

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.147 of 2004

1. Krishnapad Mandal, S/o late Sri Jitendra Mandal, aged about 46 years.
2. Vishnu Mandal, S/o late Sri Jitendra Mandal, aged about 41 years.
3. Ramesh Mandal, S/o Panchanan Mandal, aged about 29 years.

All are R/o Village Jawahar Nagar, Police Station Balrampur, Tahsil Pal, District Surguja (C.G.)

(Defendants)
---- Appellants

Versus

Kalipad Jordar (Dead) through his Legal Representative

(Plaintiff)

Smt. Namita Jordar, W/o Charan, aged about 29 years, R/o Village Jawaharnagar, P.O. Bardar, P.S. and Tahsil Balrampur, District Surguja (C.G.)

---- Respondent

For Appellants/Defendants: Mr. V.K. Pandey, Advocate.
For Respondent/Plaintiff: None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

26/07/2019

1. This second appeal has been admitted on the following substantial questions of law: -

“a. Whether, the first appellate Court was justified in reversing the judgment and decree of the trial Court dated 31.7.2002, declaring the plaintiff as the owner of the disputed land and directing the defendants to handover the possession of the dispute land to the plaintiff?

b. Whether, the appellate Court was justified in reversing the finding of the trial Court holding that the suit filed by the plaintiff was within limitation and declaring that the plaintiff is entitled for Rs.1,000/- per year as damages for use of the disputed land?”

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

2. The plaintiff filed a suit that he is the Bhumiswami of the suit land which was given to him on lease for ten years, but thereafter, he did not return the land leading to filing of suit for declaration of title, mesne profit, permanent injunction and possession in which the defendants admitted the title of the plaintiff as owner and claimed perfection of title by adverse possession which the trial Court accepted and dismissed the suit, but the first appellate Court reversed the judgment and decree of the trial Court on appeal taken by the plaintiff holding that the plaintiff's title has been admitted as a lessee and the plea of adverse possession has not been proved in accordance with law against which this second appeal has been preferred and substantial questions of law have been framed which have been set-out in the opening paragraph of this judgment.
3. Mr. V.K. Pandey, learned counsel for the appellants / defendants, would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiff, as the plaintiff has failed to produce the lease deed in his favour which has already expired after ten years, therefore, the decree granted is unsustainable and bad in law.
4. I have heard learned counsel for the appellants / defendants and considered his submissions and perused the records of both the Courts below with utmost circumspection.
5. The plaintiff in para 1 of the plaint pleaded that he is the title holder which the defendants admitted while filing written statement in para 1 and setup the plea of perfection of title by adverse possession

admitting the title of the plaintiff. Once the title is found proved on the basis of admission or otherwise, 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 twelve years before the date of suit and starting point of limitation is the date when the possession of the defendant becomes 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.

6. 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

¹ (2005) 8 SCC 330

date the defendant's possession becomes adverse. (See *Vasantiben Prahladi 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.)”

7. This view has been approved and followed by the Supreme Court in the matter of **M. Durai v. Muthu and others**⁴ 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.”

8. 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.
9. 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.

10. It has been held in the matter of **Secy. of State for India in Council**

2 (2004) 3 SCC 376

3 (2004) 1 SCC 271

4 (2007) 3 SCC 114

5 AIR 1935 Privy Council 36

v. Debendra Lal Khan⁶ that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario*.

11. In the matter of S.M. Karim v. Mst. Bibi Sakina⁷, the Supreme 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. ...”

12. 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.”

13. 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

6 AIR 1934 Privy Council 23

7 AIR 1964 SC 1254

8 AIR 1995 SC 895

9 (2004) 10 SCC 779

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 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.]

14. 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 of

10 (1996) 8 SCC 128

11 (2009) 16 SCC 517

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.”

15. 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.”

16. 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: -

“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

12 2008 AIR SCW 5682

13 (2011) 10 SCC 404

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.”

17. 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: -

“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.

14 (2014) 2 SCC 788

15 (2007) 6 SCC 59

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](#).”

18. Reverting to the facts of the present case, in light of the aforesaid statement of law, it is quite vivid and it is established on record that the plaintiff is title holder of the suit land and the defendants have taken the plea of perfection of their title by adverse possession by stating that they are in possession since long and admitted the ownership of the plaintiff, however, it was incumbent upon the defendants to plead and establish the date on which they came into possession, what is the nature of possession and whether the factum of possession was known to the plaintiff and further, they are in peaceful possession over the suit land for a statutory period of twelve years, but no legal and proper evidence has been brought on record by the defendants to establish the plea of adverse possession. Thus, the defendants have not only failed to plead, but also failed to establish the necessary ingredients namely factual possession of twelve years on the suit land and also failed to establish the requisite intention to possess (*animus possidendi*) and finally, that the alleged adverse possession has ripened into ownership rights by applying the correct doctrine. The

substantial questions of law are answered accordingly.

19. In view of the aforesaid legal analysis, the first appellate Court is absolutely justified in granting decree in favour of the plaintiff. I do not find any perversity or illegality in the said finding. The appeal is liable to be and is accordingly dismissed with no order as to cost(s).

20. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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