AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.179 of 2009

1. Gram Panchayat Jaimura Tahsil Kharsiya,Distt.Raigarh
2. Sarpanch, Gram Panchayat Jaimura, Tahsil Kharsiya, Distt. Raigarh

---- Appellants/Defendants

Versus

1. Nirnidhi, w/o Shri Ram Patel, Aged about 45 years,
2. Shyam Kumar S/o Shri Ram Patel, Aged about 36 years,
3. Mu. Bhagwali D/o Shri Ram Patel, aged about 20 years,
4. Mu. Indarmati W/o Bhagat Ram Pattel, aged about 60 years
5. Mu. Savitri (died and deleted)

   All are R/o Village Ushrout, Tahsil and District Raigarh
6. Mu. Gayatri W/o Kanhai Ram, Aged about 45 years, R/o Village Barmuda, Tahsil and District Raigarh
7. Mu. Kamla W/o Jadulal Patel, Aged about 40 years, R/o Village Ghot, Tahsil Arang, District Raipur.

   Respondent No.1 to 3 are R/o Village Jaimura, Tahsil Kharsiya, Distt. Raigarh (CG) and Respondent No.4 R/o Village Raitarai, Tahsil and District Raigarh (CG)

---- Plaintiffs

8. State of Chhattisgarh, Through the Collector Raigarh (CG)

---- Respondents

For Appellants/Defendants:
Mr.Amit Sharma, Advocate
For Respondents No.1 to 4, 6 and 7:
Mr.M.K.Jaiswal, Advocate
For Respondent No.8: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/3/2020

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellants/defendants is as under:-

> "Whether both the Courts below were unjustified in holding that original plaintiff – Ganpat Lal Patel (Now, his Lrs.) have perfected their title over the suit land by way of adverse possession by recording a finding which is perverse and contrary to the record in view of the principle of law laid down by the Supreme Court in paragraph 63 in the matter of **Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.**[1] ?"
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> [For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. Admittedly, the suit land bearing Khasra Nos.415 and 416 is government land (grass land) and reserved for public utility and on Khasra No.415 Primary Health Centre, Jaimura has already been constructed by Gram Panchayat Jaimura-appellant herein. Original plaintiff claimed title & adverse possession on the basis of his long and continuous possession & on the basis of his name having been recorded in Exs.P-1 to P-5 in remarks column (column NO.12) and claimed declaration of title, permanent injunction and

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1 (2019) 8 SCC 729

demolition of Primary Health Centre constructed by defendant No.2-Gram Panchayat-Jaimura.

3. Defendants No.2 and 3 filed their written statement and denied the averments made in the plaint stating inter-alia that the suit land is government land and reserved for public utility i.e. for road and Primary Health Centre, therefore, decree declaring title based on adverse possession cannot be granted in favour of the plaintiff.

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 17.1.2002, held in para-13 that the suit land is government land and reserved for public utility i.e. for road and Primary Health Centre and after found that on Khasra No.415 Primary Health Centre has already been constructed on 17.11.95 proceeded to examine on the basis of Exs.P-1 to P-5 and held that the suit land is in possession of the plaintiff for last 90 years, as such, he has perfected his title by way of adverse possession. On appeal being preferred by the appellants/defendants, the first appellate Court upheld the judgment and decree of the trial Court. Questioning the judgment and decree of the first appellate Court, this second appeal

under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.Amit Sharma, learned counsel for the appellants/defendants, would submit that the suit land is reserved for public utility and in view of latest decision of the Supreme Court in **Ravinder Kaur Grewal** (supra) (para-63), plea of adverse possession is not available on the land reserved for public utility and the plaintiff has failed to prove continuous and uninterrupted possession on the basis of entry made in remarks column (column No.12), as such, the judgment and decree of both the Courts below deserve to be set aside.

6. On the other hand, Mr.M.K.Jaiswal, learned counsel for respondents No.1 to 4, 6 and 7, would submit that decree has rightly been granted in favour of the plaintiff.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Admittedly, the suit land bearing Khasra Nos.415 and

416 is government land (grass land). It is also established that both the lands were reserved for public utility and on Khasra No.415 Primary Health Centre has already been constructed and hospital is running on the said land, on which, the plaintiff claimed adverse possession.

9. Article 112 of the Limitation Act, 1963 provides for period of limitation for filing suit by Central or State Government :-

112.	Any suit (except a suit before the Supreme Court in exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the government of the State of Jammu and Kashmir.	Thirty years.	When the period of limitation would begin to run under this Act against a like suit by a private person.

10. By virtue of above-stated provision, the period of limitation against the State government being 30 years, a person can convert his possession into an absolute title against the government, only by proving possession for 30 years. In order to claim adverse possession against the government, a person has to prove such possession for the full statutory period and he has to prove adverse possession. So, on mere proof of long possession, the burden is not

shifted on the State to show that it had held possession within the period provided by the Article.

11. Article 112 of the Limitation Act, 1963 is *para materia* provision to Article 144 of old Limitation Act, 1908. The Nagpur High Court, in the matter of ***Provincial government, Central Provinces and Berar v. Govindrao Tukaram***[2] while considering adverse possession under old Article 144 of Limitation Act, 1908, has held that government having fundamental rights in all land, possessory title cannot prevail against it and a person must prove adverse possession for continuous period of 60 years and observed as under:-

> "That a possessory title is good against all but the true owner, is a proposition which can be accepted, but the government has the fundamental right in all land and is, therefore, the true owner. Accordingly a person who relies on a possessory title cannot succeed against government unless he can show either that the government has parted with its title in some way to the plaintiff or his predecessors or that the plaintiff and his predecessors have been holding adversely against government and so have acquired a good title against government by adverse possession. The adverse possession necessary in the case of government is 60 years."

2 AIR 1949 Nagpur 403

It was further held that continuous and uninterrupted possession over a long period can give rise to presumption in possession is there with title would not apply to the case of a State Government having fundamental right over the land observing as under:-

> "Continuous and uninterrupted possession over a long period can give rise to a presumption that the person in possession is there with title even when the possession is short of the statutory period. This presumption may apply in a case between private individuals but it cannot apply to the case of a body in whom the fundamental right resides, such as the government."

12. 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. 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 that his possession was hostile to the real owner and amounted to a denial of his title to the property

claimed.[please see ***Annasaheb Bapusaheb Patil and others v. Balwant @ Balasaheb Babusaheb Patil (Dead) by LRs. & Heirs and others***[3]].

13. It is not in dispute that title by adverse possession can be prescribed also against the government, but where the claim of adverse possession in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right and title of State to immovable property and also conferring upon a third party encroacher title where he had none. [See ***State of Rajasthan v. Harphool Singh (Dead) through his LRs***[4]].

14. The Supreme Court in the matter of ***R. Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others***[5] has held that in order to establish the plea of adverse possession, the limitation period would be thirty years and further laid down principles of the law indicating the nature of proof required in a suit for declaration of title against the government, which is reproduced herein below :-

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3 (1995) 2 SCC 543
4 (2000) 5 SCC 652
5 (2010) 5 SCC 203

Nature of proof required in suits for declaration of title against the Government

> "**19.** Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The *second* difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties,

to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has pro-

duced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for

a few years will not be sufficient and should be ignored.

23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc. or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government. Be that as it may."

15. Section 57 of the Chhattisgarh Land Revenue Code, 1959 provides for state ownership in all lands, which is as under:-

"**Section 57. State ownership in all lands**.- (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, mineral and forests reserved or not, and all right in the sub-soil of any land are the property of the State Government:

Provided that nothing in this section shall save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the [Sub-Divisional Officer].
(3) …… xx ……

(4) …… xx ……"

16. In **Ravinder Kaur Grewal** (supra), Their Lordships have clearly observed that property dedicated to public use, courts have been loath to confer the right by adverse possession and held as under:-

> "63. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession."

17. Reverting to the facts of the present case, in light of principles of law laid down by the Supreme Court in the above-stated judgments (supra) and keeping in view the provisions contained in Section 57 of the Code vesting title of all land to the State Government, it is quite vivid that the suit land is recorded as grass land in revenue records (Exs.P-1 to P-5) but in remarks column (column No.12) name of the plaintiff has been recorded as encroacher.

18. It is well settled law that the provisions of

Chapter IX of the Chhattisgarh Land Revenue Code, 1959 or even other provisions of the Code, including the Rules framed in respect of them, do not require a Patwari to make any other kind of entry in a Khasra or field book in respect of the matter relating to occupation of lands. He is not required to make any entry in the remarks column or any other column of a Khasra of field book with regard to any person other than recorded holder being in occupation of the land unauthorizedly or on the basis of any imperfect title. It is obvious that in case, he does make any such entry, the same cannot have any presumptive value as regards its correctness under Section 117 of the Code.

19. In the matter of **Harisingh & others v. Dheerajsingh**[6] the Madhya Pradesh High Court has categorically held that presumption under Section 117 of the Code arises with respect to entries which are required to be made under the law and held as under:-

> "8.....It will also be relevant to point out that the presumption with regard to the entries in the Khasra in the light of Section 117 of the Code arises only in respect of those entries which are required to be made under Chapter 9 of the Code and in respect of entries in other land record prepared under the Code. It applies only to those entries which are required to be made

6 1983 RN 57

> under the law. If any entry, existing in the land records is not required to be made either under Chapter 9 of the Code or under any other provision of the Code, no presumption of correctness can arise in respect of such entry. In the records of right and the Khasra, it is required that an entry should be made as to sub-tenant or occupancy tenant, cultivating the field and, therefore, had the defendants No.1 been in occupation, having been inducted as a sub-tenant or an occupancy tenant, he would have been entered as such and the entry would not have been in column No.12 which is only with regard to Remarks."

20. Thereafter, in the matter of **Churamani v. Ramadhar**[7], the Division Bench of Madhya Pradesh High Court noticing **Harisingh** (supra) has held that the rules framed under the Code do not cost duty on the Patwari to make any entry in remarks column of Khasra in regard to any other person unauthorizedly in possession and held as under:-

> "10. We find ourselves unable to accept the abovesaid contention of the learned counsel. In our opinion, no presumption of correctness can attach to an entry made by a Patwari in the remark column of a Khasra or field-book showing therein some third party/trespasser to be in possession of a land held by a Bhumiswami and recorded as such in his name in the said land record.
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> 12. For our present purpose, the special provisions with regard to raising of presumption are contained in Section 117 of the M. P. Land Revenue Code, 1959. According to the said section, all entries made under Chapter IX (containing Sections 104 to 123) in the land records shall be presumed to be correct until contrary is proved. Taking even a broader view of the

7 1991 M.P.L.J. 311

section, it has been held that the presumption under the section applies only to those entries which are required to be made under the law. Thus, even as per the broader view, the presumption arises only in respect of those entries which are required to be made under Chapter IX and in respect of entries in other land records prepared under the Code.

16. Accordingly, in our opinion, in the facts and circumstances of the case, the appellate Court i.e. the Additional Judge to the Court of District Judge, Satna did not act improperly or with illegality in refusing to draw any presumption as regards 'continuity of possession' of the plaintiffs-petitioners over the suit land on the basis of their so called 'actual' possession having been recorded by the Patwari in the remark column of the Khasras for the period 1963-1964 to 1981-1982."

21. The aforesaid decision **Churamani** (supra) has again been followed by the Madhya Pradesh High Court in the matter of **Jageshwar Ramsahay Ahir v. Parmeshwar Ramprasad and others**[8] and held as under:-

"3...in which it has been laid down that a presumption as regards continuity of possession of the plaintiffs over the suit land could not be drawn in favour of the plaintiffs on the basis of the remarks recorded in the remarks column. No presumption of correctness can attach to an entry made by the patwari in the remarks column of a Khasra or field book showing therein some third party/trespasser to be in possession the land held by a bhumiswami and recorded as such in his name in the said land records. Presumption under Section 117 of the Code applies to those entries which are required to be made under Chapter IX and in respect of entries in other land records prepared under the Code. The provisions of the Code or the Rules

8 AIR 2000 MP 223

> made thereunder do not require the patwari to make any entry in the remarks column and if such an entry is made, the same cannot have any presumptive value as regards its correctness under Section 117 of the Code. As there is no such duty cast on the patwari to make an entry in the remarks column there arises no question of drawing any presumption under Section 114(e) of the Evidence Act regarding any act of the patwari having been regularly performed."

22. In the aforesaid documents, it has not been shown that entry made in remarks column (column No.12) in Ex.P-1 was made in accordance with the rules. The plaintiff's pleading and filing documents placing reliance on Khasra entries was required to examine Patwari who made entry for the relevant years to prove the same, which the plaintiff failed to examine. Two Courts below committed an illegality by holding that the plaintiff has proved his possession on the basis of entry made by the patwari in remarks column of Exs.P-1 to P-5, which the patwari is not authorized to record, as such, finding of continuous and long possession recorded by both the Courts below is perverse.

23. Similarly, the State Government is owner of the suit land i.e. Khasra No.415 and the suit land has been reserved for public utility i.e. for road and Primary Health Centre. In **Ravinder Kaur Grewal** (supra) the Supreme Court has authoritatively

pronounced that the land reserved for public utility the right based on adverse possession would not accrue and no rights can accrue by adverse possession, which is clearly applicable to the facts of the present case and as such, the plaintiff cannot claim adverse possession on the land reserved for public utility such as road/hospital etc.

24. Consequently, both the Courts below have failed to take notice that the plaintiff has failed to prove adverse possession over the suit land and the suit land is reserved for public utility i.e. for road and Primary Health Centre. Finding recorded by two Courts below that the plaintiff has perfected his title by way of adverse possession is contrary to the facts and law settled in this regard. For the foregoing reasons, the judgment and decree of both the Courts below are hereby set aside and the plaintiff's suit would stand dismissed. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s). Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.179 of 2009

Appellants Gram Panchayat Jaimura and another

Versus

Respondents Nirnidhi and others

(Head-note)

(English)

The plaintiff cannot claim adverse possession on a Government land reserved for public utility such as road/hospital.

(हिन्दी)

लोकोपयोगिता हेतु आरक्षित शासकीय भूमि जैसे सड़क/अस्पताल पर वादी प्रतिकूल कब्जे का दावा नहीं कर सकता है।