NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.287 of 2004

Tamdu S/o Jagan, age 72 years, Caste-Kanwar, Occupation-Agriculture, r/o village Jujgu, Post Kurdeg, Tehsil Bagicha, Distt. Jashpur (CG)

---- Appellant

Versus

1a. Jagdish s/o Late Ishwar, aged about 45 years, R/o Village-Jugju, Post-Kurdeg, P.S. & Tahsil – Bagicha, District Jashpur (CG)

2. Patu S/o Motiya, Caste-Kanwar, aged about 67 years, occupation-Agriculture, r/o village Jugju, Post Kurdeg, Tehsil Bagicha, Distt. Jashpur (CG)

3a. Kartik Ram S/o Late Shivlal, aged about 48 years, R/o Village-Jugju, Post- Kurdeg, P.S. & Tahsil – Bagicha, District – Jashpur (CG)

3b. Shardha Sai s/o late Shivlal, aged about 35 years, R/o Village-Jugju, Post-Kurdeg, P.S. & Tahsil-Bagicha, District-Jashpur (CG)

4. The State of Chhattisgarh, through Collector, Jashpur (CG)

---- Respondents

For Appellant	:	Mr.A.K.Prasad, Advocate
For Respondents No.1 to 3	:	Mr.J.K.Saxena, Advocate
For Respondent No.4	:	Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/02/2019

1. This is the defendant's second appeal under Section 100 of the CPC. The trial Court decreed the suit, which was upheld by the First Appellate Court.

2. The plaintiffs' filed a suit for declaration of title and permanent injunction stating inter-alia that they are title holder of the suit land and also entitled for permanent injunction. The trial Court has held that the plaintiffs are entitled for 4.77 acres of the suit land negativating the plea that the suit is barred by limitation and also holding that the suit is

not barred by estoppel and waiver. Appeal preferred by the defendant was dismissed by the First Appellate Court. Against which, this second appeal under Section 100 of the CPC has been preferred.

3. Mr.A.K.Prasad, learned counsel for the appellant/defendant, would submit that the suit was barred by Section 257 (v) of the C.G. Land Revenue Code, 1959 (hereinafter called as “the Code”) and also barred by limitation, as such, the suit deserves to be dismissed.

4. I have heard learned counsel for the appellant/defendant, perused the impugned judgment and decree and records of the Courts below with utmost circumspection.

5. The plaintiffs' suit was for declaration based on title and also for permanent injunction, to which the defendant has taken specific plea that the suit is barred by estoppel and waiver, which both the Courts below did not accept and decreed the suit.

6. Section 257 (v) of the Code states as under:-

> “(v) amount payable as compensation under sub-section (3) of section 209, confirmation of the scheme for consolidation of holdings under section 210, transfers of rights in carrying out the scheme under section 213 and assessment and apportionment of costs of consolidation of holdings under section 215;”

7. The Supreme Court in the matter of **Beni Madhav Singh and others v. Ram Naresh**[1] has clearly held that bar to jurisdiction of civil court under Section 257 (v) of the Code is not applicable to a suit between two contenders to the title of land, not in any way affecting the scheme of consolidation. It was observed as under:-

> “The only substantial question of law raised before the High Court was whether the suit of the plaintiff-respondent was

1 (1998) 8 SCC 751

> barred on account of Section 257(v) of the Madhya Pradesh Land Revenue Code, 1959. It has been held by the High Court on the basis of the text and precedent that a suit to challenge the scheme of consolidation of holdings was barred, but not one of possession and injunction claimed on the basis of the title between two parties. It has been taken that a civil court certainly has jurisdiction to determine a question of title to land without causing any dent to the consolidation scheme. We have gone through the provision in question and the reasoning of the High Court. It seems to us that the view taken by it is unexceptionable. Instantly was a suit between two contenders to the title of the land, not in any way affecting the scheme of consolidation. On this premise we dismiss the appeal, affirming the judgment and order of the High Court. No costs."

8. The principle of law laid down in **Beni Madhav Singh** (supra) squarely applies to the facts of the present case and the suit cannot be held to be not maintainable as the instant suit was for declaration of title and permanent injunction and scheme of consolidation of holding was not challenged at all in the suit, therefore, the suit was not barred under Section 257 (v) of the Code.

9. So far as the question of limitation is concerned, it is mixed question of law and fact. Both the Courts below have clearly recorded the finding that the suit is within limitation. The finding recorded by two Courts below is the finding of fact based on evidence available on record, in which I do not find any illegality or perversity. Even I do not find any substantial question of law for determination of this second appeal.

10. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-