

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 678 /2015

Rooplal, S/o. Sulau, Aged About 35 Years, R/o. Village Lawan, Tahsil Baloda Bazar, Police Station & Post- Baloda Bazar, Civil & Revenue District Baloda Bazar - Bhatapara (Chhattisgarh).....(Defendant No. 01)

---- Applicant

Versus

1. Smt. Shanti Bai, W/o. Bhagwani Gond, Aged About 51 Years, R/o. Village Lawan, Tahsil Baloda Bazar, Police Station & Post- Baloda Bazar, Civil & Revenue District Balodabazar-Bhatapara (Chhattisgarh)(Plaintiff)

2. State Of Chhattisgarh, Through: Collector, Baloda Bazar, District Balodabazar-Bhatapara (Chhattisgarh)

.....(Defendent No. 02)

---- Respondents

For Appellant : Mr. Manoj Paranjpe, Advocate.
For Respondent No.1 : Mr. Neeraj Choubey, Advocate
For Respondent No.2 : Mr. Sangharsh Pandey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12/02/2016

1. The appeal is against the order dated 24.11.2015 passed in Civil Appeal No.12-A/2015 by the First Additional District Judge, Baloda Bazar. By such appeal, the judgment & decree dated 30.01.2015 passed in Civil Suit No.89-A/2013 by the Civil Judge Class-1, Baloda Bazar, was reversed only on the question of limitation.
2. The suit was filed by Shanti Bai, respondent/plaintiff, for declaration, injunction and claiming possession that she purchased the land bearing khasra No.1210/19 admeasuring 0.008 hectare from Sulau & Bhulai Gond to construct a house on 24.02.1992 and

thereafter she was placed in possession of the said land, which was also mutated in her name. It was further pleaded that at the time of purchase of the land, the land was bearing Khasra No.1210/2 and thereafter it was re-numbered as 1210/19. Since the plaintiff was not financially well off as such she could not construct her house over the land and the plot was kept open. It was stated that before filing of the suit i.e. in the month of July, 2012 before five years, the defendant initially placed the wooden logs and other articles on the said land, which was objected and removed and the plaintiff had placed the bricks and the sand for construction; however, the construction could not be raised. Subsequently, in the month of October, 2011 the defendant again entered into the said land and took over the possession and the defendant resisted to handover the possession and disputed the identity for which application was filed before the Tahsildar for demarcation of the land and it was confirmed that the defendant has encroached upon the land, therefore, the civil suit was filed.

3. The defendant contended that the possession of the land was never handed over to the plaintiff and initially the plaintiff wanted to secure the possession in the year 2002 followed by 2007 and subsequently on 20.12.2011 on the basis of demarcation, she is trying to claim the land, however, at no point of time, the plaintiff was in possession.
4. The learned trial Court below by its judgment & decree held that the plaintiff had purchased the said land by a registered sale deed dated 24.02.1992 and it was also held that after the purchase of land, she was residing at other place at Mahasamund instead of village Lawan and the mutation though was made in name of the plaintiff, the cause of action arose on 24.02.1992 i.e. from the date of purchase. It was held that though the plaintiff is the owner of the

land but the suit was held to be barred by time. However, the appellate Court held that cause of action arose in 2011 and suit was filed within prescribed period of limitation. Being aggrieved by such order, this second appeal.

5. Learned counsel for the appellant would submit that admittedly in this case the plaintiff has admitted the fact that the plaintiff was not in possession of the land. He would further submit that according to the pleadings and statement of the plaintiff, it would be clear that the plaintiff was not in possession of the land and any effort to get the possession would not arrest the limitation and it would start from 1992 and since the suit was filed in the month of July, 2012, the suit was apparently barred under Section 65 of the Limitation Act as the appellate Court without any application of mind has turned down that finding, which is completely perverse.
6. Perused the judgment & decree, the pleadings and the evidence. In the plaint, the plaintiff at para 14 has stated that the cause of action arose in the month of October, 2011 and on 21.02.2012 when the defendant had encroached upon such land and raises a construction of hut. It is further pleaded that when proceedings were drawn before the revenue authorities, the plaintiff was directed to file a civil suit. The said averments have been denied by the defendant in the written statement. The plaintiff in her statement had stated that since she was not resident of village Lawan, taking the advantage of her absence, the defendant in the month of October, 2011 again encroached upon the land and took possession and started disputing the ownership of the land. It is further stated that the defendant had earlier to that also, before five years had encroached upon the land which was got vacated. Again the defendant had encroached upon the land and ownership was disputed, therefore, the application was drawn for demarcation of

land which was bearing No.1A/12 of 2011-12. The demarcation report is filed as Ex. P-1 & P-2 which purports that the demarcation was carried out in the year 2011-12. The sale deed in this case is filed as Ex.P-3 which is not in dispute by both the parties. The revenue records also shows that the name of Shanti Bai was recorded and the Panchsala Khasra has been marked as Ex.P-7 in the year 2011. The evidence is further on record that after the demarcation when the defendant was asked to vacate the possession, he did not do so. All the other issues have been held in favour of the plaintiff and the suit was dismissed only on the point of limitation by the trial Court. The suit was filed on 02.07.2012. Now the question arises that the finding of appellate Court that the suit was filed within the period of 12 years as the suit was for possession is correct or not.

7. Reading the evidence of the plaintiff along with the statement of the defendant, it would show that the defendant at para 8 of the cross examination has admitted the fact that from 2011 the dispute started in between the plaintiff and the defendant. Reading of such statement along with the demarcation report, which is of the year 2011-12, the natural inference can be drawn that in the year 2011 when the defendant encroached upon the land when the demarcation was carried out and it was established that that the defendant had encroached upon the land, the suit was filed. Therefore, the finding of the appellate Court that the suit is within the limitation cannot be faulted with.
8. In the result, no substantial question of law arises for consideration. Accordingly, the appeal is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
Judge