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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA**

ON THE 26th OF APRIL, 2024

SECOND APPEAL No. 839 of 2024

BETWEEN:-

1. **BALCHANDRA S/O RATANLAL GURJAR, AGED ABOUT 59 YEARS, OCCUPATION: AGRICULTURE R/O GRAM PIPALYA BIJARET TEHSIL. JIRAPUR, DISTT. RAJGARH (MADHYA PRADESH)**
2. **MANGILAL S/O MEGHA NAT, AGED ABOUT 81 YEARS, OCCUPATION: AGRICULTURE R/O GRAM PIPLIYA BIJROL, TEH. JEERAPUR, DISTRICT RAJGARH (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI MANISH KUMAR VIJAYWARGIYA - ADVOCATE)

AND

1. **KALUSINGH S/O MEGHA NAT, AGED ABOUT 79 YEARS, OCCUPATION: AGRICULTURE R/O GRAM PIPALYA BIJAREL, TEHSIL. JIRAPUR DISTT. RAJGARH (MADHYA PRADESH)**
2. **RAMLAL S/O MEGHA NAT, AGED ABOUT 75 YEARS, OCCUPATION: AGRICULTURE R/O GRAM PIPLIYA BIJAREL, TEH. JEERAPUR JILA RAJGARH (MADHYA PRADESH)**
3. **BABU NAT S/O MEGHA NAT, AGED ABOUT 69 YEARS, OCCUPATION: AGRICULTURE R/O GRAM PIPLIYA BIJAREL, TEH. JEERAPUR, DISTRICT RAJGARH (MADHYA PRADESH)**
4. **RAMESH S/O MEGHA NAT, AGED ABOUT 64 YEARS, OCCUPATION: AGRICULTURE R/O GRAM PIPLIYA BIJAREL, TEH. JEERAPUR, DISTRICT RAJGARH (MADHYA PRADESH)**
5. **STATE OF MADHYA PRADESH THROUGH COLLECTOR, DISTRICT RAJGARH (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI SHALABH SHARMA - GOVERNMENT ADVOCATE FOR
RESPONDENT NO.5/STATE)**

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This appeal coming on for admission this day, the court passed the following:

ORDER

Record of both the courts below has been received.

1. Counsel for the appellants heard on admission.

2. Appellants/defendants No.1 & 2 have preferred the present second appeal under Section 100 of the Code of Civil Procedure, 1908 (in short "CPC") against the impugned judgment dated 13.2.2024 passed by the 2nd District Judge, Rajgarh in RCA No.7/2020, confirming the judgment and decree dated 19.12.2019 passed by the Civil Judge Class-1, Jeerapur, District Rajgarh in Civil Suit No.RCSA/100028/2015, whereby the suit filed by the respondents No.1 to 4/plaintiffs has been allowed.

3. Facts of the case, in brief, are that the suit land has been inherited by the plaintiffs from their mother Kshar Bai and plaintiffs' name has been recorded as an owner in the revenue records. On 8.6.2014 plaintiffs have demarcated their disputed land. Accordingly it has been found that defendants Mangilal and Balchandra had encroached their land 0.500 hectare and 1.00 hectare. Then they preferred an application for removal of the encroachment before the Naib Tehsildar, Machalpur. The application has been allowed, but same was not upheld by the SDO, Khilchipur in Revenue Appeal, but defendants No.1 and 2 are not ready to return the possession of the suit land. On 2.10.2015 they have made quarrel with the plaintiffs. Therefore, plaintiffs have filed the civil suit against them.

4. Appellants/defendants before the trial Court denied all the averments of

the plaint by stating that defendants No.1 and 2 possesses the suit land since long period. Plaintiffs have done fake demarcation and no opportunity of cross-examination was provided to the defendants. Petition was time barred. Order passed by the Naib Tehsildar was set aside by the SDO (Revenue), Khilchipur. Plaintiffs did not challenge the said order, therefore, order is binding upon them and suit is not maintainable.

5. On the aforesaid pleadings trial court framed the issues and after recording the evidence and hearing both the parties, allowed the suit vide judgment dated 19.12.2019. Being aggrieved by the judgment and decree of the trial Court, appellants preferred appeal before the first appellate court, but after re-appreciating the entire evidence, the first appellate court has confirmed the findings of fact so recorded by the trial Court and dismissed the appeal. Hence, the present second appeal has been preferred before this Court.

6. Learned counsel for the appellants contended that both the courts below have committed grave error of law and facts. The judgment and decree passed by both the courts below are illegal, perverse, arbitrary and not based upon proper appreciation of evidence. Both the courts below have erred in allowing the civil suit against the appellants and completely committed error in ignoring the pleadings and evidence of the appellants. Plaintiffs have admitted in their evidence that defendants are in possession of the suit land since so many years and, therefore, on the basis of the adverse possession defendants were became owner of the suit land, which was not considered by both the courts below. Thus, in view of the aforesaid, learned counsel for the appellants submits that the appeal deserves to be admitted on the substantial questions of law so proposed by the appellants. He has placed reliance upon the judgment of

Hon'ble Apex Court in the case of *Smriti Debbarma (dead) through Legal Representative Vs. Prabha Ranjan Debbarma and others reported in 2022 LiveLaw (SC) 19.*

7. I have gone through the impugned judgment and decree passed by both the courts below and also perused the entire record with due care.

8. Plaintiff Kalusingh (PW-1) deposed before the trial Court that he has inherited the suit land from his mother Keshar Bai in succession. Plaintiffs have proved their Bhuadhikar and Rin Pustika (Ex.P/1), Khasra of the suit land from 2011 to 2016 (Ex.P/4), Khasra of the year 1994-95 to 1997 (Ex.P/5) and Khasra from 1999-2000 to 2003 (Ex.P/6). In all the documents name of the plaintiff's mother Keshar Bai was found as Bhumiswami. If the defendants possesses the suit land since long period, then their possession should be mentioned in the aforesaid Khasras, but there is no recital regarding their names in these Khasras of the suit land. Therefore, both the courts below have rightly drawn adverse inference against the appellants/defendants.

9. Although defendant No.1 Balchandra (DW-1) and defendant No.2 Mangilal (DW-2) both are examined before the trial Court and filed certain revenue papers (Ex.D/1 to D/8), but they did not file any relevant Khasra, Kistbandi Khatoni or any other relevant document to prove their possession over the suit land for long period.

10. On the contrary, the plaintiffs proved the demarcation report (Ex.P/2) and Naksha (Ex.P/3). From perusal of the demarcation report, it is proved that defendants No.1 and 2 have encroached some part of the disputed land owned by the plaintiffs. Appellants did not challenge the demarcation report before any appropriate court. Therefore, the demarcation report attained finality and it is also binding upon the appellants.

11. The appellants are claiming title over the suit land by adverse possession. The law with regard to perfecting title by adverse possession is well settled.

12. The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three nec - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In ***S.M. Karim Vs. Mst. Bibi Sakina [AIR 1964 SC 1254]*** it has been observed thus:

“Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.”

13. Normally, the plea of adverse possession would only enable a person taking the same to resist any attempt by any other person to evict them. It is also in the form of defence. It was this reason that the plea of adverse is treated as a shield and not a sword.

14. It is also well settled principle that the parties claiming adverse possession must prove their possession and the said possession must be peaceful, open, uninterrupted and continuous. The plaintiff's possession must be adequate and in continuity and adverse to true owner. The adverse possession must start from wrongful dispossession of the original owner and the possession must be actual, visible, exclusive, hostile and continued for a statutory period, therefore, to claim title by adverse possession, the plaintiff must plead and prove on the date, he came into possession and what are the nature of his possession and whether the factum of possession was known to

other person and how long, his possession was continued and his possession was open and undisturbed. It is also established rule, that where, possession, however, so long, cannot be treated as an adverse, so to acquire title, unless there is an unanimous or hostility on the part of the person in possession, who is not the real owner. The plea of adverse possession is raised against the Government and in respect of the Government land. The statutory provision of hostile possession of Government land would be 30 years, where continuous possession whatsoever duration, is not sufficient to acquire the title by adverse possession in respect of the Government land.

15. Relying upon the aforesaid law laid down by the Hon'ble Apex Court and the evidence available on record, this Court is of the considered view that appellants/defendants No.1 and 2 have failed to prove their continuous possession over the suit property prior to the institution of civil suit for a period of 12 years as per Section 64 & 65 of the Indian Evidence Act. Therefore, the plea of adverse possession sought by the appellants has rightly been dismissed by both the courts below as there is no evidence available on record before both the courts below to establish this plea.

16. For the aforesaid reasons, no substantial question of law arises for consideration in this appeal. The appeal fails and is hereby dismissed *in limine*.

C.C. as per rules.

(ANIL VERMA)
JUDGE