

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.230 of 2010**

Anand Ram S/o Late Sadawa Sinha, aged about 54 years, R/o Pagbandhi, Tahsil Dhamdha, Distt. Durg (CG)

---Appellant/Defendant

**Versus**

Balak Ram S/o Sadaram Sinha R/o Pagbandi, Tahsil-Dhamdha, Distt.-Durg (CG)

---Respondent/Plaintiff

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For Appellant/Defendant:-

Mr.H.B.Agrawal, Senior Advocate  
with Mr.Pankaj Agrawal, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Order on Board**

**22/09/2020**

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard this second appeal preferred by the appellant/defendant on admission and formulation of substantial question of law.
3. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by the defendant affirming the judgment and decree of the trial Court granting decree in favour of the plaintiff for declaration of title and for possession.
4. Mr.H.B.Agrawal, learned Senior Counsel with

Mr.Pankaj Agrawal, learned counsel for the appellant/defendant, would submit that both the Courts below concurrently erred in not holding that the defendant has perfected his title by way of adverse possession by recording a finding which is perverse to the record and the appeal involves substantial question of law for determination.

5. Admittedly, father of the plaintiff and defendant both were brothers. It is admitted position on record that the plaintiff's father purchased the suit land from one Krishna Prasad by sale deed dated 26.12.1955 (Ex.P-1) and came into possession of the suit land. It is the case of the plaintiff that out of love and affection the plaintiff's father allowed the defendant to cultivate two decimals of land as badi, but thereafter the defendant started constructing house by digging foundation, which compelled the plaintiff to file a suit for declaration of title and possession. The defendant set-up a plea that though the suit land was purchased by the plaintiff's father, but in the year 1959 the plaintiff's father sold the part of suit land in his favour for cash consideration of ₹ 100/- and

therefore, he is entitled to retain the possession in view of the provisions contained in Section 53A of the Transfer of Property Act, 1882 (hereinafter called as 'TP Act'). He also set-up a plea of adverse possession.

**6.** The trial Court upon appreciation of oral and documentary evidence available on record by its judgment and decree dated 08.12.2008 decreed the suit holding that the plaintiff is title-holder of the suit land vide Ex.P-1 and the defendant is only having possession on behalf of the plaintiff and he has not perfected title by way of adverse possession as it is his case that he came into possession pursuant to oral sale which is of ₹ 100/- and it was required to be registered by virtue of the provisions contained in Section 54 of the TP Act, which has been affirmed by the first appellate Court.

**7.** Admittedly, the plaintiff's father purchased the suit land on 26.12.1955 vide Ex.P-1 and the defendant was allowed to cultivate the part of the suit land as he was not having his own land and therefore, his possession is permissive possession and that has never ripened into adverse possession. None of the ingredients of

adverse possession is available in the instant case being permissive possession on own showing of the defendant. The trial Court has rightly held that the defendant has failed to prove adverse possession over the land held by the plaintiff and decreed the suit, which has been affirmed by the first appellate Court, in which I do not find any perversity or illegality and even I do not find any substantial question of law for determination of this second appeal.

**8.** Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

**(Sanjay K. Agrawal)**  
**JUDGE**

B/-