A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No. 256 of 2006
CNR No- ODHC010372602006

(In the matter of an Appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the judgment and decree dated 25.03.2006, passed by the learned Additional District Judge, Sonepur in R.F.A. No.14 of 2005, confirming the judgment dated 07.02.2005 & decree dated 21.02.2005 passed by the learned Civil Judge (Senior Division), Sonepur in T.S. No.87 of 2001).

Ghuturam Bagh (Dead) by his LRs **....** ***Petitioner (s)***

-versus-

Commissioner of Endowments, Bhubaneswar & Anr. **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. Manoj Mishra, Senior Adv.*
along with associates
Mr. Tanmay Mishra, Adv.

For Opposite Party (s) : *Mr. Prabhu Prasanna Behera, ASC*
Ms. Pratyusha Naidu, Adv.

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-11.09.2026
DATE OF JUDGMENT:-30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present appeal has been filed challenging the judgment dated 25.03.2006 passed by the learned Additional District Judge, Sonepur in RFA No.14 of 2005, whereby the judgment dated 07.02.2005 and decree

dated 21.02.2005 passed by the learned Civil Judge (Senior Division), Sonepur in T.S. No.87 of 2001 have been confirmed.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The suit land belongs to the deity Maa Sureswari Devi of Sonepur Town. His father was in possession of the suit land for more than 50 years and, after his death, the Plaintiff has been continuing in possession thereof. It is contended that, by virtue of such long and continuous possession, the Plaintiff has acquired a right of occupancy over the suit land. During the 5th Settlement Operation, the Plaintiff requested the Defendants to settle the suit land in his favour, but the same was refused. Consequently, after serving notice on the Defendants, the Plaintiff instituted the present suit.

3. Based on the aforesaid pleadings and matter in controversies between the parties, altogether 5 (five) numbers of issues were framed by the learned Trial Court in the suit vide T.S. No.87 of 2001 and the said issues are:-

ISSUES

(i) Is the suit maintainable ?
(ii) Has the plaintiff got cause of action to file the suit?
(iii) Is the suit bad for non-joinder of necessary party?
(iv) Has the plaintiff got right, title and interest over the suit properties?
(v) To what relief, if any, the plaintiff is entitled ?

4. In order to substantiate the aforesaid relief (s) sought for by the plaintiff in the suit vide T.S. No.87 of 2001 against the defendants, the plaintiffs examined three witnesses from his side and exhibited the documents on his behalf vide Exts.1 to 3.

5. On the contrary, in order to defeat/nullify the suit of the plaintiff, the defendants examined one witness on their behalf i.e. D.W.1.

6. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the learned Trial Court answered all the issues in favour of the defendants and against the plaintiff and basing upon the findings and observations made by the learned Trial Court in all the issues, the learned Trial Court dismissed the suit of the plaintiff vide T.S. No.87 of 2001 on contest against the defendants as per its judgment and decree dated 07.02.2005 and 21.02.2005 respectively assigning the reasons as follows:

> *"Admittedly, the suit property is a Devottar property belonging to Deity Sureswari Devi. A deity is a perpetual minor against whom no adverse possession can be pleaded. Further, the evidence as discussed goes to show that Ghuturam has never possessed the suit land on Bhag. The receipts filed by him discloses that his father Daulat was taking the land on annual lease and was paying Bhag regularly and further his brother Nakul has taken the land on Bhag annually as disclosed from the receipts vide Ext.3 series. A Bhag tenant or an annual lease-holder of the land cannot also claim adverse possession over the properties by him on annual lease basis as the said possession is a permissive possession and permissive possession also cannot be converted into adverse possession. As regard starting of encroachment case the same is to be treated as a misconceived one as the Tahasildar has got no right to start an*

encroachment case belonging to the deity and the suit land cannot be treated as the property belonging to the State Government though the management of the deity is looked after by the Commissioner Endowment. Thus, the plaintiff has got no connection with the suit land nor has got any right over the suit property far less to have acquired right over the same by way of adverse possession."

7. On being dissatisfied with the aforesaid judgment and decree of the dismissal of the suit of the plaintiff passed by the learned Trial Court in the suit vide T.S. No.87 of 2001, the plaintiff challenged the same preferring the 1st appeal vide R.F.A. No.14 of 2005 being the appellant against the defendants arraying them (defendants) as respondents.

8. After hearing from both the sides, the learned 1st Appellate Court allowed that 1st Appeal vide R.F.A. No.14 of 2005 of the plaintiff and dismissed the appeal on contest and the judgment dated 07.02.2005 and decree dated 21.02.2005 passed by the learned Trial Court in the suit vide T.S. No.87 of 201 was confirmed assigning the reasons as follows:

"It is the admitted position that the suit property is Devottor property which belongs to the deity Sureswari Devi. Significantly, the deity is a perpetual minor against whom no case of adverse possession can lie. Besides, the evidence on record unmistakably shows that the plaintiff had never been in possession of the suit land. However, the rent receipts as contained in Ext.3 show that plaintiff's father Daulata was taking the suit land on annual lease and was paying bhag regularly. It is the settled position of law that neither a bhag tenant nor an annual lease holder of a land can claim adverse possession over the properties on the basis of annual lease for the simple reason that the possession is permissive in nature and under no circumstance permissive possession can turn into adverse possession. The learned trial Cout has, therefore,

rightly come to the conclusion that the plaintiff has no right, title over the suit land and has not acquired title by way of adverse possession. The contentions raised by the learned counsel for the appellant are rejected being legally unsustainable. While finding the illegality or infirmity in the impugned judgment. I am entirely in agreement with it.
10. Resultantly, the appeal is dismissed on contest and the judgment dated 7.02.2005 and decree dated 21.02.2005 passed by the trial court in T.S. No.87 of 2001 are hereby affirmed."

9. On being aggrieved with the aforesaid judgment and decree dated 07.02.2005 and 21.02.2005 respectively passed by the learned 1st Appellate Court in R.F.A. No.14 of 2005 in favour of the defendants, the plaintiff challenged the same preferring this 2nd appeal being the appellants against the defendants arraying them as respondents.

10. This 2nd Appeal was admitted on formulation of the following substantial questions of law i.e.:-

Whether the evidence are sufficient enough to prove the adverse possession of the appellants over the suit land and further the law of adverse possession can be applicable to the properties of a deity.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

11. The learned counsel for the Appellant earnestly made the following submissions in support of his contentions:

(ii) Both the learned Courts below have concurrently held that, the deity being a perpetual minor, the Plaintiff cannot claim adverse possession against the deity. Both the Courts below have further held that the Plaintiff is in permissive possession over the suit property. Thus, the permissive possession of the Plaintiff over the

suit property has been concurrently found and confirmed by both the Courts below.

(iii) It is true that adverse possession cannot be claimed against a deity, which is a perpetual minor. However, both the learned Courts below, having found that the plaintiff is in possession over the suit property, have decreed the suit for confirmation of possession only.

(iv) It is well settled in law that a person in settled possession of a property cannot be dispossessed except by following due process of law. Such person is entitled to protect his settled possession and has a possessory right in respect of the property.

(v) In ***Rame Gowda (D) by LRs vs M. Varadappa Naidu***[1] wherein, at paragraph 9, the Hon'ble Supreme Court has held as follows:

> *"8.It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner…..no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner."*

(vi) The plaintiffs have been in possession of the suit property since the time of their grandfather, as has been concurrently held by the learned Courts below. The appellant is also, as on date, in possession of the suit land and is cultivating the same. Thus, the plaintiffs are in settled possession of the suit property and,

[1] 2004 (1) SCC 769

therefore, their possession is required to be protected in accordance with the ratio laid down by the Hon'ble Supreme Court in the judgment relied upon.

(vii) Therefore, in view of the facts and circumstances of the case, the submissions made and the law laid down by the Hon'ble Apex Court, the plaintiffs are found to be in settled possession of the suit land and, therefore, are entitled to a decree for confirmation of possession. Accordingly, the learned Courts below committed an error of law in dismissing the suit in its entirety.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

12. *Per contra*, the learned counsel for the Respondents earnestly made the submission in support of his contentions.

(i) The original Plaintiff filed Title Suit No. 87 of 2001 seeking declaration of his right, title and interest over the suit land belonging to the deity and for confirmation of his possession thereon.

(ii) Admittedly, the suit lands belong to the deity, Maa Sureswari Devi. The predecessor-in-interest of the Plaintiff, as well as the Plaintiff himself, were tenants under the said deity and had been cultivating the suit lands for and on behalf of the deity.

(iii) The plaintiffs are in cultivable possession of Ac. 7.467 decimals of the deity's land. During the settlement operation, the plaintiffs requested the defendants to settle the suit land in their favour. However, the said request was declined, which led to the institution of the suit.

(iv) It is no longer res integra that a suit for adverse possession is not maintainable against a deity, the deity being a perpetual minor.

(v) The Hon'ble Apex Court in in ***Nilam Gupta and Others vs. Rajendra Kumar Gupta***[2] has reiterated that, in order to establish a plea of adverse possession, the claimant is required to establish the essential ingredients are as follows:

a) Nec Clam (Without Secrecy)

b) Nec Vi (Without Force/Peace

c) Nec Precario (Animus Possidendi/Hostile Intent)

(vi) The plaintiffs have neither pleaded nor proved the essential ingredients necessary to establish adverse possession against the defendant. There is also no specific pleading or evidence indicating the date of their entry into the suit property or the date from which their possession allegedly became adverse to the defendant. In the absence of such foundational pleadings and evidence, the basic ingredients of adverse possession remain unestablished. Accordingly, the plea of adverse possession is liable to fail.

(vii) The law is well settled that a second appeal before the High Court is maintainable only when the Court is satisfied that the case involves a substantial question of law. In the absence of any substantial question of law, the second appeal cannot be entertained and is liable to be dismissed at the threshold, as the

[2] ***AIR 2014 SC 5374***

jurisdiction of the High Court under Section 100 of the Code of Civil Procedure is not attracted.

(viii) The judgment in ***Rame Gowda vs. M. Varadappa Naidu***[3] relied upon by the Appellant is not applicable to the facts of the present case. Paragraph 12 of the said judgment makes it clear that where the title is not clear, the question of possession may be gone into. However, in the case at hand, the Appellant/Plaintiffs are trespassers and, therefore, cannot seek a decree for confirmation of possession against the true owner.

(ix) The Appellant/Plaintiffs, having failed in their attempt to obtain a decree declaring their right, title and interest over the lands belonging to the deity and having been unsuccessful in the said proceeding, are now making a belated attempt to assert possession over the deity's land. Moreover, when the very entry into the property was illegal and unauthorised, no subsequent right or claim flowing merely from such possession can be recognised or legalised.

IV. THIS COURT'S REASONING AND ANALYSIS:

13. The jurisdiction of this Court in second appeal is confined to substantial questions of law. The Court cannot undertake a fresh appraisal of the evidence merely because another factual inference is possible. In ***Santosh Hazari v. Purushottam Tiwari***[4], the Supreme Court explained the requirement of formulating a substantial question of law and the

[3] AIR 2004 SUPREME COURT 4609
[4] (2001) 3 SCC 179

relationship between that question, the pleadings and the findings necessary for deciding the dispute. The Court observed the following:

> *"The phrase substantial question of law, as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying question of law, means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with - technical, of no substance or consequence, or academic merely. However, it is clear that the Legislature has chosen not to qualify the scope of substantial question of law by suffixing the words of general importance as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta & Anr. Vs. T. Ram Ditta, AIR 1928 Privy Council 172, the phrase substantial question of law as it was employed in the last clause of the then existing Section 110 of the C.P.C. (since omitted by the Amendment Act, 1973) came up for consideration and Their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties."*

14. The present appeal must therefore be examined within the question on which it was admitted.

15. The existence of concurrent findings does not, however, exclude scrutiny of the legal principles applied in reaching them. In ***Hero Vinoth v. Seshammal***[5], the Supreme Court recognised that interference may be warranted where the courts below disregard material evidence,

[5] (2006) 5 SCC 545

draw erroneous inferences by applying the law incorrectly or wrongly place the burden of proof. The relevant excerpts are produced below:

> *"The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.*

16. The substantial question has two connected aspects. The first concerns the legal availability of adverse possession in respect of property belonging to a deity. The second concerns whether the possession relied upon in this case satisfies the requirements of that doctrine. The appellants' alternative submission seeking confirmation of possession must also be distinguished from their claim to acquisition of title by prescription.

17. Both courts below proceeded on the proposition that a deity is a perpetual minor and that adverse possession can never operate against its property. That proposition cannot be accepted in such absolute terms. In ***M. Siddiq v. Mahant Suresh Das***[6], the Constitution Bench expressly rejected the contention that a deity stands exempted from limitation merely because it is described as a perpetual minor. The Court explained that the analogy cannot be extended to create an

[6] (2020) 1 SCC 1

exemption which the law of limitation does not provide. The judgment highlighted the need for human agency to represent the deity does not place its property beyond the operation of limitation. The relevant excerpts are produced below:

> *"The analysis of the legal position on the applicability of the law on perpetual minority by Justice S U Khan commends itself. Based on the judicial precedents analysed above, it is an established position that a deity cannot on the ground of being a perpetual minor stand exempted from the application of the Limitation Act. The submission which was urged by Mr C S Vaidyanathan is contrary to the jurisprudence of close to a century on the issue. We follow the line of precedents emanating from the Privy Council, this Court and several High Courts noted earlier. The applicability of the law of limitation cannot be ruled out on the basis of the theory of perpetual minority."*

18. The second limb of the substantial question must therefore be answered by holding that the description of a deity as a perpetual minor does not, by itself, exclude a claim founded on adverse possession. This conclusion does not dispense with the requirements of prescription or determine the application of any special statutory provision governing religious endowments. Those matters depend upon the nature of the right asserted and the proceeding concerned. For the present appeal, it is sufficient to examine whether the plaintiff established possession having the character necessary to support his claim.

19. The error concerning perpetual minority does not necessarily require reversal of the decrees. The courts below also rejected the claim on the independent ground that the occupation disclosed by the receipts

originated in annual lease arrangements and that acquisition of title by adverse possession had not been established. The sustainability of that ground must therefore be considered separately.

20. In ***Karnataka Board of Wakf v. Government of India***[7], the Supreme Court explained that adverse possession requires possession accompanied by the intention to hold adversely to the true owner. Its commencement, nature, continuity, publicity and hostile character must be established. The claimant must plead and prove the circumstances in which possession became adverse and continued for the prescribed period. Mere occupation, however longstanding, does not establish those requirements. The inquiry involves both the facts of possession and their legal character. The relevant excerpts are produced below:

> *"In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC*

[7] (2004) 10 SCC 779

375 and D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

21. Where possession originates with the owner's permission, its duration must be distinguished from the duration of any subsequent hostile possession. In ***Thakur Kishan Singh v. Arvind Kumar***[8], paragraph 5, the Supreme Court held that permissive possession does not become adverse merely through the passage of time. A change to hostile possession must be established by cogent evidence and must be adverse to the knowledge of the true owner. Accordingly, the observation of the courts below that permissive possession can never become adverse requires qualification. The correct position is that permission does not become hostility merely because occupation continues.

22. The relevant commencement is that of possession adverse to the owner, rather than the date on which ownership arose or occupation first

[8] (1994) 6 SCC 591

began. Possession referable to a tenancy or lease does not establish the hostile animus necessary for prescription merely because the occupier subsequently asserts ownership.

23. In the present case, the receipts relied upon by the plaintiff were understood by both courts below as evidencing annual leases and payment of bhag by his father and brother. Those documents support occupation referable to the deity's permission. They do not, by themselves, establish that the persons cultivating the land held it in denial of the deity's title. Nor does the existence of receipts in the names of family members automatically establish an independent right in favour of the original plaintiff.

24. Even assuming that the plaintiff continued the cultivation previously undertaken by his father, the claim to adverse possession does not follow. Continuity of cultivation is not equivalent to continuity of hostile possession. The period during which the family occupied the land under annual arrangements cannot be counted as adverse merely because the occupation is said to have extended over several decades. A subsequent change in the character of possession, followed by its continuance for the requisite period, remained necessary.

25. The findings below disclose no established commencement of such hostile possession or a proved course of conduct repudiating the deity's title for the prescriptive period. The deficiency is therefore substantive. It concerns the character of the occupation and the absence of an established transition from permission to hostility. On this aspect, the receipts support the conclusion reached by the courts below,

independently of their erroneous proposition concerning perpetual minority.

26. The plaintiff's request that the land be settled in his favour does not supply that deficiency. Such a request is consistent with seeking a grant or recognition from those managing the deity's property. Its precise effect would depend upon its terms and timing, and it need not be treated as conclusively defeating every conceivable claim of prior adverse possession. Nevertheless, the request does not itself prove that hostile possession commenced or that title had already been acquired by prescription.

27. In ***Ravinder Kaur Grewal v. Manjit Kaur***[9], the Supreme Court recognised that a plaintiff who has perfected title by adverse possession may seek affirmative relief. The present claim cannot therefore be rejected merely because adverse possession is advanced by the plaintiff rather than by a defendant. The availability of the remedy, however, does not establish its factual foundation. The claim here fails because possession having the requisite hostile character has not been established, rather than because such a suit is inherently unavailable.

28. The first limb of the substantial question is accordingly answered against the appellants. The longstanding cultivation relied upon, considered with the annual lease arrangements evidenced by the receipts, does not establish acquisition of title by adverse possession. Correcting the legal proposition concerning the deity's status does not remove this independent deficiency in the plaintiff's case.

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[9] (2019) 8 SCC 729

29. The alternative submission based on settled possession requires separate consideration. In ***Rame Gowda v. M. Varadappa Naidu***[10], the Supreme Court recognised that settled possession may be protected against forcible dispossession even at the instance of the true owner. Failure to establish ownership does not, by itself, permit the use of force against an occupier. At the same time, protection against forcible dispossession must be distinguished from recognition of a proprietary or occupancy right over the land.

30. The material findings reproduced in the judgments below do not support the appellants' assertion that both courts concurrently recognised the original plaintiff's settled possession. Nevertheless, the present appeal need not be decided by treating the plaintiff's personal cultivation as conclusively disproved. Even accepting the cultivation asserted by the appellants, and referred to in the respondents' submissions, such cultivation would not establish the acquisition of title claimed in the suit. The receipts and the duration of occupation do not convert the general protection against force into a declaration of an independent right over the deity's land.

31. The claim to a right of occupancy, insofar as it is founded merely upon the length of cultivation, encounters the same difficulty. Occupation under an annual arrangement and acquisition of an enduring legal interest are distinct matters. The latter must rest upon an established legal foundation. The conclusion that adverse title has not been proved does not mean that a tenant or lessee can never possess enforceable

[10] (2004) 1 SCC 769

rights. It means that those rights cannot be inferred solely from the period of cultivation relied upon to support the present prescriptive claim.

32. The appellants' reliance on ***Rame Gowda*** (supra) must therefore be accepted to the extent that recovery of possession cannot be pursued by unlawful force. It does not require the Court to declare that the appellants have acquired the proprietary or occupancy right asserted by them. The proper course is to preserve the distinction expressly. The dismissal of their claim does not operate as a decree for eviction in favour of the respondents and cannot be treated as authority to dispossess any person otherwise than through the procedure applicable in law.

V. CONCLUSION:

33. The substantial question of law is answered as follows. A deity is not exempt from the law of limitation merely because it is described as a perpetual minor. The contrary proposition adopted by the courts below is therefore disapproved. Nevertheless, the occupation evidenced by the annual lease arrangements and bhag receipts, together with the failure to establish possession adverse to the deity for the requisite period, independently sustains rejection of the plaintiff's claim to title by prescription. The assertion of continued cultivation does not warrant a declaration of the independent right claimed, although the protection available in law against forcible dispossession remains unaffected.

34. Subject to the correction of the legal propositions and the clarification concerning dispossession stated above, the judgment dated 25.03.2006 passed by the learned Additional District Judge, Sonepur in R.F.A. No. 14 of 2005, affirming the judgment dated 07.02.2005 and decree dated 21.02.2005 passed by the learned Civil Judge (Senior Division), Sonepur in T.S. No. 87 of 2001, is affirmed.

35. The second appeal is **dismissed.** No order as to cost.

36. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th October,, 2026/