

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 04.07.2019

Judgment delivered on 08.11.2019

Second Appeal No.388 of 2005

1. Tahsildar Singh, S/o Dalpratap Singh, aged about 44 years
 2. Babbu Singh, S/o Dal Pratap Singh, aged about 42 years
 3. Shivkumar Singh, S/o Dalpratap Singh, aged about 40 years
- All residents of Telipara, Bilaspur, Tahsil & Distt Bilaspur (Chhattisgarh)

---- Appellants

Versus

1. State of Chhattisgarh through the Collector, Bilaspur (Chhattisgarh)
2. Sanchanalaya, Krishi Sheeshal Prakshetra Bharni, Tah Takhatpur District Bilaspur (CG)
3. Tahsildar, Takhatpur, District Bilaspur (CG)
4. Up-Tahsildar, Ganiyari Tahsil, Takhatpur, District Bilaspur (CG)

---- Respondents

For Appellants	: Shri Upendra Bharat, Advocate
For Respondents/State	: Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Judgment

1. Appellants/Plaintiffs have challenged the impugned judgment and decree dated 12.08.2005 passed by the Additional District Judge, Bilaspur, in Civil Appeal No.18-A/2003 whereby learned First Appellate Court allowed the appeal filed by respondents/defendants and set aside judgment and decree dated 06.08.2003 passed by learned trial Court in Civil Suit No.222-A/2002.
2. Facts of the case in nutshell are that one Ravi Kumar was owner of land bearing Khasra Nos. 1, 2, 3, 4, 5, 6/1, 6/3, 6/4, 37 & 131/3 measuring 0.38, 0.38, 0.38, 1.57, 0.49, 0.50, 0.50, 0.31 & 2 acres total land measuring 8.86

acres at village Bharni, Takhatpur, district Bilaspur. This land of Ravi Kumar was alleged to be in possession of respondent/defendant-2 in which some plantation of Sheeshal seeds was done by respondent-2. When even after request of Ravi Kumar, respondent/defendant-2 did not vacate the land illegally possessed by them, then, Ravi Kumar made an application before the Additional Collector, Bilaspur for exchange of his land with land recorded in the name of respondent/defendant-2, but lying vacant.

3. After receiving an application, the Additional Collector, Bilaspur, conducted an inquiry and found that about 5.08 acres of land owned by Ravi Kumar of different Khasra numbers was illegally possessed by respondent-2 and therefore, decided to invoke his powers as provided under Part-4-No.3, paragraph 20 of the Revenue Book Circular for giving the same area of land under exchange to Ravi Kumar. Additional Collector vide his order dated 06.07.1999 allowed the application of Ravi Kumar and allotted land admeasuring 5.08 acres from Khasra No.71/2, measuring 9.05 acres recorded in the name of respondent/defendant-2. It was also directed to Tahsildar to initiate demarcation proceedings in pursuance of order, correct the records and to handover possession of the allotted land to Ravi Kumar. The order of Additional Collector was challenged by respondent/defendant-2 before the Commissioner by way of appeal but the same was dismissed.

4. Tahsildar in pursuance of the order passed by the Additional Collector, conducted demarcation and also apportioned the land in Revenue Map. Action of the Tahsildar for apportioning the part of Khasra No.71/2 in Revenue Map and the construction raised by appellant/plaintiff was reported by defendant-2 to the Sub-Divisional Officer (SDO). The SDO after recording

statements of Revenue Officers, passed an order on 29.10.2001 and set aside the correction of Revenue Map of Khasra No.71/2 and further directed that the correction of Revenue Map be done in accordance with approved map in the order of Additional Collector dated 06.07.1999 and also to remove possession of the appellant from said land. This order of SDO made the appellant/plaintiff to approach the Civil Court by way of filing a Civil Suit for declaration of title over the land measuring 5.08 acres situated at Khasra No.71/2(kha) and for permanent injunction and for restraining respondents/defendants to interfere with peaceful possession and not to damage the boundary of barbed wire over the disputed land.

5. The pleadings made in the plaint by the appellant/plaintiff are that the appellant/plaintiff had purchased the property in dispute from Ravi Kumar vide registered sale deed dated 20.08.2001 and since then, he is owner of the property in dispute and also in possession of the same. It was also pleaded that prior to the sale deed, Ravi Kumar was owner and in possession of the property in dispute. It has been pleaded that Ravi Kumar became owner of the property by virtue of order passed by the Additional Collector, Bilaspur, wherein the Additional Collector ordered for allotment of 5.08 acres of land out of total 9.05 acres of land of Khasra No.71/2 (kha) and in pursuance of the order, Tahsildar got demarcated and also corrected the Revenue Map accordingly. After purchasing the land, the appellant/plaintiff came to know that on 01.11.2001 defendant-1 had passed an order on 29.10.2001 directing the appellant for removing the fencing of barbed wire from the disputed land. It was pleaded that no opportunity of hearing was provided by respondent -1 before passing the order dated 29.10.2001.

6. Defendants-1 and 3 submitted written statements while denying the pleadings made in the plaint; had further pleaded that bifurcation of the Revenue Map of Khasra No.71/2 and demarcation has not been done correctly. Correction of Revenue records and Revenue Map was on account of connivance of Ravi Kumar with Revenue Officers and thereafter, disputed property has been sold. It was pleaded that Ravi Kumar against his land measuring 8.86 acres, had demanded 9.05 acres of land from Khasra No.71/2 (government land) and made an application before the Additional Collector but which portion of land of Khasra No.71/2 has not been mentioned specifically in his application nor the boundaries of land demanded by him has been specifically mentioned in his application. It was also pleaded that even Tahsildar while complying the order dated 06.07.1999 of the Additional Collector, Bilaspur, has not brought to the notice of Additional Collector that specific portion of land has not been mentioned in the order and therefore, the proceedings initiated by Tahsildar with regard to correction of revenue entries and Revenue map were illegally and irrationally done by the Revenue Officers. It was also pleaded that at the time of executing the sale deed by Ravi Kumar in favour of appellant/plaintiff, the proceedings before the SDO on the basis of complaint of defendant- 2 was pending.

7. It was pleaded that as the possession of the disputed land has not been validly and in accordance with law received by Ravi Kumar, therefore, the possession over the disputed property of appellant comes within the purview of encroachment and objected for the relief of declaration of title ad permanent injunction and prayed for dismissal of the suit.

8. Defendant- 2 was earlier owner of the property, by virtue of the allotment of land to it vide order dated 02.04.1969 by the Collector, Bilaspur for the purpose of sheeshal plantation. It was admitted by him in written statement that portion of land owned by Ravi Kumar measuring 5.08 acres was found in possession of defendant 2 where the plantation has been done and also the passing of order dated 06.07.1999 by the Additional Collector, Bilaspur for allotting the land to Ravi Kumar from Khasra No.71/2 measuring 5.08 acres out of 9.05 acres of land. Defendant-2 had denied the pleadings of plaint and stated that the land in dispute was allotted to them on 02.04.1969 but while correcting the Revenue Map and Revenue records, no intimation was given to him.

9. Defendant-1 prayed for dismissal of the suit on the ground that the suit has been filed on incorrect averments and prayed for dismissal of the suit as well as application for grant of temporary injunction.

10. Learned trial Court on appreciation of pleadings as well as evidence placed on record ie the documentary as well as oral evidence by respective parties to the suit, decreed the suit in favour of the appellant.

11. The judgment and decree passed by the learned trial Court was made to challenge in First Appeal before the Additional District Judge, Bilaspur, by the defendants who after considering the entire material available on record, ie the pleadings, documentary and oral evidence, allowed the appeal and set aside the judgment and decree passed by learned trial Court by recording a finding that the Tahsildar illegally corrected the Revenue records and Map without bringing to the knowledge of the Additional Collector that there is no

specific direction with regard to the manner of bifurcation of Khasra numbers in Revenue Map. The First Appellate Court recorded a finding that the plaintiff failed to prove that the land in dispute which is adjacent to road has been allotted to Ravi Kumar by illegal bifurcation of Revenue Map of Khasra No.71/2. It was also held that if the possession of appellant/plaintiff was found over the land in dispute, then, it is merely possession by way of encroachment. Learned First Appellate Court considered the documents- Ex.D1, D2, D3, D4, D5 and D6.

12. Setting aside of judgment and decree passed by learned First Appellate Court made the appellant to file this Second Appeal. The Second Appeal was admitted on following questions of law.

“(i) Whether the first appellate Court is justified in reversing the findings of the Trial Court without meeting the reasoning recorded by the Trial Court for declaration of title and permanent injunction ?

(ii) Whether the first appellate Court is justified in holding that the land demarcation and Batankan was not properly done though there is overwhelming evidence on record that the demarcation and Batankan was properly done ?”

13. So far as the first question of law formulated is concerned, the Suit was filed for declaration of title and permanent injunction. The basis of claiming title by the plaintiff is the order passed by the Additional Collector on 06.07.1999 for giving 5.08 acres of land out of Khasra No.71/2 measuring 9.05 acres of land. The order passed by the Additional Collector dated 06.07.1999 was on the basis of an application for granting the land of Khasra No.71/2 measuring 9.05 acres against his land encroached and possessed by defendant-2/ respondent-2 measuring 8.86 acres. It is not in dispute that the

Additional Collector on an enquiry found that defendant- 2 was only in possession of 5.08 acres of land owned by Ravi Kumar and therefore, in view of application filed by Ravi Kumar for giving the vacant land of defendant- 2 of Khasra No.71/2, the Additional Collector has ordered to allot 5.08 acres of land out of Khasra No.71/2 measuring 9.05 acres of land. The order of Additional Collector has not been marked as Exhibit by placing it as evidence to prove his case by the appellant/plaintiff. Case of the appellant/plaintiff is based on the order or allotment passed by the Additional Collector, Bilaspur dated 06.07.1999 in Case No.15/A-19/98-99 which is an order of granting the disputed land in exchange but the said order has not been marked as Exhibit to prove that which portion of land has been ordered to be allotted to Ravi Kumar, the original owner from whom the appellant/plaintiff allegedly purchased vide registered sale deed dated 20.08.2001.

14. Defendants- 1 and 3 in their written statements very specifically pleaded that Ravi Kumar has not specifically mentioned by enclosing map and boundaries of land which he has requested to be allotted to him out of Khasra No.71/2 nor the Tahsildar/Revenue Inspector had informed the Additional Collector with regard to the same fact and had proceeded for demarcation and bifurcation of Khasra number in Revenue Map of their own, illegally. Defendant-2 also denied the fact that the Additional Collector vide order dated 06.07.1999 ordered to allot the land measuring 5.08 acres from Khasra No.71/2 which is adjacent to Road. Plaintiff (PW-1) in his evidence has only stated that by virtue of order of the Additional Collector, Bilaspur land measuring 5.08 acres from Khasra No.71/2 was allotted on exchange but he has not stated in very specific terms that in the order of Additional Collector

which portion of the land has been ordered to be allotted to Ravi Kumar (when in the plaint itself the Plaintiff has pleaded that) but from the contents of plaint itself it is apparent that Khasra No.71/2 is measuring more than 5.08 acres of the land and therefore, Khasra No.71/2 has been shown to be bifurcated as 71/2 (kha) measuring 5.08 acres of the land out of total area of land of Khasra No. 71/2 and balance land is shown as 71/2 (ka).

15. Rajendra Gupta, Tahsildar was examined as PW-2 and in para-1 of his evidence he has very clearly stated that total area of Khasra No.71/2 was 9.05 acres from which 5.08 acres of land was allotted. From the aforementioned ie the pleadings made in plaint, evidence of PW-1, plaintiff himself and PW-2 (Rajendra Gupta, Tahsildar), it is clear that the land bearing Khasra No.71/2 was more than 5.08 acres of land ie 9.05 acres, but the plaintiff neither in his pleadings had specifically pleaded that which portion of Khasra No.71/2 has been ordered by the Additional Collector, Bilaspur to be allotted to Ravi Kumar and even the Tahsildar ie PW-2 in his evidence had not stated in very specific terms as to under what direction or material he conducted demarcation and also directed for correction of Revenue Map of Khasra No.71/2.

16. Perusal of Part 4, No.3 para 20 of Revenue Book Circular provides for exchange of government land suitable for agriculture purpose, the authority competent has been shown to be the Collector. It is the Collector only, who can permit for exchange of particular piece of land with the particular piece of other land after considering the conditions mentioned in para-20, part-4 No.3 of the Revenue Book Circular. The Revenue Book Circular or any other provision of law in the issue does not provide any powers or jurisdiction to the Tahsildar to allot any piece of government land under exchange. It is for the

Tahsildar only to comply with the orders passed by the Collector (in this case the Additional Collector) for allotting a piece of land as ordered by the competent authority under the Revenue Book Circular. The Plaintiff has nowhere pleaded nor proved that out of 9.05 acres of land of Khasra No.71/2, from where land of 5.08 acres is ordered to be allotted by mentioning the boundaries of that land.

17. PW-2 Ranjendra Gupta, Tahsildar in his evidence has stated that he has received a case from the Court of Additional Collector, Bilaspur for correction of records and giving possession of land to Ravi Kumar and in compliance of the order he wrote a letter on 24.11.2002 that out of 9.05 acres of Khasra 71/2 give possession of 5.08 acres of land and to correct the revenue records and in compliance of the said letter B1 and Khasra Panchshala were corrected and thereafter on 02.07.2001, on an application of Ravikumar Kadla further direction was issued to Revenue Inspector, Sakri for correcting revenue record of Khasra No.71/2 and on the basis of his order, the Revenue inspector has corrected the Revenue Map of 71/2. In cross examination, PW-2 admitted that along with the records of Additional Collector and the order of the Additional Collector, approved map was not attached / available. He also admitted that he has not brought to the notice of Additional Collector that approved map was not available in the records. This witness also admitted that the land bearing Khasra no.71/2 was of the possession of defendant-2 i.e. Sheeshal Parikshetra.

18. PS Dau (DW3) in his evidence stated that for demarcation he has been ordered by Tahsildar but due to his busy schedule he handed over the order to Durgaprasad Mishra (Patwari) for demarcation and after demarcation the

documents have been placed before him for his approval but he refused to sign the documents on the ground that unless and until he visits the site personally, he would not sign the demarcation report or other documents. He also stated in para-2 of his evidence that the Tahsildar had directed him not to conduct any further enquiry. He also stated that he did not sign the documents / records and thereafter he had been transferred.

19. Section 107 of the LRC 1959 provides for field map. Section 107 is reproduced here below for ready reference:

“107. (1) There shall be prepared a map showing the boundaries of survey numbers or plot numbers and waste lands called the field map for every village except when otherwise directed by the State Government. (2) There may be prepared for the abadi of each village a map showing the area occupied by private holders and the area not so occupied and such other particulars as may be prescribed. (3) If the State Government considers that in the case of any village it is necessary to show separately in the map prepared under sub-section (2) the plots occupied by private holders, it may direct the Collector to get the map so prepared or revised. (4) If any Gram Panchayat passes a resolution that a map of the village abadi should be prepared showing separately the plots occupied by private holders and is willing to contribute to the cost of survey operations in such proportion as may be prescribed, the State Government may under-take the preparation of such map. (5) Such map shall be prepared or revised, as the case may be, by the Settlement Officer at [revenue survey] and by the Collector at all other times and in all other circumstances.]”

20. Sub-Section 1 of Section 107 of LRC provides for the map showing the boundaries of survey numbers or plot numbers of every village. The map may also be prepared for Abantan of each village showing the area occupied by private holders and the area not so occupied or other particulars. The revision or preparation of the map has been authorized to the Collector or the Settlement Officer (at the time of revenue survey).

21. Here, it is a case where the Additional Collector has ordered to allot 5.08 acres of land out of Khasra No.71/2 measuring 9.05 acres of total land. There is no evidence that the Additional Collector in his order directed for allotting particular portion and from which side of land of Khasra No.71/2. On the contrary, evidence of PW-2 i.e. Tahsildar (Revenue Officer) in his evidence categorically had stated that records of Additional Collector received by him do not bear the approved map.

22. In the aforementioned facts and circumstances of the case when there is no specific map approved by the Additional Collector for bifurcation of Khasra No.71/2 and allotting 5.08 acres of land out of total area 9.05 acres of land, the Tahsildar could not have directed for allotting any particular piece of land to Ravi Kumar in pursuance of the order of exchange of land. It is the Collector who is authorised to allot land in exchange and not the Tahsildar. The Additional Collector though ordered to allot land of 5.08 acres but not specified the piece of land of the big Khasra number.

23. Here it is not a case with respect to simply demarcation of any land of two owners and correction of the Revenue Map; but it is a case where a piece of land was allotted to a person by the authority i.e. Additional Collector from Khasra number which was measuring more than the land to be allotted to the said beneficiary. In that circumstance, when the power of allotment of land has been given to the Collector under the Revenue Circular i.e. Para 20 of Part-IV No.3, then it is only the Collector / Additional Collector who can allot a piece of land by describing the boundaries of it to any person which was not pleaded and proved by the plaintiff that the Additional Collector has ordered to

provide a particular piece of land mentioning the boundaries of the same and it is the very same land given in possession by Tahsildar.

24. For the aforementioned discussions the relief sought for by the Plaintiff i.e. declaration of title over the land shown in the map attached along with the plaint cannot be granted.

25. Trial court while decreeing the suit of the appellant/Plaintiff, framed issue No.1 as to where the disputed land Khasra No.71/2 (kha) measuring 5.08 acres situated at Village Bharni is owned and possessed by the Plaintiff. The learned trial court had considered that vide order dated 06.07.1999 the Additional Collector, Bilaspur had directed to allot 5.08 acres of which Khasra No was 71/2. The learned trial Court further held that defendants – 2, 3 and 4 admitted that the disputed property was received by Ravikumar in exchange. The learned trial court further considered the evidence of DW-2, 3 and 4 by recording all aforementioned defense witnesses admitted that the land has been demarcated and bifurcated in Revenue Map in pursuance of the order of Additional Collector, Bilaspur of Khasra No.71/2 and Khasra No.71/2 (kha) has been given to Ravi Kumar. Learned trial court has taken into consideration that the demarcation and the bifurcation of the revenue map has been validly done but, not considered the crucial point that whether there was any specific order of the Additional Collector or map of the land to be allotted to Ravi Kumar in the order of Additional Collector showing the boundaries was available or not for claiming relief of declaration of ownership and title over the property in dispute. The learned trial court on the basis of revenue documents i.e. Rinpustika-Ex.P2, Demarcation Map-Ex.P4 dated 18.8.2001, Spot map-Ex.P5, Mutation Record-EX.P9, Map of Revenue Department-

Ex.P10 and sale deed-Ex.P11, had held that the Plaintiff became owner of the land after purchasing the land from Ravi Kumar by sale deed dated 20.08.2001 and held that the appellant/plaintiff is owner and in possession of the disputed property.

26. The First Appellate Court in its judgment categorically admitted that though the Tahsildar PW-2 had issued directions for demarcation and correction / bifurcation of revenue map and correction of revenue records and bifurcation of khasra no.71/2 in revenue map to Patwari and Revenue Inspector but along with order of Additional Collector, there was no approved map.

27. The First Appellate Court has also taken into consideration the provisions of Section 70 (2) of the LRC which provides for the power to renumbering or sub-division of the survey number. First Appellate Court also considered that after resettlement proceedings, the powers of sub-division of survey numbers, powers of settlement officer lies with the Collector under Section 86 of the LRC for completion of the balance of settlement of unfinished settlement proceedings. The First Appellate Court after discussing the evidence, had held that the Plaintiff failed to prove that the Additional Collector allotted the land adjacent to Kota Road on exchange. The First Appellate Court arrived at a finding that the demarcation and correction proceedings initiated by the Tahsildar were not in accordance with law.

28. From the above, when the First Appellate Court had arrived at a conclusion and held that without there being any approved map of the Competent Authority allotting the land in exchange i.e. (the Additional

Collector), the Tahsildar had illegally proceeded by demarcating and correcting the revenue map without bringing it to the knowledge of the Additional Collector has clearly given the reasons by meeting the reasoning recorded by the trial Court for reversing the judgment and decree of the trial court. The allotting authority is Collector and in the order of allotment, there should be specific mention of land, which is not proved by the appellant/plaintiff that the land possessed by him was allotted by the competent authority. The burden of proof was on the plaintiff in which he utterly failed. Learned First Appellate Court while reversing the judgment passed by the learned trial Court, in paragraph-19 of the judgment elaborately dealt with that the findings recorded by the trial Court and held to be not sustainable. Accordingly, the first question of law is answered in negative.

29. So far as the second substantial question of law as framed is concerned, the area of land in dispute 5.08 acres is ordered to be allotted to Ravi Kumar by the Additional Collector under the provisions of Revenue Book Circular i.e. Part-IV-3 Para-20 out of Khasra No.71/2 measuring 9.05 acres but the Plaintiff failed to prove by producing which portion of khasra was allotted to him nor produced the approved map showing the boundaries of the land allotted to Ravi Kumar under exchange of the land, therefore, in the aforementioned facts and circumstances, when it is a case of allotment of land by a Competent Authority the Tahsildar could not have directed for demarcation of particular portion of Khasra No.71/2 on his own to allot the beneficiary and the correction of map has been done only on the basis of spot demarcation made under the direction of Tahsildar only who is not having any jurisdiction or power to allot any piece of land as stated above. The revenue

authorities have acted under the direction of Tahsildar and demarcated the land and corrected the revenue map by bifurcation of Khasra No.71/2 in revenue map and making two sub-divisions of survey No./Khasra no. which he could not have ordered or directed unless and until there is specific direction by mentioning the boundaries of land so allotted to the beneficiary. In these circumstances learned First Appellate Court arrived at a finding that demarcation and Batankan were not properly done. The Additional Collector has not identified the portion of the land in his order of allotment when Khasra No. 71/2 from which a portion of land was allotted to the beneficiary i.e. Ravi Kumar out of 9.05 acres of land nor separately approved sketch map has been made part of the order and sent for compliance to the Tahsildar.

30. The evidence of PW-2 who is Tahsildar (Revenue Officer) in whose direction the proceedings of demarcation and Batankan has been done by the Revenue Inspector and Patwari himself admitted that along with order of Additional Collector, there was no approved map. The Plaintiff or his witnesses have not proved that the order of the Additional Collector very specifically mentioned the portion of land to be allotted to Ravi Kumar from Khasra No.71/2. Proper demarcation of the land of a Khasra number which is measuring more than the land to be allotted can be done only when there is specific mentioning of the boundaries of that land. It is not for any of the Revenue Officer to demarcate the land as per his own will and there is no such provision in LRC or in Revenue Book Circular. Tahsildar (PW-2) in his evidence said that he acted in compliance of the order passed by the Additional Collector, but as discussed above, the order of Additional Collector

does not provide for allotting any specific piece/portion of land of Khasra No.71/2.

31. Evidence of DW-1 Chandramohan Mishra, who is SDO, Kota, in very specific terms has stated that as per the statement of Revenue Officers at the time of demarcation of Khasra No.71/2, Ravi Kumar was not present on the spot nor he has supplied any documents for the purpose of demarcation of the land ordered to be allotted to him.

32. Evidence of DW-3, PS Dau records the clear statement of this witness in para-2 wherein Tahsildar (PW-2) had stopped him to conduct any enquiry of the disputed land. The conduct of Tahsildar itself is suspicious when he himself has ordered this witness to hold demarcation and submits its report, then, from verifying the report of demarcation he has been stopped to verify and enquire into the correct fact of spot of land.

33. The other witness DW-2 Jagannath Prasad Sahu (Patwari) in para-6 of his statement had stated that when the Tahsildar directed them to correct the revenue map on the basis of demarcation and possession. Again the question is that as to how and on what basis Ravi Kumar was possessing the said portion of land which was to be demarcated (as stated by witness DW-2).

34. From the aforementioned facts and evidence of the witnesses, particularly when there was no boundaries of the land allotted and to be demarcated was available, the demarcation and Batankan cannot be said to have been properly done and therefore the First Appellate Court was justified in holding that demarcation and Batankan was not properly done. The Second question of law is answered accordingly.

35. For the foregoing reasons and discussions I do not find any merit in the appeal which is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma