

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

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 7th OF MAY, 2022

SECOND APPEAL No. 350 of 2021

Between:-

- 1. BEVIBAI W/O PEMAJI GURJAR , AGED ABOUT 69 YEARS,
VILLAGE BAGOD, TEHSIL BARWAH, DIST. KHARGONE
(MADHYA PRADESH)**
- 2. NARENDRA S/O PEMAJI GURJAR , AGED ABOUT 50
YEARS, VILLAGE BAGOD, TEHSIL BARWAH DIST
KHARGONE (MADHYA PRADESH)**
- 3. DHARMENDRA S/O PEMAJI GURJAR , AGED ABOUT 37
YEARS, VILLAGE BAGOD, TEHSIL BARWAH, DIST.
KHARGONE (MADHYA PRADESH)**
- 4. SANTOSH W/O GOPAL GURJAR , AGED ABOUT 41 YEARS,
VILLAGE BAGOD TEHSIL BARWAH DIST KHARGONE
(MADHYA PRADESH)**
- 5. SAVITRI W/O JAHAN SINGH GURJAR , AGED ABOUT 42
YEARS, VILLAGE BAGOD, TEHSIL BARWAH, DIST.
KHARGONE AT PRESENT NEAR JAIL SHAJAPUR TEHSIL
AND DIST SHAJAPUR (MADHYA PRADESH)**
- 6. RANJITA W/O ASHOK GURJAR , AGED ABOUT 39 YEARS,
VILLAGE BAGOD, TEHSIL BARWAH DIST KHARGONE
(MADHYA PRADESH)**
- 7. BHERU LAL S/O ONKAR GURJAR , AGED ABOUT 50
YEARS, 160, NEW HEERA NAGAR, INDORE TEHSIL AND
DIST INDORE (MADHYA PRADESH)**
- 8. RAHUL S/O BHERULAL GURJAR , AGED ABOUT 20
YEARS, 160, NEW HEERA NAGAR, INDORE TEHSIL AND
DIST INDORE (MADHYA PRADESH)**

9. **MANISH THR NATURAL GUARDIAN FATHER BHERULAL S/O ONKAR GURJAR , AGED ABOUT 50 YEARS, 160, NEW HEERA NAGAR, INDORE TEHSIL AND DIST INDORE (MADHYA PRADESH)**
10. **MANISHA W/O RAJESH GURJAR, AGED ABOUT 24 YEARS, LAL BAGH NATHDWARA RAJASTHAN (RAJASTHAN)**
11. **POONAM W/O RAVI GURJAR , AGED ABOUT 27 YEARS, HAMMAL COLONY, INDORE (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI B. S. Gandhi Adv.)

AND

1. **SARPANCH GRAM PANCHAYAT BAGOD SARPANCH BAGOD, TEHSIL BARWAH, DIST. KHARGONE (MADHYA PRADESH)**
2. **STATE OF MADHYA PRADESH THR COLLECTOR KHARGONE (MADHYA PRADESH)**
3. **CHIEF MUNICIPAL OFFICER JANPAD PANCHAYAT BARWAH DIST KHARGONE (MADHYA PRADESH)**
4. **PUBLIC IN GENERAL VILLAGE BAGOD, TEHSIL BARWAH, DIST. KHARGONE (MADHYA PRADESH)**
5. **MADANLAL S/O SHRI BABULAL OCCUPATION: PRESIDENT PANCHAYATI KHATA VILLAGE BAGOD, TEHSIL BARWAH, DIST. KHARGONE (MADHYA PRADESH)**

.....RESPONDENTS

(Shri Yash Agrawal Adv. For respondents No.1 & 5)

(Shri Ranjeet Sen, GA for respondent No.2/State)

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

JUDGMENT

1/ This second appeal is filed by the appellants/plaintiffs under Section 100 of the Code of Civil Procedure (in short "CPC") against the impugned judgment and decree dated 4.12.2020 passed by the 3rd Addl. District Judge, Badwah, District Mandleshwar in Civil Appeal No.100031A/2014, whereby affirming the judgment and decree dated 10.10.2014 passed by the Civil Judge Class-I, Badwah in Civil Suit No.16A/2014 filed by the appellants for declaration of title and permanent injunction.

2/ The facts of the case in brief are that appellants filed the civil suit by stating that land bearing Survey No.281 area 2.517 hectare situated at village Bagod is ancestral property of the plaintiff. Originally suit land was recorded in the name of Shambhuji, who had two sons namely Damaji and Ramaji. The name of Damaji was recorded over the suit land in revenue records since 1945 to 1952-53 as Bhumiswami and after his death, Pemaji and Kaluji were in possession of the suit land. Appellant constructed a water tank for cattle on their expense. Respondents No.1 & 3 illegally got the name of Kaluji deleted from the revenue record and did not record the name of the appellants after the death of Kaluji and illegally got the name of Gram Panchayat, Bagod recorded over the suit land in revenue records. Appellants sent a notice to the respondents but they did not reply.

3/ Respondent/defendants No.1 & 5 filed their written statement denying the plaint averments by stating that suit land is

recorded in the name of Gram Panchayat, Bagod since beginning and same was possessed by them and Gram Panchayat, Bagod is also paying the water tax and installed 3 HP water connection on the suit land in the year 1982.

4/ On the aforesaid pleadings, trial Court framed the issues and permitted both the parties to lead their evidence. The trial Court vide judgment and decree dated 10.10.2014 dismissed the civil suit. Being aggrieved by the said judgment and decree plaintiffs/appellants preferred first appeal, the same was also dismissed vide judgment dated 14.12.2020, therefore, plaintiff/appellant has filed this second appeal.

5/ Learned counsel for the appellants contended that both the courts below committed a grave illegality and perversity in dismissing the appeal. Judgment and decree passed by both the courts below are not based upon the proper appreciation of evidence and they have failed to consider the oral as well as the documentary evidence produced by both the parties. It is also argued that the trial Court has erred in dismissing the suit preferred by the plaintiff. Both the courts below have ignored the pleadings made by the plaintiff/appellant and also ignored by holding that appellants are not owner of the suit land. Both the courts below ignored the documentary as well as the oral evidence. Both the courts below are not justified in not considering the documents Exhibit P/1 to P/4, P/11 and P/12 which is the sufficient evidence for proving the title of appellants over the suit property. Thus, in the light of the aforesaid it is contended that present appeal deserves to be allowed.

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

7/ After perusal of the record, it appears that the suit land was recorded in the name of Gram Panchayat, Bagod since 1974 but possession of appellants and their ancestors was not recorded over the suit land in the revenue records.

8/ Learned counsel for the appellants contended that since 1945 plaintiffs and their ancestors are continuously and peacefully in possession of the suit property, therefore, on the basis of their adverse possession they have 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/ In the present case plaintiff Narendra (PW-1) has categorically admitted in Para-20, 22 & 24 of his cross-examination that he did not file any relevant revenue documents in respect of name of Damaji, Shambhu, Kaluji and Pemaji and his name ever registered on the suit land. Plaintiff Baby Bai (PW-2) also admits in her cross-examination that their names were never entered in the revenue records in respect of the suit land. The suit was filed in the year 2011, therefore, onus to prove the adverse possession for last 30 years lies upon the plaintiff, but the plaintiff did not file continuous Panchshala Khasra for the period of 30 years. During the last 30 years no proceedings under Section 248 of the M.P. Land Revenue Code has been instituted against the appellants and their ancestors. Therefore, appellants/plaintiffs have failed to prove their continuous possession over the suit property prior to the institution of civil suit for the period of 30 years as per Section 64 & 65 of the Limitation Act. Therefore, the plea of adverse possession taken by the appellants was rightly dismissed by both the courts below as there was no evidence available before both the courts below to establish this plea.

14/ 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.

15/ 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 2912(7) SCC 288.**

16/ 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)
Judge**

Trilok/-