

ORDER BELOW EXH.28

Read an application and say filed by the plaintiff at Exh.30. Perused the record. Heard the learned counsel for the plaintiff, Advocate Shri. Sayyed Ali and the learned counsel for the defendants Advocate Shri. L.G. Tighare.

2] Defendants have filed this application under Order VII Rule 11(d) of the Code of Civil Procedure to reject the plaint. It is the contention of the defendants that the plaintiff filed this suit against the defendants and sought declaration as well as permanent injunction regarding the suit property on the basis of adverse possession. It is pleaded by the plaintiff that the plaintiff is in possession over the field Survey No.302, admeasuring 1.62 H.R. situated at mouze Nishat Kheda, Tah. Mouda, Distt. Nagpur and his possession over the suit field continued without interruption since about 17 years. (This is hereinafter referred as “the suit property”).

It is also allegations of the plaintiff that Sub-Divisional Officer, Ramtek, on 14.12.2007, decided that the possession of the plaintiff including that of his forefather was continuously and uninterruptedly for more than 12 years. The plaintiff is claiming declaration that he be declared as owner by way of adverse possession. It is further contention of the defendants that the declaration which is sought by the plaintiff regarding ownership of the suit property is impermissible in law

in the light of the judgment laid down by Hon'ble Supreme Court and it is binding upon all the Courts in India as per Article 141 of Constitution of India. The Hon'ble Supreme Court has held that even if a person is found to be in adverse possession, he cannot seek a declaration to the effect that such adverse possession has matured into ownership. The defendant further submitted that the main principle relief which is claimed by the plaintiff in the suit is the declaration as to ownership by way of adverse possession and the second relief which is claimed by the plaintiff is ancillary relief and the same is consequential one since if the main relief could be granted, then only the question of consideration for granting the second relief would arise. The defendants further submitted that the suit of the plaintiff is not maintainable in the eyes of law. Therefore, the suit filed by the plaintiff, prima facie, hit by the provisions of Order VII Rule 11(d) of Code of Civil Procedure. Therefore, they prayed to reject the plaint.

On the contrary, the learned counsel for the plaintiff contended that the doctrine of adverse possession is very much known and recognized under the Indian Laws and the Court is entitled under the Specific Relief Act. He further submitted that it is correct that there would be no sense of declaring any person owner by way of adverse possession. However, it is materially enough on record to show that a person continuously and uninterruptedly in possession of suit property much against the right, title and interest therein he is really owner by way of

adverse possession in the eyes of law. In such an event, if such a dispute raised legally, validly and propriety of the same shall definitely decided by the Civil Court by passing a decree of declaration under the Specific Relief Act. According to the plaintiff, the defendants have mis-interpreted the provisions of law provided under Order VII Rule 11(d) of the Code of Civil Procedure.

**3.** On perusal of record and the submission of learned counsel for the plaintiff and the defendants, it prima facie, appears that the plaintiff filed this suit against the defendants for declaration and permanent injunction on the basis of adverse possession. The plaintiff prayed that the Court should pass decree in the nature of declarative decree declaring that the suit field has become the property of the plaintiff for reasons of adverse possession which is in his possession for more than 20 years. The plaintiff also sought decree of perpetual injunction to restrain the defendants permanently from selling the suit property from creating any third party interest therein. According to the plaintiff, the plaintiff is cultivating the suit property continuously and uninterruptedly since about more than 20 years. The predecessor in title of the present plaintiff is continuously cultivating the suit property and after their death the present plaintiff came into the possession of the same and his possession continued without any interruption since about 17 years.

It is also case of the plaintiff that the predecessor in

interest of the defendants i.e. Abdul Rahim raised the dispute by filing complaint to Police Station, Ramtek on 06.09.2007 against the plaintiff. The plaintiff contested the claim of Abdul Rahim. Then, the Hon'ble Sub-Divisional Officer, Ramtek gave definite finding about the possession of the plaintiff over the suit field. It is also case of the plaintiff that the suit property is still in the possession of the plaintiff. However, the defendants are trying to sale the suit property to other person and therefore the plaintiff filed this suit against the defendants.

4. The learned counsel for the defendants argued that the suit is not maintainable in the eyes of law because the plaintiff sought the declaration of ownership on the basis of adverse possession which is not tenable. The plaintiff cannot claim the ownership on the basis of adverse possession. However, if defendants filed the suit against the plaintiff for the possession then the defendants may come with a plea of adverse possession.

The learned counsel for the defendants Advocate Shri. L.G. Tighare also relied upon some authorities i.e. *Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669* and submitted that, “*Declaration of ownership of land on basis of adverse possession cannot be sought by plaintiff, but claim of ownership by adverse possession can be made by way of defence when arrayed as defendant in proceedings against him.*”

The learned counsel for the defendants also relied

upon another authority i.e. **Bhim Singh & Ors V. Zile Singh & Ors. Reported in 2006 Punjab and Haryana 195** and thereafter submitted that, “*plea of adverse possession is available to the defendants only.*” Therefore, no declaration can be sought by the plaintiff with regard to ownership on the basis of adverse possession.

5. I read the authorities submitted by the defendants. It is true that the plaintiff filed this suit against the defendants for declaration of ownership on the basis of adverse possession. The Hon'ble Supreme Court in **Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669** held that, “*the declaration of ownership of land on basis of adverse possession cannot be sought by the plaintiff.*” In **Bhim Singh & Ors V. Zile Singh & Ors. Reported in 2006 Punjab and Haryana 195** the Hon'ble High Court of Punjab and Haryana held that, “*no declaration could be sought by the plaintiff with regard to ownership on the basis of adverse possession.*” It is settled that the person who is in the possession over the landed property or house property, may be encroacher, trespasser or tenant cannot be evicted without following due process of law. The ownership can be transferred by virtue of registered document or instrument i.e. sale-deed, will-deed or mortgage-deed or lease deed. However, there is an exception that the ownership can be transferred without any registered document or instrument. The person can become the owner on the basis of adverse possession i.e. settled possession in

view of Section 27 of the Limitation Act, 1963. Section 27 of the said Act provides that, “*At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.*” As per Article 65 of the Limitation Act, there is limitation of 12 years for claiming possession of immovable property based on title when the possession of the defendants become adverse to the plaintiff. The Hon'ble Supreme Court in ***Gurdwara Sahib case*** held that the possession of the appellant/plaintiff cannot be disturbed except by due process of law. It is also cleared that the suit of the plaintiff seeking relief of the injunction has been dismissed in case of respondents filing suit for possession and/or ejection of appellant, it would be open to appellant to plead in defence that appellant had become owner of suit land by adverse possession. So, in view of judgment of ***Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669*** and ***Bhim Singh & Ors V. Zile Singh & Ors. Reported in 2006 Punjab and Haryana 195*** cited supra, the plaintiff cannot claim the ownership over suit property on the basis of adverse possession. However, he can take the plea of adverse possession when the owner of the property may file the suit against him.

6. In ***Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669***, the case of the plaintiff was that the appellant claimed ownership by adverse possession on the ground that it is

in the possession of the land in dispute for sufficiently long period which fact has been established. The suit of the plaintiff was partly decreed by the Trial Court and granted relief of injunction. In appeal, it is held that, *“the plaintiff is in adverse possession over the suit property since 13.04.1952 and the defendants are restrained from dispossession of the plaintiff forcibly and illegally from the suit property and further restrained from damaging the building of Gurdwara Sahib except according to due process of law.”* The remaining relief as sought by the plaintiff is dismissed.” The Hon'ble Supreme Court, in appeal held that the appellant Gurdwara Sahib is not entitled to the relief of declaration as it is Gram Panchayat which is owner of the property in dispute. In para No.10 of the aforesaid judgment, it is held that, “the appellant is in possession of the suit property since 13.04.1952 and has been granted decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law and the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejection of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession.

Needless to mention at this stage that the appellant shall also be at liberty to plead that findings of Issue No.1 1 to the effect that the appellant is in possession of adverse possession since 13.04.1952 operates as res judicata.”

7. So, on reading judgment of *Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669*, the Hon'ble Supreme Court held that, “*the plaintiff cannot sought declaration of ownership on the basis of adverse possession.*” However, the Hon'ble Supreme Court nowhere held that the plaintiff who is in adverse possession is not entitled to protect his possession.

8. In this present case, in my view, the declaration of ownership on the basis of adverse possession and the protection of possession on the basis of settled possession or adverse possession are two important different aspects. It is well settled law that the plaintiff cannot claim the ownership on the basis of adverse possession. However, if the plaintiff is in settled possession over the property of the owner and his possession is hostile then he is entitled to protect his possession. He cannot be evicted or dispossessed without following due process of law. The Hon'ble Supreme Court, nowhere discussed in the judgment i.e. *Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669* that the plaintiff/appellant was not entitled to file the suit on the basis of adverse possession. It is true that the plaintiff cannot claim the ownership on the basis of adverse possession but he can file the suit against the true owner if there is apprehension to the possession of the person who is in settled possession.

Section 9 of the Code of Civil Procedure provides

that, “*the Court shall have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly barred.*” I also read Order VII Rule 11 of the Code of Civil Procedure. Order VII Rule 11 provides that, the plaint should be rejected in the following cases :-

- [a] where it does not disclose a cause of action;
- [b] where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- [c] where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- [d] where the suit appears from the statement in the plaint to be barred by any law;
- [e] where it is not filed in duplicate;
- [f] where the plaintiff fails to comply with the provisions of rule 9;

9. So, on reading Order VII Rule 11 of Code of Civil Procedure, it appears that the Court may reject the plaint if the relief claimed is under-valued or the plaintiff has not deposited sufficient stamp or the suit appears to be from the statement in the plaint to be barred by any law. In this present suit, it is contended by the defendants that the suit is not maintainable

only because the plaintiff filed this suit for declaration for ownership on the basis of adverse possession. However, there is no any law that the plaintiff cannot file the suit on the basis of adverse possession. So far as 'doctrine of adverse possession' is concerned, if the person who is in settled possession or in adverse possession feels that his possession over the property is in danger. If the said person feels that he can be dispossessed or evicted at any time by any other person then he may file suit against true owner to protect his possession. He cannot claim the ownership of possessive property on the basis of adverse possession but he cannot be precluded or he cannot be prohibited to protect his possession even though he may be trespasser, encroacher or any other status. In *Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another reported in (2014) 1 Supreme Court Cases 669* the Hon'ble Supreme Court has not held that, “*the person who is in settled possession by adverse possession cannot file suit against true owner.*” It is true that it cannot be declared that the plaintiff who is in adverse possession cannot be claimed ownership over the property by way of adverse possession but he cannot be precluded to file the suit against true owner to protect his possession. Therefore, even though the suit of the plaintiff for ownership on the basis of adverse possession is not tenable in view of the judgment of Hon'ble Supreme Court in *Gurdwara Sahib case*, cited supra, the plaintiff filed this suit against true owner to protect his possession. Therefore, I am of the opinion that the plaint of the plaintiff cannot be rejected in view of Order VII Rule 11 of C.P.C.

Therefore, I do not accept the submissions of the learned counsel for the defendants that the plaint is liable to be rejected on the basis of that the suit is not tenable.

10. In this present case, the plaintiff filed the suit against the defendants for declaration and permanent injunction. The plaintiff claimed two reliefs i.e. declaration of ownership and perpetual injunction. The evidence of the plaintiff is not commenced till today. The ownership of the property as well as the possession can be decided on merit. However, the plaint cannot be rejected as per Order VII Rule 11 of Code of Civil Procedure.

The learned counsel for the plaintiff pleaded that the suit is not barred by any law. He also relied upon one authority *Govinda Goverdhandas Daga and another Vs. Field Mining and Ispat Ltd., Nagpur reported in 2009(6) Mh.L.J. 398* and submitted that the Civil Court is entitled to take cognizance of every dispute of a civil nature unless the law prohibits it either expressly or impliedly from entertaining it.

I also read the authority filed by the plaintiff. The plaintiff is also relied upon the case of *Bhau Ram Vs. Janak Singh and others reported in 2012(6) Mh.L.J. 758* and submitted that, “*the averments in the plaint can be looked into while deciding the application under Order 7, Rule 11 but pleas taken by the defendant in the written statement would be*

*irrelevant.”*

I also read Section 9 of the C.P.C. Section 9 of C.P.C. is also provides that, “*the Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*” No any law bar to file the suit by the plaintiff for the protection of his possession over the property. So, in view of above discussion, I am of the opinion that the plaint cannot be rejected under Order VII Rule 11 of Code of Civil Procedure. Hence, I pass the following order :-

**ORDER**

- 1] The application is rejected.
- 2] No order as to costs.

Mouda.  
Dt.22.03.2018

( D. D. Fulzele )  
Civil Judge, Jr.Dn.  
Mouda

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of Judgment are word to word, as per original judgment.

Name of Stenographer        :-     R.K. Shriwastava.