

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

28. SECOND APPEAL NO. 559 of 2012
WITH CA/10768/2011 IN SA/559/2012
WITH CA/183/2014 IN SA/559/2012

Tanaji S/o Gulabgir Gosavi,
age 55 years occupation agriculture
R/o Ruikhel Post Mandargaon Tal.
Shrigonda Dist. Ahmednagar

Appellant

(Orig. plaintiff)

Versus

1 The State of Maharashtra
 through : The Collector, Ahmednagar

2 The Divisional Forest Officer,
 Ahmednagar Division, Bhingar Camp,
 Ahmednagar

3 The Range Forest Officer,
 Range Forest Office, Shrigonda
 Tal. Shrigonda Dist. Ahmednagar

...Respondents

(Orig. defendants)

Mr. Kuldip S. Patil, Advocate, h/f. Mr. S.S. Choudhary, Adv. for appellant.

Mr. S.P. Sonpawale, Asstt. Govt. Pleader for respondents.

CORAM : AVINASH G. GHAROTE, J.

Date : 30th September, 2019

ORAL JUDGMENT:

1. For the sake of convenience, the parties are being referred to as they were before the Trial Court.

2. This second appeal is filed by the original plaintiff challenging the judgment and decree dated 6th July 2006 passed by the learned Civil Judge (Senior Division), Shrigonda, in Reg. civil suit No. 23 of 2004, whereby the learned Trial Court has dismissed the suit as filed by the plaintiff claiming a declaration that the plaintiff was the owner of the suit property and perpetual injunction restraining the defendants from obstructing his possession over the same, which dismissal has been confirmed by the learned first Appellate Court, vide judgment and decree dated 22nd March, 2011.

3. It is the case of the plaintiff that the area admeasuring 2 hectares out of Gat No. 327 situated at village Ruikhel Tal. Shrigonda Dist. Ahmednagar, was received by his father in the year 1945-46 for cultivation under document styled as "*Eksalina Karar*", since which date his father and after him, the plaintiff is in cultivating possession of the same. It is averred that initially, the land was 10 acres, however, in the year 1967 area of 5 acres was taken away for percolation tank. It is averred that the remaining land of 5 acres is in cultivating possession of the plaintiff, which he has developed, which is demonstrable by the entry in 7/12 extract, wherein the name of the plaintiff is recorded. It is further averred that the plaintiff is in possession of the suit property since

last more than 50 years and because of his continuous possession, he has become the owner of the suit property. Since the defendants were trying to disturb his possession, a suit for declaration claiming that the plaintiff had become the owner of the suit property and perpetual injunction against the defendants from obstructing his possession over the same, was filed.

4. The suit was opposed by the defendants, by filing of written statement by defendant No.3, whereby it was contended that the suit property was not given to the plaintiff's father permanently, but was only temporarily permitted to be used under the document styled as "*Eksalina Karar*". It was, thus, contended that the occupation of the plaintiff and before him that of his father, could at the most be said to be that of a person holding over and definitely not adverse. It was submitted that the land has been given to the Forest Department and as per the directions of the Hon'ble Supreme Court in Writ Petition No. 202 of 1995, all unauthorized occupants in forest land needed to be removed.

5. The plaintiff examined himself and two more witnesses. The documentary evidence consists of 7/12 extracts from 1945-46 upto 2005 as well as tax receipts. The learned Trial Court upon a consideration of the evidence and the documents before him, found that the plea of the plaintiff, of having become

owner by way of adverse possession of the suit land, was not established and, thus, dismissed the suit. The Appellate Court by its judgment dated 22/03/2011 has followed suit.

6. It is vehemently contended by learned Counsel Mr.Kuldip S. Patil for the appellant/plaintiff, that both the judgments suffer from non-application of mind to the admitted position on record and overlooked the continuous possession of the plaintiff over the suit property, which is reflected from the documents on record, namely, the 7/12 extracts at Exh. 35 to 38, which has resulted in miscarriage of justice. He further submitted that the Courts below have ignored the evidence on record and their reasoning is based upon a misreading of the evidence led before the Trial Court and, therefore, is perverse. He further submits that evidence as to his longstanding possession has been ignored and, thus, the judgments of the Courts below, call for interference at the hands of this Court. He, therefore, submits that a substantial question of law, as urged by him, arises for consideration and is needed to be framed and decided. He places reliance upon the case of *D.R. Rathna Murthy Vs. Ramappa, (2011) 1 SCC 158*, to urge that the above propositions have been considered to be substantial questions of law. He, therefore, submits that the judgments of the Courts below need to be set

aside and the plaintiff is required to be declared as having perfected his title to the suit property by way of adverse possession.

7. Mr. S.P. Sonpawale, learned Asstt. Govt. Pleader appearing for the original defendants, opposes the same. He contends that the genesis of the possession of the plaintiff and before him that of his father, stemmed from the agreement styled as "*Eksalina Karar*", which he stated was a yearly agreement permitting the father of the plaintiff to occupy the suit land for cultivation, which is an admitted position on record. He, therefore, submits that the continuation of occupation after the expiry of the time period, cannot be construed to be adverse to the defendants but at the most, it can be said that the plaintiff has overstayed his welcome after the expiry of the time, which does not confer any right whatsoever upon the plaintiff or for that matter upon his father. He further submitted that the requirements to establish a plea of adverse possession were absent in the pleadings as well as evidence and, therefore, the contrary findings rendered by the Courts below, were fully justified. He, thus, submits that the suit was rightly dismissed by the Trial Court and the dismissal was further rightly upheld by the first Appellate Court.

8. In an adversarial system, as ours, the importance of proper and precise pleadings, cannot but be over emphasized. The entire edifice of the case stands on the pleadings and if these are not specific, precise, relevant then the subsequent course, which the suit has to travel, also goes wayward, having a cascading effect in as much as the defense also becomes improper and imprecise, non-specific, which then flows down to the issues, and tumbles down to the evidence and resultantly seeps into the judgment too. The importance of pleadings therefore has been en-grafted in the Statute itself, which is reflected from the provisions of O.6 Rule 2 onwards of the Code of Civil Procedure, which reads as under :

“O.6 Rule 2 : Pleading to state material facts and not evidence -

(1) Every pleading shall contain, **and contain only**, a statement in a concise form of the material facts on which the party pleading relies for his claim or defense, as the case may be, but not the evidence by which they are to be proved”.

The words “material facts” has been defined in Black’s Law Dictionary, as under:

“Material fact” : a fact that is significant or essential to the issue or matter at hand.

In Virendra Nath Gautam Vs Satpal Singh, 2007 (3)

SCC 617, "material facts" has been held to mean :

"The expression "material facts" has neither been defined in the Act nor in the Code According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary" (Burton's Legal Thesaurus, 3rd Edn. At page 349. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence in other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends what particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down it is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party".

In Halsbury's Laws of England (4th Edition, Volume 36, para 38) "material facts" has been stated to mean as under :

"38. The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs this function has been variously stated, namely, either to limit the generality

of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required. Each party is entitled to know the case that is intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him from being taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial. A party is bound by the facts included in the particulars, and he may not rely on any other facts at trial without obtaining the leave of the Court".

9. O.6 Rule 4 then mandates the situations in which particulars are required to be given and states that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

10. O.6 Rule 6, then mandates that if there is any condition precedent, the performance or accordance of which is intended to be contested, the same shall be distinctly specified in his pleading by the party by making a specific averment. O.6 Rule 7, then postulates that there cannot be any departure from the pleadings by way of raising a new ground of claim or any

allegation of fact inconsistent in the previous pleading of the party, except by way of amendment. O.6 Rule 8, then requires that where a contract is alleged in a pleading, in case a party has to deny the legality or sufficiency in law of such contract, the same cannot be by way of a bare denial, but the denial in this regard has to be specifically remitted to the absence of legality and sufficiency in law of such contract. O.6 Rule 9, then mandates at the first place, for a party relying upon a document, in case the contents thereof are material, to state the effect thereof as briefly as possible in the pleadings, unless the precise words of the document or any part thereof, are material. O.6 Rule 10, then requires a party to allege malice, fraudulent intention, knowledge or other condition of the mind of any person as a fact in the pleading. O.6 Rule 11, then requires that whenever it is necessary to allege notice to any person of any fact, matter or thing, it would be sufficient to allege such notice as a fact, unless the form, precise terms, circumstances from which such notice is to be inferred are material. O.6 Rule 12, thereafter mandates the requirements to be inserted in the pleadings in relation to any contract or any relation between any persons which are to be implied from a series of letters, conversations or otherwise from the circumstances.

11. The above provisions, would categorically demonstrate that the matter of pleading, has not been left open, but has been categorized into broad parameters, which can then be moulded from case to case. Thus, the very purpose, nature and form of pleadings, has been spelt out in Order 6 of the C.P.C. This being the position, it is necessary for any party approaching the Court to strictly adhere to the nature and form of pleadings, in as much as a proper and precise form of a pleading, that too in a plaint, sets into motion, the corresponding requirement or responsibility upon the defendant, to be categoric, precise and specific in his defence, as is spelt out by the provisions of Order 8, Rule 1-A to Rule 5 of the C.P.C., which require the defendant, to produce the documents upon which his defence is based, which are in his power, possession and custody, in case there are new facts to plead them specifically, the denial vis-a-vis the pleadings in the plaint to be precise and specific and not evasive. The provisions of Order 8 Rule 4 and 5 (1), specifically contain the liabilities which the defendant may incur in case of an evasive or non specific denial.

12. The position in this regard has been spelt out by the Hon'ble Apex Court in the case of **A. Shanmugam Vs Ariya Kshtriya Rajkula, 2012 (6) SCC 430** in the following words :

"26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases".

13. This position has been reiterated in the case of **R.S.T.C Vs Bajrang Lal, (2014) 4 SCC 693**, wherein it has been held that :

"14. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the

court is under no obligation to entertain the pleas. (Vide *Larsen & Toubro Ltd. v. State of Gujarat* [(1998) 4 SCC 387 : AIR 1998 SC 1608] ; *National Buildings Construction Corpn. v. S. Raghunathan* [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770 : AIR 1998 SC 2779] ; *Ram Narain Arora v. Asha Rani* [(1999) 1 SCC 141] ; *Chitra Kumari v. Union of India* [(2001) 3 SCC 208 : AIR 2001 SC 1237] and *State of U.P. v. Chandra Prakash Pandey* [(2001) 4 SCC 78 : 2001 SCC (L&S) 661 : AIR 2001 SC 1298]”.

14. Further in the case of **Maria Margarida Sequiera Fernandez Vs Erasmo Jack De Sequeira**, (2012) 5 SCC 370 the Hon'ble Apex Court in relation to the importance of pleadings has held as under :

“53. Pleadings are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded”.

15. It is further trite position of law, that in absence of pleadings, no evidence can be permitted to be let in, and in case seeps in, it cannot be considered. Reliance can be placed upon the case of **Syed and Co. Vs. J & K.**, 1995 Supp (4) 422 which in para 7 holds as under :

“Without specific pleadings in that regard, evidence could not be led in since it is a settled principle of law that no amount of evidence can be looked unless there is a pleading”.

And in the case of Executive Officer, **Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar Vs. Chandran and others, (2017) 3 SCC 702** in para 22 as under :

“Unless there is a pleading especially with regard to the source of title, the defendant of a suit has no opportunity to rebut such pleading thus an evidence with regard to which there is no pleading cannot be relied upon by the plaintiff for setting up his title in a suit”.

16. The law on the point of establishing a plea of adverse possession, is well settled. For a person to plead and establish such a plea, the pleadings necessarily have to demonstrate the point of time, when the possession became adverse to the original owner, the knowledge of the owner as to such hostile assertion of title and the absence of any action by the owner for the statutory period as contemplated by Article 65 of the Limitation Act.

17. The record and proceedings in the instant matter was called for by an order dated 12/02/2014 and having perused the plaint averments, it is apparent that the basic ingredients required for pleading adverse possession, are absent from the plaint. The

plaint nowhere states the point of time when the possession of the plaintiff or that of his father became adverse to the defendants. So also, the plaint does not contain an averment that such possession was hostile to the defendants or for that matter at any point of time whatsoever, any assertion of hostile title was ever made by the plaintiff against the defendants. Since these basic pleas are absent in the plaint, there is no evidence led in this regard. The plaintiff himself contends that he had entered upon the suit property, under the document styled as "*Eksalina Karar*". Thus, the entry of the plaintiff in the suit property was under an agreement, with the express permission of the defendants. This being so, any continuation of occupation by the plaintiff of the suit property, beyond the period of the "*Eksalina Karar*" could never be presumed to be hostile to the title of the defendants.

18. The plea of adverse possession necessarily mandates the assertion of an "Animus possidendi", and unless the person possessing the land has a requisite animus, the period for prescription does not commence. It is a settled position of law that peaceful, open and continuous possession for whatever time, does not constitute an "Animus possidendi". In other words, mere physical fact of exclusive possession, is not enough. The "*Animus possidendi*" to hold as owner in exclusion to the actual owner, to

his knowledge, is the most important factor to establish a plea of adverse possession. Therefore, a person, who claims adverse possession, should state/show:

- (a) Admit that he is not owner of the land in respect of which he claims a declaration of ownership by way of adverse possession;
- (b) admit the title of the owner to the property to which he claims a declaration of ownership by way of adverse possession;
- (c) on what date he came into possession;
- (d) what was the nature of his possession;
- (e) whether such possession was on account of wrongful dispossession of the original owner;
- (f) whether such dispossession was actual, visible, exclusive;
- (g) whether the factum of dispossession was known to the rightful owner;
- (h) whether there was any hostile assertion of title to the knowledge of the rightful owner;
- (i) the date of such hostile assertion and the continuity of the same throughout the statutory period, to the knowledge of the rightful owner;

- (j) the document which may demonstrate such hostile assertion, if there is any;
- (k) in case his possession relates to or stems from agreement/document or is in the nature of permissible user, there ought to be a document in writing who demonstrates his claim of adverse possession satisfying all the ingredients as required, as an oral plea would naturally stand excluded, considering his entry was under a document or was permissible;

These are some of the ingredients necessary for raising and establishing a plea for adverse possession.

19. It is further a trite position of law, that a person pleading adverse possession has no equities in his favour and 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 demonstrate his adverse possession. The question of hostility to the knowledge of the owner and its openness is further germane to the plea of adverse possession. The possession must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. The necessity of a plea of adverse possession, is the point at which the possession is claimed to have become adverse to the true owner

so as to establish the starting point of limitation. If this is absent, then no amount of time spent over another's property, would permit, raising successfully, of a plea of adverse possession. Mere possession for a period of more than 12 years does not ripen into a title in absence of "Animus possidendi". The position in this regard is clearly laid down by the Hon'ble Apex Court by observing in the following cases, thus:

(I) ***P.T. Munichikkanna Reddy and others Vs. Revamma and others, (2007) 6 SCC 59:***

" 14. Importantly, intention to possess can not be substituted for intention to dispossess which is essential to prove adverse possession....."

23. It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper owner.

31. Inquiry into the starting point of adverse possession i.e. dates as to when the paper-owner got dispossessed is an important aspect to be considered....."

**(II) *Annakili Vs. A. Vedanayagam and others,*
(2007) 14 SCC 308**

" 24. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the [Limitation Act](#). Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title."

(III) *Chatti Konati Rao and others Vs. Palle Venkata Subba Rao,* (2010) 14 SCC 316 :

" 14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile

possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.

15. *Animus possidendi* as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is

trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights."

(IV) ***State of Haryana Vs. Mukesh Kumar and others, (2011) 10 SCC 404 :***

"31. 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 adverse possession....."

20. Applying the above parameters, as enunciated by the Hon'ble Apex Court, to the facts of the present matter, it is apparent that the pleading in this regard in the plaint, clearly falls short of the requirements of law. There is no averment as to when the possession became adverse so as to determine the starting point of limitation. There is no averment that there was at any point of time any hostile assertion to the knowledge of the defendants, of either the plaintiff or his father, claiming title to the suit property. The very entry into the property, was by way of a permission, as is admitted by the plaintiff in light of the document styled as "*Eksalina Karar*". This being the position, no fault can be

found with the judgments of both the Courts below.

21. Article 65 of the Limitation Act, itself mandates that the time, from which the period begins to run is, when the possession of a party becomes adverse to the owner. It, thus, naturally follows that there has necessarily to be an averment in the plaint as to the starting point of limitation, so as to enable the Court to calculate and determine the expiry of the period as contemplated by the statute. This very starting point, is absent in the present matter, as is reflected from a plain reading of the plaint averments.

22. The reliance upon the case of ***D.R. Rathna Murthy*** (supra), by the learned Counsel for the appellant is totally misplaced, as the plaintiff himself has failed to plead the basic ingredients necessary for establishing a plea of adverse possession, as a result of which no evidence in this regard was led in. Thus, the present second appeal is devoid of any merit and does not raise any question of law, much less a substantial one, and is accordingly dismissed. In the circumstances, there will be no order as to costs. In view of disposal of the second appeal, pending civil applications shall stand disposed of.

(AVINASH G. GHAROTE, J.)

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