

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 191 of 2005**

Bodra Ram (since deceased) through LRs:-

- a. Smt. Mantori, aged about 60 years, widow of Bodraram,
- b. Dilram, aged about 45 years, S/o Bodraram,
- c. Banuram, aged about 35 years, S/o Bodraram,
- d. Smt. Usha Bai, aged about 40 years, D/o Bodraram, (Wife of Chaitram)
- e. Smt. Laxmin Bai, aged about 35 years, wife of Sampatram,

All are R/o Village Kapoo, Tahsil Dharamjaigarh, District Raigarh (C.G.)

---- Appellants/plaintiffs

Versus

1. Satyadeo, son of Shri Ram Prasad, caste – Baniya, Resident of village Kapoo, Tah. Dharamjaigarh, Distt. Raigarh (C.G.)
2. The State of Chhattisgarh, through – Collector, Raigarh, C.G.

---- Respondents/defendants

For Appellants/plaintiffs	: Mr. Vivek Bhakta, Advocate.
For Respondent No. 2/State	: Mr. Saleem Kazi, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/07/2019

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

“Whether the findings of the First Appellate Court regarding non applicability of doctrine of adverse

possession is perverse ?

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

(2) Original plaintiff – Bodraram instituted a suit for declaration of title based on adverse possession over the suit land, in which, the defendant set up a plea that he has purchased the suit land by registered sale deed dated 16.06.1969 from one Man Sai in the name of defendant himself and his mother Sonamati, as such, the plaintiffs are not entitled for decree declaration of title over the suit land.

(3) The trial Court decreed the suit in favour of the plaintiff, which the first appellate Court has reversed and dismissed the plaintiff's suit, against which this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which, substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

(4) Learned counsel appearing for the appellants/plaintiffs would submit that the first appellate Court is absolutely unjustified in dismissing the suit by taking additional documents and evidence on record without giving an opportunity to lead evidence and rebuttal and, therefore, the matter is remanded back to the first appellate Court for deciding the first appeal afresh after affording due opportunity of hearing to the affected parties.

(5) I have heard learned counsel appearing for the appellants and considered his submissions made hereinabove and went through the record with utmost circumspection.

(6) The plaintiff's suit was basically for the declaration of title based on adverse possession, which was granted by the trial Court but the first appellate Court has reversed the finding of the trial by dismissing the suit of the plaintiff.

(7) In the matter of **Gurdwara Sahib v. Gram Panchayat Village Sirthala and another**¹ their Lordships of the Supreme Court have clearly held that the suit for declaration of title on the basis of adverse possession is not maintainable and held 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 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.

(8) In view of the aforesaid legal position, I am of the view that the first appellate Court is absolutely justified in dismissing the suit by allowing the appeal filed by the defendant No. 1- Bodra as the suit for declaration of title based on adverse possession is not maintainable. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed. However, liberty is reserved in favour of the plaintiffs to take up the plea of adverse possession, if the suit is filed by defendant No. 1 at any point of time.

(9) A decree be draw-up accordingly.

(10) No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 (2014) 1 SCC 669

