

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.473 of 2005

1. Surij, S/o Late Ramdhar, Aged about 45 years
2. Kodu, S/o Late Ramdhar, Aged about 38 years

Both R/o Village Bade Moratpal, Tehsil Jagdalpur, Distt. Bastar (C.G.)
 (Defendants)
 ---- Appellants

Versus

1. a. Smt. Jhitri, Wd/o Late Mandhar
- b. Sahdeo, S/o Late Mandhar
- c. Jairam, S/o Late Mandhar
- d. Deenu, S/o Late Mandhar, Aged about 15 years

Respondents 1B & 1D are minor Through natural guardian and mother Smt. Jhitri Bai, Wd/o Late Mandhar

2. Nani, S/o Late Bongu, Aged about 58 years
3. Masu, S/o Late Bangdu, Aged about 50 years
4. Manglu, S/o Late Bangdu, Aged about 46 years
5. Chitu, S/o Late Padi, Aged about 24 years
6. Kana, S/o Late Samu, Aged about 43 years
7. Boga, S/o Late Samu, Aged about 38 years

All R/o Village Bade Moratpal, Tehsil Jagdalpur, Distt. Bastar (C.G.)
 (Plaintiffs)
 ---- Respondents

For Appellants: Mr. Prafull N. Bharat, Advocate.
 For Respondents: Mr. Dashrath Kushwaha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

31/07/2019

1. This second appeal was admitted for hearing by formulating the following substantial question of law: -

“Whether the Courts below were justified in not considering the provisions prescribed under Section 168 & 169 of the Chhattisgarh Land Revenue Code, 1959, and have thus arrived at a wrong conclusion?”

2. The respondents herein / plaintiffs filed a suit for declaration of title, recovery of possession and permanent injunction stating inter alia that the suit land is originally owned by Udran and in the year 1932-33, the total land recorded was 18.70 acres. After the death of Udran, the land was succeeded by his eldest son Bongu and Bongu and his brother Samu were cultivating the suit land with mutual consent. During the lifetime of Udran, one Lakhmu was working as agricultural labour on the agricultural field and Udran has given 4 acres of land in lieu of services rendered by Lakhmu on license. After death of Lakhmu, his sons were also cultivating and working under the plaintiffs as agricultural labours. In the year 1999, the plaintiffs removed the defendants from agricultural labour, but the suit land was not vacated though it was given on license in lieu of services rendered by the defendants and it was also found that the names of the defendants' were recorded in the revenue record without the knowledge of the plaintiffs. With the aforesaid facts, suit claiming aforesaid reliefs was filed before the trial Court which the defendants denied and they have claimed that they are members of the same family and they have also half share in the suit property and they have also claimed the suit property. The trial Court after appreciating oral and documentary evidence on record, answered the issues in favour of the plaintiffs and ultimately, granted decree in their favour holding that grand-father of defendants No.1 & 2 – Lakhmu was the agricultural labour with the plaintiffs' grand-father Udran and 4 acres of land was given on license to Lakhmu in lieu of the services rendered and the plaintiffs and defendants No.1 & 2 belong to different family and as such names of

defendants No.1 & 2 have illegally been recorded in the revenue record, therefore, the plaintiffs are entitled for decree as claimed. The first appellate Court has agreed with the findings of the trial Court on appeal taken by the defendants and thus, dismissed the first appeal. This second appeal has been preferred by the defendants questioning the judgment & decree of the first appellate Court in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

3. Mr. Prafull N. Bharat, learned counsel appearing for the appellants / defendants, submits that both the Courts below have erred in overlooking and not considering the provisions contained in Sections 168 & 169 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code'), as the defendants' grand-father and thereafter the defendants have cultivated the suit land on the basis of lease for more than one consecutive year and i.e. for a period of three years, therefore, under Section 168 of the Code right of occupancy tenant has been conferred to them by virtue of Section 169(i) of the Code. Therefore, judgment & decree of both the Courts below deserve to be set aside by granting the appeal.
4. Mr. Dashrath Kushwaha, learned counsel appearing for the respondents / plaintiffs, submits that no such plea was recorded in the written statement so filed before the trial Court and thereafter it was not raised before the first appellate Court and as such, it cannot be permitted to raise before this Court for the first time.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
6. The plea with regard to grant of lease in favour of the defendant's

grand-father that too for a period of more than 3 years has been raised before this Court for the first time, but a careful perusal of the written statement filed would show that it is not the case of the defendants that the suit land was leased in favour of Lakhmu and thereafter, they are continuing as leaseholders over the suit land and thereby they have conferred with the rights of occupancy tenant under Section 169(i) of the Code. Therefore, the trial Court was right in not framing any issue in this regard and no finding was returned by the trial Court in that regard. Even before the first appellate Court, it nowhere appears that such a plea was raised by the defendants that they have been conferred with the occupancy right under Section 169(i) of the Code. It is well settled law that a party to lis cannot be taken by surprise by the other side by raising a plea which is altogether new that too at the second appellate stage. Since the defendants have not taken any plea with regard to conferment of occupancy right under Section 169(i) of the Code either before the trial Court or before the first appellate Court which has not been tried by any of the Courts below, in my considered opinion, the defendants cannot be permitted to raise such a new plea first time before this Court i.e. the second appellate Court. The two Courts below are absolutely justified in granting decree in favour of the plaintiffs. I do not find any illegality or perversity in such finding. The substantial question of law is answered accordingly.

7. The appeal deserves to be and is accordingly dismissed. The defendants will bear their own costs as well as that of the plaintiffs.
8. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge