

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.431 of 2007

1. Baijoram, S/o Shri Patiram Sahu, aged about 44 years;
(Defendant No.2)
2. Dilip, S/o Shri Pitamber Sahu, aged about 38 years;
(Defendant No.3)
3. Parasram, S/o Shri Manohar Sahu, aged about 80 years;
(Defendant No.4)
4. Pargan, S/o Shri Sukhdeo Satnami, aged about 70 years;
(Defendant No.7)

All are Agriculturist and R/o Village Salhebharri, Tahsil Khairagarh,
District Rajnandgaon (C.G.)

---- Appellants

Versus

1. Parmanand, S/o Shri Karan Gond, aged about 45 years;
(Plaintiff)
2. Netram, S/o Shri Dhanesh Sahu, aged about 75 years;
3. Ramesar, S/o Shri Kishun Sahu, aged about 60 years;
4. Shyamlal, S/o Shri Jauharik Raut, aged about 65 years;

All are Agriculturist and R/o Village Salhebharri, Tahsil Khairagarh,
District Rajnandgaon (C.G.)

5. State of Chhattisgarh (the then Madhya Pradesh Government),
Through the Collector, Rajnandgaon (C.G.)

(Defendants)

---- Respondents

For Appellants: Mr. Rakesh Pandey, Advocate.
For Respondent No.1: Mr. R.N. Jha, Advocate.
For Respondent No.5 / State: -
Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

20/09/2019

1. This second appeal preferred by defendants No.2 to 4 and

defendant No.7 was admitted for hearing on the following substantial question of law: -

"Whether both the courts below were justified in decreeing the suit of the plaintiff holding that the plaintiff has perfected his title by way of adverse possession ignoring the fact that suit land is government land by recording findings, which is perverse 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 suit pond being Khasra No.240, area 0.61 decimal, admittedly held by the Government / defendant No.8 and recorded in the revenue records as beneath water, was nistar pond used for nistar of villagers including defendants No.1 to 7 for which the plaintiff filed an application before the Collector, Rajnandgaon, stating that the land be settled in his favour, as he is in possession for last 25-30 years, which the Collector by order dated 8-3-1988 settled in his favour finding merit in his application so filed. The order of the Collector was subjected to appeal before the Additional Commissioner, Raipur Division, Raipur by the appellants herein along with some of the respondents herein, but the Additional Commissioner maintained it by order dated 3-1-1989, however, in further appeal before the Board of Revenue at the instance of the appellants herein and some of the respondents herein, the Board of Revenue vide Ex.P-4 held that the land reserved for nistar purpose under Section 234 read with Section 237 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') could not have been diverted for any other purpose / granting lease in favour of the plaintiff which is in violation of Sections 234 and 237(2) of the Code

and set-aside the order of the Collector and that of the Additional Commissioner by its order dated 22-2-1995 (Ex.P-4).

3. Thereafter, the plaintiff filed suit for declaration of title over the suit pond and also eventually sought relief that the order of the Board of Revenue dated 3-1-1989 is not binding on him and he be declared title holder and granted permanent injunction against the defendants / appellants herein in which he setup the plea of adverse possession also and also setup the plea that the order passed by the Board of Revenue is without jurisdiction and without authority of law. The suit was opposed by the State and by the private defendants also by filing written statements. The trial Court returned a finding that the plaintiff is in possession for last 30-35 years though it is adverse and the order of the Board of Revenue dated 22-2-1995 is illegal and void, therefore, the plaintiff is entitled for declaration of title and permanent injunction and that was granted. In first appeal preferred by the appellants herein, the judgment & decree of the trial Court was maintained resulting into filing of this second appeal in which substantial question of law has already been formulated which has been set-out in the opening paragraph of this judgment.
4. Mr. Rakesh Pandey, learned counsel appearing for the appellants herein / defendants No.2, 3, 4 & 7, would submit that the trial Court is absolutely unjustified in granting decree in favour of the plaintiff ignoring the fact that in the order Ex.P-4 of the Board of Revenue, the plaintiff was party, but he did not seek cancellation / setting-aside of that order and therefore suit for bare declaration of title would not lie, as the plaintiff ought to have sought consequential

relief of cancellation of that order and in absence of that, the suit was barred by the proviso to Section 34 of the Specific Relief Act, 1963. If the plaintiff was in possession of the suit pond pursuant to the order passed by the Collector, the said order of the Collector has already been set-aside by the Board of Revenue vide Ex.P-4. Therefore, the question of adverse possession over the Government land does not arise and as such, the judgment & decree of both the Courts below deserve to be set-aside.

5. Mr. R.N. Jha, learned counsel appearing for respondent No.1 herein / plaintiff, would support the impugned judgment & decree.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. As noticed herein-above, admittedly, the suit land is grass land which is recorded in the revenue record Ex.P-1 as beneath water. It is admittedly, owned by the State Government, but in column 12, possession of the plaintiff is recorded. The said land was sought to be settled by the plaintiff (and it was reserved for nistar purpose of villagers) in his favour and ultimately, it was settled by the Collector in favour of the plaintiff by order dated 8-3-1988 ~~and he is cultivating over the suit land~~ which was maintained by the Collector, but the Board of Revenue reversed it on the ground that the land is reserved for nistar patrak for nistar rights of the villagers and entry could only be changed under Section 234(4) read with Section 237(2) of the Code only on the resolution passed by Gram Sabha by a majority of not less than $\frac{2}{3}$ of the members present and voting and it can be done by the Sub-Divisional Officer with the prior

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sanction of the Collector.

8. Section 234(4) of the Code provides that a nistar patrak prepared under Section 234(3) can be amended on a resolution passed by the Gram Sabha by a majority of not less than two third of members present and voting. Likewise, Section 237(2) of the Code (now stands repealed with effect from 16-1-2012) provides that lands set apart specially for any purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector.
9. The Board of Revenue has clearly recorded a finding that no such application as required under Section 234(4) read with Section 237(2) of the Code was filed before the competent authority, therefore, the land could not have been diverted for any other purpose except nistar which the villagers have the right to use and thereby set-aside the order passed by the Collector and also held that the Sub-Divisional Officer is the competent authority to make any correction in the nistar patrak and as such, the Collector could not have entertained the application. That order of the Board of Revenue ought to have been challenged in the civil suit filed by the plaintiff, but the plaintiff eventually sought only declaration that, that order is not binding on him. The plaintiff was a party to the order of the Board of Revenue Ex.P-4, he ought to have questioned that order as void and without jurisdiction. A person who is party to an order ought to have questioned it to get the desired relief, he cannot avoid the order passed against him collaterally.
10. The Supreme Court in like situation in the matter of Jugraj Singh and another v. Jaswant Singh and others¹ held that person

¹ AIR 1971 5

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suing for declaration ought to have asked for the consequential relief of setting aside the order of revenue officer and observed as under: -

"11. ... We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order."

11. In the instant case also, the plaintiff's suit has to fail on the reason of omission of the plaintiff to question the order of the Board of Revenue Ex.P-4. He ought to have sought consequential relief of seeking the setting aside / cancellation of that order (Ex.P-4 dated 22-2-1995, setting aside the order of the Collector settling the land in favour of the plaintiff).
12. In view of the above, the suit without seeking the relief of setting-aside / cancellation of the order of the Board of Revenue Ex.P-4 dated 22-2-1995, was hit by the proviso to Section 34 of the Specific Relief Act, 1963.
13. Now, turning to the plea of adverse possession, admittedly, the plaintiff claimed to be in possession of the suit land which was ultimately settled in his favour by the order of the Collector dated 8-3-1988 which was eventually set-aside by the Board of Revenue on 22-2-1995 (Ex.P-4). The plaintiff has claimed adverse possession against the State Government in which he has claimed that he has perfected his title over the suit land by remaining in possession since then.

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14. Article 112 of the Limitation Act, 1963 provides for period of limitation for filing suit by Central or State Government :-

	Description of suit	Period of limitation	Time from which period begins to run
112.	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the government of the State of Jammu and Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

15. By virtue of the above-stated provision, the period of limitation against the State Government being 30 years, a person can convert his possession into an absolute title against the Government, only by proving possession for 30 years. In order to claim adverse possession against the Government, a person has to prove such possession for the full statutory period and he has to prove adverse possession. So, on mere proof of long possession, the burden is not shifted on the State to show that it had held possession within the period provided by the Article.

16. Article 112 of the Limitation Act, 1963 is *pari materia* provision to Article 144 of the old Limitation Act, 1908. The Nagpur High Court in the matter of **Provincial Government, Central Provinces and Berar v. Govindrao Tukaram**² while considering adverse possession under old Article 144 of the Limitation Act, 1908, has held that Government having fundamental rights in all lands, possessory title cannot prevail against it and a person must prove adverse possession for continuous period of 60 years and observed as under:-

² AIR 1949 Nagpur 403

"That a possessory title is good against all but the true owner, is a proposition which can be accepted, but the government has the fundamental right in all land and is, therefore, the true owner. Accordingly a person who relies on a possessory title cannot succeed against government unless he can show either that the government has parted with its title in some way to the plaintiff or his predecessors or that the plaintiff and his predecessors have been holding adversely against government and so have acquired a good title against government by adverse possession. The adverse possession necessary in the case of government is 60 years."

It was further held that continuous and uninterrupted possession over a long period can give rise to a presumption that the person in possession is there with title, but this presumption would not apply to the case of a State Government having fundamental right over the land and observed as under:-

"Continuous and uninterrupted possession over a long period can give rise to a presumption that the person in possession is there with title even when the possession is short of the statutory period. This presumption may apply in a case between private individuals but it cannot apply to the case of a body in whom the fundamental right resides, such as the government."

17. A person who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to 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 that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

[See Annasaheb Bapusaheb Patil and others v. Balwant @

Balasaheb Babusaheb Patil (Dead) by LRs. & Heirs and others^{3]}

18. It is not in dispute that title by adverse possession can be prescribed also against the government, but where the claim of adverse possession in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right and title of State to immovable property and also conferring upon a third party encroacher title where he had none. [See **State of Rajasthan v. Harphool Singh (Dead) through his LRs^{4]}**]

19. The Supreme Court in the matter of **R. Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others^{5]}** has held that in order to establish the plea of adverse possession, the limitation period would be thirty years and further laid down principles of law indicating the nature of proof required in a suit for declaration of title against the government, which is reproduced herein below :-

“19. Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The *second* difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a

3 (1995) 2 SCC 543

4 (2000) 5 SCC 652

5 (2010) 5 SCC 203

declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the

plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored.

23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc. or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government. Be that as it may."

20. Section 57 of the Chhattisgarh Land Revenue Code, 1959 provides for State ownership in all lands, which is as under:-

"57. State ownership in all lands.-(1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, mineral and forests reserved or not, and all right in the sub-soil of any land are the property of the State Government:

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Provided that nothing in this section shall save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the Sub-Divisional Officer.

(3) xxx xxx xxx

(4) xxx xxx xxx"

21. Reverting to the facts of the present case in light of the principles of law laid down in the aforesaid judgments of the Supreme Court and keeping in view the provisions contained in Section 57 of the Code vesting title of all lands to the State Government, it is quite vivid that the suit pond is recorded as grass land in the revenue records Ex.P-1 in the name of the State Government, it is beneath water and only in the remarks column, name of the plaintiff is recorded. It is the admission of the plaintiff himself, as recorded in the revenue record, that it is the Government land which he wanted to be settled in his favour, though ultimately settled, but the said order was set-aside by the Board of Revenue on 22-2-1995 (Ex.P-4) to which he did not seek cancellation / setting aside of that order, attaching finality to that order and has failed to prove his nature of possession, long possession adverse to the State and other requisite for perfecting title over the Government land for thirty years. Both the Courts below have committed a legal error in holding that the plaintiff has perfected his title by adverse possession. The finding of both the Courts below is perverse and contrary to law. The judgments and decrees of both the Courts below are set-aside and the plaintiff's suit stands dismissed. The

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substantial question of law is answered accordingly.

22. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

23. Decree be drawn-up accordingly.

Sd/-
Sanjay K. Agrawal
Judge

Soma