

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 491 of 2004**

1. Chamar Sai S/o Jaipal, aged about 45 years, R/o Village Pahad Karnwa, Tahsil Pratappur, District Surguja (C.G.)
2. Rajpal S/o Raghunath, aged about 55 years, Caste – Gond, R/o Village Narola, Tahsil Pratappur, District Surguja (C.G.)
3. Kisun S/o Jaipal, aged about 40 years, Caste – Gond, R/o Village Narola, Tahsil Pratappur, District Surguja (C.G.)
4. Ram Sai S/o Jaipal, aged about 43 years, Caste – Gond, R/o Village Narola, Tahsil Pratappur, District Surguja (C.G.)
5. Dev Sai, S/o Jaipal, aged about 38 years, Caste – Gond, R/o Village Narola, Tahsil Pratappur, District Surguja (C.G.)

--- Appellants/ Plaintiffs**Versus**

1. Dharam Sai S/o Budi, aged about 65 years, Caste – Gond, R/o Villae Narola, Tahsil Pratappur, District Sarguja (C.G.)
2. Chamru S/o Budi, aged about 57 years, Caste – Gond, R/o Villae Narola, Tahsil Pratappur, District Sarguja (C.G.)
3. Rambilas S/o Chamru, aged about 40 years, Caste – Gond, R/o Villae Narola, Tahsil Pratappur, District Sarguja (C.G.)
4. State of Chhattisgarh, through Collector, Ambikapur, Sarguja (C.G.)

---- Respondents / Defendants

For Appellants

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Mr. D. N. Prajapati, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/09/18**

1. The appellants / plaintiffs filed a suit for bare declaration of title and permanent injunction upon the suit land and further declared the sale deed dated 29.03.1961 as null and void in which the defendants set up a defense that they have acquired the title by purchasing the suit land from plaintiff No. 1 and plaintiffs' father Jaipal.
2. The trial Court has held that appellants / plaintiffs are not in

possession of the suit land and the defendants No. 1 to 3 have acquired the title by sale deed on 29.03.1961 and dismissed the suit on merits. In an appeal preferred by the plaintiffs, the first Appellate Court held that defendants have not acquired the title over the suit land by Exhibit – D/1 as the sale deed has not been proved in accordance with law and the suit is also not time barred and held that though the plaintiffs are not in possession of the suit land but the plaintiffs have not claimed relief of possession as per the proviso to Section 34 of the Specific Relief Act and dismissed their appeal, against which this second appeal has been preferred.

2. Learned counsel for the appellants submits that the finding recorded by the two Courts below that plaintiffs are not in possession of the suit land is a perverse finding and contrary to law.

3. I have heard learned counsel for the appellants.

4. The two Courts below have recorded a finding that the plaintiffs are not in possession of the suit land and defendants are in possession of the suit land and the plaintiffs have not sought for relief of possession which is barred under proviso to Section 34 of the Specific Relief Act. In this regard, the decision of the Supreme Court in case of **Vinay Krishna v. Keshav Chandra and another**¹ is pertinent.

5. In view of the aforesaid legal position, the finding recorded by the trial Court that no relief can be granted to the plaintiffs as they have not claimed for relief of possession cannot be said to be perverse which has rightly been affirmed by the First Appellate Court. The finding recorded by the two Courts below is not contrary to law. I do not find any substantial question of law involved in this second appeal for determination.

6. Accordingly, the second appeal deserves to be and is hereby dismissed in limine. No cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

1 AIR 1993 SC 957