

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 242 of 2006**

1. Awtar Singh (dead) through Lrs.

(a) Smt. Surjeet Kaur Wd/o Late Awtar Singh, Aged about 70 years, Resident of Budhwari Para, Ward No. 11 (Now Ward No. 13), Dongargarh, District Rajnandgaon, Chhattisgarh.

(b) Harvinder Singh, S/o Late Awtar Singh, Aged about 55 years, R/o Budhwari Para, Ward No. 11 (Now Ward No. 13), Dongargarh, District Rajnandgaon, Chhattisgarh.

(c) Balvinder Singh, S/o Late Awtar Singh, Aged about 52 years, R/o Budhwari Para, Ward No. 11 (Now Ward No. 13), Dongargarh, District Rajnandgaon, Chhattisgarh.

(d) Kulbeer Singh, S/o Late Awtar Singh, Aged about 48 years, R/o Budhwari Para, Ward No. 11 (Now Ward No. 13), Dongargarh, District Rajnandgaon, Chhattisgarh.

(e) Narendar Singh, S/o Late Awtar Singh, Aged about 40 years, R/o Budhwari Para, Ward No. 11 (Now Ward No. 13), Dongargarh, District Rajnandgaon, Chhattisgarh.

(f) Smt. Gurvinder Kaur, D/o Late Awtar Singh, W/o Davinder Singh, Aged about 45 years, R/o Katora Talab Raipur, District Raipur, Chhattisgarh.

2. Gurucharan Singh S/o Matwal Singh, Sikh, Aged about 50 years, R/o Budhwari Para, Ward No. 11 (Now Ward No. 13) Dongargarh, District Rajnandgaon, Chhattisgarh.

3. Kanhaiya S/o Mangtu (died) through Lrs.

(a) Smt. Hemwati Sahu, Agd about 60 years, W/o Late Shri Kanhaiya R/o Danteshwari Para, Dongargarh, District Rajnandgaon, Chhattisgarh.

4. Sukhi Ram S/o Premlal Sahu, Aged about 55 years, Samiti Sevak Kawardha (Kabirdham), Chhattisgarh.

5. Suman Bai D/o Premlal Sahu, Aged about 40 years, R/o Deori Bhilai, District Durg, Chhattisgarh.

----- Appellants/Defendants

Versus

1. Suraja Bai W/o Shyamcharan, Aged about 70 years, R/o Budhwari Para, Dongargarh, District Rajnandgaon, Chhattisgarh.

2. Rukhmani Bai D/o Shyamcharan, Aged about 50 years, Luchakipara, Durg, District Durg, Chhattisgarh.

3. Ramkumar S/o Late Shyamcharan, Aged about 48 years, R/o Budhwari Para, Dongargarh, District Rajnandgaon, Chhattisgarh.

4. Radhelal S/o Late Shyamcharan Sahu, Aged about 46 years, R/o bhilai Sector 2, District Durg, Chhattisgarh.

5. Chandrika Bai D/o Late Shyamcharan Sahu, Aged about 40 years, R/o Indira Nagar, Dongargarh, District Rajnandgaon, Chhattisgarh.

6. Malati Bai D/o Late Shri Shyamcharan, Aged about 41 years, R/o Bhilai, Sector 6, District Durg, Chhattisgarh.

7. Rekha Bai D/o Shyamcharan, Aged about 37 years.

8. Revati Bai D/o Shyamcharan, Aged about 35 years.

Both R/o Kalkapara, Dongargarh, District
Rajnandgaon, Chhattisgarh.

9. State of Chhattisgarh Through Collector,
Rajnandgaon, Chhattisgarh.

----- Respondents/Plaintiffs

For Appellants	:	Mr. Bharat Gulabani, Advocate
For Respondents	:	Mr. Anup Majumdar and Mr. Saket Pandey, Advocates
For State	:	Mrs. Astha Shukla, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

11/12/2019

1. This second appeal preferred by the defendants
was admitted for hearing on the following
substantial question of law:-

“Whether the lower appellate Court did
not properly appreciate the evidence
oral as well as documentary on record
and fell into error in reversing the
judgment and decree passed by the trial
Court by recording a finding that the
respondents/plaintiffs were the title-
holders of Nazul Plot Number 1983,
1984/1 of Sheet No. 6 of Dongargarh Town
measuring area 3135 Square feet ?”

2. Original plaintiff Shyamcharan Sahu filed a civil suit for declaration of title and possession stating *inter alia* that the suit land bearing Khasra No. 1983 and 1984/1 situated at Dongargarh, Distt. Rajnandgaon is owned by him in which he has already constructed a house and defendants have encroached upon some portion of the suit land. In a complaint made by the petitioner against his neighbor Prem Singh, the Tahsildar directed the petitioner to get his land demarcated pursuant to which the demarcation report was submitted on 10/10/2000 from which plaintiff got to know that defendants have constructed a house upon 3,135 Sq. ft. of the suit land owned by the plaintiff. From the demarcation report, plaintiff came to know that defendants No. 1 and 2 got sale deed dated 21/01/1974 executed in their favour whereas plaintiff's father Ramsingh Sahu was the title-holder of the suit land then and he did not execute any sale deed in favour of the defendants, as such, plaintiff is entitled for declaration of title and possession of the suit land after demolishing the house constructed by the defendants.

3. Defendants filed their written statement and set up a plea that the suit land was owned by Premlal, Kanhaiya and chaitu who executed the sale deed dated 21/01/1974 in favour of defendants No. 1 and 2 for a sale consideration amount of ₹ 10,000/- and thereafter, they came into possession of the suit land and constructed a house upon it. The defendants further pleaded that plaintiff's suit is barred by limitation.
4. Learned trial Court, after appreciating the oral and documentary evidence on record, dismissed the suit of the plaintiff vide its judgment and decree dated 23/10/2003 holding that plaintiff has failed to prove that he is the title-holder of the suit land and is in possession of the same and he has also failed to prove that defendants have constructed the disputed house on his land. The trial Court further held that the suit filed by the plaintiff is barred by limitation.
5. Learned first appellate Court reversed the judgment and decree of the trial Court and allowed the appeal of the plaintiffs vide its judgment and decree dated 18/04/2006 holding that plaintiffs' suit is within limitation and further held that defendants have not proved their title

over the suit land and plaintiffs vide Ex. P/3 and P/4 i.e. Khasra Panchshala of years 1972-73 and 1996-97 have proved their title as original plaintiff shyamcharan's and his father RamSingh's names are recorded therein as the title-holder of the suit land.

6. Calling in question the judgment and decree of the first appellate Court, this Second Appeal has been preferred by the defendants under Section 100 of the CPC wherein substantial question of law has been formulated and set out in the opening paragraph of this judgment.
7. Mr. Bharat Gulabani, learned counsel for the appellants/defendants would submit that in the plaint, no source of title has been pleaded by the plaintiffs and no document with regard to their title upon the suit land has been filed. Merely, on the basis of Ex. P/3 and P/4 i.e. Khasra Panchshala, decree for declaration of title and possession has been granted in favour of the plaintiffs by the first appellate Court which is totally unsustainable and bad in law, as such, the judgment and decree passed by the first appellate Court deserves to be set aside and the second appeal deserves to be allowed.

8. Mr. Anup Majumdar and Mr. Saket Pandey, learned counsel for the respondents/plaintiffs would support the impugned judgment and decree passed by the first appellate Court and would submit that the second appeal deserves to be dismissed.
9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and perused the records with utmost circumspection.
10. Though the original plaintiff Shyamcharan filed a suit stating in para 2 of the plaint that he is title-holder of the suit land in which defendants have illegally encroached upon and dispossessed him by constructing a house and thereafter, in para 6 of the plaint he has mentioned that from the demarcation report, it came to his knowledge that defendants No. 1 and 2 got sale deed dated 21/01/1974 executed in their favour, but he has simply refuted that his father Ramsingh has not executed any sale deed in defendants' favour.
11. The trial Court, while deciding issue No. 1, has clearly recorded a finding that though the plaintiff has claimed title upon the suit land but no source of title has been pleaded by him and whereas defendants have pleaded that the suit

land was held by Premlal, Kanhaiya and chetu from whom they purchased the suit land vide sale deed dated 21/01/1974. Likewise, the trial Court has also held that no statement with regard to possession has been made by the plaintiff and furthermore, no witness has been examined by them to establish the fact of possession and admittedly, defendants have been in possession of the suit land.

12. The trial Court has also recorded a finding that on the basis of Ex. P/3 and P/4 i.e. Khasra Panchshala of the years 1972-73 and 1996-97, no title can be conferred upon the plaintiff whereas the first appellate Court has held that defendants have failed to establish their title over the suit land and no evidence has been brought on record by them in this regard whereas plaintiff has proved his title by way of Ex. P/3 and P/4 wherein plaintiff's and his father's name has been recorded as 'bhoomi dhaari' i.e. titleholder of the suit land. It is well-settled law that the entries in revenue record neither confers any title nor does it have any presumptive value on the title. It is merely a document which enables the person whose name is

recorded to pay land revenue. Moreover, Exhibit P/2 which is relied upon by the plaintiffs, that is, the demarcation report submitted on 10/10/2000, clearly records that defendants have purchased the suit land from Premlal, Kanhaiya and Chetu by sale deed dated 21/01/1974 on payment of consideration amount of ₹ 10,000/- and since then, defendants have been in possession of the suit land.

13. The first appellate Court did not meet with the reasonings of the trial Court that no source of title has been indicated by the plaintiffs nor they have established the fact of possession and Ex. P/2 relied by the plaintiff clearly indicates the title of the defendants upon the suit land and their possession has also been established therein, as such, the first appellate Court has interfered with the judgment and decree of the trial Court without meeting its reasonings and without complying with the law laid down by the Supreme Court for reversal of judgment in ***Santosh Hazari v. Purushottam Tiwari (deceased)*** by Lrs.¹.

14. In view of the aforesaid, I am of the considered opinion that the first appellate Court is

absolutely unjustified in reversing the well-merited judgment and decree of the trial Court, accordingly, the judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is restored.

15. The second appeal is allowed to the extent indicated herein-above with no order as to cost(s).

16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet