

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.48 of 2007

President, Primary School Vikas Samiti, Parsoda, Tahsil-Charama,
Distt.-Kanker (CG)

(Defendant No.5)
---- Appellant

Versus

1. Santosh Kumar Sahu S/o. Pyari Ram Sahu, aged about 45 years, R/o. Village – Parsoda, Tahsil – Charama, Distt.-Kanker (CG)
2. State of Chhattisgarh through the Collector Kanker, Distt.-Kanker (CG)
3. Assistant Settlement Officer, office-Jagdalpur Baster, Distt. Jagdalpur (CG)
4. Sub Divisional Officer, Kanker Tahsil and Distt.-Kanker (CG)
5. Tahsildar Charama, Tahsil office Charama, Distt.-Kanker (CG)

---- Respondents

For Appellant/Defendant No.5	: Mr.Sunil Sahu, Advocate
For Respondent No.1/Plaintiff	: Mr.R.S.Patel and Mr.Malay Jain, Advocates
For Respondents No.2 to 5/State	:Ms. Anjali Singh Chouhan, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/09/2019

1. The second appeal preferred by defendant No.5 was admitted for hearing by formulating the following substantial question of law:-

“Whether the finding of the lower appellate Court regarding ownership of the disputed property is perverse to the evidence adduced on behalf of the parties ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. Plaintiff-Santosh Ram instituted a suit for declaration of title, recovery of possession and for permanent injunction pleading inter-alia that the suit

land bearing Khasra No.149/1, area 1.20 acres was re-numbered as Khasra No.266/1 in settlement, which was registered in the name of the plaintiff's father-Pyariram Sahu and in partition, the suit land fell in share of the plaintiff. It was further pleaded that in a proceeding initiated by the Naib-Tahsildar, Charama at the instance of defendant No.5 the suit land was recorded in his name (defendant No.5) on 12.12.1995 necessitating for filing of the suit for declaring the order dated 12.12.1995 as illegal and bad in law and he is entitled for the reliefs as mentioned above.

3. The defendant No.5 appeared and filed his written statement stating inter-alia that the suit land is recorded as grazing land and it is being used as playground of school being government land, as such, the plaintiff is not entitled for decree.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 4.3.2004, dismissed the suit holding that the plaintiff has failed to prove his title over the suit land and it has not been proved that by Ex.P-30 the suit land has been settled in favour of the plaintiff father and also held that the suit land is recorded as land reserved for Chhote Jhad Ka Jungle (reserved for playground of school etc.) In appeal preferred by the plaintiff, the first appellate Court reversed the judgment and decree of the trial Court and granted decree in favour of the plaintiff relying upon Ex.P-30. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant/defendant No.5, in which substantial question of law has been formulated, which has been

set-out in the opening paragraph of this judgment.

5. Mr.Sunil Sahu, learned counsel for the appellant/defendant No.5, would submit that the first appellate Court is absolutely unjustified in decreeing the suit in favour of the plaintiff by setting aside well merited judgment and decree of the trial Court.
6. Mr.R.S.Patel and Mr.Malay Jain, learned counsel for respondent No.1/plaintiff, would support the impugned judgment and decree.
7. I have heard learned counsel for the parties, considered their rival submissions thoughtfully and also went through the records with utmost circumspection.
8. The plaintiff mainly claimed title over the suit land on the basis of Ex.P-30 by which the allotment officer under Revenue Book Circular has granted Bhoomiswami right to the plaintiff's father in Khasra No.268/1, area 0.62 acre, which the trial Court disbelieved holding that it is not a lease (patta) granted in favour of his father and even otherwise, it has not been proved by examining allotment officer who has granted the land to the plaintiff's father. The first appellate Court, however, accepted that document (Ex.P-30) and granted decree in favour of the plaintiff.
9. Ex.P-30 is the document by which Bhoomiswami right in Khasra No.268/1, area 0.62 acre has been granted in favour of the plaintiff's father, whereas in relief clause of the plaint, the suit land is mentioned as Khasra No.266/1, area 0.48 hectare, as such, the suit land has not been granted to the plaintiff's father as by Ex.P-30 Bhoomiswami right has been granted with regard to Khasra No.268/1, area 0.62 acre. Therefore, the first appellate Court has committed an error in relying

upon the document (Ex.P-30) to hold title of the plaintiff and granted decree in favour of the plaintiff. Khasra No.266/1 has been recorded in Government record vide Exs.D-2C and D-3C as Chhote Jhad Ka Jungle (कब्रिस्तान, पाठशाला, खेल का मैदान, गौठान) and therefore, the first appellate Court ought not to have granted decree in favour of the plaintiff by setting aside the judgment and decree of the trial Court, particularly when the appellant/defendant No.5 is in possession of the suit land and under Section 237 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "the Code") the land reserved for schools/playgrounds in Nistar Patrak cannot be diverted without the sanction of the Collector under Section 237 (2) of the Code as was in force (now deleted), as such, the substantial question of law is answered in favour of defendant No.5 and against the plaintiff.

10. In view of above, the judgment and decree of the first appellate Court is set aside and that of the trial Court is hereby restored. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

11.A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-