

2024 LiveLaw (SC) 245

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.**

March 18, 2024

CIVIL APPEAL NOS.4322 – 4324 OF 2024 (Arising Out of SLP (C) Nos. 19059-19061 of 2014)

M. Radheshyamlal versus V Sandhya and Anr. Etc.

Property Law – Plea of adverse possession – Ingredients to prove the plea of adverse possession: - (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner; (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner; (c) The plaintiff must also plead and establish when he came into possession; and (d) The plaintiff must establish that his possession was open and undisturbed. It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. The plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff. (Para 12)

Property Law – Plea of adverse possession – When a party claims adverse possession, Firstly, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. It is not pleaded that even before the year 1947, the plaintiff or his father were in hostile possession to the knowledge of the original owner. Therefore, there is no proper foundation for the plea of adverse possession in the plaint. Further, the plaintiff could not establish that his adverse possession commenced from a particular date. In a complaint filed to police one year before the institution of the suit the plaintiff asserted that he was in possession of the suit property for 35 years before filing the complaint. In the plaint, the plaintiff claimed to have been in possession since 1950. The plaintiff's own complaint defeats the case made out in the plaint. The plaintiff failed to prove his adverse possession. (Para 13, 15 & 16)

For Appellant(s) Mr. M.P. Parthiban, AOR Mr. Arunagiri, Adv. Ms. Priyaranjani Nagamuthu, Adv.

For Respondent(s) Mr. Prashant Shrikant Kenjale, AOR Ms. Srishty Pandey, Adv.

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.

FACTUAL ASPECTS

2. These appeals arise out of three separate suits. For convenience, we are referring to the parties with reference to their status in Original Suit No. 12091 of 2010 (Civil Suit no. 331 of 1996). The appellant is the plaintiff in the said suit. The respondents in Special Leave Petition (C) No. 19060 of 2014 are the defendants in the said suit.

3. It is not in dispute that one Sungani Bai (Sukri Bai) was the original owner of the suit property who died in the year 1947. Sungani Bai (the original owner) executed a registered settlement deed dated 1st December 1945. She settled the suit property by the said settlement deed in favour of three persons: Gopu Bai, Abbey Karan Joshi and Vijay Kishan Bohra. It is not in dispute that the original owner died intestate without leaving any

legal representatives. As per the settlement deed, it was provided that 1/3rd share in the suit property was given to Gobu Bai for her life and then to her two daughters for their lifetime. It was provided that after their demise, 1/3rd of the share would pass on to their male children. The daughters of Gobu Bai died, leaving behind them Radhe Shyam, Rajendra Purohit and Omprakash Purohit. As per the settlement deed, 1/3rd share was given to Abbey Karan Joshi during his lifetime and after his demise to his male children. The 2nd defendant – Sailesh Joshi, is his only son. The remaining 1/3rd share was settled on Vijay Kishan Bohra during his lifetime. It was provided that it would go to his male children after his lifetime. The said Vijay Kishan Bohra died, leaving behind his son Chandrasekar Bohra. Vasantha Kumar (original 3rd defendant) and his wife V. Sandhya (4th defendant) purchased the suit property by a registered sale deed dated 29th January 2001 from the 2nd defendant – Sailesh Joshi, and the successors of two other sharers who were entitled to 1/3rd share each under the said deed of settlement. The 3rd defendant died during the pendency of the proceedings, and the 5th defendant is the son of the 3rd and 4th defendants.

4. Original Suit No. 12091 of 2010, as stated earlier, was filed by the appellant/plaintiff. The suit was filed on 17th November 1995, in which the plaintiff claimed that he was in open, uninterrupted and continuous possession of the suit property for 45 years. He claimed that he had perfected his title to the suit property by adverse possession along with his father and other family members. In the plaint, it is stated that the original owner died in 1947. The plaintiff relied upon several documents to show his possession. As the defendants threatened to dispossess him and trespass upon the suit property, the suit was filed for a declaration that he had become the owner of the suit property by adverse possession and for permanent injunction.

5. The 2nd defendant contested the suit by contending that the plaintiff was well aware of the said deed of settlement, but he had not disclosed the same in the plaint. He submitted that the three persons on whom the suit property was settled by the original owner in the year 1945 became the owners of the suit property on the demise of the original owner. The 4th and the 5th defendants also filed a written statement contending that the plaintiff was in unlawful possession of a small portion of the suit property to the extent of 250 sq. ft. The 4th and 5th defendants denied the claim of adverse possession made by the plaintiff.

6. Original Suit no. 12092 of 2010 was filed by the 3rd, 4th and 5th defendants against the plaintiff. The suit was filed for possession based on the title acquired by the 3rd, 4th and 5th defendants on the basis of the sale deed dated 29th January 2001.

7. The 2nd defendant had filed a suit for eviction against the tenants in the suit property, being EP No. 28 of 1996, in which an order of eviction was passed. The plaintiff/appellant filed Original Suit No. 973 of 1996, *inter alia*, for a declaration that he was not bound by any order of eviction in EP No. 28 of 1996. The City Civil Court dismissed Suit No. 12091 of 2010 filed by the plaintiff and decreed Suit No. 12092 of 2010 filed by 3rd to 5th defendants and passed a decree for possession. Suit No. 973 of 1996, filed by the plaintiff, was decreed. Therefore, two appeals were preferred by the plaintiff before the High Court for challenging the decrees in the first two suits. The 2nd defendant preferred an appeal against the decree passed in Suit No. 973 of 1996. The appeal filed against the decree passed in Suit No. 973 of 1996 was dismissed by the First Appellate Court. However, the finding of the Trial Court that the plaintiff had perfected his title by adverse possession was set aside. The plaintiff filed a second appeal before the High Court. By the impugned

judgment dated 25th April 2014, the High Court dismissed all three appeals preferred by the plaintiff.

SUBMISSIONS

8. The learned senior counsel appearing for the appellant/original plaintiff submitted that what was executed on 1st December 1945 by the original owner was a will. He submitted that as the suit property is in Chennai, rights can be claimed based on the will only if a probate or letters of administration is obtained. The learned counsel submitted that in the absence of probate or letters of administration, no right could be claimed based on the so-called settlement deed dated 1st December 1945. Consequently, no right, title or interest in the suit property has been passed on to the 3rd and 4th defendants by the sale deed dated 29th January 2001. He submitted that the continuous possession of the plaintiff is at least from 1951, and on facts, the plaintiff had established the plea of adverse possession. He submitted that the defendants have no right concerning the suit property, and hence, the impugned judgment is entirely erroneous. The learned counsel appearing for the respondents supported the impugned decision of the High Court.

CONSIDERATION OF SUBMISSIONS

9. As far as the suit filed by the plaintiff for the declaration of ownership based on adverse possession is concerned, the plaintiff can never succeed unless he proves the plea of adverse possession. There is a concurrent finding of fact on this issue against the plaintiff.

10. As far as the plea of adverse possession is concerned, a Constitution Bench of this Court in the case of ***M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das***¹, in paragraph 1142 and 1143 has held thus:

“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being *nec vi nec claim* and *nec precario*. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.”

¹ (2020) 1 SCC 1

(underline supplied)

11. In the case of *Karnataka Board of Wakf v. Govt. of India and Ors.*², in paragraph 11, this Court has laid down the law regarding the plea of adverse possession. Paragraph 11 reads thus:

“**11.** In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See *S.M. Karim v. Bibi Sakina* [AIR 1964 SC 1254] , *Parsinni v. Sukhi* [(1993) 4 SCC 375] and *D.N. Venkatarayappa v. State of Karnataka* [(1997) 7 SCC 567] .) Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma* [(1996) 8 SCC 128]”

(underline supplied)

12. Therefore, to prove the plea of adverse possession:-

- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;
- (c) The plaintiff must also plead and establish when he came into possession; and
- (d) The plaintiff must establish that his possession was open and undisturbed.

It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

13. Therefore, it is necessary to consider the averments made in Original Suit No. 12091 of 2010. A plea of adverse possession can be found in paragraph 3 of the plaint, which reads thus:

“3. The plaintiff is for the last 45 years in open uninterrupted and continuous possession and enjoyment of the premises being land and building bearing Old Door no. 14, New No. 18, Peria Neikaran Street, Sowcarpet, Madras-600079, more fully described in the schedule hereunder and he has thus perfected his title by adverse possession from before 1951, alongwith his father, J. mangilal Radhakishen Joshi, other members of his family. In proof thereof, the plaintiff has filed

² (2004) 10 SCC 779

several documents to establish his said possession adverse to the interests of anyone else including the defendants. The said documents may be treated as part and parcel hereof. Several years prior to 1951, the said property had been owned by on Sukri Bai who died in or about 1947, she died leaving no issues. The father of the plaintiff and later the plaintiff have been paying taxes only in her name. The mutation in the Corporation and other registries remain unchanged.”

(underline supplied)

As stated earlier, the suit was filed on 17th November 1995. Therefore, going by the averments in paragraph 3 of the plaint, the plaintiff can, at the highest, claim to be in possession from the year 1950. In the same paragraph, the plaintiff stated that the original owner died in 1947. It is not pleaded that even before the year 1947, the plaintiff or his father were in hostile possession to the knowledge of the original owner. When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint.

14. The Trial Court and the High Court have recorded findings of fact on the plea of adverse possession. The High Court has noted the admitted position that all along, the property tax and water tax bills stood in the name of the original owner. The High Court confirmed the finding of the Trial Court that the plaintiff was not able to produce even a single document to show that he had paid house tax before 1995. The High Court has referred to the Court Commissioner's Report, which records that the building forming a part of the suit property was in a completely dilapidated condition. The High Court has noted that the plaintiff took no steps to repair the portion in the dilapidated condition. The High Court has recorded a finding that water tax and sewage tax were not paid for years together.

15. The High Court has referred to a complaint dated 25th August 1995 submitted by the plaintiff to the police. In the complaint, firstly, the plaintiff asserted that he was in possession of only the front portion of the suit property. Secondly, he specifically asserted that he had been in possession of the suit property for 35 years before filing the complaint. It is pointed out that this complaint was filed one year before the institution of the suit. Thus, he claimed to have been in possession since 1960. In the plaint, the plaintiff claimed to have been in possession since 1950. The plaintiff's own complaint defeats the case made out in the plaint.

16. Therefore, the High Court held that the plaintiff could not establish that his adverse possession commenced from a particular date. The Trial Court and High Court rightly held that the plaintiff failed to prove his plea of adverse possession. In fact, as stated earlier, there was no foundation for the plea of adverse possession in the plant itself. Therefore, the suit for declaration of ownership by the plaintiff must fail. On one hand, the plaintiff is claiming only on the basis of the plea of the adverse possession. On the other hand, the defendants are claiming through the person who was admittedly the original owner. Even considering the failure to obtain probate or a letter of administration, it is obvious that the defendants have a better title to the suit property than the plaintiff, a trespasser. Therefore, it is not possible to find fault with the concurrent judgments recording a finding of fact that the plaintiff failed to prove his adverse possession. Thus, the appeals must fail.

17. During the submissions, the learned senior counsel appearing for the appellant/plaintiff submitted that the plaintiff is more than 80 years old. The plaintiff was in possession of at least a part of the suit property almost from 1995. Therefore,

notwithstanding the dismissal of the appeals, we propose to grant the plaintiff a longer time to vacate the suit property.

18. Accordingly, we dismiss the appeals with no orders as to costs. Notwithstanding the dismissal of the appeals and confirmation of the decree for possession against the plaintiff, we direct that the decree of possession shall not be executed till 31st March 2025, subject to the condition of the appellant and all adult members of his family filing unconditional undertakings on oath to vacate and handover the peaceful possession of the suit property to the defendant nos. 4 and 5 (plaintiffs in Original Suit No. 10292 of 2010). The undertakings on oath shall be filed within one month from today. The advocate for the appellant shall provide copies of the undertakings to the advocate for the respondents. On the failure of the appellant and his adult family members to file undertakings as above within the stipulated time, the decree for possession shall forthwith become executable.

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