

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.39 of 2002

1. Sheikh Amir, Aged about 32 years, S/o Late Sheikh Latif
2. Sheikh Ibrahim, aged about 30 years, S/o Late Sheikh Latif
3. Sheikh Sameer, aged about 28 years, S/o Late Sheikh Latif
4. Sheikh Nasir, aged about 24 years, S/o Late Sheikh Latif
5. Jahedru, aged about 46 years, Wd/o Late Sheikh Latif
6. Mumtaj Begam, aged about 26 years, D/o Sheikh Latif
7. Sheikh Babbu, aged about 60 years, S/o Abdul Shubhan

All R/o Village Barar, Tahsil Kota, District Bilaspur (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Peetar Singh (Died and deleted)
2. Mohit Ram, aged about 45 years, S/o Tatu Ram
3. Pardeshi, aged about 48 years, S/o Sukhi Ram

All the above are R/o Village Barar, Tahsil Kota, District Bilaspur (C.G.)

4. Binda Lal, aged about 50 years, R/o Village Ratkhandi, Tahsil Kota, District Bilaspur (C.G.)
5. Md. Khan (Died and deleted)
6. Administrator, Gram Panchayat Ratkhandi, Office: Gram Panchayat Belghana, Through Secretary Gram Panchayat Ratkhandi, Tahsil Kota, District Bilaspur (C.G.)
7. Block Development Officer, Kota, District Bilaspur (C.G.)
8. Chief Executive Authority, Fisher Development Authority, Bilaspur (C.G.)
9. The State of Chhattisgarh, Through the Collector, Bilaspur (C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Ahamad Hussain, Advocate.

For Respondents No.2 to 4 and 6 to 8: -

None present though served.

For Respondent No.9 / State: -

Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

15/01/2019

1. This is plaintiffs' second appeal admitted on the following substantial question of law: -

“Whether in the facts and circumstances of the case and considering the relief claimed the Courts below were justified in holding that the Civil Court had no jurisdiction in view of the provisions contained in Clause (m) of Section 257 of the Revenue Act, 1959?”

(For the sake of convenience, parties would be referred as per their status shown in the trial Court.)

2. “Clause (m)” of Section 257 mentioned in the substantial question of law be read as clause (y) of Section 257 of the M.P. (C.G.) Land Revenue Code, 1959.
3. The two plaintiffs filed suit for declaration of title, permanent injunction and damages stating inter alia that they have nistari rights over the suit tank known as Purena Talab situated at Gram Barar, Tahsil Kota, District Bilaspur and the Gram Panchayat has no right to lease out the said tank for fishing purpose to the other defendants for ten years and the defendants be restrained from irrigating their lands for nistari purpose in which the defendants filed written statement and held that the suit tank is owned by the State and at the instructions of the State, it is managed by the Gram Panchayat and has been vested in the State under Section 251 of the M.P. (C.G.) Land Revenue Code, 1959 (for short, 'the Code') and as per the instructions of the Fisheries Officer dated 13-1-1989, it has been leased for ten years to defendant No.1 by Gram Panchayat Ratkhandi.
4. The trial Court after appreciating oral and documentary evidence on record, dismissed the suit holding that the suit tank is owned by the

State and it is managed by the Gram Panchayat and the plaintiffs have no right and title over the suit tank and lease granted is strictly in accordance with law which was duly upheld by the first appellate Court holding that the suit tank having been vested with the State by the order of competent authority, the jurisdiction of civil court is barred under Section 257(y) of the Code which has been questioned in this second appeal and substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

5. Mr. Ahamad Hussain, learned counsel appearing for the appellants / plaintiffs, would submit that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiffs based on Section 257(y) of the Code, as the plaintiffs are seeking declaration that the lease granted to defendant No.1 by the Gram Panchayat at the instructions of the State is illegal and they have nistari and irrigation rights over the suit tank, therefore, the decisions rendered by the two Courts below are liable to be set aside.
6. None present for respondents No.2 to 4 and 6 to 8, though served.
7. I have heard learned counsel for the appellants / plaintiffs and perused the judgments and records of both the Courts below with utmost circumspection.
8. Both the Courts below have concurrently held that the suit tank is vested under Section 251 of the Code in the State Government and on the instructions of the State Government, it is being managed by the Gram Panchayat and the Gram Panchayat has leased out the same to defendant No.1 for fisheries purpose and there is nothing on record to hold that the finding of the two Courts below that the suit tank is vested with the State under Section 251 of the Code by the order of competent authority, is perverse or contrary to record.

9. At this stage, it would be apt to notice clause (y) of Section 257 of the Code which reads as under: -

“257. Exclusive jurisdiction of revenue authorities.— Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:—

(y) any decision regarding vesting of tanks in State Government under section 251 and any claim against the State Government arising thereunder;”

10. A focused perusal of clause (y) of Section 257 of the Code would show that any decision regarding vesting of tanks in State Government under Section 251 of the Code and any claim against the State Government arising thereunder is expressly barred.
11. Reverting to the facts of the present case, though the order of the competent authority vesting the suit tank with the State Government has not been questioned, yet relief has been sought for declaration of title and that the lease is void and the plaintiffs have nistari and irrigation rights, in the considered opinion of this Court, the decision of the civil court to question the decision regarding vesting of tanks under Section 251 of the Code and any claim against the State Government arising thereunder is expressly barred. The plaintiffs may not be questioning the decision of the competent authority vesting the tank in the State Government, but they are making claim arising thereunder after vesting of the said tank which is covered by Section 257(y) of the Code, as such, the first appellate Court has rightly held that the jurisdiction of civil court is barred under Section 257(y) of the Code and also that the finding of vesting of the suit tank with the State

Government is a finding of fact based on the evidence available on record. I do not find any perversity or infirmity in the said finding. The substantial question of law is answered accordingly and the second appeal is dismissed. No order as to cost(s).

12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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