

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.350 of 2002Order reserved on: 30-1-2019Order delivered on: 6-2-2019

1. Banso (Died and deleted)
 2. Loya (Dead) Through LRs
 - 2A. Sukhna, S/o Late Loya, aged about 30 years,
 - 2B. Dinesh, S/o Late Loya, aged about 27 years,
 - 2C. Dholo, Wd/o Late Loya, aged about 45 years,
 - 2D. Indramani, W/o Bandan, D/o Late Loya, aged about 28 years,

All R/o Village Ratasili, Tahsil Kusmi, Post Kusmi, District Balrampur-Ramanujganj (C.G.)
 3. Bandhu, S/o Sube, age 35 years, R/o Village Ratasili, P.S. & Tehsil Kusmi, District Surguja (C.G.)
- (Defendants)
---- Appellants

Versus

1. Birsay, S/o Libdu, age 28 years.
 2. Jira, S/o Libdu, age 18 years.
 3. Sundari, W/o Libdu, age 45 years.
- All R/o Village Ratasili, P.S. & Tehsil Kusmi, District Surguja (C.G.)
4. Jagmohan (Died) Through LRs
 - 4.A. Jasinta Toppo, D/o Late Jagmohan, aged about 38 years, R/o Village Karsi, Tahsil Pratappur, District Surajpur (C.G.)
 - 4.B. Jasinta Toppo, D/o Late Jagmohan, aged about 35 years, R/o Dobhipara, Ambikapur, District Surguja (C.G.)
 - 4.C. Kusum Toppo, D/o Late Jagmohan, aged about 32 years, R/o Delhi.
 - 4.D. Ajajak Toppo, S/o Late Jagmohan, aged about 30 years.
 - 4.E. Bijendra Toppo, S/o Late Jagmohan, aged about 28 years.
 - 4.F. Anuj Toppo, S/o Late Jagmohan, aged about 25 years.

4.G. Kansolata Toppo, D/o Late Jagmohan, aged about 23 years.

Respondent No.4.D to 4.G are R/o Village Ratasili, Tahsil Kusmi, District Balrampur-Ramanujganj (C.G.)

5. Nikola, S/o Late Thema, age 25 years, R/o Village Ratasili, P.S. & Tehsil Kusmi, District Surguja (C.G.)

(Plaintiffs)

6. The State of Chhattisgarh, through Collector, Surguja, Ambikapur.
(Proforma Resp. No.6)
---- Respondents

For Appellants: Mr. A.K. Prasad, Advocate.

For Respondents No.1 to 3 and 5: -

Mr. Anurag Singh, Advocate.

For Respondent No.6 / State: -

Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The second appeal has been admitted by formulating the following substantial question of law: -

“Whether the Court below has erred in law in not properly appreciating the evidences that have been adduced before the Court below and has given a perverse finding?”

(Parties hereinafter will be referred as per their status and ranking shown in the plaint before the trial Court.)

2. The plaintiffs / respondents No.1 to 5 herein filed a suit for declaration and possession of the lands described in Schedule A of the plaint and further, the dispute relates to the lands mentioned in Schedule B bearing Khasra No.391, area 1.489 hectares, for which the plaintiffs sought for declaration of title and possession from the defendants that they are owners and titles holders of the suit land, but the defendants have dispossessed them and thus, they are entitled for decree of possession of the suit land.

3. The defendants filed written statement and pleaded that the suit land was settled in the name of defendant No.1 in the first settlement operation of the Surguja State and patta was granted in her favour

which has become final and therefore the suit is liable to be dismissed.

4. The trial Court decreed the suit holding that the suit land bearing Khasra No.391, area 1.489 hectares, was settled in favour of the predecessor-in-title of the plaintiffs and as such, the plaintiffs are entitled for declaration of title and possession. In appeal filed by the defendants, the first appellate Court dismissed the appeal relying upon the admission made by defendant No.1 in paras 9 & 10 of her examination leading to filing of second appeal in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. A.K. Prasad, learned counsel appearing for the appellants herein / defendants, would submit that the first appellate Court has failed to consider Ex.D-1 i.e. the patta granted in favour of defendant No.1 in the Surguja State Settlement which proves the title of defendant No.1 in the suit land and the first appellate Court has committed illegality in not considering Ex.D-1 while affirming the decree granted in favour of the plaintiffs by recording a finding holding paras 9 & 10 of the evidence of defendant No.1 as admission is perverse to the record and therefore, it is liable to be set-aside. He would rely upon the judgments of the Supreme Court in the matters of Chikkam Koteswara Rao v. Chikkam Subbarao and others¹, Sebastiao Luis Fernandes (Dead) Through LRs. and others v. K.V.P. Shastri (Dead) Through LRs. and others² and Muddasani Venkata Narsaiah (Dead) Through Legal Representatives v. Muddasani Sarojana³ to buttress his submission.

1 AIR 1971 SC 1542

2 (2013) 15 SCC 161

3 (2016) 12 SCC 288

6. Mr. Anurag Singh, learned counsel appearing for the plaintiffs / respondents No.1 to 3 and 5 herein, would submit that both the Courts below have concurrently recorded the title of the plaintiffs as such, the finding of fact is based on record and it is not open for interference in second appeal. He would rely upon the judgments of the Supreme Court in the matters of Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and others⁴ and Damodar Lal v. Sohan Devi and others⁵ to buttress his submission.
7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
8. The second appeal has been admitted on the ground that the finding recorded by the two Courts below are perverse and contrary to record.
9. The first question is, the scope of interference by this Court in the concurrent finding of fact recorded by the two Courts below.
10. In Kondiba Dagadu Kadam (supra), the Supreme Court has held that High Court under Section 100 of the CPC cannot substitute its own opinion for that of the first appellate court unless it finds that the conclusions drawn by the lower court were erroneous being (1) contrary to the mandatory provisions of applicable law; or (2) contrary to the law as pronounced by the Apex Court; or (3) based upon inadmissible evidence or no evidence.
11. Likewise, in Damodar Lal (supra), the Supreme Court, with reference to interference by High Court under Section 100 of the CPC, has held that even if the finding of fact is wrong, that by itself will not constitute a question of law, the wrong finding should stem out of a complete

4 (1999) 3 SCC 722

5 (2016) 3 SCC 78

misreading of evidence or it should be based only on conjectures and surmises, and laid down the test that the safest approach on perversity is the classic approach on the reasonable man's inference on the facts. It was observed as under: -

“14. In *S.R. Tewari v. Union of India*⁶, after referring to the decisions of this Court, starting with *Rajinder Kumar Kindra v. Delhi Admn.*⁷, it was held at para 30: (*S.R. Tewari* case, SCC p.615)

“30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide *Rajinder Kumar Kindra* (supra), *Kuldeep Singh v. Commr. of Police*⁸, *Gamini Bala Koteswara Rao v. State of A.P.*⁹ and *Babu v. State of Kerala*¹⁰.)”

This Court has also dealt with other aspects of perversity.

15. We do not propose to discuss other judgments, though there is plethora of settled case law on this issue. Suffice to say that the approach made by the High Court has been wholly wrong, if not, perverse. It should not have interfered with concurrent findings of the trial court and first appellate court on a pure question of fact. Their inference on facts is certainly reasonable. The strained effort made by the High Court in second appeal to arrive at a different finding is wholly unwarranted apart from being impermissible under law. Therefore, we have no hesitation to allow the appeal and set aside the impugned judgment of the High Court and restore that of the trial court as confirmed by the appellate court.”

12. In the matter of **Ramathal v. Maruthathal and others**¹¹, the Supreme Court held that High Court should not interfere with factual finding of

6 (2013) 6 SCC 602 : (2013) 2 SCC (L&S) 893

7 (1984) 4 SCC 635 : 1985 SCC (L&S) 131

8 (1999) 2 SCC 10 : 1999 SCC (L&S) 429

9 (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372

10 (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179

11 2017 SCC OnLine SC 1100

fact unless and until there is absolute perversity and High Courts will not interfere with question of fact just because two views are possible.

13. Reverting to the facts of the present case, two courts have granted decree in favour of the plaintiffs relying upon the document Ex.P-3 which is the copy of *adhikar abhilekh panji* and which was prepared under Section 115 of the M.P. Land Revenue Code, 1954 (for short, 'the Code of 1954') on the basis of *jamabandi* of the year 1954-55.

14. 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.

15. 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.

16. 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.”

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

18. Thus, it appears that the document Ex.P-3 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.

19. The Supreme Court in the matter of Chhote Khan and others v. Malkhan and others¹² 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. ...”

20. 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 others¹³ 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,

12 AIR 1954 SC 575

13 AIR 1957 SC 286

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.) ...”

21. To the same effect is the decision of the Supreme Court in the matter of **Abdul Waheed Khan v. Bhawani and others**¹⁴ 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.

22. Thus, on the basis of aforesaid discussion, it is quite vivid that entry vide Ex.P-3 is an entry prepared on the basis of *jamabandi* of 1954-55, which was prepared in accordance with Section 103 read with Section 115 of the Code of 1954 and it has presumptive value under Section 105(6) of the said Code and therefore both the Courts are absolutely justified in holding that the plaintiffs have title over the suit land, as the said entry has not been rebutted by leading appropriate evidence on behalf of the defendants. Even otherwise, defendant No.1 Banso (DW-1) has clearly admitted in her cross-examination that the suit land is owned by Thema – predecessor-in-title of the plaintiffs and after the death of Thema, they have taken the possession of the suit land.

14 AIR 1966 SC 1718

23. For the foregoing reasons, it cannot be held that the decree of title granted by the two Courts below is either perverse or contrary to record requiring interference by this Court under Section 100 of the CPC. The substantial question of law is answered accordingly.
24. Consequently, the second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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