

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.511 of 2004

Arun Pathak S/o Jwala Prasad Pathak, Aged about 31 years, R/o Nayapara Jagdalpur, At present near Pramod Provision Store Vrindawan Colony, Jagdalpur, Dist: Bastar-(CG)

----- Appellant/Defendant No.3

Versus

1. Gyani Hajrat Singh (Dead) through his LR's  
1(a) Karamjit Singh S/o Mahendra Singh, aged about 50 years, R/o Plot No.28/1, Sheet No.52, Frazerpur, P.S. Fregerpur, District Bastar (CG)  
----- Plaintiff
2. State of Chhattisgarh through Collector Jagdalpur, Dist : Jagdalpur (CG)
3. Tahsildar (Nazul), Jagdalpur

----- Respondents

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For Appellant/Defendant No.3

:Mr.Prafull Bharat and Mr.Akash Pandey, Advocates

For Respondent No.1/Plaintiff:

Mr.Aishwarya Pandey, Advocate

For Respondents No.2 & 3 :Mr.Sanjeev Kumar Agrawal, P.L.

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

02/01/2020

1. This second appeal preferred by the appellant/defendant No.3 was admitted for hearing by formulating the following substantial questions of law:-

"1. Whether the lower appellate Court was not justified in reversing the decree passed by the trial Court and passing a decree for possession even after confirming the answer

of issue no.1 ?

2. Whether the lower appellate Court was not justified in passing an order for delivery of possession from the defendant as admittedly the defendant was possessing the land on account of a grant and the suit was barred u/s 257(m) of the M.P. Land Revenue Code ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. Plaintiff-Gyani Harjas Singh filed a suit for declaration of title and permanent injunction stating inter-alia that the suit land bearing plot No.28/1, sheet No.52, area 1500 sq.ft. is owned by the State Government on which he has constructed pakka house and staying therein and as such, he is residing for last 31 years and has perfected his title by way of adverse possession, but during pendency of his application for allotment, encroachment proceeding under Section 248 of the Chhattisgarh Land Revenue Code, 1959 was initiated against him and by order of Nazul Officer dated 10.3.1983, fine was imposed upon him. In other two cases, fine was also imposed against him, but he was in possession of the suit land. It was further pleaded that by order dated 17.3.89 in Revenue Case No.70/A-20(1)/82-83 the suit land has been allotted to defendant No.3 by defendant No.2. The plaintiff has perfected his title by way of adverse possession and grant of permanent lease in

favour of defendant No.3 is void and violative of principles of natural justice. It was also pleaded that he has been dispossessed pursuant to permanent lease granted by defendant No.2 in favour of defendant No.3, as such, the plaintiff is entitled for declaration of title and in alternative, allotment made in favour of defendant No.3 be declared void and not binding on him and he is also entitled for permanent injunction.

3. Defendant No.3 filed his written statement and denied the averments made in th plaint stating inter-alia that permanent lease has rightly been granted in his favour by order of Nazul Officer dated 17.3.89 and pursuant thereof, he has been placed in possession of the suit land and the plaintiff being rank encroacher is not entitled for declaration of title and permanent injunction and as such, the suit deserves to be dismissed.

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 24.2.2003, dismissed the suit holding that the plaintiff has not perfected his title by way of adverse possession over the suit land and allotment made by defendant No.2 in favour of defendant No.3 is in accordance with law, against which, the plaintiff

preferred first appeal under Section 96 of the CPC before the first appellate Court. The said Court by the impugned judgment and decree partly allowed the appeal and set aside the judgment and decree of the trial Court holding that permanent lease granted by defendant No.2 in favour of defendant No.3 is not in accordance with law and the plaintiff is entitled for possession over the suit land. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.3, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

5. Mr.Prafull Bhagat, learned counsel for the appellant/defendant NO.3, would submit that the first appellate Court has fallen into grave legal error in decreeing the suit of the plaintiff ignoring the fact that order granting permanent lease by Nazul Officer in favour of defendant No.3 on 17.3.89 was not challenged by the plaintiff in civil suit preferred by him before the trial Court. He would further submit that possession of the plaintiff, which is admittedly as encroacher, cannot be adverse possession in the light of decision rendered by the Supreme Court in the matter of Ravinder Kaur Grewal

**and others v. Manjit Kaur and others**<sup>1</sup>. He would also submit that the plaintiff is not in possession over the suit land and did not seek for possession. Therefore, the suit is barred by proviso to Section 34 of the Specific Relief Act, 1963 (hereinafter called as 'Act of 1963'), as such, the impugned judgment and decree deserves to be set aside.

6. Mr. Aishwarya Pandey, learned counsel for legal representative of respondent No.1/plaintiff, would submit that the plaintiff's application for grant of permanent lease was arbitrarily rejected by Nazul Officer/defendant No.2 though he was in possession over the suit land, but he was not afforded an opportunity before granting permanent lease in favour of defendant No.3, as such, the first appellate Court has rightly granted decree in favour of the plaintiff directing him to be reinstated in possession and as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. It is not in dispute that the suit land bearing plot No.28/1, sheet No.52, area 1500 sq.ft. is the land held by the State Government in which the plaintiff

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<sup>1</sup> (2019) 8 SCC 729

claimed to be in possession for last 31 years. It is also not in dispute that defendants No.1 and 2 have initiated encroachment proceeding against the plaintiff and he has been found to be encroacher under Section 248 of the Code for unauthorizedly remaining on government land by encroaching the government land. It is admitted position on record as stated in para-4 of the plaint that permanent lease has been granted by Nazul Officer by order dated 17.3.89 in Revenue Case No.70/A-20(1)/82-83 in favour of defendant No.3 and pursuant to that order, possession has been delivered to defendant No.3 and the plaintiff is not in possession of the suit land.

9. In a suit filed by the plaintiff, he only claimed that he has become title-holder of the suit land by way of adverse possession and therefore, permanent lease be granted in his favour. He also pleaded that permanent lease granted on 17.3.89 in favour of defendant NO.3 is void and not binding on the plaintiff, which the trial Court did not accept, but the first appellate Court accepted the same by reversing the finding of the trial Court holding that grant of permanent lease in favour of defendant No.3 is not in accordance with law. The first appellate Court ignored the fact that order granting permanent lease in favour of defendant No.3 on 17.3.89 is

admitted fact as stated in para-4 of the plaint, but the plaintiff did not question that order granting permanent lease in favour of defendant No.3 as bad in law and simply sought relief that order is not binding on him being void. In fact, the plaintiff was required to seek setting aside of order granting permanent lease in favour of the appellant/defendant No.3.

10. In the matter of Jugraj Singh and another v. Jaswant Singh and others<sup>2</sup>, the Supreme Court in identical fact situation has held as under:-

"11. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary, in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order."

11. In this case, permanent lease was granted by defendant No.2 in favour of defendant No.3, but the plaintiff did not question the same though the suit

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2 AIR 1971 SC 761

was filed on 6.6.98 after grant of lease in favour of the appellant/defendant No.3 as permanent lease was granted in favour of defendant No.3 on 17.3.89, as such, the suit is barred by proviso to Section 34 of the Act of 1963 as the plaintiff ought to have questioned the order dated 17.3.89 in order to get the relief particularly when it is his case that order dated 17.3.89 is bad and unsustainable in law. Similarly the suit is further barred as it is his case that in June-July, 1998 he has been dispossessed from the suit premises as it was amended in para-10A of the plaint, but he did not seek relief of possession being out of possession. Therefore, the suit is also barred by proviso to Section 34 of the Act of 1963 as he ought to have sought specific relief of possession by amending the plaint, if any, being out of possession of the suit land.

12. The plaintiff has also claimed that he has acquired title by way of adverse possession.

13. The Supreme Court in the matter of Ravinder Kaur Grewal (supra) has held as under:-

"56. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on "title" as envisaged in the opening part under Article 65 of the Act. Under Article 65,

the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonymous with adverse possession.

60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

14. As such, the first appellate Court has committed illegality in granting decree in favour of the plaintiff overlooking the fact that the suit is barred by proviso to Section 34 of the Act of 1963 as the plaintiff neither questioned the order granting

permanent lease in favour of the appellant/defendant No.3 nor sought relief of possession being not in possession over the suit land.

15. For the foregoing reasons, the impugned judgment and decree passed by the first appellate Court is set aside and that of the trial Court is hereby restored and thereby the suit would stand dismissed.

16. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

17. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)  
Judge

B/-