

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 202 of 2002**

Keshav (since deceased) through LR:-

- 1.a Shanta Kedar, Wd/o late Keshav, aged about 48 years,
- 1.b Kamlesh Kedar, S/o late Keshav, aged about 27 years,
- 1.c Kritesh Kedar, S/o late Keshav, aged about 24 years,
- 1.d Sonu Kedar, S/o late Keshav, aged about 21 years,

All R/o Village Namnakala, P.S. and Tahsil Ambikapur, District Surguja (C.G.)

- 2. Shami (Shyam), S/o Bhola, aged about 35 years, Occupation – Shopkeeper, r/o Namnakala, P.S. & Tehsil Ambikapur, Distt. Surguja (C.G.)

----Appellants/Defendants

Versus

Chhedi Prasad Soni (since deceased) through LR:-

- 1.a Rupesh Verma, S/o late Chedi Prasad Soni, aged about 35 years,
- 1.b Suresh Verma, S/o late Chedi Prasad Soni, aged about 30 years,

All are R/o Brahmapara, Payal Gas Shop, Ambikaur, District Surguja (C.G.)

---- Respondents/plaintiffs.

For Appellants	: Shri A.K. Prasad, Advocate.
For Respondents	: Shri Sushil Dubey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/01/2019

(1) The substantial question of law involved, formulated and to be answered in this defendants' second appeal states as under:

“Whether finding of 1st Appellate Court holding possession of appellants un-authorized is perverse?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Original plaintiff – Chhedi Prasad filed a suit for declaration of title and permanent injunction stating inter alia that he is owner of the suit land bearing Khasra No. 437/2, area 0.1/2 acres, which he has purchased by registered sale deed dated 29.12.1956 vide Ex.P-1 from Dakhiya, widow of Maniksao and came into possession thereof and got the shop constructed in it and let out the same to defendants in the year 1978-79 on a monthly rent of Rs.40/-, which was destroyed by fire in the intervening night of 17/18.11.1993, on account of which the plaintiff took possession of the suit property at the instance of defendants but later on the defendants have forcefully dispossessed the plaintiff from the suit land leading to filing of the suit for declaration of title and possession of the suit land from the defendants.

(2.2) Now, defendants, by filing written statement, stated that they are tenant of one Ramkripal Pandey and they have perfected their title over the suit land by way of adverse possession.

(2.3) The trial Court, after appreciating the oral and documentary evidence available on record, dismissed the suit filed by the plaintiff holding that plaintiff has failed to

prove his title over the suit land and the defendants have also failed to prove the fact that they have perfected their title over the suit land by way of adverse possession.

(2.4) On appeal being preferred by the plaintiff, the first appellate Court held that the plaintiff has become title holder of the suit land by registered sale deed dated 29.12.1956 and the possession of the defendants over the suit land is un-authorised and decree the suit granting declaration and recovery of possession in plaintiff's favour.

3. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the defendants in which the substantial question of law has been formulated for consideration and which has been set out in the opening paragraph of the judgment.

4. Learned counsel appearing for the appellants / defendants would submit that the first appellate Court was unjustified in holding that possession of the defendants is unauthorized over the suit land by recording findings, which are perverse and contrary to the record, as such, the impugned judgment and decree passed by the first appellate Court deserves to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit be dismissed.

5. On the other hand, counsel for the respondent/plaintiff would support the impugned judgment and decree.

6. I have heard learned counsel appearing for the parties and perused the record of both the courts below including judgment & decree impugned with utmost circumspection.

7. The First appellate Court has clearly recorded a finding that the plaintiff became title holder of the suit land by registered sale deed dated 29.12.1956, which is 30 years old document and by which the plaintiff has acquired the title over the suit land; and further held that possession of defendants over the suit land is totally unauthorized. Once the plaintiff has established his title over the suit land, it is for the defendants to prove that they have acquired title by way of adverse possession as per Article 65 of the Limitation Act.

8. Article 65 of the Limitation Act, 1963 provides as under:-

	Description of suit	Period of limitation	Time from which period begins to run
65.	For possession of immovable property or any interest therein based on title. <i>Explanation.</i>—For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

	(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		
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9. From the aforesaid provision of law, it is quite vivid that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. In the instant case, the plaintiff has proved his title over the suit land as held by the first appellate Court on the basis of registered sale deed dated 29.12.1956, the defendants were required to plead and establish the adverse possession. The defendants have half heartedly taken a plea of adverse possession in paragraph 20 of their written statement stating that they are in possession over the suit land since last 20 years and even they have not challenged the title of the plaintiff over the suit land.

10. The first appellate Court has clearly recorded a finding that defendants have failed to prove the plea of adverse possession as they did not challenge the same by filing counter appeal or cross objection, in the appeal preferred by the plaintiff before the first appellate Court, as such, the finding recorded by the first appellate court that the defendants have failed to prove adverse possession over the suit land has become final in absence of challenge by the defendants. Thus, the first appellate Court has rightly held that defendant's possession over the suit land is unauthorized, which is a finding of fact based on material available on record and I do not find it

perverse or contrary to the record. The substantial question of law is answered accordingly.

11. Thus, the second appeal being devoid of merit is liable to be and is hereby dismissed. No cost(s)

12. A decree be drawn accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

