

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 12 of 2010****Judgment reserved on 10/02/2021****Judgment delivered on 16/02/2021**

Sukhdai D/o Paklu, Aged about 44 years, Caste Muriya, R/o Village Bade Marenga, Tahsil Jagdalpur, Distt. Bastar, Chhattisgarh.

---Appellant/Defendant No. 4

Versus

1. (a). Hariprasad Vishwakarma S/o Late Bhagwat Prasad Vishwakarma, Aged about 45 years, R/o Village Marenga, Jagdalpur, Distt. Bastar, Chhattisgarh.

(b). Ram Sevak Vishwakarma, S/o Late Bhagwat Prasad Vishwakarma, Aged about 40 years, R/o Village Marenga, Jagdalpur, Distt. Bastar, Chhattisgarh.

Legal representatives of former plaintiff late Bhagwat Prasad.

--- LRs. of Plaintiff

2. Sub Divisional Officer (Rev), Jagdalpur, Distt. Office, Jagdalpur, Chhattisgarh.
3. State of Chhattisgarh, through Collector, Bastar, Jagdalpur, Chhattisgarh.
4. Tahsildar, Jagdalpur, Distt. Bastar, Chhattisgarh.

--- Respondents

For Appellant :- Mr. Rajesh Kumar Sharma and
Mr. Vinod Tekam, Advocates

For Respondents No. 1(a) and 1(b) :-
Mr. Ratan Pusty, Advocate

For Respondents No. 2 to 4/State :-
Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the appellant/defendant No. 4 was admitted for hearing on 05/01/2021 by formulating the following two substantial questions of law :-

"1. Whether the trial Court was justified in declaring the order dated 16/01/1992 passed by the Sub-divisional Officer, Jagdalpur as null and void ?

2. Whether the first appellate Court was justified in affirming the judgment and decree of the trial Court by recording a finding which is perverse and contrary to the record as the order dated 16/01/1992 was neither challenged by the plaintiff nor produced before the trial Court ?"

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

2. The Naib Tahsildar, Jagdalpur / competent authority (Revenue) granted the bhoomiswami right/patta over the suit land in favour of the plaintiff on 15/03/1976 which was cancelled by

the Sub-divisional Officer, Jagdalpur by order dated 16/01/1992. Questioning the said order, plaintiff preferred a revision before the Commissioner, who by his order dated 08/08/1994 (Ex. P/4) affirmed the order of the Sub-divisional Officer and thereby, dismissed the revision finding no merit, against which a civil suit was filed by the plaintiff before the trial Court on 22/03/2001 pleading that the suit land was granted to him by the Naib Tahsildar, Jagdalpur in bhoomiswami right and therefore, the order of the Sub-divisional Officer dated 16/01/1992 as well as the order dated 08/08/1994 passed by the Commissioner are null and void, which was opposed by defendant No. 4 in the written statement filed by him.

3. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit of the plaintiff vide its judgment and decree dated 22/03/2005 holding that the order passed by the Sub-divisional Officer dated 16/01/1992 cancelling the patta in favour of the plaintiff and the revisional order passed by the Commissioner dated 08/08/1994 (Ex. P/4) are null and void.

4. On appeal being preferred by the appellant/defendant No. 4, learned first appellate Court vide its judgment and decree dated 20/11/2009 affirmed the judgment and decree passed by the trial Court and thereby dismissed the appeal against which this second appeal has been preferred by the appellant/defendant No. 4 in which two substantial questions of law have been framed and set out in the opening paragraph of the judgment.

5. Mr. Rajesh Kumar Sharma and Mr. Vinod Tekam, learned counsel for the appellant/defendant No. 4, would submit that both the Courts below are absolutely unjustified in decreeing the suit of the plaintiff and declaring the order dated 16/01/1992 passed by the Sub-divisional Officer as well as the order dated 08/08/1994 passed by the Commissioner as null and void by recording a finding which is perverse and contrary to the record as the order dated 16/01/1992 was neither produced nor challenged before the two Courts below by recording a finding which is perverse and contrary to the record, as such, the

judgment and decree passed by both the Courts below deserves to be set aside.

6. Mr. Ratan Pusty, learned counsel for the LRs. of plaintiff/respondents No. 1(a) and 1(b), would submit that though the order dated 16/01/1992 passed by the Sub-divisional Officer, Jagdalpur was neither produced but challenged before the two Courts below and against the said order of the Sub-divisional Officer, revision was preferred by the plaintiff which was dismissed by order dated 08/08/1994 passed by the Commissioner and the said order dated 08/08/1994 passed by the Commissioner has been produced and challenged before the trial Court and it has even been marked as Exhibit P/4 by the trial Court. He would also submit that the order dated 16/01/1992 passed by the Sub-divisional Officer was absolutely void, therefore, it has rightly been declared null and void by the two Courts below.

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

8. For the sake of convenience, substantial question of law No. 2 is taken up first for consideration.

Answer to substantial question of Law No. 2 :-

9. By order dated 16/01/1992, the patta granted over the suit land in favour of the plaintiff was cancelled by the Sub-divisional Officer, Jagdalpur. The said order was assailed by the plaintiff in revision before the Commissioner, Bastar, who by his order dated 08/08/1994 (Ex. P/4) dismissed the revision. The revisional order passed by the Commissioner has been challenged before the two Courts below and has been marked as Exhibit P/4. Even two issues were framed by the trial Court with regard to the order dated 16/01/1992 passed by the Sub-divisional Officer as well as the order dated 08/08/1994 passed by the Commissioner and both of these orders were declared null and void. As such, the argument made by learned counsel for the appellant/defendant No. 4 that the order dated 16/01/1992 passed by the Sub-divisional Officer, Jagdalpur was not produced before the two Courts below therefore it could not have been declared as null and void is absolutely

wrong as it cannot be held that in absence of production of the order dated 16/01/1992 passed by the Sub-divisional Officer before the two Courts below has caused any prejudice to defendant No. 4 especially when the order dated 08/08/1994 (Ex. P/4) passed by the Commissioner affirming the order dated 16/01/1992 passed by the Sub-divisional Officer was produced and challenged before the two Courts below and it has been declared null and void. Thus, the substantial question of law No. 2 has been answered in favour of the plaintiff and against defendant No. 4.

Answer to substantial question of law No. 1 :-

10. The patta granted to the plaintiff in his bhoomiswami right by the Naib Tahsildar, Jagdalpur was revoked by the Sub-divisional Officer, Jagdalpur by order dated 16/01/1992 by exercising suo moto revisional jurisdiction which was challenged by the plaintiff before the Board of Revenue but the Board of Revenue affirmed the order of the Sub-divisional Officer by order dated 08/08/1994 (Ex. P/4). Though the order dated 16/01/1992 passed by the Sub-divisional Officer was not produced before the

trial Court, but it is admitted position on record that plaintiff's patta was revoked by the Sub-divisional Officer by exercising suo moto revisional jurisdiction and the order dated 16/01/1992 has been filed before this court in an application under Order 41 Rule 27 of CPC. The said order dated 16/01/1992 passed by the Sub-divisional Officer is a public document as well as an admitted document and that order is not in dispute as it has been affirmed by the Commissioner vide order dated 08/08/1994 (Ex. P/4) which has been challenged by the plaintiff.

11. A careful perusal of the aforesaid order would show that on 26/01/1991, the Sub-divisional Officer, Jagdalpur took suo moto cognizance of the matter and registered suo moto revision No. 175/90-91 against the plaintiff and thereafter, on 16/01/1992, revoked the order passed by the Naib Tahsildar granting patta in favour of the plaintiff. For the sake of pleadings, it would be appropriate to notice the order dated 26/09/1991 and 16/01/1992 which state as under :-

26/9/91 श्री भागवत प्रसाद पिता बृजलाल
 सा. बड़ेमारेंगा
 को ग्राम - बड़ेमारेंगा - तहसील जगदलपुर के ख० नंबर 216/25 में

से रकबा 1.62 एकड़ भूमि कृषि हेतु/मकान बाड़ी प्रयोजन हेतु तहसीलदार/नायब तहसीलदार के राजस्व प्रकरण क्रमांक 84/अ-68/75-76 आदेश दिनांक - 15/3/76 द्वारा आबंटित की गई है जिसमें अनियमितता पाये जाने के कारण स्वमेव पुनरीक्षण में लिया जाता है।

2/ प्रकरण पंजीबद्ध किया जावे।

3/ अनावेदक को कारण दर्शाने सूचना जारी हो।

सही/-

अनुविभागीय अधिकारी (रा)

जगदलपुर

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16/1/92

प्रकरण स्वमेव निगरानी में लिया जाकर पंजीबद्ध किया गया। अनावेदक को कारण बताओ नोटिस जारी की गई। अनावेदक द्वारा जवाब प्रस्तुत। उसके द्वारा अपने जवाब में बताया गया है कि प्राप्त भूमि पर अनावेदक मकान बनाकर निवास करता आ रहा है। अनावेदक द्वारा अन्य किसी व्यक्ति को विक्रय नहीं किया गया है। अधीनस्थ न्यायालय के प्रकाश का अवलोकन किया गया। अधीनस्थ न्यायालय द्वारा ख० नं० 216/1 ड जो कि छोटे का जंगल के रूप में दर्ज है का व्यवस्थापन किया गया है। हल्का पटवारी द्वारा प्रतिवेदित किया गया है कि अनावेदक भागवत पिता बृजलाल विश्वकर्मा, जगदलपुर का निवासी है तथा ग्राम बड़ेमारंगा में उनके नाम पर भूमि अभिलेख में दर्ज नहीं था। छोटे झाड़ के जंगल की भूमि का व्यवस्थापन के आदेश शासन से नहीं थे। पटवारी प्रतिवेदन से स्पष्ट है कि अनावेदक जगदलपुर का निवासी है। अधीनस्थ न्यायालय द्वारा छोटे झाड़े के जंगल की भूमि का व्यवस्थापन किया गया है, जो कि उसके अधिकारिता के बाहर है। छोटे झाड़ की जंगल की भूमि के व्यवस्थापन के आदेश चूंकि शासन से नहीं थे अतएव राजस्व निरीक्षक निर्णय समिति द्वारा अधीनस्थ न्यायालय प्र०क्र० 84/अ-68/75-76 में ख०नं० 216/15 रकबा 1.72 एकड़ भूमि का व्यवस्थापन आदेश नियमानुसार न होने के कारण निरस्त किया जाता है। तदनुसार पटवारी अभिलेख में सुधार हो। अनावेदक से ऋण पुस्तिका प्राप्त कर नायब तहसीलदार जमा करावें। प्रकरण में भूमिहीनों को आबंटन की कार्यवाही की जावे। प्रकरण नस्ती होकर दाखिल दफ्तर हो।

सही/-

अनुविभागीय अधिकारी (रा)

जगदलपुर

12. It appears from the aforesaid order that the Sub-divisional Officer (Revenue), Jagdalpur has exercised suo moto revisional jurisdiction and revoked the order passed by the Naib Tahsildar granting patta in favour of the plaintiff, however, Section 50(i) of the Chhattisgarh Land Revenue Code, 1959 provides as under :-

"50. Revision. - the Board or the Commissioner of the [Settlement Commissioner or the Collector or the Settlement Officer] may at any time on its/his motion or on the application made by any party for the purpose of satisfying itself/himself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it/him call for, and examine the record of any case pending before, or disposed of by such officer, any may pass such order in reference thereto as it/he thinks fit:

Provided that -

[(i) no application for revision shall be entertained-

(a) against an order appealable under this Code;

(b) against an order of the Settlement Commissioner under Section 210;

(c) against an order passed in revision by the Commissioner or the Settlement Commissioner in respect of cases under Section 170-B, nor shall any such order be revised by the Board on its own motion];"

13. A careful reading of the aforesaid provision would show that the power of revision under the provisions of the Chhattisgarh Land Revenue Code has been conferred only upon the Board of

Revenue or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer. No such power of revision has been conferred upon the Sub-divisional Officer (Revenue) and in view of that, both the trial Court as well as the first appellate Court have held that suo moto revisional jurisdiction could not have been exercised by the Sub-divisional Officer and accordingly proceeded to declare the order dated 16/01/1992 passed by the Sub-divisional Officer as well as the order dated 08/08/1994 (Ex. P/4) passed by the Commissioner affirming the order of the Sub-divisional Officer as void. As such, in view of Section 50(i) of the Chhattisgarh Land Revenue Code, the Sub-divisional Officer (revenue), Jagdalpur did not have the jurisdiction to exercise the power of suo moto revision and in that view of the matter, both the Courts below have rightly declared the order passed by the Sub-divisional Officer as void. I do not find any merit in the argument of learned counsel for the appellant/defendant No. 4 in this regard. Accordingly, substantial question of law No. 1 is also answered in favour of the plaintiff and against defendant No. 4.

14. As a fallout and consequence of the aforesaid legal discussion, the second appeal, being devoid of merits, deserves to be and is hereby dismissed.

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet