

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 304 of 2003**

Jagatram (dead) through LR's.

- 1.a Smt. Baishakhin Bai Verma, Wd/o Late Jagat Ram Verma, aged about 81 years,
- 1b. Smt. Chaiti Verma, D/o Late Jagat Ram Verma, aged about 60 years,
- 1c. Shri Bhanu Ram Verma, S/o Late Shri Jagat Ram Verma, aged about 54 years.
- 1d. Smt. Anjani Verma, S/o Late Jagat Ram Verma, aged about 49 years,
- 1e. Smt. Savita Verma, D/o Late Shri Jagat Ram Verma, aged about 46 years,

All are R/o Ward No. 7, Balauda Bazar, Distt. Balodabazar- Bhatapara (C.G.)

----Appellants/plaintiffs

Versus

- 1. Guman Singh, son of Narayan Lal Verma, aged about 70 years, resident of Ghotia, Tehsil- Balauda Bazar, District – Raipur, (C.G.)
- 2. State of Chhattisgarh, through Collector, Raipur, District – Raipur (C.G.)

---- Respondents/defendants.

For Appellants : Shri Vivek Kumar Tripathi, Advocate.
 For Respondent No. 1 : Shri H.V. Sharma, Advocate.
 For Respondent No. 2 : Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/01/2019

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

“Whether the first appellate Court is justified in reversing the finding of the trial Court and holding that the defendant has perfected his title by adverse possession by recording a perverse finding which is contrary to the record ?”

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

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

(2.1) Original plaintiff – Jagat Ram filed a suit for declaration of title, permanent injunction and recovery of possession in alternative stating *inter alia* that he is title and possession holder of the suit land, which was given to defendant No. 1- Guman Singh for cultivation for few years and the plaintiff, after his retirement, is cultivating the suit land. Since the defendant threatened to dispossess him leading to filing of the civil suit for the aforesaid reliefs.

(2.2) By filing written statement, the defendant No.1 has admitted the title of the plaintiff and his mother Rambha Bai over the suit land and set up a plea that he has purchased the suit land from plaintiff and his mother by making payment of consideration amount and obtained possession of the suit land from the plaintiff; and he has perfected his title by way of adverse possession over the suit land as he is in possession thereof since 1966 i.e. from the date of purchase.

(2.3) The trial, after appreciating oral and documentary evidence on record, found that plaintiff is title holder of the suit land and the defendant has failed to establish the plea of adverse possession and granted decree in favour of the plaintiff.

(2.4) On appeal being preferred by defendant No.1; the First Appellate Court found the plea of adverse possession established and dismissed the plaintiff's 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 has been formulated, which has been set out in opening paragraph of the judgment.

(3) Mr. Vivek Kumar Tripathi, learned counsel appearing for the appellants/plaintiffs, would submit the first appellate Court was absolutely unjustified in holding that defendant No.1 has perfected his title over the suit land by way of adverse possession, as such, the judgment and decree granted by the first appellate Court deserve to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit be decreed.

(4) Per contra, H.V. Sharma, learned counsel appearing for defendant No. 1 would submit that the first appellate Court is absolutely justified in dismissing the suit by granting appeal, which does not call for any interference.

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

(6) The trial Court has clearly recorded a finding that plaintiff is title holder of the suit land and even otherwise defendant No. 1 in his written statement in paragraph 10 (B) defendant No. 1 has clearly admitted the title of the plaintiff and his mother over the suit land.

(7) Now the question for consideration is whether defendant No. 1 has perfected his title over the suit land by way of adverse possession.

(8) In the matter of Karnataka Board of Wakf Vs. Government of India and others¹, their Lordships of the Supreme Court has stated the facts to establish the claim of adverse possession and held 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 wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina, Parsinni v. Sukhi and D.N. Venkatarayappa v. 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.”

(9) Reverting the facts of the present case in light of the afore-cited judgment of the Supreme Court (supra), it is apparent that the defendant was required to show (a) on what date he came into possession; (b) what was the nature of his

1 (2004) 10 SCC 779

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, etc.

(10) Defendant No. 1, in his written statement, has clearly stated that on the basis of un-registered sale, he came into possession over the suit land from the date of purchase i.e. 1966-1967.

(11) In **Achal Reddi Vs. Ramakrishna Reddiar and others**², their Lordships of Supreme Court have clearly held that a person who is put in possession in pursuance of contract, his possession cannot be said to be the adverse and held as under:-

“8..... In the case of an agreement of sale the party who obtains possession, acknowledges title of the vendor even though that the agreement of sale may be invalid. It is an acknowledgment and recognition of the title of the vendor which excludes the theory of adverse possession. The well-settled rule of law is that if a person is in actual possession and has a right to possession under a title involving a due recognition of the owner's title his possession will not be regarded as adverse in law, even though he claims under another title having regard to the well-recognised policy of law that possession is never considered adverse if it is referable to a lawful title. The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both

parties stipulating for a total divestiture of all the rights of the transferor in the property, and in case in which there is a mere executory agreement of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely against the transferor. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse.”

(12) Similarly, in the matter of **Mohan Lal v. Mirza Abdul Gaffar**³, their Lordships of the Supreme Court have held as under :-

“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 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 his title by prescription *nec vi, nec claim, 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.”

(13) Finally, reverting the facts the case, it appears that defendant No. 1 has simply stated that he came into possession of the suit land pursuant to the sale,

3 (1996) 1 SCC 639

which is unregistered and his possession over the suit land pursuant to the said unregistered sale and, therefore, in light of the decision rendered by the Supreme Court in **Achal Reddi (supra)**, possession of defendant No. 1 on the suit land cannot be said to be the adverse possession and it is always permissive possession and permissive possession for a period how so far long it may be, cannot be said to be the adverse possession as adverse possession implies that it commenced in wrong and is maintained against right. As such, defendant's No. 1 possession being permissive possession pursuant to the unregistered sale and it cannot be said to be open and undisturbed possession against the plaintiff and, therefore, the first appellate Court is absolutely unjustified in interfering with the well merited judgment and decree of the trial Court and, therefore, the judgment & decree of the first appellate Court is liable to be set aside.

(14) As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently allowed, the plaintiffs' suit stands decreed. The substantial question of law is answered accordingly. No cost(s).

(15) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

