

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.775 of 2017

Sanjeev Kumar Chaudhary, S/o Sri Kumudendra Mohan Chaudhary, Resident
of Village- Belhari, P.S.- Bihariganj, District- Madhepura.

... .. Petitioner/s

Versus

1. Phool Jha, S/o Sri Nageshwar Jha.
2. Smt. Lata Devi, W/o Sri Phool Jha, Both are resident of Mohalla- Sipahi Tola Chunapur Road, P.S.- Khajanchi Ghat (K. Ghat), District- Purnea.
3. Hem Lata Mishra, W/o Late Hari Mohan Mishra.
4. Neetu Mishra, W/o Late Manoj Mishra, Both are resident of Mohalla- Sipahi Tola, Madhubani Road, P.S. Khajanchi Ghat (K. Ghat), District- Purnea.
5. Kumari Prachi Mishra.
6. Kumari Richa Mishra, Both are minor daughter of Late Manoj Mishra and represented through their mother and natural guardian Neetu Mishra, resident of Mohalla- Gipahi Tola, Madhubani Road, P.S.- Khajanchi Ghat, (K. Ghat), District- Purnea.
7. Smt. Sarita Ojha, D/o Late Hari Mohan Mishra and W/o Harish Chandra Jha, resident of 52/60 Officer Flat Bailey Road, P.S. Kotwali, District- Patna.
8. Smt. Divya Dubey, D/o Late Hari Mohan Mishra and W/o Prabhat Shankar Dubey, resident of Abhilasha Mohalla- Lalu chak, P.S. Bhagalpur, District- Bhagalpur.
9. Smt. Alka Mishra, D/o Late Hari Mohan Mishra and W/o Kaushal Kishore Mishra, resident of AD- 126/1 Costle Apartment Ravindra Palley, Prafulla Kanan Kestopur, P.S.- Kestopur, Kolkata- 700101.
10. Smt. Rashmi Mishra, D/o Late Hari Mohan Mishra and W/o Sri Satya Prakash Mishra, resident of Vrindavan Garden Apartment Near Ram Nagri More, Ashiana Nagar Road, P.S. Rajeev Nagar, Patna- 800025.
11. Smt. Sushila Pandey, D/o Late Hari Mohan Mishra and W/o Dr. Indu Bhushan Pandey, resident of A-1/4 Gomati Nagar, P.S.- Gomati Nagar, Lacknow U.P.
12. Smt. Mukta Upadhyay, D/o Late Hari Mohan Mishra and W/o Sri Rajeev Upadhyay, resident of M.I.G. 121 Lohia Nagar, P.S. Kankarbagh, Patna- 800020.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bhanu Pratap Singh, Advocate Mr. Jharkhandi Upadhyay, Advocate
For the Respondent/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Sanjeev Kumar Mishra, Advocate Mr. Ritk Shah, Advocate



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 08-02-2024

Heard learned counsel for the petitioner and learned counsel for the respondent 1st set on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed for setting aside the order dated 08.02.2017 passed by the learned Sub-Judge 1st, Purnea in Title Suit No. 135 of 2015 by which the learned Sub-Judge 1st Purnea rejected the petition filed by the defendant-petitioner under Order VII Rule 11(d) of the Code of Civil Procedure (hereinafter referred to as the Code) for rejection of the plaint.

3. Learned counsel for the petitioner submits that the respondent 1st set are the plaintiffs before the learned trial court and they filed Title Suit No. 135 of 2015 seeking following relief(s):-

“(i) Let it be decided, declare and adjudicated that the right, title and interest over the suit land was obtained by the plaintiffs by way of adverse possession against defendant 1st and defendant 2nd party. Thus title of the plaintiffs be declared over the suit property.

(ii) After the above declaration possession of plaintiff be confirmed over the suit property.



(iii) That the Kewala dated 29.5.2015 (Twenty Nineth day of May Two thousand fifteen) executed by the defendant no.1 in favour of defendant 2nd party be declared void and inoperative because the defendant no.1 ceased to have any right over the suit property to convey the same in favour of defendant 2nd party since what ever right she had, she have lossed by adverse possession of plaintiff hence title over the suit land was not transferred through the sale deed dated 29.5.2015 (Twenty Nineth day of May Two thousand fifteen) as such defendant 2nd party has got right to claim suit property in any way.

(iv) A decree of permanent injunction be also granted in favour of the plaintiff and the defendant be restrained from claiming the suit land.

(v) Cost of the suit together with such other relief or reliefs to which the plaintiff may be found under the circumstances may also be declared in favour of the plaintiff.”

4. Learned counsel further submits that the plaintiffs cannot maintain a suit seeking declaration of right, title and interest over the suit property on the ground of adverse possession. The plea of adverse possession can be taken only as a defence and cannot be wielded as a sword. Learned counsel has placed reliance on the decision of the Hon'ble Supreme



Court in the case of ***Gurdwara Sahib vs. Gram Panchayat Village Sirthala & Anr.***, reported in ***(2014) 1 SCC 669***.

Paragraph nos. 8 and 10 read as under:-

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejection of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of Issue 1 to the effect that the appellant is in possession of adverse possession since 13-4-1952 operates as res judicata. Subject to this clarification, the appeal is dismissed.”

5. Learned counsel thus submitted that the plaintiffs



could have defendant themselves and if any proceedings were initiated against them, but they could not have filed a suit on their own for declaration of their right, title and interest over the suit property on the ground of adverse possession. Learned trial court erred and did not consider the law as propounded by the Hon'ble Supreme Court and passed an erroneous order rejecting the application filed under Order VII Rule 11(d) of the Code.

6. Learned senior counsel appearing on behalf of the respondent 1st set submits that there is no bar for a plaintiff to maintain a suit on the ground of adverse possession and the issue has been settled by the Hon'ble Supreme Court in the case of ***Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & Ors.***, reported in ***(2019) 8 SCC 729***, wherein the Hon'ble Supreme Court overruled its earlier decision relied by the learned counsel for the petitioner i.e., ***Gurdwara Sahib (supra)***. Paragraph nos. 51, 52, 53, 62 and 64 of ***Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & Ors.*** read as under:-

“51. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation in Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and



extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

52. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

53. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once the right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is



sought to be defeated.

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.

64. Resultantly, we hold that decisions of *Gurdwara Sahib v. Gram Panchayat Village Sirthala* [*Gurdwara Sahib v. Gram Panchayat Village Sirthala*, (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630] and decision relying on it in *State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj* [*State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj*, (2017) 9 SCC 579 : (2017) 4 SCC (Civ) 671] and *Dharampal v. Punjab Wakf Board* [*Dharampal v. Punjab Wakf Board*, (2018) 11 SCC 449 : (2018) 5 SCC (Civ) 148] 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 the aforesaid basis in case of infringement of any rights of a plaintiff.”

7. Thus, learned senior counsel submits that there is no merit in the instant petition and the same may be dismissed.

8. Learned counsel for the petitioner, by way of reply, submits that the decision relied on by the learned senior counsel for the respondent 1st set has been pronounced in the year 2019 whereas the impugned order was passed on 08.02.2017. So the law existing at that time is required to be considered.

9. Having considered the rival submissions, as on today the issue has not remained *res integra*. The Hon’ble Apex



Court has clarified that even a plaintiff can maintain a suit for declaration of title on the basis of adverse possession. If there were judicial pronouncement to the effect that a plaintiff could not file a suit on the ground of adverse possession, the said proposition has been overruled by the decision of a Bench of three Judges of the Hon’ble Supreme Court in the case of ***Ravinder Kaur Grewal & Ors. (supra)*** and the earlier decision could not be said to be laying down the correct law. Not it has been settled that a plaintiff can maintain a suit on its own on the basis of adverse possession.

10. In view of discussion made hereinabove, I do not find any merit in the petition of the petitioner and therefore, I am not inclined to interfere with order dated 08.02.2017 passed by the learned Sub-Judge 1st, Purnea in Title Suit No. 135 of 2015.

11. Hence, the present petition stands dismissed at the stage of admission itself.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.02.2024
Transmission Date	NA

