NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 53 of 2003

- Balindar S/o Late Udai Ram Caste Gond, aged about 45 Years, R/o Village Mudesa, P.S. Jainagar, Tehsil Ambikapur, District Surguja Chhattisgarh

---- Petitioner

Versus

1. Kanhaiya (Sukhram) S/o Late Chainsay Gond, aged 35 years
2. Budhram S/o Late Chainsay Gond Aged About 38 Years
3. The State Of Chhattisgarh Through Collector, Surguja, Chhattisgarh
4. Rajendra Prasad S/o Bholaram Aged About 50 Years R/o Village Udaipur Dhab. Tehsil Ambikapur, Distt. Surguja, Chhattisgarh

---- Respondent

For Appellant	Shri A. K. Prasad, Advocate
For Respondent-State	Shri Anil Pillai, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/07/2018

1. This is plaintiff's second appeal under Section 100 of the CPC assailing the concurrent judgment and decree passed by the courts below dismissing his suit for declaration of title and permanent injunction as also for declaring the sale deed dated 15.03.1994 between the defendant Nos. 1 to 3 with defendant No.5 to be illegal and void.

2. Indisputably, a previous suit bearing Civil Suit No.29-A/1070 was filed by Chainsai, the predecessor in interest of the present defendant Nos.1 to 3, against Amlu and Udairam, the predecessors in interest of the present appellant. The said suit was decreed against the plaintiff's ancestor vide judgment and decree dated 27.02.1971, against which Udairam preferred an appeal before the District and Sessions Judge bearing Civil Appeal No.7-A/1971, which was also dismissed on 30.09.1971.

3. In the present suit, the plaintiff asserted that despite the said judgment and decree, Udairam and thereafter the present plaintiff remained in possession of the suit land as the decree was not executed and possession was not recovered by the opposite party despite lapse of 12 years from the date of judgment and decree, therefore, the present plaintiff being in peaceful and uninterrupted possession for more than 12 years, he has perfected his title, therefore, he is entitled to a decree for declaration of title, permanent injunction as also for declaring the sale deed dated 15.03.1994 executed by the defendant Nos.1 to 3 in favour of the defendant No.5 as null and void. The defendants contested the suit on the plea that immediately after the judgment and decree in the previous suit, they have been settled in possession and since thereafter they are in continuous possession, therefore, no case for passing a decree on the ground of adverse possession is made out.

4. While deciding Issue Nos.1 & 2 as to whether the plaintiff/appellant is entitled for declaration and permanent injunction, the trial Court has recorded a finding that the plaintiff has failed to prove as to whether he

is in possession of the entire suit land and whether the previous decree involves the same land as is involved in the present suit. This finding is on a reasoning that in proceeding under Section 145 of the CrPC before the Sub Divisional Magistrate, the plaintiff has raised a claim for possession of 20 plots admeasuring 5.257 Hectares, whereas in the present suit, the total land involved is 25 plots admeasuring 16.02 Hectares.

5. The above finding of the trial Court that the plaintiff has failed to prove possession vis-a-vis the entire suit land or with specific claim over any particular land out of the total 16.02 Hectares of land has not been found proved, has been affirmed by the First Appellate Court. Even if the reasoning on which the trial Court has recorded the above finding is ignored and the materials available in the record of the trial Court are considered, it is to be seen that after the judgment and decree was delivered in the previous suit, the present defendants, whose predecessors in interest were the decree holders, have claimed that they recovered possession after the previous decree. The khasra entries proved by the plaintiff in the present suit vide Ex-P-8 would prove plaintiff's possession till 1975-76, as no revenue entries in favour of the present appellant or his predecessors have been placed on record to substantiate the plea of remaining in possession even thereafter. Even in the said khasra entries, there are some entries mentioning the name of Amlu on several plots, meaning thereby that even during those years till 1975-76, the plaintiff was not enjoying the peaceful possession over the entire suit land.

6. In a suit for declaration of title on the basis of adverse possession, the plaintiff having failed to produce any documentary evidence showing his possession over the suit land, would thus bank on the oral evidence, on the basis of which the two courts below have recorded concurrent finding against him to the effect that the plaintiff has failed to prove his possession over the suit land. While exercising jurisdiction under Section 100 of CPC, this Court is not entitled to upset the said concurrent finding of fact unless the same is shown to be perverse.

7. As discussed above, with reference to the evidence available on record, I have found that the finding is not perverse, therefore, the present is an appeal where no substantial question of law would arise for determination.

8. The second appeal deserves to be and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Nirala