

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.473 of 2016**

1. (A) Ramfal @ Ramsay S/o Somarsay, Aged About 40 Years R/o- Village- Kanthi, Tahsil- Ambilapur, District- Surguja, (Chhattisgarh).
1. (B) Somarsay, Aged about 70 Years S/o Rambharosh, R/o- Village- Kanthi, Tahsil- Ambilapur, District- Surguja, (Chhattisgarh).
1. (C) Rampati, Aged about 35 Years D/o Somarsay, R/o- Village- Kanthi, Tahsil- Ambilapur, District- Surguja, (Chhattisgarh),..... (Palintiffs).

---- Appellants**Versus**

1. Smt.Prem Bai And Others W/o Posau Satnami Aged About 45 Years RAnand Kashyap S/o Late Jayram, Aged About 62 Years R/o- Bramh Road, Ambikapur, P.S. And Tahsil- Ambikapur, District- Surguja, (Chhattisgarh).
2. Shatrughan Verma, S/o Ramgarib Verma, Aged About 33 Years Caste- Bari, R/o- Gandhinagar, P.S.- Gandhinagar, Tahsil- Ambikapur, District- Surguja, (Chhattisgarh).
3. Ajay Kumar Prasad, S/o Rambilas, Aged About 33 Years Caste- Kushwaha, R/o- Chopdapara, P.S. And Tahsil- Ambikapur, District- Surguja, (Chhattisgarh).
4. Sohan Lal Jaysawal, S/o Rupnarayan Jaysawal, Aged About 39 Years R/o- Gandhinagar, P.S.- Gandhinagar, Tahsil- Ambikapur, District- Surguja, (Chhattisgarh),.....(Defendants).
5. State Of Chhattisgarh, Through Collector, District- Surguja, (Chhattisgarh),.....(Defendant No. 3).

-----Respondents

For Appellants:	Shri Sunil Tripathi, Advocate.
For Respondents No.2 to 4:	Shri Nishikant Sinha, Advocate.
For Respondent No.5/State:	Shri VB Singh, Panel Lawyer.

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

30.10.2017

1. This is the Plaintiffs' Second Appeal preferred under Section 100 of

the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 22.08.2016 passed by the Fifth Additional District Judge, Ambikapur, District Surguja in Civil Appeal No.408-A/2011 by which, the lower appellate Court, while reversing the judgment and decree dated 11.03.2010 passed by the 2nd Civil Judge, Class-II, Ambikapur (Sarguja) in Civil Suit No.33-A/2009, has dismissed the Plaintiffs' suit.

2. The undisputed facts of the case are that the original Plaintiff-Surajmani (since deceased represented by her legal representatives) instituted a suit claiming declaration of title with regard to the property in question bearing Khasra No.97 admeasuring 0.12 acres and also for cancellation of the registered deed of sale executed by Defendant No.1 on 04.10.2005 in favour of Defendants No.2 to 4 and prayed further that the order as passed by the Sub Division Officer on 13.09.2007 based upon the said registered deed of sale be also declared as null and void. According to the Plaintiff, she has been enjoying the suit property for over more than 50-60 years and therefore acquired her right, title and interest by way of adverse possession and Defendant No.1, without any authority, has sold the same to Defendants No.2 to 4. Therefore, the Plaintiff has been constrained in filing the suit in the instant nature, instituted on 20.09.2007.

3. The Defendants have contested the suit by denying very specifically the ownership of the Plaintiff with regard to the property in question. They contested further on the ground that by virtue of the registered deed of sale dated 04.10.2005, Defendant No.1 has validly sold the suit property to Defendants No.2 to 4. It is contested further on the ground that on the basis of the registered deed of sale, the revenue papers were also

mutated in their favour and therefore, suit as framed and instituted deserves to be dismissed.

4. The trial Court, after considering the evidence of the parties, has come to the conclusion that the Plaintiff has prescribed her right, title and interest by way of adverse possession and consequently, while holding as such, has decreed the Plaintiff's case.

5. Being aggrieved, the Defendants No.2 to 4 have preferred an Appeal as per the provision prescribed under Section 96 of the CPC. The appellate Court, in turn, has come to the conclusion that the Plaintiff has not acquired any interest by way adverse possession and held further that the registered deed of sale as executed by Defendant No.1 on 4.10.2005 in favour of Defendants No.2 to 4 cannot be held to be invalid one. In consequence, the lower appellate Court, while reversing the finding of the trial Court, has dismissed the Plaintiff's claim.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Sunil Tripathi, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below, while reversing the finding of the trial Court, are apparently contrary to law. He submits that the specific finding as recorded by the trial Court that the Plaintiff has acquired her interest by way of adverse possession ought not to have been reversed by the lower appellate Court. He submits further that even otherwise, the Plaintiff is entitled to claim the injunction with regard to the suit property and therefore submits further that the judgment and decree as passed by the lower appellate Court be set aside and that of the trial Court be restored.

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

entire record carefully.

8. The Plaintiff's suit was instituted mainly on the ground that she is the owner of the property in question bearing Khasra No.97 admeasuring 0.12 acre and based upon that, it was claimed that the registered deed of sale as executed by Defendant No.1 on 04.10.2005 in favour of Defendants No.2 to 4 be declared as null and void. The Plaintiff, under such circumstances, was required to establish the fact that she is the owner of the property in question. However, from perusal of the record, I do not find any document by which, it could be presumed that the Plaintiff is the owner of the property in question. The decree as passed by the trial Court that the Plaintiff has prescribed her interest by way of adverse possession was therefore rightly reversed by the lower appellate Court. Since the Plaintiff has failed to establish her ownership with regard to the property in question, therefore, the registered deed of sale as executed by Defendant No.1 in favour of Defendants No.2 to 4 cannot be held to be invalid. Consequently, the findings so recorded by the lower appellate Court, while reversing the finding of the trial Court deserve to be and are hereby affirmed.

9. In view of the foregoing 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