

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 141 of 2003

Reserved on : 06.08.2019

Delivered on : 04.10.2019

Krishi Upaj Mandi Samiti, Bhatapara, Through Secretary, Krishi Upaj Mandi Samiti, Bhatapara, Tahsil & P.S.- Bhatapara, District- Raipur (C.G.)

---- Appellant

Versus

1. Fattechand, S/o Ramjilal (Matadin) Agrawal, aged about 53 years, Bhatapara, Tahsil & P.S.- Bhatapara, District- Raipur (C.G.)
2. Shivshakti Rice Mill, Nayaganj Ward, Through Proprietor (Owner), Fattechand Agrawal, S/o Ramjilal (Matadin) Agrawal, Bhatapara, Tahsil & P.S.- Bhatapara, District- Raipur (C.G.)
3. State of Chhattisgarh, Through Collector, Raipur (C.G.)

---- Respondents

For Appellant	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate.
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For Respondents	:	Mrs. Anju Ahuja, Advocate.
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Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 17.05.2003 passed by Second Additional District Judge, Baloda-Bazar, District- Raipur (C.G.) in Civil Suit No. 1A/1997, wherein the said court decreed the suit filed by respondent No. 1 & 2 partially and declared them owner of the land bearing Survey No. 229 situated at Village- Avrethi to the extent on which one boundary wall is constructed by them and for

restraining the appellant from interfering in possession of the land in limited area.

2. The respondents filed a suit contending that they are owner by adverse possession of land bearing Survey No. 229 situated at Village- Avrethi, Patwari Halka No. 7/24 area admeasuring 3 acres. The total area of Survey No. 229 is 2.533 Hectare as per Ex. D/1. The land was given to Krishi Upaj Mandi by publication in Madhya Pradesh Gazette. As per the appellant, the respondents encroached in some part of the land. For removal of which, notices were sent on 01.02.1982 and on subsequent dates, therefore, finding arrived at by the trial court that respondents were in peaceful possession of the land is contrary to factual matrix and legal aspect of the matter.
3. Learned counsel for the appellant submits as under:-
 - (i) As per Ex. P/5, case for removal of encroachment is initiated in the year 1965. Again, notices were served on 18.04.1963, 23.04.1963 & 22.11.1982, therefore, possession of the said respondents was interrupted and they have not acquired any title by adverse possession.
 - (ii) As peaceful possession for 30 years in the Government land, is not established, the finding of the trial court is not liable to be sustained.
 - (iii) The trial court has passed unexecutable decree because area for which decree is granted, is not ascertainable. When the said respondents are not owner of the property, injunction cannot be

granted in their favour, therefore, the finding arrived at by the trial court is liable to be reversed.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with 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. The respondents side adduced evidence of Fattechand (PW-1), Surya Prasad Mishra (PW-2), Prabhulal Sharma (PW-3), Shiv Prasad Tiwari (PW-4) & Chhedilal (PW-5) and produced document Ex. P/1 to P/6. As against this, the appellant side adduced evidence of Jivan Lal (DW-1), Phaguaram (DW-2) & Gosai Ram Yadu, Assistant Sub-Inspector, Krishi Upaj Mandi, Bhatapara (DW-3) and produced document Ex. D/1 & D/2 which is record of right & Khasra entry respectively. It is clear that the land bearing Survey No. 229/1 area admeasuring 2.533 Hectare is property of the Krishi Upaj Mandi, Bhatapara. The khasra entry (DW-2) shows possession of the Krishi Upaj Mandi for year 1988-89. The respondent side is also not claiming title by any document over the property, but they are saying that they are in possession of the property since 1950-52. They are claiming over the property on the basis of adverse possession.
7. As the property in question is property of the appellant as per record, the only question for consideration before this Court is whether the

respondents acquired the title over the property on the basis of adverse possession. In the matter of **Chatti Konati Rao & others Vs. Palle Venkata Subba Rao**, reported in **(2010) 14 SCC 316**, Hon'ble the Apex Court held as under:-

- (i) It is a well-settled principle that a party claiming adverse possession must prove that his possession is peaceful, open and continuous.
- (ii) The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner.
- (iii) It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.
- (iv) A person who claims adverse possession should show:-
 - (a) On what date he came into possession,
 - (b) What was the nature of his possession,
 - (c) Whether the factum of possession was known to the other party,
 - (d) How long his possession has continued, and
 - (e) His possession was open and undisturbed.
- (v) A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.
- (vi) Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose.

8. From the record, it is clear that the notices were issued to

respondents/ predecessor of respondent Matadin Agrawal for removal of encroachment on 02.01.1960 (Ex. P/1). Again, notices were served to them on 18.04.1963 (Ex. P/3) and 23.04.1963 (Ex. P/4). The case was also instituted for removal of encroachment as per Ex. P/5. Again, notice was served to respondent Fattechand on 22.11.1982 (Ex. P/6) for removal of encroachment.

9. From record, it is clear that the notices were served since 1960 for removal of encroachment, therefore, it cannot be said that the possession of the respondent was peaceful and uninterrupted. The oral evidence adduced on behalf of the appellant side is supported with document while the statement adduced by respondents/ plaintiff side is not supported with any record that they were in possession of the land since long, therefore, the evidence on behalf of the appellant side is more convincing. The respondent side is not able to establish on what date they came into possession and further, their possession is always challenged by Municipal Corporation who is earlier owner of the property in question and again by Krishi Upaj Mandi who is now owner of the property in question, therefore, it is not established that on what date, the respondents came into possession and also not established that their possession was uninterrupted. As the property in question is property of the State Government, 30 years continuous possession is required as per Article 112 of the Limitation Act, 1963 for acquiring adverse possession, but that is not proved by evidence of respondents side.
10. The trial court recorded finding on the basis of bald statement of

respondents side which is rebutted by oral as well as documentary evidence, therefore, finding arrived at by the trial court on factual count is not sustainable.

11. Accordingly, the appeal is allowed. The decree is passed in favour of the appellant and against the respondents on the following terms and conditions:-

- (i) The appeal is allowed.
- (ii) The suit filed by respondent No. 1 & 2 is dismissed with cost.
- (iii) The said respondents to bear cost of the appellant throughout.
- (iv) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (v) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge