

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 336 of 2010**

1. Daulal, S/o. Kamru, aged about 60 years,
2. Janki Bai, W/o. Ram Vishal, aged about 32 years,
Both are by Caste – Teli, R/o. Village – Joba,
Tahsil and Distt.- Mahasamund (C.G.)

----Appellants/defendants**Versus**

1. Manohar, S/o. Than Singh, aged about 60 Years,
Occupation – Agriculturist, R/o. Village – Joba,
Tahsil and Distt.- Mahasamund (C.G.)
(Plaintiff)
2. State of Chhattisgarh, through Collector
Mahasamund, Distt.- Mahasamund (C.G.)

Defendant No. 3**----Respondents/defendants.**

For Appellant : Mr. Vivek Kumar Tripathi, Adv.
For Respondent No.1 : Mr. Manoj Kumar Paranjpe, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/09/2020**

(1) Heard on the question of admission and formulation of substantial question of law in a second appeal preferred by the appellants/defendants.

(2) By the impugned judgment, first appellate Court has reversed the judgment and decree of the trial Court and decreed the suit of the plaintiff filed for permanent injunction restraining the defendants from interfering with the possession of the plaintiff.

(3) Shri Vivek Kumar Tripathi, learned counsel appearing for the appellants/plaintiffs would submit that the first appellate is absolutely unjustified in granting decree in favour of the plaintiff by recording a finding which is perverse to the record and that give rise to the substantial question of law for determination.

(4) The suit land bearing Khasra No. 316, area 2.94 hectare was the abadi land, in which the house was constructed by late Man Singh. Plaintiff is the nephew of Man Singh. Man Singh and Than Singh both are real brothers. Plaintiff's sister is the wife of defendant No. 1 whereas defendant No. 2 is the wife of Ram Vishal (son of plaintiff's sister). Plaintiff filed a suit for permanent injunction stating *inter alia* that after the death of Man Singh and Ram Vishal, defendants started disputing his possession leading to filing of the suit for permanent injunction, in which, the defendants set up a plea the suit house was given by Man Singh to Ram Vishal for living purposes and since the Man Singh has no issue, therefore, they are perfected their title over the suit land by way of adverse possession.

(5) The trial Court dismissed the suit. Plaintiff preferred first appeal there-against. The first appellate Court by its impugned judgment & decree dated 01.10.2020, decreed the suit holding that suit house is constructed on abadi land and in view of the provisions contained in Sections 245 & 246 of the Land Revenue Code, 1959, late Man Singh was the absolute

owner of the suit house, which has been inherited by his nephew i.e. plaintiff herein negating the claim of the defendants that the suit house was given to Ram vishal for living purposes by late Shri Man Singh and, therefore, after the death of Ramvishal, they have perfected their title over the suit land by way of adverse possession; and no title has been proved by the defendants over the suit house and even it has not been established that he (Ramvishal) is the adopted son of late Shri Man Singh to whom the property belonged.

(6) The first appellate court, upon appreciating the oral and documentary evidence on record, has clearly reached to the conclusion that plaintiff being the Man Singh's nephew would succeed the property against the defendants and the suit house was given by late Man Singh to Ramvishal (son of plaintiff's sister) only for staying purposes. Thus, the finding recorded by first appellate Court the the plaintiff is possession and title holder of the suit house and defendants have no right and title over the suit house and, thus, the plaintiff is entitled for injunction is a finding of fact based on material available on record, which is neither perverse nor contrary to the record.

(7) In view of above, the first appellate court after re-appreciating the entire evidence available on record in its proper perspective has reversed the finding and decreed the plaintiff's suit and I do not find it either perverse or contrary to record and no question of law

much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

