

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 139 of 2003

Reserved on : 06.08.2019

Delivered on : 04.10.2019

1. Phattechand Agrawal, S/o Ramjilal (Matadin) Agrawal.
2. Shiv Shakti Rice Mill, New Ganjward, Tahsil- Bhatapara, District- Raipur (C.G.)

---- Appellants

Versus

Krishi Upaj Mandi Samiti, Bhatapara, a constituted body which is constituted under Krishi Upaj Mandi Act which has a general seal which is Krishi Upaj Mandi Samiti, Bhatapara, Tahsil- Bhatapara, District- Raipur which is known as Krishi Upaj Mandi Samiti, Bhatapara.

---- Respondent

For Appellants	:	Mrs. Anju Ahuja, Advocate.
For Respondent	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, 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 17.05.2003 passed by Second Additional District Judge, Baloda-Bazar (C.G.) in Civil Suit No. 56A/2001, wherein the said court decreed the suit filed by the respondent/plaintiff for declaration of title over the property bearing Survey No. 251/1, area admeasuring 1.795 Hectare situated at Village- Avrethi, Tahsil- Bhatapara, District- Raipur and for delivery of possession of the land area admeasuring 3245 sq.mtr. from the

appellant/ defendant.

2. As per the respondent/ plaintiff, the land in question i.e. Survey No. 251/1 area 1.795 Hectare was given to it by Municipal Corporation as per proposal dated 15.01.1972. Accordingly, the respondent became owner of the said land and the land is recorded in its ownership. The appellant/ defendant encroached the land in the month of December, 1981 to the tune of 3245 sq.mtr. which was found correct in demarcation performed by Tahsildar- Bhatapara. A notice was given to the appellant on 08.05.1987 for vacating the land. As per the appellant, he is in possession of the land since 30-32 years and acquired title on the basis of adverse possession, but the trial court recorded finding contrary to the factual matrix and legal aspect of the matter.
3. Learned counsel for the appellants submits as under:-
 - (i) The appellant is claiming adverse possession since 1952 which is established from statement of Phattechand (DW-1), Hanuman Prasad Sharma (DW-2) & Sitaram (DW-3), therefore, the finding arrived at by the trial court is not liable to be sustained.
 - (ii) The trial court erred in holding that the appellant had encroached the land in the year 1981, therefore, the finding arrived at by the trial court is liable to be set aside
4. On the other hand, learned counsel for the respondent submits as under:-

(i) A notice was issued to the appellants for removal of encroachment on 14.12.1981 as per Ex.P/5 and he replied on 09.01.1982 as per Ex.P/6 that he is willing to exchange his land bearing Survey No. 228 with the land of the respondent bearing Survey No. 251/1.

(ii) Again, a notice was issued to the appellant on 09.11.1982 as per Ex. P/7, but he did not vacate the land that is why the suit was filed on 28.04.1988.

(iii) The appellant was not in possession of the land in question since 1952, therefore, he has not acquired title of the property on the basis of adverse possession.

(iv) The finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking jurisdiction of the appeal

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. The respondent/ plaintiff adduced evidence of Ashok Kumar Kumbhaj, Secretary, Krishi Upaj Mandi, Bhatapara (PW-1), Ghanaram Sahu (PW-2), Mahettarram Verma (PW-3) & Sosai Ram, Assistant Sub-Inspector, Krishi Upaj Mandi, Bhatapara (PW-4) and produced document Ex. P/1 to P/9. As against this, the appellant/ defendant adduced evidence of Phattechand (DW-1), Hanuman Prasad Sharma (DW-2) & Sitaram (DW-3). From document Ex. P/1 which is record of

right, it is established that the respondent- Krishi Upaj Mandi is owner of the property in question. The appellant- Phattechand himself (PW- 1) deposed before the trial court (Para 1) that he is in possession of the land bearing Survey No. 251/1 area 3235 sq.mtr. He further deposed before the trial court that he has filed an application before the respondent- Krishi Upaj Mandi regarding exchange of his land bearing Survey No. 228 with land of the respondent bearing Survey No. 251/1. Looking to the record of right and further looking to the admission of the appellant, it is clear that the property in question is property of respondent- Krishi Upaj Mandi and the appellant is in possession of 3235 sq.mtr. of the land in question.

7. The only issue for consideration before this Court is whether the appellant has acquired title over the property on the basis of adverse possession. In the matter of **Chatti Konati Rao & others Vs. Palle Venkata Subba Rao**, reported in **(2010) 14 SCC 316**, Hon'ble the Apex Court held as under:-

- (i) It is a well-settled principle that a party claiming adverse possession must prove that his possession is peaceful, open and continuous.
- (ii) The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner.
- (iii) It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.
- (iv) A person who claims adverse possession should show:-

- (a) On what date he came into possession,
 - (b) What was the nature of his possession,
 - (c) Whether the factum of possession was known to the other party,
 - (d) How long his possession has continued, and
 - (e) His possession was open and undisturbed.
- (v) A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.
- (vi) Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose.
8. In the present case, the appellant has not produced any documentary evidence to prove his possession over the property in question. From evidence of Ashok Kumar Kumbhaj, Secretary, Krishi Upaj Mandi, Bhatapara (PW-1), Ghanaram Sahu (PW-2), Mahettarram Verma (PW-3) & Sosai Ram, Assistant Sub-Inspector, Krishi Upaj Mandi, Bhatapara (PW-4), it is clear that the appellant possessed the property in question in the year 1981. Though, Phattechand Agrawal (DW-1), Hanuman Prasad Sharma (DW-2) and Sitaram (DW-3) deposed before the trial court that the appellant is in possession of the property since 1950, but no document is produced before the trial court to substantiate their version that the property in question is possessed by the appellant since 1950-52.

9. From bald statement of appellant side, it is not established that on what date the appellant came into possession and whether factum of possession was known to the Municipal Corporation or Krishi Upaj Mandi who are owner of the property. From the record, it is clear that the appellant was served with notice (Ex. P/5) on 14.12.1981 and again, he was served with notice on 09.11.1982 for removal of encroachment. The appellant himself filed an application on 09.01.1982 for exchange of his property with the property in question which shows that the possession of the appellant was interrupted by issuing notice for removal of encroachment.
10. From evidence of appellant side, it is not established that his possession was known to the Municipal Corporation which was earlier owner of the property. When it is known to the Krishi Upaj Mandi, the Mandi issued a notice for removal and filed a suit for vacation on 28.04.1988. As the property is property of the State Government, the period of acquiring title is 30 years as per Section 112 of the Limitation Act, 1963.
11. In the present case, the appellant has failed to establish that on what date he came into possession of the property in question. Looking to the notice & admission of the appellant and further looking to the evidence of respondent side which is supported by document, the trial court opined that the appellant encroached the land in question in the year 1981 and the suit is filed in the year 1988, therefore, it is not a case where the appellant has acquired title by adverse possession.

The statement of appellant side is not specific and the same is general and bald statement which is not sufficient to prove on what date the appellant came into possession of the property and when possession was known to the other party, therefore, the evidence on behalf of the respondent side was acceptable looking to the oral and documentary evidence.

12. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to take a contrary view. Argument advanced on behalf of the appellants is not sustainable.
13. Accordingly, the appeal is liable to be dismissed. 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 up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge