

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 289 of 2007**

1. Ram Kripal, S/o Shri Baburam Aged About 50 Years R/o Village Parasgarhi, Tehsil Manendragarh, District Korea Chhattisgarh.

2. Prem Lal Alias Prem Sai S/o Shri Amar Sai Aged About 31 Years R/o Village Parsgarhi, Tehsil Manendragarh, District Korea Chhattisgarh. (Plaintiffs),

---- **Appellants**

Versus

1. Brijwasilal (Died) Through Lrs. As Per Honble Court Order Dated 16-09-2019.

1.(i). Omprakash S/o Shri Brijwasi Lal Aged About 55 Years R/o Phuwara Chowk, Mahendragarh, District Koriya Chhattisgarh.,

1(ii) - Aadhya Narayan Alias Munshi S/o Late Shri Brijwasi Lal Aged About 52 Years R/o Phuwara Chowk, Mahendragarh, District Koriya Chhattisgarh.,

1.(iii). Keshav Prasad S/o Late Shri Brijwasi Lal Aged About 50 Years R/o Phuwara Chowk, Mahendragarh, District Koriya Chhattisgarh.

2. State Of Chhattisgarh Through Collector, Sarguja Chhattisgarh., (Defendants),

---- **Respondents**

For Appellants	:Shri Sourabh Sharma, Advocate
For Respondent 1 (ii)	:Shri Ratnesh Agrawal, Advocate.
(Aadhya Narayan Alias Munshi, legal representative of deceased Respondent 1)	
For Respondent 2/State	:Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Sanjay S. Agrawal

Order On Board

29.11.2019

1. This is the plaintiffs' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908) questioning the legality and propriety of the judgment and decree dated 27.12.2006 passed by the Additional District Judge (F.T.C.), Manendragarh, District Korea (C.G.) in Civil Appeal No.1-A/2006, by which, the lower appellate Court, while affirming the judgment and decree dated 29.08.1990 passed by the Civil Judge Class-2, Manendragarh in Civil Suit No. 76-A/84, has dismissed the plaintiffs' claim.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration of title, possession and injunction in relation to the property in question bearing Kh.No.41 and 127 admeasuring 2.08 and 2.85 acres of land respectively situated at village Parasgadi, Tahsil Manendragarh, District Korea by submitting, inter alia, that the said property is of their ancestral property and the defendant has tried to cut their crops when it was ripe giving rise to the institution of the suit in the instant nature. Alternatively, it is claimed for possession, if the defendants are not found in possession.
3. The defendants have contested the aforesaid claim denying specifically the ownership of the plaintiffs with regard to the suit property.
4. After considering the evidence led by the parties, the trial Court, while entertaining issue No.2 and that by considering the judgment and decree dated 16.04.1958 passed in earlier Civil Suit No 5-A/56, whereby it has been held that the predecessors-in-interest of the plaintiffs are not the owner of the property in question bearing Kh.No.41 admeasuring 2.08 acres, arrived at a conclusion that the plaintiffs are not the owner of the property in question. It held further by considering the revenue papers showing the name of defendant Brijwasi Lal that the plaintiffs are never in possession over the property in question. As a consequence, the trial Court has dismissed the plaintiffs' claim.
5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiffs under Section 96 of the Code of 1908.
6. Being aggrieved, the plaintiffs have preferred this appeal. Shri Sourabh Sharma, learned counsel for the appellants submits that the Courts below

have committed an illegality in dismissing the plaintiffs' claim by misinterpreting the 'Bandobast Khasra' (Ex.P.1) of the year 1944-45. However, the alleged documentary evidence showing the plaintiffs' ownership and they are in possession since the execution of the alleged document (Ex.P.1). He submits further that the judgment and decree passed in an earlier instituted suit was only in relation to Kh.No.41 admeasuring 2.08 acres of land, therefore, dismissing the plaintiffs' claim with regard to property in question, i.e. Kh.No.127 admeasuring 2.85 acres of land as well is apparently contrary to law.

7. I have heard learned counsel for the appellants and perused the entire record carefully.
8. According to the plaintiffs, the properties in question described in plaint para 3 are their ancestral properties. In support of their claim, a document known as 'Bandobast Khasra of the year 1944-45' of Korea estate was placed on record. A bare perusal of the said document would show the name of Ramlal recorded as *Jamindar* and/or *Jagirdar* which, however, it appears to authorise him to collect the land revenue alone and, thus, cannot be held to be a deed of title as alleged by the plaintiffs', so as to arrive at a conclusion that the plaintiffs are the owner of it. That apart, the plaintiffs have failed to produce the revenue papers in order to establish their possession based upon it. Contrarily, the documentary evidence like; Khasra Panchshala (Ex.D.11) of the year 1948-49 upto 1952-53 produced by defendant Brijwasi Lal would, however, shows his possession. Besides, a suit, being Civil Suit No.5-A/96, was instituted by defendant Brijwasi Lal against the predecessors-in-interest of the plaintiffs for possession and mesne profits with regard to the property in question bearing Kh.No.41 admeasuring 2.08 acres of land. In the said suit, one of the issue as to

whether predecessors-in-interest of the plaintiffs are the owners of the said land or not, was framed. Finding of the said issue was, however, decided against them by the concerned trial Court vide its judgment and decree dated 16.04.1958 (Ex.D.2C) holding that they, i.e., the predecessors-in-interest of the plaintiffs, are not the owner of the said land. The finding so recorded has attained its finality by efflux of time and the plaintiffs being heirs are bound by the said decree and they are precluded from establishing their right as such.

9. In so far as the suit land bearing Kh.No.127 admeasuring 2.08 acres is concerned, I do not find any document, except the said Khasra Bandobast (Ex.P.1), on record so as to hold that the plaintiffs are the owners of this land. Consequently, findings so recorded by the Courts below based upon due and proper appreciation of the evidence led by the parties deserve to be and are hereby affirmed.
10. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law, which arise for determination in this appeal. The appeal is accordingly dismissed. No order as to costs.

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