

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 149 of 2004**

1. Jukhtiyar (died) through Lrs.

i. Smt. Shanti Bai, Aged about 48 years, D/o Late Jukhtiyar, W/o Shri Gorelal Yadav, R/o Village Bhangodihi, Post Muktaraja, Tahsil Sakti, Distt. Janjgir-Champa, Chhattisgarh.

ii. Smt. Laxmi Bai, Aged about 45 years, D/o Jukhtiyar, W/o Jodhi Ram Yadav, R/o Village New Baradwar, Behind Old Police Station, P.O. New Baradwar, Tahsil Sakti, Distt. Janjgir-Champa, Chhattisgarh.

---Appellants/Lrs. Of plaintiff

Versus

1. Anandram, Aged about 40 years, S/o Shri Bhagat.

2. Mahaveer, S/o Shri Bhagat (died) through Lrs.

i. Lalji Suryawanshi, S/o Late Mahaveer, Aged about 40 years, R/o Village Khaira, Tahsil and Distt. Baloda Bazar, Chhattisgarh.

3. Dharam, S/o Shri Daani (died) through Lrs.

i. Sevak Suryawanshi S/o Late Dharam (died) through Lrs.

a. Ramvilas, S/o Late Sevak Suryawanshi, Aged about 28 years, R/o Village Bundela, Tahsil Pamgarh, Distt. Jajgir Champa, Chhattisgarh.

4. Dharmool, Aged about 50 years, S/o Shri Daani.

Sl. No. 1 to 4 are caste – Suryawanshi, R/o Village Bundela, Tahsil Sakti, Distt. Janjgir-Champa, Chhattisgarh.

5. Janki, Aged about 40 years, S/o Shri Neelkanth Sriwas.

6. Umashankar, Aged about 35 years, S/o Shri Neelkanth Sriwas.

7. Gajanand, S/o Shri Neelkanth Sriwas (died) through Lrs.

i. Rakhi Bai @ Rahi Bai, Widow of Shri Gajanand, Aged about 45 years.

ii. Dinesh, S/o Gajanand, Aged about 19 years.

Both are R/o Village Bundela, Tahsil Pamgarh, Distt. Janjgir-Champa, Chhattisgarh.

8. Satanand, Aged about 30 years, S/o Shri Neelkanth Sriwas.

Sl. No. 5 to 8 are R/o Village Bundela, Tahsil Sakti, Distt. Janjgir Champa, Chhattisgarh.

9. State of Chhattisgarh, through the District Collector, Janjgir-Champa, Chhattisgarh.

---Respondents/Defendants

For Appellants	:-	Mr. A.N. Bhakta and Mr. Vivek Bhakta, Advocates
For Respondents	:-	Mr. Y.C. Sharma and Mr. Sachin Nidhi, Advocates
For State	:-	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

02/01/2020

1. This second appeal preferred by the appellants/Lrs. of plaintiff was admitted for hearing on the following substantial question of law :-

"Whether the findings in relation to ownership and possession of the suit land Khasra No. 644 area 2.85 acres is perverse on the face of record ? and the plaintiff is the owner of this land also ?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Original plaintiff – Jukhtiyar filed a civil suit for recovery of possession stating *inter alia* that the suit land bearing Khasra No. 258 area 0.34 acre and Khasra No. 644 area 2.85 acres were earlier owned by him and his brother Mukhtiyar and after his brother's death, he became the title-holder of the said suit land and further pleaded that defendants have dispossessed him from the suit land five years prior to the date of filing of the suit which necessitated the institution of the suit for recovery of possession based on title.

3. Defendants filed their written statement and set up a plea that their grandfather Thakur Ram was the title-holder of the suit land and they have inherited the suit land from him, as such, plaintiffs are not the title-holders of the suit

land and they are not entitled for decree as claimed.

4. Learned trial Court, after appreciating the oral and documentary evidence on record, vide its judgment and decree dated 31/03/2000, decreed the suit of the plaintiff qua suit land bearing Khasra No. 238 area 0.34 acre, but dismissed their suit qua suit land bearing Khasra No. 644 area 2.85 acres against which the plaintiff preferred an appeal under Section 96 of the CPC wherein learned first appellate Court, vide its judgment and decree dated 20/12/2003, affirmed with the judgment and decree of the trial Court and dismissed his appeal. Questioning the said judgment and decree passed by the trial Court as well as the first appellate Court qua suit land bearing Khasra No. 644 area 2.85 acres, this second appeal under Section 100 of the CPC has been preferred by the plaintiff (now, his Lrs.) in which substantial question of law has been framed and catalogued in the opening paragraph of this judgment.

5. Mr. A.N. Bhakta and Mr. Vivek Bhakta, learned counsel for the appellants/Lrs. of plaintiff would submit that both the Courts below have erred in dismissing the suit of the plaintiff qua suit land bearing Khasra No. 644 area 2.85 acres by recording

a finding which is perverse and contrary to record and the second appeal deserves to be allowed.

6. Mr. Y.C. Sharma and Mr. Sachin Nidhi, learned counsel for the respondents/defendants would support the impugned judgment and decree and submit that the second appeal deserves to be dismissed.

7. Plaintiff has also claimed title over the suit land bearing Khasra No. 644 area 2.85 acres and in order to prove his title over the said suit land, he has filed Exhibit P/1 which is Khasra Panchshala for the year 1938-39 wherein the name of defendants' grandfather Thakur Ram has been recorded as the title-holder in column 5 whereas the name of plaintiff's grandfather Shivilal has been recorded in column 6 as possession-holder of the suit land. No other document has been filed by the plaintiff except Ex. P/1 to prove his title over the suit land bearing Khasra No. 644 area 2.85 acres. Plaintiff ought to have brought on record other documents demonstrating his title over the said suit land. By merely accepting Ex. P/1 i.e. Khasra Panchshala for the year 1938-39 which shows plaintiff's grandfather to be in possession of the suit land, it cannot be held that plaintiff has proved his title over the suit land. Defendants' grandfather's name has also been recorded in column

5 of the said document (Ex. P/1) and even otherwise, oral evidence by the plaintiff is absolutely missing so as to prove his title over the suit land bearing Khasra No. 644 area 2.85 acres.

8. Both the Courts below have rightly concluded that in absence of any oral evidence and merely on the basis of Khasra entry of one year 1937-38, no title has been established in favour of the plaintiff and dismissed the suit of the plaintiff qua Khasra No. 644 area 2.85 acres holding that plaintiff has failed to establish his title over the said suit land which is neither perverse nor contrary to record.

9. The second appeal deserves to be and is accordingly dismissed qua suit land bearing Khasra No. 644 area 2.85 acres. It is made clear that this Court has not expressed any opinion with regard to the decree passed by both the Courts below qua Khasra No. 238 area 0.34 acre. No cost(s).

10. A decree be drawn up accordingly.

(Sanjay K. Agrawal)
Judge