

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.240 of 2005

Champa Bai, D/o Dhansingh Gond, aged about 55 years, R/o Behind Tara Engineering, Chakradhar Nagar, Raigarh.

---- Appellant

Versus

1. State of Chhattisgarh, through Collector, Raigarh.
(Defendant No.1)
2. Udham Das, S/o late Parshumal, aged about 55 years, R/o Sindhi Colony, Raigarh.
3. (A) Smt. Laji Bai, Wd/o Amardas, R/o Sindhi Colony, Raigarh.
(B) Biharidas, S/o Amardas, R/o Sindhi Colony, Raigarh.
(C) Madhudas (Dead) Through LRs
(i) Manju, W/o Late Madhudas, aged about 58 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
(ii) Geeta, D/o Late Madhudas, aged about 38 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
(iii) Amit, S/o Late Madhudas, aged about 35 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
(iv) Aarti, D/o Late Madhudas, aged about 32 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
(v) Ashish, S/o Late Madhudas, aged about 28 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
(D) Lakhandas, S/o Amardas, R/o Sindhi Colony, Raigarh.
(E) Premi Bai, D/o Amardas, R/o Sindhi Colony, Raigarh.
(F) Pili Bai, D/o Amardas, R/o Sindhi Colony, Raigarh.
(G) Janki Bai, D/o Amardas, R/o Sindhi Colony, Raigarh.
4. Manohar Das, S/o late Govind Ram, aged about 25 years, R/o Sindhi

Colony, Raigarh.

5. Omprakash, S/o late Govind Ram, Aged 24 years, R/o Sindhi Colony, Raigarh.
6. Anil Kumar, S/o late Govind Ram, aged about 18 years, R/o Sindhi Colony, Raigarh.
7. Jaikumar, S/o late Govindram, aged 16 years, Minor, Represented by her mother-guardian Smt. Pushpadevi, Wd/o late Govind Ram, R/o Sindhi Colony, Raigarh.
8. Jagdish Kumar, S/o Late Govindram, aged 13 years, Minor, Represented by her mother-guardian Smt. Pushpadevi, Wd/o late Govind Ram, R/o Sindhi Colony, Raigarh.
9. Smt. Tilli Bai (Died and Deleted)
10. Smt. Bhagvanti Bai @ Ashadevi (Dead) Through LRs
 - (A) Nirmala Nebhani, W/o Rooplal Nebhani, aged about 59 years, R/o Telibandha, District Raipur (C.G.)
 - (B) Jay Nebhani, S/o Late Baisakhmal Nebhani, aged about 57 years, R/o Telibandha, District Raipur (C.G.)
 - (C) Gopi Nagwani, W/o late Rajkumar Nagwani, aged about 55 years, R/o Dayanand Park, Behind Jaripatka, District Nagpur (Maharashtra)
 - (D) Sunita Chandwani, W/o Rajkumar Chandwani, aged about 53 years, R/o Kasturba Nagar, Jaripatka, District Nagpur (Maharashtra)
 - (E) Mina Ahuja, W/o Suresh Ahuja, aged about 51 years, R/o 226, New Rajendra Nagar, Raipur (C.G.)
 - (F) Smt. Kiran Madhwani, W/o Ashok Madhwani, Aged about 46 years, R/o Main Bazar, Arang (C.G.)
 - (G) Smt. Priya Khatwani, W/o Nanak Ram Khatwani, Aged about 45 years, R/o Sindhu Colony, Gondia (Maharashtra)
 - (H) Smt. Madhu Narwani, W/o Dilip Kumar Narwani, Aged about 44 years, R/o Near Bus Stand, Mungeli (C.G.)
 - (I) Vijay Nebhani, S/o Late Baisakhmal Nebhani, Aged about 43 years, R/o Telibandha, District Raipur (C.G.)
11. (A) Dulamal, S/o Lodhamal, R/o Behind Tara Engineering, Raigarh.
 - (B) Indra Bai, D/o Lodhamal, R/o Behind Tara Engineering, Raigarh.
 - (C) Jaipal, S/o Lodhamal, R/o Behind Tara Engineering, Raigarh.

(D) Srichand, S/o Lodhamal, R/o Behind Tara Engineering, Raigarh.

(E) Ashok, S/o Rajkumar, R/o Behind Tara Engineering, Raigarh.

12. Sattumal (Dead) Through LRs

(i) Smt. Seeta Bai, Wd/o Late Sattumal, aged about 58 years.

(ii) Mohini, D/o late Sattumal, aged about 30 years.

(iii) Soni, D/o Late Sattumal, aged about 18 years.

All are R/o Sindhi Colony, Raigarh, Tah. and Distt. Raigarh.

13. Shankarlal, S/o Tularam (Dolaram), aged about 43 years, R/o Near
Bihari Talkies, Bilaspur.

(Plaintiffs)
---- Respondents

For Appellant:	Mr. H.S. Patel and Mr. Manoj Paranjpe, Advocates.
For Respondent No.1 / State: -	Mr. Mateen Siddiqui, Deputy Advocate General.
For Respondents No.2, 3(A) to 3(G), 4 to 8 and 12(i) to 12(iii): -	Mr. Parag Kotecha, Advocate.

AND

Second Appeal No.34 of 2006

State of Chhattisgarh, through the Collector, Raigarh (C.G.)
(Defendant-1)
---- Appellant

Versus

1. Champa Bai, D/o Dhansingh Gond, aged about 55 years, R/o Behind
Tara Engineering, Chakradhar Nagar, Raigarh (C.G.)
(Defendant No.2)
2. Udham Das, S/o Late Parshumal, aged about 55 years, R/o Sindhi
Colony, Raigarh (C.G.)
3. Amardas, since deceased through LRs
 - (a) Smt. Laji Bai, Wd/o Amardas, R/o Sindhi Colony, Raigarh (C.G.)
 - (b) Biharidas, S/o Amardas, R/o Sindhi Colony, Raigarh (C.G.)
 - (c) Madhudas (Dead) Through LRs
 - (i) Manju, W/o Late Madhudas, aged about 58 years, R/o Village
Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District
Raigarh, District Raigarh (C.G.)

- (ii) Geeta, D/o Late Madhudasa, aged about 38 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
- (iii) Amit, S/o Late Madhudasa, aged about 35 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
- (iv) Aarti, D/o Late Madhudasa, aged about 32 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
- (v) Ashish, S/o Late Madhudasa, aged about 28 years, R/o Village Sindhikhadan, P.S. & Post Raigarh, Civil and Revenue District Raigarh, District Raigarh (C.G.)
- (d) Lakhandasa, S/o Amardasa, R/o Sindhi Colony, Raigarh (C.G.)
- (e) Premi Bai, D/o Amardasa, R/o Sindhi Colony, Raigarh (C.G.)
- (f) Pili Bai, D/o Amardasa, R/o Sindhi Colony, Raigarh (C.G.)
- (g) Janki Bai, D/o Amardasa, R/o Sindhi Colony, Raigarh (C.G.)
- 4. Manohar Das, S/o Late Govind Ram, aged about 25 years, R/o Sindhi Colony, Raigarh (C.G.)
- 5. Omprakash, S/o Late Govind Ram, aged about 24 years, R/o Sindhi Colony, Raigarh (C.G.)
- 6. Anil Kumar, S/o Late Govind Ram, aged about 18 years, R/o Sindhi Colony, Raigarh (C.G.)
- 7. Jaikumar, S/o Late Govindram, aged about 16 years, Minor through brother Manohar Das, S/o Late Govind Ram, R/o Sindhi Colony, Raigarh (C.G.)
- 8. Jagdish Kumar, S/o Late Govindram, aged about 13 years, Minor through brother Manohar Das, S/o Late Govind Ram, R/o Sindhi Colony, Raigarh (C.G.)
- 9. Smt. Tilli Bai (Died and Deleted)
- 10. Smt. Bhagvanti Bai @ Ashadevi, D/o Chelaram, aged about 48 years, R/o Telibvandha, Raipur.
- 11. Lodharam, Since deceased through LRs
 - (a) Dulamal, S/o Lodhamal, R/o Behind Tara Engineering, Raigarh.
 - (b) Indra Bai, D/o Lodhamal, R/o Behind Tara Engineering, Raigarh.
 - (c) Jaipal, S/o Lodhamal, R/o Behind Tara Engineering, Raigarh.

(d) Srichand, S/o Lodhamal, R/o Behind Tara Engineering, Raigarh.

(e) Ashok, S/o Rajkumar, R/o Behind Tara Engineering, Raigarh.

12. Sattumal (Dead) Through LRs

(A) Smt. Sita Devi, W/o Sattumal, aged about 58 years, R/o Sindhi Colony, Raigarh. Tah. & Distt. Raigarh (C.G.)

(B) Mohani, D/o Sattumal, aged about 30 years, R/o Sindhi Colony, Raigarh. Tah. & Distt. Raigarh (C.G.)

(C) Mandakni, D/o Sattumal, aged about 18 years, R/o Sindhi Colony, Raigarh. Tah. & Distt. Raigarh (C.G.)

13. Shankarlal, S/o Tularam (Dolaram), aged about 43 years, R/o Near Bihari Talkies, Bilaspur.

(Plaintiffs)
---- Respondents

For Appellant / State: Mr. Mateen Siddiqui, Deputy Advocate General.
For Respondent No.1: Mr. H.S. Patel and Mr. Manoj Paranjpe, Advocates.
For Respondents No.2, 3(a) to 3(g), 4 to 8 and 12(A) to 12(C): -
Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/08/2019

1. Both the aforesaid two second appeals have arisen from the judgments & decrees passed in Civil Appeal Nos.23-A/2004 (Champa Bai v. State and others) and 24-A/2004 (State v. Champa Bai and others) by the 4th Additional District Judge (Fast Track Court), Raigarh on 21-3-2005.
2. In Second Appeal No.240/2005 preferred by defendant No.2 Champa Bai (**Champa Bai v. State of Chhattisgarh and others**), the following substantial question of law was framed: -

“Whether both the courts below were justified in granting decree for declaration of title in favour of respondents/plaintiffs ignoring the fact that plaintiffs are not in possession of the suit land and the suit is barred by

proviso to Section 34 of the Specific Relief Act?”

3. In Second Appeal No.34/2006 preferred by defendant No.1 State of Chhattisgarh (**State of Chhattisgarh v. Champa Bai and others**), in addition to the afore-stated question of law, one more additional substantial question of law was framed which is as under: -

“Whether both the courts below were justified in holding that suit land is not the government nazul land?”

[For sake of convenience, parties hereinafter will be referred as per their status shown in the plaint before the trial Court.]

4. The suit land being raiti land bearing Khasra No.251/1, area 2.53 acres, situated in Village Bailadula (Kaserpara) alias Maharajpur, District Raigarh, is the subject matter of present dispute which was originally held by one Durga Prasad Singh. He sold the aforesaid suit land along with other lands bearing Khasra No.251/6, area 2.25 acres, and Khasra No.251/7, area 1.25 acres, to one Dhansingh Gond by a registered sale deed dated 19-3-1949 (Ex.P-3). Dhansingh Gond made an application under Section 10 of the Central Provinces States Land Tenure Order, 1949, on 22-10-1951 (Ex.P-4) to the Deputy Commissioner seeking leave to sell the land which was ultimately granted to him on 20-11-1951 vide Ex.P-10, on the basis of report and recommendation submitted by the Sub-Divisional Officer on 17-11-1951 (Ex.P-5) and accordingly, Dhansingh Gond sold the suit land bearing Khasra No.251/1 to Dayaram, Chelaram, Parshumal and Ghesamal by a registered sale deed dated 13-3-1953 (Ex.P-1) for a cash consideration of ₹ 2,500/-. The original purchasers i.e. the aforesaid four persons died and the plaintiffs are their successors-in-interest. Thereafter, the present plaintiffs moved an application for

mutating their names in the revenue records, but the ASLR declined to register their names in the revenue records and advised them to approach the civil court for getting their title determined in accordance with law which persuaded them to bring a suit only seeking bare declaration of their title. In the suit instituted by the plaintiffs, they have pleaded that their forefathers had purchased the suit land bearing Khasra No.251/1 by registered sale deed dated 13-3-1953 and thus, they have become title holders and they are also in possession, but since their names could not be recorded in the revenue records and as per the direction given by the revenue court, they are constrained to file civil suit seeking their declaration of title, as they are continuing in possession of the suit land, they are entitled for decree for declaration of title of the suit land.

5. The erstwhile State of Madhya Pradesh filed written statement claiming title over the suit land and stated that the possession is with the State Government which they sought to be amended that they are in possession of the suit land and which the trial Court allowed by order dated 11-9-1997 which defendant No.2 sought review and which was also rejected by the trial Court on 6-10-1997 and both the orders were put to challenge before the High Court of M.P. at the instance of defendant No.2 Champa Bai in Civil Revision No.3/1998 in which the High Court of M.P. has declined to entertain the challenge and the plea with regard to the defendant State that it claimed to be in possession remained in their written statement. It is the case of the State that bare suit for declaration would not be maintainable unless the consequential relief of possession is sought,

as admittedly, the plaintiffs are not in possession and they did not ask for the relief of possession, as such, the suit deserves to be dismissed.

6. Defendant No.2 Champa Bai filed her written statement stating inter alia that she being the daughter of Dhansingh Gond has inherited the property of her father, as no application was moved under Section 10 of the Central Provinces States Land Tenure Order, 1949, for alienation of the suit land and the said property was never sold by her father on 13-3-1953 vide Ex.P-1 in favour of the predecessors-in-title of the plaintiffs. She also took a categorical plea that the suit for bare declaration of title without seeking the relief of possession would not be maintainable in view of the proviso to Section 34 of the Specific Relief Act, 1963. In addition to filing written statement, defendant No.2 also raised counter-claim seeking relief of declaration of title and possession and simultaneously, seeking declaration that the sale deed dated 13-3-1953 is void and it has not conveyed any title to the predecessors-in-title of the plaintiffs.

7. The trial Court on the basis of pleadings of the parties, framed as many as twelve issues and by its judgment & decree dated 9-1-1999, decreed the suit instituted by the plaintiffs and dismissed the counter-claim filed by defendant No.2, finding inter alia that,

1. The suit land was held by Durga Prasad Singh who sold the suit land to Dhansingh Gond on 19-3-1949 and Dhansingh Gond, in turn, had sold the suit land in favour of the predecessors-in-title of the plaintiffs on 13-3-1953 vide Ex.P-1 and thus, they are title holders of the suit land and the lands

described in Schedule A of the plaint bearing Khasra No.251/1, area 2.53 acres, is not the Government Nazul land.

2. The plaintiffs are in possession and counter-claim is merit-less.
 3. Champa Bai is not the daughter of Dhansingh Gond who has purchased the suit land from the original holder.
8. Feeling aggrieved against the judgment & decree dated 9-1-1999, defendant No.2 Champa Bai filed Civil Appeal No.23-A/2004 before the first appellate Court whereas, the State preferred Civil Appeal No.24-A/2004 questioning that judgment & decree. The first appellate Court by its judgment dated 21-3-2005, by two separate judgments & decrees, dismissed the appeals affirming the judgment & decree of the trial Court clearly holding that,
1. The plaintiffs are title holders of the suit land and they are in possession of the suit land.
 2. The suit land is not the Government Nazul land.
 3. Champa Bai – defendant No.2 is not the daughter of Dhansingh Gond.
9. Now, these two second appeals, as stated in the opening paragraph of the judgment, one by Champa Bai – defendant No.2 being S.A. No.240/2005 and another by the State – defendant No.1 being S.A. No.34/2006, have been preferred questioning the respective judgments & decrees of the first appellate Court and substantial questions of law have been formulated which have been incorporated in the opening paragraph of the judgment.
10. Since common question of law has arisen, therefore, for the sake of

convenience, both the appeals were clubbed together and heard together and are being disposed of by this common judgment.

11. Mr. H.S. Patel and Mr. Manoj Paranjpe, learned counsel for the appellant / defendant No.2 in S.A.No.240/2005, would vehemently submit that both the Courts below have concurrently committed an illegality in holding that the plaintiffs are in possession of the suit land and thereby entertained the suit for bare declaration of title, the suit ought to have been dismissed after having held that the plaintiffs are not in possession, as admittedly, they did not seek the consequential relief of possession, therefore, the suit is apparently barred by the proviso to Section 34 of the Specific Relief Act, 1963.
12. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State/appellant in S.A.No.34/2006, would adopt the submission of learned counsel for the appellant in S.A.No.240/2005 and in support of their submission, he would vehemently submit that the plaintiffs are not in possession over the suit land and the findings recorded by the two Courts below are perverse, therefore, bare suit for declaration was not maintainable. Additionally, with reference to the second substantial question of law framed in S.A. No.34/2006, he would submit that the two Courts below have committed a jurisdictional error in holding that the suit land is not the Government Nazul land and it is the land held by the plaintiffs and thereby committed illegality in granting decree in favour of the plaintiffs, as such, the suit deserves to be dismissed on this count only.
13. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record

with utmost circumspection.

14. The first question of law i.e. common in both the appeals is, whether the bare suit for declaration of title as instituted and decreed by both the Courts below holding that the plaintiffs are title holders and also they are in possession; the fact of the plaintiffs being in possession is perverse and therefore, the suit for bare declaration of title was hit and is in teeth of the provisions contained in the proviso to Section 34 of the Specific Relief Act, 1963, as admittedly, the consequential relief of possession has not been sought for.
15. The fact which both the Courts below have found proved is that the suit land being raiti land was held by one Durga Prasad Singh. He sold the land bearing Khasra No.251/1, area 2.53 acres, to one Dhansingh Gond vide registered sale deed dated 19-3-1949 (Ex.P-3) and said Dhansingh Gond applied for permission to sell out the suit land as required under Section 10 of the Central Provinces States Land Tenure Order, 1949, which was ultimately, upon due enquiry and submission of report by the Sub-Divisional Officer, granted on 20-11-1951 vide Ex.P-10 and thereafter, sale deeds were executed in favour of the predecessors-in-title of the plaintiffs namely Dayaram, Chelaram, Parshumal and Ghesamal vide registered sale deed dated 13-3-1953 (Ex.P-1) which clearly recites that pursuant to the sale made, possession is delivered to the purchasers i.e. the predecessors-in-title of the plaintiffs and since then, it is the case of the plaintiffs that they are continuing in possession. Up to this stage that the plaintiffs' predecessors-in-title have purchased the suit land from erstwhile owner Dhansingh Gond after obtaining due permission

from the Deputy Commissioner under the Central Provinces States Land Tenure Order, 1949, and thereafter, sale deed was executed in their favour, have been concluded by the two Courts by returning a positive finding that they have purchased the suit land by registered sale deed and they came in possession of the suit land.

16. The present plaintiffs sought their names to be mutated in the revenue records obviously for the purpose of making revenue records up-to-date, to pay the land revenue etc., but it was not found favour with by the revenue court and the revenue court asked the plaintiffs to have their title determined in the regular and jurisdictional civil court which compelled them to file suit. As noticed above, defendants No.1 & 2, both, claimed that they are in possession in exclusion of each other, but the trial Court relying upon oral and documentary evidence on record clearly reached to a categorical finding in paragraph 11 while deciding issue Nos.3, 9, 11 and 12 that the plaintiffs are in possession of the suit land pursuant to the sale deed dated 13-3-1953 (Ex.P-1) and negated the plea of Champa Bai – defendant No.2 that she is in possession and the plaintiffs have been dispossessed from the suit land during the pendency of suit by decreeing the suit of the plaintiffs and dismissing the counter-claim of defendant No.2.

17. It is appropriate to notice here that Champa Bai while preferring first appeal under Section 96 of the CPC only questioned the part of the judgment & decree of the trial Court by which her counter-claim valued at ₹ 700/- was dismissed which is clearly apparent from the appeal memo under Section 96 of the CPC filed by her which is

available on record and the appeal was valued equal to the counter-claim made and dismissed by the trial Court, and did not question the decree that was granted in favour of the plaintiffs ignoring the finding that the plaintiffs are in possession of the suit land, as the forceful submission by both the defendants i.e. the State as well as Champa Bai has been negated by the trial Court that they are in possession in exclusion to each other (defendants) and to the exclusion of the plaintiffs. Another appeal was preferred by the State, though the State questioned the judgment & decree of the trial Court decreeing the bare suit for declaration holding that the plaintiffs are in possession of the suit land. The first appellate Court in both the appeals, separately (paragraphs 40 & 41 of the judgment in Champa Bai's appeal and paragraphs 40 & 44 of the judgment in the State's appeal), clearly recorded a finding that the plaintiffs are in possession of the suit land and affirmed the finding of the trial Court.

18. Though Mr. Paranjpe and Mr. Siddiqui, learned counsel for the respective defendants, extensively taken me through the pleadings and the statements of the plaintiffs and their witnesses to buttress their submission that the State and defendant No.2 Champa Bai are in possession to the exclusion of each other and to the exclusion of the plaintiffs, but they could not point-out any iota of evidence demonstrating perversity in the findings of the two Courts below holding that the plaintiffs are in possession and failed to demonstrate that even after execution of sale deed in favour of the predecessors-in-title of the plaintiffs on 13-3-1953 and delivery of possession to them, they ever dispossessed the plaintiffs from the suit premises

and they came in possession of the suit land, and thereby the findings of both the Courts below are perverse and the plaintiffs are not in possession of the suit land. As such, the findings recorded by the two Courts below holding that the plaintiffs are in possession of the suit land and bare suit for declaration of title was maintainable as the plaintiffs are in possession of the suit land and thereby the decree granted in favour of the plaintiffs, are unexceptionable and cannot be interdicted, as the finding regarding possession of the plaintiffs over the suit land is neither perverse nor contrary to record and I hereby affirm the findings recorded by the two Courts below holding it to be based on the material available on record.

19. This would bring me to the next substantial question of law framed in S.A.No.34/2006 filed by the State that whether both the Courts below are justified in holding that the suit land is not the Government Nazul land.

20. It is the case of the State / defendant No.1 that the suit land is the Government Nazul land and therefore the plaintiffs have no title over the suit land. Documents Exs.D-1 to D-5, D-14C and D-15C have been filed to demonstrate that the land is held by the State and therefore the decree granted in favour of the plaintiffs declaring them to be the title holders of the suit land, is perverse and the suit deserves to be dismissed.

21. The trial Court has framed specific issue No.2 to decide the plea raised by the State and returned the finding in negative holding that the suit land is not the Government land which has been in turn, accepted by the first appellate Court holding it to be based on the

evidence available on record. Further, Exs.D-1 to D-5 are the documents brought on record on behalf of the defendants in which from the years 1965-66, 1966-67, 1967-68, 1968-69, 1973-74, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, 1979-80, 1980-81, 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98, the suit land has been recorded as Nazul Bhoomi. Likewise, Exs.D-14C & D-15C have been proved by defendant No.2's witness – Khemraj Patel, Patwari Halka No.12. The two Courts below after appreciating the evidence of defendant No.1's witness – D.R. Nirala, who has proved Exs.D-1 to D-5, has held that the suit land has been declared Nazul land without making any survey and entry has been made, whereas in the sale deed Ex.P-1A on western side, Nazul land is available and Dhansingh Gond has purchased the suit land which is adjoining to the Nazul land from the land of Durga Prasad Singh. Both the Courts have concluded that the suit land has been declared Nazul land without making survey and without taking appropriate proceeding for declaring any land as Nazul land and disbelieved Exs.D-14C & D-15C, as it has not been mentioned on the basis of the order of which authority, in which proceeding and on what date it has been declared as Nazul land and it has been held to be the Nazul land, which is not correct.

22. Apart from this, one more reason assigned by the two Courts below is equally forceful to uphold the decree granted by them. Dhansingh Gond also sold part of Khasra No.251/6 to three persons namely, Bachhulal Sharma, Brijbhushan Jagatramka and Panchanan Sahu. Bachhulal Sharma brought a suit for declaration of title against the

State which is the subject matter of Civil Suit No.66-A/1973 (Bachhulal Sharma v. State of Madhya Pradesh) in which decree was passed by the jurisdictional civil court on 25-6-1976 and Bachhulal Sharma was held to be the title holder of Khasra No.251/6. Similarly, Brijbhushan Jagatramka purchased part of Khasra No.251/6, area 80 decimal. He also preferred Civil Suit No.57-A/1990 in the Court of 1st Additional Civil Judge, Class-II, Raigarh which was decreed in his favour on 5-8-1991 holding him to be the title holder vide Ex.P-14/P-18. Panchanan Sahu also purchased part of Khasra No.251/6, area 20 decimal, from Dhansingh Gond on 11-4-1952 which the civil court (Additional District Judge, Raigarh) decreed in his favour in Civil Suit No.7-A/ 1960 vide Ex.P-19 and even the State of Madhya Pradesh taken the matter to the M.P. High Court in First Appeal No.89/1968 which was decided by the High Court on 7-12-1971 vide Ex.P-9 and it has been held by the M.P. High Court that the suit land was purchased by Panchanan Sahu from Dhansingh Gond and it was further held that mere recording of land as Nazul land, it cannot be held that the land is Government land.

23. Thus, on the aforesaid basis, both the Courts negated the title of the State over the suit land holding that the plaintiffs have purchased the suit land from Dhansingh Gond who is similarly situated with Bachhulal Sharma, Brijbhushan Jagatramka and Panchanan Sahu in whose favour decree has been passed by the jurisdictional civil court and in case of Panchanan Sahu, the matter has been upheld up to the High Court of M.P. in first appeal and since Dhansingh Gond from whom the predecessors-in-title of the plaintiffs have purchased the

suit land is a member of aboriginal tribe and therefore with the due permission of the Sub-Divisional Officer under the Central Provinces States Land Tenure Order, 1949, it was sold to the predecessors-in-title of the plaintiffs, therefore, it cannot be held that the suit land is Government Nazul land and the State is the title holder of the suit land. The aforesaid finding recorded by the two Courts below qua the case of the State that the suit land is not Nazul land and the plaintiffs are entitled for decree, is also a finding of fact based on the evidence available on record, which is neither perverse nor contrary to record.

24. In addition to this, it is appropriate to mention that the two Courts below have held that so far as Champa Bai is concerned, she is not the daughter of Dhansingh Gond, therefore, she has no right to claim the property of Dhansingh Gond, if any; that finding has attained finality. Even otherwise, the appeal of Champa Bai has no force on that count also and that finding has not been question in the second appeal.

25. As a fallout and consequence of the aforesaid discussion, it cannot be held that both the Courts below are unjustified in decreeing the suit of the plaintiffs holding them to be the title holders. Concludingly, both the second appeals deserve to be and are accordingly dismissed directing the defendants to bear their own cost(s) and cost(s) of the plaintiffs as well.

26. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge