

SECOND APPEAL No. 731 of 2019

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 20th OF APRIL, 2022

SECOND APPEAL No. 731 of 2019

Between:-

**BAPULAL S/O RAMLAL GURJAR , AGED ABOUT 46 YEARS,
OCCUPATION: AGRICULTURE VILLAGE BHILKHEDI TAEHSIL
MALHARGARH (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI Y.P. RATHROE, ADVCOATE)

AND

**¹THE STATE OF MADHYA PRADESH COLLECTOR THROUGH
'DISTRICT COLLECTOR MANDSAUR (MADHYA PRADESH)**

**²UNION OF INDIA, THROUGH CHIEF SECRETARY CENTRAL
'SECRETORIATE NEW DELHI (DELHI)**

.....RESPONDENTS

(BY SHRI RANJEET SEN, G.A.)

*This petition coming on for admission this day, the court passed
the following:*

ORDER

Heard the learned counsel for the applellant on admission.

This Second Appeal has been filed by the appellant/plaintiff under section 100 of Civil Procedure Code,1908 (in short CPC) being aggrieved by the judgment and decree dated 22/12/2018 passed by the

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Additional District Judge, Mandsaur in RCA no. 205/2017, thereby affirming the judgment and decree dated 06/01/2017 passed by the Civil Judge Class-I, Narayangarh, District Mandsaur in Civil Suit no 101-A/2016 filed by the appellant/ plaintiff for declaration of title and permanent injunction, which has been dismissed by the Trial Court.

2 Facts of the case in brief are that Iliyas Mohammad Ejaj Mohammd and Ishaq Mohammad as Khudashat and their names were registered in the revenue record as *pakka* tenant and landlord. On 15/08/1947, they had migrated to Pakisthan. Appellant/ plaintiff and other persons filed three separate civil suits bearing no. 166-A/2004, 167-A/2004 and 168-A/2004 before the Civil Judge, Narayangarh by showing themselves to be sub-farmer of Iliyas Mohammad, Ejaj Mohammd and Ishaq Mohammad and sought relief of declaration and their title, but all the three civil suits were dismissed on 30/01/2005, then the appellant and other persons preferred appeal before the 2nd Additional District Judge, Mandsaur. The same was also dismissed vide order dated 30/12/2008 with liberty to the plaintiff to file afresh civil suit. The plaintiff was in possession of the suit property since 15th August, 1947. His possession was entered in the revenue record as landlord but in the year 1973-74, name of the plaintiff along with other persons were deleted and name of respondent No.2 was entered into revenue record. As per the provision of Administration Evacuee Property Act,1950, the suit land was vested in respondent No 2/Government of India, but respondent No. 2 never took possession of the suit land through Custodian Officer and no such notification was issued. The provision of

section 264 of Madhya Pradesh Land Revenue Code is not applicable in respect of land of the Central Government, therefore, the appellant/plaintiff filed civil suit against the respondent/defendant.

3. The respondent denied all the allegations regarding possession of the plaintiff over the suit property by stating that on 31/03/1974, on behalf of respondent No. 1 Revenue Inspector had taken possession of the suit land, therefore, no question arises regarding acquiring adverse possession of the appellant /plaintiff over the suit property for last 30 years. Order of Mutation dated 23/03/1974 is also binding upon the plaintiff. The suit being time barred is not maintainable.

4. Learned Trial Court, after recording the evidence and after hearing both the parties dismissed the suit filed by the appellant/plaintiff by the judgment and decree dated 06/01/2017. Being aggrieved by the said judgment and decree, the appellant/plaintiff preferred an appeal before the Lower Appellate Court and the Lower Appellate Court, by the impugned judgment and decree affirmed the judgment and decree passed by the Court below, hence this second appeal has been preferred before this Court by the appellant.

5. Learned counsel for the appellant/plaintiff contended that the impugned judgment and decree passed by both the Courts below are contrary to law and in the facts and circumstances of the case. The Trial Court has erred in dismissing the suit of the appellant /plaintiff and committed grave error in interpretation of Administration of Evacuee Property Act, 1950. The respondent no 2 is exclusively owner of the

disputed land and respondent no 2 has no title over the suit property. Both the courts below have committed grave error in interpretation of section 2(d) and 2(j) of the Administration of Evacuee Property Act, 1950. Both the Courts below have failed to consider oral and documentary evidence produced by the appellant. Both the Courts below have ignored the pleadings made by the appellant/plaintiff. Thus, in view of the aforesaid, learned counsel submits that present appeal deserves to be admitted on the circumstantial questions of law proposed by the appellant.

6. I have gone through the judgment and decree passed by the both the Courts below and also perused the entire record.

7. Undoubtedly, on 15th August, 1947, British India was divided into two parts I.e India and Pakistan and our country became free, sovereign and democratic country. Partition was one of the most traumatizing, violent and daunting event of human history, which was not only tore human population into two, but also tore many many lives into halves. Due to partition, about 80 lacs Muslims migrated from India to Pakistan as against about 55 lacs Hindu and Sikh, who had left the territory of West Pakistan, came to India. At the time of partition, millions of refugees, who seized with panic, abandoned their lands, homes, personal belongings, cash, securities, indeed properties of every description, in order to escape with their lives, hence there is considerable properties in India belonging to Muslims and in Pakistan belonging to Hindus and Sikhs had abandoned their properties. Due to crises of partition and birth of new country i.e. Pakistan, the previous

owner of the suit land namely Iliyas Mohammad Ejaj Mohammd and Ishaq Mohammad left their motherland India and migrated to newly born Pakistan and they never came back. In the film “Mother India”, the heart touching lines in the song reflecting conditions and feelings of people, who left their land are relevant here.

“ओ जाने वालो,
ओ जाने वालो जाओ न घर अपना छोड़ के
माता बुला रही है, तुम्हे हाथ जोड़ के
नगरी तुम्हारी गालिया, तुम्हारी ये बस्तियां
इन सब को छोड़ कर, अब जाते हो तुम कहाँ
उजड़ी है लाख फिर भी, है धरती तुम्हारी माँ
दुनिया में सुख न पाओगे, दिल माँ का तोड़ के
ओ जाने वालो जाओ न घर अपना छोड़ के ”

Now leaving the past behind, let's return back to present case. It is also an admitted fact that after enforcement of M.P. Land Revenue Code 1951, name of these three Muslims Evacuee persons were remained stated as landlord in respect of the suit land in the revenue record and the same position was continued till 1974 and thereafter, as per the orders of Revenue Authorities, the land was vested in Madhya Pradesh Government and name of the Madhya Pradesh Government was mutated in the revenue records.

8. Learned counsel for the appellant contended that since the appellant and his ancestral held possession of the suit property peacefully and continually even, prior to 15th August 1947 till now, therefore, on the basis of their adverse possession, they acquired title over the suit property.

9. The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three *nec - nec vi, nec clam* and *nec precario*. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In **S.M. Karim Vs. Mst. Bibi Sakina [AIR 1964 SC 1254]** it has been observed thus:

“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.”

10. Normally, the plea of adverse possession would only enable a person taking the same to resist any attempt by any other person to evict them. It is also in the form of defence. It was this reason that the plea of adverse is treated as a shield and not a sword.

11. Hon'ble Supreme Court in the case of **Balkrishna Vs. Satyaprakash reported in (2001) 2 SCC406** considered the question, whether a person could claim title by adverse possession by filing a suit, therefore, the suit for declaration of title for adverse possession as well as permanent injunction is maintainable.

12. It is also well settled principle that the parties claiming adverse possession must prove their possession and the said possession must be peaceful, open, uninterrupted and continuous. The plaintiff's possession must be adequate and in continuity and adverse to true owner. The adverse possession must start from wrongful dispossession of the original owner and the possession must be actual, visible, exclusive, hostile and continued for a statutory period, therefore, to claim title by

adverse possession, the plaintiff must plead and prove on the date, he came into possession and what are the nature of his possession and whether the factum of possession was known to other person and how long, his possession was continued and his possession was open and undisturbed. It is also established rule, that where, possession, however, so long, cannot be treated as an adverse, so to acquire title, unless there is an unanimous or hostility on the part of the person in possession, who is not the real owner. The plea of adverse possession is raised against the Government and in respect of the Government land. The statutory provision of hostile possession of Government land would be 30 years, where continuous possession whatsoever duration, is not sufficient to acquire the title by adverse possession in respect of the Government land.

13. Iliyas Mohammad Ejaj Mohammmd and Ishaq Mohammad residing in village migrated to Pakistan at the time of partition and their entire land, be it owned by the proprietor, became as evacuee property by operation of law. The said land thus, vested into the custodian and subsequently came to be acquired by the Central Government by virtue of operation of law under various enactments. The vesting took place under the various ordinance issued by the State Government and finally, under the provision of Administration of Evacuee Property Act, 1950. Under the provision of the Act, 1950, all the interest of Muslim Evacuees in the land and property left behind by them, which had become evacuee property, vested in the Central Government. Subsequently, The Displaced Person (Compensation and Rehabilitation)

Act, 1954 came into existence and in accordance with the said Act, the Central Government became owner of the evacuee property.

14. In the present case, the original owner of the suit land i.e. Iliyas Mohammad Ejaj Mohammad and Ishaq Mohammad had migrated to Pakistan on 15th August 1947, therefore, the under the provision of Administration of Evacuee Property Act, 1950, their rights and interests in the suit land were vested in the custodian appointed under the said Act. Although learned counsel for the appellant contended that no custodian was appointed by the Central Government and no notification was issued, but in view of the admission that the property was vested under the Administration of Evacuees Act, 1950. It was also admitted by both the parties in previous round of litigation, therefore, no need to file such notification or appointment letter of custodian. When once the property vested in custodian, then original owner or anybody claiming through original owner will not have any right against such property.

15. Onus to prove the issue of adverse possession lies upon the appellant/plaintiff. Appellant/plaintiff Bapulal (PW-1) has categorically admitted in his cross-examination that he has no knowledge as to who is the actual owner prior and after the freedom of India. Since the plaintiff had no knowledge, as to who is the actual owner from the year 1947 to onward, then the plaintiff cannot take plea that his adverse possession was openly hostile to the actual owner of the suit property. The plaintiff has also not produced any document from custodian/evacuee property cell to prove that his possession was openly hostile to such custodian. Even the plaintiff never paid any fees or revenue rent to the custodian or

Central Government or the State Government over the suit property from 1947 till now. Therefore, plaintiff has failed to prove his case that he has perfected his title/ownership of the suit land by adverse possession.

16. In the present case, the appellant/plaintiff had proved Panchshala Khasra (Ex.P-9) of the suit property for the period of 1965-66, but in the same year suit land was registered in the name of Iliyas Mohd., Ejaj Mohd and Ishaq Mohd but nowhere name of the plaintiff was stated as a possession holder and the appellant also proved *Panchshala Khasra* (Ex-P/10 to Ex.-P/13 of the suit property since 1992 to 2005-06, but in all these Kharas, the suit land was registered in the name of Madhya Pradesh Government, although, in the said Khasras, name of several persons along with the plaintiff were mentioned as possession holder in column no. 12. The suit was filed in the year 2015, therefore onus to prove adverse possession for last 30 years lies upon the plaintiff, but the plaintiff did not file continuous Panchshala Khasras for the period of 30 years. Even the appellant/plaintiff did not file any relevant document regarding revenue receipt or any other paper for proving possession of land, payment of rent is crucial. Even during the period of 30 years, no proceeding under section 248 of Madhya Pradesh Land Revenue Code has been instituted against the appellant/ plaintiff, therefore, the appellant/plaintiff has failed to prove his continuous possession over the suit property prior to the date of institution of the civil suit for the period of 30 years as per the sections 64 and 65 of the Indian Limitation Act, therefore, the plea of adverse possession set up by the appellant was rightly dismissed by both the Courts below as there is

no evidence available before the Court below to establish this plea.

17. The plaintiff Bapulal also fairly admits that he knows that the suit land was mutated in the name of Madhya Pradesh Government. From perusal of Khasras (Ex.-P-P/12 and Ex-P/13), it appears that since 1973 when the suit land was registered in the name of Madhya Pradesh Government, but the appellant did not file any civil suit for declaration of title in respect of the suit land within 12 years of said mutation. He has belatedly filed civil suit in the year 2015 without explaining aforesaid delay therefore, both the Courts below have rightly hold that the suit is time barred as per Article 64 and 65 of the Limitation Act.

18. In the light of the aforesaid discussion, this Court is of the considered view that the judgment and decree passed by both the courts below are well reasoned and are based on due appreciation of oral as well as documentary evidence available on record. The findings recorded by the courts below are concurrent findings of fact.

19. Learned counsel for appellants has failed to show that how the findings of fact recorded by the courts below are illegal, perverse or based upon no evidence. Thus, no substantial question of law arises for consideration in the present second appeal. The Supreme court in number of cases has held that in exercise of powers under section 100 of the Code of Civil Procedure the Court can interfere with the findings of fact only if the same is shown to be perverse and based upon no evidence. Some of these judgments are **Hafazat Hussan Vs. Abdul Majeed and others , 2011(7) SCC 189, Union of India Vs. Ibrahim**

Uddin, 2012(8) SCC 148 and Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal 2012(7) SCC 288.

20. For the aforesaid reasons, no substantial questions of law arises for consideration in this appeal. The appeal fails and is hereby **dismissed** in *limine*.

C c as per rules.

(ANIL VERMA)
J U D G E

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HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	<u>SECOND APPEAL No. 731 of 2019</u>
2	Parties Name	<i>BAPULAL S/O RAMLAL GURJAR</i> <i>Vs.</i> <i>THE STATE OF MADHYA PRADESH</i>
3	Date of Judgment	20 th April, 2022
4	Bench constituted of	Hon'ble Shri Justice Anil Verma
5	Judgment delivered by	Hon'ble Shri Justice Anil Verma
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri Y.P Rathore, learned counsel for the appellant. Shri Ranjeet Singh, GA for the the respondent/State.
8	Law laid down	If the plaintiff has no knowledge, as to who is the actual owner prior and after 15 th August, 1947 the year 1947 to onward, then the plaintiff cannot take a plea that his adverse possession was openly hostile to the actual owner of the suit property.
9	Significant paragraph numbers	15

(Anil Verma)
Judge