

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.143 of 1990

Duryodhan (Died) through his Legal Representative Sunder Mohan,
S/o Late Duryodhan, aged about 50 years, R/o Village Ludeg,
Tahsil Patthalgaon, District Raigarh (C.G.)

(Defendant No.1)
---- Appellant

Versus

1. Madhulal (Died) through his Legal Representatives

(Plaintiff)

1(i) Dushyant Yadav, S/o late Rohit Kumar Yadav (grand son of
Madhulal), aged about 21 years, R/o Village & Post Ludeg, Police
Station & Tahsil Patthalgaon, District Jashpur (C.G.)

1(ii) Smt. Chandra Yadav, aged about 38 years, wife of Raghu
Yadav, R/o Village & Post Ludeg, Police Station & Tahsil
Patthalgaon, District Jashpur (C.G.)

2. Mst. Damyanti (Died) through her Legal Representatives

(Defendant No.2)

2(i) Rudradhar Khuria, S/o Vidyadhar Khuria, aged about 65 years,

2(ii) Mohan Khuria (Died) through his Legal Representatives

2(ii)(A) Smt. Tejaswari Yadaw, D/o late Mohan Khuriya, aged about
46 years,

(B) Smt. Krishna Yadaw, D/o late Mohan Khuriya, aged about 43
years,

(C) Tamal Kishor Khuriya, S/o late Mohan Khuriya, aged about 37
years,

(D) Manoj Kutiya, S/o late Mohan Khuriya, aged abut 34 years,

Respondents No.2(ii)(A) to (B) all R/o Village Ludeg, Pathalgaon,
Distt. Jashpur (C.G.)

2(iii) Birodhar Khuria, S/o Vidyadhar Khuria, aged about 55 years,

2(iv) Devendra Khuria, S/o Vidyadhar Khuria, aged about 35 years,

Respondents No.2(i), 2(iii) and 2(iv) all R/o Village Ludeg,
Pathalgaon, Distt. Jashpur (C.G.)

---- Respondents

For Appellant: Miss Sharmila Singhai, Advocate.
For LR's of Respondent No.1: -
Mr. B.P. Sharma and Mr. H.S. Patel, Advocates.
For LR's of Respondent No.2: -
None present though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

21/08/2018

1. The substantial questions of law involved, formulated and to be answered in this defendant No.1's second appeal state as under: -

(1) Whether the lower appellate Court was justified in reversing the decree of the Court of first instance on the ground that the plaintiff had prescribed title by adverse possession?

(2) Whether the first appellate Court was right in holding that the certified copy of the sale deed Ex.D.5 was inadmissible in evidence?

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court.)

2. The original plaintiff / respondent No.1 herein instituted an action against defendant No.1 (appellant herein) and defendant No.2 (respondent No.2 herein) before the trial Court seeking declaration to the effect that the plaintiff be declared as Bhumi Swami of suit land bearing Khasra No.107/1, area 0.324 hectare, situated at Village Ludeg, Tahsil Dharamjaigarh, District Raigarh stating inter alia that originally the suit land was known as "Narihai land" meaning thereby that village servant used to enjoy this land during his tenure. The State Government vide Patta dated 20-3-1957

allotted the suit land to the Narihar community. After the grant of Patta, Smt. Damayanti – defendant No.2, wife of the then 'Gotiya' Vidyadhar, purchased the land in dispute from one Jhera who was also 'Narihar', vide registered sale deed dated 27-12-1962. According to the plaintiff, defendant No.2 sold 101.32 acres out of 2.12 acres of land of Khasra No.107/1 to the appellant herein / defendant No.1. It is the case of the plaintiff set out in the plaint that the ancestors of the plaintiff are settled, undisputed and continuous possession of the suit land for last 40 years and as such, they have perfected their adverse possession into the title and therefore the plaintiff is entitled for decree of declaration of title in his favour.

3. Defendant No.1 / appellant herein denied the plaint allegations stating inter alia that he has purchased the land in dispute vide registered sale deed dated 17-1-1966 (Ex.D-5) from defendant No.2 for a valuable consideration and since then he is in possession of the suit land.
4. The trial Court after appreciating oral and documentary evidence on record held that the plaintiff is not in possession over the suit land from the time of his ancestors, the land in dispute belongs to defendant No.2 and defendant No.2 vide Ex.D-5 dated 17-1-1966 transferred the land in favour of defendant No.1 and also held the suit to be barred by limitation and thereby dismissed the suit.
5. On first appeal being preferred by the plaintiff, the said first appellate Court allowed the appeal and decreed the suit on the

ground that the plaintiff has perfected his title by adverse possession and the sale deed Ex.D-5 was also inadmissible in evidence. Questioning that judgment and decree passed by the first appellate Court, this second appeal has been preferred in which the substantial questions of law formulated for consideration and which have been cataloged in the opening paragraph of the judgment.

6. Miss Sharmila Singhai, learned counsel for the appellant / defendant No.1, would submit that the finding recorded by the first appellate Court that the plaintiff has perfected his title on the suit land on the basis of adverse possession, is grossly perverse and contrary to the evidence available on record, as the suit for declaration of title based on adverse possession is not maintainable in view of the law laid down by the Supreme Court in the matter of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another¹. She would further submit that even otherwise, the plaintiff has failed to prove perfection of his title by way of adverse possession, as the necessary ingredients for granting decree based on adverse possession is absolutely missing in the plaint averment as well as by the supporting evidence brought on record on behalf of the plaintiff, as such, the judgment and decree granted by the first appellate Court deserve to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit be dismissed.

7. As against this, Mr. B.P. Sharma, learned counsel for the plaintiff /

¹ (2014) 1 SCC 669

respondent No.1 herein, would submit that the plaintiff has clearly, in terms of Article 65 of the Limitation Act, 1963 by clinching and unequivocal evidence established the plea of adverse possession which has rightly been appreciated in proper perspective by the first appellate Court and decree for declaration of title has been granted in favour of the plaintiff and therefore the substantial questions of law framed by this Court be answered in affirmative and the appeal be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions and perused the records of both the Courts below with utmost circumspection.

Answer to the first substantial question of law: -

9. In order to answer the first substantial question of law and to find out the correct test in relation to perfection of title by way of the doctrine of adverse possession, it would be profitable to notice the relevant statutory provision, necessary ingredients and the principle underlying the doctrine of adverse possession.

10. Article 65 of the Limitation Act, 1963 states as under: -

	Description of suit	Period of limitation	Time from which period begins to run
65.	For possession of immovable property or any interest therein based on title. <i>Explanation.</i> —For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

	devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		
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11. The Supreme Court in the matter of **Saroop Singh v. Banto and others**² has held that in the light of Article 65 of the Limitation Act, 1963, the plaintiffs have to prove their title and it is for the defendant to prove title by adverse possession and in terms of Article 65 of the Limitation Act, 1963 starting point of limitation does not commence from the date when the right of ownership arises to the plaintiffs, but commences from the date the defendant's possession becomes adverse. Paragraphs 28, 29 and 30 of the report are as under: -

“28. The statutory provisions of the [Limitation Act](#) have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the

² (2005) 8 SCC 330

[Limitation Act](#), 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the [Limitation Act](#), 1963. In the instant case, plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

29. In terms of [Article 65](#) the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See [Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak](#)³.)

30. “*Animus possidendi*” is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali v. Jagadish Kalita*⁴, SCC para 21.)”

12. This view has been approved and followed by the Supreme Court in the matter of **M. Durai v. Muthu and others**⁵ and it has been held as under: -

“7. The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-a-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession.”

13. It is well settled law that a mere possession or user or permissive possession does not remotely come near the spectrum of adverse

3 (2004) 3 SCC 376

4 (2004) 1 SCC 271

5 (2007) 3 SCC 114

possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession.

14. In the matter of Maharaja Srischandra Nandy and others v. Baijnath Jugal Kishore (Firm)⁶, it has been held that the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

15. It has been held in the matter of Secy. of State for India in Council v. Debendra Lal Khan⁷ that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario*.

16. In the matter of S.M. Karim v. Mst. Bibi Sakina⁸, the Supreme Court has ruled that: -

“(5) ... 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. ...”

17. In the matter of Annasaheb Bapusaheb Patil and others v. Balwant alias Balasaheb Babusaheb Patil (dead) by Lrs. & heirs etc.⁹, the Supreme Court held as under: -

“12. [Article 65](#) of the Schedule to the [Limitation Act, 1963](#) prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date of the defendant's interest becomes adverse to the plaintiff.

6 AIR 1935 Privy Council 36

7 AIR 1934 Privy Council 23

8 AIR 1964 SC 1254

9 AIR 1995 SC 895

Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under [Article 65](#), 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.”

18. In the matter of Karnataka Board of Wakf v. Government of India and others¹⁰, the Supreme Court has held that person pleading adverse possession has no equity in his favour. It runs as under: -

“11. ... Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is “*nec vi, nec clam, nec precario*”, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. ... Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari*]

10 (2004) 10 SCC 779

*Sharma*¹¹.]”

19. Thereafter, in the matter of Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others¹², the Supreme Court emphasized the need for fresh look regarding the law on adverse possession by stating as under: -

“32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.

34. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

20. In the matter of Kurella Naga Druva Vidya Bhaskara Rao v. Galla Jani Kamma alias Nacharamma¹³, the Supreme Court held that mere possession for some years by the party would not be sufficient to claim adverse possession. Paragraph 17 of the report

11 (1996) 8 SCC 128

12 (2009) 16 SCC 517

13 2008 AIR SCW 5682

states as under: -

“17. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax-receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to defendant, plaintiff was not the true owner, his possession hostile to plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.”

21. In the matter of State of Haryana v. Mukesh Kumar and others¹⁴, the Supreme Court held that a serious re-look to the law of adverse possession is absolutely imperative in the larger interest of the people. Paragraphs 43 to 46 of the report read as follows: -

“43. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people.

44. Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eyes of law – to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has

14 (2011) 10 SCC 404

troubled a great many legal minds. We are clearly of the opinion that time has come for change.

45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.

46. In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

22. In the matter of Tribhuvanshankar v. Amrutlal¹⁵, the Supreme

Court noticing the earlier decisions in paragraphs 37 and 38 of the report held as under: -

“37. It is to be borne in mind that adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his willful neglect but also on account of the possessor’s constant positive intent to remain in possession. It has been held in *P.T. Munichikkanna Reddy and others v. Revamma and others*¹⁶.

38. Regard being had to the aforesaid concept of adverse possession, it is necessary to understand the basic policy underlying the statutes of limitation. *The Acts of Limitation* fundamentally are principles relating to “repose” or of “peace”. In Halsbury’s Laws of England, Fourth Edition, Volume 28, Para 605 it has been stated thus: -

15 (2014) 2 SCC 788

16 (2007) 6 SCC 59

“605. Policy of the Limitation Acts. – The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

These principles have been accepted by this Court keeping in view the statutory provisions of the [Indian Limitation Act.](#)”

23. Reverting to the facts of the present case, in order to judge the correctness of the findings recorded by the first appellate Court, it would be appropriate to notice the plaint averments with regard to adverse possession. The plaintiff in the opening paragraph of the plaint has stated that his ancestors were in peaceful possession of the suit land bearing Khasra No.107/1, area 0.80 acre, since long and further in para 7, it has been stated that though the suit land is originally Narihai land, but the members belonging to Nariha community were not in possession and for last 40 years, the plaintiff's ancestors were in possession of the suit land and using the land and, therefore, the plaintiff is entitled for Bhumi Swami rights on the said land, and the plaintiff was acquitted in the criminal case initiated on behalf of defendant No.1 for harvesting the crop. The plaintiff has examined himself as PW-1 in which he has stated that the suit land was being cultivated by his father and thereafter, he is cultivating for last 25-30 years. So far as the other witness is concerned, one Manbodh Ram (PW-2) has been examined and he has stated that the suit land was being cultivated by the plaintiff's father and thereafter by the plaintiff himself. Same is the statement

made by Nanhiram (PW-3). So far as the documentary evidence is concerned, the plaintiff has filed only document Ex.P-8 which is the Khasra Panchsala for the year 1979-80 in which in remarks column, the name of the plaintiff has been entered into. Likewise, in 1976-77 and 1978-79, the name of the plaintiff is entered in column No.12. Likewise, in Ex.P-13 – Seemankan Prativedan, possession of the plaintiff has been found while demarcating the land by the concerned Revenue Inspector. Whereas, the defendant has filed documents Ex.D-1 i.e. copy of the Adhikar Abhilekh and Ex.D-2 Kishtbandi Khatauni of the year 1980-81 in which the name of defendant No.1 is shown as Bhumi Swami. Likewise, for the years 1979-80 and 1980-81, the name of defendant No.1 has been shown as the possession holder in column No.3 and the name of the plaintiff has been shown in column No.12.

24. Thus, keeping in view the plea raised by the defendants in the written statement and if the evidence adduced as aforesaid are examined in the light of the ingredients laid down by the Supreme Court in **Karnataka Board of Wakf** (supra), it would be clear that the plaintiff has merely pleaded that his father was in possession of the land in dispute and thereafter he is cultivating the land, but has failed to establish the date on which he or his father came into possession of the suit land; nature of possession; whether the factum of his possession was known to defendant No.1; how long his possession has continued; and further that his possession was open, hostile and peaceful for the statutory period of twelve years,

as no legal and appropriate evidence has been brought on record to establish the above plea of adverse possession.

25. The question is, whether the entry made by the Patwari in remarks column of Exs.P-8 & P-9 (column No.12) showing that the plaintiff is in possession can be relied upon and any presumption of continuity of possession in favour of the plaintiff can be drawn?

26. It is well settled law that the provisions of Chapter IX of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') or even other provisions of the Code, including the Rules framed in respect of them, do not require a Patwari to make any other kind of entry in a Khasra or field book in respect of the matter relating to occupation of lands. He is not required to make any entry in the remarks column or any other column of a Khasra or field book with regard to any person other than recorded holder being in occupation of the land unauthorisedly or on the basis of any imperfect title. It is obvious that in case, he does make any such entry, the same cannot have any presumptive value as regards its correctness under Section 117 of the Code.

27. In the matter of Harisingh and others v. Dheerajsingh¹⁷, the Madhya Pradesh High Court has categorically held that presumption under Section 117 of the Code arises with respect to entries which are required to be made under the law and observed as under: -

“8. ... It will also be relevant to point out that the presumption with regard to the entries in the Khasra in

17 1983 RN 57

the light of Section 117 of the Code arises only in respect of those entries which are required to be made under Chapter 9 of the Code and in respect of entries in other land record prepared under the Code. It applies only to those entries which are required to be made under the law. If any entry, existing in the land records is not required to be made either under Chapter 9 of the Code or under any other provision of the Code, no presumption of correctness can arise in respect of such entry. In the records of right and the Khasra, it is required that an entry should be made as to sub-tenant or occupancy tenant, cultivating the field and, therefore, had the defendant No.1 been in occupation, having been inducted as a sub-tenant or an occupancy tenant, he would have been entered as such and the entry would not have been in column No.12 which is only with regard to Remarks.”

28. Thereafter, in the matter of Churamani v. Ramadhar¹⁸, the Division Bench of the Madhya Pradesh High Court noticing the decision in Harisingh (supra) has held that the rules framed under the Code do not cast duty on the Patwari to make any entry in remarks column of Khasra in regard to any other person unauthorisedly in possession and observed as under: -

“10. We find ourselves unable to accept the abovesaid contention of the learned counsel. In our opinion, no presumption of correctness can attach to an entry made by a Patwari in the remark column of a Khasra or field-book showing therein some third party/trespasser to be in possession of a land held by a Bhumiswami and recorded as such in his name in the said land record.

12. For our present purpose, the special provisions with regard to raising of presumption are contained in Section 117 of the M.P. Land Revenue Code, 1959. According to the said section, all entries made under Chapter IX (containing sections 104 to 123) in the land records shall be presumed to be correct until contrary is proved. Taking even a broader view of the section, it has been held that the presumption under the section applies only to those entries which are required to be made under the law. Thus, even as per the broader view, the presumption arises only in respect of those entries which

are required to be made under Chapter IX and in respect of entries in other land records prepared under the Code.

16. Accordingly, in our opinion, in the facts and circumstances of the case, the appellate Court i.e. the Additional Judge to the Court of District Judge, Satna did not act improperly or with illegality in refusing to draw any presumption as regards continuity of possession' of the plaintiffs-petitioners over the suit land on the basis of their so called 'actual' possession having been recorded by the Patwari in the remark column of the Khasras for the period 1963-1964 to 1981-1982."

29.The aforesaid decision in Churamani (supra) has again been followed by the Madhya Pradesh High Court in the matter of Jageshwar Ramsahay Ahir v. Parmeshwar Ramprasad Yadav and others¹⁹ and it has been held as under: -

"3. ... in which it has been laid down that a presumption as regards continuity of possession of the plaintiffs over the suit land could not be drawn in favour of the plaintiffs on the basis of the remarks recorded in the remarks column. No presumption of correctness can attach to an entry made by the patwari in the remarks column of a Khasra or field book showing therein some third party/trespasser to be in possession the land held by a bhumiswami and recorded as such in his name in the said land records. Presumption under [Section 117](#) of the Code applies to those entries which are required to be made under Chapter IX and in respect of entries in other land records prepared under [the Code](#). The provisions [of the Code](#) or the Rules made thereunder do not require the patwari to make any entry in the remarks column and if such an entry is made, the same cannot have any presumptive value as regards its correctness under [Section 117](#) of the Code. As there is no such duty cast on the patwari to make an entry in the remarks column there arises no question of drawing any presumption under [Section 114\(e\)](#) of the Evidence Act regarding any act of the patwari having been regularly performed."

30.In the matter of Sitaram v. Ram Charan and others²⁰, the Madhya Pradesh High Court held as under: -

19 AIR 2000 MP 223

20 AIR 1995 MP 134

“8. After hearing counsel on both sides and on going through the record, I am of the opinion that this appeal has no merit. No doubt, under Section 117 of the Code, there is a presumption of correctness of all entries made in land records under Chapter IX of the Code unless the contrary is proved. But, this presumption is confined to land records prepared in the manner prescribed. Under the Code, certain records are finalised after inviting objections, such as records of rights, Nistar Patrak, Wazib-ul-arz etc. and in such cases, there is a higher presumption of correctness while certain entries are made by the Patwari on the basis of his observation on the site or on information and for such entries, the presumption is weaker, notwithstanding it is there unless it is rebutted. In the second category of the cases, too, there should be an evidence that the copy issued by the Patwari is signed by him in his official capacity and the entry was made and the copy issued in the manner prescribed in the form provided by law. Therefore, the defendant was bound to lead evidence to prove that the entry in the Khasra was made according to the manner prescribed in the rules and also the copy so issued. Then only, under [Section 79](#) of the Evidence Act, the inference could have been drawn that the document is genuine and not spurious. [Section 35](#) of the Evidence Act requires the following conditions to be fulfilled before a document can be held to be admissible under this Section. (1) The document must be in the nature of an entry in any public or other official book, register or record, (2) it must state a fact in issue or a relevant fact and (3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties especially enjoined by the law of the country in which the relevant entry is kept. (*See State of Bihar v. Radha Krishna Singh*, (AIR 1983 SC 684) (supra). In the present case, there is no evidence that the entries were made by the Patwari in Khasras and Khatoni in the manner prescribed under the rules and he issued certified copies. In such circumstances, particularly when the evidence is of after the commencement of the lis, to eliminate the element of concoction, the Patwari ought to have been examined to prove the correctness of the entries made by him.”

31. In addition to this, in Exs.P-8 & P-9, in remarks column, name / possession of the plaintiff has been recorded which the concerned Patwari was not authorised to make entry as per rules. Therefore, no presumption of his correctness can be raised under Section 117

of the Code and the plaintiff has failed to bring appropriate legal evidence to establish the fact that the entry was made in accordance with the rules. Thus, the first appellate Court has evidently committed legal error in holding that the plaintiff has established his adverse possession over the suit land.

32. There is yet another reason for not upholding the decree granted by the first appellate Court. The plaintiff's suit was principally a suit for declaration of his title based on adverse possession. The said question is no longer *res integra* and it has been held by Their Lordships of the Supreme Court in Gurdwara Sahib (supra) that suit for declaration of title based on adverse possession is not maintainable and observed as under: -

“7. In the second appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable.

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.”

33. Thus, the plaintiff has neither established perfection of his title by adverse possession by leading clinching evidence nor the suit for declaration of title based on adverse possession is maintainable.

34. The first substantial question of law is answered in favour of the appellant herein / defendant No.1. In view of the first substantial question of law answered in favour of the appellant / defendant No.1, I deem it inappropriate to answer the second substantial

question of law.

35.Resultantly, judgment and decree passed by the first appellate Court are set aside and judgment and decree passed by the trial Court are restored. The second appeal is consequently, allowed and the plaintiff's suit stands dismissed with no order as to cost(s).

36.Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma