

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-1-2019

Judgment delivered on 30-01-2019

FA No. 303 of 1998

1. Ram Singh aged about 65 years.
2. Ramhu, aged about 55 years.
3. Faru aged about 50 years.

(All sons of Seikhu Dhimar, r/o. Bhagat Singh Ward, Dongargarh, District Rajnandgaon).

---- Appellants.

Versus

1. State of MP(Now CG) through Collector, Rajnandgaon.
2. Municipal Counsel, Dongargarh, through its Chief Municipal Officer, Dongargarh, District Rajnandgaon.

---- Respondents

For appellants :Mr. B.P. Gupta, Advocate.

For respondent/State :Mr. Ravish Verma &
Mr.Raghavendra Verma, Govt. Advocates.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellants have preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 4-3-1998 passed by 11th Additional District Judge, Rajnandgaon in Civil Suit No. 2-A/96 wherein the said court dismissed the suit of the appellants filed for declaration and injunction in the suit premise (which is

mentioned in the schedule "A" of the plaint and which is tank) for fishing right and injunction against the respondent for not auctioning the same.

2. The suit was filed by three sons of one Seikhu Dhimar namely Ram Singh, Ramhu and Faru on the ground that the suit property in question is survey N.274/1 area 6.17 acres which is known as Tanka Tank situated at Dongargarh which was handed over to father of the appellants namely Seikhu Dhimar on account of agreement to sell between late Raja Veerendra Bahadur and Seikhu Dhimar on 28-4-1959.
3. As per plaint averment, said Seikhu Dhimar was alive on the date of filing of suit i.e., 19-3-1996. It is alleged that he is missing for two years. It is the case of the appellants that they are in possession of the said tank of their father Seikhu Dhimar and they have acquired title by adverse possession, but the respondents have published auction of the said tank which is liable to be restrained.
4. On the other hand, learned counsel for the respondent supporting the judgment and decree passed by the trial Court would submit that the finding of the trial Court is based on factual and legal aspect of the matter and same is

not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. As per plaint averment Tank was handed over to Seikhu Dhimar and the appellants are successors of said Seikhu Dhimar being his sons and Seikhu Dhimar is alive, therefore, Seikhu Dhimar was necessary party in the present case. The suit was filed on 19-3-1996 and it is pleaded that the said tank was handed over to Seikhu Dhimar on 28-4-1959 Age of the appellant Faru is shown in the paint to be 40 years in the year 1996, therefore, he was a child of three years in the year 1959, the age of the appellant Ramhu was 17 years in the years 1996 and the age of appellant Ramsingh was 27 years in the year 1996.
7. From the plaint averment, it is not clear as to what is the exact date of starting of their adverse possession against the Government. For taking plea of adverse possession, date of initiation of adverse possession must be shown, but that is not shown in the plaint, therefore, it appears that cause of action is not available to the present appellants on the ground of adverse possession. As per plaint averment, only Seikhu Dhimar has legal interest in litigation and he is

alive, therefore, suit filed without adding him as party was not maintainable, that is why the trial Court dismissed the suit at preliminary stage. Finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material and it is not a case where this Court should disturb the finding recorded by the trial Court.

8. Accordingly, decree is passed against the appellants and in favour of respondents as under:
- (i) The appeal is dismissed with cost.
 - (ii) Appellants to bear the cost of respondents throughout.
 - (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
 - (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju