

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.393 of 2001

1. Lakheshwar, aged 65 years, S/o Manbodhi, by caste Aghariya,
2. Vidhyadhar, aged 42 years, S/o Manbodhi, by caste Aghariya,
3. Ganesh Ram, S/o Late Shri Dhan Sai, aged 45 years, by caste Aghariya,
4. Bihari, aged 40 years, S/o Late Shri Dhan Sai, by caste Aghariya.
5. Tillau, aged 37 years, S/o Late Shri Dhan Sai, by caste Aghariya.

All by occupation cultivation, R/o Village Pirda, P.H.No.31, R.I. Circle Sankra, Tahsil and District Mahasamund.

(Defendants)
---- Appellants

Versus

1. Kanhaiya Lal, aged 48 years, S/o Late Shri Salik Ram Patel, occupation cultivation, R/o Village Pirda, P.H.No.36, R.I. Circle Sankra, Tahsil and Distt. Mahasamund.
(Plaintiff)

2. The State of Chhattisgarh, through the Collector, Mahasamund.
---- Respondents

For Appellants: Mr. Awadh Tripathi and Mr. Vivek Tripathi, Advocates.

For Respondent No.1: -

None present.

For Respondent No.2 / State: -

Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

28/09/2018

1. The substantial questions of law involved, formulated and to be answered in the defendants' second appeal are as under: -

“1. Whether the first appellate Court has committed an error of law while granting decree of title, possession and permanent injunction in favour of the plaintiff only on the ground that the name of the plaintiff was reflected in the revenue record for the period between 74-75 to 91-92.

2. Whether the findings of the First Appellate Court is perverse or not as except for the entry in the revenue record between 91 to 92 there is no any other piece of evidence in support of his claim.

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter alia that by virtue of registered family arrangement dated 10-6-1991 made by his father, he came into possession of the suit land and became owner of the suit land. The plaintiff also took the alternative plea that he has perfected his title by way of adverse possession. In written statement filed by the defendants before the trial Court, the defendants pleaded that on 27-4-1960, Manbodhi – father of original defendants No.1 to 3, had purchased the suit land from one Sadak Hasan on payment of a cash consideration of ₹ 27,500/- vide Ex.D-1 and in revenue case, order has been passed on 24-2-1993 as such, the suit is liable to be dismissed.
3. The trial Court after appreciating oral and documentary evidence on record came to the conclusion that the defendants are owners of the suit land as they have purchased the same vide Ex.D-1 on 27-4-1960 and the plaintiff has no title by virtue of the alleged family arrangement dated 10-6-1991 and dismissed the suit. In first appeal filed by the plaintiff, the first appellate Court reversed the findings of the trial Court and decreed the suit leading to filing of second appeal under Section 100 of the CPC in which substantial questions of law have been framed and set-out in the opening paragraph of this judgment.
4. Mr. Vivek Tripathi, learned counsel appearing for the appellants / defendants, would submit that the first appellate Court is absolutely unjustified in granting decree on the basis of revenue records for the years from 1974-75 to 1991-92, as the revenue records do not confer any title to the plaintiff and it is only for the purpose of collection of

land revenue, therefore, the judgment and decree of the first appellate Court is liable to set aside.

5. None appeared for the plaintiff / respondent No.1, though served.
6. The State / respondent No.2 is formal party.
7. I have heard learned counsel for the appellants / defendants and considered his submissions and went through the records with utmost circumspection.
8. The plaintiff setup his title on the basis of family arrangement dated 10-6-1991 (Ex.P-1) which was not accepted by the trial Court holding that the plaintiff has failed to prove the source of title of his father relying upon the statement of the plaintiff himself and accepted Ex.D-1 dated 27-4-1960 by which title has been transferred in favour of the defendants. The first appellate Court reversed the finding of title of the defendants merely relying upon the khasra entries for the years from 1974-75 to 1991-92.
9. It is well settled law that mutation of property in revenue records does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni (Smt) v. Inder Kaur (Smt) and others¹.)
10. It is the specific case of the defendants that in dispute between the revenue courts, the revenue authorities have passed orders in favour of the defendants and in Ex.P-2, the documents filed by the plaintiff for the years 1984-85 to 1992-93, the name of defendant Dhansai and others are recorded.

¹ (1996) 6 SCC 223

11. In the matter of Nagar Palika Nigam, Gwalior v. Kailash Narain Srivastava and others², it was held that where khasra entries were found to be for few years and there was no source of title found in favour of person whose name appeared there, no title is created under.
12. Apart from this, the first appellate Court has held the document Ex.P-1 dated 10-6-1991 as valid document without reversing the finding of the trial Court in that regard. The trial Court has given sufficient reasons holding that the document dated 10-6-1991 (Ex.P-1) does not confer any title to the plaintiff, as the source of title of his father over the suit land is not proved on the basis of evidence led by the plaintiff himself and title of the defendants on the basis of sale deed dated 27-4-1960 (Ex.D-1) is fully established, as such the said finding of the first appellate Court is liable to be set aside.
13. The first appellate Court has further recorded a finding that the plaintiff has perfected his title by way of adverse possession. In the instant case, the plaintiff has set-up title in himself and also taken the alternative plea of adverse possession.
14. It is well settled law that pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. The Supreme Court in the matter of Karnataka Board of Wakf v. Government of India and others³ has held as under: -

“12. A plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See *S.M. Karim v. Bibi Sakina*⁴.) In *P. Periasami*

2 2001 RN 432

3 (2004) 10 SCC 779

4 AIR 1964 SC 1254

v. P Periathambi⁵ this Court ruled that: (SCC p. 527, para 5)

"Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with Mohan Lal v. Mirza Abdul Gaffar⁶ that is similar to the case in hand, this Court held: (SCC pp. 640-41, para 4)

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

15. Following the principle of law laid down in the afore-cited case Karnataka Board of Wakf (supra), it is quite vivid that since the plaintiff has taken the inconsistent pleas of title and adverse possession, both are mutually inconsistent, and the plaintiff has not renounced or disclaimed his plea of title, therefore, the plea of adverse possession was not available to the plaintiff.
16. There is one more reason for not accepting the plea of the plaintiff that he has perfected his title by way of adverse possession. In the matter of Gurudwara Sahib v. Gram Panchayat, Village Sirthala and another⁷, the Supreme Court has held that plaintiff cannot maintain suit for declaration of title based on adverse possession and it can use

5 (1995) 6 SCC 523

6 (1996) 1 SCC 639

7 (2014) 1 SCC 669

his adverse possession as a shield/defence. Paragraph 8 of the report succinctly states as follows: -

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

17. Following the principle of law laid down by the Supreme Court in Gurudwara Sahib (supra), it is held that the plaintiff is not entitled to seek declaration and grant of declaration of title on the basis of adverse possession.

18. In view of the above, the judgment and decree passed by the first appellate Court are set aside and that of the trial Court is restored. The substantial questions of law are answered accordingly. Consequently, the second appeal is allowed. There will be no order as to cost(s).

19. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge