



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 71 of 2023

Date of Decision: 26.11.2025.

Urmila Devi and others

.....Appellants

Versus

Ved Parkash and others

.....Respondents

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Appellants : Mr. Dheeraj K. Vashisht,
Advocate.

For the respondents : Mr. Y.P. Sood, Advocate.

Bipin Chander Negi, Judge (oral).

The present appellants have filed this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), assailing the judgment and decree dated 30.11.2022, passed by the learned Additional District Judge (II), Una, District Una, H.P. in Civil Appeal No. 28-XIII-2022, titled Urmila Devi and others vs. Ved Parkash and others, whereby the judgment and decree dated 20.07.2022, passed by the learned Senior Civil Judge, Una, District Una,



H.P. in Civil Suit No. 20/2010, titled Ved Parkash and others vs. Shankri Devi through LR's and others, has been upheld and affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

3. The facts material and relevant for the disposal of the present appeal are that the respondents, hereinafter referred to as the plaintiffs, filed a civil suit against the appellants, hereinafter referred to as the defendants, before the learned trial court seeking possession of the land denoted by letters 'ABCDE' in the site plan measuring 0-4-03 comprised in Khewat no. 402, Khatauni no. 417, Khasra nos. 870 and 871 as per the Jamabandi for the year 2004-2005 situated in village Kuthar Khurad, Tehsil and District Una, (hereinafter referred to as the suit land), by demolishing the superstructure raised and constructed thereon.

4. The case of the plaintiffs was that they along with other co-sharers are the owners of the suit land, and that the defendants and their predecessor-in-interest had, without consent and behind their back, raised construction on the suit land and had, in connivance with the settlement



department, got entries of their possession as Kabij incorporated in the revenue record, which entries were illegal and not binding upon the plaintiffs. The plaintiffs pleaded that upon discovering this in December 2009, they requested the defendants to desist and vacate the suit land, but the defendants refused.

5. The defendants contested the suit, raising preliminary objections regarding improper valuation for court fee and jurisdiction, estoppel by conduct, non-joinder of necessary parties, and limitation. On merits, while not denying the plaintiffs' ownership, the defendants denied any illegal construction. They pleaded that their predecessors had constructed a Kachha abadi on the suit land over 52 years ago, and that during consolidation proceedings in 1987-88, it was found the land was under their abadi.

6. They further averred that a compromise was reached whereby, in lieu of the suit land, equal area from Khasra no. 2038 was given to the plaintiffs by way of exchange, and the plaintiffs took possession thereof. They also stated that they later raised Pucca and Kacha constructions on the suit land with the knowledge and without objection of the plaintiffs, who were thus estopped from filing the suit.



7. Upon the pleadings of the parties, the learned trial court framed the following issues on 6.8.2010:

- 1. Whether the plaintiffs are entitled to the possession of the site denoted by letters 'ABCDE' in the site plan, as alleged? OPP**
- 2. Whether the suit is not properly valued for the purpose of court fee and jurisdiction, if so, what is its correct valuation ? OPP**
- 3. Whether the plaintiffs are barred by their act and conduct to file the present suit? OPD**
- 4. Whether the suit is bad for non-joinder of necessary parties? OPD**
- 5. Whether the suit is barred by limitation? OPD**
- 6. Relief.**

8. After evidence, the learned trial court decided issue no.1 in favour of the plaintiffs and issues no.2 to 5 against the defendants. The trial court concluded that the defendants failed to prove the alleged exchange of land as there was no supporting revenue entry for the plaintiffs' possession over Khasra no. 2038, that the court fee was proper, that the plaintiffs were not estopped, that limitation did not bar a suit for possession based on title, and that there was no defect of non-joinder. Consequently, the suit was decreed.

9. Aggrieved, the defendants filed a first appeal, assailing the judgment and decree primarily on the grounds that the trial court had not properly appreciated the evidence, had arrived at erroneous conclusions against



the law and facts of the case, and had failed to consider their legal and cogent evidence which was sufficient for the dismissal of the suit, rendering the findings based on surmises and conjectures.

10. The first appellate court, after hearing the learned counsels and perusing the record, however, dismissed the appeal. Being aggrieved by the dismissal of the first appeal, the defendants have preferred the present second appeal.

11. Heard Counsels for the parties and perused the impugned pleadings.

12. In the present case, it is an admitted fact, as corroborated by the revenue record Ext. P-1 and the testimony of defendant no. 4 Swaran Chand (DW2), that the suit land comprised in Khasra Nos. 870 and 871 was allotted to the predecessor-in-interest of the plaintiffs, who along with other co-sharers are the recorded owners. It is also admitted that the defendants are in physical possession of the suit land and have raised constructions thereon.

13. The core defence raised by the defendants was that in lieu of the suit land, they had given an equal area out of their land in Khasra No. 2038 to the plaintiffs by way of exchange pursuant to a compromise, and the



plaintiffs took possession thereof. This plea has been found entirely unsubstantiated. The plaintiffs' witnesses, PW2 and PW3, consistently and credibly denied any such exchange or compromise. Crucially, the defendants' own documentary evidence, Ext. D-1 (Jamabandi for Khasra No. 2038), does not record the plaintiffs in possession of any portion of that land, thereby fatally undermining their claim. The oral evidence of DW2 and DW3 on this point was vague, inconsistent, and in the case of DW3, self-contradictory. No reliable evidence was led to prove that the alleged exchange was ever affected or that the plaintiffs were put in possession of any alternative land. Consequently, the defendants' plea of exchange fails.

14. The alternative stance emerging from the defendants' evidence was that their possession over the suit land is of long duration, spanning 50-60 years, which could constitute adverse possession. However, this plea was not specifically raised in the written statement, wherein the defendants instead premised their right on the alleged exchange.

15. At the outset, one needs to understand the concept of adverse possession. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is well settled principle that



a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*" i.e. 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. Therefore, a person who claims adverse possession has to 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 is continued; and (e) his possession was open and undisturbed. This was held by Supreme Court in **Karnataka Board of Wakf Vs. Government of India and Ors (2004)10SCC779**, relevant extract whereof have been reproduced hereinunder.

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 [1964]6SCR780 , Parsinni v. Sukhi (1993)4SCC375 and D N Venkatarayappa v. State of Karnataka (AIR1997SC2930). Physical fact of exclusive possession and the animus posited 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 (AIR1996SC869).

12. Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: S M Karim v. Bibi Sakinal MANU/SC/0236/1964 : [1964]6SCR780). In P Periasami v. P Periathambi MANU/SC/0821/1995 : (1995)6SCC523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with Mohan Lal v. Mirza Abdul Gaffar MANU/SC/1039/1996 : (1996)1SCC639 that is similar to the case in hand, this Court held: "As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

16. Therefore, in view of the aforesaid the alternative contention of the defendants regarding long



possession, potentially ripening into adverse possession, is also without merit. In the eye of the law, an owner is deemed to be in possession so long as there is no intrusion, and mere non-use does not affect title. A plea of adverse possession, which is a hostile assertion of title in denial of the true owner, requires clear, specific, and consistent pleading. Such a plea is fundamentally inconsistent with the defendants' primary defence of a lawful compromise and exchange, wherein they implicitly acknowledged the plaintiffs' title. Having claimed possession under a purported agreement of exchange, the defendants cannot simultaneously assert a hostile, adverse animus.

17. Furthermore, the plea of adverse possession was not specifically raised in their pleadings. Even if considered, the defendants have failed to lead evidence fulfilling the essential ingredients required to establish adverse possession. They have not clearly shown on what date they came into possession with a hostile claim, the nature of such possession, whether it was known to the plaintiffs, or that it was peaceful, open, continuous, exclusive, and undisturbed for the entire statutory period. A person claiming adverse possession, who seeks to defeat the rights of the true owner, must clearly plead and establish all necessary facts, which the defendants have



not done. Their vague assertions of long possession, contradicted by their own plea of exchange, are insufficient to prove acquisition of title by adverse possession.

18. The testimony of the plaintiffs' witnesses, i.e., PW2 and PW3, was found to be consistent, firm, and credible. They established that the defendants raised construction on the suit land without the plaintiffs' consent and that the plaintiffs, upon discovery of the wrongful entries in the revenue record, sought possession. The site plan Ext. PW1/A correctly identifies the suit land and the constructions. In contrast, the defendants' evidence was insufficient to prove either a lawful basis for their occupation or a perfected title by adverse possession.

19. In light of the foregoing, the findings of the courts below are affirmed. The plaintiffs have successfully proved their title and entitlement to possession of the suit land. The defendants have failed to establish any right to remain in occupation. The decree for possession in favour of the plaintiffs is, therefore, upheld.

20. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law for consideration of the Court, therefore, the present appeal is dismissed being devoid of



merit. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

26th November, 2025
(*Susheel/T.B.*)