

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 5th OF JANUARY, 2024
SECOND APPEAL No. 256 of 2022**

BETWEEN:-

**RUGA S/O HIRA (DECEASED)
R/O VILLAGE TUKOGANJ, TEHSIL SARANGPUR,
DISTRICT SHAJAPUR**

THROUGH LRS:-

1. PREMNARAYAN S/O RUGA @ RUGHNATH SINGH, AGED ABOUT 51 YEARS, OCCUPATION – LABOURER, R/O – TUKOGANJ GULAWTA, DISTRICT RAJGARH (MADHYA PRADESH)
2. SHANTA BAI D/O RUGA @ RUGHNATH SINGH, W/O MOHANLAL BANJARA, AGED ABOUT 61 YEARS, OCCUPATION –HOUSEWIFE, R/O – HOUSE NO.91, WARD NO.12, PACHORA SHAJAPUR, UJJAIN (M.P.)
3. SANTOSH BAI D/O RUGA @ RUGHNATH SINGH, W/O RAMCHANDRA JI PARMAR, AGED ABOUT 61 YEARS, OCCUPATION – HOUSEWIFE, R/O – VILLAGE KANNAD, TEHSIL AGAR, WARD NO.15, SHAJAPUR (M.P.)

.....APPELLANTS

(BY SHRI M.A. BOHRA -ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH
COLLECTOR, DISTRICT RAJGARH (BIAORA)**

1. (MADHYA PRADESH)
2. CHANDER SINGH S/O HIRA PARDI, AGED ABOUT 70 YEARS, OCCUPATION – AGRICULTURE, R/O – VILLAGE TUKOGANJ, TEHSIL SARANGPUR,

DISTRICT SHAJAPUR (MADHYA PRADESH)**...RESPONDENTS**

**(SHRI SHALABH SHARMA – GOVERNMENT ADVOCATE FOR
RESPONDENT NO.1/STATE)**

WHETHER APPROVED FOR REPORTING : YES

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

JUDGMENT

Heard on admission.

1. Present second appeal has been filed by the appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908 (in short “CPC”) being aggrieved by the judgment and decree dated 30.1.2021 passed by the 1st Addl. District Judge, Sarangpur, District Rajgarh (Biaora) in Regular Civil Appeal No.10A/2018, affirming the judgment and decree dated 1.3.2018 passed by the Civil Judge Class-II, Sarangpur in Civil Appeal No.18-A/2018 filed by the appellant/plaintiff for declaration of title and permanent injunction, which has been declined by both the courts below.

2. Facts of the case in brief are that appellant/plaintiff filed a Civil Suit for declaration of title and permanent injunction against the respondent in relation to the agricultural land bearing Survey No.493/7 area 8.582 hectares situated at village Tukoganj, Tehsil Sarangpur, District Rajgarh (Biaora) by stating that original plaintiff Ruga is the owner of the suit land and the suit land is in possession of the ancestors of plaintiff since 1970. The suit land was recorded in the name of the

government and the suit land was granted on lease to the landless person belonging to the backward class. Notice under Section 80 of CPC was issued to the government and the reply dated 27.6.2015 was sent by the government. The possession of the plaintiff was attempted to be forcibly taken away from 27.6.2015. Thereafter present suit has been filed.

3. Respondent No.1/defendant No.1 denied all the averments made by the plaintiff by stating that the plaintiff is not a landless person and the suit property is recorded in the name of the government. Respondent No.2/defendant No.2 also denied all the averments made by the plaintiff by stating that the suit property belongs to the ownership of his father Heeralal and after the demise of Heeralal, 5 bigah land came in possession of respondent No.2 and he has filed suit for declaration of title and permanent injunction over the 5 bigah land out of the suit property. The trial court after recording the evidence of both the parties, dismissed the suit. Being aggrieved by the said judgment and decree, the appellant/plaintiff preferred the appeal before the first appellate court and the first appellate court dismissed the appeal by affirming the judgment and decree passed by the trial Court.

4. Learned counsel for the appellant argues that the judgment and decree passed by both the courts below are illegal and are not based on proper appreciation of evidence. Both the courts below have failed to consider the oral as well as documentary evidence produced by the appellant. Both the courts below have erred in dismissing the suit

preferred by the appellant/plaintiff. The findings of both the courts below is perverse which is against the evidence available on record. Hence he submits that the appeal deserves to be admitted on the substantial questions of law proposed by the appellant.

5. Both the parties heard at length and perused the entire record of both the courts below with due care.

6. From perusal of the record of the trial Court, it appears that the appellant/plaintiff filed a civil suit for declaration of title and permanent injunction, therefore, burden lies upon the appellant to prove his case that he acquired title of the suit land by adverse possession.

7. 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. 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.

8. In the case of **Ravinder Kaur Grewal and others Vs. Manjit Kaur and others reported in 2019(2) RN 129 (SC)**, it has been held that:-

“48. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation Article 65 as 12 years. Law of limitation does not define the concept of adverse

possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

49. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

50. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.”

9. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on ‘title’ as envisaged

in the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession. In Article 65 in the opening part a suit “for possession of immovable property or any interest therein based on title” has been used. Expression “title” would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions.

10. Appellant/plaintiff deposed before the trial Court that he is a landless poor person and belongs to the tribal community and he is in possession of suit land since last 45 years and ploughing it continuously. This fact is in the knowledge of the government employees, Patwari, Revenue Inspector and Tehsildar also. He is keeping continuously adverse possession over the suit land since last 45 years, therefore, he acquired title to the suit land by adverse possession, but in Para-14 of his cross-examination he categorically admits that the suit land was never mutated in his name and a case was registered against him in the Tehsil Court, but he did not give the possession of the suit land to the government. Prabhulal (PW-2), Ramchandra (PW-3), Bahadur Singh (PW-4) and Shivnarayan (PW-5) also deposed in the same manner.

11. Appellant/plaintiff has also filed Khasra Panchshala of the suit land from 1970-71 to 1992-93 which is Ex.P/7 to P/13. From perusal of Ex.P/7 it appears that the land bearing Survey No.493 is registered as Charnoi land and name of the appellant was not mentioned in Column 3 as possession holder. Although in amended entry regarding year 1972-73 in Column 16 it has been mentioned that appellant has encroached the government land, but later on in Ex.P/7 it has been again mentioned as Government Charnoi land. But later on in the amended entries of Khasra Panchshala of the year 1981-82 to 1984-85 possession of the appellant as an encroacher was mentioned. In the Khasra Panchshala of the year 1988-89 no entry was found regarding the appellant's possession over the suit land. Same position is found regarding the year 1994-95. Therefore, on the basis of the aforesaid documents filed by the appellant, he has failed to prove that his possession is adequate in continuity in publicity over the suit land for the period of more than 30 years. Therefore, on the basis of the aforesaid evidence, the trial Court as well as the first appellate court have given concurrent finding that appellant has failed to prove adverse possession and perfected the title over the suit land.

12. In the light of the aforesaid discussion, this Court is of the considered opinion that the impugned judgment passed by both the courts below are well reasoned and based upon the due appreciation of oral as well as documentary evidence available on record. The findings recorded by both the courts below are concurrent findings of facts. The appellant has failed to show that how the findings of facts recorded by

both the courts below are illegal, perverse and based on no evidence. Thus, no substantial question of law arises for consideration in the present second appeal.

13. Enunciation of law by the Hon'ble Apex Court in the case of **Hari Narayan Bansal Vs. Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Patam, reported in (2015) 16 SCC 540** empowers this Court to finally dispose of this appeal without framing the substantial questions of law at the admission stage itself. The observation made by Hon'ble Supreme Court is reproduced hereinbelow :-

“In our opinion, a substantial question of law is not required to be framed if the High Court decides to dismiss the second appeal at an admission stage. Only in a case where the second appeal is admitted or is decided finally by allowing the same, a substantial question of law is required to be framed by the High Court. In the instant case, no substantial question of law was involved in the second appeal and therefore, the High Court had rightly dismissed the second appeal at the admission stage by passing the impugned order. We, therefore, see no reason to entertain this Petition.”

14. The Supreme Court in number of cases has held that in exercise of powers under Section 100 of the Code of Civil Procedure can interfere with the findings of fact only if the same is shown to be perverse and based on no evidence. Some of these judgments are ***Hajazat Hussain vs. Abdul Majeed & others, 2011 (7) SCC, 189 and Union of India vs. Ibrahim Uddin, 2012 (8) SCC 148.***

15. Accordingly, present second appeal sans merit and is hereby dismissed at the admission stage for the reasons indicated above.

No order as to costs.

C.C. as per rules.

**(ANIL VERMA)
JUDGE**

Trilok/-