

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.230 of 2007

1. Kamlesh Kumar, S/o Ghyanshyam, aged 42 years.
2. Shiv Kumar, S/o Ghyanshyam, aged 48 years.
3. Rajesh Kumar, S/o Ghyanshyam, aged 40 years.
4. Krishna Kumar, S/o Ghyanshyam, aged 38 years,
5. Smt. Janki Bai, W/o Ghyanshyam, aged 67 years.

All are R/o Village Sikola, Tahsil Patan, District Durg (C.G.)

(Plaintiffs)
(Appellants in first appeal)
---- Appellants

Versus

State of Chhattisgarh, Through Collector, Durg, District Durg (C.G.)

(Defendant)
(Respondent in first appeal)
---- Respondent

For Appellants:	Mr. Malay Shrivastava, Advocate.
For State/Respondent:	Mr. Mateen Siddiqui, Deputy Advocate General and Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/09/2019

1. Heard on admission and formulation of substantial question of law for determination in this second appeal preferred by the plaintiffs.
2. Mr. Malay Shrivastava, learned counsel appearing for the appellants / plaintiffs, submits that the concurrent finding recorded by the two Courts below that the plaintiffs have not perfected their title over the suit land by adverse possession ignoring the oral and documentary evidence on record raises substantial question of law for determination as such, the appeal deserves to be admitted by

formulating substantial question of law. He would rely upon the decision of the Supreme Court in the matter of Ravinder Kaur Grewal and others v. Manjit Kaur and others¹ and the decision of this Court in the matter of Government of Madhya Pradesh (presently Government of Chhattisgarh) and others v. Ishwar Chandra² to buttress his submission.

3. The five plaintiffs brought a suit for declaration of title on the basis of adverse possession stating inter alia that their ancestor was the ex-malgujar of Village Sikola, he had two sons Gajadhar and Parasram, Ghanshyam was son of Parasram and the suit property fell in the share of their father Ghanshyam in oral partition between them and thereafter, the suit land came in their possession. The Tahsildar, Patan issued encroachment notice then they came to know about the said proceeding and raised a dispute before the Sub-Divisional Officer under Section 57(2) of the Land Revenue Code which was rejected and appeal preferred there-against was also dismissed, as such they are in possession from 1934-35 by cultivating the land, though the suit land has been registered as grass land and the property is in their possession for sixty years and therefore they are entitled for declaration of title, as they have perfected their title by way of adverse possession.
4. The defendant / State filed its written statement holding that the suit land is grass land on which the plaintiffs are encroachers and their application under Section 57(2) of the Land Revenue Code has already been rejected and appeal there-against has also been dismissed, therefore, the plaintiffs are not entitled for declaration of

¹ 2019 SCC OnLine SC 975

² S.A.No.72/2005, decided on 23-9-2016

title on the basis of adverse possession and the appeal deserves to be dismissed.

5. The trial Court upon appreciation of oral and documentary evidence, on detailed discussion, came to a finding that the plaintiffs are not title holders of the suit land, their application under Section 57(2) of the Land Revenue Code adjudicating the question of title has been rejected which has been upheld by the appellate authority and the plea of adverse possession has not been fully established which the first appellate Court has also on detailed analysis, in its judgment particularly paras 11 & 12, has reached to a conclusion that neither title has been proved nor possession of the plaintiffs over the suit land for last 30 years has been established, and in that view of the matter the appeal was dismissed.
6. It is not in dispute that suit for declaration of title on the basis of adverse possession would be maintainable in view of the decision of the Supreme Court in Ravinder Kaur Grewal (supra), as the decision rendered in the matter of Gurudwara Sahab v. Gram Panchayat Village Sirthala³ has already been overruled by Their Lordships of the Supreme Court. Therefore, this proposition is not in dispute in view of the latest decision and the suit as framed and filed for declaration of title on the basis of adverse possession was maintainable.
7. Now, the question is whether the plaintiffs have perfected their title over the Government land by way of adverse possession?
8. Article 112 of the Limitation Act, 1963 provides for period of

³ (2014) 1 SCC 669

limitation for filing suit by Central or State Government :-

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.
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9. By virtue of 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.

10. 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**⁴ while considering adverse possession under old Article 144 of the Limitation Act, 1908, has held that government having fundamental rights in all land, possessory title cannot prevail against it and a person must prove adverse possession for continuous period of 60 years and observed as under:-

“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 re-

4 AIR 1949 Nagpur 403

lies 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.”

11. 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 would not apply to the case of a State Government having fundamental right over the land observing 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.”

12. 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 others⁵]

5 (1995) 2 SCC 543

13. 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 LRs⁶.]

14. The Supreme Court in the matter of R. Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others⁷ 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 the 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 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

6 (2000) 5 SCC 652

7 (2010) 5 SCC 203

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 plaintiff 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.”

15. Section 57 of the Chhattisgarh Land Revenue Code, 1959 provides

for state ownership in all lands, which is as under:-

“Section 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:

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 ”

16. 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(2) of the Land Revenue Code vesting title of all lands to the State Government, it is quite vivid that the suit land is presently recorded as grass land in the revenue records and in threadbare analysis of oral and documentary evidence, both the Courts have clearly held that the plaintiffs have failed to prove adverse possession over the suit land for last 30 years. The said finding recorded by the Courts below that the plaintiffs have failed to prove their adverse possession over the suit land for last 30 years which is a grass land, is a finding of fact based on the evidence available on record. It is neither perverse nor contrary to record. I do not find any merit much less substantial question of law for determination in this appeal. The appeal deserves to be and is accordingly dismissed in *limine* leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge