

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.66 of 2010

1. Ramgopal (died and deleted)

2. Rambahorik, aged 85 years, S/o Shri Sundarlal Jaiswal,

Both are residents of Baniyapara, Ratanpur, and P.O. Ratanpur,
Tahsil Kota, District Bilaspur (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. State of Chhattisgarh, through the District Collector, Bilaspur.

2. Nagar Panchayat, Ratanpur, through the Chief Municipal
Officer, Nagar Panchayat, Ratanpur, Tahsil Kota, District
Bilaspur (C.G.)

3. Mahabir, S/o Shri Gendram Kahra, R/o Village/P.O. Ratanpur,
Tahsil Kota, District Bilaspur (C.G.)

(Defendants)
---- Respondents

For Appellant/Plaintiff: Mr. Somnath Verma, Advocate.

For Respondent No.1 / State: -

Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/01/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs/appellants.
2. By the impugned judgment, the first appellate Court has dismissed the appeal preferred by the plaintiffs affirming the judgment & decree of the trial Court dismissing the suit.
3. Mr. Somnath Verma, learned counsel appearing for the appellant herein / plaintiff, would submit that both the Courts have committed grave illegality in not decreeing the suit by

holding that the plaintiff is title holder of the suit land vide Ex.P-1 which is copy of settlement (*misa*) dated 15-7-1955 and the suit tank bearing Khasra No.6396, area 0.43 decimal, and embankment of tank bearing Khasra No.6395, area 0.40 decimal, were settled in favour of the plaintiff. As such, both the Courts below dismissed the suit by recording a finding which is perverse to the record. Therefore, the appeal involves substantial question of law, it be framed accordingly and the appeal be admitted for hearing.

4. The suit tank namely, Krishna Band bearing Khasra No.6396, area 0.43 decimal, and embankment of tank bearing Khasra No.6395, area 0.40 decimal, is the suit property. The plaintiffs claimed title solely on the basis of document Ex.P-1 – copy of settlement (*misa*) dated 15-7-1955 on which basis the suit tank was settled in favour of the plaintiffs in *nistar patrak*. It is the case of the plaintiffs that they are in possession of the suit tank since last 50 years, but all of a sudden, Nagar Panchayat, Ratanpur – respondent No.2 herein has auctioned the suit tank in favour of respondent No.3 herein which is totally unauthorised and without authority of law and as such, the plaintiffs are entitled for declaration of title and permanent injunction. The trial Court upon appreciation of oral and documentary evidence available on record dismissed the suit holding that except document Ex.P-1 there is no document in favour of the plaintiffs to establish their title. Even otherwise, the suit tank has been transferred by the Department of Bhu-Sudhar, Madhya Pradesh on 29-9-1953 to Nagar Panchayat, Ratanpur which has now become Municipal Council and it has

been entered in the municipal tank register on 25-9-1973 vide Ex.D-11 and it is being auctioned by the Gram Panchayat regularly for fishing. Even otherwise, the plaintiffs have not filed any document except Ex.P-1 that they are title holders and their names have been recorded in the revenue records, whereas by virtue of Section 251 of the Chhattisgarh Land Revenue Code, 1959, all the tanks are vested with the State Government and the Nagar Panchayat is maintaining the tank as such, the plaintiffs are not title holders which has been affirmed by the first appellate Court. The finding recorded by the two Courts below that the plaintiffs are not title holders of the suit tank and they have failed to establish their title except document Ex.P-1, whereas the suit tank has been transferred by the State Government to the Nagar Panchayat / Municipal Council which is evident from Ex.D-11, copy of property register relating to tanks, which is being maintained by the said Council, is based on oral and documentary evidence available on record which is neither perverse nor contrary to the record. I do not find any substantial question of law involved in this second appeal and it is not a fit case for admission by formulating substantial question of law. I do not find any merit in this second appeal. The appeal deserves to be and is accordingly dismissed *in limine* being no question of law involved. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge