

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 23 of 2007**

Smt. Dhanki Bai, W/o Tulsiram Mahar, Aged about 75 years,
Occupation Kashtkari, R/o Village Kesritola, Tahsil Ambagarh
Chowki, District Rajnandgaon, Chhattisgarh.

--- Appellant/Plaintiff

Versus

1. Dilip, Son of Banshilal Borkar, Aged about 24 years.

– Defendant No. 2

2. Pradeep, Son of Banshilal Borkar, Aged about 22 years.

– Defendant No. 3

3. Santosh, Son of Banshilal Borkar, Aged about 20 years.

– Defendant No. 4

4. Gautam Kumar, Son of Kejuram, Aged about 25 years.

– Defendant No. 5

5. Ahsok Kumar, Son of Kejuram, Aged about 20 years.

– Defendant No. 6

Respondents No. 1 to 5 are residents of Pangri, Tahsil Ambagarh
Chowki, District Rajnandgaon, Chhattisgarh.

6. Smt. Sukorbai (died) Through Lrs.

– Defendant No. 7

(a). Pushpabai, son of Kejuram, Aged about 27 years.

(b). Smt. Rambai, W/o Huvanlal Ramteke, Aged about 30 years.

Respondents No. 6(a) & (b) are residents of Krishnagar Supela,
Bhilai, District Durg, Chhattisgarh.

7. State of Madhya Pradesh (Now Chhattisgarh) Through Collector,
Rajnangaon, Chhattisgarh.

– Defendant No. 8

---- Respondents

For Appellant	:	Mr. Anup Majumdar and Mr. Saket Pandey, Advocates
For Respondents	:	Ms. Swati Verma, Advocate
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

02/09/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiff under Section 100 of the CPC.
2. Mr. Anup Majumdar and Mr. Saket Pandey, learned counsel appearing for the plaintiff would submit that both the Courts below are absolutely unjustified in not granting decree for declaration of title based on adverse possession in favour of the plaintiff, as the plaintiff is in possession of the suit land for more than 30 years, but by a fraudulent act, one Sadhram, who claims to be her power of attorney holder, sold the suit land to defendants No. 2 to 6 by sale deed dated 04/10/1978 and consequently, the names of defendants No.2 to 6 were recorded in the revenue records and the suit land is shown to be in their possession. Therefore, the finding recorded by both the Courts below, being perverse, gives rise to substantial question of law for determination in this second appeal.
3. Both the Courts below, while dismissing the suit of the plaintiff, have clearly held that plaintiff has failed to prove that she has been in possession of the suit land for more than 30 years, as not a

single document has been filed by her to establish the fact that she has perfected her title over the suit land by way of adverse possession and further, no cancellation of sale deed dated 04/10/1978 (Ex. D/3), allegedly executed by one Sadharam in favour of defendants No. 2 to 6, has been sought by the plaintiff, therefore, she is not entitled for decree of declaration of title based on adverse possession.

4. The concurrent finding recorded by both the Courts below holding that plaintiff has failed to adduce any evidence, oral or documentary, to prove her possession over the suit land for a statutory period of 12 years that has ripened into adverse possession and further no cancellation of sale deed dated 04/10/1978 (Ex. D/3) has been sought by her is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and does not give rise to any substantial question of law for determination in this second appeal.
5. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**