

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 422 of 2007**

1. Awadh Ram S/o Rewa Ram Sahu, Aged about 50 years.
2. Santosh Kumar S/o Rewa Ram Sahu, Aged about 47 years.
3. Bodhan Lal S/o Rewa Ram Sahu, Aged about 43 years.
4. Leela Ram S/o Rewa Ram Sahu, Aged about 37 years.

All R/o & Farmers of Village Bhilai, P.C. No. 147, Tahsil Arang, District Raipur, Chhattisgarh.

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

1. State of Chhattisgarh, Through the Collector, Raipur, Chhattisgarh.
2. Naib Tahsildar Arang, P.C. No. 147, Village Bhilai, Arang, District Raipur, Chhattisgarh.
3. Paras Nath S/o Chumbak Lal Sahu, Former Sarpanch, Gram Panchayat Bhilai R/o Bhilai, Tahsil Arang, District Raipur, Chhattisgarh.
4. Sarpanch (Former) Smt. Teeman Bai W/o Parasnath Sahu, Gram Panchayat Bhilai, R/o Bhilai Tahsil Arang, District Raipur, Chhattisgarh.

----Respondents/Defendants

For Appellants	:	Mr. Hemant Kesharwani, Advocate
For State	:	Mr. Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06.09.2019**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs under Section 100 of the CPC.

2. Mr. Hemant Kesharwani, learned counsel appearing for the appellants/plaintiffs would submit that both the Courts below have concurrently erred in not granting decree for declaration of title and permanent injunction on the basis of adverse possession in favour of the plaintiffs as they have been in possession of the suit land since the lifetime of their father i.e. since 1956-57 as such, they have perfected their title over the suit land by way of adverse possession and also the finding recorded by the Courts below that notice under Section 80 of the CPC has not been served to the respondents is absolutely bad in law, therefore, the second appeal involves substantial question of law for determination and deserves to be admitted for hearing.

3. In a suit filed by the appellants/plaintiffs for declaration of title and permanent injunction stating *inter alia* that they are in possession of the suit land since 1956-57, and that their possession has culminated into adverse possession and they are entitled for decree of declaration and permanent injunction on the basis of adverse possession, the defendants No. 3 and 4 filed their written statement and pleaded that the suit land is a grass land and plaintiffs have encroached upon the said suit land against which proceedings of encroachment was initiated against the plaintiffs (Exhibit P/19) and a penalty of Rs. 1,000/- has been imposed upon them and they have been directed to remove encroachment from the suit land therefore, they have not perfected their title over the suit land on the basis of adverse

possession, as also, the plaintiffs have not complied with the provisions as contained under Section 80 of the CPC and have not served notice upon the respondents accordingly.

4. Learned trial Court, upon appreciating the oral and documentary evidence on record, dismissed the suit filed by the plaintiffs holding that plaintiffs have failed to prove that they have perfected their title over the suit land by remaining in possession of the suit land for more than 30 years and further held that plaintiffs have also not served notice to the State Government as per Section 80 of the CPC. In an appeal preferred by the plaintiffs under Section 96 of the CPC, learned first appellate Court affirmed the judgment and decree of the trial Court by dismissing the appeal.
5. The question for consideration is whether the plaintiffs who are in possession of the suit land as encroachers have perfected their title over the suit land by remaining in possession of the suit land for more than 30 years.
6. Article 112 of the Limitation Act, 1963 provides for period of 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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7. 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.

8. Article 112 of the Limitation Act, 1963 is *para materia* provision to Article 144 of old Limitation Act, 1908. The Nagpur High Court, in the matter of ***Provincial government, Central Provinces and Berar v. Govindrao Tukaram***¹ while considering adverse possession under old Article 144 of 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 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.”

1 AIR 1949 Nagpur 403

It was further held that continuous and uninterrupted possession over a long period can give rise to presumption 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.”

9. 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. [please see ***Annasaheb Bapusaheb Patil and others v. Balwant @ Balasaheb Babusaheb Patil (Dead) by LRs. & Heirs and others***²]

10. It is not in dispute that title by adverse possession can be

2 (1995) 2 SCC 543

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***³].

11. The Supreme Court, in the matter of ***R. Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others***⁴ 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 :-

Nature of proof required in suits for declaration of title against the Government

“**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

3 (2000) 5 SCC 652

4 (2010) 5 SCC 203

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 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.”

12. 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)xx.....

(4)xx.....”

13. Reverting to the facts of the present case, in light of the

principles of law laid down in aforesaid judgments of the

Supreme Court, the suit land is recorded as grass land in

revenue records (Exhibits P/3, P/5 and P/7) and the plaintiffs

have been declared as encroachers upon the said suit land

and they have been directed to remove encroachment vide

Exhibit P/19 by imposing penalty of Rs. 1,000/- upon them

and even otherwise, the suit is held to be not maintainable as the plaintiffs have not served notice upon the defendants No. 1 and 2/State which is mandatory under Section 80 of the CPC, as such, both the Courts below have rightly dismissed the suit filed by the plaintiffs holding that the suit land is a grass land and plaintiffs, being encroachers upon the suit land, have failed to establish that they have perfected their title over the suit land on the basis of adverse possession by being in settled and undisputed possession of the suit land for more than 30 years and moreover, notice under Section 80 of the CPC has not been served by the plaintiffs upon the defendants No. 1 and 2/State. The aforesaid findings of fact recorded by both the Courts below is a finding of fact based on record, which is neither perverse nor contrary to record. I do not find any substantial question of law involved in this second appeal.

14. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge