

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.498 of 2018****Order Reserved on :10.02.2020****Order Delivered on:23.03.2020**

Smt.Satrupa Bai W/o Banshilal Rajput Aged About 45 years,
R/o Fish Market Supela, Tah. & Distt. Durg (CG) Civil &
Revenue Distt. Durg (CG)

----- Appellant/Defendant**Versus**

- 1(A) Avtar Singh S/o Late Antar Singh Gumber Aged about 44 years
- 1(B) Surendra Singh S/o Late Antar Singh Gumber Aged about 40 years
- 1(C) Bhupendra Singh S/o Late Antar Singh Gumber, Aged about 35 years
R-1 to 3 R/o Raipur Road, Bemetara, Tah. & Distt. Bemetara (C.G.)
- 1(D) Smt.Kamlesh Kaur Wadhwa W/o Sukhbir Singh Wadhwa Aged about 47 years, R/o Udit Nagar Ashoka Hotel Raurkela Orrisa
- 1(E) Smt.Sudesh Shaluja W/o Ashok Shaluja Aged About 45 years R/o Keshav Apartment Behind Shiva Temple Distt. Bilaspur (CG)
- 1(F) Smt.Mamta Tuteja W/o Satbir Singh Tuteja Aged about 38 years R/o Rozi Garments, AC Market, 1st Floor, Hatan Road, Aasansole, West Bengal
- 1(G) Smt.Jugni Khalsa W/o Narendra Singh Khalsa Aged about 34 years, R/o Mahasamund Distt. Mahasamund (CG)
- 1(H) Smt.Vimla @ Babli W/o Kamaljeet Aajmani Aged 36 years, R/o Raipur Road, Bemetara, Distt. Bemetara (CG)
- 1(I) Ku.Samta Gumber D/o Late Antar Singh Gumber, Aged About 32 years, R/o Raipur Road, Bemetara, Distt. Bemetara (CG)
2. Satish Kumar S/o Narayana Das Aged About 42 years, R/o Cinema Line, In Front of Krishna Talikes, Medical Stores, Rajnandgaon (CG)

----- Respondents/Plaintiffs

For Appellant/Defendant : Mr.Vikas Shrivastava, Advocate
For Respondents No.1(A), (C) & I):

Ms Sharmila Shinghai, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Heard on admission and formulation of substantial question of law in a second appeal preferred by the appellant/defendant.
2. By the impugned judgment and decree, the Firth Additional District Judge, Durg, in Civil Appeal No.14A/2015 affirmed the judgment and decree dated 24.7.2014 passed by the Third Civil Judge Class-I, Durg, in Civil Suit No.47A/2012 decreeing the suit of the plaintiffs.
3. Mr.Vikas Shrivastava, learned counsel for the appellant/defendant, would submit that both the Courts below have concurrently erred in holding that the plaintiffs have proved their title over the suit land and they are entitled for decree of declaration of title and possession after removing the construction made by the defendants, by recording a finding which is perverse to record and as such, the appeal deserves to be admitted for hearing by formulating the substantial question of law for determination.
4. Original plaintiff NO.1-Atar Singh, his wife plaintiff

No.2-Smt.Shanti Rani and plaintiff No.3-Satish Kumar jointly filed a suit against the defendants stating inter-alia that Anil Kumar, son of plaintiff No.1 and plaintiff No.3 have purchased the suit land i.e. abadi land admeasuring 14x30 ft.=420 sq.ft. from one Bounda Singh on 26.12.1975 vide Ex.P-1 by making payment of cash consideration of ₹ 3000/- and came in possession over the suit land. On behalf of the plaintiffs, plaintiff No.1 Atar Singh was looking after the suit land, but the defendants tried to make temporary wall and tried to dispossess the plaintiffs, to which, the plaintiffs lodged FIR on 12.6.1998, in which the defendants were prosecuted for offence under Section 447 of the IPC, but ultimately extending the benefit of doubt, they were acquitted on 30.4.2002 and thereafter the plaintiffs filed a suit on 23.9.2002 for declaration of titler and possession after dismantlement the construction made by the defendants, in which the defendants set-up a plea that Bounda Singh has never sold the suit land in favour of Anil Kumar, son of plaintiff No.1 and plaintiff No.3, as such, the plaintiffs are not entitled for declaration and possession. The trial Court upon evaluation of oral and documentary evidence available on record decreed the suit holding that Anil Kumar, son of plaintiff No.1 and plaintiff No.3 have jointly

purchased the suit land i.e. abadi land admeasuring 14x30 ft.= 420 sq.ft. by registered sale deed dated 26.12.1975 (Ex.P-1) and when the defendants tried to encroach upon the suit land, FIR was lodged though the defendants were acquitted, but since the plaintiffs have purchased the suit land by registered sale deed dated 26.12.1975 (Ex.P-1) and came in possession over the suit land and they are title-holders and since they have been dispossessed by the defendants, they are entitled for decree of declaration of title and possession and as such, the suit for possession filed on 23.9.2002 after the judgment of criminal Court on 30.4.2002 is not barred by limitation and granted decree for declaration of title and recovery of possession in favour of the plaintiffs, which was assailed by the defendants, but defendant No.1-Yashwant Singh has died during during pendency of the appeal and appeal filed by defendant No.2-Satrupa Bai was dismissed by the first appellate Court affirming the judgment and decree of the trial Court.

5. Finding recorded by two Courts below that Anil Kumar, son of plaintiff No.1 and plaintiff No.3 has purchased the suit land by registered sale deed dated 26.12.1975 (Ex.P-1) from Bounda Singh and came in possession over the suit land and they were dispossessed by the defendants, for which FIR was lodged on 12.6.98 and as

such, the plaintiffs are title-holders of the suit land is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding and even I do not find any substantial question of law for determination of this second appeal.

6. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K.Agrawal)

Judge

B/-