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**(2019) 02 CHH CK 0209**

**Chhattisgarh High Court**

**Case No:** Second Appeal No. 478 Of 2004

Bharat And Ors

APPELLANT

Vs

Anand And Ors

RESPONDENT

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**Date of Decision:** Feb. 14, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 100

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** B.D. Guru, R.N. Pusty, Vimlesh Bajpai

**Final Decision:** Dismissed

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### **Judgement**

Sanjay K. Agrawal, J

1. The substantial questions of law involved, formulated and to be answered by this Court in this second appeal preferred by the defendants are as

under:-

1. Whether the finding in relation to ownership and possession of the plaintiff is perverse ?

2. Whether the valuable documentary evidence like exhibit D-1 and D-2 have been ignored by the Courts below and wrong finding in relation to possession has been recorded ?

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and raking given in the suit before the trial Court]

2. The plaintiffs filed a suit for declaration of title, possession and permanent injunction in respect of the suit land situated at village Banora stating

inter-alia that their ancestor Sukha was owner and in possession of the suit land on the strength of parcha patta dated 1.1.1927 (Ex.P/1). After his death, the plaintiffs' father and thereafter the plaintiffs became owner and came in possession of the suit land, which is sought to be interfered with by the defendants. Therefore, the plaintiffs sought declaration of title and in alternative, relief of possession.

3. The defendants filed their written statement denying the plaint allegations stating inter-alia that they are in possession of the suit land on the basis of purchase from Bali Singh, Goutia of village Banora and they are in possession since the days of their ancestor Punau and their names were also recorded in revenue records, as such, the suit deserves to be dismissed.

3. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 31.1.2004, decreed the suit.

On appeal being preferred by the defendants, the First Appellate Court affirmed the judgment and decree passed by the trial Court. Questioning

legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed

by the appellants/defendants, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.

4. Mr.B.D.Guru, learned counsel for the appellants/defendants, would submit that the two Courts below are absolutely unjustified in decreeing the suit

of the plaintiffs by recording a finding, which is perverse and contrary to record with regard to ownership and possession ignoring the documents

Exs.D/1 and D/2 i.e. khasra panchashala and Form B-1 i.e. kistabandi khatouni.

5. On the other hand, Mr.R.N.Pusty, learned counsel for respondents No.1 to 4, would submit that concurrent finding recorded by two Courts below is

a finding of fact based on evidence available on record.

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

7. The trial Court has clearly recorded a finding that parcha patta (Ex.P/1) was granted in favour of the plaintiffs' ancestor by the competent authority,

which is also apparent from misal bandobast (Ex.P/2) for the year 1925-26 and the defendants have failed to establish that they have purchased the suit land from Bali Singh, Goutia of village Banora as they have not produced any document of sale- purchase from said Goutia Bali Singh and said finding has been affirmed by the First Appellate Court.

8. Exs.D/1 and D/2 are said to have been ignored by the First Appellate Court. Ex.D/1 is a copy of khasra panchashala for the year 1985-86 to 92-93.

Merely on the basis of revenue entries for few years, it cannot be held that the defendants are title-holders of the suit land, particularly they have claimed their title on the basis of purchase from Bali Singh, but they have not produced copies of sale deeds alleged to have been purchased from Bali Singh. Likewise, Ex.D/2 is a copy of Form B-1 for the year 1993-94, again it is stray entry for one year, by which it cannot be held that the defendants are title-holders of the suit land.

9. The Supreme Court in the matter of Bhimabai Mahadeo Kambeker (D) Th. LR v. Arthur Import and Export Company and others 2019 SCC

OnLine SC 99 has held that mutation of a land in the revenue records does not create or extinguish the title over such land. It was observed as under:-

8. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarn (Smt.)

v. Inder Kaur, (1996) 6 SCC 223, Balwant Singh v. Daulat Singh (dead) by L.Rs., (1997) 7 SCC 13 7and Narasamma v. State of Karnataka, (2009) 5 SCC 591).

10. Thus, on the basis of above-stated analysis, I am of the considered opinion that both the Courts below have taken correct view that the defendants

have failed to establish the purchase of the suit land from Bali Singh, Goutia of village Banora, which is a finding of fact based on evidence available

on record, in which I do not find any perversity or illegality. The substantial questions of law is answered in favour of the plaintiffs and against the defendants.

11. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

12. A decree be drawn up accordingly.