

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 587 of 2004**

Mehtaru Ram, S/o Nankoo Ram, Caste Sahu, Aged about 40 years, R/o Village Par-ras, P.H. No.0-5/1, Tahsil Balod, District Durg (C.G.)

----Appellant/Plaintiff

Versus

1. Salik Ram (died) through LRs.

1(A) Omkar Sahu, son of Late Salik Ram, aged about 37 years,

1(B) Radha Bai, D/o Late Salik Ram, aged about 30 years,

1(C) Premvati Bai, wife of Late Salik Ram, aged about 54 years,

All are R/o Village Par-ras, Ward No.1, Balod, District Balod (C.G.)

2. Bhagat (died) through LRs.

2(A) Tilak Ram, son of Late Bhagat, aged about 55 years, village Par-ras, Ward No.1, Balod, District Balod (C.G.)

3. Sonai Bai, D/o Lalwa Sahu, aged about 45 years,

All residents of village Par-ras, P.H. No.0-5/1, Tahsil, Balod, Distt. Durg (C.G.)

4. State of Chhattisgarh, Through Collector, Distt. Durg (C.G.)

----Respondents/defendants.

For Appellant /plaintiff	: Mr. Praveen Dhurandhar, Advocate.
For Respondent No. 4/State	: Mr. Aditya Sharma, PL for the State.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/09/2018

(1) This is plaintiff's Second Appeal filed under Section 100 of CPC against the judgment and decree dated 6.10.2004, passed by the Additional District Judge, Balod, District Durg, in Civil Appeal No. 5-A/2001 affirming the judgment and decree dated 09.12.2000 passed by Second Civil Judge, Class-II, Balod, District Durg, in Civil Suit No. 51-A/99 dismissing the suit.

(2) The plaintiff filed a civil suit for declaration of title stating inter alia that he has perfected his title on the suit land by way of adverse possession, which was opposed by the defendants.

(3) The trial Court dismissed the plaintiff's suit holding that the plaintiff's possession over the suit land is not established and he has not perfected his title by way of adverse possession. Appeal preferred there-against by the appellant/plaintiff was also dismissed by the appellate court vide judgment and decree impugned. Hence, this Second Appeal.

(4) Learned counsel appearing for the appellant/plaintiff would submit the concurrent findings recorded by both the courts below are perverse and that give rise a substantial question of law for determination in this appeal.

(5) I have heard learned counsel appearing for the appellant and perused the records of both the courts below with utmost circumspection.

(6) In the matter of **Gurdwara Sahib v. Gram Panchayat Village Sirthala and another**¹, 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 defendant. Paragraphs 7 and 8 of the report states 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.

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 proceeding 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

1 (2014) 1 SCC 669

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.

(7) 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 **State of Uttarakhand and another Vs. Mandir Sri Laxman Sidh Maharaj**² and **Dharampal (Dead) Through Legal Representatives Vs. Punjab Wakf Board and others**³.

(8) In present case, the plaintiff has sought for the relief of declaration of title based on adverse possession stating that he has perfected his title over the suit land by way of adverse possession.

(9) In view of the aforesaid legal analysis, the plaintiff's suit for declaration of title based on adverse possession was not maintainable and, therefore, both the courts below were justified in dismissing the suit of plaintiff based on adverse possession, and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(10) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

² (2017) 9 SCC 579

³ (2018) 11 SCC 449

