

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 395 of 1994**

Smt. Daiben through LR's.

Braj Lal Rathod, S/o Arjun Rathod, Aged about 62 years, R/o Hotel Geeta
Narbada Para, Station Road, Civil and Revenue District Raipur (C.G.)

----Appellant

Versus

Babulal, S/o Pilaram Nirmalkar, resident of Anand Goods Transport
Company, in front of Anad Goods Transport Co. Street No.1, Raipur, Bilaspur
Road, Phaphadih, Raipur, District Raipur (M.P.)

---- Respondent

For Appellant	: Shri Kishore Bhaduri & Shri Pawan Kesharwani, Advocat
For Respondent	: Shri Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/08/2018

(1) The substantial question of law involved, formulated and to be answered in
this plaintiff's second appeal states as under:

“Whether the finding of the 1st appellate court while
reversing the judgment of the trial Court and dismissing the
suit of the plaintiff conferring the title upon the defendants
by way of adverse possession is legal, proper and
justified ?”

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

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

(2.1) Original plaintiff –Smt. Daiben instituted an action against defendant Babulal for recovery of possession stating inter alia that the suit land was purchased by her husband late Warjangji by registered sale deed dated 03.08.1957 and he came into possession and got his name mutated in the revenue records. It was further pleaded that after the death of Warjangji, she came into possession of the suit land and got her name mutated in the revenue records in place of her husband and the defendant taking advantage of her absence, constructed a hut on the suit land without authority of law, for which notice dated 4.1.1984 (Ex-P-4) was served to him but despite that the suit land was not vacated leading to filing of the instant suit for recovery of possession.

(2.2) Defendant filed written statement stating that the said suit land was a waste land and he is residing in it after constructing hut since last 20 years and, as such, he has perfected his title by adverse possession and the plaintiff is not entitled for decree of recovery of possession.

(3) Trial Court after appreciating oral and documentary evidence on record held that the plaintiff is owner and title holder of the suit land and the defendant has unauthorizedly dis-possessed the plaintiff over the suit land after constructing hut in it and therefore, the plaintiff is entitled for decree of possession and negating the plea of adverse possession, the suit was decreed.

(4) Defendant, questioning the judgment and decree passed by the trial Court,

preferred first appeal under Section 96 of the Code of Civil Procedure before the first appellate court. The said court, by the impugned judgment and decree dated 12.01.1994 held that the defendant has perfected title by way of adverse possession over the suit land and, therefore, the plaintiff is not entitled for decree of possession and dismissed the suit. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/plaintiff in which the substantial question of law formulated for consideration has been incorporated in the opening paragraph of the judgment.

(5) Mr. Kishore Bhaduri, learned counsel appearing for the appellant/plaintiff, would submit that the defendant has failed to plead and establish the plea of adverse possession over the suit land as neither it has been pleaded in terms of Article 65 of the Limitation Act, 1963 nor the defendant examined himself to prove the plea of adverse possession and, as such, there is no oral and documentary evidence available on record to hold that he has perfected his title by way of adverse possession, 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) As against this, Mr. Arvind Shrivastava, learned counsel appearing for the respondent/defendant would support the impugned judgment and decree and submit that though the defendant was not examined to prove the plea of adverse possession but his mother Vedin Bai (DW-2) was examined to support the plea of adverse possession, as such, the plea of adverse possession has rightly been held to be proved by the first appellate Court and therefore the substantial question of law

framed by this Court be answered in affirmative and the appeal be dismissed.

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

(8) In order to answer the 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.

(9) 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 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	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

	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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(10) A close reading of above-stated provision would reveal that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidences, unless the defendant proves adverse possession for the prescribed period, the plaintiff cannot be non-suited and burden is on the defendant to plead and prove that he was in adverse possession for 12 years before the date of suit and starting point of limitation is the date, when the possession of the defendant become adverse to the plaintiff. Therefore, the defendant claiming title by adverse possession has to be very specific about the date on which possession becomes adverse to the plaintiff.

(11) The Supreme Court in the matter of **Saroop Singh v. Banto and others**¹ 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: -

¹ (2005) 8 SCC 330

“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 [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](#)².)

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*³, 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**⁴ 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 possession.

² (2004) 3 SCC 376

³ (2004) 1 SCC 271

⁴ (2007) 3 SCC 114

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)**⁵, 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 Khan**⁶ 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 Sakina**⁷, 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.**⁸, 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. 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

⁵ AIR 1935 Privy Council 36

⁶ AIR 1934 Privy Council 23

⁷ AIR 1964 SC 1254

⁸ AIR 1995 SC 895

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 others**⁹, 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 Sharma¹⁰.]”

(19) Thereafter, in the matter of **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others**¹¹, the Supreme Court emphasized the need for fresh look regarding the law on adverse possession by stating as under: -

⁹ (2004) 10 SCC 779

¹⁰ (1996) 8 SCC 128

¹¹ (2009) 16 SCC 517

- “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 Nacharamma¹², 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 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 others**¹³, 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 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. Amrutlal**¹⁴, the Supreme Court noticing the earlier decisions in paragraphs 37 and 38 of the report held as under:

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“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*¹⁵.

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: -

“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 case, in a suit filed by plaintiff for possession based on title over the suit land, the trial Court, on due appreciation of oral and documentary evidence on record, has held that plaintiff is title holder of the suit land and entitled for recovery of possession; and also recorded a finding that the defendant has failed to establish his title by way of adverse possession on the suit

¹⁴ (2014) 2 SCC 788

¹⁵ (2007) 6 SCC 59

land. The short question for consideration would be whether the defendant has pleaded and established the ingredients of adverse possession as held by their Lordships of the Supreme Court in above-stated decision and detailed out in the foregoing paragraphs to perfect his title on the suit land on the basis of adverse possession.

(24) The defendant in paragraph 2 of his written statement has simply stated that the suit land is waste land and he is residing in the suit land after constructing hut since last more than 20 years and the defendant is in peaceful and uninterrupted occupation of the said land since more than 20 years and has perfected his title by adverse possession.

(25) In support of the plea of adverse possession, the defendant has chosen not to examine himself, rather examined Kamla Bai (DW-1), who is neighbor of the defendant and mother of the defendant – Vedin Bai (DW-2) and one neighbour of the defendant i.e. Meera Bai (DW-3), who have only stated that defendant is in peaceful possession of the suit land by constructing hut for last 20 years.

(26) It is the case of the defendant that he has perfected his title by way of adverse possession, therefore, in order to establish the plea raised, defendant ought to have examined himself to clearly state the date on which he came into possession over the suit land and ought to have presented himself for cross examination to prove the aforesaid facts but he has chosen not to examine himself.

(27) In the matter of Vidhyadhar V. Manikrao, (1999) 3 SCC 573, their Lordships of the Supreme Court held as under:-

“17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.....”

(28) The aforesaid principles of law laid down by the Supreme Court has been followed with approval by the Supreme Court in the matter of **Janki Vashdeo Bhojwani V. Indusind Bank Ltd.**¹⁶

(29) As stated above, for the reasons best known to the defendant he did not enter into the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side.

(30) In light of judgment of the Supreme Court in the matter of **Karnataka Board of Wakf** (supra), it was incumbent upon the defendant to plead and establish the date on which he came into possession, what was the nature of his possession and whether the factum of possession was known to the plaintiff; and further that he is in peaceful possession in the suit land for the statutory period of 12 years, but no legal and proper evidence has been brought on record by defendant to establish the plea of adverse possession. Thus, the defendant has not only failed to plead, but also failed to establish the necessary ingredients namely factual possession of twelve years on the suit land ; and also failed to establish the requisite intention to possess (*animus possidendi*) and finally that the alleged adverse possession has ripened into ownership rights by applying the correct doctrine.

(31) 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

¹⁶(2005) 2 SCC 217.

Court is restored. The second appeal is consequently, allowed and the plaintiff's suit stands decreed. The substantial question of law is answered accordingly. No cost(s).

(32) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

