

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.304 OF 2013
WITH CA/6065/2013**

**SAHEBRAO VISHWANATH MUTHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Appellant : Mr. R.R. Karpe
AGP for Respondent/State : Mr. P.G. Borade
...

CORAM : S.G. MEHARE, J.

DATED : NOVEMBER 08, 2023

PER COURT:-

1. Heard learned counsel for the appellant and learned AGP for the State.
2. The appellant had claimed the adverse possession over Gat No.216 ad-measuring 31 R of land against the Government. He has claimed that he was possessing the suit land since 1968 uninterruptedly and to the knowledge of the true owner and his possession was made public. He had a case that since he was in uninterrupted possession for 12 years, he has perfected the title by adverse possession. However, the learned Trial Court as well as the First Appellate Court declined his plea and dismissed the suit.
3. Learned counsel for the appellant would submit that both Courts have discussed and recorded the finding that the suit is barred by limitation, but no issue as such was framed. Therefore, this is a substantial question of law involved in the case. He would submit that

the documentary evidence of the 7/12 extract and mutation entry has also not been properly appreciated to believe the uninterrupted possession over the suit land. He was possessing the suit land for more than 40 years.

4. Per contra, the learned AGP would submit that the limitation for claiming the adverse possession against the Government is 30 years as per Article 112 of the Limitation Act and not under Article 65 of the said Act.

5. For perfecting the title by adverse possession, the burden is on the person claiming adverse possession to prove the ouster. To establish ouster, it is necessary to prove the requisite animus, to prescribe title adversely to the true owner. There must be positive evidence of possession and hostile animus must be brought to the knowledge of the owner against whom the ouster is claimed. Ouster is a positive matter, and the hostile animus necessary to constitute ouster must also be a positive matter. For entertaining a hostile animus to ouster the real owner, the person in possession need not know who the real owner whoever he be, known or unknown, the animus is sufficiently hostile to exclude the real owner also. These are the broad principles determining the title claimed on the basis of the adverse possession.

6. In the case at hand, the plaintiff was very well knowing that the Government is the owner of the land. So, it was difficult to accept that it was a ouster of the real owner. It appears that both Courts dealt with the suit presuming that it is governed under Article 65 of the

Limitation Act. Here, both Courts committed error. Admittedly, the land was a Government land. Therefore, the issue could not have been dealt with by considering the adverse possession under Article 65 of the Limitation Act. Article 112 of the Limitation Act would apply in the case of adverse possession claimed against the Government. The period of limitation for claiming the adverse possession against the Government is 30 years.

7. Learned counsel for the appellant would submit that it is an Article for claiming the possession by or on behalf of the Central Government or the State Government. Therefore, Article 112 would not apply.

8. A basic idea behind the adverse possession is that the person who is not the owner should be in possession to the knowledge of the true owner for a particular period and after completing that period, he gets a cause of action or right to claim the title perfected by a long standing possession known as 'adverse possession'. Article 65 governs with the limitation to bring the suit for possession against the private party. If a person files a suit for possession, the burden is on him to prove that his suit is within 12 years. If a person files a suit for possession, he has to establish that he is claiming possession within 12 years. In such a suit, the person in possession may say that the suit is barred by limitation, as he is in possession for more than 12 years and he has perfected the title by adverse possession. Earlier, the adverse possession was a shield and not the sword. Now, the right has been

conferred upon a person in a long standing possession to file a suit for declaration of title by adverse possession. The person claiming adverse possession has a cause of action after the prescribed period of limitation. Article 112 prescribes 30 years period to file the suit for adverse possession against the Government. If it is so, for claiming adverse possession against the Government, such person must be in uninterrupted possession for 30 years. Considering the evidence of the appellant/plaintiff, he failed to prove that he was in uninterrupted possession for more than 30 years. The plaintiff had no right to claim title perfected by adverse possession. Hence, the suit was not maintainable.

9. In view of the above discussion, the Court finds that there is no substantial question of law involved in the appeal. Hence, the appeal stands dismissed at the admission stage. No order as to costs.

10. Pending civil applications, if any, stand disposed of.

(S.G. MEHARE, J.)