



2026:CGHC:587

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

Judgment reserved on 27-01-2026

Judgment delivered on 03-02-2026

**SA No. 406 of 2005**

**1** - Lala Prasad (Died) Through Legal Heirs

**1.1** - Smt. Chandrakali Mishra. (Died And Deleted) As Per Honble Court Order Dated 05-09-2024.

**1.2** - Sushil Kumar S/o Late Lala Prasad Aged About 54 Years R/o Village Ramhepur, P.H. No. 30, Ric Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**1.3** - Smt. Shashi Devi D/o Late Lala Prasad Aged About 50 Years R/o Village Ramhepur, P.H. No. 30, Ric Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**1.4** - Smt. Shakuntala Devi D/o Late Lala Prasad Aged About 47 Years R/o Village Ramhepur, P.H. No. 30, Ric Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**1.5** - Shatrujan Mishra S/o Late Lala Prasad Aged About 45 Years R/o Village Ramhepur, P.H. No. 30, Ric Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**1.6** - Smt. Durga Mishra D/o Late Lala Prasad Aged About 38 Years R/o Village Ramhepur, P.H. No. 30, RIC Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**1.7** - Sudhir Mishra S/o Late Lala Prasad Aged About 33 Years R/o Village Ramhepur, P.H. No. 30, Ric Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**1.8** - Anirudh Mishra S/o Late Lala Prasad Aged About 30 Years R/o Village Ramhepur, P.H. No. 30, RIC Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

**... Appellants**

**versus**

**1** - Safi Mohammed S/o Yusuf Mohammed Musalman, Aged About 55 Years R/o Maruti Ward No. 07, Kawardha, Tah. Kawardha, District Kabirdham, Chhattisgarh.

**2** - Smt. Khatoon Bi (Died)

**3** - State of Chhattisgarh, Through Collector, Kawardha, District Kabirdham, Chhattisgarh.

**... Respondents**

**(Cause-title taken from Case Information System)**

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For Appellants	: Mr. H.B. Agrawal, Senior Advocate with Ms. A. Sandhya Rao, Advocate
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For Respondent no.1	None for respondent No.1, despite service of SPC pursuant to the order dated 15.12.2025
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For Respondent/State	: Mr. Malay Jain, Panel Lawyer
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**Hon'ble Shri Bibhu Datta Guru, J**

**C A V Judgment**

1. By the present appeal under Section 100 of the CPC, the appellant/plaintiff challenging the impugned judgment and decree dated 16/08/2005 passed by the learned District Judge, Kabirdham,

Kawardha, C.G. in Civil Appeal No.39-A/2004 (Shafi Mohammad Vs. Lalaprasad & Ors) arising out of the judgment and decree dated 11/05/2001 passed by the learned 2<sup>nd</sup> Civil Judge Class-I, Kawardha, C.G. in Civil Suit No.13A/2001 [Lala Prasad Vs. Safi Mohammad & Ors] whereby the learned Appellate Court allowed the appeal filed by the defendant/respondent No.1 and reversed the judgment and decree passed by the trial Court. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

2. The instant appeal was admitted by this Court on 23.11.2005 on the following substantial question of law :

*“1) Whether the finding of the lower Appellate Court that the nature of possession of the plaintiff was permissive possession and not hostile is legally correct particularly, when the plaintiff was in possession of the property since 1977 on the strength of agreement to sale?”*

*ii) "Whether the first Appellate Court was justified in decreeing the counterclaim of the defendant which was filed after more than 12 years for delivery of possession on the basis of agreement?"*

*iii) "Whether the appeal preferred by the defendant before the First Appellate Court was liable for dismissal for not filing proper Court-fee?"*

3. (a) The plaintiff preferred a suit for specific performance of the contract or, in the alternative, for declaration, pleading *inter alia* that on 20.08.1977, Yusuf, the father of defendant No. 1, entered into an agreement to sell the suit land bearing Khasra No. 133/3, area 0.70 decimal, for a consideration of Rs. 1,951/-. On the same day, he received Rs. 1,000/- in cash as advance in the presence of witnesses, and a receipt to that effect was executed before the witnesses. Further, it was agreed in writing that the remaining amount of Rs. 951/- would be paid at the time of execution and registration of the sale deed. Possession of the suit land was delivered to the plaintiff on the same day. The agreement was initially written on plain paper affixed with a revenue stamp. Thereafter, on the same day, a stamp paper worth Rs. 2/- was purchased and the above facts were reiterated and reduced into writing on stamp paper as well. A period of 15 days time was granted to the father of defendant No. 1 for execution of the sale deed. Even after the expiry of 15 days, he did not execute the sale deed in favour of the plaintiff. Whenever requested, he kept postponing the matter by saying that the land was already in the

plaintiff's possession and there was no urgency. The plaintiff has been in peaceful and continuous possession of the suit land till date.

(b) About six years prior to filing of the suit, the father of defendant No. 1 required money for medical treatment, whereupon he called the plaintiff, and the plaintiff paid him the balance amount of Rs. 951/- for his treatment. At that time, the father of defendant No. 1 assured that he would execute the sale deed after recovery from illness; however, he died. The legal heirs of Yusuf, namely defendant Shafi Mohammad and defendant No. 2, the daughter of Yusuf, were fully aware of the said agreement, yet they also failed to execute the sale deed in favour of the plaintiff despite repeated requests. Since the date of the agreement dated 20.08.1977, the plaintiff has remained in continuous, peaceful possession of the suit land, and on this basis has also acquired ownership by adverse possession. Even after service of notice, the defendants did not execute the sale deed in favour of the plaintiff. Therefore, the plaintiff has filed the present suit for specific performance of the contract or, in the alternative, for declaration of title.

4. (A) In the said Civil Suit, the defendants submitted their written statement and denied the plaint averments. The defendant also

denied the execution of any agreement by Yusuf. Defendant contends that no title was acquired on the basis of an agreement to sell, and that the suit is barred by limitation. It is further contended that no ownership can be acquired over the suit land on the basis of adverse possession. Therefore, Defendant has prayed for dismissal of the suit and for appropriate relief. In the alternative, if the plaintiff is found to be in possession of the suit land, Defendant No. 1 has prayed that possession thereof be restored to Defendant No. 1.

(B) The defendant also raised the counter claim along with the written statement by contending that if it is found that the land is under the possession of the plaintiff, and the possession of the plaintiff is based on permission; then, the defendant is entitled to get back the possession of the land; and also contended that for the counterclaim, the Court fee of ₹40/- is payable at the rate of ₹2/- per acre, amounting to twenty times of the rent, and on this, a court fee of ₹4/- is affixed. In the said counterclaim, the defendant prayed for dismissal of the suit and to grant of decree of possession in respect of the suit land in favour of the defendant.

5. By controverting the counter claim, the plaintiff submitted his reply and stated that the dispute pertains to the ownership of the disputed land, which is based on permission. The disputed land has

been continuously in the possession of plaintiff from the date the father of the defendant agreed to sell the land to the plaintiff I.e. 20-08-1977 till today. Consequently, in accordance with the principles of rightful possession and the statements described in the agreement, the plaintiff is the sole owner of the disputed land. In this regard, the matter has been communicated to the defendants from the beginning. As a result, the defendant is not entitled to obtain possession. The suit concerning possession and its duration is barred; therefore, the defendant cannot file a claim or counterclaim to obtain the possession of the said land. It is also not clear on what basis the counterclaim has been evaluated. According to the plaintiff, the defendant has not affixed sufficient court fee in support of his counterclaim.

6. The learned Trial Court, after framing the issues and upon due consideration of the evidence adduced by both parties as well as the material available on record, allowed the suit filed by the plaintiff. The Trial Court held that, in light of the findings recorded on the issues, the plaintiff's claim stood proved. Since Defendant No. 1 and Defendant No. 2 are the lawful heirs of Yusuf, they were directed to execute a sale deed in favour of the plaintiff in respect of the suit land bearing Khasra No. 133/3, admeasuring 0.70 decimal. It was further ordered that in the event Defendant Nos. 1

and 2 failed to get the suit land registered in favour of the plaintiff within a period of three months, the sale deed shall be executed through the Court in favour of the plaintiff. Additionally, on the basis of the plaintiff's uninterrupted and peaceful possession over the suit land for more than twelve years, the plaintiff was also declared to be the owner of the suit land.

7. The trial Court while considering the Issue No. 8 i.e. "Whether the defendants have properly valued their claim?", which pertains to counter-claim, observed that the burden of prove lies upon the defendants. However, in order to substantiate the same, the defendants did not examine any witnesses. In the counter-claim, Defendant No. 1 sought only restoration of possession of the suit land. For the said relief, Defendant No. 1 had properly valued the counter-claim and paid the court fee of Rs. 40/- Accordingly, Issue No. 8 was answered in the affirmative.
8. Against the said judgment and decree, the defendant, Shafi Mohammad, filed a Civil Appeal before the learned first appellate court for setting aside the judgment and decree dated 11.5.2001 and for allowing the counter claim. The appellate court allowed the appeal by allowing the counter claim of the defendant and by dismissing the suit filed by the plaintiff. The plaintiff was directed to deliver possession of the land measuring 0.70 acres, Khasra No.

133/3, situated in the village Ramhepur, to the defendant within a period of one month. Thus, this appeal by the appellant/plaintiff.

9. Learned counsel for the plaintiff/appellant submits that the learned First Appellate Court has committed a manifest error of law in reversing the well-reasoned judgment and decree of the Trial Court. The plaintiff was put in possession of the suit land on 20.08.1977 pursuant to a written agreement to sell, upon payment of part consideration, the balance having been subsequently paid, and such possession was in part-performance of the contract and not permissive in nature. The finding of the First Appellate Court that the plaintiff's possession was permissive is perverse, contrary to the evidence on record and settled principles of law, as possession delivered under an agreement to sell cannot be treated as permissive. The plaintiff remained in open, peaceful and continuous possession of the suit land for more than twelve years to the knowledge of the defendants, who despite being fully aware of the agreement, failed to execute the sale deed. The Trial Court rightly decreed the suit for specific performance and, in the alternative, declared the plaintiff's title on the basis of long and uninterrupted possession. The counter-claim filed by the defendant seeking recovery of possession was barred by limitation, having been raised after more than twelve years, and was wrongly

entertained and decreed by the First Appellate Court. According to the learned counsel, the learned First Appellate Court ought to have dismissed the appeal preferred by the defendant under Section 96 of the CPC on the ground of deficit Court fee, however, the said aspect has not been considered. The impugned judgment, therefore, suffers from substantial errors of law and deserves to be set aside, restoring the decree passed by the Trial Court.

10. None for respondent No.1, despite service of SPC pursuant to the order dated 15.12.2025.
11. I have heard learned counsel for the appellant at length and have carefully perused the pleadings, oral and documentary evidence as well as the judgments and decrees passed by the Courts below.
12. The present second appeal has been preferred under Section 100 of the CPC, which circumscribes the jurisdiction of this Court only to substantial questions of law. The First Appellate Court, being the final Court of facts, has reversed the judgment of the Trial Court after re-appreciating the entire evidence. Therefore, interference in second appeal is permissible only if the findings recorded by the First Appellate Court are shown to be perverse, contrary to law, or based on misreading or non-consideration of material evidence.

13. Section 149 of the CPC prescribes a discretionary power which empowers the court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment, etc. This section also empowers the court to retrospectively validate insufficiency of stamp duties, etc. It is also a usual practice that the court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the court dismisses the appeal. However, in the case at hand, a bare perusal of the record, it is evident that no such opportunity was afforded to the defendant by the learned First Appellate Court to cure the defect, if any, in respect of deficiency of Court fee.

14. The Supreme Court in the matter of ***Manoharan v. Sivarajan and Others, (2014) 4 SCC 163*** held thus at para 7:-

*7. Section 149 of the Civil Procedure Code prescribes a discretionary power which empowers the court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment, etc. This section also empowers the court to retrospectively validate insufficiency of stamp duties, etc. It is also a usual practice that the court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the court dismisses the appeal. In the present case, the appellant filed an application for extension of time for*

*remitting the balance court fee which was rejected by the learned Sub-Judge. It is the claim of the appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fides. The court, while extending the time for or exempting from the payment of court fee, must ensure bona fides of such discretionary power. Concealment of material fact while filing application for extension of date for payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learned Sub-Judge for payment of court fee by the appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned Sub-Judge is wrong and is liable to be set aside and accordingly set aside.*

15. In respect of deficiency in Court fee, the power of the Appellate Court is coextensive with that of trial Court and the First Appellate Court in the interest of justice can do all that which could be done by Trial Court in suit proceeding. The Supreme Court in the matter of *Tajender Singh Bhambir and Another v. Gurpreet Singh & Others, (2014) 10 SCC 702* at para 11 as under:-

*"11. The High Court was also in error in holding that the deficiency in court fee in respect of the plaint cannot be made good during the appellate stage. In this regard, the High Court, overlooked the well-*

*known legal position that an appeal is continuation of the suit and the power of the appellate court is coextensive with that of the trial court. It failed to bear in mind that what could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice.”*

16. The Supreme Court observed in the aforesaid case that an appeal is a continuation of the original proceeding, the appellate Courts have co-extensive jurisdiction with that of trial Court in procedural matters including rectification of Court fee deficiency. Hence, applying the aforesaid principles to the facts of the present case, this Court finds no substance in the contention of the appellant that the appeal before the First Appellate Court was liable to be dismissed on account of alleged deficiency of Court fee. Even assuming that there was any such deficiency, the same was curable in nature, and the learned First Appellate Court was well within its jurisdiction to entertain the appeal and decide the same on merits. Mere technical objections relating to Court fee, in the absence of any prejudice caused to the opposite party, cannot be permitted to defeat substantive justice, particularly when the appellate court has adjudicated the rights of the parties after full consideration of the evidence on record.

17. Coming to the principal contention regarding the nature of possession, the learned First Appellate Court, upon re-appreciation of oral and documentary evidence, has recorded a categorical finding that the alleged agreement to sell dated 20.08.1977 was not proved in accordance with law and that the plaintiff failed to establish continuous readiness and willingness to perform his part of the contract. Once the agreement itself is disbelieved, the plea of possession in part-performance under Section 53-A of the Transfer of Property Act automatically falls to the ground.
18. The finding of the First Appellate Court that the plaintiff's possession, if any, was permissive in nature cannot be said to be perverse or based on no evidence. It is well settled that possession flowing from a permissive arrangement does not ripen into adverse possession unless there is a clear, hostile assertion of title to the knowledge of the true owner. The learned First Appellate Court has rightly held that there was no cogent evidence on record to demonstrate that the plaintiff had ever asserted hostile title against the defendants within the statutory period.
19. The Trial Court's alternative declaration of title in favour of the plaintiff on the basis of long possession was rightly set aside by the First Appellate Court, as the plea of adverse possession was neither specifically pleaded nor proved by satisfying the essential

ingredients of intention to possess, continuity, and hostility. A person who enters into possession claiming under an agreement to sell cannot, in the same breath, claim adverse possession unless there is a clear repudiation of the permissive or contractual character of possession, which is conspicuously absent in the present case.

20. As regards the counter claim filed by the defendant for recovery of possession, the First Appellate Court has correctly held that the cause of action for seeking possession arose only after the plaintiff's claim of title was negatived. The counter claim, being in the nature of a defence coupled with a claim for consequential relief, was maintainable and not barred by limitation. The said finding is based on settled legal principles and does not suffer from any illegality.
21. The findings recorded by the First Appellate Court are reasoned, based on proper appreciation of material on record, and do not disclose any perversity, misreading of evidence, or violation of settled principles of law. The appellant has failed to demonstrate how any substantial question of law arises for consideration in the present appeal.
22. In view of the foregoing discussion, this Court is of the considered opinion that the present second appeal is devoid of merit and does

not give rise to any substantial question of law as contemplated under Section 100 of the CPC. The impugned judgment and decree passed by the learned First Appellate Court do not warrant interference.

23. Accordingly, the substantial questions of law framed in this Second Appeal are answered against the appellant/plaintiff and in favour of the defendant/respondent.
24. Accordingly, the second appeal stands **dismissed** with no order as to costs. As far as, the objection regarding Court fee is concerned, the deficiency of Court fee being a curable defect. This Court, in exercise of power under Section 149 CPC, permits the defendant to make good the deficit court fee of the first appeal before execution of the Decree drawn by the First Appellate Court.
25. A decree be drawn accordingly.

Sd/-  
(Bibhu Datta Guru)  
Judge

**HEAD NOTE**

An appeal is a continuation of the original proceeding, the appellate Courts have co-extensive jurisdiction with that of trial Court in procedural matters including rectification of Court fee deficiency.