

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.220 of 2002**

1. Smt. Bindabai, Aged 85 years, W/o Madhav Singh,
2. Ram Singh S/o Madhav Singh, Aged 60 years,
3. Maha Singh S/o Madhav Singh, Aged 50 years,
4. Arjun Singh S/o Madhav Singh, Aged 45 years,
All R/o Agriculture Village Boria, Tah. Saja, Distt.Durg
5. Kuwar Singh S/o Madhav Singh Aged 55 years, Agriculture
Village Dangnia, Tah. Saja, Distt. Durg
6. Ramkumari Joje, Aged 40 years, S/o Lakhan Singh, Agriculture
Village Bagledi, Tah. Saja, Distt.Durg
7. Chamru Prasad, Aged 50 years, S/o Tularam Bramhan Kashtkar,
Village Lakhanpur, Lohara, Tah. Kawardha, Distt. Rajnandgaon

---- Appellants**Versus**

1. Bala Aged 40 years S/o Domar Lodhi, Agriculture, Village
Dangnia, Tah. Saja (Before Bemetara) Distt. Durg
2. State of Chhattisgarh Through Collector, Durg, Tah. & Distt. Durg

---- Respondents

For Appellants/defendants	:	Mr.Manoj Paranjape and Mr.Anurag Singh, Advocates
For Respondent No.1	:	None present
For Respondent No.2	:	Mr.A.N.Bhakta, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****09/01/2019**

1. The substantial questions of law involved, formulated and to be answered by this Court in this second appeal preferred by the defendants are as under:-

“1. Whether the two Courts below were justified in not holding that the land which has been purchased by the Appellants/defendants vide sale deed dated 28.1.1982 and the land belonging to the Plaintiff's father Domar Lodhi were distinct piece of lands having separate boundaries ?

2. Whether the core dispute between the Plaintiff and the Defendants was on account of a mistake in entering of the Khasra Nos. in the two sale deeds by which the Plaintiff and the Defendants claim ownership over the suit land ?”

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

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that he is title-holder and in possession of the suit land bearing khasra No.132/3, which is originally khasra No.132/1 area 3.80 acres, in which the defendants are interfering as the plaintiff's father has purchased the suit land by registered sale deed dated 6.8.1954 vide Ex.P/4, whereas the defendants set-up a plea that they have purchased the suit land from Chamru by registered sale deed dated 28.1.1982 (Ex.D/1) and also set-up a plea of adverse possession.

3. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 22.12.87, came to the conclusion that the suit land is in fact khasra No.132/1, which the plaintiff's father-Domar Lodhi has purchased and it is not khasra No.132/3 and also negated a plea of adverse possession and

decreed the suit.

4. On appeal being preferred by the defendants, the First Appellate Court affirmed the judgment and decree passed by the trial Court.

5. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.

6. Mr. Manoj Paranjape, learned counsel for the appellants/defendants, would submit that the two Courts below have recorded the concurrent finding, which is perverse and liable to be set aside.

7. None present for respondent No.1/plaintiff though served.

8. I have heard learned counsel for the appellants/defendants and went through the records with utmost circumspection.

9. The trial Court has clearly recorded a finding that the suit land bearing khasra No.132/1 area 3.80 acres, which has wrongly been mentioned as khasra No.132/3, was purchased by the plaintiff's father by registered sale deed dated 6.8.1954 (Ex.P/4) and was in possession during his life-time and thereafter the plaintiff is in possession and the defendants have no right to interfere by purchasing the part of khasra No.132/3 keeping in view that defendant No.1 Madho did not enter into

witness box to prove that he has purchased the suit land bearing khasra No.132/3. Both the Courts below have concurrently recorded a finding that the suit land is part of khasra No.132/1, which the plaintiff's father has purchased, he was in possession during his life-time and thereafter the plaintiff is in possession. The concurrent finding recorded by two Courts below has not been shown to be perverse as there is no evidence on record particularly defendant No.1-Madho did not offer himself to be cross-examined by the plaintiff, as such, the finding recorded by two Courts below that the plaintiff is owner of the suit land and he is in possession is the finding of fact, which is neither perverse nor contrary to record. The substantial questions of law are answered in favour of the plaintiff and against the defendants.

10. Accordingly, the second appeal deserves to be and is hereby dismissed. No cost(s).

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-