

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 85 of 2008**

Dr. Badri Jaiswal, S/o Shri Ganesh Prasad Jaiswal, Aged about 52 years,
R/o Normal School Road, Tahsil & District Bilaspur (C.G.)

---- Appellant/Defendant

Versus

Santosh Kumar, S/o Shri Gaurishankar Sonthalia, Aged about 57 years,
R/o Juni Line, Madhya Nagri Chowk, Tahsil & District Bilaspur (C.G.)

---- Respondent/Plaintiff.

For Appellant : Mr. Rajeev Bharat, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

04/09/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by defendant under Section 100 of the Code of Civil Procedure, 1908.

(2) The respondent/plaintiff filed a suit for possession based on title and for damages stating that he is title holder of the suit land as he has purchased the same by registered sale deed dated 29.04.1987 and in which the defendant/appellant had illegally encroached by fencing, therefore, he is entitled for possession of the suit land.

(3) Learned counsel appearing for the appellant/defendant would submit that the suit was based on previous possession and not on title and, therefore, provisions of Article 64 of the Limitation Act, 1963 would apply and suit is barred by limitation as it was not instituted within 12 years from the date of dispossession in view of the

decision rendered by the Supreme Court in the matter of **Ramiah v. N. Narayana Reddy (dead) by Lrs.**¹ and, therefore, both the courts below legally erred in dismissing the suit as barred by limitation.

(4) The plaintiff filed a suit for possession based on title stating inter alia that he has purchased the suit land by registered sale deed dated 29.04.1987 and came in possession but in the month of November, 1985, defendant illegally encroached upon 0.09 decimal of his land by fencing and, as such, he is entitled for recovery of possession, which the defendant claimed by way of adverse possession and it is barred by limitation. The trial Court held that plaintiff is title holder of the suit land as the suit was filed for possession based on title and plea of adverse possession has not been established and decreed the suit, which the first appellate Court has upheld.

(5) The Supreme Court in **Ramiah** (supra) held as under :-

“9. We do not find any merit in the aforesaid arguments. Article 64 of the Limitation Act, 1963 (Article 142 of the Limitation Act, 1908) is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring a suit within the purview of that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908), on the other hand, is a residuary article applying to suits for possession not otherwise provided for. Suits based on the plaintiff's title in which there is no allegation of prior possession and subsequent

1 (2004) 7 SCC 541

dispossession alone can fall within Article 65. The question whether the article of limitation applicable to a particular suit is Article 64 or Article 65, has to be decided by reference to pleadings. The plaintiff cannot invoke Article 65 by suppressing material facts. In the present case, in Suit No. 357 of 1960 instituted by N. Narayana Reddy in the Court of Principal Munsif, Bangalore, evidence of the appellant herein was recorded. In that suit, as stated above, the appellant was the defendant. In his evidence, the appellant had admitted that he was in possession of the suit property up to 1971. This admission of the appellant in that suit indicates ouster from possession of the appellant herein. In the circumstances, both the courts below were right in coming to the conclusion that the present suit was barred by limitation. The appellant was ousted in 1971. The appellant had instituted the present suit only on 8-5-1984. Consequently, the suit has been rightly dismissed by both the courts below as barred by limitation.”

(6) Reverting to the facts of the present case, it is quite vivid that suit filed by the plaintiff was for possession of immovable property based on title, which both the courts below have held that plaintiff is title holder of the suit land. Article 64 of the Act, 1963 would apply where the suit is for possession of immovable property based on previous possession and not on title and Article 65 of the Limitation Act would apply where suit is for possession based on title. In the instant case, admittedly and undisputedly, suit was for possession based on title, therefore, provisions of Article 65 of the Limitation Act, 1963 would squarely apply and defendant was required to plead and establish his possession adverse to the plaintiff, which he has failed to establish. This finding of fact arrived at by the two courts below is based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

