

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 551 of 2004**

Gaya Ram, S/o Mittoo Ram Dewangan, Aged about 45 years, R/o Village Sarangpal,
Tahsil Kanker, Distt: Kanker (C.G.)

----Appellant/Plaintiff

Versus

1. Rajaya, W/o Ramuram, Aged about 40 years.
2. Rohit, S/o Ramuram, Aged about 18 years.
3. Sanjay, S/o Ramuram, Aged about 16 years.
4. Vijay, S/o Ramuram, Aged about 12 years.
5. Ku. Malti, D/o Ramuram, Aged about 7 years.

Respondents No. 3, 4 & 5 Through mother and natural Guardian Rajaya, W/o Ramuram.

Respondents No. 1 to 5 R/o Village Sarangpal, Tahsil and Distt : Kanker – (C.G.)

6. Farsa Bai, W/o Shyamlal, Aged about 45 years.
7. Agnuram, S/o Shyamlal, Aged about 18 years.

Respondents 6 & 7 are R/o Village Sarangpal, Tahsil & Distt: Kanker (C.G.)

----Respondents/defendants.

For Appellant	:	Mr. Prafull N. Bharat, Advocate.
For Respondents	:	None

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/09/2018

(1) This is plaintiff's Second Appeal filed under Section 100 of CPC against the judgment and decree dated 5.8.2004, passed by the 4th Additional District Judge (Fast Track Court), Kanker, in Civil Appeal No. 48-A/2002 affirming the judgment and decree dated 30.06.2000 passed by Civil Judge, Class-II, Kanker, in Civil Suit No. 25-A/91 dismissing the suit.

(2) The plaintiff's suit for permanent injunction and in alternative recovery of possession was dismissed by the trial Court.

(3) The plaintiff preferred first appeal thereagainst. The first appellate court, after re-appreciating the oral and documentary evidence brought on record, affirmed the judgment and decree passed by the trial court, leading to filing of this Second Appeal under Section 100 of the Code of Civil Procedure.

(4) Learned counsel appearing for the appellant/plaintiff would submit the concurrent finding recorded by the both the courts below that the suit is barred by limitation is perverse and contrary to the record 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) The plaintiff filed a suit for permanent injunction only on 31.08.1990 stating that cause of action has arisen in the year 1990 and thereafter made an amendment on 17.11.1999 praying for relief of recovery of possession also if the courts finds that he is not in possession of the land in dispute, that application for amendment was allowed. The trial Court, after appreciating the oral and documentary evidence available on record, found that cause of action has arisen in the year 1983 relying upon the document Ex. D-1 and the relief of possession was sought to be introduced in the plaint on 17.11.1999 i.e. after 16 years from the cause of action and, therefore, the suit is dismissed as barred by limitation, which has been upheld by the first appellate Court.

(7) The finding recorded by the trial Court that suit is barred by limitation is a finding of fact as admittedly cause of action has arisen in the year 1983 and the relief of possession has been introduced in the plaint on 17.11.1999 i.e. after 16 years from the cause of action has

has rightly been affirmed by the first appellate Court in its impugned judgment and decree 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.

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

