

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.211 of 2004

Samal S/o. Late Jairam, Aged about 45 years, Caste Bargah, R/o. Village Sigari, Tahsil Pratappur, District Surguja (CG)

(Plaintiff)

---- Appellant

Versus

1. Teju S/o. Late Budhu Ram Aged 30 years, Caste Bargah, R/o. Village Sigari, Tahsil Pratappur, District Surguja (CG)
2. State of Chhattisgarh Through Collector, Sarguja Ambikapur (CG)

(Defendants)

---- Respondents

For Appellant/Plaintiff	: Mr.D.N.Prajapati, Advocate
For Respondent No.1/Defendant	: None present
For Respondent NO.2	: Mr.Sanjeew Agrawal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

21/10/2019

1. The second appeal preferred by plaintiff/appellant herein was admitted for hearing by formulating the following substantial questions of law:-

"1. Whether the correct test in relation to perfection of title by way of adverse possession has not been applied by the Courts below and wrong findings have been recorded by them ?

2. Whether the Courts below were justified in holding that the suit of plaintiff was barred by limitation ?"

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

2. The suit property was originally held by Ghurbigan. It was his self-acquired property. Ghurbigan had no male issue and he had only one daughter namely Moto and Moto had one son Samal, the plaintiff herein. Plaintiff-Samal filed a suit that in the suit property held by his maternal grandfather Ghurbigan, which was granted to him in Surguja settlement. Defendant No.1- Budhu in 1978 got his name mutated and in 1991 he filed an application for partition under Section 178 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "the Code") being Revenue Case No.13A/27/90-91, which has caused cloud on title of the plaintiff, which necessitating the institution of the suit for declaration of title and permanent injunction.
3. Defendant No.1 set-up a plea that he is adopted son of Ghurbigan and Ghurbigan has given to him 1/2 share in the suit property as being adopted son and the plaintiff's suit is barred by limitation as his name was already mutated in revenue records in 1978 and the plaintiff filed the instant suit on 20.1.1992. Therefore, the suit deserves to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.9.2000, held that the suit property was self-acquired property of Ghurbigan and he has only daughter Moto and the plaintiff being

his daughter's son has exclusively succeeded the suit property, but further held that the defendant No.1 is in possession of 1/2 share of the suit property and has perfected his title by way of adverse possession and the suit is barred by limitation as name of defendant No.1 was mutated in revenue records in 1978, but the suit was filed on 20.1.1992 and accordingly, dismissed the suit. On appeal being preferred by the plaintiff, the first appellate Court dismissed the appeal by affirming the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

5. Mr.D.N.Prajapati, learned counsel for the appellant/plaintiff, would submit that both the Courts below have committed legal error in dismissing the suit after having held that the plaintiff has exclusively inherited the suit property after death of Ghurbigan, original holder of the suit property by holding that defendant No.1 has succeeded in establishing his title by way of adverse possession. He would further submit that the pleas of title and adverse possession both cannot stand together. Defendant NO.1 claimed title on the basis of it being given by Ghurbigan as he was his adopted son and on

the same breath cannot be allowed to take the plea of adverse possession. He would also submit that both the Courts below have committed illegality in holding that the suit was barred by limitation.

6. None present for respondent No. 1/defendant No.1 through served.
7. I have heard learned counsel for the appellant/plaintiff, considered his submissions made hereinabove and also went through the records with utmost circumspection.
8. Admittedly, the suit property was originally held by Ghurbigan, maternal grandfather of the plaintiff as he had no male issue and therefore, in absence of male issue, the plaintiff being daughter's son would succeed the property.

Answer to substantial question of law No.2:-

[For sake of convenience, this substantial question of law is taken first for determination].

9. The question for consideration would be, whether the suit for declaration of title would be barred by limitation ?
10. Article 58 of the Limitation Act, 1963 (hereinafter called as 'the Act of 1963') states as under:-

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.

11. In order to seek declaration, the time from which the period of limitation would start running when the right to sue first accrues. In the instant case, both the Courts below have held that when name of defendant No.1 was mutated in revenue records in 1978, then cause of action has arisen and the suit ought to have been filed within three years, whereas he has brought a suit on 20.1.92, therefore, the suit is barred by limitation.

12. It is well settled law that mutation does not confer any title in favour of a person whose name is recorded in revenue records. It does not create any right or extinguish title over the suit land. The object of mutation is to keep the records up to date and for the purpose of collecting revenue. No title can be conferred on the basis of recording of name of a person in revenue records. Merely because the name of a person is recorded in revenue records, the limitation/right to sue cannot be said to be accrued in favour of a person who claims title over the suit land. In this case, defendant No.1 filed an

application for partition claiming 1/2 share in the suit property as it is his case that 1/2 share in the suit property was given to him by Ghurbigan as adopted son, then the plaintiff filed a suit for declaration of title. The plaintiff has given revenue case also in para-9 of his plaint being Revenue Case No.13A/27/90-91 alleging that on that day when he received the notice from revenue Court seeking partition, cause of action arisen and the suit was filed on 20.1.92.

13. Initiation of proceeding for partition under Section 178 of the Code can be said to be when the right of the plaintiff has been challenged to hold the suit land and that gives rise to cause of action to the plaintiff for the purpose of Article 58 of the Act of 1963 and that day can be taken to be the date when the right has been accrued for filing of the suit for declaration of title and the suit filed on 20.1.92 after proceeding was initiated for partition in the year 1991, is within the period of limitation and it cannot be held to be barred by limitation, as such, finding recorded that the suit is barred by limitation by the trial Court as well as by the first appellate Court is perverse and contrary to record, hence, it is set aside.

Answer to substantial question of law No.1:-

14. Both the Courts below have concurrently held that the plaintiff has exclusively succeeded the suit

property from his maternal grandfather Ghurbigan and also held that defendant No.1 was not adopted son of Ghurbigan and this Court already held while answering substantial question of law No.2 that the plaintiff's suit was within the period of limitation and it was not barred by limitation.

15. The question for consideration would be, whether defendant NO.1 has succeeded in establishing the plea of adverse possession which both the Courts below have found in his favour ?

16. Defendant NO.1 has taken the plea that the suit property (1/2 share) was given to him by Ghurbigan as adopted son, as such, he claimed title of his own over the suit land and also claimed the plea of adverse possession.

17. Now, the question for consideration would be, whether the plea of title and the plea of adverse possession both can stand together as taken by defendant No.1 ?

18. It is well settled principle of law laid down by the Supreme Court in the matter of **Firm Srinivas Ram Kumar v. Mahabir Prasad**¹ that it is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea it could be granted, which has been followed in the matter of **Arundhati Mishra (Smt) v. Sri Ram Charitra**

1 AIR 1951 SC 177

Pandey².

19. The question is, whether the plea based on title and adverse possession are mutually inconsistent and whether the defendant can be permitted to set up a plea based on title and simultaneously on same breath can be allowed to raise a plea of perfection of title by way of adverse possession.

20. The Supreme Court in **Arundhati Mishra (Smt)** (supra) has clearly held that the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced and in that case, Their Lordships further held that since his plea is based on his title, he never denounced his title nor admitted the title of the appellant, therefore, the defendant cannot be permitted to take inconsistent plea.

21. Likewise, in the matter of **L.N. Aswathama and another v. P. Prakash**³, the Supreme Court relying upon its earlier decisions clearly held that the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. It has been observed as under: -

“17. ... The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person

2 (1994) 2 SCC 29

3 (2009) 13 SCC 229

possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide *P. Periasami v. P. Periathambi*⁴, *Md. Mohammad Ali v. Jagdish Kalita*⁵ and *P.T. Munichikkanna Reddy v. Revamma*⁶.)"

22. In the matter of **Mohan Lal v. Mirza Abdul Gaffar**⁷, it has been held that the pleas based on title and adverse possession both are mutually inconsistent and destructive. It has been observed as under: -

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the (sale) agreement, he must disclaim his right thereunder 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 of his title by prescription nec vi, nec clam, nec precario (not by violence, not by stealth, not by permission). Since the appellant's claim is founded on Section 53-A (of the Transfer of Property Act, 1882), it goes without saying that he admits by implication that he came into possession of the 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."

23. In the matter of **Karnataka Board of Wakf v. Government of India and others**⁸, similar proposition has been struck by the Supreme Court and the principle of law rendered in **Mohan Lal** (supra) has been relied upon and it has been held as under: -

4 (1995) 6 SCC 523

5 (2004) 1 SCC 271

6 (2007) 6 SCC 59

7 (1996) 1 SCC 639

8 (2004) 10 SCC 779

"13. As we have already found, the respondent obtained title under the provisions of the Ancient Monuments Act. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by the respondent is unsustainable. The High Court ought not to have found the case in their favour on this ground."

24. The Supreme Court in the matter of Karnataka Board of Wakf (supra) has clearly held the necessary ingredients to establish claim for adverse possession and further held that the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Paras 11 and 12 of the report state as under:-

"11. In the eye of 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 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 v. Bibi Sakina⁹, Parsinni v. Sukhi¹⁰ and D N Venkatarayappa v. State of Karnataka¹¹). 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma¹²).

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 v. Bibi Sakina (supra). In P Periasami v. P Periathambi¹³ this Court ruled that -

"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....."

25. The principle of law laid down in **Karnataka Board of Wakf** (supra) was followed by the Supreme Court recently in **Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.**¹⁴.

9 AIR 1964 SC 1254

10 (1993) 4 SCC 375

11 (1997) 7 SCC 567

12 (1996) 8 SCC 128

13 (1995) 6 SCC 523

14 AIR 2019 SC 3827

26. Thus, following the principles of law laid down in the aforesaid judgments, it is quite vivid that the plea of defendant No.1 having acquired title being adopted son of Ghurbigan as well as the plea of adverse possession both are mutually inconsistent pleas setup by him, as such, defendant NO.1 is precluded from setting up an inconsistent plea based on title and adverse possession. The two are mutually destructive pleas and the plea of adverse possession is not available to defendant NO.1 though he has admitted the title of Ghurbigan, but he has not admitted the title of present title-holder/plaintiff. Even otherwise, defendant No.1 has only claimed that he has long and settled possession over the suit land and therefore, he has perfected his title over the suit land. A person who claims adverse possession should show on what date he came into possession, what was the nature of his possession, whether the factum of possession was known to the other party and how long his possession has continued. In the present case, defendant No.1 has failed to prove the above-stated necessary ingredients for establishing the plea of adverse possession. Mere pleading of long possession would not confer any title to him, as such, finding recorded by both the Courts below that defendant NO.1 has perfected his title over 1/2 share of the suit property is perverse and contrary to law,

hence, it is set-aside, as such, the substantial questions of law are answered in favour of the plaintiff and against defendant No.1.

27. In view of the aforesaid analysis, the judgment and decree passed by both the Courts below are hereby set-aside and the suit would stand allowed and it is held that the plaintiff is title-holder of the suit land being Khasra Nos.26, 40, 45, 124, 411, 449, 691 and 693, 32, 43, 46, 610, 448, 450, 692 and 694, area 12.39 acres situated at village Singari, Tahsil Pratappur, District Surguja (CG) and defendant No.1 is restrained from interfering with possession of the plaintiff over the suit land.

28. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

29. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-