

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.260 of 2004**

1. Rajuram, son of Late Kisnath, aged about 67 years,

2. Bajjuram, son of Late Kisnath, aged about 52 years,

Both Ganda by caste, resident of village Tarayee Ghutiya, Tah. Bhanupratappur, District Kanker (CG)

---- Appellants/Plaintiffs

Versus

1. Fatturam, son of Late Jiri, aged about 72 years,

2. Sukdi, wife of Fattu, aged about 67 years,

3. Sanki, wife of Fattu, aged about 44 years,

All Gond by caste, resident of village Tarayee Ghotiya, Tah. Bhanupratappur, District Kanker (CG)

At present resident of village Nedgaon, Tah. Bhanupratapur, District Kanker (CG)

4. State of Chhattisgarh, through Collector, Kanker, District Kanker (Chhattisgarh)

---- Respondents/Defendants

For Appellants/Plaintiffs	:	Mr.R.N.Jha, Advocate
For Respondent No.4/State	:	Ms K. Tripti Rao, P.L.
For Respondents No.1 to 3	:	None as appeal yet not admitted

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26/2/2019

1. Heard on the question of admission of second appeal and formation of substantial question of law preferred by the appellants/plaintiffs under Section 100 of the Code of Civil Procedure, 1908.

2. Suit filed by the plaintiffs for declaration of title, possession and permanent injunction was dismissed by the trial Court and upheld by the First Appellate Court on appeal being preferred by the plaintiffs,

questioning that judgment and decree, the instant second appeal has been filed.

3. Mr.R.N.Jha, learned counsel for the appellants/plaintiffs, would submit that concurrent findings recorded by two Courts below are perverse and it gives rise to substantial question of law for determination of this second appeal.
4. The plaintiffs' filed a suit for declaration of title and consequent recovery of possession stating inter-alia that they are in possession of the suit land owned by the defendants for last 40 to 50 years and thereby they have perfected their title by way of adverse possession. The trial Court has held that the plaintiffs have failed to prove their possession over the suit land for a continuous period of more than 12 years, as such, they have not perfected their title by way of adverse possession, which has been agreed by the First Appellate Court. Concurrent finding recorded by two Courts below on the question of possession and that the plaintiffs have not perfected their title by way of adverse possession is a finding of fact based on evidence available on record, in which I do not find any illegality or perversity.
5. In the matter of **Gurdwara Sahib v. Gram Panchayat Village Sirthala and another**¹ the Supreme Court has held that declaration of ownership of land on basis of adverse possession cannot be sought by plaintiff. 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

¹ (2014) 1 SCC 669

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.”

6. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse. {See : Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and others² and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others³).
7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed *in limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

² (2018) 11 SCC 77

³ (2018) 12 SCC 681