

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.253 of 2007**

Mahabir, S/o-Guhri Ram Dhobi, 28 yrs. R/o Bharkapara, Rajnandgaon, Distt. Rajnandgaon (CG)

---- Appellant/Defendant

Versus

Kamla Bai, W/o Jethu Ram Dhobi, 40 yrs. R/o Bharkapara, Rajnandgaon, Teh. & Distt. Rajnandgaon (CG)

---- Respondent/Plaintiff

For Appellant/Defendant	:	Mr.Prafull Bharat, Advocate
For Respondent/Plaintiff	:	Mr.Rakesh Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

01.10.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the defendant is as under:-

“Whether the finding recorded by the first appellate Court that the appellant has not proved his title by adverse possession, is perverse ?”

[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 plaintiff/respondent herein filed a suit for possession based on title stating inter-alia that she is title-holder of the suit land, which was given to the defendant on licence, but he is not vacating the suit premises necessitating filing of the suit for possession based on title. It was further pleaded that the plaintiff and the defendant both are daughter and son of Manmoutinbai (common mother), but the plaintiff

is daughter of Sudheram out of his wedlock with Manmoutinbai, whereas the defendant is son of Guhri out of his wedlock with Manmoutinbai. It is also the case of the plaintiff that the suit land was originally held by his father Sudheram and after his death she has inherited the suit property and the suit property was given to the defendant on licence, but despite notice dated 12.8.96 he has not vacated the suit premises, as such, she is entitled for decree of possession.

3. The defendant filed his written statement and disputed her title and claimed the property by way of Will dated 29.3.82 executed by Manmoutinbai in his favour, as such, he is owner of the suit premises and the plaintiff is not entitled for decree of possession.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 2.1.1998, though held that the suit property was originally held by Sudheram and after his death the plaintiff has inherited the suit property, but dismissed the suit holding that the defendant has acquired the title over the suit premises, which the first appellate Court reversed holding that the defendant has failed to plead and establish adverse possession over the suit land, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.
5. Mr.Prafull Bharat, learned counsel for the appellant/defendant, would submit that the first appellate Court is absolutely unjustified in setting aside the well merited and well reasoned judgment and decree of the

trial Court particularly with regard to adverse possession, as such, the judgment and decree of the first appellate Court suffers from perversity and deserves to be set aside.

6. On the other hand, Mr.Rakesh Thakur, learned counsel for the respondent/plaintiff, would support the impugned judgment and decree and submit that there is no express pleading with regard to adverse possession raised by the defendant, as such, the first appellate Court is absolutely justified in setting aside the judgment and decree of the trial Court with regard to adverse possession and has rightly granted decree in favour of the plaintiff.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. In order to answer the substantial question of law and to find out the correct test in relation to perfection of title by way of the doctrine of adverse possession, it would be profitable to notice the relevant statutory provision, necessary ingredients and the principle underlying the doctrine of adverse possession.
9. Article 65 of the Limitation Act, 1963 states as under: -

	Description of suit	Period of limitation	Time from which period begins to run
65	For possession of immovable property or any interest therein based on title. Explanation.-For the purposes of this article- (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be	Twelve years	When the possession of the defendant becomes adverse to the plaintiff

deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		
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10. A close reading of above-stated provision would reveal that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidences, unless the defendant proves adverse possession for the prescribed period, the plaintiff cannot be non-suited and burden is on the defendant to plead and prove that he was in adverse possession for 12 years before the date of suit and starting point of limitation is the date, when the possession of the defendant become adverse to the plaintiff. Therefore, the defendant claiming title by adverse possession has to be very specific about the date on which possession becomes adverse to the plaintiff.

11. The Supreme Court in the matter of Saroop Singh v. Banto and others¹ has held that in the light of Article 65 of the Limitation Act, 1963, the plaintiffs have to prove their title and it is for the defendant to prove title by adverse possession and in terms of Article 65 of the Limitation Act, 1963 starting point of limitation does not commence from the date when the right of ownership arises to the plaintiffs, but commences from the date the defendant's possession becomes adverse. Paragraphs 28, 29 and 30 of the report are as under: -

“28. The statutory provisions of the [Limitation Act](#) have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the [Limitation Act](#), 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the [Limitation Act](#), 1963. In the instant case, plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant- appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

29. In terms of [Article 65](#) the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See [Vasantiben Prahladiji Nayak v. Somnath Muljibhai Nayak](#)².)

30. “*Animus possidendi*” is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali v. Jagadish Kalita*³, SCC para 21.)”

1(2005) 8 SCC 330

2(2004) 3 SCC 376

3(2004) 1 SCC 271

- 12.** This view has been approved and followed by the Supreme Court in the matter of M. Durai v. Muthu and others⁴ and it has been held as under: -

“7. The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-a-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession.”

- 13.** It is well settled law that a mere possession or user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession.

- 14.** In the matter of Maharaja Srischandra Nandy and others v. Baijnath Jugal Kishore (Firm)⁵, it has been held that the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

- 15.** It has been held in the matter of Secy. of State for India in Council v. Debendra Lal Khan⁶ that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario*.

- 16.** In the matter of S.M. Karim v. Mst. Bibi Sakina⁷, the Supreme

4(2007) 3 SCC 114

5AIR 1935 Privy Council 36

6AIR 1934 Privy Council 23

7AIR 1964 SC 1254

Court has ruled that: -

“(5) ... Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. ...”

17. In the matter of Annasaheb Bapusaheb Patil and others v. Balwant alias Balasaheb Babusaheb Patil (dead) by Lrs. & heirs

etc.⁸, the Supreme Court held as under: -

“12. [Article 65](#) of the Schedule to the [Limitation Act](#), 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date of the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under [Article 65](#), burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

18. In the matter of Karnataka Board of Wakf v. Government of India and others⁹, the Supreme Court has held that person pleading

adverse possession has no equity in his favour. It runs 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

8AIR 1995 SC 895

9(2004) 10 SCC 779

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 the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma*¹⁰.]”

19. Thereafter, in the matter of Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others¹¹, the Supreme Court emphasized the need for fresh look regarding the law on adverse possession by stating as under: -

“32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.

34. In our considered view, there is an urgent need

10(1996) 8 SCC 128

11(2009) 16 SCC 517

of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

- 20.** In the matter of Kurella Naga Druva Vidya Bhaskara Rao v. Galla Jani Kamma alias Nacharamma¹², the Supreme Court held that mere possession for some years by the party would not be sufficient to claim adverse possession. Paragraph 17 of the report states as under: -

“17. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax-receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to defendant, plaintiff was not the true owner, his possession hostile to plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.”

- 21.** In the matter of State of Haryana v. Mukesh Kumar and others¹³, the Supreme Court held that a serious re-look to the law of adverse possession is absolutely imperative in the larger interest of the people. Paragraphs 43 to 46 of the report read as follows: -

122008 AIR SCW 5682
13(2011) 10 SCC 404

“43. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people.

44. Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eyes of law – to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.

45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.

46. In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

22. In the matter of Tribhuvanshankar v. Amrutlal¹⁴, the Supreme Court noticing the earlier decisions in paragraphs 37 and 38 of the report held as under: -

14(2014) 2 SCC 788

“37. It is to be borne in mind that adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his willful neglect but also on account of the possessor’s constant positive intent to remain in possession. It has been held in [P.T. Munichikkanna Reddy and others v. Revamma and others](#)¹⁵.

38. Regard being had to the aforesaid concept of adverse possession, it is necessary to understand the basic policy underlying the statutes of limitation. [The Acts](#) of Limitation fundamentally are principles relating to “repose” or of “peace”. In Halsbury’s Laws of England, Fourth Edition, Volume 28, Para 605 it has been stated thus: -

“605. Policy of the Limitation Acts. – The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

These principles have been accepted by this Court keeping in view the statutory provisions of the [Indian Limitation Act](#).”

23. Recently, in the matter of [Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.](#)¹⁶ the Supreme Court revisited the law of adverse possession and pertinently held as under:-

“65. 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 take 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

15(2007) 6 SCC 59

16 2019 SCC OnLine SC 975

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.

66. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

67. 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, consequence 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, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any 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 title by adverse possession, can sue and maintain a suit. ”

24. Reverting to the facts of the present case in the light of the judgments rendered by the Supreme Court in the above-stated cases (supra), it is quite vivid that in the instant case, there is no express pleading of the defendant that he has perfected his title by way of adverse possession except pleading that he is in possession of the suit house from his date of birth. The defendant did not plead on what date he came into possession of the suit house, what was the nature of his possession and his possession was open and undisturbed, as it is the case of the defendant that he (plaintiff) was staying in the suit premises as licensee. A person pleading adverse possession has no equities in his favour as held by the Supreme Court in **Karnataka Board of Wakf** (supra). Therefore, a person pleading adverse possession has to plead and establish all facts necessary to establish his adverse possession, which he has not pleaded and it cannot be inferred on the basis of long possession that his possession is adverse. The first appellate Court has rightly held that the plaintiff is title-holder of the suit land and the defendant has failed to plead and establish his plea of adverse possession over the suit house, as such, the first appellate Court is absolutely justified in setting aside the judgment and decree of the trial Court and decreeing the suit filed by the plaintiff. The substantial question of law is answered in favour of the plaintiff and against the defendant.

25. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

26. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-