

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.89 of 2009**

Sukutri Bai W/o Bhuwan Singh, aged about 64 years,
D/o Rupsai, R/o village Bhadaura, Tahsil Pendra Road,
District Bilaspur (CG) (correct address – village
Pakaria, Tahsil Pendra Road, District Bilaspur (CG)

----- Appellant/Defendant No.5

Versus

1. Surji Bai D/o Rupsai, W/o Manglu, Caste Rathore,
Agriculturist, R/o Village Bacharwar, Tahsil Pendra
Road, District Bilaspur (CG)

----- Plaintiff

2. Hiranjiya widow of Rupsai, R/o village Madarwani,

----- Defendant No.1

3. Durga Bai D/o Rupsai, Minor through natural Guardian
Mother Hiranjiya Bai

----- Defendant No.2

4. Bhallu S/o Rupsai, Minor thorough natural guradian
Mother Hiranjiya

----- Defendant No.3

5. Durapiya Bai D/o Rupsai, Minor through natural
guardian Mother Hiranjiya

----- Defendant No.4

6. Sonwati W/o Nanhu Rathore, D/o Rupsai, R/o village
Lalpur

----- Defendant No.6

7. Kulsibai W/o Lallu Rathore, D/o Rupsai, R/o village
Lalpur

----- Defendant No.7

8. Jamuna s/o Rupsai, aged about 27 years, R/o Madarwani,
Tahsil Pendra Road, District Bilaspur (CG)

----- Defendant No.8

All are resident of Tahsil Pendra Road, District
Bilaspur (CG)

9. State of C.G., through the Collector Bilaspur,
District Bilaspur (CG)

----- Defendant No.9

For Appellant/Defendant No.5: Mr.Rakesh Pandey, Advocate
For Respondent No.9 : Mr.Rahul Jha, Govt.Advocate
For other respondents : None present

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05.02.2020

- 1.The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellant/defendant No.5 is as under:-

“Whether the Court below has erred in holding that respondent No.1 has perfected her title by way 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 suit property was originally ancestral property in the hands of Rupsai. The plaintiff is one of the daughter of Rupsai, who filed a suit for declaration of title, ownership on the basis of adverse possession and permanent injunction stating inter-alia that she was gharjiha daughter of Rupsai and for her livelihood the suit land was given to her 30-35 years prior to filing of the suit and as such, she has perfected her title by way of adverse possession. In that suit, the plaintiff has impleaded Rupsai, her father as party

defendant, but during pendency of the suit, he died and his legal representatives i.e. widow, sons and daughters were brought on record.

3. The defendants filed their written statement and denied the averments made in the plaint stating inter-alia that the suit property is ancestral property in the hands of Rupsai and after death of Rupsai, all the daughters have also limited right over the property of their father.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 7.3.2001, dismissed the suit holding that the suit property is ancestral property of the parties and it was only given to the plaintiff for cultivation. On appeal being preferred by the plaintiff, the first appellate Court decreed the suit holding that the plaintiff is in possession over the suit land for 30 years and has perfected her 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/defendant No.5, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

5. Mr. Rakesh Pandey, learned counsel for the

appellant/defendant No.5, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiff has perfected her title by way of adverse possession, which is a perverse finding, as such, finding recorded by the first appellate Court deserves to be set aside.

6. None present for respondents No.1 to 8 though served.

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

8. The question for consideration would be, whether the plaintiff has perfected her title by way of adverse possession over the suit land ?

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

1 (2004) 10 SCC 779

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)."

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 others**⁶, in which it was held as under:-

2 1964 SC 1254
 3 (1993) 4 SCC 375
 4 (1997) 7 SCC 567
 5 (1996) 8 SCC 128
 6 (2019) 8 SCC 729

"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. 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 the suit property was admittedly ancestral property in the hands of Rupsai including the plaintiff and defendant No.5, in which sons and daughters of Rupsai had right to partition though the appellant/defendant No.5 and the plaintiff have limited right over the share of their father in the ancestral property. Not only this, the plaintiff has failed to plead and establish that on what date she came into possession, what was the nature of her possession, whether the factum of possession was known to other party, how long her possession has continued

and her possession was open and undisturbed.

12. The Supreme Court in the matter of Nanjegowda alias Gowda (Dead) by Legal Representatives and another v. Ramegowda⁷ has held that there cannot be adverse possession amongst members of one family for want of animus among them over land belonging to their family.

13. As such, the first appellate Court is absolutely unjustified in decreeing the suit of the plaintiff by granting appeal. Accordingly, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored. The substantial question of law is answered in favour of the defendants and against the plaintiff.

14. The second appeal is allowed to the extent indicated hereinabove. No cost(s).

15. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-