

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 233 of 2005****Judgment Reserved on : 16.07.2019****Judgment Delivered on : 26.07.2019**

- Smt. Samari Bai (died) Through legal representaives
 - 1.1 - (A). Pran Singh S/o Late Chamraram Aged About 55 Years By Caste Gond, R/o Village Bhiravahi, Tahsil Bhanupratappur, District U.B. Kanker., District : Kanker, Chhattisgarh
 - 1.2 - (B). Narayana Singh S/o Late Chamraram Aged About 50 Years By Caste Gond, R/o Village Bhiravahi, TahsilBhanupratappur, District U.B. Kanker., District : Kanker, Chhattisgarh
- Appellant/Plaintiff**

Versus

1. Mahtarin Bai D/o Sunhare Aged About 66 Years W/o Bodhiram R/o Pevari Thana Mahamai Tahsil Balod District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Ghasiyaram S/o Kangluram Aged About 40 Years Mother Soni Bai, R/o Village Bhirvahi Tahsil Bhanupratappur District Kanker., District : Kanker, Chhattisgarh
3. The State Of Chhattisgarh Through Collector Kanker Chhattisgarh. (Defendants) **----Respondents/ Defendants**

For Appellant/ Plaintiff	:	Mr. Shivalik Tiwari & Mr. Parag Kotecha, Advocates
For Respondents No. 1 & 2	:	None present
For State/ Respondent No. 3:	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by plaintiff/ appellant is as under:-

“Whether the first appellate Court was justified in reversing the decree of the trial Court without

meeting the reasonings recorded by the trial Court for decreeing the suit?"

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

2. The original plaintiff Samari Bai is the daughter of Chanduram whereas defendant No. 1 is the daughter of Sunhare. Chanduram and Sunhare, both were brothers and Samari Bai (plaintiff herein) has filed a suit that the suit land was originally recorded in the name of Respondent No. 1 in the year 1940-41 in the revenue records which is the self acquired property of her father Chanduram and after his death in the year 1948-49, she has succeeded the suit property. It was further pleaded that at the instance of defendant No. 1, the order of partition was passed by the Tehsildar on 15.09.1994 which was challenged in appeal before the SDO and which was dismissed on 03.04.1994 and revision thereagainst was also dismissed by the Revisional Commissioner on 29.05.1997 necessitating the filing of suit declaring that the name of defendant No. 1 declared illegal and the order dated 03.04.1985 passed by the SDO affirming the order of Tehsildar directing partition also be declared illegal and she is the exclusive owner of the suit land and her confirmation be also declared, in alternative possession from defendant No. 1 be given to her along with permanent injunction. Defendant No. 1 has filed her separate written statement and denied the plaint allegations stating inter alia that her name and her father's

name was also recorded along with the plaintiff's father's name and as such, she is cultivating over the suit land and therefore she is the title holder of the suit land and the suit is barred by limitation.

3. The trial Court decreed the suit holding that the plaintiff had possession over the suit land and suit is barred by limitation. The first appellate Court allowed the appeal preferred by defendant No. 1 and dismissed the suit as barred by limitation and further held that the plaintiff has failed to prove her exclusive title over the suit land.
4. I have heard learned counsel for the appellant/ plaintiff, considered his submissions made hereinabove and went through the records with utmost circumspection.
5. The first appellate Court reversed the decree granted by the trial Court relying upon document Ex. P-2 which is the copy of *Adhikar Abhilekh Panji* which was prepared under Section 115 of the M.P.(C.G.) Land Revenue Code, 1954 (for short 'the Code') on the basis of *Jamabandi* of the year 1954-55.
6. Section 103 of the Code of 1954 provides for record-of-rights which reads as under: -

“103. Record-of-rights—A record-of-rights shall be prepared and maintained for every village and such record shall include the following particulars:—

- a) the names of all persons, other than tenants, who are holders of land ;
- b) the names of all occupancy tenants and protected lessees ;

c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto ;

d) the rent or land revenue, if any, payable by such persons ; and

e) such other particulars as may be prescribed.”

7. Sub-section (6) of Section 105 of the Code of 1954 states that an entry in the records of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

8. Section 115 of the Code 1954 provides records-of-rights at commencement of the Code which reads as under: -

“115. Records-of-rights at commencement of Code.

— (1) Until a record-of-rights for the Central Provinces and merged territories is prepared in accordance with the provisions of section 103 the jamabandi for the agricultural year immediately preceding the year in which this Code comes into force, shall, so far as it contains the particulars specified in section 103, be deemed to be the record-of rights.

(2) The jamabandi referred to in sub-section (1) shall be published in the village in such manner as may be directed by the Collector.

(3) Objections may be filed to any entry in the jamabandi and the provisions of section 105 shall apply to the objections as they apply to an entry in the mutation register and the entries shall be corrected after certification as provided for in that section.”

9. As such, record of rights prepared under the Code of 1954 shall be presumed to be true until the contrary is proved or new entry is lawfully substituted therefor.

10. It appears that document Ex.P-2 has been prepared on the basis of *Jamabandi* of year 1954-55 which was prepared in accordance with Section 103 of the Code of 1954 and it has presumptive value under Section 105(6) of the said Code, as it is prepared in accordance with Section 115 of the Code of 1954.
11. The Supreme Court in the matter of **Chhote Khan and others v. Malkhan and others**¹ while dealing with entry in record of rights prepared under Section 31 of the Punjab Land Revenue Act which has presumptive value under Section 44 of that Act, held as under: -

“20. By section 44 of the Punjab Land Revenue Act an entry made in the record of rights or in an annual record shall be presumed to be true until the contrary is proved. That entries in the Jambadies fall within the purview of the record of rights under section 31 of the Act admits of no doubt. Section 16 of the old Act (XXXIII of 1871) laid down that entries in the record of rights made or authenticated at a regular Settlement shall be presumed to be true. ...”

12. Similar is the proposition of law laid down by a Constitution Bench of the Supreme Court in the matter of **Raja Rajinder Chand v. Mst. Sukhi and Others**² in which it was held as under:-

“19. It is not disputed that under S. 31 of the Punjab Land Revenue Act, 1887, *Wajib-ul-arz* is a part of the record-of rights, and entries made therein in accordance with law and the provision, of Ch. IV of the Act and the rules thereunder, shall be presumed to be true (vide S. 44). The *Wajib-ul-arz* or village administration paper is a record of existing customs regarding rights and liabilities in the estate; it is not to be used for the creation of new rights or liabilities.

1 AIR 1954 SC 575

2 AIR 1957 SC 286

(see para 295 of the Punjab Settlement Manual, pp.146- 147, 1930 ed.) ...”

13. To the same effect is the decision of the Supreme Court in the matter of **Abdul Waheed Khan v. Bhawani and others**³ in which while dealing with the entry made under Section 9 of the Bhopal State Land Revenue Act, 1932, the Supreme Court held as under:-

“10. ... The scope of an entry in regard to the right to hold a land under S. 89(2) of the Act and the decision under S. 93 thereof is disclosed by S. 95. When such an entry is made in the register of rights and is not corrected in the manner prescribed in S.93, under S. 95 it shall be presumed to be correct until the contrary is proved. The effect of such an entry, therefore, is only to make it a presumptive piece of evidence in a collateral proceeding: that is to say, in a suit based on title when such an entry is relied upon by one or other of the parties, the Court shall presume it to be correct unless the other party rebuts the presumption. Not only S 95 does not by necessary implication bar a suit but also assumes that in such a suit the correctness of such an entry could be questioned subject to the said presumption.”

14. Thus, on the basis of aforesaid discussion it is quite vivid that entry vide Ex.P-2 was prepared on the basis of *Jamabandi* of year 1954-55 which was prepared in accordance with Section 103 read with 115 of the Code of 1954. It has presumptive value and it has to be presumed to be true under Section 105(6) of the Code. In Ex.P-2 name of the plaintiff's father and defendant's father are jointly recorded to be the owner of the suit land which the plaintiff has challenged in the suit filed on 09.07.1998. Even otherwise, the plaintiff has failed to prove his exclusive title over

3 AIR 1966 SC 1718

the suit land, which the First Appellate Court after appreciating oral and documentary evidence on record came to a specific conclusion that the plaintiff has failed to prove his exclusive title over the suit land relying upon Ex.P-2.

15. The above-stated finding of fact recorded by the First Appellate Court is based on the material available on record, it is neither perverse nor contrary to record, and it is held that the first appellate Court is absolutely justified in reversing the judgment and decree of the trial Court.
16. The substantial question of law is answered accordingly and the second appeal is dismissed leaving the parties to bear their own cost(s).
17. Decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge