

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 461 of 2005**

- 1(K) Smt. Lachhani Bai, W/o. Shri Andaruram, aged about 65 years,
 1(KH) Smt. Janki Bai, Daughter of Late Andaruram, aged about 42 years,
 1(G) Smt. Dukalo Bai, Daughter of Late Andaru Ram, aged about 40 years,
 1(GH) Ramesh Ram, son of Late Andaruram, aged about 40 years,
 1(D) Smt. Ramula Bai, daughter of Late Andaru Ram, aged about 36 years,
 1(DH) Atmaram, son of Late Andaru Ram, aged about 36 years,

All are resident of village Tikrapara, Umradah, Distt. Kaker (C.G.)

----Appellants/Plaintiffs

Versus

1. Krishna Kumar, son of Murlidhar Choubey, aged about 54 years, Resident of Amapara, Kanker, Tahsil and Distt. Kanker (C.G.)
2. Patiram, son of Kachru Gond, aged about 37 years,
3. Rajnath, son of Pando gond, aged about 50 years,
4. Tularam, son of Pando Gond, aged about 37 years,
5. Shyamlal, son of Jagat Gond, aged about 39 years,
6. Thanvar, son of Doordeshi Gond, aged about 23 years,
7. Sube Singh, aged about 44 years, son of Talmali Gond,
8. Ganjiram, son of Dukhva Gond, aged about 60 years,
- 9(1A) Narayan, son of Majiram Gond, aged about 50 years,
- 9(1B) Pran, son of Majiram Gond, aged about 48 years,
10. Fool Singh, son of Bhukhau Gond, aged about 44 years,
- 11(1A) Smt. Surjotin @ Nagadaba Rahin, widow of Late Aasharam Gond, aged about 65 years,
12. Jagdish, son of Samrath Gond, aged about 44 years,
- 13(1K) Sukhdei, widow of late Bhagirathi gond, aged about 50 years,
- 13(1KH) Rakesh, son of Late Bhagirathi Gond, aged about 30 years,

13(1G) Rajesh, son of Late Bhagirathi Gond, aged about 24 years,

13(1DH) Roshan, son of Late Bhagirathi Gond, aged about 27 years,

14. Bide Singh, aged about 50 years, son of Manghu Gond,

15. Ram Kumar, son of Deonath Gond, aged about 31 years,

All (except No. 1) are R/o. village Umradah, Tahsil Kanker, Distt. Bastar, Now Kanker (C.G.)

16. State of Chhattisgarh, through the Collector, Distt. Kanker (C.G.)

----Respondents/defendants.

For Appellants	: Mr. R.N. Jha, Advocate.
For Respondents	: None as appeal yet not admitted

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/02/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908.

(2) The plaintiffs' suit for declaration of title on the basis of adverse possession was dismissed by the trial Court. First Appeal preferred there-against was also dismissed by the first Appellate Court affirming the judgment & decree of the trial Court.

(3) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below have erred in dismissing the suit of the plaintiffs by holding that plaintiffs have not perfected their title over the suit land by way of adverse possession by recording perverse findings and that give rise to substantial question of law for determination in this appeal.

(4) The plaintiffs' suit for declaration of title was based on adverse possession that they have perfected their title over the suit land by way of adverse possession, which was not accepted by the trial Court holding that plaintiffs have failed to establish their adverse possession over the suit land and they have not perfected their title over the suit land. The said finding has been accepted by the first appellate Court and dismissed the appeal by affirming the judgment & decree of the trial Court. Thus, the finding for fact recorded by both the courts that plaintiffs have not perfected their title over the suit land by way of adverse possession are finding of fact based on material available and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.. However, in the matter of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another**¹, their Lordships of the Supreme Court have held that suit for declaration of title based on adverse possession is not maintainable. Relevant paragraph of the report states 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 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 above settled legal position, it is apparent that plaintiff cannot maintain his suit for declaration of title based on adverse possession.

(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 and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul**

1 (2014) 1 SCC 669

Datta and others² & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others³ }

8. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

² (2018) 11 SCC 77

³ (2018) 12 SCC 681

