

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.112 of 2004

Ashok Kumar Gupta S/o Bhikhu Sao, aged about 45 years,
r/o village Laddand, P.S. Meral Bihar State, present
address C/o Geda Ram S/o Mahto Bargarh, r/o village
Jamhati, Tehsil Kusmi, Distt. Surguja, C.G.

(Defendant No.1)

----- Appellant

Versus

1. Sushila d/o Nirmal, Caste Uraon, aged about 30 years,
r/o village Korba, District Bilaspur (M.P.) Now
District Korba (CG)
2. Kumari Lusiyana d/o Patras, Caste Uraon, aged about 32
years, r/o village Jamhati, Tehsil Kusmi, District
Surguja (CG)
3. Manewel (dead) through LR's
 - 3a. Anuj S/o late Manuwel, aged about 26 years,
 - 3b. Archana D/o Late Manuwel, aged about 24 years,
 - 3c. Seema D/o late Manuwel, aged about 22 years,
 - 3d. Chhotu S/o late Manuwel, aged about 20 years,
 - 3e. Shashi D/o late Manuwel, aged about 18 years,
 All are R/o. Village Jamhati, Tahsil & P.S.
Shankargarh, Post Dipadih, Kala, Dist. Balrampur-
Ramanujganj (CG)
4. Geda (Dead) through LR's
 - 4a. Sukhni Wd/o late Geda, aged about 60 years,
 - 4b. Jagmohan S/o late Geda, aged about 40 years,
 All R/o Village - Jamhati, P.S.-Shankargarh, Tahsil -
Shankargarh, District-Balrampur-Ramanujganj (CG)
5. Bhondu s/o Khorso Bargah, aged about 50 years
6. Jogi (Dead) through LR's
 - 6a. Gaangi D/o late Jogi, aged about 55 years,
 - 6b. Parvati D/o late Jogi, aged about 52 years,
 - 6c. Raju Kumar S/o Jagtu Ram, aged about 25 years,
 - 6d. Rajmat S/o Jagtu, aged about 20 years,
 All R/o Village - Jamhati, P.S.-Shankargarh, Tahsil -
Shangargarh, District - Balrampur-Ramanujganj (CG)
7. Rame s/o Jhuniya Uraon, aged about 40 years.
8. Somaro s/o Khorso Bargah, aged about 42 years,
9. Saheba s/o Jhaniya Oraon, aged about 35 years,
No.7 to 9 all by occupation Agriculturist and r/o
village Jamhati, P.S. Shankargarh, Tehsil Kusmi,
District Surguja (CG)
10. The State of M.P. (Now C.G.) through Collector,
Surguja (CG)

----- Respondents

For Appellant/Defendant No.1: Mr.A.K.Prasad, Advocate
 For Res.No.1&2 and LR's of : Mr.A.K.Yadav, Advocate
 Res.No.3/Defendants
 For Respondent NO.10 : Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/10/2019

1. The second appeal preferred by defendant No.1 was admitted for hearing by formulating the following substantial questions of law:-

"1. Whether the finding of the first appellate Court in reversing the decision of the trial Court holding that the plaintiffs have perfected their title over the suit property by way of adverse possession, is correct or not?

2. Whether the finding of the first appellate Court in respect of the plaintiff's having got a right over the suit property by way of correction being shown in the revenue records after showing the original owner to have been absconded, relying the same to be a material document for declaring the plaintiffs to be the owner of the suit property, is proper or not?"

[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 shown in Schedule appended with the plaint admeasuring 8.95 acres was admittedly Manwar land held by the then Gautiya of village Jamhata and is situated at village Jamhati, Tahsil Kusmi, District Surguja. It is the case of the plaintiffs that Etwa (father of plaintiff No.1) remained in possession of

suit land 12 years prior to 1954 in raiyat rights and after abolition of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (hereinafter called as "the Act of 1950") he remained in possession as tenant and his name came to be recorded in revenue records as it was abandoned land, for which Etwa used to pay the land revenue and after his death, it was recorded in the names of his sons Patras and Nirmal and they are in possession of the suit land. It is the father's case of the plaintiffs, that defendant NO.1 is resident of Bihar and in 1985 he came in village Jamhati and started staying therein and threatening them, he demanded document relating to title on 21.11.85 and despite report, the police has not taken any action, as such, they have no right and title over the suit land. In alternative, they have also pleaded that if it is held that the suit land is owned by predecessor-in-title of defendant No.1, then the suit land being abandoned land, the plaintiffs have perfected their title by way of adverse possession and as such, they are entitled for declaration of title and permanent injunction over the suit land.

3. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that his father Bhikhu Sao was former Gautiya of village Jamhati and since his father was appointed on

the post of Gautiya of said village, the suit land was given to him in Surguja settlement and he continued in possession during his lifetime. After coming into force of the Act of 1950, it was settled as Manwar land and by order of the Deputy Commissioner, Land Reforms on the report of the Compensation Officer & Extra Assistant Commissioner's (Ex.D-18) he was granted raiyat rights vide Ex.D-17 on 20.12.1951. The plea of adverse possession was refuted by defendant No.1. It was also pleaded that mutation order passed in favour of the plaintiffs was set aside by the Naib-Tahsilar, Shankargarh on 11.12.89 (Ex.D-11), but thereafter the order of Naib-Tahsildar was set aside by the Sub-Divisional Officer and against the order of the SDO, appeal/revision was said to be pending before the Commissioner at the time of institution of suit.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 12.10.1999, dismissed the suit holding that it is not proved that the suit land was held by Etwa and further held that the suit land was settled in favour of defendant No.1 by order of the Deputy Commissioner, Land Reforms, Surguja vide Ex.D-17 and the plaintiffs have not perfected their title over the suit land by way of adverse possession. On appeal being preferred by the plaintiffs, the first appellate Court by its impugned judgment and decree

set aside the judgment and decree of the trial Court and held that the plaintiffs have perfected their title by way of adverse possession over the suit land and also set aside the finding of the trial Court held in favour of defendant No.1, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.1, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

5. Mr.A.K.Prasad, learned counsel for the appellant/defendant No.1, would submit that since raiyat rights was granted by order of the Deputy Commissioner, Land Records, Surguja on 20.12.1951 (Ex.D-17) in favour of defendant No.1 and that raiyat right has ripened into Bhumidhari right by virtue of the provisions contained in Section 147(b) of the Madhya Pradesh Land Revenue Code, 1954 (hereinafter called as "Code of 1954") and that Bhumidhari right has further been converted into Bhumiswami rights by virtue of the provisions contained in Section 158(1) (a) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "the Code of 1959"), therefore, the trial Court has rightly held that defendant NO.1 is title-holder and Bhumiswami of the suit land, which has been set aside by the first appellate Court. He would also submit that the pleas of adverse possession and title both cannot exist together and the

plaintiffs have not renounced the plea of title in the instant case and claimed on the basis of their title and therefore, the first appellate Court is absolutely unjustified in holding that the plaintiffs have perfected their title by way of adverse possession.

6. On the other hand, Mr.A.K.Yadav, learned counsel for respondents No.1 and 2 and legal representatives of respondent No.3/defendants, would submit that the plaintiffs are title-holders of the suit land which has has rightly been held by the first appellate Court, which is neither perverse nor contrary to record. He would further submit that mutation order dated 11.12.89 (Ex.D-11) passed by the Naib-Tahsildar, Shankargarh in favour of defendant No.1 has already been set aside by the Sub-Divisional Officer. The plaintiffs are in possession of the suit land 12 years prior to 1954, therefore, finding of the first appellate Court that the plaintiffs have perfected their title by way of adverse possession cannot be taken exception to by defendant No.1 in this appeal and the instant second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to substantial question of law No.2:-

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

8. Admittedly, the suit land is Manwar land held by former Gautiya of village Jamhata. The plaintiffs claimed that their ancestor Etwa was holding that land in raiyat rights and as such, his name was recorded in revenue records in 1954 vide Ex.P-1. It was abandoned land and Etwa obtained the land by paying the land revenue and after death of Etwa and Patras, the plaintiffs are in possession of the suit land, whereas it is the case of defendant No.1 that the suit land was held by his father Bhikhu Sao, who was former Gautiya of village Jamhati and the land was settled in his favour on the report submitted by the Compensation Officer & Extra Assistant Commissioner's Revenue Case No.173 I-A/17 on 20.12.1951 (Ex.D-18) that defendant is hereditary Gaontia and the whole area of the manwar land was under his personal cultivation on the date of vesting and recommended to settle in favour of defendant NO.1 and accordingly, the Deputy Commissioner, Land Reforms, Surguja by its order dated 20.12.1951 vide Ex.D-17 granted patta under rule 6 of the rules framed under section 91(2) (p) of Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, which states as under:-

"Deputy Commissioner, Land Reforms, Surguja's Case No.173I-

A/17 of true coy of Form-C.

F O R M – C

Patta under rule 6 of rules framed under section 91(2)(P) of Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951)

This is to certify that under section 54(1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951), and in pursuance of rules 6 of the rules made under section 91(2)(p) of the said Act in Revenue Case No.173 of the court of डिपुटी कमिशनर लैंड रिफार्मस dated the 20/12/1951 the rights of a raiyat have been reserved to अशोक कुमार son of भिखू साव resident of जम्हाटी tahsil सामरी district सरगुजा in respect of the land situated in mouza जम्हाटी Tahsil सामरी District सरगुजा as detailed below:-

Khasra No.	Area	Rent	Remarks
(1)	(2)	(3)	(4)
	Acres	Rs. As.P.	
260	0.26	11- -	
261	2.34		
262	1.50		
263	2.42		
285	0.57		
286	1.24		
288	0.25		
289	0.29		
290	0.08		
9	8.95	11/-	

(Seal)

SD/-Illegible

Deputy Commissioner

Dated 20/12/1951

Land Reforms, Surguja

9. The Madhya Pradesh Land Revenue Code came into force w.e.f. 12th February, 1955. Section 147(b) of the Code of 1954 provides as under:-

"147. Bhumidhari- Every person who at the coming into force of this Code belongs to any of the following classes shall be called a Bhumidhari and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumidhari by or under this code, namely

(a) xxx xxx xxx

(b) every person in respect of land held by him as a raiyat or raiyat sarkar [Mahakoshal Region excluding merged territories]."

10. Mahakoshal region used in Section 147(b) of the Code of 1954 has been defined in Section 2 (49)(a) of the Chhattisgarh General Clauses Act, 1957 (hereinafter called as "the Act of 1957") which states as under:-

"(49) the expression:-

(a) "Mahakoshal region" means the territories comprised immediately before the appointing day within the districts of Jabalpur, Sagar, Damoh, Mandla, Hoshangabad, Narsimhapur, Chhindwara, Seoni, Betul, Nimar, Raipur, Bilaspur, Durg, Bastar, Surguja, Raigarh and Balaghat;"

11. Thus, by virtue of the provisions contained in Section 147(b) of the Code of 1954 read with Section 2(49)(a) of the Act of 1957, defendant No.1, who was holding the suit land before coming into force of the Act of

1957 as a raiyat, became Bhumidhari of the said land and thereafter the Chhattisgarh Land Revenue Code came into force w.e.f. 2.10.1959 and by virtue of Section 158(1)(a) of the Code, he (defendant No.1) holding the suit land as Bhumidhari became Bhumiswami of the suit land. Thus, by virtue of the aforesaid provision of Code, defendant NO.1 became Bhumiswami of the suit land, as such, he is Bhumiswami or title-holder of the suit land.

12. Vide Ex.P-1, name of Etwa was recorded in revenue records holding that since defendant No.1 was absconded and the suit land was settled in favour of Etwa, therefore, his name was recorded. That order was set aside by Naib-Tahsildar, Shankargarh vide Ex.D-11 dated 11.12.89, but order of Naib-Tahsildar was admittedly further set aside by the Sub-Divisional Officer and the plaintiffs' appeal/revision was said to be pending before the Commissioner on the date of institution of suit. Even otherwise, mutation order 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.

13. Since the suit land being Manwar land and was

settled in favour of defendant No.1 vide Ex.D-17 and after coming into force of the Code of 1954 though raiyat rights was converted into Bhumidhari and therefore, Bhumiswami rights in accordance with the Madhya Pradesh/Chhattisgarh Land Revenue Code, 1954 and 1959 as noticed hereinabove and all the rights and liabilities have been conferred upon a Bhumiswami by or under this Code, therefore, the first appellate Court is absolutely unjustified in holding that defendant No.1 is not title-holder of the suit land. Finding recorded by the first appellate Court in this regard is absolutely perverse and is hereby set aside.

Answer to substantial question of law No.2:-

14. By recording a finding that the plaintiffs have perfected their title by way of adverse possession taken by them, the first appellate Court set aside the judgment and decree of the trial Court and decreed the suit in favour of the plaintiffs.
15. A careful perusal of the plaint would show that the plaintiffs set-up a plea that their ancestor Etwa possessed the suit land and claimed exclusive title over the suit land and in alternative, they took the plea that they have also perfected their title by way of adverse possession. Admittedly and undisputedly, the plaintiffs did claim title based upon title of their ancestor, but also took the plea of ripening into their title by prescription i.e. acquisition of

title by adverse possession.

16. 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 the plaintiffs/respondents in the instant suit.
17. It is well settled principle of law laid down by the Supreme Court in the matter of **Firm Sriniwas 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 Pandey**².
18. 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.
19. The Supreme Court in **Arundhati Mishra (Smt) v. Sri Ram Charitra Pandey**³ 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

1 AIR 1951 SC 177

2 (1994) 2 SCC 29

3 (1994) 2 SCC 29

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.

20. Likewise, in the matter of L.N. Aswathama and another v. P. Prakash⁴, 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 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*⁵, *Md. Mohammad Ali v. Jagdish Kalita*⁶ and *P.T. Munichikkanna Reddy v. Revamma*⁷.)"

21. In the matter of Mohan Lal v. Mirza Abdul Gaffar⁸, 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

4 (2009) 13 SCC 229

5 (1995) 6 SCC 523

6 (2004) 1 SCC 271

7 (2007) 6 SCC 59

8 (1996) 1 SCC 639

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."

22. In the matter of **Karnataka Board of Wakf v. Government of India and others**⁹, 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: -

"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."

23. 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

9 (2004) 10 SCC 779

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 Sakina¹⁰, Parsinni v. Sukhi¹¹ and D N Venkatarayappa v. State of Karnataka¹²). 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

10 AIR 1964 SC 1254

11 (1993) 4 SCC 375

12 (1997) 7 SCC 567

Sharma¹³).

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 Periathambi¹⁴ 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....."

24. 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.**¹⁵.

25. Thus, following the principles of law laid down in the aforesaid judgments, it is quite apparent that the pleas of the plaintiffs based their suit on title as well as on plea of adverse possession and as such, both are mutually inconsistent pleas setup by them, as the plaintiffs have claimed the suit property through Etwa, predecessor-in-interest and in alternative, they prayed that they remained in possession 12 years prior to 1954 which has ripened into title and as such, in my considered opinion, the plaintiffs are precluded from setting up an inconsistent plea based on title and adverse possession. The two are mutually

13 (1996) 8 SCC 128

14 (1995) 6 SCC 523

15 AIR 2019 SC 3827

destructive pleas and the plea of adverse possession is not available to the plaintiffs, as they have not renounced the title on them and they have not admitted the title of defendant NO.1 over the suit land, as such, the plea of adverse possession was neither available nor has been established by the plaintiffs. 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, the plaintiffs have failed to prove the above-stated necessary ingredients for establishing the plea of adverse possession. The trial Court has rightly held that the plaintiffs have not perfected their title by way of adverse possession, but the first appellate Court has reversed the finding of the trial Court and held that the plaintiffs have perfected their title by way of adverse possession and thereby committed an illegality, which cannot be sustained.

26. In view of the aforesaid legal analysis, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored and accordingly, the suit of the plaintiffs would stand dismissed.

27. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear

their own cost(s).

28. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-