

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.68 of 2008**

Satish Singh S/o Ramlal Singh, Aged About 52 Years Cast- Kshatri, R/o Village Salka, Tahsil & District Baikunthpur, Chhattisgarh(Plaintiff)

---- **Petitioner****Versus**

1. State Of Chhattisgarh , Through Collector, Koriya, Chhattisgarh
2. District Education Officer, Baikunthpur, Korea, Chhattisgarh ...(Defendants)

-----**Respondents**

For Appellant:	Shri Shakti Raj Sinha along with Shri Nishikant Sinha, Advocate.
For Respondent/State:	Smt M. Asha, Panel Lawyer.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

16.8.2016

1. The present Second Appeal has been preferred against the judgment passed by the 1st Appellate Court in Civil Appeal No.42-A/06 dated 25.10.2007 whereby the judgment and decree dated 29.4.2006 passed by the 2nd Civil Judge, Class-1, Baikunthpur in Civil Suit No.76A/05 was affirmed.

2. Brief facts of the case necessary for adjudication of the present Second Appeal are that the Appellant/Plaintiff in the instant case had filed a Civil Suit before the Court below which was registered as Civil Suit No.76-A/05 on 30.1.2005. Vide the said suit, the Appellant/Plaintiff had sought for declaration of title as also for grant of permanent injunction. It was the case of the Appellant/Plaintiff before the Trial Court that the property so far as that situates in Khasra No.195 measuring 3.20 hectares and that the property situating at Khasra No.205 measuring 4.35 hectares he has the bhumiswami rights and where the property exclusively was in the possession of the

Appellant/Plaintiff and the title was also in the name of the Plaintiff. Therefore, the Respondents/Defendants could not interfere with the peaceful possession of title holding property of the Plaintiffs over the said land. It was also the claim of the Appellant/Plaintiff before the Trial Court as is reflected from the Plaint that so far as Khasra No.193 measuring 0.340 hectares, 196 measuring 0.99 hectares, 199 measuring 1.00 hectares are concerned, they were Government lands but are in the possession of the Appellant/Plaintiff for the past over 45 years and therefore, by virtue of an uninterrupted possession and enjoyment over the said property for a continuous period of 45 years, he is entitled for getting the title over the said property by way of a right of adverse possession.

3. It is pertinent to mention that the Respondents/Defendants had been proceeded ex-parte both before the Trial Court as well as before the 1st Appellate Court.

4. The Trial Court, on 29.4.2006, partly allowed the suit to the extent that the property over which the Appellant/Plaintiff had bhumiswami right and were in their possession i.e. the property situating in Khasra No.105 measuring 3.20 hectares and property situating in Khasra No.205 measuring 4.35 hectares were declared to be the Appellant/Plaintiff's property and a decree was passed in this regard. However, the Trial Court, at the same time, held that so far as the Appellant/Plaintiff not being able to establish the principle of adverse possession over the property situating in Khasra No.193, 196 and 199 and the Appellant having failed to prove the adverse possession part, the decree and claim in this regard was rejected.

5. The said judgment dated 29.4.2006 was put to challenge by way of a First Appeal i.e. First Appeal No.42-A/06 by the Plaintiff.

6. The 1st Appellate Court, vide the impugned judgment dated 25.10.2007, had affirmed the judgment and decree of the Trial Court and rejected the appeal.

7. The 1st Appellate Court also had reached to the conclusion that so far as the allowing of the suit partly in respect of the property over which the Appellant had bhumiswami right, the same is proper, legal and justified as there was sufficient evidence in the revenue records which reflected the title and ownership of the Appellant/Plaintiff over the property situating at Khasra Nos.195 and 205. However, so far as the rejection of the suit of the Plaintiff by the Trial Court with regard to the property situating at Khasra No.193, 196 and 199 is concerned, the 1st Appellate Court also reached to the conclusion that the Appellant/Plaintiff had failed to establish his case so far as adverse possession is concerned. There is a specific and categorical finding by the two Courts below that the Appellant/Plaintiff had not been able to establish as to from which date the possession became adverse. That from the pleadings in the Plaint itself, it is categorically reflected that it is only when the Government came up for construction of BTI building in the suit premises i.e. the Government land that the Appellant/Plaintiff for the first time, initiated proceedings seeking for a decree on the basis of the adverse possession.

8. The law so far as the grant of relief of adverse possession is concerned, is by now well established that a person claiming the relief of adverse possession first has to disclose before the Court below by way of cogent evidence, the actual date from which the possession became adverse over the suit property. In the instant case, the Appellant/Plaintiff has categorically failed to prove possession of 45 years over the said property. When the suit as per the Plaint itself is said to be on the basis of adverse

possession and if the Appellant/Plaintiff himself is not able to establish the date from which he has come in adverse possession over the said property, the rejection of the suit by the Trial Court cannot be said to be a perverse finding of fact or contrary to the evidence which has come on record.

9. The Appellant had not filed any document which goes to show that there was any sort of encroachment proceeding drawn against him, except for the oral evidence which alone would not be sufficient to substantiate the claim. No any explanation also has been given by the Plaintiff witness for not adducing any documentary evidence in this regard.

10. For establishing a title by way of adverse possession, the person claiming will have to establish extinguishing title of the true owner. The claimer has to be in continuous and hostile possession. The Plaintiff and his witnesses have not been able to disclose as to since when the Plaintiff came in hostile possession.

11. It was imperative for the Plaintiff to disclose, for the reason that animus to hold the land adversely to the title of true owner only when true owner derives knowledge of such possession.

12. In the opinion of this Court, since there is a categorical concurrent finding of fact by the two Courts below, both reaching to the conclusion that the Appellant's/Plaintiff's claim over the adverse possession not having been proved particularly the fact that the Appellant/Plaintiff himself has not been able to establish his case as to when he has come in adverse possession over the suit property, this Court does find any strong case for interfering with the two concurrent findings of the Courts below.

13. That in the instant appeal, whatever submissions have been made by

the counsel for the Appellants, being all pure questions of fact having no substantial question of law and on the question of facts there being concurrent findings of both the courts below, the instant Second Appeal being devoid of merit, the same is accordingly dismissed. No order as to costs.

Sd/-

(P. Sam Koshy)

JUDGE