

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 5171 of 2008**

1. Ramchand S/o Goverdhan Sahu, aged about 55 years, R/o Village Dubchera, Patwari Halka No. 21, Tah. Daundilohara, Distt. Durg, C.G.
2. Ramji s/o. Goverdhan Sahu, aged about 50 years, R/o Village Dubchera, Patwari Halka No. 21, Tah. Daundilohara, Distt. Durg, C.G.

---- Petitioners**Versus**

1. Chairman Board Of Revenue Chhattisgarh – Bilaspur, Circuit Court at Raipur (CG).
2. Additional Commissioner, Raipur.
3. Sub Divisional Officer (Rev) Tah. Daundilhara, Dist. Durg (CG).
4. Goverdhyan s/o/ late Dukalu (since dead) through legal heir Smt. Sita Bai, widow of late Goverdhan, aged about 65 years.
5. Beni Ram son of Goverdhan, aged about 23 years.
6. Homan Singh s/o. Late Goverdhan.

Respondents No.; 4 to 6 are the residents of village Dubcheer, Pst Office Koba, Tahsil Daundilahara, Dist. Durg (G).

7. Smt. Urmila Bai, wife of Shri Jaswant aged about 42 years, resident of Koba, Tahsil Doundilhara, Dist. Dur (CG).
8. Smt. Jhamit Bai, wife of Dhanraj Sahu, resident of village Kotiya, Tahsil Balod, District Durg (CG).

---- Respondents

For petitioners	:	Mr. Praveen Dhurandhar, Advocate.
For Respondents	:	None .

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****02-7-2020**

Heard.

1. This writ petition has been filed under Article 227 of the Constitution of India, against the order dated 14-2-2007 passed by the Board of Revenue, Bilaspur, whereby respondents' revision has been allowed and the petitioners' application for dispossession filed under Section 250 of the Chhattisgarh Land Revenue Code, 1959 (for short, "the Code, 1959") has been held to be barred by limitation.

2. Briefly sated, relevant facts necessary for adjudication of this petition are that the land ad-measuring 0.91 hectares situated in Khasra No. 275/1 at village Koba, Tahsil Daundilohara, District Durg, originally belonged to one Dukalu. Dukalu executed a will on 11-1-1989 in favour of the petitioners. After death of Dukalu, the names of the petitioners were mutated vide order dated 18-1-1991 by the Revenue Authorities in above proceeding. After few months ie., on 22-7-1991 petitioners moved an application under Section 250 of Code for dispossession of private respondents on the ground that by virtue of will executed in their favour after death of Dukalu, they have succeeded to the property and therefore, the respondents who are illegally encroaching upon and in possession of disputed land, be dispossessed. The Tahsildar, Doundailohara passed an order on 30-8-1993. An appeal was preferred before the Sub

Divisional Officer (Revenue), Doundilohara by the private respondents successfully, in which, the said authority passed an order on 19-3-1996 allowing the appeal and set aside the order of dispossession mainly on the ground that in absence of there being any pleading and proof with regard to the date and the manner in which the petitioners or their predecessors were dispossessed, the application could not be allowed. The petitioners, thereafter, preferred second appeal before the Additional Commissioner, Raipur, who allowed the appeal vide order dated 8-3-2000 and set aside the order of Sub Divisional Officer (Revenue) and the order of dispossession passed by the Tahsildar, Doundilohara. Finally, the private respondents took up the remedy of revision before the Board of Revenue. The Board of Revenue vide order dated 14-2-2007 held that in order to succeed, an application under Section 250 of the Code, 1959, seeking restoration on the allegation of encroachment, the application is necessarily required to be filed within two years. In the present case, it was held that the petitioners application and evidence failed to prove dispossession within two years and therefore, the application is rejected, thereby allowing the revision. It is against this order, this writ petition has been preferred.

3. Learned counsel for the petitioners would contend that the learned Board of Revenue committed patent illegality and perversity in holding the application under Section 250 of the Code 1959 as barred by limitation. The next submission is that after death of Dukalu, by virtue of will dated 11-1-1989, petitioners succeeded to

the property in dispute and their names were first mutated in revenue records only on 18-1-1991, therefore, anybody who is in illegal possession of the property could be ejected by taking recourse the provisions of Section 250 of Code 1959. According to the petitioners, the day on which the petitioners' names were mutated in revenue records, they are deemed to be dispossessed on that day, and, therefore, filing of application under Section 250 of the Code, 1959 on 22-7-1991 cannot be said to be beyond the period of limitation.

4. After giving my anxious consideration to the submission made by learned counsel for the petitioners, I find it unacceptable in law. The petitioners are claiming interest in the property by virtue of will dated 11-1-1989 which bestowed title upon them after death of Dukalu. However, the petitioners who are claiming property, stepped in the shoes of dispossessed Dukalu. In their application, they did not disclose as to the date on which Dukalu was dispossessed, therefore, in absence of special pleadings as to the date on which he was dispossessed, the application was held to be not maintainable. It is not the case of the petitioners that after their names were mutated, they came to possession of property and thereafter they were dispossessed by private respondents.

5. Upon going through the impugned order, this court finds that there is a finding of fact recorded by the Board of Revenue that the predecessors were dispossessed long back and the private respondents remained in possession of the property since about 20

years. If that be so, merely because the names of the petitioners were mutated on the strength of will on 18-1-1991, it cannot be said that they are treated to be dispossessed on the date their names were mutated. This court does not find any jurisdictional flaw, patent illegality or perversity in the view taken by the Board of Revenue.

6. Accordingly, this petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E

Raju