

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.331 of 2008****Judgment Reserved on :5.8.2020****Judgment Delivered on:24.8.2020**

Sarpanch Village Gram Panchayat Dhaura Bhata, [Since presided by Aghan Singh Markam], S/o Shyam Lal Gond, Aged about 50 years, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh

----- Appellant/Defendant No.2**Versus**

1. Bali Ram, S/o. Late Sakha Ram, Caste Gond, aged about 57 years, resident of Village Urraiya, Tahsil Narharpur, District North Bastar, Kanker, Chhattisgarh

----- Plaintiff

2. State of Chhattisgarh, through Collector, Kanker, Chhattisgarh

----- Respondent/Defendant No.1

For Appellant/Defendant No.2:

Mr.Manoj Chauhan, Advocate appears
on behalf of Mr.R.N.Jha, Advocate

For Respondent No.1/Plaintiff:

None present through served

For Respondent No.2: Dr.Veena Nair, Dy.A.G.

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

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellant/defendant No.2 are as under:-

"1. Whether the first appellate Court has committed an illegality by recording a finding which is perverse and contrary to the record holding that plaintiff is the

title-holder of the suit tank ignoring the fact that the said suit tank is vested in the State by the order of the competent authority ?

2. Whether both the Courts below were unjustified in proceeding ex-parte against the appellant/defendant No.2 without even serving notice to him ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. The dispute relates to the suit property bearing Khasra No.58/1^क area 4.45 acres. Earlier this land was recorded as Chhote Jhad Ka Jungle, but later on on the request of Gram Panchayat, Dhourabhatha it was allowed to be converted into public tank for nistar rights of villagers. It appears from the record that during settlement of the aforesaid tank, out of aforesaid land, Khasra No.58/1^क was came to be recorded in the names of Baliram and Goverdhan bearing Khasra No.65 area 0.70 hectare and Khasra No.68 arera 0.04 hectare and the aforesaid two persons were shown to be owners of the land/tank though it was public tank belonging to Gram Panchayat Dhourabhatha. When this fact was brought to notice of the Tahsildar, Narharpur, the Tahsildar in exercise of powers conferred under Section 89 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter

called as 'the Code') by order dated 30.9.2001 corrected it and recorded in the name of Sarpanch, Gram Panchayat, Dhourabhatha, which was appealed by the plaintiff before the Sub-Divisional Officer (R.), Kanker, but the Sub-Divisional Officer (R.) by order dated 20.3.2003 dismissed the appeal and it was further affirmed by the Board of Revenue by order dated 31.1.2005. Thereafter, the plaintiff filed the instant suit claiming declaration that he is owner and title-holder of Khasra No.65 and Khasra No.315 area 6.92 hectares and the suit land bearing Khasra No.65 area 0.70 hectare was directed to be vested with the Government without payment of compensation and therefore, the orders passed by the revenue Courts be declared null and void and he be granted decree for permanent injunction in his favour.

3. The defendants proceeded ex-parte before the trial Court.

4. The trial Court by its judgment and decree dated 31.8.2007 dismissed the suit holding that the plaintiff has failed to prove his title over the suit land and jurisdiction of the civil Court is barred by virtue of Section 257(y) of the Code and certified copies of order of the Tahsildar, Narharpur dated 30.9.2001 and order of the SDO dated 20.3.2003 and

order of the Board of Revenue dated 31.1.2005 have not been filed and therefore, it is not part of record and it cannot be read into. The plaintiff preferred first appeal before the first appellate Court. The first appellate Court by the impugned judgment and decree dated 15.2.2009 allowed the appeal and granted decree in favour of the plaintiff holding that he is title-holder of the aforesaid land and also entitled for permanent injunction. Questioning the judgment and decree of the first appellate court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.2, in which substantial questions of law have been formulated, which have been set-out in opening paragraph of this judgment for sake of completeness.

5. Mr.R.N.Jha, learned counsel for the appellant/defendant No.2 in his written submission would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiff ignoring the fact that the suit land particularly the land bearing Khasra No.65 area 0.70 hectare was the part of old Khasra No. 58/1क, which was earlier recorded as Chhote Jhad Ka Jungle and later on it was converted into public tank and it is the part of the suit tank, therefore, the trial Court

has rightly dismissed the suit, but on perverse grounds, it has been reversed by the first appellate Court.

6. None present for respondent No.1 though served.

7. I have heard learned counsel for the appellant/defendant No.1, considered his submissions made hereinabove and also went through the records with utmost circumspection.

8. The order of the Tahsildar, Narharpur dated 30.9.2001 passed under Section 89 of the Code was affirmed by the first appellate authority i.e. SDO by order dated 20.3.2003 and further affirmed by the Board of Revenue by order dated 31.1.2005, but surprisingly the plaintiff did not file certified copies of order of three authorities though he claimed only declaration that the order of the Tahsildar, Narharpur, order of the SDO, Kanker and order of the Board of Revenue are illegal and bad in law. Not only this, though quasi-judicial orders passed by the Tahsildar, SDO and Board of Revenue were sought to be declared illegal but they have not been impleaded as party defendant in the suit and only the State of Chhattisgarh has been impleaded as party defendant. When the plaintiff has challenged the quasi-judicial orders passed by three revenue authorities, they

ought to have been impleaded as party defendant in the suit in order to maintain duly constituted suit against their orders and further ought to have filed at least certified copies of those orders and it could have been exhibited at the instance of the plaintiff. Further, the plaintiff being party in all three orders passed by the Tahsildar, SDO and Board of Revenue ought to have sought setting aside of these orders. Merely seeking declaration that the orders passed by the revenue authorities are illegal either without impleading them as party defendant in the suit or without even filing the certified copy of those orders and even not claiming setting aside of those orders even though those orders are binding upon the plaintiff would not suffice, as such, the suit as framed and filed was not duly constituted and therefore, the suit could not have been decreed by the first appellate Court.

9. The fact remains that the suit land bearing Khasra Nos.65 and 68 was the part of earlier Khasra No. 58/17 which was earlier recorded as Chhote Jhad Ka Jungle and later on, it was converted into public tank and for nistar purpose of the villagers, therefore, decree could not have been granted by the first appellate Court in favour of the plaintiff

without setting aside the orders of revenue authorities. The suit tank has been claimed to be Sarpanch of Gram Panchayat, Dhourabhatha, therefore, Gram Panchayat, Dhourabhatha ought to have been impleaded as party defendant in the suit and ought to have been sued its Secretary and service of notice could have been made through the Secretary of Gram Panchayat by virtue of the provisions contained in Section 11 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. Sarpanch, Gram Panchayat has been impleaded instead of Gram Panchayat through its Secretary in its corporate name and notice is said to have been served to the Sapranch and both the Courts have proceeded against the appellant/defendant No.2 without serving any notice to the Secretary of concerned Gram Panchayat. The trial Court though dismissed the suit but the first appellate Court even did not notice illegality in not impleading the necessary party in the suit and as such, Gram Panchayat, Dhourabhatha through its Secretary ought to have been impleaded as party defendant as before the revenue authorities the main dispute is between the plaintiff and Gram Panchayat, Dhourabhatha, therefore, the suit is also hit by proviso to Order 1 Rule 9 of the CPC particularly in view of the fact

that no notice was served to the Gram Panchayat through its Secretary and ex-parte decree has been passed by the first appellate Court against the appellant without serving due notice to the Secretary of concerned Gram Panchayat as the suit as framed and filed is bad for non-impleadment of necessary party.

10. In sum and substance, the suit as framed and filed was not duly constituted and the first appellate Court is absolutely unjustified in decreeing the suit in favour of the plaintiff.

11. Consequently, the judgment and decree of the first appellate Court is set aside and that of the trial Court is restored by answering the substantial questions of law in favour of defendant No.2 and against the plaintiff.

12. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

13. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-