



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 4219 of 2013
Reserved on: 21.07.2023
Decided on: 28.07.2023.

Om Prakash and anotherAppellants/Defendants.

Versus

Bishan DassRespondent/Plaintiff.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge

Whether approved for reporting?¹ Yes

For the appellants: Mr. Bhupender Gupta, Senior Advocate with
Ms. Rinki Kashmiri, Advocate.

For the respondent: Mr. Ajay Sharma, Senior Advocate, with
Mr. Ajay Thakur, Advocate.

Satyen Vaidya, Judge

By way of instant Regular Second Appeal, the appellants have assailed judgment and decree dated 17.07.2013 passed by learned Additional District Judge (II), Kangra at Dharamshala, District Kangra, H.P. in RBT Civil Appeal No. 218-P/10/08, whereby the judgment and decree dated 26.5.2008 passed by learned Civil Judge (Junior Division), Court No.2 Palampur, District Kangra, H.P. in Civil Suit No. 5/2006 was reversed.

¹ Whether reporters of print and electronic media may be allowed to see the order?

2. The respondent herein (hereinafter referred to as “plaintiff”) filed a suit for possession of the land comprised in Khata No. 33, Khatauni No. 68, Khasra No. 396, measuring 0-02-64 hectares, situated at Mohal Sughar, Mauza Bandla, Tehsil Palampur, District Kangra, H.P. (hereinafter referred to as the ‘suit land’) on the basis of his title. The appellants herein (hereinafter referred to as “defendants”) were alleged to be in unauthorised occupation of the suit land since December, 2004. It was specific case of plaintiff that while he was away from the suit land in December, 2004, defendants taking benefit of his absence had unauthorisedly occupied the same and on his return, the defendants refused to hand over the possession of the suit land to the plaintiff despite his repeated requests.

3. The defendants admitted their unauthorised occupation on the suit land. However, a plea was raised by defendants that their father had been holding the unauthorised occupation of the suit land even prior to the revenue settlement, which had taken place in the year 1974-75. Defendants asserted their open, hostile and continuous possession on the suit land since then. As per the defendants, plaintiff and his predecessor-in-interest were

aware about the unauthorised occupation of the defendants and their predecessor-in-interest on the suit land right from the beginning. As a matter of fact, plaintiff and his father in the year 1990-92 had also approached the Assistant Collector for correction of revenue entries in respect of the suit land by way of application bearing case No.19 of 1990, which incidentally was dismissed.

4. In replication, the plaintiff denied the averments made in the written statement by the defendants and reiterated the contents of the plaint.

5. On the basis of the pleadings of the parties, the following issues were framed by learned trial Court:

1. *Whether the plaintiff is recorded as owner of the suit land as alleged? OPP*
2. *Whether in December 2004 the plaintiff was forcibly dispossessed from the suit land by the defendants as alleged? OPP*
3. *Whether the plaintiff is entitled to the decree of possession against the defendants qua suit land, as prayed? OPP*
4. *Whether the defendants have become owners of the suit land by way of adverse possession, as alleged? OPD*
5. *Whether the plaintiff has no cause of action and locus standi? OPD*

6. *Whether the suit is barred by limitation? OPD*

7. *Relief.*

Issues No. 1 and 4 to 6 were decided in affirmative. Issues No. 2 and 3 were decided in negative and consequently, the suit of the plaintiff was ordered to be dismissed. The defendants were held to have perfected their title over the suit land by way of adverse possession by specifically deciding issue No.4 in affirmative.

6. In appeal filed by the plaintiff under Section 96 of the Code of Civil Procedure (for short the 'Code'), learned Appellate Court reversed the findings returned by learned trial Court. The appeal of the plaintiff was accepted and a decree of possession was passed in favour of the plaintiff and against the defendants in respect of the suit land.

7. On 30.9.2013, the instant appeal had been admitted by this Court for hearing on following substantial questions of law:

1. Whether the findings of the lower Appellate Court are illegal, erroneous and perverse that the suit is within limitation by ignoring material evidence i.e. Ex. D-1 and Ex. D-2?
2. Whether the lower Appellate Court has committed grave error of law and jurisdiction in decreeing the suit by rejecting the claim of

defendant to have become owner by afflux of time i.e. adverse possession especially when the hostile possession of the defend was proved much prior to the year 1974-75 when settlement took place which recorded the possession of defendant-appellant in the capacity of "Billa' Sifat" and even thereafter when the plaintiff himself filed an application for correction of revenue entries which was ultimately dismissed on 15.10.1992 by ignoring Ex. D-1 and misunderstanding and misapplying the correct ratio of the ruling quoted in the impugned judgment?

8. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

9. Learned Senior Counsel for the defendants contended that the judgment and decree passed by learned first appellate court was unsustainable *firstly*, for the reasons that the proof of hostility of the possession of defendants for requisite period was not considered in right perspective and further the learned first appellate court had laid undue emphasis on proof of initial date of commencement of adverse possession, *secondly* the factum of dismissal of correction application of plaintiff vide Ext. D-1 was wrongly appreciated and *lastly*, the plea of adverse

possession of defendants was illegally rejected on irrelevant consideration of non-joinder of necessary parties.

10. Reliance was placed upon the following excerpts from judgments passed by this Court in **(1999) 1 Sim. L.J. 174, State of Himachal Pradesh vs. Khazana Ram** to suggest that in the present case also the unauthorised possession of defendants and their predecessor was proved atleast since 1974-75, when the settlement in the area had taken place:

“4. On perusal of the record, I find that the possession of the respondent is reflected for the first time in the jamabandi of the year 1959-60 Ext.DW-1/5. As presumption of correctness is attached to this document, the presumption would take us back to four years earlier. It would, thus, mean that the respondent’s possession over the suit land would relate back to the year 1955-56. The next following jamabandi placed on record is Ex.DW-1/B, which is of the year 1963-64. Jamabandi for the year 1969-70 is Ex.DW-1/C and likewise jamabandi of the year 1974-75 is Ex.DW-1/D. Jamabandi of the year 1979-80 is Ex.DW-1/E and jamabandi of the year 1984-85 is Ex.DW-1/F. Jamabandi of the year 1988-89 which is from ‘Missal Hakiyat’ is Ex.DW-1/G. In the jamabandi Ex.DW-1/H of the year 1989-90, the possession of Khazana Ram is recorded without payment of any rent. In the rent column, it is recorded as ‘BILA LAGAN BAWAZA KABZA’. In the other jamabandis as noticed above the entry in the rent column is identically the same. In the jamabandi of the year 1974-75, in column No.13 it is

recorded that the ownership has not changed from Gram Panchayat in favour of the State of Himachal Pradesh.

6. Coming to the first jamabandi in favour of the respondent of the year 1959-60 Ex.DW-1/S is the Nagar Panchayat that is recorded as owner and the respondent is recorded in the possessory column as 'G MAROOSI' as (If) this word has appeared in isolation some meaning could be given to it. Strangely enough in column No.7 pertaining to 'Lagan' it is recorded "BILA LAGAN BAWAZA NAZAJ KABZA". It would, thus, follow that the respondent has been in possession of the suit land unauthorisedly and without payment of any rent. Ex.PW-1/A is the report made by the revenue Patwari suggesting appropriate action as the possession of respondent Khazana Ram was found to be illegal. Patwari has also appeared as PW-1 in this case. In cross-examination he has made a funny statement. It has been said by him that the unauthorised possession was found at the time of check-up but he did not record it in the 'rapat roznamcha'. Towards the end of his statement it has been categorically said by him that the possession of the respondent over the suit land since 1959-60 is unauthorised.

11. In addition, parity has been sought by placing reliance of para 28 of the judgment passed by this Court in

(2012) 2 Latest HLJ (HP) 775, Ran Singh and others vs.

Thunia and others and which reads as under:

"28. It was pleaded on behalf of the plaintiffs in para 3 of the plaint that the defendants had taken forcible possession of the suit land on 28.7.1984. However, plaintiff No.1 Shri Ran Singh, while appearing as PW-1 on 26.5.1999, has stated in chief examination that the

defendants have taken forcible possession of the suit land about 10-12 years back, that is, somewhere in 1987/1989. Thus, there is a marked variance between the pleadings set up on behalf of the plaintiffs and the evidence led to prove the same. In cross-examination, though PW-1 Ran Singh has denied that in 1980, the plaintiffs had asked the defendants to vacate the suit land, yet he has categorically admitted that in 1981, when they had asked the defendants to vacate the suit land, they had assured that they would vacate the same sooner or later. In further cross-examination, he has stated that 'Bandobast' (settlement) had taken place in the area in 1980-81. It is further admitted by him that the defendants did not vacate the suit land since settlement till the day he was making statement in the Court on 26.5.1999. Thus, it is apparent that the plaintiffs did not take any steps for restoration of possession of the suit land from the defendants, despite the fact that they had been asserting hostile title to the same since 1981, when settlement had taken place in the area and since the suit was filed only on 15.2.1995, that is, after more than 12 years, the same was, on the face of it, barred by time."

12. In the case in hand the defendants have been able to prove existence of continuous entries in the records of rights showing their possession over suit land. It is also evidently clear that the possession of defendants or their predecessor over the suit land has been recorded without any specific status. The entry of possession in favour of defendants has also continued since settlement in the year

1974-75. The existence of such fact has also found concurrence in the judgments of learned trial and first appellate courts. Nonetheless, the question remains whether the defendants can be said to have proved perfection of title over the suit land by way of adverse possession?

13. To succeed in plea of adverse possession, the first and foremost requirement is assertion and proof of hostile title by the possessor in denial of the title of true owner. The hostility of title would mean claim to the property as owner by clearly denying the title of true owner. Thereafter, the uninterrupted, open and hostile possession has to follow for the period of 12 years as prescribed under Article 65 of the Limitation Act. Hence, the need for proximal time when such assertion was first made becomes relevant. Reference in this regard can be made to the following expositions of law rendered by Hon'ble Supreme Court and this Court:

i) (2004) 10 SCC 779, Karnataka Board of Wakf vs. Government of India and others;

“11. In the eye of 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 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 Sakinal* 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (*Dr. Mahesh Chand Sharma v. Raj Kumari Sharma* (1996) 8 SCC 128).

ii) (2005) 8 SCC 330, Saroop Singh vs. Banto and others;

“29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date of defendant’s possession becomes adverse. (See *Vasantiben Prahladi Nayak vs. Somnath Muljibhai Nayak*, (2004) 3 SCC 376.

30. “Animus possidendi” is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali vs. Jagadish Kalita* (2004) 1 SCC 271, para 21).”

iii) (2010) 3 Sim.LC 156, Gurdas and another vs. Devi Singh and others;

“12. In *Karnataka Board of Wakf v. Government of India and others*, (2004) 10 Supreme Court Cases 779, the Hon’ble Supreme Court has enunciated broad parameters required to be established by a person who claims adverse possession, vide para 11 of the judgment, which is to the following effect:

“In the eye of 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 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, Parsinni v. Sukhi and D.N Venkatarayappa v. State of Karnataka](#)). 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 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](#)).”

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13. The Hon'ble Apex Court while reiterating the above ingredients has further held in *T. Anjanappa and others v. Somalingappa and another*, (2006) 7 Supreme Court Cases 570 “that mere possession howsoever long does not necessarily mean that it is adverse to the true owner” vide para 20 of the judgment, which goes thus:

“It is well-recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.”

14. In another authoritative and exhaustive pronouncement of law reported as *P.T Munichikkanna Reddy and others v. Revamma and others*, (2007) 6 Supreme Court Cases 59, the Hon'ble Supreme Court

has further emphasized that (1) starting point of adverse possession is of equal importance; (2) even an unduly long and undisturbed possession does not prove the intention of the person claiming title by adverse possession; (3) the initial burden lies on the land owner to prove his title and possession, the onus then shifts to other side to prove title by adverse possession and (4) since right to property is a human right, adverse possession should be considered in that context against the background that Courts around the world are taking an unkind view to the concept of adverse possession, should be kept in mind.”

(iv) In **Ran Singh** (supra), this Court in para 21 of the judgment observed as under:

“21. In another authoritative and exhaustive pronouncement of law, reported as *Konda Lakshmana Bapuji* (supra) the Hon’ble Supreme Court has further emphasized as under, in para 53 of the judgment.”

The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has ‘animus possidendi’ to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not

be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect titles by adverse possession as against the Government is 30 years.”

14. Proof of long standing unauthorised possession can only be a relevant trait for consideration of plea for acquisition of title by adverse possession but cannot be the sole criteria. The underlying principle remains the proof to possess the land of another as owner with requisite hostile animus, as discussed above, and further proof of uninterrupted, open, peaceful continuity of same state for 12 years. Since, by plea of adverse possession, rightful title of someone is sought to be taken away, a heavy burden lies upon the defendants to prove the plea of adverse possession. In case of failure to prove the adverse possession, any other form of possession howsoever, long, cannot be held sufficient to non-suit the plaintiff in his prayer for possession of the suit land on the basis of title.

15. Reverting to the facts of the case, I have not been able to find the specific pleading and proof as regards the assertion of title over the suit land and the proximal period therefor that too in clear hostility over the title of true owner. The material on record does not suggest that the defendants had ever expressed their specific hostile animus to hold the possession of suit land as owners by denying the title of plaintiff or his predecessor-in-interest. That being so the defendants cannot be held to have perfected the title over the suit land by way of adverse possession. Defendants have failed to discharge the necessary burden of proof.

16. As regards the implication of document Ext. D-1, the only fact that can be said to have been established is the filing and dismissal of correction application by the plaintiff and his predecessor in respect of suit land as against the defendants. No further inference can be drawn in absence of perusal of pleadings made by the parties in said proceedings and also in absence of exact reasons for rejection of the application. Thus, Ext D-1 cannot be used to the benefit or detriment of case of either of the parties.

17. The question as to non-joinder of the other co-owners, in the given facts of the case, is answered by holding that the defendants were required to contest the claim of plaintiff as raised in the plaint and the defendants, thus, were within their rights to raise the defence of adverse possession to defeat the claim of plaintiff. Since, this court has already held the claim of defendants regarding adverse possession as “not proved”, no further exploration on the plea of non-joinder of necessary parties is required.

18. The substantial questions of law as framed in the instant appeal are decided accordingly.

19. In view of above discussion, there is no merit in the appeal and the same is dismissed with no orders as to costs. Decree dated 17.07.2013 passed by learned Additional District Judge (II), Kangra at Dharamshala, District Kangra, H.P. in RBT Civil Appeal No. 218-P/10/08 is affirmed. Decree sheet be drawn accordingly.

Appeal stands disposed of, so also all pending miscellaneous application(s) if any.

28th July, 2023

(GR)

**(Satyen Vaidya)
Judge**