

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 481 of 2006****Judgment reserved on 15/01/2020****Judgment delivered on 17/01/2020**

Hari Ram S/o Baliram, Aged about 54 years, R/o
Aamgaon, P.S. Ramanujnagar, Tahsil Surajpur,
Distt. Surguja, Chhattisgarh.

---Appellant/Plaintiff**Versus**

1. Ram Ratan S/o Ramdhan (died) through LRs. :-

A. Vinay Singh, S/o Late Ramdhan, Aged about 36
years.

B. Vinita Singh, D/o Late Ramdhan, Aged about 34
years.

2. Amarsai S/o Mansai, Aged about 59 years.

3. Samay Lal S/o Mewalal, Aged about 54 years.

4. Harinandan S/o Ram Prasad, Aged about 29 years.

5. Ram Prasad S/o Ramdhan, Aged about 49 years.

6. Hira Sai S/o Mewalal, Aged about 55 years.

All are R/o Aamgaon, P.S. Ramanujnagar, Tahsil
Surajpur, Distt. Surguja, Chhattisgarh.

7. State of Chhattisgarh, through Collector,
Surguja, Chhattisgarh.

--- Respondents/Defendants

For Appellant

:-

Mr. J.K. Shastri, Advocate

For Respondents No. 1 A and B :-

Mr. Rahul Mishra, Advocate

For Respondents No. 2 to 6 :-

Mr. Ashok Shukla, Advocate

For Respondent No. 7/State :-

Mr. Sanjeev Kumar Agrawal, P.L.

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

1. This second appeal preferred by the appellant/plaintiff was admitted for hearing on the following substantial question of law :-

"Whether the finding of the lower Appellate Court was justified in reversing the well reasoned order passed by the Trial Court only on the ground that there was not sufficient proof to establish that the suit land of which the original Khasra No. was filed as 583/4 was renumbered as 942 ?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Plaintiff filed a suit that he be declared the title-holder of the suit land bearing Khasra No. 942 area 1.00 acre and defendants No. 1 to 7 be restrained from interfering with his possession of the suit land wherein defendants filed their joint written statement stating *inter alia* that no patta has been granted in favour of the plaintiff, however, patta was granted in the name of father of defendants No. 1 and 5 Ramdhan in the year 1965 upon the suit land bearing old

Khasra No. 583/3 which was later on renumbered as Khasra No. 942, therefore, plaintiff's suit deserves to be dismissed.

3. Learned trial Court, upon appreciation of oral and documentary evidence on record, by its judgment and decree dated 30/10/2004, held that plaintiff is the owner and title-holder of the suit land bearing old Khasra No. 583/4 and new Khasra No. 942 area 1.00 acre and he has been in possession of the said suit land and thereby, decreed the suit and restrained the defendants from interfering with plaintiff's possession upon the suit land.

4. On appeal being preferred by the defendants under Section 96 of the CPC, learned first appellate Court reversed the judgment and decree of the trial Court principally on the ground that renumbering patta of the suit land bearing old Khasra No. 583/4 and new Khasra No. 942 has not been produced by the plaintiff and consequently, by its judgment and decree dated 06/10/2006, allowed the appeal by setting aside the judgment and decree of the trial Court against which this second appeal under Section 100 of the CPC has been preferred by the plaintiff in which one

substantial question of law has been framed and set out in the opening paragraph of this judgment.

5. Mr. J.K. Shastri, learned counsel for the appellant/plaintiff would submit that the first appellate Court was absolutely unjustified in granting defendants' appeal by holding that since renumbering patta of the suit land bearing old Khasra No. 583/4 and new Khasra No. 942 has not been produced by the plaintiff, therefore, he has failed to prove his case and so, the decree granted by the trial Court cannot be sustained. He would further submit that defendant No. 1 (D.W. 1) namely Ramratan has clearly admitted in paragraph 7 of his statement that identity of plaintiff's land is different to that of his land and he is the owner and is in possession of Khasra No. 583/3 whereas plaintiff is the owner and is in possession of Khasra No. 583/4 and in that view of the matter, there is no dispute as to the identity of the land and the first appellate Court has gravely erred in reversing the well-merited judgment and decree of the trial Court, as such, the second appeal deserves to be

allowed by setting aside the judgment and decree of the trial Court.

6. Mr. Rahul Mishra and Mr. Ashok Shukla, learned counsel for the respondents would support the impugned judgment and decree of the first appellate Court and submit that no patta has been granted by the competent authority in favour of the plaintiff with regard to the suit land bearing old Khasra No. 583/4 and new Khasra No. 942 and moreover, the renumbering patta has also not been produced by the plaintiff, as such, learned first appellate Court was absolutely justified in holding that the identity of the suit land has not been established, and therefore, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

8. Plaintiff instituted a suit stating *inter alia* that he is the owner and title holder of suit land bearing old Khasra No. 583/4 renumbered as Khasra No. 942, area 1.00 acre and defendants No.1 to 7 be restrained from interfering with his

possession of the suit land wherein the defendants stated that patta of the suit land was granted by State in favour of father of defendant No. 1 and 5 namely Ramdhan in the year 1965 upon the land bearing Khasra No. 583/3 which was later on renumbered as 942. Learned trial court relied upon statement of defendant No. 1 Ramratan (D.W. 1) as in paragraph 7 of his statement, he has admitted that he (defendant) is owner and is in possession of Khasra No. 583/3 whereas plaintiff is in possession of Khasra No. 583/4. The trial court also relied upon Ex. D/2 by which Khasra No. 583/3 area 4.03 acres has been settled in favour of defendant Ramdhan, and on that basis it was held that defendant No. 1 Ramratan is in possession of Khasra No. 583/3 which is a land different from Khasra No. 583/4 renumbered as Khasra No. 942 held by plaintiff.

9. Learned trial court clearly recorded a finding that plaintiff is owner and title holder of suit land bearing old Khasra No. 583/4 renumbered as 942 and also relied upon Ex. P/4 copy of *Rin Pustika* issued under provisions of the Chhattisgarh Land Revenue Code, 1959 in which plaintiff is shown to be the owner of Khasra No.

583/4 which has been corrected as Khasra No. 942 area 1.00 acre, and accordingly held him to be the title holder of the suit land, which the first appellate court reversed only on the ground that plaintiff has not filed renumbering patta of Khasra No. 583/4 and the *Rin Pustika* has not been signed while it has been corrected as Khasra No. 942.

10. The defendant himself has admitted the fact that plaintiff is in possession of Khasra No. 583/4 and he (defendant) is in possession of Khasra No. 583/3 and he doesn't know the location of Khasra No. 583/4 and in the *Rin Pustika* (Ex. P/4) the plaintiff has admittedly been shown to be the title holder of 583/4 and vide Ex. D/2 the defendant has been settled with Khasra No. 583/3 as per report of the Collector, the identity of the plaintiff's land 583/4 new number 942 is well established, as such, the first appellate court unnecessarily interfered with the finding of the trial court only on the ground that renumbering patta has not been filed by the plaintiff particularly when the defendant did not seriously dispute the identity of the land while filing the written statement as only a faint challenge was

made in paragraph 2 of the written statement averring that suit land is part of Khasra No. 583/3, but during the course of the evidence defendant No. 1 himself in paragraph 7 of his statement admitted the fact that plaintiff is in possession of Khasra No. 583/4 whereas he is in possession of Khasra No. 583/3, and admittedly, the defendant was granted *patta* of land bearing Khasra No. 583/3 vide Ex. D/2. Even otherwise, during course of the trial, defendants did not seriously peruse the said plea which is apparent by the fact that no issue of identity of land was struck by the trial court and the defendants did not raise any grievance with regard to identity of the land, as such, the defendants, having contested the suit in open eye that he (defendant No. 1) is the title and possession holder of land bearing Khasra No. 583/3 vide Ex. D/2 and plaintiff is title and possession holder of 583/4, cannot be permitted to raise a grievance on the ground that renumbering *patta* of Khasra No. 583/4 by which it was renumbered as Khasra No. 942 was not produced on record by the plaintiff. The identity of the suit land is clearly established on the basis of oral and documentary evidence on record including the

statement of defendant No. 1 himself, therefore, the first appellate court is absolutely unjustified in setting aside the judgment and decree of the trial court granting decree in favour of plaintiff.

11. Consequently, the judgment and decree of the first appellate court is hereby set aside and that of the trial court is restored. The Second appeal is allowed with no order as to cost(s).

12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet