



2026:CGHC:16602-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No. 56 of 2025

- 1 - Dilip Das S/o Mahetar Das Aged About 53 Years R/o Village Rano, Post Parpodi, Tahsil Devkar, District Bemetara (C.G.)**
- 2 - Smt. Dashreet Das W/o Dildaar Das Aged About 40 Years R/o Village Rano, Post Parpodi, Tahsil Devkar, District Bemetara (C.G.)**
- 3 - Santu S/o Ganesh Yadav Aged About 50 Years R/o Village Rano, Post Parpodi, Tahsil Devkar, District Bemetara (C.G.)**
- 4 - Bishal S/o Ghasiya Sahu Aged About 62 Years R/o Village Rano, Post Parpodi, Tahsil Devkar, District Bemetara (C.G.)**

... Appellants/Plaintiffs

versus

- 1 - Basant Kumari Gupta W/o Murlidhar Gupta Aged About 80 Years R/o House No. 237, Old Post Office Lane, Ward No. 41, Kasaridih, Kelabadi, Durg, Tahsil And District Durg (C.G.)**

2 - Yogeshwar Sonkar S/o Ballaram Sonkar Aged About 35 Years R/o House No. 196, Bajrang Chowk, Ward No. 2, Kumhari, Tahsil Damdha, District Durg (C.G.)

3 - Smt. Pushpa Sonkar W/o Rajeshwar Sonkar Aged About 32 Years R/o House No. 475, Ganesh Chowk, Ward No. 5, Kumhari, Tahsil Damdha, District Durg (C.G.)

4 - Prahlad S/o Jogi Verma Aged About 70 Years R/o Village Salhekala, Post Udaipur, Tahsil Chuikhadan, District Rajnandgaon (C.G.)

5 - State Of Chhattisgarh Through Collector Bemetara, District Bemetara (C.G.)

... Respondents/Defendants

(Cause-title taken from CIS)

For Appellants	: Mr. P.R. Patankar, Advocate
For Respondents No. 1 to 4	: Mr. Chandresh Shrivastava, Advocate
For Respondent No. 5/State	: Mr. Amit Buxy, Dy. G.A.

DB- Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Sachin Singh Rajput

Judgment On Board

10.04.2026

Sanjay K. Agrawal, J.

1. Invoking appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, the appellants/plaintiffs have preferred this appeal questioning the illegality, validity and correctness of the

impugned judgment and decree dated 03/01/2025 (Annexure A/1) passed by learned Principal District Judge, Bemetara in Civil Suit No. 5-A/2023 whereby the suit filed by the appellants/plaintiffs seeking declaration of title on the basis of adverse possession, permanent injunction and for declaration of sale deeds dated 23/12/2022 (Exs. P/7 and P/8) executed by respondent/defendant No. 1 in favour of respondents/defendants No. 2 and 3, respectively, as null and void has been dismissed finding no merit.

(For the sake of convenience, parties would be hereinafter referred as per their status and ranking shown in the suit before the trial Court.)

2. Plaintiffs instituted the civil suit stating *inter alia* that the suit land bearing Khasra No. 284 area 10.60 acres (4.24 hectare) situated at Village Rano, Tahsil Devkar, District Bemetara (C.G.) was lying vacant since 1990 and as plaintiffs are marginal agriculturists and are engaged in agricultural work, taking advantage of the suit land lying vacant and unused, they undertook peaceful possession and started cultivating crops in the said suit land, which was well within the knowledge of defendant No. 1 as well as other villagers yet defendant No. 1 or the members of her family never made any complaints, oral or written, and never raised any objection, as such, plaintiffs No. 1, 3 and 4 remained in continuous and uninterrupted

possession of the suit land for the last 33 years and plaintiff No. 2 remained in continuous and uninterrupted possession of the suit land for the last 33 years and at present also, plaintiffs are possession-holders of the suit land. However, on 23/12/2022, defendant No. 1 alienated the suit land to defendants No. 2 and 3 by bisecting it into two parts and executed sale deeds (Exs. P/7 and P/8) ignoring the fact that plaintiffs have been in long and continuous possession of the suit land and they have already perfected their title by way of adverse possession. As such, decree for declaration of title through adverse possession, permanent injunction and declaration of sale deeds dated 23/12/2002 (Exs. P/7 and P/8) be passed in their favour.

3. Defendant No. 1 filed her written statement and while opposing the plaint averments, she has further stated that she is an old and ailing woman and after the death of her husband Murlidhar Gupta, the suit land was being looked after by her son-in-law namely Balram Gupta (DW-1) and she has executed registered sale deeds dated 23/12/2022 (Exs. P/7 and P/8) and sold the suit land to defendants No. 2 and 3.
4. Defendants No. 2 to 4 have jointly filed their written statement and they have also opposed the plaint averments and stated further that defendant No. 1 is the exclusive title and possession holder of

the suit land and accordingly, she had the right to alienate the suit land in favour of defendants No. 2 and 3 and pursuant to the alienation, defendants No. 2 and 3 have been in possession of the suit land and they have leased it to defendant No. 4 who carries out agricultural work in the suit land. As such, the suit filed by the plaintiffs is liable to be dismissed.

5. After pleading of the parties, learned trial Court framed three issues and answered them as stated below :-

क्र.	वादप्रश्न	निष्कर्ष
1.	क्या वादी का वादभूमि पर प्रतिकूल कब्ज़ा है ?	"प्रमाणित नहीं"
2.	क्या वादी प्रतिकूल कब्जे के आधार पर वादभूमि पर स्वामित्व की घोषणा का अधिकारी है ?	"प्रमाणित नहीं"
3.	सहायता एवं व्यय ?	"वाद खारिज"

6. In sum and substance, the trial Court held that since plaintiffs have failed to prove the ingredients of adverse possession, therefore, they are not entitled for obtaining decree for declaration of title by way of adverse possession and thereby, dismissed the suit of the plaintiffs.

7. Mr. P.R. Patankar, learned counsel for the appellants/plaintiffs, would submit that the trial Court is absolutely unjustified in dismissing the suit filed by the plaintiffs by recording a finding

which is perverse and contrary to the record. The plea of adverse possession taken by the plaintiffs has duly been established by them by leading oral evidence in the shape of testimonies of plaintiff No. 1 Dilip Das (PW-1), Vishal Sahu (PW-2) and Mansharam Sahu (P.W.-3), therefore, the impugned judgment and decree passed by the trial Court is liable to be set aside and plaintiffs are entitled for decree as claimed by them.

8. Per contra, Mr. Chandresh Shrivastava, learned counsel for respondents/defendants No. 1 to 4, would support the impugned judgment and decree passed by the trial Court and submit that none of the ingredients of adverse possession, as laid down by their Lordships of the Supreme Court in the matter of **Karnataka Board of Waqf v. Government of India and Others**¹, further followed with approval in the matter of **Ravinder Kaur Grewal v. Manjit Kaur and Others**², has been established by the plaintiffs and moreover, all the documentary evidence led by the plaintiffs themselves shows the title and possession of defendant No. 1 over the suit land, as such, she has rightly alienated the suit land in favour of defendants No. 2 and 3 which has further been leased by them to defendant No. 4 for the purpose of cultivating crops. Thus, the suit filed by the plaintiffs has rightly been dismissed by the trial Court, which also deserves acceptance by this Court.

1 (2004) 10 SCC 779

2 (2019) 8 SCC 729

9. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
10. The point for determination that arises in this appeal is, “whether the trial Court is justified in holding that plaintiffs have failed to prove the plea of adverse possession taken by them and therefore, they are not entitled to decree for declaration of title based on adverse possession, permanent injunction and declaration of sale deeds dated 23/12/2022 (Exs. P/7 and P/8) executed by defendant No. 1 in favour of defendants No. 2 and 3 as null and void ?”
11. In order to answer the aforesaid point for determination and to find out the correct test in relation of title by way of doctrine of adverse possession, it would be profitable to notice the relevant statutory provision, necessary ingredients and the principle underlying the doctrine of adverse possession.
12. Article 65 of the Indian Limitation Act, 1963 states as under :-

	Description of Suit	Period of limitation	Time from which period begins to run
65.	For possession of immovable property or any interest therein based on title. <i>Explanation.</i> – For the purposes of this article -	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		
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13. A close reading of the afore-stated provision would show that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidences, unless the defendant proves adverse possession for the prescribed period, the plaintiff cannot be non-suited and burden is on the defendant to plead and prove that he was in adverse possession for 12 years before the date of suit and starting point of

limitation is the date when the possession of the defendant became adverse to the plaintiff.

14. The Supreme Court, in the matter of **Karnataka Board of Wakf (supra)**, laid down the principles of law which a person claiming adverse possession should demonstrate by holding that 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. Their Lordships further held that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.
15. The principle of law laid down in **Karnataka Board of Wakf** (supra) has been followed with approval in **Ravinder Kaur Grewal** (supra) and their Lordships in paragraphs 60, 61 & 62 of the report laid down the principles and clearly held that 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 detail of title and his knowledge, and observed 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.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking may be by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is

acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

16. 1. In **Ram Janmabhumi Temple Case** in the matter of **M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das and others**³, the Supreme Court (Constitution Bench) has clearly held that the claim on the basis of adverse possession amounts to acknowledgment of title of person against whom adverse possession is claimed and observed as under:

"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a 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 No.4 ought to be cognizant 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

3 (2020) 1 SCC 1

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.

1143. 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. ...”

16.2. Their Lordships further relying upon the judgment of the Supreme Court in **Karnataka Board of Wakf** (supra) held that the ingredients in terms of that judgment 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.

16.3. Their Lordships also emphasized the need for making clear averment of adverse possession as under: -

“1154. In a judgment rendered in 2015, one of us (Abdul Nazeer, J.) as a Single Judge of the Karnataka High Court succinctly identified and laid down the prerequisites of a claim to adverse possession in the following terms: (*Pilla Akkayamma case*⁴, SCC OnLine Kar Para 27)

4 Pilla Akkayamma v. Channappa, 2015 SCC OnLine Kar 8226 : ILR 2015 Kar 3841

“27. 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 others’ rights but denies them. Possession implies dominion and control and the consciousness in the mind of the person having dominion over an object that he has it and can exercise it. Mere possession of the land would not ripen into possessory title. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. Occupation only implies bare use of the land without any right to retain it. In order to constitute adverse possession, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. To prove title to the land by adverse possession, it is not sufficient to show that some acts of possession have been done. The possession required must be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. In other words, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation.

30. In a suit falling under Article 65 of the Limitation Act, plaintiff must establish his title to the property. He need not prove that he was in possession within 12 years. If he fails to prove his title, the suit fails, and the question of adverse possession does not arise in such a case. When the plaintiff has established his title to a land, the burden of proving that he has lost that title by reason of the adverse possession of the defendant lies upon the defendant. If the defendant fails to prove that he has been in adverse possession for more than 12 years, the plaintiff is entitled to succeed simply on the strength of his title. A person alleging that he has become owner of immovable property by adverse possession must establish that he was in possession of the property peaceably, openly and in assertion of a title hostile to the real owner. Stricter proof is required to establish acquisition of title by adverse possession for the statutory period.”

(emphasis supplied)

1155. In *Ravinder Kaur Grewal v. Manjit Kaur*⁵, a three-Judge Bench of this Court of which one of us, Abdul Nazeer, J. was a part, further developed the law on adverse possession to hold that any person who has perfected their title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In this view, adverse possession is both a sword and a shield.

1156. The plaintiffs have failed to adopt a clear stand evidently because they are conscious of the fact that in pleading adverse possession, they must necessarily carry the burden of acknowledging the title of the person or the entity against whom the plea of adverse possession has not been adequately set up in the pleadings and as noted above, has not been put forth with any certitude in the course of the submissions. Above all, it is impossible for the plaintiffs to set up a case of being in peaceful, open and continuous possession of the entire property. ...”

17. Coming to the facts of the present case in light of the principles of law laid by their Lordships of the Supreme Court in the matters of Karnataka Board of Wakf (supra) followed in Ravinder Kaur Grewal (supra) and Ram Janmabhumi Temple Case (supra), it is quite vivid that it was incumbent upon the plaintiffs to plead and establish the date on which they came into possession, what was the nature of their possession and whether the factum of possession was known to the defendants; and further that they are in peaceful possession of the suit land for the statutory period of 12 years, but surprisingly, that has not been pleaded and established. We shall consider the evidence led by the plaintiffs, documentary as well as oral, one-by-one.

5 (2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453

- 18.** So far as documentary evidence on record is concerned, 'kishtbandi khatauni' or 'the register of landholdings' (Ex. P/1 and P/2) for the year 2012-13 has been filed on behalf of the plaintiffs wherein the name of defendant No. 1 i.e. Basant Kumari Gupta has been mentioned as title-holder as well as possession-holder in all the entries. Similarly, 'kishtbandi khatauni' or 'the register of landholdings' as well as khasra panchshala (Ex. P/3, P/4, P/5 and P/6) for the year 2022-23 have been filed by the plaintiffs wherein pursuant to the alienation made by defendant No. 1, the names of defendant No. 2 and defendant No. 3 namely Yogeshwar Sonkar and Smt. Pushpa Sonkar have been recorded as title and possession-holders of the suit land. Exhibits P/7 and P/8 are the sale deeds dated 23/12/2022 executed by defendant No. 1 in favour of defendants No. 2 and 3, respectively. Rin pustika (Exs. P/9C and P/10C) have also been brought on record by the plaintiffs in which defendant No. 1's name has been recorded as title-holder. As such, there is no documentary evidence available on record to establish that at the relevant point of time, plaintiffs were in possession of the suit land and therefore, the plaintiffs have failed to prove the plea of adverse possession by leading documentary evidence.
- 19.** Now, we will deal with the oral evidence led by the plaintiffs. So far as the statement of plaintiff No. 1 Dilip Das (PW-1) is concerned, it

is controverted and does not match with the plaint as in the plaint itself, the plaintiffs have stated that since the suit land was lying vacant, they started using the land for the purpose of cultivating crops, however, in his cross-examination, Dilip Das (PW-1) has stated that he is not aware as to whose land he is in possession of exactly. He has also failed to disclose the boundary of the suit land and has also admitted that after the alienation of the suit land by defendant No. 1 in favour of defendants No. 2 and 3, defendant No. 4 carries out agricultural work in the suit land.

20. Similarly, Vishal Sahu (PW-2), in his statement before the Court, has failed to state the area of the land which he is in possession of except stating approximately 2.5 acres. He has only stated that he used to sow crops in the suit land and at present, agricultural work is being carried out by defendant No. 4.
21. Lastly, Mansharam Sahu (PW-3) has also failed to state that on what date they came to be in possession of the suit land and further failed to disclose the bhoomiswamis of the adjoining lands.
22. Now, so far as defendants' witness is concerned, defendant No. 1's son-in-law namely Balram Singh Gupta (DW-1) has been examined as power of attorney holder and he has clearly stated in his statement before the Court that since her mother-in-law i.e. defendant No. 1 has become old and weak, he has been looking

after the suit land and has been performing agricultural work therein for the last 12-13 years and after selling the suit land to defendants No. 2 and 3, they have leased the suit land to defendant No. 4, who is cultivating crops at present.

- 23.** Thus, from a careful perusal of the record, it is quite evident that there is no oral as well as documentary evidence available on record to show that plaintiffs have been able to establish the plea of adverse possession. As such, it is hereby held that necessary ingredients to establish the plea of adverse possession have not been established and plaintiffs have failed to establish that on what date they came into possession, what was the nature of their possession and whether the factum of possession was known to the plaintiff except for simply saying that since the suit land was lying vacant, they took its possession and starting cultivating crops and even they have not clearly acknowledged the title of defendant no. 1 over the suit land which was absolutely necessary for establishing their plea of adverse possession. The plaintiffs have also failed to establish that their alleged adverse possession has ripened into ownership rights by applying the correct doctrine. We are of the considered opinion that the trial Court has rightly dismissed the suit filed by the plaintiffs finding no merit and we hereby affirm the findings recorded by the trial Court.

24. Accordingly, this appeal, being devoid of merits, is hereby dismissed leaving the parties to bear their own cost(s).

25. A decree be drawn-up accordingly.

**Sd/-
(Sanjay K. Agrawal)
Judge**

**Sd/-
(Sachin Singh Rajput)
Judge**

Harneet