



2025:CGHC:38576

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 22 of 2004

1 - Baldau Prasad (Died And Deleted) Through Legal Heirs In Compliance Of Honble Court Order Dated 30-08-2024 And 15-10-2024.

1.1 - (A) Jugal Kishore Kesharwani, S/o Late Baldau Prasad Kesharwani Aged About 64 Years R/o 15 Mahatma Gandhi Ward No. 6, Shivrinarayan, (Nagar Panchayat) Navagarh, Janjgir Champa, Chhattisgarh.

1.2 - (B) Soumya Siddharth Kesharwani S/o Jugal Kishore Kesharwani, Aged About 45 Years R/o Village Shivrinarayan, 15 Mahatma Gandhi Ward No. 6, Shivrinarayan, (Nagar Panchayat) Janjgir Champa, Chhattisgarh. 49557.

2 - Deleted Dau Prasad As Per Honble Court Order Dated 28.03.2017, Chhattisgarh

3 - Deleted Satnarayan As Per Honble Court Order Dated 28.03.2017, Chhattisgarh

4 - Deleted Om Prasad As Per Honble Court Order Dated 28.03.2017, Chhattisgarh

5 - Deleted Gayatri Bai As Per Honble Court Order Dated 28.03.2017, Chhattisgarh

6 - (Deleted) Kamla Bai As Per Honble Court Order Dated 22-02-2019.

7 - (Deleted) Ratna Bai As Per Honble Court Order Dated 22-02-2019.

... Appellant(s)

versus

1 - State Of Chhattisgarh Through Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh Defendant, Chhattisgarh

... Respondent(s)

For Appellants	:	Mr. Vivek Kumar Tripathi, Advocate
For Respondent/State	:	Mr. Topilal Bareth, P.L.

Hon'ble Shri Justice Rakesh Mohan Pandey

Judgment On Board

04-08-2025

1) Appellants/plaintiffs have preferred this second appeal under Section 100 of CPC assailing the judgment and decree passed by the learned Second Additional District Judge (FTC), Janjgir-Champa, in Civil Appeal No. 1-A/2003 dated 12.12.2003 whereby the civil appeal preferred by the appellants was dismissed and the judgment and decree passed by the learned civil court was affirmed.

2) This appeal was admitted for hearing vide order dated 08.10.2014 on the following substantial question of law:-

“Whether the findings arrived at by the two Courts below in respect of accepting mutation of the suit property in the name of defendant/ respondent, is perverse or not, particularly when there was no documentary evidence to show that there was a gift deed executed by the grand father of the plaintiffs gifting the said suit property to the defendant/ respondent?”

3) Facts of the present case are that the original plaintiff, namely Jagannath Prasad, filed a suit for declaration of title, possession and permanent injunction pertaining to Khasra No. 622/1 ad-measuring 3.36 acres and Khasra No. 622/2 ad-measuring 5.00 acres situated at Village–Mahatpara, Tehsil–Shivrinarayan, District–Janjgir-Champa (C.G.) inter alia on the ground that the suit property, i.e. survey no. 622/2 admeasuring 5.00 acres was recorded in the name of his father, namely Prayag Prasad alias Pargariha, and he was in its possession.

4) In the plaint, it was pleaded that the Tehsildar, Shivrinarayan, without affording opportunity of hearing to the original plaintiff, entered the name of “Higher Secondary School, Shivrinarayan–School Education Department, State of Madhya Pradesh” in the revenue records against Khasra No. 622 ad-measuring 5 acres and deleted the name of the

original plaintiff. It was further pleaded that the original plaintiff came to know about such amendment in the revenue records on 06.06.1989, and he was informed that the order of mutation was passed on 05.12.1973 vide Mutation Order No. 143 by the Tehsildar, Shivrinarayan. Thereafter, the original plaintiff preferred an appeal before the SDO(R), Janjgir on 20.09.1989 wherein he took a plea that no gift-deed was executed by his father, namely Prayag Prasad alias Parganiha, in favour of the State. The plaintiff further pleaded that the stand of the State that the suit property was gifted by the father of the original plaintiff to the State Government in the year 1962 for the construction of a school, and it was accepted by the State on 20.07.1973, is baseless. In para-8 of the plaint, the original plaintiff has admitted the fact that there was a proposal on the part of Prayag Prasad alias Pargariha to construct a school over the suit property, which would be named after Jagannath Prasad Kesharwani, but that condition was not fulfilled; therefore, the title was never transferred in favour of the respondent-State. Appeal preferred by the original plaintiff was dismissed by the SDO(R), Janjgir, vide order dated 17.09.1991 on the ground that the order of mutation was passed in Revenue Case No. 76-B/121/72-73 and the same was never challenged. It is pleaded that the date of the cause of action was 17.09.1991.

- 5)** The written statement was not filed by the defendant-State. Learned trial Court framed issues, parties led evidence, and the learned trial Court vide judgment and decree dated 30.04.2002, dismissed the suit. Legal representatives of Jagannath Prasad preferred a first appeal before the learned first appellate Court, and it was also dismissed vide judgment and decree dated 12.12.2003.

- 6)** Learned counsel for the appellants submits that the defendant-State failed to file a written statement, and evidence was also not adduced. He further submits that the alleged gift deed was never produced before the Courts below to substantiate the fact that the suit property was gifted by Prayag Prasad alias Pargariha to the State Government for the construction of a school. He contends that the revenue entries made in favour of the respondents do not confer any right or title in the absence of proof of a valid gift deed. He further contends that the alleged gift-deed was never executed according to the provisions of Sections 122 and 123 of the Transfer of Property Act, 1882 and the gift-deed is valid only if it is made voluntarily and without consideration, by one person to another and accepted by or on behalf of other person and such acceptance shall be within the lifetime of the owner. He argues that the essential ingredients of the gift-deed have not been proved by the defendant-State before the learned trial Court, but the learned trial Court, without there being any valid pleading in this regard, dismissed the suit and thereafter, the first appeal was also dismissed. He prays to set aside the judgment and decree passed by the learned Courts below.
- 7)** On the other hand, the learned counsel appearing on behalf of the defendant/State submits that the plaintiffs have not challenged the order passed by the Tehsildar, Shivrinarayan and the SDO(R), Janjgir in the instant civil suit. He further submits that there is an admission in the plaint to the effect that there was a proposal to gift the suit property for the construction of a school building and such offer was accepted by the State Government. He prays that this appeal deserves to be dismissed.

- 8)** Heard learned counsel for the parties and perused the record.
- 9)** Perusal of the record would show that Mutation Order No. 143 was passed way back on 05.12.1973, whereby the suit property was recorded in the name of “Higher Secondary School, Shivrinarayan– School Education Department, State of Madhya Pradesh”. Thereafter, the proceeding for mutation was initiated through Revenue Case No. 76-B/121/72-73 in the Court of the Naib Tehsildar, Shivrinarayan. Plaintiffs challenged the said order by filing an appeal before the SDO(R), Janjgir. In the appeal, the plaintiffs challenged the Mutation Order No. 143 only, but failed to challenge the order passed in Revenue Case No. 76-B/121/72-73; therefore, the appeal was dismissed.
- 10)** Thereafter, a suit was filed by the plaintiffs on 29.07.1992, and they had knowledge with regard to the order of mutation passed by the Tehsildar, Shivrinarayan, as well as the order passed by the SDO(R), Janjgir, but both orders were not challenged in the suit. The suit property was recorded in the name of “Higher Secondary School, Shivrinarayan– School Education Department, State of Madhya Pradesh” on the basis of the order of mutation and the said order attained finality and further, the appeal preferred by the plaintiffs was dismissed; therefore, the order of mutation cannot be held illegal or bad in law.
- 11)** With regard to the gift deed, as pleaded by the plaintiffs, it was executed by the grandfather of the plaintiffs, namely Prayag Prasad alias Parganiha, for the construction of a school. In the entire suit, the plaintiffs have neither pleaded the factum of the gift deed nor challenged the gift deed. It appears that a hypothetical story of a gift

deed was concocted in the plaint. Though it is true that the written statement has not been filed by the defendant/State and evidence has not been led before the learned trial Court, the plaintiffs were required to prove their case by leading documentary as well as oral evidence.

12) As the existence of the gift-deed was pleaded by the plaintiffs, therefore, according to Section 102 of the Evidence Act, 1872, the burden was on the plaintiffs to prove the facts pleaded in the plaint. Further, Section 117 of the Chhattisgarh Land Revenue Code states that “*All entries made in land records shall be presumed to be correct until the contrary is proved*”. Plaintiffs also failed to prove that they are in possession of the suit property, and the learned trial Court also took note of this fact in para 13 of its judgment. Learned trial Court has categorically recorded a finding to the effect that the suit property is recorded in the name of “Higher Secondary School, Shivrinarayan– School Education Department, State of Madhya Pradesh” and in revenue records, there is no description of any encroachment.

13) Taking into consideration the above-discussed facts and the documentary as well as oral evidence available on the record, the substantial question of law is answered in negative against the plaintiffs/appellants. Consequently, this second appeal fails and is hereby **dismissed**.

14) A decree be drawn accordingly.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

Ajinkya