

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 289 of 2009**

Hemkant Mishra, aged about 32 (30) years, Son of Shri Rambali Mishra,
Resident of Kilapara, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

----Appellant/Plaintiff

Versus

1. State of Chhattattisgarh, through : The Collector, Rajnandgaon (C.G.)
2. The Tahsildar, Rajnandgaon (C.G.)
3. Narendra Das Pujari, Balbhadra Jamat Mandir, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

----Respondents/Defendants

For Appellant : Mr. Shashi Bhushan, Advocate.
For Respondents No. 1 & 2 : Mr. Sanjeev Kumar Agrawal, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/11/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in dismissing the suit of the plaintiff, by recording a finding which is perverse to the record, therefore, appeal be admitted for hearing by formulating substantial question of law for determination.

(3) The plaintiff filed a suit for declaration of title and for restraining the defendant No. 3 – Narendra Das Pujari from his possession in the suit premises, which was dismissed by the trial Court holding that the land bearing Khasra No. 1218 area 0.02

acre is nazul land reserved for *Aam Rasta* and the plaintiff has encroached upon the land bearing Khasra No. 1218, area 742.28 sq.ft. and constructed house and shop therein.

(4) The trial Court, dismissed the suit, holding that the suit land is nazul land and reserved for *Aam Rasta* and the order dated 30.1.2003 passed by the Tahsildar under Section 248 of the Land Revenue Code, 1959 (henceforth "Code, 1959") is binding on the plaintiff, which has been affirmed by the first appellate Court, in the appeal preferred by the plaintiff, against which instant second appeal has been preferred.

(5) The concurrent findings recorded by two courts below that the suit land is the government nazul land and reserved for *Aam Rasta* and the plaintiff is encroacher is a finding of fact based on material available on record. Likewise order dated 30.01.2003 passed by the Tahsildar is not under challenge in the civil suit. In fact the plaintiff ought to have challenged the order dated 30.01.2003 of the Tahsildar directing his eviction under Section 248 of the Code, 1959. The plaintiff is rank encroacher upon the government land and he has rightly been held to be not entitled for decree of declaration of title, particularly in absence of challenge of the order dated 30.01.2003 passed by the Tahsildar. I do find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal .

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

