

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

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 1st OF MAY, 2023

SECOND APPEAL No. 1543 of 2020

BETWEEN:-

1. DECEASED GANYA S/O MOHAN BHIL
THROUGH LEGAL HEIRS
(A) RATAN S/O LATE GANYA BHIL, AGED ABOUT 20 YEARS,
OCCUPATION: FARMER VILLAGE SALKHEDA, TEHSIL RAJPUR
DISTRICT BARWANI (MADHYA PRADESH)
(B) JITENDRA S/O LATE GANYA BHIL, AGED ABOUT 25 YEARS,
OCCUPATION: FARMER VILLAGE SALKHEDA, TEHSIL RAJPUR,
DISTRICT BARWANI (MADHYA PRADESH)
2. PAPPU S/O MANGYA BHIL, AGED ABOUT 33 YEARS, OCCUPATION:
FARMER VILLAGE SALKHEDA, TEHSIL RAJPUR, DISTRICT BARWANI
MADHYA PRADESH)
3. GOVIND S/O MANGYA BHIL, AGED ABOUT 35 YEARS, OCCUPATION:
FARMER VILLAGE SALKHEDA, TEHSIL RAJPUR, DISTRICT BARWANI
(MADHYA PRADESH)

.....APPELLANTS

(SHRI AYUSHYAMAN CHOUDHARY, ADVOCATE FOR THE APPELLANTS)

AND

1. RICHHA S/O GATALYA (DEAD) BHIL
THROUGH LEGAL HEIRS
(A) KAILASH S/O RICHHA BHIL, AGED ABOUT 40 YEARS,
OCCUPATION: FARMER VILLAGE CHHILTYA TEHSIL KHARGONE,
DISTRICT KHARGONE (MADHYA PRADESH)
(B) NAYANSINGH S/O LATE RICHHA BHIL, AGED ABOUT 51 YEARS,
OCCUPATION: FARMER VILLAGE CHHILTYA, TEHSIL KHARGONE,

DISTRICT KHARGONE (MADHYA PRADESH)

(C) KALLU S/O LATE RICHHA BHIL, AGED ABOUT 39 YEARS, OCCUPATION: FARMER VILLAGE CHHILTYA, TEHSIL KHARGONE, DISTRICT KHARGONE (MADHYA PRADESH)

(D) SUMRIA S/O LATE RICHHA BHIL, AGED ABOUT 35 YEARS, OCCUPATION: FARMER VILLAGE CHHILTYA, TEHSIL KHARGONE, DISTRICT KHARGONE (MADHYA PRADESH)

**2. BHIKYA S/O GATALYA (DEAD)
THROUGH LEGAL HEIRS**

(A) SUMERSINGH S/O BHIKYA BHIL, AGED ABOUT 41 YEARS, OCCUPATION: FARMER VILLAGE CHHILTYA, TEHSIL KHARGONE, DISTRICT KHARGONE (MADHYA PRADESH)

(B) DHUMSINGH S/O BHIKYA BHIL, AGED ABOUT 40 YEARS, OCCUPATION: FARMER VILLAGE CHHILTYA, TEHSIL KHARGONE DISTRICT KHARGONE (MADHYA PRADESH)

(C) SURESH S/O LATE BHIKYA BHIL, AGED ABOUT 38 YEARS, OCCUPATION: FARMER VILLAGE CHHILTYA, TEHSIL KHARGONE, DISTRICT KHARGONE (MADHYA PRADESH)

3. KALU S/O GATALYA (DEAD) CASTE BHIL (NO LEGAL HEIRS)

**4. THE STATE OF MADHYA PRADESH THROUGH COLLECTOR BARWANI
DIST BARWANI (MADHYA PRADESH)**

.....RESPONDENTS

(MS. ASHI VAIDYA, PANEL LAWYER FOR THE RESPONDENT NO.4/STATE)

This appeal coming on for admission this day, the Court passed the following:

ORDER

Heard on the question of admission.

2. The present Second Appeal has been filed by the appellants/plaintiffs u/S 100 of the Code of Civil Procedure, 1908 (in short "CPC") against the judgement and decree dated 26.02.2020, passed by the IInd Additional District Judge, Barwani (M.P.) in regular Civil Appeal No.15/2017, affirming the judgement and decree dated 31.01.2017 passed by the Civil

Judge Class-I, Rajpur, District Barwani in Civil Suit No.02A/2014 filed by the appellants for declaration of title and permanent injunction, which was dismissed.

3. It is an admitted fact that agricultural land bearing *Survey No.35/1, area 6 acres, situated at village Salkheda, Tehsil Rajpur, District Barwani (M.P.) (hereinafter referred as the "suit land")* is recorded in the name of plaintiffs and the fathers of the respondents as owner. Plaintiffs and defendants are members of same family. The suit land is joint property of both the parties.

4. Facts of the case in brief are that there was a mutual partition for more than 50 years ago between father of appellants/plaintiffs and fathers of respondents/defendants. Thereafter, both the parties are in possession in their respective shares. The suit land was received by father of the plaintiffs in mutual partition. Thereafter, the plaintiffs are in peaceful and continuous possession of the suit land. Therefore, the plaintiffs are owner of the suit land. The appellants alternatively pleaded that the respondents had knowledge that appellants have been in continuous and peaceful possession of the suit land for more than 12 years. Therefore, the plaintiffs became the owner of the suit land on the ground of adverse possession. Accordingly, the appellants/plaintiffs had filed the suit for declaration of title of suit land and permanent injunction against the respondents/defendants.

5. The respondents/defendants had denied the averments of the plaint except the admitted facts and had pleaded that the suit land was never partitioned between the parties or their ancestors. Both the parties are in

joint possession of the suit land and both the parties are co-owner and co-possession holder of the suit land, therefore, the suit is liable to be dismissed.

6. Learned Trial Court after recording evidence of both the parties, has dismissed the suit. Being aggrieved by the said judgement and decree, the appellants/plaintiffs preferred an appeal before the First Appellate Court and the First Appellate Court by the impugned judgement and decree confirmed the judgement and decree passed by the learned Trial Court against the impugned judgement and decree, the present appeal has been filed.

7. Learned counsel for the appellants submits that the judgement and decree passed by both the Courts below are illegal and are not based on proper appreciation of evidence. Learned Courts below have committed error to disbelieve the evidence of plaintiffs. It is further argued that both the Courts below have erred in dismissing the suit and ignored the pleadings made by the appellants. Therefore, the findings of both the Courts below is perverse and against the evidence available on record. Thus, in the light of the aforesaid, he submits that appeal deserves to be admitted on the substantial question of law proposed by the appellants. Learned counsel for the appellants placed reliance in the case of ***Des Raj and Ors. V Bhagat Ram (dead) by LRS. and Ors. [(2007) 9 SCC 641]*** and ***Vidya Devi alias Vidya Vati (dead) by LRS. V Prem Prakash and Ors. [(1995) 4 SCC 496]***.

8. I have heard learned counsel for the appellants and perused the

records.

9. Learned Trial Court as well as the First Appellate Court have considered the oral and documentary evidence, produced by the parties. Learned Trial Court has not found proved that the suit land was received by the appellants/plaintiffs in the mutual partition. Learned Trial Court has found proved that both the parties are in joint possession of the suit land but it was not found proved that the plaintiffs have become the owner of the suit land by way of adverse possession.

10. The Apex Court in the case of *Vidya Devi alias Vidya Vati (Supra)*, in paragraphs-21, 22 and 28 has held as under:-

“21. Normally, where the property is joint, co-sharers are the representatives of each another. The co-sharer who might be in possession of the joint property shall be deemed to be in possession on behalf of all the co-sharers. As such, it would be difficult to raise the plea of adverse possession by one co-sharer against the other. But if the co-sharer or the joint owner had been professing hostile title as against other co-sharers openly and to the knowledge of others joint owners, he can, provided the hostile title or possession has continued uninterruptedly for the whole period prescribed for recovery of possession, legitimately acquire title by adverse possession and can plead such title in defence to the claim for partition.

22. "Adverse possession" means hostile possession, that is, a possession which is expressly in denial of the title of the true owner. (See:/ Gaya Parshad Dikshit Vs. Nirmal Chander and another (AIR 1984 SC 930). The denial of title of the true owner is a sign of adverse possession. In Ezaz Ali Vs. Special Manager, Court of Wards (AIR 1935 PC 53), it was observed:

"The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed."

28. *"Ouster" does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (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. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law."*

11. In the case of ***Des Raj and Ors. (Supra)***, the Apex Court in paragraph-29 has observed as under:-

"29. Yet again in [T. Anjanappa and Others v. Somalingappa and Another \[\(2006\) 7 SCC 570\]](#), it was held:

12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is

the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property."

12. Admittedly, the suit land is recorded in the name of both the parties or their ancestors. It is settled law that the possession of one co-owner is considered, in law, as possession of all the other co-owners, unless contrary is proved. The appellants/plaintiffs did not specifically plead that at what point of time and in whose presence, the oral partition had taken place and which part of land was allotted to the defendants or their fathers in their share. Similarly, the appellants did not specifically plead that as to when and how their possession of suit land turned adverse against the respondents/defendants.

13. On perusal of the judgements passed by the Hon'ble Supreme Court, relied upon by the appellants, it is apparent that the appellants have failed to plead and prove the requisites mentioned in the case-laws to obtain declaration of title of the suit land on the ground of oral partition as well as adverse possession in the suit land.

14. In view of the aforesaid, no fault can be found with the judgement and decree passed by the Courts below by dismissing the suit and appeal filed by the appellants. The concurrent finding recorded by the Courts below are based on proper appreciation and assessment of oral and documentary evidence on record and do not suffer from any perversity or material irregularity, warranting interference by this court.

15. In such circumstances, no substantial question of law arises for consideration in the present appeal. The appeal being devoid of merits is accordingly **dismissed**. No order as to costs.

(PRAKASH CHANDRA GUPTA)
JUDGE

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