



CGHC010132162019



2026:CGHC:43381

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 365 of 2019

1 - Barati Bhagat W/o Sanichar Ram Aged About 75 Years, R/o Village - Jashpur Nagar, District Jashpur Chhattisgarh

2 - Deepak Ram Bhagat S/o Sanichar Ram Aged About 64 Years R/o Village - Jashpur Nagar, District Jashpur Chhattisgarh

3 - Rajesh Ram Bhagat S/o Sanichar Ram Aged About 37 Years R/o Village - Jashpur Nagar, District Jashpur Chhattisgarh. (Plaintiffs)

... Appellant(s)

versus

1 - The State Of Chhattisgarh Through - Collector, Jashpur, Tahsil And District Jashpur Chhattisgarh. (Defendant)

... Respondent(s)

For Appellant (s) : Shri Rishikant Mahobia, Advocate

For Respondent(s) : Ms. Veethika Choubey, Panel Lawyer

(Hon'ble Shri Justice Sachin Singh Rajput)

Judgment on Board

07/10/2026

The unsuccessful plaintiffs have filed this appeal under Section 100 of the Civil Procedure Code, 1908 (for short 'CPC') assailing legality, correctness and validity of the judgment and decree dated 23/02/2029 passed by the District Judge,

Jashpur, District-Jashpur (CG) in Civil Appeal No.17A/2018. By the impugned judgment and decree, the First Appeal of the appellants / plaintiffs under Section 96 of the CPC was dismissed and the judgment and decree dated 06/08/2028 passed by the Civil Judge, Class-II, Jashpur, CG in Civil Suit No.2A/2016 was affirmed.

2. Parties are hereinafter referred to as their status before the trial Court.

3. The plaintiffs filed a suit for declaration of title on account of adverse possession and permanent injunction against the defendant i.e. State Government in respect of the suit property which is comprised in part of khasra No.505 area 6.69 acre out of which, 1.50 acres of land is situated at Mohalla/Street-Chir Bagicha. According to the plaintiffs, ancestors of the plaintiffs before independence were in occupation of the disputed property and they have developed the property for agriculture purposes and are in continuous possession without any disturbance made by the defendant. At present, for the last more than 70 years, the plaintiffs and their ancestors are in possession. Thus, they have perfected their title by way of adverse possession. Thus, the suit for above stated relief was filed.

4. The respondent/defendant filed written statement and pleaded that the suit property according to the revenue records and *nistaar patrak* dated 26/06/1957 is allotted for the grave yard and denial has been made in respect of other pleadings.

5. On the basis of above broad pleadings, learned trial Court framed issues as under -

"I. Whether the plaintiffs have adverse possession of 1.50 acres of land in Khasra No. 505 of Schedule "A" situated near Chir Bagicha Mohalla, Village-Jashpur, Tahsil and District Jashpur?

II. Whether the plaintiffs established their ownership over the disputed land on the basis of adverse possession?

III. Whether the defendant is interfering with the plaintiffs' possession over the disputed property?

IV. Whether the plaintiffs are entitled to obtain permanent injunction against the defendant?

V. Relief and cost?

VI. Whether the suit is maintainable under Section 257(b) of the Chhattisgarh Land Revenue Code."

6. The plaintiffs examined as many as four witnesses and exhibited 15

documents.

7. Learned counsel for the appellants/plaintiffs submits that the findings of issue No.1 and 2 are perverse to the record and are bad in law. He submits that the plaintiffs were able to prove their continuous and uninterrupted possession for almost 70 years. Even assuming that some revenue proceedings were drawn against the plaintiffs, that too was in the year 1996 and the suit was filed in the year 2016. Thus, even then the plaintiffs have perfected their title on account of adverse possession. Thus, it is prayed that the appeal may be admitted.

8. Learned State counsel opposes the above submission and supports the impugned judgment.

9. Issue Nos.1 and 2 are in respect of adverse possession on the suit property by the plaintiffs and title on account of adverse possession. These issues are finding of facts and learned trial Court on assessment of evidence gave the finding against the appellants in negative. According to the appellants, they are in possession of the suit property for almost 70 years and some revenue proceedings for encroachment was drawn in the year 1996. The suit was filed in the year 2016 which would mean that for 30 years, no revenue proceedings were drawn. Learned trial Court, relying upon the judgment of Hon'ble Supreme Court in the case of **Karnataka Board of Waqf vs. Government of India and ors., (2004) 10 SCC 779** gave a categorical finding on issue nos.1 and 2 against the plaintiffs. The appeal having been filed by the plaintiffs also stood dismissed affirming the finding of facts recorded by the learned trial Court.

10. This Court in the case of **Gram Panchayat Jaimura vs. Nirnidhi and ors.** in Second Appeal No.179/2009 vide its judgment dated 12/03/2020 placing reliance on the judgment in the case of **Ravinder Kaur Grewal and ors. vs. Manjit Kaur and ors.** reported in **(2019) 8 SCC 729** has observed that the plaintiff cannot claim adverse possession on the Government land reserved for public utility such as road and hospitals. In the case in hand, according to the State and evidence available on record particularly revenue records and *nistaar patrak*, since 1957, the land was allotted for the grave yard. 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.”

11. 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 the 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.”

12. In case of **Ravinder Kaur Grewal** (Supra), 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.”

13. 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.”

14. In the light of above authoritative judgments, the plaintiffs 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.

15. In the light of judgment passed in **Ravinder Kaur Grewal** (supra) and above stated judgment relied upon by the learned trial Court, the finding recorded by the learned trial Court as affirmed by the 1st appellate Court on issue Nos.1 and 2 does not appear to be finding perverse to the record. 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**. In the present case, no substantial question of law arises for consideration.

16. Thus, the appeal fails and is accordingly dismissed at the admission stage.

Sd/-

(Sachin Singh Rajput)
JUDGE

Deepti

