

## Des Raj and Others Vs Bhagat Ram and Others

**Court:** High Court of Himachal Pradesh

**Date of Decision:** Aug. 31, 1998

**Citation:** (1999) 1 ShimLC 189

**Hon'ble Judges:** R.L. Khurana, J

**Bench:** Single Bench

**Advocate:** Bhupender Gupta, for the Appellant; Anand Sharma and Tarlok Chauhan for Respondent No. 1, Hardeep Verma, Court-guardian for Respondent No. 8 and Baldev Singh, Vice-Counsel for Respondents 38 to 43, for the Respondent

**Final Decision:** Dismissed

### Judgement

R.L. Khurana, J.

The present Second Appeal has been directed against the concurrent findings of the two courts below, holding the

Respondent-Bhagat Ram to have become the owner of the land in dispute, described in the plaint, by virtue of his continuous adverse possession

for the last more than twelve years before the suit.

2. The Appellants and Respondents No. 29 to 43 were the Defendants 1 to 22-A, while Respondent No. 1 was the Plaintiff and Respondents

No. 2 to 28 were the pro forma Defendants 23 to 49 before the learned Trial Court. They are being referred to accordingly hereinafter.

3. Land measuring 232 bighas, 10 biswas comprising in Khewat No. 2, Khatoni Nos. 2 to 9 of Mohal Samlen, Pargana, Chuban, Tehsil Bhattiyat,

District Chamba, is recorded in the revenue record under the ownership of the Plaintiff to the extent of 1/3rd share and Defendants 1 to 22-A to

the extent of 2/3rd share. The dispute pertains to 2/3rd share of the Defendants No. 1 to 23-A. The pro forma Defendants 23 to 49 are

transferees from the Plaintiff in respect of a part of the land falling within the 1/3rd share of the Plaintiff.

4. The case of the Plaintiff is that he is coming in exclusive possession of the land in dispute and holding it adversely to the Defendant Nos. 1 to 22-

A, since prior to 1952-53 and by virtue of such adverse possession he has acquired title qua the land in dispute.

5. The suit was resisted only by Defendants 1 to 16, 18, 19, 21, 22 and 22-A. They denied the exclusive possession of the Plaintiff over the land

in dispute. It was pleaded that the revenue entries showing the Plaintiff to be in exclusive possession were wrong. It was averred that the joint

khata is jointly owned and possessed by the parties, namely, the Plaintiff and Defendants No. 1 to 22-A.

6. The two courts below have concurrently held that the Plaintiff by virtue of his adverse possession has acquired title qua the land in dispute

byway of prescription. Defendant Nos. 1 to 22-A were accordingly restrained by way of a permanent injunction from interfering with the

ownership and possession of the Plaintiff "qua the land in dispute.

7. Admittedly, the land measuring 232 bighas, 10 biswas, of which the land in dispute, forms a part, is recorded under the ownership of the Plaintiff

to the extent of 1/3rd share and the Defendants No. 1 to 22-A to the extent of 2/3rd share. The Plaintiff is being recorded as in exclusive

possession of the entire land measuring 232 bighas, 10 biswas. The land in dispute, which measures 175 bighas, 5 biswas represents the 2/3rd

share of Defendants No. 1 to 22-A. The Plaintiff claims himself to be in adverse possession of the land in dispute, since prior to 1952-53.

8. The Defendants 1 to 22-A, on the other hand, have claimed that they are in joint possession of the whole land measuring 232 bighas, 10 biswas

along with the Plaintiff and that the revenue entries showing the Plaintiff to be in exclusive possession of the land in dispute are wrong.

9. This is, therefore, a case where adverse possession is being set up by a co-sharer against other co-sharers.

The law as to adverse possession, as between the co-sharer, by now is well settled and admits of no conflict. The fundamental rule is that the

possession of a co-sharer is presumed to be on behalf of and for the benefit of all the co-sharers. This possession being itself lawful, cannot be

considered as adverse. Such possession which can be referred to a lawful title, cannot be considered as adverse. A co-sharer who, therefore,

claims adverse possession as against his other co-sharer(s), must plead and establish that there was an open and unequivocal denial of the title of

his co-sharers by him and that such denial or repudiation was to the knowledge of such other co-sharer(s). He has further to show that he

continued to enjoy the property exclusively for the entire statutory period after the aforesaid unequivocal denial by him of the title of his other co-

sharer(s).

10. It is equally well settled that mere non-participation in the rent and profits of the land by a co-sharer does not amount to an ouster so as to give

title by adverse possession to the co-sharer in possession of the joint land. Nor long exclusive possession necessarily constitutes adverse

possession.

11. In the present case, the Plaintiff has specifically pleaded that he is in continuous possession of the land in dispute in open and unequivocal denial

of title of Defendants No. 1 to 22-A, since prior to 1952-53. As stated above, the long-standing revenue entries since 1952-53 record the Plaintiff

to be in exclusive possession of the land in dispute.

Ex. P.1 is the copy of the plaint of the suit instituted by some of the Defendants in the year 1968, against the present Plaintiff. This plaint is dated

29.2.1968. By virtue of this suit, the Plaintiffs therein, who are the Defendants in the present case, had prayed for joint possession of the land,

which is the subject-matter of this suit. In para 3 of this plaint, it has been averred that the Plaintiff in the present case, was in exclusive possession

of the land in dispute and that he was asserting and claiming himself to be the sole owner thereof.

Ex. DW 2/A is the copy of the written statement filed by the present Plaintiff as Defendant in the said case. In para 3 of the said written statement,

which is dated 1.4.1969, the present Plaintiff had specifically raised a plea with regard to his adverse possession.

This suit, which was filed by some of the Defendants in the year 1968, was dismissed as having abated on 24.12.1977, vide order Ex. P-11 by the

learned Sub-Judge, Dalhousie.

Yet another suit being suit No. 38 of 1978 was filed by some of the present Defendants on 20.9.1978 for joint possession of the land in dispute

against the present Plaintiff. This suit also was dismissed as having abated on 11.1.1984, vide Ex. P-12 by the learned Senior Sub-Judge,

Chamba.

The pleas raised by the parties in the earlier two suits clearly prove and establish that the Plaintiff had asserted his hostile title as against the

Defendants 1 to 22-A to their knowledge and in complete denial of their title at least in the year 1968. It is also proved that the Plaintiff is

continuing to be in such hostile possession since then. He has not been ousted therefrom at any point of time.

Therefore, on the basis of the material coming on the record, especially in the form of Ex. P-1, Ex. DW 2/A, Ex. P-11 and Ex. P-12, it is

established that the Plaintiff is coming in adverse possession of the land in dispute in complete denial of the title of the Defendants No. 1 to 22-A

and to their knowledge at least since 1968. The suit out of which the present appeal has arisen was filed on 20.8.1986, that is, after about 18 years

from the date of denial of title of Defendants 1 to 22-A by the Plaintiff. The adverse possession as on the date of suit having continued for more

than the statutory period of twelve years has thus ripened into ownership.

12. The two courts below on the basis of the evidence coming on the record have rightly held the Plaintiff to have become the owner of the land in

dispute by way of adverse possession.

13. Resultantly, there being no merit in the present appeal, the same is dismissed leaving the parties to bear their own costs.