

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 437 of 2007**

Revti Bai W/o Chanwar Singh Gada, Aged about 50 years, R/o Village Devbhog, P.S. and Tahsil Devbhog, Distt. Raipur, Chhattisgarh.

---Appellant/Defendant No. 1

Versus

1. Ashok Kumar S/o Ramcharan Kalar, Aged about 36 years.
2. Hemlal S/o Ramcharan Kalar, Aged about 30 years.
3. Bisahu S/o Ramcharan, Aged about 26 years.
4. Mahesh S/o Upasu Ram Kalar, Aged about 49 years.
5. Sadaram S/o Upasu Ram Kalar, Aged about 54 years.
6. Dayaram S/o Upasu Ram Kalar, Aged about 37 years.

(All R/o Village Devbhog, Police Station and Tahsil Devbhog, Distt. Raipur, Chhattisgarh.)

--- Plaintiffs

7. Tahsildar, Devbhog Distt. Raipur, Chhattisgarh.

--- Defendant No. 2

8. State of Chhattisgarh, Through Collector, Distt. Raipur, Chhattisgarh.

--- Defendant No. 3

--- Respondents

For Appellant :- Mr. Ratnesh Kumar Agrawal, Advocate

For Respondents 1 to 6 :- Ms. Trishna Das, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****09/06/2021**

1. This second appeal preferred by the appellant/defendant No. 1 was admitted for hearing on 20/07/2009 by formulating the following substantial question of law :-

“Whether the Court below was not justified in holding that the land in dispute is not a service land allotted to Kotwar ?”

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

2. The suit land was originally held by one Dasmata Gada as patta (Ex. P/3) was granted in his favour in Mourusi right from the Manager, Court of Wards, Bindranvagarh Estate. He then sold the said suit land to Bhanghi Kalar by sale deeds dated 24/07/1937 (Ex. P/1) and 11/07/1974 (Ex. P/2). Similarly, one Bheeshmacharan and Madan Singh sold part of the suit land in favour of plaintiff No. 5 namely Maheshram. Since then, being the successors-in-interest of Bhanghi Kalar, plaintiffs have been in possession of the suit land. Thereafter, at the instance of

defendant No. 1, the suit land got mutated in her name by order dated 16/09/2004 (Ex. D/8) passed by the Tahsildar declaring the suit land as Kotwari service land and that has given rise to the cause of action for filing of the suit by the plaintiffs.

3. Defendant No. 1 filed her written statement and opposed the plaint allegations stating inter alia that suit land is a service land on the strength of Exhibits D/6 and D/7, as such, plaintiffs' suit deserves to be dismissed.
4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit by its judgment and decree dated 19/01/2007, holding that suit land is a service land and therefore, plaintiffs have no right or title over the said suit land. On appeal being preferred by the plaintiffs, learned first appellate Court reversed the judgment and decree of the trial Court and decreed the suit by the impugned judgment and decree dated 31/07/2007 holding that suit land is not service land and plaintiffs are the title-holders of the said suit land against which this second appeal has been preferred by the appellant/defendant No. 1

in which substantial question of law has been framed and set out in the opening paragraph of the judgment.

5. Mr. Ratnesh Kumar Agrawal, learned counsel for the appellant/defendant No. 1, would submit that suit land is a service land which is apparent from the Exhibits D/6 and D/7 and since Dasmata Gada was the Kotwar of Devbhog throughout, therefore, the land held by him as shown in Exhibits D/6 and D/7 would be held as service land. As such, the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court and decreeing the suit in favour of the plaintiffs.

6. Ms. Trishna Das, learned counsel for respondents No. 1 to 6/plaintiffs, would submit that by Exhibits D/6 and D/7, it is not apparent that suit land is a service land and merely because Dasmata Gada was the village Kotwar, the land held by him, if any, cannot be held to be service land as 'Right to Property' is a Constitutional right and therefore, a person claiming title has to establish his title strictly in accordance with law and merely on ipse dixit, the land cannot be declared as

service land. As such, the instant appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

8. The plaintiffs herein are successors-in-interest of Bhangi Kalar, to whom patta was granted with regard to the suit land by the Manager, Court of Wards, Bindranvagarh Estate vide Exhibit P/3. Learned trial Court did not accept the title of the plaintiffs over the suit land on the basis of the sale deeds (Exhibits P/1 and P/2), but learned first appellate Court accepted the plea of the plaintiffs and held that suit land is not service land and plaintiffs are title-holders of the said suit land. The said finding recorded by the first appellate Court that plaintiffs are the title-holders of the suit land and they are in possession of the said suit land has not been assailed by defendant No. 1 in this second appeal, as such, that finding has become final.

9. The only question that has been raised is based on the defence of defendant No. 1 that suit land

is a service land. In order to demonstrate that suit land is service land, two documents in the shape of Exhibits D/6 and D/7 have been filed.

10. A careful perusal of both the documents i.e. Exhibits D/6 would clearly show that it is misal bandobast of the year 1922-23 in which the name of owner of the suit land is recorded as one Nagendra Shah whereas Dasmata Gada is shown to be the possession-holder of the suit land in occupancy rights and also in Ex. D/7 copy of Kharasa 1922-23. As such, on the basis of Exhibits D/6 and D/7, it cannot be held that suit land is service land merely because at the relevant point of time, Dasmata Gada was having the possession of the suit land in occupancy right. The holding of official post by a person and holding of a property by a person are two quite different concepts and merely because a person was the village Kotwar at the relevant point of time, it cannot be held that his private land would also come within the category of service/Government land. Apart from this, there is no other evidence to hold that the suit land is service land held by Dasmata Gada, particularly when defendant No. 1 who is Kotwar

at present has not called in question the sale deeds executed by Dasmat Gada in favour of plaintiffs (Exhibits P/1 and P/2) and has also not questioned the patta granted to Dasmat Gada vide Exhibit P/3 by the Manager, Court of Wards, Bindranvagarh Estate.

11. As a fallout and consequence of the aforesaid discussion, it is held that learned first appellate Court is absolutely justified in holding that suit land is not a service land. I do not find any perversity or illegality in the said finding recorded by the first appellate Court.

12. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed. In view of that, all the pending applications, if any, are finally disposed of. No cost(s).

13. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet