

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.62 OF 1995

Maruti Dagadu Charwad

(Since Deceased) Through his Legal Heirs. ...Appellants

vs.

Shri. Bhau Nama Gujar (Since deceased)

Through his legal heirs and Representatives...Respondents

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Mr. Sanjeev Rairkar, a/w. Mr. Nikhil R. Vidwans, for the Appellants.

Mr. Yatin Shah, a/w. Ms. Harsha Shah and Ms. Aditi Bhat, for
Respondent Nos.1 to 7.

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CORAM : S.C. GUPTE, J.

DATED : 7 MARCH 2017

(JUDGEMENT):

. This Second Appeal challenges a judgment and order passed by the District Court at Pune in Civil Appeal No.111 of 1989. By the impugned judgment and order, the learned District Judge allowed the Respondents' appeal and set aside the judgment and decree passed by the Trial Court in favour of the Original Appellant (now represented through his legal heirs), by which the Trial Court had dismissed the Respondents' suit for declaration and injunction. The Second Appeal raises substantial questions of law on the application of the law of adverse possession by the lower appellate court to the facts concurrently found by the courts below, particularly concerning the possession which the adverse possessor must show both in terms of its nature and its openness so as to found a plea of adverse possession.

2. Respondent Nos. 1 to 7 (Original Plaintiffs) had filed the present suit, being Regular Civil Suit No.1989 of 1978, in the Court of Civil Judge, Junior Division at Pune, initially, for a declaration and injunction restraining the Defendants (the predecessor-in -title of the Appellants herein) from disturbing their possession. After rejection of their application for temporary injunction and confirmation of such rejection by the District Court in appeal, the Plaintiffs amended their plaint by seeking an alternative prayer for a decree of possession. The say filed by Defendant No.1 in reply to the application for temporary injunction (Exhibit 19) was treated as a written statement of Defendant No.1. The Trial Court accepted the Plaintiffs' case that they were owners of the suit land. It, however, came to the conclusion that the Plaintiffs had not proved that they were in possession of the suit land and, on the other hand, it was Defendant No.1, who had proved that he was in possession of the suit land since the year 1952. The Trial Court held that Defendant No.1 had proved that he had become the owner of the suit land by adverse possession and that, in the premises, the Plaintiffs were not entitled to any relief in the suit. The Trial Court, accordingly, dismissed the Plaintiffs' suit.

3. In the appeal filed by the Plaintiffs before the District Court, the learned District Judge accepted the findings of the Trial Court that the Plaintiffs were owners of the suit land but had failed to prove their possession of the same on the date of filing of the suit. The learned Judge held that Defendant No.1 was in continuous possession of the same since the year 1952-53. The learned Judge, however, held that the possession of Defendant No.1, though continuous in nature and existing

throughout the statutory period of 12 years without any interruption, did not amount to adverse possession in law. The learned Judge held that in his pleadings, Defendant No.1 had not asserted the date on which he entered into possession; that there was no evidence in what capacity he entered into possession of the suit land - whether the possession was permissive or otherwise; and from which date he asserted a hostile title. The learned Judge held that there was no evidence that since the year 1952-53, or at any time, the predecessor-in-title of Defendant No.1 or after the predecessor, he himself was in possession of the suit land by adverse possession or became owner of the suit land by adverse possession. These findings have been impugned in the present Second Appeal.

4. Learned Counsel for the Appellant submits that the Defendant in the present case had made out all ingredients of adverse possession. The possession was a hostile possession, that is to say, a possession which was expressly or impliedly in denial of the title of the owner, namely, the Plaintiffs; such adverse possession continued throughout the statutory period of 12 years, having, in fact, originated in the year 1952-53, when the Plaintiffs' predecessor, Rama Laxman Gujar, was the owner of the suit land; and it continued without any interruption throughout during the period between 1952-53 and till filing of the present suit. Learned Counsel submits that it was not necessary for Defendant No.1 to show that he had actually conveyed his intent to assert an adverse title to the true owners; that it was sufficient if the assertion of a hostile title was open and sufficient in publicity. Learned Counsel relies on several judgments of the Supreme Court in this behalf,

including the more recently decided case of **T. Anjanappa vs. Somalingappa**¹.

5. On the other hand, it is submitted by learned Counsel for the Respondents that since Defendant No.1 himself had claimed that the suit property was an ancestral property of Defendant No.1, there was no case of adverse possession. Learned Counsel also submits that possession of Defendant No.1, however long, is not adverse to the true owner, if Defendant No.1 does not openly deny the owner's title. Learned Counsel also submits that the claimant of adverse possession must prove every incident of such title claimed by him. Learned Counsel submits that, in the present case, there was no proof that Defendant No.1 had paid any revenue for the suit land or even opposed the mutation in favour of the Plaintiffs after the death of their predecessor, Rama.

6. Though quite a few judgments of the Supreme Court were cited by learned Counsel for the Appellants to elucidate the concept of adverse possession, we may merely note the observations of the Supreme Court in the recent case of **T. Anjanappa (supra)**, in which the Supreme Court considered its earlier judgments and laid down the law in the following words :-

“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that

¹ (2006) 7 Supreme Court Cases 570

his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

“24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners.”

(See [Vidya Devi v. Prem Prakash and Ors.](#), SCC p.504, para 24.)

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

“14. Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under [Article 65](#) [of the [Limitation Act](#),] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse

possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

“15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. See [Annasaheb Bapusaheb Patil v. Balwant](#), SCC p. 554, paras 14-15.)”

7. The above statement of law indicates what is precisely meant by hostile possession. It must be possession evidently with a title in either an express or an implied denial of the title of the true owner, such denial having to be established by clear and unequivocal evidence, which, in turn, must show that the person claiming title in denial of the title of the true owner had the requisite animus to assert such title. Such possession cannot be termed as adverse, if it can be referred to a lawful title. So also, one who holds possession on behalf of another, does not, by mere denial of that other's title, make his possession adverse so as to give himself the benefit of the statute of limitation.

8. In the present case, Defendant No.1 had asserted his possession of the suit land since the year 1952. It is the case of Defendant No.1 that, ever since 1952, that is to say, during the life time of the deceased Rama, the predecessor-in-title of the Plaintiffs, Defendant

No.1 was in actual possession of the suit land and cultivating the same. In support of his case, he relied on revenue entries of 7/12 extracts right from the year 1953 till the year 1978 (and, even thereafter, till the year 1981) which indicated actual cultivating possession of Defendant No.1. Though there is no explanation as to the capacity in which Defendant No.1 entered the suit field, there is evidence to show that, since the year 1952, his possession was not disturbed either by the deceased Rama or the present Plaintiffs. His possession was clearly continuous and without any obstruction. As much as the Trial Court, even the lower Appellate Court accepted this aspect of continuity of possession in Defendant No.1. The Appellate Court, however, declined to accept the Defendant's case of adverse possession on the ground, firstly, that the Defendant had not pleaded and proved the date with effect from which he came into such possession and secondly, he did not plead or establish the nature of his possession or the fact of the Plaintiffs' or their predecessor's knowledge of his adverse possession. On these findings, the lower Appellate Court came to the conclusion that there was no clear assertion of a hostile title by Defendant No.1 to the knowledge of the true owner. The Appellate Court noted that Defendant No.1 had not examined himself, but his son, and who was aged only 35 years, and who did not have any knowledge as to the entry of Defendant No.1 into the suit land or in what capacity he entered into the suit land or from what date his possession became adverse to the true owner. The Appellate Court also noted that the Defendants' witness had deposed that the suit land did not originally belong to Rama and that it was the ancestral property of his father, i.e. Defendant No.1. The Appellate Court also observed that when a person alleged that he was the owner of the

particular land, there were certain incidents in the matter of exercise of ownership right, which can be called overt acts. The Appellate Court noted that such overt acts were missing in the present case inasmuch as there was nothing to show that Defendant No.1 had paid land revenue of the suit land. On the other hand, the Plaintiffs had produced revenue receipts between the years 1966 and 1978, that is to say, for a period of 12 years prior to the filing of the present suit. The Appellate Court also noted that though the names of the Plaintiffs were entered into revenue records by mutation after the death of Rama, Defendant No.1 had not challenged the same or taken any objection, thereby exercising his right of ownership. On these grounds, the Appellate Court held against Defendant No.1.

9. There is a clear error in the impugned judgment of the first Appellate Court in applying the law of adverse possession to the facts of the present case. Any occupation of immovable property, which is inconsistent with the right of the true owner, is an act professing a title, which is adverse to the true owner. Where a person possesses an immovable property in a manner in which he is not entitled to possess it and there being nothing to show that he possesses it otherwise than as an owner, he is in adverse possession of it. In other words, unless there is something to show that his possession is consistent with the recognition of the true owner's title, the possession can only be termed as adverse. The Supreme Court in the case of **T. Anjanappa** (supra) clearly elucidates this principle of law in the following words :-

“15. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in

which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See *Ward v. Carttar* (1865) LR 1 Eq.29)). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See *Rains v. Buxton* (1880 (14) Ch D 537))."

10. In the present case, the possession of Defendant No.1 of the suit land cannot be said to be consistent with recognition of the title of the Plaintiffs or their predecessor Rama. Both courts have come to the conclusion that Defendant No.1 was in uninterrupted possession of the suit land since the year 1952 and till the date of filing of the suit in 1978. It is nobody's case that this possession was a permissive possession in the sense that it had the permission of the true owner of the suit land, namely, Rama, and his successors, the Plaintiffs herein. Defendant No.1 was cultivating the suit land, taking crops year after year from the suit land, his cultivating possession being clearly evidenced by the entries in the record of rights from the year 1952 till the year 1978 and even thereafter, showing Defendant No.1 as the person in possession and

cultivation of the suit land. There being no case of a permissive possession on the part of Defendant No.1 since the year 1952, this possession must be treated as adverse to the Plaintiffs and their predecessor Rama.

11. Now the next question is whether this adverse possession was open and sufficient in publicity so as to mature into adverse possession, defeating the true owner's right to the property. Even here, the first Appellate Court was in clear error in proceeding on the footing that there was no notice of his adverse possession by Defendant No.1 to the Plaintiffs or their predecessor Rama. The law does not require any specific notice or, for that matter, any proof that there was specific knowledge on the part of the true owner of the adverse possessor's possession or assertion of title. What is important is whether the possession was so open and sufficient in publicity as to impute knowledge on the part of the true owner. It should be open and not concealed. It should be effective so as to impute knowledge on the part of the true owner. It is not for the adverse possessor to establish specific knowledge of the true owner in all cases of adverse possession. As the Supreme Court noted in **T. Anjanappa's** case (supra), adverse possession is of two kinds – one of a trespasser or a non-permissive possessor, which is adverse *ab initio* to the true owner and the other of a permissive possessor which becomes adverse by a change in his position, namely, the possessor asserting a hostile title or denying the title of the true owner. This assertion or denial, or, in other words, change in the position of the possessor, must be shown as being within the knowledge of the true owner and the courts may insist on a notice of such change in

the position of the possessor to the true owner. That, however, is not a case where the possession is that of a trespasser or a non-permissive possessor, which is adverse *ab initio*.

12. The following observations of Supreme Court in the case of **Kshitish Chandra Bose vs Commissioner of Ranchi**² may be noted in this behalf:-

“8. It was then observed by the High Court that mere sporadic acts of possession exercised from time to time would not be sufficient for the acquisition of title by adverse possession. As discussed above, the High Court has not at all cared even to go through the evidence regarding the nature of the acts said to have been committed by the appellant nor to find out whether they were merely sporadic or incidental. Another reason given by the High Court was that the adverse possession should have been effective and adequate in continuity and in publicity. Here, the High Court has gone wrong on a point of law. All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded but that is not the case here. The findings, however, clearly show that the possession of the plaintiff was hostile to the full knowledge of the municipality.”

13. In the present case, as noted by the Trial Court, the Plaintiffs were having another agricultural land in the same village, where the suit land is situated. The Plaintiffs have also admitted in their evidence that they were aware that the name of Defendant No.1 was recorded in the revenue records. There was no concealment on the part of Defendant No.1 in the matter of his possession of the suit land. His possession was reflected in the revenue entires dating as far back as 1952 and, thereafter, throughout till the filing of the suit. There is no case that

² AIR 1981 Supreme Court 707

Rama, the predecessor of the Plaintiffs, had, at any time, objected to the Defendant's possession or obstructed the Defendant in asserting such possession. On these facts, open and notorious possession of the suit land on the part of Defendant No.1 is clearly made out. Once this is made out, it is no longer necessary for the Defendant to either show that he had communicated his assertion of adverse title to the Plaintiffs or their predecessor Rama, or that they had specific knowledge of such assertion.

14. Learned Counsel for the Respondents, relying on a statement made in the deposition of Defendant No.1, submits that the Defendant's witness actually deposed that the suit land was an ancestral property of the Defendant and denied the title of Rama. In the first place, it is pertinent to note that in the pleadings of Defendant No.1, the assertion was that the suit land originally belonged to Rama, but the same was cultivated by Defendant No.1 as an absolute owner thereof by way of adverse possession since the year 1952; that, accordingly, the possession and cultivation of the suit land by Defendant No.1 as an owner thereof was recorded in the village records continuously since the year 1952; and that Rama, during his lifetime, or the Plaintiffs, till the filing of the suit, did not challenge or disturb this possession of Defendant No.1. This pleading clearly satisfies the plea of adverse possession. That the Defendant's witness in his deposition denied the title of Rama or asserted a title of Defendant No.1 as holder of ancestral property, is neither here nor there. What is important is that the assertion of title, whatever be the source of such title, as long as the same is not permissible or claimed through the true owner, is adverse to the true owner and can very well

sustain a plea of adverse possession.

15. There is also no merit in the contention that Defendant No.1 did not prove all incidents of his title inasmuch as there was no case of payment of land revenue or objection to the mutation effected in favour of the Plaintiffs. What is important in a case of adverse possession is that the defendant asserts his adverse title openly and with sufficient publicity. It is not necessary for him to prove all incidents of that title. As long as his possession of the suit property, which is open and sufficient in publicity, is inconsistent with the rights of the true owner, that is to say, without there being anything to show that such possession is otherwise than as an owner or, in other words, otherwise than as consistent with the rights of such owner, there is a case, as I have noted above, of adverse possession.

16. In the premises, the impugned judgment and order of the first Appellate Court cannot be sustained. There is a clear error in applying the law of adverse possession to the facts found by the Court. The Second Appeal is, accordingly, allowed and the impugned judgment and order of 7th Additional District Judge, Pune, dated 17 November 1994, is set aside and the judgment and decree dated 30 June 1988 passed by the V Joint Civil Judge, Junior Division, Pune in Regular Civil Suit 1989 of 1978 is restored. No order as to costs.

(S.C. GUPTE, J.)