NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 25 of 2002

1(a) Guruwari, Wd/o. Late Fagnu, 62 years,

(b) Baliram, S/o Late Fagnu, 45 years,

(c) Shobha, S/o. Late Fagnu, 40 years,

(d) Dashrath, S/o. Late Fagnu, 30 years,

2. Dharmu, S/o Late Dashmu, 69 years.

3. Dhano, S/o. Late Dashmu, 66 years.

All R/o. Vill. Paikpal, Teh. Jagdalpur, Distt. Bastar (C.G.)

----Appellants/plaintiffs

Versus

1(a) Shri Jhitru, S/o. Late Bhadar, 51 years.

(b) Smt. Munji, Wd/o. Late Ramdas, 41 years,

Both R/o.Vill. Paikpal, Teh. Jagdalpur, Distt. Bastar (C.G.)

2. State of M.P. (now State of Chhattisgarh) through: Collector Bastar, Jagdalpur, Distt. Bastar (C.G.)

---- Respondents.

For Appellants : Shri Prafull N. Bharat, Advocate.
For Respondents 1(a) & 1(b) : Shri R.N. Jha, Advocate.
For Respondent No. 2 : Shri S.K. Agrawal, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/02/2019

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

> “a) “Whether the provisions contained in the 'Bastar State Manual; were affecting in the facts and circumstances of the

case if yes

b) Whether the Court below committed an error of law in not taking note of the provisions contained in the 'Bastar State Manual' under which the agricultural lands were required to be recorded in the name of eldest one of the family and whether non-consideration thereof has prejudiced the plaintiff resulting in dismissal of the suit ?

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

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Original plaintiff No. 1 - Fagnu, plaintiffs No. 2 & 3 namely Dharmu & Dhani, respectively and original defendant No.1 - Bhadar were brothers. Plaintiffs filed a suit against his eldest brother – Bhadar seeking declaration of title and partition stating *inter alia* that the suit land was jointly possessed by both parties and they were cultivating jointly the same. It was further pleaded that as per Bastar State Manual, name of eldest son i.e. defendant No. 1 - Bhadar was recorded in the revenue records though all of them were cultivating the suit land jointly. In December, 1998 defendant No. 1 asked the plaintiffs that due to his large family, now he will not allow them to cultivate the land so they should leave the possession of the suit land, on which, the panchayat was convened but as defendant No.1 - Bhadar was not ready to share the suit land with the plaintiffs, the instant civil suit was filed by the plaintiffs for the aforesaid reliefs.

(2.2) By filing written statement, defendant No. 1 – Bhadar denied the claim of the plaintiffs stating the suit land to be his self acquired property and he is exclusive owner

and possession holder of the suit land. He has also filed counter claim before the trial Court stating that he be declared absolute owner of the suit land as the suit land is his self acquired property.

(2.3) Trial Court, after appreciating the oral and documentary evidence available on record, came to the conclusion that suit land is not the joint family property of plaintiffs and defendant No.1 and it is the self acquired property of defendant No.1 and thereby dismissed the suit of the plaintiff and allowed the counter claim made by defendant No. 1/ his legal heirs.

(2.4) Plaintiff preferred first appeal there-against. The first appellate court, on re-appreciation of evidence dismissed the appeal, against which, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial questions of law have been formulated, which have been set out in opening paragraph of this judgment.

(3) Mr. Prafull N. Bharat, learned counsel for the appellants/plaintiffs would submit that both the courts below have concurrently erred in holding the suit property to be the self acquired property of defendant No.1 by recording findings, which are perverse and contrary to the record. He would further submit that as per Bastar State Manual, Page No. 69, Rule 2, sub Rule (3) name of eldest son of the family was recorded in the revenue record and it is not recorded jointly, therefore, in Jamabandi (Ex.P-1) for the year 1941-42, only name of original defendant No. 1- Bhadar was recorded and later on in Kishtbandi Khatouni (Ex.P-2) for the year 1954-55, name of original defendant No.1 – Bhadar was also recorded, that would not confer any title on defendant No.1,

whose name appears in record of rights and title can only be decided by competent civil Court and, therefore, both the courts below were absolutely unjustified in granting the counter claim filed by the defendant No.1 holding the suit property to be the self-acquired property of defendant No.1; and further in dismissing the suit of the plaintiffs.

(4) As against this, Shri R.N. Jha, learned counsel for defendants would submit that concurrent finding recorded by both the courts below that the suit property is self acquired property of defendant No. 1 – Bhadar is binding on this Court and it is not liable to be interfered and, therefore, the substantial questions of law framed by this Court be answered in affirmative and the appeal be dismissed.

(5) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(6) The question for consideration is whether suit property was self acquired property of defendant No. 1 – Bhadar or it was joint family property of plaintiffs and defendant No. 1.

(7) Both the courts below, after appreciation of oral and documentary evidence available on record, have concurrently recorded a finding that the suit property is self acquired property of defendant No.1.

(8) In order to prove the suit property to be the joint family property, the plaintiffs apart from leading oral evidence, also led documentary evidence. Ex.P-1 is the copy of

Jamabandi recorded in the year 1941-42, in which name of defendant No. 1 Bhadar has been recorded as title holder of the suit land; similarly Ex.P-2 is the Kishtbandi Khatouni for the year 1954-55, in which name of defendant No. 1 – Bhadar has been shown as Bhumidhari and when the Kishtbandi Khatouni (Ex.P-2) was recorded, M.P./C.G. Land Revenue record has already come into force.

(9) Admittedly, the trial Court has granted counter claim in favour of defendant No.1 relying upon the document Ex.P-2, which is the copy of Adhikar Abhilekh Panji, which was prepared on the basis o*f Jamabandi* of the year 1954-55.

(10) 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.

(11) 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.

(12) Section 115 of the Code 1954 provides record 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."

(13) 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.

(14) Thus, it appears that the document Ex.P-1 has been prepared on the basis of *jamabandi* 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.

(15) 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

1 AIR 1954 SC 575

> 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. ..."

(16) Similar is the proposition laid down by the 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. (see para 295 of the Punjab Settlement Manual, pp.146-147, 1930 ed.) ..."

(17) 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

2 AIR 1957 SC 286
3 AIR 1966 SC 1718

> 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."

(18) Thus, on the basis of above-stated discussion, it is quite vivid that Ex.P-2 is document filed and proved by the plaintiffs themselves, which has been prepared on the basis of Jamabandi of the year 1954-55 and which was record of rights prepared and maintained in accordance with Section 103 read with Section 115 of the M.P. Land Revenue Code, 1954 and it has presumptive value to be true under Section 105 (6) of the said Code and the said entry has not been rebutted by leading appropriate evidence on behalf of the plaintiffs and as such, by entry Ex.P-2, which was prepared on the basis of Jamabandi of the year 1954-55, it was conferred Bhumidhari rights under the Land Revenue Code, 1954, and later it was converted into Bhumiswami right under M.P./C.G. Land Revenue Code, 1959, therefore, both the courts below have rightly held the suit property to be the self-acquired property of defendant No. 1 – Bhadar and he was title holder over the suit property in the capacity of Bhumiswami, and I do not find any illegality or perversity in the findings recorded by both the courts below warranting interference under Section 100 of the Code of Civil Procedure. The substantial questions of law are answered in favour of defendant No.1 and against the plaintiffs.

(19) In view of foregoing, the second appeal being devoid of merit is liable to be and is hereby dismissed. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-