

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 335 of 2002

State Of Chhattisgarh through the Collector Kanker

---- Appellant

Versus

1. Rameshwar, aged about 35 years
2. Mohan, aged about 32 years
3. Ram Narayan, aged about 28 years

No. 1 to 3 above are sons of Late Hariram Kalar and residents of Chilhati, Tehsil Bhanupratappur, District Kanker (Chhattisgarh)

4. Smt. Tripureshwari Devi, aged about 54 years, W/o Udai Pratap Dev
5. Aditya Pratap Dev, aged about 30 years
6. Surya Pratap Dev, aged about 28 years
7. Ashwani Pratap Dev, aged about 29 years
8. Ku. Anuradha Dev, aged about 33 years, D/o Udai Pratap Dev.
9. Smt. Manjushri Devi, aged about 42 years, D/o Maharaja Bhanu Pratap Dev

No. 4 to 9 are residents of the Palace Kanker, District -Kanker (Chhattisgarh)

---- Respondents

For Appellant/State : Shri Sanjay Kumar Agrawal, Government Advocate
For Respondents No.1 to 3 : Shri R.K.Pali and Shri Amit Kumar Sahu, Advocates

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/07/2019

Heard.

1. This appeal is directed against the judgment and decree dated 12.4.2002 passed by learned Additional District Judge, Bastar, Kanker in Civil Appeal No.48-A of 1999 by which, learned lower appellate Court has reversed the

judgment and decree of the trial Court and decreed plaintiffs' suit declaring that the plaintiffs have perfected their title by adverse possession and also granted decree of permanent injunction against the appellant-defendant No.1 from interfering with the peaceful possession of the plaintiffs over the property in dispute.

2. The respondents-plaintiff filed a suit seeking declaration of title and permanent injunction against the appellant/defendant and other co-defendants (respondents No. 4 to 9 in this appeal) on the pleading, inter alia, that property in dispute, originally belonged to Smt. Amulya Prabha Devi, wife of Bhanupratap Dev, Ex-Ruler of Kanker Estate. It was pleaded that the plaintiffs' father late Hariram and general power of attorney holder of Amulya Prabha Devi, namely Tribhuwan Nath Sahdev entered into an agreement of sale of the property in dispute, in which, possession was given to Hariram and preparation were made for registration of sale deed, prepared on stamp papers, but due to sudden illness of Amulya Prabha Devi, the sale deed could not be registered. In course of time, the plaintiffs came to know that Amulya Prabha Devi donated a part of her landed property for establishment of a college on 24.3.1966 and while gifting such landed property, by mistake, disputed property was also included and in this manner, a dispute arose. Later on, as the college was taken over by the Government, the property donated to the private society for establishment of college was also transferred to the Government and in the revenue records, property was mutated as Government land, giving rise to dispute. When the plaintiffs could not succeed in revenue proceedings, a suit was filed seeking declaration of title based on adverse possession.
3. While private defendants in the suit namely Maharaja-dhiraj (defendant No.2) and Smt. Manju Devi (defendant No.3) admitted the claim of the plaintiffs in their respective written statements, defendant No.1/State filed its written statement denying the claim of the plaintiffs and it was stated in the written statement that the plaintiffs did not acquire any valid title over the land in dispute as there is no sale deed executed and registered in favour of Hariram or the plaintiffs. As per the written statement of defendant No.1 (appellant herein), Smt. Amulya Prabha Devi had donated 50 acres of her landed property for establishment of a college and in all the revenue proceedings, the authority, upon enquiry, found that property was

donated by Smt. Amulya Prabha Devi and this also included the disputed property.

4. Learned trial Court framed as many as six issues which included issue with regard to limitation also as to whether suit was barred by limitation. Learned trial Court decided the preliminary issue as to whether the suit was barred by limitation and held in affirmative. Accordingly, plaintiff's suit was dismissed as barred by limitation. Aggrieved by the judgment and decree passed by learned trial Court, plaintiffs preferred an appeal. Learned lower appellate Court while reversing finding on the limitation aspect, held that suit was not barred by limitation, but it was within limitation. Thereafter, the learned lower appellate Court proceeded to decide the matter on merits. It recorded a finding based on evidence led by the plaintiffs and defendants and various documentary evidence that the plaintiffs were continuing in uninterrupted adverse possession of the property in dispute ever since 1962. Therefore, the plaintiff had perfected their title by adverse possession. Against this judgment, present appeal has been filed.

5. This appeal was admitted on following two substantial questions of law :-

“1. Whether a correct test in relation to perfection of title by way of adverse possession has not been applied by the Lower Appellate Court and the decree for declaration and permanent injunction vitiates on this count ?

2. Whether the Lower Appellate Court erred in procedure by deciding the issues on merits and not remanding the case to the trial Court, when the trial Court has not decided any such issue and had only dismissed the suit on point of limitation ?”

6. Learned counsel for the State/appellant would argue that in view of recent judicial pronouncement, he would confine his submissions on the first issue as to whether the learned lower appellate Court could have declared that the plaintiffs have perfected title by adverse possession and, therefore, became bhumi-swami of the land in dispute. He would argue that even if the entire findings of fact that the plaintiffs had remained in adverse

possession of the property for long is admitted, no declaration of title based on adverse possession could be granted in favour of plaintiffs, in view of what has been held by Supreme Court in the case of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Anr.** (2014) 1 SCC 669.

7. Learned counsel appearing for the respondents, supporting the judgment and decree passed by learned lower appellate Court, would argue that the findings of learned lower appellate Court is based on acquisition of title by way of sale of property in dispute by Smt. Amulya Prabha Devi in favour of Hariram, father of the plaintiffs and it is not only a case of acquisition of title by mere adverse possession. It is argued that plaintiffs' evidence has remained un-rebutted that in the year 1962, Smt. Amulya Prabha Devi had entered into an agreement of sale of her property and having received consideration, she had parted with possession of the property. Though, the registered sale deed could not be executed, the fact remains that the plaintiffs were inducted into the property under a sale transaction and which they continued ever since 1962 till the date of filing of suit. Therefore, the declaration made in favour of plaintiffs by learned lower appellate Court does not warrant any interference.
8. I have heard learned counsel for the parties and having perused the impugned judgment and decree passed by learned lower appellate Court, it is clear that declaratory decree of title in favour of plaintiffs has been granted by learned lower appellate Court on the finding that the plaintiffs have perfected their title by adverse possession and acquired the status of bhumi-swami. It is on this premise that the learned lower appellate Court has granted a decree in favour of plaintiffs. It is an admitted position on record that there is no registered sale deed in favour of the plaintiffs or their father Hariram so as to say that by virtue of registered sale deed, the title over the property in dispute transferred in favour of Hariram or his sons, the plaintiffs. This position has also not been disputed by learned lower appellate court.
9. If that be so, the only basis for granting title in favour of plaintiffs is adverse possession and noting more. In the considered opinion of this Court, this issue is now no longer res integra in view of Supreme Court decision in the case of **Gurdwara Sahib** (supra). That was a case where the plaintiff's

claimed ownership by adverse possession on the ground that it was in possession of the disputed property for sufficiently long time and the same having been fully established and proved, his suit could not be dismissed. In this regard, the legal position was enunciated by the Supreme Court, as below:-

“8. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

10. In view of above clear annunciation of law and settled legal position, the first question of law has to be answered in the manner that the learned lower appellate Court has not correctly applied the law and granted a decree of declaration and permanent injunction in favour of plaintiffs. In view of the above, it is not necessary for this Court to decide the second question of law,

11. It, however, has to be observed that as the plaintiffs were found to be in long continuous possession of the property in dispute, they cannot be dispossessed except in accordance with due process of law.

12. The appeal is accordingly allowed. Impugned judgment and decree passed by the learned lower appellate Court is set aside and the plaintiffs' suit is dismissed subject to the observation made, as above.

13. The parties to bear their respective costs.

14. Let an appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge