

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 228 of 2006**

- Krishna Lal @ Kishan Kumar Tamboli S/o. Badriprasad Tamboli, R/o. Village – Karaihapara, Ratanpur, Tah. – Kota, District – Bilaspur, Chhattisgarh

---- Appellant**Versus**

- Ram Narayan S/o Beniram Thawait, R/o. Village – Karaihapara, Ratanpur, Tah.-Kota, District – Bilaspur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Amand Tamboli, Advocate
For Respondent	:	Shri Ahmed Hussain, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****26/02/2020**

This appeal arises out of impugned judgment and decree dated 28/02/2006 passed by the Additional District Judge, FTC, Bilaspur in Civil Appeal No.6-A/2005 by which, the learned lower Appellant Court reversed the judgment and decree of the Trial Court and dismissed plaintiff's suit.

2. The appellant / plaintiff filed a suit seeking decree of recovery of possession of the disputed property on the pleadings that the property in dispute was purchased by him, vide registered sale deed dated 21/12/1985 from its erstwhile owner, Baldau Prasad. It was also pleaded that earlier, the defendant – Ramanarayan filed a suit seeking declaration of his title in respect of the property in dispute on the basis of unregistered sale deed dated 07/01/1975 and in that suit, though a decree was passed in favour of Ramnarayan, having been challenged in appeal, the Appellate Court reversed the judgment and decree and dismissed the suit of Ramnarayan

holding that Ramnarayan had no title on the basis of an unregistered sale deed and the title was that of Krishnalal (Kishan Kumar), the plaintiff in the present case, who had purchased the property by a registered sale deed. According to the plaintiff, he was dispossessed by the defendant on 21/07/1996 and therefore, he is entitled to recover possession of the property, he being the title holder.

3. The plaintiff's suit was opposed by the respondent / defendant by submitting that the defendant had purchased the property way back in the year 1975 and even if, defendant's suit in earlier round was dismissed, otherwise also, the defendant had perfected his title by adverse possession. As the Appellate Court, vide its judgment and decree dated 18/07/1996, passed in Civil Appeal No.10-A/95, held that though, the title was that of Krishnalal, possession through out remained with Ramnarayan (defendant in the present case).

4. Learned Trial Court framed issues, allowed the parties to lead oral and documentary evidence and decreed the suit of the plaintiff, having found that in the earlier round of litigation between the parties, it has been held that no title can be granted in favour of Ramnarayan on the basis of unregistered sale deed dated 07/01/1975 and it is the plaintiff – Krishnalal, who acquired valid title by virtue of sale deed executed in his favour on 21/12/1985.

5. Aggrieved by the judgment and decree of the Trial Court, respondent / defendant filed appeal. Learned lower Appellate Court reversed the judgment and decree, allowed the appeal and non-suited the plaintiff only on the ground that the plaintiff failed to prove that he was dispossessed by the defendant on 21/07/1996.

6. This appeal was admitted on following sole substantial question of law -
 “Whether the lower Appellate Court was not justified in dismissing the suit by reversing the decree of the Trial Court on the ground that

the plaintiff could not prove the dispossession on the date of cause of action i.e. on 21/07/1996 and in these circumstances, a decree for possession was not possible in his favour ?

7. Learned counsel for the appellant argued that as it has been held, not only in the earlier round of litigation, but also, in the present suit that the plaintiff acquired valid title by virtue of registered sale deed dated 21/12/1985, executed in his favour by one Baldau Prasad, the plaintiff was entitled to decree of possession, irrespective of whether the plaintiff succeeded in proving his dispossession, once the Courts below came to the conclusion that the possession remained with the defendant. He would argue that the plaintiff could be non-suited only when the defendant succeeded in proving that he perfected his title by adverse possession and not on any other ground. In support of this submission, reliance has been placed in the case of **Indira v. Arumugam and anr., AIR 1999 SC 1549.**

8. On the other hand, learned counsel for the respondent would argue that though, in the earlier round of litigation, it was held that the defendant - Ramnarayan did not acquire any valid title on the basis of unregistered sale deed dated 07/01/1975, nevertheless, a finding was recorded in his favour that it was Ramnarayan who remained continuously in possession of the property in dispute. In the present case, the plaintiff nowhere pleaded in the plaint, much less in the suit, as to when he obtained possession of the disputed property after the decree passed by the Appellate Court in earlier round of litigation to straightway come out with a case that he was dispossessed from the property on 21/07/1996, which was rightly disbelieved by the learned lower Appellate Court. On the date of dispossession, even if he had title over the property, the suit for recovery of possession was rightly held to be not maintainable and the suit was, therefore, rightly dismissed. He has also prayed for framing an additional question of law to the effect that the respondent / defendant had otherwise perfected his title by adverse possession as he

remained in possession of the property since long, being more than 12 years and therefore, even if it has been held in the earlier suit, as also in the present suit, that title passed on to the plaintiff by virtue of sale deed dated 21/12/1985, the defendant having perfected his title by way of adverse possession, on this count, plaintiff's suit is also liable to be dismissed.

9. As far as prayer of learned counsel for the respondent for framing an additional question of law is concerned, that does not arise for consideration in view of specific finding recorded by the learned Trial Court on issue no.6. There is abundance of evidence on record that after purchase of the property, vide registered sale deed dated 21/12/1985, serious dispute arose between the plaintiff and the defendant and proceedings under Section 145 / 146 of CrPC were initiated, property was attached and thereafter, Ramnarayan filed a suit for declaration of title. On this basis, learned Trial Court came to the conclusion that Ramnarayan failed to prove uninterrupted possession which is *sine qua non* to establish prescription of title by adverse possession. Therefore, no question of law on that count arises for consideration.

10. Indisputably, the parties had entered into litigation earlier also. Ramnarayan had filed a suit, registered as Civil Case No.30-A/87, in the Court of 3rd Civil Judge, Class II, Bilaspur, praying for declaration of title on the basis of sale deed dated 07/01/1975. That suit was decreed in favour of Ramnarayan. Aggrieved by the said judgment and decree, Krishnalal (plaintiff in the present case) filed an appeal registered as Civil Appeal No.10-A/1995 which was decided vide judgment and decree dated 18/07/1996 (Ex.P/5). In that case, the Appellate Court held that Ramnarayan did not get any title in respect of the property in dispute on the basis of unregistered sale deed dated 07/01/1975 and held that Krishnalal had purchased the property by a registered sale deed from Baldau Prasad and therefore, it is Krishnalal

who will be holding title over the disputed property vide registered sale deed dated 21/12/1985. In that case, the Appellate Court also recorded specific finding that, though, the title passed in favour of Krishnalal, the possession of the property remained only with Ramnarayan.

11. In the present case, plaintiff's suit for recovery of possession is based on title. Even if it is held that the plaintiff failed to prove the date on which, he was dispossessed, in a suit based on title for possession, he is entitled to get decree of possession, which could be denied only when the defendant succeeded in setting up and proving that he has perfected his title by adverse possession. In the case of **Indira** (supra), this legal position was examined and proposition of law enumerated as below -

“5. It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. Unfortunately, this aspect of the matter was missed by the learned Judge and, therefore, the entire reasoning for disposing of the Second Appeal has got vitiated. Only on that short ground and without expressing any opinion on the merits of the question of law framed by the learned Judge for disposing of the Second Appeal, this appeal is allowed. The impugned decision rendered is set aside and the Second Appeal is restored to the file of the High Court with a request to proceed further with the hearing of the appeal with respect to the substantial question aforementioned in accordance with law. No costs.”

12. Therefore, in view of above, the learned lower Appellate Court was not justified in law in non-suiting the plaintiff only on the ground that he failed to prove the date on which he was dispossessed. The defendant had failed to prove that he perfected his title by adverse possession, therefore, the plaintiff's suit based on his title, deserves to be decreed. The substantial question of law is accordingly answered in favour of

the appellant and against the respondent.

13. The impugned judgment and decree passed by the learned lower Appellate Court is set aside. The suit of the plaintiff is decreed as per the decree of the learned Trial Court. Parties shall bear their respective costs. Let appellate decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge