

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 321 of 2001**

- 1 A. Rameshwar Singh Chouhan, Aged about 48 years.
 B. Rajendra Singh Chouhan, Aged about 46 years.
 C. Samresh Singh, Aged about 44 years.
 D. Smt. Shalini Chouhan, Aged about 42 years.
 E. Ku. Meena Chouhan, Aged about 40 years.
 F. Ku. Rachna Chouhan, Aged about 38 years.

All sons and daughters of Devi Singh, All by Caste-Chatrri and residents of Ward-Shitalapara, Kanker, Tahsil Kanker, District Bastar now District Kanker, now Chhattisgarh-State.

---- Appellants

Versus

State of Madhya Pradesh now State of Chhattisgarh, through Collector Bastar, Jagdalpur now Collector Kanker, Chhattisgarh.

---- Respondent

For Appellants	: Shri Anil Singh Rajput, Advocate.
For State/Respondent	: Shri Vimlesh Bajpai, G. A.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

01.04.2019

1. This is plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') questioning propriety of the judgment and decree dated 17.03.2001 passed by Additional District Judge, Bastar, place Kanker in Civil Appeal No.14-A/1991, by which the lower Appellate Court, while affirming the judgment and decree dated 27.08.1991 passed by Civil

Judge Class-II, Kanker, in Civil Suit No.2-A/1987, has dismissed the plaintiff's suit.

2. Briefly stated the facts of the case are that the plaintiff Devi Singh (since deceased now represented by his legal representatives) instituted a suit claiming declaration of title, and permanent injunction by submitting inter alia that his mother Parwatidevi had purchased the property in question described in plaint paragraph 2 admeasuring 100.53 acres situated at village Nawagaon Bhavgir, Tahsil Kanker District Bastar (C.G.) by virtue of a registered deed of sale dated 14.10.1969. It is pleaded in the plaint that the property in question was originally held by Mangalgir and Sheogir, who in turn, by executing the deed of sale dated 05.06.1939 (ExP-3) had sold the same to one Sitaramdas. It is pleaded further that by virtue of the deed of sale dated 29.05.1954, said Sitaramdas sold the same to one Kisan Singh Chhatri, the vendor of the plaintiff's mother. It is pleaded further that by way of adverse possession also, he acquired his right, title and interest over the land in question and has been constrained to institute the suit in the instant nature, when the competent authority while exercising the powers enumerated under the MP/CG Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as 'the Act of 1960') has passed the order while vesting the property in question to the State Government.

3. The aforesaid claim has been contested by the defendants. It is pleaded that Sitarmadas had not acquired any interest whatsoever over the property in question nor the plaintiff has prescribed his interest by way of adverse possession. It is contested further on the ground that since the alleged proceeding under the Act of 1960 was under consideration, the suit is, therefore, barred by jurisdiction under Section 46 of the said Act of 1960.

4. After considering the evidence led by the parties and considering further the evidence adduced by the parties, it has been held by the trial Court that said Sitaramdas has not acquired the suit property by virtue of the sale dated 05.06.1939 (ExP-3) as it was purchased by Ram Janki Mandir through him as a Sarvarakar and as such, he is not the exclusive owner of the property in question. It, however, held further that the plaintiff had acquired his interest by way of adverse possession while entertaining the Issue No.3 and, observed further that the suit as framed during the pendency of the said proceedings initiated under the Act of 1960 is barred by jurisdiction under Section 46 of the said Act. As a consequence, the suit was dismissed by the trial Court vide its judgment and decree dated 27.08.1991.

5. The aforesaid finding has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff.

6. Being aggrieved, the plaintiff has preferred this appeal. Shri A. S. Rajput, learned counsel for the appellants submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits further that a bare perusal of the record would show that by virtue of a registered deed of sale, dated 14.10.1969 (ExP-1A) executed by Kisan Singh Chhatri in favour of plaintiff's mother Parwatidevi, it is evident that his mother had acquired her valid right, title and interest over the suit land. He submits further that the finding of the trial Court regarding plaintiff's acquisition by way of adverse possession has not been turned down by the lower appellate Court, yet the lower appellate Court has dismissed the plaintiff's claim, which is, therefore, liable to be set aside. He submits further that the provisions prescribed under Section 46 of the Act of 1960 as applied by the Courts below are not applicable in the present case.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. A suit for declaration of title and injunction has been made by the plaintiff Devi Singh (since deceased now represented by his legal representatives) on the ground that by virtue of registered deed of sale dated 14.10.1969 (ExP-1A) his mother Parwatidevi had acquired her interest over the property in question as described in plaint paragraph 2. Perusal of the record would show that the property in question was originally held by Mangalgir and Sheogir, who in turn, sold the same by virtue of deed of sale dated 05.06.1939 (ExP-3) to Ram Janki Temple through its Sarvarakar namely Sitaramdas. It is, thus, clear that said Sitaramdas was not the exclusive owner of the suit property. It appears further from the plaint averments that he sold the same to one Kisan Singh Chhatri by virtue of deed of sale dated 29.05.1954. However, the said document has not been produced by the plaintiff for the reasons best known to him. Be that as it may, the plaintiff's mother Parwatidevi purchased the suit property on 14.10.1969 (ExP-1A) as a Sarvarakar of said Ram Janki Temple from said Kisan Singh Chhatri and the said deed of sale would also show that plaintiff's mother had not purchased the suit property in her individual capacity. Based upon these documentary evidence, it cannot be held that plaintiff's mother Parwatidevi had acquired her interest by virtue of the alleged sale (ExP-1A). As far as the acquisition of ownership by plaintiff by way of adverse possession, as held by the trial Court, is however, cannot be held to be sustainable in the eyes of law for want of necessary pleadings in this regard. In order to establish the claim by virtue of adverse possession, the plaintiff is required to establish the fact that on what date, he asserted his right, over the property in question, against its true owner.

In absence of specific plea of ouster, it cannot be held that the plaintiff had acquired his interest by virtue of adverse possession. The finding of the trial Court, though not meted out by the lower appellate Court, cannot be held to be sustainable under such circumstances and, therefore, deserves to be and is hereby set aside. Thus, from stretch of any imagination, it is difficult to hold that plaintiff's mother Parwatidevi had acquired any interest whatsoever over the suit land either by virtue of alleged sale (ExP-1A) or by way of adverse possession.

9. Besides, a proceeding which was initiated under the Act of 1960 was under consideration before the competent authority, when the suit was filed on 19.12.1986. It is, therefore, specifically barred by jurisdiction as per the provisions prescribed under Section 46 of the Act of 1960. The Courts below have, therefore, not committed any illegality in holding that the suit is barred by jurisdiction under Section 46 of the Act of 1960.

10. In view of the forgoing discussions, I do not find any question of law, much less the substantial question of law in this appeal. The appeal, being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge