

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.205 of 2009

Raju son of Shanker Rao aged 37 years, Resident of
Amrawati Road Chandramani Chok, Nagpur
(Maharashtra)

----- Appellant/Plaintiff

Versus

(1)(a) Durga Singh son of Johan Halba aged 24 years
(b) Radha Bai widow of Johan Halba aged 60 years
(c) Brijlal son of Johan Halba aged 19 years
All residents of village Karathi, Tahsil
Bhanupratappur, District Kanker (CG)

(2) State of Chhattisgarh through Collector, Kanker

(3)(a) Smt.Rajkumari widow of late Govind

(b) Kamalkant son of Govind

(c) Rama Kant son of Govind

(d) Rameshwari daughter of Govind

Residents of village Kanhargaon, Tahsil
Bhanupratappur

(4)(a) Smt.Kiran Dehari daughter of Badrinath age
36 years

(4) a-1 Kumari Chetna

(b) Minor Subham Dehari son of Badrinath age 03
yrs.

All residents of village Kanhargaon Thana & Tahsil
Bhanupratappur Distt. Uttar Bastar

5. Krishna son of Shanker Rao 40 years

6. Rajkumar son of Shanker Rao aged 24 years

7. Ku. Megha son of Shanker Rao aged 22 years

8. Ku. Bulki son of Shanker Rao age 20 years

(Respondent No. 5 to 8 appellant nos. 2 to 5 in
lower appellate Court/co-plaintiffs in trial court)

All residents of Amraowati Road Chandramani Chauk
Nagpur (Maharashtra)

----- Respondents

For Appellant/plaintiff:

Mr.Vinod Kumar Sharma, Advocate

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/07/2020

1. Proceedings of this matter have been taken up

through video conferencing.

2. Heard this second appeal on the question of admission and formulation of substantial question of law preferred by the appellant/plaintiff.
3. By the impugned judgment and decree, the first appellate Court dismissed the appeal preferred by the plaintiff affirming the judgment and decree of the trial Court dismissing the suit on merits as well as barred by limitation.
4. Mr.Vinod Kumar Sharma, learned counsel for the appellant/plaintiff, would submit that both the Courts below are absolutely unjustified in dismissing the suit filed for declaration of order dated 4.3.83 as null and void and for declaring that the plaintiffs are title-holders of the suit land.
5. The plaintiffs filed a suit for declaration of title and for declaring the order dated 4.3.83 passed by the Tahsildar, Bhanupratappur granting occupancy tenant right to defendant No.1 as null and void. The suit was filed on 19.3.97 stating inter-alia that the order passed by the Tahsildar, Bhanupratappur on 4.3.83 is null and void as the property was earlier held by Shankar Rao which the plaintiffs have inherited and therefore, the order dated 4.3.83 be declared null and void and the plaintiffs be delivered peaceful possession of the

suit land and alienation be restrained.

6. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that occupancy tenant right has been confirmed to him by valid order of Tahsildar, Bhanupratappur dated 4.3.83, which has attained finality and by which bhumiswami right has been granted in his favour as he was occupancy tenant and that has become final. The suit has been filed after 14 years of the said order and that has become barred by limitation and as such, the suit deserves to be dismissed.
7. Defendants No.3 and 4/subsequent purchasers supported the written statement made by defendant No.1.
8. The trial Court upon appreciation of oral and documentary evidence available on record by the judgment and decree dated 12.5.2005 dismissed the suit on merits as well as barred by limitation holding that the suit was not preferred within 3 years from the date of order granting bhumiswami right to defendant No.1. On appeal being preferred, the first appellate Court dismissed the appeal affirming the judgment and decree of the trial Court.
9. Admittedly, defendant No.1 confirmed with bhumiswami right as he was holding the suit land as

occupancy tenant by order dt. 4.3.83, which the plaintiffs questioned only by filing suit on 19.3.97. The trial Court rightly held that the suit could have been filed within 3 years from the date of order dated 4.3.83 and that order has attained finality as the said order was passed in presence of Shankar Rao/his legal representatives. The finding recorded by two Courts below holding the suit to be barred by limitation is in accordance with law as the plaintiffs ought to have filed the suit within 3 years from the date of order dated 4.3.83 as they were aware of the proceedings initiated by the Tahsildar, Bhanupratappur for declaring defendant No.1 as occupancy tenant and granting bhumiswami right.

10. There is one more difficulty. The order has been passed by the Tahsildar, Bhanupratappur in the capacity of quasi-judicial authority, but the said quasi-judicial authority has not been impleaded as party defendant in the suit and only the State of Madhya Pradesh through Collector has been impleaded as party defendant. The finding recorded by two Courts below that the suit to be barred by limitation as the suit for declaration was not brought within 3 years from the date of passing of order dated 4.3.83 is finding of fact based on evidence available on record. It is neither

perverse nor contrary to record. I do not find any merit in this second appeal and even I do not find any substantial question of law for determination of this second appeal.

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

Sd/-

(Sanjay K. Agrawal)
Judge

B/-