

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.224 of 2011**

1. Shankarlal, S/o. Late Loknath Gupta, aged about 48 years, Occupation-Agriculture,
2. Mrigendra, S/o. Late Loknath Gupta, aged about 36 years, Occupation-Agriculture,
3. Jagdish, S/o. Late Loknath Gupta, aged about 34 years, Occupation-Agriculture,
4. Madan, S/o Late Loknath Gupta, aged about 30 years, Occupation-Agriculture,

All R/o Village Kharwat, Tahsil Baikunthpur,
District Korla (CG)

----- Appellants/Plaintiffs

Versus

1. The State of Chhattisgarh, Through: The Collector, Korla, District Baikunthpur (CG)
2. Sub-Divisional Officer (Revenue), Baikunthpur, Dist.Korla (CG)
3. Tahsildar, Baikunthpur, Dist.Korla (CG)
4. Divisional Forest Officer (D.F.O.), Korla Forest Division, Baikunthpur, Distt. Korla (CG)

----- Respondents/Defendants

For Appellants/Plaintiffs:

Mr.A.K.Prasad, Advocate

For Respondents/Defendants:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/3/2021

1. Heard this second appeal on admission and formulation of substantial question of law preferred by the appellants/plaintiffs.
2. By the impugned judgment and decree, the first

appellate Court dismissed the appeal preferred by the appellants/plaintiffs by affirming the judgment and decree of the trial Court dismissing the suit filed for declaration of title and permanent injunction based on adverse possession.

3. Learned counsel for the appellants/plaintiffs would submit that both the Courts below have concurrently erred in holding that the plaintiffs have failed to prove their title over the government land and failed to prove title by way of adverse possession, by recording a finding which is perverse and contrary to record and the second appeal involves substantial question of law for determination.
4. Article 112 of the Limitation Act, 1963 provides for period of limitation for filing suit by Central or State Government :-

112.	Any suit (except a suit before the Supreme Court in exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the government of the State of Jammu and Kashmir.	Thirty years.	When the period of limitation would begin to run under this Act against a like suit by a private person.
------	---	---------------	--

5. By virtue of above-stated provision, the period of limitation against the State government being 30

years, a person can convert his possession into an absolute title against the government, only by proving possession for 30 years. In order to claim adverse possession against the government, a person has to prove such possession for the full statutory period and he has to prove adverse possession. So, on mere proof of long possession, the burden is not shifted on the State to show that it had held possession within the period provided by the Article.

6. Article 112 of the Limitation Act, 1963 is *para materia* provision to Article 144 of old Limitation Act, 1908. The Nagpur High Court, in the matter of **Provincial government, Central Provinces and Berar v. Govindrao Tukaram**¹ while considering adverse possession under old Article 144 of Limitation Act, 1908, has held that government having fundamental rights in all land, possessory title cannot prevail against it and a person must prove adverse possession for continuous period of 60 years and observed as under:-

“That a possessory title is good against all but the true owner, is a proposition which can be accepted, but the government has the fundamental right in all land and is, therefore, the true owner. Accordingly

1 AIR 1949 Nagpur 403

a person who relies on a possessory title cannot succeed against government unless he can show either that the government has parted with its title in some way to the plaintiff or his predecessors or that the plaintiff and his predecessors have been holding adversely against government and so have acquired a good title against government by adverse possession. The adverse possession necessary in the case of government is 60 years."

It was further held that continuous and uninterrupted possession over a long period can give rise to presumption in possession is there with title would not apply to the case of a State Government having fundamental right over the land observing as under:-

"Continuous and uninterrupted possession over a long period can give rise to a presumption that the person in possession is there with title even when the possession is short of the statutory period. This presumption may apply in a case between private individuals but it cannot apply to the case of a body in whom the fundamental right resides, such as the government."

7. A person who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must

be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.[please see **Annasaheb Bapusaheb Patil and others v. Balwant @ Balasaheb Babusaheb Patil (Dead) by LRs. & Heirs and others²**].

8. It is not in dispute that title by adverse possession can be prescribed also against the government, but where the claim of adverse possession in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right and title of State to immovable property and also conferring upon a third party encroacher title where he had none. [See **State of Rajasthan v. Harphool Singh (Dead) through his LRs³**].

9. The Supreme Court in the matter of **R. Hanumaiah and another v. Secretary to Government of Karnataka,**

2 (1995) 2 SCC 543

3 (2000) 5 SCC 652

Revenue Department and others⁴ has held that in order to establish the plea of adverse possession, the limitation period would be thirty years and further laid down principles of the law indicating the nature of proof required in a suit for declaration of title against the government, which is reproduced herein below :-

Nature of proof required in suits for declaration of title against the Government

"19. Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The *second* difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from

4 (2010) 5 SCC 203

Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse

possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaintiff averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title

by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored.

23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc. or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government. Be that as it may."

10. Recently, the Supreme Court in the matter of **Joginder and another v. State of Haryana and others**⁵

has held as under:-

"9. At this stage, the decision of this Court in the case of Jagpal Singh (supra) is required

to be referred to. In the said decision, this Court had come down heavily upon such trespassers who have illegally encroached upon on the Gram Sabha/Gram Panchayat Land by using muscle powers/money powers and in collusion with the officials and even with the Gram Panchayat. In the said decision, this Court has observed that "such kind of blatant illegalities must not be condoned". It is further observed that "even if there is a construction the same is required to be removed and the possession of the land must be handed back to the Gram Panchayat". It is further observed that "regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village". Thereafter, this Court has issued the following directions:

"23. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For 1 this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession.

Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

In view of the above also, the prayer of the petitioners for regularization of their illegal occupation of the panchayat land cannot be accepted."

11.Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), in the instant case, both the Courts below have held that the plaintiffs have not perfected their title by way of adverse possession and even further held that Khasra No.537 area 8.70 acres is part of *Chhote Jhad Ka Jungle*. Even both the Courts below have not found possession of the plaintiffs over the suit land. In view of aforesaid finding recorded by two Courts below, I do not find any substantial question of law for determination of this second appeal.

12. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to other side.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-