

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 621 of 2018

Shakila Begum W/o Late Mohammad Ali, Aged About 35 Years,
R/o House No. 177, Ward No. 2, Vidhansabha Area,
Vaishalinagar Gandhinagar, Bhilai, Police Station- Supela, Post
Office- Nehrunagar, Tahsil and District Durg, Chhattisgarh.

---- Appellant/plaintiff

Versus

1. Municipal Corporation, Bhilai Through Commissioner, Municipal Corporation, Bhilai, District Durg, Chhattisgarh.
2. State of Chhattisgarh Through The Collector District Durg, Chhattisgarh,
3. Jaybun W/o Naim Aged About 50 Years R/o Fajilpur, Post Husainganj, District Shiwan, Bihar,
4. Khushbun W/o Shamshuddin Aged About 46 Years R/o Fijilpur, Post Husainganj, District Shiwan, Bihar,
5. Imamuddin S/o Mohd. Habib Khan Aged About 48 Years R/o Quarter No. 1/d, Road, 36, Sector-8, Bhilai Nagar, Tahsil and District Durg, Chhattisgarh.
6. Ku. Mahrunnisha D/o Late Mohd. Habib Khan, Aged About 42 Years, R/o Quarter No. 1/ D, Road 36, Sector-8, Bhilai Nagar, Tahsil and District Durg, Chhattisgarh.
7. Nuraisha W/o Asalam Aged About 44 Years R/o Village Katwar, Post- Dhuraunda, Police Station Maharajganj, District Shiwan, Bihar.
8. Shaukat Ali S/o Late Mohd. Habib Khan Aged About 40 Years R/o Village Katwar, Post Dhuranda, Police Station- Mahrajganj, District Shiwan, Bihar.,

9. Faukat Ali S/o Late Mohd. Habib Khan Aged About 36 Years R/o Village Katwar, Post Dhuraunda, Police Station Mahrajganj, District Shiwan Bihar.,
10. Najbunnisha W/o Sanauur Khan Aged About 34 Years R/o Village Salempur Kasba, District Devaria, Uttar Pradesh., District : Deoria, Uttar Pradesh

---- **Respondents/ Defendants**

For the Appellant	:- Mr. B. P. Singh, Advocate
For the Respondent No.1	:- Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate
For the Respondent No.2	:- Mr. Rajesh Singh, Dy. G.A.

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By Prashant Kumar Mishra, J.

10.01.2019

1. Heard on I.A. No. 01 of 2018 for condonation of delay.
2. There being no objection from other side on I.A. No. 01 of 2018 for condonation of delay of 30 days in filing the appeal, the said application is allowed. Delay of 30 days in filing the appeal is hereby condoned.
- 3) With the consent of learned counsel for the parties, the appeal is heard finally at the admission stage.
- 4) Plaintiff Shakila Begum has preferred this first appeal challenging the judgment and decree of the trial Court dismissing her suit for declaration of title on the ground of adverse possession.

- 5) the plaintiff was married with late Mohammad Ali, S/o. Mohammad Habib on 27.03.1989. At that time, Mohammad Habib Khan had already died on 19.01.1986. Later on, plaintiff's husband also died on 25.11.1996. The suit property is a house bearing No. 177 over khasra No. 1222/19 area 0.02 hectare at Vaishali Nagar, Bhilai, P.S. Supela, District Durg.
- 6) Admittedly, the house was owned by the plaintiff's father-in-law Mohammad Habib Khan. It is also admitted that Habib Khan had nine sons and daughter including plaintiff's husband Mohammad Ali. Plaintiff averred that at the time of death of her husband Mohammad Ali, the original defendant No. 1 Laimunnisha, (her mother-in-law) was also residing in the suit house, however, in January 1997 she went back to her parental house at village Katakwar, District Shiwan, Bihar, allowing the plaintiff to occupy the house abandoning her claim over the suit house. In the original plaint, other sons and daughter of Habib Khan were not arrayed. They were impleaded later on in March 2015. Laimunnisha died during pendency of the suit, therefore, her name was deleted from the array of the party vide order of the trial Court on 25.09.2017.
- 7) Plaintiff claimed the cause of action for filing suit for declaration of title on the basis of adverse possession commencing in January 1997 and the suit was filed on 28.02.2009. Although, the suit has been dismissed after a full blown trial. However, in our considered opinion the framing of the suit itself was defective, inasmuch as para-6 of the plaint would plead permissive possession

commencing in January 1997 without there being any pleading as to on what date subsequent to January 1997 plaintiff possession over the suit house became adverse to the true owner.

- 8) Even in para-7 of the plaint, the period of 12 years continuous possession is said to commence from January 1997 and not on any other subsequent dates. More over, the present respondents No. 3 to 10, who are also the sons and daughter of deceased Habib Khan have succeeded to the property of Habib Khan but there is no plea in the plaint as to on what date or on happening of which event the plaintiff's possession over the suit house became adverse to the other sons and daughter of deceased Habib Khan.
- 9) In view of the above stated defects in the basic plaint case, the very foundation of the suit for declaration of title on the ground of adverse possession is not built on proper pleadings, therefore, a decree for declaration on the basis of adverse possession could not be passed on such defective pleadings.
- 10) More over, it is settled legal position that a suit for declaration of title on the basis of adverse possession is not maintainable. Plea of adverse possession is always used as shield and not as sword.
- 11) In view of the above, the present appeal has no substance it deserves to be and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Vimla Singh Kapoor