

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 335 of 2008**

1. Fagnuram (died) through Lrs.

(I) Narbadiya Bai W/o Dukalu Ram, Aged 38 years, R/o Village Neorgaon Kala, Tahsil Bodla, District Kabirdham, Chhattisgarh.

(ii) Rajia Bai W/o Dalichand, Aged 30 years, R/o Village Motiyari, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

(iii) Udasiya Bai W/o Late Fagnuram, Aged 62 years.

(iv) Narayan S/o Late Fagnuram, Aged 36 years.

(v) Rajju S/o Late Fagnuram, Aged 34 years.

(vi) Rajelal S/o Late Fagnuram, Aged 23 years.

Lrs. No. (iii) to (vi) are R/o Village Bhalpheri, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**----- Appellants**

**Versus**

1. Nankuram, Son of Late Jhari Marar, Aged about 62 years, Village Bhalpahri, Police Station Bodla, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

2. State of Chhattisgarh, through the Collector, Kawardha, District Kabirdham, Chhattisgarh.

**----- Respondents**

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| For Appellants | : | Mr. Malay Shrivastava, Advocate  |
| For State      | : | Mr. Anshuman Rabra, Panel Lawyer |

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**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Order on Board**

**18/11/2019**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/defendants under Section 100 of the CPC against the judgment and decree of the first appellate Court reversing the judgment and decree of the trial Court and decreeing the suit of the plaintiff with respect to 0.03 acre of land in favour of the plaintiff.
2. Mr. Malay Shrivastava, learned counsel for the appellants/defendants would submit that the first appellate Court is absolutely unjustified in reversing the finding of the trial Court with respect to the title of the plaintiff holding that plaintiff has title over the suit land ignoring other legally admissible evidence available on record that prove that plaintiff is not the title-holder of the suit land, therefore, no decree could have been passed in his favour. Moreover, the suit was also not properly valued with regard to possession. As such, the finding recorded by the first appellate Court, being perverse, gives rise to substantial question of law for determination in this second appeal.

3. Plaintiff filed a civil suit that he is the title-holder of the suit land bearing khasra No. 297/3 admeasuring 0.30 acre out of which 0.03 acre has been encroached upon by the defendants and he has been dispossessed unauthorizedly, therefore, he is entitled for decree of declaration of title over the entire 0.30 acre of suit land and decree for possession over 0.03 acre of suit land.
4. Learned trial Court dismissed the suit of the plaintiff holding that plaintiff has failed to prove his title over the suit land but the first appellate Court, on the basis of the oral and documetary evidence on record, particularly Exhibit P/3 and P/4 came to the conclusion that suit land is recorded in the name of plaintiff and it has not been controverted by the defendants and thus, reached to the conclusion that plaintiff is title-holder of the suit land and is entitled for decree of possession over the suit land.
5. The finding recorded by the first appellate Court that plaintiff is the title-holder of the suit land bearing khasra No. 297/3 area 0.03 acre is a finding of fact based on evidence available on

record particularly, Exhibits P/3 and P/4 filed and proved by the plaintiff. As such, the aforesaid finding recorded by the first appellate Court is neither perverse nor contrary to record. Likewise, the first appellate Court has also recorded a finding with regard to the valuation of the suit in paragraph 16 of its judgment which is a finding of fact based on evidence available on record.

6. The second appeal being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet