

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 196 of 2004**

1. Mahesh Ram, aged about 22 years, son of Shri Ghasiya Ganda,
2. Dhano, aged about 35 years, son of Shri Ghasiya Ganda.
3. Dhansingh, aged about 30 years, son of Shri Ghasiya Ganda,

All occupation – cultivation, resident of village Kheda, Paali, Tah.
Dharamjaigarh, Distt. Raigarh (C.G.)

---- Appellants/Defendants

Versus

1. Shivilal, aged about 60 years, son of Shri Mukund Ram Aghariya.
2. Peelaram, aged about 49 years, son of Shri Kanasram Aghariya

Both are agriculturist and resident of village Khedapali, Tah.
Dharamjaigarh, Distt. Raigarh (Chhattisgarh)

....Plaintiffs

3. The State of Chhattisgarh, through : the District Collector,
Raigarh (C.G.)

---- Respondents

For Appellants/Defendants	: Mr. Rahul Tamaskar, Advocate.
For Respondents No. 1 & 2	: Mr. Vivek Bhakta, Advocate.
For Respondent No. 3	: Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/08/2019

(1) The substantial question of law involved, formulated and to be answered in the second appeal preferred by defendants is as under:-

“ Whether the appellate Court was not justified in reversing the judgment and decree of the trial Court

and holding that respondents No. 1 & 2 herein are the owners of the disputed land and they are in possession of the same since 1960 ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) Two plaintiffs namely Shivilal and Peelaram brought a suit for declaration of title and confirmation of possession stating inter alia that plaintiffs' father and their uncle Mukundram had purchased the suit property from original holder of the suit land i.e. Raghuvar by un-registered sale deed dated 15.03.1960 (Ex.P-12) and thereafter came in possession over the suit property, and after the death of their father and uncle, they are in possession over the suit land since 1960, even otherwise they have perfected their title by way of adverse possession

(3) The defendants filed their written statement and controverted the plaint allegation stating inter alia no title has been conveyed by way of unregistered sale deed and the suit as framed and filed is not maintainable.

(4) The trial Court, by its judgment & decree dated 13.08.2003, dismissed the suit holding that plaintiff is not the title holder of the suit land and the plea of adverse possession has not been proved, which the first appellate Court has reversed and granted decree in favour of the plaintiffs, against which this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants, in which substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

(5) Shri Rahul Tamaskar, learned counsel appearing for the

appellants/defendants would submit that the first appellate Court was absolutely unjustified in granting the decree in favour of the plaintiffs on the basis of unregistered sale deed, which is of more than Rs.300/-, and no title has been conveyed in favour of their predecessor-in-title by way of unregistered sale deed (Ex.P-12) dated 15.03.1960 and they have inherited the suit property after the death of their father and uncle. He submits that the plaintiffs cannot claim declaration of title on the basis of adverse possession as their possession on the basis of unregistered sale deed (Ex.P-12) will be permissible possession, if any.

(6) On the other hand, Shri Vivek Bhakta, learned counsel appearing for respondents No. 1 & 2 would submit that the first appellate is absolutely justified in holding that the plaintiffs have perfected their title over the suit land by way of adverse possession as well as on the basis of un-registered sale deed, as such, the second appeal deserves to be dismissed.

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

(8) The plaintiffs claimed title over the suit land on the basis of unregistered sale deed (Ex.P-12). A careful perusal of the un-registered sale deed would show that it is only sale receipt/agreement to sell for a cash consideration of Rs. 300/- with a promise to execute the agreement by original holder - Reghuvar in favour of Shivilal, plaintiff No.1 herein.

(9) According to Section 54 of the Transfer of Property Act, 1882, in order to transfer title by way of sale, if the sale price is more than Rs.100/-, it can be made

only by registered instrument. Admittedly sale deed dated 15.03.1960 (Ex.P-12) is un-registered document and even it is only sale receipt/agreement to sell, therefore, no title has been conveyed in favour of plaintiff No. 1 by way of unregistered sale deed (Ex.P-12).

(10) The first appellate Court has granted decree in favour of the plaintiffs holding that plaintiffs have perfected their title over the suit land by way of adverse possession.

(11) The plaintiffs have claimed that they entered into agreement to sell vide Ex.P-12 with Raghubar and came into possession of the suit land and, thereafter, continuing in possession of suit land and perfected their title by way of adverse possession.

(12) The Supreme Court in the matter of **Mohan Lal (Deceased) Through his Lrs. v. Mirza Abdul Gaffar & Another**¹ has held that possession pursuant to agreement to sell cannot adverse and held as under :-

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e. up to completing the period of his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the

1 (1996) 1 SCC 639

appellant.”

(13) In view of the aforesaid legal position, no title has been conveyed by un-registered sale deed (Ex.P-12) in absence of registered instrument, even otherwise Ex. P-12 is an agreement to sell/sale receipt; and possession pursuant to agreement to sell cannot be adverse in view of the decision rendered by the Supreme Court in the matter of Mohan Lal (supra); I am of the opinion that the first appellate Court is absolutely unjustified in decreeing the suit of the plaintiff and thereby setting aside the judgment and decree of the trial Court.

(14) Resultantly, judgment and decree passed by the first appellate Court are set aside and judgment and decree passed by the trial Court are restored. The second appeal is consequently, allowed and the plaintiffs' suit stands dismissed with no order as to cost(s).

(15) Decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

