

**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT INDORE**  
**BEFORE**  
**HON'BLE SHRI JUSTICE ANIL VERMA**  
**SECOND APPEAL No. 26 of 2005**

**BETWEEN:-**

**NANURAM S/O RAMNARAYAN, AGED ABOUT 62  
YEARS, OCCUPATION – KASTKARI, R/O –  
MANGLYA SADAK, TEHSIL SANVER, DISTRICT  
INDORE (MADHYA PRADESH)**

**.....APPELLANT**

***(NONE FOR THE APPELLANT)***

**AND**

**PANNALAL S/O RAMNARAYAN, AGED ABOUT 70  
YEARS, OCCUPATION – KASTKARI, R/O –  
1. MANGLYA SADAK, TEHSIL SANVER, DISTRICT  
INDORE (MADHYA PRADESH)**

**2. THE STATE OF MADHYA PRADESH THROUGH  
COLLECTOR, DISTRICT INDORE (M.P.)**

**...RESPONDENTS**

***(NONE FOR RESPONDENT NO.1)***

***(SHRI SHALABH SHARMA – GOVERNMENT ADVOCATE  
FOR RESPONDENT NO.2/STATE)***

---

**SECOND APPEAL No. 318 of 2005**

**BETWEEN:-**

**NATHOORAM S/O RAMNARAYAN, AGED ABOUT  
55 YEARS, OCCUPATION – AGRICULTURE, R/O –  
MANGLYA SADAK, TEHSIL SANVER, DISTRICT  
INDORE (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI AYUSHYAMAN CHOUDHARY - ADVOCATE)***

**AND**

**PANNALAL S/O RAMNARAYAN, AGED ABOUT 70 YEARS, OCCUPATION – AGRICULTURE, R/O – 1. MANGLYA SADAK, TEHSIL SANVER, DISTRICT INDORE (MADHYA PRADESH)**

**2. COLLECTOR, DISTRICT INDORE (M.P.)**

**NANURAM S/O RAMNARAYAN, AGED ABOUT 62 3. YEARS, OCCUPATION – AGRICULTURE, R/O – MANGLYA SADAK, TEHSIL SANVER, DISTRICT INDORE (MADHYA PRADESH)**

**...RESPONDENTS**

*(NONE FOR RESPONDENTS NO.1 & 3)*

*(SHRI SHALABH SHARMA – GOVERNMENT ADVOCATE FOR RESPONDENT NO.2/STATE)*

***Reserved on* : 03/05/2024**

***Pronounced on* : 08/05/2024**

*These appeals having been heard and reserved for judgment, coming on for pronouncement this day, JUSTICE ANIL VERMA passed the following:*

**JUDGMENT**

1. This judgment shall govern the disposal of *Second Appeal No.26/2005 (Nanuram Vs. Pannalal and Another)* and *Second Appeal No.318/2005 (Nathooram Vs. Pannalal and others)*, as both the appeal arise out of the common judgment and decree dated 9.12.2004 passed by the 7<sup>th</sup> Addl. District Judge, Indore in First Appeal No.53/2004, whereby the judgment and decree dated 6.8.2004 passed by the Civil Judge Class-2, Sanver in Civil Suit No.50-A/2003 has been upheld, by which the civil suit filed by the respondent No.1/defendant Pannalal for declaration of title and permanent injunction has been allowed.

2. During the pendency of this appeal, appellant Nathuram has filed separate appeal and vide order dated 15.9.2006 passed in SA No.26/2005 his name has been deleted from the cause title of appeal memo.

3. Brief facts of the civil suit filed by the respondent No.1 Pannalal before the trial Court are that the agricultural land bearing Survey No.147 and 155/3 admeasuring 0.741 hectare situated at village Manglia was in the joint name of Ramnarayan, Laljiram, Damodar & Hariram. Pannalal has purchased the share of Damodar and Hariram through registered sale deed, but in the registered sale deed the name of Nanuram was also mentioned as a purchaser. But after the purchase the land in question was mutated in the sole name of plaintiff Pannalal. Father of the plaintiff voluntarily partitioned the land between Nanuram, Nathuram and Pannalal, accordingly they have given separate land. Plaintiff possesses land bearing Survey No.149, 153 & 155/1 as an owner and defendants have no title over it, but defendant No.1 Nanuram and defendant No.2 Nathuram have threatened in the year 1977 that they will forcefully take possession of the land. Then plaintiff preferred an application before the Naib Tehsildar, Tappa Kshipra for deleting the name of defendants No.1 and 2 and the order has been passed in favour of the plaintiff. Defendants have no right to interfere in the land in question.

4. Defendant No.1 Nanuram before the trial Court denied all the plaint averments by stating in his written statement that in the year 1965 plaintiff and his father drove him away, therefore, he started living in a

rented house, but thereafter his father has partitioned his entire land. Laljiram has given his land to the plaintiff Pannalal. Land of Hariram and Damodar had been purchased in the name of Pannalal and Nathuram and defendant Nanuram was deprived from his share in the suit property. Therefore, he is entitled to get share in the suit property.

5. Defendant No.2 Nathuram also denied the plaintiff's allegation by stating in his written statement before the trial Court that plaintiff Pannalal is a mischievous person. He has driven away Nathuram and Nathuram who did not get any share in the ancestral property. The land of Hariram and Damodar was purchased in the name of Pannalal and Nathuram, but plaintiff fraudulently mutated it in his alone name. Hence, his suit deserves to be dismissed.

6. On the basis of the aforesaid, the trial Court has framed the issues and directed both the parties to adduce their evidence and after conclusion of the evidence, the trial Court has allowed the plaintiff's case for declaration of title and permanent injunction. Being aggrieved by the same, both the appellants have preferred the First Appeal, but the same has been dismissed. Being aggrieved by the same, both the appellants have preferred these two separate second appeals.

7. Appellant Nanuram (in Second Appeal No.26/2005) contended that the impugned judgment and decree passed by both the courts below are contrary to the law and facts and in the facts and circumstances of the case, both the courts below have erred in allowing the respondent No.1/plaintiff's case. Both the courts below have failed to consider oral

as well as the documentary evidence produced by the appellant. At the initial stage name of Lalji, Hariram and Damodar were jointly recorded in respect of the land in question, which was their ancestral property. Appellant is also co-owner of the suit land, therefore, respondent No.1/ plaintiff cannot get title on the basis of the adverse possession over the suit land, which belongs to the joint family property. Without partition plaintiff cannot be declared sole owner of the suit land. In the light of the aforesaid, learned counsel for the appellant submits that the present appeal deserves to be allowed on the following substantial question of law, which has been framed by this Court vide order dated 12.9.2007:-

“Whether, in the facts and circumstances of the case plaintiff had acquired title by way of adverse possession against co-owners in respect of property inherited from their father Ramnarayan?”

8. Appellant Nathuram (in Second Appeal No.318/2005) contended that the impugned judgment and decree passed by both the courts below are illegal, arbitrary and not based upon proper appreciation of the evidence. Both the courts below have failed to consider the oral as well as the documentary evidence available on record. The suit land belongs to the joint Hindu family property. The appellant is also co-owner, therefore, the plaintiff is not entitled to claim his title on the basis of the adverse possession over the land in question. Hence it is contended that the appeal deserves to be allowed on the following substantial questions of law, which have been framed by this Court vide order dated 17.7.2007:-

“1) Whether, in the facts and circumstances of the case, plaintiff had acquired title by way of adverse possession against co-owners in respect of property inherited from their father Ramnarayan?

2) Whether, plaintiff had acquired title by way of adverse possession against his brother and co-owner Nathuram in respect of property jointly purchased by them from Hariram?”

9. Although respondent No.1 Pannalal opposes both the appeals by stating that the impugned judgment and decree passed by both the courts below are based upon cogent evidence available on record and the findings given by both the courts below are concurrent findings of fact, which does not deserve for any interference, but at the time of final argument nobody has appeared on behalf of respondent No.1.

10. Learned counsel for the respondent No.2/State submits that the State is a formal party and the court may pass appropriate order as it may deem fit.

11. I have gone through the impugned judgment and decree passed by both the courts below and perused the entire record with due care.

12. Respondent No.1/plaintiff Pannalal before the trial Court deposed that at the time of partition his father Ramnarayan and their other three brothers everyone get 3 Bigah land out of the total 12 Bigah agricultural land. Thereafter he has purchased total 6 Bigah land from Damodar and Hariram through two separate registered sale deeds, but due to the affection name of Nathuram was mentioned as a purchaser but the entire sale amount was paid by him and he was continuously in

possession over the 9 Bigah land, which was earlier given in the partition to Damodar, Laljiram and Hariram with the consent of defendant Nathuram. Therefore, his name is mutated in the aforesaid 9 Bigah land. Thereafter in 1974 as per the family settlement again 3 Bigah land has been given to him and Nathuram was given 4.73 Acre land situated at Surlakhedi along with 10 Tola gold, 2.5 kg silver and Nathuram has executed the deed (Ex.P/2) dated 28.7.1974 in his favour, which is also signed by Nanuram. Defendant Nathuram also get 10 Tola gold, 2.5 kg silver, one house and one shop as per the family settlement deed and also executed the deed dated 19.1.1976 (Ex.P/3) in his favour. He was continuously in possession of the suit land since a long period.

13. Nirbhayram (PW-2), Siddhnath (PW-3), Rajendra @ Rajesh Sharma (PW-4) and Ambaram (PW-5) all these witnesses also supported the case of the plaintiff.

14. Defendant Nathuram (DW-1) deposed that he has purchased the suit land through the registered sale deed, in which his name is also mentioned, but the plaintiff Pannalal is a mischievous person, he tried to deprive the defendants from their entitlement. Gendalal (DW-2), Saligram (DW-3), Onkarlal (DW-4) and Bherosingh (DW-5) also supported the case of the defendants by stating that Pannalal, Nathuram and Nanuram are the real brothers, they were living jointly and they are joint owners of the entire land in question.

15. Although plaintiff Pannalal has filed two documents (Ex.P/1 & P/2) to establish that his brother Nanuram and Nathuram both have been

executed an agreement and given No Objection for mutation of his name in respect of the suit land, but it is noteworthy that the relinquishment of any right over any immovable property can be done only through registered document. Ex.P/1 & P/2 are the unregistered documents and cannot be considered as relinquishment deed executed by the defendants. Both the courts below have not considered the aforesaid fact in true perspective.

16. It is admitted fact that some of the disputed land was purchased in the name of plaintiff Pannalal, Nanuram and Nathuram, therefore, status of the suit land is joint Hindu family property, which is also proved by Kistbandi Khatoni (Ex.P/18) and Khasra (Ex.P/17 to P/21). Therefore, it is crystal clear that the suit land was initially mutated in the name of Pannalal, Nanuram and Nathuram and they became the co-owners of the suit land.

17. Respondent No.1/plaintiff claimed adverse possession over the suit land, but on the basis of the evidence available on record, it appears that the appellants Nanuram and Nathuram are also the co-owners of the suit land alongwith the plaintiff Pannalal.

18. Hon'ble the apex Court in the case of **Nagabhushanammal (Dead) by Legal Representatives Vs. C. Chandikeswaralingam reported in (2016) 4 SCC 434** has held as under:-

"Ouster of non-possessing co-owner by the co-owner in possession, who claims his possession to be adverse, is a weak defence in a suit for partition of family property and it is strong if the defendant is able to establish consistent and



open assertion of denial of title, long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the other co-owner. In *Vidya Devi*, (1995) 4 SCC 496 the Court stated three necessary elements for establishing the plea of ouster in the case of co-owner viz. (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner."

19. Hon'ble the apex Court in the case of **Syed Shah Ghulam Ghouse Mohiuddin Vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri reported in (1971) 1 SCC 597** held that "possession of one co-owner is presumed to be on behalf of all co-owners unless it is established that the possession of the co-owner is in denial of title of co-owners and the possession is in hostility to co-owners by exclusion of them. It was further held that there has to be open denial of title to the parties who are entitled to it by excluding and ousting them."

20. Therefore, it is a settled position of law 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.

21. The Hon'ble Apex Court in the case of **Narasamma and others Vs. A. Krishnappa (dead) through LRs reported in (2020) 15 SCC 218** has held as under:-

“34. The aforesaid judgment in turn relied upon the judgment in Mohan Lal Vs. Mirza Abdul Gaffar [(1996) 1 SCC 639], which observed in para 4 as under:

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

35. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial.”

22. The Hon'ble Apex Court in the case of **Syed Shah Ghulam Ghouse Mohiuddin and others Vs. Syed Shah Ahmed Mohiuddin**

**Kamisul Quadri (died) through LRs and others reported in 1971(1)**

**SCC 597** has held as under:-

“18..... Possession by one co-owner is not by itself adverse to other co-owners. On the contrary, possession by one co-owner is presumed to be the possession of all the co-owners unless it is established that the possession of the co-owner is in denial of title of co-owners and the possession is in hostility to co-owners by exclusion of them. In the present there is no case to evidence to support this conclusion. Ouster is an unequivocal act of assertion of title. There has to be open denial of title to the parties who are entitled to it by excluding and ousting them.”

23. The Hon’ble Apex Court in the case of **Janaki Pandyani Vs. Ganeshwar Panda (dead) by LRs and Another reported in (2001)**

**10 SCC 434** also held as under:-

“2. ....Further, merely because the defendants had converted the attached house into a tiled house and also dug a well, it does not mean it was an ouster of the plaintiff. Admittedly, the property in dispute is a joint family property and the plaintiff and the defendants are the co-sharers of the property. In fact, there is no partition of the property and so long as the property is not partitioned, it continues to be a joint Hindu family property. Under such circumstances, one co-sharer cannot claim adverse possession against the other co-sharer.”

24. In the instant case, on the basis of overwhelming evidence it is proved that the appellant Nathuram, Nanuram and respondent/plaintiff Pannalal are the co-owners of the suit land. No effective partition has taken place between them. Both the appellants did not execute any registered relinquishment deed regarding relinquishment of their title

over the suit land. It is the settled law that the possession of one co-owner is presumed to be on behalf of all co-owners unless it is established that the possession of the co-owner is in denial of title of co-owners and the possession is in hostility to co-owners by exclusion of them. But in the instant case respondent No.1/plaintiff has failed to prove his continuous and uninterrupted possession over the suit land prior to the institution of the civil suit for a period of more than 12 years as per Section 65 of the Limitation Act. Therefore, the plea of adverse possession sought by the plaintiff cannot be sustainable.

25. Both the courts below have ignored the pleadings and evidence available on record and given erroneous finding regarding the adverse possession of the plaintiff over the suit land. Therefore, the legal position, thus, stands as evolved against the respondent herein in advancing a plea of title and adverse possession over the suit land. In view of the aforesaid legal position, both the courts below have committed an error in holding that the respondent No.1/plaintiff had acquired possession over the suit land by adverse possession.

26. Admittedly the suit property is ancestral property and no family partition has taken place between the plaintiff Pannalal and his brothers Nanuram and Nathuram under Section 178 of the M.P. Land Revenue Code. All three brothers are co-owners of the suit land. If they have allowed the plaintiff to cultivate the suit land, this does not entitle the plaintiff to claim adverse possession by efflux of time. In fact, it is a permissive possession given by other co-owners by virtue of members

of the same family. Under these circumstances, this Court is not agree with the findings of fact recorded by the trial Court as well as the first appellate court. Accordingly, the substantial question of law framed in both the appeals are answered in favour of the appellants.

27. Apart from the above, both the appellants have preferred the applications under Order 41 Rule 27 of CPC (IA No.3755/2006 & IA No.3756/2006), which is also pending for consideration.

28. By both the applications, appellants have filed copy of the sale deed by which they have purchased some of the suit land from Damodar, but it is mere photocopy of the sale deed. No certified copy or original document has been produced by the appellants and also failed to furnish any proper explanation regarding non production of these documents before the trial Court. Thus, the document may be available at the time of filing the civil suit before the trial Court, but the defendants did not show any sufficient reason for not filing this documents at earlier stage. The said document has been filed after a huge delay. Even the documents are neither original nor certified copy. Hence it cannot be admissible in evidence. Therefore, this Court is of the considered opinion that the applications under Order 41 Rule 27 of CPC (IA No.3755/2006 & IA No.3756/2006) do not appear to be bonafide. Therefore, both the applications are dismissed.

29. As a result of the foregoing analysis, both the appeals are allowed. The impugned judgment and decree passed by both the courts

below are set aside and the suit filed by the respondent No.1/plaintiff stands dismissed.

30. There shall be no order as to the costs.

31. Signed order be kept in the file of SA No.318/2005 and a copy thereof be placed in the file of connected SA No.26/2005.

**(ANIL VERMA)**  
**JUDGE**

Trilok/-