

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No. 495 of 2006

Mahra Ram Lodhi (dead) through his Lrs.

1. Manthir, Aged 48 years, S/o Mahra Ram Lodhi.
2. Pusuk, Aged 58 years, S/o Mahra Ram Lodhi.

Both R/o Village Bottepar, P.S. Dhumka, Tahsil & Distt. Rajnandgaon, Chhattisgarh.

3. Smt. Sugandhin Bai, Aged 53 years, W/o Hridaya Ram, D/o Mahra Ram Lodhi, By profession Housewife, R/o Village Saloni, Post Saloni, P.S. Khairagarh, Tahsil & Distt. Rajnandgaon, Chhattisgarh.

---- Appellants/Plaintiffs

Versus

1. Manrakhan, Aged 53 years, S/o Milaou Gound, R/o Village Bottepar, P.S. Dhumka, Tahsil & Distt. Rajnandgaon, Chhattisgarh.
2. The State of Chhattisgarh, Through the Collector, Distt. Rajnandgaon, Chhattisgarh

----Respondents/Defendants

For Appellants	:	Mr. Aditya Tiwari, Advocate
For Respondent No. 1	:	Mr. Harshwardhan Parganiha
For Respondent No. 2/State	:	Ms. Anjali Singh Chouhan, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06.09.2019

1. The two substantial questions of law involved, formulated and to be answered in this second appeal preferred by the plaintiffs state as under :

“1. Whether the rejection of suit of the plaintiff on the ground of limitation was proper, legal and justified ?

2. Whether the respondent No. 1 has perfected right of title over the suit property by way of adverse possession ?”

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

2. The sole plaintiff – Mahra, aged about 85 years, instituted a civil suit on 20/09/1996 for declaration of title and recovery of possession stating *inter alia* that he is the owner of the suit land bearing khasra No. 574 area 0.18 decimal which defendant No. 1 – Manrakhan has illegally encroached upon and thereafter, constructed a hut on some part of the said suit land and has sown crops on the remaining part of that land, for which he moved an application before the Nayab Tahsildar under Section 250 of the Land Revenue Code. The Nayab Tahsildar rejected the said application moved by the plaintiff on 08/02/1996 holding that it is beyond the period of limitation which necessitated filing of the civil suit by the plaintiff claiming decree as stated above.

3. Defendant No. 1 – Manrakhan filed his written statement and denied the averments made in the plaint stating that he purchased the suit land from the plaintiff 40 years ago for a sale consideration of less than Rs. 100/-, and so, the sale

was not required to be evidenced in writing. Apart from opposing the suit, defendant No. 1 also filed counter-claim on 06/03/1998 stating *inter alia* that he purchased the suit land from the plaintiff 40 years ago and constructed a hut in some part of the suit land and sown crops on the remaining, and thus, has been in possession of the suit land ever since, as such, he has perfected his title over the suit land on the basis of adverse possession by remaining in possession of the suit land for the last 40 years.

4. Plaintiff replied to the said counter-claim made by defendant No. 1 by way of filing certain documents, being Exhibit P/1, which is a copy of order dated 08/02/1996 passed by the Nayab Tahsildar and Exhibit P/3, being the revenue records in which name of plaintiff – Mahra has been recorded as the title-holder of the suit land, whereas not a single document has been filed by defendant No. 1 supporting his statements.
5. Learned trial Court, upon appreciating the oral and documentary evidence on record, dismissed the suit of the plaintiff and decreed the counter-claim of defendant No. 1 vide judgment and decree dated 03/01/2003 by primarily holding that plaintiff was not examined before the trial Court, therefore, he could not be cross-examined by defendant No. 1 and held that defendant No. 1 – Manrakhan has perfected his title over the suit land by way of adverse possession by remaining in possession of the suit land for the last 40 years.
6. Questioning the said judgment and decree passed by the trial Court, legal representatives of plaintiff/appellants herein

preferred a civil appeal wherein learned first appellate Court declined to interfere with the findings recorded by the trial Court and held that defendant No. 1 – Manrakhan has perfected his title over the suit land on the basis of adverse possession by remaining in possession of the said suit land for the last 40 years and thereby, dismissed the appeal vide judgment and decree dated 25/07/2006.

7. Being aggrieved by the judgment and decree passed by both the Courts below, this second appeal under Section 100 of the CPC has been preferred by the legal representatives of the plaintiff / appellants herein in which two substantial questions of law were framed and formulated for consideration on 23/09/2014 and are set out in the opening paragraph of this judgment.
8. Mr. Aditya Tiwari, learned counsel appearing for the legal representatives of plaintiff – Mahra/the appellants herein would submit that defendant No. 1 – Manrakhan, though claimed that he has been in adverse possession of the suit land for the last 40 years as he purchased the suit land from the plaintiff – Mahra 40 years ago, but has not filed a single document in support of his statements demonstrating that either he has purchased the suit land from plaintiff or that he has been in possession of the suit land for the last 40 years and the trial Court has erred in dismissing the suit of the plaintiff and decreeing the counter-claim of defendant No. 1 merely on the basis of the oral evidence of defendant No. 1 and his two witnesses. He further places reliance upon the

decision rendered by the Supreme Court in the matter of ***Karnataka Board of Wakf Vs. Government of India & Ors.***¹.

9. Mr. Harshwardhan Parganiha, learned counsel appearing for defendant No. 1 – Manrakhan would support the impugned judgment and decree and would submit that both the Courts below have concurrently and rightly held that defendant No. 1 has been in possession of the suit land for the last 40 years, which is also recorded in Exhibit P/1 i.e. the order dated 08/02/1996 passed by the Nayab Tahsildar in which plaintiff himself has admitted that defendant No. 1 has been in possession of the suit land for the last 30 years and moreover, plaintiff did not examine himself before the trial Court, therefore, the findings recorded by the trial Court are in consistence with the evidence available on record, as such, the second appeal filed by the legal representatives of the plaintiff / appellants herein deserves to be dismissed. He further places reliance upon the latest judgment of the Supreme Court in the matter of ***Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & Ors.***².

10. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

11. In the matter of ***Karnatka Board of Waqf*** (supra), their Lordships of the Supreme Court have laid down the necessary ingredients which has to be demonstrated by a

1 (2004) 10 SCC 779

2 2019 SCC Online SC 975

person claiming adverse possession, which reads as under :-

“11.Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma Vs. Raj Kumari Sharma)

12. A plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: S M Karim Vs. Bibi Sakinal (AIR 1964 SC 1254). In P Periasami Vs. P Periathambi (1995) 6 SCC 523 this Court ruled that: (SCC p. 527, para 5)

"Whenever the plea of adverse possession

is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with *Mohan Lal Vs. Mirza Abdul Gaffar* (1996) 1 SCC 639 that is similar to the case in hand, this Court held: (SCC pp. 640-41, para 4)

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant." "

12. The above-stated proposition of law laid down by the Supreme Court in ***Karnataka Board of Waqf*** (supra) was followed with approval in the matter of ***Ravinder Kaur Grewal*** (supra) wherein it has been held as under :-

“25. ... 8. Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially “wilful neglect” element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

2. Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.

30. In Karnataka Wakf Board the law was stated, thus: (SCC p. 785, para 11)

“11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. 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. (See S.M. Karim Vs. Bibi Sakina, Parsinni Vs. Sukhi and D.N. Venkatarayappa Vs. State of Karnataka). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. 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.” ”

13. Now, the question that requires consideration is whether the five ingredients laid down by their Lordships of the Supreme Court in the matter of ***Karnataka Board of Waqf*** (supra) have been established by defendant No. 1 who claimed relief of adverse possession by way of filing counter-claim.

14. At this stage, it is pertinent to notice the counter-claim filed by defendant No. 1. Following pleadings have been made by

defendant No. 1, who has claimed adverse possession, in paragraphs 8, 9 and 10 of the counter-claim filed by him :-

प्रतिदावा अंतर्गत आदेश 8 नियम 7 व्य०प्र०सं०

8. यह कि, यह प्रतिवादी विगत 40 वर्ष पूर्व वादग्रस्त भूमि जो कि, निःकृष्ट किस्म की थी, को तत्कालीन समय में रुपये 60-रुपये में क्रय कर काविज कोठार बनावा था तथा छोटी झोपड़ी का भी निर्माण किया था । जिस पर व्यक्तिगत रूप से काविज हो कृषि कार्य करता चला आ रहा था । कि, विगत सन 1994 में वादी द्वारा बदनियती पूर्वक एक आवेदन अंतर्गत धारा-250 म०प्र०भू०रा०संहिता प्रस्तुत किया जो कि, वादी के बयान के आधार पर ही निरस्त किया गया था ।

9. यह कि, प्रतिवादी एक आदिवासी है जो कि, सीधा-सादा भोला भाला है तथा ग्राम में प्रचलित नियम कि, 100.00 रुपये कम कीमत की भूमि पर बिना लिखा पढ़ी के नगद पैसा प्राप्त कर मौखिक रूप से वादी द्वारा कहे जाने पर कब्जा प्राप्त कर, तथा वादी को सही मानकर वादग्रस्त भूमि का पंजीयन नहीं करवाया गया है । अब जबकि, वादग्रस्त भूमि की कीमत इस प्रतिवादी द्वारा अधिक मेहनत कर, उन्नत भूमि तथा मकान कृषि कार्य कर रहा है तथा इस समय उक्त भूमि की कीमत बढ़ गई है । क्योंकि, आवागमन हेतु रास्ता आदि का भी निर्माण हो चुका है । तब वादी के पुत्र मंथीर द्वारा बदनियती पूर्वक पूर्व में आवेदन दिलवाया गया था तथा यह वाद भी प्रस्तुत करवाया गया है जो कि, पोषणीय नहीं है । वादी के पुत्र की बदनियती पूर्वक व्यवहार के कारण ही यह प्रतिदावा वास्ते प्रतिकूल कब्जा प्राप्ति हेतु प्रस्तुत किया जा रहा है । जो कि, समय सीमा के अंतर्गत यह प्रतिदावा प्रस्तुत किया जा रहा है ।

10. यह कि, प्रतिवादी विगत 40 वर्षों से अधिक समय से वादग्रस्त भूमि पर बहैसीयत स्वामी काविज हो अपना कृषि कार्य आदि कर रहा है । साथ ही बरसात में धान आदि भी बोता है ऐसी स्थिति में वादग्रस्त भूमि पर इस प्रतिवादी को प्रकूल कब्जा के आधार पर भी स्वामित्व प्राप्त होता है । ऐसी स्थिति में भी जबकि, वादग्रस्त भूमि पर सतत् कब्जा चला आ रहा है । वादी को उक्त भूमि का कब्जा विधिक तौर पर प्राप्त नहीं हो सकता है ।

15. A careful perusal of the aforesaid relevant paragraphs of the counter-claim filed by defendant No. 1 would show that defendant No. 1 has not stated anywhere in his counter-claim that on what date he came into possession of the suit land except simply stating that he has been in possession of the

suit land for the last 40 years, claiming that he purchased the said suit land from plaintiff and then came into possession of the suit land 40 years ago, neither has he indicated the date on which he allegedly purchased the suit land from the plaintiff, and he has also not clearly stated whether the factum of possession was known to the other side i.e. the plaintiff, except merely stating that he has been in possession of the suit land by constructing a hut in some parts of the suit land and by cultivating crops in the remaining parts of the suit land.

16. As held in ***Karnataka Board of Waqf*** (supra), since defendant No. 1 was claiming adverse possession and trying to defeat the title of the true owner i.e. the plaintiff herein, it was upon him to not only clearly plead all the necessary ingredients of adverse possession, but also point out all the facts constituting his adverse possession over the suit land, which he has not done and has only emphasized that he has been in adverse possession over the suit land for the last 40 years.

17. It is well-settled that long possession would not ripen into adverse possession unless his possession was hostile to the original owner, which defendant No. 1 has failed to aver in the written statement or the counter-claim filed by him.

18. Learned trial Court has drawn an adverse inference against the plaintiff on the ground that plaintiff, being more than 80 years of age, could not examine himself before the trial Court and could not be cross-examined by defendant No. 1, and

ignored the fact that it is defendant No. 1 who has claimed adverse possession in his counter-claim and his position was alike plaintiff, therefore, he was required to plead and establish all the necessary ingredients constituting adverse possession as laid down by the Supreme Court in ***Karnataka Board of Waqf*** (supra), which has apparently not been done by defendant No. 1 and even otherwise, not a single document has been brought on record by defendant No. 1 which could prove that at any point of time, he was in possession of the suit land. Even in Exhibit P/3 filed by the plaintiff, which is revenue record of the year 2001, defendant No. 1's name has not even been registered in the remarks column and plaintiff's name has been recorded as title-holder of the suit land. Therefore, in absence of any pleading constituting the facts of adverse possession and in absence of any document filed by defendant No. 1 in support of his counter-claim with regard to adverse possession, both the Courts below have concurrently erred in granting decree of declaration of title on the basis of adverse possession in favour of defendant No. 1. Accordingly, the findings recorded by both the Courts below holding that defendant No. 1 has perfected his title over the suit land by way of adverse possession by remaining in possession of the suit land for more than 40 years, being perverse and contrary to record, is liable to be set aside.

19. Consequently, the impugned judgment and decree passed by the trial Court which has been upheld by the first appellate

Court granting the counter-claim filed by defendant No. 1, is hereby set aside and since, defendant No. 1 himself has claimed that he purchased the suit land from the plaintiff, and thereby, admitted the title of the plaintiff and failed to plead and establish the plea of adverse possession. Plaintiff's suit is decreed and thereby, it is ordered and decreed that legal representatives of the plaintiff are the title-holders of the suit land, therefore, defendant No. 1 is directed to deliver the peaceful possession of the suit land bearing khasra No. 574 area 0.18 decimal situated at village Botepar, Tahsil and district Rajnangaon to legal representatives of the plaintiff within two months from the date of receipt of certified copy of this order.

20. Accordingly, the second appeal is allowed to the extent indicated herein-above with no order as to cost(s).

21. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge