

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 421 of 2009**

Manoj Banchor, S/o Ramsharan Banchor, Aged about 30 years, Agriculturist, R/o Village Selud, Patwari Halka No. 20, R.I. Circle Bhilai, Tahsil Patan, District Durg, Chhattisgarh.

**---Appellant/Defendant No. 1**

**Versus**

1. Salik Ram S/o Late Banvali Prasad, Aged about 74 years.
2. Kriparam S/o Late Kalanath, Aged about 58 years.
3. Dhanuslal S/o Late Ramlal, Aged about 67 years.

All R/o Village Selud, Patwari Halka No. 20 R.I. Circle Bhilai, Tahsil Patan, District Durg, Chhattisgarh.

**--- Plaintiffs**

4. State of Chhattisgarh, through Collector, Durg, District Durg, Chhattisgarh. **--- Defendant No. 2**

**--- Respondents**

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| For Appellant   | :- | Mr. H.V. Sharma, Advocate     |
| For Respondents | :- | Dr. Kumaresh Tiwari, Advocate |
| For State       | :- | Mr. Mateen Siddiqui, Dy. A.G. |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**06/08/2020**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred

by the appellant/defendant No. 1 under Section 100 of the CPC against the impugned judgment and decree by which the first appellate Court reversed the judgment and decree of the trial Court and granted decree for delivery of possession in favour of the plaintiffs.

2.Mr. H.V. Sharma, learned counsel for the appellant/defendant No. 1, would submit that the first appellate Court is absolutely unjustified in granting decree for delivery of possession in favour of the plaintiffs by recording a finding which is perverse and contrary to the record as the suit land was never notified in the nistaar patra under Section 237 of the Chhattisgarh Land Revenue Code, 1959 and plaintiffs have failed to prove their title over the suit land, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.

3.Plaintiffs filed a suit under Order 1 Rule 8 of CPC stating inter alia that the total of 77.98 acres of land situated at village Selud, Patwari Halka No. 20, Tahsil Patan, District Durg has been reserved by the plaintiffs and their forefathers and several other people of the

village jointly for the purpose of cattle grazing out of which defendant No. 1 has encroached upon the suit land which is a part of Khasra No. 170 area 90 x 50 sq. ft. by illegally constructing a plinth and despite the objection raised by the plaintiffs, defendant No. 1 continued to make construction, therefore, they are entitled for decree for possession and thereafter, for restraining him from raising construction over the suit land to which defendant No. 1 opposed by filing written statement and stating that construction has already been complete and the ancestors of defendant No. 1 namely Jagannath and Kachra Bai have also dedicated their land for common grazing land, therefore, plaintiffs are not entitled for any decree.

4. Learned trial Court, upon appreciation and evaluation of oral and documentary evidence on record, dismissed the suit whereas the first appellate Court granted decree in favour of the plaintiffs.

5. Learned first appellate Court has clearly and categorically recorded a finding that the suit land, which is a part of Khasra No. 170 area 90 x

50 sq. ft., is part of a common cattle grazing land reserved privately by the plaintiffs and their forefathers and defendant No. 1 has encroached upon the said land by raising construction and he has justified the same only on the ground that his forefathers namely Jagannath and Kachra Bai have also dedicated their land for common grazing land. The first appellate Court also held that defendant No. 1 had no right to make construction forcibly on the said suit land on the ground that plaintiffs are also alienating part of the common grazing land without the permission of the Collector and ultimately, granted decree for possession over the suit land in favour of the plaintiffs holding that the said suit land can only be used by the plaintiffs as common grazing land.

6. Despite too much of persuasion and long drawn argument, Mr. H.V. Sharma, learned counsel for the appellant/defendant No. 1, could not demonstrate that the aforesaid finding recorded by the first appellate Court is perverse and contrary to the record. In result, I do not find any perversity/substantial question of law for determination in this matter.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet