

(2025) 05 BOM CK 0217

In the Bombay High Court, Aurangabad Bench

Case No : Second Appeal No. 320 Of 1995

Motiram Bajirao Patil

APPELLANT

Vs

State Of Maharashtra Thro.G.P.

RESPONDENT

Date of Decision : 05-05-2025

Acts Referred:

Maharashtra Village Panchayats Act, 1959 — Section 53, 56
Evidence Act, 1872 — Section 110
Bharatiya Sakshya Adhinyam, 2023 — Section 113
Limitation Act, 1963 — Article 112

Citation : (2025) 05 BOM CK 0217

Hon'ble Judges : S.G. Chapalgaonkar, J

Bench : Single Bench

Advocate : S B. Deshpande, P. A. Deshpande, S.P. Tiwari, V S Badakh, S. V. Dixit

Final Decision : Dismissed

Judgement

S.G. Chapalgaonkar, J

1. The appellant/original plaintiff impugns the judgment and decree dated 31.7.1995 passed by the learned District Judge, Jalgaon, in Regular Civil Appeal no.289 of 1989 thereby upholding the judgment and decree dated 30.9.1989 passed by the learned Civil Judge S.D., Jalgaon, in R.C.S.No.619 of 1985 thereby dismissing suit of the plaintiff seeking the relief of declaration of ownership and perpetual injunction claimed against defendant no.1/State of Maharashtra. (Parties hereinafter are referred to as per their original status).

2. Appellant/plaintiff instituted suit claiming the relief of declaration of ownership and perpetual injunction in respect of the suit plot which is part and parcel of gat no.147 of village Asankhede, more particularly, described in the plaint. According to plaintiff, suit plot was possessed by his forefathers since 150 to 200 years. Plaintiff continued in possession and enjoyment of the suit property as owner. Plaintiff has installed a flour-mill and constructed cattle-shed as well as water pond. Defendant no.2 village Panchayat mutated name of plaintiff's father in

Panchayat record under Resolution No.46 dated 22.12.1964. Since then, defendant no.2 is receiving tax. Plaintiff asserts that he has no documentary evidence to show his ownership, but his long standing and continuous possession would rest title upon him by prescription. Hence, in the alternate, he claims ownership by way of adverse possession. According to plaintiff, on false complaint made by a villager, S.D.O. Chalisgaon made an inquiry. Eventually, Tahsildar, Pachora ordered plaintiff to vacate the suit plot. Hence, plaintiff required to approach Court seeking relief, as claimed.

3. Defendant no.1 refuted plaintiff's claim, either as to his own title or acquisition of same by adverse possession. It is pleaded that suit plot is meant for public use. Plaintiff encroached on area of suit plot causing nuisance to public. The Government requires land for implementation of various schemes. Resolution of the village Panchayat is inconsistent to Section 53 and 56 of the village Panchayat Act.

The Trial Court framed issues based on pleadings of the parties and finally dismissed the suit. In appeal filed by the plaintiff before the District Judge, Jalgaon, the decree as passed by the Trial Court is confirmed.

4. Aggrieved plaintiff filed present Second Appeal, which has been admitted by this Court vide order dated 4.3.1997 on ground nos.3,5,6,7,9,11 and 17, being substantial questions of law, which reads thus :-

i. The courts below have failed to exercise jurisdiction vested in them, in not considering the fact that long possession under section 110 of the Evidence Act is proof of title.

ii. Whether the findings of the Courts below that the appellant has not pleaded the adverse possession properly in the plaint is legally correct.

iii. The Courts below have failed to consider that the appellant himself claims ownership over the suit property for more than 200 years continuously and without interruption to the knowledge.

iv. The Courts below have wrongfully held that the appellant is not entitled to raise alternative plea of adverse possession, when he himself claims owner of the suit property.

v. Whether the entry of ownership by the Grampanchayat recording the name of the plaintiff's father is not proof of ownership.

vi. Whether the inference drawn by the Courts below from the statement Exh.55, that the appellant was of the opinion, that, by adverse possession is correct, when the appellant in his statement on oath clearly deposed the circumstances under which he submitted application for allotment of the plot to him.

vii. Whether the long possession, more than 30 years over the suit property, where several activities are being carried out by the appellant in the presence of village officers and Grampanchayat under his title and when the flour mill also

being run by him, does not establish the knowledge to the Government of his hostile possession.”

5. Mr. Sanjeev Deshpande, learned senior advocate vehemently submits that there is voluminous evidence depicting long standing possession of plaintiff over suit plot. In the year 1965, village Panchayat passed a Resolution and accepted possession of plaintiff's father and resolved to enter his name in village Panchayat record as the owner of suit plot. Since then, tax has been paid to the village Panchayat. He would further submit that plaintiff has raised construction over the suit plot. The same has been used openly without any objection. He would therefore submit that in view of section 110 of the India Evidence Act, 1872 presumption as to title of plaintiff arises. In absence of evidence in rebuttal, plaintiff is entitled for declaration of his ownership.

6. In support of his submissions, he relies upon observations of the Supreme Court of India in case of Yerikala Sunkalamma and another Vs. State of Andhra Pradesh, Department of Revenue and others reported in 2025 DGLS (SC) 437.

7. Mr. Deshpande, would further submit that since plaintiff is in settled possession, he cannot be evicted without following the due process of law. Therefore, decree of perpetual injunction to that extent could have been passed.

8. In support of his contentions, he relies upon the observations of the Supreme Court of India in case of Rame Gouda (D) by L.Rs. M. Varadappa Naidu (D) by L.Rs. Reported in 2003 DGL (SC) 1059.

9. Per contra, Mr. V.S. Badakh, learned AGP appearing for respondent no.1 vehemently submit that there cannot be dispute that suit property belongs to the State. Plaintiff is asserting his own title and at same breath seeks declaration of his ownership on the basis of adverse possession. According to him, suit with conflicting pleas which are detrimental to each other cannot be entertained. Mr. Badakh would further submit that, assuming plaintiffs long standing possession, other ingredients to treat his possession as adverse to title of defendant are absent. Both Courts have recorded concurrent finding that plaintiff failed to establish his title or adverse possession for statutory period. Therefore, urges to dismiss this second appeal.

10. Having considered submissions advanced, it is apposite to refer to pleadings of plaintiff. The plaintiff asserts that his forefathers acquired ownership of the land about 150 to 200 years ago from then rural and since then generations after generation they are in possession. The suit property is now fenced and there is construction of flour mill since 20 to 25 years. Water tank and cow-shade is also constructed in the property. Plaintiff asserts that in the year 1965 an application was moved to Village Panchayat by Karta of the family i.e. Bajirao Sadashiv Patil to mutate suit property in his name. Resolution No.15 to that effect is passed. It has been allotted house No.170. According to plaintiff, his family is enjoying aforesaid property openly without any obstruction as owner known to the public at large. As such, apparently, plaintiff acquired the title by adverse possession.

11. Plain reading of contents of plaint shows that plaintiff is asserting his ownership based on title and in the alternate claiming title by adverse possession. At this stage, reference can be given to the observations of the Supreme Court of India in case of State of Uttarakhand Mandir Vs. Mandir Sri Laxman Sidh Maharaj reported in (2017) 9 SCC 579 that claim of independent title and adverse possession at the same time amounts to contradictory pleas. Therefore, prima facie, this Court finds that claim of the plaintiff seeking declaration of independent title at one hand and adverse possession on the other hand would amount to self destructing pleas. Plaintiff can take alternative plea only when such plea compliments or goes parallel with his other plea. Therefore, in facts of the present case, plaintiff cannot be allowed to rest his claim on the basis of self contradictory pleas.

12. Mr. Deshpande, learned senior advocate appearing for the appellant vehemently submits that section 110 of the Indian Evidence Act raises presumption of title owing to long standing possession. According to him, once long standing possession is established, plaintiff would be entitled to claim his title by operation of law. By inviting attention of this Court to the depositions of witnesses, he submit that plaintiff has established his continuous possession for more than 35 to 40 years. Defendants could not rebut presumption. Therefore, claim of plaintiff as to declaration of ownership needs to be accepted.

13. Before proceeding to consider the aforesaid limb of arguments, it is apposite to refer to section 110 of the Indian evidence Act, 1972, which reads thus :-

110. Burden of proof as to ownership :-

"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

14. Mr. Deshpande, in deference to his arguments relies upon observations of the Supreme Court of India in case of Yerikala (supra), particularly, on paragraph no.72 which reads thus :-

"72. The Section embodies the well-recognized principle that possession is prima facie proof of ownership. A person in possession is entitled to remain in possession until another person can disclose a better title under Section 113 of the BSA. Therefore, once the plaintiff proves that he has been in possession of the suit property, the burden of proving that the plaintiff is not the owner is on the defendant who affirms that the plaintiff is not the owner. The Section does not make a distinction between the Government and a private citizen. Section 113 is, therefore, equally applicable where a Government claims to be the owner or challenges the ownership of the plaintiff who is in possession of the property. It is not disputed that before the possession of the Subject Land was taken over, the plaintiffs were in possession of the property for more than twenty years. The onus, therefore, under section 113 of the BSA was on the State to prove that the Government had a subsisting title to the Subject Land.

75. . Section 113 of the BSA provides that when the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. The application of this Section to lands claimed by the Government or the Municipality has been considered by the Madhya Pradesh High Court in *Jagannath Shivnarayan v. Municipal Commissioner, City Municipality, Indore* reported in AIR 1951 MB 80.”

15. It can be observed that, presumption under section 110 of the Act is based on public policy. However, such presumption of the title as a result of possession can arise only when facts disclose that no title vests in any party and possession of the plaintiff is not prima facie wrongful. To rebut such presumption, party the defendants are required to displace this claim of apparent title and to establish beneficial title in himself by leading satisfactory evidence. In short, presumption contemplated under section 110 is rebuttable presumption in favour of a person, who holds lawful possession and contesting party fails to prove his title.

16. Turning back to facts of the present case, defendant/State of Maharashtra filed written statement contending that plaintiff is encroacher on suit property and he has no lawful right to continue as such. It is pleaded that suit land is part of Gayran Land, which is required by the Government for implementing Government Schemes. It is further pleaded that village Panchayat has no right to deal with the aforesaid land. Village Panchayat acted in contravention of the provisions of village Panchayat Act and passed the resolution in favour of plaintiff.

17. Perusal of 7/12 extract shows that land gat no.147 (old S.No.75) is recorded in name of group Grampanchayat, whereas, adjacent land gat no.148 is mutated in the name of Khandu Patil. Except bare entry in village Panchayat record based on resolution of 1965, there is absolutely no material to show possession of plaintiff or his forefather over the suit property. Although, plaintiff claims that his possession is since 150 years, no documentary evidence is placed on record in support of his contentions. The plaintiff simply relies upon oral evidence for that purpose, which would not be sufficient to establish continuous possession. Even from statement of witness Daulat Patil, it is brought on record that possession of plaintiff is for last 40 years. Evidence of Daulat was recorded on 22.9.1989. In cross-examination he states that he cannot tell exact year from which plaintiff is in possession of suit plot. He further clarifies his estimation as to plaintiffs possession is approximate and tentative one. Another witness namely Lala Pawar asserts about possession of plaintiff since his grand father, but does not refer to particular year. Same is the case with evidence of Devram Patil. Therefore, even from oral evidence relied upon by plaintiff, he could not bring on record theory of his possession for more than 30 years, which can be held sufficient to raise presumption of his title.

18. Evidently, land is mutated in the name of village Panchayat in revenue record. Since 1985 onwards, plaintiff was served with notices to vacate the premises. The 7/12 extract from 1953 onward as to survey no.75 shows that

name of the Government has been consistently recorded. Lateron, name of village Panchayat brought on record as per order of the competent authority. Aforesaid evidence crystallize that land is primarily owned by the Government and put into occupation of village Panchayat. It is, therefore, evident that defendant holds title to suit property and some times after 1960 to 1962 plaintiff came in possession. It is evident that this is not a case where defendants could not bring any material to show their title so as to raise presumption of plaintiffs title on the basis of possession.

19. In a case of Yerikala (Supra), relied upon by appellant/plaintiff, plaintiff was dispossessed by the Government. Prior to that suit property was originally owned by Harijana, who had mortgaged the same to Perugu Swamy Reddy under the mortgage deed dated 6.6.1943. Laeron, Perugu Swami's son filed suit for recovery of mortgage money. The decree was passed for sale of mortgaged property. In court auction, one Karuva Ramanna purchased the land. He was put in possession under the court orders. Lateron Kuruva Sold land under the registered sale deed dated 10.12.1970 to father of the plaintiff, who enjoyed possession till his death. However, government dispossessed plaintiff without following due process of law. In this background, Supreme Court observed that presumption under section 110 would arise in favour of plaintiff when Government could not show title to the property.

20. In the present case, plaintiff is not in a position to plead and establish how his possession is legal or lawful. The defendant state is shown as owner in old revenue record. Hence basic ingredients to invoke presumption u/s 110 of evidence act are absent in facts of present case. Since plaintiff took alternate plea of adverse possession reference can be given to certain observations of the Supreme Court in case of T. Anjappa and Others Vs. Somlaingappa and Another reported in (2006) 7 SCC 570 which reads thus :-

"13. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

21. Similarly in case of D. N. Venkatarayappa and Ors. Vs. State of Karnataka and Ors. reported in (1997) 7 SCC 567 Supreme Court of India observed as under :-

"Physical fact of exclusive possession and the animus possidendi 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 the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

22. Applying aforesaid exposition of law in facts of the present case, it can be observed that appellant/plaintiff failed to prove that he was in continuous uninterrupted possession for more than 30 years. There is nothing to prove his animus to enjoy the property adverse to title of the Government and to knowledge of the Government Officers. Therefore, Trial Court as well as the Appellate Court has rightly observed that long standing possession is not enough to establish title adverse to owner. In the present case, plaintiff did not admit title of the Government nor he pleaded the date since when his possession became adverse. Concurrent findings as recorded by the Courts below are in consonance with pleadings and evidence coupled with exposition of law by the Supreme Court of India.

23. It is important to note here that when the suit is instituted seeking declaration of title on the basis of adverse possession, it is incumbent upon the Courts to find out exact tenure of possession claimed by plaintiff whether his possession is authorized or unauthorized or permissible. In case of *R. Hanumaiah Vs. Secretary to Government of Karnataka, Revenue Department* reported in (2010) 5 SCC 203, Supreme Court explained as to how title suits against Government are to be dealt with and observed thus :-

"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 have 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 government. This follows from Article 112 of Limitation Act, 1963, which

prescribes a longer period of thirty years as limitation in regard to suits by 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.”

24. In light of the aforesaid discussion, there is no merit in this Second Appeal. Second Appeal stands dismissed. Pending civil application, if any, also stands disposed of.

25. Mr. Tiwari, learned advocate appearing for appellant submits that, during pendency of the second appeal, there was interim protection in favour of appellant, that may be continued since appellant may take chance by filing SLP before the Supreme Court.

26. Considering the submissions advanced and fact that second appeal was pending for a long time, interim relief, that was in operation shall continue for a period of twelve weeks from today.