

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 305 of 2009**

Malikram Gond, S/o Sukalu, Aged about 43 years,
Agriculturist, R/o Village Teekarkala, P.S. and
Tahsil Pendra Road, District Bilaspur,
Chhattisgarh.

---Appellant/Plaintiff

Versus

Mohd. Yakub S/o Mohd. Sharif, Muslim, Occupation
Tobacco trader, R/o Pendra Road, P.S. and Tahsil
Pendra Road, District Bilaspur, Chhattisgarh.

--- Respondent/Defendant

For Appellant :- Mrs. Renu Kochar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26/08/2020

1. Proceedings of this matter have been taken up for hearing through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which the trial Court dismissed the suit of the plaintiff.

3. Mrs. Renu Kochar, learned counsel for the appellant/plaintiff, would submit that both the Courts below are absolutely unjustified in dismissing the suit holding that plaintiff is not the possession holder of the suit land, therefore, he is not entitled for decree for permanent injunction. As such, the appeal be admitted by formulating substantial question of law in this regard.

4. Plaintiff filed a bare suit for permanent injunction stating *inter alia* that he is in possession of the suit land since the time of his forefathers i.e. from 1959 and proceedings under Section 248 of the Land Revenue Code, 1959 was initiated wherein he was also fined vide Exhibits P/1 and P/3 and the defendant has no right title over the suit land.

5. Defendant set up the plea that he has been granted patta by the Ex-Zamindar, therefore, he is the title-holder of the suit land.

6. Learned trial Court, after evaluating the oral and documentary evidence on record, dismissed the suit finding no merit and it was affirmed by the first appellate Court in the appeal preferred by the appellant/plaintiff.

7. Both the Courts below have clearly recorded the finding that plaintiff is an encroacher on Government land and he has been granted patta of the land adjoining to the suit land and on the garb of that patta, he wanted to encroach upon the suit land, as such, he has no title over the suit land.
8. The aforesaid finding recorded by both the Courts below that plaintiff is an encroacher upon the Government land and he is not entitled for decree for permanent injunction is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record.
9. 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