

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 98 of 2005**

Anil Kumar, son of late Andriyas, aged about 43 years, resident of Jarhabhata, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

---- Appellant/Plaintiff

Versus

State of Chhattisgarh, Through : Collector, Bilaspur (C.G.) (The then State of M.P.)

----Respondents

For Appellants
For State

: Mr. Ram Kumar Tiwari, Advocate.
: Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/01/2019

(1) This is plaintiff's Second Appeal filed under Section 100 of CPC questioning the judgment and decree dated 09.11.2004, passed by First Appellate Court in Civil Appeal No. 47-A/2004 whereby the said Court has affirmed the judgment and decree dated 27.02.1999 passed by trial Court dismissing the suit of the plaintiff/appellant herein for declaration of title and permanent injunction.

(2) Original plaintiffs filed a suit for declaration to title stating *inter alia* that they are in peaceful possession over the suit land for the last 30 years, therefore, title over the suit land be declared in their favour as they have perfected their title over the suit land by way of adverse possession and permanent injunction also be granted in their favour restraining the defendants from interfering with their peaceful possession over the suit land.

(3) The trial Court, after appreciating the oral & documentary evidence available on record, by its judgment & decree dated 27.02.1999 recorded a finding that the plaintiffs have failed to prove peaceful possession over the suit land for the last 30 years; and they have not perfected their title over the suit land by way of adverse possession; and also held that they are not entitled for permanent injunction.

(4) The plaintiffs preferred first appeal there-against. The first appellate court after re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court.

(5) Being aggrieved & dissatisfied with the judgment & decree passed by the trial Court as affirmed by the first appellate Court, instant second appeal under Section 100 of the Code of Civil Procedure has been preferred.

(6) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are absolutely unjustified in dismissing the suit holding that the plaintiffs have not perfected their title by way of adverse possession.

(7) Per contra, counsel for the respondent/defendants would submit that judgment & decree passed by the trial Court as affirmed by the first appellate Court is strictly in accordance with law, which does not call for any interference in the instant second appeal.

(8) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) The trial Court has clearly recorded a finding while deciding the issue No. 1A & 1B that plaintiffs are not in peaceful possession over the suit land for the last 30 years; and they have not perfected their title over the suit land by way of adverse possession after due appreciation of oral & documentary evidence available on record. The said finding has been upheld by the first appellate Court on the independent appreciation of the evidence available on record, which is neither perverse nor contrary to the record giving rise to substantial question of law for determination.

(10) Even otherwise, in **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another** reported in **(2014)1 SCC 669**, the Supreme Court has clearly held that declaration of ownership of land on basis of adverse possession cannot be sought by plaintiff. Relevant paragraph of the report states as under:-

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, he cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

(11) Reverting to the facts of the case, it is quite vivid that concurrent findings recorded by both the courts below that plaintiffs have failed to establish their peaceful possession over the suit land for the last 30 years; and further failed to prove adverse possession over the suit land is a finding of fact based on material available on record. Similarly, in view of the decision rendered by the Supreme Court in **Gurdwara Sahib** (supra), plaintiff cannot seek declaration of title based on adverse possession. In view

of that, I do not find any substantial question of law for determination in this appeal.

(12) Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

