

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 362 of 2015**

1. Smt. Indiya @ Indira Bai W/o Late Arunlal Lodhi, Aged About 75 Years R/o & Agriculturist Village Khairi, P.H.No. 6, Tahsil Dongargaon, Civil & Revenue Distt. Rajnandgaon Chhattisgarh
2. Baliram S/o Late Arunlal Lodhi Aged About 40 Years R/o & Agriculturist Village Khairi, P.H.No. 6, Tahsil Dongargaon, Civil & Revenue Distt. Rajnandgaon Chhattisgarh
3. Shivnandan S/o Late Arunlal Lodhi Aged About 44 Years R/o & Agriculturist Village Khairi, P.H.No. 6, Tahsil Dongargaon, Civil & Revenue Distt. Rajnandgaon Chhattisgarh
4. Deep Chand S/o Late Arunlal Lodhi Aged About 35 Years R/o & Agriculturist Village Khairi, P.H.No. 6, Tahsil Dongargaon, Civil & Revenue Distt. Rajnandgaon Chhattisgarh
5. Kantilal S/o Late Arunlal Lodhi Aged About 30 Years R/o & Agriculturist Village Khairi, P.H.No. 6, Tahsil Dongargaon, Civil & Revenue Distt. Rajnandgaon Chhattisgarh

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1. Dr. Achal Kumar S/o Govind Lal Shrivastava Aged About 60 Years R/o Sonarpara Ward No. 35 Rajnandgaon Tahsil & Distt. Rajnandgaon (C.G.) (died on 05.06.2010)
- 1(a) Smt. Durga W/o Late Dr. Achal Kumar Shrivastava Aged About 63 Years R/o Sonarpara, Rajnandgaon Distt. Rajnandgaon (C.G.)
- 1(b) Atul S/o Late Dr. Achal Shrivastava Aged About 39 Years R/o Sonarpara, Rajnandgaon Distt. Rajnandgaon (C.G.)
- 1 (c) Smt. Arjita W/o Santosh Sinha Aged About 36 Years R/o Subhash Ward, Ambikapur, Tahsil & Distt. Ambikapur (Surguja)
2. State Of Chhattisgarh Through The Collector, Rajnandgaon Distt. Rajnandgaon Chhattisgarh

---- Respondents

For appellants- Shri Ajit Singh, Advocate.
For State/respondent No.2 – Shri Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order****8/03/2016**

1. The instant appeal is against the judgement and decree dated 25/02/2015 in Civil Appeal No.28-A/2014 passed by the First Additional District Judge, Rajnandgaon whereby the judgement and decree passed by the court of Third Civil Judge, Class-II Rajnandgaon in Civil Suit No.

21-A/2005 dated 11/08/2009 was affirmed.

2. The brief facts of the case are that the suit was filed by the plaintiffs/appellants herein that at village Khairi Tehsil Dongargaon, land bearing khasra No.90/1 admeasuring 2.07 acres and land bearing khasra No.412/1 admeasuring 2.60 acres was recorded in the name of father of the plaintiffs and the other co-sharer. The said land was purchased by defendant No.1 Dr. Achal Kumar, when the land was put to auction in the year 1975 for revenue recovery. It was stated that though the defendant purchased the said land, defendant was never in possession of the land which led to different criminal dispute. It was stated that the plaintiffs are in possession of the said land for last 12 years before filing of the suit which was known to the defendant and in such suit, declaration and permanent injunction was prayed for. Defendant contended that the defendant purchased the land including other land and the suit land was purchased which was subject of auction for recovery of the loan and in such recovery proceeding land were purchased wherein defendant No.1 being highest bidder purchased the land. Therefore on 5/04/1975 sale was confirmed in favour of defendant No.1 and he came into possession of the said land. It was further stated that plaintiffs after such purchase were not in possession of the said land and even the order of the revenue court wherein it was directed to record name of the plaintiffs was without jurisdiction. It was further contended that in subsequent revenue proceeding too, name of the defendant was directed to be recorded in respect of the said land and it was stated that suit of the plaintiffs be dismissed.

3. Learned trial court after evaluating the facts and evidence on record dismissed the civil suit against which first appeal was preferred. The first appellate court too dismissed the case of the plaintiffs, therefore this

second appeal.

4. Learned counsel for the appellants would submit that admittedly appellants/plaintiffs were in possession of the said land and suit in like nature for declaration and injunction could not have been dismissed as according to the evidence on record, plaintiffs were in possession of the land uninterruptedly to the knowledge of the defendant and therefore stated that the appeal be admitted for hearing.

5. I have perused the judgement and decree, pleading and record of the court below.

6. Considering the claim of the plaintiffs the law laid down by their Lordship in case of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala & Another** reported in **(2014) 1 SCC 669** would be relevant wherein it has been held that even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Here plaintiffs have categorically prayed for declaration that adverse possession has matured into ownership and it is not a case that the suit was filed by the defendant against the appellants/plaintiffs wherein he could have used the adverse possession as shield/defence. Here specific averment and prayer made is that he has become owner. Therefore, such declaratory suit only on the basis of adverse possession could not have been decreed. In view of the settled proposition by Supreme Court in case law (supra) and further more reading document and the evidence would show that even possession of the suit land has not been held to be in favour of the plaintiffs. The plaintiff Baliram PW-1 in cross examination admitted the fact in respect of khasra No.412/1 and 90/1 which is disputed suit land, the possession was taken over by the government after it was subject of auction. Document Ex.D-1 which is also admitted by the plaintiff that suit property was initially

attached, thereafter it was subject of auction and which lasted from 28/04/1974 to 6/05/1975. Consequently, it is proved that after auction was made defendant came into possession of the said land.

7. Reading of the evidence here would also show that plaintiffs have also not able to prove identity of the land wherein they are in possession, since it was case of the defendant that including suit land he has purchased entire land of area 23.47 acres. In statement of PW-2 and PW-3 this fact is admitted and the identity of the suit land still remained a question. On such ground therefore both the court below have dismissed the civil suit as also appeal. Considering the facts and the law laid down by Hon'ble the Supreme Court no substantial question of law arises for consideration in this second appeal.

8. Accordingly, second appeal is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE