

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
S.A. No. 541 of 2015

Mahto, S/o. Late Sangram, aged about 66 years, Occupation-Agriculture,
 R/o. Village-Chhindkalo, Tahsil-Ambikapur, District – Sarguja (C.G.)

----Appellant

Versus

1. Thema, S/o. Nan, aged about 53 years, Occupation-Agriculture.
2. Mohan, S/o. Pradhan, aged about 73 years, Occupation-Agriculture.
 Both R/o.Village-Batwahi, P.S. & Tahsil, Ambikapur, District – Sarguja (C.G.)
3. State of Chhattisgarh, Through the Collector, Surguja (C.G.)
4. Lachhan, S/o. Sangram, aged about 68 years, Occupation-Agriculture.
5. Nanha @ Vishwanath, S/o. Sangram, aged about 64 years

Respondent No.4 & 5 are R/o. Village- Chhindkalo, Tahsil-Ambikapur,
 District – Sarguja (C.G.).

----Respondents.

 For Appellant : Mr. Ashok Kumar Shukla, Advocate
 For Respondent No.1 & 2 : Mr. Hemant Gupta, Advocate
 For State/Respondent No.3 : Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

26/02/2016

Heard on admission.

1. This is an appeal against the judgment and decree dated 08.07.2015, passed by 4th Additional District Judge, Ambikapur, District -Sarguja, in Civil Appeal No.05-A/2011, whereby the judgment and decree dated 30.03.2007, passed in Civil Suit No.58-A/2006, passed by 3rd Civil Judge, Class-II, Ambikapur, is affirmed.

2. The appeal is by the plaintiff against the concurrent finding of the Courts below
3. Brief facts of the case are that a suit was filed by the plaintiff/appellant in respect of the land, situated at Village-Chhindakalo, Tahsil-Ambikapur, mentioned in the Schedule-A of the plaint admeasuring area 2.734 hectares for declaration, permanent injunction and the claim was based on the plea of adverse possession. Initially the relief was granted in favour of the appellant against that an appeal was filed. The Appellate Court subsequently remanded the case and after the remand, further judgment and decree was passed on 30.03.2007, whereby the suit filed by the plaintiffs was dismissed and against which, the first appeal was preferred, which too was dismissed.
4. According to the plaintiffs suit land was settled in favour of the Pradhan Uraon and after the settlement of the land in favour of Pradhan Uraon, he left the village and therefore, the land was subject of auction in revenue case No.223/1949-50. Where on the lease was granted in favour of Smt. Chhandi, the original plaintiff (since deceased) and Sangram. After such lease, they were in possession of the suit land. Subsequently, father of the defendant No.1, filed a suit against Sangram, which was bearing Civil Suit No.108-A/1966, for declaration and possession before the Court of Civil Judge Class-II, Ambikapur. The said suit was decreed in favour of the plaintiff/Nanh by a judgment and decree dated 18.01.1968. It was the case of the plaintiffs that after such decree for possession was passed in favour of the Nanh, the possession

was never obtained from the plaintiffs and they continued in the possession of the suit land and their names were also recorded in the revenue records. It was further case of the plaintiff that after the names were recorded in the revenue records on 10.01.1992, the defendant started disturbing the possession and tried to take over the possession of the land. It was therefore, stated by the plaintiff that after the initial decree was passed on 18.01.1968, the possession having not been obtained, such decree can be executed as 12 years has elapsed as execution of decree was barred under the law of limitation. It was further contended that the mutation of name made in favour of the defendant is void.

5. The defendant No.1 and 2, Thema and Mohan in reply to the plaint allegations, stated that against the judgment and decree dated 18.01.1968, an appeal was filed by the then plaintiffs, which ended into compromise and according to the compromise, the defendants were placed into possession of the suit land and the defendant, thereafter continued their possession in the suit land.
6. Learned Court below after hearing both the parties, came to a finding of fact that the defendants are in possession of the suit land. It was further held that suit claiming title on the basis of adverse possession can not be entertained and eventually dismissed the suit. Against such finding, an appeal was filed. The Appellate Court too affirmed the order of the Trial Court. Hence this second appeal.
7. Mr. Ashok Kumar Shukla, learned counsel appearing on behalf of the appellant vehemently argued that initially the judgment and

decree was passed on 18.01.1968 in favour of defendant through their predecessor but the decree was never executed. Therefore, the said decree could not have been executed after lapse of 12 years as it is barred under Article 136 of the Indian Limitation Act. He further submits that the defendants were never placed in possession of the land at any point of time. Consequently, the possession of the plaintiffs continued and they remained in exclusive possession of the land and both the Courts below had erred in holding that the defendants are in possession. The counsel on the aforesaid submission prays that the appeal be admitted for hearing.

8. Heard the learned counsel for the appellant at length.
9. On survey of the evidence and the pleadings, this fact is established that initially the appellant/plaintiffs were in physical possession of the land and thereafter by the judgment and decree dated 18.01.1968, decree was passed in favour of the defendant and their predecessor.
10. On behalf of the plaintiffs, one Mahto (PW-1) and Ghasiram (PW-2) were examined. The witness, Mahto (PW-1) in his cross-examination has stated that in respect of the same land, a civil suit was decided in between the parties and against that an appeal was filed before the Appellate Court. At para-4 of the plaint these pleadings have been made. The said pleading on being read alongwith statement, it is established that in respect of the same land a judgment and decree was passed on 18.01.1968. The witness at para-7, has stated that he is in know of the fact of entire

cases, which proceeded in between the parties. Further at para-14, the witness has stated that he is neither paying the revenue of such land last 2 to 3 years nor it was being recovered from him. This witness has further stated that while the appeal was filed in respect of the earlier suit, before the District Judge, he had not attended each and every date of hearing and it was being attended by her mother. But one fact can be assumed from the entire reading of the statement that an appeal was filed which ended into compromise. Perusal of the record would show that though the fact is established that an appeal was filed against the judgment and decree of possession, which was passed against the plaintiffs but what was the outcome of such appeal has not been placed on record. Perusal of the document Ex.P/1 and P/2 do not go to prove the fact that the plaintiffs were in possession of the land.

11. Therefore, reading the entire evidence of the plaintiffs, the finding of fact that the plaintiffs are not in possession of the land can not be faulted with. In a result no substantial question of law arises for consideration in this second appeal.
12. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE