

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.431 of 2008**

Jodhan (dead) through LR's

Smt.Lakhni Bai, daughter of Late Jodhan, Wife of Sukhnathram, aged about 55 years, resident of village Madwa (Ghodasot), Post Office and Police Station Chando, District-Balrampur-Ramanujganj, at present Chopdapara, behind Mangal Bhawan, Ambikapur, District Surguja (Chhattisgarh)

----- Appellant/Plaintiff

Versus

1. Suresh Kumar Son of Kodho Uraon, Aged about 50 years, Caste-Uraon, Resident of Village Shahpur (Churunda), Post & P.S. - Chando, Tahsil - Kusmi, District - Surguja (CG)
2. State of Chhattisgarh, Through - Collector - Surguja, Ambikapur, District-Surguja (CG)

----- Respondents/Defendants

For Appellant/Plaintiff : Mr.V.K.Pandey, Advocate
 For Respondent No.2/State : Ms Anjali Singh Chauhan, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04.02.2020

1. Heard this second appeal preferred by the appellant/plaintiff on the question of admission and for formulation of substantial question of law.
2. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit finding no merit.

3. Mr.v.K.Pandey, learned counsel for the appellant/legal representative of the plaintiff, would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff and as such, the appeal deserves to be admitted by formulating the substantial question of law for determination.
4. The plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that he has perfected his title over the suit land bearing Khasra No.1311/9 area 1.49 hectares as he is in possession since 1951-52 in which defendant No.1 interfered with his peaceful possession. The trial Court dismissed the suit finding no merit. On appeal being preferred by the plaintiff, the first appellate Court upheld the judgment and decree of the trial Court.
5. The question for consideration would be, whether the plaintiff has perfected his title by way of adverse possession over the suit land ?
6. The Supreme Court in the matter of **Karnataka Board of Wakf v. Government of India and others**¹ has laid down the requirements for pleading and establishing necessary facts to establish his adverse possession. Para-11 of the report states as under:-

1 (2004) 10 SCC 779

"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 v. Bibi Sakina², Parsinni v. Sukhi³ and D. N. Venkatarayappa v. State of Karnataka⁴). 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma⁵)."

2 1964 SC 1254

3 (1993) 4 SCC 375

4 (1997) 7 SCC 567

5 (1996) 8 SCC 128

7. The principle of law laid down in Karnataka Board of Wakf (supra) has recently been followed by the Supreme Court in the matter of Ravinder Kaur Grewal and others v. Manjit Kaur and others⁶, in which it was 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 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 synonym 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.

6 (2019) 8 SCC 729

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.

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."

8. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that in the present case, the plaintiff has failed to prove that on what date he came into possession, what was the nature of his possession, whether the factum of possession was known to other party, how long his possession has continued and his possession was open

and undisturbed. Both the Courts below have concurrently held that the plaintiff has failed to prove the requirements of adverse possession over the suit land. Finding recorded by two Courts below qua adverse possession is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality in said finding.

9. 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/-