

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 510 of 2004****Judgment reserved on : 22/08/2019****Judgment delivered on: 27/08/2019**

Dev Prasad Mishra (Died) through legal heirs.

Durga @ Ranu D/o. Late Shri Dev Prasad Mishra, aged about 31 years, R/o. Sirigitti, Ward No.3, Tahsil Bilaspur, District – Bilaspur (Chhattisgarh)

---Appellant/Plaintiff**Versus**

1. Onkar Awasthy, aged about 50 years S/o. Ramkhilawan Awasthy, Occupation – Gram Sewak, Resident of Sirgitti, Tehsil and District – Bilaspur, Chhattisgarh.
2. State of Chhattisgarh, through the Collector, Bilaspur, Chhattisgarh.

---- Respondents/Defendants

For Appellant	:	Mrs. Renu Kochar, Advocate
For Respondent No. 2/State	:	Mr. Anshuman Rabra, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Judgment

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. Mrs. Renu Kochar, learned counsel for the appellant/plaintiff would submit that both the courts below are absolutely unjustified in dismissing the civil suit by holding that plaintiff is encroacher upon the suit land by recording a finding which is perverse to the record ignoring the fact that he is in settled possession of the suit land since 1948 therefore, he was entitled for decree of permanent injunction.

As such, the second appeal involves substantial question of law for determination.

3. Plaintiff filed a bare suit for permanent injunction stating *inter alia* that he is in possession of suit land bearing Khasra No. 511/1 area 6930 sq.ft. since 1948 along with his father, and the defendants are interfering with their possession therefore, they be restrained from interfering with his possession. The defendant No.1 filed his written statement stating *inter alia* that suit land is the *Nistar* land used by the villagers in which Tahsildar has already passed an order sending him in to civil jail holding him to be an encroacher and the appeal and revision preferred by the plaintiff against that order, has already been dismissed by higher revenue authorities, as such the suit deserves to be dismissed.
4. Learned trial Court, upon consideration of oral and documentary evidence on record, came to the conclusion that the suit land is owned by the State Government and plaintiff is an encroacher relying upon paragraph 7 of his statement in which he had admitted the fact of land being grass land owned by the State Government and by Ex.P-1, title of the plaintiff is not proved. Learned first appellate Court, in an appeal preferred by the plaintiff, declined to interfere with the finding of the trial court and rather accepted the finding of the trial court negating the title of the plaintiff holding him to be the encroacher.
5. A careful perusal of the record, specifically Ex.D-1 to Ex.D-6, would show that plaintiff is a rank encroacher upon the government land and he has been subjected to proceeding under Section 248 of the Chhattisgarh Land Revenue Code, 1959 for encroachment and he

has been directed to be evicted from the suit land, being an encroacher upon the government land. The alleged possession, if any, of the plaintiff is in the capacity of encroacher and he has no semblance of the right title over the suit land. Learned Courts below have concurrently recorded a finding that the plaintiff is an encroacher upon the government land therefore, he is not entitled for decree of permanent injunction, which is a finding of fact based on material available on record which is neither perverse nor contrary to the record. I do not find any merit much less any substantial question of law for determination in this second appeal.

6. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side.
7. I also do not find any merit in application filed under Order 41 Rule 27 of the CPC which is also dismissed accordingly. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge