

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.174 of 2010**

Phool Bai, W/o. Radheshyam Lohar, aged about 50 years, R/o Bhatgaon, Tah. Bilaigarh, District Raipur (CG)

----- Appellant/Plaintiff

Versus

1. Mehattar, S/o. Dhanau Dhimer (Since died)
2. Bhikhwa Ram Sahu, Halka Patwari, Halka Patwari No.15, R/o Bhatgaon, Tahsil Bilaigarh, District Raipur (CG)
3. Sub-Registrar, Sub-Registration Office, Bilaigarh, Tehsil Bilaigarh, District Raipur (CG)
4. Teejram, S/o. Dhansai Dheemer (Since died)
 - 4A. Ram Dhimar, S/o Late Teejram, aged about 45 years,
 - 4B. Hanuman Dhimar, S/o. Late Teejram, aged about 43 years,
 - 4C. Labho Kumar, S/o. Late Teejram, aged about 48 years,
 - 4D. Kusho Kumar S/o Late Teejram, aged about 50 years,

Respondent No.4A to 4D are R/o. Bhatgaon, Tahsil Bilaigarh, District Raipur Chhattisgarh
5. Tihar, S/o. Dhansai Dheemer, aged about 50 years, R/o. Bhatgaon Tahsil Bilaigarh, District Raipur Chhattisgarh
6. Mansukha, S/o. Dhansai Dheemer, aged about 45 years, R/o. Bhatgaon, Tahsil Bilaigarh, District Raipur Chhattisgarh
7. Bodhram, S/o. Dularu Dheemer (Since died)
 - 7A. Dashrath Dhimar, S/o Late Bodhram, aged about 45 years,
 - 7B. Gore Lal Dhimar, S/o. Late Bodhram, aged about 42 years,

Respondents No.7A & 7B are R/o. Bhatgaon, Tahsil Bilaigarh, District Raipur Chhattisgarh

8. Phoolbai, D/o. Bhikham Teli, aged about 40 years,

9. Badri Prasad, S/o Dan Ram Teli, aged about 45 years,

10. Samelal, S/o. Babulal Dheemer, aged about 42 years,

R/o. Bhatgaon, Tahsil Bilaigarh, District Raipur
Chhattisgarh

11. State of Chhattisgarh, Through Collector,
Raipur, District Raipur (CG)

----- Respondents/Defendants

For Appellant/Plaintiff:

Mr. Anurag Singh, Advocate appears on
behalf of Mr. Manoj Paranjape, Advocate

For Res. No. 5, 6, 8, 9 and 10/Defendants:

Mr. Uday Pratap Singh Sahu, Advocate

For Respondent No. 11/State:

Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

29/06/2021

1. This second appeal preferred by the appellant / plaintiff was admitted for hearing on 27.8.2020 by formulating the following substantial question of law for determination:-

"Whether both the Courts below are justified in partially dismissing the suit of the plaintiff holding that the defendant No. 1 did not have the title of the suit land at the time of selling it to the plaintiff, by recording a finding which is perverse and contrary to the record?"

[For the sake of convenience, the parties would be referred hereinafter as per their

status shown and nomenclature in the suit before the trial Court].

2. It is the case of the plaintiff that she has purchased the suit land bearing Khasra No.636/1 area 0.538 hectare from defendant No.1 by registered sale deed dated 15.3.2000 (Ex.P-1), from which she was dispossessed by defendant No.1 leading to filing of the suit for declaration of title and recovery of possession.
3. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint.
4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 22.9.2007, partly decreeing the suit held that defendant No.1-Mahettar was only having 0.186 hectare of land out of Khasra No.636/1 and therefore, the plaintiff is entitled for decree to that extent only. On appeal being preferred, the first appellate Court affirmed the judgment and decree of the trial Court, against which, against which, the appellant / plaintiff preferred this second appeal under Section 100 of the CPC, in which one substantial question of law has been formulated by this Court, which has been set-out in opening paragraph of this judgment for

sake of completeness.

5. Mr. Anurag Singh, learned counsel for the appellant / plaintiff, would submit that both the Courts below concurrently erred in disbelieving the document (Ex.P-4), which is copy of khasra panchshala for the year 1996-97 in which Mahettar got the land bearing Khasra No.636/1 area 0.538 hectare and therefore, alienation made by Mahettar of the said land, the plaintiff has acquired title and therefore, both the Courts below ought to have decreed the suit in toto.
6. On the other hand, Mr. Uday Pratap Singh Sahu, learned counsel for respondents No. 5, 6, 8, 9 and 10, would submit that the judgment and decree of both the Courts below are based on material available on record, which is neither perverse nor contrary to record.
7. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. Admittedly, the plaintiff has purchased the suit land bearing Khasra No.636/1 area 0.538 hectare from defendant No.1 by registered sale deed dated 15.3.2000 (Ex.P-1). In a suit filed, the trial Court partly decreed the suit holding that defendant No.1-

Mahettar was only having 0.186 hectare of land out of Khasra No.636/1 and Mahettar did not have title over entire 0.538 hectare of land and relied upon Ex.P-2 where the concerned revenue officer has certified that in Khasra No.636/1 only 0.186 hectare of land is left in the name of Mahettar and her name to be recorded in revenue records. Thereafter, the plaintiff filed an application before the Additional Tahsildar, Bhatgaon for recording her name in the entire land bearing Khasra No.636/1 area 0.538 hectare. The Additional Tahsildar after enquiry has held that the plaintiff has purchased the suit land without measurement of the actual suit land on the spot as during joint khata part of Khasra No.636/1 has already alienated to some other persons, but revenue records have not been certified and the plaintiff got the suit land purchased bearing Khasra No.636/1 area 0.538 hectare on the basis of rin pustika, whereas other persons are in possession of the suit land. While rejecting the application, the Additional Tahsildar has clearly held that the plaintiff is only entitled for certification of revenue records in Khasra No.636/1 area 0.186 hectare.

9. Reliance of the plaintiff on Ex.P-4 is not helpful

to her. By that document, it has only been held on 21.06.97 that Khasra No.636/1 area 0.626 hectare is now on partition owned by defendant No.1-Mahettar from whom the plaintiff has purchased. It has been explained by the Additional Tahsildar, Bhatgaon in its order dated 15.10.2003 (Ex.P-3) that the land bearing Khasra No.636/1 was jointly held by other co-owners, some part of suit land has already been sold and it has not been certified and even partition made vide Ex.P-4 is defective, as such, there is no evidence on record that defendant No.1 was title and possession-holder of the suit land bearing Khasra No.636/1 area 0.538 hectare, whereas there is overwhelming evidence on record that defendant No.1 was owner of the land bearing Khasra No.636/1 area 0.186 hectare, which has rightly been decreed by both the Courts below.

- 10.** The finding recorded by two Courts below that defendant NO.1-Mahettar was owner of the land bearing Khasra No.636/1 area 0.186 hectare is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any illegality or perversity in said finding. The substantial question of law is answered in favour of the defendants and against the

plaintiff.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-