



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Regular Second Appeal No.372 of 2016

Reserved on: 4th July, 2025.

Date of decision: 9th July, 2025

State of Himachal Pradesh

...Appellant

Versus

Sukhan Devi (deceased) through LRs

...Respondents

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes the Appellant: Mr. Vishav Deep Sharma, Additional Advocate General.

For the Respondent:

Ms. Vishali Lakhanpal, Advocate vice
Mr.Parv Sharma, Advocate.

Vivek Singh Thakur, Judge

State has preferred this appeal, under Section 100 of Code of Civil Procedure (in short 'CPC') against judgment and decree dated 12.10.2015 passed by the District Judge, Bilaspur H.P. in **Civil Appeal No. 23/13 of 2015, titled State of HP vs. Sukhan Devi**, whereby judgment and decree dated 30.4.2015 passed by the Civil Judge (Junior Division), Bilaspur, District Bilaspur HP in **Civil Suit No. 120/1 of 2009 titled Sukhan Devi vs. State of HP**, has been affirmed.

2 For convenience, parties herein-after shall be referred as per their status in the suit i.e. plaintiff and defendant/State respectively.

3 Case of plaintiff is that her husband Gurdass had occupied the land of the State of Himachal Pradesh on 13.1.1963 i.e. from the date

of her marriage and plaintiff and her husband had constructed a residential house thereon in village Manwa and they lived in the said residential house. Name of her husband Gurdass was also incorporated in the column of possession over the suit land since 1963 onwards as evident from jamabandi for the year 1963-64, till filing of the suit.

4 Further case of plaintiff is that possession of husband of plaintiff had matured into title of the suit land on 13.1.1993 after 30 years of the adverse possession, which remained peaceful, continuous without any interruption and obstruction from any corner and to the best of knowledge of the State of HP, through its Revenue Agency.

5 According to plaintiff, she and her husband were illiterate and therefore, they could not take steps for change of revenue entries in the column of ownership. Her husband expired on 18.6.2008 and thereafter, plaintiff is occupying, using and enjoying the suit property and she has acquired all rights, title and interest in the suit land as exclusive owner and therefore, revenue entries showing contrary are wrong and illegal and not binding on plaintiff and are liable to be corrected by entering the name of plaintiff in revenue record as exclusive owner in possession of suit land along with house/structure raised thereon wherein plaintiff is residing since 1963 after her marriage as during lifetime of her husband, she was residing with her husband and thereafter, she is living in the said house.

6 It is the case of plaintiff that she came to know about non-entering of her name including the name of her husband as exclusive owner in revenue record with respect to suit property in 2009 when she approached the Patwari for getting jamabandi of suit land for raising loan from the Bank.

7 Further case of plaintiff is that defendant through Revenue Agency wanted to oust her forcibly from the suit property and therefore, she approached the Court by filing the suit for declaration that she had become owner in possession by way of adverse possession of house existing over the suit land w.e.f. 13.1.1993 and also for decree directing the respondent to enter her name in the column of ownership and possession in place of her husband and for further decree of permanent prohibitory injunction restraining the defendant from dispossessing the plaintiff as well as interfering in and changing the nature of suit land by itself or through its agents, servants or representatives in any manner and alternatively, for possession.

8 In written statement filed on behalf of State, it was contended that Civil Court had no jurisdiction to try and decide the suit in view of provisions of Section 171 of HP. Land Revenue Act. However, it was admitted that plaintiff was widow of Gurdass son of Santa who had occupied 5 biswas of Government land in Mauja Manwa by constructing house thereon, which was the Government land, since 1963. It was further admitted that as per Roznamcha Entries since 1961 to 1963 no

Missal regarding the encroachment of land was prepared against the husband of plaintiff.

9 It was contended on behalf of defendant/State that husband of plaintiff had been shown in possession of suit land in column of possession in jamabandi but this entry was reflecting only possession, which did not create any right in favour of Gurdass, husband of plaintiff, or the plaintiff to claim ownership because Gurdass was entered in revenue record in illegal possession with further submission that he had already expired on 18.6.2008. But it was denied that plaintiff was entitled to enter her name in revenue record in possession of suit property because after death of Gurdass Ram, plaintiff was not entitled for any right over encroached land in any manner. It was denied that plaintiff had become owner of suit land and her name deserved to be entered in the column of ownership with further submission that State of HP was owner of land and State had right to eject any person from wrongful possession upon the Government land at any time and therefore, it was canvassed that suit of plaintiff deserved to be dismissed.

10 In replication, plaintiff has reiterated the stand taken in plaint.

11 Plaintiff examined herself as PW1 and placed reliance on copy of jamabandi for the year 1963-64 Ext.PW1/B, copy of jamabandi for the year 2002-03 Ext.PW1/A, copy of Certificate issued by the President, Nagar Panchayat, Talai Ext.PW1/C, death certificate of Gurdass Ext.PW1/D, Certificate issued by the Panchayat Secretary

Ex.PW1/E, photographs Ext.PW1/F and Ext.PW1/G, copies of jamabandis Ext.PW1/H, Ext.PW1/J, Ext.PW1/K, Ext.PW1/L, Ext.PW1/M, Ext.PW1/N, Ext.PW1/O and Pension Payment Order Ext.PW1/P.

12 State did not lead any evidence except examining DW1 Thakur Dass Patwari of concerned Patwar Circle.

13 In examination-in-chief, plaintiff reiterated her version narrated in the plaint. In cross-examination, no question was asked from this witness with respect to entries in jamabandis reflecting the unauthorized possession of Gurdass Ram since 1963-64 till filing of suit. The only defence, as apparent from trend, in cross-examination, taken was that after death of her husband, neither she was in possession of suit land nor was having any right or title thereon, which was denied by plaintiff. She also denied the suggestion that she was not entitled to become owner because her name was not mentioned in column of possession or ownership in revenue record by asserting that she was owner in possession of suit land.

14 DW1 in his examination-in-chief deposed that owner of land in reference was Government and unauthorized possession of Gurdass son of Santa Singh over the suit land was recorded in revenue record and on the spot, there was a residential house and unauthorized possession of Gurdass on the suit land was since 1963-64 and same was as such as recorded till the date of his deposition i.e. 14.1.2014. He also stated that according to record, plaintiff had not been recorded in

possession of suit land and no Missal had been prepared in her name since 1961 to 1963. He admitted that according to jamabandis, placed on record Ext.PW1/A, Ext.PW1/B, Ext.PW1/H, Ext.PW1/J, Ext.PW1/K, Ext.PW1/M, Ext.PW1/N and Ext.PW1/O, suit land was in unauthorized possession of Gurdass who expired on 18.6.2008. This witness identified the photos Ext.PW1/F and Ext.PW1/G belonging to the residential house of plaintiff. This witness also admitted that according to revenue record, unauthorized possession, w.e.f. 13.1.1963 till 13.1.1993, had completed 30 years.

15 Taking into consideration the material on record and pleadings of parties, suit of plaintiff was decreed partly by the Trial Court holding that plaintiff was entitled for entry of her name in the column of possession of suit property in place of her husband and restraining the defendant/State from dispossessing the plaintiff as well as interfering in and changing the nature of the suit land forcibly without adopting the course of law. Decree was passed accordingly.

16 As recorded supra, appeal preferred by State of HP was dismissed by the District Judge, Bilaspur and judgment and decree passed by the Trial Court was upheld.

17 Being aggrieved by the aforesaid judgment and decree passed by the Courts, State has preferred the present appeal, which was admitted on 4.10.2016 on the following substantial questions of law:-

1. Whether name of encroacher is a inheritable right?

2. Whether Civil Court can direct inclusion of name in revenue entries without any right and title?

18 Learned Additional Advocate General has submitted that encroachment upon the Government land cannot be inherited by his legal heirs automatically as the encroachment is not a inheritable right. As evident from the material on record, especially firm admissions on the part of the defendant-State, unauthorized possession of the husband of the plaintiff remained uninterrupted, peaceful, hostile and adverse to the knowledge of the State for more than 30 years so it was and is adverse possession upon the suit land after completion of 30 years. After death of Gurdass, plaintiff is in possession. No eviction proceedings were ever initiated against encroacher despite entry recorded in revenue record. Therefore, question to be determined is that whether an adverse possession is inheritable or not.

19 Plea of appellant/State on this question runs contrary to the observations made by the Supreme Court in case ***Ravinder Kaur Grewal vs. Manjit Kaur and others*** reported in **(2019)8 SCC 729** which read 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 synonym 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 the large 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."

20 In present case, suit property has been properly identified and continuation of possession of plaintiff has not been disputed by the

State during trial rather has been admitted in written statement as well as by its witness DW1 Thakur Dass concerned Patwai, and it is also substantiated from the record of right being maintained by the Revenue Agency for depicting the husband of plaintiff in possession since 1963 till filing of suit. It is also admitted that no steps were ever taken by State to evict the husband of plaintiff or plaintiff at any point of time since 1963 till filing of suit or even thereafter. Therefore, entries in revenue record reflect that unauthorized possession was very much in the knowledge of State since 1963 and for completion of 30 years of adverse possession without any interruption, interference, objection despite being in knowledge of the Revenue Agency, Gurdass during his life time had right to claim title on the basis of adverse possession and after his death, his adverse possession is heritable as held by the Supreme Court in its pronouncement, referred supra. Thus plaintiff is entitled to inherit the encroachment with claim of adverse possession by clubbing the period of possession of her husband since 1963.

21 With respect to second substantial question of law, learned Additional Advocate General has referred Section 171, specially Section 171(2)(v) of H.P. Land Revenue Act with submission that these provisions exclude the jurisdiction of Civil Court to try any suit related to entries of revenue record including the record of rights or periodical record.

22 Referred Section 171/171(2)(v) reads as under:-

“171. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers-- Except as otherwise provided by this Act-

(1) A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act, to dispose of or take cognizance of the manner in which the State Government or any Revenue Officer exercises any powers vested in it or him by or under this Act; and in particular-

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely-

(i).....

(ii).....

(iii).....

(iv).....

(v) the framing of a record-of-rights or (periodical) record of the preparation, signing or attestation of any of the documents included in such a record.”

23 It is true that Section 171 excludes the jurisdiction of Civil Court with respect to matters referred in Section 171 of the H.P. Land Revenue Act, but it is also apt to record that this exclusion of jurisdiction is not absolute as Section 171 starts with words ‘Except as otherwise provided by this Act’.

24 Section 46 of the H.P. Land Revenue Act provides remedy of filing a suit for declaratory decree by person aggrieved by an entry in the record, which reads as under:-

“46. Suit for declaratory decree by persons aggrieved by an entry in a record-If a person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in a periodical record, he may institute a suit for a declaration of his right under Chapter-VI of the Specific Relief Act, 1963 (Act No. 47 of 1963).”

25 Section 171 itself provides that Civil Court shall have jurisdiction if otherwise provided under the Act. Section 46, referred supra, is providing right to aggrieved person to file a suit being aggrieved by the entry in the record of rights/revenue record. Therefore, Section 46 empowers the Civil Court to direct inclusion of name of person in the revenue entries subject to establishing right by the such aggrieved person by filing appropriate suit.

26 In present case, claim of plaintiff was that her name was not incorporated by concerned Government/Revenue Officials/Officer in column of ownership and possession despite acquiring such status by way of adverse possession. Such denial to record name of plaintiff in the column of ownership and possession has not been controverted and/or rebutted by the State. Therefore, plaintiff, in given facts and circumstances, after approaching Revenue Officials/Officer was and is having right to file civil suit as provided under Section 46 of H.P. Land Revenue Act.

27 Even in cases of emergent nature, sometime circumstances warrant, a person may be constrained to approach the Court to protect his legal right even without resorting to ordinary process.

28 Learned Additional Advocate General has failed to point out any material on record dis-entitling the plaintiff for filing the suit for correction of revenue entries irrespective of provisions of Section 46 of H.P. Land Revenue Act providing remedy to plaintiff to maintain such suit.

29 In the given facts and circumstances, substantial questions of law, referred supra, are answered against appellant/State and in favour of respondent.

Accordingly, the appeal is dismissed. No order as to costs.

(Vivek Singh Thakur),
Judge.

09th July, 2025(MS)