

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURSA No. 220 of 2005

- Mahesh Kumar Chandrakar S/o Shri Kaluram Chandrakar, Aged About 50 Years R/o Village Gomchi, Post Tenduva, P. S. Urla, Tahsil Dharsiwa, District Raipur Chhattisgarh,

---- Appellant

Versus

1. Jugal Kishore S/o Gokul Prasad Purohit By Profession, Aged About 40 Years R/o Village Gomchi Post Tendua, Tahsil And District Raipur Chhattisgarh,
2. Daya Ram Yadaw (Died) Through Lrs.
2.i - Savitri Bai W/o Late Dayaram Yadav Aged About 46 Years, R/o village Hathbandh, Police Station Urla, Post Tedunwa, Tehsil Dharsiwan, Civil and Revenue District Raipur (C.G.)
2.ii. Manish, S/o Late Dayaram Yadav Aged About 26 Years, R/o village Hathbandh, Police Station Urla, Post Tedunwa, Tehsil Dharsiwan, Civil and Revenue District Raipur (C.G.)
3. Ashwini Yadaw S/o Late Poona Ram Yadaw, Aged About 40 Years R/o Village Hathbandh Post Office Tendua, Tahsil And District Raipur Chhattisgarh,
4. Kedar Yadaw S/o Late Poona Ram Yadaw, Aged About 37 Years R/o Village Hathbandh Post Office Tendua, Tahsil And District Raipur Chhattisgarh,
5. Man Singh Died Through Lrs-, Chhattisgarh
5.a-Badri S/o Late Man Singh, Aged About 50 Years
5.b-Rukhmani Bai Wd/o Bushan (S/o Late Man Singh) Aged About 45 Years.

Both resident of village: Atari, P.O. Chandnidihi, Tahsil and District Raipur (C.G.)
6. Smt. Son Kunwar Bai W/o Late Srirangnath, Aged About 70 Years Cultivator By Profession And R/o Village Hathbandh, P. O. Tendua, Tahsil And District Raipur Chhattisgarh,
7. Shri Ram Kumar S/o Late Srirangnath, Aged About 40 Years Cultivator By Profession And R/o Village Hathbandh, P. O. Tendua, Tahsil And District Raipur Chhattisgarh
8. Ram Bisal @ Dauram Died...Deleted, Chhattisgarh
9. Dwarika Prasad S/o Late Srirangnath, Aged About 28 Years Cultivator By Profession And R/o Village Hathbandh, P. O. Tendua, Tahsil And District Raipur Chhattisgarh.

10. Awadh Ram S/o Late Srirangnath, Cultivator By Profession And R/o Village Hathbandh, P. O. Tendua, Tahsil And District Raipur Chhattisgarh,

11. State Of Chhattisgarh Through Collector Raipur Chhattisgarh.....Defendents,

---- Respondents

For Appellant	: Shri Manoj Paranjpe with Anurag Singh, Advocate
For Respondent No.11/State	: Shri Rahim Ubwani, P.L.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

24.10.2019

1. Heard on admission.
2. This is the plaintiffs' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908) questioning the legality and validity of the judgment and decree dated 26.08.2004 passed by the 1st Additional District Judge, Raipur (C.G.) in Civil Appeal No. 9-A/2002, by which, the lower appellate Court, while affirming the judgment and decree dated 22.12.2000 passed by the 5th Civil Judge Class-2, Raipur, in Civil Suit No. 65-A/93, has dismissed the plaintiff's claim.
3. Learned counsel for the appellant submits that the Courts below have committed an illegality in holding that the plaintiff has not acquired any right, title or interest over the property in question under the registered deed of sale, dated 25.06.1963. However, by virtue of the alleged sale, the plaintiff and his father Bahadur Singh had purchased the entire property from their vendors as such. In any case, the plaintiff has prescribed his interest over the property in question by virtue of adverse possession. Having failed to consider the evidence led by the parties in its proper manner, the Courts below have erred in dismissing the plaintiff's claim.

4. I have heard learned counsel for the appellant and perused the entire record carefully.

5. A suit was instituted by the plaintiff Mahavir Singh (since deceased now represented by his legal representative, namely, Mahesh Kumar) claiming declaration of title and injunction in relation to the property in question bearing Kh. No.226 admeasuring 0.030 acres situated village Gomchi, Tahsil and District Raipur by virtue of the registered deed of sale dated 25.06.1963 (Ex.P.1), purported to have been executed by Deokanth, Bahura Bai, Tirangnath, Punaoram and Man Singh. From perusal of the alleged document, it appears that the description of the property in question has not been mentioned therein. That apart, one of the vendors of the alleged document, namely, Man Singh, examined as P.W.4, has stated in his evidence at paragraphs 1 and 6 that the property in question has not been sold to the plaintiff Mahavir Singh and his father Bahadur Singh. Even the plaintiff has also admitted the fact that there was no description of the alleged property in the alleged sale executed in the year 1963. Perusal of the record would show further that part of the land admeasuring 0.06 acres of Kh.No.226 was sold by the plaintiff's vendors to one Jugal Kishore, defendant No.1, by executing the registered deed of sale, dated 10.07.1992 (Ex.D.1). In absence of any documentary evidence showing that plaintiff and his father have purchased the property in question, as alleged by the plaintiff under the said sale, it cannot be held that the plaintiff has acquired any interest whatsoever with regard to the property in question. The Courts below have, therefore, not committed any illegality in dismissing plaintiff's claim. The finding so arrived at by the Courts below based upon due and proper appreciation of the evidence led by the parties deserves to be and is hereby affirmed.

6. In so far as the alternative claim of the plaintiff over the property in question by way of adverse possession is concerned, the same is also liable to be rejected

as the plaintiff has failed to produce any document showing that he was in possession continuously from the date of its purchase, i.e., from the year 1963. Ex.P.2 and Ex.P.3, the revenue papers, as produced by the plaintiff in order to establish his ownership by virtue of adverse possession, were only with regard to the period commencing with effect from 1975-76 upto 1979-80. That apart, the plaintiff is claiming his ownership by virtue of registered deed of sale, as such, he cannot claim his ownership over the property in question by way of adverse possession, as both the pleas are destructive with each other. In any case, in absence of any specific plea of ouster, the plea of adverse possession has rightly been turned down by the Courts below.

7. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge