

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 262 of 2005**

1. B. Madhava Rao, aged about 52 years, S/o Dr. B.M. Rao

2(b) B. Raghava Rao, aged about 45 years, S/o Dr. B.M. Rao,

2(c) Ku. Vimla, aged about 47 years, D/o Dr. B.M. Rao,

All R/o Station Ward, BHATAPARA, P.O./P.S./Tahsil Bhatapara, District Raipur
(C.G.)

----Appellants/defendants.

Versus

1. Vishnu Prasad, aged about 70 years, S/Polt. Ganga Pd. Mishra, R/o Gandhi Chowk, Baloda Bazar, P.O./P.S./Tahsil – BALODA BAZAR, Distt. Raipur (C.G.)

2. Bhagwan Pd. Mishra, aged about 80 years, S/o Ganga Pd. Mishra, R/o-3, Prakash Nagar, DHAR, Distt. Dhar (M.P.)

3. Rakesh Kumar, aged about 42 years, S/o Narayan Pd. Mishra, R/o Qtr. No. B 03/120, Township, Malajkhanda, Distt. Balaghat (M.P.)

4. Smt. Taradevi, aged about 66 years, Wd/o Narayan Pd. Mishra, R/o Qtr. No. B-3/120, Township, Malajkhanda, Distt. Balaghat (M.P.)

5. Smt. Shail Mishra, aged about 62 years, Wd/o Jagannath Pd. Mishra, R/M-33, 'Jagat Niwas', Rajiv Nagar, Raipur (C.G.)

6. Krishna Pd. Mishra, aged about 66 years, S/o Ganga Pd. Mishra, R/o Qtr. No. 55, Sector-3, Devendra Nagar, RAIPUR, Distt. Raipur (C.G.)

7. Ramchand Mishra, aged about 62 years, S/o Ganga Pd. Mishra (Principal), R/o Akaltara, Distt. Janjgir-Champa (C.G.)

8. Bhagwat Pd. Mishra, aged about 60 yrs. S/o Ganga Pd. Mishra, R/o Opposi Suraiya House Pipe Factory, Ward Kota, Raipur, Distt. Raipur (C.G.)

---- Respondents/Plaintiffs

For Appellants	:	Mr. H.B. Agrawal, Senior Advocate assisted by Mr. G.R. Miri & Mr. Basant Kaiwartya, Advocate.
For Respondents	:	Mr. M.D. Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/03/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by defendants under Section 100 of the Code of Civil Procedure, 1908.

(2) Suit filed by plaintiff – Vishnu Prasad Mishra for declaration of title and for recovery of possession and permanent injunction was decreed by the trial Court and on an appeal being preferred by defendants, the first appellate Court affirmed the judgment and decree of the trial Court, against which instant second appeal has been preferred by defendants.

(3) Shri H.B. Agrawal, learned Senior Counsel appearing for the appellants/defendants would submit that both the courts below have concurrently erred in decreeing the suit in favour of the plaintiffs ignoring the material fact that lease of the suit land has been granted in favour of defendant No. 1- B. Madhav Rao vide Ex.P-1 by recording findings which are perverse and contrary to the record and that give rise to substantial question of law for determination.

(4) Plaintiff – Vishnu Prasad Mishra filed a suit for declaration of title, permanent injunction and for recovery of possession stating inter alia that suit land admeasuring area 21" x 70" situated at station Road Bhatapara, District Raipur was given on lease to his father – Ganga Prasad Mishra by Rai Bahadur Dau Kalyan Singh of Tarega on 26.02.1933 vide Ex.P-1 on payment of Najrana i.e. Rs.114/- vide Ex.P-10 and possession of the said suit land was handed over to him and, thereafter, vide Ex. P-3 his father – Ganga Prasad Mishra made an application for permission to construct the house on the suit land which was granted by the Chief Municipal Officer, Municipal Council, Bhatapara vide order dated 14.12.1967 vide Exs. P-4 & P -5; and further held

that on the basis of aforesaid documents, plaintiff and his brothers are in possession of the suit property since 1967 after death of their father Ganga Prasad Mishra. The suit was resisted by the defendants by filing written statement.

(5) The trial Court, after appreciation the oral & documentary evidence available on record, has clearly recorded a finding that defendant No. 2 has admitted the possession of the plaintiff's father and title over the suit land vide letter dated 20.02.1965 vide Ex.P-7, as such, defendants No. 1 & 2 are not in possession over the suit land till 1980, thereafter, from the southern side of the suit land, defendants No. 1 & 2 made construction after encroaching the suit land. It was further recorded a finding that the suit land was earlier owned by Rai Bahadur Dau Kalyan Singh of Tarega, which was granted on lease to the plaintiff's father and after coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 by virtue of Section 5 (a) of the said Act, plaintiff's father had become title holder of the suit land and defendants No. 1 & 2 have no title or interest over the suit land and thereby decreed the suit.

(6) The defendants preferred first appeal thereagainst. The first appellate Court after re-appreciation of the material available on record has affirmed the finding recorded by the trial Court holding that plaintiff's No. 1 father – Ganga Prasad Mishra got the suit land on lease vide Ex.P-1 by its erstwhile owner - Rai Bahadur Dau Kalyan Singh of Tarega on 26.03.1933 and he is in possession thereof and the defendants No. 1 & 2 have encroached upon the suit land from southern side in the year January, 1992, which is totally unauthorized.

(7) Finding of fact recorded by two courts below that plaintiff's father – Ganga Prasad Mishra was title holder of the suit land on the basis of lease granted in his

favour vide Ex.P-1 and which has ripened into title in his favour by virtue of Section 5 (a) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950; and admission of defendant No. 2 that he has encroached upon the suit land from the southern side, are the finding of fact concurrently recorded by the two courts below 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.

(8) Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul Datta and others¹ & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others²** }

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

¹ (2018) 11 SCC 77

² (2018) 12 SCC 681

