

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 424 of 2018****Reserved on 03.02.2021****Pronounced on 11.02.2021**

1. Ashok Kumar S/o Late Shri Kanhaiya Aged About 65 Years R/o Village Kududand Nehru Nagar, Bilaspur, Tehsil And District- Bilaspur, Chhattisgarh.
2. Santosh Kumar S/o Late Shri Kanhaiya Aged About 36 Years R/o Village Kududand Nehru Nagar, Bilaspur, Tehsil And District- Bilaspur, Chhattisgarh.
3. Munnalal S/o Late Shri Kanhaiya Aged About 38 Years R/o Village Kududand Nehru Nagar, Bilaspur, Tehsil And District- Bilaspur, Chhattisgarh.
4. Melu Singh Mnadavi S/o Narottam, aged about years, R/o Village Kududand Nehru Nagar, Bilaspur, Tehsil And District- Bilaspur, Chhattisgarh.

---- Appellants/Defendants**Versus**

- Gopi Chanda Bajaj S/o Shri Dayal Das Aged About 48 Years R/o Rajendra Ngar, Bilaspur, Tehsil And District- Bilaspur, Chhattisgarh.

--- Respondent/Plaintiff

For Appellants:	: Shri M.D. Sharma appears along with C.D. Sharma, Advocate.
For Respondent:	: Shri Prafull N Bharat appears along with Shri Keshav Dewangan, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
CAV Judgment/order

1. This appeal has been preferred by the defendants under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC), questioning the legality and propriety of the judgment and decree dated 03.05.2018 passed in Civil Suit No 27-A/2016, whereby the trial Court has decreed the plaintiff's claim for possession and injunction. The parties to this appeal shall be referred hereinafter as per their description in the Court below.
2. Briefly stated the facts of the case are that the plaintiff instituted a suit

claiming possession and injunction with regard to the property in question admeasuring 20' x 75' (1500 square feet) of land situated at Village Kududand, Tahsil and District Bilaspur described in red colour in plaint Schedule-A, which is the part of the Khasra No.357/8 admeasuring 3750 square feet. According to the plaintiff, it was purchased by him from one Smt. Suman Lata Awasthi and a registered deed of sale dated 11.05.1981 was executed and the revenue papers were accordingly mutated in his name. It is pleaded further that the defendants had made an attempt to encroach his alleged land by putting a temporary shed (Thela) in the year 2003 and threatened to implicate him in connection with the offence punishable under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 when it was resisted by him. Further contention of him is that owing to the alleged illegal act of the defendants, a proceeding under Section 250 of the Chhattisgarh Land Revenue Code 1959 (hereinafter referred to as the 'Code of 1959') was initiated for removal of the alleged encroachment and in order to protect their possession, a suit for declaration of title and injunction was instituted by them which was registered as Civil Suit No. 108-A/2009. It is pleaded further that the said suit was dismissed by the trial Court vide its judgment and decree dated 09.12.2009 and the appeal preferred there against was also dismissed by the Appellate Court vide judgment and decree dated 21.04.2014 in Civil Appeal No. 18-A/2013 and has thus attained its finality by efflux of time. It is pleaded further that despite the refusal of their claim, the defendants have started a pakka construction over the alleged suit land, and therefore, he has

been constrained to institute a suit in the instant nature.

3. While denying the execution of the alleged registered deed of sale dated 11.05.1981, the defendants have raised a counter claim by claiming declaration of their title and injunction by submitting, inter alia, that their predecessor-in-interest, namely, Kanhaiya Lal had worked as a *Kamiya* (Halwaha) to the said Smt. Suman Lata Awasthi and had constructed a house over the suit land and was residing over there and after his sad demise, they (defendants) have been residing without any obstruction being raised by said Smt. Suman Lata Awasthi and have thus, perfected their interest by way of adverse possession. It is pleaded further that in an earlier suit the plaintiff herein (who was the defendant in the said suit) had failed to raise a counter claim, therefore, he is precluded from raising his interest over the suit land. The claim of him as made, therefore, deserves to be dismissed.
4. The trial Court, after considering the evidence led by the parties, arrived at a conclusion that a part of Khasra No. 357/8 admeasuring 3750 square feet of land was purchased by the plaintiff under the registered deed of sale dated 11.05.1981 (Ex. P-4) from one Smt. Suman Lata Awasthi. It held further that part of it, i.e., admeasuring 1500 square feet (20' x 75') was encroached by the defendants by constructing a house illegally and in consequence decreed the claim. This is the order which has been impugned by way of this appeal.
5. Shri M.D. Sharma, learned counsel appearing for the Appellants/Defendants submits that the trial Court has committed an illegality in holding that the plaintiff has acquired his interest over the land bearing Khasra No. 357/8 admeasuring 3750 square feet under

the registered deed of sale dated 11.05.1981 and thereby erred further in holding that the part of it, i.e., 20' x 75' (1500 square feet) was encroached by the defendants. Further contention of him is that no sale as such was ever executed by said vendor in favour of the plaintiff and contended further that the predecessor-in-interest of the defendants, namely, Kanhaiya Lal was in possession by constructing a house and upon his death the defendants have been in continuous possession and have acquired their interest by way of adverse possession.

6. On the other hand, Shri Bharat learned counsel for the Respondent No.1/Plaintiff has supported the impugned judgment and decree as passed by the trial Court.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. Ex.P-6 is the Jama-Bandi (Mishal Bandobast) for the year 1928-29 and, a bare perusal of it would show that one Ratan Singh S/o Mohar Singh was shown to be in possession over the land bearing Khasra No. 357 admeasuring 3.43 acres and by virtue of a registered deed of sale, dated 04.06.1968 (Ex.P-8), the plaintiff's vendor namely Smt. Suman Lata Awasthi and others had acquired their valid title with regard to the land bearing Khasra No. 357/1 admeasuring 1.63 acres from one Gaukaran, who was the son of said Ratan Singh. It appears further that the part of Khasra No.357/8 admeasuring 3750 square feet of land has been purchased by the plaintiff from said Smt. Suman Lata Awasthi under the registered deed of sale dated 11.05.1981 (Ex. P-4) and, a part of it, i.e., 20' x 75' (1500 square feet) marked in red colour in plaint Schedule-A was encroached by the defendants by constructing a house over it. It

appears further that a proceeding was, therefore, initiated for its removal by the plaintiff under Section 250 of the Code of 1959. It appears further that immediately upon the initiation of the said proceeding, a suit being Civil Suit No.108-A/2009 was instituted by the defendants claiming declaration of title and injunction with regard to the land bearing Khasra No. 357. It was held by the trial Court in the said suit while entertaining the issue no. 6 that the defendants have no right to question the validity of the alleged sale (Ex. P-4), purported to have been executed by said Smt. Suman Lata Awasthi in favour of the plaintiff and while entertaining the Issue No. 4, the possession of the defendants was found as that of encroachers. The said suit was accordingly dismissed vide judgment and decree dated 09.12.2009 (Ex. P-1) in Civil Suit No.108-A/2009 and, the appeal preferred there against was also dismissed by the Appellate Court vide its judgment and decree dated 11.04.2014 in Civil Appeal No. 18-A/2013 and which has attained its finality by efflux of time.

9. In view of the aforesaid background, it is evident that the plaintiff has acquired his valid right, title and interest by virtue of the alleged registered deed of sale dated 11.05.1981 (Ex. P-4) in respect of the part of Khasra No. 357/8 admeasuring 3750 square feet and the part of it, i.e., the suit land, admeasuring (20' x 75') 1500 square feet has been encroached by the defendants by raising a house over it. In so far as the counter claim of the defendants seeking declaration of title and injunction based upon the adverse possession is concerned, the same has, however, been rejected by the trial Court on 27.06.2017 in exercise of the powers enumerated under Order 7 Rule 11 of C.P.C. as

the ownership of theirs had already been declined in their earlier instituted suit, as observed herein above.

10. In view of the above, I do not find any infirmity in the judgment and decree passed by the trial Court and the appeal, being devoid of merits, is accordingly dismissed. No order as to costs.
11. A decree be drawn accordingly.

Sd/-
(Sanjay S.Agrawal)
JUDGE

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