

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 76 of 2006**

Alakhram, aged about 49 years, son of Shri Sitaram Sahu, Resident of Village Mourikala, Tahsil Kurud, District Dhamtari (C.G.)

---- Appellant/Plaintiff

Versus

1. State of Chhattisgarh, Through : The Collector, Dhamtari (C.G.).
2. The Naib Tahsildar, Kurud, District Dhamtari (C.G.)
3. Jailal, Son of Shir Mahraji Sahu, Sarpanch Gram Panchayat, Mourikala, Tahsil Kurud, District Dhamtari (C.G.)

---- Respondents/defendants.

For Appellant	:	Mr. R.K. Pali & Mr. Amit Kumar Sahu, Advocate.
For Respondents No. 1 and 2	:	Mr. Akash Pandey, Panel Lawyer
For Respondent No. 3	:	Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

13/09/2019

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

“Whether the plaintiff has perfected his title over the suit land on the basis of adverse possession for more than thirty years ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given 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) Plaintiff filed a suit for declaration of title and damages stating *inter alia* that he is in possession over the land bearing Khasra No. 677, area 40 decimal by constructing house for last 31-32 years but on a complaint made by defendant No. 3 regarding encroachment by plaintiff, a revenue case was registered and order of eviction was passed under Section 248 of the Land Revenue Code, 1959 (hereinafter referred to as "Code, 1959") on 7.4.2001 and consequently the suit house was demolished without any authority of law. It has further been averred that the plaintiff has perfected his title over the suit land by way of adverse possession and, therefore, he is entitled for declaration of title and damages to the extent of Rs.49,530/-.

(2.2) By filing written statement, defendants opposed the plaint averments and submitted that, the plaintiff is rank trespasser over the government land, which is a grass land, and for his unauthorized encroachment, he has already suffered with the order of eviction and fine of Rs.400/-, which he has already deposited before the concerned authority and, therefore, he is not entitled for any relief.

(2.2) The trial Court, after appreciating the oral and documentary evidence available on record, by the judgment & decree dated 24.07.2003 passed in Civil Suit No. 6-A/2001 dismissed the suit holding that suit land is government grass land, in which, the plaintiff is encroacher since 1983-84 vide Ex.P-1 and order of eviction under Section 248 of the Code has already been passed and fine amount of Rs.400/- has already been deposited by the defendants; the plaintiff has failed to prove 30 years' possession over the suit land as he is in possession over the suit land only from 1983-84 vide Ex.P-1 and the suit was instituted on 24.11.2001, therefore, he is not entitled for the relief as claimed. Plaintiffs preferred first appeal thereagainst. The first appellate court by its

impugned judgment & decree dated 08.12.2005 passed in Civil Appeal No. 60-A/2004, on re-appreciating the entire evidence, affirmed the findings so recorded by the trial court and dismissed the appeal.

(3) Mr. R.K. Pali, learned counsel appearing for the appellant/plaintiff would submit that the concurrent finding recorded by both the courts below that plaintiff has not perfected his title over the suit land on the basis of adverse possession as the plaintiff is in possession over the suit land since last 30 years, and, therefore, the judgment & decree of both the courts below are liable to be set aside.

(4) On the other hand, counsel for the respondents would support the impugned judgment & decree.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(6) The question for consideration is whether the plaintiff has perfected his title over the suit land by pleading and proving the possession since last 30 years over the land admittedly being the grass land owned by the State Government ?

(7) Article 112 of the Limitation Act, 1963 provides for period of limitation for filing suit by Central or State Government :-

	Description of suit	Period of limitation	Time from which period begins to run
112	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the government of the State of Jammu and Kashmir.	Thirty years.	When the period of limitation would begin to run under this Act against a like suit by a private person.

(8) By virtue of above-stated provision, the period of limitation against the State government being 30 years, a person can convert his possession into an absolute title against the government, only by proving possession for 30 years. In order to claim adverse possession against the government, a person has to prove such possession for the full statutory period and he has to prove adverse possession. So, on mere proof of long possession, the burden is not shifted on the State to show that it had held possession within the period provided by the Article.

(9) Article 112 of the Limitation Act, 1963 is *para materia* provision to Article 144 of old Limitation Act, 1908. The Nagpur High Court, in the matter of ***Provincial government, Central Provinces and Berar v. Govindrao Tukaram***¹ while considering adverse possession under old Article 144 of Limitation Act, 1908, has held that government having fundamental rights in all land, possessory title cannot prevail against it and a person must prove adverse possession for continuous period of 60 years and observed as under:-

“That a possessory title is good against all but the true owner, is a proposition which can be accepted, but the government has the fundamental right in all land and is, therefore, the true owner. Accordingly a person who relies on a possessory title cannot succeed against government unless he can show either that the government has parted with its title in some way to the plaintiff or his predecessors or that the plaintiff and his predecessors have been holding adversely against government and so have acquired a good title against government by adverse possession. The adverse possession necessary in the case of government is 60 years.”

(10) It was further held that continuous and uninterrupted possession over a long period can give rise to presumption in possession is there with title would not apply to the case of a State Government having fundamental right over the land observing as under:-

1 AIR 1949 Nagpur 403

“Continuous and uninterrupted possession over a long period can give rise to a presumption that the person in possession is there with title even when the possession is short of the statutory period. This presumption may apply in a case between private individuals but it cannot apply to the case of a body in whom the fundamental right resides, such as the government.”

(11) A person who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to 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 that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.[please see ***Annasaheb Bapusaheb Patil and others v. Balwant @ Balasaheb Babusaheb Patil (Dead) by LRs. & Heirs and others***²]

(12) It is not in dispute that title by adverse possession can be prescribed also against the government, but where the claim of adverse possession in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right and title of State to immovable property and also conferring upon a third party encroacher title where he had none. [See ***State of Rajasthan v. Harphool Singh (Dead) through his LRs***³].

(13) The Supreme Court, in the matter of ***R. Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others***⁴ has

2 (1995) 2 SCC 543

3 (2000) 5 SCC 652

4 (2010) 5 SCC 203

held that in order to establish the plea of adverse possession, the limitation period would be thirty years and further laid down principles of the law indicating the nature of proof required in a suit for declaration of title against the government, which is reproduced herein below :-

Nature of proof required in suits for declaration of title against the Government

“**19.** Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The *second* difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being

routinely decreed, either *ex parte* or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaintiff averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a

year or for a few years will not be sufficient and should be ignored.

23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc. or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government. Be that as it may.”

(14) Section 57 of the Chhattisgarh Land Revenue Code, 1959 provides for state ownership in all lands, which is as under:-

“Section 57. State ownership in all lands.- (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, mineral and forests reserved or not, and all right in the sub-soil of any land are the property of the State Government:

[Provided that nothing in this section shall save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the [Sub-Divisional Officer].

(3)xx.....

(4)xx.....”

(15) Reverting to the facts of the present case, in light of the principles of law laid down in aforesaid judgments of the Supreme Court, and keeping in view the provisions contained in Section 57 of the Code vesting title of all land to the State Government, it is quite vivid that the suit land is recorded as a grass land in the revenue records filed by

the plaintiff vide Ex.P-1 and possession of the plaintiff has been shown in column No.16 for the year 1983-84. Against the plaintiff, proceeding for encroachment was registered and, in which, order dated 7.4.2001 under Section 248 of the Code has been passed evicting the plaintiff from the aforesaid land with fine of Rs. 500/-, which he has already deposited. Ever otherwise, no other evidence has been brought on record to hold that plaintiff is in possession over the suit land since last 30 years.

(16) The plaintiff is not the registered as the owner of the suit land in revenue records so filed and no other documents have been filed to demonstrate his title over the suit land. Both the courts below have rightly concluded that the suit land is the grass land owned by the State Government and the plaintiff is sheer encroacher upon the government land since 1983-84, as such, he has even failed to demonstrate that he is in settled and undisputed possession over the suit land for the statutory period of 30 years. Thus, the finding of fact based on material available on record, which is neither perverse nor contrary to record. Substantial question of law is answered accordingly in favour of defendants and against the plaintiff.

(17) Consequently, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No costs.

(18) Decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

