

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.63 of 2012**

Girwarlal Chauhan (Dead) Through Lrs
 1. (a) Dhan Bai Chauhan Aged about 58 Years Wd/o Late Girwarlal Chauhan, R/o Village Darrabhatha, P.O. Thathari, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 1. (b) Sunil Kumar Chauhan Aged about 28 Years S/o Late Girwarlal Chauhan, R/o Village Darrabhatha, P.O. Thathari, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 1. (c) Anjana Chauhan Aged about 26 Years D/o Late Girwarlal Chauhan, R/o Village Darrabhatha, P.O. Thathari, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 1. (d) Rishi Kumar Chauhan Aged about 24 Years S/o Late Girwarlal Chauhan, R/o Village Darrabhatha, P.O. Thathari, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 1. (e) Anil Kumar Chauhan Aged about 33 Years S/o Late Girwarlal Chauhan, R/o Village Darrabhatha, P.O. Thathari, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 1. (f) Anita Chauhan Aged about 30 Years W/o Rajkumar Chauhan, R/o Village Mudapar, Near Hanuman Mandir, Korba, District Korba, Chhattisgarh(Plaintiffs)

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1. Mahettarlal @ Chandu (Dead) Through Lrs
 1. (A) Jagdish Aged about 26 Years S/o Mehattarlal @ Chandu, R/o Village Darrabhata, Post Thathari, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 1. (B) Ghasnin Bai Aged about 60 Years Wd/o Mehattarlal @ Chandu, R/o Village Darrabhata, Post Thathari, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 2. Budhwara Wd/o Khikhram, Aged About 35 Years R/o Village Darrabhatha, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 3. Ashish S/o Khikhram, Aged About 11 Years Minor Through Natural Mother Budhwara, Wd/o Khikhram, R/o Village Darrabhatha, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 4. Ashwani S/o Khikhram, Aged About 9 Years Minor Through Natural Mother Budhwara, Wd/o Khikhram, R/o Village Darrabhatha, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
 5. Mahetarin D/o Madan, Aged About 45 Years Caste Gond, R/o Village Darrabhatha, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh, At Present R/o Adarsh Nagar, Chunchuni, Qr. No. M-1058, Post Kusmunda, District Korba, Chhattisgarh
 6. Manharan S/o Tengnu, Aged About 48 Years Caste Gond, R/o Village Darrabhatha, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh, At Present R/o Adarsh Nagar, Chunchuni, Qr. No. M-1058, Post Kusmunda, District Korba, Chhattisgarh

7. Chhotu S/o Tengnu, Aged About 43 Years Caste Gond, R/o Village Darrabhatha, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh, At Present R/o Adarsh Nagar, Chunchuni, Qr. No. M-1058, Post Kusmunda, District Korba, Chhattisgarh

8. Barpalahin Wd/o Tengnu, Aged About 73 Years Caste Gond, R/o Village Darrabhatha, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh, At Present R/o Adarsh Nagar, Chunchuni, Qr. No. M-1058, Post Kusmunda, District Korba, Chhattisgarh

9. State Of Chhattisgarh, Through: The Collector, District Janjgir-Champa, Chhattisgarh(Defendants)

10. Bhadak Ram S/o Konda, Aged About 33 Years Caste Gond, R/o Village Darrabhata, Post Office Thathari, Tehsil Jaijaipur, District Janjgir-Champa, Chhattisgarh

-----**Respondents**

For Appellants:	Shri PP. Sahu and Shri Raj Kumar Pali, Advocates.
For Respondents No.4 & 10:	Shri Chandra Bhushan Kesarwani, Advocate.
For Respondent No.9/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

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

17.05.2017

1. This is the Plaintiff's Second Appeal filed under Section 100 of the Code of the Civil Procedure, 1908 by questioning the judgment and decree dated 30.4.2011 passed by the Additional District Judge, Sakti, District Janjgir-Champa (CG) in Civil Appeal No.45-A/2010 by which the lower Appellate Court, while reversing the judgment and decree dated 21.6.2010 passed by the Civil Judge, Class-II, Jaijaipur in Civil Suit No.33-A/2007, has allowed the Defendants' Appeal.

2. Briefly stated, the undisputed facts of the case are that the Plaintiff- Girwarlal Chauhan instituted a suit for declaration of title, injunction and possession by submitting, *inter alia*, that his mother – Parvathi Bai had purchased the property in question in the year 1960 from one Gourilal for a consideration of Rs.180/-. It is pleaded further that since the date of its

purchase, the Plaintiff is continuously in possession for over more than 150 years and thus has prescribed right, title and interest by way of adverse possession. It is pleaded further that Defendant No.1 is interfering in his peaceful possession by encroaching the property in question, therefore, the Plaintiff has been constrained in filing the suit in the instant nature, instituted on 4.9.2006.

3. The Defendants have contested the aforesaid claim of the Plaintiff by denying specifically that the Plaintiff is in possession for over more than 150 years and has prescribed his right by way of adverse possession. They contested further on the ground that the Plaintiff's mother – Parvathi Bai had never purchased the property in the year 1960. It is contested on the ground that the Defendants themselves are in possession for over more than 29-30 years and are peacefully cultivating the land in question and contested further on the ground that the suit as framed and instituted is barred by time.

4. The trial Court by its judgment and decree dated 21.6.2010 has come to the conclusion that the Plaintiff had purchased the property as they contended, but by virtue of an unregistered deed of sale, the right would not confer upon him and therefore, it cannot be held that the Plaintiff has become the owner of the property in question by virtue of an unregistered deed of sale. It held further that since the Plaintiff is continuously in possession for over more than 12 years, therefore, has prescribed his right by way of adverse possession. As a consequence, the trial Court has decreed the Plaintiffs' claim.

5. Being aggrieved with the aforesaid judgment and decree of the trial Court, the Defendants have preferred an Appeal under Section 96 of the Code of Civil Procedure. The appellate Court, in turn has observed very specifically at paragraph-23 of its impugned judgment and decree that the Plaintiff has

failed to establish his claim by way of adverse possession as he failed to establish with regard to the fact that when he prescribed his right as such against the Defendants in absence of any pleading in this regard. The lower appellate Court, has thus while reversing the finding of the trial Court, dismissed the Plaintiffs' claim.

6. Being aggrieved, the Plaintiff Girwarlal has preferred this Appeal. During pendency of Appeal, he expired, therefore, substituted by his legal representatives. Shri P.P Sahu submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court is apparently contrary to law. He submits further that though the registered deed of sale is not there, but, they are continuously in possession for over more than 150 years and therefore, the trial Court has rightly come to the conclusion that the Plaintiffs have prescribed their right, title and interest by way of adverse possession. He would submit further that the appellate Court in such circumstances, without meeting its reasonings in this regard ought not to have reversed the finding of the trial Court.

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

8. Plaintiff Girwarlal instituted a suit (Now represented by his legal representatives) mainly on the ground that his mother – Parvathi Bai had purchased the property in question in the year 1960 from one Gourilal, the son of Balaram for a consideration of Rs.180/-. From perusal of the record, it is evident that no document as such was produced by the Plaintiff so that it could be held that the Plaintiff's mother had purchased the property as such. Further pleadings of the Plaintiffs would show that they have claimed their interest on the basis of adverse possession as well. If the Plaintiffs are claiming by way

of adverse possession, then they cannot claim the ownership of the property in question by virtue of any deed of title as they contended. Since the Plaintiffs are claiming their right not only on the basis of purchasing the suit property but also claiming their right by way of adverse possession, therefore, in such circumstances, it cannot be held that the Plaintiffs have either purchased the property or prescribed their interest by way of adverse possession as both the pleadings are destructive with each other. Besides, the lower appellate Court while examining the documentary evidence as well as the oral statements led by the parties, have arrived to a definite conclusion that the Plaintiffs have failed completely to establish their right by way of adverse possession. This finding is the pure finding of fact and it cannot be held to be a perverse one. Therefore, the same deserves to be and is hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less, the substantial question of law involved in this Appeal. Consequently, the Appeal being devoid of any substance is hereby dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE