

HIGH COURT OF CHHATTISGARH AT BILASPURSecond Appeal No. 459 of 2004

1. Smt. Mahindar Kaur (Died and deleted)
2. Papendra Singh, S/o Late Maan Singh, age 41 years.
3. Harjeet Singh (Dead) Through LRs
 - (a) Smt. Karmjeet Kaur, Wd/o Late Harjeet Singh, aged 45 years.
 - (b) Tanveer Kaur, D/o Late Harjeet Singh, aged 18 years.
 - (c) Navjot Singh, S/o Late Harjeet Singh, aged 20 years.
 - (d) Pavejot Kaur, S/o Late Harjeet Singh, aged 14 years, through his mother Smt. Karamjeet Kaur.
4. Savindar Singh, S/o Late Maan Singh, aged about 31 years.

All R/o Town Ambikapur, Mohalla Kedarpur, Tehsil Ambikapur, Distt. Surguja, C.G.

(Defendants)
---- Appellants

Versus

Smt. Rammani Devi, W/o Late Kanhaiyalal, age 65 years, R/o Town Ambikapur, Sadar Road, Tehsil Ambikapur, Distt. Surguja, C.G.

(Plaintiff)
---- Respondent

For Appellants/Defendants:	Mr. Rajeev Shrivastava and Mr. Malay Shrivastava, Advocates.
For Respondent/Plaintiff:	Mr. Sunil Tripathi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

11/07/2019

1. This second appeal preferred by the defendants was admitted for hearing by framing the following substantial question of law for determination: -

“Whether the lower appellate Court was justified in reversing the well reasoned judgment and decree passed by the trial Court?”

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

2. The suit lands situated at Deviganj Road, Ambikapur, bearing Khasra No.496/1, area 0.05 decimal; Nazul land plot No.497/1, area 0.03 ½ decimal; and the house constructed thereon were originally held by Vishwanath Soni, Baiju Ram, Shivnath, Smt. Bhagmaniya and Kailash Soni. The original plaintiff purchased the said suit property by registered sale deed dated 21-7-1970 (Ex.P-3C) executed by Vishwanath Prasad Soni, Baijoram Soni, Shivnath Prasad and Smt. Bhagmaniya Devi, and later-on, one of the co-owners Kailash Soni accorded his consent vide Ex.P-4C on 27-8-1970 in favour of original plaintiff Smt. Rammani Devi. It is the case of the plaintiff that the defendants after alienating the suit lands asked for time to vacate the premises after making arrangement for their residence which the plaintiff consented to. The plaintiff being a pardanashin lady, her property was being looked after by her husband Kanhaiyalal. In the meanwhile, in December, 1975, he died and taking advantage of her position, defendant No.1 in collusion with the other defendants, on 30-11-1978 vide Ex.D-6, got the suit lands transferred in his favour which is illegal and it does not confer title to defendant No.1. It was further pleaded that defendants No.4, 5 & 6 in collusion with their mother – defendant No.1 again got the suit lands transferred in their favour and recorded in their favour necessitating the filing of suit for recovery of possession and for damages.

3. The defendants filed their written statement opposing the plaint allegations stating inter alia that they have purchased the suit property by registered sale deed dated 30-11-1978 (Ex.D-6) and are in possession of the suit lands and as such, the plaintiff's suit is barred by limitation and deserves to be dismissed.
4. During the course of trial, the original sale deed dated 21-7-1970 could not be produced by the plaintiff, therefore, she was permitted to adduce secondary evidence by the trial Court qua the above sale deed.
5. The trial Court after appreciating oral and documentary evidence on record, dismissed the suit holding that the plaintiff has failed to prove that she has purchased the suit land by registered sale deed dated 21-7-1970 by making payment of consideration amount of ₹ 10,000/- to the erstwhile owners of the suit property.
6. On appeal being preferred by the plaintiff, the first appellate Court interfered with the finding of fact recorded by the trial Court and decreed the suit holding that the plaintiff has purchased the suit property and became the owner of the suit property and no title has been transferred in favour of the defendants by defendants No.2, 4 & 6 and the plaintiff is entitled for possession of the suit property from the defendants which has been questioned in this second appeal in which substantial question of law has been framed which has been set-out in the opening paragraph of the judgment.
7. Mr. Malay Shrivastava, learned counsel for the appellants herein / defendants, would submit that the first appellate Court went wrong in decreeing the suit of the plaintiff ignoring the valid title acquired

by the defendants vide Ex.D-6 by recording a finding which is perverse to the record, as such, the judgment & decree of the first appellate Court deserve to be set aside and that of the trial Court deserve to be restored. Mr. Shrivastava would lastly submit that the suit was barred by limitation.

8. Mr. Sunil Tripathi, learned counsel appearing for the plaintiff / respondent herein, would support the judgment & decree of the first appellate Court.
9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
10. It is not in dispute that the original owners of the suit property were Vishwanath Soni, Baiju Ram, Shivnath, Smt. Bhagmaniya and Kailash Soni. Vishwanath Prasad Soni, Baijram Soni, Shivnath Prasad and Smt. Bhagmaniya Devi executed a sale deed in favour of the plaintiff on 21-7-1970 vide Ex.P-3C and Kailash Soni gave his consent in favour of the plaintiff vide 27-8-1970 (Ex.P-4C). Since the original sale deed could not be filed before the trial Court, the plaintiff was permitted to adduce secondary evidence of the sale deed and accordingly, Deos Toppo (PW-2) – Registration Clerk, Lakhan Kashyap (PW-3) & Satyanarayan Gupta (PW-4) were examined to prove the sale deed. On the basis of aforesaid sale deed Ex.P-3C and the subsequent consent deed Ex.P-4C, the first appellate Court recorded a finding that the plaintiff has succeeded in proving her title over the suit land, as title of the erstwhile owners was not in dispute and they have admittedly transferred their title in favour of the present plaintiff which has duly

been proved by examining Registration Clerk Deos Toppo (PW-2) on the execution of sale deed and Satyanarayan Gupta (PW-4) has proved the signature of his father Kanhaiyalal Gupta on the sale deed, as Kanhaiyalal Gupta was one of the witnesses to the sale deed. As such, the first appellate Court has found the sale deed Ex.P-3C and the subsequent consent deed Ex.P-4C proved and held the title as transferred in favour of the plaintiff.

11. The submission of Mr. Malay Shrivastava, learned counsel for the defendants / appellants herein, that the suit was barred by limitation has rightly been rejected by the first appellate Court. Sale deed was executed in favour of the plaintiff on 21-7-1970 and consent was granted on 27-8-1970 (Ex.P-4C) by one of the co-owners Kailash Soni and suit for possession based on title was filed by the plaintiff on 19-7-1982.
12. The suit was based on title, therefore, Article 65 of the Limitation Act is applicable and the period of limitation would be 12 years. The suit was admittedly, within the period of limitation. Merely because it was not filed promptly, it cannot be held that the suit was barred by limitation. Further, suit for possession was based on title and as such, the plaintiff was not required to file suit for declaration of title.
13. The first appellate Court has also dealt with the question of adverse possession which said to have been ripened in favour of the defendants. It is the case of defendant No.1 that pursuant to Ex.D-1 – agreement to sale dated 23-11-1969, Ex.D-3 dated 27-12-1969 and Ex.D-5 dated 4-4-1970, he came in possession of the suit land.

14. In the matter of Mohan Lal (deceased) through his LRs. Kachru and others v. Mirza Abdul Gaffar and another¹, the Supreme Court has held that a person having come into possession under the agreement, his possession cannot be adverse and the plea of adverse possession is not available to the said person. Paragraph 4 of the report states as under: -

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

15. In the instant case, it is the case of the defendants that they came into possession of the suit land pursuant to the agreement to sale, therefore their possession cannot be adverse as held by their Lordships of the Supreme Court in Mohan Lal (supra).

16. Even otherwise, it is well settled law that agreement for sale does not of itself create any interest in, or charge on, such property and agreement to sale which is not a registered deed of conveyance would fall short of the requirements of Sections 54 and 55 of the Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the Transfer of Property Act). (See Suraj Lamp and Industries Private Limited (2) Through

¹ (1996) 1 SCC 639

Director v. State of Haryana and another², Balwant Vithal Kadam v. Sunil Baburaoi Kadam³, Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra⁴, Meghmala and others v. G. Narasimha Reddy and others⁵ and Bishnudeo Narain Rai (dead) by L.Rs. and others v. Anmol Devi and others⁶.)

17. Reverting to the facts of the present case in light of the discussion herein-above, it is quite vivid that the plaintiff has become owner of the suit lands by registered sale deed dated 21-7-1970 (Ex.P-3C) executed by the erstwhile owners in her favour and further, on accord of consent by one of the co-owners vide Ex.P-4C dated 27-8-1970 and therefore she has become title owner which was duly proved by her by examining three witnesses namely, Deos Toppo (PW-2) – Registration Clerk, Lakhan Kashyap (PW-3) & Satyanarayan Gupta (PW-4). Therefore, by the subsequent sale deeds Exs.D-2, D-4 & D-6, no title has been conferred to defendant No.1 / defendants No.4 to 6 and their possession pursuant to the agreement to sale – Ex.D-1 dated 23-11-1969, Ex.D-3 dated 27-12-1969 and Ex.D-5 dated 4-4-1970, cannot be said to be adverse possession, as they have come in possession pursuant to the agreement to sale.

18. In that view of the matter, the first appellate Court is absolutely justified in granting decree in favour of the plaintiff by setting aside the judgment and decree of the trial Court which is neither perverse nor contrary to record. The substantial question of law is answered

2 (2012) 1 SCC 656

3 (2018) 2 SCC 82

4 (2004) 8 SCC 614

5 (2010) 8 SCC 383

6 AIR 1998 SC 3006

accordingly. I do not find any merit in the second appeal. The second appeal deserves to be and is accordingly dismissed. The appellants herein / defendants will bear their own cost as well as that of the plaintiff / respondent herein.

19. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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