

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.606 of 2019

Ashok Valecha, S/o Pratap Valecha, aged about 50 years, R/o Adarsh Nagar, Kanker, Police Station & Tahsil Kanker, District North Bastar Kanker (C.G.)

(Defendant)
---- Appellant

Versus

1. Manish Gandhi, S/o Prakash Chandra Gandhi, aged about 39 years, R/o Amapara, Kanker, Police Station & Tahsil Kanker, District North Bastar Kanker (C.G.)

(Plaintiff)

2. Ganesh Mansani, S/o Gulabchand Mansani, aged about 42 years, R/o Amapara, Kanker, Police Station & Tahsil Kanker, District North Bastar Kanker (C.G.)

(Defendant)
---- Respondents

For Appellant / Defendant: Mr. D.N. Prajapati, Advocate.
For Respondent No.1 / Plaintiff: Mr. Shobhit Koshta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/03/2021

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the appellant herein / defendant.
2. By the impugned judgment & decree, the first appellate Court has dismissed the appeal preferred by the defendants affirming the judgment & decree of the trial Court decreeing the suit filed by the plaintiff.
3. Mr. D.N. Prajapati, learned counsel appearing for the appellant herein / defendant, would submit that both the Courts below have concurrently erred in holding that the defendants have failed to prove adverse possession over the suit land and further committed error in holding that no agreement to sale was executed by the plaintiff in favour of the

defendants to sell the suit accommodation and thereby decreed the suit in favour of the plaintiff by recording a finding perverse to the record and the appeal deserves to be admitted by formulating substantial question of law.

4. The trial Court has clearly held that the plaintiff is title holder of plot No.85/4, area 258 sq.mtr. (subsequent plot No.85/5) out of which he has given one block to the defendants on the basis of license to stay for some time. The trial Court further held that the defendants have failed to prove any agreement to sale executed by the plaintiff in their favour for the said accommodation for a consideration of ₹ 3,00,000/- vide sale deed dated 15-4-2008, out of which ₹ 2,00,000/- have been allegedly paid by them to the plaintiff and thereby decreed the suit which has been affirmed by the first appellate Court. As such, the plaintiff is held to be the title holder of the suit accommodation i.e. 258 sq.mtr. and it has been by the two Courts below that one block of the suit accommodation has been given to the defendants for their residence on the basis of license. The defendants have taken the plea of adverse possession, but they have failed to prove the said plea of adverse possession. Further, the defendants have taken the plea that though there is agreement to sale by the plaintiff in favour of the defendants for sale of the suit accommodation for a cash consideration of ₹ 3,00,000/-, but the plaintiff has failed to execute the sale deed, which has also not been found established. As such, there is concurrent finding recorded by the two Courts below that the defendants have failed to establish adverse possession and there is also concurrent finding that there is no agreement to sale by the plaintiff in favour of the defendants. The concurrent findings of both the Courts below are neither perverse nor contrary to the record.
5. It is also well settled legal position that title on the basis of adverse possession and plea of Section 53A of the Transfer of Property Act, 1882

based on agreement to sale both cannot dwell together and they are inconsistent to each other. In the matter of Mohan Lal (deceased) through his LRs. Kachru and others v. Mirza Abdul Gaffar and another¹ it has been held as under: -

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

6. Finally, the concurrent findings of two Courts below holding that the defendants have failed to prove their adverse possession over the suit accommodation and that there is no agreement to sale in respect of the suit land in favour of the defendants by the plaintiff. Plea of adverse possession and plea based on Section 53A of the Transfer of Property Act, 1882, both cannot stand together as held by their Lordships of the Supreme Court in Mohan Lal (supra). The aforesaid findings recorded by the two Courts below are findings of fact based on the evidence available on record, it is neither perverse nor contrary to record. I do not find any substantial question of law for admission in this second appeal.
7. Concludingly, judgments & decrees of both the Courts below are affirmed and the appeal is dismissed *in limine*, without notice to the other side, as no substantial question of law is involved. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 (1996) 1 SCC 639