



NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Judgment Reserved on 21/04/2026****Judgment Delivered on 01/05/2026****SA No. 510 of 2005**

Ramesh S/o. Nandlal, Aged About 30 Years R/o. Chandeni (Dehandih), Thana Sahaspur- Lohara, Tahsil Kawardha, District Kabirdham Chhattisgarh,  
District : Kawardha (Kabirdham), Chhattisgarh

**.Appellant(s)****Versus****1 - Smt.Radhabai (Died) Through Legal Heirs-****1.1 - (A) Janrail Singh S/o Ghanshyam, Aged About 45 Years R/o Village Udiya, Thana Sahaspur Lohara, District Kabirdham Chhattisgarh.****1.2 - (B) Mansingh, S/o Ghanshyam Aged About 43 Years R/o Village Udiya, Thana Sahaspur Lohara, District Kabirdham Chhattisgarh.****1.3 - (C) Virendra S/o Ghanshyam Aged About 33 Years R/o Village Udiya, Thana Sahaspur Lohara, District Kabirdham Chhattisgarh.****1.4 - (D) Narayan S/o Ghanshyam Aged About 28 Years R/o Village Udiya, Thana Sahaspur Lohara, District Kabirdham Chhattisgarh.****2 - Janrel Singh, S/o Ghanshyam, Aged About 30 Years R/o Odia Thana, Sahaspur Lohara, Tahsil Kawardha, District Kabirdham Chhattisgarh.****3 - Virendra Kumar, S/o Ghanshyam Singh Aged About 26 Years R/o Odia Thana, Sahaspur Lohara, Tahsil Kawardha, District Kabirdham Chhattisgarh.**



4 - Narayan, S/o Ghanshyam Singh, Aged About 19 Years R/o Odia Thana, Sahaspur Lohara, Tahsil Kawardha, District Kabirdham Chhattisgarh.

5 - State Of Chhattisgarh Through Collector District Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

**Respondent(s)**

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

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For Appellant(s) : Mr. Ajit Singh, Advocate

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For Resp No. 1 to 4 : Mr. H.B. Agrawal, Senior Advocate along with Ms. A. Sandhya Rao, Advocate

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For Resp. No.5 : Mr. Anand Gupta, Dy. GA

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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/defendant has assailed the judgment and decree dated 25/10/2005 passed by the learned District Judge, Kabirdham (C.G.) in Civil Appeal No. 8-A/2005 (*Smt. Radhabai & Others v. Ramesh & Another*), whereby the first appellate Court allowed the appeal preferred by the plaintiffs/respondents and reversed the judgment and decree dated 24/03/2005 passed by the II Civil Judge, Class-I, Kawardha in Civil Suit No. 94-A/2003 {*Ghanshyam (since deceased) through LRs Smt. Radhabai & Others v. Ramesh & Another*}, thereby setting aside the dismissal of the suit filed by the plaintiffs/respondents.
2. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
3. The instant Second appeal was admitted on 07/03/2006 for hearing on the following substantial question of law?



*“Whether the Lower Appellate Court failed to evaluate the material evidence while reversing the judgment and decree passed by the trial Court?”*

4. (a) The facts of the case, in brief, are that the original plaintiff Ghanshyam instituted a civil suit against the defendants in respect of the disputed land bearing Khasra No. 230, admeasuring 2.00 acres, situated at Village Lohara, Tahsil Kawardha, District Kabirdham. The suit was filed seeking recovery of possession of the suit land, permanent injunction restraining the defendants from interfering with the plaintiffs’ possession, declaration that the sale deed dated 01/05/1973 is valid and binding upon defendant No. 1, and further declaration that the orders dated 22/10/2001, 23/10/2001 passed in Revenue Case No. A/70/2001 and order dated 31/05/2002 passed in Case No. 254/2001 are not binding upon the plaintiffs.
- (b) It is an admitted position between the parties that the suit land bearing Khasra No. 230, admeasuring 2.00 acres, is recorded in the revenue records in the names of the plaintiffs. It is also not in dispute that defendant No. 1 is in possession of the said land. Earlier, a dispute arose between the plaintiffs and defendant No. 1, which led to proceedings under Sections 145 and 146 of the Code of Criminal Procedure, wherein, by order dated 31/05/2002 passed in Case No. 254/2001, possession of defendant No. 1 over the suit land was recognized. It is further pleaded that deceased Ghanshyam (original plaintiff) had also filed an application under Section 250 of the Chhattisgarh Land Revenue Code before the Nayab Tahsildar, Lohara.



(c) According to the plaintiffs, the suit land was originally purchased by deceased Ghanshyam vide Ex.P/1 by way of a registered sale deed dated 01/05/1973 from Nandram and others for a consideration of ₹1,000/-. After purchase, the name of the deceased Ghanshyam was duly recorded in the revenue records. Upon his death, the names of the plaintiffs, being his legal heirs, were mutated in the revenue records. It is further pleaded that the suit land was being cultivated through sharecropping (*Adhiya*) and defendant No. 1 was working as an Adhiyadar under the deceased. However, taking undue advantage of the situation, defendant No. 1 started asserting his own rights over the suit land and refused to hand over possession to the plaintiffs. Disputes arose between the parties, culminating in proceedings under Sections 145 and 146 CrPC, wherein possession was declared in favour of defendant No. 1. Aggrieved thereby, the plaintiffs instituted the present suit.

(d) Defendant No. 1 filed a written statement denying the plaint averments and also preferred a counter-claim claiming ownership over the suit land on the basis of adverse possession. It was contended that the land was not sold but was mortgaged by Nandlal Yadav for a sum of ₹1,000/-, with possession delivered to defendant No. 1, and that the plaintiffs, by playing fraud, got the sale deed executed instead of a mortgage deed and managed to get their names recorded in the revenue records. It was further pleaded that defendant No. 1 has been in continuous, peaceful possession of the suit land for the last 20–25 years to the knowledge of the plaintiffs and has thus perfected his title by adverse possession. The defendant denied any forcible dispossession or



interference. He also stated that the order passed by the revenue authorities has attained finality because the plaintiff has not challenged the same before the appropriate authority and hence the suit itself is not maintainable.

(e) The plaintiffs filed a reply to the counter-claim denying the allegations and contended that, in absence of any objection at the time of mutation of the name of deceased Ghanshyam in the revenue records, the counter-claim is barred by limitation and is liable to be rejected. It was further pleaded that the original plaintiff, Late Ghanshyam, had acquired title over the suit land by virtue of a registered sale deed dated 01/05/1973 executed by Nandram and others for a consideration of Rs. 1,000/-, which is binding upon defendant No. 1. In this regard, an application under Order VI Rule 17 of the Code of Civil Procedure was also filed seeking amendment of the plaint to incorporate the said facts along with consequential pleadings relating to court.

(f) Defendant No. 2 remained absent despite service of notice and was proceeded ex parte. No written statement was filed on his behalf.

5. On the basis of pleadings and evidence, the Trial Court dismissed the suit holding that the plaintiffs failed to prove due execution and validity of the sale deed dated 01/05/1973, as neither any attesting witness nor any executant of the document was examined in accordance with law, particularly in view of denial of execution by the vendor himself. The Trial Court further held that the evidence on record established that the transaction in question was not a sale but a mortgage (rehan), as consistently deposed by the defendant and the executant of the



document. It was also found that the plaintiffs failed to prove their possession over the suit land, whereas the defendant No. 1 was in settled possession for a considerable period. The Court further held that defendant No. 1 successfully established his claim of adverse possession. Consequently, it was held that the plaintiffs were not entitled to declaration of title, recovery of possession, or permanent injunction. The counter-claim preferred by defendant No. 1 was accordingly allowed, declaring him to have acquired title over the suit property by adverse possession, and the suit of the plaintiffs was dismissed with costs.

6. Aggrieved by the said judgment and decree, the plaintiff preferred a first appeal before the Appellate Court, which allowed the appeal holding that the Trial Court had erred in disbelieving the registered sale deed dated 01/05/1973 (Ex.P-1), which was a duly executed and registered document clearly evidencing transfer of the suit property in favour of the plaintiffs' predecessor, Ghanshyam. The Appellate Court found that the executant of the document, namely Nandram, had himself admitted execution of the sale deed, and his subsequent plea that the transaction was a mortgage was inconsistent and unreliable. It was further held that the contents of a registered document cannot be contradicted by oral evidence in absence of any cogent proof, and the document, being more than 30 years old and produced from proper custody, carried a presumption of due execution. The Appellate Court also held that the defendant had no locus to challenge the sale deed, not being a party thereto. On appreciation of evidence, it was concluded that the plaintiffs had validly acquired title and possession over the suit land, and that the



defendant had failed to establish continuous and adverse possession so as to perfect title by adverse possession. Consequently, the judgment and decree of the Trial Court were set aside, and the suit of the plaintiffs was decreed by granting recovery of possession and permanent injunction in their favour. Thus, this appeal by the defendant.

7. (i) Learned counsel for the appellant/defendant submits that the impugned judgment and decree passed by the First Appellate Court are unsustainable in law, as they reverse the well-reasoned findings of the Trial Court without proper appreciation of evidence and settled legal principles. It is contended that the Appellate Court erred in treating the document dated 01/05/1973 as a sale deed, ignoring the surrounding circumstances which clearly indicate that the transaction was, in substance, a mortgage. The intention of the parties, being determinative, has not been properly examined, and the provisions of Sections 54 and 58 of the Transfer of Property Act have been misapplied by relying solely on the recitals of the document rather than its true nature. It is further submitted that the Appellate Court failed to consider the appellant's long, continuous, and settled possession of the suit land, as reflected in revenue proceedings, and erred in directing dispossession without due process. The evidentiary value of such proceedings and material documents has not been properly appreciated.
- (ii) It is also urged that the findings of the First Appellate Court are perverse, having been recorded without proper evaluation of oral and documentary evidence on each and every points and by ignoring material contradictions and admissions. The plea of limitation and



maintainability of the suit has also not been adequately addressed. The reversal of the Trial Court's judgment is thus based on misreading and non-consideration of material evidence and incorrect application of law. Accordingly, it is prayed that the substantial questions of law be answered in favour of the appellant/defendant and the impugned judgment be set aside.

(iii) Learned counsel for the appellant further submits that the plaintiff's claim is based on an alleged sale deed dated 01.05.1973; however, the record, particularly the Tehsildar's order dated 16.07.1996, establishes that the plaintiff was never in possession of the suit land. The suit, instituted in 2002, is hopelessly barred by limitation, a vital issue overlooked by the Appellate Court. The Trial Court rightly held that the transaction was in the nature of a mortgage and that the defendants have remained in continuous, open, and uninterrupted possession since 1973.

(iv) It is further submitted that the long delay of nearly 37 years, coupled with consistent revenue records from 1994 to 2002, reinforces the defendants' plea of limitation and settled possession. The First Appellate Court, however, reversed the Trial Court's judgment without proper appreciation of evidence and recorded perverse findings.

(v) It is also contended that mere execution of a sale deed does not confer valid title unless the essential requirements under Section 54 of the TP Act namely intention to transfer ownership and delivery of possession are satisfied. In the present case, absence of possession and surrounding circumstances negate an absolute sale. The Appellate Court has further failed to correctly apply Sections 54 and 58 of the Act and



the principles of adverse possession, despite long and hostile possession of the appellant.

(vi) Learned counsel for the appellant would further submit that the impugned judgment and decree by which the learned First Appellate Court has reversed the well reasoned judgment and decree passed by the learned Trial Court is not a reasoned judgment. According to him, at the most the learned Appellate court ought to have remanded the matter to the Trial Court for fresh adjudication. He would submit that the impugned judgment and decree has been passed by the learned First Appellate Court without appreciating the each and every issue involved in the case that too without considering the provisions of the Section 58(c) of the TP Act, which categorically provides that no transactions shall be deemed to be a mortgage unless the condition is embodied in the document which effect or purports to affect the sale.

(vii) It is submitted that the learned First Appellate Court has failed to deal with each and every material aspect of the matter and has not undertaken a comprehensive reappraisal of the oral and documentary evidence on record. Without addressing the findings of the Trial Court on crucial issues, including the nature of the transaction, possession, limitation, and evidentiary value of revenue records, the Appellate Court has mechanically reversed the well-reasoned and cogent judgment of the Trial Court. Such reversal, without proper analysis and independent reasoning, renders the impugned judgment unsustainable in law. The direction of dispossession is thus unsustainable. It is, therefore, prayed that the impugned judgment be set aside and that of the Trial Court be



restored. To support his contention, reliance has been place on the decision rendered by the Supreme Court in the matters of *Shakir Hussain v Administrator, Nagar Palika, Mandsaur, (1998) 9 SCC 613*, *Santosh Hazari v. Purushottam Tiwai (Dead) By Lrs. (2001) 3 SCC 179*, *Janak Dulari Devi and Another v. Kapil Deo Rai and Another, (2011) 6 SCC 555*, *Vinod Kumar v. Gangadhar, 2015 (1) SCC 391*, *C. Venkata Swamy v. H.N. Shivanna (Dead) by Legal Representative and Another, (2018) 1 SCC 604*, *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, (2019) 8 SCC 729* and *Lucknow Nagar Nigam & Others v. Kohli Brothers Colour Lab Private Limited & Others, (2025) 6 SCC 628*.

8. (A) Learned counsel for the respondents/plaintiffs, *ex adverso*, submits that the impugned judgment and decree passed by the learned First Appellate Court are well-reasoned, based on proper appreciation of evidence, and do not suffer from any illegality or perversity warranting interference under Section 100 of the Code of Civil Procedure. It is contended that the suit was instituted for declaration and permanent injunction challenging the order dated 31/05/2002 passed by the Sub-Divisional Officer under Section 145 CrPC, and the same was filed well within limitation as prescribed under Article 100 of the Limitation Act. It is further submitted that the plaintiffs have successfully established their title over the suit property on the basis of a duly executed and registered sale deed dated 01/05/1973, which has neither been challenged by the executants nor set aside in accordance with law. The executant himself, examined as a witness, has admitted execution of the said document, and



therefore, the plea of the defendant that the transaction was a mortgage is wholly untenable and has rightly been rejected by the First Appellate Court, particularly in absence of any stipulation as required under Section 58(c) of the TP Act.

(B) It is further contended that the First Appellate Court has rightly held that the nature and contents of a registered document cannot be contradicted by oral evidence in view of Section 92 of the Evidence Act, and therefore, the defence sought to be raised by the defendant was legally impermissible. Learned counsel submits that the defendant, not being a party to the sale deed, had no locus to challenge its validity, and no independent proceedings were ever initiated to declare the document void or voidable. It is also submitted that the plea of adverse possession raised by the defendant has been rightly rejected, as there is no cogent evidence to establish continuous, open, and hostile possession for the statutory period to the knowledge of the true owner. Mere possession, particularly when originating as permissive possession in the capacity of an *Adhiyara*, cannot ripen into adverse possession in absence of clear and unequivocal hostile assertion of title.

(C) It is further submitted that reliance placed on proceedings under Section 145 CrPC is misconceived, as such proceedings are limited to determination of possession for maintaining law and order and do not confer or extinguish title. The learned First Appellate Court, being the final Court of fact, has re-appreciated the entire evidence on record and has assigned cogent and legally sustainable reasons while reversing the judgment of the Trial Court, which had failed to properly appreciate the



documentary evidence, particularly the registered sale deed. No perversity, misreading of evidence, or non-consideration of material documents has been demonstrated by the appellant so as to warrant interference in second appeal. The issues raised are purely factual in nature and amount to seeking re-appreciation of evidence, which is impermissible in exercise of jurisdiction under Section 100 CPC. Hence, it is submitted that the present appeal, being devoid of merit, deserves to be dismissed.

9. 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.
10. Since the present appeal arises under Section 100 of the Code of Civil Procedure, the scope of interference by this Court is confined only to substantial questions of law, and it is well settled that concurrent findings of fact or findings based on proper appreciation of evidence cannot be interfered with unless the same are shown to be perverse or based on misapplication of law.
11. The principal controversy in the present case revolves around the nature, validity and evidentiary value of the document dated 01/05/1973 (Ex.P-1), and whether the learned First Appellate Court was justified in reversing the finding of the Trial Court by holding the same to be a valid sale deed. Upon careful scrutiny, it is evident that the said document is a registered instrument, containing clear recitals of sale, consideration, description of property and transfer of rights in favour of the original plaintiff Ghanshyam. The executant of the document, namely Nandram,



though examined on behalf of the defendant, has admitted execution of the document. His subsequent attempt to characterize the transaction as a mortgage is not only inconsistent but also unsupported by the contents of the document itself.

12. In this regard, the learned First Appellate Court has rightly applied the settled principles of law that where the terms of a written and registered document are clear and unambiguous, the same cannot be contradicted or varied by oral evidence, in view of Section 92 of the Evidence Act. Further, in absence of any condition as contemplated under Section 58(c) of the TP Act, the transaction cannot be treated as a mortgage by conditional sale. The Trial Court, in discarding the document on the ground of non-examination of attesting witnesses, has overlooked the material aspect that the executant himself admitted its execution, thereby satisfying the requirement of proof. Thus, the finding of the First Appellate Court that Ex.P-1 is a valid sale deed is based on correct appreciation of law and evidence and does not call for interference.
13. As regards the contention relating to misinterpretation of Sections 54 and 58 of the TP Act, this Court finds that the learned First Appellate Court has correctly interpreted the said provisions. Section 54 clearly provides that a sale of immovable property of value exceeding ₹100 can be effected only by a registered instrument, and once such a document is executed and registered, it operates as a transfer of ownership. On the other hand, for a transaction to qualify as a mortgage by conditional sale under Section 58(c), the essential condition must be embodied in the document itself. In the present case, no such condition exists in Ex.P-1.



Therefore, the conclusion of the First Appellate Court that the document is an out-and-out sale and not a mortgage is legally sound.

14. The next issue pertains to the plea of adverse possession raised by the appellant/defendant. It is trite law that adverse possession must be established by cogent and convincing evidence showing continuous, open, hostile and uninterrupted possession to the knowledge of the true owner for the statutory period. In the present case, the evidence on record does not establish the exact period from which the possession of the defendant became hostile. On the contrary, the case of the plaintiffs that the defendant was inducted as an Adhiyara (sharecropper) probalizes the initial possession to be permissive in nature. Permissive possession, by its very nature, cannot mature into adverse possession unless there is a clear and unequivocal assertion of hostile title, which has not been proved in the present case.
15. In the case at hand, the plaintiff witness namely; Radha Bai (PW-1), who is the wife of the original plaintiff, categorically stated in her affidavit under Order 18 Rule 4 of the CPC that her husband purchased the land in question after selling her ornaments. The said land was never put on mortgage and as such the contention of the defendant Ramesh that the land was put on mortgage is not true. This witness further stated that since the original plaintiff used to go outside for business purpose, the land in question was given to the defendant on Adhiya under their supervision. However, the defendant by taking undue advantage of the same used to create hurdle in respect of the ownership. Another plaintiff witness namely; Dhur Singh (PW-2) also stated in his affidavit



that the Adhiyara namely; Ramesh (defendant) used to quarrel with the plaintiffs in respect of the land in question since last six years and was not giving the fruits of the crop to the plaintiffs. From the evidence of these witnesses, it manifest that the land in question was actually in possession of the plaintiffs whereas they gave it to the defendant only on Adhiya.

16. The reliance placed by the appellant on proceedings under Sections 145 and 146 of the Code of Criminal Procedure is also misconceived. It is well settled that such proceedings are summary in nature and are confined only to determination of actual possession for the purpose of maintaining law and order. They do not confer any title nor do they decide rights of the parties finally. Therefore, the finding recorded in such proceedings recognizing possession of the defendant cannot be construed as proof of lawful possession or title, much less adverse possession.
17. The contention regarding improper appreciation of evidence by the First Appellate Court also does not merit acceptance. Being the final Court of fact, the First Appellate Court is duty bound to re-appreciate the entire evidence on record, and in the present case, it has done so in a comprehensive manner. The reasons assigned by the First Appellate Court for reversing the judgment of the Trial Court are cogent, well-founded and in consonance with settled legal principles. No material evidence has been shown to have been ignored, nor any irrelevant material has been taken into consideration so as to render the findings perverse.



18. So far as the plea of limitation is concerned, the suit was instituted challenging the order dated 31/05/2002 passed by the Sub-Divisional Officer and seeking consequential reliefs. The suit having been filed within a few months thereof is clearly within limitation, as rightly held by the First Appellate Court. No error, much less a substantial error of law, has been demonstrated in this regard.
19. The contention of the learned counsel for the appellant that the learned First Appellate Court failed to deal with each and every material aspect of the case and mechanically reversed the well-reasoned judgment of the Trial Court is also found to be devoid of merit. A careful perusal of the impugned judgment shows that the First Appellate Court has independently re-appreciated the entire oral and documentary evidence on record and has recorded specific findings on the core issues, namely the nature of the transaction embodied in Ex.P-1, the validity of the sale deed, the plea of adverse possession, and the effect of revenue proceedings. Merely because the Appellate Court has not discussed each piece of evidence or every finding of the Trial Court in detail would not render its judgment infirm, so long as the essential issues arising for determination have been duly considered and decided with cogent reasons. The judgment of the First Appellate Court reflects due application of mind and cannot be said to be cryptic or perverse. Therefore, the submission that the reversal is mechanical or without proper analysis is liable to be rejected.
20. The decision of *Shakir Hussain (supra)* relied upon by defendant No. 1, wherein the Supreme Court held that a plaintiff cannot succeed unless he



establishes both his title to the suit property and possession thereof, shall not be applicable to the facts of the present case, as from the entire material available on record and the evidence adduced by the witnesses, it is abundantly clear that the plaintiff is the owner of the disputed land and had given the same to defendant No. 1 only for the purpose of Adhiya.

21. Since the learned First Appellate Court, upon due appreciation of the entire material available on record in its proper perspective, has rightly reversed the findings of the learned Trial Court, it cannot be said that such reversal has been made in a cryptic manner. Accordingly, the reliance placed by defendant No. 1 on the decision of the Supreme Court in *Santosh Hazari (Supra)* is distinguishable from the facts of the present case.
22. It is pertinent to mention here that the decision rendered by the Supreme Court in *Vinod Kumar (supra)* is also not applicable to the facts of the present case, as the learned First Appellate Court has decided the civil appeal after duly considering all aspects of the matter in their proper perspective. Hence, it cannot be said that any prejudice has been caused to defendant No. 1, nor that any valuable right of his has been adversely affected so as to deprive him of an opportunity of being heard in the civil appeal in accordance with law.
23. Before parting, it is also apposite to observe that the First Appellate Court, being the final Court of fact, has not only considered the documentary evidence, particularly the registered sale deed (Ex.P-1), in its proper perspective, but has also dealt with the oral evidence and



surrounding circumstances in a comprehensive manner. The conclusions arrived at are neither perverse nor contrary to law. The learned First Appellate Court reversed the finding of the learned Trial Court by evaluating and examining the evidence available on record. There is no illegality or irregularity in the reversal judgment rendered by the First Appellate Court. Thus, the question of law framed by this Court on 07/03/2006 is answered accordingly.

24. In view of the foregoing analysis and applying the well settled principles of law to the facts of the present case, this Court is of the considered opinion that the findings recorded by the learned First Appellate Court are based on proper appreciation of evidence and correct application of law. The substantial questions of law framed in the present appeal are answered against the appellant/defendant No.1 and in favour of the respondents/ plaintiffs. The substantial question of law is answered in the negative, as no failure of consideration of material evidence by the First Appellate Court is made out.
25. Consequently, the present second appeal, being devoid of merit, deserves to be and is hereby dismissed. The judgment and decree dated 25/10/2005 passed by the learned First Appellate Court are affirmed. There shall be no order as to costs.
26. Decree be drawn accordingly.

**Sd/-**  
**(Bibhu Datta Guru)**  
**Judge**