

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 01-10-2019

Judgment delivered on 24-10-2019

FA No. 91 of 2008

- Ishwer Singh S/o Late Shiv Nandan Singh Markam (Gond)
Aged About 70 Years R/o Village - Panabaras, Tehsil -
Mohla, District - Rajnandgaon, Chhattisgarh.

---- Appellant/defendant No.1

Versus

1. Janak Singh (Died) Through Legal Heirs.

1. (A) Dewki Bai W/o Bideshwar Singh Aged About 54 Years
R/o Village Birkha, Post Gandai, District Rajnandgaon,
Chhattisgarh.
- 1.(B) Ganga Bai W/o Dhruw Singh Aged About 50 Years
R/o Village Kasahi, Post Doundilohara, District Balod,
Chhattisgarh
- 1.C) Radha Bai W/o Sup Singh Thakur Aged About 45
Years R/o Village And Post Fingeshwar, District
Mahasamund / Raipur, Chhattisgarh.
- 1.(D) Jamuna Bai W/o Dhyan Sai Aged About 40 Years R/o
Village And Post Kandadi, Tahsil Manpur, District
Rajnandgaon, Chhattisgarh.
- 1.(E) Dulari Bai W/o Ishwar Singh Aged About 35 Years R/o
Village Bhutkachhar, Tahsil Lormi, District Mungeli,
Chhattisgarh.
- 1.(F) Kumari Bai W/o Jot Singh Aged About 32 Years R/o
Village Kasahi, Post Doundilohara, District Balod,
Chhattisgarh.
- 1(G) Domendra Singh S/o Janak Singh Aged About 28
Years R/o Village Agar, Post Rajpur, Tahsil Dhamdha,
District Durg, Chhattisgarh
- 1.(H) Bihas Kunwar W/o Janak Singh Aged About 75 Years
R/o Village Agar, Post Rajpur, Tahsil Dhamdha,
District Durg, Chhattisgarh.

2. Manrakhan Singh S/o Shiv Nandan Singh Markam (Gond)
Aged About 67 Years R/o Village Agar, P.C. No.3, Post
Office Rajpur, Tahsil Dhamdha, District Durg.
3. Chhotu Singh (Died) Through Legal Heirs.
3.A) Poonam D/o Chhotu Singh Aged About 30 Years
3(B) Sohan Kumar S/o Chhotu Singh Aged About 28 Years
3(C) Mohani D/o Chhotu Singh Aged About 26 Years
3 (D) Awtar Singh S/o Chhotu Singh Aged About 24 Years
3(E) Kadam Kunwar W/o Chhotu Singh Aged About 50
Years
4. State of Chhattisgarh Through The Collector, Durg.

---- Respondents

For appellant : Mr. V.K. Sharma, Advocate.

For respondents No. 1 to 3 : Mr. H.B. Agrawal, Sr.
Advocate with Ku. Shefali
Arora, Advocate.

For respondent No.4/State : Mr. Shubha Shrivastava, PL

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 13-3-2008 passed by 12th Additional District Judge (FTC), Durg (CG) in Civil Suit No. 35-A/2007 wherein the said court decreed the suit filed by the original respondents namely Janak Singh, Manrakhan Singh and Chhotu Singh and declared their title in the land bearing Khasra No. 106, 209, 333, 459, 608, 670, 675 area 5.53

acres, 0.07 acres, 0.22 acres, 0.11 acres, 0.61 acres 0.03 acres and 0.13 acres total area 6.70 acres situated at village Agar on the basis of adverse possession.

2. The facts, in brief, are that the appellants (respondents herein) Janak Singh, Manrakhan Singh and Chhotu Singh are real brothers and admittedly they are owners of the property in question. The suit is filed on the ground that the appellant relinquished his right on the basis of document (Ex.P/4) and received Rs.56,000/- on 9-1-1995, therefore, Janak Singh, Manrakhan Singh and Chhotu Singh acquired the title by adverse possession when suit is filed on 11-4-2007. The trial court after evaluating the oral and documentary evidence recorded finding that above three persons acquired title on the basis of adverse possession.

3. Learned counsel for the appellant would submit as under:

- I) Document (Ex.P/4) is not a registered document, therefore, right of the appellant cannot be relinquished on the basis of such unregistered document.
- ii) Possession of one co-sharer is possession of other co-sharer and on behalf of the another co-sharer, therefore,

possession in property by above three persons is permissive possession and it cannot be adverse possession in any way.

- iii) Document (Ex.P/4) is conditional in which it is mentioned that Rs.19,500/- shall be paid in the next five years, but there is nothing on record as to when the amount of Rs.19,500/- was paid, therefore, condition of said document is not fulfilled and it cannot be used for any purpose.
- iv) The trial court, has not evaluated the evidence in its true perspective, therefore the same is liable to be set aside.

Reliance has been placed in the matter of **Maharajadhiraj Vs. Subodh & others, reported in AIR 1971 SC 376, Yellapu Uma vs. Buddha and others, 2015 (16) SCC 187 and N. Padmamma vs. S. Ramkrishna, 2015(1) SCC 417.**

- 4. On the other hand, learned counsel for the respondents would submit as under.

- i) The property was handed over as per document Ex.P/4 on 9-1-1995 and suit is filed on 11-4-2007, therefore, respondents have acquired title by adverse possession.
- ii) Finding of the trial court is based on documentary evidence which is not liable to be interfered with while invoking jurisdiction of the appeal.
- iii) Document (Ex.P/4) is not rebutted, therefore, same is rightly relied on by the trial court. The trial court has evaluated the entire evidence properly, therefore, finding of the trial court is not liable to be reversed.

Reliance has been placed in the matter of **Ravinder Kaur Grewal and others vs. Manjit Kaur and others** (Civil Appeal No. 7764 of 2014 with Special Leave Petition © No.8332-8333 of 2014 Radhakrishna Reddy (D) through LRs and G. Ayyavoo and others) decided by Hon'ble the Supreme Court on 7-8-2019.

5. I have heard learned counsel for the parties and perused the record of the court below including the judgment and decree.

6. The only question for consideration of this court is whether original respondents namely Janak Singh, Manrakhan Singh and Chhotu Singh acquired title by adverse possession. From the document (Ex.P/4) it is clear that property in question is ancestral property in which all the four sons of Shiv Nandan Singh namely Ishwar Singh, Janak Singh, Manrakhan Singh and Chhotu Singh were shareholders. Though document (Ex.P/4) is alleged to be written on 9-1-1995, in the said document it is mentioned that Rs.19,500/- was to be received within next five years from the date of execution of that document. It is not clear from record whether amount of Rs.19,500/- was paid in next five years or not because no documentary evidence was adduced regarding payment of Rs.19,500/-. The document is unregistered and as per Section 17 of the Indian Registration Act, 1908 any document which is extinguished right of a person shall be compulsorily registered. As the document is unregistered, it is not a document of relinquishment of right. Though it can be considered for collateral purpose regarding possession, but when amount which is mentioned in the document is not proved to be paid to the tune of Rs.19,500/-, possession on the basis of this document is

permissive in nature and same cannot be termed as adverse possession. Even otherwise, possession of co-sharer is possession of other co-sharer and on behalf of other co-sharer which cannot be termed as adverse possession. When title is not relinquished on the basis of document Ex.P/4 and the amount mentioned in the said document is not paid to appellant, it is clear that possession was permissive and same was not adverse possession, therefore, finding of the trial court that Janak Singh, Manrakhan Singh and Chhotu Singh acquired title by adverse possession is not sustainable. When document itself is conditional and condition is not fulfilled, the title of the appellant remained intact and no title can be passed in favour of respondents on the basis of such document. The finding of the trial court is liable to be and is hereby reversed.

7. Accordingly, the appeal is allowed and decree is passed in favour of appellant and against the respondents as under:

- (i) The suit filed by the respondents is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju