

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 80 of 2015

- B. S. P. Employees Co-Operative Society Limited Aged About 45 Years Head-Office- Sector 1 East Bhilai-1 Regd No. 1392 Tah And Distt.- Durg C.G. Through President Pradeep Kumar Pandey S/o Shri Shivkumar Pandey R/o Vivekanand-Nagar, Durg- 491001, Tah And Distt.- Durg, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- Nagar Palika Nigam Bhilai Municipal Corporation Bhilai S/o Through Commissioner Municipal Corporation Bhilai Office G.E. Road, Supela-Bhilai, Tah And Distt.- Durg, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant	: Shri V.G.Tamaskar, Advocate
For Respondent	: Shri H.B.Agrawal, Sr. counsel assisted by Smt. Meera Jaiswal, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Mrs. Justice Rajani Dubey

Order On Board By Mrs.Rajani Dubey, J.

23/07/2018

With the consent of both the parties, the matter is heard finally.

Appellant has filed this appeal against the judgment and decree dated 31.01.2015 passed by the Second Additional District Judge, Durg in Civil Suit No. 13-A/2013.

In the trial court, appellant/plaintiff instituted Civil Suit on 16.12.2002 against the respondent for declaration and injunction, claiming perfection of its title due to adverse possession. Learned court below vide impugned judgment and decree dated 31.01.2015 has dismissed the suit filed by the appellant.

Learned counsel for the appellant submits that the court below failed

to consider the object of possessor to prevent the violent self help they are thought to be serious and must be discouraged by taking away all advantages which one may derive from it and not even the owner can get by force what is his own, except in the due course-of-law. The possessor is in an advantageous possession and the law forbids anyone to take advantage by force. The adverse possession is in someway similar to the law of prescription in easements and profits a prendre. The court below has failed to see that the appellant is in uninterrupted possession of plot for more than 50 years to the knowledge of respondent/defendant.

Counsel for the appellant also submitted that the appellants/plaintiff is in possession of the plot since 42 years and at that time the defendant/society was not in existence. Defendant/Society gave notice to plaintiff on 22.11.2002 which shows that the plaintiff was still in possession but learned court below dismissed his suit erroneously. Supporting his argument, he has placed his reliance in the matter of **Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited** reported in **(2018) 2 SCC 674**. Appellant/plaintiff claims the ownership by adverse possession on the ground that it is in possession of land in dispute for a long time and this fact has been established, therefore the suit cannot be dismissed.

On the other hand, counsel for the respondent/defendant supported the findings recorded by the lower court and relied upon the judgment of the Apex Court in the matter of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala & Another** reported in **(2014) 1 SCC 669**.

After going through the pleadings and evidence of the parties, the trial court had observed that the plaintiff/appellant's suit is not maintainable and dismissed the same.

We find that this relief of declaration has been denied on the ground that the suit for such a relief was not maintainable and plaintiff had failed to

establish his adverse possession. Hon'ble Apex Court in the matter of **Gurudwara Sahib** (supra) and also in other cases has authoritatively pronounced that even if the plaintiff is found to be in adverse possession it cannot seek declaration to the effect that such adverse possession has matured into ownership. It is only in proceedings filed against the appellant where the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

In the present case, the trial court also relied upon the supreme court cases and dismissed the suit of the plaintiff. This finding is based on well settled legal position. Appellant's counsel also submitted that the appellant is in possession of the suit property so the possession of the appellant cannot be disturbed except by due process of law but the trial court in its finding did not prove this fact.

In para 6 of the judgment impugned, it is stated that defendant/respondent dispossessed the plaintiff from the suit land. Appellant did not claim for restoration of his possession so relief of injunction can also not be granted to the appellant.

In the result, the appeal has no substance, the same deserves to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge