

Sri Uttam Chand (D) Th Lrs . vs Nathu Ram (D) Thr. Lrs. on 15 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 461, (2020) 1 ANDHLD 245, (2020) 1 CURCC 248, (2020) 1 MAD LJ 837, (2020) 1 RECCIVR 721, (2020) 2 SCALE 123, (2020) 1 ALL RENTCAS 193, AIRONLINE 2020 SC 849, AIRONLINE 2020 SC 35

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Bench: Hemant Gupta, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 190 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 16321 OF 2011)

SHRI UTTAM CHAND (D) THROUGH LRS.

.....APPELLANT(S)

VERSUS

NATHU RAM (D) THROUGH LRS. & ORS.

.....RESPONDENT(S)

JUDGMENT

HEMANT GUPTA, J.

1. Plaintiff is in appeal before this Court aggrieved against judgment and decree passed by the High Court of Delhi on 18 th February, 2011 whereby, the defendants second appeal was allowed and the suit of the plaintiff for possession on the basis of title was dismissed.

2. The plaintiff filed a suit for possession on the basis of purchase of suit property from the Managing Officer, Department of Rehabilitation, Government of India in a public auction held on 21st March, 1964. The certificate of sale was issued thereafter on 4th January, 1965. The plaintiff filed a suit for possession on 17 th February, 1979 alleging the defendants to be in an unauthorised possession of the suit property and who have refused to vacate the same.

3. The defendants in the written statement denied that the plaintiff is the owner of the property. The defendants asserted that their house existed on the property in question for more than the last two centuries. The grandfather of the defendants was said to be in possession of the property as owner, thereafter their father one Tara Chand and now all the defendants are in possession of the property as owners. It was denied that the property was ever vested with the Managing Officer and, therefore, it was claimed that the Managing Officer has no authority or jurisdiction to auction the property in question. Therefore, the plaintiff has no interest, right or title in the property.

4. Parties went to trial on the following issues:

“1. Whether the suit is properly valued for the purpose of Court fee & Jurisdiction?

2. Whether the suit is time barred?

3. Whether the plaintiff is the owner of the property in suit?

4. Whether the defendants become owner by adverse possession of the property in suit?

5. Whether the defendants are in unauthorized occupation of the property in dispute?

6. Relief.”

5. Before the learned trial court, the plaintiff examined PW-4 Chander Bhan, Lower Division Clerk from the Land and Building Department who has proved that the sale certificate was issued in favour of plaintiff on 15th January, 1965. The learned trial court recorded the finding on the basis of testimonies of Din Dayal Khanna (PW-3), Chander Bhan (PW-4) and S.B. Lal (PW-5) that the property is situated in Khasra No. 9 and has been sold through auction. The learned trial court also considered the testimonies of Bhagwan Dass (DW-1) and Ranjit (DW-2), both sons of the defendant, that the plaintiff is the owner of the property purchased through Ex.B4/1 in an auction from the Managing Officer, Department of Rehabilitation. Thus, Issue No. 3 was held in favour of the plaintiff and the plaintiff was found to be owner of the property. But Issue Nos. 2, 4 and 5 were decided in favour of the defendants and against the plaintiff and consequently the suit was dismissed but with a direction to the plaintiff to make good the deficiency of court fee of Rs. 2000/- within one month in view of the finding recorded on Issue No. 1.

6. In the first appeal by the plaintiff, the learned First Appellate Court affirmed the findings recorded by the trial court on Issue Nos. 1 and 3 that the plaintiff is the owner of the property in question. However, in respect of Issue No. 2 as to whether the suit is time barred, the learned First Appellate Court returned a finding that the suit is within time as the same was filed on February 17, 1979 i.e. before the completion of 12 years. Issue No. 2 was decided against the defendants holding that the findings recorded by the trial court that the limitation starts from the date of purchase of the suit property is not sustainable. The right of the respondents over the property was challenged before the completion of 12 years, therefore, the suit filed in February, 1979 is within period of

limitation. Under issue No. 4, the findings recorded were that the mere possession of 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. The assertion of title must be clear and unequivocal. Consequently, Issue No. 5 was also decided against the defendants and the suit stood decreed.

7. In the second appeal, the High Court affirmed the finding of ownership in favour of the plaintiff and relied upon electricity and house tax bills showing the possession of the defendants over the suit property from November, 1963. It was, thus, held that the adverse possession of the defendants over the same matured within 12 years, by November, 1995, therefore, the suit filed on 17th February, 1979 was barred by limitation.

8. The High Court referred to the statement of PW-1 Uttam Chand that the suit property was assessed to house tax but no one had paid such tax. He stated that there was only one kachha room of mud at the site but he did not know when the unauthorised construction was made in the suit property. The High Court considered the statement of witness of the plaintiff to return a finding that Tara Chand, deceased father of the defendants was found in possession of the suit property in March, 1964. The High Court returned a finding that Tara Chand was in occupation of the suit property even prior to the purchase of the same by the plaintiff in the year 1964.

The Court referred to the judgment of this Court reported as *T. Anjanappa & Ors. v. Somalingappa & Anr.*¹ to hold that the defendants were in open, uninterrupted, peaceful and hostile possession since March, 1964 and the period of 12 years was completed in March, 1976. Therefore, the suit filed by the plaintiff on 17th February, 1979 was barred by limitation.

9. Learned counsel for the appellant argued that for a successful plea of adverse possession against the true owner, the person in possession has to admit hostile possession to the knowledge of the true owner. The defendants in their written statement have not admitted the title of the appellant and of adverse possession to the knowledge of the true owner. The defendants have denied vesting of the land with the Managing Officer and the subsequent sale in favour of the appellant. The trial court has returned a finding as to the title of the appellant itself and such finding has not been set aside neither by the First Appellate Court nor by the High Court. The defendants are asserting their long and continuous possession but such possession howsoever long cannot be termed as adverse possession so as to perfect title within the meaning of Article 65 of the Limitation Act. It was argued that long possession is not necessarily adverse possession. Reliance is placed upon *Karnataka Board of Wakf v. Government of India & Ors.*², *Kurella Naga Druva Vudaya Bhaskara Rao v. Galla Jani*¹ (2006) 7 SCC 570 ² (2004) 10 SCC 779 *Kamma alias Nacharamma*³ and *Dagadabai (Dead) by Legal Representatives v. Abbas alias Gulab Rustum Pinjari*⁴.

10. On the other hand, learned counsel for the defendants argued that the witness of the plaintiff has admitted the possession of the defendants in the year 1964 itself i.e. before the purchase, therefore, the possession is adverse to the knowledge of the appellants.

11. In T. Anjanappa, this Court has set aside the finding of the High Court that the defendants claiming adverse possession do not have to prove who is the true owner. If the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. The Court held as under:

“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.

3 (2008) 15 SCC 150 4 (2017) 13 SCC 705

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

“24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners.” (See Vidya Devi v. Prem Prakash [(1995) 4 SCC 496] , SCC p. 504, para

24.)

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents.

Such persons cannot set up adverse possession:

“14. ... Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act,] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession,

regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. ...

15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

(See Annasaheb Bapusaheb Patil v. Balwant [(1995) 2 SCC 543, p. 554 : AIR 1995 SC 895, p. 902] , SCC p. 554, paras 14-

15.)”

12. In Kurella Naga Druva Vudaya Bhaskara Rao, the payment of tax receipts and mere possession for some years was found insufficient to claim adverse possession. It was held that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient. The Court held as under:

“19. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and the High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.”

13. In Brijesh Kumar & Anr. v. Shardabai (Dead) by Legal Representatives & Ors.5, the Court held as under:

“13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in *M. Venkatesh* [*M. Venkatesh v. BDA*, (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387] . The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent- plaintiff failed to discharge the onus. Reference may also be made to *Chatti Konati Rao v. Palle Venkata Subba Rao* [*Chatti Konati Rao v. Palle Venkata Subba Rao*, (2010) 14 SCC 316 : (2012) 1 SCC (Civ) 452] , on adverse possession observing as follows: (SCC p. 322, para 15) “15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation 5 (2019) 9 SCC 369 overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law.””

14. As to whether the plaintiff can claim title on the basis of adverse possession, this Court in a judgment reported as *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.*⁶ has held as under:

“60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, *nec vi* i.e. adequate in continuity, *nec clam* i.e. adequate in publicity and *nec precario* i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.”

15. The matter has been examined by a Constitution Bench in *M Siddiq (D) through LRs v. Mahant Suresh Das & Ors.*⁷ wherein, it has been held that a plea of adverse possession is founded on the acceptance that ownership of the property vests in another, against whom the claimant asserts possession adverse to the title of the other. The Court held as under:

“747. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a 6 (2019) 8 SCC 729 7 (2019) SCC OnLine SC 1440 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 4 ought to be cognisant 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.

748. 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 paragraph 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.

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752. In *Supdt. and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja*, (1979) 4 SCC 274, Justice R S Sarkaria, speaking for a three judge Bench of this Court noted that the concept of possession is “polymorphous. embodying both a right (the right to enjoy) and a fact (the real intention). The learned judge held:

“13. “It is impossible to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of “possession”. Much of this difficulty and confusion is (as

pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. "Possession", implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control . (See Dias and Hughes, *ibid.*)." These observations were made in the context of possession in Section 29(b) of the Arms Act 1959.

In *P Lakshmi Reddy v. L Lakshmi Reddy*, 1957 SCR 195, Justice Jagannadhadas, speaking for a three judge Bench of this Court dwelt on the "classical requirement" of adverse possession:

"4. Now, the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec precario*. (See *Secretary of State for India v. Debendra Lal Khan* [(1933) LR 61 IA 78, 82]). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor." The court cited the following extract from U N Mitra's "Tagore Law Lectures on the Law of Limitation and Prescription":

"7...An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and circumstances attending the appropriation), to hold the land against him (sic) who was in possession. (Angell, Sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession." (6th Edition, Vol. I, Lecture VI, at page 159) This Court held:

"7...Consonant with this principle the commencement of adverse possession, in favour of a person implies that the person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus." In *Karnataka Board of Wakf v. Government of India*, (2004) 10 SCC 779, Justice S Rajendra Babu, speaking for a two judge Bench held that:

"11...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." The ingredients must be set up in the pleadings and proved in

evidence. There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.

In *Annakili v. A Vedanayagam*, (2007) 14 SCC 308, this Court emphasized that mere possession of land would not ripen into a possessory title. The possessor must have animus possidendi and hold the land adverse to the title of the true owner. Moreover, he must continue in that capacity for the period prescribed under the Limitation Act.”

16. In the present case, the defendants have not admitted the vesting of the suit property with the Managing Officer and the factum of its transfer in favour of the plaintiff. The defendants have denied the title not only of the Managing Officer but also of the plaintiff. The plea of the defendants is one of continuous possession but there is no plea that such possession was hostile to the true owner of the suit property. The evidence of the defendants is that of continuous possession. Some of the receipts pertain to 1963 but possession since November, 1963 till the filing of the suit will not ripen into title as the defendants never admitted the plaintiff-appellant to be owner or that the land ever vested with the Managing Officer. In view of the judgments referred to above, we find that the findings recorded by the High Court that the defendants have perfected their title by adverse possession are not legally sustainable.

Consequently, the judgment and decree passed by the High Court is set aside and the suit is decreed. The appeal is allowed.

.....J. (L. NAGESWARA RAO)J. (HEMANT
GUPTA) NEW DELHI;

JANUARY 15, 2020.