

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 434 of 2008****Judgment reserved on 25/11/2020****Judgment delivered on 17/12/2020**

1. Siyaram, Aged about 37 years.
2. Shyam Lal, Aged about 32 years.
3. Santosh, Aged about 24 years.
4. Sawant Kumar, Aged about 17 years.

Minor represented through brother Siyaram, All Sons of
Sadhuram Gond R/o Village Mopka, Tahsil and District
Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs**Versus**

1. Prakashchandra S/o Late Dhanjee Bhai.
2. Purushottam S/o Late Dhanjee Bhai.
3. Laxmi Bai D/o Late Dhanjee Bhai.
4. Urmila Bai D/o Late Dhanjee Bhai.
5. Geeta Devi D/o Late Dhanjee Bhai.
6. Rekha Bai D/o Late Dhanjee Bhai.

All by caste Gujrati, R/o Tikrapara, Near Jagmal
Chowk, Bilaspur, Chhattisgarh.

7. State of Chhattisgarh, Through Collector,
Bilaspur, Chhattisgarh.

--- Respondents/Defendants

For Appellants :- Mr. Sourabh Sharma, Advocate

For Respondents :- None, though served.

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

1. This second appeal preferred by the appellants/plaintiffs was admitted for final hearing on 05/02/2020 by formulating the following substantial question of law :-

“Whether both the Courts below have legally erred in holding that plaintiffs have failed to prove their title over the suit land by way of adverse possession by recording a finding which is perverse and contrary to the record ?”

[For the sake of convenience, the parties will herein-after be referred to as per their status shown before the trial Court.]

2. Plaintiffs filed a suit for declaration of title and permanent injunction stating inter alia that the suit land mentioned in paragraph 1 of the plaint was given to their father Sadhurar by the then Malguzar of village Mopka namely Balgangadhar Rao Tilak and since then, their father was in possession of the suit land and after his death, plaintiffs have been in continuous possession of the suit land by cultivating and growing vegetables as the suit land is located near the Arpa river and the

defendants were never in possession of the suit land. It was further pleaded that in the year 1967, defendants' father namely Dhanjee Bhai filed a suit against plaintiffs' father being C.S. No. 6A/1967 which was dismissed for want of prosecution on 16/04/1968. Then, the defendants' father also filed an application for recovery of possession of the suit land before the Additional Tahsildar, Bilaspur under Section 250 of the Chhattisgarh Land Revenue Code, 1959 which was dismissed on 04/06/1997, but the defendants got their names recorded in the revenue records with the collusion of the revenue officer. As such, they are entitled for decree for declaration of title and permanent injunction as they have perfected their title over the suit land by way of adverse possession.

3. Resisting the suit, defendants filed their written statement stating inter alia that their father had purchased the suit land from Hussain Bi, Julfikar Hussain, Gangadhar Rao, Manohar Rao and Padmakar Rao by separate registered sale deeds and defendants' father Dhanjee Bhai had filed a suit against plaintiffs' father Sadharam

who vacated the suit premises during the pendency of the suit before the trial Court, therefore, defendants' father stopped appearing in the suit and it was thus dismissed by the trial Court for want of prosecution and since then, defendants' father and thereafter the present defendants are in possession of the suit land.

4. Learned trial Court, after appreciating the oral and documentary evidence on record, vide its judgment and decree dated 29/09/2007, dismissed the suit of the plaintiffs finding no merit which was affirmed by the first appellate Court vide its impugned judgment and decree dated 19/09/2008 in the first appeal preferred by the plaintiffs under Section 96 of CPC against which this second appeal under Section 100 of CPC has been preferred by the plaintiffs/appellants herein.
5. Mr. Sourabh Sharma, learned counsel appearing for the appellants/plaintiffs, would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiffs by holding that plaintiffs have not perfected their title

over the suit land by way of adverse possession as the suit filed by defendants' father Dhanjee Bhai against plaintiffs' father vide Ex. P/1 for declaration of title and possession over the suit land was dismissed by the trial Court vide Ex. P/3 and thereafter, the application moved by defendants' father for recovery of possession under Section 250 of Chhattisgarh Land Revenue Code, 1959 was also dismissed and moreover, defendants' witnesses themselves have admitted the possession of the plaintiffs over the suit land, as such, it is duly established on record that the plaintiffs have perfected their title over the suit land by way of adverse possession as such, the judgment and decree of both the Courts below be set aside and plaintiffs' suit be decreed with cost(s).

6. None appeared on behalf of the defendants, though served.
7. I have heard learned counsel for the appellants/plaintiffs, considered his submissions and went through the records with utmost circumspection.

8. Plaintiffs filed a suit mainly for declaration of title and the consequential relief of permanent injunction which is based on their plea that they have perfected their title over the suit land by way of adverse possession as they have been in continuous possession of the suit land prior to 1967 and the suit filed by defendants' father vide Ex. P/1 was dismissed vide Ex. P/3 as back as on 16/04/1968 and thereafter, his application for recovery of possession under Section 250 of Land Revenue Code was also dismissed on 04/06/1997 vide Ex. P/4, as such, they have perfected their title over the suit land and are entitled for decree for declaration of title and permanent injunction.

9. It is now well-settled law that the suit for declaration of title based on adverse possession is maintainable in view of the decision rendered by the Supreme Court in the matter of **Ravinder Kaur Grewal v. Manjit Kaur**¹. Now, the question is, whether both the Courts below are justified in holding that plaintiffs have not perfected

¹ (2019) 8 SCC 729

their title over the suit land by way of adverse possession ?

10. Three classic requirements of adverse possession are contained in *nec vi*, *nec clam* and *nec precario* namely, adequate in continuity, adequate in publicity and adverse to a competitor, respectively. The above-stated requirements are required to be pleaded and established to get a decree on the basis of adverse possession.

11. The Supreme Court in the matter of **Karnataka Board of Wakf v. Government of India and others**² laid down the principles of law which a person claiming adverse possession should demonstrate by holding that 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. Their Lordships further held that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true

² (2004) 10 SCC 779

owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

12. The principle of law laid down in **Karnataka Board of Wakf** (supra) has been followed with approval in **Ravinder Kaur Grewal** (supra) and their Lordships in paragraphs 60, 61 & 62 of the report laid down the principles and clearly held that 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 detail of title and his knowledge, and observed as under: -

"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 large the 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.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of

dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

13. 1. In **Ram Janmabhumi Temple Case** in the matter of **M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das and others**³, 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

3 (2020) 1 SCC 1

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 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. ..."

13.2. 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.

13.3. 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*⁴, 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. 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

⁴ Pilla Akkayamma v. Channnappa, 2015 SCC OnLine Kar 8226 : ILR 2015 Kar 3841

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 suits 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*⁵, 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. ..."

14. Reverting to the facts of the present case in light of the principles of law flowing from the above-noticed judgments of the Supreme Court (supra), it is quite vivid that plaintiffs in the entire plaint did not make any averment that defendants' father was the original title-holder of the suit land and after him, defendants are the title-holders of the suit land and the possession of the plaintiffs is adverse to the interest of the defendants. The plaintiffs simply pleaded that Balgangadhar Rao Tilak, the then Malguzar of village Mopka, was the title-holder of the suit land who gave the suit land to their father namely Sadhuran in lieu of the service rendered to him and in that capacity, they are in possession of the suit

land. Plaintiffs never admitted the title of the defendants though they claimed declaration of title on the basis of adverse possession by way of filing the civil suit. In a suit for title based on adverse possession, the plaintiffs were required to plead that defendants are the title-holders of the suit land and by remaining in continuous, peaceful and undisturbed possession of the suit land to the knowledge of the title-holder, they have perfected their title by way of adverse possession, as such, the pleading regarding defendants being the title-holders of the suit land is absolutely missing.

15. Now, coming to the evidence of plaintiff No. 1 Siyaram Gond (P.W. - 1) in paragraph 13 it has been stated that Balgangadhar Rao Tilak was the owner of the suit land, being the Malguzar of village Mopka, and the plaintiffs' father has obtained the suit land from him and after their father's death they are in possession of the suit land. Likewise, in paragraph 16 as well, he has stated that he is in possession of the land owned by the Malguzar and not on the land owned by the defendants. Next, P.W. - 2 Mahadev has also maintained the fact that plaintiffs

obtained the land from the ex-malguzar. Similarly, P.W. - 3 Shyam Bhau in his evidence has also maintained the fact that plaintiffs are in possession of the land given to them by the Malguzar and they are not in possession of the land owned by the defendants.

16. Defendant No. 1 Prakashchandra (D.W. - 1) though in paragraph 12 has admitted the fact that in that year, plaintiffs have sown the crops in the suit land but in paragraph 13 he has also stated that plaintiffs have vacated the possession of the suit land. D.W. - 2 Bhagwat has also stated that plaintiffs are in possession of the suit land at present and they have sown vegetables, etc. in the suit land this year.

17. As such, in the entire evidence, plaintiffs have maintained the fact Balgangadhar Rao Tilak, the then malguzar of village Mopka, was the titleholder of the suit land who gave it to them and thereafter, plaintiffs' father and now the plaintiffs are in possession of the said suit land since long. The plaintiffs have neither admitted the title of defendants on the suit land nor have they established that they are in possession of the land held by the defendants as

in the evidence led before the Court, their stand is that they are not in possession of the land owned by the defendants, but they are in possession of the land given to their father by the ex-malguzar. Even otherwise, the admission of the defendants and his witnesses that plaintiffs are in possession of the suit land since few years will not establish the plea of adverse possession. As such, the basic ingredients for establishing the plea of adverse possession is absolutely missing, therefore, in view of the aforesaid judgments rendered by the Supreme Court (supra), the plaintiffs have failed to plead and establish the plea of adverse possession and in that view of the matter, both the Courts below are absolutely justified in dismissing the suit of the plaintiffs holding that they have failed to establish the plea of adverse possession, therefore, they are not entitled for decree for declaration of title and permanent injunction in which I do not find any perversity or illegality warranting interference under Section 100 of CPC.

18. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

19. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet