

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 533 of 2006**

1. Haridas, S/o Dayaldas, aged about 60 years
2. Bhuwan, S/o Dayaldas, aged about 58 years
3. Gangaram, S/o Bhagatram, aged about 55 years
4. Chandan, S/o Dayaldas aged about 50 years

All R/o village – Khamharmuda, P.H.No.14, Revenue Circle No.-Patewa,
Tehsil & District – Mahasamund (CG)

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1. Phool Singh S/o. Lala, aged about 64 years
2. Dilip S/o Shyamlal, aged about 52 years
3. Shivdas S/o Nanku, aged about 69 years
4. Ratiram, S/o Bhagirathi, aged about 59 years
5. Nayandas, S/o Shyamlal, aged about 33 years
6. Anandram, S/o Udeyram, aged about 45 years
7. Vishwadas, S/o Udeyram, aged about 33 years
8. Jitendra, S/o Udeyram, aged about 33 years
9. Dhamdas, S/o Udeyram, aged about 36 years
10. Premdas, S/o Bhagirathi, aged about 53 years

All R/o of Village – Khamharmuda, P.H.No.14, Revenue Circle No.-Patewa,
Tehsil & District – Mahasamund (CG)

11. State of Chhattisgarh Through Collector, Mahasamund (CG)
12. Shri Dhurve, Nayab Tehsildar, Mahasamund (CG)

---- Respondents

For Appellant	:	Shri Shobhit Mishra, Advocate
For State	:	Shri Aditya Bharadwaj, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

19/02/2020

Heard on admission.

The present appeal is preferred against judgment and decree dated 29/08/2006 passed by the First Additional District Judge, Mahasamund in Civil Appeal No. 57-A/2005.

2. Learned counsel for the appellant argued that the present case involves a substantial question of law for decision as to whether the suit filed by the respondents / plaintiffs was barred by limitation. He would argue that the defendants have come out with specific plea that the property continued to remain in possession of Dayaldas and thereafter, his sons – Haridas and others. In the matter of dispute with the State, Dayaldas and his sons were contesting in the matter in various Revenue Courts. Learned counsel would submit that as the defendants have come out with a plea of possession and that they alone were making efforts to protect the property on State's action, plaintiffs' suit, long after decision of the highest Revenue Court / Board of Revenue, is barred by limitation as the defendants were asserting their title in the property, which is adverse to that of plaintiffs and therefore, it was for the plaintiff to file suit seeking declaration of title within 12 years of the possession of Dayaldas and thereafter, his sons – Haridas and others.

As far as prayer for framing substantial question of law on the aspect of limitation is concerned, firstly, no such issue was framed before the Trial Court. Secondly, in the background of overwhelming evidence that the disputed pond was constructed by Umendi, common ancestor of plaintiffs and defendants, though, had remained recorded in his name in *missal bandobast* of 1921-22 and khasra panchshala from 1946-1948 and 1951-1952, possession, if any, of any of the parties, does not by itself, without any plea or evidence of ouster, would result in perfection of title by adverse possession.

Another plea that though, the Board of Revenue passed an order on 06/04/1991, the suit was filed only on 05/04/1999, therefore, the suit would, in any case, be barred by limitation, is also not acceptable in law because the order passed by the Board of Revenue does not adjudicate any title dispute between the parties nor an order that the plaintiffs have no possessory title over the property. That order, therefore, does not lead to adverse possession of the defendants against the plaintiffs.

3. Even though, no question of law has been proposed in the memo of appeal, during the course of argument, learned counsel for the appellant strenuously urged before this Court to frame question on the issue as to whether the learned lower Appellate Court was justified in rejecting appellant's application under Order 41 Rule 27 CPC.

4. Learned lower Appellate Court considered and rejected the application taking into consideration that the appellants were in possession of certified copy of the order passed by the Board of Revenue in the year 1998 itself. As the appellant failed to fulfill legal requirement under Order 41 Rule 27 CPC, before a party could be allowed to lead evidence at the appellate stage, no substantial question of law arises for consideration on that aspect.

5. There is also an argument that the plaintiff failed to prove that the pond continued to be joint family property.

Once the parties do not dispute that the pond was constructed by their forefather Umendi, after death of Umendi, the title would devolve upon four sons i.e. Lala, Bhagirathi, Dayaldas and Bhagatram and thereafter, their successors. As against the plaintiffs' plea that there was no partition, the defendants came out with only evasive denial, not even taking a plea of partition. The defendants only vaguely pleaded that the property remained in possession of Dayaldas without explaining the

source and possession in respect of the pond to the exclusion of the plaintiffs.

6. Viewed from any angle, the appeal does not involve any substantial question of law and is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge