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HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 454 of 2012**

1. Kashiram (Dead) Through : LRs.

- i. Smt. Chameli Bai, aged about 45 years, W/o. Kashiram,
- ii. Tulsidas, aged about 34 years, S/o. Kashiram
- iii. Charandas, aged about 32 years, S/o. Kashiram
- iv. Smt. Shashi Bai, W/o. Shivkumar, aged about 38 years
- v. Smt. Amrika Bai, W/o. Hariprasad, aged about 36 years
- vi. Smt. Asha Bai, W/o. Roopchand, aged about 35 years

All are R/o. Pandariya, P.S., Tahsil and P.O. Pandariya, District –
Kabirdham (C.G.)

----Appellants**Versus**

- 1. Hemray Satnami, S/o. Rikhiya Satnami, aged about 70 years, R/o. Village Pandariya, Police Station Tahsil and P.O. Pandariya, District- Kabirdham (C.G.)
- 2. State of Chhattisgarh, Through : Collector, Kabirdham, District – Kabirdham (C.G.)

----Respondents

For Appellants	: Mr. H.B. Agrawal, Sr. Advocate assisted by Mr. Pankaj Agrawal, Advocate
For Respondent No.1	: Mr. Sudhir Verma, Advocate
For State/Respondent No.2	: Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/04/2016**

Heard on admission.

- 1. This is an appeal against the judgment and decree dated 24.08.2012, passed by Additional District Judge, Kabirdham (Kawardha), District Kabirdham (C.G.), in Civil Appeal 27-A/2012, whereby the judgment and decree dated 02.08.2010, passed in

Civil Suit No.31-A/2007, passed by Civil Judge, Class-II, Pandariya, District – Kabirdham (C.G.), was affirmed.

2. The appeal is by the defendant against the concurrent finding of fact by both the Courts Below.
3. Brief facts of this case are that a suit was filed by Hemray, the respondent herein on 28.04.1994 for possession and damages of the crops. It was pleaded that at village-Pandariya, land bearing Kh.No. 586/10, admeasuring 2.02 acres was purchased by the plaintiff from one Jodhan Singh in the year 1965-66. Thereafter, in some part of the land, the plaintiff had raised construction and the rest of the land was left for agriculture. It was contended that out of land, which was left, the defendant, Kashiram had encroached upon 6400 sq.ft. of land by force for which different criminal cases under Section 107 and 116 of Cr.P.C. was also filed. It was stated that the defendant do not have any right or title over the suit property, therefore, he may be given the possession of the land alongwith damages.
4. The defendant contended that the land bearing Kh.No.586/10 was in two part and it was admitted the plaintiff had purchased the said land from Jodhan Singh. It was further stated that possession of the defendant was over 0.09 acres of land towards South near Gopiband Pond from 1979-80. It was stated that initially the said land was in possession of one Ladu, S/o. Jhadiyar. It was stated that with the consent of Ladu, the defendant was placed in possession. Further it was stated that such possession was to the knowledge of the plaintiff for long back and there by had perfected

his title by adverse possession. The plaintiff entered into an agreement of exchange of land though the demarcation was made but it was in the absence of the defendant, therefore, the plaintiff is not entitled for the possession and any relief.

5. After evaluating the pleadings and the evidence, the Trial Court decreed the suit in favour of the plaintiff by holding that the defendant has failed to prove the fact that he has perfected his title over the land by adverse possession and passed the decree for ejectment. The said judgment and decree was assailed in appeal before the Appellate Court and the Appellate Court also affirmed the finding of fact by the Trial Court. Hence, this second appeal.
6. Learned counsel for the appellant submits that the land wherein the appellant/defendant was in possession was initially in hold of Laduram and with his consent, he was placed in possession, which would be evident from the statement of Laduram, Ex.D/2 and therefore, appellant/defendant had perfected his title over land by adverse possession. It is further submitted that before the land was demarcated to that of the land of the plaintiff, defendant had perfected his title over the land by adverse possession. Therefore, submits that the finding of both the Courts below are perverse, therefore, the appeal be admitted for hearing.
7. Heard the counsel for the appellant.
8. Perused the judgment and the decree, pleadings and the evidence.
9. The sale deed in this case is marked as Ex.P/5, wherein it shows that Kh.No.586/10 admeasuring 2.00 acres was purchased by Hemray, the plaintiff from Jodhan Singh on 25.11.1967. The

document Ex.P/1 is the Panchanama of Tahsildar dated 20.01.1993, wherein respective lands of plaintiff and Laduram were demarcated. The reading of this document would reveal that in the revenue records in the map wrong marking was made for which both Hemray and son of Laduram filed an application and subsequently compromise was arrived at. The document Ex.P/4 is the order, was passed on 15.10.1992 by the Court of Tahsildar, Pandariya and by such order, the land of Hemray, which is bearing Kh.No.586/15 was corrected in the map and subsequently the subject land was demarcated. Ex.P/7 is the demarcation report, which was made on the application filed by the plaintiff with a prayer to demarcate the area and portion of the land, which was encroached by the defendant. On such application, a demarcation was made and it was held by the demarcation report dated 22.06.1993 (Ex.P/7) that out of Kh.No. 586/10 over 6400 sq.ft., the defendant has encroached upon.

10. The defendant/appellant though had stated that he has perfected his title by way of adverse possession but nothing is placed on record that defendant was holding the land adversely to the knowledge of plaintiff. Nothing is on record to draw such inference. The defendant though for his defence has proved the document Ex.D/4 to show that he was in possession of the land prior to 1993 but reading of the Ex.D/4 would show that the order pertains to a proceeding under Section 145 of Cr.P.C., wherein demarcation dated 22.06.1993, which is filed as Ex.P/7 was taken note of and it was held that defendant, Kashiram is in possession of the land, prior to the order of *Istgasa*, which was filed by the police. The said

order is dated 08.12.1999. The suit in this case was filed on 28.04.1994, therefore, even if, Ex.D/4 is considered then in such case, the possession of the defendant was only held to be prior to 8 years of such order of 1999. Entire perusal of the document would show that nothing has been placed on record that before 12 years of 1993-94, the defendant was in possession and order (Ex.D/4) only records the possession that too on the basis of the demarcation.

11. Perusal of the statement of the defendant, Kashiram, shows neither he is in hold of documents of title of the said land and it was stated since the land was lying vacant, therefore, he had constructed the house. Further he has stated that he is not in know of the fact that the land wherein he is in possession to whom it belongs. Thereby the entire defence of adverse possession is diluted as the defendant himself has expressed his inability to point out the real owner of land.
12. Therefore, perusal of the document and evaluating the entire evidence and the facts, this Court is of the opinion that the finding arrived at by both the Courts below are finding of fact which do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.
13. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE