

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 641 /2015

Babulal, S/o. Late Shri Malikram, Aged About 66 Years, R/o. Village-Saragbundiya, Thana & Tahsil- Kartala, Civil & Revenue Distt.- Korba, Chhattisgarh. (Plaintiff)

---- Appellant

Versus

State Of Chhattisgarh, Through Collector Korba, Distt.- Korba, Chhattisgarh. (Defendant)

---- Respondent

For Appellant : Dr. Sanjeet Sharma, Advocate.

For Respondent : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31/03/2016

Heard on admission.

1. The appeal is against the judgment & decree dated 31.07.2015 passed by the Court of First Additional District Judge, Korba, in Civil Appeal No.52-A/2014. By such order, the judgment & decree passed in Civil Suit No.08-A/2013 passed by the Court of Civil Judge Class-II, Kartala, on 17.07.2014 has been affirmed. The appeal is by the plaintiff against the concurrent finding of fact.
2. The facts as pleaded by the plaintiff is that a land bearing Khasra No.16/1 total admeasuring 31.94 Acres out of that over 1.50 Acres which is recorded as Government grass land, the plaintiff is in possession and therefore the suit for declaration and permanent injunction was filed. It was stated by the plaintiff that on the part of the land bearing Khasra No.16/1 over 1.50 Acre, the plaintiff is in possession and was cultivating the same and because of the encroachment, the plaintiff was fined by the Naib Tahsildar and

subsequently the plaintiff filed an application before the Collector, Korba, for settlement; however, no decision was arrived at by the Collector, Korba. It was further pleaded that the plaintiff was in possession of the said land to the knowledge of the State, therefore, the suit for declaration and permanent injunction be decreed.

3. The trial Court dismissed the suit and against the judgment & decree, first appeal was preferred and the first appellate Court too dismissed the appeal, therefore, the second appeal.
4. Learned counsel for the appellant is unable to submit any facts and to answer the query of the Court as to how he is claiming the adverse possession over the Government land. It is contended by the counsel that an application was preferred before the Collector for settlement, however, no decision was taken and, as such, a suit for permanent injunction and declaration has been filed.
5. Perused the record of the Court below. As per the plaintiff, he was in possession of the part of land bearing khasra No.16/1 over a part admeasuring 1.50 Acre from 1975. It has been stated by the plaintiff himself that a case was registered against the plaintiff/appellant for such illegal encroachment over the land and the fine was also imposed by the Naib Tahsildar. Subsequently, an application was filed by the plaintiff/appellant for settlement and therefore, it was contended that from 1975, he was in possession of the said land to the knowledge of the State and therefore a decree for declaration and permanent injunction be passed.
6. Admittedly, according to the statement of the plaintiff, while the plaintiff was in possession of the land, he was fined by the Naib Tahsildar, as he being illegal occupant of the land and an amount of Rs.500/- was paid by the appellant/plaintiff on 24.11.2005.

Reading the statement would also do not support the contention that the plaintiff/appellant was in possession of the land and was holding the land adversely to the knowledge of the State since it has itself been negated by the fine imposed by the State. The Panchsala-khasra shows that the land was recorded to be a grass land and the plaintiff/appellant was stated to be an encroacher. Even otherwise the suit on the basis of adverse possession could not have been entertained at the behest of the plaintiff, as has been laid down by the Hon'ble Supreme Court in the case of ***Gurudwara Sahib v. Gram Panchayat Village Sirthala & Anr***¹

7. In the result, no substantial questions of law arises for consideration in this second appeal. Accordingly, the appeal is dismissed at the motion stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge

¹ (2014) 1 SCC 669