

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 729 of 2003

Kanshi Ram S/o Gyan Prasad Aged About 56 Years Caste - Gupta, Occupation Agriculturist R/o Bandhi Tahsil Bemetara, District Durg Chhattisgarh. (Plaintiff),
District : Durg, Chhattisgarh

---- Appellant

Versus

1. (Deleted) Dev Singh As Per Hon'ble Court Order Dated 21-08-2019.
2. Indre Singh S/o Surit Singh Aged About 52 Years R/o Village Semariya, Tahsil Bemetara, District Durg, Occupation Agriculturist.
3. (Deleted) Mohan Singh As Per Honble Court Order Dated 21-08-2019.
4. (Deleted) Prem Singh As Per Honble Court Order Dated 21-08-2019.
5. (Deleted) Lakhan Singh As Per Honble Court Order Dated 21-08-2019.
6. Rohit Singh S/o Jagjit Singh Aged About 38 Years R/o Village Semariya, Tahsil Bemetara, District Durg, Occupation Agriculturist.
7. Kanti Bai Wd/o Bhagwat Aged About 28 Years R/o Village Bandhi, Tahsil Bemetara, District Durg, Chhattisgarh. Occupation Agriculturist., District : Durg, Chhattisgarh
8. Baliram S/o Tilakram Aged About 28 Years R/o Village Bandhi, Tahsil Bemetara, District Durg, Chhattisgarh. Occupation Agriculturist., District : Durg, Chhattisgarh
9. State Of Chhattisgarh Through The Collector, Durg, Durg Chhattisgarh. (Defendants), District : Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri Vishnu Koshta, Advocate
For Respondent No.7 & 8	:	Shri Vaibhav Goverdhan, Advocate
For State/Respondent No.9	:	Shri Ankur Kashyap, Panel Lawyer

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/10/2019

1. This appeal is directed against the impugned judgment and decree dated

29.09.2003 passed by learned Second Additional District Judge, (FTC) Bemetara, in Civil Appeal No.33-A of 2003 by which, learned lower appellate Court affirming the judgment and decree dated 8.11.1995 passed by the learned trial Court, has dismissed the appeal and also the plaintiff's suit.

2. Appellant-plaintiff filed a suit seeking a decree that he has perfected title by adverse possession over the disputed property admeasuring 1.81 acres situated in Kh.No.1079/1 of Village Bandhi, on the pleadings, inter alia that the property in dispute belonged to earlier proprietor of Village- Bandhi and the plaintiff's father purchased the same from the erstwhile Malgujar Surit Singh. According to plaintiff, after having purchased the property, since long, the plaintiff has remained in continuous possession over the property in dispute which is completely hostile and adverse to title of the defendant. According to the plaintiff, the defendant started interfering with the plaintiff's possession and also revenue Courts started passing orders, therefore, ultimately, the plaintiff had to file the suit seeking appropriate decree.
3. The defendant denied the plaintiff's claim stating that neither the plaintiff's father nor the plaintiff had acquired title in respect of the property in dispute and the plaintiff never remained in possession of the property. The revenue documents, relied upon by the plaintiff are not reliable.
4. Learned trial Court framed specific issue with regard to possession of the plaintiff and other connected issues. On the issue of plaintiff's possession, learned trial Court recorded a finding that though the plaintiff has placed on record documentary evidence in the form of khasra entries showing his possession over the property in dispute between period 1963-64 to 1978-79, the plaintiff has failed to prove possession prior to or thereafter. The suit having been filed in the year 1988, learned trial Court dismissed the suit. Aggrieved by the judgment of the trial Court, an appeal was filed. In the appeal, the appellant led additional evidence to support his plea of possession by placing on record the revenue documents of his possession not only in respect of the period which were considered by the trial Court but also in respect of period from 1984-85 to 1986-87. Learned lower appellate Court, however, dismissed the appeal having recorded a

concurrent finding with regard to the aspect of possession that the plaintiff failed to prove his possession continuously and hostile to defendant. This led to filing of the present appeal.

5. This appeal was admitted on the following substantial question of law:

“Whether both the Courts below are justified in dismissing the suit of the plaintiff by recording findings which are perverse and contrary to the record ? ”

6. Learned counsel for the appellant- plaintiff would argue that even though the plaintiff led clinching documentary as well as oral evidence and there being also an admission on the part of defendant in his evidence that the plaintiff remained in possession of the property in dispute for a long period of more than 12 years which was completely hostile and adverse to the title of the defendant, the Courts below recorded perverse finding on the aspect of continuous and established possession of the plaintiff. Referring to the documents of possession as reflected from revenue documents in Ex.P-1, Ex.P-2, Ex.P-3 and Ex.P-4, which were admitted in evidence at the appellate stage, it has been argued that plaintiff's possession during long period raises a presumption in his favour that in respect of period prior to and after the period covered under the revenue document, the plaintiff remained in possession and it was for the defendant to rebut the presumption by leading evidence of his own possession. Learned counsel for the appellant-plaintiff lastly submitted that the Rooplal (DW1) has also admitted in the cross-examination regarding possession of the plaintiff which has been completely ignored from consideration by the learned Courts below to record finding.
7. On the other hand, learned counsel for the respondent-defendant would argue that no perversity has been committed by the Courts below in recording finding with regard to possession of the plaintiff. He would submit that the evidence led by the plaintiff with regard to possession was supported by certain revenue documents which have only presumptive value and that too in respect of the period from 1963-64 to 1978-79. No clinching evidence or any documentary evidence of possession prior to and after the aforesaid period was produced before the trial Court and,

therefore, the suit was dismissed. In the appellate Court, the plaintiff sought to rely upon additional documents of possession to include period from 1984-85 to 1986-87 on the basis of entries made in revenue records which were subsequently set aside by higher revenue Courts which attained finality. Therefore, there is no perversity in the judgments of learned Courts below.

8. I have heard learned counsel for the parties and perused the records of the Courts below.
9. The plaintiff's suit is based on his claim of adverse possession. As far as suit based on adverse possession is concerned, in view of recent judicial pronouncement of the Supreme Court in the case of **Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & Ors.** (AIR 2019 SC 3827), a suit for declaration of title can be filed on the basis of adverse possession, overruling earlier decisions rendered in *Gurudwara Sahab v. Gram Panchayat Village Sirthala* (2014) 1 SCC 669, *State of Uttarakhand Vs. Mandir Sri Laxman Sidh Maharaj* (AIR 2017 SC 4472) and *Dharampal (Dead) through LRs v. Punjab Wakf Board* (2018) 11 SCC 449.
10. The plaintiff's case that he remained throughout in possession of the property which is adverse to the interest and title of the defendant is based on oral evidence and certain documentary evidence in respect of the period from 1963-1964 and 1978-1979 and another period from 1984-85 to 1986-87. In addition, oral evidence has also been led. Before the trial Court, the plaintiff led documentary evidence of revenue entries showing his possession over the property from 1963-1964 to 1978-79 only. No clinching documentary evidence showing his possession prior to or after that period was led in evidence. Learned trial Court, appreciating the evidence, held that the plaintiff having failed to prove his possession in respect of the entire period up to the date of filing of the suit, dismissed the suit.
11. Before the learned lower appellate Court, the plaintiff filed certain documentary evidence to strengthen his case of having acquired title by adverse possession since 1963-64 and 1978 to 1979 and also in respect of the period from 1984-1985 to 1986-87. The additional documents showing possession in respect of period from 1984-85 to 1986-87 were not led in

evidence before the trial Court. However, learned lower appellate Court allowed the additional evidence. Even though, learned lower appellate Court found that the possession of the plaintiff could not be proved to be continuous so as to entitle him to a declaration of title by presumption on the basis of adverse possession.

Reliance placed on revenue entries contained in khasra document of the year 1984-85 up to 1986-87 is disbelieved by learned lower appellate Court taking into consideration that orders passed by revenue authorities which led to entries made in the revenue records pertaining to the period 1984-85 up to 1986-87 were, later on, set aside by higher revenue Courts and attained finality. Therefore, as far as these findings of learned lower appellate Court is concerned, it could neither be said to be illegal, much less perverse. The document with regard to possession, which were later on rendered ineffective by the order of the superior revenue Courts, could not be made a basis to claim possession. In this manner, the only documentary evidence of possession led by the plaintiff was in respect of the period from 1963-64 to 1978-79.

12. The oral evidence of the plaintiff has been minutely scrutinized by the Courts below and concurrent finding of fact in this regard has been made. The submission that there is admission by defendant witness Rooplal (DW1) regarding plaintiff's possession over the property in dispute, upon close scrutiny, does not merit acceptance. This witness has nowhere admitted that throughout, till the date of filing of the suit, the plaintiff had remained in possession. In fact in para-9 of his evidence, he has stated otherwise. What has been elicited in para-6 of his cross-examination that copies of 'khasra panchshala' brought before him records name of plaintiff, is not an admission of plaintiff's possession in respect of the period as claimed by the plaintiff. It is well settled legal position that prescription of title through adverse possession can be claimed only when plaintiff succeeds in proving that he has been in continuous possession of the property in dispute for 12 years which is adverse and hostile to the defendant's title and interest in the property.

13. Mere possession or user or permissive possession does not come near the spectrum of adverse possession. In order that the possession is treated as

adverse, it 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. This well settled principle of "*nec vi nec clam and nec precario*" has been succinctly stated in plethora of decisions.

14. In the absence of there being any cogent and reliable evidence of plaintiff's possession after 1978-79 till the filing of the suit 1988-1989, no decree of declaration of title based on adverse possession could be granted.

15. The concurrent finding of fact of the Courts below, therefore, cannot be said to be perverse so as to warrant any interference in the second appeal. The appeal being sans merit is dismissed. Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge