

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 439 of 2006**

Ramdulare Singh, Aged about 67 years, S/o Bahoran Singh, Caste Kshatriya, Occupation – Agriculture, R/o Village Pacheda, Tahsil and District Janjgir-Champa, Chhattisgarh.

---Appellant/Defendant

Versus

1. Nawal Singh, Aged about 57 years, S/o Late Jhaduram, Caste Suryawanshi, R/o Village Siuad, Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh.

---Plaintiff

2. State of Chhattisgarh, Through Collector, District Janjgir-Champa, Chhattisgarh.

---Respondents

For Appellant	:- Mr. Raghvendra Pradhan, Advocate
For Respondent No. 1:-	Mr. Manoj Paranjpe and
	Mr. Anurag Singh, Advocates
For State	:- Mr. Rahul Jha, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

10/01/2020

1. This second appeal preferred by the appellant/defendant was admitted for hearing on the following substantial question of law :-

"Whether both the Courts below are justified in granting the decree of declaration of title and permanent injunction on the basis of adverse possession in favour of the plaintiff by recording a finding which is perverse to the record ?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Suit land bearing Khasra No. 381 area 1.76 acres was originally owned by the defendant Ramdulare Singh. Original plaintiff – Jhaduram initially filed a civil suit for declaration of title and permanent injunction but subsequently, also sought for the relief of correction of sale deed (Ex. P/13) stating *inter alia* that he purchased the suit land from the defendant vide registered sale deed dated 31/03/1977 (Ex. P/13) on payment of cash consideration of ₹ 2,000/- and thereby, he came into possession of the said suit land which he has been cultivating ever since and has also been paying property tax and water tax, however, on 17/06/1991, Jhaduram requested one Teejram to cultivate the suit

land, but Teejram was stopped by Golan Singh and Jai Singh and subsequently, plaintiff inquired from the patwari, then only, he came to know that instead of Khasra No. 381 area 1.76 acres, defendant has mentioned the land bearing Khasra No. 967/2 area 1.52 acres and Khasra No. 1010 area 0.40 decimal in the sale deed dated 31/03/1977 (Ex. P/13) which he has executed in plaintiff's favour and when he inquired, he also found out that Khasra No. 967/2 area 1.52 acres and Khasra No. 1010 area 0.40 decimal is in possession of one Foolsai. Immediately thereafter, plaintiff requested the defendant for correction of the sale deed (Ex. P/13), but the defendant denied stating that he has alienated the land mentioned in the sale deed itself in favour of the plaintiff. It was further pleaded that original plaintiff - Jhaduram has been in possession of the suit land since 1977 i.e. for 15 years and after his death, his son - Nawal Singh i.e. the present plaintiff has been in possession of the suit land, as such, he has perfected his title over the suit land by way of adverse possession, therefore, he is entitled for decree for declaration of title

on the basis of adverse possession, permanent injunction and additional relief of correction of sale deed (Ex. P/13) as claimed by him.

3. Defendant filed his written statement and set up a plea that he has, in fact, sold the land bearing Khasra No. 967/2 area 1.52 acres and Khasra No. 1010 area 0.40 decimal to the plaintiff and not sold Khasra No. 381 area 1.76 acres as claimed by him.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, came to the conclusion that defendant showed the suit land bearing Khasra No. 381 area 1.76 acres to the plaintiff and obtained cash consideration of ₹ 2,000/-, but thereafter, executed the sale deed (Ex. P/13) after mentioning Khasra No. 967/2 area 1.52 acres and Khasra No. 1010 area 0.40 decimal in favour of the plaintiff and further recorded a finding that plaintiff has been in continuous, long, undisturbed and hostile possession of the suit land (Khasra No. 381 area 1.76 acres) and therefore, he has perfected his title by way of adverse possession and accordingly, vide its judgment and decree dated 16/12/2004, decreed the suit of the plaintiff and granted decree for

declaration of title and permanent injunction in his favour.

5. On appeal being preferred by the defendant, learned first appellate Court, vide its judgment and decree dated 31/03/2006, dismissed the appeal and affirmed the judgment and decree of the trial Court against which this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

6. Mr. Raghvendra Pradhan, learned counsel for the appellant/defendant would submit that both the Courts below have concurrently erred in granting decree in favour of the plaintiff ignoring the fact that the possession of plaintiff was permissive in nature as pleaded by the plaintiff himself, therefore, decree for declaration of title could not have been granted in his favour. He would rely upon the decision rendered by the Supreme Court in the matter of Deva (dead) through Lrs. v. Sajjan Kumar (dead) by Lrs.¹ to strengthen his submission that mere long possession of the

¹ (2003) 7 SCC 481

plaintiff for a period of more than twelve years without intention to possess the suit land adversely to the title of the defendant and to the latter's knowledge cannot result in acquisition of title by the plaintiff upon the suit land.

7. Mr. Manoj Paranjpe, learned counsel for the respondent/plaintiff would submit that plaintiff has been in possession of the suit land bearing Khasra No. 381 area 1.76 acres pursuant to the sale deed dated 31/03/1977 (Ex. P/13) executed in his favour by the defendant. It may be an invalid conveyance, but the fact remains that he was placed in possession of the suit land on 31/03/1977 and since then, he has been in possession till the date of filing of the suit i.e. 24/06/1991 and is still continuing his possession which totals to more than 12 years therefore, the nature of his possession would be adverse, as such, the trial Court is absolutely justified in holding that plaintiff has perfected his title over the suit land by way of adverse possession and subsequently, rightly granted decree in his favour which has further been

affirmed by the first appellate Court. The second appeal, thus, deserves to be dismissed.

8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

9. It is the case of the plaintiff that defendant showed him the land bearing Khasra No. 381 area 1.76 acres and agreed to sell the said land to him for which he also obtained a cash consideration of ₹ 2,000/- and executed the sale deed on 31/03/1977 (Ex. P/13) and placed him in possession of Khasra No. 381 area 1.76 acres which he has been cultivating ever since, but later he got to know that the conveyance executed in shape of the sale deed (Ex. P/13) does not consist of the land which was intended to be conveyed to him i.e. Khasra No. 381, instead Khasra No. 967/2 and Khasra No. 1010 is mentioned therein which is apparently held by one Foolsai.

10. Both the Courts below have recorded a finding that plaintiff has been in possession of the suit land bearing Khasra No. 381 area 1.76 acres since the date of execution of the sale

deed i.e. 31/03/1977 though the said sale deed did not state the sale of Khasra No. 381.

11. The question that arises for consideration would be whether the nature of possession of the plaintiff would be adverse or permissive in the present case wherein the plaintiff was placed in possession of the suit land bearing Khasra No. 381 area 1.76 acres pursuant to the execution of the invalid sale deed/title deed (Ex. P/13), but the said conveyance did not state the land to be Khasra No. 381 area 1.76 acres ?

12. In this regard, first of all, the decision rendered by the Court of Judicial Commissioner, Nagpur in the matter of **Mt. Kasturi v. Baliram and Deokisan**² is pertinent to notice wherein it has been held that where the intended conveyance is void from the commencement and for whatever cause, and possession is taken on the intended conveyance, the possession is adverse and after twelve years ripens into a good title.

13. The Constitution Bench of the Supreme Court in the matter of **Collector of Bombay v. Municipal Corporation of the city of Bombay and Ors.**³ has

² AIR 1924 Nag 222

³ AIR 1951 SC 469

held that if the possession of a person continues without any legal title, such possession not being referable to any legal title is prima facie adverse to the owner from the very moment that person takes possession under the invalid grant. Paragraph 19 of the report states as under :-

"19. The Crawford Market site has been in the possession of the Municipal Corporation for over 60 years under an invalid grant, a term of which was that no rent should be charged. We are not concerned now with any question of ejectment or determination of tenancy. Could it be said that the right to levy assessment on the land, enjoyed without any payment of any kind so far, was lost by adverse possession ? I find it difficult to give an affirmative answer. Before a right could be said to be acquired or lost by adverse possession, it must have been the subject of possession by a man without title as against the person with the rightful title. Right to levy assessment is a prerogative right of the Government and it is hard to conceive of a case where it could be said to be lost by adverse possession. True, there can be adverse possession of a limited right like that of a mortgagee or a lessee or even a permanent tenant, but still a right must have been enjoyed by the possessor adversely to the claim of the true owner. It is unnecessary to go into the wider question whether the denial of the right to levy assessment and possession of property coupled with this denial for over a period of 60 years will negative that right; it is sufficient to say that no right to levy assessment was exercised in the case

before us before March, 1938, and the denial was only afterwards."

14. Thereafter, in the matter of State of West Bengal v. The Dalhousie Institute Society⁴, their Lordships of the Supreme Court followed the principle of law laid down in Collector of Bombay (supra) and held that where grant of land in favour of a particular person or an Institute is not in a manner required by law and it is established that grantee was in open, continuous and uninterrupted possession for over 60 years on the basis of invalid grant, the person in such possession acquires title by adverse possession which has been observed in paragraphs 16 and 17 as under :-

"16. There is no material placed before us to show that the grant has been made in the manner required by law though as a fact a grant of the site has been made in favour of the Institute. The evidence relied on by the Special Land Acquisition Judge and the High Court also clearly establishes that the respondent has been in open, continuous and uninterrupted possession and enjoyment of the site for over 60 years. In this respect the material documentary evidence referred to by the High Court clearly establishes that the respondent has been treated as owner of the site not only by the Corporation, but also by the Government. The possession of the respondent must have been on the basis of the grant made by the Government,

which, no doubt, is invalid in law. As to what exactly is the legal effect of such possession has been considered by this Court in Collector of Bombay v. Municipal Corporation of the City of Bombay, 1952 SCR 43 = (AIR 1951 SC 469) as follows:

"...the position of the respondent Corporation and its predecessor in title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the respondent Corporation took possession of the land under the invalid grant. This possession has continued openly, as of right and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title to it and its predecessor in title had been prescribing for during all this period, that is to say, the right to hold the land in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865...."

17. The above extract establishes that a person in such possession clearly acquires title by adverse' possession. In the case before us there are concurrent findings recorded by the High Court and the Special Land Acquisition Judge in favour of the respondent on this point and we agree with those findings. "

15. The principle of law enunciated in Collector of Bombay (supra) and Dalhousie Institute Society (supra) has further been reiterated

and followed by the Supreme Court in **Achal Reddi v. Ramakrishna Reddiar and Ors.**⁵.

Paragraph 9 of the judgment states as under :-

"9. ... The position is different in the case where in pursuance Of an oral transfer or a deed of transfer not registered the owner of a property transfers the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is a clear manifestation of the intention of the owner to divest himself of the right over the property. On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself. The correctness of the decision in Annamalai v. Muthiah, (ILR (1965) 1 Mad 254) (supra) cannot, therefore, be doubted."

16. Likewise, the law laid down in Dalhousie Institute society (supra) was followed with approval in the recent decision of the Supreme court in the matter of Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.⁶ Wherein their Lordships have laid down three classic requirements of adverse possession which states 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 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."

17. The Madhya Pradesh High Court, in the matter of Bala S/o Dola v. Heeralal S/o Urajan and Ors.⁷ has considered the question as to whether the possession of the defendants commencing under an invalid deed of transfer of title would be adverse and has concluded it in paragraphs 9 and 11 as under :-

"9. The next question is whether the possession of the defendants commencing under an invalid deed of transfer of title would be adverse. The learned counsel for the appellant submits that such possession must be deemed to be permissive because unless and until the transfer was validated it must be deemed that the person in possession was holding under the rightful owner. There is no warrant for such a proposition. It has been held in *Peer Khan vs. Hamirsingh*, 1979-1 MPWN 58, that possession commencing under invalid deed of transfer can be adverse. In *Peer Khan* this Court relied on the law laid down by the Apex Court in *State of W. B. vs. The dalhousie Institute Society*, AIR 1970 SC 1778. The possession was held under a grant which was not shown to have been made in the manner required by law. Quoting from an earlier decision in *Collector of Bombay vs. Municipal Corporation of the City of bombay*, AIR 1951 SC 469, their Lordships stated the law by saying that a person having no legal title, but nevertheless holding possession of the land under colour of an invalid grant, such possession not being referable to any legal title is prima facie adverse to the owner from the very moment of taking possession of the land under the invalid grant. The view is consistent with the dictum of their Lordships of the Supreme court in

Nair Service Society Ltd. vs. K. C. Alexander, AIR 1968 SC 1165, wherein it was held that "A person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner; and if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.

11. It, therefore, follows that where a person holds possession under an invalid deed of transfer of title, he holds in, and prescribes, his own title as an owner. It cannot be said that he holds under the previous owner by permission. Hence his possession is hostile from the first day."

18. Thus, from the above-stated principle of law enunciated by the Supreme Court in the aforesaid judgments, it is quite vivid that possession of a person under invalid grant cannot be treated as permissive in nature, his possession will be adverse to the original owner and the person who has been in continuous possession for more than 12 years under invalid grant can be said to have been perfected his title by way of adverse possession and he can, therefore, claim such a right.

19. Reverting back to the facts of the present case in light of the aforesaid legal analysis,

both the Courts below have clearly held that plaintiff has been in continuous possession of the suit land bearing Khasra No. 381 area 1.76 acres for more than 12 years pursuant to the sale deed (Ex. P/13) and it is in the knowledge of the defendant though the conveyance was not executed as intended by him and plaintiff has been in possession of the suit land under invalid grant and has perfected his title by way of adverse possession fulfilling the three classic requirements i.e. adequate in continuity, adequate in publicity and adverse to a competitor/defendant, in denial of title and his knowledge as held in **Ravinder Kaur Grewal** (supra). In view of this finding, the trial Court granted decree for declaration of title and permanent injunction in favour of the plaintiff which was then affirmed by the first appellate Court. I do not find any perversity or illegality in the said finding recorded by both the Courts below. The judgment relied upon by Mr. Raghvendra Pradhan, learned counsel for the appellant/defendant is, thus, clearly distinguishable.

20. As a fallout and consequence of the above discussion, the judgment and decree of the trial Court as affirmed by the first appellate Court is hereby reaffirmed by this Court. The second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

21. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet