

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.301 of 2012**

- Rajendra Prasad, S/o Khoman Lal Chandrakar, Aged About 43 Years, R/o Sisdevvari, Tahsil Palari, Dist. Raipur, Chhattisgarh

----- Appellant**Versus**

1. Dwarika Prasad, S/o Shriram Chandrakar, Aged About 80 Years
2. Goverdhan, S/o Dwarika Prasad, Aged About 42 Years
3. Khelan, S/o Dwarika Prasad, Aged About 45 Years
4. Rajendra, S/o Chhedilal, Aged About 25 Years
5. Mohan, S/o Birij Chandrakar, Aged About 50 Years
6. Ishwari, S/o Kishun, Aged About 40 Years
7. Badri, S/o Shriram, Aged About 60 Years

All R/o Village Sisdevvari, Tahsil Palari,
District Raipur, Chhattisgarh

8. State of Chhattisgarh, Through Collector, Raipur, Chhattisgarh [Now District Balouda Bazar (C.G.)]

----- Respondents

For Appellant

Mr. Vishnu Koshta and Mr.
Shobhit Koshta, Advocates

For Respondent-State

Mr. Sunil Otvani, Addl. AG

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

06/07/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff.
2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellant/plaintiff vide judgment and decree dated 25.07.2012 passed by the learned 2nd Upper District Judge, Baloda Bazar, District Raipur (C.G.) in Civil Appeal No.112A/2011 affirming the judgment and decree of the Trial Court dated 04.07.2011 passed by the learned Civil Judge Class-II, Baloda Bazar (C.G.) in Civil Suit No.53-A/2010, whereby the learned Trial Court dismissed the suit preferred by the appellant/plaintiff.
3. Mr. Koshta, learned counsel for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in holding that Ex-P/1 is agreement to sale, pursuant to which the appellant came in possession of the suit land bearing Khasra

No.967/2, area 0.076 hectare, as such the possession is permissive and the plaintiff is not entitled for decree of declaration of title and permanent injunction, as the plaintiff has perfected the title by way of adverse possession by recording a finding perverse to the record. As such, the appeal involves substantial question of law for determination and deserves to be admitted for hearing.

4. I have heard learned counsel for the appellant/plaintiff, considered his submissions made herein-above and also went through the records with utmost circumspection.
5. Admittedly, the defendant No.1 was the owner of the suit property. He is said to have executed the agreement to sale on 07.02.1988 (Ex-P/1) and delivered possession to the plaintiff upon receipt of Rs.10,380/- but thereafter he failed to execute the sale deed. The plaintiff filed a suit on 14.08.2010 for declaration of title and permanent injunction stating inter-alia that though he has come in

possession vide Ex-P/1 dated 07.02.1988 but his possession has ripened into the adverse possession, as such he is entitled for declaration of title and permanent injunction, which the defendant Nos.1 & 3 to 7 opposed by filing written statement inter-alia stating that no agreement has been executed, as such the plaintiff has no right and title over the suit land.

6. The Trial Court upon appreciation of oral and documentary evidence available on record dismissed the suit holding that the plaintiff has not perfected his title by way of adverse possession, which the First Appellate Court has also affirmed.
7. Both the Courts below have rightly held that the plaintiff has not perfected his title by way of adverse possession, particularly in view of the fact that it is case of the plaintiff that he came in possession pursuant to agreement to sale (Ex-P/1) and it is well settled law that possession pursuant to the agreement to sale is always permissive possession and cannot be said to be adverse

possession against the true owner. (See : **Mohan Lal (deceased) through his LRs Kachru and others vs Mirza Abdul Gaffar and another¹**). The said finding recorded by the two Courts below is the finding of fact based on the material available on record, which is neither perverse nor contrary to record.

8. I do not find any substantial question of law for determination in this second appeal. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala

1 (1996) 1 SCC 639