

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.637 of 2017**

Ramesh Kumar @ Lalua Yadav S/o Late Shri Hinch Ram, Aged About 63 Years R/o Infront Of Old Maharashtra Bank Gali, Gondpara, Subhash Nagar, Tehsil And District Bilaspur Chhattisgarh.....Plaintiff, Chhattisgarh

---- Appellant**Versus**

1. Municipal Corporation Bilaspur Through Commisisoner, Municipal Corporation Bilaspur Chhattisgarh., Chhattisgarh
2. Sanjeev Kumar Sinha S/o Late Shri Ganesh Shankar Sinha, Aged About 36 Years R/o Gondpara, Tehsil And District Bilaspur., District : Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through Collector Bilaspur.....Defendants, District : Bilaspur, Chhattisgarh

-----Respondents

For Appellant: Shri Prafull N. Bharat, Advocate.
 For Respondent No.2 on caveat: Shri MK Bhaduri, Advocate.
 For Respondent No.3/State: Shri Vijay Bahadur Singh, PL

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

09.08.2018

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 01.07.2017 passed by the 7th Additional District Judge, Bilaspur in Civil Appeal No.54/2016 by which, the lower appellate Court, while affirming the judgment and decree dated 12.07.2016 passed by the 4th Civil Judge, Class-I, Bilaspur in Civil Suit No.710-A/2014, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff instituted a suit claiming declaration of title and injunction by submitting *inter alia* that his forefathers were in possession over the property in question for over more than 75-80 years while constructing a residential house and as

such, has prescribed his right, title and interest over the property in question by way of adverse possession. It is pleaded further that the Defendants are interfering in his peaceful possession, therefore, he has been constrained to file the suit in the instant nature.

3. The Defendants have contested and denied the aforesaid claim of the Plaintiff.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that in absence of specific plea of ouster, it cannot be held that the Plaintiff has prescribed his interest over the property in question by way of adverse possession. As a consequence, the trial Court has dismissed the suit.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Plaintiff.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Prafull Bharat, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below is apparently contrary to law. He submits further that the Plaintiff's forefathers were in possession continuously for over more than 75-80 years by constructing a residential house, therefore, has prescribed his right, title and interest by way of adverse possession, however, without considering the said fact in its proper manner, the Courts below have committed illegality in refusing Plaintiff's claim.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. Perusal of the record would show that though the Plaintiff has pleaded that his forefathers were in possession over the property in

question for over more than 75-80 years by constructing a residential house, however, has failed completely to establish the fact that when and from what date, he asserted is right by disowning the interest of the Defendants. In absence of any such plea coupled with its proof by cogent and reliable evidence, the Courts below have rightly disbelieved the Plaintiff's claim that he prescribed his interest by way of adverse possession. The findings of the Court below are therefore liable to be and hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya