

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 154 of 2012

Hira Singh S/o Late Mishra Singh Rajput, aged about 58 years, R/o Village -Bharni, P.S. Dhamdha, District Durg.

---- Petitioner

Versus

1. Smt. Hemin Bai, wife of Dwarika Singh, aged about 73 years, resident of Jamgaon, Post Saja District Durg
2. Smt. Fatkan Bai, wife of Shri Bhagwat Singh Rajput, aged about 55 years, resident of Radhika Nagar, Police Station- Supela, Distrit- Durg
3. State Of Chhattisgarh Through The Collector, Durg

---- Respondents

For Petitioner	:	Shri Sameer Uraon, Advocate
For Respondent No.1 & 2	:	Shri Ratnesh Kumar Agrawal, Advocate
For Respondent No.3/State	:	Shri Neeraj Sharma, Dy. Govt. Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/10/2015

Heard on admission.

1. Learned counsel for the appellant argued that the Courts below have committed gross illegality and perversity in granting and affirming decree in favour of respondents– plaintiff even though respondents failed to specifically plead the particulars, details and boundary of the land in dispute alleged to be comprised in kh. no. 295 of Village- Bharni, Tahsil Dhamdha District -Durg. Learned counsel for the appellant further argued that the Courts below, without there being any clinching evidence on record, jumped to the conclusion that the land in dispute comprised in kh. no. 295 was under the ownership and title of the plaintiff by virtue of judgment and decree dated 12.1.1961 passed in Civil Suit No. 55-A/1960, whereas there is no legally admissible evidence to prove that the land in respect of which the decree was sought by the plaintiff was the one in respect of which

earlier decree was granted in the year 1961. Learned counsel for the appellant stressed on his submission that the Courts below have not made proper inquiry with regard to the identification of the land in dispute, as to whether it actually formed part of land in respect of which decree was passed in the year 1961 in favour of plaintiff on the basis of compromise between the parties.

2. The Courts below have recorded concurrent finding that the land in dispute comprised in kh. no. 295 is the new khasra number of the land admeasuring 2 acres comprised in earlier kh. no. 282/2 and 181/3. In order to come to the said conclusion, the Courts below have taken into consideration the evidence of Revenue Inspector- G.R. Tandon (P.W.3), land records relating to kh. no.295, judgment and decree dated 12.1.1961 passed in Civil Suit No.55-A/1960, appellant raising no dispute with regard to mutation of lands in the year 1968-69 in favour of plaintiff and finding recorded by the trial Court on the additional issue framed by the appellate Court.

The aforesaid findings are purely finding of facts based on evidence available on record.

3. The plea of prescription of title by adverse possession has also been rejected on the consideration that the appellant -defendant has failed to lead clinching reliable evidence based on specific pleading as to when his adverse possession commenced. The suit was filed by the plaintiff when upon demarcation made on 14.4.1991 in Revenue Case No.8 A –12/1990-91 it was found that the appellant has encroached upon a part of land comprised in kh. no.295 which belong to plaintiff on the basis of title declared in their favour in decree passed way back on 12.1.1961 in Civil Suit No.55-A/1960 which was also passed on the basis of compromise.
4. All the issues which are being raised by the second appeal are issues of fact in respect of which concurrent finding of fact has been recorded by the Courts below.
5. Therefore, no substantial question of law is involved in the appeal. The appeal is accordingly dismissed. Decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge