

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.120 of 20015**

Devprasad S/o Laxman Aged About 54 Years R/o Village- Tilai, Tahsil Janjgir-Distt.- Janjgir- Champa, Chhattisgarh

---- Appellant

Versus

1. Surendra Kumar Soni & Ors. S/o Niranjanlal Aged About 31 Years R/o Near Gattani School, Janjgir- Tahsil Janjgir-Distt.- Janjgir-Champa, Chhattisgarh
2. Gowardhan S/o Laxman Aged About 48 Years R/o Village Tilai, Tahsil-Janjgir, District Janjgir-Champa, Chhattisgarh
3. Horilal S/o Motiram Kurmi Aged About 56 Years R/o Village Tilai, Tahsil-Janjgir, District Janjgir-Champa, Chhattisgarh
4. Jawahar S/o Chheduram Aged About 51 Years R/o Village Kataud, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh
5. Gorelal S/o Chheduram Aged About 46 Years R/o Village Kataud, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh
6. Chhotelal S/o Chheduram Aged About 46 Years R/o Village Kataud, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh
7. Tukaram S/o Bodhram Aged About 59 Years R/o Village- Gidhori, Tahsil Kasdol, District Raipur, Chhattisgarh
8. Krishna Kumar S/o Bodhram Aged About 47 Years R/o Village- Gidhori, Tahsil Kasdol, District Raipur, Chhattisgarh
9. Shiv Kumar S/o Bodhram Aged About 45 Years R/o Village- Gidhori, Tahsil Kasdol, District Raipur, Chhattisgarh
10. State Of Chhattisgarh Through The District Collector, Janjgir, District Janjgir-Champa, Chhattisgarh

-----Respondents

For Appellant:	Shri Somnath Verma, Advocate.
For Respondent No.10/State:	Smt Shobha Kashyap, Dy. Govt. Advocate.

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

07.07.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 by questioning the judgment and decree dated

22.12.2014 passed by the 3rd Additional District Judge, Janjgir in Civil Appeal No42-A/2014 by which the lower appellate Court, while affirming the judgment and decree dated 24.10.2009 passed by the 1st Civil Judge, Class-II, Janjgir-Champa in Civil Suit No.68-A/2009, has dismissed the Appeal.

2. The undisputed facts of the case are that Plaintiff-Dev Prasad instituted a suit for declaration of title and injunction by submitting *inter alia* that the property in question bearing Khasra No.496 admeasuring 0.82 acres has come in share of his predecessor in interest namely Lakshman, however it was inadvertently recorded in the name of Ganga Bai, the daughter of one Puniram. The said Puniram was the real brother of Plaintiff's grand father namely Muritram. It is pleaded further that since the Plaintiff was in possession for over more than 12 years and has been cultivating the property in question as per the permission of Ganga Bai therefore, has prescribed his right, title and interest by way of adverse possession. It is pleaded further by the Plaintiff that Defendants 4 & 9 i.e. Jawahar, Gorelal, Chotelal and Tukaram, without any authority, have sold the suit property to Defendant No.1- Surendram Kuamr Soni, who on the basis of alleged alienation started interfering in peaceful possession of the Plaintiff, therefore, the Plaintiff has filed this suit for declaration of title and injunction.

3. The Defendants have contested the aforesaid claim.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the suit property bearing Khasra No.496 admeasuring 0.82 acres has not come in share of his predecessor interest namely Lakshman. It held further that the Plaintiff has not prescribed his right, title and interest by way of adverse possession. As a consequence, the trial Court dismissed the Plaintiff's suit.

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

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Somnath Verma, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below is not at all sustainable in the eye of law. He submits further that the Courts below ought to have seen that the property in question came in the share of Plaintiff's predecessor in interest namely Lakshman. Even otherwise, the Courts below ought to have seen and held that Plaintiff-Dev Prasad who was cultivating the property in question for over more than 12 years has prescribed his right, title and interest by way of adverse possession. Without considering these material facts, the Courts below have committed illegality in passing the impugned judgment and decree, therefore, the same deserves to be set aside.

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

8. The Plaintiff-Dev Prasad had instituted a suit for declaration of title and injunction on the premises that the property in question had come in the share of his predecessor interest namely Lakshman. The said fact was required to be established by the Plaintiff by adducing cogent evidence. However, the Plaintiff has failed completely to prove that this property had come in share of his father Lakshman in an oral partition as effected orally between him and legal heirs of his grand uncle Baula. He failed further to establish the fact that this property was inadvertently recorded in the name of Ganga Bai. As far as the plea of adverse possession is concerned, the Plaintiff is required to establish the fact that on which date, he is in possession by disowning the real owner of the property in question. However, neither the said plea nor any

evidence is there on record by which it could be presumed that the Plaintiff has disowned the interest of the real owner of the property in question and was continuously in possession for over more than 12 years so as to prescribe his right, title and interest by way of adverse possession. In absence of specific plea of ouster in order to establish his hostile possession, it cannot be held that the Plaintiff has prescribed his interest by way of adverse possession. Therefore, findings of the Courts below deserve to be and are hereby affirmed.

9. In view of above 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 merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE