

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 191 of 2007**

1. Mohan Lal, Aged 42 years, Son of Shri Prem Lal, Caste Bhaina.
2. Johan Lal, Aged 40 years, Son of Shri Prem Lal, Caste Bhaina.
3. Sohan Lal, Aged 38 years, Son of Shri Prem Lal, Caste Bhaina.

All residents of Village Badhwandand, Tahsil Pendraroad, District Bilaspur, Chhattisgarh.

--- Appellants/Plaintiffs

Versus

1. Daddulal (dead) through Lrs.
(A) Gulab, Aged 30 years, Caste Bhaina, Son of Daddulal.
2. Lala, Aged 36 years, Caste Bhaina, Son of Buddhu.
3. Chain Singh, Aged 42 years, Caste Bhaina, Son of Buddhu.
4. Munna, Aged 22 years, Caste Bhaina, Son of Buddhu.

All residents of Village Sadhwani, Tahsil Pendraroad, District Bilaspur, Chhattisgarh.

5. State of Chhattisgarh, through the District Collector, Bilaspur.

---- Respondents/Defendants

For Appellants	: Mr. Somnath Verma, Advocate
For Respondents No. 1 to 4	: Mr. Siddharth Pandey, Advocate
For Respondent No. 5/State	: Mr. Sanjeev Agrawal, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

03/10/2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by appellants/plaintiffs states as under:

“Whether the finding of the lower appellate Court that the appellants are not owners of the property is perverse ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Plaintiffs filed a suit for declaration of title and permanent injunction stating *inter alia* that they are title-holders of the suit land bearing khasra No. 742/23 admeasuring 7.50 acres situated at village Sadhwani, Tahsil Pendra Road, District Bilaspur from which they have been dispossessed illegally by the private defendants.
3. In the said civil suit, defendants filed their written statement and set up a plea that suit land is a land owned by the State Government therefore, no decree can be granted in favour of the plaintiffs as claimed by them.
4. Learned trial Court, upon appreciating the oral and documentary evidence on record, vide judgment and decree dated 06/08/1999, granted decree for declaration of title and permanent injunction in favour of plaintiffs which was reversed by the first appellate Court in the appeal preferred by the defendants under Section 96 of the CPC. Learned first appellate Court, vide judgment and decree dated 25/01/2007 allowed the appeal of the defendants and dismissed the suit of the plaintiffs. Being aggrieved by the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the plaintiffs in which substantial question of law was framed on 01/09/2009 and has been set out in the opening paragraph of this judgment.

5. Mr. Somnath Verma, learned counsel appearing for the appellants/plaintiffs would submit that the first appellate Court is absolutely unjustified in holding that the suit land is a Government land and thereby, learned first appellate Court has committed illegality in reversing the judgment and decree passed by the trial Court.
6. Mr. Siddharth Pandey, learned counsel appearing for respondents/defendants No. 1 to 4 would support the impugned judgment and decree passed by the first appellate Court.
7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. In order to prove their case, plaintiffs have only filed two documents – Exhibits P/1 and P/2 in which names of plaintiffs are recorded as title-holders of the suit land whereas P.W. 1 namely Mohan Lal (plaintiff No. 1) has himself admitted in paragraph 4 of his statement that he has not purchased the suit land and it was a Government land which was made fertile by his father. Likewise, P.W. 2 namely Ramcharan has also admitted to the suit land being a Government land which was made fertile by plaintiffs' father and similarly, P.W. 3 namely Hari Singh too has admitted to the fact of suit land being a Government land, as such, there is sufficient evidence on record to hold that the suit land is a Government land which was then made fertile by plaintiff's father Prem Lal.
9. Learned first appellate Court has clearly held that the suit land is a Government land on the own showing of plaintiffs and thereby, set

aside the judgment and decree of the trial Court after holding that plaintiffs have not led any evidence to show from where they have derived their title except maintaining that their father has made the suit land fertile. Thus, the finding recorded by learned first appellate Court that the suit land is a Government land over which plaintiffs have not established any title is a finding of fact based on evidence available on record which is neither perverse nor contrary to record.

10. Furthermore, it has also been held by the Supreme Court in the matter of ***Bhimabai Mahadeo Kambekar (dead) through Lrs. Vs. Arthur Import and Export Company***¹ that mutation entries neither creates nor extinguishes title over the suit property. As such, merely by mutation of their names in the revenue records, no title has been acquired by the plaintiffs over the suit land. Consequently, the substantial question of law is answered in favour of defendants and against the plaintiffs.

11. The second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

12. Decree be drawn up accordingly.

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

Harneet

¹ (2019) 3 SCC 191