

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 114 of 2010**

Pratap Singh, aged about 62 years, S/o Gambhir Singh, R/o Village/Post Koda, Thana Jhagrakhand, Tahsil Manendragarh, Distt. Koriya (C.G.)

-----Appellant/plaintiff

Versus

1. Motilal, aged about 56 years, S/o Mahaval Harijan

2. Ramdeen, aged about 35 years, S/o Motilal

3. Laxmi, aged about 30 years, D/o Motilal, All R/o Village/Post, Thana Jhagrakhand, Tahsil Manendragarh, Distt. Koriya (C.G.)

4. State of Chhattisgarh, through Collector, Baikunthpur, Distt. Koriya.

-----Respondents/defendants.

For Appellant : Shri Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/8/2020

(1) Proceedings of the matter have been taken up through video conferencing.

(2) Heard on the question of admission and formulation of substantial question of law in a second appeal preferred by the appellant/plaintiff.

(3) By the impugned judgment, first appellate Court

dismissed the appeal preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit.

(4) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in not granting decree for declaration of title and permanent injunction in favour of plaintiff by recording a finding which is perverse to the record and overlooking the fact that application for restoration of possession filed by the respondents/defendants under Section 250 of the Land Revenue Code, 1959 (henceforth "Code, 1959") was rejected by the Revenue Court on 23.02.2004, as such, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(5) Admittedly, three defendants are owners of three different suit lands and for these three different suit lands, one consolidated suit was filed by the plaintiff claiming declaration of title based on adverse possession.

(6) The trial Court, after appreciating the oral & documentary evidence available on record, clearly reached to the conclusion in paragraph 24 of the

judgment that a consolidated suit was filed by the plaintiff for three different suit lands owned by three different defendants; and the plaintiff has failed to establish that on what date and on what capacity, he came into possession of the suit land; and plaintiff has also failed to prove that he is in possession over the suit lands for last 35 years, as such, the plaintiff pleading adverse possession has no equities in his favour and as he is trying to defeat the rights of the true owners, it is for him to clearly plead and establish all necessary ingredients to establish his adverse possession, which is missing in the present case, therefore, no decree for declaration of title based on adverse possession can be granted in favour of the plaintiff.

(7) Plaintiff preferred first appeal thereagainst before the first appellate Court. The first appellate Court, after reappreciating the oral and documentary evidence available on record, affirmed the judgment & decree of the trial Court dismissing the suit. Against which, this second appeal under Section 100 of the CPC has been preferred.

(8) In Ram Janmabhumi Temple Case in the matter of M. Siddiq (Dead) Through Legal Representatives (Ram

Janmabhumi Temple Case) v. Mahant Suresh Das and

others¹, the Supreme Court (Constitution Bench) has clearly held that the claim on the basis of adverse possession amounts to acknowledgment of title of person against whom adverse possession is claimed and observed as under: -

"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No.4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being *nec vi nec claim* and *nec precario*. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with

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reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. ..."

(9) Their Lordships further relying upon the judgment of the Supreme Court in Karnataka Board of Wakf (supra) held that the ingredients in terms of that judgment must be set up in the pleadings and proved in evidence. There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.

(10) Their Lordships also emphasized the need for making clear averment of adverse possession as under: -

"1154. In a judgment rendered in 2015, one of us (Abdul Nazeer, J.) as a Single Judge of the Karnataka High Court succinctly identified and laid down the prerequisites of a claim to adverse possession in the following terms: (*Pilla Akkayamma case*², SCC OnLine Kar Para 27)

"27. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person, who does not acknowledge others' rights but denies them. Possession implies dominion and control and the consciousness in the mind of the person having dominion over an object that he has it and can exercise it. Mere possession of the land would not ripen into possessory title. Possessor must have animus possidendi and hold the land adverse to the title of the true owner.

2 *Pilla Akkayamma v. Channnappa*, 2015 SCC OnLine Kar 8226 : ILR 2015 Kar 3841

Occupation only implies bare use of the land without any right to retain it. In order to constitute adverse possession, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. *To prove title to the land by adverse possession, it is not sufficient to show that some acts of possession have been done. The possession required must be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. In other words, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation.*

30. In a suit falling under Article 65 of the Limitation Act, plaintiff must establish his title to the property. He need not prove that he was in possession within 12 years. If he fails to prove his title, the suit fails, and the question of adverse possession does not arise in such a case. When the plaintiff has established his title to a land, the burden of proving that he has lost that title by reason of the adverse possession of the defendant lies upon the defendant. If the defendant fails to prove that he has been in adverse possession for more than 12 years, the plaintiff is entitled to succeed simply on the strength of his title. A person alleging that he has become owner of immovable property by adverse possession must establish that he was in possession of the property peaceably, openly and in assertion of a title hostile to the real owner. Stricter proof is required to establish acquisition of title by adverse possession for the statutory period."

(emphasis supplied)

1155. In *Ravinder Kaur Grewal v. Manjit Kaur*³, a three-Judge Bench of this Court of which one of us, Abdul Nazeer, J. was a part, further developed the law on adverse

possession to hold that any person who has perfected their title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In this view, adverse possession is both a sword and a shield.

1156. The plaintiffs have failed to adopt a clear stand evidently because they are conscious of the fact that in pleading adverse possession, they must necessarily carry the burden of acknowledging the title of the person or the entity against whom the plea of adverse possession has not been adequately set up in the pleadings and as noted above, has not been put forth with any certitude in the course of the submissions. Above all, it is impossible for the plaintiffs to set up a case of being in peaceful, open and continuous possession of the entire property"

(11) Reverting to the facts of the present case in light of the principles of law flowing from the above-cited judgments of the Supreme Court, it is quite vivid that the plaintiff has failed to prove the date on which he came into possession over the suit lands held by three different defendants and though except oral evidence, no documentary evidence has been filed to substantiate that he is possession over the suit lands for last 35 years and which has been accepted by the first appellate Court.

(12) It is settled law that mere possession over the land for a long time would not ripen into possessory title unless its ingredients pleaded and established.

(13) Thus, the findings recorded by both the courts below holding that the plaintiff has failed to plead and establish the ingredients of adverse possession over the suit land for last 35 years is a finding of fact based on material available on record, which is neither perverse nor contrary to the record.

(14) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-