



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 23rd OF JULY, 2025

SECOND APPEAL No. 652 of 2007

POORAN

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri Jai Prakash Mishra – Advocate for appellant.

Shri G.K. Agarwal – Government Advocate for respondent No.1/State.

Shri Soumya Pawaiya – Advocate for respondent No.2.

JUDGMENT

Heard on the question of admission.

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 02.08.2007 passed by II Additional District Judge (Fast Track Court), Basoda, District Vidisha (M.P.) in Regular Civil Appeal No.104-A/2006 as well as judgment and decree dated 31.07.2006 passed by II Civil Judge Class II, Ganjbasoda, District Vidisha (M.P.) in Regular Civil Suit No.205A/1994.

2. Present appeal has been filed by the plaintiff who has lost his case from both the courts below.

3. The facts, necessary for disposal of present appeal, in short, are that the plaintiff/appellant filed a suit for declaration and permanent injunction by



pleading *inter alia* that appellant was in possession of 1.066 hectares out of total area 2.320 hectares of Survey No.53 as well as 1.090 hectares of total area 7.630 hectares of Survey No.215, total area 2.180 hectares on the basis of verbal lease granted by earlier *Zamindar*. He had paid the rent to *Zamindar* also. Even after abolition of *Zamindari* rights, the plaintiff was in possession of the property in dispute and therefore now he has acquired the *Bhumiswami* rights. By mistake of revenue authorities, the land stood vested in the State whereas no information in this regard was given to the plaintiff. However, it was claimed that the plaintiff was in possession of the property in dispute. It was further claimed that in case if it is found that plaintiff has not acquired the rights of *Bhumiswami* still by virtue of his open and hostile possession, he has perfected his title by way of adverse possession. It was further submitted that the State authorities by denying the title of the plaintiff are out and out to allot the land on *patta* to different persons.

4. Defendant No.1 filed its written statement and denied the plaint averments. It was stated that the plaintiff was never in possession of the property in dispute. The State Government was the owner and the aforesaid land has been declared as *Kabilkasht land* and accordingly has allotted *Patta* to landless people of scheduled caste, namely, Jalam S/o Halku, Hari Singh S/o Satte, Bharosa S/o Naunita, Shriram S/o Guman and Maan Singh S/o Gendalal and accordingly, the leaseholders are in possession of the property in dispute. It was further pleaded that plaintiff has not clarified that which *Zamindar* had granted verbal *Patta* to him and when that verbal *Patta* was granted.

5. Defendant No.3, namely, Maan Singh filed a separate written statement and denied the plaint averments and it was denied that the plaintiff is in possession of the property in dispute for the last 30 years. It was further claimed



that *Patta* has been granted to defendant No.3 in respect of Khasra No.215 area 2 hectares and thus he has acquired *Bhumiswami* rights.

6. The Trial Court, after framing issues and recording evidence, dismissed the suit.

7. Being aggrieved by the judgment and decree passed by the Trial Court, appellant preferred an appeal which too has been dismissed by the court below.

8. Challenging the judgment and decree passed by the courts below, it is submitted by counsel for appellant that the courts below have failed to see that a verbal *Patta* was granted by Ex-Zamindar and therefore, after the abolition of *Zamindari* rights, he has acquired *Bhumiswami* rights and proposed the following Substantial Questions of Law:

(1) Whether, in the facts and circumstances of the case the impugned judgement and decree passed by the learned First Appellate Court confirming the judgement and decree passed by the learned Trial Court is illegal, without jurisdiction and contrary to law ?

(2) Whether, in the facts and circumstances of the case the learned first appellate court has erred in law in over looking the material piece of oral and documentary evidence of the plaintiff?

(3) Whether, the learned First Appellate Court has erred in law in over looking the direction issued by this Hon'ble Court in Second Appeal No.685/1997 which is mandatory to be followed by the learned Trial Court as well as by the learned First Appellate Court ?

(4) Whether, the learned First Appellate Court has erred in law in not considering, discussing and appreciating oral and documentary evidence on record which goes unrebutted?

(5) Whether, in view of the settled possession of the plaintiff over the suit land, the plaintiff is legally entitled to get decree for permanent injunction in view of the law laid down by this Hon'ble Court reported in 1970 MPWR-SN 43, reported in 1996 RN 425



(Bhagwan Singh vs. Sardar Singh) and reported in 1996 RN 389 (Teepan Vs. Chuyn) and also in view of the law laid down by Hon'ble Apex Court reported in Pratap Rai N. Kothari Vs. John Braganza reported in 1999 4 SCC 403 ?

(6) Whether, in the facts and circumstances of the case the learned first appellate court has erred in law in basing the impugned judgement on evidence which are not on record ?

(7) Whether, in the facts and circumstances of the case, the learned first appellate court has erred in law in drawing the presumption regarding plaintiff's continuous possession over the suit land ?

(8) Whether, the learned first appellate court has committed illegality and jurisdictional error in not drawing backward and forward possession on the basis of Khasras entries, on record ?

(9) Whether, the certified copy of Khasra entries Ex. P.1 issued by the Patwari is permissible in evidence?

(10) Whether, the learned First Appellate Court has erred in law in not decreeing the plaintiff's case when the plaintiff has proved his case by adducing the oral and documentary evidence then the burden of proof shifted over the defendants while the defendants have failed to adduce any evidence in support of their defence and rebuttal?

(11) Whether, the findings in impugned judgement passed by the learned first appellate court are perverse ?

(12) Whether, the decree of injunction ought to have been passed in favour of plaintiff when plaintiff proved to be in settled possession?

(13) Whether, the impugned judgements are speaking or reasoned judgements ?

(14) Whether, the impugned judgement passed by the learned first appellate court is based on surmises and conjectures ?



9. Heard learned counsel for the parties.

10. Although the plaintiff had claimed that verbal Patta was granted to the father of plaintiff by Ex-Zamindar but in the plaint pleadings it was claimed by the plaintiff that verbal Patta was granted by Ex-Zamindar to the plaintiff himself. Further, the plaintiff could not point out the name of the *Zamindar* who had granted verbal *Patta*. Even no document has been placed on record to show that the land in dispute was a *Zamindari* land. Furthermore, no documentary evidence has been filed to prove that the plaintiff was in possession of the land in dispute in Samvat 2007 i.e. year 1950 and Samvat 2008 i.e. year 1951. Nothing has been placed on record to show that plaintiff had ever paid rent to the Ex-Zamindar. Both the courts below have given a concurrent finding of fact that the plaintiff has failed to prove that any verbal Patta was granted either to him or to his father and he has also failed to prove that after abolition of *Zamindari* rights, he has acquired the rights of *Bhumiswami*.

11. So far as the question of adverse possession is concerned, the plaintiff has taken two self-contradictory pleadings. On one hand, he has claimed that he is in possession by virtue of verbal *Patta* granted by Ex.Zamindar whereas on the other hand he has claimed that he has perfected his title by way of adverse possession. In order to establish the plea of adverse possession, the aspirant has to admit the title of true owner.

12. The Supreme Court in the case of **Hemaji Waghaji Jat Vs. Bhikabhai Khengarbhai Harijan and others** reported in (2009) 16 SCC 517 has held as under:

14. In *Secy. of State for India In Council v. Debendra Lal Khan* [(1933-34) 61 IA 78 : AIR 1934 PC 23] it was observed that the



ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

15. This Court in *P. Lakshmi Reddy v. L. Lakshmi Reddy* [AIR 1957 SC 314], while following the ratio of *Debendra Lal Khan case* [(1933-34) 61 IA 78 : AIR 1934 PC 23], observed as under : (*P. Lakshmi Reddy case* [AIR 1957 SC 314] , AIR p. 318, para 4)

“4. ... But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster.”



The Court further observed thus : (*P. Lakshmi Reddy case* [AIR 1957 SC 314] , AIR p. 318, para 4)

“4. ... the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession.”

16. In *S.M. Karim v. Bibi Sakina* [AIR 1964 SC 1254], Hidayatullah, J. speaking for the Court observed as under : (AIR p. 1256, para 5)

“5. ... Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for ‘several 12 years’ or that the plaintiff had acquired ‘an absolute title’ was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.”

17. The facts of *R. Chandavarappa v. State of Karnataka* [(1995) 6 SCC 309] are similar to the case at hand. In this case, this Court observed as under : (SCC p. 314, para 11)

“11. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been



pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant.”

18. In *D.N. Venkatarayappa v. State of Karnataka* [(1997) 7 SCC 567 : (1998) 2 CLJ 414] this [Ed. : The extract quoted herein below is taken from the observations of the learned Single Judge of the High Court in an order involved in *D.N. Venkatarayappa case*, (1997) 7 SCC 567.] Court observed as under : (SCC p. 571b-c, para 3)

“Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession....”



19. In *Md. Mohammad Ali v. Jagadish Kalita* [(2004) 1 SCC 271] this Court observed as under : (SCC p. 277, paras 21-22)

“21. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

22. ... We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein.”

20. In *Karnataka Board of Wakf v. Govt. of India* [(2004) 10 SCC 779] at para 11, this Court observed as under : (SCC p. 785)

“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.”

The Court further observed that : (SCC p. 785, para 11)

“11. ... 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 the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.”

21. In *Saroop Singh v. Banto* [(2005) 8 SCC 330] this Court observed : (SCC p. 340, paras 29-30)

“29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See *Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak* [(2004) 3 SCC 376] .)

30. ‘*Animus possidendi*’ is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states



that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Md. Mohammad Ali v. Jagdish Kalita* [(2004) 1 SCC 271] .)”

22. This principle has been reiterated later in *M. Durai v. Muthu* [(2007) 3 SCC 114] . This Court observed as under : (SCC p. 116, para 7)

“7. ... in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession.”

23. This Court had an occasion to examine the concept of adverse possession in *T. Anjanappa v. Somalingappa* [(2006) 7 SCC 570]. The Court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The Court further observed that : (SCC p. 577, para 20)

“20. ... The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor



actually informing the real owner of the former's hostile action.”

24. In a relatively recent case in *P.T. Munichikkanna Reddy v. Revamma* [(2007) 6 SCC 59] this Court again had an occasion to deal with the concept of adverse possession in detail. The Court also examined the legal position in various countries particularly in English and American systems. We deem it appropriate to reproduce relevant passages in extenso. The Court dealing with adverse possession in paras 5 and 6 observed as under : (SCC pp. 66-67)

“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. *It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.* (See *Downing v. Bird* [100 So 2d 57 (Fla 1958)]; *Arkansas Commemorative Commission v. City of Little Rock* [227 Ark 1085 : 303 SW 2d 569 (1957)] ; *Monnot v. Murphy* [207 NY 240 : 100 NE 742 (1913)] ; *City of Rock Springs v. Sturm* [39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929)] .)

6. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed



it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. (See *American Jurisprudence*, Vol. 3, 2d, p. 81.) *It is important to keep in mind while studying the American notion of adverse possession, especially in the backdrop of limitation statutes, that the intention to dispossess cannot be given a complete go-by. Simple application of limitation shall not be enough by itself for the success of an adverse possession claim.*”

13. The Supreme Court also in the case of **Nand Ram (Dead) Through Legal Representatives And others vs. Jagdish Prasad (Dead) Through Legal Representatives** reported in **(2020) 9 SCC 393** has held as under:

“42 In the present proceedings, the respondent has denied his status as that of a tenant but claimed title in himself. The respondent claimed adverse possession and claimed possession as owner against a person, who has inducted him as tenant. The respondent was to prove his continuous, open and hostile possession to the knowledge of true owner for a continuous period of 12 years. The respondent has not led any evidence of hostile possession to the knowledge of true owner at any



time before or after the award of the Reference Court nor has he surrendered possession before asserting hostile, continuous and open title to the knowledge of the true owner. The question of adverse possession without admitting the title of the real owner is not tenable. Such question has been examined by this Court in *Uttam Chand v. Nathu Ram* [(2020) 11 SCC 263].”

14. The Supreme Court in the case of **A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others** reported in (2012) 6 SCC 430 has held as under:

“43.6. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

43.7. The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.”

15. The plaintiff cannot take two self-contradictory stands i.e. on one hand that the possession of the land was with the plaintiff in his *Bhumiswami* rights and on the other hand that he has perfected his title by way of adverse possession.



Unless and until the title of the true owner is admitted by the plaintiff, he cannot set up his claim on the basis of adverse possession. Both the courts below have given a concurrent findings of fact that neither the plaintiff is in possession nor he has perfected his title by way of adverse possession. It is well established principle of law that this Court in exercise of power under Section 100 of CPC cannot interfere with the concurrent findings of fact even if they are found to be erroneous. No perversity in the findings recorded by the courts below could be pointed out by counsel for appellant. Thus, it is held that no substantial question of law arises in the present appeal.

16. Accordingly, judgment and decree dated 02.08.2007 passed by II Additional District Judge (Fast Track Court), Basoda, District Vidisha (M.P.) in Regular Civil Appeal No.104-A/2006 and judgment and decree dated 31.07.2006 passed by II Civil Judge Class II, Ganjbasoda, District Vidisha (M.P.) in Regular Civil Suit No.205A/1994 are hereby affirmed.

17. *Ex. consequenti*, appeal fails and is hereby ***dismissed*** *in limine*.

(G.S. Ahluwalia)
Judge