

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 242 of 2011****Order reserved on 25.01.2019****Order delivered on 28.01.2019**

Nanhu Ram (Dead) Through LR's.

- 1(a).Suryadev Soni S/o. late Nanhu Ram, aged about 56 years.
- 1(b).Kunj Bihari S/o. late Nanhu Ram, aged about 51 years,
Occupation – Agriculture.
- 1(c).Vinod Bihari S/o. late Nanhu Ram, aged about 40 years,
Occupation – Service (Peon).

All are R/o. Bilmha, Tahsil- Ambikapur, District – Surguja
(Chhattisgarh).

---Appellants

Defendants

Versus

- 1.Subaso W/o. Shri Lakhan Sai aged about 35 years,
Agriculturists, R/o. Village – Bilmha, Tehsil – Ambikapur,
District – Surguja (M.P.).
- 2. Lakhan Sai (Deleted).
- 3. The State of M.P. through Collector, Surguja, Ambikapur

---Respondents**And****Second Appeal No. 379 of 2000**

Nanhu Ram (Dead) Through LR's.

- 1(a).Smt. Jagmaniya (Deleted).
- 1(b).Suryadev Soni S/o. late Nanhu Ram, aged about 56 years,
Occupation - Agriculture.
- 1(c).Kunj Bihari S/o. late Nanhu Ram, aged about 51 years,
Occupation – Agriculture.
- 1(d).Vinod Bihari S/o. late Nanhu Ram, aged about 40 years,
Occupation – Service (Peon).

All are R/o. Bilmha, Tahsil- Ambikapur, District – Surguja
(Chhattisgarh).

---Appellants

Versus

1. Subaso W/o. Shri Lakhan Sai aged about 35 years, Agriculturists, R/o. Village – Bilmha, Tehsil – Ambikapur, District – Surguja (M.P.).
2. Lakhan Sai (Deleted).
3. The State of M.P. through Collector, Surguja, Ambikapur

---Respondents

For Appellants : Mr. A. K. Prasad, Advocate.

For Respondent : Mr. Sushil Dubey, Advocate.

For State : Ms. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. This is defendant's second appeal.
2. The trial court partly decreed the suit for recovery of possession filed by the plaintiffs except suit land bearing survey Nos. 713, 715 and 731. The plaintiffs preferred first appeal against the part of the judgment and decree declining the decree for possession with respect to survey Nos. 713, 715 and 731, whereas the defendant preferred first appeal against part of judgment and decree granting the decree for recovery of possession in favour of the plaintiffs. The First Appellate Court allowed the appeal filed by the plaintiffs and decreed the plaintiff's suit in full, whereas dismissed the appeal filed by the defendant.

3. These are two second appeals filed by defendant-Nanhu Ram questioning the judgment and decree passed by the First Appellate Court dismissing the appeals filed by him and granting the appeal filed by the plaintiffs.

4. Mr. A. K. Prasad, learned counsel for the appellant/defendant would submit that both the Courts below are absolutely unjustified in granting the decree for recovery of possession in favour of the plaintiffs as the plaintiffs' suit for recovery of possession based on title was barred by limitation as in earlier suit filed by the defendant, suit for title based on adverse possession was partly decreed on 16.01.1965 though it was set aside by the First Appellate Court and affirmed by the Second Appellate Court on 01.04.1977, therefore, the plaintiffs ought to have filed the instant suit for recovery of possession within twelve years from 16.01.1965, as the defendant has perfected his title by adverse possession and both the Courts below have concurrently unjustified in decreeing the suit of the plaintiffs ignoring the plea of limitation and adverse possession.

5. I have heard the learned counsel for appellant/defendant, considered his submission and went through the record with utmost circumspection.

6. Article 65 of the Limitation Act, 1963 provides as under:-

Article 65. For possession of immovable property or	Twelve years	When the possession of the defendant
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any interest therein based on title.		becomes adverse to the plaintiff.
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7. From the aforesaid provision of law, it is *quite vivid* that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. In the instant case, the defendant earlier filed a suit for declaration that he has perfected is title over the suit land by adverse possession, which was partly granted by the trial court vide Ex.P/7 on 16.01.1965. The said decree was set aside by the appellate court at the instance of the plaintiffs by Ex.P/6 on 16.01.1969 dismissing the suit of the defendant in *toto* and affirmed by the High Court of Madhya Pradesh in second appeal No. 514 of 1969 on 01.04.1977, as such, the defendant's suit based on adverse possession was dismissed and thereafter, the plaintiffs filed suit for recovery of possession on 20.01.1979 in which again the defendant took and set up a plea of adverse possession, which has not been accepted by two Courts below and held the plaintiffs to be title-holder and granted the decree for possession in their favour. The finding recorded by two Courts below in the earlier suit that the defendant has not perfected his title by way of adverse possession will operate as res-judicata in the instant suit specially the second appeal filed by the defendant claiming the plea of adverse possession came to be dismissed as back as on 01.04.1977 and the

present suit was filed on 20.01.1979 within two years from the date of dismissal of the defendant's second appeal. The defendant is estopped from taking the plea of adverse possession in the instant suit that too within two years as in earlier suit and appeals, his plea of adverse possession has been turned down and fresh plea of adverse possession is not available to him within a period of two years from dismissal of earlier second appeal. The finding recorded by two Courts below that the defendant has not perfected his title by adverse possession over the suit land is a finding of fact based on evidence available on record. It is neither perverse nor contrary to record.

8. Accordingly, the second appeals are liable to be and are hereby dismissed in *limine* without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge