

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SA No. 207 of 2015**

- Lakhan Das S/o Dhyandas Manikpuri Aged About 63 years Village Kholwa, P.S. Bhatapara Gramin, Tah. Bhatapara, Distt.- Baloda Bazar, Chhattisgarh

**---- Petitioner**

**Versus**

- Minabai And Anr. S/o Wd/o Bhuneshwar Manikpuri Aged About 48 Years Village Udela, P.S. Newra, Tah. Simga, Distt.- Baloda Bazar, Chhattisgarh
- State Of Chhattisgarh Through Collector, Baloda Bazar, P.S. Baloda Bazar, Distt.- Baloda Bazar, Chhattisgarh

**---- Respondents**

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|----------------------|---|-------------------------------------------|
| For Petitioners      | : | Shri BP Gupta, Advocate.                  |
| For Respondent No.1. | : | Not noticed.                              |
| For Respondent No.2. | : | Ms. Shobha Kashyap, Deputy Govt. Advocate |

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Judgment On Board**

**14/07/2015**

Heard on admission.

1. The instant Second Appeal filed under Section 100 of CPC is directed against the judgment and decree dated 08.01.2015, passed by the Additional District Judge, Bhatapara, Distt. Raipur, in Civil Appeal No.H-10-A/2014, whereby and whereunder the plaintiff's/appellant's appeal has been dismissed affirming the judgment and decree dated 02.04.2014, passed by Civil Judge, Class I, Bhatapara, in Civil Suit No. 123-A/2011.

2. Facts in brief necessary for disposal of this appeal are that, appellant/plaintiff filed a suit before the trial court for declaring him as a owner of the suit land by adverse possession. The trial court on a close scrutiny of evidence led, submissions made and material placed on record, dismissed the suit vide its judgment and decree dated 02.04.2014 and held that adverse

possession as pleaded by the plaintiff is not proved.

3. Before the trial court, the admitted fact was that, the land in question was recorded in the name of respondent No.1-Minabai in the revenue records as a owner.

4. Against the said judgment and decree passed by the trial court, the plaintiff preferred First Appeal. The First appellate court after re-appreciating the entire evidence available on record, dismissed the appeal and affirmed the findings recorded by the trial court.

5. Against the said judgment and decree passed by the first appellate court, the plaintiff has preferred this Second Appeal inter-alia on the ground that even after admission by the respondent No.1/defendant as the land in question was given to the appellant on Adhiya basis, and thereby, the appellant was in possession during the impugned 12 years, also there is no ingredients regarding Adhiya, no any corroboration by any other witnesses for the factum of Adhiya, it is proved that appellant was in possession of the suit land, and thereby, adverse possession is proved, but both the courts below have erred in holding that pleadings of adverse possession is not proved. The findings of both the courts below are erroneous, not based on entire evidence including admission by the respondent No.1/defendant, and therefore, appeal may be admitted as substantial question of law exists i.e. whether the courts below erred in holding that factum of adverse possession is not duly proved. It is further prayed that appeal may be allowed and judgment and decree of both the courts below may be set aside.

6. I have heard the counsel appearing for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of CPC and perused the judgments and decree including records of both the courts below.

7. Learned counsel appearing for the appellant supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with admission of the appeal. He would further submit that as

the substantial question of law is involved as mentioned in the memo of appeal, the appeal may be admitted for hearing and be disposed of accordingly.

8. After perusal of entire facts, it goes to show that as an admitted position, the land in question was recorded in the name of respondent No.1/defendant. So far as factum of adverse possession is concerned, the appellant pleaded that he was in possession and thereby acquired the status of owner by adverse possession. On the other hand, as per pleading of the respondent No.1, the land in question was given to the appellant on Adhiya (A local customary procedure for giving the land for cultivation to the other party and the crop is divided in half share to the owner and the person who had cultivated the crop on the basis of permissive possession).

9. A careful perusal of evidence adduced by the witnesses of both the parties regarding possession goes to show that it cannot be held that appellant was in peaceful possession well within the knowledge of respondent No.1/defendant and respondent No.1 never objected the possession in those more than 12 years. As per the facts emerged from the evidence, the appellant was in permissive possession and not adverse possession as the suit land was given to him by the defendant to cultivate crop on Adhiya basis every year, which cannot be held that appellant was in peaceful possession of the suit land as a owner without any objection or obstruction by the respondent No.1/defendant. This cannot be held as factum of adverse possession, rather it is a permissive possession, which does not constitute doctrine of adverse possession.

10. It is settled law, permissive possession for a period how so far long it may be, cannot be termed as adverse possession. Therefore, in the facts and circumstances of the case, merely because the plaintiff continue cultivated the land in question for more than 12 years on Adhiya basis, no decree of declaration of his right by way of adverse possession can be granted in his favour.

11. The Supreme Court in a decision rendered in the case of ***L.N. Aswathama***

**and another v. P. Prakas<sup>1</sup>**, has held: “long and continuous possession by itself would not amount to adverse possession if it was either permissive or without *animus possidendi*. To establish a claim of title by prescription, possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years and observed in para 17 as under:

“17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without *animus possidendi*. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide *P.Periasami v. P. Periathambi*, (1995) 6 SCC 523, *Md. Mohammad Ali v. Jagadish Kalita*, (2004) 1 SCC 271 and *P.T.Munichikkanna Reddy v. Revamma*, (2007) 6 SCC 59).”

12. Applying the ratio of law laid down by the Supreme Court in above referred case to the facts of present case and also considering other attending facts, in the considered opinion of this court, both the courts below have not committed any illegality for the appreciation of evidences adduced at the time of trial, also not committed any error of law while appreciating the pleadings and their counter for the adverse possession.

13. Upon perusal of entire evidence, there is no any substantial question of law requires to be formulated for hearing of this second appeal.

14. This court cannot proceed to hear a second appeal without there being any

substantial question of law involved in the appeal. Existence of substantial question of law is the *sine-qua-non* for the exercise of the jurisdiction under the amended Section 100 of the Code. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.

15. In view of above, since no substantial question of law arises for determination in the instant case, this is not a fit case for admission. Consequently, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of CPC. No order as to costs.

Sd/-  
**(Chandra Bhushan Bajpai)**  
JUDGE