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HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.475 of 2013**

1. Smt. Raziya Begum Wd/o Late Daulat Khan Aged About 70 Years R/o Ward No. 06, Kopebhatha (Gandai), Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
2. Baratu Khan S/o Late Daulat Khan Aged About 50 Years R/o Ward No. 06, Kopebhatha (Gandai), Tah. Chhuikhadan, Distt. Rajnandgaon C.G.

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1. Mahmood Khan S/o Late Fatte Sher Aged About 55 Years R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
 2. Maksud Khan S/o Late Fatte Sher Aged About 51 Years R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
 3. Liyakat Khan S/o Late Fatte Sher Aged About 53 Years R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
 4. Dadamiya S/o Late Fatte Sher Aged About 50 Years R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
 5. Mahboob Khan S/o Late Fatte Sher Aged About 53 Years (Died)
- (A) Smt. Rafikun Nisha W/o Late Mahboob Khan Aged About 28 Years R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
- (B) Ku. Aafrin D/o Late Mahboob Khan Aged About 9 Years Minor, Thru- Mother Smt. Rafikun Nisha, R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
- (C) Arslan Khan S/o Late Mahboob Khan Aged About 7 Years Minor, Thru- Mother Smt. Rafikun Nisha, R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
- (D) Anis S/o Late Mahboob Khan Aged About 5 Years Minor, Thru- Mother Smt. Rafikun Nisha, R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
6. Rajjak Khan S/o Late Fatte Sher Aged About 40 Years R/o Kopebhatha, P.C. No. 12, R.I. Circle- Gandai, Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
 7. State Of Chhattisgarh Thru- Collector, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Respondent

For Appellants	:	Shri Ram Kumar Tiwari, Advocate
For Respondent No.1 to 6	:	Shri Vivek Tripathi, Advocate
For Respondent No.7	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****04/12/2015**

Heard on admission.

2. Learned counsel for the appellants argued that the learned lower appellate Court has committed gross illegality, perversity and reversed the judgment and decree passed by the learned trial Court by dismissing the suit of the plaintiff.

3. It is contended that from the documentary evidence which includes sale deed executed in favour of Daulat Khan in respect of 3.60 acres of land earlier situated in Khasra Number 110/1 and the oral evidence as also the records of revenue survey of allotment of new Khasra Number 239 to earlier Khasra Number 110/1. It is clearly proved that the land comprised in Khasra No.239 was the land, which was actually purchased by Daulat Khan from the erstwhile owner-Hazi Mohammed by the registered sale deed and since then, the plaintiffs being his successors, are in continuous possession. Even though, the learned appellate Court found that the upon survey, new Khasra Number of earlier Khasra No.110/1 was 239, it has recorded a perverse finding that during survey, the allotment of new Khasra Numbers have been wrongly allotted as 239 of old Khasra No.110/1 and 242 of old Khasra Number 110/2. Learned counsel for appellants argued that even according to the case of defendants, Fatte Sher Khan had purchased 3.70 acres of land comprised in Khasra No.110/2 from Hazi Mohammed. The total area of land was 7.30 acres. 3.60 acres of land comprised in Khasra No.110/1 was sold by Hazi Mohammed to Daulat Khan whereas 3.70 acres of land comprised in Khasra No.110/2 was sold by Hazi Mohammed to Fatte Sher Khan. According to re-numbering done after survey, Khasra Number 110/1 was re-numbered as 239 and Khasra Number 110/2 was re-numbered as Khasra Number 242. Thus, the appellants are titleholder and in possession of land comprised in Khasra No.239 (Old Khasra Number 110/1) and thus, the trial Court rightly granted decree in their favour.

The appellate Court has mechanically relied upon the various demarcation report and actual physical possession of land comprised in Khasra No.239 and reversed the judgment and decree passed by the trial Court. Hence, this appeal.

4. It is also submitted that learned lower appellate Court has also committed illegality in holding that the suit is barred by limitation.

5. In order to hold that the respondents/defendants are in continuous possession of the land comprised in Khasra No.239 since last more than 50 years, the learned lower appellate Court has relied upon the demarcation report, Ex.P-11, Panchnama, Ex.P-41 and Inspection Report of Revenue Inspector, Ex.D-21. In all these reports, it has been found that Fatte Sher Khan and thereafter his successors are in possession of the land ad measuring 3.70 acres situated in Khasra No.239. It has also been found that Daulat Khan and thereafter his successors are in actual possession of land ad measuring 3.60 acres situated in Khasra No.242.

6. The aforesaid finding of fact is based on appreciation of oral and documentary evidence on record and neither perverse nor contrary to evidence. It is not in dispute that the land which was purchased by Daulat Khan from Hazi Mohammed ad measured 3.60 acres whereas the land purchased by Fatte Sher Khan from Hazi Mohammed ad measured 3.70 acres. In various demarcation reports proved before the Court, the appellants have been found in possession of 3.60 acres of land, of which, number has been recorded as Khasra No.242 whereas the respondents have been found in possession of 3.70 acres of land, of which, new number has been recorded as 239. The Court below has noted this discrepancy at the time of revenue survey and re-numbering the land ad measuring 3.60 acres situated in Khasra No.110/1 and found that number was wrongly mentioned as 239 whereas the total area, to which, the appellants are entitled is 3.60 acres. Measurement of land comprised in Khasra No.239 have been found to be 3.70 acres of land. Admittedly, Hazi Mohammed sold 3.70 acres of land to Fatte Sher Khan. On the basis of appreciation of oral and documentary

evidence on record, the Court below found that the respondents are in possession of 3.70 acres of land which has been numbered as 239. The learned lower appellate Court has also found that the appellants are in possession of 3.60 acres of land which has been renumbered as Khasra No.242. This shows that at the time of re-numbering, some discrepancy had taken place, otherwise the total area of land in Khasra No.239 should have been 3.60 acres and total area of land in Khasra No.242 should have been 3.70 acres. The learned lower appellate Court has held that the appellants/plaintiffs sought permanent injunction without seeking recovery of possession whereas the land in dispute of 3.70 acres of land comprised in Khasra No.239, the possession of Fatte Sher Khan and thereafter, his successors/defendants was consistently found for the last more than 50 years. Therefore, without seeking recovery of possession, no decree of declaration and permanent injunction could be granted in favour of the plaintiffs. It has to be noted that the learned lower appellate Court has recorded a finding that the appellants are in possession of 3.60 acres of land which has been numbered as 242.

7. In view of above, no substantial question of law arises for consideration in this appeal. The appeal, is therefore, dismissed.

Sd/-
Manindra Mohan Shrivastava
Judge