

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 555 of 2005**

1. Lakhmu Ram, S/o Arkhit Muriya, Aged about 42 years, Agriculturist, R/o Village Bhond, Tehsil Jagdalpur, District Bastar, Chhattisgarh.
2. Bhaktu, S/o. Arkhit Muriya, Aged about 47 years, Agriculturist, R/o Village Bhond, Tehsil Jagdalpur, District Bastar, Chhattisgarh.
3. Sonadhar, S/o Arkhit Muriya, Aged about 45 years, Agriculturist, R/o Village Bhond, Tehsil Jagdalpur, District Bastar, Chhattisgarh.

**---- Appellants****Versus**

1. Vinod Kumar, S/o Botiram, Caste Muriya, Aged about 37 years, Agriculturist, R/o Village Bhond, Tehsil Jagdalpur, District Bastar, Chhattisgarh.
2. State of Chhattisgarh, Through Collector, Bastar, Jagdalpur, Chhattisgarh.

**---- Respondents**


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For Appellant : Shri Sourabh Sharma and Shri Tarkeshwar Nande, Advocate.  
 For Respondent No.2 : Shri Vimlesh Bajpai, G. A.

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**Hon'ble Shri Justice Sanjay Agrawal****Order On Board****28.02.2019**

1. This is defendants' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') questioning the legality and propriety of the judgment and decree dated 16.11.2005 passed by 3<sup>rd</sup> Additional District Judge, Bastar, place Jagdalpur in Civil Appeal No.3-A/2005, by which, the lower appellate Court, while affirming the judgment and decree dated 30.11.2004

passed by 1<sup>st</sup> Civil Judge Class-II, Bastar, in Civil Suit No.10-A/2004, has dismissed the appeal.

2. Briefly stated the facts of the case are that the plaintiff Vinod Kumar instituted a suit claiming declaration of title, possession and also for injunction by submitting *inter alia* that by virtue of a registered deed of sale dated 14.05.1990, purported to have been executed by one Keja Bai in his favour, he acquired right, title and interest over the land in question bearing Khasra No.1086 admeasuring 1.62 hectares situated at village Bhond, Tahsil Jagdalpur, District Bastar (C.G.). According to the plaintiff, the Defendant No.3 Lakhmuram has forcefully cultivated the property in question on 08.06.2000, therefore, he has been constrained to file the suit in the instant nature.

3. The aforesaid claim was contested by the defendants denying specifically the due execution and registration of the alleged deed of sale executed by said Keja Bai on 14.05.1990. It is contested further on the ground that alleged sale was infact executed nominally and as such, it does not confer any right, title or interest upon him. While denying the claim as such, the defendants have submitted a counter claim by saying that since they are in possession for over more than 20-25 years, therefore, they have acquired their right, title and interest upon the suit property by way of adverse possession.

4. The trial Court, vide judgment and decree dated 30.11.2004, has arrived at a conclusion that the plaintiff Vinod Kumar has acquired his valid right, title and interest upon the suit property on the strength of the registered deed of sale, dated 14.05.1990 (Ex.P-11), which was executed by said Keja Bai in his favour. It held further that defendants' possession over the suit property is not uninterrupted as previously there was a dispute existing between defendants and said Keja Bai. In

consequence, the counter claim raised by defendants has been dismissed.

5. The aforesaid findings of the trial Court have been affirmed further by the appellate Court in an appeal preferred by the defendants.

6. Being aggrieved, the defendants have preferred this appeal. Shri Tarkeshwar Nande, learned counsel for the appellants submits that the judgment and decree as passed by the Courts below are apparently contrary to law. According to him, the defendants are in possession for over more than 20-25 years, as visualized from the order dated 20.06.1984 passed by the Sub Divisional Magistrate, Jagdalpur in Criminal Case No.682/1983 under Section 145 of the Code of Criminal Procedure, 1973 and since the said order had attained its finality by efflux of time, therefore, the defendants have acquired their right, title and interest by way of adverse possession. Having failed to consider the same in its proper perspective, the Courts below have erred in refusing their counter claim while decreeing the plaintiff's claim by holding that he acquired his ownership by virtue of alleged deed of sale dated 14.05.1990 (Ex.P-11) executed by said Keja Bai in his favour.

7. I have heard learned counsel for the appellants and perused the entire record carefully.

8. A suit for declaration of title, injunction and possession has been made by the plaintiff Vinod Kumar on the premises that he acquired his valid interest over the property in question bearing Khasra No.1086 admeasuring 1.62 hectares situated at village Bhond, Tahsil Jagdalpur, District Bastar (C.G.) on the basis of the registered deed of sale dated 14.05.1990 (Ex.P-11) executed by said Keja Bai in his favour. According to the plaint averments, the Defendant No.3 Lakhmuram has cultivated

the land in question forcefully on 08.06.2000, therefore, the suit as such was instituted by the plaintiff. The defendants contested the claim by saying that no sale as such was executed by Keja Bai in his favour as she was not competent to alienate the same and even otherwise, it was a nominal sale, therefore, no right or interest could confer upon the plaintiff. However, from perusal of the record would show that a proceeding was initiated under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 by the defendants against said Keja Bai when a registered deed of sale, dated 06.02.1990 was executed by their father Arkhit Muriya, in favour of said Keja Bai. In the said proceeding, it was held by the High Court vide its order dated 24.06.1999 (Ex.P-5) passed in WP No.4122/1992 that said Keja Bai had acquired her valid interest over the suit property on the strength of said sale dated 06.02.1990.

9. Based upon the aforesaid facts, the Courts below have rightly come to the conclusion that Keja Bai was the owner of the property in question and was entitled to execute the registered deed of sale on 14.05.1990 (Ex.P-11) in favour of the plaintiff, Vinod Kumar. Consequently, I do not find any infirmity with regard to the finding of the Courts below in relation to the execution of alleged sale (Ex.P-11). The said findings, therefore, deserve to be and are hereby affirmed.

10. As far as defendants' acquisition over the suit property by way of adverse possession is concerned, the burden was heavily upon the defendants' to establish the said fact. However, they failed to establish their uninterrupted possession over it by way of any cogent and reliable evidence. Contrarily, it was found by the Courts below that there was a dispute existing between defendants and plaintiff's vendor Keja Bai. Besides, the defendants have not raised the specific plea of ouster in their counter claim in order to prescription of their rights by adverse

possession. Even otherwise, the defendants cannot claim their ownership by way of the adverse possession, in view of the principles laid down by the Supreme Court in the matter of *Gurdwara Sahib Versus Gram Panchayat Village Sirthala and Another* reported in (2014) 1 SCC 669, wherein the Supreme Court has held in paragraph 8 as under:-

“8. ....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.”

11. In view of the forgoing discussions, I do not find any question of law, much less, substantial question of law in this appeal. The appeal, being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-  
(Sanjay Agrawal)  
Judge