

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.282 of 2012**

1. Shanker Lal, aged about 51 years, S/o Sahdev Kumhar,
2. Ganesh, aged about 48 years, S/o Sahdev Kumhar,

Both R/o Village Mohara, Tahsil and Distt. Rajnandgaon

(Plaintiffs)
---- Appellants

Versus

1. Smt. Usha Shrivastava, W/o Kamlesh Shrivastava, R/o Baldevbagh, Tahsil and Distt. Rajnandgaon

2. State of Chhattisgarh, through Collector, Rajnandgaon

(Defendants)
---- Respondents

For Appellants / Plaintiffs: -

Mr. Parag Kotecha, Advocate.

For Respondent No.1 / Defendant No.1: -

Mr. Rakesh Thakur, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/02/2021

1. This second appeal preferred by the plaintiffs / appellants herein

was admitted on the following substantial question of law:

“Whether both the Courts below have committed illegality by holding that the appellants have failed to prove adverse possession, especially in the light of unchallenged para 1 of the evidence of appellant Shanker Lal?”

(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 property was held originally by Sumiya Bai – mother of

the plaintiffs. She had sold the suit property by registered sale deed Ex.D-2 on 31-3-1975 in favour of defendant No.1 and the name of defendant No.1 was also recorded in the revenue record by the order of the Tahsildar which was set aside by the Sub-Divisional Officer by order dated 1-5-1979. Thereafter, the plaintiffs also preferred an application before the Debts Relief Court claiming that the sale deed Ex.D-2 is not an outright sale, it was a mortgage executed for security of loan. Ultimately, that application was rejected and the Additional Collector by its order dated 16-3-1979 declared that Ex.D-2 is a sale transaction, it is not executed for security of loan and it is not mortgage. Thereafter, by order dated 20-7-2001, the name of defendant No.1 was recorded in the revenue records by the order of the Tahsildar, duly affirmed by the Sub-Divisional Officer by order dated 26-3-2002 and by the Additional Collector by order dated 26-2-2007, which was sought to be challenged by the plaintiffs by instituting suit on 31-7-2001 claiming declaration of title and permanent injunction stating inter alia that the sale deed executed by their mother in favour of defendant No.1 was executed by their mother without prior permission of the court which is hit by Section 8(2) of the Hindu Minority and Guardianship Act, 1956 and that is not binding on them and defendant No.1 has got his name mutated in the revenue records. It was also pleaded that the order dated 1-5-1979 reverting the names of the plaintiffs in the revenue record was never challenged by defendant No.1. Simultaneously, it was also pleaded that since the plaintiffs are in possession over the suit land prior to 1975, they have also perfected their title by

way of adverse possession and claimed decree as aforesaid.

3. Resisting the suit, defendant No.1 filed her written statement stating inter alia that she purchased the suit land from Sumiya Bai by Ex.D-2 on 31-3-1975 and came in possession and her name was recorded in the revenue records in the year 1977. The suit land was sold by Sumiya Bai for legal necessity of her family and in spite of that, the plaintiffs got their application rejected by the Debts Relief Court on 7-6-1978, which was affirmed by the Additional Collector on 16-3-1979 (Ex.D-3), it was not challenged by the plaintiffs directly after obtaining copy of the same, therefore, the suit is barred by limitation and as such, the suit deserves to be dismissed.
4. The trial Court in order to decide the suit, framed as many as seven issues including the issue of title of the plaintiffs; whether the suit is barred by limitation and also whether the plaintiffs' mother as head of the family sold the suit property to defendant No.1 and whether the plaintiffs have perfected their title by way of adverse possession, and dismissed the suit holding that the plaintiffs have no title over the suit land, their mother had already sold the suit land in favour of defendant No.1, the suit is also barred by limitation by virtue of Article 60(a) of the Limitation Act, 1963 and the plaintiffs have also failed to establish their plea by adverse possession. In the appeal preferred by the plaintiffs, the first appellate Court has affirmed the judgment & decree of the trial Court; questioning the same, this second appeal has been preferred in which substantial question of law has been formulated by this Court which has been set-out in the opening paragraph of this judgment for the

sake of completeness.

5. Mr. Parag Kotecha, learned counsel for the appellants herein / plaintiffs, would submit that both the Courts below have concurrently erred in not decreeing the suit of the plaintiffs on the basis of adverse possession as there is un-controverted evidence on record to hold that the plaintiffs are in possession from 1975 and defendant No.1 is not in possession of the suit land for last 12 years, therefore, the plaintiffs have perfected their title by way of adverse possession and as such, the judgment & decree of the both the Courts below deserve to be set aside and the present second appeal deserves to be allowed. He would rely upon the decisions of the Supreme Court in the matters of Ravinder Kaur Grewal and others v. Manjit Kaur and others¹ and Ravinder Kaur Grewal and others v. Manjit Kaur and others² to buttress his submission.

6. Mr. Rakesh Thakur, learned counsel for respondent No.1 herein / defendant No.1, would submit that the plaintiffs having claimed title over the suit land cannot simultaneously take the plea of adverse possession as both are inconsistent and destructive pleas. He would further submit that if the issue of limitation has been decided by the trial Court against the plaintiffs and affirmed by the first appellate Court, no such issue / question of law has been proposed or formulated by this Court, therefore in the suit which has been found concurrently barred by limitation by the two Courts below, no decree for declaration of title can be granted in favour of the plaintiffs.

1 AIR 2019 SC 3827 (Civil Appeal No.7764/2014 with SLP (Civil) Nos.8332-8333 of 2014, decided on 7-8-2019)

2 AIR 2020 SC 3799 (Civil Appeal No.7764/2014, decided on 31-7-2020)

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. As per the plaint averment, the plaintiffs setup their plea on the basis of their own title holding that their mother Sumiya Bai could not have alienated the suit property on 31-3-1975 (Ex.D-2) in favour of defendant No.1, that was without legal necessity and that too without prior permission of the court under Section 8(2) of the Hindu Minority and Guardianship Act, 1956. Alternatively, it was also pleaded that the plaintiffs have perfected their title by adverse possession over the suit land. The trial Court held that the plaintiffs' mother had already sold the suit property in favour of defendant No.1 by which defendant No.1 has become title holder and the suit is barred by limitation. However, the trial Court further found that the plaintiffs have not established their plea based on adverse possession taken alternatively by the plaintiffs and in appeal, the first appellate Court affirmed the decree of the trial Court.
9. Admittedly and undisputedly, the plaintiffs did claim title upon the suit land pleading that the alienation so made by their mother in favour of defendant No.1 was without legal necessity and is hit by Section 8(2) of the Hindu Minority and Guardianship Act, 1956, which both the Courts did not accept and rejected, and further held that the suit could have been brought by the plaintiffs within three years from the date of attaining majority and thus the suit is barred by Section 60(a) of the Limitation Act, 1963. The said finding has attained finality as it has not been questioned by the plaintiffs. Further, the plaintiffs also took the

plea of ripening into their title by prescription i.e. acquisition of title by adverse possession which is an inconsistent plea taken by the plaintiffs in their claim and the substantial question of law formulated is confined to the plea of adverse possession.

10. It is well settled law laid down by the Supreme Court in the matter of Firm Srinivas Ram Kumar v. Mahabir Prasad³ that it is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea it could be granted, which has been followed in the matter of Arundhati Mishra (Smt) v. Sri Ram Charitra Pandey⁴.

11. The question is, whether the plea based on title and adverse possession are mutually inconsistent and whether the plaintiffs can be permitted to set up a plea based on title and simultaneously on same breath can be allowed to raise the plea of perfection of title by way of adverse possession.

12. The Supreme Court in Arundhati Mishra (Smt) (supra) has clearly held that the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced and in that case, the Supreme Court further held that since his plea is based on his title, he never denounced his title nor admitted the title of the appellant.

13. Likewise, in the matter of L.N. Aswathama and another v. P. Prakash⁵, the Supreme Court relying upon its earlier decisions clearly held that the pleas based on title and adverse possession are mutually inconsistent and the latter does not

3 AIR 1951 SC 177

4 (1994) 2 SCC 29

5 (2009) 13 SCC 229

begin to operate until the former is renounced. It has been observed as under: -

“17. ... The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide *P. Periasami v. P. Periathamb*⁶, *Md. Mohammad Ali v. Jagdish Kalita*⁷ and *P.T. Munichikkanna Reddy v. Revamma*⁸.)”

14. In the matter of **Mohan Lal v. Mirza Abdul Gaffar**⁹, it has been held that the pleas based on Section 53-A of TP Act and adverse possession both are mutually inconsistent and destructive. It has been observed as under: -

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the (sale) agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor-in-title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period of his title by prescription nec vi, nec clam, nec precario (not by violence, not by stealth, not by permission). Since the appellant's claim is founded on Section 53-A (of the Transfer of Property Act, 1882), it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

15. In the matter of **Karnataka Board of Wakf v. Government of India and others**¹⁰, similar proposition has been struck by the Supreme Court and the principle of law rendered in **Mohan Lal** (supra) has been relied upon and it has been held as under: -

6 (1995) 6 SCC 523

7 (2004) 1 SCC 271

8 (2007) 6 SCC 59

9 (1996) 1 SCC 639

10 (2004) 10 SCC 779

“13. As we have already found, the respondent obtained title under the provisions of the Ancient Monuments Act. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by the respondent is unsustainable. The High Court ought not to have found the case in their favour on this ground.”

16. Thus, following the principles of law laid down in the aforesaid judgments, it is quite apparent that the plea of the plaintiffs based on title as well as adverse possession, both are inconsistent and destructive pleas setup by the plaintiffs. The trial Court negated the title of the plaintiffs holding that their mother had already alienated the suit property in favour of defendant No.1 and further held that the plaintiffs have not questioned the said alienation and the Debts Relief Court has already declared the transaction as sale transaction which has become final. Once the plaintiffs claim themselves to be owners and title holders of the suit land and it has been held that they are not title holders, in the considered opinion of this Court, at the same breath, they are precluded from claiming the said plea based on adverse possession. Further, the plea based on title and the plea based on adverse possession, both are mutually destructive pleas and the plea of adverse possession is not available to the plaintiffs, as they have not renounced the title on them and they have not admitted the title of defendant No.1 over the suit land. As such, the plea of adverse possession was neither available nor has been established by the plaintiffs. Even otherwise, it has been held by the two Courts below that the plea of adverse possession has not been established by the

plaintiffs by appropriate pleading and leading evidence on the said plea which is the concurrent finding recorded by the two Courts below that the plaintiffs have failed to prove the plea of adverse possession. Further, both the Courts below have concluded that the plaintiffs' suit is barred by limitation which has not been challenged in this second appeal. As such, I do not find any merit in the second appeal and the first appellate Court is absolutely justified in affirming the judgment & decree of the trial Court. The substantial question of law is answered accordingly and the second appeal is dismissed. No order as to cost(s).

17. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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