

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.23 of 2005**

1. Smt. Kunjbati Dewangan, widow of Chaitram, aged 55 years
2. Roshanlal Dewangan, aged 35 years, son of Chaitram
3. Yogendra Kumar Dewangan, aged 33 years, son of Chaitram Dewangan
4. Ramchandra Dewangan, aged 29 years, son of Chaitram Dewangan

All permanent resident of Kayasthpara, ward No.4, Durg, Tahsil and District Durg (Chhattisgarh)

5. Smt. Madhulata Dewangan, aged 40 years, wife of Shivdayal Dewangan, resident of Maroda Sector, Quarter No.39G, Bhilai, District Durg (CG)
6. Smt. Gopkumari Dewangan, aged 39 years, wife of Tijusam Dewangan, resident of village Kura, Block Dharsiwa, District Raipur (CG)
7. Smt. Padma Dewangan, aged about 35 years, wife of Shri Harish Kumar Dewangan, resident of sector 5, Street No.M.P.A., Quarter No.11C, Bhilainagar, Tahsil and District Durg (Chhattisgarh)

All legal representatives of deceased plaintiff Chaitram Dewangan, son of Shri Ballu Sao Dewangan

---- Appellants/Plaintiffs

Versus

1. Satyendra Kumar, aged 47 years, son of Babulal Shrivastava,
2. Anil Kumar, aged 44 years, son of Babulal Shrivastava
3. Rameshchandra, aged about 34 years, son of Babulal Shrivastava
4. Rajesh Kumar, aged about 30 years, son of Babulal Shrivastava
5. Ku.Ranjana, aged about 36 years, D/o Babulal Shrivastava
6. Ku.Jyotibala, aged about 24 years, daughter of Babulal Shrivastava
7. Smt.Mridula, wife of Shri Satish Kumar Shrivastava, resident of Sahaspur Lohara, Tahsil Kawardha, District Rajnandgaon, present District Kawardha (Chhattisgarh)

---- Respondents

For Appellants/Plaintiffs	:	Mr.H.B.Agrawal, Senior Advocate with Mrs.Prabha Sharma, Advocate
For Respondents/Defendants:		Mr.Vinod Kumar Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

15.07.2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the appellants/plaintiffs is as under:-

“Whether the learned lower Appellate Court was justified in reversing the decree in favour of the appellant by holding that the suit was barred as per Section 64 of the Indian Limitation Act on the basis of material available on record and particularly in the light of the statement of P.W.-2 and P.W.-3 who have stated that in the execution of warrant of possession issued by the Court, the possession of the suit house was delivered to the appellants on 09/02/1976?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The original plaintiff's suit for eviction being Civil Suit No.59-A/75 was decreed by the jurisdictional Civil Court and ultimately, after dismissal of appeal filed by the defendants, original plaintiff-Chaitram Dewangan was placed in possession of the suit house on 22.2.1976 vide Ex.P/1 in execution of warrant of possession issued on 9.2.1976. Thereafter, Babulal Shrivastava, husband of defendant No.1 and father of defendants No.2 to 8 dispossessed him forcibly

from the suit premises, for which he was prosecuted for offence punishable under Section 426 of the IPC on 9.10.1982 and he was sentenced till rising of the Court. Other defendants were also sentenced, but in appeal they were acquitted. Now the present Civil Suit No.2A/86 was instituted by the original plaintiff, who died during pendency of the trial and his legal representatives were brought on record, stating inter-alia that he is owner and title-holder of the suit land and he has been dispossessed forcibly by the defendants, as such, he is entitled for decree of possession, which the trial Court granted holding him to be title-holder and he has been dispossessed forcibly and the suit is within limitation. Feeling aggrieved and dissatisfied with the judgment and decree of the trial Court, both the parties preferred first appeal. The first appellate Court disposed of both the appeals by common order, by which the plaintiffs' first appeal was dismissed, however, the defendants first appeal was allowed dismissing the suit holding that the suit is barred by Article 64 of the Limitation Act, 1963 (hereinafter called as "the Act of 1963"). Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

3. Mr.H.B.Agrawal, learned Senior Counsel appearing for the appellants/plaintiffs, would submit that the original plaintiff was placed in possession on 22.2.1976 and he was dispossessed by the

defendants on 23.2.1976 and ultimately, the suit was filed on 23.1.86, which was within the limitation prescribed under Article 64 of the Act of 19963, as such, the first appellate Court is absolutely unjustified in holding and dismissing the suit as barred by limitation. Therefore, the judgment and decree passed by the first appellate Court deserves to be set aside.

4. On the other hand, Mr.Vinod Kumar Sharma, learned counsel for the respondents/defendants, would support the impugned judgment and decree.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. Civil Suit filed by Chaitram Dewangan being Civil Suit No.59A/75 for possession based on title was decreed by the trial Court on 5.9.74 and in execution of decree, he was placed in possession on 22.2.1976 vide Ex.P/1. The fact of original plaintiff being placed in possession is apparent from the statement of Anantram Tiwari (PW-2) and Roshanlal Dewangan (PW-3). Article 64 of the Act of 1963 provides for limitation for possession of immovable property based on previous possession which states as under:-

	Description of suit	Period of limitation	Time from which period begins to run
64.	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession

7. In the instant case, original plaintiff-Chaitram Dewangan was dispossessed from the suit premises on 23.2.1976 and he brought a suit for possession on 23.1.1986. If dispossession is counted from the date of dispossession i.e. 23.2.1976, it cannot be held the suit was filed beyond the period of 12 years as it was well within the period of limitation. The first appellate Court is absolutely unjustified in holding that suit was hit by Article 64 of the Act of 1963. The plaintiff having been dispossessed after he was placed in possession on 22.2.1976, the suit as framed and filed was within the period of limitation as prescribed under Article 64 of the Act of 1963, as such, the first appellate Court is absolutely unjustified in dismissing the suit as barred by Article 64 of the Act of 1963, which is perverse and contrary to record.
8. For the foregoing reasons, the impugned judgment and decree passed by the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered in favour of the plaintiffs and against the defendants.
9. The second appeal is allowed to the extent indicated hereinabove. The defendants will bear their own cost and cost of the plaintiffs.
10. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-