

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.308 of 2004**

Manoranjan Prasad Pandey, S/o Mokal Prasad Pandey, aged about 30 years, Labourer, R/o Baikunthpur, Raigarh, Tehsil and District Raigarh (CG)

---- Appellant/Plaintiff

Versus

1. Vachan Das, S/o Garib Das Mahant, aged about 55 years, labourer, R/o village Zorapali, District Raigarh (CG)
2. State of Chhattisgarh, through its Collector Raigarh (CG)

---- Respondents

For Appellant	:	Mr.Vimlesh Bajpai, Advocate
For Respondent No.1	:	None present
For Respondent No.2	:	Mr.I. Lakda, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

01.07.2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the plaintiff is as under:-

“Whether the learned lower Appellate Court was justified in reversing the decree passed in favour of the plaintiff and dismissing the suit on the finding of prescription of title by adverse possession without there being evidence of continues hostile possession of the defendant over the suit land for a period of 12 years or more from the date of filing of suit by the plaintiff ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff herein filed a suit for possession based on title stating inter-alia that he is owner of agricultural land bearing khasra No.109, area 0.073 hectare and out of which, 2 decimal land has been encroached by defendant No.1 and using the same for cultivating vegetables and as such, entitled for decree of possession.
3. Defendant No.1 filed his written statement and claimed to be purchased the suit land from the plaintiff's father and he is in possession of the suit land for last 25 years and also made counter-claim for suit land.
4. The trial after appreciating oral and documentary evidence available on record, by its judgment and decree dated 13.1.2004, decreed the suit holding that the plaintiff is owner of the suit land and the defendant is cultivating the said land as encroacher and therefore, the plaintiff is entitled for possession. On appeal being preferred by the defendant No.1, the first appellate Court allowed the appeal on the basis of adverse possession and dismissed the suit. Against which, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.
5. Mr.Vimlesh Bajpai, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court, therefore, it deserves to be set aside.

6. None present for respondent No.1 though served.
7. I have heard learned counsel for the parties and considered his submissions made hereinabove and also went through the records with utmost circumscription.
8. The trial Court has clearly recorded a finding that the plaintiff is owner and title-holder of the suit land and the defendant is encroacher. The defendant set-up a plea that he has purchased the suit land from the plaintiff's father, which he failed to establish during the course of trial, but the first appellate Court on appeal being preferred by the defendant reversed the finding on the ground of adverse possession and relied upon the provisions contained in Section 4 of the M.P. Vas-Sthan Dakhalkar (Bhumiswami Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1980 (hereinafter called as "the Act of 1980").
9. The judgment and decree of the first appellate Court cannot be sustained for more than one reasons. Firstly, the plaintiff has established his title over the suit land which the trial Court found favour and held the defendant to be encroacher and the defendant has claimed title through the plaintiff's father by way of sale deed which he failed to produce and establish that he at any point of time has purchased the suit land from the plaintiff's father. Even otherwise, the defendant has not claimed his title by way of adverse possession. No express plea of adverse possession was taken by the defendant except saying that he is in possession over the suit land for last 25 years. Plea of adverse possession has to be taken

expressly in pleading by making necessary averment, which is absolutely lacking in the written statement/counter-claim filed by the defendant. In absence of that, the first appellate Court is not justified in holding that the defendant has proved his adverse possession over the suit land. The provisions contained in the Act of 1980 would not be applicable as this Act is enacted to provide for conferring Bhumiswami rights on landless persons in respect of dwelling house and sites on or appurtenant to agricultural lands in non-urban areas in the State of Madhya Pradesh (Now Chhattisgarh), which is not applicable. No pleading was raised with regard to the applicability of the Act of 1980 in written statement and no issue was framed in this regard and even it was not dealt with by the trial Court, but the first appellate Court reversed the decree of the trial Court on the basis of adverse possession as well as applying the provisions contained in Section 4 of the Act of 1980, which is wholly inapplicable to the facts of the present case.

- 10.** In view of above, the first appellate Court is absolutely unjustified in holding that the defendant has become title holder of the suit land by way of adverse possession and by virtue of the provisions contained in Section 4 of the Act of 1980. Accordingly, the impugned judgment and decree passed by the first appellate Court is hereby set aside and the judgment and decree passed by the trial Court is hereby restored.
- 11.** The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s). A decree

be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-