

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.364 of 2015

Shiv Kumar Agrawal @ Mama, S/o Late Shri Ramniwas Agrawal, aged about 52 years, Occupation Business, Krishna Photocopiers, R/o Kota Pandariya, Main Road, Old Bus Stand, Lormi, P.S. Lormi, Civil & Revenue Distt. Bilaspur (C.G.)

(Defendant)/  
---- Appellant

Versus

1. Smt. Rashmi Kesharwani, W/o Mahesh Kumar Kesharwani, aged about 35 years,
2. Smt. Manju Kesharwani, W/o Mukesh Kumar Kesharwani, aged about 34 years,
3. Smt. Ekta Kesharwani, W/o Manoj Kumar Kesharwani, aged about 31 years,

All are R/o Ward No.8, Rani Gaon, Lormi, (In front of Life Insurance Office) Post and Tahsil Lormi, Distt. Bilaspur (now Mungeli) (C.G.)

4. State of C.G., through Collector, Mungeli, Distt. Mungeli (C.G.)

(Plaintiffs)/  
---- Respondents

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| For Appellant:             | Mr. R.P. Tripathi and Mr. Vivek Tripathi, Advocates.                           |
| For Respondents No.1 to 3: | Mr. Shree Kumar Agrawal, Senior Advocate with Mr. Anand Kumar Gupta, Advocate. |
| For State/respondent No.4: | Mr. Om P. Sahu, Govt. Advocate.                                                |

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

05/08/2016

1. Heard on admission.

2. This is defendant's appeal under Section 100 of the CPC by which the first appeal preferred by the appellant / defendant under Section 96 of the CPC was dismissed by the first appellate Court affirming the judgment and decree of the trial Court granting decree for recovery of possession and arrears of rent against the appellant / defendant.
3. The plaintiffs/respondents herein filed suit for recovery of possession, arrears of rent and damages against the appellant / defendant stating inter alia that the plaintiffs / respondents No.1 to 3 have purchased the suit land from the erstwhile owner of the suit accommodation Shri Sharda Prasad Shukla in which the present appellant / defendant is tenant of Shri Sharda Prasad Shukla and despite service of notice, neither the suit accommodation has been vacated nor possession has been handed-over and therefore decree for possession, arrears of rent and damages be granted in favour of the plaintiffs. The defendant entered into appearance and opposed the suit stating inter alia that the suit is not properly constituted and it is barred by res judicata and further, the defendant has pleaded that he has perfected his title by way of adverse possession.
4. The trial Court by its judgment and decree dated 22-1-2014, decreed the suit holding inter alia that the plaintiffs have purchased the suit land by registered sale deed dated 6-3-2009 from Shri Sharda Prasad Shukla and acquired title, and

further held that the present defendant was tenant of Shri Sharda Prasad Shukla and now, after giving information by the plaintiffs with regard to purchase, he has become the tenant of the present plaintiffs and he has not paid rent from April, 2009 to November, 2009 despite service of notice and as such, on account of non-payment of arrears of rent, the defendant deserves to be ejected from the suit land and also held that the defendant has not perfected his title by way of adverse possession.

5. The appellant / defendant preferred first appeal under Section 96 of the CPC. The first appellate Court by its impugned judgment dismissed the appeal upholding the judgment of the trial Court decreeing the suit finding no merit in the first appeal preferred by the appellant / defendant. Questioning the said judgment and decree of the first appellate Court, this second appeal has been preferred.
6. Mr. R.P. Tripathi, learned counsel appearing for the appellant / defendant, would vehemently submit that firstly, opportunity to adduce evidence of the defendant was abruptly closed by the trial Court resulting into serious prejudice to the appellant / defendant as he could not adduce evidence in support of his defence raised in the written statement. Secondly and alternatively, he would submit that concurrent finding recorded by the two Courts below holding that the defendant has not perfected his title by adverse possession

is a finding which is wholly contrary and perverse to the record and therefore that gives rise to substantial question of law and as such, the appeal deserves to be admitted on the above stated two substantial questions of law. He would further submit that perverse finding of the two Courts below also gives rise to substantial question of law and placed reliance in the matter of **Rajasthan State Road Transport Corporation and another v. Bajrang Lal**<sup>1</sup>.

7. I have considered the submissions made by learned counsel for the appellant / defendant and also gone through the record extensively.
8. The plaintiff's opportunity to lead evidence was closed by order dated 30-11-2013, as the plaintiff was granted time to lead evidence from 24-9-2012 to 30-11-2013. It appears from the order sheet that the defendant was given opportunity to lead evidence on 14-9-2012, 28-9-2012, 11-10-2012, 31-10-2012, 24-11-2012, 14-2-2013 and 12-7-2013 and as such, sufficient much less reasonable opportunity was given to the appellant / defendant to adduce evidence but he did not adduce evidence. Consequently, his right to lead evidence was closed by order dated 30-11-2013. The first appellate Court has, in detail, considered the submission in this regard and has clearly come to the conclusion that reasonable opportunity to lead evidence was granted to the

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<sup>1</sup> (2014) 4 SCC 693

appellant / defendant and he did not avail the opportunity to lead evidence and thereby closed the opportunity in which I do not find any illegality. I am of the considered view that the trial Court has not committed any jurisdictional error in closing the opportunity to lead evidence and the first appellate Court is absolutely justified in affirming the said finding. Therefore, the concurrent finding in this regard does not give rise to any substantial question of law for admission of this appeal.

9. This brings me to the next proposed substantial question of law that the defendant has not perfected his title by adverse possession.
10. The trial Court has clearly recorded a finding that the defendant was tenant of Shri Sharda Prasad Shukla and after purchase of the suit accommodation by the present plaintiffs from Shri Sharda Prasad Shukla and upon notice being given to the defendant, by attornment, the plaintiffs have become landlords of the suit accommodation and the defendant has become plaintiffs' tenant of the suit accommodation. Thus, the defendant's / appellant's possession become permissive possession.
11. In the matter of **Roop Singh (Dead) Through LRs v. Ram Singh (Dead) Through LRs**<sup>2</sup> it has been held by the Supreme Court that "if the defendant got the possession of

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<sup>2</sup> (2000) 3 SCC 708

suit land as a lessee or under a *batai* agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. (**Thakur Kishan Singh v. Arvind Kumar**<sup>3</sup>) Hence, the High Court ought not to have interfered with the findings of fact recorded by both the courts below”.

12. The law laid down by the Supreme Court in **Roop Singh** (supra) squarely applies to the facts and circumstances of the present case.

13. In the matter of **The State Bank of Travancore v. Aravindan Kunju Panicker and others**<sup>4</sup>, Their Lordships of the Supreme Court have held that “a permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more. There is no evidence to show that either Krishnan Krishnan or Vellu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before he present suit”.

14. Further, in **Thakur Kishan Singh** (supra), Their Lordships of

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<sup>3</sup> (1994) 6 SCC 591

<sup>4</sup> (1972) 4 SCC 274

the Supreme Court have held that “the possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession”.

15. The defendant came into possession in the suit accommodation as a lessee therefore, his possession cannot be held to be adverse possession. However, both the Courts below have concurrently not found the plea of adverse possession to be established in which I do not find any jurisdictional error or illegality.

16. Recently, the Supreme Court in the matter of **Vishwanath Agrawal, S/o Sitaram Agrawal v. Sarla Vishwanath Agrawal**<sup>5</sup> has held that High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Paragraphs 36 and 37 of the report are as under:-

“36. In *Major Singh v. Rattan Singh*<sup>6</sup> it has been observed that when the courts below had

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5 (2012) 7 SCC 288

6 (1997) 3 SCC 546 : AIR 1997 SC 1906

rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In *Vidhyadhan v. Manikrao*<sup>7</sup> it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in *Abdul Raheem v. Karnaraka Electricity Board*<sup>8</sup>.”

17. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid cases, the concurrent finding of fact recorded by both the courts below is based on evidence and no substantial question of law is involved in this appeal. Thus, the finding of the two Courts below decreeing the suit of the plaintiffs is based on finding of fact available on record, it is neither perverse nor contrary to record.

18. In the result, I do not find any substantial question involved in this appeal. Consequently, the appeal deserves to be and is accordingly dismissed in limine. No order as to costs.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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<sup>7</sup> (1999) 3 SCC 573

<sup>8</sup> (2007) 14 SCC 138 : AIR 2008 SC 956