

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.7266 OF 2013

RAM NAGINA RAI & ANR.

..APPELLANTS

VERSUS

**DEO KUMAR RAI (DECEASED) BY LRS.
& ANR.**

..RESPONDENTS

ORDER

This appeal is directed against the judgment and order dated 17.10.2003, passed by the learned Single Judge of the High Court of Judicature at Patna in Second Appeal No. 403 of 1998. By the impugned judgment, the High Court confirmed the judgment and decree dated 30.06.1998 passed by the 9th Additional District Judge, Bhojpur at Arrah in Title Appeal No.26/97.

2. The records reveal that the appellants being the plaintiffs in Title Suit No. 64/89 in the court of Munsif III, Arrah (Bhojpur) filed a suit for declaration of title and recovery of possession in respect of the suit house situated over new Plot No. 2909 under new Khata No. 699, area measuring 10 decimals. The suit came to be decreed by the Trial Court in favour of the plaintiffs. The contesting defendants filed Title Appeal No. 26/97 9th before the Additional District Judge, Bhojpur at Arrah,

which came to be allowed, setting aside the judgment of the Trial Court; consequently, the suit of the appellants herein was dismissed. The judgment of the District Court, i.e. the First Appellate Court, dated 30.06.1998 was confirmed by the High Court in second appeal on 17.10.2003. Thus, the unsuccessful plaintiffs are before us questioning the judgment of the High Court as well as the First Appellate Court.

3. The case of the plaintiffs is that the disputed house was in their ownership and the *khata* of the property was recorded in the name of their ancestor. Since the defendants' ancestor was on friendly terms with the plaintiffs' ancestor, and as plaintiffs' ancestor was in a different place for business, the defendants were permitted to occupy the disputed house. The defendants got *khatian* changed without notice to the plaintiffs, showing the defendants to be in possession of the disputed house. Since the defendants did not hand over possession of the property to the plaintiffs, despite many requests by the plaintiffs, the suit came to be filed.

The case of the contesting defendants is that they are the owners in possession of the suit house even prior to 1953. Their ancestor, viz. Sheomuni Rai, had friendly relations with the plaintiffs' grandfather, Pitambar Rai. At the time of the revision survey, the concerned authorities having found that the defendants are in possession of the

property, *R.S. Khatian* was prepared in their names. *R.S. Khatian* was finally published in the year 1970, but the plaintiff filed the Title Suit only 19 years after its final publication and hence, the suit is barred by limitation. It is further the case of the defendants that they have become owners of the property by virtue of their adverse possession over the suit property. In other words, the defendants contended that they had perfected the title by adverse possession and therefore the plaintiffs are not entitled to recover the possession of the suit house from the defendants.

4. The only question to be decided in this appeal is, whether the First Appellate Court and the High Court were justified in concluding that the defendants have perfected the title by adverse possession over the suit property. Heard the arguments on both the sides, and perused the records at hand.

5. At the outset, it is relevant to mention that the defendants have not produced any document to show that they are the owners of the suit property by purchasing the same or by acquiring the same by any mode of transfer. Also, there is nothing on record to show that the property in question is the ancestral property of the defendants. However, alternative case of the defendants that the plaintiffs were the owners of the property and had permitted the defendants' ancestor and thereafter, the defendants to be in possession of the property. In

other words, the defendants do admit that the plaintiffs are the owners of the property. But the sole contention of the contesting defendants is that they have perfected the title by adverse possession, and that the suit to claim possession of the suit property is beyond the period of limitation. The plaintiffs do admit that the defendants are in permissive possession of the property, but claim that *khatian* changed in the name of defendants was without notice to the plaintiffs and the same cannot be relied upon. It is the specific case of the plaintiffs that the defendants have not perfected the title by virtue of adverse possession.

6. Since the contesting defendants have raised a plea of adverse possession, the burden is on them to prove affirmatively that the bar of limitation prescribed under Article 65 of the Schedule of the Limitation Act, 1963, viz., 12 years, is applicable in the matter to file a suit for possession of immovable property based on title. The limitation of 12 years begins when the possession of the defendants would become adverse to that of the plaintiffs. Thus, it is incumbent on the plaintiffs to file a suit for possession within 12 years from when the possession of the defendants becomes adverse to the plaintiffs. Article 65 presupposes that the limitation starts only if the defendants prove the factum of adverse possession affirmatively from a particular time. Adverse possession means a hostile assertion, i.e. a possession

which is expressly or impliedly in denial of the title of the true owner. The person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed. In deciding whether the acts alleged by the person constitute adverse possession, regard must be given to the animus of the person doing such acts, which must be ascertained from the facts and circumstances of each case. It is needless to observe that where the possession can be referred to a lawful title, it would not be considered to be adverse, the reason being that the person whose possession can be drawn to a lawful title, will not be permitted to show that his possession was hostile to another's title. Simply put, one who holds possession on behalf of another, does not by mere denial of the other's title, make his possession adverse so as to give himself the benefit of the statute of limitation.

7. In the matter on hand, though the defendants have pleaded that they are the owners of the property, it seems that during the course of the trial, they have given up this contention, inasmuch as they have only concentrated on the contention that they have perfected the title by adverse possession. All through, as is evident from the material evidence on record and their contentions, the defendants have tried to show that they have been in continuous possession of the property for

more than 60 years. But there is no iota of evidence to show as to when the defendants' possession in fact became adverse to the interest of the plaintiff. Except for the change of *khatian* sometime in the year 1970 by the defendants and the payment of taxes for being in possession of property, no material is produced by the defendants to show whether the possession was really hostile to the actual owner. There is absolutely nothing on record to show that there was a hostile assertion by the defendants. We do not find that the defendants had hostile animus at any point of time, from the facts and circumstances of this case. The defendants denied the title of the plaintiffs over the suit property only when the suit came to be filed, inasmuch as the defendants have taken such a contention for the first time in their written statements.

8. The non-use of the property by the owner even for a long time may affect the title of the owner under certain circumstances. The acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. There is a lot of difference between simple possession and adverse possession. Every possession is not adverse possession. The defendants will not acquire adverse possession by simply remaining in permissive possession for howsoever long it may be.

9. Until the defendants' possession becomes adverse to that of the

real owner, the defendants continue in permissive possession of the property. Only if the defendants' possession becomes adverse to the interest of the real owner and the real owner fails to file the suit for possession within 12 years, as prescribed under Article 65 of the Limitation Act, from the point of time the possession by the defendants becomes adverse to the plaintiffs, the real owner loses his title over the property.

The defendants are not only required to prove that they have been in possession of the suit property continuously and uninterruptedly, but also need to prove, by cogent and convincing evidence, that there is hostile animus and possession adverse to the knowledge of the real owner.

10. This Court, while discussing the law relating to adverse possession in *P.T. Munichikkanna Reddy and Ors. v. Revamma and Ors.*,¹ held that, to assess a claim of adverse possession, a two-pronged enquiry is required; viz. application of the limitation provisions, and the specific positive intention to dispossess on the part of the adverse possessor.

In *Thakur Kishan Singh v. Arvind Kumar*,² this Court held:

“5. As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became

1 (2007) 6 SCC 59 p. 68 para 8

2 (1994) 6 SCC 591 p. 594, para 5

adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. *Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Apart from it, the appellate court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse.*"

(emphasis supplied)

Talking about the concept of *intention to dispossess*, the case of *Powell v. McFarlane*,³ was used as guidance in *P.T. Munichikkanna Reddy and Ors. v. Revamma and Ors* (supra), wherein it is stated thus:

"18. On intention, *Powell v. McFarlane* is quite illustrative and categorical, holding in the following terms:

"If the law is to attribute possession of land to a person who can establish no paper title to possession, *he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi')*.

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If his acts are *open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can*, the courts will treat him as not having had the requisite *animus possidendi* and consequently as not having dispossessed the owner.

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In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, *but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner.*

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What is really meant, in my judgment, is that the *animus possidendi* involves the intention, *in one's own*

3 (1977) 38 P & CR (Property, Planning and Compensation Reports) 452

name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence."

(emphasis in original)

11. Thus, it is important to assess whether such intention to dispossess is apparent to the actual owner or not. The intention of the adverse user must be communicated atleast impliedly to the actual owner of the property. His hostile attitude should be open to the knowledge of the real owner. It follows that the intention and possession of the adverse possessor must be hostile enough to give rise to a reasonable notice to the actual owner.

12. Applying the test of *nec vi, nec clam, nec precario* i.e., 'without force, without secrecy, without permission' as an established test for finding adverse possession, we find that the defendants have not proved their possession to be adverse to that of the real owner inasmuch as they entered into possession as licensees to begin with and there is nothing on record to show as to when the permissive

possession became adverse to the interest of the real owner. '*Animus possidendi*' is one of the ingredients of adverse possession, and unless the person possessing the property has the requisite hostile animus, the period of prescription does not commence. Virtually, the defendants are required to prove the possession to be adequate in continuity, adequate in publicity and to adequately show that their possession is adverse to that of the true owner. It must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The physical fact of exclusion, possession and *animus possidendi* to hold as owner, in exclusion to the actual owner, are the most important factors to prove adverse possession.

A person pleading adverse possession has no equities in his favour. Since he is trying to take away the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession.

13. It is an established position of law that insofar as Articles 64 and 65 of the Limitation Act are concerned, once a party proves its title, the onus of proof would be on the other party to prove the claim of title by adverse possession. In this case, it is an admitted fact that the ownership of the said suit property rests with the plaintiffs. In this given scenario, it is our considered view that the defendants have not

proved the onus of adverse possession against the plaintiffs.

14. This court in the case of *Hemaji Waghaji vs. Bhikhabhai Khengarbhai and Ors.*,⁴ has opined that there is an urgent need for a fresh look regarding the law on adverse possession by observing thus:

"32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation.

36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession."

This aforementioned observation was reiterated by this Court in a subsequent judgment of *State of Haryana v. Mukesh Kumar*,⁵ wherein the Court observed that the law of adverse possession needs a re-look, holding the right to property to be a human right, in addition to it being a constitutional or a statutory right.

4 (2009) 16 SCC 517

5 (2011) 10 SCC 404

15. In light of the above observations of this Court, we find that there is no absolute requirement to deem the mere possession of the suit property by the defendants to amount to adverse possession over the suit property. This would be in clear violation of the basic rights of the actual owner of the property. There is nothing on record to show that the defendants' permissive possession over the property became adverse to the interest of the real owner, at any point of time. On the contrary, the records reveal that the permissive possession of the defendants continued till the filing of the suit.

16. The defendants have relied upon certain paid tax receipts and *khatian* extracts. The Trial Court has, on facts, specifically found that these documents do not disclose the *khatian* and plot number, and even the tax receipts do not relate to the suit house. Also, the *chaukidari* receipts (A1 to A16) do not contain the *khatian* of the suit house. These receipts have been unfortunately believed to prove that the defendants are in adverse possession of the disputed land. Even assuming that those documents relate to the suit house, they, at the most, depict the possession of the defendants and not their adverse possession.

17. Having regard to the totality of the facts, in our considered opinion, the First Appellate Court as well as the High Court are not justified in arriving at the conclusion that the contesting defendants

have perfected their title by adverse possession. In view of the same, the judgment of the High Court as also the judgment of the 9th Additional District Judge, Bhojpur at Arrah are set aside.

18. The judgments of the Trial Court i.e. the Court of Munsif III, Arrah (Bhojpur) in Title Suit No.64/89 is restored. Appeal is allowed accordingly.

.....**J.**
[N.V. RAMANA]

.....**J.**
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
AUGUST 21, 2018.

ITEM NO.104

COURT NO.7

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7266/2013

RAM NAGINA RAI & ANR.

Appellant(s)

VERSUS

DEO KUMAR RAI (D) BY LRS. & ANR.

Respondent(s)

Date : 21-08-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mr. Dhruv Paul, Adv.

Mr. Ranjan Mukherjee, AOR (Not present)

For Respondent(s)

Mr. Vijay Kumar, Adv.

Mr. Thomas O., Adv.

For Mr. Vishwajit Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

This appeal is allowed in terms of the signed order.

(SUKHBIR PAUL KAUR)
AR CUM PS(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)