25th February, 2020

ADVERSE POSSESSION

1. Karnataka Board of Wakf -Vs.- GOI, 16.04.2004, [(2004) 10 SCC 779], Relevant Paras 11, 12, 13

- Essentials are Intention and exclusive possession and the possession is peaceful, open and continuous
- Always facts and documents utmost to establish the adverse possession
- To plead all necessary facts to establish adverse possession.
- Held 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 rights over it and the person having title omits or neglects to take legal action against such person for years together

A copy of the judgment attached hereto at **page no. 3 to 10.**

2. Amrendra Pratap Singh vs. Tej Bahadur Prajapati, 21.11.2003, [(2004) 10 SCC 65], Relevant Paras 22, 23

- The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner.
- Thus, a method of gaining legal title to the property by the actual, open, hostile, and continuous possession of it to the exclusion of its true owner for the period prescribed by law is adverse possession.
- In order to elucidate the concept of adverse possession, we have to consider Art 64 and 65 of the limitation Act.

A copy of the judgment attached hereto at **page no. 11 to 30.**

3. P.T. Munichikkanna Reddy vs. Revamma, 24.04.2007, [(2007) 6 SCC 59], Relevant Paras 5 to 17

- Openness and Hostility means to dispossess the owner
- Date of dispossession, i.e. starting date of adverse possession is also very important
- There must be positive intention to dispossess the owner.
- Initial burden lies on the landowner to prove his title and possession
- Onus then shift to other party to prove title by adverse possession and can only be established by cogent and convincing evidence.

A copy of the judgment attached hereto at **page no. 31 to 52.**

4. Saroop Singh v. Banto, 07.10.2005, [(2005) 8 SCC 330], Relevant Paras 29, 30

- In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises but commences from the date the trespasser/defendant's possession becomes adverse.
- Unless the person possessing the land has a requisite animus the period for prescription does not commence

A copy of the judgment attached hereto at **page no. 53 to 63.**

5. Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak, 09.03.2004, [(2004) 3 SCC 376, Relevant Paras 6 and 7

- Partitions only process by which joint enjoyment of property is divided into individual enjoyment and as such no new title or transfer of title.
- Hostility, continuity and uninterrupted possession and right of exclusive ownership stood proved by payment of revenue cess from 1940; property taxes; that their names were recorded in the revenue records and also grant of permission by the Panchayat to construct the compound wall

A copy of the judgment attached hereto at **page no. 64 to 69.**

6. Narne Rama Murthy v. Ravula Somasundaram, 17.08.2005, [(2005) 6 SCC 614], Relevant Para 5

- Held where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded
- It is necessary to frame an issue and the same must be proved to establish the adverse possession

A copy of the judgment attached hereto at **page no. 70 to 72.**

7. Hemaji Waghaji vs. Bhikhabhai Khengarbhai, 23.09.2008, [AIR 2009 SC 103], Relevant Paras 14, 23, 32 and 33

- Must show by clear and unequivocal evidence that his title was hostile to the real owner
- Observed that Law of Adverse possession is irrational, illogical and wholly misappropriate
- Directed Central Government to consider suitable changes in law of Adverse Possession

A copy of the judgment attached hereto at **page no. 73 to 85.**

8. T. Anjanappa vs. Somalingappa, 22.08.2006, [2006 7 SCC 570], Relevant Paras 12, 14, 15, 18, 20, 21

- The possession must be open and hostile enough to be capable of being known by the parties interested in the property
- The possession to become adverse to the owner must be so overt and open that the person against whom time runs, can, with exercise of reasonable diligence, be aware of what is happening.

A copy of the judgment attached hereto at **page no. 86 to 93.**

9. Kshitish Chandra Bose v. Commissioner of Ranchi, 06.02.1981, [AIR 1981 SC 707], Relevant Para 2

- All that the law requires is that the possession must be open and without any attempt at concealment.
- It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner.

A copy of the judgment attached hereto at **page no. 94 to 100.**

10. Bhimrao Dnyanoba Patil Vs State of Maharashtra, 07.08.2002, [AIR 2003 Bom 80] Relevant Para 8

- Held that, unless enjoyment of the property is accompanied by adverse animus, mere possession for a long period even over a statutory period, would not be sufficient to mature the title to the property by adverse Possession

A copy of the judgment attached hereto at **page no. 101 to 106.**

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anywhere as to whether the vocal cords were affected or not. The doctor, PW 7 specially stated in his evidence that the vocal cords were not at all affected and the victim could speak. This being the position, we do not find any substance in this point as well. For the foregoing reasons, we are of the view that the prosecution has failed to prove its case beyond reasonable doubts and the High Court was quite justified in upholding conviction of the appellant. As such, no ground whatsoever for interference by this Court is made out.

8. Accordingly, appeal fails and the same is dismissed.

(2004) 10 Supreme Court Cases 779

(BEFORE S. RAJENDRA BABU AND G.P. MATHUR, JJ.)

KARNATAKA BOARD OF WAKF .. Appellant;

Versus

GOVERNMENT OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 16899 of 1996† with Nos. 16900 and 16895 of 1996, decided on April 16, 2004

A. **Muslim Law — Wakfs — Wakf Act, 1954 — Ss. 4, 26 & 56 — Nature of suit property — Whether government property or wakf property — Held, property must be "existing" wakf property on the date of commencement of the Act so as to entitle the Wakf Board to exercise power over the same — Where the property in question had been acquired by Govt. of India under Ancient Monuments Preservation Act, 1904 and entered in the Register of Ancient Protected Monuments long back and Govt. of India remaining in absolute ownership and continuous possession thereof for the last about one century, held, the property cannot be said to be an "existing" wakf property and therefore, appellant Wakf Board cannot exercise any right over the same — Hence subsequent notification issued in 1976 by the appellant Board showing the property as having been declared wakf property under S. 26 of the Wakf Act, and published in gazette, would be null and void and liable to be deleted — Factum of ownership, possession and title over the property, having been proved on admissible evidence and records by Govt. of India, appellant's claim over the property based on some borderline historical facts, unsubstantiated by concrete evidence and records, cannot be accepted (Paras 8 and 9)**

B. **Ancient Monuments Preservation Act, 1904 — S. 4 — Acquisition of immovable property by Govt. of India under the Act — Proof — Entry in Register of Ancient Protected Monuments — Evidentiary value of — Register maintained by Executive Engineer in charge of the ancient monuments produced wherein suit property was mentioned and the Govt. was referred to as the owner — When manner of acquisition was not under challenge, held, the entry in the Register could be treated as a valid proof of acquisition under the appropriate provisions of the Act (Para 8)**

† From the Judgment and Order dated 10-3-1995 of the Karnataka High Court in RFA No. 549 of 1986

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C. **Specific Relief Act, 1963 — S. 34 — Suit for declaration of ownership and title over immovable property — Proof — Held, must be proved by admissible evidence and records — In a title suit of civil nature, there is no scope for historical facts and claims — Reliance on borderline historical facts would lead to erroneous conclusion — Plaintiff filing title suit should be very clear about origin of title over the property and must specifically plead it — Civil Procedure Code, 1908, Or. 6 R. 4 (Paras 8 and 12)**

D. **Adverse Possession — Essentials of — Held, are exclusive physical possession and animus possidendi to hold as owner in exclusion to the actual owner — Facts to establish claim for adverse possession, stated — Pleas of adverse possession and of title are mutually inconsistent — Limitation Act, 1963, Art. 65**

In the eye of the 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 the 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. 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. (Para 11)

S.M. Karim v. *Bibi Sakina*, AIR 1964 SC 1254; *Parsinni* v. *Sukhi*, (1993) 4 SCC 375; *D.N. Venkatarayappa* v. *State of Karnataka*, (1997) 7 SCC 567; *Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma*, (1996) 8 SCC 128, *relied on*

A plaintiff, filing a title suit, should be very clear about the origin of title over the property. He must specifically plead it. The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. (Para 12)

S.M. Karim v. *Bibi Sakina*, AIR 1964 SC 1254; *P. Periasami* v. *P. Periathambi*, (1995) 6 SCC 523; *Mohan Lal* v. *Mirza Abdul Gaffar*, (1996) 1 SCC 639, *relied on*

In this case, the respondent obtained title under the provisions of the Ancient Monuments Act. But, the alternative plea of adverse possession by the respondent is unsustainable. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. (Para 13)

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E. **Civil Procedure Code, 1908 — Or. 41 R. 27 — Scope of — Additional evidence — Production of**

a *Held* :

The scope of Order 41 Rule 27 CPC is very clear to the effect that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, unless they have shown that in spite of due diligence, they could not produce such documents and such documents are required to enable the court to pronounce proper judgment. (Para 6)

b Appeals dismissed R-P-M/Z/29967/S

Advocates who appeared in this case :

Salman Khurshid, Senior Advocate (Imtiaz Ahmed, Javed A. Warsi and Z. Ahmad Khan, Advocates, with him) for the Appellant;

Mukul Rohatgi, Additional Solicitor General (Sanjay Hegde, Satya Mitra, S. Wasim A. Qadri, Anil Katiyar and Ms Sushma Suri, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

c
1. (1997) 7 SCC 567, *D.N. Venkatarayappa* v. *State of Karnataka* 785*c-d*
2. (1996) 8 SCC 128, *Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma* 785*e-f*
3. (1996) 1 SCC 639, *Mohan Lal* v. *Mirza Abdul Gaffar* 786*a*
4. (1995) 6 SCC 523, *P. Periasami* v. *P. Periathambi* 785*f*
5. (1993) 4 SCC 375, *Parsinni* v. *Sukhi* 785*c-d*
6. AIR 1964 SC 1254, *S.M. Karim* v. *Bibi Sakina* 785*c-d*, 785*f*

d The Judgment of the Court was delivered by

S. RAJENDRA BABU, J.— Three suits were filed by the first respondent in each of these cases seeking for a declaration that notifications issued by the Karnataka Board of Wakf i.e. the appellant before us, showing some of the defendants to be illegal and void or in the alternative, to declare the first e respondent as owner of the suit properties on the ground that they have perfected their title by adverse possession and consequential relief for permanent injunction. There are three sets of properties in each of these three matters. One is CTS No. 24 of Ward No. VI, described as "Karimuddin's Mosque", another is CTS No. 36 of Ward No. VI, described as "Mecca Masjid" and the other is CTS No. 35 of Ward No. VI, described as "Water Tower". All of them were situated at Bijapur.

f

2. The claim made by the first respondent is that they acquired the suit property under the Ancient Monuments Preservation Act, 1904 (the Ancient Monuments Act) and a notification had been published in that regard and the suit property had been entered in the Register of Ancient Protected Monuments in charge of the Executive Engineer. Thereafter, the Government of India enacted the Ancient Monuments and Archaeological Sites and g Remains Act, 1958 and the suit property came to be under the management of the Department of Archaeological Survey, Government of India. It is asserted by the first respondent that in all the relevant records, the name of the Government of India has been shown as the owner of the suit property and that they came to know that the defendants got published Notification No. KTW/531/ASR-74/7490 dated 21-4-1976, showing the suit property as h having been declared as "wakf property" in terms of Section 26 of the Wakf Act, 1954 and was also stated to have been published in the gazette.

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Inasmuch as the suit property since inception was under the ownership of the plaintiff with lawful possession thereof, the defendants could not have made any claim thereto nor got the same declared as wakf property. The defendants contested this claim of the plaintiffs in the original suits and that after following due procedure publication has been made in the Karnataka Gazette in terms of Section 67 of the Karnataka Land Revenue Act and the order passed by the officer concerned is binding on the plaintiff and, therefore, the plaintiff cannot claim any ownership on the ground of adverse possession.

3. While this is the stand of the Wakf Board, the appellant before us, and the other defendants described as to be "*mutawallis*" of the wakf property, stated that one of the Arab preachers, Peer Mahabari Khandayat came as a missionary to the Deccan as early as AD 1304 and occupied whole Arkilla and erected "Mecca Masjid" according to the established customs to offer prayer which is surrounded by a vast open area. The said property had all along for seven centuries been treated as wakf and has since after the time of the Peer, been managed, looked after and maintained by *sajjada nashin* from time to time. No one has interfered with their right. They claim that they have appropriate *sanads* to show that the property in question is wakf property and that another portion of the suit property also belongs to the *Darga* of Peer Mahabari Khandayat and Chinni Mahabari Khandayat Darga Arkilla, Bijapur and, therefore, the same has been appropriately entered in the wakf register.

4. The trial court raised several issues in the matter and gave a finding that on a consideration of the oral and documentary evidence in the case it is clear that even prior to the introduction of the Survey Department at Bijapur, the Government of India had taken these properties as ancient monuments and they are protecting them by keeping appropriate watch over these monuments but now the defendants have come forward contending that these properties are wakf properties and they have nothing to show that even after the demise of Peer Mahabari Khandayat they remained in the possession of the same. The properties in question were acquired by the Government of India as long back as 1900 and they started preserving them as important historical monuments and they remained in possession and enjoyment of them. This was clear both from oral and documentary evidence and on that basis, the trial court held that they are owning and managing the suit properties. The trial court also gave a finding that the Wakf Board itself declared these properties as wakf properties without properly following the relevant provisions of the Wakf Act and without following due procedure prescribed therein and in a case where there is a dispute as to who is a stranger to the wakf, a mere declaration by the Wakf Board will not bind such person and on that basis the trial court decreed the suit.

5. The matter was carried in appeal. A Division Bench of the High Court examined the matter once over again and affirmed the findings of the trial court. The Division Bench also noticed that at the end of the arguments the appellant made a submission that as they have not produced some of the important documents, the matter may be remanded to the trial court in order to enable them to produce the said documents and with a direction to the trial

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court for a fresh disposal in accordance with law. The High Court did not allow the plea raised by the appellant that there are documents in question *a* which will go to the root of the matter or which would be necessary in terms of Order 41 Rule 27 CPC to permit them to adduce further evidence and on that basis rejected that claim. The High Court affirmed the various findings given by the trial court.

6. In the circumstances, the learned counsel for the appellant reiterated the claim made before the High Court that they should be permitted to *b* adduce further evidence before the Court to substantiate their claim but when the matters were pending before the trial court and the High Court they had ample opportunity to do so. If they had to produce appropriate documents, they could have done so and also it is not clear as to the nature of the documents which they seek to produce which will tilt the matter one way or the other. The scope of Order 41 Rule 27 CPC is very clear to the effect that *c* the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, unless they have shown that in spite of due diligence, they could not produce such documents and such documents are required to enable the court to pronounce proper judgment. In this view of the matter, we do not think there is any justification for us to interfere with the orders of the High Court. However, in view of the arguments addressed *d* by the learned counsel for the appellant, we have also gone into various aspects of the matter and have given another look at the matter and our findings are that the view taken by the High Court is justified. However, one aspect needs to be noticed. The High Court need not have stated that the first respondent is entitled to the relief even on the basis of adverse possession. We propose to examine this aspect.

e **7.** The case advanced by the appellants is that one Arabian saint Mahabari Khandayat came to Bijapur around the 13th century, acquired certain properties (suit property) and constructed "Mecca Mosque" which is under the management of the lineal descendants of the said saint; that by virtue of notification bearing No. KTW/531/ASR-74/7490 dated 21-4-1976, issued by the appellant and the Karnataka Gazette Notification, p. 608/Part *f* VI dated 8-7-1976, they became absolute owners and title-holders of the suit property; that pursuant to the circulars dated 8-6-1978 and 22-1-1979, the Deputy Commissioner of the districts were instructed to hand over possession of any wakf properties that are under the possession of any government department; that by virtue of the said circular the Assistant Commissioner, Bijapur held enquiry under Section 67 of the Karnataka Land Revenue Act, 1964 and arrived at the conclusion that the suit property is a *g* wakf property; that the alleged acquisition by the respondent itself is a concocted story; that the notification and the gazette publication itself is a notice to all concerned and the respondent failed to reply to this notice; that the original suit is bad by limitation; that the original suit itself is not maintainable since there is no notice under Section 56 of the old Wakf Act; *h* that the plea regarding title of the suit property by the respondent and the plea of adverse possession is mutually exclusive; that, therefore, the appeal is to be allowed.

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8. Pertaining to the ownership claim of the appellants over the suit property there is no concrete evidence on record. The contention of the appellants that one Arabian saint Mahabari Khandayat came to India and built the Mosque and his lineal descendants possessed the property, cannot be accepted if it is not substantiated by evidence and records. As far as a title suit of civil nature is concerned, there is no room for historical facts and claims. Reliance on borderline historical facts will lead to erroneous conclusions. The question for resolution herein is the *factum* of ownership, possession and title over the suit property. Only admissible evidence and records could be of assistance to prove this. On the other hand, the respondent produced the relevant copy of the Register of Ancient Protected Monuments maintained by the Executive Engineer in charge of the ancient monuments (Ext. P-1) wherein the suit property is mentioned and the Government is referred to as the owner. Since the manner of acquisition is not under challenge, the entry in the Register of Ancient Protected Monuments could be treated as a valid proof for their case regarding the acquisition of suit property under the appropriate provisions of the Ancient Monuments Act. Gaining of possession could be either by acquisition or by assuming guardianship as provided under Section 4 thereof. Relevant extracts of Ext. P-2, CTS records fortify their case. It shows that the property stands in the name of the respondent. Moreover, the evidence of Syed Abdul Nabi who is the power-of-attorney holder (of Defendants 2-A and 2-B in the original suit) shows that the suit property has been declared as a protected monument and there is a signboard to this effect on the suit property. He also deposed that the Government is in possession of the suit property and the Government at its expenditure constructed the present building in the suit property. On a conjoint analysis of Exts. P-1, P-2 and deposition of Syed Abdul Nabi, it could be safely concluded that the respondent is in absolute ownership and continuous possession of the suit property for the last about one century. Their title is valid. The suit property is government property and not of a wakf character.

9. The old Wakf Act is enacted "for the better administration and supervision of wakfs". Under Section 4 of the old Wakf Act, Survey Commissioner(s) could only make a "... survey of wakf properties existing in the State at the date of the commencement of this Act". The Wakf Board could exercise its rights only over existing wakf properties. Since the suit property itself is not an existing wakf property the appellant cannot exercise any right over the same. Therefore, all the subsequent deeds based on the presumption that the suit property is a wakf property are of no consequence in law. The notification bearing No. KTW/531/ASR-74/7490 dated 21-4-1976, issued by the appellant and the Karnataka Gazette Notification, p. 608/Part VI dated 8-7-1976 is null and void. The same is liable to be deleted. In view of this, the aspects relating to treating gazette notification as notice and limitation need not be looked into. As regards the compliance with notice under Section 56 of the old Wakf Act, the High Court based on evidence and facts ruled that the same is complied with. This is a finding of fact based on evidence.

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10. Now we will turn to the aspect of adverse possession in the context of the present case. The appellants averred that the plea of the respondent based on title of the suit property and the plea of adverse possession are mutually exclusive. Thus finding of the High Court that the title of the Government of India over the suit property by way of adverse possession is assailed.

11. In the eye of the 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 the 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 Sakina*[1], *Parsinni* v. *Sukhi*[2] and *D.N. Venkatarayappa* v. *State of Karnataka*[3].) 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. [*Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma*[4].]

12. A plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See *S.M. Karim* v. *Bibi Sakina*[1].) In *P. Periasami* v. *P. Periathambi*[5] this Court ruled that: (SCC p. 527, para 5)

> "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with

1 AIR 1964 SC 1254
2 (1993) 4 SCC 375
3 (1997) 7 SCC 567
4 (1996) 8 SCC 128
5 (1995) 6 SCC 523

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Mohan Lal v. *Mirza Abdul Gaffar*[6] that is similar to the case in hand, this Court held: (SCC pp. 640-41, para 4)

"*4*. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

13. As we have already found, the respondent obtained title under the provisions of the Ancient Monuments Act. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by the respondent is unsustainable. The High Court ought not to have found the case in their favour on this ground.

14. In the result, these appeals stand dismissed.

(2004) 10 Supreme Court Cases 786

(BEFORE ARIJIT PASAYAT AND C.K. THAKKER, JJ.)

USMAN MIAN AND OTHERS .. Appellants;

Versus

STATE OF BIHAR .. Respondent.

Criminal Appeal No. 587 of 1999†, decided on October 4, 2004

A. **Criminal Trial — Circumstantial evidence — When can conviction be based on — Principal fact can be inferred from the chain of circumstances — Circumstances must be proved beyond reasonable doubt and must be shown to be closely connected with the principal fact — Chain of incriminating circumstances must be consistent only with the hypothesis of guilt of the accused**

B. **Penal Code, 1860 — Ss. 302/34 — Circumstantial evidence — Accused's abscondence is a vital circumstance — Falsity of defence plea provides an additional link to the chain of incriminating circumstances — Held, incriminating circumstances proved by prosecution conclusively established commission of murder by accused-appellants — Hence their conviction upheld**

A woman was found dead in her husband's house. The prosecution case was based on circumstantial evidence. The circumstances which were pressed into

6 (1996) 1 SCC 639

† From the Judgment and Order dated 7-8-1998 of the Patna High Court in Crl. A. No. 424 of 1986

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(2004) 10 Supreme Court Cases 65

(BEFORE R.C. LAHOTI AND ASHOK BHAN, JJ.)

a

AMRENDRA PRATAP SINGH .. Appellant;

Versus

TEJ BAHADUR PRAJAPATI AND OTHERS .. Respondents.

Civil Appeal No. 11483 of 1996†, decided on November 21, 2003

A. **Scheduled Tribes — Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 — Regns. 3, 2(f), 3-A and 7-D — Prohibition against transfer of immovable property by a member of Scheduled Tribe to a non-tribal without permission of competent authority — "Transfer" in the context — Meaning and scope — Includes any "dealing" with immovable property having effect of extinguishing the title, possession or right to possess such property in the tribal and vesting the same in a non-tribal — Adverse possession can be regarded as such a dealing and thus amount to "transfer of immovable property" — Hence acquisition of title in favour of a non-tribal by invoking doctrine of adverse possession over the immovable property belonging to a tribal in a tribal area prohibited — A tribal is considered to be incapable of protecting his own immovable property — Constitution of India, Art. 244 & Sch. V para 5 — Orissa Merged States (Laws) Act, 1950 (4 of 1950), S. 7(b) — Words and phrases — "Transfer"**

B. **Limitation Act, 1963 — Art. 65 & S. 27 — Adverse possession — Meaning and applicability — Acquisition of title by adverse possession, when can be claimed — Factors to be considered — Adverse possession includes "dealing" with one's property which results in extinguishing one's title in the property and vesting the same in the person in possession thereof and thus amounts to "transfer of immovable property" in a wider sense — Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 — Regn. 7-D (as inserted by Orissa Regulation 1 of 1975) — Words and phrases — "Adverse possession", "dealing"**

C. **Supreme Court Rules, 1966 — Or. 41 — Costs — While allowing the appeal, costs incurred in High Court and in Supreme Court directed to be borne by respondent while costs incurred in trial court left to the discretion of the trial court**

D. **Constitution of India — Art. 136 — Discretionary jurisdiction of Supreme Court — Case remanded to trial court with the direction to dispose of it consistently with the judgment of the Supreme Court, expeditiously and in any case within six months — Civil Procedure Code, 1908, Or. 41 R. 23-A**

E. **Interpretation of Statutes — Subsidiary rules — Generalia specialibus non derogant — Acquisition of title by adverse possession — Whereas it is permissible for a tribal to acquire title over another tribal's land by adverse possession, in view of the specific prohibition in the special law, the general law cannot prevail and adverse possession by a non-tribal is not permissible**

† From the Judgment and Order dated 12-9-1994 of the Orissa High Court in AHO No. 26 of 1987

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The land in question was situated in a tribal area in Orissa. The property originally was owned by two persons belonging to Oraon tribe which is a Scheduled Tribe. In 1962 they transferred the property to another person also belonging to a Scheduled Tribe, who in turn on 7-4-1964 sold the property in two parts to two persons *R* and *H*, not belonging to a Scheduled Tribe, after obtaining permission from the Sub-Divisional Officer. *R* then sold a portion of the land purchased by him to the appellant. The respondent had purchased some land on 25-4-1967 from the original holders and had also encroached upon some portion of land belonging to the appellant. In 1970 the appellant filed a suit for declaration of title, recovery of possession and issuance of permanent preventive injunction against the defendants. The defendants denied the title of the plaintiff and pleaded their title by way of adverse possession over the suit land. The trial court decreed the suit and directed possession over the suit property to be restored to the plaintiff. The High Court found the title of the plaintiff to have been proved but at the same time held the defendant-respondent to have been in adverse possession over the property for the prescribed statutory period of 12 years and therefore, held the plaintiff not entitled to a decree in the suit.

The original landholders, belonging to an aboriginal tribe, could not have transferred their holding to a member of a non-aboriginal tribe though the transfer of holding by a member of one aboriginal tribe to a member of the same or another aboriginal tribe, was permitted. This restriction continued to remain in force by virtue of Section 7-D of the Orissa Merged States (Laws) Act, 1950, from the year 1950 up to the year 1956. That restriction came to be deleted by para 9 read with Entry 2 of the Schedule to the 1956 Regulations. But then the same restriction came to be imposed independently by para 3 of the Regulations. While the 1950 Act imposed a restriction on *the transfer of a holding* by a member of an aboriginal tribe to a non-member except with the previous permission of the Sub-Divisional Officer concerned, the 1956 Regulations enlarged the scope of the restriction by including within the purview of prohibition, *any transfer of any immovable property* except with the previous consent in writing of the competent authority. The immovable property, referred to in para 3 of the Regulations, would obviously include a holding as well. The definition of "transfer of immovable property" under para 2(*f*) of the Regulations is very wide. Apart from the well-known modes of transfer such as mortgage, lease, sale, gift and exchange, what has been included therein is "any dealing with such property" which is non-testamentary. Para 7-D of the Regulations has amended the provisions of the third column of the Schedule to the Limitation Act, 1963. The effect of this amendment is that the period of limitation prescribed for suit for possession of immovable property or any interest therein in a suit based on title, instead of being twelve years, stands substituted by a period of thirty years in the Limitation Act, which period would begin to run from a point of time when the possession of the defendant becomes adverse to the plaintiff in its applicability to immovable property belonging to a member of a Scheduled Tribe such as "Oraon".

The period for which the defendant claims to be in possession has to be divided into two parts: (*i*) the pre-7-4-1964 period, when the ownership of the land vested in the person or persons who belonged to an aboriginal tribe; and (*ii*) post-7-4-1964, when the ownership had come to vest in a person belonging to a non-aboriginal tribe consequent upon a transfer made by the previous permission of the competent authority. Two questions arose for consideration: firstly, what is

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the meaning to be assigned to the expression "transfer of immovable property" in relation to property owned by a member of a Scheduled Tribe to whom the Regulations apply; and secondly, whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of an aboriginal tribe.

Allowing the appeal with costs, the Supreme Court

Held:

The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe indefeatably continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making inroads amongst the tribals by acquiring property and developing roots in the habitat of tribals. (Para 15)

The expression "transfer of immovable property" as defined in clause (*f*) of para 2 of the 1956 Regulations has to be assigned a very wide and extended meaning depending on the context and the setting in which it has been used so as to include therein such transactions as would not otherwise and ordinarily be included in its meaning. The expression thus would within its meaning include not only such methods of testamentary disposition as are known to result in transferring an interest in immovable property but also any "dealing" with such property as would have the effect of causing or resulting in the transfer of interest in immovable property. Any transaction or dealing with immovable property which would have the effect of extinguishing the title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property".

(Paras 20, 16 and 14)

Sanjay Dinkar Asarkar v. *State of Maharashtra*, (1986) 1 SCC 83; *Pandey Oraon* v. *Ram Chander Sahu*, 1992 Supp (2) SCC 77; *State of M.P.* v. *Babu Lal*, (1977) 2 SCC 435, *relied on*

Manchegowda v. *State of Karnataka*, (1984) 3 SCC 301: (1984) 3 SCR 502; *Lingappa Pochanna Appelwar* v. *State of Maharashtra*, (1985) 1 SCC 479 : (1985) 2 SCR 224; *Gamini Krishnayya* v. *Guraza Seshachalam*, AIR 1965 SC 639 : (1965) 1 SCR 195; *D (a minor)* v. *Berkshire County Council*, (1987) 1 All ER 20 : 1987 AC 317 : (1986) 3 WLR 1080 (HL), *referred to*

Jagdish v. *State of M.P.*, AIR 1993 MP 132 : 1993 MPLJ 425; *Wajeram* v. *Kaniram*, 1992 Revenue Nirnaya 270; *Dinesh Kumar* v. *State of M.P.*, 1995 Revenue Nirnaya 358, *approved*

The definition of "transfer of immovable property" makes a reference to all known modes of transferring right, title and interest in immovable property and to make the definition exhaustive, conspicuously employs the expression "any other dealing with such property", which would embrace within its sweep any other mode having an impact on right, title or interest of the holder, causing it to cease in one and vest or accrue in another. The use of the word "dealing" is suggestive of the legislative intent that not only a transfer as such but any dealing with such property (though such dealing may not, in law, amount to transfer), is sought to be included within the meaning of the expression. Such "dealing" may

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be a voluntary act on the part of the tribal or may amount to a "dealing" because of the default or inaction of the tribal as a result of his ignorance, poverty or backwardness, which shall be presumed to have existed when the property of the tribal is taken possession of or otherwise appropriated or sought to be appropriated by a non-tribal. In other words, a default or inaction on the part of a tribal which results in deprivation or deterioration of his rights over immovable property would amount to "dealing" by him with such property, and hence a transfer of immovable property. It is so because a tribal is considered by the legislature not to be capable of protecting his own immovable property. A provision has been made by para 3-A of the 1956 Regulations for evicting any unauthorised occupant, by way of trespass or otherwise, of any immovable property of a member of a Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested therein or even suo motu by the competent authority. The concept of *locus standi* loses its significance. The State is the custodian and trustee of the immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by para 3-A. The prescription of the period of twelve years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of a tribal is concerned. The tribal need not file a civil suit which will be governed by the law of limitation; it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of the Limitation Act nor Section 27 thereof would be attracted. The abovesaid shall be the position of law under the 1956 Regulations where "transfer of immovable property" has been defined and also under the 1950 Act where "transfer of holding" has not been defined. Acquisition of title in favour of a non-tribal by invoking the doctrine of adverse possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court. (Paras 25 and 26)

Every possession is not, in law, adverse possession. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession. (Para 22)

The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine

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of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section. (Para 23)

Madhavrao Waman Saundalgekar v. *Raghunath Venkatesh Deshpande*, AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798; *Karimullakhan* v. *Bhanupratapsingh*, AIR 1949 Nag 265 : ILR 1948 Nag 978, *relied on*

A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogeneous reading. (Para 28)

Laxmi Gouda v. *Dandasi Goura*, AIR 1992 Ori 5; *Madhia Nayak* v. *Arjuna Pradhan*, (1988) 65 Cut LT 360, *distinguished*

The period up to 6-4-1964, during which the land belonged to the tribals, has to be excluded from calculating the period of limitation. Undoubtedly, on 7-4-1964, the land having been sold by a tribal to a non-tribal with the previous permission of the Sub-Divisional Officer, the possession of defendant-Respondent 1 over the land on and from that date shall be treated as hostile. In the suit filed by the plaintiff-appellant in the year 1970 the period of limitation shall have to be calculated by reference to Article 65 of the Limitation Act. By that time only a period of six years i.e. between 1964 and 1970 had elapsed. The suit was not barred by limitation. (Para 27)

There was a controversy before the trial court as to the exact extent of land and of encroachment on the property belonging to the plaintiff-appellant by the defendant-respondent, as the two properties are adjoining. The other question which arises is as to the construction made by defendant-Respondent 1 over the property of the plaintiff-appellant encroached upon by defendant-Respondent 1. On these two aspects the case needs to be remanded to the trial court for the ends of justice and determination of appropriate relief. Therefore, the case is remanded to the trial court for decision in accordance with the directions herein given [in para 32]. (Paras 29 to 32)

The trial court shall dispose of the suit, consistently with the terms of the present judgment, expeditiously and in any case within a period of six months from the date of the communication of this judgment. (Para 33)

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The costs incurred in the High Court and the Supreme Court shall be borne by the defendant-Respondent 1. The costs incurred in the trial court shall be in the discretion of the trial court. (Para 34)

F. **Interpretation of Statutes — External aids — Dictionary meaning — Held, can be considered as a guide — Meaning can be assigned in wider or restricted sense than that given in the dictionary having regard to the context, setting and scheme and legislative intent**

Chambers Twentieth Century Dictionary (New Edn., 1983); *Black's Law Dictionary* (6th Edn.); Justice G.P. Singh: *Principles of Statutory Interpretation*, (8th Edn., 2001), pp. 279-80, *relied on*

G. **Precedents — Judicial decision is an authority for what it actually decides — It is not an authority for any implication, assumption or inference derived from the judgment — Constitution of India — Art. 141**

A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement. (Para 28)

R-M/TZ/29328/S

Advocates who appeared in this case :

V.K.S. Chaudhary, Senior Advocate (Vivek Raj Singh, Prakash Kr. Singh and A.S. Pundir, Advocates, with him) for the Appellant;

Anoop G. Chaudhari, Senior Advocate (Suresh C. Gupta, Anil Hooda, Guneshwar, Kaushal Yadav and Ranbir Singh Yadav, Advocates, with him) for the Respondents.

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14. AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798, *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande* 80*g*

The Judgment of the Court was delivered by

R.C. LAHOTI, J.— The suit property consists of a piece of agricultural land situated in Sundergarh area of Mouza Durgapur, Rourkela. Prior to the year 1962, the property belonged to Chand Oram and Pera Oram. Both of them belong to Oraon tribe, which is a Scheduled Tribe in the State of Orissa

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as notified vide the Constitution (Scheduled Tribes) Order, 1950 issued in exercise of the power conferred by clause (1) of Article 342 of the Constitution of India. On 21-12-1962 Chand and Pera transferred their right and interest in 0.75 decimals of land in favour of one Mangal Singh Manki. The said Mangal Singh Manki was also a person belonging to a Scheduled Tribe. Mangal Singh Manki, after obtaining the permission of the Sub-Divisional Officer, Pamposh, sold 0.40 decimals of land by a registered deed of sale dated 7-4-1964 executed in favour of one Ratnamani Mohapatra, and on the same day by another registered deed of sale transferred the remaining 0.35 decimals of land to one Harihar Pradhan. On 6-9-1965 Dr Amrendra Pratap Singh, the plaintiff-appellant purchased 0.195 decimals of land out of 0.40 decimals from Ratnamani Mohapatra. It is this land purchased by the plaintiff-appellant which forms the subject-matter of dispute. This land belonging to the plaintiff has come to be numbered as Plot No. 1147/1.

2. According to the plaintiff he raised construction in the year 1965 over 0.05 decimal area out of the land purchased by him. When he proposed to raise construction over the remaining area, he was obstructed in doing so by Harihar Pradhan, the owner of the adjoining land, whereupon the plaintiff got in touch with his predecessor-in-title Smt Ratnamani Mohapatra. It was detected that in the map attached with the sale deed dated 6-9-1965 there was some error in description of the land forming the subject-matter of sale. Smt Ratnamani Mohapatra executed a deed of rectification dated 31-8-1968 in favour of the plaintiff-appellant, after having the land demarcated by *Amin*.

3. During the course of demarcation proceedings it was found that the defendant-Respondent 1 had also purchased some land under a registered deed of sale dated 25-4-1967 from Chand and Pera and constructed two buildings thereon. However, the defendant-Respondent 1 who had purchased land Plot No. 1119 (new Plot No. 957), had also encroached upon some portion of land of Plot No. 1147 (new Plot No. 956) belonging to the plaintiff-appellant.

4. The dispute between the parties led to the initiation of proceedings under Section 145 of the Code of Criminal Procedure. In the year 1970 the plaintiff-appellant filed a suit for declaration of title, recovery of possession and issuance of permanent preventive injunction against the defendants. Defendants 1 to 3, who are the principal contesting defendants, denied the title of the plaintiff and pleaded their title by way of adverse possession over the suit land. The trial court decreed the suit and directed possession over the suit property to be restored to the plaintiff after demolition of the construction of Defendant 1 standing on the suit land. Defendant 1 preferred an appeal to the High Court. The High Court found the title of the plaintiff-appellant to be proved but at the same time held Defendant 1 to have been in adverse possession over the property for the prescribed statutory period of twelve years, and therefore, held the plaintiff-appellant not entitled to a decree in the suit. The High Court reversed the judgment and decree of the trial court and directed the suit to be dismissed. Feeling aggrieved, the plaintiff has filed this appeal by special leave.

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5. On behalf of the plaintiff-appellant, the correctness of the finding as to defendant-Respondent 1 being in adverse possession of the property and having perfected his title by being in continuous and uninterrupted possession of the property for a period exceeding twelve years' time was seriously disputed, however, we are not inclined to enter into any revaluation of evidence and dislodge the finding of fact arrived at by the High Court. We would therefore proceed on an assumption that the defendant-Respondent 1 has remained in possession of the property for a period of more than twelve years before the date of the institution of the suit. The real question is whether he can be said to have perfected his title by way of adverse possession. This question assumes significance because of the fact that the original owners of the land, namely, Chand and Pera, were persons belonging to a Scheduled Tribe and their successor-in-title Mangal Singh Manki was also a person belonging to a Scheduled Tribe.

6. The Orissa Merged States (Laws) Act, 1950 was enacted by the Legislative Assembly of Orissa for the purpose of extending certain Acts and regulations to certain areas administered as part of the State of Orissa. It received the assent of the Governor on 26-2-1950, which was published in the Orissa Gazette on 3-3-1950 and on that date the Act came into force. Section 7 of the Act, insofar as is relevant for our purpose, provided as under:

> "7. *Modification of tenancy laws in force in the merged States.*— Notwithstanding anything contained in the tenancy laws of the merged States as continued in force by virtue of Article 4 of the States Merger (Governor's Provinces) Order, 1949—
>
> * * *
>
> (*b*) an occupancy tenant shall be entitled—
>
> (*i*) to freely transfer his holding subject to the restriction that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Officer concerned;
>
> (*ii*) to have full right over all kinds of trees standing on his holding;
>
> (*iii*) to use the land comprised in the holding in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy;
>
> (*iv*) to the benefit of the presumption by any court that the rent for the time being payable by him is fair and equitable until the contrary is proved;
>
> *Explanation.*—(*i*) An 'occupancy tenant' means tenant or a raiyat having occupancy right in his holding under the tenancy laws continued in force in the merged States;
>
> (*ii*) an 'aboriginal tribe' means any tribe that may from time to time be notified as such by the State Government;
>
> * * *"

7. Article 244 of the Constitution provides for the provisions of the Fifth Schedule being applicable to the administration and control of the scheduled

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areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. Para 5 of the Fifth Schedule provides inter alia for the Governor to make regulations which may prohibit or restrict the transfer of land by or among the members of the Scheduled Tribes in such areas and/or to regulate the allotment of land to members of the Scheduled Tribes in such areas.

8. In exercise of the powers conferred by sub-para (2) of paragraph 5 of the Fifth Schedule to the Constitution, the Governor of Orissa promulgated regulations known as the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 (hereinafter referred to as "the Regulations" for short). The assent of the President was received on 21-9-1956 and published in the Orissa Gazette (Extraordinary) on 4-10-1956, on which date the Regulations came into force. The preamble to the Regulations speaks that the same were promulgated as it was considered expedient to control and check transfer of immovable property by the Scheduled Tribes in the scheduled areas of the State of Orissa. Clause *(f)* of para 2 of the Regulations defines "transfer of immovable property" to mean "mortgage with or without possession, lease, sale, gift, exchange or *any other dealing with such property* not being a testamentary disposition and includes a charge or contract relating to such property". (emphasis supplied) Regulation 3 provides as under:

> "3. *Transfer of immovable property by a member of Scheduled Tribe.*—(1) Notwithstanding anything contained in any law for the time being in force *any transfer of immovable property* situated within a scheduled area by a member of a Scheduled Tribe *shall be absolutely null and void and of no force or effect whatsoever* unless made in favour of another member of a Scheduled Tribe or with the previous consent in writing of the competent authority:
>
> Provided that nothing in this sub-section shall apply to any transfer by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose:
>
> Provided further that in execution of any decree for realisation of the mortgage money no property mortgaged as aforesaid shall be sold in favour of any person not being a member of the Scheduled Tribes without the previous consent in writing of the competent authority.
>
> * * *
>
> *Explanation.*—For the purposes of this sub-section, a transfer of immovable property in favour of a female member of a Scheduled Tribe, who is married to a person who does not belong to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe.
>
> (2) *Where a transfer of immovable property is made in contravention of sub-section (1)* the competent authority may, either on application by anyone interested therein or on his own motion and after giving the parties an opportunity of being heard *order ejectment against any person in possession of the property claiming under the transfer* and shall cause restoration of possession of such property to the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as

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may be necessary for securing compliance with the said order or preventing any breach of peace:

Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor, or his heirs is not reasonably practicable, he shall record his reasons thereof and shall subject to the control of the State Government *settle the said property with another member of Scheduled Tribe* or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 33 of 1962.

Explanation.—Restoration of possession means actual delivery, of possession by the competent authority to the transferor or his heirs.

(3) Subject to such conditions as may be prescribed an appeal, if preferred within thirty days of the order under sub-section (2) shall, if made by the Collector lie to the Board of Revenue and if made by any other competent authority to the Collector or any other officer specially empowered by the State Government in this behalf.

* * *

(4) Subject to the provisions of sub-section (3) the decision of the competent authority under sub-section (2) shall be final and shall not be challenged in court of law." (underlining* by us)

9. Under Regulation 3-A where a person is found to be in unauthorised occupation of any immovable property of a member of the Scheduled Tribe by way of a trespass or otherwise, the competent authority may either on application by the owner or any person interested therein, or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejectment of the person so found to be in unauthorised occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribe or to his heirs.

10. In the year 1975 by Orissa Regulation 1 of 1975 para 7-D was inserted by way of amendment along with a few other amendments. Para 7-D reads as under:

"7-D. *Amendment of the Limitation Act, 1963 in its application to the scheduled areas*.—In the Limitation Act, 1963 in its application to the scheduled areas in the Schedule, after the words 'twelve years' occurring in the second column against Article 65, the words 'twelve years' and figure 'but 30' years in relation to immovable property belonging to a member of a Scheduled Tribe specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time, shall be added."

11. This amendment was given retrospective operation with effect from 2-10-1973.

12. Para 9 of the Regulations partially repealed the Orissa Merged States (Laws) Act, 1950. The relevant extracts are as under:

"9. *Repeal*.—(1) On and from the date of commencement of this regulation shall stand repealed, namely;

* **Ed.**: Herein italicized

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(*a*) * * *

(*b*) The enactments mentioned in column 2 of the Schedule to the extent specified in column 3 thereof insofar as they are in force in the scheduled areas.

(2)(*a*)-(*d*) * * *

SCHEDULE

LIST OF ENACTMENTS REPEALED

(*See Section 9*)

Number and year (1)	*Short title* (2)	*Extent of repeal* (3)
1. *	*	*
2. Orissa Act 4 of 1950	Orissa Merged States (Laws) Act, 1950	The words 'subject to the restrictions that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Magistrate concerned' in Item 1 of clause (*d*) of the section shall be omitted.
3. *	*	*"

13. The position emerging from the facts of the case, found proved or undisputed and the relevant position of law, as emerging from the Act and the Regulations referred to hereinabove, may be summed up. The original holders of the land, namely, Chand and Pera, were persons belonging to an aboriginal tribe i.e. Oraon. Sundergarh, the area where the land is situated, is a tribal area. Chand and Pera Oram held the land as occupancy tenants. They could not have transferred their holding to a member of a non-aboriginal tribe though the transfer of holding by a member of one aboriginal tribe to a member of the same or another aboriginal tribe, was permitted. This restriction continued to remain in force by virtue of Section 7-D of the Orissa Merged States (Laws) Act, 1950, from the year 1950 up to the year 1956. That restriction came to be deleted by para 9 read with Entry 2 of the Schedule to the 1956 Regulations. But then the same restriction came to be imposed independently by para 3 of the Regulations. While the 1950 Act imposed a restriction on *the transfer of a holding* by a member of an aboriginal tribe to a non-member except with the previous permission of the Sub-Divisional Officer concerned, the 1956 Regulations enlarged the scope of the restriction by including within the purview of prohibition, *any transfer of any immovable property* except with the previous consent in writing of the competent authority. The immovable property, referred to in para 3 of the Regulations, would obviously include a holding as well. The Regulations define "transfer of immovable property". The definition is very wide. Apart from the well-known modes of transfer such as mortgage, lease, sale, gift and exchange, what has been included therein is "any dealing with such property" which is non-testamentary. Regulation 7-D has amended the provisions of the

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third column of the Schedule to the Limitation Act, 1963. The effect of this amendment is that the period of limitation prescribed for suit for possession of immovable property or any interest therein in a suit based on title, instead of being twelve years, stands substituted by a period of thirty years, in the Limitation Act, which period would begin to run from a point of time when the possession of the defendant becomes adverse to the plaintiff in its applicability to immovable property belonging to a member of a Scheduled Tribe such as "Oraon". What is the scope of Regulation 7-D and to what immovable properties it would apply, shall be examined a little later.

14. It cannot be disputed that until 7-4-1964 the land was owned by Chand and Pera and then by Mangal Singh, all the three being members of an aboriginal tribe and a Scheduled Tribe. On 7-4-1964 the land came to be transferred to a person not belonging to any aboriginal tribe. Proceeding on the premise that in the year 1970, on the date of the filing of the suit (the exact date not being ascertainable) Defendant 1 had been in possession of the property for a period of more than twelve years. Can it be said that he had perfected his title by adverse possession or that the suit filed by the plaintiff had become barred by time on account of having been filed twelve years after the date when the possession of the defendant became adverse to the plaintiff or his predecessors-in-title? The period for which the defendant claims to be in possession has to be divided into two parts: (*i*) the pre-7-4-1964 period, when the ownership of the land vested in the person or persons who belonged to an aboriginal tribe; and (*ii*) post-7-4-1964, when the ownership had come to vest in a person belonging to a non-aboriginal tribe consequent upon a transfer made by the previous permission of the competent authority. Two questions arise for consideration: firstly, what is the meaning to be assigned to the expression "transfer of immovable property" in relation to property owned by a member of a Scheduled Tribe to whom the Regulations apply; and secondly, whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of an aboriginal tribe. The 1956 Regulations have chosen to assign an extended meaning to the expression "transfer of immovable property" so as to include within its meaning not only such methods of testamentary disposition as are known to result in transferring an interest in immovable property but also any "dealing" with such property as would have the effect of causing or resulting in the transfer of interest in immovable property, is included therein. According to the *Chambers Twentieth Century Dictionary* (New Edn., 1983) "deal" as a verb means to divide, to distribute; to throw about; to deliver and "deal with" means to have to do with, to treat of, to take action in regard to. One of the meanings to the word "deal" assigned in *Black's Law Dictionary* (6th Edn.) is "to traffic". Dictionaries can be taken as safe guides for finding out meanings of such words as are not defined in the statute. However, dictionaries are not the final words on interpretation. The words take colour from the context and the setting in which they have been used. It is permissible to assign a meaning or a sense, restricted or wider than the one given in dictionaries, depending on the scheme of the legislation wherein the

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word has been used. The court would place such construction on the meaning of the words as would enable the legislative intent being effectuated. Where the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. We may refer to *Principles of Statutory Interpretation* by Justice G.P. Singh (8th Edn., 2001) wherein at pp. 279-80 the learned author states—

> "... in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers'. ... Judge Learned Hand cautioned 'not to make a fortress out of the dictionary' but to pay more attention to 'the sympathetic and imaginative discovery' of the purpose or object of the statute as a guide to its meaning."

15. Tribal areas have their own problems. Tribals are historically weaker sections of the society. They need the protection of the laws as they are gullible and fall prey to the tactics of unscrupulous people, and are susceptible to exploitation on account of their innocence, poverty and backwardness extending over centuries. The Constitution of India and the laws made thereunder treat tribals and tribal areas separately wherever needed. The tribals need to be settled, need to be taken care of by the protective arm of the law, and be saved from falling prey to unscrupulous device so that they may prosper and by an evolutionary process join the mainstream of the society. The process would be slow, yet it has to be initiated and kept moving. The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe indefeatably continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making inroads amongst the tribals by acquiring property and developing roots in the habitat of tribals.

16. In support of the proposition that the expression "transfer of immovable property" is capable of being assigned an extended meaning depending on the context and the setting in which it has been used so as to include therein such transactions as would not otherwise and ordinarily be included in its meaning, we may refer to a few decided cases.

17. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 imposed a ceiling on holding land and to effectuate the purpose sought to be

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achieved by the legislation, imposed restrictions on the transfer or partition of any land on or after the appointed date. Transfer was defined to mean transfer by act of parties whether by sale, gift, mortgage with possession, exchange, lease or *any other disposition* (underlining by us) made *inter vivos*. This Court in *Sanjay Dinkar Asarkar* v. *State of Maharashtra*[1] placed an object-oriented interpretation on the term "disposition" and held: (SCC p. 88, para 6)

> Though ordinarily the word "disposition" in relation to property would mean disposition made by a deed or Will, but in the Act it has to be given an extended meaning so as to include therein any disposition made by or under a decree or order of the court.

18. In *Pandey Oraon* v. *Ram Chander Sahu*[2] the term "transfer" as used in Section 71-A of the Chota Nagpur Tenancy Act, 1908, came up for the consideration of the Court. "Transfer" was not defined in the Act. It was held that considering the situation in which the exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of "transfer" to transfer under the Transfer of Property Act or a situation where "transfer" has a statutory definition. What exactly is contemplated by "transfer" in Section 71-A is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession, would be covered by "transfer". Their Lordships observed: (SCC p. 80, para 7)

> "7. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by (sic) the scope."

Their Lordships referred to three earlier decisions of this Court, namely, *Manchegowda* v. *State of Karnataka*[3], *Lingappa Pochanna Appelwar* v. *State of Maharashtra*[4], *Gamini Krishnayya* v. *Guraza Seshachalam*[5] and a decision of the House of Lords in *D (a minor)* v. *Berkshire County Council*[6] laying down the proposition that a broad and liberal construction should be given to give full effect to the legislative purpose.

19. *State of M.P.* v. *Babu Lal*[7] is an interesting case showing how this Court dealt with an artistic device employed by a non-tribal to deprive a tribal of his land. The M.P. Land Revenue Code, 1959 imposed restrictions

1 (1986) 1 SCC 83
2 1992 Supp (2) SCC 77
3 (1984) 3 SCC 301 : (1984) 3 SCR 502
4 (1985) 1 SCC 479 : (1985) 2 SCR 224
5 AIR 1965 SC 639 : (1965) 1 SCR 195
6 (1987) 1 All ER 20 : 1987 AC 317 : (1986) 3 WLR 1080 (HL)
7 (1977) 2 SCC 435

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on the transfer of land by members of a Scheduled Tribe. Babu Lal, a non-tribal, filed a suit for declaration against Baddiya, a Bheel, notified Scheduled Tribe, for declaration that his name be recorded in the revenue record as *bhumiswami* over the land of Baddiya. Baddiya did not contest the suit and the parties filed a compromise conceding to the claim of Babu Lal. The State Government intervened and filed a petition in the High Court seeking a writ of certiorari, submitting that the entire proceedings in the suit were in contravention of sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959. The judgment of the civil court based on compromise was sought to be quashed. The High Court dismissed the petition holding that the State could pursue the alternative remedy of filing a suit for declaration that the decree was null and void. In appeal by special leave, this Court set aside the judgment of the High Court and issued a writ of certiorari to quash the judgment and decree passed in the civil suit. It was held: (SCC p. 436, para 5)

> "*5. One of the principles on which certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.*" (underlining* by us)

20. The law laid down by this Court is an authority for the proposition that the court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Scheduled Tribe and vesting the same in a non-member, was construed as "transfer" within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. Thus, we are very clear in our minds that the expression "transfer of immovable property" as defined in clause (*f*) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property".

21. In a series of decisions, the High Court of Madhya Pradesh has been consistently taking this view. To wit, see *Jagdish* v. *State of M.P.*[8], *Wajeram* v. *Kaniram*[9] and *Dinesh Kumar* v. *State of M.P.*[10]

What is adverse possession?

22. Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, on the

8 AIR 1993 MP 132 : 1993 MPLJ 425
9 1992 Revenue Nirnaya 270
10 1995 Revenue Nirnaya 358

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determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section.

24. In *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*[11] Their Lordships of the Privy Council dealt with a case of *watan* lands and observed that it is somewhat difficult to see how a stranger to a *watan* can acquire a title by adverse possession for twelve years of lands, the alienation of which is, in the interests of the State, prohibited. The Privy Council's decision was noticed in *Karimullakhan* v. *Bhanupratapsingh*[12] and

11 AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798
12 AIR 1949 Nag 265 : ILR 1948 Nag 978

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the High Court noted non-availability of any direct decision on the point and resorted to borrowing from analogy. It was held that title by adverse possession on *inam* lands, *watan* lands and *debutter*, was incapable of acquisition.

25. Reverting back to the facts of the case at hand, we find that in the land, the ultimate ownership vests in the State on the principle of eminent domain. Tribals are conferred with a right to hold land, which right is inalienable in favour of non-tribals. It is clear that the law does not permit a right in immovable property vesting in a tribal to be transferred in favour of or acquired by a non-tribal, unless permitted by the previous sanction of a competent authority. The definition of "transfer of immovable property" has been coined in the widest-possible terms. The definition makes a reference to all known modes of transferring right, title and interest in immovable property and to make the definition exhaustive, conspicuously employs the expression "any other dealing with such property", which would embrace within its sweep any other mode having an impact on right, title or interest of the holder, causing it to cease in one and vest or accrue in another. The use of the word "dealing" is suggestive of the legislative intent that not only a transfer as such but any dealing with such property (though such dealing may not, in law, amount to transfer), is sought to be included within the meaning of the expression. Such "dealing" may be a voluntary act on the part of the tribal or may amount to a "dealing" because of the default or inaction of the tribal as a result of his ignorance, poverty or backwardness, which shall be presumed to have existed when the property of the tribal is taken possession of or otherwise appropriated or sought to be appropriated by a non-tribal. In other words, a default or inaction on the part of a tribal which results in deprivation or deterioration of his rights over immovable property would amount to "dealing" by him with such property, and hence a transfer of immovable property. It is so because a tribal is considered by the legislature not to be capable of protecting his own immovable property. A provision has been made by para 3-A of the 1956 Regulations for evicting any unauthorised occupant, by way of trespass or otherwise, of any immovable property of a member of a Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested therein or even suo motu by the competent authority. The concept of *locus standi* loses its significance. The State is the custodian and trustee of the immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by para 3-A. The prescription of the period of twelve years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of a tribal is concerned. The tribal need not file a civil suit which will be governed by the law of limitation; it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of the Limitation Act nor Section 27 thereof would be attracted.

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26. In our opinion, the abovesaid shall be the position of law under the 1956 Regulations where "transfer of immovable property" has been defined and also under the 1950 Act where "transfer of holding" has not been defined. Acquisition of title in favour of a non-tribal by invoking the doctrine of adverse possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court.

27. The period up to 6-4-1964, during which the land belonged to the tribals, has to be excluded from calculating the period of limitation. Undoubtedly, on 7-4-1964, the land having been sold by a tribal to a non-tribal with the previous permission of the Sub-Divisional Officer, the possession of defendant-Respondent 1 over the land on and from that date shall be treated as hostile. In the suit filed by the plaintiff-appellant in the year 1970 the period of limitation shall have to be calculated by reference to Article 65 of the Limitation Act. By that time only a period of six years i.e. between 1964 and 1970 had elapsed. The suit was not barred by limitation.

28. The learned counsel for the respondents relied heavily on para 7-D of the 1956 Regulations and upon two decisions of the Orissa High Court rendered by reference thereto, namely, *Laxmi Gouda* v. *Dandasi Goura*[13] and *Madhia Nayak* v. *Arjuna Pradhan*[14]. We have carefully perused both the decisions. The question which arose for decision therein was the effect of amendment made in para 7-D of the Regulations and given a retrospective operation with effect from a back date. The High Court has held that if adverse possession extending over a period of twelve years had already stood perfected into acquisition of title before the date of the amendment, then the amended provision could not be read so as to extend the period of twelve years of acquisition of title by adverse possession substituted as thirty years even if such date fell after 2-10-1973, the date with which the amendment commenced operating. The question which is arising for decision before us, namely, whether a non-tribal can at all commence prescribing acquisition of title of adverse possession over the land belonging to a tribal and situated in a tribal area was neither raised before the High Court nor decided by it. A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement. Still we make it clear that the provisions of para 7-D of the Regulations are to be read in the light of the principle which we have laid down hereinabove. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard

13 AIR 1992 Ori 5
14 (1988) 65 Cut LT 360

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by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogeneous reading.

29. Having held that the wrongful possession of the defendant-Respondent 1 over the land purchased by the plaintiff-appellant has not ripened into acquisition of title by adverse possession, the next question which arises for decision is in relation to the appropriate relief which should be allowed to the plaintiff-appellant. There was a controversy before the trial court as to the exact extent of land and of encroachment on the property belonging to the plaintiff-appellant by the defendant-respondent, as the two properties are adjoining. The plaintiff-appellant relied on the report of *Amin* while the trial court had also got a survey conducted by a local Commissioner who had filed his report. The High Court has not recorded any specific finding thereon because of the view taken by it on the plea of adverse possession, resulting in dismissal of the suit.

30. The other question which arises is as to the construction made by defendant-Respondent 1 over the property of the plaintiff-appellant encroached upon by defendant-Respondent 1. During the course of hearing, it was submitted by the learned counsel for defendant-Respondent 1 that huge construction has come up over the property in suit, while according to the plaintiff-appellant some construction, rather a major portion thereof, has taken place during the pendency of the appeal in this Court as no interim relief was granted by the Court though it was prayed for by the plaintiff-appellant.

31. On these two aspects the case needs to be remanded to the trial court for the ends of justice and determination of appropriate relief. We propose to make suitable directions in this regard in the operative part of the judgment.

32. The appeal is allowed. The judgment of the High Court is set aside. The case is remanded to the trial court for decision in accordance with the following directions:

(*1*) The trial court shall find if an undisputed or proved map of the land belonging to the plaintiff-appellant demarcating the area encroached upon by defendant-Respondent 1 is available on record, and if so, the same shall be accepted and made a part of the decree; if not, the trial court shall appoint an Advocate Commissioner assisted by a person proficient in survey to draw up a map of the plaintiff-appellant's land and demarcate specifically therein the area encroached upon by the defendant-Respondent 1.

(*2*) The trial court shall determine, after hearing the learned counsel for the parties and if necessary, by recording additional evidence, whether a decree for demolition of the construction, made by the defendant-Respondent 1, and specific restoration of possession to the plaintiff-appellant, is called for. In the alternative, the trial court shall determine if, in spite of the encroachment having been proved, a decree for the award of suitable compensation in lieu of demolition and restoration of possession would be a more appropriate relief.

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(*3*) In the event of the trial court forming an opinion in favour of awarding compensation, the same shall be assessed by reference to the date of this judgment. The payment of compensation, as quantified by the trial court, shall be a condition precedent for condoning the encroachment and unauthorised construction of the defendant-Respondent 1.

33. The trial court shall dispose of the suit, consistently with the terms of this judgment, expeditiously and in any case within a period of six months from the date of the communication of this judgment.

34. The costs incurred in the High Court and this Court shall be borne by the defendant-Respondent 1. The costs incurred in the trial court shall be in the discretion of the trial court.

(2004) 10 Supreme Court Cases 84

(BEFORE G.B. PATTANAIK AND BRIJESH KUMAR, JJ.)

RAJASTHAN SOCIAL WELFARE ADVISORY BOARD AND ANOTHER .. Appellants;

Versus

RAM KISHORE MEENA AND OTHERS .. Respondents.

Civil Appeal No. … of 2002†, decided on February 18, 2002

Constitution of India — Art. 226 — Interference under, without going into merits — Writ petition against order of dismissal of respondent from service of appellant Board — Single Judge dismissing the writ petition as not maintainable — Division Bench setting aside the order of the Single Judge dismissing the writ, as well as the order of dismissal itself — It also directing reinstatement of the respondent in service — Held, Division Bench erred in law in setting aside the order of dismissal without even examining the legality of the same — Ultimate conclusion of High Court interfering with the order of dismissal not being based on any reasons, liable to be set aside — Matter remanded to Single Judge to be heard on merits — Service Law — Administrative Tribunals Act, 1985 — S. 14

Appeal disposed of R-M/S/25965/SL

ORDER

1. Leave granted.

2. The order of dismissal of Respondent 1 dated 27-4-1995 was the subject-matter of challenge in the writ petition filed in the Rajasthan High Court. Respondent 1 was an employee of the Central Social Welfare Board and he was working as Welfare Officer. He had been sent on deputation as Secretary on 2-11-1988 and he was finally absorbed by order dated 24-1-1991. Thus, he became an employee of the State Board. While he was continuing as an employee of the State Board, the appropriate authority found several derelictions on his part, including the dereliction of release of Rs 8 lakhs in favour of his own brother for non-existent projects. He was

† Arising out of SLP (C) No. 19459 of 2001

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where the conviction has been recorded *only* on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

* * *

(*6*) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.' " (emphasis in original)

These aspects were highlighted in *State of H.P.* v. *Pawan Kumar*[3], SCC pp. 357-58 & 360-61, paras 5-8, 11 & 13.

5. In view of the aforesaid judgment by a three-Judge Bench of this Court, the acquittal, as directed by the High Court, is clearly unsustainable. However, we find that other points were urged in support of the appeal before the High Court, but the High Court allowed the appeal filed by the accused only on the ground of non-compliance with Section 50 of the Act. It did not examine the other grounds of challenge. We, therefore, remit the matter to the High Court to hear the appeal afresh on grounds other than that of alleged non-compliance with Section 50 of the Act, which, as noted above, has no application to the facts of the case.

6. The appeal is allowed to the aforesaid extent.

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(BEFORE S.B. SINHA AND MARKANDEY KATJU, JJ.)

P.T. MUNICHIKKANNA REDDY AND OTHERS .. Appellants;

Versus

REVAMMA AND OTHERS .. Respondents.

Civil Appeal No. 7062 of 2000†, decided on April 24, 2007

A. **Adverse Possession — Concept — Ingredients — Tests to determine — Possession must be open, continuous and hostile to constitute adverse possession — Openness and hostility — Meaning — There must be positive intention to dispossess the owner — Intention to dispossess distinguished from intention to possess — Date of dispossession of the owner i.e. starting point of adverse possession is also important — On facts held, ingredients of adverse possession not established — Even an unduly long undisturbed**

3 (2005) 4 SCC 350 : 2005 SCC (Cri) 943

† From the Judgment and Order dated 25-11-1999 of the High Court of Karnataka at Bangalore in RFA No. 134 of 1995

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possession did not prove the intention of the adverse possessor — Limitation Act, 1963, Arts. 64 and 65

B. **Adverse Possession — Burden of proof — Initial burden lies on landowner to prove his title and possession — Onus then shifts on the other party to prove title by adverse possession — Limitation Act, 1963, Arts. 64 and 65 — Limitation Act, 1908, Arts. 142 & 144**

C. **Adverse Possession — Human rights — Right to property is a human right — Adverse possession should be considered in that context — Fact that courts around the world are taking an unkind view to the concept of adverse possession should be kept in mind — Constitution of India — Pt. III — Human Rights**

One *T* was owner of 5 acres 25 guntas of land. *N*, adoptive father of Respondent 1, purchased a portion thereof measuring 1 acre 21 guntas in 1933. By two different sale deeds of 1934 and 1936, the appellants purchased the entire land (5 acres 25 guntas). However, when the appellants' possession was sought to be disturbed by the respondent in 1988, they filed a suit claiming their title on the basis of adverse possession stating that they had perfected their title by adverse possession as they had been in open, continuous and hostile possession of the property, adversely to the interest of the respondent-defendant for the past 50 years exercising absolute right of ownership in respect of the said property. The trial court decreed the suit.

On appeal the High Court reversed the judgment of the trial court holding that important ingredients of adverse possession had not been satisfied. The High Court held that important averments of adverse possession viz. to recognise the title of the person against whom adverse possession was claimed, and to enjoy the property adverse to the title-holder's interest after making him known that such enjoyment was against his interest were absent both in pleadings as well as in the evidence. The High Court also held that the finding of the trial court that possession of the plaintiffs became adverse to the defendants between 1934-36 was an error apparent on the face of the record.

Before the Supreme Court it was submitted by the appellants that the High Court had failed to take into consideration the principle that acknowledgment of the owner's title was not sine qua non for claiming title by prescription.

Dismissing the appeal with costs assessed at Rs 25,000, the Supreme Court

Held :

Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. (Para 5)

Downing v. *Bird*, 100 So 2d 57 (Fla 1958); *Arkansas Commemorative Commission* v. *City of Little Rock*, 227 Ark 1085 : 303 SW 2d 569 (1957); *Monnot* v. *Murphy*, 207 NY 240 : 100 NE 742 (1913); *City of Rock Springs* v. *Sturm*, 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929), *relied on*

Secy. of State v. *Debendra Lal Khan*, (1933-34) 61 IA 78 : AIR 1934 PC 23; *State of W.B.* v. *Dalhousie Institute Society*, (1970) 3 SCC 802 : AIR 1970 SC 1778, *referred to*

Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through

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efflux of time. Adverse possession has been termed as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law. As against rights of the owner of the property on paper, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. The argument for a more intrusive inquiry for adverse possession must not be taken to be against the law of limitation. Limitation statutes as statutes of repose have utility and convenience as their purpose. Nevertheless, there has been change on this front as well. (Paras 7, 6 and 59)

American Jurisprudence, Vol. 3, 2d, p. 81, *relied on*

Fairweather v. *St Marylebone Property Co.*, 1963 AC 510 : (1962) 2 WLR 1020 : (1962) 2 All ER 288; *Taylor* v. *Twinberrow*, (1930) 2 KB 16 : 1930 All ER Rep 342; *Chung Ping Kwan* v. *Lam Island Development Co. Ltd.*, 1997 AC 38 : (1996) 3 WLR 448 (PC), *relied on*

The right of property is now considered to be not only a constitutional or statutory right but also a human right. Human rights have been historically considered in the realm of individual rights such as right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. With the expanding jurisprudence of the European Court of Human Rights, the Court has taken an unkind view to the concept of adverse possession. Therefore it will have to be kept in mind that the courts around the world are taking an unkind view towards statutes of limitation overriding property rights. (Paras 40, 43, 44 and 56)

Declaration of the Rights of Man and of the Citizen, 1789; *Universal Declaration of Human Rights*, 1948, Ss. 17(*i*), (*ii*), *referred to*

JA Pye (Oxford) Ltd. v. *United Kingdom*, (2005) 49 ERG 90 : 2005 ECHR 921; *JA Pye (Oxford) Ltd.* v. *Graham*, 2000 Ch 676 : (2000) 3 WLR 242; *Beaulane Properties Ltd.* v. *Palmer*, (2005) 3 WLR 554 : 2005 EWHC 817 (Ch); *JA Pye (Oxford) Ltd.* v. *Graham*, (2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL) : 2002 UKHL 30; *Beyeler* v. *Italy*, [GC], No. 33202 of 1996, §§ 108-14, ECHR 2000-I, *referred to*

In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession. (Para 34)

S.M. Karim v. *Bibi Sakina*, AIR 1964 SC 1254; *Saroop Singh* v. *Banto*, (2005) 8 SCC 330; *M. Durai* v. *Muthu*, (2007) 3 SCC 114 : (2007) 2 Scale 309; *Mohammadbhai Kasambhai Sheikh* v. *Abdulla Kasambhai Sheikh*, (2004) 13 SCC 385; *T. Anjanappa* v.

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Somalingappa, (2006) 7 SCC 570; *Des Raj* v. *Bhagat Ram*, (2007) 9 SCC 641 : (2007) 3 Scale 371; *Govindammal* v. *R. Perumal Chettiar*, (2006) 11 SCC 600, *relied on*

Vasantiben Prahladji Nayak v. *Somnath Muljibhai Nayak*, (2004) 3 SCC 376; *Mohd. Mohd. Ali* v. *Jagadish Kalita*, (2004) 1 SCC 271; *Mahomedally Tyebally* v. *Safiabai*, (1939-40) 67 IA 406 : AIR 1940 PC 215, *cited*

a

Inquiry into the starting point of adverse possession i.e. dates as to when the paper-owner got dispossessed is an important aspect to be considered. In the instant case the starting point of adverse possession and other facts such as the manner in which the possession operationalised, nature of possession: whether open, continuous, uninterrupted or hostile possession, have not been disclosed. (Para 31)

b

S.M. Karim v. *Bibi Sakina*, AIR 1964 SC 1254; *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779, *relied on*

Parsinni v. *Sukhi*, (1993) 4 SCC 375; *D.N. Venkatarayappa* v. *State of Karnataka*, (1997) 7 SCC 567; *P. Periasami* v. *P. Periathambi*, (1995) 6 SCC 523; *Mohan Lal* v. *Mirza Abdul Gaffar*, (1996) 1 SCC 639, *cited*

c

To assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "wilful neglect" element on part of the owner is established. Successful application in this regard distances the title of the land from the owner of the property on paper.

2. Specific positive *intention to dispossess* on the part of the adverse possessor effectively shifts the title already distanced from the owner of the property on paper, to the adverse possessor. Right thereby accrues in favour of adverse possessor as *intent to dispossess* is an express statement of urgency and intention in the upkeep of the property. (Para 8)

d

Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and wilful neglect but also on account of possessor's positive intent to dispossess. Therefore it is important to take into account before stripping somebody of his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the owner of the property on paper. This test forms the basis of decision in the instant case. (Para 58)

e

Intention is a mental element which is proved and disproved through positive acts. Existence of some events can go a long way to weaken the presumption of *intention to dispossess* which might have painstakingly grown out of long possession which otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one ways: firstly, due compliance on this count attracts the Limitation Act and it also assists the court to unearth the intention to dispossess. (Para 12)

f

JA Pye (Oxford) Ltd. v. *Graham*, 2001 EWCA Civ 117 : 2001 Ch 804 : (2001) 2 WLR 1293 (CA); *Powell* v. *McFarlane*, (1977) 38 P&CR 452, *relied on*

g

The intention to dispossess needs to be open and hostile enough to bring the same to the knowledge and the plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (wilful) or omission (negligent or otherwise) of the right to defend or care for the integrity of property on the part of the owner of the property on paper. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

h

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Intention implies knowledge on the part of adverse possessor. The issue is that intention of the adverse user gets communicated to the owner of the property on paper. This is where the law gives importance to *hostility and openness* as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the owner of the property on paper. (Paras 19, 21 and 23)

Narne Rama Murthy v. *Ravula Somasundaram*, (2005) 6 SCC 614; *R.* v. *Oxfordshire County Council*, (2000) 1 AC 335 : (1999) 3 WLR 160 : (1999) 3 All ER 385 (HL); *Beresford, R (on the application of)* v. *City of Sunderland*, (2003) 3 WLR 1306 : (2004) 1 All ER 160, *relied on*

Bright v. *Walker*, (1834) 1 CM&R 211 : 149 ER 1057; *Dalton* v. *Henry Angus & Co.*, (1881) 6 App Cas 740 : (1881-85) All ER Rep 1 (HL), *cited*

Intention to dispossess vis-à-vis intention to possess can be marked very distinctively in the present circumstances. Intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. The factum of possession in the instant case only goes on to objectively indicate intention to possess the land. As also has been noted by the High Court, if the appellant has purchased the land without the knowledge of earlier sale, then in that case the intention element is not of the variety and degree which is required for adverse possession to materialise. The High Court observed, having regard to pleadings and evidence that the plaintiff came to know about the right of the defendants, only when disturbances were sought to be made to his possession. (Paras 14 and 15)

Thakur Kishan Singh v. *Arvind Kumar*, (1994) 6 SCC 591, *relied on*

The present case is one of the few ones where even an unusually long undisturbed possession does not go on to prove the intention of the adverse possessor. (Para 17)

Lambeth London Borough Council v. *Blackburn*, (2001) 82 P&CR 494 : 2001 EWCA Civ 912, *referred to*

The respondent had already purchased 1 acre 21 guntas out of the 5 acres 25 guntas under a duly registered deed dated 1-9-1933. The appellant bought the entire chunk of 5 acres 23 guntas subsequent to the respondent's transaction. The validity of such sale is not in question in the instant case but the transaction relating to 1 acre 23 guntas remains an important surrounding circumstance to assess the nature of the appellant's possession. The question is whether it is a case of mistaken possession ignoramus of the previous sale or adverse possession having the mental element in the requisite degree to dispossess. Also much depends on the answer to the query regarding the starting point of adverse possession: When can the possession be considered to have become adverse? In the facts and circumstances of this case, the possession of the appellant was effected through the sale deeds dated 11-4-1934 and 5-7-1936. Therefore, the alleged fact of adverse possession bears a pronounced backdrop of 1933 sale deed passing 1 acre 21 guntas to the respondent. (Para 57)

Can it be said that it is a sale with doubtful antecedents (1 acre 23 guntas) sought to be perfected or completed through adverse possession? But that aspect of the matter is not under consideration herein. (Para 58)

For the reasons aforementioned, there is no merit in this appeal which is dismissed with costs assessed at Rs 25,000. (Para 60)

R-M/36138/C

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Advocates who appeared in this case :

P. Krishnamoorthy, Senior Advocate (Romy Chacko, Girjesh Pandey and Rajiv Mehta, Advocates, with him) for the Appellants;

K.R. Sasiprabhu, Arvind Varma, Ms Swati Sinha, Ms Jaysree Singh and (for Fox Mandal & Co.), Advocates, for the Respondents. a

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4. (2006) 7 SCC 570, *T. Anjanappa* v. *Somalingappa* 76*a-b*
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6. (2005) 8 SCC 330, *Saroop Singh* v. *Banto* 71*b-c*, 75*c*
7. (2005) 6 SCC 614, *Narne Rama Murthy* v. *Ravula Somasundaram* 72*a-b*
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24. (1994) 6 SCC 591, *Thakur Kishan Singh* v. *Arvind Kumar* 69*e* g
25. (1993) 4 SCC 375, *Parsinni* v. *Sukhi* 73*d-e*
26. (1977) 38 P&CR 452, *Powell* v. *McFarlane* 70*c*
27. (1970) 3 SCC 802 : AIR 1970 SC 1778, *State of W.B.* v. *Dalhousie Institute Society* 66*d*, 76*e-f*
28. AIR 1964 SC 1254, *S.M. Karim* v. *Bibi Sakina* 73*d-e*, 74*a*, 75*a-b*
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31. 227 Ark 1085 : 303 SW 2d 569 (1957), *Arkansas Commemorative Commission* v. *City of Little Rock* 66*e-f*
32. (1939-40) 67 IA 406 : AIR 1940 PC 215, *Mahomedally Tyebally* v. *Safiabai* 75*e-f*
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35. 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929), *City of Rock Springs* v. *Sturm* 66*f*
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37. (1881) 6 App Cas 740 : (1881-85) All ER Rep 1 (HL), *Dalton* v. *Henry Angus & Co.* 72*e*
38. (1834) 1 CM&R 211 : 149 ER 1057, *Bright* v. *Walker* 72*d-e*

The Judgment of the Court was delivered by

S.B. SINHA, J.—

Background facts

1. One Thippaiah was the owner of 5 acres 23 guntas of land having been recorded in Survey No. 153/1 of Chikkabanavara Village. Nanjapa, adoptive father of Respondent 1 purchased a portion thereof measuring 1 acre 21 guntas on 11-9-1933. By reason of two different sale deeds, dated 11-4-1934 and 5-7-1936, the appellants herein purchased 2 acres 15 guntas and 3 acres 8 guntas of land respectively, out of the said plot. Despite the fact that Nanjapa had purchased a portion of the said plot, the appellants allegedly took over possession of the entire 5 acres 23 guntas of land after the aforementioned purchases. However, when allegedly their possession was sought to be disturbed by the respondent in the year 1988, they filed a suit in the Court of Additional City Civil Judge, Bangalore which was marked as OS No. 287 of 1989. In the said suit, they claimed title on the basis of adverse possession stating:

> "... The plaintiffs submit that in any event the plaintiffs have perfected their title by adverse possession as the plaintiffs have been in open, continuous uninterrupted and hostile possession of the plaint schedule land, adversely to the interest of any other person including the defendant for the past over fifty years exercising absolute rights of ownership in respect of the plaint schedule land...."

2. The defendant-respondents in their written statement denied and disputed the aforementioned assertion of the plaintiffs and pleaded their own right, title and interest as also possession in or over the said 1 acre 21 guntas of land. The learned trial Judge decreed the suit inter alia holding that the plaintiff-appellants have acquired title by adverse possession as they have been in possession of the lands in question for a period of more than 50 years. On an appeal having been preferred thereagainst by the respondents before the High Court, the said judgment of the trial court was reversed holding:

> "(*i*) ... The important averments of adverse possession are twofold. One is to recognise the title of the person against whom adverse possession is claimed. Another is to enjoy the property adverse to the

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title-holder's interest after making him known that such enjoyment is against his own interest. These two averments are basically absent in this case both in the pleadings as well as in the evidence....

(*ii*) The finding of the court below that the possession of the plaintiffs became adverse to the defendants between 1934-36 is again an error apparent on the face of the record. As it is now clarified before me by the learned counsel for the appellants that the plaintiffs' claim in respect of the other land of the defendants is based on the subsequent sale deed dated 5-7-1936.

It is settled law that mere possession even if it is true for any number of years will not clothe the person in enjoyment with the title by adverse possession. As indicated supra, the important ingredients of adverse possession should have been satisfied."

Submissions

3. Mr P. Krishnamoorthy, learned Senior Counsel appearing on behalf of the appellants, submitted that the High Court committed a manifest error in arriving at the aforementioned conclusion as it failed to take into consideration the principle that acknowledgment of the owner's title was not sine qua non for claiming title by prescription. Reliance in this behalf has been placed on *Secy. of State* v. *Debendra Lal Khan*[1] and *State of W.B.* v. *Dalhousie Institute Society*[2].

4. The learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment.

Characterising adverse possession

5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. *It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.* (See *Downing* v. *Bird*[3]; *Arkansas Commemorative Commission* v. *City of Little Rock*[4]; *Monnot* v. *Murphy*[5]; *City of Rock Springs* v. *Sturm*[6].)

6. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in

1 (1933-34) 61 IA 78 : AIR 1934 PC 23
2 (1970) 3 SCC 802 : AIR 1970 SC 1778
3 100 So 2d 57 (Fla 1958)
4 227 Ark 1085 : 303 SW 2d 569 (1957)
5 207 NY 240 : 100 NE 742 (1913)
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the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. (See *American Jurisprudence*, Vol. 3, 2d, p. 81.) *It is important to keep in mind while studying the American notion of adverse possession, especially in the backdrop of limitation statutes, that the intention to dispossess cannot be given a complete go-by. Simple application of limitation shall not be enough by itself for the success of an adverse possession claim.*

7. To understand the true nature of adverse possession, *Fairweather* v. *St Marylebone Property Co.*[7] can be considered where House of Lords referring to *Taylor* v. *Twinberrow*[8] *termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law*: (*Fairweather case*[7], All ER pp. 291 G-292 C)

> "In my opinion this principle has been settled law since the date of that decision. It formed the basis of the later decision of the Divisional Court in *Taylor* v. *Twinberrow*[8] in which it was most clearly explained by Scrutton, L.J. that it was a misunderstanding of the legal effect of twelve years adverse possession under the Limitation Acts to treat it as if it gave a title whereas its effect is 'merely negative' and, where the possession had been against a tenant, its only operation was to bar his right to claim against the man in possession [see loc. cit. p. 23]. I think that this statement needs only one qualification: a squatter does in the end get a title by his possession and the indirect operation of the Act and he can convey a fee simple.
>
> If this principle is applied, as it must be, to the appellant's situation, it appears that the adverse possession completed in 1932 against the lessee of No. 315 did not transfer to him either the lessee's term or his rights against or his obligations to the landlord who held the reversion. The appellant claims to be entitled to keep the landlord at bay until the expiration of the term by effluxion of time in 1992: but, if he is, it cannot be because he is the transferee or holder of the term which was granted to the lessee. He is in possession by his own right, so far as it is a right: and it is a right so far as the statutes of limitation which govern the matter prescribe both when the rights to dispossess him are to be treated as accruing and when, having accrued, they are thereafter to be treated as barred. In other words a squatter has as much protection as but no more protection than the statutes allow: but he has not the title or estate of the owner or owners whom he has dispossessed nor has he in any relevant sense an estate 'commensurate with' the estate of the dispossessed. All that this misleading phrase can mean is that, since his possession only defeats the rights of those to whom it has been adverse, there may be

7 1963 AC 510 : (1962) 2 WLR 1020 : (1962) 2 All ER 288
8 (1930) 2 KB 16 : 1930 All ER Rep 342

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> rights not prescribed against, such, for instance, as equitable easements, which are no less enforceable against him in respect of the land than they would have been against the owners he has dispossessed."

Also see Privy Council's decision in *Chung Ping Kwan* v. *Lam Island Development Co. Ltd.*[9] in this regard.

8. Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:

> *1.* Application of limitation provision thereby jurisprudentially "wilful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.
>
> *2.* Specific positive *intention to dispossess* on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as *intent to dispossess* is an express statement of urgency and intention in the upkeep of the property.

9. It is interesting to see the development of adverse possession law in the backdrop of the status of right to property in the 21st century. The aspect of stronger property rights regime in general, coupled with efficient legal regimes furthering the rule of law argument, has redefined the thresholds in adverse possession law not just in India but also by the Strasbourg Court. Growth of human rights jurisprudence in recent times has also palpably affected the developments in this regard.

New consideration in adverse possession law

10. In that context it is relevant to refer to *JA Pye (Oxford) Ltd.* v. *United Kingdom*[10] wherein the European Court of Human Rights while referring to the Court of Appeal judgment *JA Pye (Oxford) Ltd.* v. *Graham*[11] made the following reference:

> "Lord Justice Keene took as his starting point that limitation periods were in principle not incompatible with the Convention and that the process whereby a person would be barred from enforcing rights by the passage of time was clearly acknowledged by the Convention (Convention for the Protection of Human Rights and Fundamental Freedoms). This position obtained, in his view, even though limitation periods both limited the right of access to the courts and in some circumstances had the effect of depriving persons of property rights, whether real or personal, or of damages: there was thus nothing inherently incompatible as between the 1980 Act and Article 1 of the Protocol."

11. This brings us to the issue of mental element in adverse possession cases—intention.

9 1997 AC 38 : (1996) 3 WLR 448 (PC)
10 (2005) 49 ERG 90 : 2005 ECHR 921
11 2001 EWCA Civ 117 : 2001 Ch 804 : (2001) 2 WLR 1293 (CA)

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1. Positive intention

12. The aspect of positive intention is weakened in this case by the sale deeds dated 11-4-1934 and 5-7-1936. Intention is a mental element which is proved and disproved through positive acts. Existence of some events can go a long way to weaken the presumption of *intention to dispossess* which might have painstakingly grown out of long possession which otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one ways: firstly, due compliance on this count attracts the Limitation Act and it also assists the court to unearth as the intention to dispossess.

13. At this juncture, it would be in the fitness of circumstances to discuss intention to dispossess vis-à-vis intention to possess. This distinction can be marked very distinctively in the present circumstances.

14. Importantly, intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. The factum of possession in the instant case only goes on to objectively indicate intention to possess the land. As also has been noted by the High Court, if the appellant has purchased the land without the knowledge of earlier sale, then in that case the intention element is not of the variety and degree which is required for adverse possession to materialise.

15. The High Court observed:

> "It is seen from the pleadings as well in evidence that the plaintiff came to know about the right of the defendants, only when disturbances were sought to be made to his possession."

16. In similar circumstances, in *Thakur Kishan Singh* v. *Arvind Kumar*[12] this Court held: (SCC p. 594, para 5)

> "5. As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. *Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Apart from it, the appellate court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse.*" (emphasis supplied)

17. The present case is one of the few ones where even an unusually long undisturbed possession does not go on to prove the intention of the adverse

12 (1994) 6 SCC 591

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possessor. This is a rare circumstance, which Clarke, L.J. in *Lambeth London Borough Council* v. *Blackburn*[13] refers to:

> "I would not for my part think it appropriate to strain to hold that a trespasser who had established factual possession of the property for the necessary 12 years did not have the *animus possidendi* identified in the cases. I express that view for two reasons. The first is that the requirement that there be a sufficient manifestation of the intention provides protection for landowners and the second is that once it is held that the trespasser has factual possession it will very often be the case that he can establish the manifested intention. *Indeed it is difficult to find a case in which there has been a clear finding of factual possession in which the claim to adverse possession has failed for lack of intention.*"
>
> (emphasis supplied)

18. On *intention*, *Powell* v. *McFarlane*[14] is quite illustrative and categorical, holding in the following terms:

> "If the law is to attribute possession of land to a person who can establish no paper title to possession, *he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi').*"
>
> * * *
>
> If his acts are *open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can*, the courts will treat him as not having had the requisite *animus possidendi* and consequently as not having dispossessed the owner.
>
> * * *
>
> In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, *but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner.*
>
> * * *
>
> What is really meant, in my judgment, is that the *animus possidendi* involves the intention, *in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.*" (emphasis supplied)

19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and the plaintiff has an opportunity to object. After all adverse possession right is not a

13 (2001) 82 P&CR 494 : 2001 EWCA Civ 912

14 (1977) 38 P&CR 452

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substantive right but a result of the waiving (wilful) or omission (negligent or otherwise) of the right to defend or care for the integrity of property on the part of the paper-owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

20. While dealing with the aspect of intention in the adverse possession law, it is important to understand its nuances from varied angles.

21. Intention implies knowledge on the part of adverse possessor. The case of *Saroop Singh* v. *Banto*[15] in that context held: (SCC p. 340, paras 29-30)

> "*29.* In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See *Vasantiben Prahladji Nayak* v. *Somnath Muljibhai Nayak*[16].)
>
> *30.* '*Animus possidendi*' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali* v. *Jagadish Kalita*[17], SCC para 21.)"

22. A peaceful, open and continuous possession as engraved in the maxim *nec vi, nec clam, nec precario* has been noticed by this Court in *Karnataka Board of Wakf* v. *Govt. of India*[18] in the following terms: (SCC p. 785, para 11)

> "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."

23. It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper-owner of the property. This is where the law

15 (2005) 8 SCC 330
16 (2004) 3 SCC 376
17 (2004) 1 SCC 271
18 (2004) 10 SCC 779

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gives importance to *hostility and openness* as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper-owner.

24. In *Narne Rama Murthy* v. *Ravula Somasundaram*[19] this Court held: (SCC p. 615, para 5)

> "However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation. The only *hostile act* which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter." (emphasis supplied)

25. The test is, as has been held in *R.* v. *Oxfordshire County Council*[20]: (All ER p. 393*d-e*)

> "... *Bright* v. *Walker*[21], CM&R at 211, 219, 'openly and in the manner that a person rightfully entitled would have used it....' The presumption arises, as Fry, J. said of prescription generally in *Dalton* v. *Henry Angus & Co.*[22], App Cas at 773, from acquiescence."

26. The case concerned (at All ER p. 388*e*) interpretation of Section 22(1) of the Commons Registration Act, 1965. Section 22(1) defined "town or village green" as including:

> land ... on which the inhabitants of any locality have indulged in lawful sports and pastimes as of right for not less than 20 years.

27. It was observed that the inhabitants' use of the land for sports and pastimes did not constitute the use "as of right". The belief that they had the right to do so was found to be lacking. The House held that they did not have to have a personal belief in their right to use the land. The Court observed†: (All ER p. 395*e-f*)

> "... [the words 'as of right'] import the absence of any of the three characteristics of compulsion, secrecy, or licence—'*nec vi, nec clam, nec precario*', phraseology borrowed from the law of easements...."

19 (2005) 6 SCC 614
20 (2000) 1 AC 335 : (1999) 3 WLR 160 : (1999) 3 All ER 385 (HL)
21 (1834) 1 CM&R 211 : 149 ER 1057
22 (1881) 6 App Cas 740 : (1881-85) All ER Rep 1 (HL)
† **Ed.**: As per the observations of Scott, L.J. in *Jones* v. *Bates*, (1938) 2 All ER 237 at p. 245*e-f*.

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28. Later in *Beresford, R (on the application of)* v. *City of Sunderland*[23] same test was referred to.

29. Thus the test of *nec vi, nec clam, nec precario* i.e. "not by force, nor stealth, nor the licence of the owner" has been an established notion in law relating to the whole range of similarly situated concepts such as easement, prescription, public dedication, limitation and adverse possession.

30. In *Karnataka Wakf Board*[18] the law was stated, thus: (SCC p. 785, para 11)

> "*11.* In the eye of the 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 the 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 Sakina*[24], *Parsinni* v. *Sukhi*[25] and *D.N. Venkatarayappa* v. *State of Karnataka*[26].) 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."

2. Inquiry into the particulars of adverse possession

31. Inquiry into the starting point of adverse possession i.e. dates as to when the paper-owner got dispossessed is an important aspect to be considered. In the instant case the starting point of adverse possession and other facts such as the manner in which the possession operationalised,

23 (2003) 3 WLR 1306 : (2004) 1 All ER 160
18 *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779
24 AIR 1964 SC 1254
25 (1993) 4 SCC 375
26 (1997) 7 SCC 567

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nature of possession: whether open, continuous, uninterrupted or hostile possession, have not been disclosed. An observation has been made in this regard in *S.M. Karim* v. *Bibi Sakina*[24]: (AIR p. 1256, para 5)

> "*Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.* There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for 'several 12 years' or that the plaintiff had acquired 'an absolute title' was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea." (emphasis supplied)

32. Also mention as to the real owner of the property must be specifically made in an adverse possession claim.

33. In *Karnataka Wakf Board*[18] it is stated: (SCC pp. 785-86, para 12)

> "*12. A plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. In P. Periasami* v. *P. Periathambi*[27] *this Court ruled that*: (SCC p. 527, para 5)
>
> '*Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property.*'
>
> The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with *Mohan Lal* v. *Mirza Abdul Gaffar*[28] that is similar to the case in hand, this Court held: (SCC pp. 640-41, para 4)
>
> '*4.* As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.' "
>
> (emphasis supplied)

3. New paradigm to the Limitation Act

34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the

24 AIR 1964 SC 1254
18 *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779
27 (1995) 6 SCC 523
28 (1996) 1 SCC 639

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plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession. The ingredients of adverse possession have succinctly been stated by this Court in *S.M. Karim* v. *Bibi Sakina*[24] in the following terms: (AIR p. 1256, para 5)

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

(See also *M. Durai* v. *Muthu*[29].)

35. The aforementioned principle has been reiterated by this Court in *Saroop Singh* v. *Banto*[15] stating: (SCC p. 340, paras 29-30)

> "*29.* In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See *Vasantiben Prahladji Nayak* v. *Somnath Muljibhai Nayak*[16].)
>
> *30.* 'Animus possidendi' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali* v. *Jagadish Kalita*[17], SCC para 21.)"

36. In *Mohammadbhai Kasambhai Sheikh* v. *Abdulla Kasambhai Sheikh*[30] this Court held: (SCC p. 386, para 4)

> "But as has been held in *Mahomedally Tyebally* v. *Safiabai*[31] the heirs of Mohammedans (which the parties before us are) succeed to the estate in specific shares as tenants-in-common and a suit by an heir for his/her share was governed, as regards immovable property, by Article 144 of the Limitation Act, 1908. Article 144 of the Limitation Act, 1908 has been materially re-enacted as Article 65 of the Limitation Act, 1963 and provides that the suit for possession of immovable property or any interest therein based on title must be filed within a period of 12 years from the date when the possession of the defendant becomes adverse to

24 AIR 1964 SC 1254
29 (2007) 3 SCC 114 : (2007) 2 Scale 309
15 (2005) 8 SCC 330
16 (2004) 3 SCC 376
17 (2004) 1 SCC 271
30 (2004) 13 SCC 385
31 (1939-40) 67 IA 406 : AIR 1940 PC 215

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the plaintiff. Therefore, unless the defendant raises the defence of adverse possession to a claim for a share by an heir to ancestral property, he cannot also raise an issue relating to the limitation of the plaintiff's claim."

37. The question has been considered at some length recently in *T. Anjanappa* v. *Somalingappa*[32] wherein it was opined: (SCC p. 577, para 21)

> "*21.* The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable."

(See also *Des Raj* v. *Bhagat Ram*[33]; *Govindammal* v. *R. Perumal Chettiar*[34].)

Contentions of parties

38. The decision of the Judicial Committee in *Debendra Lal Khan*[1] whereupon reliance has been placed by Mr Krishnamoorthy, does not militate against the aforementioned propositions of law. The question which arose for consideration therein was as to whether the plaintiff had acquired right or title to the fisheries by adverse possession in the portion of River Cossye. In the aforementioned situation, it was held that the Limitation Act is indulgent to the Crown in one respect only, namely, in requiring a much longer period of adverse possession than in the case of a subject; otherwise there is no discrimination between the Crown and the subject as regards the requisites of adverse possession. The said decision is not of much assistance in this case.

39. In *Dalhousie Institute Society*[2] this Court found as of fact that the respondents were in open, continuous and uninterrupted possession and enjoyment of site for over 60 years. It was in that situation, the title of the defendant, in that behalf, was accepted.

Right to property as human right

40. There is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a constitutional or statutory right but also a human right.

41. Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17:

32 (2006) 7 SCC 570
33 (2007) 9 SCC 641 : (2007) 3 Scale 371
34 (2006) 11 SCC 600 : JT (2006) 10 SC 121
1 *Secy. of State* v. *Debendra Lal Khan*, (1933-34) 61 IA 78 : AIR 1934 PC 23
2 *State of W.B.* v. *Dalhousie Institute Society*, (1970) 3 SCC 802 : AIR 1970 SC 1778

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"Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".

42. Moreover, the Universal Declaration of Human Rights, 1948 under Sections 17(*i*) and 17(*ii*) also recognises right to property:

"17. (*i*) Everyone has the right to own property alone as well as in association with others.

(*ii*) No one shall be arbitrarily deprived of his property."

43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgment of *Beaulane Properties Ltd.* v. *Palmer*[35] and *JA Pye (Oxford) Ltd.* v. *United Kingdom*[10]. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights.

44. With the expanding jurisprudence of the European Court of Human Rights, the Court has taken an unkind view to the concept of adverse possession in the recent judgment of *JA Pye (Oxford) Ltd.* v. *United Kingdom*[10] which concerned the loss of ownership of land by virtue of adverse possession.

45. In the instant case the applicant company was the registered owner of a plot of 23 hectares of agricultural land. The owners of a property adjacent to the land, Mr and Mrs Graham ("the Grahams") occupied the land under a grazing agreement. After a brief exchange of documents in December 1983 a chartered surveyor acting for the applicants wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land.

46. In essence, from September 1984 onwards until 1999 the Grahams continued to use the whole of the disputed land for farming without the permission of the applicants.

47. In 1997, Mr Graham moved the Local Land Registry against the applicant on the ground that he had obtained title by adverse possession. The applicant company responded to the motion and importantly also issued further proceedings seeking possession of the disputed land.

48. The Grahams challenged the applicant company's claims under the Limitation Act, 1980 ("the 1980 Act") which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse

35 (2005) 3 WLR 554 : 2005 EWHC 817 (Ch)
10 (2005) 49 ERG 90 : 2005 ECHR 921

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possession by another. They also relied on the Land Registration Act, 1925, which applied at the relevant time and which provided that, after the expiry of the 12-year period, the registered proprietor was deemed to hold the land in trust for the squatter.

49. It is important to quote here the judgment pronounced in favour of *JA Pye (Oxford) Ltd.* v. *Graham*[36]. The Court held in favour of the Grahams but went on to observe the irony in law of adverse possession. According to the Court, law which provides to oust an owner on the basis of inaction of 12 years is "*illogical and disproportionate*". The effect of such law would "seem draconian to the owner" and "a windfall for the squatter". The fact that just because "the owner had taken no step to evict a squatter for 12 years, the owner should lose 25 hectares of land to the squatter with no compensation whatsoever" would be disproportionate.

50. The applicant company appealed and the Court of Appeal reversed the High Court decision. The Grahams then appealed to the House of Lords, which, allowed their appeal and restored the order of the High Court. In *JA Pye (Oxford) Ltd.* v. *Graham*[37] House of Lords observed that the Grahams had possession of the land in the ordinary sense of the word, and therefore the applicant company had been dispossessed of it within the meaning of the 1980 Act. There was no inconsistency between a squatter being willing to pay the paper-owner if asked and his being in possession in the meantime. It will be pertinent to note in this regard Lord Bingham (agreeing with Lord Browne-Wilkinson) in the course of his judgment: (All ER p. 867, para 2)

> "[The Grahams] sought rights to graze or cut grass on the land after the summer of 1984, and were quite prepared to pay. When Pye failed to respond they did what any other farmer in their position would have done: they continued to farm the land. They were not at fault. But the result of Pye's inaction was that they enjoyed the full use of the land without payment for 12 years. As if that were not gain enough, they are then rewarded by obtaining title to this considerable area of valuable land without any obligation to compensate the former owner in any way at all. In the case of unregistered land, and in the days before registration became the norm, such a result could no doubt be justified as avoiding protracted uncertainty where the title to land lay. But where land is registered it is difficult to see any justification for a legal rule which compels such an apparently unjust result, and even harder to see why the party gaining title should not be required to pay some compensation at least to the party losing it. It is reassuring to learn that the Land Registration Act, 2002 has addressed the risk that a registered owner may lose his title through inadvertence. But the main provisions of that Act have not yet been brought into effect, and even if they had it would not assist Pye, whose title had been lost before the passing of the Act. While

36 2000 Ch 676 : (2000) 3 WLR 242

37 (2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL) : 2002 UKHL 30

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I am satisfied that the appeal must be allowed for the reasons given by my noble and learned friend, this is a conclusion which I (like the Judge [Neuberger, J.] ...) 'arrive at with no enthusiasm'."

51. Thereafter the applicants moved the European Commission of Human Rights (ECHR) alleging that the United Kingdom law on adverse possession, by which they lost land to a neighbour, operated in violation of Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

52. It was contended by the applicants that they had been deprived of their land by the operation of the domestic law on adverse possession which is in contravention with Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), which reads as under:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

53. The European Council of Human Rights importantly laid down three-pronged test to judge the interference of the Government with the right of "peaceful enjoyment of property". While referring to *Beyeler* v. *Italy*[38], it was held that the "interference" should comply with the principle of lawfulness and pursue a legitimate aim (public interest) by means reasonably proportionate to the aim sought to be realised.

54. In fine the Court observed:

> "The question nevertheless remains whether, even having regard to the lack of care and inadvertence on the part of the applicants and their advisers, the deprivation of their title to the registered land and the transfer of beneficial ownership to those in unauthorised possession struck a fair balance with any legitimate public interest served.
>
> In these circumstances, the Court concludes that the application of the provisions of the 1925 and 1980 Acts to deprive the applicant companies of their title to the registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other.
>
> There has therefore been a violation of Article 1 of Protocol 1."

55. The question of the application of Article 41 was referred for the Grand Chamber Hearing of the ECHR. This case sets the field of adverse

38 [GC], No. 33202 of 1996, §§ 108-14, ECHR 2000-I

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possession and its interface with the right to peaceful enjoyment in all its complexity.

56. Therefore it will have to be kept in mind the courts around the world are taking an unkind view towards statutes of limitation overriding property rights.

The present case

57. It is to be borne in mind that the respondent had already purchased 1 acre 21 guntas out of the 5 acres 25 guntas under a duly registered deed dated 1-9-1933. The appellant bought the entire chunk of 5 acres 23 guntas subsequent to the respondent's transaction. The validity of such sale is not in question in the instant case but the transaction relating to 1 acre 23 guntas remains an important surrounding circumstance to assess the nature of the appellant's possession. The question is whether it is a case of mistaken possession ignoramus of the previous sale or adverse possession having the mental element in the requisite degree to dispossess. Also much depends on the answer to the query regarding the starting point of adverse possession: When can the possession be considered to have become adverse? In the facts and circumstances of this case, the possession of the appellant was effected through the sale deeds, dated 11-4-1934 and 5-7-1936. Therefore, the alleged fact of adverse possession bears a pronounced backdrop of 1933 sale deed passing 1 acre 21 guntas to the respondent.

58. Are we to say that it is a sale with doubtful antecedents (1 acre 23 guntas) sought to be perfected or completed through adverse possession? But that aspect of the matter is not under consideration herein. As has already been mentioned, adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and wilful neglect but also on account of possessor's positive intent to dispossess. Therefore it is important to take into account before stripping somebody of his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the paper-owner of the property. This test forms the basis of decision in the instant case.

59. The argument for a more intrusive inquiry for adverse possession must not be taken to be against the law of limitations. Limitation statutes as statutes of repose have utility and convenience as their purpose. Nevertheless, there has been change on this front as well which has been noticed by us heretobefore.

60. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly with costs. Counsel's fee assessed at Rs 25,000.

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(2005) 8 Supreme Court Cases 330

(BEFORE S.B. SINHA AND R.V. RAVEENDRAN, JJ.)

SAROOP SINGH .. Appellant;

Versus

BANTO AND OTHERS .. Respondents.

Civil Appeal No. 4426 of 1999†, decided on October 7, 2005

A. **Limitation — Punjab Limitation (Custom) Act, 1920 (1 of 1920) — S. 2(b) — Limitation period under — Applicability — Widow with life interest in husband's property donating the same to a third party by a gift deed prior to 1956 — Civil court holding that the said gift would not affect the reversionary rights of the daughters of the original property owner after the widow's death — Subsequently, the widow dying and the daughters inheriting the property under the provisions of Hindu Succession Act, 1956 and filing a suit for possession thereof — The title of the daughters having already been declared by the civil court in the earlier suit, limitation period under S. 2(b), held, not applicable to such a suit — Further held, in the said circumstances, the claim of the plaintiffs to title by inheritance instead of as reversioners, held, nonetheless justified — Hindu Succession Act, 1956, S. 8 and Sch.**

B. **Limitation Act, 1963 — S. 3 and Art. 65 — Onus of proof — Suit for possession based on title — Plaintiff already having proved his title in an earlier suit — In such circumstances the onus to prove acquisition by adverse possession, held, lay on the defendant — The defendant having not raised any plea of adverse possession, the suit, held, not time-barred — In the absence of such a plea the possession of the defendant, held devoid of the requisite animus so as to make his possession adverse for the purpose of commencement of prescription period**

C. **Limitation Act, 1908 — Arts. 142 and 144 — Provisions of, contrasted with provisions of Arts. 64 and 65 of the 1963 Act**

D. **Evidence Act, 1872 — Ss. 107 and 108 — Presumption under S. 108, of death of a person not having been heard for the stipulated period of seven years, held, not a ground to presume that such person had died seven years ago**

S was the owner of the suit property. On his death, his widow, *I*, inherited the same. On 7-1-1955, *I* donated the suit property to the appellant herein by a gift deed. *H*, one of the reversioners of *S* filed a suit in 1957 challenging the validity of that gift on the allegation that *I* had only a limited life interest therein which would not affect the reversioners' rights after the death of *I*. The suit was decreed and the gift deed was held to be valid only so long as *I* was alive. In 1994, the plaintiff-respondents herein filed a suit on the basis of the decree in the previous suit, for possession of, and permanent injunction restraining the defendant-appellant from alienating, the property. The plaintiffs alleged that not having been heard of for the preceding seven years, *I* was presumed to be dead. In his written statement, the appellant herein submitted, inter alia, that the suit was time-barred. On the basis of the decree in the previous suit, the trial court upheld

† From the Judgment and Order dated 24-8-1998 of the Punjab and Haryana High Court in RSA No. 1 of 1998

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the claim of the plaintiff-respondents. It also upheld the presumption of the death of *I* on the basis of Section 108, Evidence Act. Noting that defendants had not set up the plea of adverse possession it held that the suit was within limitation. After unsuccessfully filing an appeal, the appellant filed a second appeal before the High Court. Relying on Entry 2(*b*) of the Schedule to the Punjab Limitation (Custom) Act, 1920, affirming the findings of the courts below that the appellant could not prove the date of death of *I*, the High Court held that the suit was within limitation. It further observed that the suit was based on title on *I*'s death and in view of Article 65 of the Limitation Act, it was for the defendant-appellant to prove that title was perfected by adverse possession. The defendant-appellant then filed the present appeal.

Before the Supreme Court, the appellant contended that: (*i*) merely by reason of Section 108, Evidence Act the date of death could not be fixed, (*ii*) it was for the plaintiff-respondents to prove the date of *I*'s death as the suit was not based on title, and (*iii*) the courts below erred in relying on Article 65 of the Limitation Act.

On the other hand, the plaintiff-respondents contended that on death of *I*, the succession reopened in view of the declaratory decree passed earlier. That the appellant having not set up any plea of adverse possession, the suit was not time-barred and Article 65 of the Limitation Act was not applicable.

Dismissing the appeal, the Supreme Court

Held :

Undisputedly, the judgment and the decree in the earlier suit had attained finality. It is also not in dispute that *I* had only a life interest. The deed of gift dated 7-1-1955 was, therefore, held to be valid only so long as she was alive. On her death the succession reopened having regard to the provisions of the Hindu Succession Act, 1956. The respondents being daughters inherited the interest of *S*. They were also reversioners in terms of their personal law as was opined by the civil court in the earlier suit. The plaintiff-respondents, therefore, rightly claimed their title by inheritance. (Paras 15 and 16)

Entry 2(*b*) of the Punjab Limitation (Custom) Act, 1920 has no application herein as the title of the suit property in favour of the respondents herein had already been declared by the civil court in the earlier suit. Moreover, a declaratory decree obtained by a reversioner is not binding upon the actual owner. In the suit, it was not necessary for the respondents herein to claim their reversionary rights, as the same had already been declared in the earlier suit. In the present case, the respondents had a better title. They were not parties in the earlier suit. They, therefore, claimed their title independent of the declaratory decree, although such right had been noticed therein. (Paras 17, 18 and 20)

Giani Ram v. *Ramjilal*, (1969) 1 SCC 813; *Shakuntla Devi* v. *Kamla*, (2005) 5 SCC 390, *referred to*

Undisputedly, the date of death of *I* was not certain. By reason of Section 108, Evidence Act a presumption of death can be raised. In the present case, however, death of *I* is not in question, the date of death is. Both the parties have failed to prove the date of death of *I*. However, having regard to the presumption contained in Section 108 of the Evidence Act, the Court shall presume that she was dead having not been heard of for a period of seven years by those who would naturally have heard of her, if she had been alive, but that by itself would

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not be a ground to presume that she had died seven years prior to the date of institution of the suit. (Para 22)

Lal Chand Marwari v. *Mahant Ramrup Gir*, AIR 1926 PC 9 : 53 IA 24; *LIC of India* v. *Anuradha*, (2004) 10 SCC 131, *relied on*

Rango Balaji v. *Mudiyeppa*, ILR (1899) 23 Bom 296; *Phene's Trusts, In re*, (1870) 5 Ch App 139 : (1861-73) All ER Rep 514, *referred to*

However, the death of *I* would not assume any significance as in the present case the question of applicability of Limitation Act does not arise. The appellant has not raised any plea that after the death of *I*, his possession became adverse to the true owner and that on the expiry of the statutory period of limitation he had perfected his title by adverse possession. (Para 26)

In terms of Articles 142 and 144 of the Limitation Act, 1908, it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. Since the first defendant-appellant did not raise any plea of adverse possession, the suit was not time-barred. (Para 28)

In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically stated that his possession was not adverse being that of true owner, the logical corollary is that he did not have the requisite animus. (Paras 29 and 30)

Vasantiben Prahladji Nayak v. *Somnath Muljibhai Nayak*, (2004) 3 SCC 376; *Mohd. Mohd. Ali* v. *Jagadish Kalita*, (2004) 1 SCC 271; *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779, *relied on*

H-M/33289/C

Advocates who appeared in this case :

P.L. Jain, Senior Advocate (Balbir Singh Gupta, Advocate, with him) for the Appellant;

P.N. Mishra, Senior Advocate (K.P. Singh, Dr. H.P. Rathi, K.S. Rana, M.M. Kashyap, Shalman Ali and Harendra Singh Chaudhary, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2005) 5 SCC 390, *Shakuntla Devi* v. *Kamla* 336*c-d*
2. (2004) 10 SCC 779, *Karnataka Board of Wakf* v. *Govt. of India* 340*b-c*
3. (2004) 10 SCC 131, *LIC of India* v. *Anuradha* 338*c-d*
4. (2004) 3 SCC 376, *Vasantiben Prahladji Nayak* v. *Somnath Muljibhai Nayak* 340*a-b*
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6. (1969) 1 SCC 813, *Giani Ram* v. *Ramjilal* 335*d-e*, 336*d-e*
7. AIR 1926 PC 9 : 53 IA 24, *Lal Chand Marwari* v. *Mahant Ramrup Gir* 337*f*
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The Judgment of the Court was delivered by

S.B. SINHA, J.— The first defendant in the suit is in appeal before us. The plaintiff-respondents filed a suit for possession and permanent injunction, being Suit No. 218 of 1994.

2. One Shadi admittedly was the owner of the suit property. He left behind his widow Indira Devi, who inherited the same. On or about 7-1-1955, by a deed of gift Indira Devi donated the suit property in favour of the appellant herein. One Harnama, son of Jatti and Nathu, son of Chetu (as reversioners of the said Shadi) filed a suit being Suit No. 204 of 1957 challenging the legality of the said deed of gift, contending that the said Indira Devi had a limited life interest therein.

3. In terms of a judgment and decree dated 31-1-1958, the said suit was decreed. The said Indira Devi is stated to have died subsequently. Her date of death is not known. The plaintiff-first respondent contended that she died at Haridwar in the year 1961. While filing the aforementioned suit on 7-7-1994, the respondents raised a plea that as she was not heard of for a period of seven years prior thereto by them and by others who would have heard from her had she been alive, she was presumed to have died.

4. The plaintiff-respondents, as regards the earlier suit, averred:

> "One Harnama, son of Jatti and one Nathu, son of Chetu challenged the gift deed mentioned above in the year 1957 through Suit No. 204 and sought declaration to the effect that the gift deed in dispute shall not affect their reversionary rights after the death of Indira Devi and their suit was decreed on 31-1-1958 by Sub-Judge, First Class, Ambala. However, at the same time it was observed by the learned Sub-Judge, that declaratory decree will ensue for the benefit of daughters of Shadi deceased. Apart from it under the customary law of Punjab Smt Indira Devi was not absolute owner on 7-1-1955 i.e. the day of gift of the suit properties, rather on the other hand she was only having life interest in the suit properties and could not gift away the same to Defendant 1 as Smt Indira Devi had already parted with the suit properties in favour of Defendant 1 and could not become absolute owner with the passing of the Hindu Succession Act, 1956, rather her life interest continued through in the hand of Defendant 1."

5. In the said suit, the plaintiff-respondents prayed:

> "It is, therefore, prayed that the suit of the plaintiffs for possession as owner of the land comprised in Kh/kh No. 285/356, Khasra Nos. 194(8-4), 195(5-7), 2124(6-18), 1854(1-2), 1859(4-7), 1856(4-7), 851(4-3), 850/2(0-8), 1621(0-15), and for symbolical possession as owner of the land comprised in Kh/kh No. 285/337, Khasra Nos. 849(1-10), 850(3-7), situated within the revenue limits of Village Mullanpur Garib Dass and of 1/6 share of Khasra No. 2078(3-7) and of 1/6 share out of bara bounded as ... and for permanent injunction restraining Defendant 1 from alienating the suit properties to anybody

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may kindly be decreed in favour of the plaintiff against the defendants with costs.

Any other relief this learned court deems fit may kindly be granted to the plaintiff in the interest of justice."

6. The statement made in para 1 was traversed by the appellant herein in para 3 of the written statement, contending:

"It is incorrect and denied. Smt Indira Devi who had been absolute owner of the suit properties and she made a valid gift in favour of the answering defendant."

7. A plea that the suit is time-barred was also raised as an additional plea.

8. The learned trial Judge in view of the pleadings of the parties, inter alia, framed the following issues:

"*3*. What is the effect of the judgment and decree dated 31-1-1958? OPP parties

4. Whether Smt Indira Devi has not been heard for the last 7/7-½ years back by the plaintiff and other family members and is presumed to be dead? OPP

5. Whether the plaintiffs are entitled to possession of the suit land? OPP

6. Whether suit is time-barred? OPP"

9. While dealing with Issue 3, the trial court noticed that in the judgment and decree passed in Suit No. 204 of 1957, which was marked as Ext. P-3 and Ext. P-4, it was observed that the declaratory decree would ensue for the benefit of the daughters of Shadi, who were the plaintiffs therein, and on that basis decided the said issue in favour of the plaintiff-respondents.

10. As regards Issue 4, it while holding that there was no cogent evidence proving the death of Indira Devi in the year 1961 recorded a finding that she was presumed to have died on account of her untraceability for more than 7 years in terms of Section 108 of the Indian Evidence Act. As regards Issues 5 and 6, the trial court held:

"... The defendant has nowhere pleaded that he became the owner of the suit land by way of adverse possession. No amount of evidence can be taken into account by travelling beyond the pleadings of the parties. The defendant has neither pleaded nor set up any adverse possession over the suit property. No period of limitation is prescribed for bringing a suit for possession on the basis of inheritance. The suit for possession on the basis of inheritance can fail if the defendant proves that he has perfected his title by way of adverse possession. In the instant case, the defendants have not set up any adverse possession and consequently the suit is within time under Article 65 of the Limitation Act, 1963...."

11. The appeal preferred thereagainst by the appellant was dismissed. In the second appeal filed before the High Court, the appellant, inter alia, raised the question of limitation. The High Court relying on or on the basis of Entry

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2(*b*) of the Schedule appended to the Punjab Limitation (Customs) Act, 1920, affirming the findings of the courts below that the appellant could not prove the date of death of Indira Devi, held that the suit is not barred by limitation stating:

> "... Since the defendant-appellant failed to prove the death of Indira Devi, it cannot be said that the suit filed by the plaintiffs is barred by time. In fact the suit filed is basing on the acquisition of title on the death of Indira Devi. Thus the suit is based on title as it cannot be disputed that the plaintiffs became entitled to the suit property on the death of their mother. It is for the defendant-appellant to prove that he has perfected his title being in adverse possession for over 12 years from the date of death of Indira Devi and that the plaintiffs lost their right to sue by efflux of time. Under Article 65 of the Limitation Act, the burden of proof that he perfected his title by adverse possession is on the defendant-appellant."

12. Mr P.L. Jain, the learned Senior Counsel appearing on behalf of the appellant herein, would contend that the courts below committed a manifest error of law insofar as they failed to properly interpret the provisions of Sections 107 and 108 of the Evidence Act; as by reason thereof a date of death cannot be fixed. It was urged that Indira Devi did not become an absolute owner in terms of the provisions of the Hindu Succession Act, 1956 as she was not possessed of the property on the date of coming into force thereof and in that view of the matter the courts below had committed a serious error in passing the impugned judgments relying on or on the basis of Article 65 of the Limitation Act, 1963. Reliance, in this connection, has been placed on *Giani Ram* v. *Ramjilal*[1].

13. It was submitted that it was for the plaintiff-respondents to prove the date of death of Indira Devi as they have not filed a suit based on title.

14. Mr P.N. Misra, the learned Senior Counsel appearing on behalf of the plaintiff-respondents, on the other hand, would contend that on the death of Indira Devi, the succession reopened in view of the declaratory decree passed by the civil court. It was argued that having regard to the fact that the appellant having not set up any plea of adverse possession, the suit cannot be held to be barred by limitation and in that view of the matter Article 65 of the Limitation Act, 1963 will have no application.

15. It has not been disputed before us that the judgment and decree passed in Suit No. 204 of 1957 had attained finality. In the said suit, it was held:

> "... In the present case the declaratory decree will ensue for the benefit of the daughters of Shadi deceased and the daughters' sons who are minors. In the circumstances, I would in exercise of my discretion, grant the plaintiffs a decree for a declaration to the effect that the gift in dispute shall not affect their reversionary rights after the death of Defendant 1. The parties are, however, left to bear their own costs...."

1 (1969) 1 SCC 813

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16. It is furthermore not in dispute that Indira Devi had only a life interest. The deed of gift dated 7-1-1955 was, therefore, held to be valid only so long as she was alive. On her death the succession reopened having regard to the provisions of the Hindu Succession Act, 1956. The respondents being daughters inherited the interest of Shadi. They were also reversioners in terms of their personal law as was opined by the civil court in the earlier suit. The plaintiff-respondents, therefore, rightly claimed their title by inheritance.

17. Entry 2(*b*) of the Punjab Limitation (Customs) Act, 1920 provides for a limitation of three years, when a suit is filed for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom. The said provision has no application herein as the title of the suit property in favour of the respondents herein had already been declared by the civil court in the earlier suit, subject to the condition that they remain owners thereof. The civil court took into consideration the customary law as also the provisions of the Hindu Succession Act while arriving at the said finding. Moreover, a declaratory decree obtained by a reversioner is not binding upon actual owner, in view of the decision of this Court in *Shakuntla Devi* v. *Kamla*[2].

18. In the suit, it was not necessary for the respondents herein to claim their reversionary rights, as the same had already been declared in the earlier suit.

19. This Court in *Giani Ram*[1] held: (SCC pp. 815-16, para 5)

> "5. The Punjab Custom (Power to Contest) Act, 1 of 1920, was enacted to restrict the rights exercisable by members of the family to contest alienations made by a holder of ancestral property. By virtue of Section 6 of the Act no person is entitled to contest an alienation of ancestral immovable property unless he is descended in the male line from the great-greatgrandfather of the alienor. Under the customary law in force in Punjab a declaratory decree obtained by the reversionary heir in an action to set aside the alienation of ancestral property enured in favour of all persons who ultimately took the estate on the death of the alienor for the object of a declaratory suit filed by a reversionary heir impeaching an alienation of ancestral estate was to remove a common apprehended injury, in the interest of the reversioners. The decree did not make the alienation a nullity — it removed the obstacle to the right of the reversioner entitled to succeed when the succession opened. By the decree passed in Suit No. 75 of 1920, filed by Giani Ram it was declared that the alienations by Jwala were not binding after his lifetime, and the property will revert to his estate. It is true that under the customary law the wife and the daughters of a holder of ancestral property could not sue to obtain a declaration that the alienation of ancestral property will not bind the reversioners after the death of the alienor. But a declaratory

2 (2005) 5 SCC 390

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decree obtained in a suit instituted by a reversioner competent to sue has the effect of restoring the property alienated to the estate of the alienor."

a **20.** In this case, the respondents herein have a better title. They were not parties in the earlier suit. They, therefore, claimed their title independent of the declaratory decree, although such right has been noticed therein. We would consider the question of applicability of the Limitation Act a little later but before doing that we may consider the question of date of death of Indira Devi.

b **21.** Sections 107 and 108 of the Evidence Act read:

"107. *Burden of proving death of person known to have been alive within thirty years.*—When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

c 108. *Burden of proving that person is alive who has not been heard of for seven years.*—Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

Section 108 is a proviso to Section 107.

d **22.** There is neither any doubt nor dispute that the date of death of Indira Devi is not certain. By reason of the aforementioned provision, a presumption of death can be raised. In this case, however, death of Indira Devi is not in question, the date of death is. In the instant case, both the parties have failed to prove the date of death of Indira Devi. However, having regard to the presumption contained in Section 108 of the Evidence Act, the e Court shall presume that she was dead having not been heard of for a period of seven years by those who would naturally have heard of her, if she had been alive, but that by itself would not be a ground to presume that she had died seven years prior to the date of institution of the suit.

23. In *Lal Chand Marwari* v. *Mahant Ramrup Gir*[3] it was observed: (IA f p. 32)

"Now upon this question there is, Their Lordships are satisfied, no difference between the law of India as declared in the Indian Evidence Act and the law of England: *Rango Balaji* v. *Mudiyeppa*[4]; searching for an explanation of this very persistent heresy Their Lordships find it in the words in which the rule both in India and in England is usually g expressed. These words taken originally from *Phene's Trusts, In re*[5] run as follows:

'If a person has not been heard of for seven years, there is a presumption of law that he is dead: but at what time within that

h 3 AIR 1926 PC 9 : 53 IA 24
4 ILR (1899) 23 Bom 296
5 (1870) 5 Ch App 139 : (1861-73) All ER Rep 514

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period he died is not a matter of presumption but of evidence and the onus of proving that the death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential.'

Following these words, it is constantly assumed — not perhaps unnaturally — that where the period of disappearance exceeds seven years, death, which may not be presumed at any time during the period of seven years, may be presumed to have taken place at its close. This of course is not so. The presumption is the same if the period exceeds seven years. The period is one and continuous, though it may be divisible into three or even four periods of seven years. Probably the true rule would be less liable to be missed, and would itself be stated more accurately, if, instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one 'of not less than seven years'."

24. In *LIC of India* v. *Anuradha*[6] this Court held: (SCC pp. 137-38, para 12)

"*12.* Neither Section 108 of the Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years' absence and being unheard of having elapsed before that time. The presumption stands unrebutted for failure of the contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted backwards from the date on which the question arose for determination. At what point of time the person was dead is not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which will depend on proof of the date or time of death."

25. However, the date of death of Indira Devi would not assume any significance, as would appear from the discussions made hereinafter.

26. In the instant case, the question of applicability of the Limitation Act does not arise. The appellant-first defendant could have legitimately raised a plea that Indira Devi having died in the year 1961, his possession thereafter has become adverse to the true owner and, thus, on the expiry of the statutory period of limitation he had perfected his title by adverse possession. But, he did not raise such a plea. Even before us, Mr Jain categorically stated that the appellant does not intend to raise such a plea.

6 (2004) 10 SCC 131

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27. Articles 64 and 65 of the Limitation Act read thus:

	Description of suit	*Period of limitation*	*Time from which period begins to run*
64.	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
65.	For possession of immovable property or any interest therein based on title. *Explanation*.—For the purposes of this article— (*a*) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (*b*) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (*c*) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

28. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

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29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See *Vasantiben Prahladji Nayak* v. *Somnath Muljibhai Nayak*[7].)

30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali* v. *Jagadish Kalita*[8], SCC para 21.)

31. Yet again in *Karnataka Board of Wakf* v. *Govt. of India*[9] it was observed: (SCC p. 785, para 11)

> "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."

32. In view of our findings aforementioned, we are of the opinion that there is no merit in this appeal, which is accordingly dismissed. No costs.

(2005) 8 Supreme Court Cases 340

(BEFORE B.N. SRIKRISHNA AND C.K. THAKKER, JJ.)

DAYANDEO GANPAT JADHAV .. Appellant;

Versus

MADHAV VITTHAL BHASKAR AND OTHERS .. Respondents.

Civil Appeal No. 3370 of 2003†, decided on October 21, 2005

A. **Tenancy and Land Laws — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) — Ss. 32-G, 32, 32-M, 32-P, 15, 74, 76 and 82 — Application under S. 35-G for fixation of purchase price of land after surrendering the land — Maintainability — Scope of interference with orders of Appellate Authority and Revisional Authority, by High Court**

7 (2004) 3 SCC 376

8 (2004) 1 SCC 271

9 (2004) 10 SCC 779

† From the Judgment and Order dated 30-8-2000 of the Bombay High Court in WP No. 5844 of 1987

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interest litigation, in spite of the caution in *S.P. Gupta case*[9]. The note of caution has yielded no fruitful result and on the contrary these busybodies continue to make reckless allegations and vitriolic statements against judges and persons whose names are under consideration for judgeship. Therefore, it has become imperative to take stern action against these persons. It is not the ipse dixit of any individual to say as to whether the recommended person is fit for appointment, by making wild allegations, which has become common these days, and has resulted in delaying appointment of judges, though a large number of vacancies exist in different High Courts. All possible care and caution is exercised before appointment of a judge is made. It is true that no system is infallible, but at the same time the sinister design of people intended to thwart the prospects of a person likely to be appointed as a judge has to be nipped in the bud. The petitioner has not shown any material to show that he is really interested in the welfare of the judicial system or the institution of the judiciary. As indicated above, he appears to be a busy person seeking publicity and a person who has no genuine concern for the institution. If such type of petitions are permitted to be entertained it will cause immense damage to the system itself. High-sounding words used in the petition about the desirability of a transparent judicial system cannot in our view turn a misconceived petition filed with oblique motives to be treated as a public interest litigation. This petition deserves to be dismissed with exemplary costs and we direct so. The petition though deserves to be dismissed with costs of Rs 50,000 hoping that the petitioner would mend his ways and would not hazard such vexatious litigations in future dismiss the same with costs of Rs 10,000 which the petitioner shall deposit in the Registry of this Court within six weeks from today. If deposit is made, it shall be remitted to the Supreme Court Legal Services Authority. In case the cost is not deposited within the time stipulated, the Registry shall forward this order to the Punjab and Haryana High Court and the High Court shall have it recovered by coercive means of recovery and remit the same to this Court, which on receipt shall be paid to the Supreme Court Legal Services Authority.

(2004) 3 Supreme Court Cases 376

(BEFORE ASHOK BHAN AND S.H. KAPADIA, JJ.)

VASANTIBEN PRAHLADJI NAYAK AND OTHERS .. Appellants;

Versus

SOMNATH MULJIBHAI NAYAK AND OTHERS .. Respondents.

Civil Appeal No. 6432 of 1998†, decided on March 9, 2004

A. **Limitation Act, 1963 — Art. 65 Expln. (a) — Applicability to a case of partition — Estates in expectancy as distinguished from estates in possession — Held, estates in remainder/reversion are estates in expectancy,**

† From the Judgment and Order dated 28-4-1998 of the Gujarat High Court in SA No. 360 of 1978

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therefore adverse possession against a life tenant will not bar the reversioner/remainderman from succeeding to the estate on demise of life tenant — In case of partition however, each co-sharer has an antecedent title and therefore there is no conferment of a new title and Art. 65 Expln. (a) has no application to such a case — Adverse Possession — Transfer of Property Act, 1882 — S. 6

B. **Civil Procedure Code, 1908 — S. 54 and Or. 20 R. 18 — Partition — Nature of — Held, partition is really a process by which joint enjoyment of the property is transformed into an enjoyment severally — Each co-sharer has an antecedent title and therefore there is no conferment of a new title — Transfer of Property Act, 1882 — S. 5 — Hindu Law — Partition — Nature of — Co-owner — Nature of interest in partible estate**

Dismissing the appeal, the Supreme Court

Held :

Under the common law, there are two types of estates, namely, estates in possession and estates in expectancy. Estates in remainder/reversion are estates in expectancy as opposed to estates in possession. Consequently, adverse possession against a life tenant will not bar the reversioner/remainderman from succeeding to the estate on the demise of the life tenant. This is the reason for enacting Explanation (*a*) to Article 65 of the Limitation Act, 1963. Partition is really a process by which a joint enjoyment of the property is transformed into an enjoyment severally. In the case of partition, each co-sharer has an antecedent title and, therefore, there is no conferment of a new title. (Paras 5 and 6)

Ram Kristo Mandal v. *Dhankisto Mandal*, AIR 1969 SC 204 : (1969) 1 SCR 342, *clarified*
Mulla: *Transfer of Property Act*, 9th Edn., p. 77, *referred to*

In the circumstances, the appellants cannot be heard to say that they became the owners of the property only when the partition deed was executed on 29-11-1965. Explanation (*a*) to Article 65 of the Limitation Act, 1963 has no application to the facts of this case. Moreover, the facts show that the appellants had asserted not only their own possession, they had also asserted the possession of *P* (husband of Appellant 1 and father of the remaining appellants) prior to his death six years before the institution of the suit in 1968. (Paras 6 and 5)

C. **Adverse Possession — Elements to be proved in claim of — Held, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession became adverse — Limitation Act, 1963 — Art. 65 — Starting point of limitation**

To establish ouster in cases involving claim of adverse possession the defendant has to prove three elements namely, hostile intention; long and uninterrupted possession; and exercise of the right of exclusive ownership openly and to the knowledge of the owner. In cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but it commences from the date when the defendant's possession became adverse. Therefore, in the present case, the starting point of limitation for adverse possession cannot be taken as 29-11-1965 and one has to take the date when the respondents' possession became adverse. (Paras 7 and 6)

Hanamgowda Shidgowda Patil v. *Irgowda Shivgowda Patil*, AIR 1925 Bom 9 : 26 Bom LR 829, *approved*

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In the present case, there is a concurrent finding of fact recorded by the courts below to the effect that the respondents are in possession of the suit land from 1935 or in any event from 1941; that they have paid revenue cess from 1940; that they have paid property taxes; that their names were recorded in the revenue records and they were granted permission by the Panchayat to construct the compound wall. Moreover, in her deposition before the trial court, Appellant 1 had deposed that her husband had died six years prior to the institution of the suit; that the suit land was in possession of her father-in-law and after his death it came in possession of *P* (husband); that during the lifetime of *P*, the defendants had asked *P* to allow them to construct a building on the land which he refused and that the respondents constructed the compound wall without their permission. In view of the above concurrent findings of fact recorded by the courts below on the issue of adverse possession, there is no reason to interfere in the matter. (Para 7)

D-M/29759/C

Advocates who appeared in this case :

Ramesh Singh and Ms Meenakshi Arora, Advocates, for the Appellants;

R.P. Bhatt, Senior Advocate (M.N. Shroff and Chirag M. Shroff, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. AIR 1969 SC 204 : (1969) 1 SCR 342, *Ram Kristo Mandal* v. *Dhankisto Mandal* 380*a*, 380*a-b*
2. AIR 1925 Bom 9 : 26 Bom LR 829, *Hanamgowda Shidgowda Patil* v. *Irgowda Shivgowda Patil* 380*e*

The Judgment of the Court was delivered by

KAPADIA, J.— The appellants (plaintiffs) filed a suit bearing No. 116 of 1968 in the Court of Civil Judge, Narol for a declaration that they were owners of ancestral house site land bearing GP No. 497 in Sarkhej, District Ahmedabad and for recovery of possession thereof from the respondents (defendants) and also for permanent injunction restraining the respondents from interfering with their possession over the disputed land. According to the appellants, the suit land was ancestral property belonging to the father-in-law of Vasantiben (Appellant 1) and after his death the property came in possession of her husband. According to the appellants, in the lifetime of the husband of Appellant 1, the respondents used to tell the husband of Appellant 1 to allow them to make construction on the land. According to Appellant 1, her husband did not permit the respondents to make construction till his death i.e. six years prior to the institution of the suit. That even before his demise, the respondents used to tell Appellant 1 to donate the land to the community which she refused and soon thereafter the respondents started constructing a compound wall without her permission. In the circumstances, she filed a suit on 25-3-1968 to prevent the respondents from disturbing her possession.

2. The respondents *inter alia* denied in the suit that the husband of Appellant 1 was in possession of the suit land till he died or that after his demise, the appellants were in possession of the suit land. In the suit, they contended that they were in possession of the suit land for more than twelve

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years and that they were owners by adverse possession. They also contended that the suit was barred by limitation. In the suit, there was a dispute regarding the identity of the land. In the suit, there was a dispute regarding title of the appellants over the suit land. By the judgment and order dated 10-11-1975, the trial court dismissed the suit on the ground that the appellants had failed to prove their title over the suit land. Being aggrieved, the appellants went by way of Civil Appeal No. 133 of 1976 to the District Court, Ahmedabad which came to the conclusion that the appellants had identified the suit land. Further, the District Court came to the conclusion that the appellants had proved their title to the suit land. Consequently, the appeal was allowed vide judgment and order dated 27-3-1978.

3. Being aggrieved, the respondents herein went by way of second appeal under Section 100 CPC to the High Court being Appeal No. 360 of 1978. By judgment and order dated 22-1-1997, the High Court came to the conclusion that the lower appellate court could not have passed the decree for possession in favour of the appellants without deciding the issue of limitation and adverse possession. Consequently, keeping the second appeal pending before it, the High Court called for the findings on the above two issues from the District Court, Ahmedabad. On remand of the above issues, the District Court found that the respondents were in possession since 1934 as indicated by the books of accounts and revenue receipts for payments made to its revenue assessment. The District Court further found that the respondents had been paying land revenue from 1940. The District Court further found that the Gram Panchayat had even permitted the respondents to construct the compound wall vide a resolution (Ext. 132). In the circumstances, the District Court came to the conclusion that the respondents had acquired title by way of adverse possession. On the point of limitation, the District Court found that the respondents were in possession from 1935 or in any event from 1941 whereas the suit had been filed only on 25-3-1968 for possession and consequently, the suit was barred by law of limitation. Therefore, both the issues were decided in favour of the respondents herein by the District Court vide judgment dated 30-4-1997. The High Court which was seized of Second Appeal No. 360 of 1978 after hearing the parties confirmed the findings of the District Court on the above two issues and accordingly disposed of the second appeal vide impugned judgment dated 28-4-1998. Hence, the original plaintiffs have come by way of civil appeal to this Court.

4. Shri Ramesh Singh, learned counsel appearing on behalf of the appellants submitted that the appellants became owners of the suit land as reversioners under a registered deed of partition dated 29-11-1965 and consequently, the suit filed by the appellants was neither barred by limitation nor by adverse possession. He contended that the High Court had erred in holding that adverse possession in respect of suit land began to run against the appellants prior to 29-11-1965. In this connection, he has placed reliance on Explanation (*a*) to Article 65 of the Limitation Act (hereinafter referred to as "the said Act"). In support of his above argument, learned counsel for the

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appellants has also placed reliance on the judgment of this Court in the case of *Ram Kristo Mandal* v. *Dhankisto Mandal*[1].

5. We do not find merit in the above argument advanced on behalf of the appellants. In the case of *Ram Kristo Mandal* v. *Dhankisto Mandal*[1] it has been held by this Court that the right of the reversioner to recover possession of the property within twelve years from the death of the widow is not only based on provisions of the Limitation Act but on the principles of Hindu law and the general principles that the right of a reversioner is in the nature of *spes successionis* (estate in expectancy) and such reversioner does not trace his title through the widow. Under the common law, there are two types of estates, namely, estates in possession and estates in expectancy. Estates in remainder/reversion are estates in expectancy as opposed to estates in possession. Consequently, adverse possession against a life tenant will not bar the reversioner/remainderman from succeeding to the estate on the demise of the life tenant. This is the reason for enacting Explanation (*a*) to Article 65 of the said Act, which has no application to the facts of this case.

6. At this stage, it is important to bear in mind that partition is really a process by which a joint enjoyment of the property is transformed into an enjoyment severally. In the case of partition, each co-sharer has an antecedent title and, therefore, there is no conferment of a new title. (See Mulla: *Transfer of Property Act*, 9th Edn., p. 77.) In the circumstances, the appellants cannot be heard to say that they became the owners of the property only when the partition deed was executed on 29-11-1965. Lastly, the facts abovementioned show that the appellants had asserted not only their own possession, they had also asserted the possession of Prahladji (husband of Appellant 1 and father of the remaining appellants) prior to his death. In the case of *Hanamgowda Shidgowda Patil* v. *Irgowda Shivgowda Patil*[2] it has been held that in cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but it commences from the date when the defendants' possession became adverse. Therefore, in the present case, the starting point of limitation for adverse possession cannot be taken as 29-11-1965 and one has to take the date when the respondents' possession became adverse. For all the above reasons, there is no merit in the above arguments advanced on behalf of the appellants.

7. Shri Ramesh Singh, learned counsel appearing on behalf of the appellants next contended that in the present case the respondents have failed to prove the ouster along with other three circumstances, namely, hostile intention; long and uninterrupted possession; and exercise of the right of exclusive ownership openly and to the knowledge of the owner. We do not find any merit in this argument. It is correct to say that the defendants have to prove three elements mentioned above to establish ouster in cases involving claim of adverse possession. However, in the present case, there is a

1 AIR 1969 SC 204 : (1969) 1 SCR 342

2 AIR 1925 Bom 9 : 26 Bom LR 829

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concurrent finding of fact recorded by the courts below to the effect that the respondents are in possession of the suit land from 1935 or in any event from 1941; that they have paid revenue cess from 1940; that they have paid property taxes; that their names were recorded in the revenue records and they were granted permission by the Panchayat to construct the compound wall. Moreover, in her deposition before the trial court, Appellant 1 had deposed that her husband had died six years prior to the institution of the suit; that the suit land was in possession of her father-in-law and after his death it came in possession of Prahlad (husband); that during the lifetime of Prahlad, the defendants had asked Prahlad to allow them to construct a building on the land which he refused and that the respondents constructed the compound wall without their permission. In view of the above concurrent findings of fact recorded by the courts below on the issue of adverse possession, we do not see any reason to interfere in the matter.

8. For the aforestated reasons, civil appeal stands dismissed, with no order as to costs.

(2004) 3 Supreme Court Cases 381

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND DR AR. LAKSHMANAN, JJ.)

JAI DURGA FINVEST (P) LTD. . . Appellant;

Versus

STATE OF HARYANA AND OTHERS . . Respondents.

Civil Appeal No. 9267 of 2003†, decided on January 5, 2004

A. **Contract Act, 1872 — Ss. 56 & 67 and 32 — Doctrine of frustration — Induced frustration — Whether contract stood frustrated due to non-performance of obligation by the other party — Appellant entering into contract for extraction of mineral with respondent State Government — Government statutorily obligated to assist appellant in acquisition of land for purposes thereof, which obligation incorporated in agreement by its being executed in the standard statutory form — Appellant unable at first instance to acquire land on its own on basis of requisite powers demised to it under mining contract — Government not extending assistance in regard thereto and thereby not discharging its statutory obligation — Whether contract stood frustrated and discharged the appellant from its obligation to make contractual payments and from forfeit of the deposit made — Mines and Minerals — Punjab Minor Mineral Concession Rules, 1964 — R. 33, Form L, cl. 27 — Non-performance of obligation of State Government thereunder — Constitution of India — Art. 299 — Government contracts**

B. **Contract Act, 1872 — Ss. 54, 51, 52 and 39 — Order of performance of reciprocal obligations not expressly fixed by contract, but such order manifestly evident from nature of transaction — Moreover, the obligation**

† Arising out of SLP (C) No. 9491 of 2003. From the Judgment and Order dated 7-10-2002 of the Punjab and Haryana High Court in CWP No. 12114 of 2000

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Commission in its order has not adverted to this fact and has not recorded a finding as to any actual loss or injury caused to the respondent.

13. Since the respondent in the present case failed to aver as well as prove that actually any loss or injury was caused to it which was the *sine qua non* for invoking the provisions of Section 36-A, this appeal is accepted. The MRTP Commission has also not recorded any finding as to whether any actual loss or injury or a notional loss was caused to the respondent. Accordingly, the impugned order is set aside and the appeal is allowed. There shall be no order as to costs.

(2005) 6 Supreme Court Cases 614

(BEFORE S.N. VARIAVA AND TARUN CHATTERJEE, JJ.)

NARNE RAMA MURTHY .. Petitioner;

Versus

RAVULA SOMASUNDARAM AND OTHERS .. Respondents.

SLPs (C) Nos. 20182-84 of 2003 with Nos. 20226-28 of 2003†, decided on August 17, 2005

A. **Limitation — Question of limitation — Duty of court to decide — Necessity of plea and proof — Held, when limitation is the pure question of law and from the pleadings itself it becomes apparent that the suit is barred by limitation, then it is the duty of the court to decide limitation at the outset even in the absence of a plea — But, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved — In the instant case, the question of limitation was intricately linked with the question whether the agreement to sell was entered into by petitioner on behalf of all and whether possession was on behalf of all — It was also linked with the plea of adverse possession — Considering the facts of the case, contention that the suit was barred by limitation and that the courts below should have decided the question of limitation, held, not sustainable — Civil Procedure Code, 1908, Or. 6 R. 1, Or. 7 R. 11 and Or. 14 R. 1 — Limitation Act, 1963, Arts. 64 and 65 (Para 5)**

B. **Constitution of India — Art. 136 — Scope of interference under — Contention as to non-appreciation or misinterpretation of evidence by courts below — Held, the said courts correctly analysed the evidence on record and rightly concluded the matter — Thus, there was no infirmity in the impugned judgments — SLPs dismissed (Paras 3, 6 and 8)**

C. **Civil Procedure Code, 1908 — Or. 14 R. 2, Or. 20 R. 5 and S. 33 — Judgment — Finding to be given on each issue — Requirement of — Contention that there was no finding on Issue 1 — Held, once the finding was reached on Issue 5 the answer to Issue 1 followed — Even otherwise,**

† From the Judgment and Order dated 21-12-2001 and 4-10-2002 of the Andhra Pradesh High Court in A. No. 807 of 1997 and RC Misc. P. No. 10086 and CMP No. 2874 of 2002 in A. No. 807 of 1997

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both these issues were dealt with together and the reasoning given by the trial court for answering these two issues applied to both these issues (Para 7)

W-M/TZ/32807/C

Advocates who appeared in this case :

Sudhir Chandra, Raju Ramachandran, Harish N. Salve and Bhimrao Naik, Senior Advocates (Bhagabati Prasad Padhy, Achintya Dvivedi, Y. Rajagopal Rao, Ramesh N. Keswani, Sudarsh Menon, S. Udaya Kr. Sagar, Ms Bina Madhavan, Ram Reddy, Hemal K. Sheth and T.N. Rao, Advocates) for the appearing parties.

ORDER

1. Heard parties at great length.

2. These special leave petitions are against the judgments of the Andhra Pradesh High Court dated 21-12-2001 dismissing the appeal filed by the petitioners and the judgment dated 4-10-2002 dismissing the review petition.

3. We see no substance in the contention that there has been non-appreciation or misinterpretation of evidence. In our view, the courts below have correctly analysed the evidence on record and correctly concluded, on the basis of material on record, that the petitioner had entered into the agreement to sell not just on his own behalf but also on behalf of the other parties. The courts below also have correctly recorded that the possession had been taken on behalf of all.

4. The case sought to be made out that after notice dated 11-9-1976 calling upon Respondents 1 to 8 to pay their shares, the petitioner had cut off the other respondents as they had not paid their share is not even pleaded. In any case it is not believable in view of the various documents wherein the petitioner himself has been stating that the purchase had been made on behalf of all.

5. We also see no substance in the contention that the suit was barred by limitation and that the courts below should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter.

6. We also see no substance in the contention that no consideration has flowed from the other respondents. The petitioner in his own evidence-in-chief admits that some amounts were paid jointly. This is clear from the fact

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that in respect of some payments he uses the word "I paid" but in respect of others he deposes "we paid". Even otherwise, the contention that no consideration has flowed is contrary to the terms of the agreement. Also the evidence of DW 3 shows that in 1967, when the agreement to sell was entered into, the petitioner had no income and no monies. This also belies his claim that he alone had paid.

7. We also see no substance in the submission of Mr Ramachandran that there is no finding on Issue 1. In our view, once the finding was reached on Issue 5 the answer to Issue 1 followed. Even otherwise, both these issues have been dealt with together and the reasoning given by the trial court for answering these two issues in favour of the respondents applies to both these issues.

8. In view of the above, we see no infirmity in the impugned judgments. We see no reason to interfere. The special leave petitions stand dismissed with no order as to costs.

(2005) 6 Supreme Court Cases 616

(BEFORE ASHOK BHAN AND A.K. MATHUR, JJ.)

U.P. STATE ROAD TRANSPORT CORPN. THROUGH ITS CHAIRMAN .. Petitioner/Appellant;

Versus

OMADITYA VERMA AND OTHERS .. Respondents.

IAs Nos. 14-17 and 18-21 in Civil Appeals Nos. 6716-19 of 1999†, decided on July 15, 2005

A. **Constitution of India — Art. 136 — Procedure re — Notice — Stages at which notice to be granted in SLPs — Held, if respondent has been served with notice in the special leave petition or had filed caveat or has taken notice at the SLP stage, no further notice is necessary on grant of leave — Supreme Court Rules, 1966, Or. 16 R. 11 proviso and Or. 19 R. 4**

B. **Constitution of India — Arts. 136 and 137 — Maintainability — Recall — Applicants praying that the order passed on 5-4-2005 in this matter [reported at (2005) 4 SCC 424] be recalled as they had not been served, and may be heard in the matter — Supreme Court on examination of duplicates of dasti service notices and acknowledgment due cards finding that all applicants had in fact been served — Hence recall applications dismissed — Supreme Court Rules, 1966, Or. 19 R. 4**

U.P. SRTC v. *Omaditya Verma*, (2005) 4 SCC 424, *referred to*

D-M/ATZ/32614/C

Advocates who appeared in this case :

Rakesh Dwivedi, Senior Advocate (Pramod Swarup, Advocate, with him) for the Petitioner/Appellant;

Ashok A. Desai, Senior Advocate (Ms Rani Chhabra, Sanjeev Bhatnagar, Sunil Kr. Jain and Ms Abha Jain, Advocates for Mitter & Mitter Co., Advocates, with him) for the Respondents/Applicants.

† From the Judgment and Order dated 26-9-1997 of the Allahabad High Court in CMWPs Nos. 9990, 23496, 15746 and 20187 of 1997 : **(1998) 32 ALR 24**

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interest on that amount was plainly in breach of the express terms of the agreement. The order of the High Court insofar as pre-reference and pendente lite interest on the amount under Item 3 is concerned is, therefore, unsustainable.

34. The position with regard to the claim under Item 4 is quite different. That relates to the period after the termination of the agreement and hence, the bar of Clause 31 would not apply to it in the same way as it would apply to Item 3. We, therefore, find no infirmity in grant of pre-reference and pendente lite interest on the amount under Item 4.

35. In the light of the discussions made above, the respondent shall be entitled to interest only on the sum of Rs 10,79,456.80, the amount determined under Item 4, at the rate of 16% per annum for the period 1-11-1994 to 9-9-2000. The final amount under the award shall be accordingly worked out. The consolidated amount of the award after being recalculated shall carry, as provided in the award, interest at the rate of 18% from the date of the award till the date of payment. In working out the amount of interest for the post-award period, the period(s) for which the operation of the award was stayed by the court would be excluded.

36. In the result, the appeal is allowed to the limited extent indicated above. There shall be no order as to costs.

(2009) 16 Supreme Court Cases 517

(BEFORE DALVEER BHANDARI AND H.S. BEDI, JJ.)

HEMAJI WAGHAJI JAT .. Appellant;

Versus

BHIKHABHAI KHENGARBHAI HARIJAN AND OTHERS .. Respondents.

Civil Appeal No. 1196 of 2007†, decided on September 23, 2008

A. **Specific Relief Act, 1963 — Ss. 38, 39, 36 and 34 — Suit for permanent injunction — Entitlement to relief — Alternative ground for relief neither pleaded nor proved nor any issue framed — Effect — Though plaintiff was in adverse possession, neither pleading nor proving the same, nor any issue of adverse possession framed — Plaintiff only contesting title which also he failed to prove — Effect of — Relief of permanent injunction, held, cannot be granted — Civil Procedure Code, 1908 — Or. 6 R. 1 and Or. 7 Rr. 7 & 8 — Relief dehors the pleadings in plaint — Impermissibility — Limitation Act, 1963 — Arts. 64 and 65 — Adverse possession — Burden of proof — Plaintiff's burden of proving adverse possession not discharged — Effect of**

B. **Limitation Act, 1963 — Arts. 64 and 65 — Adverse possession — Concept — Ingredients — Classical requirement of adverse possession, stated and discussed**

† From the Final Judgment/Order dated 27-12-2004 of the High Court of Gujarat at Ahmedabad in Second Appeal No. 146 of 2004

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The appellant-plaintiff filed a suit for permanent injunction to declare him as the lawful owner and occupier in respect of the suit land. The appellant though was in forcible possession of the suit land since 1960 till the decision of the trial court in 1986, neither pleaded adverse possession nor did the trial court frame an issue of adverse possession. The appellant-plaintiff also failed to prove his title over the suit land before the first appellate court and the High Court (in second appeal).

Dismissing the appeal with costs assessed at Rs 25,000, the Supreme Court

Held:

A person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (Paras 23 and 14)

D.N. Venkatarayappa v. *State of Karnataka*, (1997) 7 SCC 567; *Santosh Hazari* v. *Purushottam Tiwari*, (2001) 3 SCC 179; *Secy. of State for India In Council* v. *Debendra Lal Khan*, (1933-34) 61 IA 78 : AIR 1934 PC 23; *P. Lakshmi Reddy* v. *L. Lakshmi Reddy*, AIR 1957 SC 314; *S.M. Karim* v. *Bibi Sakina*, AIR 1964 SC 1254; *R. Chandevarappa* v. *State of Karnataka*, (1995) 6 SCC 309; *Md. Mohammad Ali* v. *Jagadish Kalita*, (2004) 1 SCC 271; *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779; *Saroop Singh* v. *Banto*, (2005) 8 SCC 330; *M. Durai* v. *Muthu*, (2007) 3 SCC 114; *T. Anjanappa* v. *Somalingappa*, (2006) 7 SCC 570, *relied on*

Vasantiben Prahladji Nayak v. *Somnath Muljibhai Nayak*, (2004) 3 SCC 376, *cited*

The first appellate court and the High Court have clearly held that the appellant has failed to establish his title over the suit property. The appellant also failed to establish that he has perfected his title over the suit property by way of adverse possession. Admittedly, the appellants at no stage had set up the case of adverse possession, there was no pleading to that effect, no issues were framed, but even then the trial court decreed the suit on the ground of adverse possession. The trial court judgment being erroneous and unsustainable was set aside by the first appellate court. Both the first appellate court and the High Court have categorically held that the appellant miserably failed to establish title to the suit land, therefore, he was not entitled to the ownership. The findings of the first appellate court and the High Court, are therefore, upheld. (Paras 12 and 30)

[**Ed.**: *See also* (2004) 7 SCC 708]

C. **Limitation Act, 1963 — Arts. 64 and 65 — Harshness and irrationality of the law of adverse possession — Held, the law of adverse possession, which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate — Therefore, Central Government directed to consider suitable changes in the law of adverse possession — Human and Civil Rights — Right to property**

The law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner. The law should not place premium on dishonesty by legitimising

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possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation.

(Paras 32 and 33)

a

P.T. Munichikkanna Reddy v. *Revamma*, (2007) 6 SCC 59; *JA Pye (Oxford) Ltd.* v. *United Kingdom*, (2005) 49 ERG 90; *JA Pye (Oxford) Ltd.* v. *Graham*, (2000) 3 WLR 242 : 2000 Ch 676; *JA Pye (Oxford) Ltd.* v. *Graham*, (2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL), *relied on*

Downing v. *Bird*, 100 So 2d 57 (Fla 1958); *Arkansas Commemorative Commission* v. *City of Little Rock*, 227 Ark 1085 : 303 SW 2d 569 (1957); *Monnot* v. *Murphy*, 207 NY 240 : 100 NE 742 (1913); *City of Rock Springs* v. *Sturm*, 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929); *Beaulane Properties Ltd.* v. *Palmer*, (2005) 3 WLR 554 : (2005) 4 All ER 461; *Beyeler* v. *Italy*, [GC], No. 33202 of 1996 §§ 108-14 ECHR 2000-I, *cited*

b

In *P.T. Munichikkanna Reddy case*, (2007) 6 SCC 59, the legal position in various countries particularly in English and American system was examined. The right to property is now considered to be not only a constitutional or statutory right but also a human right. With the expanding jurisprudence of the European Court of Human Rights, an unkind view to the concept of adverse possession was taken in *JA Pye (Oxford) Ltd. case*, (2005) 49 ERG 90 which concerned the loss of ownership of land by virtue of adverse possession.

c

(Paras 24 and 26)

There is an urgent need of fresh look regarding the law on adverse possession. The Union of India is recommended to consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.

d

(Para 34)

SS-M/39130/S

Advocates who appeared in this case :

Raju Ramachandran, Senior Advocate (S. Prasad and Abhijat P. Medh, Advocates) for the Appellant;

e

Aniruddha P. Mayee, Sanjeev Kr. Choudhary and Ms Rucha A. Mayee, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2007) 6 SCC 59, *P.T. Munichikkanna Reddy* v. *Revamma* 525*e-f*, 526*d-e*, 527*f*, 528*b*, 528*c-d*
2. (2007) 3 SCC 114, *M. Durai* v. *Muthu* 525*b*
3. (2006) 7 SCC 570, *T. Anjanappa* v. *Somalingappa* 525*c-d*
4. (2005) 8 SCC 330, *Saroop Singh* v. *Banto* 524*g*
5. (2005) 49 ERG 90, *JA Pye (Oxford) Ltd.* v. *United Kingdom* 526*f*, 526*g*
6. (2005) 3 WLR 554 : (2005) 4 All ER 461, *Beaulane Properties Ltd.* v. *Palmer* 526*f*
7. (2004) 10 SCC 779, *Karnataka Board of Wakf* v. *Govt. of India* 524*c*
8. (2004) 3 SCC 376, *Vasantiben Prahladji Nayak* v. *Somnath Muljibhai Nayak* 525*a*
9. (2004) 1 SCC 271, *Md. Mohammad Ali* v. *Jagadish Kalita* 524*a-b*, 525*b*
10. (2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL), *JA Pye (Oxford) Ltd.* v. *Graham* 527*e*
11. (2001) 3 SCC 179, *Santosh Hazari* v. *Purushottam Tiwari* 521*g*
12. (2000) 3 WLR 242 : 2000 Ch 676, *JA Pye (Oxford) Ltd.* v. *Graham* 527*c*
13. (1997) 7 SCC 567, *D.N. Venkatarayappa* v. *State of Karnataka* 521*b-c*, 523*g*
14. [GC], No. 33202 of 1996 §§ 108-14 ECHR 2000-I, *Beyeler* v. *Italy* 528*b-c*

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15. (1995) 6 SCC 309, *R. Chandevarappa* v. *State of Karnataka* 523*c-d*
16. AIR 1964 SC 1254, *S.M. Karim* v. *Bibi Sakina* 523*b*
17. 100 So 2d 57 (Fla 1958), *Downing* v. *Bird* 526*a*
18. AIR 1957 SC 314, *P. Lakshmi Reddy* v. *L. Lakshmi Reddy* 522*e-f*, 523*a*
19. 227 Ark 1085 : 303 SW 2d 569 (1957), *Arkansas Commemorative Commission* v. *City of Little Rock* 526*a*
20. (1933-34) 61 IA 78 : AIR 1934 PC 23, *Secy. of State for India In Council* v. *Debendra Lal Khan* 522*d-e*, 522*e-f*
21. 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929), *City of Rock Springs* v. *Sturm* 526*a*
22. 207 NY 240 : 100 NE 742 (1913), *Monnot* v. *Murphy* 526*a*

The Judgment of the Court was delivered by

DALVEER BHANDARI, J.— This appeal is directed against the judgment dated 27-12-2004 passed by the High Court of Gujarat at Ahmedabad in Second Appeal No. 146 of 2004.

2. Brief facts of the case which are necessary to dispose of this appeal are as under. The appellant who has lost both before the Court of the learned District Judge, Palanpur and the High Court has approached this Court by way of special leave petition under Article 136 of the Constitution.

3. The appellant (who was the plaintiff before the trial court) filed a suit for declaration of permanent injunction with the following prayer:

> "(*1*) To hold and declare that the plaintiff is the lawful owner and occupier in respect of land of Survey No. 66/3 admeasuring 6 acres 11 gunthas situated in the boundaries of Village Yavarpura, Taluka Deesa.
>
> (*2*) That the defendants of this case themselves or their agents, servants, family members do not cause or cause hindrance to be caused in the possession and occupation of the plaintiff in respect of land of Survey No. 66/3 admeasuring 7 acres 10 gunthas in the boundaries of Village Yavarpura and also to grant permanent stay order to the effect that they do not forcibly enter into the said land of Survey No. 66/3 against the defendants and in favour of the plaintiff of this case.
>
> (*3*) To grant any other relief which is deemed fit and proper.
>
> (*4*) To award the entire costs of this suit on the defendants."

4. The trial court framed the following issues:

> "*1*. Whether the plaintiff has proved that he is the lawful owner of the disputed land?
>
> *2*. Whether the plaintiff is entitled for permanent injunction as prayed for?
>
> *3*. What order and decree?"

5. The trial court held that in the year 1925 the land was purchased for Rs 75 from Gama Bhai Gala Bhai by the appellant and he is having possession of the same for the last 70 years. The learned trial court in the same judgment has also held that in 1960 the appellant forcibly took possession of the land in question and he has been in continuous possession till 1986, which is proved from the register of right of cultivation. Thus, the appellant became owner of the suit property by adverse possession.

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6. It may be significant to note that neither the appellant ever pleaded adverse possession nor was an issue framed by the trial court with regard to the ownership of the respondents by adverse possession. According to the appellant, there is no basis for the finding of the ownership of the appellant on the basis of adverse possession.

7. The respondents being aggrieved by the said judgment of the trial court dated 5-4-1986 preferred an appeal before the learned District Judge, Palanpur, Gujarat. The learned District Judge, after hearing the counsel for the parties and perusing the entire record of the case, came to the definite conclusion that the appellant herein had failed to prove that the land in question was purchased by him.

8. The learned District Judge referred to *D.N. Venkatarayappa* v. *State of Karnataka*[1] wherein it was held that in absence of crucial pleadings regarding adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest of the original grantee, the petitioners cannot claim that they have perfected their title by adverse possession. The burden of proof lies on the petitioners to show that they have title to and have been in possession and he was dispossessed and discontinued his possession within 12 years from the date of filing his suit. Adverse possession implies that it commenced in wrong and is maintained against right.

9. The learned District Judge further held as under:

> "Thus, the learned trial Judge has wrongly concluded that the plaintiff has proved his title and ownership of this suit land through revenue record and also by adverse possession and competent authority i.e. Special Secretary has also dismissed the revision application of the plaintiff and the defendants' ownership was confirmed by the Special Secretary and thus, the learned trial Judge has erred in holding that the plaintiff is the owner and holding that the title and also become owner through adverse possession. Thus, this appeal deserves to be allowed and in these circumstances and discussion as above, it appears that the learned trial Judge has committed error in decreeing the suit in favour of the plaintiff."

10. The appellant aggrieved by the said judgment of the learned District Judge preferred an appeal under Section 100 of the Code of Civil Procedure before the High Court. In the impugned judgment, it has been held that the appellate court continues to be the final court on facts and law. The second appeal to the High Court lies only when there is substantial question of law. The High Court relied on *Santosh Hazari* v. *Purushottam Tiwari*[2]. The relevant portion of the said judgment reads as under: (SCC p. 189, para 15)

> "*15.* ... The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law

1 (1997) 7 SCC 567 : (1998) 2 CLJ 414
2 (2001) 3 SCC 179 : AIR 2001 SC 965

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even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

11. The High Court held that the respondents clearly established their title over the suit property. The relevant portion of the judgment of the High Court reads as under:

> "The learned first appellate Judge has also discussed the relevant entries as well as order passed by the Deputy Collector, the Collector and the Special Secretary in those proceedings and on the basis of the same, the learned first appellate Judge has reached the finding that the plaintiff has failed to establish title over the suit property."

The appeal filed by the appellant was dismissed by the High Court.

12. We have heard learned counsel for the parties at length and perused the impugned judgment and judgments of the subordinate courts. The first appellate court and the High Court have clearly held that the appellant has failed to establish his title over the suit property. The appellant also failed to establish that he has perfected his title over the suit property by way of adverse possession.

13. We deem it appropriate to deal with some important cases decided by this Court regarding the principle of adverse possession.

14. In *Secy. of State for India In Council* v. *Debendra Lal Khan*[3] it was observed that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

15. This Court in *P. Lakshmi Reddy* v. *L. Lakshmi Reddy*[4], while following the ratio of *Debendra Lal Khan case*[3], observed as under: (*P. Lakshmi Reddy case*[4], AIR p. 318, para 4)

> "*4.* ... But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title,

3 (1933-34) 61 IA 78 : AIR 1934 PC 23
4 AIR 1957 SC 314

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coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

a The Court further observed thus: (*P. Lakshmi Reddy case*[4], AIR p. 318, para 4)

"*4.* ... the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession."

16. In *S.M. Karim* v. *Bibi Sakina*[5], Hidayatullah, J. speaking for the Court observed as under: (AIR p. 1256, para 5)

b "*5.* ... Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for 'several 12 years' or that c the plaintiff had acquired 'an absolute title' was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

17. The facts of *R. Chandevarappa* v. *State of Karnataka*[6] are similar to the case at hand. In this case, this Court observed as under: (SCC p. 314, d para 11)

"*11.* The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly e the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action f thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

18. In *D.N. Venkatarayappa* v. *State of Karnataka*[1] this[*] Court observed g as under: (SCC p. 571*b-c*, para 3)

"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question

5 AIR 1964 SC 1254

h 6 (1995) 6 SCC 309

* **Ed.**: The extract quoted herein below is taken from the observations of the learned Single Judge of the High Court in an order involved in *D.N. Venkatarayappa case*, (1997) 7 SCC 567.

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claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession....” *a*

19. In *Md. Mohammad Ali* v. *Jagadish Kalita*[7] this Court observed as under: (SCC p. 277, paras 21-22)

> “*21.* For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.
>
> *22.* ... We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to *b* whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein.”

20. In *Karnataka Board of Wakf* v. *Govt. of India*[8] at para 11, this Court observed as under: (SCC p. 785)

> *c* “*11.* In the eye of the 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 the *d* 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.” *e*

The Court further observed that: (SCC p. 785, para 11)

> “*11.* ... 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 *f* 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.”

21. In *Saroop Singh* v. *Banto*[9] this Court observed: (SCC p. 340, *g* paras 29-30)

> “*29.* In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant’s possession

7 (2004) 1 SCC 271 *h*
8 (2004) 10 SCC 779
9 (2005) 8 SCC 330

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becomes adverse. (See *Vasantiben Prahladji Nayak* v. *Somnath Muljibhai Nayak*[10].)

a *30. 'Animus possidendi'* is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Md. Mohammad Ali* v. *Jagdish Kalita*[7].)"

b **22.** This principle has been reiterated later in *M. Durai* v. *Muthu*[11]. This Court observed as under: (SCC p. 116, para 7)

"7. ... in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the c defendant to establish that he has perfected his title by adverse possession."

23. This Court had an occasion to examine the concept of adverse possession in *T. Anjanappa* v. *Somalingappa*[12]. The Court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and d amounted to denial of his title to the property claimed. The Court further observed that: (SCC p. 577, para 20)

"*20.* ... 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 e 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."

24. In a relatively recent case in *P.T. Munichikkanna Reddy* v. *Revamma*[13] this Court again had an occasion to deal with the concept of adverse possession in detail. The Court also examined the legal position in f various countries particularly in English and American systems. We deem it appropriate to reproduce relevant passages in extenso. The Court dealing with adverse possession in paras 5 and 6 observed as under: (SCC pp. 66-67)

"*5.* Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims g of the person in possession. *It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.* (See

10 (2004) 3 SCC 376
h 11 (2007) 3 SCC 114
12 (2006) 7 SCC 570
13 (2007) 6 SCC 59

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Downing v. *Bird*[14]; *Arkansas Commemorative Commission* v. *City of Little Rock*[15]; *Monnot* v. *Murphy*[16]; *City of Rock Springs* v. *Sturm*[17].)

6. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. (See *American Jurisprudence*, Vol. 3, 2d, p. 81.) *It is important to keep in mind while studying the American notion of adverse possession, especially in the backdrop of limitation statutes, that the intention to dispossess cannot be given a complete go-by. Simple application of limitation shall not be enough by itself for the success of an adverse possession claim.*" (emphasis in original)

25. There is another aspect of the matter, which needs to be carefully comprehended. According to *Revamma case*[13] the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, this Court observed that: (SCC p. 77, para 43)

"*43.* Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English courts is quite visible from the judgments of *Beaulane Properties Ltd.* v. *Palmer*[18] and *JA Pye (Oxford) Ltd.* v. *United Kingdom*[19]. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."

26. With the expanding jurisprudence of the European Court of Human Rights, the Court has taken an unkind view to the concept of adverse possession in the recent judgment of *JA Pye (Oxford) Ltd.* v. *United*

14 100 So 2d 57 (Fla 1958)
15 227 Ark 1085 : 303 SW 2d 569 (1957)
16 207 NY 240 : 100 NE 742 (1913)
17 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929)
18 (2005) 3 WLR 554 : (2005) 4 All ER 461
19 (2005) 49 ERG 90

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Kingdom[19] which concerned the loss of ownership of land by virtue of adverse possession. In the said case, "the applicant company was the registered owner of a plot of 23 hectares of agricultural land. The owners of a property adjacent to the land, Mr and Mrs Graham (the Grahams) occupied the land under a grazing agreement. After a brief exchange of documents in December 1983 a chartered surveyor acting for the applicants wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land." The Grahams continued to use the whole of the disputed land for farming without the permission of the applicants from September 1998 till 1999. In 1997, Mr Graham moved the Local Land Registry against the applicant on the ground that he had obtained title by adverse possession. The Grahams challenged the applicant company's claims under the Limitation Act, 1980 (the 1980 Act) which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse possession by another.

27. The judgment was pronounced in *JA Pye (Oxford) Ltd.* v. *Graham*[20]. The Court held in favour of the Grahams but went on to observe the irony in law of adverse possession. The court observed that the law which provides to oust an owner on the basis of inaction of 12 years is "*illogical and disproportionate*". The effect of such law would "seem draconian to the owner" and "a windfall for the squatter". The court expressed its astonishment on the prevalent law that ousting an owner for not taking action within limitation is illogical. The applicant company aggrieved by the said judgment filed an appeal and the Court of Appeal reversed the High Court decision. The Grahams then appealed to the House of Lords, which, allowed their appeal and restored the order of the High Court.

28. The House of Lords in *JA Pye (Oxford) Ltd.* v. *Graham*[21] observed that the Grahams had possession of the land in the ordinary sense of the word, and, therefore, the applicant company had been dispossessed of it within the meaning of the Limitation Act of 1980.

29. We deem it proper to reproduce the relevant portion of the judgment in *Revamma case*[13]: (SCC p. 79, paras 51-52)

> "*51.* Thereafter the applicants moved the European Commission of Human Rights (ECHR) alleging that the United Kingdom law on adverse possession, by which they lost land to a neighbour, operated in violation of Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention').
>
> *52.* It was contended by the applicants that they had been deprived of their land by the operation of the domestic law on adverse possession which is in contravention with Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'), which reads as under:
>
> > 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his

20 (2000) 3 WLR 242 : 2000 Ch 676

21 (2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL)

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possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.' "

This Court in *Revamma case*[13] also mentioned that the European Council of Human Rights importantly laid down three-pronged test to judge the interference of the Government with the right of "peaceful enjoyment of property": (SCC p. 79, para 53)

"*53.* ... [In] *Beyeler* v. *Italy*[22], it was held that the 'interference' should comply with the principle of lawfulness and pursue a legitimate aim (public interest) by means reasonably proportionate to the aim sought to be realised."

The Court observed: (*Revamma case*[13], SCC pp. 79-80, paras 54-56)

"*54.* ... 'The question nevertheless remains whether, even having regard to the lack of care and inadvertence on the part of the applicants and their advisers, the deprivation of their title to the registered land and the transfer of beneficial ownership to those in unauthorised possession struck a fair balance with any legitimate public interest served.

In these circumstances, the Court concludes that the application of the provisions of the 1925 and 1980 Acts to deprive the applicant companies of their title to the registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other.

There has therefore been a violation of Article 1 of Protocol 1.'

55. The question of the application of Article 41 was referred for the Grand Chamber Hearing of the ECHR. This case sets the field of adverse possession and its interface with the right to peaceful enjoyment in all its complexity.

56. Therefore it will have to be kept in mind the courts around the world are taking an unkind view towards statutes of limitation overriding property rights."

30. Reverting to the facts of this case, admittedly, the appellants at no stage had set up the case of adverse possession, there was no pleading to that effect, no issues were framed, but even then the trial court decreed the suit on the ground of adverse possession. The trial court judgment being erroneous and unsustainable was set aside by the first appellate court. Both the first appellate court and the High Court have categorically held that the appellant has miserably failed to establish title to the suit land, therefore, he is not entitled to the ownership. We endorse the findings of the first appellate court upheld by the High Court.

22 [GC], No. 33202 of 1996 §§ 108-14 ECHR 2000-I

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31. Consequently, the appeal being devoid of any merit is accordingly dismissed with costs, which is quantified at Rs 25,000.

a **32.** Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine b manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the c owner to lose his possession only because of his inaction in taking back the possession within limitation.

34. In our considered view, there is an urgent need for a fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law d and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.

(2009) 16 Supreme Court Cases 529

(BEFORE RUMA PAL AND DALVEER BHANDARI, JJ.)

e AUTO CONTROL PRIVATE LIMITED .. Appellant;

Versus

COLLECTOR .. Respondent.

Civil Appeals Nos. 674-75 of 2001, decided on April 20, 2006

f **Customs — Confiscation of goods — Undervaluation — Concurrent findings of forums below, as to justifiability of confiscation due to undervaluation — Interference by Supreme Court, held, not warranted — Customs Act, 1962, Ss. 111 and 130-E**

D/44344/S

ORDER

g There has been a concurrent finding of fact by the authorities below in support of the respondent's claim for confiscation on undervaluation of the goods imported by the appellant. We do not interfere with such concurrent findings. The civil appeals are dismissed accordingly. No order as to costs.

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large scale without being conversant with the English language. He has signed all documents in English.

16. It was urged before us that two representations by the wife of the detenu were submitted before the order of detention was served in which it was stated that the detenu did not understand the English language. Those documents are not before us and, therefore, we wish to make no observation in that regard. On the basis of the material before us we are satisfied that the detenu knows the English language and, therefore, service of the documents upon him in the English language did not breach Article 22(5) of the Constitution of India. However, by way of abundant caution translated copies of documents were provided to him within 10 days of his request. We, therefore, find no merit in the last submission urged on behalf of the detenu.

17. Counsel for the petitioner then sought to urge before us that there was abnormal delay in the disposal of the representation and, therefore, the detention has become bad. The writ petition was filed soon after the order of detention was served on the detenu. The delay in the disposal of the representation was not the subject of challenge in the writ petition. We are, therefore, not persuaded to examine that aspect of the matter. If so advised, the detenu may challenge the order of detention on that ground in a separate proceeding.

18. We, therefore, find no merit in any of the contentions urged before us. This writ petition is devoid of merit and is accordingly dismissed.

(2006) 7 Supreme Court Cases 570

(BEFORE ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.)

T. ANJANAPPA AND OTHERS .. Appellants;

Versus

SOMALINGAPPA AND ANOTHER .. Respondents.

Civil Appeal No. 3594 of 2006†, decided on August 22, 2006

Adverse Possession — Concept — Possession must be hostile, in denial, either express or implied, of title of the real owner — For that it is essential that possessor must clearly know the actual owner of the property — Only then can be situation of being in hostile possession and question of denying title of true owner would arise — Possession must be peaceful, continuous and open, capable of being known by parties interested — In this case, since possessor was not sure whether plaintiff or the Govt. was true owner of the property, held, claim of adverse possession is not maintainable — Limitation Act, 1963, Art. 65 — Words and Phrases — "Adverse possession"

The plaintiff-appellant filed a suit for declaration of title in respect of a house property, which the plaintiff had purchased from *N* two days after filing of the suit. According to the plaintiff, *N* had mortgaged the property in plaintiff's favour. The defendants had encroached upon a portion of the property, put a

† Arising out of SLPs (C) Nos. 24307-08 of 2004. From the Judgment and Order dated 5-9-2003 of the High Court of Karnataka at Bangalore in RSAs Nos. 275 and 276 of 1999

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hutment about two years prior to the suit and therefore, on the strength of the title, the plaintiff sought relief of declaration of title and possession and also sought for injunction against the defendant not to repair or put up any permanent structure on the site. The defendants in their written statement denied the title of the plaintiff contending that the defendants were in possession of the premises since 1969 by putting up hutments and paying municipal tax. The defendants also contended that the property belonged to the Govt. and they were in adverse possession thereof. A defence was also taken that the area had been declared as a slum area. Hence, they prayed for dismissal of the suit. The trial court dismissed the suit. In appeal the appellate court set aside the judgment and decree of the trial court. The High Court, in second appeal, accepted their plea of their adverse possession of the property. According to the High Court though the defendants were in possession under the mistaken assumption of title with themselves or with the Government, same cannot be a ground to hold that the possession is not a hostile possession from the standpoint of the real owner. It was held that the suit for possession to that extent was not filed within 12 years of dispossession and therefore grant of decree for declaration of the title and possession to that extent in favour of the plaintiffs (the appellants herein) is bad in law and liable to be set aside.

Allowing the appeal, the Supreme Court

Held :

The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable. (Para 21)

The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. It is the basic principle of law of adverse possession that (*a*) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the

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world but wrongfully against the true owner; (*b*) it is possession inconsistent with the title of the true owner. (Paras 12, 14, 15 and 18)

Vidya Devi v. *Prem Prakash*, (1995) 4 SCC 496; *Ward* v. *Carttar*, (1865) LR 1 Eq 29 : 35 Beav 171 : 55 ER 860; *Rains* v. *Buxton*, (1880) 14 Ch D 537 : 43 LT 88, *relied on*

Annasaheb Bapusaheb Patil v. *Balwant*, (1995) 2 SCC 543 : AIR 1995 SC 895, *cited*

Halsbury's Laws of England 1953 Edn., Vol. I, *relied on*

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. (Para 20)

R-M/ATZ/34867/C

Advocates who appeared in this case :
Girish Ananthamurthy and P.P. Singh, Advocates, for the Appellants;
Basava Prabhu Patil, A.S. Bhasme and B. Subrahmanya Prasad, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1995) 4 SCC 496, *Vidya Devi* v. *Prem Prakash* 575*c*
2. (1995) 2 SCC 543 : AIR 1995 SC 895, *Annasaheb Bapusaheb Patil* v. *Balwant* 575*h*
3. (1880) 14 Ch D 537 : 43 LT 88, *Rains* v. *Buxton* 576*d*
4. (1865) LR 1 Eq 29 : 35 Beav 171 : 55 ER 860, *Ward* v. *Carttar* 576*b*

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— Leave granted.

2. Challenge in these appeals is to the correctness of the judgment rendered by a learned Single Judge of the Karnataka High Court allowing in part two second appeals filed by the respondents in the present appeals.

3. Background facts in a nutshell are as under:

Two appeals were filed before the High Court against the judgment and decree passed by the Civil Judge, Senior Division, Bellary in RA No. 15 of 1994 and RA No. 16 of 1994 arising out of OS No. 168 of 1985 and OS No. 286 of 1988 respectively on the file of the Principal Munsif, Bellary. OS No. 168 of 1985 was filed by the appellants. They filed a suit for declaration of title in respect of the suit schedule property described as a house site measuring 25' x 75' pictorially described in the rough sketch accompanying the plaint and which forms part of CTS No. 373/3A/1A/2/B in Block No. XXIV, Ward No. XXII, Devinagar, Bellary city. The plaintiffs claimed title to the property by virtue of entries in the Municipality records. The suit site was originally granted by the Municipality to one Thippanna in the year 1962 from whom one Siddalingana Gouda purchased in the year 1971 under registered sale deed. One Narasimhappa purchased the suit property from Siddalingana Gouda by a registered sale deed in the year 1978. The plaintiffs purchased the suit site from Narasimhappa under Ext. P-1 on 29-5-1985, two

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days after filing of the suit. It is said that the erstwhile owner Narasimhappa had mortgaged the property in favour of the plaintiff. According to the plaintiffs, the defendants had encroached upon a portion of the suit property to an extent of 15' x 25', put a hutment about three years prior to the suit, and therefore, on the strength of title the plaintiff sought for the relief of declaration of title and possession and also sought for injunction against the defendant not to repair or put up any permanent structure on the suit site. The defendants filed the written statement denying the title of the plaintiff contending that the defendants are in possession of the premises since the year 1969 by putting up hutment and paying tax to the Municipality. The defendants also contended that the property is a government land and they are in adverse possession of the property. A defence was also taken that the area has been declared as a slum area. Hence, they prayed for dismissal of the suit.

4. During the pendency of OS No. 168 of 1985, Defendant 1 therein filed a suit in OS No. 286 of 1988. The plaint averments are reproduction of the written statement in OS No. 168 of 1985.

5. The trial court dismissed the suit of T. Anjanappa, T. Sekharam and T. Govind (the plaintiffs in OS No. 168 of 1985) by rejecting the claim of the plaintiffs' title to the property. The suit filed by T. Somalingappa i.e. OS No. 286 of 1988 came to be allowed. The present appellants filed two appeals against the judgment and decree in OS No. 168 of 1985 and OS No. 286 of 1988 before the Civil Judge, Senior Division, Bellary. In appeal, the appellate court set aside the judgment and decree of the trial court in OS No. 168 of 1985 and OS No. 286 of 1988, upheld the title of the plaintiffs and also granted relief of possession and thus allowed both the appeals filed by the plaintiffs. Second appeals were filed challenging the correctness thereof by T. Somalingappa and Dakshyanamma.

6. The following substantial questions of law were formulated at the time of admission:

> *1.* Though the appellate court has concurred with the findings of the Principal Munsif regarding the appellant's possession and enjoyment of the property even before the purchase of the property by the respondent, whether the appellate court was justified in dismissing the suit of the appellants for injunction which was decreed by the Principal Munsif.
>
> *2.* The suit schedule property which was declared by the Government as a slum area, the action of the Municipality in granting allotment of the same in favour of the other persons. Whether the Municipality has got the power to allow the site, which was declared as a slum area by the Government in favour of other persons.

7. The following additional substantial questions of law were framed at the time of hearing:

> (*1*) Whether the appellate court was right in declaring title of the plaintiffs on the basis of Ext. P-1 which came to be executed after filing of the suit in OS No. 168 of 1985?

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(2) Whether the appellate court committed error in appreciating the oral and documentary evidence regarding the plea of adverse possession put forth by the defendants and the findings thereon are perverse and contrary to the evidence on record?

8. According to the High Court, ticklish situation arose in the legal combat between the parties. When the suit OS No. 168 of 1985 was filed, obviously the plaintiffs had no title to the property, but they sought for declaration of title. In the absence of title, there was no basis for the plaintiffs to seek possession from the defendants. It was contended that the plaintiffs had taken the property as a security in a mortgage transaction from the erstwhile owner. The High Court noted that the mortgage deed is not produced. It was observed that there is nothing on record to show that it was a possessory mortgage. Unless the plaintiffs had some kind of title or possessory interest they could not have sought for relief for possession.

9. According to the High Court though the defendants were in possession under the mistaken assumption of title with themselves or with the Government, same cannot be a ground to hold that the possession is not a hostile possession from the standpoint of the real owner. It was further held that the real owner when dispossessed under Article 64 of the Limitation Act, 1963 (in short "the Limitation Act") has to seek possession within 12 years from the date of dispossession. It was therefore held that the findings of the court below i.e. the first appellate court that the defendants had failed to prove the plea of adverse possession is perverse and contrary to law and evidence on record. After holding so, it was further held that though the documents produced by the defendants do not fully establish the case of adverse possession to the full extent of 15' x 75', yet the stand of the defendants about actual physical possession read with the admission of the plaintiffs sufficiently establish that the defendants were in adverse possession of 15' x 75'. It was further held that even otherwise, the suit for possession to that extent was not filed within 12 years of dispossession and therefore grant of decree for declaration of the title and possession to that extent in favour of the plaintiffs (the appellants herein) is bad in law and liable to be set aside.

10. Learned counsel for the appellants submitted that the High Court's approach is clearly unsustainable in law. The concept of adverse possession has been clearly misunderstood by the High Court.

11. Learned counsel for the respondents on the other hand submitted that in view of the accepted position that the defendants were in possession for more than 12 years and that actual physical possession was with them the High Court cannot be faulted.

12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed.

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For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

> "*24.* It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners."

(See *Vidya Devi* v. *Prem Prakash*[1], SCC p. 504, para 24.)

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

> "*14.* ... Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act,] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. ...
>
> *15.* Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. (See *Annasaheb Bapusaheb Patil* v. *Balwant*[2], SCC p. 554, paras 14-15.)

1 (1995) 4 SCC 496
2 (1995) 2 SCC 543, p. 554 : AIR 1995 SC 895, p. 902

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15. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See *Ward* v. *Carttar*[3].) Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See *Rains* v. *Buxton*[4].)

16. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is not held to be adverse if it can be referred to a lawful title.

17. According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

18. It is the basic principle of law of adverse possession that (*a*) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (*b*) it is possession inconsistent with the title of the true owner.

19. In *Halsbury's Laws of England*, 1953 Edn., Vol. I it has been stated as follows:

> "At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is

3 (1865) LR 1 Eq 29 : 35 Beav 171 : 55 ER 860
4 (1880) 14 Ch D 537 : 43 LT 88

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extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgment. The operation of the statute is merely negative, it extinguishes the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him."

20. It is well-recognised proposition in law that mere possession however long does not necessarily mean 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. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable. Therefore, the appeal which relates to OS No. 168 of 1985 is allowed by setting aside the impugned judgment of the High Court to that extent. Equally, the High Court has proceeded on the basis that the plaintiff in OS No. 286 of 1988 had established his plea of possession. The factual position does not appear to have been analysed by the High Court in the proper perspective. When the High Court was upsetting the findings recorded by the court below i.e. first appellate court it would have been proper for the High Court to analyse the factual position in detail which has not been done. No reason has been indicated to show as to why it was differing from the factual findings recorded by it. The first appellate court had categorically found that the appellants in the present appeals had proved possession three years prior to filing of the suit. This finding has not been upset. Therefore, the High Court was not justified in setting aside the first appellate court's order. The appeal before this Court relating to OS No. 286 of 1988 also deserves to be allowed. Therefore, both the appeals are allowed but without any order as to costs.

22. The appeals are disposed of accordingly.

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(1981) 2 Supreme Court Cases 103

(BEFORE S. MURTAZA FAZAL ALI, A. VARADARAJAN AND A. N. SEN, JJ.)

KSHITISH CHANDRA BOSE .. Appellant;

Versus

COMMISSIONER OF RANCHI .. Respondent.

Civil Appeal No. 1034 of 1971†, decided on February 6, 1981

Civil Procedure Code, 1908 — Sections 11, 104, 105 and Order 41, Rule 23 — Order of remand passed by High Court is in the nature of an interlocutory judgment and is open to challenge in appeal to Supreme Court from the final order

Limitation Act, 1963 (36 of 1963) — Articles 64 and 65 — Adverse possession — How to establish

Civil Procedure Code, 1908 — Sections 100-101 — High Court has no jurisdiction under, to interfere with concurrent findings of fact, even if erroneous

The plaintiff-appellant filed a suit for declaration of his title to the land in question on the basis of a *hukumnama* granted to him by the landlord (i. e. respondent-municipality) and in the alternative for declaration of his possession in the land on the ground of his adverse possession of the land for more than 30 years. The trial Court decreed the suit on both the questions and the Additional Judicial Commissioner, after a consideration of evidence, maintained the trial Court's decree. The High Court, in second appeal filed by the respondent held that there was no clear evidence to show that the plaintiff had obtained title by adverse possession and remanded the case to the Additional Judicial Commissioner for a decision only on the question of title. The Additional Judicial Commissioner finally decided the question of title against the plaintiff and dismissed the plaintiff's suit. The plaintiff then again filed an appeal to the High Court which having been dismissed, the present appeal by special leave was filed before the Supreme Court. Allowing the appeal the Supreme Court

Held:

(1) The plaintiff did not come up in appeal before the Supreme Court against the first judgment of the High Court, because the order passed by the High Court was not a final one but was in the nature of an interlocutory order as the case had been remanded to the Additional Judicial Commissioner and if the said court had affirmed the finding of the trial Court, no question of filing a further appeal to the High Court could have arisen. Thus, the appellant could not be debarred from challenging the validity of the first judgment of the High Court even after the second judgment by the High Court was passed in appeal against the order of remand. (Para 6)

Satyadhyan Ghosal v. *Deorajin Debi*, (1960) 3 SCR 590: AIR 1960 SC 941 [and *Keshardeo Chamria* v. *Radha Kissen Chamria*, 1953 SCR 136: AIR 1953 SC 23, *followed*

[**Ed.**: See also *Sukhrani* v. *Hari Shanker*, (1979) 2 SCC 463 and *Jasraj Inder Singh* v. *Hemraj Multan Chand*, (1977) 2 SCC 155 on this point.]

(2) Adverse possession or hostile title must be established by a consistent course of conduct and it cannot be shown by a stray or sporadic act of possession. However, all that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that

†Appeal by special leave from the Judgment and Order dated September 30, 1970 of the Patna High Court in appeal from Appellate Decree No. 733 of 1967

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the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on, where an ouster of title is pleaded but that is not the case here. One of the important facts, which clearly proves adverse possession may be that the possessor had let out the land for cultivatory purposes and used it himself from time to time without any protest from the owner or any serious attempt by the owner to evict the possessor knowing full well that he was asserting hostile title in respect of the land. If a person asserts a hostile title even to a tank which, as claimed in the present case by the owner i. e. the municipality, belonged to it and despite the hostile assertion of title no steps were taken by the owner, to evict the trespasser, his title by prescription would be complete after thirty years. (Paras 9 and 10)

In the present case, the findings clearly show that the possession of the plaintiff was hostile to the full knowledge of the municipality. (Para 9)

(3) The High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. It exceeded its jurisdiction under Section 100 in reversing pure concurrent findings of fact given by the trial Court and the then appellate Court both on the question of title and that of adverse possession. (Para 11)

Kharbuja Kuer v. *Jangbahadur Rai*, (1963) 1 SCR 456: AIR 1963 SC 1203; *R. Ramachandran Ayyar* v. *Ramalingam Chettiar*, (1963) 3 SCR 604: AIR 1963 SC 302; *D. Pattabhiramaswamy* v. *S Hanymayya*, AIR 1959 SC 57: 1958 Andh LT 834 and *Raruha Singh* v. *Achal Singh*, AIR 1961 SC 1097: 1960 Jab LJ 870, *relied on*

Thus the first judgment of the High Court remanding the case to the Additional Judicial Commissioner was clearly without jurisdiction and as a logical result thereof the order of remand and all proceedings taken thereafter would become void ab initio. (Para 14)

R-M/5184/C

Advocates who appeared in this case:

V. S. Desai, Senior Advocate and *D. N. Mukherjee* & *N. R. Choudhury*, Advocates, for the Appellant;
K. K. Sinha, Senior Advocate and *S. K. Sinha*, Advocate, for the Respondent.

The Judgment of the Court was delivered by

Fazal Ali, J.—This is a plaintiff's appeal by special leave against a judgment and decree of the Patna High Court dated September 30, 1970 and arises in the following circumstances:

2. The plaintiff filed a suit for declaration of his title and recovery of possession and also a permanent injunction restraining the defendant-municipality from disturbing the possession of the plaintiff. It appears that prior to the suit, proceedings under Section 145 were started between the parties in which the magistrate found that the plaintiff was not in possession but upheld the possession of the defendant on the land until evicted in due course of law.

3. In the suit the plaintiff based his claim in respect of plot No. 1735, Ward No. I of Ranchi Municipality on the ground that he had acquired title to the land by virtue of a *hukumnama* granted to him by the landlord as far back as April 17, 1912 which is Ex. 18. Apart from the question of title, the plaintiff further pleaded that even if the land belonged to the defendant-municipality, he had acquired title by prescription by being in possession of

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the land to the knowledge of the municipality for more than 30 years, that is to say, from 1912 to 1957.

4. The trial Court accepted the plaintiff's case and decreed the plaintiff's suit both on the question of title and adverse possession. The defendant filed an appeal before the Additional Judicial Commissioner, Ranchi (Chota Nagpur) which after a consideration of the evidence affirmed the finding of the trial Court and maintained the decree of the trial Court on both points. Thereafter, the respondent went up in second appeal to the High Court which was heard by a single Judge of the court who held that there was no clear evidence to show that the plaintiff had obtained title by adverse possession and by his judgment of February 17, 1967 (hereinafter to be referred to as 'the first judgment') remanded the case to the trial Court for a decision only on the question of title. The effect of the order of remand was that so far as plaintiff's case that he had acquired title by prescription was concerned, it was finally decided against him. After remand, the Additional Judicial Commissioner held that the municipality had proved its title to the land in dispute and accordingly dismissed the plaintiff's suit. The plaintiff then went up in appeal to the High Court which affirmed the finding of the Additional Judicial Commissioner and dismissed the appeal by its judgment of September 30, 1967 (hereinafter referred to as 'the second judgment'). Hence, this appeal by special leave.

5. Appearing for the appellant, Mr. V. S. Desai, submitted two points before us. In the first place, he urged that the first judgment of the High Court by which it remanded the matter to the trial Court for a finding on the question of title was legally erroneous inasmuch as the High Court exceeded its jurisdiction under Section 100 of the Code of Civil Procedure by reversing pure finding of fact given by the two courts below on the question of adverse possession as also on the question of title.

6. Secondly, it was contended that even so the finding of the High Court on the question of adverse possession was given without at all considering the materials and evidence on the basis of which the two courts had concurrently found that the plaintiff had acquired title by adverse possession. It is true that the plaintiff did not come up in appeal before this Court against the first judgment of the High Court obviously because the order passed by the High Court was not a final one but was in the nature of an interlocutory order as the case had been remanded to the Additional Judicial Commissioner and if the said court had affirmed the finding of the trial Court, no question of filing a further appeal to the High Court could have arisen. Thus, the appellant could not be debarred from challenging the validity of the first judgment of the High Court even after the second judgment by the High Court was passed in appeal against the order of remand. In support of this contention, the counsel for the appellant relied on a decision of this Court in the case of ***Satyadhyan Ghosal* v. *Deorajin Debi***[1], where under similar

1. (1960) 3 SCR 590: AIR 1960 SC 941

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circumstances this Court observed as follows:

> In our opinion the order of remand was an interlocutory judgment which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order.

In coming to this decision this Court relied on an earlier decision in the case of *Keshardeo Chamria* v. *Radha Kissen Chamria*[2] where the same view was taken.

7. Mr. Sinha appearing for the respondent was unable to cite any authority of this Court taking a contrary view or overriding the decisions referred to above. In this view of the matter we are of the opinion that it is open to the appellant to assail even the first judgment of the High Court and if we hold that this judgment was legally erroneous then all the subsequent proceedings, namely, the order of remand, the order passed after remand, the appeal and the second judgment given by the High Court in appeal against the order of remand would become non est.

8. We have gone through the judgment of the High Court dated February 17, 1967 and we find that the High Court has reversed the findings of fact recorded by the two courts below on the question of adverse possession without at all displacing the reasons given by the courts below or considering the important circumstances proved and relied on by them. The High Court based its decision on three circumstances: In the first place it was of the opinion that no clear case of adverse possession was put forward by the plaintiff in his plaint, and all that had been pleaded was that certain building materials were placed on the land in dispute for some time. Here, with due respect, we are constrained to observe that the High Court committed a serious error of record. The allegations in paras 6, 7, 8, 9, 15, 17 and 19 are clear and specific to show the nature of the overt acts committed by the appellant to the knowledge and notice of the defendant. It was not a question of a stray or sporadic act of possession exercised by the plaintiff but the plaint shows that there was a consistent course of conduct by which the plaintiff asserted his hostile title against municipality ever since 1912. It has also been clearly alleged in the plaint that in spite of the objection taken by the municipality the plaintiff had asserted his hostile title by giving notice to the municipal authorities and in the year 1953 even in a criminal case started between the parties it was found that the plaintiff was in possession. The High Court has not at all adverted to any of the circumstances which have been considered by the courts below. For instance, one of the most important facts which clearly proved adverse possession was that the plaintiff had let out the land for cultivatory purposes and used it himself from time to time without any protest from the defendant. During the period of 45 years no serious attempt was made by the municipality to evict the plaintiff knowing full well that he was asserting hostile title against the municipality in respect of the land. For these reasons, therefore, the first ground on which the High Court based its finding cannot be supported.

2. 1953 SCR 136: AIR 1953 SC 23

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9. It was then observed by the High Court that mere sporadic acts of possession exercised from time to time would not be sufficient for the acquisition of title by adverse possession. As discussed above, the High Court has not at all cared even to go through the evidence regarding the nature of the acts said to have been committed by the appellant nor to find out whether they were merely sporadic or incidental. Another reason given by the High Court was that the adverse possession should have been effective and adequate in continuity and in publicity. Here, the High Court has gone wrong on a point of law. All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on, where an ouster of title is pleaded but that is not the case here. The findings, however, clearly show that the possession of the plaintiff was hostile to the full knowledge of the municipality. In this connection we might extract below the well considered findings recorded by the trial Court and Additional Judicial Commissioner both on the question of title and that of adverse possession.

Trial Court

Re-Title

> I have, therefore no doubt that these receipts relate to the suit land and, therefore, they show payment of rent by the plaintiff or his father.
>
> Thus, it has got to be held that the land belonged to the landlords within whose zamindari it lay. The plaintiff's father, therefore, obtained a valid title by the settlement from them.

Re-Adverse possession

> I, therefore, find that the plaintiff has also obtained title by adverse possession inasmuch as he and his father before him had been in continuous possession of this land from 1912 till 1957 when they were dispossessed by the order of the magistrate in the case under Section 145, CrPC.
>
> Considering all these, I hold that the plaintiff has subsisting title to the suit land and he is entitled to *khas* possession of the same.

Additional Judicial Commissioner

Re-Title

> There can be no doubt that Exs. 5 to 5(*g*) relate to the same lands for which the *hukumnama* (Ex. 18) was granted as they are for the same area as given in the *hukumnama* and the first of these namely, Ex. 5 is for the very first year after the settlement and is dated May 20, 1913. Certainly by the *hukumnama* (Ex. 18), which is unregistered document the land in suit could be settled and it could create good title in favour of the settlee as the settlement was for agricultural purpose and was accompanied by the delivery of possession and grant of rent receipts. . . . PWs 1, 2, 6, 9 and 8 (plaintiff) have stated about the constant possession of the plaintiff and his father.

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Re-Adverse Possession

> Thus from the facts stated above it is quite clear that the plaintiff and his father were coming in possession of the land in suit since 1912 till the year 1954-55. The municipality made several attempts to prevent the plaintiff and his father from storing building materials on the suit land from 1924 till 1954-55.
>
> Thus the plaintiff's father is proved to have been in possession of the suit land both before and after the Municipal Survey of 1928-29. The oral evidence of PWs 1, 6, 5, 8 and 9 also prove the plaintiff and his father were in actual possession of the suit land at all times after the settlement by the landlord in 1912. Hence, the presumption of correctness of the Municipal Survey entry has been successfully reputed in this case by the plaintiff.

The High Court was clearly in error in interfering with the aforesaid findings of fact.

10. Lastly, the High Court thought that as the land in question consisted of a portion of the tank or a land appurtenant thereto, adverse possession could not be proved. This view also seems to be wrong. If a person asserts a hostile title even to a tank which, as claimed by the municipality, belonged to it and despite the hostile assertion of title no steps were taken by the owner, (namely, the municipality in this case), to evict the trespasser, his title by prescription would be complete after thirty years.

11. On a perusal of the first judgment of the High Court we are satisfied that the High Court clearly exceeded its jurisdiction under Section 100 in reversing pure concurrent findings of fact given by the trial Court and the then appellate Court both on the question of title and that of adverse possession. In the case of *Kharbuja Kuer* v. *Jangbahadur Rai*[3], this Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection this Court observed as follows:

> It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact.
>
> As the two courts approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding.

To the same effect is another decision of this Court in the case of *R. Ramachandran Ayyar* v. *Ramalingam Chettiar*[4], where the court observed as follows:

> But the High Court cannot interfere with the conclusions of fact recorded by the lower appellate Court, however erroneous the said conclusions may appear to be to the High Court, because, as the Privy Council observed, however, gross or inexcusable the error may seem to be there is no jurisdiction under Section 100 to correct that error.

12. The same view was taken in two earlier decisions of this Court

3. (1963) 1 SCR 456 : AIR 1963 SC 1203
4. (1963) 3 SCR 604 : AIR 1963 SC 302

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in the cases of *D. Pattabhiramaswamy* v. *S. Hanymayya*[5] and *Raruha Singh* v. *Achal Singh*[6].

13. Thus, the High Court in this case had no jurisdiction after reversing the concurrent findings of fact of the courts below on the question of adverse possession to remand the case to the Additional Judicial Commissioner on the question of title which also was concluded by the concurrent findings of fact arrived at by the two courts as indicated above.

14. The conclusion, therefore, is inescapable that the first judgment of the High Court remanding the case to the Additional Judicial Commissioner was clearly without jurisdiction and as a logical result thereof the order of remand and all proceedings taken thereafter would become void ab initio.

15. For these reasons, therefore, we allow this appeal, set aside the judgment of the High Court under appeal as also the judgment of the High Court dated February 17, 1967 and decree the plaintiff's suit.

16. In the peculiar circumstances of the case, there will be no order as to costs.

(1981) 2 Supreme Court Cases 109

(BEFORE S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ.)

SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, WEST BENGAL .. Appellant;

Versus

SATYEN BHOWMICK AND OTHERS .. Respondents.

Criminal Appeal No. 368 of 1975†, decided on January 15, 1981

Official Secrets Act, 1923 (19 of 1923) — Section 14 — Nature and scope — Held, neither contains any non obstante clause, nor affects the inherent power of holding proceedings in camera, nor takes away accused's right to get copies under Section 548, CrPC or copies of statements recorded by magistrate or statement of witnesses recorded by police or documents obtained by police during investigation envisaged under Criminal Rules 308 and 310 framed under CrPC — Accused's lawyer also entitled to take notes of such statements in extenso and cannot be compelled to show his register containing the notes by virtue of privilege under Section 126, Evidence Act, 1872 — Criminal Procedure Code, 1898, Sections 548, 251-A — CrPC, 1973, Sections 363(5) and 207

5. AIR 1959 SC 57 : 1958 Andh LT 834
6. AIR 1961 SC 1097 : 1960 Jab LJ 870

†Appeal by special leave from the Judgment and Order dated April 5, 1974 of the Calcutta High Court in Criminal Revision No. 193 of 1971

2002 SCC OnLine Bom 732 : AIR 2003 Bom 80 : (2003) 3 Bom CR 150 : (2003) 105 (1) Bom LR 322

Bombay High Court

BEFORE R.M.S. KHANDEPARKAR, J.

Bhimrao Dnyanoba Patil and others … Petitioners;

Versus

State of Maharashtra and others … Respondents.

Civil Revn. Appln. No. 1287 of 2002

Decided on August 7, 2002

ORDER

1. Heard the learned Advocate for the parties. Rule. By consent, the rule made returnable forthwith.

2. The petitioners challenges the order dated 4th May, 2002 passed by the lower appellate Court rejecting the application for injunction filed by the petitioners during the pendency of the Appeal filed by them against the decree passed by the trial Court dismissing the suit. The suit was filed by the petitioners for declaration that the order passed by the respondents on 26th Nov. 1991 to be void ab initio and that the petitioners have become owners of the suit property by way of injunction to restrain the respondents from disturbing from peaceful possession over the suit property.

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3. Upon hearing the learned Advocates and on perusal of the record, it is seen that it is the case of the petitioners that the petitioner No. 1 was appointed as the supervisor by the Ex-Ruler of Kolhapur State in relation to the various properties including the suit house. The suit house was allowed to be occupied by the petitioner No. 1 pursuant to his employment as the Supervisor. The petitioner No. 1 retired from the service in the year 1972, but continued to occupy the suit house without any obstruction or objection on the part of the Ex-Ruler. It is his further case that some times in the year 1972 a representative of the Ex-Ruler questioned the petitioner No. 1 about his right or interest in or to the house while he was carrying out certain repairs to the suit house and it was informed to the said representative of the Ex-Ruler by the petitioner No. 1 that the possession of the suit house was delivered to the petitioner No. 1 for the occupation of the petitioners permanently and thereby had assigned even the ownership of the suit house. In spite of the said communication, there was no objection on the part of the Ex-Ruler for continuation of the petitioners occupation in the suit house even after his retirement. The property admeasuring about 300 Acres wherein the suit house exists came to be acquired by the State Government in the year 1986. Thereafter, notice was served upon the petitioners to vacate the suit house on the ground that the suit property had been acquired by the State Government. The petitioners, therefore, filed an application to the authorities bringing to their notice that though the land was acquired, the house in occupation of the petitioners was never acquired and the same belongs to the petitioner No. 1 as it was given to the petitioner No. 1 for his permanent residence and in any case the petitioners continued to occupy the said house without any objection even after the retirement of the

petitioner No. 1 since 1972 and the period of 12 years since then having passed, the petitioner No. 1 had acquired title to the suit house by way of adverse possession. The application was rejected and, therefore, the petitioners filed the suit. The trial Court, however, dismissed the suit and the petitioners have filed the appeal against the decree of the dismissal of the suit and during pendency of the appeal, the petitioners filed an application for temporary injunction to restrain the respondent from disturbing possession of the petitioners in relation to the suit house but the same was rejected by the impugned order. Hence, the present appeal.

4. Assailing the impugned order, it was sought to be contended on behalf of the petitioners that indisputedly the petitioners continues to be in possession of the suit house since 1952 and in spite of retirement of the petitioner in the year 1972, he had continued to be in possession of the suit house without any objection on the part of the Ex-Ruler, the Court below ought to have considered that, prima facie, the petitioners have established their claim in relation to the title to the suit house having acquired the same by way of adverse possession since the year 1984, and there was no disturbance whatsoever to the petitioners and the land was acquired by the State Government only in the year 1986. Being so, the petitioners had already acquired title by way of adverse possession prior to acquisition, mere acquisition of the land would not amount to the acquisition of the suit house which is in occupation and which belongs to the petitioners. Reliance is sought to be placed on the decision of the Privy Council in the matter of *Secretary of State* v. *Debendra Lal Khan* reported in AIR 1934 PC 23 and *Kshitish Chandra Bose* v. *Commissioner of Ranchi* reported in AIR 1981 SC 707. It is further submitted by the learned Advocate for the petitioners that the testimony of the petitioner is supported by their witness PW 1 which clearly establishes necessary hostility towards the title of the owner of the house by the petitioner No. 1 and, therefore, the basic ingredient as regards the adverse possession had clearly been established and the Court below having ignored the same has acted illegally in refusing injunctive relief to the petitioners.

5. The perusal of the judgment of the trial Court which deals with the detail analysis of the materials on record discloses that admittedly the suit house was allowed to be occupied by the petitioner No. 1 and his family on account of his employment in the services of the Ex-Ruler. The petitioner No. 1 was admittedly employed since the year 1952 and continued to be in the employment of Ex-Ruler till 1972. Once the evidence on record, prima facie, discloses that the occupation of the suit house by the petitioner

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No. 1 was on account of his employment with the Ex-Ruler, question of disclosing any hostility as such in relation to the occupation of the suit house during the tenure of his employment does not arise at all. Besides, the incident which has been stated to be disclosing the hostility by the petitioners towards the ownership right of the Ex-Ruler in relation to the occupation of the suit house in the year 1952 can hardly be believed. Admittedly, the petitioner No. 1 has not disclosed any thing as regards the hostility as well as the name of the representative of the Ex-Ruler, who is stated to have visited the suit house when the petitioners were allegedly carrying out the repairs to the suit house. Undisputedly, there is no evidence produced in support of the claim of the petitioners that the suit house was being repaired by the petitioners in the year 1952 except the petitioner No. 1's own statement and that of the witness PW 2. Admittedly, PW 2 himself has not carried out any repairs to the suit house nor has disclosed any reason for him to know about alleged repairs by the petitioner to the suit house in the

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year 1952. Undisputedly, the witness PW 2 has disclosed the name of the representative of the Ex-Ruler as R.V. Chavan. However, there is no explanation on record as to why his name was not disclosed by the petitioner No. 1 himself. It is surprising that the petitioners did not know the name of the representative of the Ex-Ruler but his witness could disclose the said name. Apparently, it appears that it was an attempt to fill up the lacuna in the evidence by bringing on record the name of alleged representative of the Ex-Ruler through the testimony of PW 2. The trial Court has, therefore, rightly disbelieved the testimony of the petitioner No. 1 regarding the claim of the said repairs and the same being in the nature of hostility to the title of the Ex-Ruler to the suit house. That apart, the claim of the petitioner No. 1 regarding the hostility have been exhibited by him in relation to the enjoyment to the suit house since the year 1952, is contrary to his own pleadings regarding plea of acquisition of title by adverse possession in as much as that it is the case of the petitioner No. 1 himself that occupation of the suit house initially was on account of his employment with the Ex-Ruler and it is only after his retirement that during the period of 12 years there was no obstruction whatsoever to the petitioners to occupy the suit house and that therefore, the petitioners are entitled to claim acquisition of title by adverse possession to the suit house. Being so, the alleged acts of the hostility prior to the year 1972 can be of no help to claim the title to the suit house by way of adverse possession. Undisputedly, there is no record to disclose that the petitioner had been enjoying the suit house with the hostility to the title by the Ex-Ruler in relation to the suit house from the year 1972 till 1984. Not a single incident has been disclosed by the petitioners by which the Ex-Ruler was made known that the petitioner No. 1 had continued to occupy the suit house since 1972 onwards denying the rights of the Ex-Ruler to the suit house. It is well established by the Court that in order to claim the title by way of adverse possession, the party has to specifically pleaded all the necessary ingredients of the adverse possession and has to establish the same. The petitioners having not done so, prima facie, there was no case made for grant of any relief of temporary injunction against the respondents on the alleged ground of acquisition of title to the suit house by way of adverse possession.

6. Undoubtedly, the petitioners continued to be in occupation of the suit house, even after his retirement from the services of the Ex-Ruler. Undisputedly, the petitioner No. 1 retired from his service in the year 1972. Similarly it is also evident from the records that the property wherein the suit house exist was acquired by the Government in the year 1896. Apparently, the petitioners continued to occupy the suit house for a period over 12 years even after the retirement of the petitioner No. 1 from the employment with the Ex-Ruler. In such circumstances, can it be said that possession of the suit premises over a statutory period by itself would be sufficient to succeed in the plea of adverse possession?

7. In *Radhamoni Debi* v. *The Collector of Khula* reported in ILR 27 Cal 944 the Privy Council has held that possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor. This view finds support from the decision of the Apex Court in the matter of *P. Lakshmi Reddy* v. *L. Lakshmi Reddy* reported in AIR 1957 SC 314.

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8. The essential ingredients of adverse possession are actual and continuous possession along with necessary animus on the part of the person intending to perfect

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his title to the property by adverse possession. The possession of the property with the bona fide belief that the same belongs to him would disclose absence of necessary animus for perfecting the title by adverse possession in relation to such property. Unless the enjoyment of the property is accompanied by adverse animus, mere possession for a long period, even over a statutory period, would not be sufficient to mature title to the property by adverse possession. Certainly, these essential ingredients of adverse possession are to be established by the person claiming acquisition of title to a property by adverse possession.

9. It is also pertinent to note that the petitioners do not dispute the fact that their entry in the suit house was on account of employment of the petitioner No. 1 with the owners of the suit house. It is, therefore, the case of the petitioners themselves that they are allowed to occupy the suit house by its owners. In other words, it was a permissive possession of the suit house with the petitioners. The permissive possession will always continue to be permissive till and until the licensee asserts and proves the assertion of adverse possession. Such assertion and the proof in that regard should necessarily be for a continuous period of twelve years. The Apex Court in *Sheodhari Rai* v. *Suraj Prasad Singh* reported in AIR 1954 SC 758, has clearly held that where possession is proved in its origin to be permissive, it will be presumed that it continued to be of the same character until and unless some thing occurred to make it adverse. The Supreme Court has further held in *State Bank of Travancore* v. *A.K. Panicker* reported in AIR 1971 SC 996 that there must be open and explicit disavowal and disclaimer brought to the knowledge of the owner. Mere possession for however length of time does not result in converting the permissive possession into adverse possession, as has been ruled by the Supreme Court in *Thakur Kishan Singh* v. *Arvind Kumar* reported in AIR 1995 SC 73. The permissive possessor has necessarily to prove some overt act on his part indicating assertion of hostile title. It is well said that permissive possession and hostile animus operate in conceptually different fields, and the permissive possession does not become adverse by a mere change in the mental attitude of the person in possession and it is for such person to prove from which date the permissive possession became hostile.

10. As rightly observed by the trial Court the petitioners had also not joined the owners i.e. Ex-Ruler as the party defendant to the suit so as to establish their case of adverse possession. It was sought to be contended that the property having been acquired in the year 1972 there was no question of joinder of Ex-Ruler as the party to the suit. Undisputedly, the plea of adverse possession is not against the Government but against the Ex-Ruler and, therefore, it was necessary for the petitioners to join the Ex-Ruler as the party defendant to the suit in order to establish their plea of acquisition of title by way of adverse possession.

11. Apparently, therefore, the petitioners have failed to establish acquisition of title by adverse possession and, therefore, the trial Court dismissed the suit. In the appeal, at the interim stage of hearing of the appeal, the petitioners having prima facie failed to show that the finding on the relevant aspects of the matter to be either perverse or contrary to the materials on record and also failed to establish prima facie that the petitioners had acquired the title to the suit house by way of adverse possession.

12. The decisions sought to be relied upon by the learned Advocate for the petitioners are of no assistance in the case in hand. In *Secretary of State* v. *Debendra Lal's case* (AIR 1934 PC 23) (supra) the Privy Council had ruled that, for adverse possession it is sufficient that the possession is overt and without any attempt at concealment so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. It is further held that the Limitation Act is indulgent to the Crown in one respect only, namely, in requiring a much longer period of adverse possession than in the case of subject; otherwise there is no discrimination in the statute between the Crown and the subject as regards the

requisites of adverse possession. Referring to the facts of the case, it was clearly observed therein that. "The Crown in the case of a fishery belonging to it exercises its rights by granting lease

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or licences to fish, it does not itself fish. Consequently the granting by a person other than the Crown of leases or licenses to fish in the case of a fishery which prima facie belongs to the Crown, is evidence of the usurpation by the person of the distinctive rights of the Crown, and is thus most significant evidence of adverse possession. Where a fishery is claimed in a navigable river which is open to the public for the purposes of nevigation, the proprietor cannot exclude the public from it at any time, and it is practically impossible to prevent occasional encroachments on its right." Apparently, all the observation by the Privy Council were in the facts of the said case wherein a person had sought to lease out or grant licence to fish in a navigable river which in fact belonged to the Crown.

So also in *Kshitish Chandra Bose's case* (AIR 1981 SC 702) (supra) the Apex Court has held that, the view taken by the High Court that as the land in question consisted of a portion of the tank or a land appurtenant thereto, adverse possession could not be proved was a wrong view and it was ruled that if a person asserts a hostile title even to a tank which, as claimed by the municipality as belonging to it and despite the hostile assertion of title by the appellant therein, no steps were taken by the owner (namely, the municipality in the said case), to evict the trespasser, his title by prescription would be complete after thirty years. Certainly stranger was not in use and enjoyment of that tank on account of his employment with the municipality. Being so, both the decisions given in a different set of facts are of no assistance to the petitioners in the case in hand.

13. Undisputedly, the land wherein the house in question exists was acquired by the State Government in the year 1986. Considering the provisions of law contained under Section 16 of the Land Acquisition Act, it is abundantly clear that once the land is acquired by the Government it is vests in the State free from all encumbrances.

14. Even if any person is left without payment of compensation to him towards his interest in the land, the only remedy for him would be either to seek compensation from the State Government or from other person who might have collected the compensation in relation to his interest in such land. But apart from that, no occupant of such land could continue to claim subsisting interest in the land so as to continue to occupy the same once the land vest in the Government pursuant to its acquisition. The house in question was admittedly belonging to the Ex-Ruler. The properties wherein the house exist has already been acquired by the State. Apparently, all the things attached to the earth in or over the land acquired forming a part of the land which were belonging to the Ex-Ruler stood acquired along with the land. As already seen above, the petitioners has failed to establish any independent right or interest in or to the suit house. Being so, in the facts and circumstances of the case in hand, the house in question even though it was in permissive possession of the petitioners, the petitioners cannot insist to continue to occupy the suit house and have to deliver the possession thereof to the State Government.

15. While interpreting the expression "vest absolutely in the Government free from all encumbrances", in Section 16 of the Land Acquisition Act, 1894, the Apex Court in *The Fruit and Vegetable Merchants Union* v. *The Delhi Improvement Trust* reported in AIR 1957 SC 344 has held that (Para 19):

"In the cases contemplated by Ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession."

16. Following the above referred decision in *The Fruit and Vegetable Merchants Union's case* (supra) and while interpreting the words, "vest in State free from all encumbrance" occurring in Section 3 of Himachal Pradesh Village Common Lands Vesting and Utilisation Act (1974), in the matter of *State of Himachal Pradesh* v. *Tarsem Singh* reported in 2001 AIR SCW 3284 : (AIR 2001 SC 3431) the Apex Court has observed thus (Para 7):

"The words encumbrances means a burden or charge upon property or a claim or lien upon an estate or on the land. Encumber means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land."

And has further ruled that (Para 8):

"Thus where the land vests absolutely free

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from all encumbrances not only the rights in the land vest in the State but possession of the land also."

And further referring to the issue in the matter before the Apex Court as to whether the encumbrances would include easementary right, it was held that (Para 9):

"When the legislature has used the expression free from encumbrances, it means the vesting of land in the State is without any burden or charge on the land, including that of easementary right. We are, therefore, of the view that the consequence of vesting of right in the land free from all encumbrances is that the interest, right and title to the land including the easementary right stood extinguished and such rights vested in the State from all encumbrances."

17. Apparently, therefore, there was no, prima facie, case made out by the petitioners for grant of any injunctive relief in the matter. The trial Court having analysed the materials on record in detail and petitioners having failed to make out any case in support of their contention, and further no material have been placed by the petitioners before the lower appellate Court to justify their claim, no fault can be found with the impugned order dismissing the application for temporary injunction filed by the petitioners.

18. In spite of law on the point being very clear, it is apparent that the petitioners have been illegally without the possession of the suit house and creating hurdles to the State Government in taking appropriate decision regarding development of the land which has been acquired for rehabilitation to flood affected people. In the circumstances, the petition deserves to be dismissed with costs. Hence, the petition is hereby dismissed and the rule is discharged with costs of Rs. 2,000/- (Rupees Two thousand, only) to be paid by the petitioners to the respondent No. 1.

Petition dismissed.

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