

(2019) 08 CHH CK 0222
In the Chhattisgarh High Court
Case No : First Appeal No. 101 Of 2004

Madho Singh And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 96
Chhattisgarh Land Revenue Code, 1959 — Section 248

Citation : (2019) 08 CHH CK 0222

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Amrito Das, Raghvendra Verma

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 20.01.2004 passed by Second

Additional District Judge, Durg (C.G.) in Civil Suit No. 22A/2002, wherein the said court dismissed the suit filed by the appellants for title and

possession and for restraining the respondent from interfering possession of the appellants regarding land bearing Survey No. 468/01 & 468/02 area

admeasuring 2 acres situated at Village- Purai, Patwari Halka No. 67/29, Tahsil & District- Durg (C.G.).

2. As per the appellants, they belonged to Jamidar Family and their ancestor namely Dashrath Singh was in possession of the land bearing Survey No.

468/01 & 468/02 since 1929-30. After promulgation of Panchayati Raj Adhiniyam, Gram Panchayat- Purai came into existence. The Panchayat

wanted to construct its cultural building on the new Survey No. 762 including

Survey No. 468/01 & 468/02 also. The Sarpanch applied for the land and it was allotted to Panchayat for construction of community centre. As, the Gram Panchayat encroached the land in question and constructed the cultural building, the suit was filed which was dismissed by the trial court as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) The property in question was ancestral property and their ancestors were Malgujar and they were in possession of the property in question.

(ii) The land in question is recorded as Aabadi land as per Ex. P/1, but the Tahsildar proceeded for eviction in the year 1997 and evicted the appellants which is not proper, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State/respondent submits that the appellants were not in possession in the land since long and proceeding under Section 248 of the Chhattisgarh Land Revenue Code, 1959 is initiated against the appellants because their possession was unauthorized and they were evicted from the land in question. Now the land is recorded as Government Aabadi land, therefore, no relief can be granted to the appellants.

5. Madho Singh (PW-1), Kallu Yadav (PW-2), Khorbahara Das (PW-3) and Devdutt Singh (PW-4) deposed before the trial court that the appellants were in possession of the land because their ancestors were Malgujar. Contrary to that Patwari- Nandeshwar Prasad Sahu (DW-1) deposed that the land in question is recorded as Aabadi Land and it is Government Aabadi land. He further deposed that one community centre is constructed over the land and the appellants were never in possession of the said land. Version of this witness is supported by document Ex. D/1 to D/3.

6. The suit was filed on 03.04.1997 and as per record, the land was Government land at that time. When the land was Government land, title of the appellants cannot be ascertained by the record prevailing at the time of filing the suit. The appellants are basing their claim on Khasra entries of the year 1932-33, but the same is not conferred any right on the appellants over the property because it is a document for collection of land revenue, therefore, the trial court is right in holding that the title of the appellants cannot be declared and relief of possession cannot be awarded to them as the property is Government land. Argument advanced on behalf of the appellants is

not sustainable.

7. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of the respondents on the following

terms and conditions:-

(i) The appeal is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

Â (iv) A decree be drawn accordingly.