

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.156 of 2019**

Nathaldai, wife of Niranjana Pandey, aged about 70 years, resident of village Girola, Tahsil and District Kondagaon (CG)

---- Appellant/Defendant

Versus

1. Shrima, son of Jodhan
2. Lakhan, son of Jodhan,
3. Smt. Godari, wife of Jodhan,

All are resident of village Girola, Tahsil and District Kondagaon (CG)

4. State of Chhattisgarh, through Collector, Kondagaon, District Kondagaon (CG)

---- Respondents

For Appellant/Defendant	:	Mr.R.S.Patel, Advocate
For Respondent No.4/State	:	Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12.09.2019

1. Heard this second appeal on the question of admission and formulation of substantial question of law preferred by the appellant/defendant.
2. Mr.R.S.Patel, learned counsel for the appellant/defendant, would submit that both the Courts below have concurrently erred in not holding that defendant No.1 has perfected his title by way of adverse possession and dismissed his counter-claim and decreed the suit of the plaintiffs by recording a finding which is perverse and contrary to record, which gives rise to substantial question of law.
3. I have heard learned counsel for the appellant/defendant, perused the

impugned judgment and decree and records of the Courts below.

4. The plaintiffs' filed a suit for declaration of title, possession and permanent injunction stating inter-alia that they are title-holder of the suit land and the defendant is in unauthorized possession of the suit land, in which the defendant claimed that he he has purchased the suit land from father of plaintiffs No.1 & 2 and husband of plaintiff No.3 in the year 1977 on cash consideration of ₹12,000/- and came into possession of the suit and, but sale deed has not been executed, as such, he has perfected his title by adverse possession, which the trial Court has not accepted and held that his possession is in permissive possession of the suit land and therefore, he is not entitled for decree for declaration, which the first appellate Court has affirmed.
5. The Courts below have relied upon the judgment of the judgment of the Supreme Court in the matter of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another¹ which has been overruled in the matter of Ravinder Kaur Grewal and others v. Manjit Kaur and others², but the fact remains that defendant No.1 came into possession pursuant to agreement to sell with father of plaintiffs No.1 & 2 and husband of plaintiff No.3.
6. The Supreme Court in the mater of Mohanlal (Deceased) through his LR's Kachru and others v. Mirza Abdul Gaffar and another³ has held that possession of the person pursuant to agreement to sell would be permissive possession and observed as under:-

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the

1 (2014) 1 SCC 669

2 AIR 2019 SC 3827

3 (1996) 1 SCC 639

agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi nec clam nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

- 7.** In view of the matter, both the Courts below are absolutely justified in not granting counter-claim of defendant No.1 and decreeing the suit of the plaintiff holding that possession of defendant No.1 in the suit land is permissive possession as he admittedly came into possession pursuant to agreement to sale as pleaded in para-2 of counter-claim filed by the appellant/defendant, which has not been ripened into adverse possession. Finding recorded by two Courts below that possession of the defendant is permissive possession is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding and even I do not find any substantial question of law for determination of this second appeal.
- 8.** Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-