

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 120 of 1998****Reserved on : 26.04.2019****Delivered on : 26.06.2019**

1. Shantibai, aged 60 years, Wd/o Sampatlal Jain.
 2. Chandrakumar, aged 35 years, S/o Sampatlal Jain.
 3. Suryakumar, aged 22 years, S/o Sampatlal Jain.
- All are R/o Village- Khisora, Tahsil- Rajim, District- Raipur (M.P.) (Now C.G.)
4. Mst. Vimla, aged 42 years, W/o Mochand Lodha, R/o Village- Kharra, Tahsil- Bemetara, District- Durg (C.G.)
 5. Mst. Indrabai, aged 38 year, W/o Rajendra Chhajer, R/o Jindal Green House, Main Road, Kaneribhatha, Dalli Rajhara, Tahsil- Balod, District- Durg (C.G.)
 6. Mst. Sitarabai, aged 30 years, W/o Ashok Kumar Lunia, Aman Electricals, Main Road Kawardha, Tahsil- Kawardha, District- Rajnandgaon (C.G.)

---- Appellants**Versus**

Gyanchand, aged 52 years, S/o Devchand Jain, R/o Gandhi Ward Mungeli, Presently R/o Bhatagaon, Tahsil- Dhamtari, District- Raipur (C.G.)

---- Respondent

For Appellants	:	Mr. B.P. Sharma, Mr. Manish Thakur & Ms. Supriya Upasane, Advocates.
For respondent	:	Ms. Sharmila Singhai, Advocate.

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 23.01.1998 passed by Fourth Additional District Judge, Bilaspur, Link Court- Mungeli (M.P.) (Now C.G.) in Civil Suit No. 17-A/1990, wherein the said court

decreed the suit filed by the respondent/ plaintiff for possession of suit house bearing house No. 21/1 situated at Gandhi Ward, Mungeli mentioned in Schedule-A of the plaint and for means profit to the tune of Rs. 200/- per year.

2. The suit property is a house whose map is shown in Schedule-A of the plaint. A, B, C & D partition of the house shown in map was owned by Mohan Lal, S/o Lunkaran, who died on 26.11.1921 issue-less and after his death, his wife namely Laxmibai inherited the property. The area shown in the map K, Kh, B & C was purchased by said Laxmibai on 25.07.1942 from one Kapoorchand. Kapoorchand purchased the said portion from one Jamunalal Daga by registered sale-deed dated 21.07.1942 and earlier the said portion was purchased by Jamunalal Daga from Ratanchand vide registered sale-deed dated 07.04.1937. Ex. P/2, P/3 & P/4 are three sale-deeds regarding above mentioned three transaction.
3. Respondent- Gyanchand is son of Devchand and said Devchand was son of Fattechand, who was real brother of Mohan Lal. Laxmibai executed a registered will on 05.10.1952 (Ex. P/7) in favour of the respondent/ plaintiff- Gyanchand. In the year 1958, Laxmibai died after enforcement of the Hindu Succession Act, 1956. As Laxmibai was absolute owner of the property in the year 1958 who executed will in favour of the respondent- Gyanchand, therefore, he became absolute owner of the disputed house and his name was also mutated in the revenue record vide order dated 02.12.1961 (Ex.P/8). The original respondent namely Sampatlal Jain contested the case on the

ground that in the year 1907, Mohan Lal adopted Ratanchand as his son hence, after death of Mohan Lal, Ratanchand became sole owner of the disputed house. It is pleaded on behalf of Sampatlal that Ratanchand is son of Ashkaran who was real brother of Mohan Lal and he is sole legal heir of Mohan Lal, therefore, he is entitled to the property of Mohan Lal. It is pleaded that Sampatlal was adopted son of late Ratanchand, therefore, Sampatlal became the title holder of the disputed house and the suit filed is time barred.

4. Learned counsel for the appellants submits as under:-

(i) Though, it is pleaded on behalf of the appellant that Sampatlal was licensee in the house in question and his license was terminated vide notice dated 21.06.1989, but actually, Sampatlal was not licensee and he is entitled to retain possession being son of Ratanchand.

(ii) The respondent/ plaintiff has not established his title over the property, therefore, he has to seek declaration and possession as per the law laid down in the matter of **Anthula Sudhakar Vs. P. Buchi Reddy (Dead) By Lrs. & others**, reported in **(2008) 4 SCC 594**, **Maria Mardarida Sequeira Fernandes & others Vs. Erasmo Jack De Sequeira (Dead) through Lrs.**, reported in **(2012) 5 SCC 370** & **Daniraiji Vrajlalji, Junagadh Vs. Vahuji Maharaj Shri Chandraprabha Widow of Deceased Maharaj Shri Purshottamlalji Raghunathlalji Junagadh**, reported in **(1975) 1 SCC 612**.

(iii) The respondent cannot hear to say that adoption of Ratanchand was contrary to adoption law which has come into force in the year 1956 because adoption was made much prior to the year 1956.

(iv) The trial court went wrong relying upon the statement dated 29.01.1938 in suit bearing No. 12A/37 because in the said suit, the original defendant Sampatlal was not a party, therefore, the finding arrived at by the trial court is liable to be set aside.

5. On the other hand, learned counsel for the respondent/plaintiff submits as under:-

(i) Laxmibai was the sole owner of the property in question and she executed will in favour of the respondent in the year 1952 and after death of Laxmibai in the year 1958, the respondent became sole owner of the property in question. Though, it is pleaded on behalf of original defendant- Sampatlal that Mohan Lal adopted Ratanchand as his son in the year 1907, but in the document Ex. P/1 to P/6 everywhere, the name of father of Ratanchand is mentioned as Aashkaran who was his natural father. Original document of Ex. D/10 is not filed before the trial court, therefore, it cannot be held that Ratanchand is adopted son of Mohan Lal.

(ii) The will executed by Laxmibai in favour of respondent- Gyanchand is Ex. P/7 in which attesting witnesses is Inderchand Daga which is 45 years old documents. Signature of Inderchand Daga is proved by his son Madan Kumar Daga (PW-3), therefore, will is proved as per Section 69 of the Indian Evidence Act, 1872.

(iii) In the year 1937, Ratanchand filed a suit for declaring him insolvent, vide order dated 05.02.1938, he had been declared insolvent as per Ex. P/5 and in the said proceeding, Ratanchand admitted that the house belongs to Laxmibai, in the said proceeding

name of father of Ratanchand is mentioned as Aashkaran, therefore, Ratanchand was son of his natural father and mother and he was never son of Mohan Lal.

(iv) The will is effective after death of attestator and in the year 1958, the Hindu Succession Act, 1956 was enforced and as per Section 14 of the said act, Laxmibai held the property in question as full owner and after death of Laxmibai, the right passed to respondent- Gyanchand on the basis of will.

(v) In the will, it is mentioned that Laxmibai is issue-less. Laxmibai is wife of Mohan Lal and if Mohan Lal would have adopted Ratanchand, Laxmibai would have mentioned this fact in the will, but that is not mentioned which shows that Ratanchand was not adopted son of Mohan Lal.

(vi) After death of Laxmibai, name of respondent- Gyanchand was mutated in the municipal record which was not challenged by Sampatlal. Permission of Sampatlal was as licensee, therefore, it is not a case of adverse possession. The finding arrived at by the trial court is not liable to be interfered with invoking jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
7. Admittedly, the property in question was owned by Mohan Lal and for some of the portion, one sale-deed executed in favour of Laxmibai on 25.07.1942 by Kapoorchand. Kapoorchand purchased the said portion from Jamunalal vide registered sale-deed dated 21.07.1942 and Jamunalal purchased that portion from Ratanchand on 07.04.1937.

The documents Ex. P/2 to P/4 are the sale-deeds which prove that some portion of the property was purchased by Laxmibai which is not disputed before the trial court, therefore, it is established from the record of the trial court that some part of the property was owned by Mohan Lal and some part of the property was purchased by Laxmibai and after death of Mohan Lal, the entire property was owned by Laxmibai. The respondent- Gyanchand was claiming over the property on the basis of will Ex. P/7 executed by Laxmibai on 05.10.1952. The original defendant whose legal representatives are the appellants in the present case claimed the right over the property that Mohan Lal adopted Ratanchand and Ratanchand adopted Sampatlal.

8. The question for consideration before this Court is whether Ratanchand was adopted by Mohan Lal. The plaintiff/ respondent examined himself as PW-1, Pannalal Jain (PW-2), Madan Kumar Daga (PW-3) and document exhibited P/1 to P/6. The original defendant Sampatlal examined Icharijbai (DW-1), himself (statement not completed), Narumal (DW-2), Khamiya Bai (DW-3) and produced document Ex. D/1 to D/14. From statement of Gyanchand (PW-1) and Pannalal (PW-2), it is established that Sampatlal was residing in the property as licensee. Gyanchand is recorded as landlord in the municipal record as per the document Ex. P/8 & P/10 to P/16, which shows that the respondent was landlord as recorded in the municipal record. As per pleadings of the appellant side, Ratanchad was adopted by Mohan Lal in the year 1907. Shanti Bai (DW-4) deposed (Para 10) that the original document of adoption is lost, therefore, they could not produce the original document.

9. Ratanchand had filed a suit for insolvency (Ex. P/5) in which name of father of Ratanchand is mentioned as Aashkaran. Ex.P/1 which is sale-deed executed by Ratanchand in which name of his father is also mentioned as Aashkaran. This document is of the year 1937. The solvency proceeding was conducted in the year 1938. The other document which is mentioned by the trial court mentioning name of Ashkaran as father of Ratanchand. Ashkaran was natural father of Ratanchand.
10. An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child on the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. No adoption which has been validly made can be cancelled by the adoptive father or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.
11. In the present case, there is no record to show that Ratanchand was adopted son of Mohan Lal. All the documents are showing that father of Ratanchad was Ashkaran, who was his natural father. Laxmibai was wife of Mohan Lal who executed will in favour of the respondent and in the said will (Ex.P/7), it is mentioned that she is issue-less, therefore, in absence of any evidence of adoption, the trial court is right in holding that Ratanchand was not adoptive son of Mohan Lal. When Ratanchand was not adopted son of Mohan Lal, he cannot claim his right over the property on the basis of adoption. As per evidence of the respondent side, Sampatlal was licensee in the

property in question, therefore, he cannot claim adverse possession in the said property because permissive possession cannot be adverse possession. It is also not proved on record that Ratanchand was heir of Mohal Lal. No such evidence is adduced before the trial court, therefore, the trial court is right in holding that Ratanchand was not adopted son of Mohan Lal and Sampatlal cannot inherit the property of Mohan Lal who alleges to be adopted son of Ratanchand.

12. The respondent/ plaintiff- Gyanchand deposed before the trial court that the will has been executed in favour of him by Laxmibai as per Ex. P/7 on 05.10.1952. Inderchand Daga was attesting witness of the said will and it is more than 30 years old document. As the attestators of the will are not available and as per version of Madan Kumar Daga (PW/3) who is son of Inderchand Daga, his father died and he identified the signature of his father in the said will. Looking to more than 30 years old will and further looking to the statement of Madan Kumar Daga (PW-3), the trial court recorded finding that the will is proved and looking to the provisions of Section 69 of the Indian Evidence Act, 1872, this court has no reason to record contrary finding.
13. Laxmibai passed in the year 1958. On the date of passing Laxmibai, the Hindu Succession Act, 1956 was enforced and as per Section 14 of the said Act, Laxmibai was absolute owner of the property in question and she had all the right to execute will in favour of respondent- Gyanchand. After passing of Laxmibai in the year 1958, respondent- Gyanchand became full owner of the property and possession of the appellant side was permissive in nature which was

not adverse, therefore, the suit filed by the respondent/ plaintiff was within time and argument advanced on behalf of the appellants is not sustainable. The case laws cited by learned counsel for the appellants are clearly distinguishable from the facts and circumstances of the present case. Accordingly, the appeal is liable to be dismissed.

14. The decree is passed against the appellants and in favour of the respondent on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear cost of the respondent 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