

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.170 of 2010**

Smt.Savitri Devi, W/o Surendra Kumar, aged about 34
 yers, R/o Village Dhaba, Post Bhadesar, Patwari Halka
 No.1, Tahsil & Distt.Durg (CG)

---Appellant/Plaintiff

Versus

State of Chhattisgarh Through Collector, Durg, Distt.
 Durg (CG)

---Respondent/Defendant

For Appellant/Plaintiff:

Mr.B.P.Singh, Advocate

For Respondent/Defendant:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

25/01/2021

1. Heard this second appeal on admission and formulation of substantial question of law preferred by the appellant/plaintiff.
2. By the impugned judgment and decree, the first appellate Court has affirmed the judgment and decree of the trial Court dismissing the suit of the plaintiff filed for declaration of title and permanent injunction.
3. Mr.B.P.Singh, learned counsel for the appellant/plaintiff, would submit that both the Courts below have erred in not decreeing the suit filed by the plaintiff for declaration of title and

permanent injunction, by recording a finding which is perverse and contrary to record. He would further submit that erstwhile owner Bikhuram was already declared bhumiswami on 28.1.1995 and therefore, he has a transferable right in the suit land and he has rightly transferred the suit land in favour of the plaintiff by sale deed dated 3.2.1996 (Ex.P-6) and thereafter the Collector has no jurisdiction to cancel the patta granted in favour of Bikhuram by order dated 8.12.1997 that too without affording an opportunity of hearing to the then pattadar Bikhuram or the present appellant, as such, the second appeal involves substantial question of law for determination and it be formulated accordingly for determination.

4. The competent authority granted patta vide Ex.P-1 in favour of Bikhuram for 10 years from 1974-75 to 1984-85 and thereafter the lease period has expired, but it was not extended and said Bikhuram by registered sale deed dated 3.2.1996 (Ex.P-6) transferred the suit land in favour of the plaintiff, but thereafter when the Collector came to know about transfer of the suit land by Bikhuram in violation of terms of patta (Ex.P-1) revoked patta by order dated 08.12.1997. The plaintiff filed a suit for declaration of title and permanent

injunction over the suit land, which was dismissed by the trial Court and affirmed by the first appellate Court in first appeal preferred by the plaintiff, against which, this second appeal has been preferred.

5. Admittedly, the suit land was governmental land and patta of the suit land was granted to Bikhuram and lease period has expired after 10 years in the year 1985, but thereafter the lease was not extended in favour of Bikhuram and ultimately it was sold by Bikhuram vide sale deed (Ex.P-6) in favour of the plaintiff without prior permission of the Collector and thereafter the Collector revoked the patta on 08.12.1997 and that order of the Collector has not been questioned in civil suit filed by the plaintiff, as such, Bikhuram has no right, title or subsisting right at the time of alienation in favour of the plaintiff and secondly, the order revoking patta which was granted earlier in favour of erstwhile Bikhuram has not been called in question in civil suit filed by the plaintiff. In that view of the matter, the suit has been dismissed by the trial Court.
6. The appellant/plaintiff is purchaser from Bikhuram and Bikhuram has derived title from the State Government by patta (Ex.P-1) and since patta itself

has been revoked, the plaintiff has no right, title or interest over the suit land, which can be decreed by the trial Court under Section 34 of the Specific Relief Act, 1963, as such, the trial Court has rightly dismissed the suit of the plaintiff, which has been affirmed by the first appellate Court in first appeal preferred by the plaintiff.

7. In the matter of **Guntaiah and others v. Hambamma and others**¹ where grantee sold the lands in breach of condition restricting alienation for 15 years, which was challenged the third party purchasers, that in view of the matter, their Lordships held that such third party purchasers cannot challenge such condition as void, when grantees on whom the condition was binding under the contract with the Govt. had not challenged the same. It was further held that such transfer of lands in breach of terms of grant are null and void and would not convey any right, title or interest to the purchasers by virtue of S. 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, as such, this case is not helpful to appellant.
8. I do not find any perversity or illegality in finding recorded by two Courts below and even I do

1 (2005) 6 SCC 228

not find any substantial question of law for determination of this second appeal.

9. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to other side.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-