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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 112 of 2010

1. Arjun Dubey (died) through Lrs. :-

   (a). Ramalala Dubey S/o Late Arjun Dubey, Aged about 46 years.

   (b). Shrichand Dubey S/o Late Arjun Dubey, Aged about 32 years.

   Both are R/o Village Parasdiha P.S. Chalgali, Tahsil Wadrafnagar, District Balrampur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Amarnath S/o Jageshwar, Aged about 35 years.
2. Vedanti S/o Shyamsunder, Aged about 40 years.
3. Vindhyachal S/o Jageshwar, Aged about 55 years.
4. Shambhu S/o Girdhari, Aged about 38 years.
5. Shriman S/o Ramsunder, Aged about 55 years.
6. Bhuneshwar (died) through Lrs. :-

   (a). Smt. Sarita W/o Late Bhuneshwar, Aged about 40 years.

   (b). Sarambh Babu Patel S/o Late Bhuneshwar, Aged about 21 years.

   (c). Kanha Babu Patel S/o Late Bhuneshwar, Aged about 19 years.

   Both are R/o Village Parasdiha, P.s. Chalgali, Tahsil Wadrafnagar, Distt. Balrampur-Ramanujganj, Chhattisgarh.

7. Jawaher S/o Ramsahai, Aged about 55 years.
8. Ramsushil S/o Jaikeshwer, Aged about 55 years.
9. Ramsnehi S/o Kalika Prasad, Aged about 55 years.
10. Chaturgun S/o Jaikeshwer, Aged about 55 years.
11. Hardev S/o Thakuri, Aged about 40 years.
12. Heeralal S/o Prabhash, Aged about 40 years.
13. Jawaher S/o Prabhash, Aged about 45 years.
14. Bhaiyaram S/o Jageshwar (died) through Lrs. :-

    (a). Smt. Saroj W/o Late Bhaiya Ram, Aged about 38 years.

    (b). Ankur Kumar Patel S/o Late Bhaiya Ram, Aged about 22 years.

    Both are R/o Village Parasdiha, P.S. Chalgali, Tahsil Wadrafnagar, Distt. Balrampur-Ramanujganj, Chhattisgarh.

--- Respondents/Defendants

For Appellants :- Mr. A.N. Pandey, Advocate

For Respondents :- Mr. Hariom Rai, Advocate

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

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

12/01/2021

1. This second appeal preferred by the appellant/plaintiff (now, his LRs.) was admitted for hearing on the following two substantial questions of law :-

> "(1) Whether the Courts below have committed an error of law by dismissing the plaintiff's suit under Order 7 Rule 11 of the Code of Civil Procedure, 1908 ?
>
> (2) Whether the Courts below are justified in holding that the plaintiff's suit is barred under Section 257 of the Chhattisgarh Land Revenue Code, 1959 ?"

[The parties will hereinafter be referred to as per their status given and ranking shown in the plaint before the trial Court.]

2. The suit land bearing Khasra No. 219/4 admeasuring 1.131 hectares is a part of the land bearing Khasra No. 219/1 total area 4.407 hectares. The said suit land is admittedly Government land reserved/earmarked for the purpose of grazing by the competent authority under the provisions of Section 237(1) of Chhattisgarh Land Revenue Code, 1959.

3. The original plaintiff Arjun Dubey i.e. father of the appellants herein filed an application before the Sub-divisional Officer (Revenue), Ramanujganj stating *inter alia* that though the land bearing Khasra No. 219/1 admeasuring 4.407 hectares is reserved by the Government for the purpose of grazing, but since he is in cultivating possession of 1.131 hectares of the said land for the last 35 years, therefore, the

said land be settled in his favour, which the Sub-divisional Officer (R) enquired into and ultimately, by exercising the power under Section 237(2) of the Land Revenue Code, vide order dated 05/10/1982, deleted the suit land from the Nistar Patra and made it open for using it as agricultural land and thereby, settled it in favour of the plaintiff. Later on, the Collector, Sarguja on being informed about the same, took up the matter on suo moto revisional jurisdiction and vide order dated 10/02/1986 (Ex. P/5) revoked the order of the Sub-divisional Officer dated 05/10/1982 denotifying the said land reserved for the purpose of grazing and settling it in favour of the plaintiff. The plaintiff questioned the order before the Commissioner by way of revision but he remained unsuccessful which led to the filing of the suit by the plaintiff for declaration of title and permanent injunction stating that he is in settled possession of the suit land and the order of the Collector (Ex. P/5) setting aside the order of the Sub-divisional Officer is unsustainable and bad in law, as such, he is entitled for decree for declaration of title and permanent injunction.

4. In the first round of litigation, the State of Chhattisgarh remained ex-parte and an ex-parte decree was granted by the trial Court which was later on set aside and the matter was remitted to the trial Court to decide it afresh after giving an opportunity to the State and other defendants. In the second round of litigation, learned trial Court framed an issue as to whether the jurisdiction of the Civil Court is barred and ultimately, vide its judgment and decree dated 10/12/1999, dismissed the suit holding that the jurisdiction of Civil Court is barred by Section 237(2) of the Land Revenue Code.

5. On appeal being preferred by the plaintiff under Section 96 of CPC, learned first appellate Court also agreed with the finding recorded by the trial Court qua the jurisdiction of the Civil Court to entertain the suit and dismissed the appeal by its impugned judgment and decree dated 21/01/2010 against which this second appeal has been preferred by the appellant/plaintiff (now his Lrs.) under Section 100 of CPC in which two

substantial questions of law have already been framed and set out in the opening paragraph of the judgment.

6. Mr. A.N. Pandey, learned counsel appearing for the appellant/plaintiff (now his Lrs.), would submit that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiff by recording a finding which is perverse and contrary to the record holding that the suit as framed and filed by the plaintiff is not maintainable and the jurisdiction of Civil Court is barred by Section 237(2) of the Land Revenue Code and even otherwise, he submits that the plaintiff has perfected his title over the suit land by way of adverse possession, as such, the judgment and decree of both the Courts below deserves to be set aside and plaintiff's suit be decreed by answering the two substantial question of law in their favour.

7. Mr. Hariom Rai, learned counsel appearing for the defendants, as well as Mr. Ravi Bhagat, learned Deputy Government Advocate appearing for the State, would support the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree passed by the

trial Court and would submit that the Collector, Surguja rightly set aside the order dated 05/10/1982 passed by the Sub-divisional Officer denotifying the suit land originally reserved for grazing purpose as under the provisions contained in Section 237(2) of the Land Revenue Code, the competent authority for diverting the purpose of the land is only the Collector, as such, the order of the Sub-divisional Officer was absolutely without jurisdiction and it was rightly revoked by the Collector vide order dated 10/02/1986 (Ex. P/5) and by virtue of the provisions contained under Section 237(2) of the Land Revenue Code, the jurisdiction of the Civil Court to entertain the plaintiff's suit is expressly barred, as such, the second appeal deserves to be dismissed.

8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

9. It is not in dispute that the suit land bearing khasra No. 219/4 area 1.131 hectares is a part of Khasra No. 219/1 total area 4.407 hectares which is admittedly Government land reserved for

the purpose of grazing under Section 237(1) of the Land Revenue Code to which the plaintiff applied for denotifying it for his purpose before the Sub-divisional Officer as it is the case of the plaintiff that he has made the suit land cultivable and is using it for agricultural purpose for the last several years which was ultimately granted by the Sub-divisional Officer by order dated 05/10/1982 in exercise of the power under Section 237(2) of the Land Revenue Code without authority of law but the Collector vide Ex. P/5 set aside the order of the Sub-divisional Officer holding that he (S.D.O.) had no jurisdiction to denotify the suit land for grazing purpose under Section 237(2) of the Land Revenue Code and only the Collector has the power and jurisdiction to divert the purpose as Section 237(2) of the Land Revenue Code.

10. Sections 233 and 234 of the Land Revenue Code state as under :-

> "**233. Record of unoccupied land. -** A record of unoccupied land shall, in accordance with rules made in this behalf be prepared and maintained for every village showing separately -

(a) unoccupied land set apart for exercise of nistar rights under Section 237;

(b) Omitted by M.P. Act No. 25 of 1964 w.e.f. 23.04.1964

234. Preparation of Nistar Patrak. - (1) The [Sub-Divisional Officer] shall, consistently with the provisions of this Code and the rules made thereunder, prepare a Nistar Patrak embodying a scheme of management of all unoccupied land in a village and all matters incidental thereto and more particularly matters specified in Section 235.

(2) A draft of the Nistar Patrak shall be published in the village and after ascertaining the wishes of the residents of the village in the prescribed manner, it shall be finalised by the [Sub-Divisional Officer].

(3) On a request being made by the Gram Sabha, or where there is no Gram Sabha, on the application of not less than one-fourth of the adult residents of a village, or on his own motion the [Sub-Divisional Officer] may, at any time, modify any entry in the Nistar Patrak after such enquiry as he deems fit."

11. A careful perusal of Section 233 of the Land Revenue Code would show that the record of unoccupied land shall be prepared and maintained for every village showing separately unoccupied

land set apart for exercise of nistar rights under Section 237. Similarly, Section 234 of the Land Revenue Code provides for a Nistar Patrak. By Sub-section (1), the Sub-divisional Officer is given the power to prepare a Nistar Patrak embodying a scheme of management of all unoccupied land in a village and all matters incidental thereto and more particularly matters specified in Section 235. This power originally vested in the Collector but by Section 4 of the Amendment Act No. 24 of 1961, the power is given to the Sub-divisional Officer instead. Sub-section (2) deals with how after the draft of the Nistar Patrak has been published in the village and after ascertaining the wishes of the residents of the village in the prescribed manner, the Nistar Patrak shall be finalised by the Sub-divisional Officer. Sub-Section (3) deals with how an entry in the Nistar Patrak is to be modified. It lays down that the application for modification may be originated by the Gram Sabha or where there is no Gram Sabha, by no less than one-fourth of the adult residents of the village. It can also be initiated by the Sub-divisional Officer on his own motion.

12. Section 235 of the Land Revenue Code lays down matters to be provided for in the Nistar Patrak and Section 236 provides that in preparing the Nistar Patrak as provided in Section 235, the Collector shall, as far as possible, make provisions for (a) free grazing of the cattle used for agriculture and (b) and (c) also provide matters to be provided in the Nistar Patrak. Thus, reading Sections 235 and 236 together, it would appear that certain matters provided under the former Section must necessarily be provided for in the Nistar Patrak. The three provisions 234, 235 and 236 of the Land Revenue Code could be read conjointly and the power exercised by the Collector only for the limited purpose provided in Section 236.

13. At this stage, it would be appropriate to notice Section 237(1) and (2) of the Chhattisgarh Land Revenue Code, 1959, which states as under :-

> "**237. Collector to set apart land for exercise of Nistar rights. -** (1) Subject to the rules made under this Code, the

collector may set apart unoccupied land for the following purposes, namely, -

(a) for timber or fuel reserve;

(b) for pasture, grass bir or fodder reserve;

(c) for burial ground and cremation ground;

(d) for gaothan;

(e) for encamping ground;

(f) for threshing floor;

(g) for bazar;

(h) for skinning ground;

(I) for manure pits;

(j) for public purposes such as schools, play grounds, parks, road, lanes, drains and the like; and

(k) for any other purposes which may be prescribed for the exercise of right of Nistar.

(2) Lands set apart specially for the purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector."

14. A careful perusal of the aforesaid provisions would show that under Section 237 of the Land Revenue Code the unoccupied land is reserved for particular purpose by the competent authority i.e. Collector and by virtue of Section 237(2) of the Code, any land reserved for a particular purpose under Section 237(1) cannot be diverted without the sanction of the Collector, as such, the power for diverting the land reserved for a particular purpose under Section 237(1) of the

Code has only been conferred upon the Collector as per Section 237(2) of the Code.

15. Section 237(2) of the Code provides that the lands set apart specially for any purpose mentioned in sub-section (1) of Section 237 shall not be diverted without the sanction of the Collector.

16. Now, the question for consideration would be, whether the land reserved for specific purpose mentioned in Section 237(1) of the Code can be diverted for agricultural purpose/cultivation without the sanction of the Collector ?

17. The Division Bench of the Madhya Pradesh High Court in the matter of **Amarsingh v. Raguvirsingh**[1] has clearly held that in the context, the diversion contemplated by sub-section (2) of Section 237 relates to purposes mentioned in sub-section (1) inter-se and not diversion into cultivation use. It was further held by Their Lordships that the scheme of Section 237 deals with setting apart unoccupied land for non-agricultural purposes and the diversion is with reference to such purpose only.

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18. In the instant case, the suit land which was reserved for the purpose of grazing under Section 237(1) of Land Revenue Code was diverted for agricultural purpose and settled in favour of the plaintiff by the Sub-divisional Officer by order dated 05/10/1982. The Nistar Patrak can be amended only after enquiry by the Sub-divisional Officer as provided in Section 234 of the Code and then only, the purpose can be changed. In the instant case, though the application was before the Sub-divisional Officer but neither the Gram Sabha nor the one-fourth adult residents of the village nor it was taken on own motion by the Sub-divisional Officer for the change of the purpose of the suit land set apart as a grazing land. No enquiry has been done by the Sub-divisional Officer for making such changes which is necessary under Section 234(3) of the Code, as such, the order passed by the Sub-divisional Officer on 05/10/1982 which is ex-facie without jurisdiction and without authority of law, has rightly been set aside by the order dated 10/02/1986 (Ex. P/5) passed by the Collector.

19. Now, coming to the question as to whether the jurisdiction of the Civil Court to entertain plaintiff's suit was barred as held by the two Courts below.

20. A careful perusal of Section 237(2) of the Land Revenue Code would clearly show that the exclusive jurisdiction of diversion of a land set apart for a particular purpose under Section 237(1) of the Code has only been conferred upon the Collector. An appeal lies from such an order of the Collector to the Commissioner and against the revisional order, a further revision would lie to the higher authority i.e. the Board of Revenue. By virtue of provision contained under Section 257, no civil Court shall entertain any suit instituted or application made to obtain a decision or order or any other matter which the revenue officer is by this Code empowered to decide and Section 257(w) of the Code provides that no Civil Court shall exercise jurisdiction over any claim to modify any entry in the Nistar patrak, as such, the jurisdiction of the Civil Court has expressly been barred as the revenue Courts have the exclusive jurisdiction with regard to the matter specified in Section 257(w)

of the Code. Even otherwise, the plaintiff has not questioned the order dated 10/02/1986 (Ex. P/5) passed by the Collector revoking the order of the Sub-divisional Officer diverting the suit land from grazing land to agricultural purpose in his favour in the civil Court and that has become final.

21. Consequently, the two Courts below have rightly concluded on the pleadings of the parties that the Civil Court has no jurisdiction to entertain plaintiff's suit as the order of the Collector dated 10/02/1986 (Ex. P/5) setting aside the order of the Sub-divisional Officer has become final as revision filed by the plaintiff against the order of the Collector before the Commissioner has already been dismissed and the order of the Commissioner affirming the order of the Collector setting aside the order of the Sub-divisional Officer has not been assailed either in this proceeding or otherwise. As such, I do not find any perversity or illegality in the aforesaid finding recorded by both the Courts below.

22. This second appeal, being devoid of merits, deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

23. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet