

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 255 of 2001**

Sukhdev, S/o Shivshankar, Caste- Ahir, aged about 47 years, Occupation- Agriculture,
r/o Village Khairi, P.S. Bhaiyathan, Tehsil – Surajpur, Distt. Surguja (C.G.)

----Appellant/Defendant No. 1

Versus

1. Atibal, S/o Moharsay, Caste- Rajwar, aged about 37 years, Occupation – Agriculture.

2. Goverdhan, S/o Hari, Caste- Kumhar, aged about 34 years, Occupation- Agriculture.

Both resident of village Jhugarpara, P.S. Jainagar, Tehsil – Surajpur, Distt. Surguja (C.G.) (Plaintiffs)

3. The State of M.P. (Now C.G.) through Collector, Surguja (C.G.)

(Proforma defendant No. 2)

----Respondents

For Appellant/defendant No. 1 : Mr. A.K. Prasad, Advocate.
For Respondent No. 3/State : Mr. Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/09/2018

(1) The substantial questions of law involved, formulated and to be answered in this defendant's No. 1 second appeal states as under:

“1. Whether on the facts and in the circumstances of the case the two courts were justified in holding that the defendant failed in proving that no valid sale-deed was executed by Moharmaniya in favour of the plaintiffs ?

2. Whether on the facts and in the circumstances of the case the two courts were unjustified in not dismissing the suit of the

plaintiffs and further not holding that the defendant had perfected title over the suit lands by prescription, especially in view of the statements of P.W. 3 as contained in paragraph 9 of his statement ?

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

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

(2.1) The plaintiffs filed a suit for permanent injunction and in alternative, recovery of possession based on sale deed executed by Moharmaniya in favour of plaintiffs vide Ex.P-1.

(2.2) The defendant took a plea that Moharmaniya has executed a Will in favour of defendant on 17.02.1987; and also taken a plea that he came into possession pursuant to the sale deed dated 9.4.1982 and gift deed dated 10.03.1974.

(3) The trial Court, after appreciating the oral and documentary evidence available on record, found that plaintiffs are purchaser of the suit land from the Moharmaniya and on the basis of which they are title holder of the said suit land, granted decree for possession as well as permanent injunction in favour of the plaintiffs negating the plea of adverse possession.

(4) The defendant preferred first appeal there-against. The first appellate court after re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/defendant in which the substantial question of law formulated for consideration and which has been incorporated in the opening paragraph of the judgment.

(5) Learned counsel appearing for the appellant/defendant would submit that both the courts below are unjustified in decreeing the suit of the plaintiffs by not accepting the plea of adverse possession strongly put forth by the defendant as the execution of sale deed by Moharmaniya in favour of plaintiffs is also not proved and, therefore, the judgment and decree of the both the courts below are liable to be set aside.

(6) Per contra, counsel for the respondents would support the impugned judgment & decree.

(7) I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

Answer to Question No.1.

(8) The plaintiffs have set up their title over the suit land on the basis of sale – deed executed by Moharmaniya in their favour. Execution of sale deed has been proved by the plaintiff by examining witness namely Mahnohar Ram (PW-2), who has stated in his evidence that plaintiffs have purchased the suit from Moharmaniya for a cash consideration of Rs.12,000/- and Moharmaniya has executed the sale deed (Ex.P-1) in favour of plaintiffs in his presence. On that basis, the trial Court as well as the First Appellate Court have clearly held that Moharmaniya has executed the sale deed in favour of the plaintiffs and on the basis of which they are title and possession holder of the suit land, which is a finding of fact based on evidence available on record, in which I do not find any illegality warranting interference by this Court in this Second appeal. Accordingly, the substantial question of law No.1 is answered in favour the plaintiffs and against the defendant.

Answer to Question No. 2.

(9) The defendant No. 1 set up a plea of title in himself by will dated 17.02.1987 and also set up a plea to title on the basis of sale deed dated 9.4.1982 and gift deed dated 10.03.1974. The trial Court held that alleged will deed and gift deed was not produced before the court and is not proved in accordance with law. Similarly, sale deed dated 9.4.1982 is held to be inadmissible for want of registration. The above-stated finding has been affirmed by the first appellate court, which is neither perverse nor contrary to the record. The said findings are hereby re-affirmed.

(10) The defendant No.1 also set up a plea of adverse possession by way of amendment dated 25.3.1994 in the written statement. It is well settled law that plea of title and plea based on adverse possession is mutually inconsistent & destructive plea.

(11) It is well settled law laid down by the Supreme Court in the matter of **Firm Srinivas Ram Kumar v. Mahabir Prasad**¹ that it is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea it could be granted, which has been followed in the matter of **Arundhati Mishra (Smt) v. Sri Ram Charitra Pandey**².

(12) The question is, whether the plea based on title and adverse possession are mutually inconsistent and whether the defendant can be permitted to set up a plea based on title and simultaneously on same breadth can be allowed to raise a plea of perfection of title by way of adverse possession.

(13) The Supreme Court in **Arundhati Mishra (Smt)** (supra) has clearly held that the pleas based on title and adverse possession are mutually inconsistent and the latter

¹ AIR 1951 SC 177

² (1994) 2 SCC 29

does not begin to operate until the former is renounced and in that case, the Supreme Court further held that since his plea is based on his title, he never denounced his title nor admitted the title of the appellant.

(14) Likewise, in the matter of **L.N. Aswathama and another v. P. Prakash**³, the Supreme Court relying upon its earlier decisions clearly held that the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. It has been observed as under: -

“17. ... The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide *P. Periasami v. P. Periathambi*⁴, *Md. Mohammad Ali v. Jagdish Kalita*⁵ and *P.T. Munichikkanna Reddy v. Revamma*⁶.)”

(15) In the matter of **Mohan Lal v. Mirza Abdul Gaffar**⁷, it has been held that the pleas based on title and adverse possession both are mutually inconsistent and destructive. It has been observed as under: -

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the (sale) agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor-in-title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period of his title by prescription nec vi, nec clam, nec precario (not by violence, not by stealth, not by permission). Since the appellant's claim is founded on Section 53-A (of the *Transfer of Property Act*, 1882), it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

(16) In the matter of **Karnataka Board of Wakf v. Government of India and others**⁸,

3 (2009) 13 SCC 229

4 (1995) 6 SCC 523

5 (2004) 1 SCC 271

6 (2007) 6 SCC 59

7 (1996) 1 SCC 639

8 (2004) 10 SCC 779

similar proposition has been struck by the Supreme Court and the principle of law rendered in **Mohan Lal** (supra) has been relied upon and it has been held as under: -

“13. As we have already found, the respondent obtained title under the provisions of the **Ancient Monuments Act**. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by the respondent is unsustainable. The High Court ought not to have found the case in their favour on this ground.”

(17) Reverting to the facts of the present case; it is quite vivid that defendant No.1 did not renounce his plea of title, on the basis of sale deed, will deed and gift deed, therefore, plea of adverse possession was not available to him, as such, the first appellate Court is justified in affirming the judgment and decree of the trial Court.

(18) Accordingly, the substantial questions of law are answered against the defendant and in favour of the plaintiffs and consequently, the second appeal is dismissed affirming the decree passed by the first appellate court leaving the parties to bear their own cost (s).

(19) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

