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HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 169 of 2017**

(Arising out of judgment/order dated 29.11.2016 in Civil Appeal No.18-A/2016 of the learned 1st Additional District Judge, Balodabazar)

- Ramgopal Agrawal S/o Late Shri Jhumuk Lal Agrawal, Aged About 76 Years (Retd. Principal), R/o Bajrang Chowk, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh(Plaintiff)

---- Appellant

Versus

1. Digvijay Agrawal S/o Late Shri Rammanorath Agrawal, Aged About 60 Years R/o C/o Vyasnarayan Agrawal, Dudhadhari Math, Mathpara, Raipur, District Raipur, Chhattisgarh
2. Deepak Agrawal S/o Late Shri Rammanorath Agrawal, Aged About 52 Years R/o Lakadganj Para, Kodagaon, District Bastar, Chhattisgarh
3. State Of Chhattisgarh, Through Collector, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
4. Khilleshwar Sahu S/o Jagdish Sahu, Aged About 32 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
5. Vikesh Kumar Sahu S/o Jagdish Sahu, Aged About 30 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
6. Omprakash Sahu S/o Jagdish Sahu, Aged About 28 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
7. Kiran Kumar Sahu S/o Jagdish Sahu, Aged About 22 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
8. Devnath Sahu S/o Jageshar Sahu, Aged About 34 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
9. Loknath Sahu S/o Jageshar Sahu, Aged About 31 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
10. Sumant Sahu S/o Jageshar Sahu, Aged About 29 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh

11. Suresh Kumar Sahu S/o Jageshar Sahu, Aged About 25 Years R/o Village & Post Risda, Police Station And Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh
12. Ultratech Cement Limited (Unit Rawn Cement Works), Through Authorized Representative Ravikant Shukla (Assisant Manager) S/o Shri Bhanuprakash Shukla, Aged About 46 Years, R/o Grasim Vihar Rawan Tahsil Simga District Baloda Bazar, Chhattisgarh
13. Smt. Jyotasana Agrawal W/o Mahesh Agrawal, Aged About 49 Years R/o House No.C-02, Behind House Of Parshad Chhagan Choubey, Vasundhara Nagar, Changora Bhatha, Raipur, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondent No.3/State	:	Shri Sanjeev Pandey, G.A.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

22/11/2017

1. Heard on admission.
2. This appeal has been preferred by the plaintiff under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 29.11.2016 passed by the 1st Additional District Judge, Balodabazar in Civil Appeal No. 18-A/2016, by which, the lower appellate Court, while affirming the judgment and decree dated 31.03.2016 passed by the 2nd Civil Judge, Class-1, Balodabazar, in Civil Suit No.55-A/2013, has dismissed the plaintiff's claim.
3. The undisputed facts of the case are that the plaintiff Ramgopal instituted a suit claiming declaration of title with regard to the suit property described in plaint para 4 by submitting, inter alia, that the suit property was purchased by him orally in 1983 from his brother Ram Manorath Agrawal for a sale consideration of Rs.45,000/-. It is pleaded that in 1983 itself, the possession was delivered to him

and since then he is continuously in peaceful possession over the same, and therefore, has prescribed his right, title and interest by way of adverse possession as well. It is pleaded further that defendants No. 1, 2 and 13, the heirs of his vendor, namely, Ram Manorath, have applied for mutation with regard to the suit property, therefore, the plaintiff has been constrained to file the suit in the instant nature.

4. The said suit was contested by the defendants denying very specifically that the suit property was alienated orally by Ram Manorath to the plaintiff Ramgopal. They denied further that the plaintiff Ramgopal is in possession since 1983 and has prescribed his right, title and interest by way of adverse possession, as alleged by him. Since the plaintiff had not acquired any interest over the same, therefore, the suit property was rightly sold to other defendants by the heirs of said Ram Manorath. In view of the said fact, the suit is liable to be dismissed.

5. The trial Court, after considering the evidence of the parties, has dismissed the plaintiff's suit by holding that the plaintiff had not acquired his interest by way adverse possession and the suit as filed by him is barred by law.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff under Section 96 of the Code of 1908.

7. Being aggrieved, the plaintiff has preferred this appeal. Shri Sanjay Patel, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by holding that the plaintiff had not acquired any right, title or interest by way of adverse possession is apparently contrary to law. He submits further that since the plaintiff has purchased the suit property from his brother Ram Manorath, therefore, no such formal deed like sale deed was executed, but the entire sale consideration was paid by him in 1983 itself when the possession was

delivered to him by said Ram Manorath. He, therefore, submits that though the registered deed of sale was not executed in his favour but continuously in possession since the year 1983 and has prescribed his valid title upon it. Without considering the said material fact in its proper manner, the Courts below have erred in dismissing the plaintiff's claim.

8. I have heard learned counsel for the appellants and perused the entire record carefully.

9. The plaintiff's suit is essentially based on the ground that he has purchased the suit property, described in plaint para 4, from his brother Ram Manorath in 1983 orally for a sale consideration of Rs.45,000/- and has prescribed his right, title and interest by way of adverse possession as well over the same. In order to establish the said fact, the plaintiff is required to file registered deed of sale that he has acquired the valid title from his brother Ram Manorath by purchasing the suit property in 1983. However, in absence of any registered deed of sale, it cannot be held that any right, title and interest was conferred upon him on the basis of oral sale, particularly, where the value of the suit property was above Rs.100/-. By virtue of Section 54 of the Transfer of Property Act, the immoveable property could be sold only by way of execution of registered document if the value of it is above Rs.100/-. Admittedly, in the instant case, the plaintiff Ramgopal has purchased the suit property from his brother orally for a sale consideration of Rs.45,000/-. In such circumstances, it cannot be held that the plaintiff has acquired any valid title upon it on the basis of alleged oral sale from his brother Ram Manorath. Besides, the plaintiff is claiming his ownership over the suit property on the basis of adverse possession. However, both the pleas are destructive with each other, therefore, under such circumstances also, it cannot be held that plaintiff has acquired any right over the suit property. Under such circumstances, the Courts below have rightly held that the plaintiff has failed to acquire his interest by way of adverse

possession. Consequently, the findings so recorded by the Courts below deserve to be and are hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law which arise for determination in this appeal. Accordingly, the appeal, being devoid of merit, is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge