

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 288 of 2005**

Krishnapad Mallik, S/o Rasik Mallik, aged about 60 years, R/o Village Shahpur, Tahsil Dharamjaigarh, District Raigarh (C.G.)

----Appellant/plaintiff

Versus

1. State of Chhattisgarh, Through : The Collector, Raigarh (C.G.)
2. Kalipad Mallik, S/o Rasik Mallik, aged about 48 years, R/o Village Shahpur, Tahsil Dharamjaigarh, District Raigarh (C.G.)

---- Respondents/defendants.

For Appellants : Mr. Vivek Bhakta, Advocate.
 For Respondent No. 1 /State : Mr. Vimlesh Bajapi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/01/2019

(1) This is plaintiff's Second Appeal under Section 100 of the Code of Civil Procedure (for short 'the CPC') against the judgment and decree dated 6.1.2005 passed by District Judge, Raigarh in Civil Appeal No. 25-A/2004, affirming the judgment and decree dated 29.3.2004 passed by Civil Judge, Class-1, Dharamjaigarh, District Raigarh in Civil Suit No. 20-A/2001, dismissing the suit for declaration of title over the suit land bearing Khasra No. 34/1, area 5 acres and in alternative possession against the defendants.

(2) Learned counsel appearing for the appellants/plaintiffs would submit the concurrent finding recorded by both the courts below suffers from illegality & perversity and that give rise to the substantial question of law for determination.

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

(4) Case of the plaintiff is that the suit land was settled in his favour by the State Government under scheme of agricultural settlement in the year 1975 but later on the said land was leased out to respondent No. 2 – Kalipad Mallik by order dated 5.7.1980.

(5) The trial Court by its judgment & decree dismissed the suit of the plaintiff holding that the suit land has already been leased out to defendant No. 1, therefore, decree of declaration of title and in alternative possession cannot be granted in favour of plaintiff; and even otherwise, the plaintiff did not challenge the patta (Ex.D-4) by which the land was allotted to defendant No. 1; and the judgment & decree passed by the trial Court has duly been upheld by the first appellate court. Thus, the concurrent findings recorded by both the courts below are finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

