

Court No. - 6

Case :- WRIT - C No. - 3000011 of 2008

Petitioner :- Gur Bux Singh

Respondent :- Additional Commissioner Lko.And 3 Ors.

Counsel for Petitioner :- V.K.Pandey

Counsel for Respondent :- C.S.C.,Umajeet Gupta

Hon'ble Alok Mathur,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel on behalf of respondents.

2. By means of this writ petition, the petitioner has challenged the order dated 27.02.1981 passed by the prescribed authority whereby rejecting the objections filed by the petitioner in terms of power under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 as well as the order dated 12.11.2007 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow whereby rejecting the appeal against the order of the prescribed authority.

3. It has been submitted by the learned counsel for the petitioner that notice under Section 10(2) of the Act, 1960 was issued to Kripal Singh, who was a recorded tenure holder, who filed the objection on 12.11.1979. The petitioner also filed his objections under Section 5(3) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 stating that he is in possession of Gata No.462 M, new no.1079, 1072 and 1073 of Village- Gadaniya, Pargana & Tehsil- Palia, District- Lakhimpur Kheri. He stated that he is in possession of the aforesaid land since 1967 and he had accordingly, produced Khatauni pertaining to Fasli 1374 to demonstrate that he is in possession of the said land. He has submitted that he has got possession of the land on account of adverse possession and consequently, has become the owner of

the said land and hence, the said land be excluded from the holding of the recorded tenure holder and also from the ceiling proceedings against the recorded tenure holder. The prescribed authority by means of an order dated 27.02.1981, rejected the said objections.

4. To support his contentions, the petitioner has filed the Khatauni for the Fasli year 1381 and Khasra for the year 1374-83 and no evidence was tendered on behalf of the petitioner to support his contentions.

5. The prescribed authority, in view of the fact that the cut off date being 08.06.1973, the petitioner could not demonstrate that he was in possession of the said land prior to cut off date and consequently, the basic requirement of the statute to prove the possession on the ground of adverse possession was not made out. The petitioner had given material only with regard to his possession for three years prior to the cut off date and consequently, in absence of any documentary or oral evidence before the prescribed authority, it could not be proved that the petitioner was entitled for benefit of exclusion of land on the ground of adverse possession and accordingly, rejected his prayer.

6. The prescribed authority had also considered the objections of the recorded tenure holder with regards to the fact as to whether the land is irrigated or unirrigated and also that the said land would have been excluded in the light of the fact that his sons have become major, but the prescribed authority rejected all the contentions and objections raised by the recorded tenure holder. Against the order of the prescribed authority, the petitioner had filed an appeal before the Additional Commissioner (Administration), Lucknow Division, Lucknow. Before the appellate authority, the petitioner has again stated his

claim on the ground of adverse possession. The appellate authority also affirmed the findings recorded by the prescribed authority and rejected the contentions of the petitioner.

7. The petitioner before this Court has also submitted that he has demonstrated substantially that he was in possession since 1964 and consequently, has proved his possession by way of adverse possession. Even if, it is assumed that the petitioner was in fact, in possession over the land since 1861, still he had to demonstrate that his possession was adverse to that of the recorded tenure holder.

8. Hon'ble Supreme Court has discussed the essentials of adverse possession in detail in case of **Government of Kerala and Another Vs. Joseph and Others, 2023 SCC OnLine SC 961**, held as under:-

"21. Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgements rendered by this Court, the following principles can be observed :

21.1 Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist- nec vi, i.e., adequate in continuity; nec clam, i.e., adequate in publicity; and nec precario, i.e., adverse to a competitor, in denial of title and knowledge;

(a) In Radhamoni Debi v. Collector of Khulna, 1900 SCC OnLine PC 4, the Privy Council held that-

"The possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor."

(b) Further, the Council Maharaja Sri Chandra Nandi v. Baijnath Jugal Kishore, AIR 1935 PC 36, observed-

"It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening."

(c) A Bench of three judges of this Court in Parsinni v. Sukhi, (1993) 4 SCC 375, held that

"Party claiming adverse possession must prove that his possession must be 'nec vi, nec clam, nec precario' i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner."

(d) In Karnataka Board of Wakf v. Govt. of India (two-Judge Bench), (2004) 10 SCC 779, it was held:-

"It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

This case was relied on in the case of M. Venkatesh v. Bangalore Development Authority, (2015) 17 SCC 1 (three-Judge Bench), Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729 (three-Judge Bench).

(e) This Court in a recent case of M Siddiq (D) through LRs v. Mahant Suresh Das & Ors., (2020) 1 SCC 1, (five-Judge Bench) reiterated this principle as under -

"748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being 'nec vi nec claim and nec precario'. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence."

21.2 The person claiming adverse possession must show clear and cogent evidence substantiate such claim;

This Court in Thakur Kishan Singh v. Arvind Kumar, (1994) 6 SCC 591 (two-Judge Bench) held that -

"5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession..."

Reference may also be made to M. Siddiq (supra).

21.3 Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;

(a) In *Gaya Prasad Dikshit v. Dr. Nirmal Chander and Anr.*, (1984) 2 SCC 286 (two-Judge Bench), this court observed-

"1... It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough."

Reference may also be made to *Arvind Kumar (supra)*; *Mallikarjunaiah v. Nanjaiah*, (2019) 15 SCC 756 (two-Judge Bench); *Uttam Chand (supra)*.

21.4 Such clear and continuous possession must be accompanied by *animus possidendi* - the intention to possess or in other words, the intention to dispossess the rightful owner; in *Karnataka Board of Wakf (supra)* it was observed-

"...Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature..."

(a) The case of *Annakili v. A. Vedanayagam*, (2007) 14 SCC 308 (two-Judge Bench) also shed light on this principle as under -

"24. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession..."

(b) In *Des Raj and Others v. Bhagat Ram*, (2007) 9 SCC 641 (two-Judge Bench) this Court observed -

"21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his coowners and they were in know thereof."

(c) This court in *L.N. Aswathama v. P. Prakash*, (2009) 13 SCC 229 (two-

Judge Bench) had observed that permissive possession or possession in the absence of Animus possidendi would not constitute the claim of adverse possession.

(d) It was also held in the case of *Chatti Konati Rao v. Palle Venkata Subba Rao*, (2010) 14 SCC 316 (two-Judge Bench) -

"15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed..."
(Emphasis supplied)

Referring to the above judgement *Subha Rao* (supra) this Court has reiterated the cardinality of the presence of Animus possidendi in a case concerning adverse possession in *Brijesh Kumar & Anr. v. Shardabai (dead) by Lrs.*, (2019) 9 SCC 369 (two-Judge Bench).

21.5 Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;

The prior position of law as set out in *Gurudwara Sahab v. Gram Panchayat Village Sirthala*, (2014) 1 SCC 669 (two-Judge Bench) was that the plea of adverse possession can be used only as a shield by the defendant and not as a sword by the plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of *Ravinder Kaur* (supra) had held that - "...Title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession..."

The position in *Ravinder Kaur* (supra) was followed in *Narasamma & Ors. v. A. Krishnappa (Dead) Through Lrs.*, (2001) 2 SCC 498 (three-Judge Bench)."

9. After due perusal of the aforesaid, it is clear that to bring home the aspect of adverse possession, it has to be shown that the person has been in possession of the said property, and the said possession has been adverse to that of the recorded tenure holder. There is no material which can establish that the said possession is adverse to that of the recorded tenure holder except to the fact that the name of the petitioner is mentioned in

revenue records pertaining to certain revenue years. Mainly, because of the fact that the petitioner's name has been recorded, it cannot be assumed that the possession becomes adverse to the recorded tenure holder. The entries were disputed by the recorded tenure holder, who disputes the possession of the petitioner. No evidence apart from the revenue entries are available on record and as such, merely on the basis of few revenue entries, it cannot be held that the possession of the petitioner was open, clear, continuous and hostile to the claim or possession of the recorded tenure holder. Accordingly, the claim of the petitioner, on account of adverse possession, is not made out on the basis of above facts. No other documentary or oral evidence was filed by the petitioner before the authorities below in support of his claim.

10. In the present case, the petitioner does not dispute that there was any objections raised by the tenure holder at the time when the entry in favour of the petitioner was made in the revenue records and consequently, it cannot be said that his possession was adverse to that of the recorded tenure holder. Recorded tenure holder, on the other hand, has denied the possession of the petitioner and also submitted that he is in possession of the entire land and the claim of the petitioner in this regard is false. Even if, the material produced by the petitioner is believed, he could only demonstrate his possession, but there is no material to show that the said possession was in knowledge of the recorded tenure holder or he had ever objected to his possession. Accordingly, no case of adverse possession is made out by the petitioner.

11. In the light of the above, there is no infirmity in the order dated 27.02.1981 of the prescribed authority requiring interference.

12. Accordingly, the writ petition is **dismissed**.

Order Date :- 29.1.2024

Mohd. Sharif

(Alok Mathur,J.)