

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 213 of 2011

Reserved on : 03.07.2019

Delivered on : 24.07.2019

1. Sunil Kumar Bondia, S/o Late Shri Radhe Shyam Bondia, aged about 45 years, R/o Gandhi Ganj, Raigarh, Tahsil & District- Raigarh (C.G.)
2. Sanjay Kumar Bondia, S/o Late Shri Radhe Shyam Bondia, aged about 40 years, R/o Gandhi Ganj, Raigarh, Tahsil & District- Raigarh (C.G.)

---- Appellants

Versus

Prahlad Agrawal, S/o Shri Chaturbhuj Agrawal, aged about 55 years, R/o Gandhi Ganj, Raigarh, Tahsil & District- Raigarh (C.G.)

---- Respondent

For Appellants	:	Mr. Ankit Singhal, Advocate.
For respondent	:	None.

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 06.08.2011 passed by District Judge, Raigarh, District- Raigarh (C.G.) in Civil Suit No. 26-A/2011, wherein the said court decreed the suit filed by the respondent/ plaintiff for declaration, possession and compensation regarding land situated at Nazul Sheet No. 33, Plot No. 83/1, area admeasuring 400 sq.ft. at Raigarh which is mentioned in Schedule-A of the plaint.
2. As per the appellants, the respondent filed a suit against the

appellants that the property in question is recorded in the joint name of Goverdhan Das and Sitaram and the property came into name of Goverdhan Das in partition held in the year 1992-93, thereafter, it was transferred in name of the respondent as successor. The property was being used by the appellants/ defendants and earlier, it was used by the appellant's father namely Radhe Shyam Bondia for godown purpose with the license of Goverdhan Das. When the appellants were asked to vacate the property, they refused and claimed title over the suit property i.e. why the suit was filed which was decreed contrary to the fact and legal aspect of the matter.

3. Learned counsel for the appellants submits as under:-

(i) The suit property was sold by grand-father of the respondent to grand-father of the appellants and since then they are in peaceful possession of the property.

(ii) The appellants and their ancestral are in possession of the property for last 60-70 years and they acquired the property by way of adverse possession.

(iii) The suit property was never licensed to the appellants and it was sold for a cash consideration of Rs. 11,000/-.

(iv) Awarding compensation against the appellant @ Rs. 100/- per day from the date of filing of the suit is without evidence because it is not proved that the said property was yielding any income, therefore, the finding arrived at by the trial court is not liable to be sustained.

4. First question for consideration before this Court is whether the

respondent/ plaintiff is owner of the property in question or the appellants/ defendants are owner of the property in question. The respondent/ plaintiff side adduced evidence of Prahlad Roy (PW-1) and Jashpal Singh (PW-2) while the appellants side adduced evidence of Sanjay Bondia (DW-2). As per version of respondent witness, the property in question is property of Prahlad Roy. Version of this witness is supported by Maintenance Khasra (Ex.P/4) and document of lease (Ex.P/5). As against this, no document was filed on behalf of the appellants. They are basing their claim on oral transaction of sale and possession. The appellants side stating that they purchased the land from ancestral of the respondent for a cash consideration of Rs. 11,000/-, but no document was produced before the trial court to support their claim.

5. The immovable property valued more than Rs. 100/- can be alienated only by way of registered sale-deed as per provisions of Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Indian Registration Act, 1908, therefore, it is legally not sound to say that the property was purchased through oral transaction. From version of the appellants, it is clear that their possession is permissive possession. When the possession is permissive possession, it cannot be converted into adverse possession. For adverse possession, it has to be established that the person claiming such possession entered into property without having any right and challenged the right against owner.
6. In the present case, the appellants are claiming right on the basis of oral transaction which cannot be termed as adverse to right of the

respondent, therefore, argument advanced on behalf of the appellants on this count is not sustainable.

7. Sanjay Bondia (DW-2) entered into witness box on behalf of the appellants and deposed before the trial court that the property in question is used for business purpose. He also deposed that the property in question is valued to Rs. 12 lakh. Looking to the statement of this witness, it cannot be said that the compensation to the tune of Rs. 100/- per day awarded by the trial court is excessive or unreasonable, therefore, the compensation part as awarded by the trial court is also not liable to be interfered with and this Court has no reason to record contrary finding.
8. 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 accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge