

HIGH COURT OF CHHATTISGARH, BILASPUR
SA. No. 735 of 2003

Rohi Das S/o. Mhattar, aged about 57 years, Village, Pandel -Paleka, PO-Khalari, Tah. Balod, Distt. Durg, Chhattisgarh.

---- Appellant

Versus

1. Smt. Tulsi, Sarpanch, Gram Panchayat Dhobani, Tah. Balod, Disst. Durg,
2. Dhan Singh S/o. Milau, Sachiv, Gram Panchayat, Dhobani, Tah Balod, Distt. Durg, Chhattisgarh.
3. State of Chhattisgarh, Through, Collector, Durg, Chhattisgarh.

---Respondents

For Appellant	:	Mr. Praveen Dhurandhar, Advocate.
For State	:	Mr. Sanjay Agrawal, GA.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

30.01.2019

1. The plaintiff's suit for declaration of title and permanent injunction based on adverse possession was dismissed by the trial Court and upheld by the First Appellate Court, against which, this second appeal under Section 100 of the C.P.C has been preferred.
2. Learned counsel appearing for the appellant/plaintiff would submit that both the Courts below have committed illegality in dismissing the suit by recorded a finding, which is perverse and contrary to the record.
3. I have heard learned counsel for the appellant and perused the impugned judgment.
4. The plaintiff filed a suit for declaration of title and permanent injunction that he has perfected his title by adverse possession as he is in possession of the suit land for last 50 years. The trial Court has held that possession of the plaintiff for last 30 years has not been proved and the suit land is recorded as 'Bade Jhad Ka Jungle' and is owned by the State Government. The plaintiff is only encroacher upon the suit land which has been held by the First Appellate Court. The land being a governmental land recoded as 'Bade Jhad K Jungle'. The trial Court and the First Appellate Court have

rightly held that the plaintiff has failed to prove his peaceful and adverse possession over the suit land for last 30 years. The Supreme Court in the matter of **Gurdwara Sahi v. Gram Panchayat Village Sirthala** reported in **(2014) 1 SCC 669**, has clearly held that the plaintiff cannot seek a declaration to the effect that such adverse possession has matured into the ownership. It was observed as under :-

“8. There cannot be any quarrel to this extent that 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 are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

5. In view of concurrent finding recorded by two Courts below and the principle of the law laid down by the Supreme Court in the matter of **Gurdwara Sahi** (supra), the plaintiff cannot maintain the suit for declaration of title based on adverse possession, I do not find any perversity or illegality in the said finding much-less the substantial question of law.
6. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, *without notice to the other side*. No order as to cost(s).

Sd /-

(Sanjay K. Agrawal)
Judge