

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.183 of 2009**

Ramkumar Sharma, S/o. Gangaprasad Sharma, Aged about 54 years, R/o Radhakrishn Mandir Chowk, Tifra, Tahsil Distt. Bilaspur (CG)

----- Appellant/Plaintiff

Versus

1. Sotilal Sahu, S/o. Latel Ram Sahu, Aged about 43 years, Ex-Sarpanch, Village Panchayat Tifra, R/o. Tifra, Tahsil & District Bilaspur (CG)
2. Suratlal Sahu, S/o. Latel Ram Sahu, Aged about 41 years, R/o. Village Tifra, Sadakpara, Tifra, Tahsil & District Bilaspur (CG)
3. All Villagers, Village Tifra, Tahsil & District Bilaspur (CG)
4. Durga Prasad Kashyap, S/o. Bharatlal Kashyap, Aged about 22 years, R/o. Vishnu Chowk, Tifra, Ex-Panch, Village Panchayat-Tifra, Tahsil & District Bilaspur (CG)

----- Respondents/Defendants

For Appellant/Plaintiff:

Mr. Ashok Kumar Shukla, Advocate

For Respondents No.1&2: None present though served

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

26/08/2020

1. Final hearing of this second appeal has been taken-up through video conferencing.
2. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellant/plaintiff is as under:-

“Whether both the Courts below were justified in dismissing the suit of the plaintiff by

recording a finding which is perverse and contrary to the record invoking Order 7 Rule 11 of the CPC ?"

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

3. The suit land bearing Khasra No.368/5~~क~~ was governmental nazul land recorded in the name of the erstwhile State of Madhya Pradesh and it is used for grazing land for grazing of cattle of the villagers. The plaintiff filed a suit stating inter-alia that defendants No.1 and 2 are obstructing the use of the suit land as gothan and therefore, the defendants be restrained from obstructing the use of the suit land as gothan.

4. Resisting the suit, defendants No.1 and 2 filed their joint written statement and denied the averments made in the plaint. During the course of trial, defendants No.1 and 2 filed an application under Order 7 Rule 11 of the CPC that the suit is barred by the provisions contained in Section 132 read with Section 257 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called as 'Code'), which was allowed by the trial Court and dismissed the suit to be barred by the provisions contained in Section 132 of the Code. On appeal being preferred, the first appellate Court

dismissed the appeal by affirming the judgment and decree of the trial Court. Feeling aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment for sake of completeness.

5. Mr. Ashok Kumar Shukla, learned counsel for the appellant/plaintiff, would submit that the suit as framed and filed was not barred by the provisions contained in Section 132 read with Section 257 of the Code, therefore, both the Courts below are absolutely unjustified in dismissing the suit by invoking the provisions contained in Order 7 Rule 11 of the CPC, as such, the judgment and decree of both the Courts below deserve to be set aside and the suit be restored for hearing in accordance with law.

6. None present for respondents No.1 and 2/defendant No.1 and 2 though served.

7. I have heard learned counsel for the appellant/plaintiff, considered his submissions made hereinabove and also went through the records with utmost circumspection.

8. Sections 132 and 133 of the Code provide as under:-

"132. Penalty for obstruction of way, etc.,-

Any person who encroaches upon, or causes any obstruction to the use of a recognised road, path or common land of a village including those roads and paths recorded in the village Wajib-ul-arz or who disobeys the decision of a Tahsildar under section 131, shall be liable, under the written order of a Tahsildar stating the facts and circumstances of the case, to a penalty which may extend to ten thousand rupees.

133. Removal of obstruction.-If a Tahsildar finds that any obstacle impedes the free use of a recognised road, path or common land of a village or impedes the road or water, course or source of water which has been the subject of a decision under section 131, he may order the person responsible for such obstacle to remove it and if such person fails to comply with the order, may cause the obstacle to be removed and may recover from such person the cost of removal thereof and such person shall be liable, under the written order of a Tahsildar stating the facts and circumstances of the case, to a penalty which may extend to ten thousand rupees."

9. The provisions contained in Sections 132 and 133 of the Code qua jurisdiction of the Civil Court came to be considered before this Court in the matter of **Chotelal Sahu & others v. Vishram Tumkeri & others**¹ in which this Court held as under:-

"9. It is clear that, Tahsildar is empowered to remove the obstacle from the common land and also to impose penalty on the person who encroaches upon or obstructs the use of common land. Therefore, when Tahsildar has been empowered to determine, decide and give relief to villagers according to the aforesaid provision, then the provisions of

¹ 2005(2) C.G.L.J. 458

Section 257 of the Chhattisgarh Land Revenue Code, 1959 will come into play and the bar created under that provision will apply. Accordingly, no civil suit can be instituted by a private party seeking relief for removal of the obstruction from the common land, which belongs to the State Government."

10. Reverting to the facts of the present case in the light of principle of law laid down by this Court in Chotelal Sahu (supra), it is quite vivid that in the instant case the suit land is governmental land recorded for grazing of cattle and it is the case of the plaintiff that the defendants are trying to obstruct/encroach upon the suit land and that is clearly cognizable under Sections 132 and 133 of the Code and the Tahsildar has jurisdiction to remove the obstruction from common land, if any and the jurisdiction of the Civil Court is barred as held by this Court in Chotelal Sahu (supra).

11. Similarly, the suit land is recorded as gothan in revenue records and the dispute related to causing obstruction over the common land of the village, therefore, the State was necessary party in the suit and without impleading the State, the suit was filed. Even notice under Section 80 CPC was not served to the State, as such, the suit is bad for want of necessary party and hit by proviso to Order 1 Rule 9 of the CPC, as such, both the Courts below are absolutely

justified in holding that the suit as framed and filed was barred by the provisions contained in Order 7 Rule 11(d) of the CPC and have rightly dismissed the suit of the plaintiff. I do not find any perversity or illegality in the said finding. The substantial question of law is answered in favour of the defendants and against the plaintiff

12. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
13. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-