

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 52 of 2004**

Harishchandra Singh, S/o Harnam Singh, aged about 54 years, R/o
Kukanar, Tahsil Jagdalpur, Distt. Bastar (C.G.)

---- Appellant/Defendant

Versus

1. Sheikh Bijali, S/o Sheikh Abdul Hamid, aged about 49 years, R/o
Patnampara, Sukama, Tah. Konta, Distt. Dantewada (C.G.)
.....Plaintiff

2. State of Chhattisgarh Through : Collector, Dantewada (C.G.)
....Defendant

---- Respondents

For Appellant	:	Ms. Rajkumari Yadav, Advocate.
For Respondent No. 1	:	Mr. Ratan Pusty, Advocate.
For Respondent No. 2/State	:	Mr. Sanjeev Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

30/08/2019

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

“Whether the findings recorded by the Courts below
with regard to the prescription of title by respondent
No. 1 by adverse possession is perverse and without
there being proper pleading and proof required in the
law to prove adverse possession ?

(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) The plaintiff herein filed a suit for declaration of title that he has perfected his title by way of adverse possession in respect of the suit land i.e. 10 decimal of land out of Khasra No. 817, area 1 acre in village Sukma, Tahsil Konta stating *inter alia* that suit land was adjoining to land of defendant in northern and western side and he remained in open, uninterrupted peaceful possession to the knowledge of defendant No.1 since last 30 years by constructing a house without any obstruction either from previous owner Rahamtulla or from defendant No.1 (Harish Chandra), who has purchased the land in revenue auction vide sale certificate (Ex.D/7) dated 29.5.1981 and got mutated his name in the revenue records. It was further pleaded that in previous suit vide Ex.P-6 filed by defendant for declaration of title and recovery of possession, the plaintiff has also filed counter claim but ultimately the suit was dismissed in default on 11.1.1996 vide Ex.P-8 and counter claim remained unadjudicated. Since the plaintiff has perfected his title by way of adverse possession, he is entitled for decree of declaration of title over the suit land.

(2.2) Defendant No. 1/appellant herein filed written statement before the trial Court and also filed counter claim stating that he had no knowledge of construction of house by the plaintiff and that he acquired knowledge of encroachment of plaintiff when he initiated action for recording his name in revenue records. It was further pleaded that possession of the plaintiff was not peaceful, as he has raised objection before the revenue court and he has also filed suit, which was dismissed in his absence.

(2.3) The plaintiff filed written statement to the counter claim and imputed knowledge of possession of defendant from the date of purchase by auction i.e. from 12.03.1981 to 29.5.1981 as the disputed house was adjacent to house of its previous owner Rahamtulla and after purchase, defendant No. 1 had repaired the said house and since then staying therein.

(3) The trial Court, after appreciating oral and documentary evidence on record, by its judgment & decree dated 30.06.2000 passed in Civil Suit No. 1-A/98 decreed the suit holding that defendant has purchased the suit land in revenue auction vide Ex. D/7 (dtd. 29.5.1981) from the previous owner Rahamtulla. It was further held that possession of the plaintiff by constructing house since last 30 years was not specifically denied by the defendant and the plaintiff has perfected his title over the suit land by way of adverse possession.

(4) On appeal being preferred by the defendant, judgment and decree of the trial Court was affirmed by the first appellate Court by its impugned judgment & decree dated 22.01.2003 passed in Civil Appeal No. 22-A/2002 holding that pursuant to the sale certificate in respect of one acre of the land vide Ex.P-7 on 29.5.1981, the defendant was able to take possession of 0.90 acres of the land out of 1 acre of the land and since the plaintiff was residing in the suit accommodation since last 30 years by constructing house without any interruption, plaintiff has acquired title over the suit land by way of adverse possession, against which this second appeal has been preferred by the appellant/defendant in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(5) Learned counsel appearing for the appellant/defendant would submit that

there is no specific pleading with regard to ingredients of adverse possession by the plaintiff and there is no evidence on record to hold that plaintiff has proved his adverse possession over the suit land, as such, decree granted by two courts below is liable to be set aside.

(6) On the other hand, counsel for respondent No. 1/plaintiff would submit that both the courts below are absolutely justified in decreeing the suit of the plaintiff on the basis of adverse possession.

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

(8) The question for consideration would be whether both the courts below were justified in decreeing the suit filed by the plaintiff by holding that he has perfected his title by way of adverse possession ?

(9) The principal argument raised on behalf of the defendant is that there is no proper pleading that plaintiff's possession has been matured into the adverse possession. A careful perusal of the pleading of the plaint would show that in paragraph 6, the plaintiff has categorically pleaded that in the suit house owned by the plaintiff, he is in possession for the last 30 years and he is continuing in peaceful possession without interruption by the defendant and his previous owner Rahmat Ulla has also not interrupted the plaintiff's possession over suit land. In paragraph 7, it has clearly been pleaded that on 29.5.1981 vide Ex.P-7 sale certificate was issued in favour of defendant No. 1 and it was also recorded in the revenue record in the same year. He (defendant) also filed a suit against the plaintiff for declaration of title

and possession, which was dismissed on 11.01.1996 vide Ex.D-4 and then also defendant No. 1 did not take any action. In paragraph 8, it has been pleaded that the plaintiff is continuing using the suit land without any interruption and interference and in the knowledge of defendant No. 1 and the plaintiff is in exclusive possession over the suit land and he has become title holder. Pleading averred in paragraphs 7 to 9 would clearly show the express averment made that he is in possession of the suit land and is in peaceful possession since long etc. and hostile possession to the knowledge of defendant has been pleaded, as such, it cannot be held that the plaintiff has not pleaded the material particulars for establishing his plea by adverse possession, therefore, the argument in this regard is hereby rejected, as the plaint contains all the necessary pleadings in order to prove the plea of adverse possession. Not only this, in reply to the counter-claim filed by the defendant, the plaintiff on 17.8.1999 clearly reiterated that defendant has knowledge of the plaintiff's possession over the land immediately after purchase in auction dated 29.5.1981 (Ex.P-7) till the date of institution of suit.

(10) Plea of adverse possession is undisputedly governed by Article 65 of the Limitation Act and onus to prove adverse possession would be on the person who raises such a plea.

(11) In the matter of **Ravinder Kaur Grewal & others Vs. Manjit Kaur & others**¹, the Supreme Court has considered all the earlier decisions on the point and overruled its earlier decision in the matter of **Gurudwara Sahib v. Gram Panchayat, Sirthala**² and laid down requirement of adverse possession in paragraphs 57 & 59 of

1 (2019) SCC Online SC 975

2 (2014) 1 SCC 669

the judgment, which state as under :-

“57. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not taken care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. *Animus possidendi* under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequences is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64,

even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession. Similarly, one other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the tile by adverse possession, can sue and maintain a suit.”

(12) Reverting to the facts of the case in light of requirements to prove the adverse possession as indicated by their Lordships of the Supreme Court in **Ravinder Kaur Grewal (supra)**, it is quite vivid that in the present case long and continuous possession of the plaintiff is not in dispute; further the intention on the part of the plaintiff to possess the suit property is quite evident from the fact that defendant was aware of the fact that plaintiff is possession of the suit property, in which the plaintiff has already constructed the house prior to date of issuance of sale certificate (Ex.D-7) in his favour as he has purchased the suit property by auction. Both the Courts below have concurrently recorded a finding that plaintiff is in possession of the suit land since the date of purchase by auction and the defendant did not take steps to evict the plaintiff for period of more than 12 years and plaintiff being in adverse possession for more than 12 years, the right of defendant was extinguished as per Section 27 of the Limitation Act. The First Appellate Court has also recorded a finding that the defendant could take possession of only 0.90 decimal of the land out of 1 acre as 0.10 decimal of the land was in possession of the plaintiff without any interruption by the defendant from 29.05.1981. However, filing successive suit does

not arrest limitation as the first suit by the defendant for possession was dismissed on 11.1.1996 vide Ex.P-8.

(13) The Supreme Court in the matter of **Desh Raj and others Vs. Bhagat Ram (DEAD) by Lrs. And others**³ has clearly held in paragraph 22 that filing of successive suit does not arrest limitation, rather it would show that party was not successful in his attempt to possess the suit land during hostile possession of other.

(14) In view of the aforesaid discussion, both the courts below are absolutely justified in granting decree in favour of the plaintiff on the basis of adverse possession in favour of the plaintiff, which is neither perverse nor contrary to the record.

(15) As a fallout and consequence of the aforesaid discussion, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. Substantial question of law is answered accordingly in favour of plaintiff and against the defendant. No costs.

(16) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

3 (2007) 9 SCC 641

