

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.65 of 2007

Awadh Kishore Mishra, S/o Sadhu Saran Mishra, aged about 53 years, Occupation Choodi Seller, R/o Main Road, Saraipali, Tehsil Saraipali, Distt. Mahasamund (C.G.)

---- Appellant/
(Plaintiff)

Versus

1. Nagar Panchayat, Saraipali, Through its President, Nagar Panchayat Saraipali, Tehsil Saraipali, Distt. Mahasamund (C.G.)
2. Chief Executive Officer, Nagar Panchayat Saraipali, Tehsil Saraipali, Distt. Mahasamund (C.G.)
3. State of Chhattisgarh, through the Collector, Mahasamund, Distt. Mahasamund (C.G.)

---- Respondents/
(Defendants)

For Appellant: Mr. Awadh Tripathi and Mr. Vivek Tripathi, Advocates.

For State/Respondent No.3: Mr. Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/07/2016

1. Heard on admission.
2. The plaintiff's suit for declaration of title and permanent injunction against defendant Nagar Panchayat, Saraipali, was dismissed by the trial Court holding that temporary lease was granted to the plaintiff and in violation of the terms of lease, he has constructed Pukka house upon the suit land and he has not perfected his title by way of adverse possession and he is not

entitled for renewal against which the plaintiff preferred first appeal before the first appellate Court. The first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal against which this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been preferred by the plaintiff/appellant herein.

3. Mr. Awadh Tripathi and Mr. Vivek Tripathi, learned counsel appearing for the plaintiff/appellant herein, would submit that concurrent finding recorded by the two Courts below holding that the plaintiff is not entitled for relief and his title has not been perfected by adverse possession, suffers from illegality and is perverse and gives rise to substantial question of law.
4. It is not in dispute that the plaintiff was granted temporary lease and pursuant to such lease, he was held to be in possession, but it is also equally well settled that permissive possession cannot be adverse possession, as the plaintiff has entered into the suit land on the strength of temporary lease granted by the Nagar Panchayat. Concurrent finding recorded by the two Courts below is finding of fact based on evidence available on record and I do not find any perversity or illegality in the same. The appeal deserves to be and is accordingly dismissed in *limine* leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge