

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 146 of 2014

Reserved on : 12.07.2019

Delivered on : 02.08.2019

1. Tilak Ram, S/o Phoolsai, aged about 65 years.

2. Parmeshwar, S/o Kunteram, aged about 36 years.

Both Caste: Rajwar, Occupation- Agriculture, R/o Village- Khopa,
Tahsil- Bhayyathan, District- Surajpur (C.G.) **---- Appellants**

Versus

1. Barato, D/o Late Amarsai, aged about 90 years, S/o Shyam Nager
(Doyam), Tahsil, Revenue & Civil District- Surajpur (C.G.)

2. Anook Ram, S/o Rameshwar, aged about 48 years, Caste- Rajwar,
R/o Village- Khopa, Tahsil- Bhayyathan, Revenue & Civil District-
Surajpur (C.G.)

3. State of Chhattisgarh, through Collector- Surajpur, Revenue & Civil
District- Surajpur (C.G.). **---- Respondents**

For Appellants : Mr. Shahid Ahmed Ansari, Advocate.

For respondents No. 1 & 2 : Mr. D.N. Prajapati, Advocate.

For State/ respondent No. 3 : Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 01.10.2014 passed by Third Additional District Judge, Surajpur, District- Surajpur (C.G.) in Civil Suit No. 5A/2010, wherein the said court dismissed the suit filed by the appellants/ plaintiffs for declaration of title and injunction regarding land bearing Khasra No. 360, 1087, 1117, 1120, 1197, 1229, 1713, 2213, 2217, 2219, 2226, 2228, 2231, 2233, 2949, 2957, 2958, 2963, 3009, 3013 & 3047 (total 21 Khasra Nos.) area

admeasuring 0.50, 0.35, 0.11, 0.10, 0.22, 0.32, 0.13, 0.22, 0.16, 0.19, 0.13, 0.06, 0.20, 0.71, 0.34, 0.57, 0.18, 0.54, 0.20, 0.49 & 0.14 acres (total area 5.86 Aare) (13.95 Acres) respectively situated at Village- Khopa, Patwari Halka No. 23, Revenue Circle- Bhatgaon, Tahsil- Bhayyathan (Surajpur), District- Surguja (C.G.).

2. As per the appellants/ plaintiffs, name of respondent No. 1-Barato was recorded as landlord in Khasra Panchshala (Ex. P/1 & P/2) & B-1 (Ex. P/3 & P/4) of 1975-76, 1976-77, 1977-78, 1978-79 & 1979-80 as also in the year 2007, 2008 & 2009. In the said record, name of the appellants is recorded as possessor. The land was earlier settled in the name of Amarsai. After death of Amarsai, the appellants were in possession of the land peacefully since last 40 years, but respondent No. 2- Anook Ram claimed over the property on the basis of sale-deed dated 18.03.2008 i.e. why the suit was filed before the trial court which was dismissed against the facts and circumstances of the case.
3. Learned counsel for the appellants submits as under:-
 - (i) The Halka Patwari deposed before the trial court that the revenue records are maintained after order passed by Tahsildar, but the same is not appreciated by the trial court. The trial court has ignored all the revenue records which is not correct.
 - (ii) The finding arrived at by the trial court is not based on proper marshaling of evidence and the same is liable to be set aside.
4. On the other hand, learned counsel for the respondents submit that the finding arrived at by the trial court is based on factual and legal aspect of the matter and the same is not liable to be interfered with

invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. From evidence adduced on behalf of the appellants, the only thing is established that the Khasra entries are in their favour. Now the point for consideration before this Court is whether the Khasra entries are sufficient to establish adverse possession. In the present case, admittedly, the property was owned by Amarsai and respondent No. 1 being her daughter, inherited the property in question. The Khasra entries can be used against respondent No. 1 who is owner of the property only when it is made after hearing her by the authority who recorded such khasra entries, but in the present case, there is no evidence that any Khasra entries was recorded after hearing respondent No. 1, therefore, her knowledge cannot be inferred regarding such entries and the same is not sufficient to record that the appellants were in adverse possession against respondent No. 1- Barato.
7. From evidence of Anooksai, (DW-1), Sonsai (DW-2) & Heera (DW-3), it is established that the appellant has sown the crop with permission of Barato. On the basis of crop share, half of the crop was allotted to the appellants for their labours and half of the crop was received by Barato as owner of the property, which shows that possession of the appellants was not adverse, but it was permissive possession. Permissive possession cannot be held as adverse possession. From the Khasra entries of the year 1991 to 1995, it is clear that name of

Barato is mentioned as possessor which strengthen that Barato was owner of the property in question and possession of the appellants was permissive in nature, therefore, the appellants are not entitled to claim adverse possession and their title cannot be perfected on that count.

8. Admittedly, Barato who is owner of the property sold the same to respondent No. 2-Anook Ram and as per evidence of Anook Ram, he is in possession of the property in question which shows that the property is alienated by the owner and now he is possessor of the property in question.
9. The trial court has elaborately discussed the entire evidence and recorded finding that claim of the appellants is not acceptable. After reassessing the entire evidence, this Court has no reason to take a contrary view. Argument advanced on behalf of the appellants is not sustainable.
10. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of the respondents on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) The appellants to bear cost of the respondents throughout.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge