

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 500 of 2007**

1. Dashoda, Aged about 30 years, D/o Baishakhu Gond,
R/o Daujra, Tahsil Pendra Road, District
Bilaspur, Chhattisgarh.
2. Shriram, S/o Avadhram Gond, Aged 22 years, R/o
Village Newsa, Tahsil Pendra Road, District
Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs**Versus**

1. Semkuwar W/o Bechan Singh (died and deleted).
2. Sahay Singh S/o Bechan Singh (died and deleted).
3. Vigyan Singh, Aged 30 years, S/o Bechan Singh.
4. Sandeep Singh, Aged 25 years, S/o Bechan Singh.
5. Bharat Singh, Aged 18 years, S/o Bechan Singh.

All are by caste Kanwar, R/o Village Newsa
Kachharpara, Police Station Gaurela, Tahsil
Pendra Road, District Bilaspur, Chhattisgarh.

6. Sarodhan Singh, Aged about 53 years, S/o Bikul
Singh, Agriculturist, R/o Village Newsa, Tahsil
Pendra Road, District Bilaspur, Chhattisgarh.
7. Mayaram, Aged about 50 years, S/o Baishakhu
Gond, R/o Darmohli, Tahsil Marwahi, District
Bilaspur, Chhattisgarh.
8. Shobhnath, Aged about 38 years, S/o Baishakhu
Gond, R/o Daujra, Tahsil Pendra Road, District
Bilaspur, Chhattisgarh.
9. Udaybhan Singh, Aged 19 years, S/o Kumar Singh,
R/o Nagwahi Ghordewatola, Tahsil Pendra Road,
District Bilaspur, Chhattisgarh.

10. State of Chhattisgarh, through Collector,
Bilaspur, Chhattisgarh.

---Respondents/Defendants

For Appellants	:-	Mr. S.D. Rajas, Advocate
For Respondents No. 1 to 6	:-	Mr. Rakesh Pandey, Advocate
For Respondent No. 7	:-	Mr. Vinod Ku. Sharma, Advocate
For State	:-	Ms. Anjali Singh Chouhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/01/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs under Section 100 of the CPC assailing the impugned judgment and decree by which the first appellate Court reversed the judgment and decree of the trial Court and dismissed the suit of the plaintiffs.

2. Mr. S.D. Rajas, learned counsel for the appellants/plaintiffs would submit that first appellate Court has clearly erred in dismissing the suit of the plaintiffs on the ground that the sale deeds (Ex. P/3 to P/6) in favour of Baishakhu i.e. plaintiffs' predecessor in title have already been declared null and void by the S.D.O in

170 (b) proceedings of the Chhattisgarh Land Revenue Code initiated by the defendants which was ultimately set aside by the Additional Collector vide Ex. P/1. He would further submit that the first appellate Court has allowed the documents Ex. D/13 and D/14 without giving an opportunity to the plaintiffs to rebut them by adducing evidence in rebuttal, as such, the appeal deserves to be admitted by formulating substantial questions of law in these regard.

3. It is the case of the plaintiffs that their predecessor-in-title Baishakhu purchased the suit property vide registered sale deed (Ex. P/6) and thereby, came into possession of the said suit property. After a long time, proceeding under Section 170 (b) of the Chhattisgarh Land Revenue Code was initiated by the defendants wherein by order dated 22/07/1994, the S.D.O. declared the said transaction (Ex. P/3 and P/6) as null and void which was assailed by the plaintiffs in an appeal before the Additional Collector, who vide its order dated 22/01/1996 (Ex. P/1) set aside the order passed by the S.D.O. and thus,

the said order passed by the S.D.O. was not challenged by the plaintiffs before the civil Court while filing of the suit and only simple declaration of title was sought by them which was granted by the trial Court, but reversed by the first appellate Court in the appeal preferred by the defendants on the ground that the sale deeds (Ex. P/3 and P/6) have been declared null and void by the S.D.O. under Section 170 (b) of the Land Revenue Code which was set aside by the Additional Collector, but the order of the S.D.O. has been upheld by the Commissioner vide order dated 26/08/1997 in revision preferred by the defendants and the order passed by the Commissioner was not challenged by the plaintiffs before the trial Court, therefore, the order of the S.D.O. declaring the transaction (Ex. P/3 and P/6) as null and void has become final.

4. It is correct to say that while filing the suit, along with the relief of declaration of title, plaintiffs also ought to have sought for the consequential relief of setting aside the order of the Commissioner affirming the order of the S.D.O. by which the sale deeds

(Ex. P/3 and P/6) particularly, Ex. P/6 by which plaintiffs' predecessor in title namely Baishakhu purchased the suit property from one Pratap Singh were declared null and void under Section 170 (b) of the Land Revenue Code.

5. In this regard, the decision of the Supreme Court in the matter of Jugraj Singh and Anr. v. Jaswant Singh and Ors.¹ is pertinent.

Paragraph 11 of the report states as under :-

"In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific

reliefs. Indeed they had only to ask for the setting aside of the order. "

6. As such, in absence of seeking relief of setting aside the order of the Commissioner dated 26/08/1997 affirming the order of the S.D.O. dated 22/01/1996 declaring the impugned transaction (Ex. P/3 and P/6) as void under Section 170(b) of the Land Revenue Code, plaintiffs' suit is barred by proviso to Section 34 of the Specific Relief Act, 1963.

7. The next contention of learned counsel for the appellants/plaintiffs is that Ex. D/13 and D/14 i.e. copy of khasra panchshala were taken on record and no opportunity was provided to the plaintiffs to lead evidence in rebuttal which the first appellate Court ought to have granted. This point certainly has merit as no additional evidence can be taken on record without giving an opportunity to the other side to rebut and lead evidence in rebuttal, otherwise it will be in violation of principles of natural justice, but since the suit is apparently barred by proviso to Section 34 of the Specific Relief Act for want of challenge to the order of the S.D.O. as affirmed by the Commissioner declaring the

transaction (Ex. P/3 and P/6) to be null and void, even admitting the appeal on this ground and remitting it to the trial Court would not serve any purpose as apparently, plaintiffs' suit is barred by proviso to Section 34 of the Specific Relief Act for want of challenge to the order of the Commissioner, setting aside the order of the Additional Collector and duly upholding the order of the S.D.O. passed under Section 170 (b) of the Land Revenue Code. In view of the aforesaid legal analysis, I do not find any merit in this appeal giving rise to any substantial question of law.

8. The second appeal, being devoid of merits, 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