

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 402 of 2004**

1. Khorbahara S/o Ghunari.
2. Sukharu S/o Ghunari.

Occupation- Agriculture R/o Village Kareli, Tahsil Balouda Bazar, Distt. Raipur, Chhattisgarh.

---- Appellants/Plaintiffs**Versus**

1. Jagat Ram (died) Through Lrs.

- 1.(A) Gaurishankar (died) through Lrs.

- 1.(A) (I) Shanti Bai Wd/o Gaurishankar, aged about 54 years.

- 1.(A) (ii) Nurendra S/o Gaurishankar, aged about 35 years.

- 1.(A) (iii) Hemant S/o Gaurishakar, aged about 29 years.

- 1.(A) (iv) Shailendra S/o Gaurishankar, aged about 29 years.

- 1.(A) (v) Maheshwari D/o Gaurishankar, aged about 27 years.

All are R/o Village Kareli, Tahsil Baloda Bazar, Distt. Baloda Bazar, Bhataphara, Chhattisgarh.

- 1.(B) Chowaram S/o Jagat Ram, aged about 55 years.

- 1.(C) Komal S/o Jagat Ram, aged about 52 years.

- 1.(D) Rukmani D/o Jagat Ram, aged about 53 years.

- 1.(E) Kumari D/o Jagat Ram, aged about 48 years.

All are R/o Village Kareli, Tahsil Baloda Bazar, Distt. Baloda Bazar, Bhatapara, Chhattisgarh.

2. State of Chhattisgarh, Through the Collector, Raipur, Distt. Raipur, Chhattisgarh.

----Respondents/Defendants

For Appellants/Plaintiffs	:	Mr. Vivek Tripathi, Advocate
For Respondent/Defendant No. 1	:	Mr. F.S. Khare, Advocate
For State/Defendant No. 2	:	Mr. Sanjeev Kumar Agrawal, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

21.08.2019

1. The two substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:-

“1. Whether the findings of both the Courts below that the suit is barred by law of limitation is legally sustainable particularly in the light of the findings that the defendants have failed to prove continuous possession over the suit land since 1968 ?

2. Whether the findings of the Sub-divisional Magistrate in the proceedings under Section 145 of the Cr.P.C. between the defendants and Kam Singh could be used against the appellants who were not party to the said proceedings particularly whereas in the revenue records the plaintiffs are shown to have been in possession over the suit land ?”

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

2. The two plaintiffs namely Khorbahra and Sukhau filed a civil suit for declaration of title and possession stating *inter alia* that they have purchased the suit land bearing khasra No. 493 with an area of 0.068 hectare from one Kam Singh, by way of

registered sale deed dated 12/02/1970 (Exhibit 10C) for a sale consideration of Rs. 600/- and came in possession of the suit land and thereafter, their names were also mutated in the revenue records. At the instance of the defendant namely Jagat Ram, proceedings under Section 145 of Cr.P.C. was initiated before the Sub-Divisional Magistrate, Baloda Bazar on 02/08/1978 and ultimately, on 14/11/1883, the Sub-Divisional Magistrate, Baloda Bazar accepted the possession of defendant over the suit land and passed an order that defendant would remain in possession of the suit land, which led to the filing of civil suit for declaration of title and recovery of possession by the plaintiffs.

3. Defendant – Jagat Ram filed his written statement and pleaded that the sale deed dated 12/02/1970 (Exhibit 10C) executed by Kam Singh in favour of plaintiffs was not a real sale but was a nominal one and that possession of the suit land still remained with Kam Singh, from whom defendant purchased the suit land in the year 1968 by making payment of Rs. 5,500/-. He further pleaded that plaintiffs had knowledge about their possession over the suit land since the date of purchase i.e. 12/02/1970 but the civil suit has been filed on 26/11/1884, which is apparently barred by limitation. Therefore, the civil suit deserves to be dismissed.
4. Learned trial Court, after appreciating oral and documentary evidence on record, though clearly recorded a finding that plaintiffs are title-holders of the suit land as they have purchased the said suit land from Kam Singh by registered sale deed dated 12/02/1970 (Exhibit 10C), but further held that as

plaintiffs have purchased the suit land on 12/02/1970, they ought to have filed the civil suit within 12 years from the date of purchase of the suit land, whereas they have filed the civil suit on 26/11/1884, which exceeds the period of 12 years and as such, is barred by limitation, and dismissed the plaintiffs' suit vide judgment and decree dated 30/07/2003.

5. On appeal being preferred by the plaintiffs, the said finding recorded by the trial Court was affirmed by the first appellate Court that plaintiffs are the title-holders of the suit land but the civil suit filed by them is barred by limitation and dismissed the first appeal filed by the plaintiffs by its judgment and decree dated 20/07/2004.
6. Being aggrieved by the judgment and decree passed by both the Courts below, this second appeal has been preferred by the plaintiffs in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.
7. Mr. Vivek Tripathi, learned counsel for the plaintiffs submits that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiffs holding it to be barred by limitation by ignoring the fact that the suit for recovery of possession was based on title and in that case Article 65 of the Limitation Act, 1963 (hereinafter "the Act") would apply and under Article 65 of the Act, the period of limitation would begin to run when the possession of defendant becomes adverse to plaintiff, but in this case, defendant No. 1 neither set up a plea of adverse possession nor proved it, therefore, the civil suit filed by the plaintiffs cannot be held to be barred by limitation, as such, the

judgment and decree passed by both the Courts below deserves to be set aside.

8. Mr. F.S. Khare, learned counsel for the defendant would support the judgment and decree passed by both the Courts below and submit that both the Courts below are absolutely justified in holding plaintiffs' suit to be barred by limitation and the second appeal deserves to be dismissed.
9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

Answer to substantial question of law No. 1

10. The question for determination is whether both the Courts below are justified in holding that plaintiffs' suit is barred by Article 65 of the Limitation Act. At this stage, it would be appropriate to notice Article 142 of the Schedule under Indian Limitation Act, 1908, which reads as under :-

"142	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance."
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11. But there is change in law under the new Limitation Act, 1963, which came into force on 5th October, 1963. Corresponding Article in the Schedule under the new Act is Article 65, which is extracted hereunder:

"65	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff."
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12. From the above, it is seen that under the old Limitation Act, the period of limitation commences from the date of dispossession or discontinuance of the possession by the plaintiff, whereas under the new Act, the period of limitation commences only after the possession of the defendant becomes adverse to the plaintiff. If that is so, the question that falls for consideration would be "when did the possession of the defendant became adverse to the plaintiff ?"

13.The Supreme Court, in the matter of **Indira vs. Arumugam and another¹**, has held that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff's suit cannot be dismissed. Paragraph 5 of the report states as under:--

"5. It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. Unfortunately, this aspect of the matter was missed by the learned Judge and, therefore, the entire reasoning for disposing of the Second Appeal has got vitiated. Only on that short ground and without expressing any opinion on the

1 AIR 1999 SC 1549

merits of the question of law framed by the learned Judge for disposing of the Second Appeal, this appeal is allowed. The impugned decision rendered is set aside and the Second Appeal is restored to the file of the High Court with a request to proceed further with the hearing of the appeal with respect to the substantial question aforementioned in accordance with law. No costs."

14. The Supreme Court, in the matter of **Saroop Singh vs. Banto**², has held that in light of Article 65 of the Limitation Act, 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, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but from the date when defendant's possession becomes adverse to plaintiff. Paragraphs 28, 29 and 30 of the report states 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, the plaintiff-respondents have proved their title by adverse possession. As noticed hereinabove, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

2 (2005) 8 SCC 330

29. 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 plaintiff but commences from the date the defendant's possession become adverse. (See *Vasantiben Prahladi Nayak vs. Somnath Muljibhai Nayak*³).

30. 'Animus Possidendi' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period of 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. Mohammad Ali vs. Jagadish Kalita*⁴)."

15. This view has been approved and followed by their Lordships of the Supreme Court, in the matter of ***M. Durai vs. Muthu and others***⁵, wherein they have 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."

16. Reverting to the facts of the present case, in light of Article 65 of the Act and the judgments rendered by the Supreme Court in

3 (2004) 3 SCC 376

4 (2004) 1 SCC 271

5 (2006) 9 SCC 612

the aforesaid cases, it is quite vivid that the civil suit filed by the plaintiff for possession of the suit property was based on title stating that they purchased the suit property from one Kam Singh by registered sale deed dated 12/02/1970 (Exhibit 10C) and became title-holders of the suit land, which was subjected to attachment proceeding under Section 145 of Cr.P.C. before the Sub-Divisional Magistrate, Baloda Bazar, who vide order dated 14/11/1983, accepted the defendant to be the title-holder and in possession of the suit land.

17. Learned trial Court as well as the first appellate Court have accepted that plaintiffs have proved their title over the suit land but held that since the period from the date of purchase of suit land i.e. 12/02/1970 to the date of filing of civil suit by the plaintiffs i.e. 26/11/1984 has exceeded a period of 12 years, which is required as per Article 65 of the Limitation Act, the civil suit filed by the plaintiffs for possession based on title is barred by limitation.

18. In my considered opinion, both the Courts below have failed to notice that as per Article 65 of the Limitation Act, the period begins to run when the possession of the defendant becomes adverse to the plaintiff. Thus, in a suit, according to Article 65 of the Limitation Act, once the plaintiff proves his title, the burden is upon the defendant to establish that he has perfected his title over the suit land by adverse possession.

19. From a careful perusal of the plaint, it is evidently clear that defendant No. 1 has not raised any plea that he has perfected his title over the suit land for the limitation period of 12 years by

way of adverse possession, therefore, plaintiffs' suit for possession based on title could not have been dismissed by both the Courts below holding it to be barred by limitation. As such, the finding recorded by both the Courts below that the civil suit filed by the plaintiffs is barred by limitation is perverse and contrary to Article 65 of the Limitation Act. The concurrent finding recorded by both the Courts below holding plaintiffs' suit to be barred by limitation, being perverse and contrary to record, deserves to be and is hereby set aside. Accordingly, the substantial question of law No. 1 has been answered.

20. In view of the findings recorded in substantial question of law No. 1, substantial question of law No. 2 need not be answered.

21. Resultantly, the second appeal is allowed and judgment and decree of both the Courts below are hereby set aside and it is ordered and decreed that plaintiffs are title-holders and are entitled for possession of the suit land bearing khasra No. 493 area 0.068 hectares situated at Village Kareli, Tahsil Baloda Bazar. Defendant No. 1 is directed to deliver the vacant and peaceful possession to plaintiffs No. 1 and 2 within a period of two months from today. No order as to cost(s).

22. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge