

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 388 of 2006**

1. Shersingh (died) through Lrs. :-

(I). Smt. Dhela Bai, Wd/o Late Shersingh, Aged about 60 years.

(ii). Tiharuram Pal, S/o Late Shersingh, Aged about 35 years.

Both are R/o Village Samonda, Tahsil Arang, Distt. Raipur, Chhattisgarh.

---Appellants/Defendants

Versus

Sewaram Sahu S/o Banshilal Sahu, Aged about 38 years, R/o Village Samonda, Tahsil Arang, Distt. Raipur, Chhattisgarh.

--- Respondent/Plaintiff

For Appellants	:-	Mr. A.P. Sharma, Advocate
For Respondent	:-	Mr. Y.C. Sharma, Sr. Advocate with Mr. Anil Gulati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/06/2021

1. This second appeal preferred by the appellant/defendant (now his LRs.) was admitted for hearing on 25/11/2013 by formulating the following two substantial questions of law :-

"1) Whether the appellants have been able to prove their case for title over the suit premises by way of adverse possession ?

2) Whether the findings arrived at by the two Courts below are perverse or not ?"

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

2. The suit property was originally held by one Ramdulari Dewangan who sold the suit property in favour of the plaintiff by sale deed dated 12/02/2001 (Ex. P/4) and delivered its peaceful possession thereof. Thereafter, plaintiff brought a suit for possession based on title against the defendant stating inter alia that she be granted decree for possession as she is the title-holder of the suit property.
3. The sole defendant filed his written statement stating inter alia that he is in possession of the suit property for the last 15 years, as such, he has perfected his title over the suit property by way of adverse possession, therefore, plaintiff's suit deserves to be dismissed.
4. Learned trial Court, after appreciating the oral and documentary evidence on record, decreed the

suit in favour of the plaintiff by its judgment and decree dated 05/04/2006 holding that plaintiff is the title-holder of the suit property and defendant is a trespasser in her land, therefore, plaintiff is entitled for decree for possession which was also affirmed by the first appellate Court in the appeal preferred by the defendant vide its impugned judgment and decree dated 10/07/2006 against which this second appeal under Section 100 of CPC has been preferred by the defendant (now his LRs.) in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

5. Mr. A.P. Sharma, learned counsel for the appellants/LRs. Of defendant, would submit that though defendant has not taken the plea of perfecting his title by way of adverse possession, yet he is in possession of the suit property for the last 15 years, therefore, he is not a trespasser on plaintiff's land and he cannot be evicted by the plaintiff, as such, both the Courts below have erred in granting decree for possession in favour of the plaintiff and the instant appeal be allowed by setting

aside the judgment and decree of both the Courts below.

6. Mr. Y.C. Sharma, learned senior counsel appearing for the respondent/defendant, would vehemently submit that plaintiff has rightly been held to be the title-holder of the suit property by both the Courts below on the strength of sale deed dated 12/02/2001 (Ex. P/4) executed by Ramdulari Dewangan in her favour. The defendant further did not take the plea of perfecting his title by way of adverse possession and merely because he has been in possession of the suit property for the last 15 years, his title cannot be perfected by way of adverse possession until and unless an express plea has been taken and it has been proved by leading appropriate evidence, as such, the judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court decreeing the suit of the plaintiff deserves to be maintained and the instant appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-

above and went through the records with utmost circumspection.

8. Both the Courts below have clearly held that plaintiff is the title-holder of the suit property having purchased it from the erstwhile title-holder Ramdulari Dewangan by sale deed dated 12/02/2001 (Ex. P/4) and it has further been held that though defendant is in possession of the suit property for the last 15 years, but since the plea of adverse possession has not been taken and proved by the defendant, it cannot be held that he has perfected his title over the suit property by way of adverse possession and decree for possession has been granted in favour of the plaintiff.
9. Now, the question is, whether the defendant has made out a case for perfection of his title over the suit property 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**¹

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.

12. The principle of law laid down in **Karnataka Board of Wakf** (supra) has been followed with approval in **Ravinder Kaur Grewal and Others v. Manjit Kaur and Others**² and their Lordships in paragraphs 60, 61 & 62 of the report laid down

1 (2004) 10 SCC 779

2 (2019) 8 SCC 729

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. The Supreme Court (Constitution Bench) in the matter of M. Siddiq (Dead) through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das & Others³ has clearly held that the claim on the basis of adverse possession amounts to acknowledgement of title of person against whom adverse possession is claimed and the plea of adverse possession has to be expressly taken and it has to be proved 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

3 (2020) 1 SCC 1

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. ..."

14. Their Lordships further relying upon the judgment of the Supreme Court in the matter of **Karnataka Board of Wakf** (supra) have 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. 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

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

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 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*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. ..."

15. Reverting to the facts of the case in light of the aforesaid judgments of the Supreme Court, it is quite vivid that defendant was though in possession of the suit property for a fairly long time, but he has failed to plead and establish the plea of adverse possession by adhering to the three classic requirements of adverse possession as stated above. In that view

⁵ (2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453

of the matter, both the Courts below are justified in decreeing the suit of the plaintiff holding that plaintiff is the title-holder of the suit property and defendant, having not taken the plea of adverse possession, has suffered the decree for possession. I do not find any perversity or illegality in the findings recorded by both the Courts below while decreeing the suit of the plaintiff.

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

17. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet