

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 413 of 2009**

Sunita Sahu, D/o Kemla Sahu, W/o Shiv Kumar Sahu, 43 years, R/o Village Janakpur,
Tahsil – Bharatpur, Distt. Korea (C.G.)

----Appellant/Plaintiff

Versus

1. State of Chhattisgarh, Through : Collector Korea, Baikunthpur, Distt. Korea – (C.G.)
2. Ramadhar Sahu, S/o Late Shri Surdeen Sahu, 71 years, R/o Village Janakpur,
Tahsil – Bharatpur, Distt. Korea -(C.G.)

----Respondents/Defendants

For Appellant/Plaintiff : Mr. Prafull N. Bharat, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/07/2020

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal under Section 100 of the Code of Civil Procedure, 1908 preferred by appellant/plaintiff against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial court dismissing the suit.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts were absolutely unjustified in dismissing the suit filed by the plaintiff by holding that plaintiff has failed to prove that she was in possession of the suit land for the last 30 years, as such, the plaintiff is settled possession of the suit land and she has perfected her title over the suit land by way of adverse possession and, therefore, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) Learned trial Court, upon appreciating the oral & documentary evidence available on

record, after appreciation of oral & documentary evidence available on record, dismissed the suit holding that the plaintiff is in possession of the suit land since 1993 whereas the civil suit has been instituted in the year 2003, therefore, the statutory period of 30 years has not been completed, as such, the plaintiff has not perfected her title over the suit land by way of adverse possession. In an appeal preferred by the plaintiff under Section 96 of the CPC there-against, learned first appellate court affirmed the judgment and decree of the trial court by dismissing the appeal.

(4) It is not in dispute that title by adverse possession can be prescribed also against the government, but where the claim of adverse possession in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right and title of State to immovable property and also conferring upon a third party encroacher title where he had none. [See ***State of Rajasthan v. Harphool Singh (Dead) through his LRs***¹].

(5) The Supreme Court, in the matter of ***R. Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others***² has held that in order to establish the plea of adverse possession, the limitation period would be thirty years and further laid down principles of the law indicating the nature of proof required in a suit for declaration of title against the government, which is reproduced herein below :-

Nature of proof required in suits for declaration of title against the Government

“19. Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government,

1 (2000) 5 SCC 652

2 (2010) 5 SCC 203

is not available to any person or individual. The *second* difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either *ex parte* or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into ti-

tle. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored.

(6) Reverting to the facts of the case in light of the principles of law laid down in aforesaid judgments of the Supreme Court, it is quite vivid that both the courts below have rightly and concurrently held that plaintiff is in possession over the suit land sine 1993 whereas the suit has been filed in the year 2003, therefore, the statutory period of 30 years has not been completed and she has not perfected her title over the suit land by way of adverse possession, which is neither perverse nor contrary to the record. I do not find any substantial question of law involved in this second appeal.

(7) The second appeal deserves to be and is accordingly dismissed in *limine* without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

