



CGHC010001852019

2026:CGHC:43700

NAFR

Digitally
signed by
PRAKASH
KUMAR
Date:
2026.10.15
17:35:41
+0530

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.14 of 2019

Ramesh Singh S/o Chandrabhan Singh, Aged About 52 Years, R/o Village- Rohrakala, Tahsil- Patharia, District Mungeli, Chhattisgarh.

... Appellant

versus

1 - Kumari Bai Wd/o Ganga Singh, Caste – Thakur, Aged About 58 Years R/o Bankimongra, Katayinar, Chhattisgarh (Near High School), Post Office- Bankimongra, District Korba, Chhattisgarh.

2 - Shekhar Singh Rajput S/o Kirtan Singh, Aged About 35 Years, Caste Thakur, R/o Geetanjali Nagar, Raipur, In Front of Bottle House, Sector- 1, Quarter No.13, Tahsil And District Raipur, Chhattisgarh.

3 - Kamla Bai Wd/o Kirtan Singh Aged About 75 Years Caste Thakur, R/o Geetanjali Nagar, Raipur, In Front Of Bottle House, Sector- 1, Quarter No.13, Tahsil And District Raipur, Chhattisgarh,

4 - Rajendra Singh Rajput S/o Kirtan Singh, Aged About 30 Years Caste Thakur, R/o Pragati Nagar, Deepika, Quarter No. B-140, Tahsil- Deepika, District Korba, Chhattisgarh.

5 - Santoshi Bai W/o Indrabhan Singh, Aged About 33 Years, Caste Thakur, R/o Near Mama Bhanja Talab, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.

6 - State of Chhattisgarh Through The Collector, District Bilaspur Chhattisgarh.

... Respondents

For Appellant	:	Mr. Rudra Pratap Dubey, Advocate on behalf of Mr. Goutam Khetrapal, Advocate
For Respondent No.6 /State	:	Mr. Sabyasachi Choubey, Govt. Advocate

Hon'ble Shri Justice Sachin Singh Rajput

Judgment on Board

08/10/2026

Heard on admission.

1. This is an appeal under Section 100 of the Civil Procedure Code, 1908 (for short 'CPC') assailing the legality, correctness and judicial propriety of the judgment and decree dated 17.10.2018, passed by the District Judge, Mungeli, District Mungeli (C.G.) in Civil Appeal No.H-31-A/2016. By the impugned judgment and decree, the first appeal filed by the appellant/plaintiff under Section 96 of the CPC was dismissed and the judgment and decree dated 24.10.2016 passed by the First Civil Judge, Class-I, Mungeli, District-Mungeli, (C.G.) in Civil Suit No.S/1-A/2011 was affirmed.
2. The parties are herein after referred to as their status before the trial Court.
3. The plaintiff filed a suit for declaration of title, permanent injunction and specific performance of the contract in respect of the suit property which is comprised in Khasra No.70/1, 144 and 221/1, area 0.44, 0.06, 2.98 acre respectively total area 3.44 acre situated at village Rohrakala, P.H. No.38, Tehsil – Mungeli, present Tehsil – Pathariya, District – Mungeli, Chhattisgarh (for short 'the suit property'). During

pendency of the civil suit, original defendant No.1 – Jawahar Singh passed away in his place, his daughter Kumari Bai was substituted on record. As per the pleadings, Jawahar Singh, Kirtan Singh and Baran Singh S/o Bhuvneshwar were the Bhumiswami of the suit property and on the need of some amount, on 26.11.1988 the said property was sold to the plaintiff for a consideration of Rs.40,000/- and also delivered the possession and executed an agreement indicating therein that as soon as the plaintiff would ask to get the sale deed registered, they would execute and register the sale deed. When the plaintiff asked the defendants Jawahar Singh, Kirtan Singh and Baran Singh to execute and register the sale deed, however, they were giving oral assurance. Since the defendants were relatives, the plaintiff believed on their oral assurance. It has been further pleaded that the Kirtan Singh died 10 years back, Baran Singh died about 7 years back. Defendant No.2 and 4 are the sons of Kirtan Singh, defendant No.3 is his wife and defendant No.5 is his daughter. After the death of Kirtan Singh and Baran Singh, the plaintiff requested Defendant Nos. 1 to 5 to execute and register the sale deed. However, they assured the plaintiff that the sale deed would be executed and registered after the mutation entries were made in their favour following the death of the original Bhumiswamis. On 19.10.2010, the plaintiff sent a legal notice to the defendants for execution and registration of the sale deed. Despite receipt of the same, the sale deed was not executed or registered. It has been further pleaded that the appellant is in possession of the suit property for 22 years and by adverse possession, he has perfected his title. Thus, seeking the above stated reliefs, the suit was filed.

4. Written statement was filed by the defendant No.1 to 5 wherein they have denied the averments of execution of the agreement to sale by the deceased Kirtan Singh and Baran Singh. They have stated that they were in possession of the suit property and in order to affect the possession, the suit was filed. The suit is barred by limitation. As no agreement to sale was executed, there cannot be any question of execution and registration of the sale deed.
5. On the basis of above pleadings, following issues have been framed by the learned trial Court:-

- “1. Whether the defendants Jawahar Singh, Kirtan Singh and Baran Singh sold the disputed agricultural land Khasra No. 70/1, 144 and 221/1 situated in village Roharakala, P.H. No. 38, Tehsil Mungeli, District Bilaspur, admeasuring 0.44 acres, 0.06 acres, 2.98 acres respectively, 'total area 3.44 acres' to the plaintiff on 26-11-88 for Rs. 40,000/- and executed the sale agreement and received the full consideration?*
- 2. Whether the plaintiff has purchased the disputed agricultural land from the said defendants on the said sale agreement dated 26/11/88 and is in continuous possession and cultivation thereof?*
- 3. Is the plaintiff always ready and willing to execute the sale deed and get the disputed land registered?*
- 4. Whether the plaintiff is entitled to a decree for specific performance of the contract in respect of the suit land against respondents 1 to 5?*
- 5. Whether the plaintiff is the title holder of the disputed land on the basis of continuous adverse possession?*
- 6. Is the plaintiff's suit within the time limit?*
- 7. Has the plaintiff not properly evaluated the case and has affixed insufficient court fees?*
- 8. Relief and costs?*

6. The plaintiff examined as many as three witnesses and exhibited 12

documents whereas defendants examined as many as two witnesses, however, no documents were exhibited.

7. The learned trial Court, after proper appreciation of the evidence available on record dismissed the Civil Suit No.S/1-A/2011 filed by the plaintiff. The learned Appellate Court also affirmed the judgment and decree passed by the learned Trial Court. Hence, this second appeal.
8. Learned counsel for the appellant/plaintiff submits that the impugned judgment and decree dated 17.10.2018 is bad in law, perverse, erroneous and is contrary to the evidence available on record. He submits that the learned Trial Court as well as the First Appellate Court have failed to properly appreciate the oral and documentary evidence adduced by the parties, particularly the evidence establishing that the plaintiff was put in possession of the suit property pursuant to the agreement in question. He further submits that the plaintiff has always been ready and willing to perform his part of the contract, and the material available on record sufficiently establishes his readiness and willingness to fulfill his contractual obligations. He also submits that the time was not the essence of the contract and, therefore, the plaintiff's claim could not have been rejected merely on the ground of delay in performance. Accordingly, learned counsel submits that the substantial questions of law formulated in the memorandum of appeal arise for consideration in the present second appeal and that the appeal deserves to be admitted for hearing.
9. Learned State counsel submits that dispute is between the private parties and State is the formal party.
10. Heard learned counsel for the parties and perused the evidence available on record.

11. The alleged agreement to sell was executed on 26.11.1988 and the present suit was filed on 29.01.2011 i.e. after a lapse of 22 years. It is a settled position of law that in order to succeed the plaintiff was required to comply the provisions contained in Section 16(c) of the Specific Relief Act, 1963. Readiness and willingness is not only required to be pleaded but it is required to be proved by cogent and prudent evidence. Readiness and willingness are two different aspects.

12. The Hon'ble Supreme Court in case of **His Holiness Acharya swami Swami Ganesh Dassji Vs. Sita Ram Thapa reported in (1996) 4 SCC 526** dealt with the meaning of readiness and willingness. It was observed that 'readiness' means the capacity of the plaintiff to perform the contract which includes the financial situation to pay the sale consideration. To ascertain the 'willingness', conduct of the plaintiff has to be properly scrutinised. In paragraph 2 the Hon'ble Supreme Court held as under:-

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For contract, the conduct has to be properly scrutinised. [...] The factum of readiness and willingness to perform plaintiff's part of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was no ready no capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bit for the time which disentitles him as time is the essence of the contract."

(emphasis supplied)

13. Issue No.3 is in respect of readiness and willingness. The learned Trial Court after due assessment of evidence decided this issue against the plaintiff. Learned Trial Court observed that during lifetime of Kirtan Singh and Baran Singh, plaintiff never made any efforts for performance of the agreement to sell. Even the sanctity of the agreement to sell has been doubted by the learned Trial Court. Thus, the finding on this issue is affirmed.

14. The issue No.1 was framed with regard to the execution of the agreement to sell and receipt of entire sale consideration. This issue has been decided in negative. The learned Trial Court on assessment of evidence on record decided the issue on meticulous examination which has been later on affirmed by the First Appellate Court. The issue No.2 with regard to continuous possession of suit property by the plaintiff has also been held to be not proved. Otherwise, the plaintiff has also pleaded perfection of his title on account of adverse possession. Even the pleadings of the plaintiff be looked into, his possession was said to be permissive in nature after alleged agreement to sell.

15. The law with regard to perfection of title on the basis of adverse possession is no longer *res integra*. A Constitution Bench of Hon'ble Supreme Court in the case of **M. Siddiq (dead) through LRs. (Ram Janmabhumi Temple case) vs. Mahant Suresh Das and Ors.** reported in **(2020) 1 SCC 1** in paragraph 1142-1143 held as under:-

“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to

the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr. Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. 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. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading paragraph 11(a), it becomes evident that beyond stating that the Muslims have been in long exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.”

16. This judgment was relied upon by the Hon'ble Supreme Court in the case of **Uttam Chand (Dead) through LRs vs. Nathu Ram (dead) through LRs** reported in **(2020) 11 SCC 263** in para 15. In case of **M. Karim vs. Mst Bibi Sakina** reported in **AIR 1964 SC 1254**, the Hon'ble Supreme Court observed as under:-

“Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. here is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.”

17. In case of **Ravinder Kaur Grewal and Ors. vs. Manjit Kaur and Ors.** reported in **(2019) 8 SCC 729**, Hon'ble Supreme Court observed as under:-

“60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, 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 his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The

owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.”

18. Following observation was made by the Hon'ble Supreme Court in case of **Chatti Konati Rao & Ors vs. Palle Venkata Subba Rao** reported in **(2010) 14 SCC 316** with regard to plea of adverse possession:-

“15. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds 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 possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The Courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.”

19. In light of the above authoritative judgments, the plaintiff in order to acquire title on adverse possession was required to plead and prove (i) on what date he came into possession, (ii) what was the nature of his possession, (iii) whether the factum of possession was known to the defendants/respondents, (iv) how long his possession was continued,

(v) his possession was open and undisturbed, (vi) date on which his possession became adverse.

20. In the case in hand, the issue No.5 has been formulated with regard to declaration of title on account of adverse possession. In the opinion of this Court, the abovestated ingredients have not been fulfilled by the plaintiff by leading prudent and cogent evidence. When his possession is under the risk of eviction, he cannot claim that he has perfected the title on account of adverse possession. Learned trial Court has meticulously examined the oral and documentary evidence on record and thus, decided the issue against the plaintiff. The finding of fact recorded by the learned Civil Judge has also been affirmed by the 1st appellate Court. It is well settled that for admission of a second appeal under Section 100 of CPC, formulation of a substantial question of law is *sine qua non* as held by the Hon'ble Supreme Court in **Sir Chunilal V. Mehta and sons Ltd. vs. Century Spinning and Manufacturing Co. Ltd.** reported in **AIR 1962 SC 1314** and in the matter of **Chandrabhan (Deceased) through LRs. & Ors. vs. Saraswati & Ors.** reported in **2022 SCC OnLine SC 1273**.

21. In the present case, no substantial question of law arises for consideration. Thus, the appeal fails and is accordingly dismissed at the admission stage. No order as to cost. Decree be drawn.

Sd/-

**(Sachin Singh Rajput)
JUDGE**