

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 112 of 2005**

Afjal Ali, S/o Rahmat Ali, aged about 34 years, By Caste Muslim, Occupation Agriculture, R/o Village – Barvahi, Tahsil Pal, (Ramanujganj), District Surguja (M.P.)

----Appellant/plaintiff

Versus

1. Hari Bhuinya, S/o Barahil aged about 33 years;
2. Smt. Sundari, W/o Harawan, aged about 60 years;
3. Jholara, S/o Harawan, aged about 35 years;

All resident of Village Barvahi, Tahsil Pal (Ramanujganj), District Surguja (C.G.)

4. Zalil Miyan, S/o Ramjan, aged about 38 years;
5. Sundar, S/o Zaten Bhuinya, aged about 37 years;
6. Smt. Zatun Bibi, W/o Rajjak, aged about 44 years;
7. Gyani, S/o Kheman Bhuinya, aged about 28 years;

All resident of Village – Barvahi, Occupation – Agriculture, Tahsil Pal (Ramanujganj), District Surguja (C.G.)

8. State of M.P. (Now State of Chhattisgarh), Through: The Collector, Ambikapur, District Surguja (C.G.)
9. Maniger, S/o Harawan, aged about 30 years, R/o Village Barvahi, Tah. Pal – Ramanujganj, District Surguja (C.G.)

---- Respondents/defendants.

For Appellant	: Shri Sushil Dubey, Advocate.
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/03/2019

1. Heard on the question of admission and formulation of substantial question of law in

this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.

2. Plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court and in an appeal being preferred, it was affirmed by the first appellate Court, against which instant second appeal under Section 100 of the Code of Civil Procedure has been preferred.

3. Shri Sushil Dubey, learned counsel appearing for the appellant/defendant would submit that both the courts below have concurrently erred in holding that plaintiff has no right, title or interest over the suit property and that give rise to substantial question of law for determination.

4. The plaintiff claimed the suit land by way of *patta* Ex.P-2 dated 26.03.1980 and further pleaded that defendants have dispossessed him and it has been allotted to them illegally by the revenue officers and he has perfected his title over the suit land by way of adverse possession.

5. The trial Court dismissed the suit holding that when the patta was granted in favour of plaintiff, he was minor and, as such, lease granted to the minor is void in view of the law declared by the Privy Council in case of **Mohari Bibee v. Dharmodas Ghose**¹ and further relied upon judgment of the Patna High Court in the matter of **Pramila Bali Das and others Vs. Jogesher Mandal**². Plaintiff preferred first appeal there-against. The first appellate court, on re-appreciation of evidence dismissed the appeal.

6. The plaintiff was minor and the patta was granted to him on 26.03.1980 and the civil suit was filed on 24.07.1996 and, therefore, he had not completed period of 30 years over the government land for claiming title by way of adverse possession and even otherwise

¹ 8 P.C.J. 374 (P.C.)

² (1918) 3 Patna LJ 518

the suit for declaration of title on the basis of adverse posses is not maintainable in view of the judgment of the Supreme Court in the matter of **Gurdwara Sahib v. Gram Panchayat Village Sirthala and another**³

7. Thus, both the courts below have rightly recorded a finding that the plaintiff has failed to establish title over the suit land, in which I do not find any perversity or illegality and no question of law much less substantial question of law is involved in this appeal.

8. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul Datta and others**⁴ & **Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others**⁵}

9. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

3 (2014) 1 SCC 669

4 (2018) 11 SCC 77

5 (2018) 12 SCC 681

