

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 622 of 2018**

Uderam, Aged about 51 years, S/o Pyara Verma, Village Bakhat Rengakathera, P.H. No. 19/20, Tahsil and District Rajnandgaon, Chhattisgarh.

---Appellant/Defendant No. 1

Versus

1. Tulsiram Verma, Aged about 57 years, S/o Lt. Heera Verma R/o Village Bakhat Rengakathera, P.H. No. 19/20, Tahsil and District Rajnandgaon, Chhattisgarh. **– Plaintiff**

2. State of Chhattisgarh, Through Collector, Rajnandgaon, District Rajnandgaon, Chhattisgarh. **--- Defendant No. 2**

---- Respondents

For Appellant	:	Mr. Rakesh Thakur, Advocate
For Respondent No. 1	:	Mr. B.D. Guru, Advocate
For State	:	Mr. Mateen Siddiqui, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/09/2019

1. Heard on admission and formulation of substantial question of law for determination in this second appeal preferred by defendant No. 1 under Section 100 of the CPC.
2. Mr. Rakesh Thakur, learned counsel for the appellant/defendant No. 1 would submit that both the Courts below have concurrently erred in allowing the suit of the plaintiff by holding that defendant No. 1 has not perfected his title over the suit land as the plaintiff himself has admitted that defendant No. 1 has been in possession of the suit land

for over three generations, as such, the finding recorded by both the Courts below on the plea of adverse possession is perverse and contrary to the records and gives rise to substantial question of law for determination in this second appeal.

3. Plaintiff filed a civil suit for declaration of title, recovery of possession and permanent injunction stating *inter alia* that his father Late Shri Heera Verma purchased the suit land from Fattu Verma by registered sale deed dated 03/06/1966 and came into possession of the said suit land and after his death, plaintiff's name was registered in the revenue record, but defendant No. 1 illegally encroached upon the suit land and thereafter, constructed a house in some part of the suit land and by resolution dated 02/05/2000 passed by the Gram Panchayat, defendant No. 1 tried to get his name entered into the revenue records but remained unsuccessful as the said resolution passed by the Gram Panchayat was set aside by the competent authority vide order dated 17/09/2007. Plaintiff also filed an application under Section 250 of the Chhattisgarh Land Revenue Code, 1959 for restoration of possession but that same stood rejected as not maintainable which led to the filing of the civil suit, in which defendant No. 1 set up a plea that he has been staying in the said suit house for last 60-70 years and has perfected his title over the suit land by way of adverse possession.
4. Learned trial Court, upon appreciating oral and documentary evidence on record, allowed the suit of the plaintiff holding that plaintiff is the title-holder of the suit land and defendant No. 1 came into possession of the suit land unauthorizedly and he failed to plead and establish the plea of adverse possession over the suit

land/house which has been affirmed by the first appellate Court in the appeal preferred by defendant No. 1 under Section 96 of the CPC.

5. Both the Courts below have clearly held that plaintiff is the title-holder of the suit land and defendant No. 1 has failed to establish his adverse possession over the suit land.
6. In the matter of ***Karnataka Board of Waqf Vs. Government of India & Ors.***¹, their Lordships of the Supreme Court have laid down the necessary ingredients which has to be demonstrated by a person claiming adverse possession, which reads as under :-

“11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by 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. (See S.M. Karim Vs. Bibi Sakina, Parsinni Vs. Sukhi and D.N. Venkatarayappa Vs. State of Karnataka).

¹ (2004) 10 SCC 779

Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. 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.”

7. Reverting to the facts of the present case, it appears that learned trial Court has taken into consideration the statement made by the plaintiff which has been highlighted in paragraph 11 of its judgment and has clearly come to the conclusion that defendant No. 1 has failed to establish his plea of adverse possession over the suit land and long possession merely will not ripen into adverse possession which has been upheld by the first appellate Court. In the considered opinion of this Court, defendant No. 1 has failed to plead and establish that on what date he came into possession of suit land and also failed to prove the nature of possession over the suit land and has further failed to plead and establish that said possession was known to other side and it was uninterrupted and open. Thus, the aforesaid

concurrent findings recorded by both the Courts below that plaintiff is the title-holder of the suit land and defendant No. 1 has failed to establish his adverse possession is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and does not involve any substantial question of law for determination in this second appeal.

8. The second appeal deserves to be and is accordingly dismissed *in limine* with no order as to cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**

Harneet