

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 47 of 2009**

Vinod Kumar Patel, S/o Late Rupsai Patel, Aged about 27 years, Occupation Agriculturist, R/o Village Shivpur Charcha, Tahsil Baikunthpur, Distt. Korea, Chhattisgarh.

--Appellant/Plaintiff

Versus

1. Smt. Gulabi Devi W/o Late Ramavtar, Aged about 52 years.

2. Premchand S/o Late Ramavtar, Aged about 32 years.
Both R/o Village Beliya, Tahsil Sonhat, Distt. Korea, Chhattisgarh.

3. Smt. Nanki Bai W/o Late Rupsai, Aged about 52 years, R/o Village Shivpur Charcha, Tahsil Baikunthpur, Distt. Korea, Chhattisgarh.

4. State of Chhattisgarh, through Collector, Korea, Chhattisgarh.

---Respondents/Defendants

For Appellant	: Mr. Shaktiraj Sinha, Advocate
For State	: Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/03/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff 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. Shaktiraj Sinha, learned counsel for the appellant/plaintiff would submit that both the Courts below have committed illegality in holding that plaintiff's suit is hit by *res judicata*. He would further submit that plaintiff has also undivided interest in the suit property, therefore, dismissal of the earlier suit filed by his father would not operate as *res judicata* in the suit filed by the plaintiff/son, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.
3. Plaintiff's father namely Rupsai Patel filed a suit for recovery of possession based on title against defendant No. 1's husband and defendant No. 2's father namely Ramavtar which was dismissed on 12/12/1980 (Ex. D/1) holding that though plaintiff's father purchased the suit property by sale deed dated 14/05/1965 but defendants' predecessor in title Ramavtar, being in possession of the suit property, has perfected his title by way of adverse possession. The decree passed in the earlier suit has not been challenged by the plaintiff in the instant suit

and both the Courts below have held that the decree would operate as *res judicata* as the plaintiff is claiming the suit property through his father, parties are same as the earlier suit and the subject matter is also identical to that of the earlier suit, therefore, plaintiff's suit is hit by the principle of *res judicata*.

4. The said finding recorded by both the Courts below that plaintiff's suit is hit by the principle of *res judicata* 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 in this regard.
5. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge