
(2020) 02 CHH CK 0007

Chhattisgarh High Court

Case No: Second Appeal No. 431 Of 2008

Jodhan (Dead) Through
Lr's

APPELLANT

Vs

Suresh Kumar And Anr

RESPONDENT

Date of Decision: Feb. 4, 2020

Acts Referred:

- Limitation Act, 1963 - Article 65

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: V.K. Pandey, Anjali Singh Chauhan

Final Decision: Dismissed

Judgement

1. Heard this second appeal preferred by the appellant/plaintiff on the question of admission and for formulation of substantial question of law.

2. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by the appellant/plaintiff affirming the judgment

and decree of the trial Court dismissing the suit finding no merit.

3. Mr.v.K.Pandey, learned counsel for the appellant/legal representative of the plaintiff, would submit that both the Courts below have concurrently

erred in dismissing the suit of the plaintiff and as such, the appeal deserves to be admitted by formulating the substantial question of law for

determination.

4. The plaintiff filed a suit for declaration of title and permanent injunction stating interÂalia that he has perfected his title over the suit land bearing

Khasra No.1311/9 area 1.49 hectares as he is in possession since 1951-52 in which defendant No.1 interfered with his peaceful possession. The trial

Court dismissed the suit finding no merit. On appeal being preferred by the plaintiff, the first appellate Court upheld the judgment and decree of the trial Court.

5. The question for consideration would be, whether the plaintiff has perfected his title by way of adverse possession over the suit land ?

6. The Supreme Court in the matter of Karnataka Board of Wakf v. Government of India and others (2004) 10 SCC 779 has laid down the

requirements for pleading and establishing necessary facts to establish his adverse possession. Para 11 of the report states as under:

11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property

by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and

asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled

principle that a party claiming adverse possession must prove that his possession is *nec vi, nec clam, nec precario*, that is, peaceful, open

and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It

must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M

Karim v. Bibi Sakina 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D. N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567).

Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that

are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a

person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether

the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.

A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead

and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (1996) 8 SCC 128).

7. The principle of law laid down in Karnataka Board of Wakf (supra) has recently been followed by the Supreme Court in the matter of Ravinder

Kaur Grewal and others v. Manjit Kaur and others (2019) 8 SCC 729, in which it was held as under:

56. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the

property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on "title" as envisaged in

the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the

start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of

limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is

synonym with adverse possession.

60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec

clam i.e., adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that

if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it.

Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's

long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user

does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property,

protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour

and makes the land cultivable. The legislature in various States confers rights based on possession.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our

opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfillment of

certain conditions, tacking may be by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person

must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct

trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.â€

8. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is

quite vivid that in the present case, the plaintiff has failed to prove that on what date he came into possession, what was the nature of his possession,

whether the factum of possession was known to other party, how long his possession has continued and his possession was open and undisturbed.

Both the Courts below have concurrently held that the plaintiff has failed to prove the requirements of adverse possession over the suit land. Finding

recorded by two Courts below qua adverse possession is finding of fact based on evidence available on record, which is neither perverse nor contrary

to record. I do not find any perversity or illegality in said finding.

9. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to other side.