

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 358 of 2008

Paras, S/o Paltu, aged about 50 years, Caste – Satnami,
R/o Village – Pachri, Tahsil and District Mahasamund
(C.G.)

----Appellant

Versus

1. Smt. Munna Bai, W/o Budh Ram, aged about 36 years,
Caste – Kalar, R/o Village- Pachri, District –
Mahasamund, (C.G.), through General Power of Attorney
Husband Budh Ram, S/o Nand Lal Sinha, aged about 41
years, R/o Village – Pandripani, Police Station –
Pithora, District – Mahasamund (C.G.)

2. Gaur Singh, S/o Subedar Rawat, aged about 40 years.

3. Bali Ram, S/o Bori, aged about 35 years,

Both are R/o Village – Pachri, Tahsil and District –
Mahasamund (C.G.)

4. State of Chhattisgarh, through Collector,
Mahasamund, District – Mahasamund, (C.G.)

----Respondents/Plaintiffs

For Appellant : Mr. Vivek Kumar Tripathi, Adv.
For Respondent No.4 : Ms. Anjali Singh Choughan, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/02/2020

(1) Heard on the question of admission and formulation of
substantial question of law of this second appeal preferred
by defendant under Section 100 of the Code of Civil
Procedure, 1908 questioning the impugned judgment & decree
dated 4th July, 2008 passed by First Additional District
Judge, Mahasamund in Civil Appeal No.5-A/2006 affirming the

judgment & decree dated 3.1.2005 passed by First Civil Judge, Class-I, Mahasamund in Civil Suit No. 24-A/2003, decreeing the suit.

(2) Plaintiff filed suit for permanent injunction stating inter alia that she is title holder and possession holder of the land bearing Khasra No. 250, area 1.65 hectare, which she has purchased from Jai Narayan Agrawal vide Ex.P-5 and came in possession thereof and cultivating the same, which is being interfered with by the defendants.

(3) Defendants, by filing their written statement, stated that they are title holder and possession holder of the land bearing Khasra No. 249, area 2.10 hectare.

(4) The trial Court, upon appreciation of oral and documentary evidence available on record, decreed the suit holding that plaintiff are the title and possession holder of the land bearing Khasra No. 250, area 1.65 hectare whereas defendants are title and possession holder of the land bearing Khasra No. 249, area 2.18 hectare and thereby restrained the defendants from interfering with the possession of plaintiff, which has been affirmed by the first appellate Court on an appeal being preferred by the defendant, against which second appeal has been preferred.

(5) Learned counsel appearing for the appellant/defendant would submit that the concurrent finding recorded by both the courts below holding that plaintiffs are in possession of the

land bearing Khasra No. 250, area 1.65 hectare is perverse finding and therefore, the appeal deserves to be admitted for hearing by formulating substantial question of law.

(6) Both the courts below have concurrently recorded a finding that plaintiff – Munnibai is in possession of the land bearing Khasra No. 250, area 1.65 hectare and cultivating the same whereas defendants are in possession of land bearing Khasra No. 249, area 2.18 hectare and cultivating the same. The aforesaid finding is based on oral and documentary evidence available on record including the admission made by Parasram (DW-1), defendant No. 1 in paragraph 5 of his statement that plaintiffs are cultivating the land bearing Khasra No. 250, area 1.65 hectare whereas defendants are cultivating the land bearing Khasra No. 249, area 2.18 hectare. As such, finding recorded by both the courts below are finding of fact based on material available on record and I do not find it either perverse and contrary to the record and no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

