

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.128 of 2010

Chandrakali, aged about 40 years, D/o Vishram Rajput, R/o Gram
Nawagaon, (Venkat), Tahsil Lormi, District Bilaspur (C.G.)
(Defendant No.3)
---- Appellant

Versus

1. Bundela Bai, D/o Itwari, W/o Mohan Rajput, aged about 50 years,
(Plaintiff)
 2. Bisauha, S/o Hariram Rathore, aged about 65 years,
 3. Radha Bai, W/o Vishram Rathore, aged about 65 years,
 4. Amrika Bai, D/o Vishram, W/o Naresh, aged about 30 years,
 5. Manohar, S/o Sukhram Rathore, aged about 22 years,
 6. Hemlata, W/o Manohar Rathore, aged about 20 years,
 7. Titari Bai, Wd/o Bisesar Rathore, aged about 60 years,
(Defendants No.2 & 4 to 7)
- All R/o Village Nawagaon, (Venkat), Tahsil Lormi, District Bilaspur
(C.G.)
8. State of Chhattisgarh, Through Collector, Bilaspur (C.G.)
---- Respondents

For Appellant: Mr. Vimlesh Bajpai, Advocate.

For Respondent No.1: -

Mr. Pallav Mishra, Advocate.

For Respondents No.2 to 7: -

None present.

For Respondent No.8 / State: -

Mr. Sanjeev Kumar Agrawal and Mr. Aakash Pandey, Panel
Lawyers.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

25/02/2020

1. This second appeal preferred under Section 100 of the CPC by defendant No.3 / appellant herein was admitted for hearing by formulating the following substantial questions of law: -

“1. Whether both the Courts below have erred in holding that respondent Bundela Bai has acquired title over the suit property measuring area 0.02 acre?

2. Whether both the Courts below have erred in holding that respondent Bundela Bai is in possession of suit property especially when the appellant is in possession of the suit property since last 30-40 years?”

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

2. The suit land bearing Khasra No.152/1, area 0.16 acre was originally held by Tekram and his three sisters which was sold by them vide registered sale deed dated 2-5-2003 in favour of plaintiff Bundela Bai and thereafter, Bundela Bai filed an application under Section 250 of the Chhattisgarh Land Revenue Code, 1959 alleging that in 0.02 acre land, defendant No.3 Chandrakali has constructed a house and is in possession, she be dispossessed and Bundela Bai be given possession, that application was dismissed for want of prosecution. Thereafter, the plaintiff brought suit that in 0.02 acre land, defendant No.3 has encroached by constructing a house and she is entitled for possession which the trial Court granted and the first appellate Court affirmed the judgment & decree of the trial Court against which this second appeal has been preferred in which substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.

3. Mr. Vimlesh Bajpai, learned counsel appearing for the appellant herein /

defendant No.3, would submit that admittedly, defendant No.3 is in possession after constructing a house over the suit land bearing Khasra No.152/1, area 0.02 acre, and as such, she has perfected her title. He would alternatively plead that even if it is held that adverse possession has not been duly pleaded and established, by virtue of Section 27 of the Limitation Act, 1963, the plaintiff's right and title over the suit land has extinguished and defendant No.3 being in possession, the suit deserves to be dismissed to that extent.

4. Mr. Pallav Mishra, learned counsel appearing for respondent No.1 herein / plaintiff, would support the judgment & decree of the two Courts below.
5. Learned State counsel has brought the decisions of the Supreme Court in the matters of Ravinder Kaur Grewal and others v. Manjit Kaur and others¹ and M. Durai v. Muthu and others² to the notice of this Court.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
7. Admittedly, the land bearing Khasra No.152/1, area 0.16 acre, was held by Tekram and three others which they sold to plaintiff Bundela Bai by registered sale deed dated 2-5-2003 (Ex.P-4) and the plaintiff claimed possession over the suit land. The plaintiff in his statement before the Court in cross-examination paras 11 & 12 admitted the possession of defendant No.3 and clearly indicated that at the time when she purchased the suit land from Tekram, a house was already

1 (2019) 8 SCC 729

2 (2007) 3 SCC 114

constructed 30-35 years back by father of Chandrakali and from that time, Chandrakali and his brothers were residing in the said accommodation. As such, the plaintiff has admitted continuous, uninterrupted and peaceful possession of defendant No.3 and her father 30-35 years prior to the date of purchase by sale deed Ex.P-4. Likewise, Jhitra (PW-2) also in para 6 of his statement has clearly admitted that the suit house was constructed by Chandrakali, but he has stated that the house was constructed 3-4 years back. Dhiru Singh (PW-3) has admitted in his statement that in the suit land area 2 decimal, a house has been constructed 30-35 years back and the said house was constructed by defendant No.3's father Vishram. Samelal (PW-4) has also admitted that when the suit land along with the suit house was sold to the plaintiff, the suit house was constructed 20 years back by Vishram – father of defendant No.3. As such, there is overwhelming evidence on record in the shape of evidence of the plaintiff and her witnesses that the suit house has already been constructed 30-35 years prior to the date of filing of suit. Defendant No.3 though has claimed the suit land by plea of adverse possession, but the plea of adverse possession has not been found proved by both the Courts below.

8. Now, the question is, whether defendant No.3 is entitled to the benefit of Section 27 of the Limitation Act, 1963, as it has already been held by this Court in the preceding paragraphs that defendant No.3 is in continuous and uninterrupted possession 30-35 years prior to the date of filing of suit through her father by constructing a small house over the suit land i.e. over 2 decimal of land.

9. At this stage, Article 65 of the Limitation Act, 1963 would be

pertinent to be noticed herein which reads as under: -

65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
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10. A careful perusal of Article 65 of the Limitation Act, 1963 would show that suit for possession of immovable property or any interest therein based on title should be filed within twelve years from the date on which possession of the defendant becomes adverse to the plaintiff.

11. Since both the Courts below have held that defendant No.3 has failed to plead and establish adverse possession, the question would be, whether defendant No.3 would be entitled for the benefit of Section 27 of the Limitation Act, 1963. Section 27 of the Limitation Act, 1963 provides as under: -

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

12. The above-stated provision clearly provides that after determination of the period prescribed for instituting a suit for right to any property, the party which should have instituted such suit but has failed to do so within the period prescribed by the law of limitation, cases to have any right over the property and after the expiry of the period prescribed under the Limitation Act, the law declares that not only the remedy is barred but the title is also extinguished.

13. This Court in the matter of Resham Lal alias Badri Prasad v. Gosai Ram and others³ has clearly held that the practical effect of the inaction of the appellants/plaintiffs is extinguishment of their title over the suit land

³ 2007(3) C.G.L.J. 231

by virtue of Section 27 of the Limitation Act, 1963.

14. The Supreme Court in the matter of Prem Singh and others v. Birbal and others⁴ has clearly held that limitation is a statute of repose, it ordinarily bars a remedy, but does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Their Lordships observed in paragraphs 11 and 12 of the report as under: -

“11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.”

15. Recently, the Supreme Court in Ravinder Kaur Grewal (supra) with reference to Section 27 of the Limitation Act, 1963 held that once the right to property to recover possession is extinguished, it cannot be re-vested by re-entry or by subsequent acknowledgment of title. Their Lordships observed in paragraphs 28 and 53 of the report as under: -

4 AIR 2006 SC 3608

“28. In *Halsbury's Laws of England*, extinction of title by the effect of the expiration of the period of limitation has also been discussed in Para 783 and once right is lost to recover the possession, the same cannot be re-vested by any re-entry or by a subsequent acknowledgment of title. Para 783 is extracted hereunder:

“783. Extinction of title.—At the expiration of the periods prescribed by the Limitation Act, 1939 for any person to bring an action to recover land (including a redemption action) or an action to enforce an advowson, the title of that person to the land or advowson is extinguished. This is subject to the special provisions relating to settled land and land held on trust and the provisions for constituting the proprietor of registered land a trustee for the person who has acquired title against him. The extinguished title cannot afterward be revested either by re-entry or by a subsequent payment or acknowledgment of title. A rent-charge is extinguished when the remedy to recover it is barred.”
(emphasis supplied)

53. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once the right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.”

16. The Supreme Court in the matter of Yeshwantrao Laxmanrao Ghatge and another v. Baburao Bala Yadav (dead) By L.R's.⁵ while dealing with Section 28 of the Limitation Act, 1908 which is *pari materia* to Section 27 of the Limitation Act, 1963, held that the effect of Section 28 of the Limitation Act was that right to the property was extinguished resulting in conferment of a title by adverse possession on the persons in possession of the concerned properties. It was further held that the effect of Section 28 is not only to bar the remedy, but also extinguish the right. It was also held that it could not be revived by a provision like

the one contained in Section 52-A of the Bombay Public Trusts Act, 1950.

17. Reverting to the facts of the present case in the light of the aforesaid principle of law, it is quite vivid that defendant No.3 is in continuous and peaceful possession over the suit land uninterruptedly through her father for last 30 years as stated by the plaintiff herself (PW-1) and her witnesses – Jhitra (PW-2), Dhiru Singh (PW-3) and Samelal (PW-4) in their statements and as noticed by this Court in the foregoing paragraph. As such, on the date on which the suit was filed i.e. 30-11-2005, by the strength of sale deed dated 2-5-2003, Tekram and three others had already extinguished their title over the suit land (0.02 acre) due to complete inaction on their part in acquiring the possession over the suit land for more than 12 years during which period Vishram and her daughter – defendant No.3 herein remained in possession continuously and without interruption. As such, Tekram and others had no salable rights over 0.02 acre of land to the plaintiff and therefore they had already extinguished their title over the suit land and thus, by alienation, no valid title has been conferred to the plaintiff so as to bring a suit for declaration and possession and both the Courts below are absolutely unjustified in decreeing the suit of the plaintiff to the extent of 0.02 acre of land.

18. Thus, in view of the aforesaid analysis, judgment & decree of the first appellate Court is partly modified holding that the plaintiff is not entitled for possession of the suit land bearing Khasra No.152/1, area 0.02 acre, which is in possession of defendant No.3 by constructing a house over it. The substantial questions of law are answered accordingly and

the appeal is partly allowed. No order as to cost(s).

19. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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