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HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 42 of 2005****Judgment reserved on 28/08/2019****Judgment delivered on /09/2019**

1. Triyogi Prasad (since dead), Aged about 67 years, S/o Shri Kapilnath Tiwari, his legal representative Rajendra Kumar Tiwari, Aged about 46 years, S/o Triyogi Prasad Tiwari.
2. Smt. Vimla Bai (deleted).
3. Manoj Kumar, Aged about 32 years, S/o Tri Vikramprasad Tiwari.
4. Tankeshwari Devi, Aged about 28 years, Wd/o Late Shri Sanjeev Kumar, R/o Village Lachanpur, Post Pandhi, Tahsil and District Bilaspur, Chhattisgarh.
5. Ku. Pushpa, Aged about 28 years, D/o Tri Vikramprasad Tiwari.
6. Amritlal, Aged about 52 years, S/o Shri Kapilnath Tiwari.
7. Arun Kumar, Aged about 51 years, S/o Shri Jeevrakhanlal Tiwari.

All R/o Village Lachanpur, Post Pandhi, Tahsil & District Bilaspur, Chhattisgarh.

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

1. State of Chhattisgarh, Through Collector Bilaspur, District Bilaspur, Chhattisgarh.
2. Rakesh Kumar, Aged about 27 years, S/o Tri Vikram Prasad Tiwari, R/o Village Lakhanpur, P.O. Pandhi, Tahsil and District Bilaspur, Chhattisgarh.

----Respondents/Defendants

For Appellants	:	Mr. Anil Singh Rajput, Advocate
For Respondent / State	:	Mr. Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs under Section 100 of the Code of Civil Procedure, 1908 (henceforth "CPC").
2. Mr. Anil Rajput, learned counsel for the plaintiffs/appellants herein would submit that both the courts below are absolutely justified in dismissing the civil suit filed by the plaintiffs holding that they are not entitled for settling the suit lands in their favour by virtue of Section 40 of M.P. Abolition of Proprietary Rights (Estates, Mohals, Alienated Lands) Act, 1950 (hereinafter, the Act of 1950), as the suit lands were under their cultivating possession after the agricultural year 1948-49 and therefore, those lands were deemed to be settled by State government and as such, they are entitled for decree for declaration of title and permanent injunction. As such, the findings recorded by both the Courts below in this regard are perverse and give rise to substantial question for law for determination.
3. Five original plaintiffs brought a civil suit for declaration that the plaintiffs and their ancestors are in cultivating possession of suit land admeasuring 51.24 acres prior to and after coming into force of Act of 1950. It was also pleaded that the order of Collector dated 01.05.1979 rejected the recommendation of Sub-Divisional Officer dated 19.07.1974, by which it was reported that the plaintiffs are in cultivating possession of suit land. The appeal preferred by the plaintiffs before the Commissioner was dismissed by order dated 31.08.1979 and the Commissioner directed to recover compensation from the

plaintiffs for unauthorized use of suit lands and the further revision preferred by the plaintiffs were dismissed by Board of Revenue in default on 27.03.1981. It was finally pleaded that a decree for declaration be granted in their favour holding that they are *Bhumiswami* of the suit land and defendant/State be restrained from interfering with their possession. The defendant/State filed their written statement that plaintiffs are not entitled for suit land to be settled in their favour as proceedings under Section 248 of the Chhattisgarh Land Revenue Code, 1959 has been initiated for removal of the encroachment.

4. The trial Court, after appreciating the oral and documentary evidence on record, dismissed the suit holding that plaintiffs have failed to establish that the suit lands were in their cultivation after the agricultural year 1948-49, and therefore, they are not entitled to be settled in view of Section 40 of the Act of 1950.
5. On appeal being preferred by the plaintiffs, the first appellate court and affirmed the decree passed by the trial court holding that in documents filed by the plaintiffs Ex. P-31 to Ex. P-34 which are the *Khasra Panchsala* for the year 1948-49 to 1952-53, in which the suit lands except *Khasra No. 414, 429 and 603/1*, all the lands are recorded as a grassland in Column-II and possession of the plaintiffs are not recorded in these documents, likewise in Ex.P-10 and Ex.P-13, the lands are recorded as grasslands, and possession of the plaintiffs are not recorded.

6. Section 40 of the Act of 1950 which was subsequently omitted by MP Act II of 1955 provides as under:-

“40. Right of Proprietor as lessee in certain lands. – Any land not included in home-farm but brought under cultivation by the proprietor after the agricultural year 1948-49 shall continue in the possession of such proprietor and shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed.”

7. A careful perusal of the aforesaid provision would show that this provision is applicable only to those lands in respect of which proprietor had the right of cultivation.
8. The Madhya Pradesh High Court in the matter of ***State of M.P. v. Ramrijhawan Awadhram***¹ pointing out the intention of Section 40 of the Act has held as under:-

“7.The real intention of Section 40 is to create a right in favour of the subject; and if it can be proved that the lands were brought under cultivation after 1948-49, the ex-proprietor has a right to have them settled. The Deputy Commissioner may, however, settle any lands with the ex-proprietor or any other person in exercise of the wider powers which vest in the State.”

9. The Madhya Pradesh High Court in the matter of ***Fatya v. State***², while dealing with Section 40 of the Act has held as under:-

“Held, that the Malguzar was entitled to bring under cultivation only specified kinds of land but

1 1961 MPLJ 1121

2 1963 MPLJ (NOC) 144

not every land of which he was the proprietor. Section 40 of the Abolition Act applied only to those lands in respect of which the proprietor had the right of cultivation. In other words that section presupposed an absolute and unqualified right of bringing the land under cultivation. That section did not give protection and benefit to a person who brought a land under cultivation in contravention of the law.”

10. Reverting to the facts of the case in light of the provisions contained in Section 40 of the Act and principle of law laid down by the Madhya Pradesh High Court in the above-stated judgments, while considering Section 40 of the Act, it is quite vivid that it was incumbent on the part of plaintiffs to plead and establish clearly by leading evidence that suit lands were brought under cultivation after the year 1948-49 and therefore, they had right to have them settled. The trial court as well as the first appellate court referring to Ex.P-31 to Ex.P-54 and Ex.P-10 to Ex.P-13, which are copies of *Khasra Panchsala* brought by the plaintiff himself for the years 1948-49 to 1952-53 and 1975-76 to 1980-81, clearly held that except *Khasra* No. 414, 429, and 603/1 all the suit lands are recorded as grasslands and even possession of the plaintiffs are not recorded anywhere in the said documents, therefore, they are not in cultivating possession of the suit lands, and therefore that cannot be settled in favour of the plaintiffs. The said finding recorded concurrently by both the courts below is finding of fact based on evidence available on record which is neither perverse not contrary to record and in which I do not find any illegality or perversity much less any substantial question of law

involved for determination.

11. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

SA No. 42 of 2005

Triyogi Prasad (since dead) through Lrs. & Ors. **Versus** State of Chhattisgarh & Anr.

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Hon'ble Shri Justice Sanjay K. Agrawal

23.09.2019	In this case, judgment was delivered by this Court on 13/09/2019 but while uploading, in the PDF file, the date of the judgment has been left blank and inadvertently been mentioned as “ /09/2019”. It be read as 13/09/2019. Sd/- (Sanjay K. Agrawal) Judge
Harneet	