

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.27 of 2004

Judgment reserved on: 8-10-2018

Judgment delivered on: 10-10-2018

Smt. Sulochana Devi, W/o Shri Nanhelal, Aged about 50 years,
Occupation House Wife, R/o Deviganj Road Nagar, Ambikapur,
Police Station and Tahsil Ambikapur, District Surguja (C.G.)

(Plaintiff)

---- Appellant

Versus

1. Smt. Vimla Gupta, W/o Shri Parmeshwar Lal and D/o Dukhi Sao,
Aged about 50 years, Occupation House Wife, R/o Kedarpur Nagar,
Ambikapur, Police Station and Tahsil Ambikapur, District Surguja
(C.G.)

2. State of Chhattisgarh, Through the Collector, Surguja, Ambikapur
(C.G.)

(Defendants)

---- Respondents

For Appellant: Mr. A.N. Bhakta and Mr. Vivek Bhakta, Advocates.

For Respondent No.1: Mr. Bhupendra Singh, Advocate.

For Respondent No.2 / State: -

Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The substantial question of law involved, formulated and to be
answered in this plaintiff's second appeal is as under: -

“Whether the findings of first appellate court that
respondent has perfected her title over the suit property
by way of adverse possession is perverse?”

[Parties will be referred in this appeal as per their status
shown in the plaint before the trial Court.]

2. The plaintiff filed a suit for recovery of possession of the suit land
situate at Deviganj Road, Ambikapur, stating inter alia that the said

land is owned by her, as she has purchased the same by registered sale deed dated 7-6-1972 at a cash consideration of ₹ 3,000/-. It has also been averred that in the civil suit filed by Vimla Gupta – defendant No.1 being C.S.No.82-A/1996 holding the suit property to be joint family property the civil court vide Ex.P-4 dated 24-4-1998 had already held that the plaintiff herein has purchased the suit land by sale deed dated 7-6-1972 which is valid sale deed executed in favour of the plaintiff. It was further pleaded that defendant No.1 is her licensee, but despite having requested she has not vacated the suit premises leading to filing of suit for possession.

3. Defendant No.1 set up a plea that the suit house was given to her by her father Tulsi Sao to stay on which she is staying for last 25 years and as such, she has perfected her title by adverse possession for staying in the said accommodation for last 25 years.
4. After appreciating oral and documentary evidence on record, the trial Court recorded a finding that the plaintiff is owner of the suit accommodation having been purchased by sale deed dated 7-6-1972 which has duly been upheld by the civil court in the civil suit filed by defendant No.1 herein and further, the plaintiff herein has been held to be the title holder of the suit land and since defendant No.1 was in permissive possession in the suit accommodation, her possession is permissive possession, and decreed the suit holding that defendant No.1 has not perfected her title by adverse possession.
5. On appeal being preferred by defendant No.1, the first appellate Court held that defendant No.1 has perfected her title by way of

adverse possession and therefore the plaintiff is not entitled for decree and set aside the judgment & decree of the trial Court against which this second appeal has been preferred in which substantial question of law has been framed which has been set-out in the opening paragraph of the judgment.

6. Mr. A.N. Bhakta, learned counsel appearing for the appellant / plaintiff, would submit that the plaintiff having established her title over the suit land, it was for defendant No.1 to plead and establish the plea of adverse possession over the suit accommodation which she has miserably failed. He would further submit that initial possession of defendant No.1 admittedly being permissive possession, it is for her to establish by cogent evidence that her permissive possession has turned into adverse possession which she has neither pleaded nor established, therefore, the judgment & decree of the first appellate Court deserve to be set aside.
7. On the other hand, Mr. Bhupendra Singh, learned counsel appearing for respondent No.1/defendant No.1, would support the impugned judgment & decree and would submit that the first appellate Court is absolutely justified in holding that defendant No.1 has perfected her title by way of adverse possession, as there is sufficient evidence on record to establish such plea. Therefore, the second appeal deserves to be dismissed.
8. I have heard learned counsel for the parties and also considered their rival submissions made herein and gone through the records of the two Courts below thoroughly and extensively.
9. The question for consideration would be, whether the possession of

defendant No.1 in the suit accommodation is adverse in nature?

10. It is the case of defendant No.1 that her father Tulsi Sao had given the suit accommodation to her out of love and affection to reside therein and in which she was staying for last 25 years and as such, she has perfected her title on the suit accommodation and therefore the plaintiff is not entitled for any decree for recovery of possession. Thus, admittedly, defendant No.1 came into the suit accommodation as a licensee of Late Shri Tulsi Sao and thereafter, Tulsi Sao has sold the suit accommodation to the plaintiff by registered sale deed dated 7-6-1972 and in Civil Suit No.82-A/1996 (Smt. Vimla Gupta v. Ganeshram Gupta and four others) filed by defendant No.1 herein, the jurisdictional civil court had already held the title of the plaintiff herein in the suit accommodation. In this suit also, the trial Court has held the plaintiff herein to be the title holder and the first appellate Court has also affirmed the same, but the first appellate Court held that the plea of adverse possession is proved.
11. In order to decide whether the plea of adverse possession has been established, it would be appropriate to notice the decisions of the Supreme Court in this regard profitably herein.
12. In the matter of The State Bank of Travancore v. Aravindan Kunju Panicker and others¹, Their Lordships of the Supreme Court have held that “a permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years of more.

¹ (1972) 4 SCC 274

There is no evidence to show that either Krishnan Krishnan or Vellu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before he present suit”.

13. Similarly, in the matter of Thakur Kishan Singh (dead) v. Arvind Kumar², the Supreme Court has held that “as regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession”.
14. In the matter of Roop Singh (dead) Through LRs v. Ram Singh (dead) Through LRs³, Their Lordships of the Supreme Court have held that “if the defendant got the possession of suit land as a lessee or under a *batai* agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. (*Thakur Kishan Singh v. Arvind Kumar*, (1994) 6 SCC

² (1994) 6 SCC 591

³ (2000) 3 SCC 708

591) Hence, the High Court ought not to have interfered with the findings of fact recorded by both the courts below”.

15. Reverting to the facts of the present case in light of the aforesaid principles of law laid down by the Supreme Court, it is quite vivid that admittedly and undisputedly, the possession of defendant No.1 on the suit accommodation on the date of purchase by the plaintiff i.e. 7-6-1972 was permissive possession and since initial possession of defendant No.1 was permissive possession, burden was heavy on defendant No.1 to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner that it has become adverse possession. But it appears that the plea of adverse possession has been taken halfheartedly by defendant No.1 in the written statement. In order to have the plea of adverse possession, the person taking the adverse possession must admit the title of the original owner (plaintiff herein). But, in this case, defendant No.1 had not admitted the title of the plaintiff herein and except the pleading of staying for last 25 years that she has perfected her title by adverse possession, nothing has further been pleaded nor it has been established to show positive intention to dispossess and factual possession for twelve years adverse to the knowledge of the plaintiff. Therefore, mere long possession for 25 years of time would not result into converting her permissive possession into adverse possession. As a result, the first appellate Court is absolutely unjustified in holding that defendant No.1 has perfected her title by adverse possession.

16. For the foregoing reasons, the judgment & decree of the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered accordingly. The second appeal is allowed. No order as to cost(s).
17. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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