

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.62 of 2009**

Ramnath Son of Late Dashru Ram, Aged about 60 years
Occupation – Agriculturist, Resident of Village –
Saraitikra, P.S. – Darima, Tahsil-Ambikapur, Distt.
Surguja (CG)

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

Versus

1. Dharamsai Son of Goutiya Aged about 40 years
2. Smt. Bhagmen Widow of Goutiya, Aged about 60 years,
Caste – Rajwar, Resident of Village Saraitikra, P.S.-
Darima, Tahsil – Ambikapur, Distt. Surguja (CG)
3. State of Chhattisgarh, Through-Collector Surguja,
Distt. Surguja (CG)

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

For Appellant/Plaintiff : Mr.V.K.Pandey, Advocate
For Res.No.1 & 2/Defendants: Mr.A.N.Pandey, Advocate
For Respondent No.3/State : Mr.Rahul Jha, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

31.01.2020

1. The substantial question of law involved, formulated
and to be answered in this second appeal preferred by
the plaintiff is as under:-

“Whether the Courts below have erred by not
declaring the appellant as Bhumi Swami on the
basis of adverse possession ?”

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

2. The plaintiff filed a suit for declaration of title

and for permanent injunction stating inter-alia that he is in possession of government land bearing Khasra No.178/643/5, area 0.462 hectare for last 40-50 years and earlier it was possessed by his father and grandfather. By way of amendment on 22.7.2003, it was introduced in the plaint that he is in uninterrupted, peaceful and cultivating possession and he has perfected his title by way of adverse possession.

3. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that the suit land has been granted by the State Government to his father Goitiya Ram on lease and they are in possession over the suit land for last 50 years as they have inherited the property by inheritance and he has dispossessed unnecessarily by interfering with his peaceful possession by the plaintiff, as such, the plaintiff is not entitled for declaration and permanent injunction.

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 26.7.2007, dismissed the suit holding that the plaintiff has failed to prove and establish his possession over the suit land for 12 years, therefore, no decree could have been passed in his favour, which was upheld by the first

appellate Court in appeal preferred by the plaintiff holding that the plaintiff has failed to prove his possession for last 12 years as he has perfected his title by way of adverse possession. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

5. Mr.V.K.Pandey, learned counsel for the appellant/plaintiff, would submit that concurrent finding recorded by two Courts below that the plaintiff has failed to prove his adverse possession is perverse finding, which is liable to be set aside.
6. On the other hand, Mr.A.N.Pandey, leaned counsel for respondents No.1 and 2/defendants, would support the impugned judgment and decree.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The question for consideration would be, whether the plaintiff has perfected his title by way of adverse possession over the suit land as admittedly it is Government land of which patta was granted in favour

of Goutiya Ram, father of defendant No.1.

9. 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:-

"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)

1 (2004) 10 SCC 779

2 1964 SC 1254

3 (1993) 4 SCC 375

4 (1997) 7 SCC 567

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)."

10. 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

5 (1996) 8 SCC 128

6 (2019) 8 SCC 729

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.

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."

11. 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 though the plaintiff has asserted that by way of amendment in the plaint on 22.7.2003 that he is in possession over the suit land for last 45 to 50 years, but except self-serving statement, no documents i.e. grant of patta, khasra panchshala etc., have been filed to demonstrate that he is in possession over the suit land for last 45 to 50 years. It has also not been stated in the plaint 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.

12. In absence of such pleading, both the Courts below have clearly held that the plaintiff has failed to plead and establish necessary facts to establish his adverse possession. Finding recorded by two Courts below is purely a finding of fact based on evidence available on record warranting no interference by this Court under Section 100 of the CPC and it is binding to this court. I do not find any illegality or perversity in said finding. The substantial question of law is answered in favour of the defendants and against the plaintiff.

13. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

14. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-