

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.237 of 2012**

1. Somarsay, S/o Vishwyamar, Caste Gond, Aged about 43 years
2. Jaykaran, S/o Vishwyamar, Caste Gond, aged about 65 years
3. Devsharan, S/o Shankar, Caste Gond, aged bout 70 years
4. Dhansay, S/o Ramdhan, Caste Gond, aged about 45 years
5. Indrapal, S/o Mansay, Caste Gond, aged about 60 years
6. Anrup, S/o Dalpratap, caste Gond, aged about 40 years

All are cultivators and residents of Village Modipara, Tahsil Baikunthpur, District Koriya (C.G.)

----- **Appellants**

Versus

1. Hingo Bai, Wd/o Motilal, Caste Gond, aged about 50 years, Housewife, R/o Village Modipara, Tahsil Baikunthpur, District Koriya (C.G.)
2. State of Chhattisgarh, through the Collector, Koriya, District Koriya (C.G.)

----- **Respondents**

For Appellants	Mr. A. K. Shukla, Advocate
For Respondent-State	Mr. Sunil Otwani, 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 appellants/plaintiffs.
2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellants/plaintiffs vide judgment and decree dated 25.04.2012 passed by the learned First Upper District Judge, Manendragarh, Baikunthpur, District Koriya (C.G.) in Civil Appeal No.14A/2011 affirming the judgment and decree of the Trial Court dated 30.09.2010 passed by the learned Civil Judge Class-II, Baikunthpur, District Koriya (C.G.) in Civil Suit No.22-A/2009, whereby the learned Trial Court dismissed the suit preferred by the appellants/plaintiffs for declaration of title and permanent injunction.
3. Mr. Shukla, learned counsel for the appellants/plaintiffs, would submit that both the Courts below have committed a legal error in dismissing the suit of the plaintiffs by

recording a finding perverse to the record and by holding that the plaintiffs have not perfected their title by way of adverse possession, therefore, the plaintiffs have no right and title over the suit land. 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. The suit land bearing Khasra No.341/14, 341/15, 341/17, total area 1.219 hectare, new Khasra No.479, area 1.340 hectare is admittedly the government land, in which the plaintiffs claimed declaration of title and permanent injunction by filing a suit stating that Motilal, the husband of the defendant No.1, illegally got his name mutated in the revenue records, whereas he never remained in possession. As such, the plaintiffs are in possession and title be declared and permanent

injunction be granted in their favour, which was opposed by the defendant No.1 by filing her written statement stating that the patta was granted in favour of her husband Motilal and he remained in possession of the suit land and in the year 2009, the plaintiffs have cultivated the suit land forcibly, therefore, the suit deserves to be dismissed.

6. The Trial Court upon appreciation of oral and documentary evidence available on record dismissed the suit holding that the plaintiffs have failed to prove their possession and no decree can be granted on the basis of adverse possession, whereas the patta was granted in favour of defendant No.1's husband Motilal, as such the plaintiffs are not entitled for decree, which has also been affirmed by the First Appellate Court.

7. Both the Courts below have concurrently recorded a finding that the patta was granted in favour of Motilal, the husband of defendant No.1, and he remained in possession for very long time and in the year 2009, the plaintiffs have dispossessed the defendant No.1,

therefore, the plaintiffs are not entitled for declaration of title and permanent injunction. First Appellate Court has not only recorded a finding that the suit land is the government land, in which the defendant No.1's husband was in possession for very long time for 30-40 years and after his death, the defendant No.1 is in possession and the plaintiffs are in possession only for last 3 years, but also recorded a finding that the plea of adverse possession is not proved and even otherwise no relief has been sought against the Government, while the suit land is the government land and the patta of the suit land has already been granted in favour of Motital Lal, the husband of defendant No.1, as such the plaintiffs are not entitled for any relief.

8. The findings recorded by the two Courts below holding that the suit land is the government land, in which the plaintiffs have neither strictly raised the plea of adverse possession nor they have proved the adverse possession for last 30 years, whereas they are in possession only for last 3 years and the patta

has already been granted in favour of Motital Lal, the husband of defendant No.1, therefore, they are not entitled for decree as the findings of fact based on the material available on record, which are neither perverse nor contrary to record.

9. 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