

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 272 of 2001**

Jai Krishna (dead) through LRs.

1. Smt. Shanti Devi, wife of Late Jaikshan, aged about 65 years,
2. Ranu Kushwaha, daughter of late Jaikishan, aged about 30 years,
3. Puran Chand Kushwaha, son of Late Jaikishan, aged about 28 years,
4. Smt. Rinku Kushwaha, wife of Naresh Kushwaha, aged about 25 years, resident of village Badhai Tikra, Tahsil Ambikapur, District-Surguja (C.G.)
5. Ritu Kushwaha, daughter of late Jaikishan, aged about 23 years,

Applicants No. 1 to 3 & 5 are resident of village – Chhindiya, Post Patra, Tahsil Baikunthpur, District Koriya (C.G.)

----Appellants/plaintiffs

Versus

Ramadhin (deceased) through Legal representative:

Sukhram, son of late Ramadhin, aged about 40 years, Resident of village – Chhindiya, Tehsil – Baikunthpur, District Koriya (C.G.)

---- Respondent/defendant

For Appellants	: Ms. Sharmila Singhai, Advocate.
For Respondent	: Mr. Prafull N. Bharat & Mr. Sharad Mishra, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/09/2018

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

“1. Whether the first appellate Court was justified in holding the suit of the plaintiff barred by limitation ?

2. Whether the finding of the first appellate Court reversing the order of the trial Court on the ground that the defendant had accrued right over the suit property by way of adverse possession is perverse or not ?

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

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

(2.1) The plaintiff filed a suit for recovery of possession based on title stating inter alia that the licence was granted in favour of defendant No.1 in the month of June, 1983 and that was terminated on 30.03.1993 (Ex-P-1) but despite such termination of licence the house in dispute was not vacated by defendant leading to filing of the suit for the aforesaid relief (s).

(2.2) The defendant No.1 filed his written statement and pleaded that he has purchased the suit property from the plaintiff's father by un-registered sale deed dated 9.2.1974 for a cash consideration of Rs.800/- and came into possession of the suit property since the date of that sale deed, therefore, the plaintiffs' suit is liable to be dismissed.

(3) The trial Court, after appreciating the oral and documentary evidence, decreed the plaintiff's suit stating inter alia that plaintiff is title holder of the suit property and he is entitled for possession negating the plea of limitation and plea of license.

(4) Defendant preferred first appeal there-against. The First appellate Court, by its impugned judgment and decree, held that the possession of defendant No. 1 pursuant to un-registered sale deed is not permissive possession, but that would be a case of adverse possession and the suit ought to have been filed within 12 years from the date of un-registered sale deed dated 9.2.1974 and allowed the appeal and dismissed the plaintiff's suit resulting into filing of the second appeal in which the substantial questions of law have been formulated for consideration and have been set out in the opening paragraph of the judgment.

(5) Ms. Singhai, learned counsel appearing for the appellants/plaintiffs would submit that the first appellate Court is absolutely unjustified in granting the appeal filed by defendant by holding that plea of adverse possession is established by the defendant and suit is barred by limitation. She submits that plea of adverse possession was never taken by the defendant in his written statement. She submits that suit would not be barred in light of provisions contained in Article 65 of the Limitation Act, 1963 (henceforth "Act, 1963") as such, the impugned judgment and decree passed by the first appellate Court deserves to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit deserves to be decreed.

(6) Per contra, counsel for respondent/defendant would submit that the judgment & decree passed by the first appellate court is in accordance with law, which does not call for any interference.

(7) I shall take up the substantial question of law No. 2 at first.

Answer to Question No. 2

(8) The trial Court has clearly recorded a finding that the plaintiff is title holder of the suit land and is entitled for recovery of possession; plea of adverse possession has not been taken by the defendant in his written statement; the defendant has not acquired any title over the suit house by un-registered sale deed dated 9.2.1974. The First Appellate Court, however, held that the defendant No. 1 came into possession of the suit land pursuant to the un-registered sale deed dated 9.2.1974 and the said possession pursuant to the un-registered sale deed would be adverse possession.

(9) Question for consideration would be whether the first appellate court is justified in holding that the defendant has perfected his title over the suit land by adverse possession.

(10) It is settled position that plea of adverse possession is not pure question of law, but it is a blended one of fact and law. In the matter of **B. Leelavathi v. Honnamma and another**¹ Supreme Court has held that the adverse possession is question of fact, which has to be specifically pleaded and proved. In absence of any plea of adverse possession, framing of an issue and evidence led on the point could not hold that the plaintiff has perfected title by adverse possession.

(11) The pleading is the foundation for the claim of adverse possession or any right in the property and it is heart and sole of civil cases. In the absence of any plea whatever evidence adduced either oral or documentary to support the contention of the plaintiff that he perfected his title by adverse possession cannot be looked into. The importance and purity of pleadings in civil cases has been highlighted by the Supreme Court in **Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria**².

1 (2005) 11 SCC 115

2 AIR 2012 SC 1727

"61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

77. The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case."

(12) In the matter of **Secretary of State v. Debendra Lal Khan**³ Privy Council has held that it is duty of the parties to plead and prove the requirements which are essential for claiming adverse possession; otherwise, the party who set up adverse possession is not

entitled to claim any right and the ordinary classical requirement is that it should be '*nec vi, nec clam, nec precario*' and possession required must be adequate in continuity, in publicity and in extent to show that possession is adverse to the competitor.

(13) In **S. M. Karim v. Mst. Bibi Sakina**⁴ and in **R. Chandevarappa and others v. State of Karnataka and others**⁵ and **D. N. Venkatarayappa and another v. State of Karnataka and others**⁶ the Supreme Court has been highlighted the crucial pleadings to constitute adverse possession and held that in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the land in question claiming right, title and interest in the land in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession. Therefore, it is obligatory on the part of the plaintiff to plead necessary requirements, more particularly, as to when the plaintiff set up hostile title against the defendant and his continuation for the period of 12 years from the date of such claim of hostile title. In the absence of such details, the evidence whatever adduced to constitute adverse possession is of no assistance to establish the claim of title by adverse possession over the immovable property.

(14) In **Mandal Revenue Officer v. Goundal Venkaiah and another**⁷ and **Annakili v. A. Vedanayagam and others**⁸ the Supreme Court reiterated the requirements to constitute a adverse possession and according to it, claim by adverse possession has two elements; (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain possession for a period of 12 years thereafter. *animus possidendi* as is well known is a requisite ingredient of adverse possession and it is now a

4 AIR 1964 SC 1254

5 (1995) 6 SCC 309

6 (1997) 7 SCC 567

7 (2010) 2 SCC 461

8 (2007) 14 SCC 308

well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. For the said purpose, not only *animus possidendi* must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title.

(15) A conspectus of the aforesaid judgments referred hereinabove would show that it is duty of the defendant to plead and prove the requirements to constitute adverse possession by adducing cogent and satisfactory evidence to establish prescription of title *i.e. animus possidendi* and continued possession of the property more than 12 years as prescribed by Limitation Act from the date of setting up of hostile title.

(16) Reverting back to the fact of present case in the light of the principle of law laid down in above-stated judgments it is *quite vivid* that in the instant case defendant No.1 set up title himself by pleading that he came into possession over the suit land by purchasing the said property by unregistered sale deed dated 09.02.1974 from the plaintiff's father. The defendant No. 1 did not take plea of adverse possession by making averment the necessary ingredient to set up the said plea as to when the adverse possession commenced and possession is ripened into adverse possession and therefore rightly no issue was framed in that regard by the trial court and parties also did not led any evidence either to prove or disprove the said plea of adverse possession. In the first appellate court altogether new ground was set up and found established by the said appellate court which is absolutely contrary to the pleading and evidence available on the record, as such the first appellate court is absolutely unjustified in entertaining the plea of adverse possession and granting the appeal filed by defendant No.1 and thereby dismissing suit of the plaintiff.

Thus, the said finding is liable to be and is hereby set aside. The substantial Question of law No. 2 is answered accordingly.

Answer to Question No. 1

(17) So far as first question of limitation is concerned, the first appellate Court has held that the suit ought to have been filed within 12 years of the execution of un-registered sale deed dated 9.2.1974 and since it has not been instituted within the stipulated time prescribed under the law, suit is barred by limitation relying the provisions contained in Article 65 of the Limitation Act, 1963.

(18) Article 65 of the Limitation Act, 1993 states as under:-

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
65	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff

(19) In the matter of *Indira v. Arumugam and Another*⁹, their Lordships of the Supreme Court considering Article 65 of the Act of 1963 have held that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendants proves adverse possession for the prescriptive period, plaintiff cannot be non-suited.

(20) In a suit for possession based on title, the plaintiff is called upon to prove title and nothing more than that and it is for the defendant to set up the plea of adverse possession and to prove that plaintiff was not in possession of property within 12 years next before the suit and that the defendant has established or acquired the title

9
(1998) 1 SCC 614

by adverse possession regarding which there must specific plea that it was, nec, vi, nec, claim and nec pericranium viz open, hostile and adverse.

(21) Reverting the facts of the present case, it is evident from the record that the trial Court granted the decree in favour of plaintiff finding title in his favour and suit is within the period of limitation; and appeal being preferred, the first appellate Court maintained the title of plaintiff, but allowed the appeal dismissing the suit holding the possession of defendant is adverse and suit is barred by limitation, as it has already been held that the plea of adverse possession has not been expressly taken and as it has not been proved; in absence of pleading and evidence, the plaintiff has proved and established the title over the suit house, then defendant has to prove the plea of adverse possession for the prescriptive period, which in the instant case has not been discharged by pleading & proving the plea of adverse possession as held by their Lordships of the Supreme Court in the matter of **Indira V. Arumugan and another** (supra), and, therefore, the first appellate Court is absolutely justified in reversing the judgment and decree of the trial Court on untenable grounds.

(22) In view of the aforesaid legal analysis, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently, allowed the plaintiff's suit stands decreed leaving the parties to bear their own cost.

(23) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

