

**Mangri Bai and Others Vs. Dhani and Others**

**Mangri Bai and Others Vs. Dhani and Others**

**SooperKanoon Citation :** [sooperkanoon.com/951880](http://sooperkanoon.com/951880)

**Court :** Chhattisgarh

**Decided On :** Feb-13-2012

**Judge :** T. P. Sharma

**Appeal No. :** Second Appeal No 262 of 1995

**Appellant :** Mangri Bai and Others

**Respondent :** Dhani and Others

**Judgement :**

(SECOND APPEAL UNDER SECTION 100 OF THE CPC)

1. By this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short `CPC'), the appellants have challenged the legality and propriety of the judgment and decree dated 16.2.1995 passed by the Additional District Judge, Jashpurnagar, in Civil Appeal No.10-A/98, reversing the judgment and decree dated 17.1.1990 passed by the Civil Judge Class-II, Jashpurnagar, in Civil Suit No.155A/87, whereby the Civil Judge Class-II has dismissed the suit filed on behalf of the respondents/plaintiffs against defendant Nawas i.e. predecessor-in-title of the present appellants for declaration and possession of the suit property.

2. The present second appeal has been admitted for consideration on 18.4.95 on the following substantial question of law:-

"Was the lower Court incorrect in not holding that Jamabandi and Khasra and other revenue documents filed by the defendant, had presumption of correctness about them, which presumption has not been held to be rebutted by the oral evidence led by the plaintiffs, and therefore, the suit should have been dismissed?"

3. As per plaint allegation, one Chamra was owner of the suit property total area 39.80 acres situated at Purnanagar, tahsil Jashpur, he was having two sons namely Fouda and Ganga, Ganga died unmarried during his minority and property was inherited by his only son Fouda who died in the year 1958 leaving behind two sons Dhani and Khasru and wife Rondhibai. After death of Fouda, names of his two sons and wife were recorded in revenue record. In the year 1982, defendant Nawas, son of Tetangu filed application for mutation, partition and claim half share over the property showing himself as son of Ganga and succeeded in mutation of his name. Nawas was never in possession of the suit property and was not son of Ganga, therefore, he was not entitled for partition. On the aforesaid ground, suit for declaration and possession was filed by the respondents/plaintiffs. Nawas, original defendant, contested the claim of the respondents/plaintiffs and alleged that he was son of deceased Ganga, brother of Fouda, therefore, he is entitled for half share. He has received notice of the Court under the belief that it has been sent to him as Nawas S/o. Ganga, he is entitled for half share over the suit property as son of Ganga. In the year 1976 one of plaintiff Rondhi Bai has filed application for partition before the Naib-Tahsildar, in which she has made defendant Nawas as non-applicant S/o Ganga which was finally stayed and consigned to record room, his name has been mutated in revenue proceeding. After providing opportunity of hearing to the parties, the Civil Judge Class-II, Jashpurnagar has dismissed the claim of the respondents/plaintiffs by holding that defendant Nawas S/o Ganga was also entitled for half share. Same was challenged before the lower appellate Court and the lower appellate Court by reversing the judgment and decree has decreed the suit filed on behalf of the respondents/plaintiffs.

4. I have heard learned counsel for the parties, perused the impugned judgment and decree, judgment and decree of the trial Court and records of the Courts

below.

5. Learned counsel for the appellants vehemently argued that as per plaint allegation Ganga was younger son of deceased Chamra, original owner of the suit property. As per para 7 of the plaint allegation, land was settled in the name of Chamra. At the time of settlement after death of Chamra, property was inherited by his only son Fouda because Ganga was died in the minority and his name was never recorded in the revenue record which reveals that perhaps Ganga died during life time of Chamra, therefore, at the time of death of Chamra, only Fouda was alive as heir of Chamra, but as per evidence of Khasru Ram (PW-1), which has been recorded on 30.6.89 his father died 25 to 30 years prior to his evidence i.e. between 59 to 64, but as per evidence of Dhani (PW-2), Fouda died in the year 1958-59 and Ganga died in the year 1974 i.e. 15 years prior to his evidence. Even as per evidence of Mikhail Tirki (PW-3), Ganga died 30 to 35 prior to his evidence dated 25.9.1989 i.e. between 54 to 59. Evidences of the aforesaid witnesses reveal that Ganga died after death of Chamru and Ganga has inherited the property left by Chamra. The present appellants have claimed acquisition of the property by inheritance also from Ganga relating to his share. Learned counsel further argued that as per certified copy of Jamabandhi of 1947-48 Ex.D-1 Fouda S/o Chamra and Nawas S/o Ganga were recorded as bhumiswami of the land situated at Purnanagar Udaipur State. As per Ex.D-2 certified copy of record of right, Fouda S/o Chamra and Nawas S/o Ganga were bhumiswami of the land situated at Purnanagar, Tahsil Jashpur, District Raigarh of 1954-55, P.H.No.31, Circle Kastura, in which remark column shows that as per Jamabandi of year 1954-55. The respondents/plaintiffs have also filed copies of the land record i.e. record of right (B1) of 1985-86 as Exs.P-1, P-2 and P-3 which also reveal that village Purnanagar, Circle Kastura P.C.No.69/30, N.B.No.102 which is same in Ex.D-1. Khasra number of the land shown in Exs.P-1, P-2 and P-3 and Exs.D-1 and D-2 are one and same. In Exs.P-1, P-2 and P-3 area has been recorded in hectare, however, in Exs.D-1 and D-2 area has been recorded in acres. While decreeing the suit by reversing the judgment and decree of the trial Court the lower appellate Court has discussed these documents in detail and has held that how the name of Nawas has been mutated in Ex.D-1. Ex.D-1 reveals that land is situated at Village Purnanagar, Udaipur State, although the property is situated in

Jashpur district, not at Udaipur State. The lower appellate Court has also held that the parties have neither filed any document of possession (panchshala khasra) showing the possession of defendant Nawas nor they have explained the cause for non-filing of such document. On the evidence of the defendant witness, the lower appellate Court has held that defendant Nawas has failed to prove the fact that he was son of Ganga. While disbelieving the entries of Jamabandi Ex.D-1 the lower appellate Court has held that Ex.D-1 does not reflect that how name of Nawas has been corrected and village Purnanagar has not shown in Tahsil Jashpur, inter alia, it has been shown in Udaipur State.

6. Learned counsel for the appellants placed reliance in the matter of Karewva and others v. Hussensab Khansaheb Wajantri and others<sup>1</sup> in which the Supreme Court has held that presumption as to correctness has to be rebutted by leading evidence. Entry does not stand rebutted by mere statement of fact made in written statement. Learned counsel further placed reliance in the matter of Rangammal v Kuppuswami and Anr.<sup>2</sup> In which the Supreme Court has held that placing of burden on wrong party vitiates entire judgment. Learned counsel relied upon the matter of Jagdish Prasad v. Smt. Dropatibai and others<sup>3</sup> in which the High Court of Madhya Pradesh has held that upsetting findings of trial Court illegally and illogically, interference of second appellate Court is not only permissible but also desirable.

7. On the other hand, learned counsel for respondents No.1 and 2 opposed the appeal and argued that original defendant Nawas was under obligation to prove the fact that he was son of Ganga and not Tetangu was upon him but he has failed to discharge his burden. He has also failed to prove the fact that how his name was corrected in revenue record and whether village Purnanagar was part of Udaipur State. His mother was alive, but reason best known to him he has not examined his mother in his favour. On the basis of aforesaid infirmity in evidence of Nawas and evidence adduced on behalf of the respondents, the lower appellate Court has rightly reversed the judgment and decree of the trial Court.

8. Definitely, statutory presumption of correctness of entry may be rebutted by oral evidence but unless the Court shall presume the correctness of entry specially

relating to possession and Bhumiswami right of the person. In the case of Vishalsingh v. State of M.P.<sup>4</sup> the Supreme Court has held that statutory presumption may be rebutted by oral evidence.

9. Entry in column 2 of Jamabandi showing the names of Fouda S/o Chamra and Nawas S/o Ganga as bhumiswami shall be presumed to be correct unless rebutted by oral evidence. Exs.D-1 and D-2 reveal same entry and further reveals that it has been prepared on the basis of Jamabandi of 1954-55 i.e. subsequent Jamabandi of Ex.D-1 (Ex.D-1 is related to 1947-48). Both the documents are sufficient for drawing presumption that Purnanagar was the part of State of Udaipur before merger of the State i.e.1951. Same khasra number has been mentioned in Exs.P-1 to P-3, in which Rondhi Wd/o Fouda, Khasru S/o Fouda and Dhani S/o Fouda have been shown as bhumiswami.

10. While disbelieving the document Ex.D-1 the lower appellate Court has held that document does not reflect the fact that how the name of Nawas has been corrected but the lower appellate Court has relied the documents Exs.P-1 to P-3 which also do not reflect the correction of names of Rondhi, Khasru and Dhani. The lower appellate Court has disbelieved the entry of Ex.D-1, but on same facts and circumstances the lower appellate Court has believed the revenue record Exs.P-1 to P-3 which was neither just nor proper.

11. The respondents have adduced evidence, but have failed to show that entry made in Ex.D-1 relating to name of Nawas S/o Ganga was false and illegal. In absence of oral evidence of rebuttal entry made in revenue record Ex.D-1, the only presumption would be possible under Section 117 of the Code that in the year 1947-48 Fouda S/o Chamra and Nawas S/o Ganga were bhumiswami of the suit property. This fact also find support from certified copy of the application filed on behalf of plaintiff No.3 Rondhi, mother of present respondents No.1 and 2 Ex.D-6 before the Naib-Tahsildar on 26.6.1976 through his advocate Mr.B.Ekka which reveals that she has filed application for partition and separate holdings against her sons respondents No.1 and 2 Dhani and Khasru and original defendant Nawas showing himself as son of Ganga Uraon. In para 1 of her application, she has specifically pleaded that at village Purnanagar the applicant i.e. original plaintiff

Rondhi Bai was holding joint bhumiswami land bearing total 28 khasra numbers, area 39.80 acres along with her two sons Dhani Ram and Khasru, present respondents No.1 and 2 and Nawas S/o. Ganga, original defendant of the suit. On the basis of aforesaid application, revenue proceeding in Revenue Case No.91A/27/75-76 was initiated. This fact corroborates entry of Ex.D-1 Jamabandi. The plaintiff Khasru has examined himself as PW-1 who has specifically deposed in para 3 of his cross-examination that he has not seen Ganga but his mother Rondhi plaintiff No.3 has told him that Nawas is son of Ganga, at that time, Rondhi was alive and she has told to this witness before filing of the suit.

12. In the light of aforesaid evidence and Ex.D-6 document, to rebut the aforesaid evidence, evidence of plaintiff No.3 was necessary, but reason best known to the respondents No.1 and 2 Dhani and Khasru plaintiffs, they have not examined Rondhi Bai, although she was alive.

13. While arriving at the finding that Nawas was not son of Ganga the lower appellate Court has considered the evidence of the appellants i.e. Nawas (DW-1), Beero Uraon (DW-2) and Bihari (DW-3) relating to birth of Nawas, his resident at Bhutan, the fact that his mother was alive who was living as keep/wife of Tetangu and the fact that Nawas has failed to examine her mother. As per evidence of Bihari (DW-3), mother of Nawas was residing with Tetangu probably as his wife. In these circumstances, it was not possible for Nawas to examine her in support of his claim.

14. In the light of entries in Jamadandi Ex.D-1 of 1947-48 and Kistbandi khatouni Ex.D-2 of 54-55, heavy burden to rebut the entry was upon the respondents/plaintiffs and not upon the defendant, but by holding that the appellants have failed to discharge burden, the lower appellate Court has committed illegality. The Courts are required to give same treatment to the parties and give proper weightage to the documents filed on behalf of the parties relating to presumption of their correctness, but presuming the correctness of the plaintiffs' document and disbelieving the correctness of defendant's document under same circumstances the lower appellate Court has committed illegality. The lower appellate Court ought to have presumed the correctness of Jamabandi which was

sufficient for drawing presumption of correctness of entries which have not been rebutted by the respondents.

15. As held by the Supreme Court in the matter of Karewwa and others (supra), presumption as to correctness has to be rebutted by leading evidence. Entry does not stand rebutted by mere statement of fact made in written statement.

16. As held by the Supreme Court in the matter of Rangammal (supra), the lower appellate Court has illegally placed burden to prove upon the defendant which was heavily upon the respondents.

17. Section 117 of the C.G. Land Revenue Code, 1959 (for short 'Code') provides presumption about entries in revenue records which reads as under:-

"117.) Presumption as to entries in land records.-All entries made under this Chapter in the land records shall be presumed to be correct until the contrary is proved." Entries in revenue records means number of land, area, holder of the land, person who has shown in possession of the land, entries relating to construction, trees and crop standing over the land. In Ex.D-1 land has been shown in names of Fouda S/o Chamra and Nawas S/o. Ganga.

18. As held by the High Court of Madhya Pradesh in the matter of Jagdish Prasad (supra), upsetting findings of trial Court illegally and illogically, interference of second appellate Court is not only permissible but also desirable.

19. Both the parties have filed revenue records of same nature, but while believing the revenue records filed on behalf of the respondents the lower appellate Court has disbelieved the revenue records filed on behalf of the appellants on the ground that Nawas has failed to prove the fact that how it was corrected. Admission is best evidence. As per evidence of Khasru, respondent No.2, his mother, contesting plaintiff Rondhi, has specifically informed him that Nawas is son of Ganga. Rondhi has also filed application Ex.D-6 before the revenue officer, in which she has shown Nawas as son of Ganga. These oral and documentary admission of the plaintiffs are sufficient to prove the fact that Nawas was son of Ganga without any further evidence of Nawas unless they are rebutted by plaintiff

No.3 Rondhi. Reason best known to the respondents, they have not examined Rondhi Bai, wife of Fouda, who was alive and was plaintiff No.3 to explain Ex.D-6 and evidence of Khusru (PW-1). Without evidence in rebuttal, the lower appellate Court has illogically and illegally held that burden was upon the appellants to disprove the allegation made in the plaint. It was grave illegality committed by the lower appellate Court. The lower appellate Court ought to have dismissed the appeal by affirming the judgment and decree of the trial Court on the basis of aforesaid evidence.

20. Consequently, substantial question of law formulated for the decision of this second appeal is decided as positive. On the basis of finding on substantial question of law, the appeal deserves to be allowed and is hereby allowed. Judgment and decree of the lower appellate Court are hereby set aside and judgment and decree of the of the trial Court, dismissing the suit filed on behalf of the respondents/plaintiffs are hereby restored and held that Nawas is entitled for half over the suit property as son of Ganga and the plaintiffs are entitled for half share over the suit property.

21. Parties shall bear their own cost.

22. Advocate fees, if certified, as per schedule or to the extent certified, whichever is less.

23. Decree be drawn accordingly.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**