

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1320 OF 2016

Vincent Joseph Pareira ..Appellant

v/s.

Ms. Monika Monsiana Mariya & Anr. ..Respondents

Mr. Pawan K. Pandey i/b. CLAYDERMAN & CO. for the Appellant.
None for the Respondents.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 7th JUNE, 2022.**

P.C.

1. By this Appeal under Section 96 of the Civil Procedure Code, the Appellant has challenged the judgment dated 30.03.2016, whereby the learned Judge, City Civil Court, Dindoshi, Mumbai has dismissed S.C.Suit No.1776 of 2014.

2. The dispute is in respect of land bearing CTS No. 1302 admeasuring 665.5 sq. mtrs surveyed at Survey No.158, Hissa No.3/1, CTS No.1304 admeasuring 402.1 sq.mtrs surveyed in Survey No.158 Hissa No.14 of Village Eksar, Marry Land Road, I.C.Colony, Borivali. The said property shall be hereinafter referred to as “the suit property”.

3. The Appellant claims that he is in possession of the suit property

since the year 1982 as Ostensible owner. The Appellant claims that the suit property was infertile agricultural land and that on 29.12.1982 he started auto repair garage in the name and style I.C. Auto Garage in the suit property. He also constructed two semi permanent structures as well as service ramps in the suit property. The property is surveyed in the Survey Records in the name of the Respondents. The Appellant has claimed that sometime in the first week of November, 1984 the Respondents along with some unknown persons tried to dispossess him from the suit property. He resisted the attempt of the Respondent/Defendant to dispossess him. The Appellant claims that he is in continuous occupation, possession and enjoyment of the suit property. He therefore filed a suit for declaration that has acquired title to the suit property by adverse possession.

4. The records indicate that the Respondent-Defendant did not contest the suit. The evidence of the Appellant-Plaintiff was recorded and by ex-parte judgment dated 30.3.2016, the learned Judge, relying upon the decision of the ***Hon'ble Supreme Court in Gurudwara Sahib vs. Gram Panchayat Village Sirthala & Anr.*** held that the suit for declaration on the basis of adverse possession is not maintainable.

5. In the subsequent decision in ***Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors. (2019) 8 SCC 729*** a three Bench Judge of the

Hon'ble Supreme Court has held that :

59. 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 owners right to eject him is lost and the possessory owner acquires right, title and interest possessed by 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 the 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 his 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.

60. *When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.*

61. *Resultantly, we hold that the decisions of Gurudwara Sahab vs. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand vs. Mandir Shri Lakshmi Siddh Maharaj (supra) and Dharam (dead) through Lrs vs. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by the Plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a Plaintiff. ”*

6. The Suit was dismissed relying upon the decision in Gurudwara Sahab vs. Gram Panchayat Villa Sirthala which has now been overruled in Ravinder Kaur Grewal (supra). Under the circumstances, the impugned judgment cannot be sustained. Hence the appeal is allowed. The impugned judgment is set aside. The matter is remanded to the Trial Court with direction to decide all the issues, including the issue of adverse possession on merits of the matter.

7. Appeal stands disposed of.

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(ANUJA PRABHUDESSAI, J.)