



CGHC010055702018

2026:CGHC:39270

AMITA
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HIGH COURT OF CHHATTISGARH AT BILASPUR

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SA No. 114 of 2018

- 1** - Dilharan S/o Shri Rambharos Aged About 51 Years Caste Sahu, R/o Village Madna, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Plaintiff No.1), District : Bilaspur, Chhattisgarh.
- 2** - Rakesh Kumar S/o Kishori Lal Aged About 52 Years R/o Village Sarbahra, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Plaintiff No.5), District : Bilaspur, Chhattisgarh.
- 3** - Mahesh Kumar S/o Kishori Lal Aged About 50 Years R/o Village Sarbahra, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Plaintiff No.6), District : Bilaspur, Chhattisgarh.

... Appellants/plaintiffs**versus**

- 1** - Sarvarakar, Bhagwan Gouri Shanker Mahadeo Trust Sarbahara Tahsil Pendra Road, District Bilaspur, Chhattisgarh, Through Manager, Collector Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
- 2** - State Of Chhattisgarh Through Collector Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
- 3** - Shiv Bhusan S/o Shri Shankari Pandey Aged About 42 Years R/o Village Purana Gorela, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Defendants), District : Bilaspur, Chhattisgarh.
- 4** - Dashrath S/o Punnulal Aged About 48 Years Caste Sahu, R/o Village Madna, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Plaintiff No.2), District : Bilaspur, Chhattisgarh.
- 5** - Dashrath Singh S/o Daulat Singh Aged About 50 Years Caste Gond, R/o Village Madna, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Plaintiff No.3), District : Bilaspur, Chhattisgarh.

6 - Rajaram S/o Shri Baisakhu Aged About 61 Years Caste Kori, R/o Village Madna, Tahsil Pendra Road, District Bilaspur, Chhattisgarh (Plaintiff No.4), District : Bilaspur, Chhattisgarh

... Respondents/defendants

For Appellants : Mr. Dharendra Prasad Mishra, Advocate.

For Respondent No. 1 : None present.

For Respondent No. 2 : Mr. Jai Prakash Tiwari, Panel Lawyer

For Respondent No. 3 : Mr. Somnath Verma, Advocate.

(Hon'ble Mr. Justice Sachin Singh Rajput)

Judgment on Board

07/09/2026

1. Heard on admission.
2. This is plaintiffs' Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 (henceforth, "CPC") against the impugned judgment and decree dated 30.10.2017 passed by Upper District Judge, Pendra Road, District Bilaspur (C.G.) {hereinafter referred to as 'Appellate Court'} in Civil Appeal No. 5-A/2017 affirming judgment and decree dated 02.11.2016 passed by learned Civil Judge, Class- I, Pendra Road, District Bilaspur (C.G.) (for short "Trial Court") in Civil Suit No. 31-A/2011, whereby the plaintiffs' suit has been dismissed.

[For the sake of convenience, the parties would be referred to as per their status shown in the plaint filed before the trial Court]

3. Facts of the case, in brief, are that appellants / plaintiffs have instituted a civil suit for declaration of title of the land bearing Khasra No. 52, measuring 0.07 acre, 0.08 acre, 0.05 acre and 0.16 acre out of total land measuring 3.32 acres owned by defendant No. 1 situated at village Madna and the land bearing Khasra No. 101, measuring 0.07 acre and 0.15 acre out of total land measuring 32.61 acres owned by defendant No. 1 situated at village

Sarbahara (for brevity, "suit land"). According to the plaintiffs, aforesaid suit land was recorded in the name of defendant No. 1 in the revenue records, which is trust property, known as Bhagwan Gouri Shanker Mahadeo Trust, Sarbahara. Ancestors of the plaintiffs and thereafter the plaintiffs have been in continuous possession of the suit property for the last 20-25 years ago by constructing house and *badi* on it. The defendant No. 1 – Trust is well aware of their continuous possession over the suit land and the plaintiffs have not let anyone other than themselves into possession and their possession over the suit land is uninterrupted and peaceful possession. Apart from the defendant No. 1, the villagers residing there also aware about the possession of the plaintiffs over the suit land. In 2008-2009, the plaintiffs filed an application before the Additional Collector, Pendra Road for recording their names on the suit land in the revenue records, thereafter, upon instructions of Additional Collector, the Tehsildar, Pendra Road, registered revenue case No. 212-B 121/08-09 in this matter, in which, the Revenue Inspector found them to have been in possession for 20-25 years. Thereafter, Tehsildar, Pendra Road vide its order dated 20.07.2009 passed an order granting them possession of the suit land. Defendant No. 1 is a Public Trust and defendant No. 2 being the District President of the said Trust, they have neither challenged the continuous possession of the plaintiffs over the suit land nor any proceeding has been initiated to take back the possession of the plaintiffs in their favour, thus, they have perfected their title over the suit land by way of adverse possession. The cause of action arose on 20.07.2009 when their (plaintiffs) names were not recorded in the revenue records as title holder of the suit land and, therefore, the suit for declaration of title over the suit land based on adverse possession was filed by the plaintiffs.

4. Written statement has been filed by the defendants denying the

averments made in the plaint stating *inter alia* that the plaintiffs are not the title holder of the suit property and Shivbhusan Pandey was only the possession holder of the suit property. The suit has not been filed in accordance with law, as the notice under Section 80 of the CPC has not been sent to the Government, therefore, the suit filed by the plaintiff is not maintainable.

5. On the basis of the above broad pleadings, the learned Trial Court framed the following issues for determination, which reads thus :-

	<i>1. Whether the Plaintiffs are entitled to obtain a declaration to the effect that they have acquired title to the suit land, as described in paragraph 3 of the plaint, by way of adverse possession and, if so, whether they are entitled to be declared the title holders thereof on that basis?</i>	<i>“Not Proved.”</i>
1.	<i>2. Relief and costs.</i>	<i>The suit of the plaintiff is dismissed.</i>

6. The respective parties led their evidence before the Trial Court. Upon appreciation of the oral and documentary evidence available on record, the learned Trial Court decided Issues and dismissed the suit. Being aggrieved thereby, the plaintiffs preferred first appeal under Section 96 of the Code of Civil Procedure before the First Appellate Court. The said appeal also came to be dismissed by the impugned judgment and decree affirming the judgment & decree of the trial Court. Against which, instant second appeal under Section 100 of the CPC has been preferred challenging the same.

7. Learned counsel for the appellants /plaintiffs submits that the ancestors of the plaintiff, and thereafter the plaintiffs themselves, have been in continuous possession of the suit property for the last 20–25 years. It is

further submitted that such possession has been peaceful, open, continuous, and uninterrupted, and has never been threatened, challenged, or disturbed by any person. It is further submitted that, during the year 2008–2009, the plaintiffs preferred an application before the Additional Collector, Pendra Road, seeking recording of their names in the revenue records in respect of the suit land. Pursuant thereto, and upon the directions of the Additional Collector, the Tehsildar, Pendra Road, registered Revenue Case No. 212-B 121/08-09 for consideration of the matter. During the course of the proceedings, the Revenue Inspector conducted an inquiry and reported that the plaintiffs had been in possession of the suit land for the preceding 20–25 years, thereafter, vide order dated 20.07.2009, the Tehsildar, Pendra Road, passed an order recognizing and granting possession of the suit land in favour of the plaintiffs. Hence, the finding recorded by the learned Trial Court dismissing the suit filed by the plaintiffs, and affirmed by the learned First Appellate Court, is perverse and unsustainable in law. Accordingly, the substantial questions of law proposed in the memorandum of appeal deserve to be framed, and the appeal deserves to be admitted for hearing.

8. Per contra, learned counsel appearing for respondent No. 3, while opposing the submissions advanced by learned counsel for the plaintiffs, would submit that the necessary ingredients required to establish a declaration of title on the basis of adverse possession have not been fulfilled by the appellants /plaintiffs. Mere continuous possession does not, *ipso facto*, lead to an irresistible conclusion that such possession was adverse. It has not been pleaded or established as to the date on which the possession of the plaintiffs over the suit property became adverse to the original owner. In the absence of such specific pleading and proof, the claim based on adverse

possession is not sustainable, and therefore, the suit is liable to be dismissed.

9. Mr. Jai Prakash Tiwari, learned counsel appearing for respondent No. 2 submits that the dispute is essentially between the plaintiff and the private respondents and the State is only a formal party to the proceedings.

10. Heard learned counsel for the parties and perused the entire record with utmost circumspection.

11. The principal claim of the plaintiff is founded upon adverse possession, it being pleaded that the plaintiff and his ancestors have been in continuous possession of the suit property for the last 20–25 years. In this regard, Issue No. 1 assumes significance, as it directly concerns the determination of the plaintiff's claim of title by way of adverse possession. Upon consideration of the evidence and materials on record, the learned Trial Court has held that the plaintiff failed to establish the requisite ingredients of adverse possession and, accordingly, has decided the said issue against the plaintiff. The findings of fact so recorded by the learned Trial Court were arrived at upon a meticulous examination and appreciation of the evidence on record with respect to the possession of the suit property. The said findings have been duly affirmed by the learned First Appellate Court. In paragraph 15 of the judgment, the First Appellate Court held that the plaintiffs had instituted the suit, claiming a declaration of their title to the suit land on the basis of adverse possession. However, Appellant No. 1/Plaintiff No. 1, Dilharan, stated in paragraph 11 of his cross-examination that he did not know the original owner of the suit land. Thus, when the appellants/plaintiffs themselves are unaware of the identity of the owner of the suit land, it remains unclear against whom they claim to have perfected title by adverse possession. A claim of adverse

possession necessarily presupposes the existence of an identifiable true owner against whom the adverse possession is asserted. In the absence of knowledge or identification of the true owner, the appellants/plaintiffs' pleadings and sworn testimony regarding their alleged adverse possession of the suit land lose their legal foundation. In these circumstances, the appellants/plaintiffs cannot be said to have established the essential ingredients necessary for claiming title by adverse possession. Consequently, the plaintiffs ought not to be granted a declaration of title on the basis of their alleged adverse possession over the suit land.

12. In view of foregoing discussion, both the Courts below have recorded categorical findings that the Plaintiffs have failed to prove the plea of adverse possession so as to perfect title over the suit property.

13. It is settled position of law that the person who pleads to perfect his title on the basis of adverse possession is required to prove and plead the following conditions:

- 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.

14. The intention to possess is totally different from the intention to dispossess. The plaintiffs are required to plead in their plaint the date on which their possession became adverse to the real owner and when it came to the knowledge of the real owner with regard to adverse possession. That would be the starting point of calculation of limitation to arrive to a conclusion that certain periods have lapsed and they have perfected their title by

adverse possession. The long drawn possession in the property itself is not sufficient to hold that the person has perfected his title by way of adverse possession.

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 Janmabhum Temple case) v. 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 No. 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. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent finding of fact recorded by both the courts below is based on evidence, no substantial question of law is involved in this appeal, thus appeal deserves to be and accordingly dismissed at admission stage itself. No order as to costs.

17 All pending application(s), if any, stand disposed of. Decree be drawn accordingly. No order as to costs.

Sd/-

(Sachin Singh Rajput)

JUDGE