

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.140 of 2016**

Imran Malik S/o Late Soebuddeen, Aged About 62 Years R/o College Road, Jashpur Nagar, Tahsil, Post Office, Police Station & District Jashpur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Masihujama Khan (Dead) Through Lrs Fasihujama Khan S/o Late Masihujama Khan, Aged About 57 Years R/o Village Jashpur, Tahsil And District Jashpur, Chhattisgarh
2. Rafikhujama Khan S/o Late Masihujama Khan, Aged About 55 Years R/o Village Jashpur, Tahsil And District Jashpur, Chhattisgarh
3. Nanhi D/o Late Masihujama Khan, Aged About 53 Years R/o Sizva, District Dhanbad (Jharkhand)
4. Raishujama Khan S/o Late Masihujama Khan, Aged About 51 Years R/o Kaji Mohalla Near Urdu Medium School, Aurangabad, Tahsil And District Aurangabad (Bihar)
5. Anisujama Khan S/o Late Masihujama Khan, Aged About 49 Years R/o Village Jashpur, Tahsil And District Jashpur, Chhattisgarh
6. Munni @ Musharrat Aara D/o Late Masihujama Khan, Aged About 47 Years W/o Shabbir Khan, R/o Kaji Mohalla Near Urdu Medium School, Aurangabad, Tahsil And District Aurangabad (Bihar)
7. Baby @ Najahat Aara D/o Masihujama Khan, Aged About 45 Years W/o Istiyak Khan, R/o Village & Post Near Khan Poultry Firm, Sohagpur, Shahdol, Tahsil And District Shahdol (M.P.) (Defendants)

-----Respondents

For Appellant:

Shri RN. Jha, Advocate.

For Respondents:

Ms. Sharmila Singhai, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

31.07.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 04.02.2016 passed by the District Judge, Jashpur in Civil Appeal No.33-A/2015 by which, the lower appellate Court, while affirming the judgment

and decree dated 31.03.2015 passed by the 1st Civil Judge, Class-I, Jashpur, Distt. Jashpur in Civil Suit No.134-A/1999, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff-Imran Malik instituted a suit claiming declaration of title and injunction with regard to the property in question bearing Khasra No.363/10 prescribed in detail in Plaint Schedule-A by submitting *inter alia* that as per the permission of the original Defendant Masihujjama Khan (since deceased, now represented by his legal representatives) has raised a *pakka* construction over the suit property. It is pleaded further that as per the permission of the Defendant, he applied for permission for raising the construction before the concerned authority of Nagar Palika and only after the permission so accorded, has raised the said construction in the year 1975 and since the date of its construction, he has been residing over there continuously well within the knowledge of the Defendant and has thus prescribed his right, title and interest by way of adverse possession. It is pleaded further that certain documents like *ikrararnama* dated 09.06.1999 has been obtained forcefully by the Defendant by obtaining his signature on blank paper and has tried to dispossess him illegally.

3. The aforesaid claim of the Plaintiff has been contested by the Defendant by submitting very specifically that he never permitted the Plaintiff to raise any construction as claimed by him nor he has prescribed his right, title or interest by way of adverse possession. It is contested further on the ground that on 18.4.1929, the alleged property was given to him on lease and that after obtaining the permission on 28.12.1973 has raised the construction over it. It is contested further on the ground that

the Plaintiff is in fact enjoying the property as his tenant and not as an owner as claimed by him.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the Plaintiff is not entitled to claim the ownership of the property in question by virtue of adverse possession as he failed completely to establish the said fact that from which date he is claiming ownership by disowning the interest of the Defendant. As a consequence, the trial Court has dismissed the suit.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Plaintiffs.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri RN Jha, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are not at all sustainable in the eye of law. He further submits that without appreciating the pleadings of the Plaintiff averment in its proper manner, the trial Court has arrived at a wrong conclusion by holding that the Plaintiff has failed to prove his ownership by adverse possession. According to him, the Plaintiff para-4A establishes the fact that the Plaintiff is enjoying the property as a licensee by raising a *pakka* construction as per the permission of the Defendant. He therefore, submits that under such circumstances, the Plaintiff is enjoying the suit property as a permanent licensee and the same cannot be revoked by the Defendant.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. The Plaintiff Imran Malik has prayed for declaration of title and injunction on the premises that he has raised a *pakka* construction over

the Plaintiff Schedule-A property with the permission of the Defendant in the year 1975 and since then he is enjoying the property as his own ownership. With this plea, it was pleaded by him that he has prescribed his right, title and interest by way of adverse possession and therefore, he is claiming ownership with regard to the said property as such. From perusal of the entire Plaintiff averment, vis-a-vis the evidence led by him, it is difficult to hold that the Plaintiff has ever prescribed his right by way of adverse possession. The burden was heavily upon the Plaintiff to establish this fact by producing cogent and reliable evidence. However, I do not find any specific plea of ouster by which it can be held that the Plaintiff has established his right by way of adverse possession. The trial Court as well as the lower appellate Court while considering the evidence of both the parties, have arrived at a conclusion that the Plaintiff has failed completely to establish the said fact. The said finding so recorded is a pure finding of fact which is based upon due and proper appreciation of evidence of the parties and therefore, the same cannot be held to be a perverse one. I therefore, affirm the said finding. As far as the contention of Shir Jha that the Plaintiff is enjoying the suit property as a permanent licensee, is noted to be rejected. Perusal of the entire Plaintiff averments as a whole would show that the Plaintiff is claiming his ownership with regard to the suit property only on the basis of adverse possession. Such a contention, therefore, appears to have built up an entirely new case and therefore, the same cannot be appreciated at this stage. Accordingly, I do not find any substance in this regard.

9. Consequently, 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 merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya