

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 33 of 2008****Judgment Reserved on 21.11.2019****Judgment delivered on 26.11.2019**

1. Kanshram, Aged about 56 years, S/o. Baliya Gond.

2. Santram, Aged about 53 years, S/o. Baliya Gond.

3. Bhagbali, Aged about 71 years, S/o. Gajadhar Gond.

All R/o. Kosmanda, Tahsil Bhatapara, District Raipur  
(C.G.)

**-----Appellants/plaintiffs**

**Versus**

1. Tekram, Aged about 31 years, S/o. Sahasram Gond.

2. Tikaram, Aged about 23 years, S/o. Sahasram Gond.

3. Mirabai, Aged about 19 years, D/o Sahasram Gond.

4. Khamman (since deceased) through LRs:-

4.A Smt. Manmat Bai, W/o Khamman Gond, aged about 61 years, R/o Kosmanda, Tahsil Bhatapara, District Raipur (C.G.) [Now District Balodabazar – Bhatapara (C.G.)]

5. Mahesh, Aged about 56 years, S/o. Ratiram Gond.

All R/o. Kosmanda, Tahsil Bhatapara, District Raipur  
(C.G.)

6. Govt. of Chhattisgarh, Through Collector, Raipur  
(C.G.)

**-----Respondents/defendants.**

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For Appellants : Mr. Arvind Kumar Dubey, Adv.  
For Respondent No. 6: Ms. Anjali Singh Chouhan, PL

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**C.A.V. Judgment**

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 11<sup>th</sup> September, 2007 passed in Civil Appeal No. 5-A/2007 by the Additional District Judge, Bhatapara, District Raipur affirming the judgment & decree of Civil Judge, Class-II, Bhatapara dated 13.12.2006 passed in Civil Suit No. 11-A/2005, dismissing the suit.

(2) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are absolutely unjustified in dismissing the suit filed by the plaintiffs holding that they are not title holder and possession holder of the suit land, ignoring the fact that earlier civil suit filed by grandfather of defendants No. 1 to 3 and father of defendants No. 4 & 5 namely Ratiram was dismissed on the basis of compromise acknowledging the title of the plaintiffs and, as such, the suit ought to have been decreed by both the courts below and, therefore, the appeal deserves to be admitted by formulating substantial question of law for determination.

(3) It is correct to say that suit filed by Ratiram, grandfather of defendants No. 1 to 3 and father of defendants

No. 4 & 5, being Civil Suit No. 9-A/73, against the present plaintiffs was dismissed in default on 8.7.1980 (Ex.P-3) and second Civil suit filed by Sahasram (father of defendants No. 1 to 3) and Khamhan (father of defendant No. 4) was dismissed on 5.12.1992 on the ground that parties have compromised the matter vide Ex.P-8.

(4) A careful perusal of the aforesaid documents would show that in the earlier suit, it has not been held that so far as suit land is concerned, plaintiffs are title holder or their title have been acknowledged by defendants or their predecessor in title. Instant suit has been filed by the plaintiffs, who were defendants in the earlier suit, stating inter alia that they are title holder of the suit land and, therefore, decree of declaration of title and permanent injunction be granted.

(5) The trial Court as well as first appellate Court, upon appreciation of oral and documentary evidence on record, have clearly come to the conclusion that plaintiffs are neither title holder nor possession holder of the suit land and, therefore, they are not entitled for declaration of title and permanent injunction.

(6) Two courts below have concurrently recorded a finding that in the earlier civil suit, title of the plaintiffs was neither adjudicated nor it was considered and, therefore, the plaintiffs cannot be held to be title holder of the suit

land.

(7) Argument of the learned counsel appearing for the appellant is mainly based on the earlier suit, title of the plaintiff were acknowledged by the defendants herein, which is not apparent from the documents i.e. Ex.P-3 & P-8 and, therefore, it cannot be held that plaintiffs' title have already been adjudicated in the earlier suit and they have been held to be title holder of the suit land. Thus, both the courts below, on appreciation of oral and documentary evidence available on record, have clearly reached to the conclusion that the plaintiffs are neither title holder nor possession holder of the suit land. The said finding is a finding of fact based on material available on record. I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-