

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 198 of 2008**

1. Mahavir Singh Rathore S/o Sunder Singh Rajput,  
Aged about 40 years.

2. Bisaribai (died) through LRs. :-

(a). Ram Singh S/o Brijlal Gandariya, Aged about  
50 years, R/o Village Kokanpur, Tahsil Kanker,  
District North Bastar, Kanker, Chhattisgarh.

**---Appellants**

**Versus**

1. Jasbir Singh S/o Bhanwar Singh, Aged about 13  
years.

2. Devendra Singh S/o Bhanwar Singh, Aged about 4  
years.

Both minors through Mother Jahurabai W/o Bhanwar  
Singh, R/o Village Kokanpur, Tahsil and District  
Kanker, Bastar, Chhattisgarh.

3. State of M.P. (Now Chhattisgarh), Through  
Collector Kanker, North Bastar, Chhattisgarh.

**--- Respondents**

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| For Appellants  | :- | Mr. Prakash Tiwari, Advocate      |
| For Respondents | :- | Mr. Ramesh Kumar Sharma, Advocate |
| For State       | :- | Mr. Ravi Bhagat, Dy. G.A.         |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**04/03/2020**

1. Heard on admission and formulation of substantial  
question of law in this second appeal preferred  
by the appellants/defendants under Section 100 of

the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court decreed the suit of the plaintiffs.

2. Mr. Prakash Tiwari, learned counsel for the appellants/defendants would submit that both the Courts below have concurrently erred in holding that defendants have not perfected their title over the suit property by way of adverse possession and thereby, committed illegality in decreeing the suit of the plaintiffs by recording a finding which is perverse and contrary to the record, as such, the second appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

3. The two plaintiffs namely Jasbir Singh and Devendra Singh, being minors, filed a suit for possession and permanent injunction through their guardian mother Jahurabai stating *inter alia* that they purchased the suit property through their mother from one Manoharlal by registered sale deed dated 02/08/1978 (Ex. P/2) and thereby, came in possession of the said suit property on which they continued to remain in cultivating possession till 18/08/1991 when defendants

forcibly entered into the suit property and destroyed the crops sown therein and threatened to kill plaintiffs' mother Jahurabai ultimately, dispossessed the plaintiffs from the suit property, as such, plaintiffs are entitled for decree for recovery of possession and permanent injunction.

4. Defendants filed their written statements separately and set up a plea that they are in possession of the suit property since long back and plaintiffs have not been in possession of the suit property for 12 years from 02/08/1978 whereas some other person was in open and undisturbed possession of the suit property, as such, the suit has become time barred by virtue of Sections 65 and 66 of the Indian Limitation Act, 1963 and it deserves to be dismissed therefor.

5. Learned trial Court, upon consideration of oral and documentary evidence on record, decreed the suit holding that plaintiffs have right and title over the suit property which they acquired after purchasing the suit property from Manoharlal by sale deed dated 02/08/1978 (Ex. P/2) and defendants have failed to establish their adverse

possession over the suit property. On appeal being preferred by the defendants, learned first appellate Court affirmed the findings of the trial Court and dismissed the appeal.

6. A careful perusal of the defendants' separately filed written statements would show that they have simply pleaded that Manoharlal, from whom plaintiffs have purchased the suit property, was not in possession of the suit property 12 years ago and it was in possession of some other person, therefore, Manoharlal had no right and title to alienate the suit property in favour of the plaintiffs and defendants have been in possession of the suit property for more than 12 years, therefore, plaintiffs' suit is barred by Sections 65 and 66 of the Limitation Act.

7. 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.

8. The Supreme Court in the matter of **Karnataka Board of Wakf v. Government of India and others**<sup>1</sup>

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

9. 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

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<sup>1</sup>(2004) 10 SCC 779

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."

10.1. 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<sup>2</sup>, 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 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. ..."

10.2. 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.

10.3. 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*<sup>3</sup>, 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*

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3 Pilla Akkayamma v. Channappa, 2015 SCC OnLine Kar 8226 : ILR 2015 Kar 3841

*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 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*<sup>4</sup>, 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 laid down by the Supreme Court in the aforesaid judgments, it is quite vivid that defendants have failed to clearly plead that they have been in possession of the suit property for the last 12 years and they have further failed to establish that they have perfected their title over the suit property by way of adverse possession, except making a

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4 (2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453

bald statement that they have been in possession of the suit property for the last 12 years. They were required to show that they have been in continuous, undisturbed and peaceful possession of the suit property for the last 12 years since the date of institution of the suit, the nature of their possession and if their possession was hostile to the possession of the plaintiffs which has not been shown by the defendants, as such, both the Courts below have concurrently and rightly held that plaintiffs' suit is not barred by Sections 65 and 66 of the Limitation Act and defendants have failed to establish the plea of adverse possession. The aforesaid finding recorded by both the Courts below is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

12. 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**