

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 367 of 2009**

1. Smt. Meena Bai Yadav, Widow of Late Dayaram Yadav, Aged about 70 years.
2. Radheshyam Yadav, S/o Late Dayaram Yadav, Aged about 65 years.
3. Shyamlal Yadav, S/o Late Dayaram Yadav, Aged about 42 years.
4. Puranik Yadav, S/o Late Dayaram Yadav, Aged about 36 years.
5. Vishnu Yadav S/o Late Dayaram Yadav, Aged about 30 years.

All R/o Village Urla, District Durg, Chhattisgarh.

--Appellants/LRs. of defendant No. 1

Versus

1. Smt. Mahabali Yadav (died and deleted).
2. Lekhram, S/o Late Udai Singh Yadav, Aged about 27 years.
3. Narayan, S/o Late Udai Singh Yadav, Aged about 25 years.

All are R/o Village Urla, Tahsil and District Durg.

4. Smt. Kamlesh Yadav, D/o Late Udai Singh Yadav, Aged about 35 years, R/o Village Jhola, P.S. and Post Somni, District Rajnandgaon, Chhattisgarh.
5. Smt. Pushpa, W/o Sharad Yadav, D/o Late Udai Singh Yadav, Aged about 32 years, R/o Village Murmunda, P.S. Dhumka, District Rajnandgaon, Chhattisgarh, Presently residing at Village Urla, Tahsil and District Durg, Chhattisgarh.

6. Chamra, S/o Sampat Yadav (died) through LRs. :-

(a). Smt. Parmati devi, Aged 65 years W/o Chamra.

(b). Arjun Yadav S/o Chamra (died) through LRs. :-

(I). Bhanu Yadav, Aged 33 years, S/o Late Arjun Yadav.

(ii). Sukhramya, Aged 30 years, S/o Late Arjun Yadav.

(iii). Dushyant, Aged 25 years, S/o Late Arjun Yadav.

(iv). Gulshan Yadav, Aged 20 years, S/o Late Arjun Yadav.

R/o Village Urla, Patwari Halka No. 57/17, District Durg, Chhattisgarh.

7.State of Chhattisgarh, through Collector, Durg, Chhattisgarh.

--- Respondents/Plaintiffs

For Appellants :-	Mr. B.P. Sharma and Ms. Anmol Sharma, Advocates
For State :-	Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

18/02/2020

1.This second appeal preferred by the appellants/LRs. of defendant No. 1 was admitted for hearing on the following substantial question of law :-

"Whether the finding of the First Appellate Court regarding the title of suit land with Plaintiff is perverse ?"

(For the sake of convenience, the parties will hereinafter be referred to as per their status before the trial Court.)

2. Plaintiffs filed a suit for declaration of title and permanent injunction with respect to the suit land bearing Khasra No. 545 area 0.06 hectare shown in Schedule 'A' appended with the plaint stating *inter alia* that they have been in possession of the suit land for the last 70-75 years and therefore, they are entitled for declaration of title and consequential relief of permanent injunction restraining defendant No. 1 from interfering with their possession wherein defendant No. 1 entered into appearance and set up a defence that he is the *bhoomiswami* of the suit land for which he filed an application under Section 250 of Chhattisgarh Land Revenue Code, 1959. Tahsildar, Durg vide order dated 31/08/1998 granted the said application and directed for delivery of possession of suit land to defendant No. 1 against which plaintiffs preferred an appeal under Section 44(1) of Land Revenue Code which was dismissed by order dated 18/05/1999 (Ex. D/1) passed by the Sub-divisional Officer, Durg affirming the order passed by the Tahsildar under Section 250 of the Land Revenue Code, as such, plaintiffs have no title over the suit land and their suit deserves to be dismissed.

3. Learned trial Court, upon evaluation of oral and documentary evidence on record, dismissed the suit vide judgment and decree dated 13/12/2005 holding that plaintiffs have no title over the suit property against which they preferred an appeal under Section 96 of the CPC wherein learned first appellate Court reversed the finding recorded by the trial Court and allowed the appeal vide judgment and decree dated 13/02/2006 granting decree for declaration of title and permanent injunction in favour of plaintiffs against which this second appeal under Section 100 of the CPC has been preferred by the appellants/LRs. of defendant No. 1 in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

4. Mr. B.P. Sharma and Ms. Anmol Sharma, learned counsel for the appellants/LRs. of defendant No. 1 would submit that admittedly, by order dated 31/08/1998, the application filed under Section 250 of the Land Revenue Code was granted in favour of defendant No. 1 with respect to suit land bearing Khasra No. 545 area 0.06 hectare and it was affirmed by the revenue appellate Court by order dated 18/05/1999 (Ex. D/1) which was

thereafter, reaffirmed by order dated 20/04/2000 passed by the Additional Collector, Durg, therefore, order of the Tahsildar has become final as plaintiffs did not assail or question the validity of the said order passed by the Tahsildar under Section 250 of the Land Revenue Code in the instant suit and unless that order is assailed successfully, declaration of title could not have been granted by the first appellate Court in view of proviso to Section 34 of the Specific Relief Act, 1963, as such, the judgment and decree of the first appellate Court deserves to be set aside.

5. None appeared on behalf of the respondents/plaintiffs, though served.

6. I have heard learned counsel for the appellants, considered his submissions and went through the records with utmost circumspection.

7. It is correct to say that defendant No. 1 filed an application under Section 250 of the Land Revenue Code which was granted by the Tahsildar vide order dated 31/08/1998 directing delivery of possession of suit land bearing Khasra No. 545 area 0.06 hectare, which is the subject matter of the suit, to defendant No. 1, against which plaintiffs preferred an appeal under Section

44(1) of Land Revenue Code. The said appeal preferred by the plaintiffs stood dismissed vide order dated 18/05/1999 (Ex. D/1) wherein the Sub-divisional Officer affirmed the order of the Tahsildar pursuant to which plaintiffs further preferred an appeal before the Additional Collector, Durg but that too, was dismissed on 20/04/2000, as such, the order dated 31/08/1998 passed by the Tahsildar under Section 250 of the Land Revenue Code has merged into the order of the Sub-divisional Officer dated 18/05/1999 and thereafter, the order of the Additional Collector passed on 20/04/2000. Plaintiffs' suit was filed in order to avoid the order of dispossession passed by the Tahsildar under Section 250 of the Land Revenue Code and surprisingly, the said order passed by the Tahsildar affirmed by the Sub-divisional Officer and reaffirmed by the Additional Collector was not questioned or sought to be set aside by the plaintiffs in their suit filed before the trial Court.

8. At this stage, reference may be made to the decision rendered by the Supreme Court in this regard in the matter of Jugraj Singh and Anr. v. Jaswant Singh and Ors.¹ Wherein in a similarly constituted fact, their Lordships of the Supreme

¹ AIR 1971 SC 761

Court have held that the order of the revenue Officer ought to have been questioned by the plaintiffs in order to get the relief of declaration otherwise, their suit is barred by Section 42 of the Specific Relief Act, 1877 (Section 34 of the present Act). Paragraph 11 of the report states as under :-

"In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order. "

9. Reverting to the facts of the present case in light of the above-stated legal analysis, it is quite vivid that in the present case the order of the Tahsildar under Section 250 of the Land

Revenue Code was affirmed by the Sub-divisional Officer and thereafter, reaffirmed by the Additional Collector, but plaintiffs did not ask either for declaration of order dated 20/04/2000 passed by the Additional Collector as invalid or sought cancellation of the said order and did not even seek injunction against the orders of Revenue Officers, as such, the suit filed by the plaintiffs without seeking any consequential relief of declaration of order of Tahsildar affirmed by Sub-divisional Officer reaffirmed by the Additional Collector to be invalid or for its cancellation, therefore, their suit is barred by proviso to Section 34 of the Specific Relief Act.

10. Plaintiffs ought to have sought for relief of either cancellation or declaration that the order passed by the Tahsildar under Section 250 of the Land Revenue Code affirmed by the Sub-divisional Officer and reaffirmed by the Additional Collector as illegal and void and thereby, is not binding on them and without the said relief, their suit as framed and filed is barred by proviso to Section 34 of the Specific relief Act and therefore, it could not have been decreed by the first appellate Court. Accordingly, the judgment and decree of the first appellate Court

is hereby set aside and that of the trial Court is restored.

11. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet