

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 439 of 2009**

Jagmaniya D/o Late Shri Sonsai, W/o Maniram, Aged about 67 years, by caste Uraon, Occupation Agriculture, R/o Village Dwarika Nagar, Tahsil Surajpur, Distt. Surguja, Chhattisgarh.

**--Appellant/Plaintiff**

**Versus**

1. Jogri D/o Late Sonsai, W/o Shivilal, Aged about 65 years, by caste Urao, R/o Village Semra, P.S. Jainagar, Distt. Surguja, Chhattisgarh.

2. Budhiyaro, D/o Late Sonsai, W/o Bhikham, Aged about 52 years, by caste Urao.

3. Bhikham S/o Mundi, Aged about 55 years, by caste Urao.

All are R/o Village Budiya, Thana Pratappur, Distt. Surguja, Chhattisgarh.

4. State of Chhattisgarh, through Collector, Surguja, Ambikapur, Chhattisgarh.

**--- Respondents/Defendants**

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For Appellant           :- Mr. Sushil Dubey and  
                                          Mr. Aman Upadhyay, Advocates

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**25/02/2020**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the

impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court dismissed the suit of the plaintiff finding no merit.

2. Mr. Aman Upadhyay, learned counsel for the appellant/plaintiff would submit that both the Courts below have erred in not accepting the plea of adverse possession projected and established by the plaintiff and are unjustified in further not declaring the sale deed dated 11/03/1991 executed by plaintiff's father Sonsai in favour of defendant No. 3 Bhikham as void and ineffective, as such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3. Sole plaintiff – Jagmaniya filed a suit against her father Sonsai, her two sisters namely Jogri and Budhiyaro and one Bhikham stating *inter alia* that the alienation made on 11/03/1991 by her father Sonsai in favour of defendant No. 3 Bhikham is null and void, rather her father has executed a Will dated 03/01/1984 in her favour, thereby, she has become the title-holder of the suit property to which the then defendant No. 1 Jogri

opposed by filing written statement stating that plaintiff has no right and title over the suit property.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit of the plaintiff holding that plaintiff has failed to establish the plea of adverse possession and the sale made by her father Sonsai in favour of defendant No. 3 vide sale deed dated 11/03/1991 is valid and though the Will dated 03/01/1984 has been executed by Sonsai in favour of plaintiff, but it has become ineffective as the suit property has already been transferred by Sonsai in favour of defendant No. 3 and so, plaintiff is not the title-holder of the suit property which was affirmed by the first appellate Court in the appeal preferred by the plaintiff.

5. Both the Courts below have clearly held that plaintiff has failed to plead and establish the necessary averment for establishing the plea of adverse possession. Plaintiff did not state on what date she came into possession of the suit property, what was the nature of her

possession and whether it was adverse to the knowledge of her father Sonsai as admittedly, he alienated the suit property in favour of defendant No. 3 on 11/03/1991 and the suit was filed on 01/05/1995. Similarly, both the Courts below have held that sale deed dated 11/03/1991 executed by Sonsai in favour of defendant No. 3 is valid.

6. The said finding recorded by both the Courts below negating the plea of plaintiff with regard to adverse possession is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet