

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.420 of 2009**

Daroga Lal, S/o Ramsanchi Lodhi, aged 40 years, R/o
Village Ramtala, Tahsil Mungeli, Distt. Bilaspur (CG)

----- **Appellant/Plaintiff**

Versus

1. Ramnath S/o Punau Teli, aged 50 years, R/o Village
Pakriya, Tahsil Mungeli, Distt. Bilaspur (CG)
2. Nokhelal, S/o Maksudan Kurmi, aged about 55 years,
R/o Village Bawali, Tahsil Mungeli, Distt. Bilaspur
(CG)
3. State of Chhattisgarh through the Collector,
Bilaspur

----- **Respondents/Defendants**

For Appellant/Plaintiff:

Mr. Ravindra Agrawal, Advocate

For Respondent NO.3/State:

Mr. S.K. Agrawal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

5/3/2020

1. Heard on the question of admission and formulation
of substantial question of law in a second appeal
preferred by the appellant/plaintiff.
2. By the impugned judgment and decree dated 16.9.2009,
the First Additional District Judge, Mungeli in
Civil Appeal No.18-A/2008 reversed the judgment and
decree passed by the Civil Judge Class-I, Mungeli in
Civil Suit No.2-A/2005 decreeing the suit of the
plaintiff.
3. Mr. Ravindra Agrawal, learned counsel for the

appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in reversing the well reasoned and well merited judgment and decree of the trial Court holding that oral sale has not been proved and adverse possession has also not been established by the plaintiff, by recording a finding which is perverse and contrary to record and appeal deserves to be admitted for hearing by formulating the substantial question of law for determination.

4. The plaintiff filed a suit that he has perfected his title by way of adverse possession, which the trial Court accepted, but the first appellate Court did not accept the finding of the trial Court and reversed the said finding and dismissed the suit. It is the case of the plaintiff that he has purchased the suit land from father of defendant No.1 by oral sale at the rate of ₹ 4000/- per acre, area 3.21 acres. By virtue of Section 54 of the Transfer of Property Act, 1882, it was required to be registered and without registration, no title has been passed to the plaintiff. Even otherwise, the first appellate Court has rightly held that it is the plaintiff's case that he came in possession over the suit land pursuant to alienation made by defendant

No.1 and that being permissive possession, it cannot be held to be adverse possession.

5. The Supreme Court in the matter of **Karnataka Board of Wakf v. Government of India and others**¹ laid down the principles of law which a person claiming adverse possession should demonstrate by holding that 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. Their Lordships further held that 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.

6. The principle of law laid down in **Karnataka Board of Wakf** (supra) has been followed with approval in **Ravinder Kaur Grewal and others v. Manjit Kaur and others**² and their Lordships in paragraphs 60, 61 & 62 of the report laid down the principles and clearly held that the adverse possession requires all the

1(2004) 10 SCC 779

2(2019) 8 SCC 729

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 detail of title and his knowledge, and observed as under: -

"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 large the 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.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking may be by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that

person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

7. Applying the principle of law laid down by the

Supreme Court in the above-stated judgments (supra) to the facts of the present case, it is quite vivid that the plaintiff has failed to plead and establish the ingredients of adverse possession as held by the Supreme Court in the matter of Ravinder Kaur Grewal (supra), as such, the first appellate Court has rightly held that the plaintiff has failed to plead and establish the plea of adverse possession that he is in continuous, peaceful and undisturbed possession of the suit land for more than twelve years since the date of institution of the suit, the date on which he came in possession of the suit land and his possession was found to be permissive possession by two Courts below, which is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding and even I do not find any substantial question for determination of this second appeal.

8. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-