

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 455 of 2016**

- Nandram Yadav S/o. Shri Sukhram Yadav, Aged About 56 Years R/o- Village- Lamer, Tahsil- Takhatpur, District- Bilaspur, (Chhattisgarh),.....
(Plaintiff). **---- Appellant**

Versus

1. Gandhiram Yadav S/o. Shri Hinchchharam, Aged About 66 Years R/o- Village- Lamer, Tahsil- Takhatpur, District- Bilaspur, (Chhattisgarh).
2. State Of Chhattisgarh, Through Collector, Bilaspur, District- Bilaspur, (Chhattisgarh),.....(Defendants). **---- Respondents**

For Appellant	:	Shri Ram Kumar Tiwari, Advocate.
For Respondent No.2/State	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****07/03/2017**

1. This is plaintiff's second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code' in short) against the judgment and decree dated 13.07.2016 passed by the 1st Additional District Judge, Bilaspur (C.G.) in Civil Appeal No. 137-A/2015, by which, the lower appellate Court while affirming the judgment and decree dated 23.10.2015 passed by the Civil Judge, Class-II, Takhatpur in Civil Suit No. J-74A/2014, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiff had instituted a suit for declaration of title and injunction by submitting, inter alia, that he purchased the suit property by virtue of agreements to sale, dated 13.07.1994 and 20.05.2001 with regard to the property in question described in plaint schedule 'A', purported to have been executed by respondent No.1 Gandhiram Yadava. It is pleaded that since the date of alleged agreements, he has been enjoying the

suit property continuously without any interruption and in peaceful manner, therefore, prescribed his right, title or interest by virtue of adverse possession.

3. The defendant No.1 has contested the aforesaid claim by denying very specially the execution of both the agreements to sale dated 13.07.1994 and 20.05.2001. It is contested further on the ground that possession was never delivered to the plaintiff on the basis of the alleged agreements to sale and stated further that both these documents are the forged one which do not confer any right, title or interest upon the plaintiff. It is put forth further on the ground that the principles of adverse possession would not apply in the matter.

4. In support, the plaintiff has examined himself and two of his witnesses while the defendant was proceeded *ex parte* and has not adduced any evidence.

5. The trial Court, vide its judgment and decree dated 23.10.2015, has come to the conclusion that the plaintiff's suit instituted on 19.12.2014 for declaration of title and injunction based on the alleged agreements to sale dated 13.07.1994 (Ex.P.1) and 20.05.2001 (Ex.P.2) is apparently barred by time. It held further that by virtue of the alleged agreements to sale, the plaintiff cannot claim his right by virtue of adverse possession. In consequence, the trial Court has dismissed the claim of the plaintiff.

6. The aforesaid judgment and decree of the trial Court has been affirmed further by the lower appellate Court by its impugned judgment and decree in an appeal preferred by the plaintiff under Order 41 Rule 1 of the Code. The appellate Court, while examining the revenue papers, i.e., *Kistbandi Khatauni*, B-1 (Ex.P.3 & Ex.P.4) has observed that despite of execution of alleged agreements to sale, the name of defendant No.1 Gandhiram Yadav was still recorded therein, and therefore, has come to the conclusion that the plaintiff has failed to prove his lawful possession over the property in question. Consequently, the appellate Court has dismissed the entire claim of the appellant.

7. Shri Ram Kumar Tiwari, learned counsel for the appellant, has submitted that both the Courts below have erred in holding that the plaintiff has not acquired his right, title or interest over the suit property by way of adverse possession. He submitted that the plaintiff has been continuously in possession over the suit property since the date of execution of the alleged agreements to sale, dated 13.07.1994 (Ex.P.1) and 20.05.2001 (Ex.P.2) without any interruption, and therefore, prescribed his right by way of the adverse possession.

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

9. The plaintiff's entire claim is based upon two agreements to sale dated 13.07.1994 (Ex.P.1) and 20.05.2001 (Ex.P.2). It is evident from the record that the plaintiff has never instituted a suit for specific performance of contract based upon these agreements to sale (Ex.P.1) and (Ex.P.2). Therefore, the plaintiff's possession could, at the most, be treated as a permissive possession of the respondent No.1 Gandhiram Yadav. In any case, both the Courts below have examined the said documents minutely and came to the conclusion that these documents were not properly executed. Be that as it may, since the plaintiff's entire case is based on these two documents by claiming declaration of title and injunction, instead of claiming for specific performance of contract and, therefore, under such circumstances, the suit as instituted cannot be held to be the duly constituted suit, therefore, both the Courts below have rightly dismissed the plaintiff's claim for declaration of title and injunction.

10. In view of the foregoing discussions, no questions of law, much less, the substantial questions of law would arise for determination in this appeal. Consequently, the appeal, being devoid of merit, is hereby dismissed at the admission stage. There shall be no order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge