

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.41 of 2008

1. Radheshyam Harmukh, aged about 55 years, S/o Late Paras Ram Harmukh, R/o Village Temri, Post Temri, Tahsil Dhamdha, Distt. Durg (C.G.)
2. Smt. Sona Bai, aged about 50 years, W/o Shri Radheshyam Harmukh, R/o Village Temri, Post Temri, Tahsil Dhamdha, Distt. Durg (C.G.)
(Defendants)
---- Appellants

Versus

1. Sitaram Harmukh, aged about 62 years, S/o Late Parasram Harmukh, R/o Polsaypara, Shyam Nagar, Durg, Tahsil & Distt. Durg (C.G.)
(Plaintiff)
2. Sarpanch, Gram Panchayat Temri, Tahsil Dhamdha, Distt. Durg (C.G.)
(Defendant) before the trial Judge
---- Respondents

For Appellants: Mr. Vinod Kumar Sharma, Advocate.
 For Respondents: None present though served.
Amicus Curiae: Mr. Aakash Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

28/01/2020

1. This second appeal preferred by defendants No.1 & 2 / appellants

herein was admitted on the following substantial question of law: -

“Whether the first appellate Court was justified in holding that Ex. D/1 dated 20/12/1997 and Ex. D/2 dated 16/10/2001 granted by defendant No.1 in favour of defendant No.2 namely Sona Bai is void and illegal by recording a finding which is perverse and contrary to record?”

[For sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.]

2. The plaintiff filed suit for declaration of title and also for declaring that Ex.D-1 – certificate dated 20-12-1997 issued by defendant No.3 in favour of defendant No.2 and Ex.D-2 – patta dated 16-10-2001 granted by the Tahsildar in favour of defendant No.2, are null and void, as the suit property is the ancestral property which he received on partition and which took place between the plaintiff and defendant No.1 in which the defendants filed written statement stating inter alia that the suit land is Government land for which patta has been granted by the Gram Panchayat – competent authority in favour of defendant No.2 and therefore the suit is liable to be dismissed which the trial Court accepted that the suit property is not the ancestral property of the parties and it is the Government land for which patta was granted by the Tahsildar on the recommendation of defendant No.3 vide Ex.D-2, but the first appellate Court in appeal preferred by the plaintiff after having held that the suit property is not the ancestral property of the parties, proceeded to examine the validity of the said patta Ex.D-2 and held that the said patta was not granted in accordance with law and on that ground set-aside the judgment & decree of the trial Court and declared the certificate dated 20-12-1997 as null and void against which this second appeal has been preferred by defendants No.1 & 2 in which substantial question of law has been formulated and which has been set-out in the opening paragraph of this judgment.
3. Mr. Vinod Kumar Sharma, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit that once the suit property is held to be not the ancestral property of the parties and held to be Government property, and Ex.D-1 dated 20-12-1997 was not

challenged by the plaintiff on the ground that it suffers from procedural illegality or procedural defect, it could not have been examined and the said patta could not have been declared as null and void.

4. None present for the respondents herein, though served.
5. Mr. Aakash Pandey, learned *amicus curiae*, has brought the relevant facts relating to this appeal and legal position before this Court by making his submission.
6. The plaintiff's case was that the suit property was the ancestral property and he received the same on partition which the trial Court and the first appellate Court, both, did not accept, but the first appellate Court proceeded to examine Ex.D-1 dated 20-12-1997 which was the certificate granted by the Gram Panchayat in favour of defendant No.2 regarding grant of suit land to defendant No.2 and held that it has not been granted in accordance with law and the rules made under Section 246 of the Chhattisgarh Land Revenue Code, 1959. The plaintiff did challenge Ex.D-1, but did not challenge it on the ground that it is void from not following the necessary procedure, the only challenge was that since the suit land is the ancestral property, therefore, patta could not have been granted in favour of defendant No.2 and as such, the first appellate Court is absolutely unjustified in examining the procedure in granting patta in favour of defendant No.2 after having held that the suit property is not the ancestral property of the plaintiff & defendant No.1 and it was the Government land of which patta was granted in favour of defendant No.2. Not only this, on the basis of Ex.D-1, the Tahsildar by order dated 16-10-2001 further allotted the suit land to defendant No.2 which goes to show that it was granted in accordance

with law. But the fact remains that in absence of challenge directly on account of procedural illegality that the patta granted is procedurally *ultra vires* without giving opportunity to the defendants to meet the alleged ground, it could not have been examined by the first appellate Court after having held that the suit property was not the ancestral property of the parties and could not have declared Ex.D-2 as illegal and void. The substantial question of law is answered accordingly.

7. In view of the above, judgment & decree of the first appellate Court are set-aside and that of the trial Court are restored and the appeal is allowed in part. No order as to cost(s).
8. This Court appreciates the assistance rendered by Mr. Aakash Pandey, Advocate, as *amicus curiae*.
9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge