

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 405 of 2006**

1. Smt. Prema Pandey, Aged about 70 years, Wd/o. Late Shri Gauridutt Pandey, Shitla Ward, Ambikapur (C.G.)
2. Basant Kumar Pandey, S/o Late Shri Gauridutt Pandey, Aged about 45 years, Shitla Ward, Ambikapur (C.G.)
3. Jayant Kumar Pandey, S/o. Late Shri Gauridutt Pandey, Aged about 34 years, Shitla Ward, Ambikapur (C.G.)
4. Hemant Kumar Pandey, S/o. Late Shri Gauridutt Pandey, Aged about 25 years, Shitla Ward, Ambikapur (C.G.)
5. Smt. Meerapant, W/o. Ashok Kumar Pant, Aged about 48 years, R/o. Bharatpur, Rajsthan.
6. Smt. Neeru Pandey, W/o. Suresh Pandey, Aged about 32 years, R/o. Dubey Colony, Katni.
7. Smt. Nisha Joshi, W/o. Ramesh Kumar Joshi, Aged about 28 years, R/o. Jagdalpur, Distt. Bastar (C.G.)
8. Ku. Reena Pandey, D/o. Late Gauridutt Pandey, Aged about 21 years, R/o. Ambikapur, Surguja (C.G.)
9. Bhawanishankar Pant, S/o. Taradutt Pant, Aged about 53 years, R/o. Vidishi, Distt. Vidisha (M.P.)

----Appellants/Plaintiffs**Versus**

1. State of Chhattisgarh, Through : Collector, Surguja, Distt. Surguja (C.G.)
2. Police Superintendent, Surguja, Ambikapur (C.G.)

----Respondents/defendants.

For Appellant	: Mr. Manoj Paranjpe & Mr. Anurag Singh, Advocate.
For Respondents	: Mr. R.K. Bhagat, Dy. Govt. Advocate.

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

02/07/2019

Heard on the question of admission and formulation of substantial question of law for determination.

(1) This is plaintiffs' Second Appeal filed under Section 100 of CPC against the judgment and decree dated 19.11.2004, passed by 4th Additional District Judge (FTC), Ambikapur, Surguja, in Civil Appeal No. 22-A/2004 affirming the judgment and decree dated 15.5.1998 passed by Third Civil Judge, Class-II, Ambikapur, Surguja, in Civil Suit No. 94-A/1991, dismissing the suit.

(2) The plaintiffs have filed a suit for declaration of title and permanent injunction against the State – defendants herein, in which, the trial Court recorded a finding that the suit land is the government land and it was not settled in favour of father of plaintiff No. 1 namely Taradutt Pant as no documents of title was filed and the plaintiffs are not in possession of the suit land, therefore, bare suit of declaration of title and permanent injunction, if the consequential relief of possession is not claimed, is not maintainable and dismissed the suit. Plaintiffs preferred first appeal there-against. The first appellate court, on re-appreciation of evidence, dismissed the appeal. Hence this Second Appeal, against which this second appeal under Section 100 of the CPC has been preferred.

(3) Learned counsel appearing for the appellant/plaintiff would submit the both the courts below have concurrently erred in dismissing the suit of the plaintiffs holding it to not maintainable and not granting decree of declaration of title in their favour and that give rise a substantial question of law for determination in this appeal.

(4) I have heard learned counsel appearing for the appellants/plaintiffs and perused the records of both the courts below with utmost circumspection.

(5) Admittedly, the suit land is the government land, in which the plaintiffs are claiming possession stating that the suit land was settled in favour of father of plaintiff No. 1 namely Taradutt Pant in the Sarguja Settlement during bandobast, but no document was filed by the plaintiffs to establish the fact of settlement in the name of their father during Sarguja Settlement and the plaintiffs are not in possession of the suit land and suit for bare declaration of title, if the consequential relief of possession is not claimed, would not be maintainable by virtue of proviso to Section 34 of the Specific Relief Act, 1963.

(6) In view of above, I do not find any perversity or illegality in the findings recording by both the courts below dismissing the suit, as such, no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

