

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R No.96 of 2016**

Rajesh Pal Raijada S/o Shri Satyapal Raijada, Aged About 50 Years Caste Kshatriya, R/o Dadu Auto Parts, Opposite Ganesh Mandir, Budhaar Chowk, Shahdol, Madhya Pradesh.....(Defendant No. 1) **---- Applicant**

Versus

1. Durga Shankar Mishra S/o Shivdeen Mishra, Aged About 54 Years Caste Brahman, R/o Village Janakpur, Tahsil Bharatpur, District Koriya, Chhattisgarh.....(Plaintiff)

2. State Of Chhattisgarh Through The District Collector, District Koriya..... (Defendant No. 2)

---- Non-Applicants

For Applicant:	Shri Hari Agrawal, Advocate.
For Non-Applicant No.1:	Shri Sunil Sahu, Advocate.
For State/Non-Applicant No.2:	Shri Sanjeev Pandey, Government Advocate.

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

03.5.2017

1. This is the Revision filed by defendant No.1/ applicant against the order dated 25.6.2016 passed in Civil Suit No.6-A/2015, whereby the trial Court has rejected his application filed under Order 7 Rule 11 (b) and (d) of the Code of Civil Procedure, 1908 .

2. The undisputed facts of the case are that the Plaintiff - Durga Shankar Mishra has instituted a suit on 10.3.2015 claiming declaration of title by virtue of adverse possession by submitting *inter alia* that he has purchased the property by virtue of an unregistered deed of sale dated 1.6.1998 from one Paramjeet Singh and since then, he is continuously in possession. He pleaded further that though his vendor Paramjeet Singh had alienated the

property in question by virtue of a registered deed of sale dated 03.03.2003 in favour of the Defendant No.1-Rajesh Pal Rajjada, however, possession was not delivered and since he was continuously in possession for over more than 12 years has, thus prescribed his right, title and interest by way of adverse possession.

3. During the pendency of the aforesaid claim, Defendant No.1-Rajesh Pal Rajjada has submitted an application as per the provisions prescribed under Order 7 rule 11 of CPC for rejection of the Plaint, in which it has been stated very specifically that the Plaintiff's suit was based completely on adverse possession and therefore, cannot be held to be maintainable.

4. The said application was opposed by the Plaintiff by filing his reply wherein it was submitted that the ingredients required under Order 7 Rule 11 CPC are not made out and therefore the application deserves to be rejected.

5. After considering the said application, the trial Court vide its order impugned dated 25.6.2016, has rejected the said application by observing that the point as raised by Defendant No.1 could be determined only by examining the evidence of the parties.

6. Being aggrieved, Defendant No.1 has preferred this Revision under Section 115 of CPC. Shri Hari Agrawal, learned Counsel for the Applicant submits that the order impugned as passed by the trial Court is not at all sustainable in the eyes of law. He submits further that a bare perusal of the entire contents made in the Plaint would show that the Plaintiff is claiming his right title and interest only on the basis of adverse possession based upon an unregistered deed of sale dated 1.6.1998, therefore, on the basis of the said unregistered document, no right could accrue upon him even on the basis of the adverse possession. In support, he placed his reliance upon the decision

delivered by the apex Court in (2014) 1 SCC 669 reported in **Gurudwara Sahib vs. Gram Panchayat Village Sirthala & Anr.**

7. On the other hand, Shri Sahu, learned Counsel for Non-Applicant No.1 submits that the observation as made by the trial Court is just and proper because the entire case could be decided only on the basis of evidence of both the parties. He submits further that there was no illegality in the order passed by the trial Court therefore, the same deserves to be upheld.

8. I have considered the submissions made by both the parties, perused the order impugned as also the papers annexed with this Revision.

9. Undisputedly, the Plaintiff – Durga Shankar Mishra has instituted the suit claiming declaration of title on the basis of adverse possession on the ground that since he was in possession right from the date of the execution of the unregistered deed of sale dated 01.06.1998, therefore, by efflux of time, he prescribed his right, title and interest by way of adverse possession. However, based upon such an unregistered document, no right whatsoever could confer upon the Plaintiff. The Plaintiff's averments would show further that the Plaintiff's vendor Paramjeet Singh has sold the property in question to Defendant No.1- Rajesh Pal Raijada on 3.3.2003 by executing the registered deed of sale in his favour.

10. A perusal of the entire averments made in the Plaintiff's case would show that the Plaintiff's entire case is based on adverse possession. Recently, the Supreme Court has laid down the principles in (2014) 1 SCC 669 (*supra*) that no one can claim their right, title or interest on the basis of the adverse possession. It has been observed very specifically at paragraph-8 as under:-

“8. xxxxx. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are

filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

11. Based upon the aforesaid principles, the Plaintiff cannot claim for declaration of title on the basis of adverse possession. Since I do not find any other averments in the Plaint by which it could be presumed that the Plaintiff is claiming his right or interest by way of any other means, therefore, the order impugned deserves to be and is hereby set aside.

12. Revision is accordingly allowed. The order impugned passed by the trial Court is set aside. No order as to costs.

Sd/-

(Sanjay Agrawal)

JUDGE

Priya