2025:CGHC:61964

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 16.10.2025

Judgment Delivered on 22.12.2025

Judgment Uploaded on 22.12.2025

SA No. 221 of 2014

1 - Banmali Kumar (Died) through LRs:

(i) - Ashok Kumar S/o Late Banmali, Aged About 73 Years

(ii) - Kanchna D/o Late Banmali, Aged About 60 Years

(iii) - Sulochna D/o Late Banmali, Aged About 58 Years

(iv) - Sanyogita D/o Late Banmali, Aged About 56 Years

All are R/o Sankra, Tahsil Pithora, District Mahasamund Chhattisgarh.

... Appellant (s)

versus

1 - Vasudeo S/o Late Chamara Sanwara Aged About 63 Years Since Deceased, Through- LRs: -

A. Kampani, Age- 45 Yrs, S/o Late Vasudeo Sanwara, R/o Village Savitripur, Tah. Pithora, Civil And Revenue Distt. Mahasamund, Chhattisgarh

B- Pavitra D/o Late Vasudeo Sanwara, W/o Makardhwaj Sanwara Aged About 35 Years, R/o Memari (Parra Pot), Tah. Basna, Civil And Revenue Distt. Mahasamund C.G.

C - Uttara D/o Vasudeo Sanwara W/o Hari Sanwara Aged About 27 Years, Cultivator of Village Gadhabhala, Tah. Basna,Civil And Revenue Distt. Mahasamund C.G.

2 - Ghasiram S/o Late Dukalu Gond Aged About 60 Years

3 - Dasiram S/o Late Dukalu Gond Aged About 55 Years

4 - Fagulal S/o Late Dukalu Gond Aged About 40 Years

5 - Dutiya D/o Late Dukalu Gond Aged About 58 Years

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6 - Basanta D/o Late Dukalu Gond Aged About 47 Years

Resp. No. 2 to 6 by occupation cultivators, R/o Village Savitripur, P.C.No. 38, R.I. Circle- Sankara, Tah. Pithora,Civil And Revenue Distt. Mahasamund C.G.

7 - Jogi Ram S/o Late Sukhru Gond Aged About 50 Years

8 - Sukhiram S/o Late Sukhru Gond Aged About 35 Years

9 - Chinta Bai D/o Late Sukhru Gond Aged About 63 Years

10 - Smt. Budhwa Wd/o Late Sukhru Gond Aged About 77 Years

Cultivator R/o Dhabakhar, Cultivator Of Village- Savitripur, P.C.No. 38, R.I. Circle- Sankara, Tah. Pithora, Civil and Revenue District : Mahasamund, Chhattisgarh

11 - State Of Chhattisgarh Thru- The Collector, Mahasamund, Civil and Revenue District : Mahasamund, Chhattisgarh

... Respondent(s)

For Appellant (s)	:	Mr. S.A. Ansari, Advocate
For Resp. No. 1 to 10	:	Mr. R.S. Patel, Advocate
For Resp. No.11/State	:	Mr. Kishan Sahu, Dy. Govt. Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

CAV Judgment

1. This appeal is filed by the appellant/defendant challenging judgment and decree dated 14.05.2014 passed by learned Second Additional District Judge, Mahasamund (CG) in Civil Appeal No. H-29/2014 whereby first appeal filed by respondents/plaintiff against judgment and decree dated 06.02.2008 passed in Civil Suit No.36-A/2006 has been allowed.

2. Facts relevant for disposal of this appeal are that respondents/plaintiffs filed a civil suit for declaring the order passed by Board of Revenue

dated 31.10.1995 and its compliance order passed by Tahsildar vide order dated 10.04.2002 to be null and void. It was the case of plaintiff that according to the order passed on 31/08/1972, government patta was allotted to Chamra son of Sadhvo Saura, Dukalu son of Panka Gond and Sukhru son of Bisahu Gond of the land situated in village Savitripur P. H. No. 38 Tehsil and District Mahasamund, old Khasra No. 110/2, 110/3, 110/4 measuring 2.043 hectare, 3.033 hectare and 1.878 hectare respectively. After mutation, their names were recorded in revenue records. Thereafter, as per the order of the Revenue Department of the Government of Madhya Pradesh (now State of Chhattisgarh) and the order of the Collector Raipur under the Twenty Points Program, land of government patta was given in the bhoomiswami rights. Accordingly, their names were recorded in the revenue records as land owner/bhoomiswami. Chamra is dead, plaintiff No.1 Vasudev is his son. Similarly, Dukalu is dead and plaintiffs No. 2 to 7 are the legal heirs of Dukalu. Sukhru is also dead and plaintiffs No. 8 to 11 are the legal heirs of Sukhru. After getting patta, above lands have been made fertile and useful by the patta holders and his successors i.e. the plaintiffs by expending huge amount on it. They were peacefully occupying the land since the year 1972. No objection was raised by the defendants or any other person at the time of granting patta of the land or thereafter. The defendants were aware of the ownership of plaintiffs and allotment of the above lands. Despite that, defendant No.1 filed an application under Section 57(2) of the Madhya Pradesh (now Chhattisgarh) Land Revenue Code, 1959 in the Court of the Sub-Divisional Officer, Mahasamund in respect of the land

situated at village Savitripur, old kh. No. 110, measuring 33.44 acres. That application came to be dismissed. After dismissal of application under Section 57(2) of the Land Revenue Code, defendant No.1 took recourse to remedy of filing first appeal before Additional Collector, Raipur and thereafter second appeal before Additional Commissioner, Raipur where plaintiffs or their father were not made parties. Upon dismissal of appeals filed by defendant No.1, subsequently, he filed a Revision Case No. 151-A/87 (Banmali Kumar vs. Government of Madhya Pradesh) before the Board of Revenue, Madhya Pradesh, Gwalior, in which final order was passed on 31/10/1995. In the said revision case also, plaintiffs or their father were not made parties. In the order passed by Board of Revenue on 31/10/1995, Tehsildar, Mahasamund was directed to transfer the above land bearing Khasra No. 110 in the name of defendant No.1. Defendant No.1 has obtained the said order in his favour by playing fraud and the order affecting the rights and privileges of the plaintiffs has been passed by the Revenue Board without any notice or knowledge of plaintiffs, and therefore it is against the principle of natural justice and is not binding on the plaintiffs. Patta granted to the plaintiffs' ancestors has not been declared ineffective by any Court or competent authority, hence all the rights and title under the said patta still exist.

3. Defendant No.1/appellant submitted a detailed counterclaim denying all material facts and further pleaded that Khasra Nos. 110, 111, 112, and 113 were purchased from the village maalgujar Vasudev in the year 1927. Except for Khasra No. 110, remaining land was registered

in the landownership rights of defendant No. 1. Defendant No.1 and his ancestors were the owners and occupants of the old Khasra No. 110 since its inception. Therefore, government had no right to distribute patta of the said land to others. State government had lost the case before Board of Revenue and they have not filed any proceeding under Section 57(3) of the Land Revenue Code, therefore, defendant No. 1 has acquired ownership rights of khasra No. 110. It was pleaded that the plaintiffs' claim be dismissed with costs as it is barred under Section 257 (f) of the Land Revenue Code and the suit filed is beyond the period of limitation.

4. No written statement has been submitted by the defendant No.2/ State Government.

5. Learned trial Court after considering oral and documentary evidence available on record, dismissed the suit of the respondent/plaintiff. Judgment and decree passed by learned trial Court was put to challenge in first appeal file under Section 96 of CPC wherein judgment and decree of trial Court was set aside and suit was decreed in favour of plaintiffs/respondents herein which is under challenge in this appeal.

6. Learned counsel for the appellants/defendant would submit that learned First Appellate Court illegally reversed the well reasoned finding of learned trial Court dismissing the suit on the ground that Civil Court has no jurisdiction to entertain the suit in view of relief claimed therein. He contended that plaintiffs in their plaint have sought relief of

declaring the order passed by Board of Revenue dated 31.10.1995 and its compliance order passed by Tahsildar vide order dated 10.04.2002 to be null and void. He contended that order of Board of Revenue against which relief is sought for, was passed in the proceeding of an application filed by defendant /appellant under Section 57 (2) of the MP (now CG) Land Revenue, 1959. He submits that land bearing kh. no.110 measuring 33.44 acres of land is owned by him and was also recorded in the revenue records. However, inadvertently due to mistake at the time of settlement, it was recorded as government land (जंगल झाड़). After coming across the said wrong entry made at the end of State, modifying/altering entry of revenue record, and entering the name of State Govt., he filed an application under Section 57 (2) of the Land Revenue Code before Sub Divisional Officer. Application filed before the Sub Divisional Officer was dismissed which was challenged before the Commissioner, Raipur Division, Raipur, which also came to be dismissed and thereafter revision was filed before the Board of Revenue. Board of Revenue vide its order dated 31.10.1995 (Ex.D-4) allowed the revision and ordered that disputed land out of kh. no. 110, 111, 112, 113 leaving apart kh. no.110, applicant therein has been held to be having title over the land bearing kh. no. 111, 112, 113 and further recorded that mutation of the name of applicant therein be done in his favour on land bearing kh. no.110. Plaintiffs have not claimed any relief of declaration of title in suit but for declaring order of revenue authorities to be null and void. He contended that against the order passed under Section 57 (2) or amending or correcting revenue entries made therein, suit is not maintainable. In support of his contention, he

referred to provision under Section 57 and Section 257 of Land Revenue Code. In support of his contention he places reliance upon the decision of Hon'ble Supreme Court in case of **Dhulabhai & Ors. Vs. The State of Madhya Pradesh and Anr.** (AIR 1969 SC 78) and decisions in case **Ganga Bai Vs. Alal & Ors.** (1967 RN 54 (CN 9), **Rameshwar Ram Vs. Dwarikaram** (2017) 2 CGLJ 146.

7. On the other hand, learned counsel for respondent/plaintiff supports the impugned judgment and would submit that learned First Appellate Court took note of the fact that land was given to respondents on patta in the year 1972-73. Proceedings under Section 57 of the Land Revenue Code was filed subsequent thereto. However, defendants have not been arrayed as party. He also contended that learned appellate Court upon appreciation of pleadings, evidence available on record has rightly come to conclusion that provision under Section 257 (f) of the Land Revenue Code will not be applicable to the facts of case which cannot be said to be erroneous finding. In the proceedings under Section 57 (2) of the Land Revenue Code, private defendants were not arrayed as party non-applicant therein and therefore also learned first appellate Court justified in observing that provision under the Chhattisgarh Land Revenue Code would not apply. There is no error or infirmity in the order passed by learned First Appellate Court and appeal be dismissed.

8. I have heard learned counsel for the parties and also perused the records of both the Courts.

9. This second appeal was admitted for hearing on following substantial questions of law:

> **“**1. Whether declaratory suit can be filed for declaration of illegality of order passed by Revenue Authorities/Naib Tahsildar/Board of Revenue ?
>
> 2. Whether decree of illegality and voidness of order passed by Board of Revenue in Revision Case No.151- ,d /87 (Banmali Kumar Vs. State of Madhya Pradesh) on 31.10.1995 and order passed by Naib Tahsildar, Pithora in Revenue Case No.6/v6/97-98 on 10.04.2002 are illegal ?**”**

10. Perusal of plaint would show that plaintiff/respondents No. 1 to 10 have sought a relief that order dated 31.10.1995 passed by Board of Revenue, Gwalior, Madhya Pradesh in Case No.151/1/87 and consequential order passed by Tahsildar dated 10.04.2002 be declared as null and void and further to pass judgment in favour of plaintiffs and against defendant. In the suit, plaintiffs in categorical terms, have pleaded that the land subject matter of suit were allotted to their ancestors on patta by virtue of order passed by SDO (R) Mahasamund in Revenue Case No137-A/19 Year 1971-72 vide order dated 31.08.1972. After allotment of land on patta by competent authority, name of plaintiffs were also mutated in revenue record vide order dated 30.01.1977 . It is also case of plaintiffs that by virtue of order passed by the State Govt. dated 06.01.1984 and order of Collector Raipur dated 06.07.1984 they were allotted patta of the same land under Bhumi-swami rights and accordingly mutation has taken place. After allotment of patta in favour of ancestors of plaintiffs/respondents, defendant filed

an application under Section 57 (2) of the Code of 1959 before SDO (R) Mahasamund, claiming right and title over land bearing kh. no.110 also which is subject matter of civil suit, on the ground that father of applicants has purchased the land in the year 1927 from maalguzar and came in possession. However in the year 1966 erroneously name of State Govt. is recorded on the land possessed by applicants therein including the land subject matter of civil suit bearing land kh. no.110. Application submitted before SDO(R) came to be dismissed. Appeal preferred before the Collector and Commissioner also came to be dismissed.

11. Against order of Commissioner dismissing second appeal filed by applicant he preferred revision under Section 50 of the Code of 1959 before Board of Revenue Gwalior, M,P, which was decided on 31.10.1995. Board of Revenue considering that there was a sale deed executed in favour of Kashiram father of applicant therein on 14.04.1927 which is about 57 years old and therefore under provision of Section 90 of the Indian Evidence Act, document can be accepted in evidence holding applicant having title, allowed the revision, set aside the orders of three Courts and directed Tahsildar, Mahasamund to mutate the land bearing kh. no.110 in name of applicant therein.

12. It is important to note hear that patta of land bearing kh. no.110 was allotted to ancestors of plaintiffs in the year 1972, their names were also mutated in revenue record in the year 1977 pursuant to order passed by competent authority. But, when the appellant/defendant filed application under Section 57 (2) before SDO (R) in the year 1983-84,

ancestors of plaintiff or plaintiffs who were in possession of land subject matter of proceedings in application under Section 57 (2) of code of 1959 were not impleaded as party non-applicants in proceedings under Section 57 (2) of the Code of 1959. Applicant therein/appellant/defendant has impleaded only the State as non-applicant. Before the Board of Revenue also, plaintiffs/patta holder since 1972 of the land subject matter of proceedings, were not impleaded as party and therefore they were not noticed and no opportunity of hearing was granted to them, as such, order of Board of Revenue, observing that applicant therein is a title holder of land and therefore his name be mutated, is in violation of principles of natural justice, without following due procedure of law. When persons who are going to be affected by any order passed by any of authority, the minimum requirement under the law is that, they are to be given opportunity of being heard.

13. Another flaw in the order of Board of Revenue is that revenue Courts like SDO (R), Collector and Commissioner came to conclusion that grounds pleaded in the application raises title dispute and therefore remedy available to applicant therein can be decided in appropriate civil suit and have advised the applicant therein to take recourse to civil law. Document Ex.D-1 based upon which defendant/appellant before the Board of Revenue has claimed that sale deed is executed on one rupee stamp paper on 14.04.1927. Document Ex.D-1, from its face, is clearly appearing that it is an un-registered document. Total land which is stated to have been sold is mentioned as 46.29 acres of land and total consideration amount is mentioned as Rs.140/-.

14. According to provision under Section 17 of the Registration Act, 1908, transfer of any immovable property by sale having its value more than Rs.100/- has to be registered compulsorily. As the document Ex.D-1 stated to have created right in favour of father of defendant, its registration was mandatory. No title can be transferred by an un-registered document executed under the head of sale deed.

15. Hon'ble Supreme Court in case of **Meghmala & Ors. vs G.Narasimha Reddy & Ors** (2010) 8 SCC 383, observed that a registered sale deed alone confers valid title, sale agreement does not create any valid title. In case of **Yellapu Uma Maheswari & Anr vs Buddha Jagadheeswararao & Ors** (2015) 16 SCC 787, observed that document affecting relinquishment of right in respect of immovable property requires compulsory registration.

16. Now, in aforementioned facts of case, it is to be considered whether judgment and decree passed by learned First Appellate Court decreeing the suit filed by plaintiff declaring the order dated 31.10.1995 passed by Board of Revenue and consequential order of Nayab Tahsildar dated 10.04.2002 to be illegal and void and the suit will not fall within purview of Section 257 (f) of the Code of 1959.

17. Section 257 of the Code of 1959 talks of exclusive jurisdiction of revenue authorities, which reads as under.

> **"257**. Exclusive jurisdiction of revenue authorities.- Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which

the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :-

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) x x x

(f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended."

x x x

x x x

x x x

18. In view of submission made by learned counsel for the appellant that Civil Suit is barred under provision of Section 257 (f) of the Code of 1959, question arises for consideration of this Court, as to whether the bar as created under the Code of 1959 would be an absolute bar or whether in some exceptional circumstances order passed by Board of Revenue can be challenged by way of filing civil suit.

19. In case of **Dhulabhai** (supra) constitution bench of Hon'ble

Supreme Court while considering the bar as created under Section 9 of Civil Procedure Code 1908 observed that "*Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must beheld to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure*" .

20. Section 57 of the Code of 1959 talks of State ownership in all lands, relevant portion of which is extracted below for ready reference:

> **"57. State ownership in all lands--(1)** All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government:
>
> Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.
>
> (2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the [Collector].
>
> (3) [*omitted*]
>
> (3-a) (a) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), no civil Court shall, in a civil suit instituted under sub-section (3) on or after 24th October, 1983, by order of temporary injunction disturb the

person to whom possession is restored under Section 250 if such person furnishes a reliable surety to recompensate the aggrieved party against any loss in case the Civil Court grants a decree in favour of the aggrieved party:

Provided that no surety shall be required to be furnished by a member of a tribe declared to be an aboriginal tribe under Sub-section (6) of Section 165;

(b) Where a civil Court by an order of temporary injunction disturbed the person referred to in clause (a) on or after 24th October, 1983, but before the publication of Revenue Department's Notification No. 1-70-VII-N-2-83, dated 4th January, 1984, such order shall abate on such publication and the Tehsildar shall restore possession to a person who is disturbed by such order.

(4) [*omitted*]

21. Under proviso to sub section (1) of Section 57 it is specifically provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property and sub-Section (2) deals with the dispute arises between State Govt. and any person in respect of any right under sub-section (1).

22. In the facts of case, as discussed above, it is clear that defendant and applicant before the revenue authorities was claiming his right and title based on the document Ex.D-1 stating it to be sale deed by which his father purchased the property. Perusal of document Ex.D-1 would show that it is an un-registered document. Under provision of Section 17 of the Registration Act, 1908, no title can be transferred through an un-registered document where the registration is made mandatorily.

Application could have been filed by the defendant only when the right is claimed based on some document admissible in evidence and creates his right even by way of transfer of property and not to any other person. Further, the land was recorded in revenue records as Govt. land. Khasra *panchshala* of the year 1966-67 onwards, which is placed on record, mentions the land kh. No.110 as Govt. land. Thereafter in year 1972, land subject matter of suit and proceedings before the revenue authority, was allotted to plaintiffs' ancestors under patta by order of competent authority i.e. SDO (R) and further, their name were also mutated in revenue record by order of authority under the Code of 1959. However ancestors of plaintiff or the plaintiffs were not arrayed as party non-applicants in the proceedings before the revenue authority.

23. In the aforementioned facts of case, proceedings initiated before the revenue authorities is not in conformity with the fundamental principles of judicial procedure as the persons who are having right and possession over the land subject matter of proceedings under Section 57 (2) before the authority have not been impleaded as party non-applicants even when their rights are going to be affected if application filed under Section 57 (2) of the Code of 1959 is to be allowed in favour of applicant therein and therefore in that facts of case Civil Court, in view of decision of Hon'ble Supreme Court in case of **Dhulabhai** (supra), can consider the correctness of decision/order of revenue authorities.

24. The Board of Revenue while setting aside the order of SDO (R),

Collector and Commissioner whereby the applicant therein was relegated to civil jurisdiction, had allowed revision treating un-registered sale deed to have created title on the father of applicant therein which is also not in conformity with the fundamental principles of judicial procedure. It was for the applicant therein to first get his title declared based on document Ex.D-1, which can be only by civil Court of competent jurisdiction and not by revenue Courts .

25. Learned First Appellate Court has considered the above aspects and in para-42 has considered that no documentary evidence has been placed in record to show that based on Ex.D-1 un-registered sale deed, name of father of applicant therein/defendant was recorded in revenue records and further considered the admission of defendant in para-15 of his evidence that he has not placed in record the mutation entry with regard to kh. no.111, 112 and 113. In revenue records of 1966-67, 1967-68, kh. No.110 is recorded as "*Bade Jhad Ka Jangal*". It it is not proved that on the date of execution of said un-registered sale deed by Vasudev in favour of father of defendant, seller is having any right or title over disputed property and therefore according to settled law no better title can be transferred by a person which he is having on any property. Board of Revenue by its order Ex.D-4 has overlooked important facts and also the law applicable to it and passed the order.

26. In the aforementioned facts of case and decision of Hon'ble Supreme Court in case of **Dhulabhai** (supra), the *firs*t substantial question of law formulated by this Court is decided in *affirmative* and *second* question

of law in *negative*. Both the questions of law are decided against the appellant.

27. For the foregoing discussions, I do not find any infirmity or illegality in the impugned judgment and decree passed by learned First Appellate Court, that suit will not fall within purview of Section 257 (f) of Code of 1959, declaring the order of Board of Revenue dated 31.10.1995 and subsequent order of Tahsildar dated 10.04.2002 to be illegal and void. Accordingly, judgment and decree passed by learned First Appellate Court is hereby affirmed and appeal filed by the appellant/defendants is dismissed.

28. No order as to cost.

29. Let a decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Praveen