

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 278 of 2004**

Ejaj Mohammed (since deceased) through LRs:-

1. Mohd. Sajjad, Son of Late Ejaj Mohammad, aged about 55 years, R/o. Gilli Chowk, Monjhapara, Kanker, District Kanker (C.G.)
2. Mohd. Arshad, Son of Ejaj Mohammad, aged about 45 years, R/o Shyam Nagar, Janakpur Ward, Kanker, District Kanker (C.G.)
3. Smt. Shabra Bano, wife of Shekh Emam, D/o. Ejaj Mohammad, aged about 35 years, R/o Isai Para, Dhamtari, District Dhamtari (C.G.)
4. Smt. Shayara Bano, wife of Ejaj Uddin, D/o Mohd. Ejaj, aged about 30 years, R/o Salebar Para, Dhamtari, District Dhamtari (C.G.)

----Appellants/Plaintiffs

Versus

1. Jameel Mohammed, S/o Faiyaz Mohammed, caste Muslim, aged about 50 years,
2. Musmat Ful Suman, W/o Faiyaz Mohd. Aged about 70 years,
3. Mohammed Tarif, S/o Faiyaz Mohd. aged about 45 years, caste Muslim
4. Mohammed Talib, S/o Faiyaz Mohd. aged about 40 years, caste Muslim

Respondents No. 1 to 4 all R/o Katatipura, Vill. Mohaba, Tahsil Mohaba, Distt. Hamirpur (U.P.)

5. Gul Mohammed, S/o Hazi Aayaz, aged about 60 years, caste Muslim, R/o Garka, Singanpur, thana and Tahsil Keshkal, Distt. Bastar (C.G.)
6. State of Chhattisgarh through Collector, Bastar, Jagadalpur (C.G.)

---- Respondents/Defendants.

For Appellants	: Shri Vishnu Koshta, Advocate
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/02/2019

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. The plaintiffs' suit for declaration of title and permanent injunction was dismissed by the trial Court. First Appeal preferred there-against was also dismissed by the first Appellate Court affirming the judgment & decree of the trial Court.
3. Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below ought to have held that plaintiffs have perfected their title over the suit land by way of adverse possession and thereby ought to have granted decree in favour of the plaintiffs but the plaintiffs' suit has been dismissed by the trial Court and which has been upheld by the first appellate Court by recording perverse finding that give rise to the substantial question of law for determination in the appeal.
4. Original plaintiff – Ejaj Mohammed filed a suit for declaration of title over the suit land on the basis that he is in possession of the suit land since 8.6.1961 and, therefore, he has perfected his title over the suit land by way of adverse possession.
5. The trial Court, after appreciating the oral and documentary evidence available on record, has held that plaintiff has failed to prove his continuous possession over the suit land for the last 34 years and dismissed the suit, which has been upheld by the first appellate Court. Finding of fact recorded by the both the courts below that plaintiff has not perfected his title over the suit land by way of adverse possession is a finding of fact based on material available on record and even otherwise the suit for declaration of title on the basis of adverse possession 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**¹

1 (2014) 1 SCC 669

6. Thus, both the courts below have rightly recorded a finding that the plaintiff has failed to establish title over the suit land by way of adverse possession , 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.

7. 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 others² & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others³**}

8. 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/-

² (2018) 11 SCC 77

³ (2018) 12 SCC 681

