

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No.341 of 2013**

Budhantin Bai W/o Ramakisun Satnami Aged About 68 Years R/o Hatkeshwar Ward, Dhamtari, Post, Tah. And Distt. Dhamtari C.G.

----Appellant**Versus**

1. State Of Chhattisgarh And Ors. S/o Thru- Collector, Dhamtari C.G.
2. C.G. Housing Board Branch- Dhamtari, Thru- Executive Engineer, C.G. Housing Board, Branch Raipur Office Ratnabandha Road, Dhamtari, Distt. Dhamtari C.G.
3. Tehsildar Revenue- Dhamtari, Distt. Dhamtari C.G.

-----Respondents

For Appellant: Shri Adil Minhaz, Advocate.
 For State/Respondents No.1&3: Smt Shobha Kashyap, Dy. Government Advocate.

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

13.4.2017

1. This is the Plaintiff's Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 30.3.2013 passed by the Additional District Judge, Dhamtari in Civil Appeal No.16-A/2011 by which the lower appellate Court, while affirming the judgment and decree passed by the trial Court, has dismissed the Appeal.
2. The undisputed facts of the case are that the Plaintiff Budhantin Bai instituted a suit for declaration of title and injunction by submitting *inter alia* that she is in possession since 1970 and has thus prescribed her right, title and interest by virtue of adverse possession. It is pleaded further that she had applied for allotment of the property in question in her favour before the

Tahsildar, Dhamtari, who in turn, has rejected the said application. After dismissal of the said application, the Plaintiff has filed the suit in the instant nature.

3. The Defendants have contested the aforesaid claim and stated that the Plaintiff's possession is not lawful over the property in question and therefore, she is not entitled to claim any relief as such.

4. The trial Court, after considering the evidence led by the parties, has dismissed the Plaintiff's claim by holding *inter alia* that the Plaintiff has failed to establish the fact that she is in possession since 1970 continuously and perfected her right by way of adverse possession. It held further that the Plaintiff's possession over the property in question is unauthorized. Consequently, the trial Court has dismissed the Plaintiff's claim.

5. The aforesaid finding of the trial Court has been affirmed by the lower appellate Court in an Appeal preferred by the Plaintiff under Section 96 of the Code of Civil Procedure.

6. Being aggrieved with the aforesaid finding of the Courts below, the Plaintiff has preferred this Appeal. Shri Minhaz, learned Counsel for the Appellant submits that the Courts below ought to have held that the Plaintiff is continuously in possession since 1970 and therefore, ought to have granted a decree for declaration of title on the basis of adverse possession. He submits further that without appreciating the evidence of the parties in its proper perspective, the Courts below have erred in dismissing the claim. The findings of the Courts below, therefore, deserves to be set aside.

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

8. Undisputedly, the Plaintiff is not the owner of the property in question,

therefore, a claim was made by her that as she is in possession since 1970 and has thus become the owner for the suit property by virtue of adverse possession. It is also revealed from the record that an application for allotment of suit land was made by the Plaintiff before the concerned Tahsildar, Dhamtari, however, the same was rejected and which has attained its finality by efflux of time. No other document is available on record by which it could be held that Plaintiff has any interest over the suit land. The trial Court as well as the lower appellate Court both have therefore rightly come to the conclusion that the Plaintiff has failed completely to establish the fact that she is the owner of the suit land or has prescribed her right, title or interest even by virtue of adverse possession. The findings so arrived cannot be held to be perverse and therefore deserve to be and are hereby affirmed.

10. In view of above, no substantial questions of law arise for determination in this appeal. Therefore, it deserves to be and is hereby dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE