

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 189 of 2005**

1. Karak Sai, S/o Late Guman Singh, Aged about 25 years, Occupation -cultivation, R/o- vill Tolum, P.S.- Manpur, Distt: Rajnanadgaon (C.G) (L.R. of plaintiff Late Guman Singh)
2. Smt. Sonbai, W/o – Sadhu Ram, Aged about 30 years, Occupation House Wife, R/o – village Kadaki, P.S.- Manpur, Distt. Rajnandgaon (C.G.) (L.R. of plaintiff Late Guman Singh)
3. Smt. Sonkunwar, W/o Sewaram, Aged about 27 years, Occupation Housewife, R/o- village Gidhalee, P.S. - Mohala, Distt. Rajnandgaon (C.G.) (L.R. of plaintiff Late Guman Singh)
4. Smt. Ramira, W/o-Son Sai, Aged about 23 years, Occupation - Houswife, R/o – village Mangiapat, P.S./Teh- Mohala, Dist- Rajnandgaon (C.G.) (L.R. of plaintiff Late Guman Singh)
5. Smt. Phool Kunwar, W/o Ramgulam, Aged about 21 years, Occupation – House wife, R/o – village Madari, P.S./Teh – Mohala, Distt. Rajnandgan (C.G.0 (L.R. of plaintiff Late Guman Singh)

---- Appellants/plaintiffs**Versus**

1. Sumer Singh, S/o Tannu Gond, Aged about -35 years, Occupation- Cultivation, R/o vill Toloom, P.H. No. -49, R.C.- Manpur, Teh – Mohala, District Rajnandgaon (C.G.) (Defendant No. 1)
2. State of C.G. Through Collector Rajnandgaon – (C.G.)

---- Respondents/defendants

For Appellants/plaintiffs	: Mr. Ravindra Agrawal, Advocate.
For Respondent No. 1	: None present, though served.
For Respondent No. 2	: Mr. Arun Shukla, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****12/07/2019**

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

“1. Whether findings of both the Courts below are perverse for the provisions under Section 16(c) of the Specific Relief Act, 1963 ?

2. Whether the findings of both the courts below are perverse regarding provisions of Section 34 of the Specific Relief Act, 1963 and adverse possession over the suit land as both are contradictory ?”

(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) Original plaintiff – Guman Singh is title and possession holder of the land of 7.66 acres in which he used to sow the crops every year and out of which, upon Khasra No. 32, area 1.10 acres(suit land) , in the month of Kartik of the year 1989, the defendant No. 1 has forcefully harvested the crops sown and thereby deprived of his right, for which the plaintiff filed a suit for possession over the suit land (Khasra No. 32, area 1.10 acre) and damages stating inter alia that defendant No. 1 has no right or title over the suit land; police report was made, but no action has been taken by the police authority and, therefore, he is entitled for decree of possession and damages.

(3) The defendant No. 1, by filing written statement, opposed the plaint allegations and also filed counter claim stating inter alia that he is in possession holder of the suit land since the life time of his father and after the death of his father, since last 13-14 years, he is in possession over the suit land and, therefore, he has perfected his title over the suit land by way of adverse possession. Apart from that, he also sought the

relief of specific performance on the basis of Rajinama vide Ex.D-1 dated 10.02.1985, by which he paid ₹ 100 to plaintiff – Guman Singh; and thereafter paid ₹ 500/- to the plaintiff on 14.07.1985 vide Ex.D-2; and also paid ₹ 600/- to the plaintiff – Guman Singh on 8.7.1986 vide Ex. D-3.

(4) The trial Court by its judgment and decree held that defendant No. 1 has perfected his title over the suit land by way of adverse possession and, therefore, he is entitled for decree of declaration of title; and further held that on the basis of Rajinama (Ex.D-1) dated 10.02.1985, the defendant No. 1 is also entitled for decree of specific performance.

(5) The plaintiffs preferred first appeal thereagainst. The first appellate Court, after re-appreciation of the oral & documentary evidence, dismissed the appeal and now this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

(6) Learned counsel appearing for the appellant/plaintiff would submit that the trial Court has committed illegality in granting decree of declaration of title on the basis of adverse possession overlooking to the principles of law laid down by the Supreme Court in the matter of Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another¹. He would further submit that possession pursuant to the agreement to sell / Rajinama dated 10.02.1985 can never be adverse in view of the judgment of the Supreme Court in the matter of Achal Reddy Vs. Ramakrishna Reddiar and others² and Mohan Lal (Deceased) through his LRs. Kachru and others Vs. Mirza Abdul

1 (2014) 1 SCC 669

2 (1990) 4 SCC 706

Gaffar and another³. Even otherwise, there is no plea of readiness and willingness pleaded by defendant No. 1 in his counter claim in order to get the decree of specific performance of contract in terms of Section 16(c) of the Specific Relief Act, 1963, therefore, counter claim filed by the defendant No. 1 deserves to be dismissed and decree granted in favour of defendant No. 1 also deserves to be set aside.

(7) None for respondent No. 1, though served.

(8) I have heard learned counsel appearing for the appellant and considered his submissions and went through the record with utmost circumspection.

(9) It is the case of defendant No. 1 that he came into possession over the suit land pursuant to the Rajinama (Ex.D-1) dated 10.02.1985 entered into between the plaintiff Guman Singh and Sumer Singh and, thereafter, he has paid Rs. 500/- on 14.07.1985 vide Ex. D-2 and vide Ex.D-3, Rs.600/- has been paid to the plaintiff – Guman Singh, original holder of the land. Once the plaintiff has entered into possession pursuant to the agreement to sell, possession cannot be adverse possession.

(10) The Supreme Court in the matter of ***Achal Reddy (supra) & Mohan Lal (Deceased) through his LRs. Kachru and others (supra)*** has held that vendee getting possession of the property under agreement of sale while parties contemplating execution of registered sale deed, vendee in such a situation recognizes title of vendor and as such cannot claim his possession to be adverse against the vendor.

(11) The Supreme Court in the matter of **Gurdwara Sahib** (supra), it has been held that plaintiff cannot seek a declaration to this effect that such adverse possession has matured into ownership and he can use it if proceedings are filed against him as defendant, that it can use this adverse possession as shield/defence.

3 (1996) 1 SCC 639

(12) In view of the aforesaid legal position, I am of the considered opinion that both the courts below have committed legal error in granting decree of declaration of title and specific performance of the contract in favour of defendant No. 1, as possession of the defendant No. 1 over the suit land pursuant to the agreement (Ex. D-1) cannot be said to be the adverse possession in light of principle of law laid down in the matter of ***Achal Reddy (supra)***; secondly the suit for declaration of title based on adverse possession is not maintainable as held in **Gurdwara Sahib** (supra) and defendant No. 1 while claiming specific performance has to plead and prove the readiness and willingness as required under Section 16(c) of the Specific Relief Act, 1963, which he failed to prove, as such, judgment and decree passed by both the courts below are liable to be and is hereby set aside and the counter claim filed by defendant No.1 would stand dismissed.

(13) The second appeal is allowed to the extent indicated hereinabove. No cost(s).

(14) A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

