



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

992 WRIT PETITION NO. 3479 OF 2020

Bhaskar s/o Babasaheb Ritpure (Died),

L.Rs.

1-A) Kunal bhaskar Ritpure,

1-B) Kapil bhaskar Ritpure,

1-C) Gaurav Bhaskar Ritpure

...Petitioners

VERSUS

Vasant s/o Bhaurao Mane (Died)

L.Rs.

1-A) Sumabbai Vasant Mane,

1-B) Shobha Sanjay Patil,

1-C) Shailabai w/o Ramakant Patil,

1-D) Ranjana w/o Subhash Patil (Died)

L.Rs.

1-D-i) Subhash Yadavrao Patil,

1-D-ii) Vikram Subhash Patil,

1-D-iii) Vasundhara Subhash Patil.

...Respondents

Advocate for the Petitioner : Mr. A. D Sonkawade h/f Hon Ashwin V.

Advocate for Respondents No.1/D/i to 1/D/iii: Mr. A. V. Patil

CORAM : ARUN R. PEDNEKER, J.

Dated : October 18, 2024.

ORAL ORDER : -

1. Heard the learned counsel for the petitioner. A counterclaim filed by the defendant has been rejected by the impugned order on the ground that adverse possession can only be set up as a defence against the owner to defend possession of the defendant, and that the adverse possessor may protect themselves from dispossession at the hands of the owner. However, it does not create a right of ownership for the adverse party. Therefore, the Civil Court by the impugned order held that the relief of declaration of ownership based on adverse possession sought in the counterclaim has to be excluded. The order dated 14/03/2019 is

challenged before this Court.

2. The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Ravindra Kaur Grewal vs. Manjit Kaur, reported in AIR 2019 Supreme Court 3827**, wherein a three-judge bench of the Hon'ble Supreme Court held in paragraphs 59 and 61 as follows :-

"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 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."

*"61. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (AIR 2017 SC 4472) (supra) and Dharampal (dead) through LRs v. 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 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.**"*

3. Thus, the Hon'ble Supreme Court in the case of **Ravindra Kaur Grewal (supra)** has clearly held that a person can protect his title upon the acquisition of title by adverse possession, and a suit is also maintainable upon acquisition of the title by adverse possession.

4. The learned counsel appearing for the respondent submits that the impugned order was passed on 14/03/2019, whereas the judgment of the Supreme Court in case of **Ravindra Kaur Grewal (supra)** was delivered on 07/08/2019, and at the time of impugned Judgment, the law in the field was governed by the case of **Dharampal (dead) through LRs v. Punjab Wakf Board, reported in (2018) 11 SCC 449.**

5. However, ***Ravindra Kaur Grewal (supra)*** has overruled the judgment of ***Dharampal (supra)*** and clarified the position as stated in paragraphs 59 and 61. Once the law is declared by the Supreme Court, it is presumed to be the law from inception, and it cannot be argued that the law came into effect only from the date of the Judgment unless it is prospectively applied by the Judgment. Therefore, the contention raised by the learned counsel for the respondent cannot be accepted. In view of this, the impugned order is set aside. The counterclaim shall be taken on record, and the matter shall be decided on merits.

6. With the above observations, the writ petition is allowed and disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.