

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.165 of 2004**

Shree Ram Tailor (since) dead), Through Legal Heirs:-

1. Smt. Santi Dahiya wife of late Shree Ram Dahiya, aged about 70 years,
2. Manik Lal Dahiya Son of late Shree Ram Dahiya, aged about 53 years,
3. Smt. Sushila W/o. Ganesh Pawar, D/o late Shree Ram Dahiya, aged about 47 years,
4. Ganesh Dahiya Son of late Shree Ram Dahiya, aged about 42 years,

All R/o. Lal Bahadur Shastri, Ward No.08, Jagdalpur, Post Office and Tahsil Jagdalpur, District (Revenue & Civil) Middle Bastar (CG)

---- Appellants

Versus

1. Smt. T. Surykanta (since dead), through Legal Heirs:-

1.A T. Surya Rao S/o. Late T. Satyam, aged about 51 years,

2.B T. Ishwari D/o. Late Venkat Rao and grand daughter of Late Suryakanta, aged about 31 years,

1.C Sharda D/o. Late Venket Rao and grand daughter of late Suryakanta, aged about 27 years,

All R/o. Dr. Shyama Mukharji, Ward No.39, Jagdalpur (Behind Kosa Centre), Post Office and Tahsil Jagdalpur, District (Civil & Revenue) Middle Bastar (CG)

2. Suresh Daan S/o. Yakoob Daan, aged about 46 years, Service, Kaary Ayojana Van Mandal, Bajrang Complex, P.D.A. Building, Raipur (CG)
3. Rajesh Daan S/o. Yakoob Daan, aged about 32 years, Farmer, Maarkel Sheonaguda Para, Tahsil Jagdalpur, District Bastar (CG)
4. Smt. Kamla Daan W/o. Vishwa Prakash Paul, Nurse, aged about 52 years, Maharani Hospital Jagdalpur, District Bastar (CG)
5. Smt. Kamni Kaushal W/o. Vipin Paul, Nurse, Mid-wife, Primary Health Centre, Nangur, Tahsil Jagdalpur, District Bastar (CG)
6. Smt. Ragini W/o. Vinod Maseeh, Nurse, Civil Dispensary Aadawal, Tahsil Jagdalpur, District Bastar (CG)

---- Respondents

For Appellants	: Mr.R.N.Jha, Advocate
For Respondent No.1-A to 1-C	: Mr. Prafull Bharat, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

29/10/2018

1. The substantial questions of law involved, formulated and to be answered by this Court in this defendant No.1's second appeal are as under:-

“1. Whether both the courts below were justified in granting decree for declaration of title holding that plaintiffs have perfected their title by way of adverse possession ? ”

“2. Whether both the Courts below were justified in dismissing counter-claim filed by defendant for declaration of title ? ”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) Original plaintiff-Smt. T. Suryakanta, who died during pendency of second appeal, instituted a suit for declaration of title based on adverse

possession and for confirmation of possession stating inter-alia that she has obtained possession pursuant to agreement to sell dated 30.7.1969 from defendant No.1-Shri Ram Tailor for cash consideration of ₹ 900/- and obtained possession with consent of erstwhile owner Sublan and since then she is in possession by constructing toilet, as such, she be declared title-holder on the basis of adverse possession and her possession be confirmed.

(2.2) Defendant No.1 filed his written statement before the trial Court and opposed the suit stating inter-alia that he is title-holder of the suit land. He has also filed counter-claim for declaration of his title.

3. The trial Court after appreciating oral and documentary evidence available on record, by the judgment and decree dated 24.12.99 decreed the suit finding inter-alia that the plaintiff has perfected her title by way of adverse possession.

4. In appeal preferred by defendant No.1, the First Appellate Court affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

5. Feeling aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed defendant No.1, in which substantial questions of law have been framed by this Court, which have been set out in opening paragraph of this judgment.

6. Mr.R.N.Jha, learned counsel for the appellants, would submit that

both the Courts below are absolutely unjustified in granting decree in favour of the plaintiff ignoring the fact that the plaintiff's suit seeking declaration of title based on adverse possession would not be maintainable in the light of judgments of the Supreme Court in the matters of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another¹, State of Uttarakhand and another v. Mandir Sri Laxman Sidh Maharaj² and Dharampal (Dead) Through Legal Representatives v. Punjab Wakf Board and others³.

7. On the other hand, Mr. Prafull Bharat, learned counsel for respondents No.1-A to 1-C would support the impugned judgment and decree.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

9. In Gurdwara Sahib's case (supra), the Supreme Court has held that the plaintiff cannot seek a declaration to the effect that such adverse possession has matured into ownership and he can defend his adverse possession if suit is filed against the plaintiff. Paras 7 and 8 of the report state as under:-

“7. In the second appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable.

1 (2014) 1 SCC 669

2 (2017) 9 SCC 579

3 (2018) 11 SCC 449

8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. 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.”

Their Lordships further held that possession of the plaintiff can be protected. It was observed as under:-

“10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of issue No.1 to the effect that the appellant is in possession of adverse possession since 13-4-1952 operates as res judicata. Subject to this clarification, the appeal is dismissed.”

10. The principle of law laid down in Gurdwara Sahib's case (supra) has been followed with approval by the Supreme Court in the matters of Mandir Sri Laxman Sidh Maharaj (supra) and Dharampal (dead) Through Legal Representatives (supra).

11. Reverting to the facts of the present case in light of principles of law laid down in above-stated judgments, it is quite vivid that the plaintiff has sought relief for declaration of title based on adverse

possession which is apparent from para-8 of the plaint, which states as under:-

“8. यह कि श्री सूबलन पिता रघू ईसाई ने अपने जीवन काल में अनुसूची “अ” में दर्शित वाद भूमि के कब्जे हेतु सक्षम न्यायालय में कोई वाद प्रस्तुत नहीं किया था, अतः प्रतिकूल कब्जा के आधार पर वादिनी उपरोक्त वाद भूमि पर अपना स्वत्व अर्जित कर चुकी है।”

12. The trial Court as well as the First Appellate Court has granted relief of declaration of title based on adverse possession and there is no dispute in this regard.

13. Applying the principle of law laid-down by the Supreme Court in **Gurdwara Sahib's** case (supra) and followed subsequently, it is quite vivid that the plaintiff cannot maintain a suit for declaration of title based on adverse possession. It is held accordingly. Therefore, both the Courts below were absolutely unjustified in granting decree in favour of the plaintiff based on adverse possession.

14. Coming to the next substantial question of law. Defendant No.1 has sought declaration of title based on adverse possession stating-inter alia that he is owner of the suit land. Both the Courts below after holding that the plaintiff to be title-holder on the basis of adverse possession dismissed counter-claim filed by defendant No.1 without deciding counter-claim on its merit.

15. Since the plaintiff's suit has been dismissed, counter-claim is remanded to the trial Court for hearing and disposal in accordance with

law.

16. The second appeal is allowed to the extent indicated hereinabove. The trial Court is directed to decide the counter-claim in accordance with law within a period of three months from the date of receipt of records. Registry is directed to send the records to the trial Court forthwith. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-