



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.402 OF 2023

APPELLANT : Arifur Rahaman Aminur Rahaman Sheikh,
On R. A. Aged 50 years, Occu- Cultivator, R/o Kazi
Mohalla, Tilak Ward, Bhandara, Tah & Dist.
Bhandara. **(Original Defendant)**

..VERSUS..

RESPONDENT : Godumal s/o Sirumal Sindhi @ Godumal s/o
On R. A. Sirumal Rawalani,
Aged 80 years, Occu- Business, R/o WCL Colony,
Jheripatka, Nagpur, Tah. & Dist. Nagpur.
(Original Plaintiff)

Mr I. A. Fidvi, Advocate for Appellant.

CORAM : **ANIL L. PANSARE, J.**

DATE : **17th DECEMBER, 2024.**

ORAL JUDGMENT

1. Heard Mr I. A. Fidvi, learned counsel for appellant.

None appears for respondent.

2. The appeal has been admitted on following substantial
question of law :

“A. Whether the impugned judgment and decree is sustainable in view of change in legal position of adverse possession by virtue of direction in judgment and order dated 07/08/2019 in case of Ravinder Kaur vs. Manjeet Kaur in Civil Appeal No.7764/2014 ?”

3. The appellant – original defendant, in Regular Civil Suit No.205 of 2013 filed by the respondent – original plaintiff, has alongwith written statement filed a counter claim. The suit filed by the respondent came to be dismissed. The counter claim filed by appellant, however, continued. The appellant, by way of counter claim, put forth a case of ownership over the suit land by way of adverse possession. Both the Courts below by relying upon the judgment passed by the Hon'ble Supreme Court in the case of *Gurudwara Sahib vs. Gram Panchayat village Sirthala and Anr, 2014 (4) Mh.L.J. 74*, dismissed the counter claim. Both the Courts below noted that the Supreme Court has held that the plea of adverse possession can be only used as a shield and not as a sword.

4. Mr I. A. Fidvi, learned counsel for appellant, has placed reliance upon yet another judgment of the Supreme Court in the case of *Ravinder Kaur Grewal and Ors. vs. Manjit Kaur and Ors., 2019 (8) SCC 729*, wherein the Supreme Court held that the decision in *Gurudwara Sahib's* case does not lay the law correctly and accordingly it was overruled. The Supreme Court clarified 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. Thus, the Supreme Court has held that plea of adverse possession can be also used as a sword and is not restricted for user as a shield.

5. The aforesaid pronouncement will, however, be of no use to the appellant, inasmuch as the First Appellate Court has dismissed the appeal not only on the ground that the plea of adverse possession can be only used as a shield and not as a sword, but also in view of the plea taken by the appellant and the evidence led in support. The First Appellate Court has noted that the appellant has specifically stated in his pleadings that the suit land has been declared by the Government as evacuee property on the ground that the land owners left India permanently in India - Pakistan partition. According to the appellant, the suit land was wrongly allotted to the respondent. He has further stated that he had not accepted the revenue entry nor has he vacated the suit land. Accordingly, the First Appellate Court held that the appellant has not accepted the respondent as a landlord/owner of the suit field No.381 situated at Umari, and therefore, essential requirement for setting up title by adverse possession is absent.

6. Having heard learned counsel for appellant, who failed to point out that this finding is perverse, I do not find any reason to interfere with the impugned judgment. If, the appellant is disputing the respondent's title, he cannot put forth a plea of adverse possession against the respondent. It is well settled that unless enjoyment of the property is accompanied by adverse animus, mere possession for a long period would not be sufficient to mature the title to the property by adverse possession.

7. In the circumstances, despite there being change in the legal position as regards adverse possession in terms of the judgment passed by the Hon'ble Supreme Court in *Ravinder Kaur Grewal's* case, the impugned judgment and decree is still sustainable. The substantial question of law is accordingly answered in affirmative. There is, thus, no merit in appeal. The appeal is **dismissed**.

8. Pending Civil Application (S) No.763 of 2024 stands disposed of.

(ANIL L. PANSARE, J.)