

Board of Revenue Uttarakhand, Dehradun

Second Appeal No. 142 of 2015-2016 under Section 331 of the UP Zamindari
Abolition and Land Reforms Act as
applicable to the State of Uttarakhand

Dr. Indu Prakash Aron s/o Late Prakash Chand Aron r/o Bagral Gaon, Malsi,
Mussoorie Diversion Road, Dehradun

Appellant

Vs

1. Babu Lal 2. Kirat Singh 3. Suresh Kumar 4. Bali Ram 5. Rajendra Singh 6.
Anil Kumar all ss/o Guddar r/o Vill. Badowala P.O. Karabari Tehsil Dehradun,
Distt. Dehradun

7. Jamil S/O Rahamtulla r/o Vill. Mehuwala Mafi Tehsil Dehradun, Distt.
Dehradun

8. State of Uttarakhand through Collector Dehradun

9. Gaon Sabha Mauja Arkedia Grant Dehradun through Gram Pradhan

Respondents

Present: Shri P.S. Jangpangi Member (Judicial)

Advocate for Appellants : Shri Vijay Kumar Gupta

Advocate for Respondents 01 to 06 : Shri Sanjay Rautela

Advocate for Respondents 07 : Shri Guru Prasad

Judgment

This appeal has been preferred against the judgment and decree dated 16.10. 2015 of the Additional Commissioner Garhwal's court in First Appeal No 112/2012-13- Jamil & Another Vs Guddar & others- and the judgment and decree dated 1.12.2003 passed by the Assitant Collector I class in charge of Dehra Dun Sub Division in Suit No 5/2001-02-Guddar Vs Jamil and Others u/s 229B of the UP Zamindari Abolition and Land Reforms Act mainly on the grounds that; the judgments and decrees of the lower courts are perverse being against the evidence and admission of the plaintiff that the his predecessor Tulsi's possession was on the basis of the Agreement dated 13.04.1964 i.e. if Tulsi was at all in possession over the land in dispute it was permissive; the lower courts failed to appreciate the absence of the necessary ingredients of the alleged adverse possession in that there was neither any assertion nor evidence in support about the inception the alleged adverse/hostile possession openly against the recorded tenureholder; the entry under Varga IX was fictitious in as much as this entry had not been made in accordance with the provisions of the



Land Records Manual and the courts below committed illegality in holding otherwise; the courts below have erred in holding Guddar as adopted son of Tulsi despite the fact that there was no registered adoption deed in favour of Guddar whose father was shown as one Rohdu in the plaint, initially, which was fraudulently amended subsequently; the impugned judgments and decrees are against the facts and law.

The brief facts of this second appeal are as hereunder:-

One Guddar s/o (adopted son of, after amendment of the plaint) Tulsi resident of Village Badowala Tehsil and District Dehradun filed a suit in the court of the Assistant Collector I class in charge of the Dehradun Sub Division under Section 229B of the UP Zamindari Abolition and Land Reforms Act (referred to as the Act hereinafter), as applicable to the state of Uttarakhand, for the declaration of his Bhumidhari rights over the land bearing khasra No 946 measuring 1.49 acres in area situated in Village Arcadia Grant of said Tahsil and District on the basis of adverse possession for over 33 years (including about 25 years during Tulsi's lifetime), the possession beginning with the handing over of the land in dispute to Tulsi by the defendant/ respondent Jamil for the satisfaction of a money decree of Rs 230/ passed by Munsif/JSCC in Suit No 6/59-Tulsi Ram Vs. Alladin & Jamil Ahmad even before an agreement to sell dated 13.04.1964 was executed in favour of Tulsi Ram for the sale of the land in dispute by paying a sum of Rs. 500/ as consideration adjusting the decretal amount but somehow a sale deed could not be executed but the possession over the disputed land continued with Tulsi Ram, till his death, and Guddar, afterwards, based on a Will dated 6.04. 68 whereby Tulsi Ram bequeathed all his movable and immovable properties to Guddar as his adopted son and as the defendant/ respondent Jamil did not perform his part of the contract in accordance with the agreement dated 13.04.1964, the agreement became an 'invalid grant' and he did not evict or eject the plaintiff from the disputed land even after six months the possession of Tulsi Ram therefore turned adverse after the lapse of six months and on completion of 12 years, first, the plaintiff is father and, afterwards, he perfected his rights as Bhumidhar of the disputed land; an entry in the relevant khatauni was accordingly made under Varg IX denoting that Tulsi was in adverse possession over the land in question; Tulsi perfected his Bhumidhari rights during his lifetime through his continued adverse possession over the land in dispute uninterrupted, hostile, continuous and the plaintiff by inheriting all the rights of Tulsi became Bhumidhar of this land and all rights and properties of the original Bhumidhar extinguished; as the defendant/ respondent Jamil's name continued in the land records and the notices under Section 80 C.P.C. to the state Government and the Gram Sabh failed to fetch any relief, a suit was necessitated.

Defendant/respondent Jamil filed his written statement and additional written statement denying all averments of the plaint and the



amendments made to it averring that the plaintiff/ respondent was not in possession over the disputed land, his possession at best being permissive based on the plaint averment about the agreement to sell dated 13.04. 64. On the contrary, the latter had tried to take possession of the land in question many times and if he somehow takes such possession, lawful action will be taken against him for his ejectment, he has further added, also denying all the documents filed by the plaintiff terming them as not genuine.

The learned Assistant Collector I class Dehradun after completing the trial of the suit decreed it vide his judgment and order dated 1. 12.2003 against which a first appeal was preferred by defendant/ respondent Jamil in the court of Commissioner Garhwal which was dismissed by the learned Additional Commissioner vide his appellate judgment and order dated 16.10.2015. Hence , this second appeal.

The land in dispute was purchased by the appellant on 10.04.2003 even during the pendency of the suit and he was made a party in the first appeal by the revisional intervention of this court. A second appeal has not been filed by the appellant in the first appeal nor has he filed a cross objection to this second appeal.

The following substantial questions of law were culled out from the memorandum of second appeal-

1. Whether first appellate judgment and decree suffer from any material and legal irregularity?
2. Whether findings and conclusions of the lower courts are perverse?

However, at the stage of argument, the following additional substantial questions of law were also added at the instance of the respondents nos. 1-6-

3. Whether the purchaser of the disputed land/ appellant is legally entitled to file second appeal?
4. Whether the appellant is bound by the judgment and decree dated 1.12.2033/15.12.2003?and
5. Whether the purchaser/appellant has any lawful claim over the land in dispute?

I have gone through the files of the courts below, this court, and written argutment filed on behalf of respondents 1-6, and, heard at length the oral arguments of the learned counsels for the appellant, respondents 1-6 and respondent no. 7.

The learned counsel for the appellant has argued, after tracing the brief history of the case, that, plaintiff Guddar's biological father was one Rohdu and Tulsi was shown as his adoptive father only after the amendment to the

plaint was allowed; there was no averment of adverse possession or its inception in the plaint and the possession alleged was permissive referable to an agreement to sell dated 13.04.1964 made between the original plaintiff and respondent /defendant Jamil, otherwise not proved, which was binding on them whether or not admitted by the latter or the appellant; the alleged will in favour of Guddar is unregistered which is not an adoption deed and does not reveal the fact of adoption; there are irreconcilable inconsistencies about the age of Tulusi and his ability to make the alleged will as he was about 100 years old at the relevant time and crippled with partial paralysis(adharang); the basis of the suit i.e. adverse possession has neither been averred nor proved with its essential ingredients of specific date/time of commencement, continuity, uninterruptedness as also it being hostile, open and exclusive; the entries in the Varga IX of the relevant khatauni and khasra have been made without complying with the mandatory provisions of the Land Records Manual as to issuance of notice to the recorded tenureholder, and, are, therefore, fictitious and collusive; the appellant was duly made a party in the first appeal through the revisional direction of this court and being a bona fide purchaser for value is genuinely aggrieved by the impugned judgments and decrees and has, therefore, locus standi to prefer this appeal as ultimately his rights are affected adversely; the trial court has not recorded a proper finding on the alleged adverse possession and decreed the suit solely on the strength of Varga IX entry on the one hand and the fact of alleged adoption and, the first appellate court has passed a cursory judgment without going into the legal and factual points made before it which renders the first appellate judgment and decree a nullity in the eye of law; the findings and conclusions of the learned lower courts are against law and evidence on record, hence, perverse; Jamil, the original tenure holder has colluded with the respondents 1-6 as he has failed to file a second appeal after the first appeal filed by him was dismissed, jeopardizing the interest of the appellant. The learned counsel has cited a host of authorities to buttress his arguments which are being taken up and analysed at appropriate stage hereinafter.

The learned counsel for respondent/defendant Jamil has argued that both the judgments and decrees of the courts below suffer from material and legal irregularity. (It is noteworthy that Jamil has neither filed a second appeal nor a cross objection).

The sum and substance of the argument, both oral and written, of the learned counsel for the respondents 1-6 is that; - the possession of the respondents/ plaintiff is admitted which is adverse in that they are not sharing the profit of the land in dispute with the original tenure holder; respondent/ defendant Jamil never brought an ejectment suit against the respondents/ plaintiff; the plea of adverse possession has been properly pleaded and proved with oral and documentary evidence; the courts below have justly decreed the suit or upheld the decree; the appellant has no locus standi to file the second



appeal as he knowingly purchased the suit land during the pendency of the suit without the permission of the court and he is bound by the judgment and decree of the trial court; the second appeal has been filed to harass the contesting respondents and is frivolous. The learned counsel has also cited quite a few authorities to underpin and strengthen his arguments which find mention and analysis at appropriate stage hereinafter.

The additional substantial questions of law are being taken up first together, being related, having bearing on one another and inseparable, in order to approach all substantial questions of law sequentially, and, they are

3. Whether the purchaser of the disputed land/ appellant is legally entitled to file second appeal?
4. Whether the appellant is bound by the judgment and decree dated 1.12.2013/15.12.2003? and
5. Whether the purchaser/appellant has any lawful claim over the land in dispute?

Admittedly, the purchaser of the disputed land/ the appellant comes into the picture only at the first appeal stage when he applies for impleadment on the basis of the purchase of the suit land from the defendant/respondent Jamil. Admittedly also, he purchased the land in question while the original suit giving rise to this second appeal was still pending at trial stage. As such the purchase by him is no doubt hit by the doctrine of lis pendens as per Section 52 of the Transfer of Property Act. The first appellate court refused to implead him initially but he was made a party after this court directed for his impleadment vide its revisional order dated 29.07.2013 in revision no. 95/2008-09 Dr. Indu Prakash A-ron vs. Jamil. The learned counsel for the respondents 1-6 has emphatically argued that the appellant has no locus standi in the matter as he is a stranger to the original suit and the judgment and decree of the trial court is binding on respondent / defendant Jamil and the appellant, the former not having filed a second appeal. He has relied on a number of authorities to buttress his argument, namely, Har Narain vs. Mam Chand & Ors.(2010) O Supreme (SC)981, Usha Sinha vs. Dina Ram & Ors. 2008 (105) RD 326 (SC), Jeetan Singh & Ors. vs. Addl. Collr. F&R/DDC Lalitpur & Ors,2015 (128) RD 339 (All India HC), Insaf Ali & Ors vs. state of UP & Ors. 2015(126) RD 160 (All India HC),K.N. Aswathnarayana Setty & Ors. vs. State of Karnataka & Ors. 2014 (122) RD 395 (SC), Guruswamy Nadar vs. P.Lakshmi Ammal & Ors,2008 (3) Supreme 284 (SC), Sheoraj Singh & Ors. vs. Zahir Ahmed & Ors.2013 RNS 869 (All India HC), Hardey Singh vs. Gurmail Singh, 2007 O Supreme(SC) 130 and Ram Das vs. Sita Bai, 2009 (108) RD 772 (SC). The gist of all the afore cited authorities is best enunciated by Hon'ble Apex court in Aswathnarayana setty's case supra as " Lis pendens-Doctrine of- Based on legal maxim ' ut lite pendente nihil innovetur' meaning during litigation nothing new should be introduced- Principle of lis



pendens in consonance with equity, good conscience and justice-Transferee pendente lite- Bound by the decree just as if he was a party to the suit-transferee cannot deprive the successful plaintiff of fruits of the decree if he purchased the property pendente lite." In other words, the purchaser in this case i.e. the appellant is bound by the fate of this case as he steps into the shoes of the seller i.e. defendant / respondent Jamil.

To this the learned counsel for the appellant has countered by arguing that Jamil has colluded with the contesting respondents and has, accordingly, not filed a second appeal leaving the interest of the appellant undefended as it hinges on the fate of this second appeal. He has added that as the interest of the appellant was at stake as he had no other option but to file this appeal and, more so, the appellant was a party in the first appeal and being aggrieved by the appellate judgment and decree, he had a legal right of appeal.

The authorities cited have not forbidden the impediment of the appellant. Moreover, he has been made a party in the case and if he is aggrieved by the judgment and decree of the first appellate court he has a right of appeal especially in view of the fact that defendant/respondent Jamil did not prefer a second appeal even after his first appeal was dismissed. Jamil's conduct by not availing of the legal remedy of second appeal is tantamount to ditching the appellant after selling the suit land pendent lite as the latter derives title only from him. The fruit of the purchase of the suit land is dependent on the fate of the suit as finally determined and decided by this second appeal. Had the appellant not filed this appeal his interest in the suit land had come to an end. The order to implead him, not otherwise challenged at appropriate stage, entitles him to avail the remedy of second appeal. There is no gain saying the legal position enshrined in the doctrine of lis pendens and the force of the authorities cited hereinbefore as the appellant 's purchase of the disputed land is subject to such doctrine and eventually the fate of this case. The substantial questions of law no. 3 and 4 are accordingly decided in the affirmative and no. 5 to the effect that the interest of the appellant in the suit land is subject to the judgment and decree to be passed in this second appeal.

Now the first two substantial questions of law are being taken up together being interrelated and they are :-

1. Whether first appellate judgment and decree suffer from any material and legal irregularity?
2. Whether findings and conclusions of the lower courts are perverse?

The original suit has its basis as long duration adverse possession over the land in dispute which gave rise to the Bhumidhari rights of the plaintiff having, as alleged, perfected during the lifetime of Tulsi, the adoptive father of plaintiff Guddar, tracing its genesis from an 'invalid grant' made through an agreement to sell dated 13.04. 1964 for the satisfaction of a money decree,



stipulating that defendant/ respondent Jamil would execute a registered sale deed in favour of Tulsi within six months and the promised sale deed having never materialised the possession of Tulsi turned adverse thereafter, after the lapse of six months and Tulsi continued in such adverse possession till his death and, thereafter, his adopted son Guddar, the plaintiff in whose favour a will dated 06.04.68 was executed by the former bequeathing all that he owned. Respondent/defendant Jamil contested the suit denying adverse possession as well as the plaintiff's status as adopted son of Tulsi and also claiming his own possession over the land in question.

The trial court framed the following four issues-

1. Whether the name of the plaintiff's father was Tulsi or Rohdu?
2. Whether the plaintiff is in possession over the land in dispute? if so, since when and in what capacity and effect thereof?
3. Whether Tulsi s/o Kushmbhari was in possession over the land in dispute? If so, since when and with what authority and effect thereof? and
4. Whether the plaintiff deserves to be declared Bhumidhar of the suit land?

The plaintiff and defendant Jamil led evidence of their respective sides. The plaintiff relied on revenue records and relevant documentary evidence produced on the file of trial court and the oral evidence of 4 witnesses including himself while the contesting defendant on 3 witnesses including himself.

The learned Assistant Collector in charge of the Dehradun Sub Division held that plaintiff Guddar was Tulsi's adopted son going by the sale deed dated November 15, 1954 and other reliable and admissible documents available on the file, the adoption having been performed as per local customs. He also held that the agreement to sell dated 13.04.64 and the Will dated 06.04.68 were genuine and with the non performance of his part of the contract made by Jamil as per the said agreement Tulsi's permissive possession turned adverse after the lapse of six months and he continued in such possession till his death evidenced by entries in Varga 9 of khatauni and khasra for twelve years (khasra barahsala). Tagging the duration of possession of Tulsi and his son Guddar together, the learned Assistant Collector concluded that the plaintiff had perfected his Bhumidhari rights over the land in dispute and, accordingly, decreed the suit on 01.12.2013.

The learned Additional Commissioner Garhwal has concurred with the findings of the trial court on all issues and dismissed the first appeal vide his judgment and order dated 16.10.15. Thus, there are concurrent findings of facts of two lower courts which cannot be disturbed, displaced or dislodged in the second appeal unless they are found to be perverse.



The plaint clearly states that plaintiff Guddar was adopted son of Tulsi, who died issueless, and bequeathed all his movable and immovable property to the former through a will dated 06.04.68. The will, though unregistered, has been duly proved by the oral evidence of its attesting witnesses. There are a plethora of documents which show that Guddar was adopted son of Tulsi although there is no adoption deed but the evidence on record points to his adoption as per local customs. All the documents filed by the plaintiff that bear his name, specifically UP Land Development Bank Pass Book bearing entries as old as 1977, paper no. 21/1 & 21/2, extracts of khataunis 1371-1373F, 1384-1386F and 1393-1398F, paper nos. 24/1, 24/2 & 25/11, sale deed dated 15.11.54, paper no 26/1 -26/3, and various receipts of tube well, irrigation and revenue dues dating back to the period before the institution of the suit, show Tulsi as his adoptive father. The plaintiff has not hidden the fact that he is adopted son of Tulsi and biological son of one Rohdu and the public records on the file of the trial court amply prove this. So he has discharged his burden to prove that he is the adopted son of Tulsi. The contesting defendant has failed to prove otherwise. I think adoption was legally possible as per local customs prior to the Hindu Code coming into effect. It is not his case that adoption as per local customs was not permissible at relevant time nor has he referred to any provision of law in this regard. Additionally, if it is proved that Tulsi had perfected his Bhumidhari rights over the suit land in his lifetime on the strength of his adverse possession the question of adoption of Guddar becomes unimportant. Guddar, in such scenario, becomes Bhumidhar of the land in dispute through the Will in his favour. The rule, cited by the learned counsel for the appellant, through the authority of Hon'ble Allahabd High Court, in Ganga Ram & Ors vs. DDC Barabanki & Ors, 2016 (115) ALR 30 has no relevance to this case as the case involved a registered adoption deed while in the instant case the adoption has taken place as per local customs. As for the rule of the Hon'ble Gujarat High Court in Gangaben Prabhubhai Bhavanbhai & Ors vs. state of Gujarat and Anr AIR 2016 Guj. 121, that "issue of adoption and right of inheritance can be decided exclusively by the civil court and not by Revenue Authorities- again cited by the learned counsel for the appellant, has to be distinguished as in the first place in Uttarakhand, the Revenue Authorities have exclusive jurisdiction in the matters governed by Land Revenue Laws and Revenue Laws are specific to a particular state, and, secondly, adoption in the instant case has been questioned by respondent/defendant Jamil, it is he who should approach the civil court, if at all, to declare that plaintiff Guddar was not adopted son of Tulsi. In the instant case, as discussed earlier, there is sufficient evidence to prove that Guddar was adopted son of Tulsi.

The plaint clearly and unambiguously states that the possession of Tulsi, adoptive father of the plaintiff, over the land in dispute has been adverse ever since defendant Jamil failed to perform his part of the contract to execute a registered sale deed in favour of the former as stipulated in the



agreement to sell dated 13.04.64, even though his possession dated back much earlier than this date, the agreement becoming 'invalid grant'. The pleading on adverse possession has been incorporated in at least five paragraphs of the plaint elaborating how the said possession of Tulsi, till his death, and, of plaintiff Guddar, was adverse against defendant/respondent Jamil as there are clear averments about it being continuous, hostile, uninterrupted and undisturbed. The fact of the said adverse possession over the land in question has been recorded in the relevant khatauni in favour of Tulsi and, after his death, in favour of plaintiff Guddar, in as much as there are entries in Varga IX of khatauni throughout since Fasli Year 1370 which corresponds to Financial Year 1963-64 and such entries have never been expunged which indicates that it was acquiesced in by defendant Jamil. Also there is khasra barahsala on record filed by the plaintiff which further bolsters the plaint averment of adverse possession. Thus, I am not inclined to accept the argument of the learned counsel for the appellant that the plea of adverse possession has not been alleged in the plaint. Of course, the trial court has framed relevant issues somehow not very clearly even though the learned counsels of the contesting parties had drawn up the issues very clearly vide paper no 33/1 and 33/2 duly signed by the Assistant collector. I think the lack of clarity in this regard has more to do with the inattention and lack of diligence on the part of the presiding officer concerned and the learned counsels at trial court than any failure on the part of the plaintiff. However, if we carefully peruse the issues 2 and 3 enumerated in the judgment of the trial court, the possession mentioned in them have further been required to be qualified by questioning the capacity or the right of the possessor which adequately supplies the deficiency of the possession not qualifying as adverse. The Hon 'ble Allahabad's rule in UP Gandhi Samarak Nidhi vs. Aziz Mian 2013(119) RD106 cited by the learned counsel of the appellant is not relevant in the instant case as the pleadings of adverse possession have been elaborately made and there are entries to that effect in the revenue records. Mere omission of words hostile, open and notorious or any such word does not vitiate the pleadings as the plea of adverse possession has been unequivocally and unambiguously asserted and averred.

The adverse possession of the plaintiff since the days of his adoptive father has also been proved by the receipts of irrigation, tube well and land revenue dues, irrigation slips and irrigation khasras vide paper nos 25/3 to 25/8 and paper nos 37/2 to 37/15, paper nos 37/7 to 37/9 specifically bearing the name of Jamil as the tenure holder, in addition to the khatauni and khasra barahsala discussed in the foregoing paragraph. The plaintiff has not only relied on the documents of Revenue Department but also on those of Irrigation and Tube Well Department. These documents though denied by defendant Jamil have not been effectively rebutted by him and there is no reason not to place reliance on them. The entries in revenue records, especially, those in khatauni i.e, the annual register, popularly called record of rights, showing the ownership



and mutation details and existence of possessor without title in some cases carry a legal presumption of correctness under Section 44 of the Land Revenue Act which can be disproved but in the instant case defendant/respondent Jamil has failed to do so. The learned counsel for the appellant has argued that the entry of possession in the khatauni and khasra have been made without notice, in form PA 10, to the original tenure holder, hence cannot be relied upon to prove adverse possession and, to support his argument has relied on the authority of Hon'ble Allahabad in Gurmukh Singh and Ors. vs. DDC/ ADM (F&R) Nainital and Ors, 1997 RJ 542, wherein it has been held that "The person claiming adverse possession shall have to prove that the tenure holder was duly given notice in prescribed form PA 10". As has been observed earlier, there are Varga IX entries first, in favour of Tulsi, and, after his death, of plaintiff Guddar and entries in the khasra. The first such entry was made in 1370F corresponding to Year 1963-64 during the life time of Tulsi. I have also referred to Section 44 of the UP Land Revenue Act which deals with the presumption about the correctness of revenue records. The entries, accordingly, are presumed to have been made in accordance with relevant rule/rules of the Land Records Manual. A bald denial about these entries by defendant/respondent without an iota of evidence cannot displace or dislodge the presumption of correctness of these entries which continue even till date. The mere existence of these entries and that too for such a long duration presupposes that all necessary processes of recording adverse possession were complied with at the commencement of such entries. Where was Jamil all these years who ought to have got these entries wiped out/expunged if they were not made as per rules? Moreover, the records like Lekhpal Diary and the office copy of notice in PA 10 or even khasra of 1370F must have been destroyed by now. In this view of the matter, the authority cited is not relevant to this case and the argument of the learned counsel, without force. Besides, the adverse possession of the plaintiff has been proved by other documentary evidence e.g. documents of tube well and irrigation department as discussed above and there is no reliance solely on revenue records. In this connection, the legal principle enunciated by Hon'ble Allahabad High Court in, Jai Narain vs. DDC & Ors., 2014(124) RD 724, that "Revenue Record Entry- Continued for a long period of about 35 years- Unchallenged- Could not be questioned after such a long time- Possession over the land established" is in greater alignment with the provisions of law.

The alleged adverse possession of the plaintiff over the land in dispute, since his adoptive father's time has also been corroborated by the oral examination of the plaintiff and one independent witness Roop Ram notwithstanding a few inconsistencies or incoherence here and there in the cross examination but there cannot be mathematical precision in oral evidence considering especially the socio-economic and educational background of the witnesses. Moreover, documentary evidence as enumerated and analyzed hereinbefore overwhelmingly prove the plaintiff's assertion of adverse possession



and it has primacy over oral evidence so far as their relative evidentiary value is concerned.

The learned counsel for the appellant has argued that the possession of Tulsi and later that of plaintiff Guddar was at best permissive emanating from agreement to sell dated 13.04.64. The said agreement to sell has though been denied by the contesting defendant/respondent but without effective rebuttal- a bald denial sans credible evidence is not sufficient. He could not have denied the existence of an outstanding money decree. He has not offered to have his signature compared by an expert while the plaintiff has done everything to prove the said agreement which is an old document, pointing to the perfunctoriness of defendant's denial. The sequence of event cited in the said agreement, e.g. an outstanding money decree against Jamil, the land in dispute then being non transferable as sirdari land, the promise to have the land converted into Bhumidhari land after paying the requisite dues and executing a sale deed within six months, also make it credible. The defendant/respondent Jamil having failed to perform his part of the contract the possession of Tulsi and later of the plaintiff became adverse against the recorded tenure holder Jamil. Thus the element of permissive possession came to an end with the duration for executing the sale deed by Jamil elapsing in six months from 13.04.64. The learned Assistant Collector has correctly analysed the legal position which regard to adverse possession flowing and emanating from as 'invalid grant' by citing the Hon'ble Supreme Court's legal principle as " In this view of the matter, the rule propounded by the Hon' ble Uttarakhand High court in Shri Munishwar Vedang Vidyalaya, Rishikesh vs Smt Lakshmi Devi & Ors, 2016 (132) RD 567, on the point, cited by learned counsel of the appellant does not apply to this case.

Thus the adverse possession having commenced and continued since 1964, during the life time of Tulsi, the latter dying 8-9 years before the institution of the instant suit in 1987 as per the plaint, he had perfected his Bhumidhari rights over the land in dispute.

On the contrary, defendant/respondent Jamil has not produced any documentary evidence to prove his own possession over the land in dispute. His witnesses have testified to cultivating this land with tractor and sowing of sugarcane crop in 1994-95 long after the suit was filed. Even so, Jamil could have produced some documents of purchase and sale of inputs and produce sugarcane being commercial crop but to no avail. Thus, the oral evidence, led by Jamil, seen in its entirety, does not inspire confidence. His conduct in not paying the decretal amount, not executing a sale deed, selling the suit land pendent lite and finally not filing a second appeal has been dubious.

There cannot be, and, is not any gain saying and disagreement with the authorities cited by the learned counsel for the appellant, namely, of this court dated 17.01.2017, various Hon'ble High Courts and Hon'ble Supreme Court, 2016(119) ALR 873, 2016 (132) RD 567, 2016(2) UAD 316, 2015(128) RD



669,2008 UAD 204, 2004 (97) RD 162, 2008 UAD 226 and 1997 UP RJ 542 in as much as the plaintiff has pleaded the ingredients of his adverse possession over the suit land in reasonable material particulars and details in the instant case, and brought on record credible documentary evidence as also oral evidence to prove it. The commencement, continuity, openness, uninterruptedness, notoriety of the plaintiff's adverse possession over the land in dispute have been clearly brought out including it being hostile to defendant/respondent Jamil's interest/rights. On the contrary, the latter has not ever bothered to eject and evict the plaintiff/respondents nor has cared to have the so called irregular revenue records corrected.

The impugned judgments and decrees thus do not suffer from any legal and factual irregularity. Of course, the judgments in question are not very exhaustive in dealing with the issues involved but every aspect of the case has been adequately touched upon and dwelt upon by the courts below. The impugned judgments have to be seen and understood in the light of limitations of Revenue Courts. There are concurrent findings of facts which in view of the discussions supra do not brook interference in the second appeal as they stand on the solid bedrock of evidence on record and their correct appraisal and analysis. I do not see any perversity in these findings and conclusions.

Defendant/ respondent Jamil not having filed a second appeal nor having put in a cross objection, the judgment and decree passed by the trial court as confirmed by the first appellate court are binding on him and the appellant of this second appeal derives title from him only.

In light of the forgoing discussions the substantial questions of law 1 & 2 are decided in the negative.

The second appeal, thus, is devoid of merit and deserved to be dis - allowed.

Order

The second appeal is dismissed. The files of the courts below be sent back and that of this court be consigned. No order as to costs.


(P.S.Jangpangi)
Member (Judicial)

Pronounced, signed and dated in the open Court today i.e.
15.05.2017


(P.S.Jangpangi)
Member (Judicial)