

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 8 of 2015**

(Arising out of the judgment and decree dated 13.11.2014 passed by the Second Additional District Judge, Durg (CG) in Civil Suit No.22-A/2013)

1. Shantilal Kumat S/o Late Hiralal Ji Kumat, Aged About 62 Years Caste Jain, Profession- Business, R/o Navkar Parisar, Pulgaon Nala Ke Pass Durg, Chhattisgarh
2. Smt Aashadevi Bewa Late Tarachand Hiralal Kumat, Aged About 50 Years Caste Jain, Profession Housewife
3. Ajay Jain S/o Late Tarachand Kumat Age 36 Years Caste Jain, Profession Business,
4. Abhay Jain S/o Late Tarachand Kumat Aged 34 Years Caste Jain, Profession Business,
No.2 to 4 R/o 104, Maruti Enclave, Tatibandh Raipur, Tehsil And District Raipur, Chhattisgarh,
5. Ramesh Kumar S/o Late Hiralal Age 57 Years Caste Jain, Profession Business, R/o Navkar Parisar, Near Pulgaon Nala, Durg, Chhattisgarh
6. Subhash Chand S/o Late Hiralala Ji Kumat Aged 54 Years Caste Jain, Profession Business, R/o Navkar Parisar, Near Pulgaon Nala, Durg, ChhattisgarhPlaintiffs

---- **Petitioner**

Versus

1. Bhujan Singh S/o Madhorao Aged About 90 Years R/o Tikarapara, Raipur Tehsil And District Raipur, Chhattisgarh,
2. Hirasingh S/o Madhovrao, Aged About 85 Years R/o Tikarapara, Raipur Tehsil And District Raipur, Chhattisgarh
3. State Of Chhattisgarh, Through District Collector, Exofficio Secretary, District Office, Durg, ChhattisgarhDefendants

---- **Respondent**





For Appellant	Mr. Prafull Bharat, Senior Advocate with Mr. Chetan Singh and Mr. Ashish Surana, Advocates
For Respondents 1 & 2	None
For Respondent No.3 / State	Mr. Ashutosh Mishra, Panel Lawyer

**DB.: Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Deepak Kumar Tiwari**

Judgment on Board by Goutam Bhaduri, J.

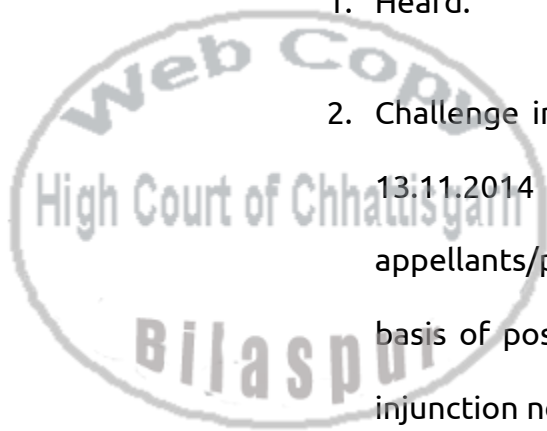
9/3/2022

1. Heard.

2. Challenge in this appeal is to the judgment and decree dated 13.11.2014 against dismissal. The suit was filed by the appellants/plaintiffs for declaration and to confer title on the basis of possession and prayer was also made for permanent injunction not to disturb the possession.

3. In this appeal, respondents 1 & 2 remained ex-parte despite service of notice by way of publication.

4. The brief resume of the facts are that the suit was filed by the appellants/plaintiffs for declaration and to confer title in their favour on the basis of possession along with the prayer for permanent injunction not to disturb the possession on the basis of agreement dated 10.2.1984- Ex.P/1. By such agreement, they agreed to purchase the land bearing Khasra No.487 area admeasuring 0.303 hectare situated at village Durg from Bhujan Singh S/o Madhorao and Hirasingh S/o Madhorao (respondents





1 & 2 herein). Accordingly, an amount of sale consideration of Rs.15,500/- was paid and the possession of the land was handed over to the appellants. As per the agreement, the sale deed was to be executed by seller after obtaining necessary revenue documents within a period of 2 months from the date of execution of the agreement. Eventually, the sale deed was not executed and the appellants/plaintiffs continued their possession over the land by virtue of such agreement of sale. Lastly, on 4.5.2012, a legal notice-Ex.P/2 was issued to the respondent-defendants, wherein, objection with respect to their possession was invited and in the alternate, it was stated that in the event of no response to such notice, the plaintiffs would be deemed to be the owner of the property. Even after the notice, since no response was made, a civil suit was filed by the appellants on 4.2.2013. The trial Court dismissed the suit. Hence, this appeal.

5. Mr. Prafull Bharat, learned Senior Counsel appearing for the appellants, would submit that the trial Court completely erred in holding that the declaration of title cannot be granted as it failed to see that a prayer for permanent injunction was also prayed for. He referred to the law laid down in the matter of **Rame Gowda (Dead) by LRs Vs. M. Varadappa Naidu (Dead) by LRs. and another¹** and would submit that when the plaintiffs/appellants were in possession of the subject land on the basis of the agreement, it would be deemed to be a "settled possession" and such "settled possession" cannot be disturbed by anyone and also, such possession would be against

¹(2004) 1 SCC 769



the public at large. Lastly, he submits that the trial Court ought to have considered the aspect that the possession of the plaintiffs was in pursuance of the agreement in the year 1984 and as such, the injunction was necessitated. He would further submit that the plaintiffs were in possession of the said land and were holding it to the knowledge of the owner from 1984, which has passed the period of limitation of 12 years and consequently, declaratory decree ought to have been passed in their favour.

6. There is no representation on behalf of respondents 1 & 2 despite service of notice. We heard Mr. Prafull Bharat, learned Senior Counsel appearing for the appellants and Mr. Ashutosh Mishra, learned Panel Lawyer appearing for the State/respondent No.3, on merits.

7. Perusal of the evidence filed would show that initially, respondents 1 & 2 entered into an agreement dated 10.2.1984 -Ex.P/1 with the appellants, whereby, they agreed to sell the land bearing Khasra No.487 admeasuring 0.303 hectare situated at village Durg for sale consideration of Rs.15,500/-. In lieu of such consideration paid, the possession of the land was handed over to the plaintiffs/appellants on that date. The agreement further purports that within a further period of 2 months from the date of execution of the agreement i.e. 10.2.1984, the seller would obtain the necessary revenue papers and thereafter, would execute the sale-deed in favour of the appellants.





8. According to the statement of plaintiff Sohan Bai (since deceased), by virtue of agreement dated 10.2.1984, the plaintiffs/appellants came into possession of the land and the entire sale consideration was paid. She also stated that they are in possession since 10.2.1984 and till date, they have become the owners. She further stated that her husband and sons have tried to search out the sellers to get the sale-deed executed for the reason that the entire sale consideration was received but they could not find them. She further stated that from 10.2.1984, since 12 years have passed, the plaintiffs have become the owners in respect of the said property and therefore, an application was filed before the Tehsildar to get their names mutated but it was advised by the revenue authorities that a decree may be obtained from a Civil Court and subsequently, the civil suit was filed. Further evidence has been adduced that the notice-Ex.P/2 was sent, but it was returned without service. Witness Kapoor Chand Jain (PW-2) have also given the same statement in similar line that the entire sale consideration was paid and since then, the plaintiffs are in possession. Likewise, witnesses Ajay Kumar, (PW-3) Ramesh Kumar (PW-4) and Ramdeen (PW-5) have made similar statements except it was added by independent witness Ramdeen that the plaintiffs are in possession of the subject land without any disturbance.
9. Reliance placed by learned counsel for the appellants in **Rame Gowda (supra)**, is an admitted settled position of law. In the said judgment, the phrase "settled possession" was enunciated.





The “settled possession” is one which is (i) effective (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The Supreme Court settled that the phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket.

10. Here, in this case, the factum of possession is not in dispute. By virtue of agreement dated 10.2.1984, the plaintiffs were placed in possession in lieu of an agreement. The question which looms large is as to what was the cause of action which was available to the plaintiffs to bring the suit for declaration to declare their title on the basis of possession for last 12 years and permanent injunction. To demonstrate the same, the plaintiffs heavily relied on the notice-Ex.P/2. A perusal of the notice-Ex.P/2 though returned unserved would reveal the fact that the settled possession of the plaintiffs was not disturbed by anyone whatsoever. Therefore, if the plaintiffs are in possession, in absence of any disturbance, the inference cannot be drawn that the possessions are being disturbed and such right of possession would be a right in rem.

11. Now reverting back to the nature of claim for which the suit was filed, on reading of the plaint, it would reveal that a declaratory decree was sought for that the plaintiffs be declared owner of the land in question on the basis of their possession for last 12 years. The nucleus of the issue, the pith and substance lies in the agreement dated 10.2.1984- Ex.P/1. By virtue of the said agreement, the plaintiffs were in possession and an agreement





for sale was executed. In this case, when the agreement for sale is executed and the purchasers are in possession, the possession would be covered under Section 53A of the Transfer of Property Act, 1882 (in short "the Act, 1882"). For sake of brevity, Section 53A of the Act, 1882 is reproduced herein below :

"53A- Part performance – Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

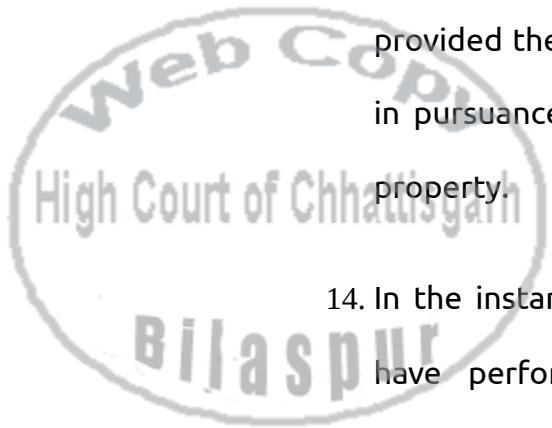




12. Admittedly, no suit was filed within a period of 3 years from the year 1984 under Article 54 of the Indian Limitation Act, 1963 for specific performance of sale-deed. The question therefore reverts back as to whether the declaratory decree can be granted on the basis of agreement qua the possession, which the plaintiffs are enjoying since 1984.

13. Section 53A of the Act, 1882 covers the doctrine of part performance and it is an equitable doctrine. The object of this section is to permit the transferor or his successor from taking any advantage on account of non-registration of the documents provided the transferee has performed his part of contract and in pursuance thereof, has taken possession of the immovable property.

14. In the instant case, the purchaser i.e. the appellants/plaintiffs have performed their part of contract and are holding possession of the land. The said Section applies even when the specific performance of a contract is barred or the contract is unenforceable. Therefore, a plain reading of Section 53A of the Act, 1882 makes it clear that this Section protects only the possession of the appellants/plaintiffs. The whole controversy revolves around Section 53A of the Act, 1882, where the parties concerned in pursuance of an exchange of amount of consideration were put to possession. The equity on which this Section rests is doctrine of part performance and confers no title, therefore, this Section cannot be utilised for perfection of title. The right conferred under Section 53A of the Act, 1882 is a right available only to transferee to protect his possession and





the Section so framed has to impose a statutory bar on the transferor but it confers no active title on the transferee. An exchange by which a person is in possession by virtue of Section 53A of the Act, 1882, does not amount to ownership of the property. Hence, it is clear that equitable doctrine of part performance would not create any right in favour of the plaintiffs to confer the ownership of the property by a declaratory decree.

15. The appellants no doubt came upon the land lawfully and were in its peaceful possession. They were put to possession by the rightful owners but a decree of declaratory title in their favour, only on the basis of possession, by virtue of Section 53A of the Act, 1882, cannot be granted. The same will only help the appellants to defend their possession, if it is held under the unregistered deed/contract and will not create right to confer the title.

16. In view of such foregoing discussions, we are of the opinion that the judgment and decree passed by the trial Court does not require any interference. The appeal is devoid of any merit and is dismissed.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Deepak Kumar Tiwari)
Judge

**HEAD NOTE****FA No. 8 of 2015**

In part performance of contract of immovable property, the possession under Section 53A of the TP Act will not confer any active title on transferee.

स्थावर संपत्ति के संविदा के भागिक पालन में, संपत्ति अंतरण अधिनियम की धारा 53क के अंतर्गत संपत्ति का कब्जा प्रदान कर दिये जाने से अन्तरिती को सक्रिय स्वत्व प्राप्त नहीं होगा।

