PSN A122

122

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc. ... Respondents

AND
OTHER CONNECTED CIVIL APPEALS

COMPILATION OF JUDGMENTS ON LIMITATION AND ADVERSE POSSESSION (SUIT 4)

BY
DR. RAJEEV DHAVAN, SENIOR ADVOCATE

(PLEASE SEE INDEX INSIDE)

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

INDEX

7. As we have noticed that the High Court considered only two grounds for granting bail — one is that the respondent was in custody for more than one year and the other is that the High Court made some observation in the previous order. We may point out that the previous order referred to by the High Court only made a mention that the respondent could renew the application after framing of the charge against him. That observation is not a ground envisaged under Section 437(1)(*i*) of the Code for granting bail. We are of the definite opinion that the High Court did not approach the bail application from a legal angle.

8. We refrain from expressing any opinion on the merits of the rival contentions raised before us. We have noticed from the impugned judgments that there was no application of mind of the High Court from the angle provided in the aforesaid clause, which is sine qua non for granting bail, in the light of the specific prohibition contained in the sub-clause that such persons shall not be so released if there appears a reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

9. While setting aside the impugned judgment, we make it clear that we have not considered the case of either the appellant or the respondent relating to the entitlement of bail claimed by the respondent. We leave it to the High Court to consider this aspect afresh if any motion is made by the respondent in that behalf. In such an event the High Court will pass orders untrammelled by any observations made by the High Court in the impugned order or by us in this order. With these observations the appeal is disposed of.

(2004) 7 Supreme Court Cases 541

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

RAMIAH .. Appellant;

Versus

N. NARAYANA REDDY (DEAD) BY LRS. .. Respondent.

Civil Appeal No. 5864 of 1999†, decided on August 10, 2004

A. Limitation Act, 1963 — Arts. 64 and 65 — Applicability — Held, applicability of the relevant article, has to be decided on the basis of pleadings — But by suppression of material facts and skilful pleading, plaintiff cannot seek to avoid the inconvenient article — Suit filed by appellant in 1984 for possession of the property without disclosing that admittedly he was ousted from the property in 1971 — Held, Art. 64 attracted and suit, having been filed thirteen years after dispossession, was barred by limitation

† From the Judgment and Order dated 27-5-1997 of the Karnataka High Court in RFA No. 412 of 1988

Held :

Article 64 of the Limitation Act, 1963 (Article 142 of the Limitation Act, 1908) is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring a suit within the purview of that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908), on the other hand, is a residuary article applying to suits for possession not otherwise provided for. Suits based on the plaintiff's title in which there is no allegation of prior possession and subsequent dispossession alone can fall within Article 65. The question whether the article of limitation applicable to a particular suit is Article 64 or Article 65, has to be decided by reference to pleadings. The plaintiff cannot be allowed by skilful pleading to avoid the inconvenient article. The plaintiff cannot invoke Article 65 by suppressing material facts. (Para 9)

Ram Surat Singh v. *Badri Narain Singh*, AIR 1927 All 799 (2) : 25 All LJ 802; *Mohd. Mahmud* v. *Mohd. Afaq*, AIR 1934 Oudh 21 : 11 OWN 104, *relied on*

Sanjiva Row: *Commentary on the Limitation Act*, (9th Edn., Vol. 2, p. 549), *relied on*

In this case in an earlier suit for possession filed by the respondent against the appellant, in his evidence the appellant had admitted that he was in possession of the suit property up to 1971. This admission of the appellant in that suit indicates ouster from possession of the appellant herein. In the present suit instituted by the appellant, he has glossed over this fact. On the facts of the case, Article 64 is applicable to the present suit. Therefore, the said suit was barred by limitation as it was filed after 13 years from dispossession. (Paras 9 and 6)

B. **Limitation Act, 1963 — S. 14 — Applicability — Benefit of exclusion of time taken in prosecuting another civil proceeding — Suit for possession of land filed by the respondent — Trial court partly decreeing the suit in 1971 finding that respondent was in possession of the entire land, which was inam land, though a portion thereof was regranted to appellant — Trial court granting permanent injunction restraining appellant from interfering with possession of respondent over the entire land with liberty to appellant to take steps to recover possession of the said portion of the land by following due process of law — First and second appeals having been dismissed, the judgment and decree passed by trial court in 1971 attained finality in 1982 — But appellant failing to take any steps to sue for recovery of the said portion of the land till 1984 when he filed the suit for possession — Held, appellant not entitled to benefit of S. 14 (Paras 4 and 11)**

Appeal dismissed R-P-M/ATZ/30300/C

Advocates who appeared in this case :
P.R. Ramasesh and Ms Vandana Jalan, Advocates, for the Appellant;
G.V. Chandrashekhar and P.P. Singh, Advocates, for the Respondent.

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

1. AIR 1934 Oudh 21 : 11 OWN 104, *Mohd. Mahmud* v. *Mohd. Afaq* 545*c-d*
2. AIR 1927 All 799 (2) : 25 All LJ 802, *Ram Surat Singh* v. *Badri Narain Singh* 545*b-c*

The Judgment of the Court was delivered by

S.H. KAPADIA, J.— Being aggrieved by the judgment and order dated 27-5-1997 passed by the High Court of Karnataka in RFA No. 412 of 1988, the original plaintiff has come to this Court by this appeal. By the impugned judgment, the High Court has dismissed the suit filed by the plaintiff.

2. The short question which arises for consideration in this appeal by special leave is whether the plaintiff has proved that he was in possession of the suit land within 12 years of the date of the suit.

3. The facts on which this appeal has arisen are as follows:

One Bayyanna was the owner of the suit land in Survey No. 19/1 admeasuring 3 acres 12 guntas. The suit land was *inam* land. Bayyanna sold the suit land to N. Narayana Reddy (since deceased), father of the respondents herein, vide registered sale deed dated 4-11-1958. N. Narayana Reddy had instituted Suit No. 357 of 1960 in the Court of Principal Second Munsif, Bangalore for recovery of possession based on title and for permanent injunction against the appellant herein on the ground that the appellant was trying to interfere with his possession.

4. The defence of the appellant herein in the above suit was that he had purchased the suit land on 27-11-1959 from B. Bayyanna and that he was in possession of the suit land. His further defence was that the suit land was *inam* land and that he was registered as *khadim* tenant by the Inam Abolition Authorities. By judgment and order dated 7-4-1971, the Principal Munsif, Bangalore partly decreed the suit filed by N. Narayana Reddy holding him to be the owner of only 1 acre 21 guntas and not of the entire land admeasuring 3 acres 12 guntas. However, he was found to be in possession of the entire 3 acres 12 guntas and, therefore, the Principal Munsif granted permanent injunction in favour of N. Narayana Reddy restraining the appellant herein from interfering with the possession of N. Narayana Reddy on the entire suit land admeasuring 3 acres 12 guntas with liberty to the appellant herein to take steps to recover possession of 1 acre 21 guntas out of the total area of 3 acres 12 guntas by following due process of law. By the aforestated judgment, the Principal Munsif, Bangalore came to the conclusion that N. Narayana Reddy was in possession of the entire area admeasuring 3 acres 12 guntas; that the entire area was *inam* lands and since an area admeasuring 1 acre 21 guntas out of total area admeasuring 3 acres 12 guntas was regranted by the Deputy Commissioner to the appellant herein, N. Narayana Reddy was not the owner of the entire area admeasuring 3 acres 12 guntas.

5. Being aggrieved by the judgment and order dated 7-4-1971, N. Narayana Reddy preferred Regular Appeal No. 45 of 1971. The first appellate court dismissed the said regular appeal vide judgment dated 13-1-1975. Thereafter, N. Narayana Reddy filed Regular Second Appeal No. 801 of 1975 in the High Court of Karnataka, which came to be dismissed on 24-11-1982. Consequently, the judgment and decree passed in Suit No. 357 of 1960 dated 7-4-1971 reached finality on 24-11-1982.

(4)

6. On 8-5-1984, the appellant herein filed the present Suit No. 1518 of 1984 i.e. within two years from the date of the decision of the High Court dated 24-11-1982 in RSA No. 801 of 1975 filed by N. Narayana Reddy, for possession of land admeasuring 1 acre 21 guntas. The said suit was instituted in the Court of Additional City Civil Judge, Bangalore (hereinafter for the sake of brevity referred to as "the trial court"). In the said suit, it was held that the appellant herein admittedly stood ousted in 1971 and, therefore, the said suit was barred by limitation as it was filed after 13 years from dispossession. Consequently, the trial court dismissed the suit.

7. Being aggrieved, the appellant herein preferred Regular First Appeal No. 412 of 1988 under Section 96 CPC in the High Court of Karnataka. By the impugned judgment, the High Court confirmed the dismissal of the suit by the trial court by holding that the present suit has been filed much beyond 12 years. By the impugned judgment, the High Court rejected the contention advanced on behalf of the appellant that the period of limitation commenced only after the decision of the High Court of Karnataka in RSA No. 801 of 1975, filed by N. Narayana Reddy, decided on 24-11-1982. Hence, this civil appeal.

8. Mr P.R. Ramasesh, learned counsel appearing on behalf of the appellant contended that the plaintiff had instituted the suit for possession based on title and not on the basis of previous possession and, therefore, under Article 65 of the Limitation Act, 1963 the suit was well within time as the limitation of 12 years commenced from the date when the possession of the defendant became adverse to the plaintiff. He contended that Article 64 was not applicable to the facts of the present case as the suit instituted by the appellant for possession of immovable property was based on title and not on the basis of previous possession. It was further urged that the appellant was entitled to the benefit of Section 14 of the Limitation Act, 1963, as the earlier litigation instituted by N. Narayana Reddy came to an end only on 24-11-1982 when the High Court in RSA No. 801 of 1975 confirmed the decree dated 7-4-1971 passed by the Principal Munsif in Suit No. 357 of 1960.

9. We do not find any merit in the aforestated arguments. Article 64 of the Limitation Act, 1963 (Article 142 of the Limitation Act, 1908) is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring a suit within the purview of that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908), on the other hand, is a residuary article applying to suits for possession not otherwise provided for. Suits based on the plaintiff's title in which there is no allegation of prior possession and subsequent dispossession alone can fall within Article 65. The question whether the article of limitation applicable to a particular suit is Article 64 or Article 65, has to be decided by reference to pleadings. The plaintiff cannot invoke Article 65 by suppressing material facts. In the present case, in Suit No. 357 of 1960 instituted by N. Narayana

Reddy in the Court of Principal Munsif, Bangalore, evidence of the appellant herein was recorded. In that suit, as stated above, the appellant was the defendant. In his evidence, the appellant had admitted that he was in possession of the suit property up to 1971. This admission of the appellant in that suit indicates ouster from possession of the appellant herein. In the present suit instituted by the appellant, he has glossed over this fact. In the circumstances, both the courts below were right in coming to the conclusion that the present suit was barred by limitation. The appellant was ousted in 1971. The appellant had instituted the present suit only on 8-5-1984. Consequently, the suit has been rightly dismissed by both the courts below as barred by limitation.

10. In the case of *Ram Surat Singh* v. *Badri Narain Singh*[1] it has been held that if the suit is for possession by a plaintiff who says that while he was in possession of the property he was dispossessed, then he must show possession within 12 years under Article 142 (now Article 64) of the Limitation Act. To the same effect is the ratio of the judgment in the case of *Mohd. Mahmud* v. *Mohd. Afaq*[2]. In *Commentary on the Limitation Act* by Sanjiva Row (9th Edn., Vol. 2, p. 549) it has been stated that the question as to which of the two articles would apply to a particular case should be decided by reference to pleadings, though the plaintiff cannot be allowed by skilful pleading to avoid the inconvenient article. On facts of the case, we find that Article 64 is applicable to the present suit. Consequently, the suit has been rightly dismissed by both the courts below.

11. In the present case, on the facts of this case as stated above, Section 14 of the Limitation Act, 1963 cannot be invoked by the appellant as the appellant herein had never challenged the findings on possession recorded by the Principal Munsif vide decree dated 7-4-1971. In the present case, earlier Suit No. 357 of 1960 was filed by the said N. Narayana Reddy, which was partly decreed and, therefore, he preferred Regular Appeal No. 45 of 1971 which was dismissed by the first appellate court on 13-1-1975. Thereafter, N. Narayana Reddy filed RSA No. 801 of 1975 which was dismissed by the High Court on 24-11-1982. All throughout this period, although the appellant had the right to recover possession from N. Narayana Reddy to the extent of 1 acre 21 guntas in accordance with law, the appellant herein did not take any steps to sue for possession till 8-5-1984. Consequently, the appellant was not entitled to the benefit of Section 14 of the Limitation Act, 1963.

12. For the foregoing reasons, we do not find any merit in this civil appeal and the same is accordingly dismissed, with no order as to costs.

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1 AIR 1927 All 799 (2) : 25 All LJ 802
2 AIR 1934 Oudh 21 : 11 OWN 104

(2019) 7 Supreme Court Cases 76

(BEFORE N.V. RAMANA, DEEPAK GUPTA AND INDIRA BANERJEE, JJ.)

SOPANRAO AND ANOTHER .. Appellants;

Versus

SYED MEHMOOD AND OTHERS .. Respondents.

Civil Appeal No. 4478 of 2007†, decided on July 3, 2019

A. Limitation Act, 1963 — Art. 65 or Art. 58 — Suit for declaration of title and possession based on title i.e. both for relief of declaration and for relief of possession — Limitation period applicable would be that under Art. 65 and not Art. 58 — Distinguished from case where only relief sought is that of declaration — Specific Relief Act, 1963 — S. 5 and S. 34 — Property Law — Ownership and Title

Held :

The main prayers made in the suit concerned clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. Article 65 deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19-8-1978 when possession was handed over to the defendants. The suit concerned was filed in 1987 and was thus, well within limitation. (Para 9)

L.C. Hanumanthappa v. *H.B. Shivakumar*, (2016) 1 SCC 332 : (2016) 1 SCC (Civ) 310, *distinguished*

B. Specific Relief Act, 1963 — Ss. 5 and 34 — Suit for declaration of title and possession based thereon, that suit lands were inam lands of Dargah, and that plaintiffs were the Inamdars and consequent possession — Grant of remedy by first appellate court after proper reappreciation of evidence and High Court modifying it — Supreme Court declined to interfere with concurrent findings of fact

— Tenancy and Land Laws — Hyderabad Atiyat Inquiries Act, 1952 (10 of 1952) — Ss. 3 and 4 — Trusts and Trustees — Bombay Public Trusts Act, 1950 (29 of 1950), S. 50-A (Para 8)

Shivajirao v. *Syed Mehmood*, 2007 SCC OnLine Bom 288 : (2007) 5 Mah LJ 641, *affirmed*

† Arising from the Judgment and Order in *Shivajirao* v. *Syed Mehmood*, 2007 SCC OnLine Bom 288 : (2007) 5 Mah LJ 641 (Bombay High Court, Aurangabad Bench, Second Appeal No. 76 of 1998, dt. 29-3-2007)

C. **Civil Procedure Code, 1908 — S. 9 — Jurisdiction of civil court — Dispute as to whether properties belonged to Dargah and remedy claimed was to manage properties instead of personal rights — Issue was not whether suit properties are wakf properties — Held, civil court has jurisdiction to decide suit — Trusts and Trustees — Religious and Charitable Endowments and Trusts — Wakfs — Jurisdiction** (Para 12)

D. **Civil Procedure Code, 1908 — Or. 7 R. 7 — Moulding of relief — Grant of remedy lesser or smaller than what has been prayed for — Permissibility of**

— On facts held, R-1 to R-4 plaintiffs prayed for declaration that they be declared as Inamdars but considering evidence High Court declared them to be Mutawallis — This relief is smaller than what had been claimed in suit — Hence, it was not interfered with — Contract and Specific Relief — Specific Relief Act, 1963, S. 34 (Paras 11 and 10)

Bachhaj Nahar v. *Nilima Mandal*, (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927, *distinguished*

Bachhraj Nahar v. *Nilima Mandal*, 2004 SCC OnLine Pat 1116 : (2005) 1 PLJR 289, *held, reversed*

E. **Civil Procedure Code, 1908 — Or. 41 R. 27 — Additional evidence before appellate court — Submission of additional evidence for first time before Supreme Court without filing it before lower appellate court — Declined to consider such application where requirements of Or. 41 R. 27 not met with**

— Appellant-defendants filed several documents for first time before Supreme Court as additional evidence without submitting them before first appellate court or High Court — Held, no explanation given as to why these documents not filed before trial court — No application filed before first appellate court or High Court — No reasons set for not filing these documents earlier — It did not meet requirements of Or. 41 R. 27 CPC — Hence, applications rejected (Para 13)

F. **Civil Procedure Code, 1908 — Or. 22 Rr. 3, 4 & 11 — Substitution of legal representatives of Mutawallis — Effect of — As mutawalli is in nature of manager, as such appeal does not abate — Trusts and Trustees — Religious and Charitable Endowments and Trusts — Wakfs — Mutawalli** (Para 6)

Appeal dismissed G-D/62617/CV

Advocates who appeared in this case :

Vivek C. Solshe and Amol B. Karande, Advocates, for the Appellants;

Youraj Gaikwad, Dr R.R. Deshpande, Anjani Kr. Jha, Sudhanshu S. Choudhari, Ms Surabhi Guleria, Yogesh Kolte, Vatsalya Vigya, Ms Nandini Singla, Shakil Ahmed Syed, Mohd. Parvez Dabas, Daanish Ahmad Syed and Uzmi Jameel Husain, Advocates, for the Respondents.

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

1. (2016) 1 SCC 332 : (2016) 1 SCC (Civ) 310, *L.C. Hanumanthappa* v. *H.B. Shivakumar* 80*b*
2. (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927, *Bachhaj Nahar* v. *Nilima Mandal* 80*e*
3. 2007 SCC OnLine Bom 288 : (2007) 5 Mah LJ 641, *Shivajirao* v. *Syed Mehmood* 78*g*
4. 2004 SCC OnLine Pat 1116 : (2005) 1 PLJR 289, *Bachhraj Nahar* v. *Nilima Mandal* (**held, reversed**) 80*e*

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.— A suit was filed by Respondents 1 to 4 herein before the trial court against the present appellants and others in which the main prayers were as follows:

> "(*i*) That, the lands S. Nos. 60, 62, 77, 79/2 and 78 admeasuring 31 acres 32 gunthas, 15 acres 22 gunthas, 27 acres 18 gunthas, 15 acres 19 gunthas and 9 acres 19 gunthas respectively situated at Village Haregaon, Taluq Ausa, Dist. Latur may be declared as inam lands of Niyamatullah Shah Dargah, Haregaon and the plaintiffs as Inamdars of the above lands.
>
> (*ii*) That, the plaintiffs be put in possession of the lands referred to above from Defendants 1 to 11."

2. The present appellants and others contested the suit. According to the plaintiffs, the possession of the land in question was illegally given to Namdeo Deosthan Trust (for short "the Trust") on 19-8-1978 by the Government and it was prayed that the possession of this land be restored to the plaintiffs. The defendants contested the suit on various grounds. One of the main grounds raised was that the suit was not filed within the period of limitation. It was also contended that the suit was bad for non-joinder of necessary parties and it was contended that the suit land belonged to the Trust since time immemorial and the suit be dismissed. The trial court vide judgment dated 14-10-1992 dismissed the suit of the plaintiffs and held that the suit was not filed within the period of limitation. It also held that the suit is bad for non-joinder of parties. Lastly, the trial court held that the plaintiffs had failed to prove that the suit land was inam land or the plaintiffs are Inamdars.

3. Aggrieved, the plaintiffs filed an appeal in the Court of District Judge, Latur. The District Judge vide judgment dated 26-11-1997 reversed the judgment and decree of the trial court and came to the conclusion that the land originally belonged to Dargah Niyamatullah Shah Quadri (for short "the Dargah") and the plaintiffs and Defendant 12 were the Inamdars of the suit land. It further held that the Government had wrongly given the possession of the suit property. It was also held that all necessary parties had been joined in the suit. Finally, the first appellate court held that the plaintiffs were entitled to a decree for possession of the suit land and accordingly allowed the appeal and decreed the suit in favour of the plaintiffs and Defendant 12 and against Defendants 1 to 11 and 15.

4. Aggrieved, the present appellants and two others filed an appeal in the High Court of Bombay. This appeal was dismissed vide judgment dated 29-3-2007[1]. However, the High Court modified the decree of the District Judge to the limited extent that the plaintiffs and Defendant 12 were held to be descendants of Mutawallis and not Inamdars. Hence, this appeal.

5. We have heard the learned counsel for the parties.

6. During the pendency of this appeal, some of the plaintiffs have died and their legal representatives were not brought on record. Though a preliminary

1 *Shivajirao* v. *Syed Mehmood*, 2007 SCC OnLine Bom 288 : (2007) 5 Mah LJ 641

objection was raised that the appeal abates as a whole, we find no merit in this preliminary objection. The plaintiffs have been held to be descendants of Mutawallis of the properties which is in the nature of a managerial post. As such the appeal does not abate.

7. The learned counsel for the appellants submitted that the plaintiffs had failed to prove that the land was the land of the Dargah. The second submission was that the suit was barred by limitation. It was also contended that the suit was not maintainable and that the High Court had granted reliefs which had not even been prayed for by the plaintiffs.

8. As far as the issue of title is concerned, that, in our view, is a finding of fact arrived at by the District Judge and confirmed by the High Court. This finding cannot be disturbed in this Court. However, on the insistence of the learned counsel for the appellants, we have gone through the record and find that the possession of land in question was handed over to the Trust only on 19-8-1978. Nothing has been brought on record to show that prior to 29-1-1973 the land was entered in the name of the Trust. In fact, as per the pleadings of the defendants a change report had been filed before the Assistant Charity Commissioner, Latur and the said authority, without issuing notices to the Inamdars/Mutawallis, allowed the said application on 29-1-1973. The plaintiffs had no knowledge of this application but on the basis of this order the Government handed over the possession of the land to the Trust. It was only after the Trust came into the possession of the land that the mutation entry (Ext. 115) was made in favour of the Trust. According to the plaintiffs, they came to know about this fact only in 1986 when some publication in this regard was made by the Assistant Charity Commissioner in terms of Section 50-A of the Bombay Public Trusts Act, 1950 and, thereafter, they filed the suit. It was the plaintiffs, as observed by the District Judge as well as the High Court, who had proved that the suit land belonged to the Dargah. According to the High Court, the plaintiffs were not actually Inamdars and were manning the affairs of the Dargah in the nature of Mutawallis. Evidence was led by the plaintiffs to show that they had been held to be the successors of one Nizamuddin, the original Mutawalli of the Dargah by the competent authority under the Hyderabad Atiyat Inquiries Act, 1952 (10 of 1952). The High Court made reference to a large number of documentary records proved by the plaintiffs from the year 1915 onwards, which showed that the land had been granted to the Dargah as far back in 1915. Therefore, the Dargah was shown to be the owner as far back in 1325 Fasli (1915 AD) in the official records. Similar entries were made in 1342 Fasli (1932 AD), 1943 and 1951, all of which showed that the lands were shown as lands belonging to Dargah. The judgments of the District Court and the High Court are based on evidence. No question of law arises as far as ownership of land is concerned. Therefore, this finding of fact calls for no interference.

9. It was next contended by the learned counsel that the suit was not filed within limitation. This objection is totally untenable. Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this

(10)

contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in *L.C. Hanumanthappa* v. *H.B. Shivakumar*[2] is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19-8-1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants.

10. It was also urged that the plaintiffs had prayed that they were Inamdars and that the High Court had created a new case for the plaintiffs by declaring them to be Mutawallis. It was argued that since the plaintiffs had not claimed the relief that they were Mutawallis, the High Court could not have granted this relief. Reliance has been placed on a judgment of this Court in *Bachhaj Nahar* v. *Nilima Mandal*[3]. Para 22 of the said judgment reads as follows: (SCC p. 500)

> "22. The observation of the High Court[4] that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. *It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed.* But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer." (emphasis supplied)

11. In our view, the aforesaid judgment does not help the appellants and, in fact, helps the respondents. The judgment clearly lays down that the lesser relief or smaller version of the relief claimed or prayed for can be granted. The plaintiffs claimed the status of Inamdars which is a higher position than that of Mutawallis. The High Court has granted a lesser or lower relief and not a higher relief or totally new relief and, therefore, we reject this contention also.

2 (2016) 1 SCC 332 : (2016) 1 SCC (Civ) 310
3 (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927
4 *Bachhraj Nahar* v. *Nilima Mandal*, 2004 SCC OnLine Pat 1116 : (2005) 1 PLJR 289

12. It was also urged that the civil court had no jurisdiction to decide the suit. No such objection was raised before the trial court. This objection was raised before the High Court but has been rightly rejected. The issue in this case was whether the properties were properties of the Dargah or not and the issue was not whether the properties are wakf properties or not. The High Court rightly held that the plaintiffs were not claiming any personal right in the land but only claiming rights of management over the property of the Dargah. We agree with the finding of the High Court that the civil court had the jurisdiction to decide the suit.

13. At this stage, it would be pertinent to point out that the appellant-defendants, during the course of this appeal, have filed a number of applications to place on record certain documents which were not on the record of the trial court. No explanation has been given in any of these applications as to why these documents were not filed in the trial court. These documents cannot be looked into and entertained at this stage. The defendants did not file these documents before the trial court. No application was filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence before the first appellate court or even before the High Court. Even the applications filed before us do not set out any reasons for not filing these documents earlier and do not meet the requirements of Order 41 Rule 27 of the Code of Civil Procedure. Hence, the applications are rejected and the documents cannot be taken into consideration.

14. In view of the above discussion, we find no merit in the appeal and the same is dismissed. Pending application(s), if any, shall stand disposed of.

(12)

(2018) 10 Supreme Court Cases 588

(BEFORE ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.)

GHEWARCHAND AND OTHERS .. Appellants;

Versus

MAHENDRA SINGH AND OTHERS .. Respondents.

Civil Appeal No. 5870 of 2015†, decided on September 20, 2018

A. **Limitation Act, 1963 — Art. 65 — Suit for declaration, injunction and possession of immovable property — Possession of defendants when turned adverse to plaintiffs — Determination of**

— Plaintiffs, filed a civil suit on 19-12-1978 for claiming a declaration of their title on the suit property, injunction and possession against the defendants and as per the plaint, the defendants' possession, became adverse when the defendants in S. 145 CrPC proceedings asserted their right, title and interest over the suit property to the knowledge of the plaintiffs for the first time and which eventually culminated in passing of an attachment order by the City Magistrate on 23-12-1966 — Held, Art. 65, which provides a limitation of 12 years for filing the suit, was applicable to the suit and the same was to be counted from the date when the possession of the defendant became adverse to the plaintiffs — Therefore, the plaintiffs, rightly filed the civil suit on 19-12-1978 within 12 years from the date of attachment order dt. 23-12-1966 — Criminal Procedure Code, 1973 — S. 145 — Specific Relief Act, 1963 — S. 5 — Property Law — Adverse possession (Paras 18 to 20)

B. **Limitation Act, 1963 — S. 3 and Art. 65 — Filing of suit within the stipulated limitation period — Ascertaining of — Plaint of the suit — Relevance of, for such determination**

— Held, in order to decide the question of limitation as to whether the suit is filed within time or not, the Court is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing the suit — In the present case, held, the plaintiffs satisfied this requirement to bring their suit within limitation — Limitation — Starting Point of Limitation/Reckoning date/Computation of period of Delay — Civil Procedure Code, 1908, Or. 7 R. 11(d) (Para 21)

Mahendra Singh v. *Ghewarchand*, 2006 SCC OnLine Raj 930, *reversed*

Appeal allowed VN-D/61214/CV

Advocates who appeared in this case :

S.K. Jain, Senior Advocate (Dileep Tandon, Puneet Jain, Harsh Jain, Ms Priyal Jain, Ms Vineeta Meghrajani, Pramod Sharma and Ms Pratibha Jain, Advocates) for the Appellants.

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

1. 2006 SCC OnLine Raj 930, *Mahendra Singh* v. *Ghewarchand* (**reversed**) 589*a*, 590*a*, 590*g*

† Arising from the Judgment and Order in *Mahendra Singh* v. *Ghewarchand*, 2006 SCC OnLine Raj 930 (Rajasthan High Court, Jodhpur Bench, SB First Appeal No. 52 of 1997, dt. 4-12-2006)

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.— This appeal is filed against the final judgment and order dated 4-12-2006 passed by the High Court of Rajasthan at Jodhpur in *Mahendra Singh* v. *Ghewarchand*[1] whereby the High Court allowed the appeal filed by the respondents (defendants) and set aside the judgment and decree dated 30-10-1996 passed by the Additional District Judge No. 3, Jodhpur in Civil Suit No. 135 of 1995 (146 of 1978) and dismissed the suit filed by the appellants (plaintiffs) as barred by time.

2. In order to appreciate the question involved in the appeal, it is necessary to set out few facts infra.

3. The appellants are the plaintiffs whereas the respondents are the defendants in a civil suit out of which this appeal arises.

4. The short question involved in this appeal is whether the High Court was justified in allowing the defendants' first appeal and thereby dismissing the appellants' (plaintiffs) suit as barred by time.

5. The appellants (plaintiffs) filed a civil suit against the respondents (defendants) in relation to the suit property, as detailed in Para 1 of the plaint, for claiming the reliefs mentioned in Para 26(3) of the plaint which reads as under:

> "26. Plaintiffs humbly pray that:
>
> 1. Decree for declaration of title be passed in favour of the plaintiffs and against the defendants that property as described in Para 1 of this suit belongs to Sh. Oswal Singh Sabha, Jodhpur and defendant Sh. Kishan Singh does not have any kind of ownership rights over it.
>
> 2. Decree for permanent injunction be passed in favour of the plaintiffs and against the defendants that the defendants be restrained from making any kind of claim or from carrying out any kind of proceeding and interfering in the possession of the disputed property forever.
>
> 3. *Possession of the above property be provided to the plaintiff from the receiver.*
>
> 4. Costs of this suit be also provided to the plaintiffs from the defendants.
>
> 5. Other relief, which this Hon'ble Court may deem fit, be also provided to the plaintiffs." (emphasis supplied)

6. The respondents (defendants) filed the written statement and joined issues on facts and law by denying the material allegations made in the plaint. The respondents, inter alia, also raised an objection that the suit is barred by limitation.

7. The trial court, by judgment/decree answered all the issues on facts and law including the issue of limitation in the appellants' favour and against the respondents and accordingly decreed the suit. It was held that the appellants

1 2006 SCC OnLine Raj 930

are the owners of the suit property; they are entitled to claim possession of the suit property from the respondents; and lastly, the suit is within limitation.

8. The respondents (defendants) felt aggrieved and filed first appeal in the High Court of Rajasthan at Jodhpur. By the impugned judgment[1], the Single Judge allowed the appeal and set aside the judgment and decree of the trial court and, in consequence, dismissed the suit only on the ground that the suit is barred by limitation. In other words, the High Court upheld all the factual findings of the trial court in the appellants' (plaintiffs') favour but reversed the finding on the issue of limitation and held that since the suit is hit by the period of limitation prescribed under the Limitation Act, 1963, it is liable to be dismissed on the ground of limitation. In this view of the matter, the defendants' appeal was allowed and the suit was dismissed as being barred by limitation having been filed beyond the period prescribed under the Limitation Act giving rise to filing of the present appeal by way of special leave in this Court by the plaintiffs.

9. Mr S.K. Jain, learned Senior Counsel appeared for the appellants (plaintiffs). None appeared for the respondents though served.

10. Having heard the learned counsel for the appellants (plaintiffs) and on perusal of the record of the case, we are inclined to allow the appeal and set aside the impugned judgment only to the extent it decides that the suit was barred by limitation and, in consequence, restore the judgment of the trial court holding that the suit was filed within limitation.

11. In our considered opinion, the trial court was right in holding that the plaintiffs' (the appellants herein) suit was filed within limitation whereas the High Court was not right in reversing this finding. This we say for the following reasons.

12. On perusal of the judgment of the trial court, we find that the trial court applied Article 65 of the Limitation Act for holding the suit to be within limitation because it was filed by the plaintiffs within 12 years from the date of accrual of cause of action prescribed in Article 65.

13. The High Court, however, was of the view that the plaintiffs' (appellants) suit against the defendants (respondents) was essentially for declaration and consequential injunction and, therefore, it was governed by the period of three years' limitation, which was to be counted from the date of accrual of first cause of action. It was held that since the suit was not filed within three years, it was barred.

14. It is apposite to reproduce the finding of the High Court on this issue: (*Mahendra Singh case*[1], SCC OnLine Raj para 131)

> "*131.* ... However, nothing was pleaded by the plaintiffs in relation to the said order dated 20-9-1983 and the suit was prosecuted in its original form only. *With conscious omission on the part of the plaintiffs to sue for possession, the submissions strenuously made by learned counsel Mr Mehta with reference to Article 65 of the Limitation are of no avail. The suit was for declaration and consequential injunction only* and having

1 *Mahendra Singh* v. *Ghewarchand*, 2006 SCC OnLine Raj 930

admitted by been filed much beyond the period of three years from the date of first accrual of cause of action, remains hopelessly barred by the limitation and, therefore, deserves to be dismissed." (emphasis supplied)

15. Without going into any factual controversy and the lengthy pleadings, which we consider not necessary, the High Court, in our view, was factually not correct in observing that the suit was filed for declaration and injunction only and "not for possession". (See italicised portion above.)

16. In our view, mere perusal of the relief in Clause 26.3 of the plaint quoted in para 5 above would show that the plaintiffs had also prayed for decree of possession of the suit property from the defendants.

17. It is not in dispute as the pleadings would go to show that the suit property was the subject-matter of the proceedings under Section 145 of the Criminal Procedure Code, 1973 (hereinafter referred to as "CrPC") between the parties before the City Magistrate wherein both the parties were claiming their right, title and interest including asserting their possession over the suit property against each other. It is also not in dispute that the City Magistrate vide his order dated 23-12-1966 attached the suit property.

18. The plaintiffs, therefore, filed a civil suit on 19-12-1978 for claiming a declaration of their title on the suit property, injunction and possession against the defendants. Since the suit was for declaration, permanent injunction and possession, Article 65 of the Limitation Act was applicable, which provides a limitation of 12 years for filing the suit which is to be counted from the date when the possession of the defendant becomes adverse to the plaintiffs.

19. As per the allegations in the plaint, the defendants' possession, according to the plaintiffs, became adverse when the defendants in Section 145 CrPC proceedings asserted their right, title and interest over the suit property to the knowledge of the plaintiffs for the first time and which eventually culminated in passing of an attachment order by the City Magistrate on 23-12-1966. This action on the part of the defendants, according to the plaintiffs, cast cloud on the plaintiffs' right, title and interest over the suit property and thus furnished a cause of action for claiming declaration of their ownership over the suit property and other consequential reliefs against the defendants in relation to the suit property. (See Para 23 of the plaint.)

20. In our opinion, the plaintiffs, therefore, rightly filed the civil suit on 19-12-1978 within 12 years from the date of attachment order dated 23-12-1966. The assertion of the right, title and interest over the suit property by the defendants having been noticed by the plaintiffs for the first time in proceedings of Section 145 CrPC before the City Magistrate, they were justified in filing a suit for declaration and possession. It was, therefore, rightly held to be within limitation by the trial court by applying Article 65 of the Limitation Act.

21. In order to decide the question of limitation as to whether the suit is filed within time or not, the Court is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing the

(16)

suit. In this case, we find that the plaintiffs satisfied this requirement to bring their suit within limitation.

22. As mentioned above, the defendants (respondents) lost the suit on merits on all fronts as they could neither prove their title and nor their lawful possession over the suit property. They, however, succeeded in the High Court only on the point of limitation which had resulted in non-suiting the plaintiffs. Since the defendants did not file any cross-objection in the appeal against the adverse findings recorded by the two courts below against them, it is not necessary for this Court to examine the legality and correctness of those findings in this appeal.

23. In the light of the foregoing discussion, we cannot concur with the view taken by the High Court on the question of limitation. It is legally unsustainable and hence deserves to be set aside.

24. The appeal thus succeeds and is accordingly allowed. The impugned judgment insofar as it holds that the appellants' (plaintiffs') suit is dismissed as being barred by limitation is hereby set aside. As a result, the judgment and decree of the trial court is restored in favour of the appellants (plaintiffs).

Santosh Jaiswal is, therefore, partly allowed. It is an instrument which requires to bear the appropriate stamp duty but is not a compulsorily registrable instrument. In appeal arising out of LPA No. 22 of 1994 of Surendra Shukla, since the duration of lease is more than a year, it is an instrument and compulsorily registrable by operation of Section 17(1)(*c*) of the Registration Act and liable to stamp duty under the Indian Stamp Act. Therefore, it cannot be acted upon unless it is duly engrossed with stamp duty and registered.

9. The appeals are accordingly disposed of. No costs.

(1995) 6 Supreme Court Cases 523

(BEFORE M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.)

Civil Appeals Nos. 1965-1966 of 1980

P. PERIASAMI (DEAD) BY LRS. .. Appellants;

Versus

P. PERIATHAMBI AND OTHERS .. Respondents.

With

Civil Appeal No. 667 of 1989

P.A. PERIASAMI MUTHIRIAR AND OTHERS .. Appellants;

Versus

P. PERIASAMI MUTHIRIAR AND OTHERS .. Respondents.

Civil Appeals Nos. 1965-1966 of 1980† with No. 667 of 1989,
decided on October 11, 1995

A **Hindu Law — Joint family — Joint Hindu family property or joint property — Self-acquired property of last elder — On his death, his sons, in absence of grandsons, would inherit the property as tenants-in-common — Property in the hands of the sons would be joint property and not joint Hindu family property — When out of income of the property some more properties purchased, the same must be accounted for as joint properties — Partition has to be made accordingly — Hindu Succession Act, 1956, S. 19**

B. **Practice and Procedure — Precedent — Long-standing precedent — Decision of High Court prevailing for half a century — Not disturbed by Supreme Court**

C. **Limitation Act, 1963 — Art. 65 — Adverse possession — Plea of — Implies that someone else is the owner of the property**

Held

The properties which came from the elder, self-acquired as they were, and there being no grandsons, cannot be held by the parties to be joint Hindu family properties but as joint properties simpliciter, capable of partition on that basis. Sons obtained it by inheritance from their father, the last elder, and their status was that of tenants-in-common. If some properties had been purchased from the income

† From the Judgment and Order dated 11-1-1979 of the Madras High Court in A.Ss. Nos 141 and 142 of 1972

(18)

derived from joint property, then obviously the same has to be accounted for as joint property and not as joint Hindu family property. It was like property jointly purchased by co-owners without attracting the rule of succession by way of survivorship. (Paras 5, 7 and 6) a

After a lapse of more than half a century, it is not prudent, just for the sake of uniformity to reconsider the view of the Full Bench of the Madras High Court in *Viravan Chettiar case* and resolve the conflict raging in the High Courts on this question, more so when the orthodox Hindu Law on the subject is itself now in tumble because of the enactment of the Hindu Succession Act, 1956 and in particular of Section 19 thereof. (Para 4) b

Viravan Chettiar v *Srinivasachariar*, AIR 1921 Mad 168 : 44 Mad 499 (FB), *approved*

Ram Dei v *Gyarsi*, ILR 1949 All 160 . AIR 1949 All 545 (FB); *M.D.R Ranganatha Mudaliar* v *M D T. Kumaraswami Mudaliar*, AIR 1959 Mad 253 : ILR 1959 Mad 298, *referred to*

Balwant Singh v. *Rani Kishori*, (1898) 20 All 267 · 25 IA 54 : 2 CWN 273 : 7 Sar 279 (PC); *Madan Gopal* v. *Ram Buksh*, (1863) 6 WR 71, *Jugmohandas Mangaldas* v. *Sir Mangaldas Nathubhoy*, (1886) 10 Bom 528; *Rani Sartaj Kuari* v *Deoraj Kuari*, (1888) 10 All 272 . 15 IA 51 . 5 Sar 139 (PC), *Raja Chelikani Venkayamma* v. *Raja Chelikani Venkataramanayamma*, (1902) 25 Mad 678 : 29 IA 156 . 12 MLJ 299 : 8 Sar 286 (PC); *Nand Kumar Lala* v *Moulvi Reazuddeen Hussain*, 10 BLR 183, *cited* c

R-M/15067/C

Advocates who appeared in this case :

R. Sundaravaradan, Senior Advocate (A.T.M. Sampath, P.N. Ramalingam, Ms N. Annapoorni, S. Srinivasan and R. Ayyam Perumal, Advocates, with him) for the appearing parties. d

ORDER

1. These are cross-appeals against the judgment and decree dated 11-1-1979 of the High Court of Madras passed in Appeals Nos. 141 and 142 of 1972 and the cross-objections. e

2. It was a suit for partition between two branches of the same family. The properties involved were entirely agricultural. The facts as depicted in the judgment of the High Court are so interwoven with so many details that we have thought it expedient to resort to tremendous shrinking. For our purpose, we condense them to say, sufficedly, that there was an elder, high in the line, who owned these properties. These were self-acquired. When he died years ago, he left behind three sons. He had by then no grandsons born from the loins of those three sons. The property on his death thus came in possession of the three sons. When eventually sons were born to those sons and thereafter grandsons, there came a day when they sought to effect a partition. In this spell of time certain properties allegedly stood purchased out of the income derived from those properties and they were also brought in, being within the nucleus and hence claimed to be partible. It is in this manner that the dispute was spread within the two branches of the family representing lines of two brothers. The plaintiffs claimed partition on the basis that the properties received from the family elder and the accretions made thereto from the income derived from the said property, were both joint Hindu family properties and out of which they were entitled to their defined shares. On the other hand, the defendants joined issue with the plaintiffs, on f g h

the question of the descended properties being joint Hindu family properties, taking the plea that the properties had come from the elder to his three sons by way of inheritance and not on the basis of survivorship. The assumption that those three sons and the elder were members of a joint Hindu family was refuted. As a consequence, it was pleaded that the so-called accretion to the properties could not be related to the nucleus factually, as also because unless it could be proved that the nucleus was owned by the joint Hindu family, the accretions could not partake the same character. Further, it was pleaded that these accretions were personal accumulations of the defendants and in case it was not so proved, they were in adverse possession thereof, for which they sought a declaration. This in nutshell is the dispute which is before us; other disputes having been settled in the courts below and others not being put to challenge before us.

3. The pristinely legal question, as discernible hereinbefore, is whether under Hindu Law self-acquired property of a father goes on his death to his sons (in the absence of grandsons) in a joint Hindu family way, in joint tenancy, or does it descend by inheritance to them in well-defined shares as tenants-in-common. On this question there has been grave conflict of opinion in the High Courts and a lot many precedents of binding value are available. In Madras, however, the law in this respect bears a strain, settled way back by a Full Bench in a decision reported in *Viravan Chettiar* v. *Srinivasachariar*[1] wherein the following passage of relevance appears in the opinion expressed by Kumaraswami Sastri, J.—

> "So far as the text of the Mitakshara dealing with the rights of the sons in their father's self-acquisitions it has been decided by their Lordships of the Privy Council in *Balwant Singh* v. *Rani Kishori*[2] that the text,
>
> > 'though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are born and they who are yet unbegotten and they who are still in the womb, require the means of support. No gift or sale should therefore be made',
>
> is only a moral precept and not a rule of law capable of being enforced. As pointed out in *Madan Gopal* v. *Ram Buksh*[3] and *Jugmohandas Mangaldas* v. *Sir Mangaldas Nathubhoy*[4] the son acquires no legal rights over his father's self-acquisitions by reason of the text of the Mitakshara (Ch. I, Ss.1, 27) but that his right is imperfect one incapable of being enforced at law.
>
> *It is difficult to see how there can be any coparcenary between the father and the sons as regards self-acquired property over which the sons have no legal claim or enforceable rights. Coparcenary and*

1 AIR 1921 Mad 168 . 44 Mad 499 (FB)
2 (1898) 20 All 267 : 25 IA 54 . 2 CWN 273 : 7 Sar 279 (PC)
3 (1863) 6 WR 71
4 (1886) 10 Bom 528

survivorship imply the existence of co-ownership and of rights of partition enforceable at law and a mere moral injunction can hardly be the foundation of a legal right. As observed by the Privy Council in *Rani Sartaj Kuari* v. *Deoraj Kuari*[5] the property in the paternal or ancestral estate acquired by birth under the Mitakshara Law is so connected with a right to partition that it does not exist where there is no right to it. A contention was raised during the course of the argument before the Privy Council in *Raja Chelikani Venkayamma* v. *Raja Chelikani Venkataramanayamma*[6] that sons acquire a right by birth in the father's self-acquired property. Lord Macnaghten observed that he did not quite understand what that right was and observed 'He is his father's son and if his father does not dispose of, it will come to him; but is it anything more than a *spes*? *So far as a father's self-acquisitions are concerned, the son, though undivided, has only spes successionis and he stands in relation to that property in the same position as heir under Hindu Law.* The very essence of the distinction between Apratibandha and Sapratibandha daya is the existence of an interest in the son in respect of properties got by his father. As observed by West and Buhler in a passage (Book 2, Introduction page 19) which was approved in *Nand Kumar Lala* v. *Moulvi Reazuddeen Hussain*[7] ancestral property may be said to be co-extensive with the objects of *apratibandha daya* or unobstructed inheritance." (emphasis supplied by us)

4. Contrary views have been expressed in *Ram Dei* v. *Gyarsi*[8] and many other cases to which reference need not be made. In *M.D.R. Ranganatha Mudaliar* v. *M.D.T. Kumaraswami Mudaliar*[9] however, occasion arose to reconsider the above-referred view of the Full Bench of the Madras High Court, but the learned Judges refrained from doing so for by then the Full Bench case of 1921 had been treated as stare decisis. Likewise after a lapse of more than half a century, we would not consider it prudent, just for the sake of uniformity to resolve the conflict raging in the High Courts on this question, more so when the orthodox Hindu Law on the subject is itself now in tumble because of the enactment of the Hindu Succession Act, 1956 and in particular of Section 19 thereof, which says that if two or more heirs succeed together to the property of an intestate they shall take the property—

(*a*) save as otherwise expressly provided in this Act, per capita and not per stripes; and

(*b*) as tenants-in-common and not as joint tenants.

5. In view of the interpretation put by the Full Bench of the Madras High Court that the sons in such a situation would get self-acquired property of their father by inheritance, having the status as tenants-in-common, they could not thus treat such properties in their hands, even though joint in

5 (1888) 10 All 272 : 15 IA 51 5 Sar 139 (PC)
6 (1902) 25 Mad 678 29 IA 156 12 MLJ 299 : 8 Sar 286 (PC)
7 10 BLR 183
8 ILR 1949 All 160 : AIR 1949 All 545 (FB)
9 AIR 1959 Mad 253 : ILR 1959 Mad 298

enjoyment, as joint Hindu family properties. Likewise the income derived therefrom, if employed to purchase other property, would not cloak the new acquisition with the character of joint Hindu family property but may otherwise be joint properties. We would rather decide this matter on this principle, and we do so accordingly, to hold that the properties which came from the elder, self-acquired as they were, and there being no grandsons, cannot be held by the parties to be joint Hindu family properties but as joint properties simpliciter, capable of partition on that basis.

6. With regard to the accreted property, there is a reference in the judgment under appeal relating to some accounting; after recording the finding that the defendants have failed to prove that that property was in their adverse possession. This is a finding of fact which need not be disturbed, as it has been sought to, in the cross-appeal. Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property. The failure of the plea has obvious results. If the parties herein were co-owners of that property and the said property had been purchased from the income derived from joint property, then obviously the same has to be accounted for as joint property and not as joint Hindu family property. It was like property jointly purchased by co-owners without attracting the rule of succession by way of survivorship. On this clarification, the judgment of the High Court is cleansed of the little vagueness about this particular which accidentally seems to have crept in while dealing with this aspect of the case.

7. For what we have said above, it is plain that the property in possession of these two branches of the family, sought to be partitioned, was not joint Hindu family property because the three sons obtained it by inheritance from their father, the last elder, and their status was that of tenants-in-common, and if the accretions to the property had been made out of the income of the joint property then these were accountable, as held by the High Court but that aspect would have to be decided before the passing of the final decree.

8. For the foregoing reasons, we dismiss all these three appeals but without any order as to costs.

(1995) 6 Supreme Court Cases 527

(BEFORE J.S. VERMA AND K. VENKATASWAMI, JJ.)

STATE OF U.P. .. Appellant;

Versus

RAMESH CHANDRA SHARMA AND OTHERS .. Respondents.

Civil Appeal No. 9374 of 1995†, decided on October 16, 1995

A. **Legal Profession — District Government Counsel — Nature of appointment of — Held, his appointment is only a professional engagement**

† Arising out of SLP (C) No 20243 of 1993

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

(23)

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)

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

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)

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)***

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*

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 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.

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 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 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.

(25)

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

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 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 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 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 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.

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 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 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; 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.

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.

28

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

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

(30)

eligible candidate as a Professor as expeditiously possible within 6 weeks from the date of receiving this order. Consequential thereto, appointment on regular basis to the post of Director should be made. We are informed that Dr (Mrs) Hiru Kumar has already been made in-charge Director. She would continue until a regular incumbent takes charge as a Director.

19. The appeal is accordingly disposed of. No costs.

(1996) 1 Supreme Court Cases 639

(BEFORE K. RAMASWAMY AND B.L. HANSARIA, JJ.)

MOHAN LAL (DECEASED) THROUGH HIS LRS. KACHRU AND OTHERS .. Appellants;

Versus

MIRZA ABDUL GAFFAR AND ANOTHER .. Respondents.

Civil Appeal No. 4485 of 1986†, decided on December 12, 1995

A. Transfer of Property Act, 1882 — S. 53-A — Past performance — Doctrine of, must be based on specific pleading of readiness and willingness to perform own part of the contract — Plea based on S. 53-A available only by way of defence — Possession of land obtained by appellant pursuant to an agreement of sale by paying part consideration — Suit for specific performance of the contract dismissed and becoming final — No specific pleading made by appellant that he was ready and willing to perform his part of the contract by paying remaining consideration, nor payment of the remaining consideration made by him — Land sold out to respondent — Held, appellant not entitled to retain possession of the land under S. 53-A — But since appellant remained in possession under an agreement, respondent not entitled to any damages — Specific Relief Act, 1963, S. 16(c)

Held:

When the transferee seeks to avail of Section 53-A to retain possession of the property which he had under the contract, it would be incumbent upon the transferee to plead and prove his readiness and willingness to perform his part of the contract. Under Section 16(*c*) of the Specific Relief Act also the plaintiff must plead in the plaint, his readiness and willingness from the date of the contract till the date of the decree. The plaintiff who seeks enforcement of the agreement is enjoined to establish the same. In a suit for possession filed by the respondent, successor-in-interest of the transferor as a subsequent purchaser, the earlier transferee must plead and prove that he is ready and willing to perform his part of the contract so as to enable him to retain his possession of the immovable property held under the agreement. In this case except vaguely denying that he was not ready and willing to perform his part, he did not specifically plead it. (Para 6)

In the earlier proceedings before the Taluk Board, the appellant had admitted that he paid only Rs 500 out of the total consideration of Rs 1000. Thus he did not discharge his part of the contract to the owner, i.e., did not pay Rs 1000 before the land was sold to the respondent nor did he deposit the amount when the suit was filed nor did he offer payment. Therefore, the appellant is not entitled to retain

† From the Judgment and Order dated 30-9-1986 of the Madhya Pradesh High Court in Second Appeal No 460 of 1975

possession. However, since the appellant has remained in possession under the agreement of sale, the respondent is not entitled to claim any damages from him.
(Paras 7 and 8)

B. **Limitation Act, 1963 — Art. 65 — Adverse possession — Plea of, held, cannot be sustained when alternative plea for retention of possession by operation of S. 53-A of T.P. Act also made, the first plea being inconsistent with the second plea — Inconsistent pleas — CPC, 1908, Or. 6**

Held :

The appellant's first plea of adverse possession is inconsistent with his second plea regarding retention of possession under Section 53-A of Transfer of Property Act. 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 of his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till the date of the suit. Thereby the plea of adverse possession is not available to the appellant. (Para 4)

R-M/15569/C

Advocates who appeared in this case :
S K Gambhir, Advocate, for the Appellants;
B S Banthia, Advocate, for the Respondents.

ORDER

1. This appeal by special leave arises from the judgment and decree of the Madhya Pradesh High Court in Second Appeal No. 460 of 1975 made on (*sic*) 30, 1986.

2. It is not necessary to elaborate all the facts in detail. Suffice it to state that the appellant had come into possession of the suit-lands pursuant to an agreement of sale dated 8-3-1956. He paid part consideration of Rs 500 and obtained possession of the lands. Subsequently, the respondent purchased the lands by sale deed dated 23-3-1960. In the meanwhile, the appellant's suit for specific performance of the contract for sale was dismissed and became final. The respondent filed the suit for possession which has given rise to this appeal. The trial court decreed the suit. On appeal, it was reversed and dismissed. In second appeal, the High Court set aside the judgment and decree of the appellate court and restored the decree of the trial court. Thus this appeal by special leave.

3. The only question is whether the appellant is entitled to retain possession of the suit property. Two pleas have been raised by the appellant in defence. One is that having remained in possession from 8-3-1956, he has perfected his title by prescription. Secondly, he pleaded that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882 (for short 'the Act').

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 of 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 the 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.

5. The question then is whether he is entitled to retain possession under Section 53-A. It is an admitted fact that suit for specific performance had been dismissed and became final. Then the question is whether he is entitled to retain possession under the agreement. Once he lost his right under the agreement by dismissal of the suit, it would be inconsistent and incompatible with his right to remain in possession under the agreement. Even otherwise, a transferee can avail of Section 53-A only as a shield but not as a sword. It contemplates that where any person contracts to transfer for consideration any immovable property by writing, signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has performed or is willing to perform his part of the contract, he would be entitled to retain possession and to continue in possession which he has already received from the transferor so long as he is willing to perform his part of the contract. Agreement does not create title or interest in the property. Since the agreement had met with dismissal of the suit his willingness to perform his part of the contract does not arise.

6. Even otherwise, in a suit for possession filed by the respondent, successor-in-interest of the transferor as a subsequent purchaser, the earlier transferee must plead and prove that he is ready and willing to perform his part of the contract so as to enable him to retain his possession of the immovable property held under the agreement. The High Court has pointed out that he has not expressly pleaded this in the written statement. We have gone through the written statement. The High Court is right in its conclusion. Except vaguely denying that he is not ready and willing to perform his part, he did not specifically plead it. Under Section 16(*c*) of Specific Relief Act, 1963, the plaintiff must plead in the plaint, his readiness and willingness from the date of the contract till date of the decree. The plaintiff who seeks enforcement of the agreement is enjoined to establish the same. Equally, when the transferee seeks to avail of Section 53-A to retain possession of the property which he had under the contract, it would also be incumbent upon the transferee to plead and prove his readiness and willingness to perform his part of the contract. He who comes to equity must do equity. The doctrine of readiness and willingness is an emphatic way of expression to establish that the transferee always abides by the terms of the agreement and is willing to perform his part of the contract. Part performance, as statutory right, is conditioned upon the transferee's

continuous willingness to perform his part of the contract in terms covenanted thereunder.

7. In the earlier proceedings before the Taluk Board, the appellant had admitted that he paid only Rs 500. He pleaded in the written statement that consideration is Rs 1000. In other words, he did not discharge his part of the contract to the owner, i.e., did not pay Rs 1000 before the land was sold to the respondent nor did he deposit the amount when the suit was filed nor did he offer payment.

8. We are, therefore, of the view that the High Court is right in its conclusion that the appellant is not entitled to retain possession. However, since the appellant has remained in possession under the agreement of sale, the respondent is not entitled to claim any damages from him.

9. The appeal is accordingly dismissed but in the facts and circumstances of the case without costs.

(1996) 1 Supreme Court Cases 642

(BEFORE S.C. AGRAWAL AND G.B. PATTANAIK, JJ.)

RESERVE BANK OF INDIA AND OTHERS .. Appellants;

Versus

PEERLESS GENERAL FINANCE AND INVESTMENT COMPANY LTD. AND ANOTHER .. Respondents.

Civil Appeal No. 37 of 1996†, decided on January 4, 1996

A. **Reserve Bank of India Act, 1934 — S. 45-K(3) — Enabling provision — Empowering RBI to issue directions "in respect of any matters relating to or connected with the receipt of deposits" — Scope of power — Residuary Non-Banking Companies (Reserve Bank) Directions, 1987 — Para 4-A (as inserted by Notification dated 19-4-1993) — Prohibiting non-banking company to take from depositors/subscribers "any amounts towards processing or maintenance charges ... for meeting its revenue expenditure" — Held, Para 4-A intra vires S. 45-K(3) — It seeks to prevent evasion of the directions contained in paras 6 and 12 of the same Directions — Such ancillary or incidental power is covered by the enabling power contained in S. 45-K(3) —Administrative Law — Ultra vires**

B. **Interpretation of Statutes — Particular statutes/provisions — Enabling provision — Should be construed so as to subserve the purpose for which it is enacted — It implies power to do everything indispensable for carrying out the purpose**

C. **Interpretation of Statutes — Words and phrases — 'Includes' — Inclusive phrase may be used by way of abundant caution**

† From the Judgment and Order dated 3-5-1995 of the Calcutta High Court in C O No Nil of 1993

34

17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated June 27, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.

18. There is no merit whatsoever in the submission that compensation can be awarded to the appellants under Section 5. Section 5 postulates payment of compensation for damage done to land during the course of surveying it and doing all other acts necessary to ascertain whether it is capable of being adapted for a public purpose. Section 5 has no application to the instant case.

19. In the result, the appeal is allowed. The judgment and order under appeal is set aside. The Rule is made absolute and the first and second respondents are directed by a writ of mandamus to make and publish an award in respect of the said land within twelve weeks from today.

20. The third respondent shall pay to the appellants the costs of the appeal quantified in the sum of Rs 10,000.

(1993) 4 Supreme Court Cases 375

(BEFORE KULDIP SINGH, M.M. PUNCHHI AND K. RAMASWAMY, JJ.)

PARSINNI (DEAD) BY LRS. AND OTHERS .. Appellants;

Versus

SUKHI AND OTHERS .. Respondents.

Civil Appeal No. 114 of 1987†, decided on September 15, 1993

Limitation Act, 1963 — Art. 65 — Adverse possession — Test — Possession must be peaceful, open and continuous — Burden of proof on the party claiming — Pursuant to division of estate of deceased owner by metes and bounds, appellant daughters getting possession of a part of the land — Mutation record showing that the land was left for appellants' enjoyment till their marriage or death, whichever earlier — But even after their marriage, appellants remaining in possession and enjoyment of the land for over 30 years without any let or hindrance by leasing to tenants and continuous entries in revenue records showing them as owners — Respondent heir thereafter filing

† From the Judgment and Order dated September 21, 1982 of the Punjab and Haryana High Court in R.S.A. No. 1822 of 1973

35

suit for declaration that they were owners of the land — Appellants claiming adverse possession on the basis of the revenue records — Held, claim sustainable

Held :

Possession is prima facie evidence of title. Burden of proof lies on the party claiming adverse possession. He must plead and prove that his possession must be '*nec vi, nec clam, nec precario*' i.e. 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. (Para 5)

When the appellants claimed title to the suit lands it is sufficient for them to show that their possession is overt and without any attempt at concealment so that the respondents against whom time is running, ought, if to exercise due vigilance to be aware of what is happening. The possession of the appellants was adverse to the respondents inasmuch as the appellants ever since their marriage continued to remain in possession and enjoyment of the property in derogation of the right, title and interest hitherto held by the respondents. When they openly and to the knowledge of the respondents continuously remained in possession and enjoyment and the entries in the revenue records established that their possession and enjoyment was as owners, the consent of the respondents initially given to remain in possession till their marriage or death whichever was earlier does not prevent possession being adverse after their marriage. The test is whether the appellants are able to show that they held lands for themselves and if they did so the mere fact that there was acquiescence or consent at the inception on the part of the respondents make no difference. Since possession and enjoyment of the appellants was to the exclusion of the respondents' brothers, for well over 30 years it is proved that the appellants were in possession and enjoyment openly and continuously in assertion of their right as owners. The entries in the revenue recorded continuously for 30 years would corroborate their plea of adverse possession and militates against the claim of the title of the respondents. The view that the respondents continued as co-owners and that, therefore, they were not excluded and that the possession of the appellants were not adverse to the right of the respondents cannot be accepted as female heirs in pre-existing law were not co-owners. Therefore, the appellants have perfected their title to the land in question by prescription and the suit is barred by limitation under Article 65 of the Schedule to the Limitation Act. (Para 5)

Appeal allowed R-M/12415/C

Advocates who appeared in this case :

V.C. Mahajan, Senior Advocate (Ms S. Janani, Advocate, with him) for the Appellants;

K.K. Gupta, Advocate, for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J.— The appellants/defendants' appeal by special leave arises against the judgment and decree of the Punjab & Haryana High Court in Regular Second Appeal No. 1822 of 1973 dated September 21, 1982. The respondents filed a suit for declaration of title to and for possession of 53 kanals 12 marlas from the appellants. The trial court in File No. 40 dismissed the suit. The Addl. District Judge, Barnala reversed the decree of the trial court and decreed the suit in Civil Appeal No. 121 of 1965 by judgment and decree dated November 28, 1973. The

High Court confirmed the appellate decree. One Wazira Singh died survived by three sons Sukhi, Surjan and Sarwan through his first wife, Mahla Singh son and Parsinni and Chinto two minor daughters through his second wife. Wazira had died on November 5, 1984 B.K. Parsinni is defendant 1 and Chinto died leaving behind her children defendants 2 to 5. From the evidence it would be clear that, after the death of Wazira, there was a division of the properties by metes and bounds and 53 kanals 12 marlas were left in the possession of Parsinni and Chinto for their enjoyment. The Mutation No. 1722 Ex. P-8 on 10.2.85 B.K. discloses that they shall remain in possession and enjoyment till their marriage or death whichever is earlier. Their marriage took place between 1990-91 to 1994-95 B.K. It is not in dispute that even thereafter for well over 30 years, the appellants continued to remain in possession and enjoyment as owners to the exclusion of the respondents Sukhi and other heirs who asserted their title for the first time in 1963 by filing the suit for declaration that they are the owners of 135 kanals 6 marlas including 53 kanals 12 marlas, situated in Bihla village. We are concerned only with 53 kanals and 12 marlas in this appeal.

2. It is the case of the respondents that 53 kanals 12 marlas continued to remain in their possession and enjoyment. Parsinni and Chinto were never in possession and enjoyment. For the first time they came across, after a suit filed by them in the court of the Sub-Collector against the tenants for recovery of the rents and decree thereon was passed in their favour, that they are asserting their rights as owners of the property. Therefore, the above suit initially was filed for declaration of the title and for injunction and later converted to relief of possession.

3. The trial court found that ever since the demise of Wazira the appellants remained in possession and enjoyment. After the suit they became separated. They remained in possession as owners and they perfected their title by prescription, after their marriage, for having been in possession for more than 30 years. The suit was also held to have been barred by limitation. Accordingly it dismissed the suit. The appellate court reversed the decree holding that the revenue entries disclose that the appellants remained in possession as owners along with their brothers and no specific share was given. Therefore, they did not acquire any separate right. The respondents claimed possession and proprietory right therein and entries in revenue records do not disclose their having lost their title for more than 12 years. Therefore, they became owners of the land and remained owners and possession being not adverse the appellants did not acquire title by prescription. The High Court without adverting to the question of adverse possession, confirmed the appellate decree.

4. The sole question that emerges is whether the appellants have perfected their title by prescription. By Article 65 of the Schedule to the Limitation Act, 1963 for short 'the Act' for possession of immovable property or any interest therein based on title, 12 years' period begins to

run when the possession of the defendant becomes adverse to the plaintiff. As stated earlier, on the demise of Wazira Singh, mutation was effected and sanctioned by the authorities that Parsinni and Chinto, daughters of Wazira Singh came into possession of 53 kanals 12 marlas of the suit property. They, being unmarried minor daughters, under law they are entitled to maintenance till they are married and in lieu thereof the property was given and they remained in possession and enjoyment of the lands. They were married in 1991-92 and 1994-95 B.K. Thereafter the respondents, as per the entries in revenue records, had right to claim possession from the appellants but they did not do so. On the other hand the appellants remained in possession and enjoyment without any let or hindrance; the continuous entries in revenue records show them as owners. They are in enjoyment by leasing the lands to the tenants as evidenced by the judgment and the decree of the Revenue Court to the exclusion of the respondents. It would show their open assertion of their own right. There was no attempt to take possession of the land by the respondents. Even after consolidation also the lands remained in their possession and enjoyment and they continued to be recorded as owners.

5. The appellants claimed adverse possession. The burden undoubtedly lies on them to plead and prove that they remained in possession in their own right adverse to the respondents. In fact, they have pleaded and succeeded and the trial court accepted the plea finding thus:

> "The defendants 1 to 5 were accepted as owners to the extent of 1/3rd share in the estate of Wazira and they continued to hold their shares as such owners till the present day. There is absolutely no material on record to show that the plaintiffs were the owners or shared with the ownership of defendants 1 to 5. The oral deposition of Surjan Singh carried little weight, evidence is contradicted by Mahla Singh, DW 1 who had an interest in the suit land to the same extent as the plaintiffs.... Even if it be assumed that the ownership of the daughters of Wazira was valid till their marriages and even then the ownership of both Parsinni and Chinto or her heirs continued till the present day and on their marriage the rights of the daughters, if were extinguished, they still continued to hold as owners of the suit land and after as many as 30 years they certainly have become full owners by prescription.
>
> The entries Exs. P-3, P-4 are sufficient to show that the plaintiffs were excluded from the right of ownership by the daughters and since no steps were taken for a number of years the right is time-barred."

The District Judge proceeded on the premise that the respondents continued as co-owners and that, therefore, they were not excluded. The possession of the appellants were not adverse to the right of the respondents. We find it difficult to accept the said finding. Female heirs in pre-existing law were not co-owners. Possession is prima facie evidence

38

of title. Party claiming adverse possession must prove that his possession must be '*nec vi, nec clam, nec precario*' i.e. 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. When the appellants claimed title to the suit lands it is sufficient for them to show that their possession is overt and without any attempt at concealment so that the respondents against whom time is running, ought, if to exercise due vigilance to be aware of what is happening. The possession of the appellants was adverse to the respondents inasmuch as the respondents (*sic* appellants) ever since the marriage of the first appellant and her sister Chinto continued to remain in possession and enjoyment of the property in derogation of the right, title and interest hitherto held by the respondents. When they openly and to the knowledge of the respondents continuously remained in possession and enjoyment and the entries in the revenue records establish that their possession and enjoyment is as owners, the consent of the respondents initially given to remain in possession till their marriage or death whichever is earlier does not prevent possession being adverse after their marriage. Without any let or hindrance they remained in possession and enjoyment excluding the respondents from sharing the usufruct from those lands. The test is whether the appellants are able to show that they held lands for themselves and if they did so the mere fact that there was acquiescence or consent at the inception on the part of the respondents make no difference. Since possession and enjoyment of the first appellant and her sister Chinto was to the exclusion of the respondent-brothers, for well over 30 years it is proved that the appellants were in possession and enjoyment openly and continuously in assertion of their right as owners. The entries in the revenue recorded continuously for 30 years would corroborate their plea of adverse possession and militates against the claim of the title of the respondents. The plea that the appellants were never in possession and enjoyment is belied by the entries in the revenue records. The suit was filed in 1963 asserting their rights as owners for the first time by which date the appellants have perfected their titles by prescription. The High Court did not advert to this aspect of the matter. Therefore, we have no hesitation to hold that the appellants have perfected their title to the 53 kanals 12 marlas by prescription and the suit is barred by limitation under Article 65 of the Schedule to the Act. The appeal is accordingly allowed, the decree of the High Court and that of the first appellate court are set aside and that of the trial court is restored. No costs.

deceased had told him that the lamp has fallen and due to which she burnt. The trial Court has not reposed confidence in this evidence. Likewise, the High court did not find it fit to repose confidence in his evidence. DW 1 has not been believed by two courts. Coming to DW 2, the cousin brother of the appellant, he also stated in chief examination that the doctor asked how the deceased was burnt. The deceased mentioned that the lamp had fallen and the quilt burnt and then she burnt. Even when they went to the referred hospital this version was repeated in his evidence. He also stated that both the arms of the appellant were burnt and the sons also sustained burn injuries. Further he deposed that appellant mentioned that while extinguishing fire he sustained burn injuries. In his cross examination he stated that there are 15 houses between his house and appellant. His house is in another lane. In the jeep it is stated that the deceased did not tell anything to anybody.

30. He says it is not true that neither he nor anybody else were not along with the deceased at the time of treatment given by doctor. *He further says that at that time there was smell of kerosene and burning of clothes from the body of the deceased.* He says that it is not true that he had told the police that the deceased told him that she burnt due to fall of lamp. In cross examination by the prosecutor he says that at the time of statement he has not stated that the deceased told him that she burnt due to the fall of lamp.

31. The version of this witness is also not believed. Undoubtedly, he is relative of the appellant.

32. No doubt from the evidence of PW9, it appears that Exh. 64 MLC information accidental burn history is mentioned. It would not show that such statement was made by the deceased and it would have ordinarily emanated from those accompanying her.

BURN INJURIES ON APPELLANT AND HIS SONS

33. Then there remains only one aspect to be considered namely the burn injuries suffered by the appellant and his two sons. We are of the view that the burn injuries suffered by the appellant and the two sons are reconcilable with the prosecution version of homicide committed by the appellant. The appellant was drunk, he poured kerosene. The deceased in a natural response to the injuries would be frantic and her reaction would bring her into close contacts with others in a small room including the appellant and their children. No doubt the trial Court has reasoned that the appellant might have tried subsequently for extinguishing the fire. The appellant stands squarely implicated by the dying declaration. The unambiguous words came from the mouth of his deceased wife who cannot be expected to lie as she would be conscious, that she would have to meet her maker with a lie in her mouth. We see no merit in the appeal. The appeal will stand dismissed. As the appellant has been released on bail under orders of this Court, we direct that the bail bond of the appellant be cancelled and appellant shall be taken into custody to serve out the remaining sentence.

2019(10) SCALE 473

RAVINDER KAUR GREWAL & ORS. *Appellants*

VS

MANJIT KAUR & ORS. *Respondents*

CORAM: ARUN MISHRA, S. ABDUL NAZEER AND M.R. SHAH, JJ.

Judgment dated August 7, 2019 in C.A. No. 7764 of 2014 with SLP(C) Nos. 8332-8333 of 2014 (Radhakrishna Reddy (D) Through LRs. vs G. Ayyavoo & Ors.).

[SCA < 159 >]

(40)

LIMITATION — LIMITATION ACT, 1963 — ARTICLE 64 & 65 — Adverse possession — Nature of title acquired by adverse possession — There is no bar for perfection of title by way of adverse possession whether a person is suing as a plaintiff or being sued as a defendant — Suit can be filed by plaintiff on the basis of title acquired by way of adverse possession or on the basis of possession under Article 64 and 65 of the Limitation Act — Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of the Act, for declaration of title and for a permanent injunction seeking protection of his possession restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person — Held, Yes — Held,

A. The question of law involved in the present matters is quite significant. Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 (for short, "the Act") for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining e defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adversepossession or in case of dispossession by some other person? In other words, whether Article 65 of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession? (Para 1).

B. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff. (Para 48).

C. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession. (Para 49).

D. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation

(41)

fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated. (Para 50).

E. In India, the law respect possession, persons are not permitted to take law in their hands and dispossess a person in possession by force, as observed in Late Yashwant Singh (supra) by this Court. The suit can be filed only based on the possessory title for appropriate relief under the Specific Relief Act by a person in possession. Articles 64 and 65 both are attracted in such cases. (Para 51).

F. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on 'title' as envisaged in the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession. (Para 53).

G. In Article 65 in the opening part a suit "for possession of immovable property or any interest therein based on title" has been used. Expression "title" would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions. (Para 54).

H. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in presenti to obtain it, not in futuro. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property. (Para 55).

I. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, 'de jure possession', constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession. (Para 56).

J. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible,

(42)

notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession. (Para 57).

K. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period. (Para 58).

L. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit. (Para 59).

M. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession. (Para 60).

[SCA < 162 >]

(43)

N. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand v. Mandir Shi Lakshmi Siddh Maharaj (supra) and Dharampal (dead) through LRs v. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff. (Para 61).

Referred: Sarangadeva Periya Matam & Anr. vs Ramaswami Gondar (Dead) By LRs. [AIR 1966 SC 1603]; Musumut Chundrabullee Debia vs Luchea Debia Chowdrain [(1865) SCC Online PC 7]; Balkrishan vs Satyaprakash & Ors. [(2001) 2 SCC 498 = 2001(1) SCALE 336]; Des Raj and Ors. vs Bhagat Ram (Dead) By LRs. and Ors. [(2007) 9 SCC 641 = 2007(3) SCALE 371]; Kshitish Chandra Bose vs Commissioner of Ranchi [(1981) 2 SCC 103 = 1981(1) SCALE 521]; Nair Service Society Ltd. vs K.C. Alexander [AIR 1968 SC 1165]; Lallu Yashwant Singh (Dead) By his Legal Representative vs Rao Jagdish Singh & Ors. [AIR 1968 SC 620]; Midnapur Zamindary Company Ltd. vs Naresh Narayan Roy [AIR 1924 PC 144]; Yar Mohammad vs Laxmi Das [AIR 1959 All. 1]; Somnath Berman vs Dr. S.P. Raju & Anr. [AIR 1970 SC 846]; Padminibai vs Tangavva & Ors. [AIR 1979 SC 1142]; State of West Bengal vs The Dalhousie Institute Society [AIR 1970 SC 1778]; Mohammed Fateh Nasib vs Swarup Chand Hukum Chand & Anr. [AIR 1948 PC 76]; Gunga Govind Mundul & Ors. vs The Collector of the Twenty-Four Pergunnahs & Ors. [11 M.I.A. 212]; S.M. Karim vs Mst. Bibi Sakina [AIR 1964 SC 1254]; Mandal Revenue Officer vs Goundla Venkaiah & Anr. [(2010) 2 SCC 461 = 2010(1) SCALE 206]; State of Rajasthan vs Harphool Singh [(2000) 5 SCC 652 = 2000(4) SCALE 336]; Annakili vs A. Vedanayagam [(2007) 14 SCC 308 = 2007(12) SCALE 523]; P.T. Munichikkanna Reddy vs Revamma [(2007) 6 SCC 59 = 2007(6) SCALE 95]; P.T. Munichikkanna Reddy vs Revamma [(2007) 6 SCC 59 = 2007(6) SCALE 95]; State of Haryana vs Mukesh Kumar & Ors. [(2011) 10 SCC 404 = 2011(11) SCALE 266]; Fairweather vs St. Marylebone Property Co. Ltd. [1962 (2) AER 288 (HL)]; Taylor vs Twinberrow [1930 All ER Rep 342 (DC)]; Krishnamurthy vs Setlur (Dead) By LRs. vs O.V. Narasimha Setty & Ors. [(2007) 3 SCC 569 = 2007(3) SCALE 478]; P.T. Munichikkanna Reddy vs Revamma [(2007) 6 SCC 59 = 2007(6) SCALE 95]; Toltec Ranch Co. vs Cook [191 U.S. 532, 542 (1903)]; Field vs Peoples [180 Ill. 376, 383, 54 N.E. 304 (1899)]; Bellefontaine Co. vs Niedringhaus [181 Ill. 426, 55 N.E. 184 (1899)]; Cf. La Salle vs Sanitary District [260 Ill. 423, 429, 103 N.E. 175 (1913)]; Camp vs Camp [5 Conn. 291 (1824)]; Price vs Lyon [14 Conn. Conn. 279, 290 (1841)]; Coal Creek, etc. Co. vs East Tenn. I. & C. Co. [105 Tenn. 563; 59 S.W. 634, 636 (1900)]; Lalla Hem Chand vs Lala Pearely Lal & Ors. [AIR 1942 PC 64]; Tichborne vs Weir [(1892) 67 LT 735]; Taylor vs Twinberrow [(1930) 2 K.B. 16]; Perry vs Clissold [(1907) AC 73]; Ram Daan (Dead) Through LRs. vs Urban Improvement Trust [(2014) 8 SCC 902 = 2014(9) SCALE 80]; Fairweather vs St. Marylebone Property Co. Ltd. [1962 (2) AER 288 (HL)]; Nepen Bala Debi vs Siti Kanta Banerjee [1910 (8) Ind Cas 41 (DB) (Cal)]; Ngasepam Ibotombi Singh vs Wahengbam Ibohal Singh & Anr. [AIR 1960 Manipur 16]; Aboobucker s/o Shakhi Mahomed Laloo vs Sahibkhatoon [AIR 1949 Sindh 12]; Bata Krista Pramanick vs Shebaits of Thakur Jogendra Nath Maity & Ors. [AIR 1919 Cal. 339]; Ram Chandra Sil & Ors. vs Ramanmani Dasi & Ors. [AIR 1917 Cal. 469];

Shiromani Gurdwara Parbhandhak Committee, Khosakotla & Anr. vs Prem Das & Ors. [AIR 1933 Lah. 25]; Rangappa Nayakar vs Rangaswami Nayakar [AIR 1925 Mad. 1005]; Shaikh Alimuddin vs Shaikh Salim [1928 IC 81 (PC)]; Pannalal Bhagirath Marwadi vs Bhaiyalal Bindraban Pardeshi Teli [AIR 1937 Nagpur 281]; Krishna Ram Mahale (Dead) By L.Rs. vs Shobha Venkat Rao [(1989) 4 SCC 131 = 1989(2) SCALE 424]; State of U.P. vs Maharaja Dharmander Prasad Singh [(1989) 2 SCC 505 = 1989(1) SCALE 106]; Radhamoni Debi vs The Collector of Khulna & Ors. [1900 ILR 27 Cal. 943]; Somnath Burman vs S.P. Raju [(1969) 3 SCC 129]; Hemaji Waghaji Jat vs Bhikhabhai Khengarbhai Harijan & Ors. [(2009) 16 SCC 517 = 2008(12) SCALE 697]; T. Anjanappa vs Somalingappa [(2006) 7 SCC 570 = 2006(8) SCALE 624]; Bhim Singh & Ors. vs Zila Singh & Ors. [AIR 2006 P&H 195]; State of Rajasthan vs Mahaveer Oil Industries [(1999) 4 SCC 357 = 1999(2) SCALE 708]; Director of Settlements, A.P. vs M.R. Apparao [(2002) 4 SCC 638 = 2002(3) SCALE 122]; Uptron India Limited vs Shammi Bhan [(1998) 6 SCC 538 = 1998(2) SCALE 586].

Overruled: Gurudwara Sahab vs Gram Panchayat Village Sirthala [(2014) 1 SCC 669 = 2013(11) SCALE 564]; Gurudwara Sahib Sannauli vs State of Punjab [2009 (154) PLR 756]; State of Uttarakhand vs Mandir Sri Laxman Sidh Maharaj [(2017) 9 SCC 579 = 2017(11) SCALE 380]; Dharampal (Dead) Through LRs. vs Punjab Wakf Board [(2018) 11 SCC 449 = 2017(11) SCALE 399].

Arun Mishra, J.

1. The question of law involved in the present matters is quite significant. Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 (for short, "the Act") for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining e defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adversepossession or in case of dispossession by some other person? In other words, whether Article 65 of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?

2. Historically, adverse possession is a pretty old concept of law. It is useful but often criticised concept on the ground that it protects and confers rights upon wrongdoers. The concept of adverse possession appeared in the Code of Hammurabi approximately 2000 years before Christ era. Law 30 contained a provision "If a chieftain or a man leaves his house, garden, and field .... and someone else takes possession of his house, garden and field and uses it for three years; if the first owner returns and claims his house, garden, and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it." However, there was an exception to the aforesaid rule: for a soldier captured or killed in battle and the case of the juvenile son of the owner. In Roman times, attached to the land, a kind of spirit that was nurtured by the possessor. Possessor or user of the land was considered to have a greater "ownership"

(45)

of the land than the titled owner. We inherited the Common Law concept, being a part of the erstwhile British colony. William in 1066 consolidated ownership of land under the Crown. The Statute of Westminster came in 1275 when land records were very often scarce and literacy was rare, the best evidence of ownership was possession. In 1639, the Statute of Limitation fixed the period for recovery of possession at 20 years. A line of thought was also evolved that the person who possesses the land and produces something of ultimate benefit to the society, must hold the best title to the land. Revenue laws relating to land have been enacted in the spirit to confer the title on the actual tiller of the land. The Statute of Wills in 1540 allowed lands to be passed down to heirs. The Statute of Tenures enacted in 1660 ended the feudal system and created the concept of the title. The adverse possession remained as a part of the law, and continue to exist. The concept of adverse possession has a root in the aspect that it awards ownership of land to the person who makes the best or highest use of the land. The land, which is being used is more valuable than idle land, is the concept of utilitarianism. The concept thus, allows the society as a whole to benefit from the land being held adversely but allows a sufficient period for the "true owner" to recover the land. The adverse possession statutes permit rapid development of "wild" lands with the weak or indeterminate title. It helps in the Doctrine of Administration also as it can be an effective and efficient way to remove or cure clouds of title which with memories grow dim and evidence becomes unclear. The possessor who maintains and improves the land has a more valid claim to the land than the owner who never visits or cares for the land and uses it, is of no utility. If a former owner neglects and allows the gradual dissociation between himself and what he is claiming and he knows that someone else is caring by doing acts, the attachment which one develops by caring cannot be easily parted with. The bundle of ingredients constitutes adverse possession.

3. We have heard learned counsel appearing for the parties at length and also the Amicus Curiae, Shri P.S. Patwalia and Shri Huzefa Ahmadi, senior counsel. Various decisions of this Court and Privy Council and English Courts have been cited in which the suit filed by the plaintiff based on adverse possession has been held to be maintainable for declaration of title and protection of the possession or the restoration of possession. Nature of right acquired by adverse possession and even otherwise as to the right to protect possession against unlawful dispossession of the plaintiff or for its recovery in case of illegal dispossession.

4. Before dilating upon the issue, it is necessary to refer the decision in *Gurudwara Sahab v. Gram Panchayat Village Sirthala* (2014) 1 SCC 669 in which this court has referred to the decision of the Punjab and Haryana High Court in *Gurudwara Sahib Sannauli v. State of Punjab* since reported in (2009) 154 PLR 756, to opine that no declaration of title can be sought by a plaintiff on the basis of adverse possession inasmuch as adverse possession can be used as a shield by a defendant and not as a sword by a plaintiff. This Court while deciding the question gave the only reason by simply observing that there is "no quarrel" with the proposition to the extent that suit cannot be based by the plaintiff on adverse possession. Thus, this point was not contested in *Gurudwara Sahib v. State Gram Panchayat Village, Sirthala* (supra) when this Court expressed said opinion.

5. It is pertinent to mention here that before the aforesaid decision of this court, there was no such decision of this court holding that suit cannot be filed by a plaintiff based on adverse possession. The views to the contrary of larger and coordinate benches

(46)

were not submitted for consideration of the Two Judge Bench of this Court which decided the aforesaid matter.'

6. *A Three-Judge Bench decision in Sarangadeva Periya Matam & Anr. v. Ramaswami Gondar (Dead) by Lrs. AIR 1966 SC 1603 of this*

Court in which the decision of Privy Council in *Musumut Chundrabullee Debia v. Luchea Debia Chowdrain* 1865 SCC Online PC 7 had been relied on, was not placed for consideration before the division bench deciding *Gurudwara Sahib v. Gram Panchayat, Sirthala.*

7. Learned Amicus pointed out that in *Sarangadeva Periya Matam & Anr. v. Ramaswami Goundar (Dead) by Lrs. (supra)* the plaintiff was in the possession of the suit land until January 1950 when the 'mutt' obtained possession of the land. On February 18, 1954, plaintiff instituted the suit against the 'mutt' for "recovery of possession" of the suit land o based on an acquisition of title to land by way of "adverse possession". A Three-Judge Bench of this Court has held that the plaintiff acquired the title by his adverse possession and was entitled to recover the possession. Following is the relevant discussion:

"1. Sri Sarangadevar Periya Matam of Kumbakonam was the inam holder of lands in Kannibada Zamin, Dindigul Taluk, Madurai District. In 1883, the then mathadhipathi granted a perpetual lease of the melwaram and kudiwaram interest in a portion of the inam lands to one Chinna Gopiya Goundar, the grandfather of the plaintiff-respondent on an annual rent of ₹ 70. The demised lands are the subject-matter of the present suit. Since 1883 until January 1950 Chinna Gopiya Goundar and his descendants were in uninterrupted possession and enjoyment of the suit lands. In 1915, the mathadhipathi died without nominating a successor. Since 1915, the descendants of Chinna Gopiya Goundar did not pay any rent to the math. Between 1915 and 1939 there was no mathadhipathi. One Basavan Chetti was in management of the math for a period of 20 years from 1915. The present mathadhipathi was elected by the disciples of the Math in 1939. In 1928, the Collector of Madurai passed an order resuming the inam lands and directing the full assessment of the lands and payment of the assessment to the math for its upkeep. After resumption, the lands were transferred from the "B" Register of inam lands to the "A" Register of ryotwari lands and a joint patta was issued in the name of the plaintiff and other persons in possession of the lands. *The plaintiff continued to possess the suit lands until January 1950 when the math obtained possession of the lands. On February 18, 1954, the plaintiff instituted the suit* against the math represented by its present mathadhipathi and an agent of the math *claiming recovery of possession of the suit lands. The plaintiff claimed that he acquired title to the lands by adverse possession and by the issue of a ryotwari patta in his favour on the resumption of the inam.* The Subordinate Judge of Dindigul accepted the plaintiff's contention and decreed the suit. On appeal, the District Judge of Madurai set aside the decree and dismissed the suit. On second appeal, the High Court of Madras restored the judgment and decree of the Subordinate Judge. The defendants now appeal to this Court by special leave. During the pendency of the appeal, the plaintiff-respondent died and his legal representatives have been substituted in his place.

2. The *plaintiff claimed title to the suit lands on the following grounds : (1)*

(47)

Since 1915 he and his predecessors-in-interest were in adverse possession of the lands, and on the expiry of 12 years in 1927, he acquired prescriptive title to the lands under s. 28 read with Art. 144 of the Indian Limitation Act, 1908; (2) by the resumption proceedings and the grant of the ryotwari patta a new tenure was created in his favour and he acquired full ownership in the lands; and (3) *in any event, he was in adverse possession of the lands since 1928, and on the expiry of 12 years in 1940 he acquired prescriptive title to the lands under s. 28 read with Art. 134-B of the Indian Limitation Act, 1908.* We are of the opinion that the first contention of the plaintiff should be accepted, and it is, therefore, not necessary to consider the other two grounds of his claim.

6. We are inclined to accept the respondents' contention. Under Art. 144 of the Indian Limitation Act, 1908, limitation for a suit by a math or by any person representing it for possession of immovable properties belonging to it runs from the time when the possession of the defendant becomes adverse to the plaintiff. *The math is the owner of the endowed property.* Like an idol, the math is a juristic person having the power of acquiring, owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency. See Babajirao v. Laxmandas (1904) ILR 28 Bom 215 (223). *It may acquire property by prescription and may likewise lose property by adverse possession. If the math while in possession of its property is dispossessed or if the possession of a stranger becomes adverse, it suffers an injury and has the right to sue for the recovery of the property. If there is a legally appointed mathadhipathi, he may institute the suit on its behalf; if not, the de facto mathadhipathi* may do so, see Mahadeo Prasad Singh v. Karia Bharti 62 Ind App 47 at p.51 and where, necessary, a disciple orother beneficiary of the math may take steps for vindicating its legal rights by the appointment of a receiver having authority to sue on its behalf, or by the institution of a suit in its name by a next friend appointed by the Court. With due diligence, the math or those interested in it may avoid the running of time. The running of limitation against the math under Art. 144 is not suspended by the absence of a legally appointed mathadhipathi; clearly, limitation would run against it where it is managed by a de facto mathadhipathi. See Vithalbowa v. Narayan Daji, (1893) I.L.R. 18 Bom 507 at p.511, and we think it would run equally if there is neither a de jure nor a de facto mathadhipathi.

10. *We hold that by the operation of Art. 144 read with s. 28 of the Indian Limitation Act, 1908 the title of the math to the suit lands became extinguished in 1927, and the plaintiff acquired title to the lands by prescription. He continued in possession of the lands until January 1950. It has been found that in January 1950 he voluntarily delivered possession of the lands to the math, but such delivery of possession did not transfer any title to the math. The suit was instituted in 1954 and is well within time.*

(emphasis supplied)"

8. In *Balkrishan vs. Satyaprakash & Ors.*, 2001 (2) SCC 498, decided by a Coordinate Bench, the plaintiff filed a suit for

(48)

declaration of title on the ground of adverse possession and a permanent injunction. This Court considered the question, whether the plaintiff had perfected his title by adverse possession. This Court has laid down that the law concerning adverse possession is well settled, a person claiming adverse possession has to prove three classic requirements i.e. *nec - nec vi, nec clam* and *nec precario.* The trial court, as well as the First Appellate Court, decreed the suit while the High Court dismissed it. This Court restored the decree passed by the trial court decreeing the plaintiff suit based on adverse possession and observed:

> "6. *The short question that arises for consideration in this appeal is: whether the High Court erred in holding that the appellant had not perfected his title by adverse possession* on the ground that there was an order of a Tahsildar against him to deliver possession of the suit land to the auction purchasers.
>
> 7. The law with regard to perfecting title by adverse possession is well settled. *A person claiming title by adverse possession has to prove three "neck" - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent.* In S.M. Karim vs. Bibi Sakina [1964] 6 SCR 780, speaking for this Court Hidayatullah, J. (as he then was) observed thus:
>
> "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."
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> 14. In Sk. Mukbool Ali vs. Sk. Wajed Hossein, (1876) 25 WR 249 the High Court held:
>
> "Whatever the decree might have been, the defendant's possession could not be considered as having ceased in consequences of that decree, unless he were actually dispossessed. The fact that there is a decree against him does not prevent the statute of limitation from running."
>
> 15. In our view, the Madras High Court correctly laid down the law in the aforementioned cases.
>
> 17. From the above discussion, it follows that the judgment and decree of the High Court under challenge cannot be sustained. They are accordingly set aside and the judgment and decree of the First Appellate Court confirming the judgment and decree of the trial court is restored. The appeal is accordingly allowed but in the circumstances of the case without costs."

(emphasis supplied)

9. In *Des Raj and Ors. v. Bhagat Ram (Dead) by Lrs. and Ors.*: (2007) 9 SCC 641, a suit filed by the plaintiff for declaration of title and also for a permanent injunction based on adverse possession. The Courts below decreed the suit of the plaintiff on the ground of adverse possession. The same was affirmed by this Court. This Court considered the change brought about in the Act by Articles 64 and 65 *vis-a-vis* to Articles 142 and 144. Issue No.1 was framed whether the plaintiff becomes the owner of the suit property by way of adverse possession? This Court has observed that a plea of adverse possession was indisputably be governed by Articles 64 and 65 of the Act. This Court has discussed the matter thus:

> "*20. A plea of adverse possession or a plea of ouster would indisputably be governed by Articles 64 and 65 of the Limitation Act.*
>
> 22. *The mere assertion of title by itself may not be sufficient unless the*

49

plaintiff proves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the defendants-appellants themselves had earlier filed two suits. Such suits were filed for partition. In those suits the defendants-appellants claimed themselves to be co-owners of the plaintiff. A bare perusal of the judgments of the courts below clearly demonstrates that the plaintiff had even therein asserted hostile title claiming ownership in himself. The claim of hostile title by the plaintiff over the suit land, therefore, was, thus, known to the appellants. They allowed the first suit to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, as has been contended on behalf of the appellants before the courts below, that a co-owner can bring about successive suits for partition as the cause of action, therefor, would be a continuous one. But, it is equally well-settled that pendency of a suit does not stop running of 'limitation'. *The very fact that the defendants despite the purported entry made in the revenue settlement record of rights in the year 1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties* in Village Samleu and/or otherwise enjoy the usufruct thereof, clearly goes to show that even prior to institution of the said suit the plaintiff-respondent had been in hostile possession thereof.

24. *In any event the plaintiff made his hostile declaration claiming title for the property at least in his written statement in the suit filed in the year 1968. Thus, at least from 1968 onwards, the plaintiff continued to exclusively possess the suit land with a knowledge of, the defendants-appellants.*

26. *Article 65 of the Limitation Act, 1963, therefore, would in a case of this nature have its role to play, if not from 1953, but at least from 1968. If that be so, the finding of the High Court that the respondent perfected his title by adverse possession and ouster cannot be said to be vitiated in law.*

28. We are also not oblivious of a recent decision of this Court in *Govindammal v. R. Perumal Chettiar and Ors.*, (2006) 11 SCC 600 wherein it was held: (SCC p. 606, para 8)

> "In order to oust by way of adverse possession, one has to lead definite evidence to show that to the hostile interest of the party that a person is holding possession and how that can be proved will depend on facts of each case."

31. We, having regard to the peculiar facts obtaining in the case, are of the opinion that the *plaintiff-respondent had established that he acquired title by ousting the defendant-appellants by declaring hostile title in himself which was to the knowledge of his co-sharers."*

(emphasis supplied)

10. In *Kshitish Chandra Bose v. Commissioner of Ranchi*, (1981) 2 SCC 103 a three-Judge Bench of this Court considered the question of adverse possession by a plaintiff. The plaintiff has filed a suit for declaration of title and recovery of possession based on Hukumnama and adverse possession for more than 30 years. The trial court decreed the suit on both the grounds, 'title' as well as of 'adverse possession'. The plaintiffs appeal was allowed by this Court. It has been observed by this Court that adverse possession had been established by a consistent course

of conduct of the plaintiff in the case, possession was hostile to the full knowledge of the municipality. Thus, the High Court could not have interfered with the finding as to adverse possession and could not have ordered remand of the case to the Judicial Commissioner. The order of remand and the proceedings thereafter were quashed. This court restored decree in favour of plaintiff for declaration of title and recovery of possession and also for a permanent injunction, has dealt with the matter thus:

> "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 the land to the knowledge of the municipality for more than 30 years, that is to say, from 1912 to 1957.*
>
> 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."*
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> (emphasis supplied)

11. In *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165, the plaintiff filed a suit claiming to be in possession for over 70 years. The plaintiff claimed possession of the excess land from the society, its Manager and Defendants Nos.3 to 6. The society denied the rights of the plaintiff to bring a suit for ejectment or its liability for compensation. Alternatively, the society claimed the value of improvements. The main controversy decided by the High Court was whether the plaintiff can maintain a suit for possession without proof of title. This court observed that in case the rightful owner does not come forward within the period of limitation his right is lost, and the possessory owner acquires an absolute title. The plaintiff was in *de facto* possession and was entitled to remain in possession and only the State could evict him. The State was not impleaded as a party in the case. The action of the society was a violent invasion of his possession and in the law, as it stands in India, the plaintiff can maintain a possessory suit under the provisions of the Specific Relief Act, 1963. The plaintiff has asserted that he had perfected his title by "adverse possession" but he did not join the State in a suit to get a declaration. He may be said to have not rested the suit on the acquired title. The suit was thus limited to recovery of possession from one who had trespassed against him. The Court observed that for the plaintiff to maintain suit based on adverse possession, it was necessary to implead the State Government *i.e.* the owner of the land as a party to the suit. A plaintiff can maintain a suit based on adverse possession as he acquires absolute title. The Court observed:

(51)

"(17) In our judgment this involves an incorrect approach to our problem. To express our meaning we may begin by reading 1907 AC 73 to discover if the principle that possession is good against all but the true owner has in any way been departed from. 1907 AC 73 reaffirmed the principle by stating quite clearly:

> "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And *if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title.*"

Therefore, the plaintiff who was peaceably in possession was entitled to remain in possession and only the State could evict him. The action of the Society was a violent invasion of his possession *and in the law, as it stands in India the plaintiff could maintain a possessor suit under the provisions of the Specific Relief Act* in which title would be immaterial or a suit for possession within 12 years in which the question of title could be raised. As this was a suit of latter kind title could be examined. But whose title? Admittedly neither side could establish title. *The plaintiff at least pleaded the statute of Limitation and asserted that he had perfected his title by adverse possession. But as he did not join the State in his suit to get a declaration, he may be said to have not rested his case on an acquired title.* His suit was thus limited to recovering possession from one who had trespassed against him. The enquiry thus narrows to this: did the Society have any title in itself, was it acting under authority express or implied of the true owner or was it just pleading a title in a third party? To the first two questions we find no difficulty in furnishing an answer. It is clearly in the negative. So the only question is whether the defendant could plead that the title was in the State? Since in every such case between trespassers the title must be outstanding in a third party a defendant will be placed in a position of dominance. He has only to evict the prior trespasser and sit pretty pleading that the title is in someone else. As Erle J put it in Burling v. Read (1848) 11 QB 904 'parties might imagine that they acquired some right by merely intruding upon land in the night, running up a hut and occupying it before morning'. This will be subversive of the fundamental doctrine which was accepted always and was reaffirmed in 1907 AC 73. The law does not, therefore, countenance the doctrine of 'findings keepings'.

. . . . . .

(22) The cases of the Judicial Committee are not binding on us but we approve of the dictum in 1907 AC 73. No subsequent case has been brought to our notice departing from that view. No doubt a great controversy exists over the two cases of (1849) 13 QB 945 and(1865) 1 QB 1 but it must be taken to be finally resolved by 1907 AC 73. A similar view has been consistently taken in India and the amendment of the Indian Limitation Act has given approval to the proposition accepted in 1907 AC 73 and may be taken to be declaratory of the law in India. *We hold that the suit was maintainable.*"

(emphasis supplied)

12. In *Lallu Yashwant Singh (dead) by his legal representative v. Rao Jagdish*

(52)

Singh & Ors., AIR 1968 SC 620, this Court has observed that taking forcible possession is illegal. In India, persons are not permitted to take forcible possession. The law respect possession. The landlord has no right to re-enter by showing force or intimidation. He must have to proceed under the law and taking of forcible possession is illegal. The Court affirmed the decision of Privy Council in *Midnapur Zamindary Company Ltd. V. Naresh Narayan Roy* AIR 1924 PC 144 and other decisions and held:

"10. In Midnapur Zamindary Company Limited v. Naresh Narayan Roy, 51 Ind App 293 = at p. 299 (AIR 1924 PC 144 at p.147), the Privy Council observed:

"In India persons are not permitted to take forcible possession: they must obtain such possession as they are entitled to through a Court."

11. In K.K. Verma v. Naraindas C. Malkani (AIR 1954 Bom 358 at p. 360) Chagla C.J., stated that the law in India was essentially different from the law in England. He observed:

"Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. Under Section 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under Section 9 and claim possession against the true owner."

12. In Yar Mohammad v. Lakshmi Das (AIR 1959 All 1 at p.4), the Full Bench of the Allahabad High Court observed:

"No question of title either of the plaintiff or of the defendant can be raised or gone into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession."

The High Court further observed:

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a Judge in his own cause. As observed by Edge C.J., in *Wali Ahmad Khan v. Ayodhya Kundu* (1891) ILR 13 All. 537 at p.556:

"The object of the section was to drive the persons who wanted to eject a person into the proper Court and to prevent them from going with a high hand and ejecting such persons."

14. In Hillava Subbava v. Narayanappa, (1911) 13 Bom. LR 1200 it was observed:

"No doubt, the true owner of property is entitled to retain possession, even though he has obtained it from a trespasser by force or other unlawful means: Lillu v. Annaji, (1881) ILR 5

(53)

Bom. 387 and Bandu v. Naba, (1890) ILR 15 Bom 238."

We are unable to appreciate how this decision assists the respondent. It was not a suit under Section 9 of the Specific Relief Act. In (1881) ILR 5 Bom 387, it was recognised that "if there is a breach of the peace in attempting to take possession, that affords a ground for criminal prosecution, and, if the attempt is successful, for a summary suit also for a restoration to possession under Section 9 of the Specific Relief Act I of 1877-Dadabhai Narsidas v. The Sub-Collector of Broach, (1870) 7 Bom. HC AC 82." In (1890) ILR 15 Bom 238 it was observed by Sargent C.J., as follows:

"The Indian Legislature has, however, provided for the summary removal of anyone who dispossesses another, whether peaceably or otherwise than by due course of law; but subject to such provision there is no reason for holding that the rightful owner so dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the view taken by West J., in (1881) ILR 5 Bom 387."

15. *In our opinion, the law on this point has been correctly stated by the Privy Council, by Chagla C.J., and by the Full Bench of the Allahabad High Court, in the cases cited above."*

(emphasis supplied)

This Court has approved the decision of the Privy Council as well as Full Bench of the Allahabad High Court in *Yar Mohammad v. Laxmi Das* AIR 1959 All. 1.

13. In *Somnath Berman v. Dr. S.P. Raju & Anr.* AIR 1970 SC 846, this Court has recognized the right of a person having possessory title to obtain a declaration that he was the owner of the land in a suit and an injunction restraining the defendant from interfering with his possession. This Court has further observed that section 9 of the Specific Relief Act, 1963 is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment is sufficient title even if the suit is brought more than six months after the act of dispossession complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and the right to possession vested in a third party. This Court has observed:

"10. In Narayana Row v. Dharmachar, (1903) ILR 26 Mad 514 a bench of the Madras High Court consisting of Bhashyam Ayyangar and Moore, JJ. held that possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that *the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person.* The same view was taken by the Bombay High Court in Krishnarao Yashwant v. Vasudev Apaji Ghotikar, (1884) ILR 8 Bom 871. That was also the view taken by the Allahabad High Court-see Umrao Singh v. Ramji Das, ILR 36 All 51, Wali Ahmad Khan v. Ahjudhia Kandu, (1891) ILR 13 All 537. In Subodh Gopal Bose v. Province of Bihar, AIR 1950 Pat 222 the Patna High Court adhered to the view taken by the Madras, Bombay and Allahabad High

(54)

Courts. The contrary view taken by the Calcutta High Court in Debi Churn Boldo v. Issur Chunder Manjee, (1883) ILR 9 Cal 39: Ertaza Hossein v. Bany Mistry. (1883) ILR 9 Cal 130. Purmeshur Chowdhry v. Brijo Lall Chowdhry, (1890) ILR 17 Cal 256 and Nisa Chand Gaita v. Kanchiram Bagani, (1899) ILR 26 Cal 579, in our opinion does not lay down the law correctly."

(emphasis supplied)

It is apparent from the aforesaid decision that a person is entitled to bring a suit of possessory title to obtain possession even though the title may vest in a third person. A person in the possessory title can get injunction also, restraining the defendant from interfering with his possession.

14. Given the aforesaid, a question to ponder is when a person having no title, merely on the strength of possessory title can obtain an injunction and can maintain a suit for ejectment of a trespasser. Why a person who has perfected his title by way of adverse possession cannot file a suit for obtaining an injunction protecting possession and for recovery of possession in case his dispossession is by a third person or by an owner after the extinguishment of his title. In case a person in adverse possession has perfected his title by adverse possession and after the extinguishment of the title of the true owner, he cannot be successfully dispossessed by a true owner as the owner has lost his right, title and interest.

15. In *Padminibai v. Tangavva & Ors.*, AIR 1979 SC 1142, a suit was filed by the plaintiff for recovery of possession on the basis that her husband was in exclusive and open possession of the suit lands adversely to the defendant for a period exceeding 12 years and his possession was never interrupted or disturbed. It was held that he acquired ownership by prescription. The suit filed within 12 years of his death was within limitation. Thus, the plaintiff was given the right to recover possession based on adverse possession as Tatya has acquired ownership by adverse possession. This Court has observed thus:

> "1. Tatya died on February 2, 1955. *The respondents, Tangava and Sundra Bai are the co widows of Tatya. They were co-plaintiffs in the original suit.*
>
> 11. We have, therefore, no hesitation in holding in agreement with the courts below that *Tatya had acquired title by remaining in exclusive and open possession of the suit lands adversely to Padmini Bai for a period far exceeding 12 years, and this possession was never interrupted or disturbed. He had thus acquired ownership by prescriptions.*"

(emphasis supplied)

16. In *State of West Bengal v. The Dalhousie Institute Society*, AIR 1970 SC 1778, this Court considered the question of adverse possession of Dalhousie Institute Society based on invalid grant. It was held by this Court that title was acquired by adverse possession based on invalid grant and the right was given to the claimant/applicant to claim compensation. This Court held that a person acquires title by adverse possession and observed:

> "16. There is no material placed before us to show that the grant has been made in the manner required by law though as a fact a grant of the site has been made in favour of the Institute. The evidence relied on by the Special Land Acquisition Judge and the High Court also clearly establishes that the respondent has been in open, continuous and uninterrupted possession and enjoyment of the site for over 60 years. In this respect, the material documentary evidence referred to by the High Court clearly establishes that the respondent has been treated as

owner of the site not only by the Corporation but also by the Government. The possession of the respondent must have been on the basis of the grant made by the Government. which, no doubt, is invalid in law. As to what exactly is the legal effect of such possession has been considered by this Court in Collector of Bombay v. Municipal Corporation of the City of Bombay, [1952] SCR 43 as follows:

> "...the position of the respondent Corporation and its predecessor in title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the respondent Corporation took possession of the land under the invalid grant. This possession has continued openly, as of right and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title to it and its predecessor in title had been prescribing for during all this period, that is to say, the right to hold the land in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865..."

17. The above extract establishes *that a person in such possession clearly acquires title by adverse possession.* In the case before us, there are concurrent findings recorded by the High Court and the *Special Land Acquisition Judge in favour of the respondent on this point and we agree with those findings."*

(emphasis supplied)

'It is apparent from the aforesaid discussion that title is acquired by adverse possession.

17. In *Mohammed Fateh Nasib v. Swarup Chand Hukum Chand & Anr.* AIR 1948 PC 76, Privy Council considered the question of adverse possession by a plaintiff. In the plaint, his case was based upon continuous, open, exclusive and undisturbed possession. He averred that he had acquired an indefeasible title to the suit property by adverse possession against the whole world. In 1928, he was surreptitiously dispossessed from the suit property. The question arose for consideration whether the plaintiff remained in adverse possession for 12 years and whether it was adverse to the wakf. The Privy Council agreed with the findings of the High Court that the "plaintiff" and his predecessors-in-interest had remained in possession of the suit property for more than 12 years before 1928 to acquire a title under section 28 of the Act and the plaintiff was not a mere trespasser. The court further held that title by the adverse possession can be established against wakf property also. The Privy Council observed:-

> "On that basis the first question to be determined is *whether the plaintiff proved continuous, open exclusive and undisturbed possession of the property in suit for 12 years and upwards before 1928* when he was dispossessed, that being the relevant date under Article 142 of the Limitation Act. If that question is answered in the affirmative then the further question arises whether such possession was adverse to the wakf.
>
> Their Lordships agree that this is the correct test to apply and, having examined the evidence, oral and documentary, they agree with the finding

(56)

of the High Court that the plaintiff and his predecessors-in-interest had been in possession of the suit property for more than 12 years prior to 1928 so as to acquire a title under Section 28 of the Limitation Act. It is no doubt true, as the learned Subordinate Judge held, that the claim of a mere trespasser to title by adverse possession will be confined strictly to the property of which he has been in actual possession. But that principle has no application in the present case. The plaintiff is not a mere trespasser; he himself purchased the property for a large sum and Aberjan, upon whose possession the claim ultimately rests, was put into possession by an order of the Court, whether or not such order was rightly made. Apart from this, their Lordships think that the character of the possession established by the plaintiff was adequate to found title even in a trespasser.

Their Lordships feel no hesitation in agreeing with the High Court that adverse possession by the plaintiff and his predecessors-in-interest has been proved for the requisite period.

The only question which then remains is whether such possession was adverse to the wakf. It is not disputed that in law a title by adverse possession can be established against wakf property, but it is clear that a trustee for a charity entering into possession of property belonging to the charity cannot, whilst remaining a trustee, change the character of his possession, and assert that he is in possession as a beneficial owner."

(emphasis supplied)

The plaintiff's title was declared based on adverse possession.

18. The question of perfecting title by adverse possession again came to be considered by the Privy Council in *Gunga Govind Mundul & Ors. v. The Collector of the Twenty-Four Pergunnahs & Ors.* 11 M.I.A. 212, it observed that there is an extinguishment of title by the law of limitation. The practical effect is the extinction of the title of the owner in favour of the party in possession and this right is an absolute interest. The Privy Council has observed thus:

"4. *The title to sue for dispossession of the lands belongs, in such a case, to the owner whose property is encroached upon; and if he suffers his right to be barred by the Law of Limitation, the practical effect is the extinction of his title in favour of the party in possession;* see Sel. Rep., vol. vi., p. 139, cited in Macpherson, Civil Procedure, p. 81 (3rd ed.). Now, in this case, the family represented by the Appellants is proved to have been upwards of thirty years in possession. The High Court has decided that the Prince's title is barred, and the effect of that bar must operate in favour of the party in possession.

Supposing that, on the extinction of the title of a person having a limited interest, a right to enter might arise in favour of a remainderman or a reversioner, the present case has no resemblance to that."

8. It is of the utmost consequence in India that the security which long possession efforts should not be weakened. Disputes are constantly arising about boundaries and about the identity of lands, -- contiguous owners are apt to charge one another with encroachment. If twelve years' peaceable and uninterrupted possession of lands, alleged to have been enjoyed by encroachment on the adjoining lands, can be proved, a purchaser may taken that title in safety; but, if the party out of possession could set up a sixty

(57)

years' law of limitation, merely by making common cause with a Collector, who could enjoy security against interruption? The true answer to such a contrivance is; the legal right of the Government is to its rent; the lands owned by others; as between private owners contesting inter see the title of the lands, the law has *established a limitation of twelve years; after that time, it declares not simply that the remedy is barred, but that that the title is extinct in favour of the possessor.* The Government has no title to intervene in such contests, as its title to its rent in the nature of jumma is unaffected by transfer simply of proprietary right in the lands. The liability of the lands of Jumma is not affected by a transfer of proprietary right, whether such transfer is affected simply by transfer of title, or less directly by adverse occupation and the law of limitation."

(emphasis supplied)

19. In *S.M. Karim v. Mst. Bibi Sakina*, AIR 1964 SC 1254, a question arose under section 66 of the Code of Civil Procedure, 1908 which provides that no suit shall be maintained against a certified purchaser. The question arose for consideration that in case possession is disturbed whether a plaintiff can take the alternative plea that the title of the person purchasing benami in court auction was extinguished by long and uninterrupted adverse possession of the real owner. If the possession of the real owner ripens into title under the Act and he is dispossessed, he can sue to obtain possession. This Court has held that in such a case it would be open for the plaintiff to take such a plea but with full particulars so that the starting point of limitation can be found. 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 was not necessarily an adverse possession and the prayer clause is not a substitute for a plea of adverse possession. The opinion expressed is that plaintiff can take a plea of adverse possession but with full particulars. The Court has observed:

"5. As an alternative, it was contended before us that the title of Hakir Alam was extinguished by long and uninterrupted adverse possession of Syed Aulad Ali and after him of the plaintiff. The High Court did not accept this case. *Such a case is, of course, open to a plaintiff to make if his possession is disturbed. If the possession of the real owner ripens into title under the Limitation Act and he is dispossessed, he can sue to obtain possession, for he does not then rely on the benami nature of the transaction. But the alternative claim must be clearly made and proved.* The High Court held that the plea of adverse possession was not raised in the suit and reversed the decision of the two courts below. The plea of adverse possession is raised here. Reliance is placed before us on Sukhan Das v. Krishanand, ILR 32 Pat 353 and Sri Bhagwan Singh v. Ram Basi Kuer, AIR 1957 Pat 157, to submit that such a plea is not necessary and alternatively, that if a plea is required, what can be considered a proper plea. But these two cases can hardly help the appellant. No doubt, the plaint sets out the fact that after the purchase by Syed Aulad Ali, benami in the name of his son-in-law Hakir Alam, Syed Aulad Ali continued in possession of the property but it does not say that this possession was at any time adverse to that of the certified purchaser. Hakir Alam was the son-in-law of Syed Aulad Ali and was living with him. There is no suggestion that Syed Aulad Ali ever asserted any hostile title against him or that a dispute

(58)

with regard to ownership and possession had ever arisen. 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. The cited cases need hardly be considered because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in Bishun Dayal v. Kesho Prasad, AIR 1940 PC 202 the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea."

(emphasis supplied)

20. There is an acquisition of title by adverse possession as such, such a person in the capacity of a plaintiff can always use the plea in case any of his rights are infringed including in case of dispossession. In *Mandal Revenue Officer v. Goundla Venkaiah & Anr*, (2010) 2 SCC 461 this Court has referred to the decision in *State of Rajasthan v. Harphool Singh* (2000) 5 SCC 652 in which the suit was filed by the plaintiff based on acquisition of title by adverse possession. This Court has referred to other decisions also in *Annakili v. A. Vedanayagam* (2007) 14 SCC 308 and *P.T. Munichikkanna Reddy v. Revamma* (2007) 6 SCC 59. It has been observed that there can be an acquisition of title by adverse possession. It has also been observed that adverse possession effectively shifts the title already distanced from the paper owner to the adverse possessor. Right thereby accrues in favour of the adverse possessor. This Court has considered the matter thus:

"48. In State of Rajasthan v. Harphool Singh, 2000 (5) SCC 652, this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. *The suit filed by the respondent against his threatened dispossession was decreed by the trial court with the finding that he had acquired title by adverse possession.* The first and second appeals preferred by the State Government were dismissed by the lower appellate court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the plaintiff-respondent could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below: (SCC p. 660, para 12)

"12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314, adverted to the ordinary classical requirement - that it should be *nec vi, nec clam, nec precario* - that is the possession required must be adequate in continuity, in publicity,

59

and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus."

50. Before concluding, we may notice two recent judgments in which law on the question of acquisition of title by adverse possession has been considered and reiterated. In Annakili v. A. Vedanayagam, 2007 (14) SCC 308, the Court observed as under:

(SCC p. 316, para 24)

"24. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff: and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. *Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner.* For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title."

51. In P.T. Munichikkanna Reddy v. Revamma, 2007 (6) SCC 59, the Court considered various facets of the law of adverse possession and laid down various propositions including the following:

(SCC pp. 66 & 68, paras 5 & 8)

x x x

8. ... 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. (emphasis in original)"*

(emphasis supplied)

21. *In P.T. Munichikkanna Reddy v. Revamma*, (2007) 6 SCC 59, this Court has observed as under:

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:

60

"(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 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."

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.

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 asintent to dispossess is an express statement of urgency and intention in the upkeep of the property.**

30. In Karnataka Wakf Board 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

(61)

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, Parsinni v. Sukhi and D.N. Venkatarayappa v. State of Karnataka.) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

22. In *State of Haryana v. Mukesh Kumar & Ors.*, (2011) 10 SCC 404, the court considered the question whether the plaintiff had become the owner of the disputed property by way of adverse possession and in that context considered the decisions in *Revamma* (supra) and *Fairweather v. St. Marylebone Property Co. Ltd.* (1962) 2 AER 288 (HL) *and Taylor v. Twinberrow* 1930 All ER Rep 342 (DC) and observed that adverse possession confers negative and consequential right effected only as somebody else's positive right to access the court is barred by operation of law. Right of the paper owner is extinguished and that competing rights evolve in favour of adverse possessor as he cared for the land, developed it as against the owner of the property who had ignored the property. This Court has observed thus:

"32. This Court in Revamma (2007) 6 SCC 59 observed that to understand the true nature of adverse possession, Fairweather v. St Marylebone Property Co. Ltd. (1962) 2 All ER 288 (HL) can be considered where the House of Lords referring to *Taylor v. Twinberrow* (1930) 2 K.B. 16 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. *As against the 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."*

(emphasis supplied)

62

23. In *Krishnamurthy S. Setlur (dead) by LRs. v. O.V. Narasimha Setty & Ors.*, (2007) 3 SCC 569, the Court pointed out that the duty of the plaintiff while claiming title based on adverse possession. The suit was filed by the plaintiff on 11.12.1981. The trial court held that the plaintiff has perfected the title in the suit lands based on adverse possession, and decreed the suit. This Court has observed that the plaintiff must plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession. The question arose for consideration whether tenant's possession could be treated as possession of the owner for computation of the period of 12 years under the provisions of the Act. What is the nature of pleading required in the plaint to constitute a plea of adverse possession has been emphasised by this Court and another question also arose whether the plaintiff was entitled to get back the possession from the defendants? This Court has observed thus:

> "12. Section 27 of the Limitation Act, 1963 operates to extinguish the right to property of a person who does not sue for its possession within the time allowed by law. *The right extinguished is the right which the lawful owner has and against whom a claim for adverse possession is made, therefore, the plaintiff who makes a claim for adverse possession has to plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession.* The question whether possession is adverse or not is often one of simple fact but it may also be a conclusion of law or a mixed question of law and fact. The facts found must be accepted, but the conclusion drawn from them, namely, ouster or adverse possession is a question of law and has to be considered by the court.

13. As stated, this civil appeal arises from the judgment of the High Court in RFA No. 672 of 1996 filed by the original defendants under Section 96 CPC. The impugned judgment, to say the least, is a bundle of confusion. It quotes depositions of witnesses as findings. It quotes findings of the courts below which have been set aside by the High Court in the earlier round. It criticizes the findings given by the coordinate Bench of the High Court in the earlier round of litigation. It does not answer the question of law which arises for determination in this case. *To quote an example, one of the main questions which arises for determination, in this case, is whether the tenant's possession could be treated as possession of the owner in computation of the period of twelve years under Article 64 of the Limitation Act, 1963.* Similarly, as an example, the impugned judgment does not answer the question as to whether the decision of the High Court dated 14.8.1981 in RSA No. 545 of 1973 was at all binding on the LRs. of Iyengar/their alienees. Similarly, the impugned judgment does not consider the effect of the judgment dated 10.11.1961 rendered by the trial court in Suit No. 94 of 1956 filed by K.S. Setlur against Iyengar inter alia for reconveyance in which the court below did not accept the contention of K.S. Setlur that the conveyance executed by Kalyana Sundram Iyer in favour of Iyengar was a benami transaction. Similarly, the impugned judgment has failed to consider the effect of the observations made by the civil court in the suit filed by Iyengar for permanent injunction bearing Suit No. 79 of 1949 to the effect that though Shyamala Raju was in possession and cultivation, whether he was a tenant under Iyengar or under K.S. Setlur was

not conclusively proved. Similarly, the impugned judgment has not at all considered the effect of Iyengar or his LRs. not filing a suit on title despite being liberty given to them in the earlier Suit No. 79 of 1949. *In the matter of adverse possession, the courts have to find out the plea taken by the plaintiff in the plaint. In the plaint, the plaintiff who claims to be owner by adverse possession has to plead actual possession. He has to plead the period and the date from which he claims to be in possession. The plaintiff has to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge* of the real owner of the land. He has to show a hostile title. He has to communicate his hostility to the real owner. None of these aspects have been considered by the High Court in its impugned judgment. As stated above, the impugned judgment is under Section 96 CPC, it is not a judgment under Section 100 CPC. As stated above, adverse possession or ouster is an inference to be drawn from the facts proved (sic) that work is of the first appellate court."

(emphasis supplied)

24. In *P.T. Munichikkanna Reddy v. Revanima,* (2007) 6 SCC 59, the plaintiff claimed the title based on adverse possession. The court observed:

"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 100 So. 2d 57 (Fla. 1958); Arkansas Commemorative Commission v. City of Little Rock 227 Ark. 1085: 303 S.W. 2d 569 (1957); Monnot v. Murphy 207 N.Y. 240 100 N.E. 742 (1913); City of Rock Springs v. Stum 39 Wyo. 494: 273 P. 908: 97 A.L.R. 1 (1929).

6. Efficacy of adverse possession law in most jurisdictions depend 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, Page 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 supplied)

25. In *Halsbury's Laws of England,* 4th Edn., Vol. 28, para 777 positions of person in adverse possession has been discussed and it has been observed on the basis of various decisions that a person in possession has a

(64)

transmissible interest in the property and after expiration of the statutory period, it ripens as good a right to possession. Para 777 is as under:

"777. **Position of person in adverse possession:** While a person who is *in possession of land without title continues in possession*, then, before the statutory period has elapsed, *he has a transmissible interest in the property* which is good *against all the world except the rightful owner*, but an interest which is liable at any moment to be defeated by the entry of the rightful owner: and, if that person is succeeded in possession by one claiming through him *who holds until the expiration of the statutory period, the successor has then as good a right to the possession as if he himself had occupied for the whole period.*"

(emphasis supplied)

26. In *Halsbury's Laws of England*, extinction of title by the effect of the expiration of the period of limitation has also been discussed in Para 783 and once right is lost to recover the possession, the same cannot be revested by any re-entry or by a subsequent acknowledgment of title. Para 783 is extracted hereunder:

"783. Extinction of title: At the expiration of the periods prescribed by the Limitation Act 1939 for any person to bring an action to recover land (including a redemption action) or an action to enforce an advowson, the title of that person to the land or advowson is extinguished. This is subject to the special provisions relating to settled land and land held on trust and the provisions for constituting the proprietor of registered land a trustee for the person who has acquired title against him. *The extinguished title cannot afterward be revested either by re-entry or by a subsequent payment or acknowledgment of title. A rent-charge is extinguished when the remedy to recover it is barred.*"

(emphasis supplied)

27. Nature of title acquired by adverse possession has also been discussed in the Halsbury's Laws of England in Para 785. It has been observed that adverse possession leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the rights of others to eject him. Same is a "good title", both at law and in equity. Para 785 is also extracted hereunder:

"785. Nature of title acquired: The operation of the statutory provision for the *extinction of title 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 others to eject him.*

A title gained by the operation of the statute is a good title, both at law and in equity, and will be forced by the court on a reluctant purchaser. Proof, however, that a vendor and those through whom he claims have had independent possession of an estate for twelve years will not be sufficient to establish a saleable title without evidence to show the state of the title at the time that possession commenced. If the contract for purchase is an open one, possession for twelve years is not sufficient, and a full length of the title is required. Although possession of land is prima facie evidence of seisin in fee, it does not follow that a person who has gained a title to land from the fact of certain persons being barred of their rights has the fee simple vested in himself; for, although he may have gained an indefeasible title against those who had an estate in possession, there may be

65

persons entitled in reversion or remainder whose rights are quite unaffected by the statute."

(emphasis supplied)

28. In an article published in Harvard Law Review on "Title by Adverse Possession" by Henry W. Ballantine, as to the question of adverse possession and acquisition of title it has been observed on strength of various decisions that adverse possession vests the possessor with the complete title as effectually as if there had been a conveyance by the former owner. As held in *Toltec Ranch Co. v. Cook,* 191 U.S. 532, 542 (1903). But the title is independent, not derivative, and "relates back" to the inception of the adverse possession, as observed. (see *Field v. Peoples,* 180 Ill. 376, 383, 54 N.E. 304 (1899); *Bellefontaine Co. v. Niedringhaus,* 181 Ill. 426, 55 N.E. 184 (1899). *Cf. La Salle v. Sanitary District,* 260 Ill. 423, 429, 103 N.E. 175 (1913); *AMES, LECTURES ON LEGAL HIST.* 197; 3 *ANGLO-AMERICAN ESSAYS,* 567). The adverse possessor does not derive his title from the former owner, but from a new source of title, his possession. The, "investitive fact" is the disseisin and exercise of possession as observed in *Camp v. Camp,* 5 Conn. 291 (1824); Price v. Lyon, 14 Conn. Conn. 279, 290 (1841); *Coal Creek., etc. Co. v. East Tenn. I. & C. Co.,* 105 Tenn. 563; 59 S.W. 634, 636 (1900). It has also been observed that titles to property should not remain uncertain and in dispute, but that continued *de facto* exercise and assertion of a right should be conclusive evidence of the *de jure* existence of the right.

29. In *Lala Hem Chand v. Lala Pearey Lal & Ors.,* AIR 1942 PC 64, the question arose of the adverse possession where a trustee had been in possession for more than 12 years under a trust which is void under the law, the Privy Council observed that if the right of a defendant owner is extinguished the plaintiff acquires it by adverse possession. In case the owner suffers his right to be barred by the law of limitation, the practical effect is the extinction of his title in favour of the party in possession. The relevant portion is extracted hereunder:

"…. The inference from the evidence as a whole is irresistible that it was with his knowledge and implied consent that the building was consecrated as a Dharmasala and used as such for charitable and religious purposes and that Lala Janaki Das, and after him, Ramchand, was in possession of the property till 1931. As forcibly pointed out by the High Court in considering the merits of the case, "during the course of more than 20 years that this building remained in the charge of Janaki Das, and on his death in that of his son, Ramchand, the defendant had never once claimed the property as his own or objected to its being treated as dedicated property." This Board held in ('66) 11 M.I.A. 345: 7 W.R. 21: 1 Suther. 676: 2 Sar. 284 (P.C.), Gunga Gobindas Mundal v. The Collector of the Twenty Four Pergunnahs, at page 361, that if the owner whose *property is encroached upon suffers his right to be barred by the law of limitation the practical effect is the extinction of his title in favour of the party in possession." Section 28, Limitation Act, says:*

"At the determination of the period hereby limited to any person for instituting a suit for possession of any property his right to such property shall be extinguished." Lala Janaki Das and Ramchand having held the property adversely for upwards of 12 years on behalf of the *charity for which it was dedicated, it follows that the title to it, acquired by prescription, has become vested in the charity and that of the defendant, if he had any, has become*

66

extinguished by operation of S. 28, Limitation Act. Their Lordships have no doubt that the Subordinate Judge would also have come to the conclusion that the title of the defendant has become barred by limitation, had he not been of the view that Lala Janaki Das retained possession of the suit property as trustee for the benefit of the author of the trust and his legal representatives, and that presumably S. 10, Limitation Act, would apply to the case, though he does not specifically refer to the section. *For the above reasons, their Lordships hold that the plaintiffs have established their title to the suit property by adverse possession for upwards of 12 years before the defendant obtained possession of it; and since the suit was brought in January 1933,* within so short a time as two years of dispossession, the plaintiffs are entitled to recover it from the defendant, whose title to hold it if he had any has become extinct by limitation, in whichever manner he may have obtained possession permissively or by trespass."

(emphasis supplied)

30. In *Tichborne v. Weir,* (1892) 67 LT 735, it has been observed that considering the effect of limitation is not that the right of one person is conveyed to another, but that the right is extinguished and destroyed. As the mode of conveying the title is not prescribed in the Act, the Act does not confer it. But at the same time, it has been observed that yet his "title under the Act is acquired" solely by the extinction of the right of the prior rightful owner; not by any statutory transfer of the estate. In the said case question arose for transfer of the lease formerly held by Baxter to Giraud who for over 20 years had been in possession of the land without any acknowledgment to Baxter who had equitably mortgaged the lease to him. The question arose whether the statute transferred the lease to Giraud and he became the tenant of the landlord. In that context, the aforesaid observations have been made. It has been held what is acquired would depend upon what right person has against whom he has prescribed and acquisition of title by adverse possession would not more be than that. The lease is not transferred under a statute but by the extinguishment of rights. The other person ripens the right. Thus, the decision does not run counter to the various decisions which have been discussed above and deals with the nature of title confered by adverse possession.

31. The decision in *Taylor v. Twinberrow,* (1930) 2 K.B. 16 has also been referred to submit to the contrary. In that case, also it was a case of a dispute between the tenant and sub-tenant. The Kings Bench considered the effect of the expiration of 12 years' adverse possession under section 7 of the Act of 1833 and observed that that does confer a title, whereas its effect is merely negative to destroy the power of the then tenant Taylor to claim as a landlord against the sub-tenant in possession. It would not destroy the right of the freeholder, if Taylor's tenancy was determined, by the freeholder, he could eject the subtenant. Thus, Taylor's right would be defeated and not that of the freeholder who was the owner and gave the land on the tenancy to Taylor. In our opinion, the view is in consonance with the law of adverse possession as administered in India. As the basic principle is that if a person is having a limited right, a person against him can prescribe only to acquire that limited right which is extinguished and not beyond that. There is a series of decisions laying down this proposition of law as to the effect of adverse possession as against limited owner if extinguishing title of the limited owner not that of reversion or having some other title. Thus, the decision in *Taylor v. Twinberrow* (supra)

does not negate the acquisition of title by way of adverse possession but rather affirms it.

32. The operation of the statute of limitation in giving a title 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 others to eject him. *Perry v. Clissold* (1907) AC 73 has been referred to in *Nair Service Society Ltdd. v. K.C. Alexander* (supra) in which it has been observed that it cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the original owner, and if the original owner does not come forward and assert his title by the process of law within the period prescribed under the statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title. In *Ram Daan (Dead) through LRs. v. Urban Improvement Trust.*, (2014) 8 SCC 902, this Court has observed thus:

> "11. It is settled position of law laid down by the Privy Council in Perry v. Clissold 1907 AC 73 (PC) (AC p. 79)
>
> "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."

The above statement was quoted with the approval by this Court in *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165. Their Lordships at para 22 emphatically stated: (AIR p. 1175)

> "22. The cases of the Judicial Committee are not binding on us but we approve of the dictum in *Perry v. Clissold* 1907 AC 73 (PC)."

33. The decision in *Fairweather v. St. Marylebone Property Co. Ltd.* (1962) 2 AER 288 (HL) has also been referred, to submit that adverse possession is a negative concept where the possession had been taken against the tenant, its operation was only to bar his right against men in possession. As already discussed above, it was a case of limited right possessed by the tenant and a sub-tenant could only perfect his right against the tenant who inducted him as sub-tenant prescribed against the tenant and not against the freeholder. The decision does not run counter to any other decision discussed and is no help to hold that plaintiff cannot take such a plea or hold that no right is conferred by adverse possession. It may be a negative right but an absolute one. It confers title as owner in case extinguishment is of the right of ownership.

34. The plaintiff's right to raise the plea of adverse possession has been recognized in several decisions of the High Court also. If such a case arises on the facts stated in the plaint and the defendant is not taken by surprise as held in *Nepen Bala Debi v. Siti Kanta Banerjee*, (1910) 8 Ind Cas 41 (DB) (Cal), *Ngasepam Ibotombi Singh v. Wahengbam Ibohal Singh & Anr.*, AIR 1960 Manipur 16, *Aboobucker s/o Shakhi Mahomed Laloo v. Sahibkhatoon*, AIR 1949 Sindh 12, *Bata Krista Pramanick v. Shebaits of Thakur Jogendra Nath Maity & Ors.*, AIR 1919 Cal. 339, *Ram Chandra Sil & Ors. v. Ramanmani Dasi & Ors.* AIR 1917 Cal. 469, *Shiromani Gurdwara Parbhandhak Committee, Khosakotla & Anr. v. Prem Das & Ors.*, AIR 1933 Lah 25, *Rangappa Nayakar v. Rangaswami*

68

Nayakar, AIR 1925 Mad. 1005; *Shaikh Alimuddin v. Shaikh Salim*, 1928 IC 81 (PC).

35. In *Pannalal Bhagirath Marwadi v. Bhaiyalal Bindraban Pardeshi Teli*, AIR 1937 Nagpur 281, it has been observed that in-between two trespassers, one who is wrongly dispossessed by the other trespasser, can sue and recover possession. A person in possession cannot be dispossessed otherwise than in due course of law and can sue for injunction for protecting the possession as observed in *Krishna Ram Mahale (dead) by L.Rs v. Shobha Venkat Rao*, (1989) 4 SCC 131, *State of U.P. v. Maharaja Dharmander Prasad Singh*, (1989) 2 SCC 505.

36. In *Radhamoni Debi v. The Collector of Khulna & Ors.* (1900) ILR 27 Cal. 943 it was observed that to constitute a possessory title by adverse possession, the possession required to be proved must be adequate in continuity in publicity, and in the extent to show for a period of 12 years.

37. In *Somnath Burman v. S.P. Raju*, (1969) 3 SCC 129, the Court recognized the right of the plaintiff to such declaration of title and for an injunction. Section 9 of the Specific Relief Act is in no way inconsistent, the wrongdoer cannot resist suit on the ground that title and right are in a third person. Right to sue is available to the plaintiff against owners as well as others by taking the plea of adverse possession in the plaint.

38. In *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harjan & Ors.*, (2009) 16 SCC 517, relying on *T. Anjanappa v. Somalingappa* (2006) 7 SCC 570, observed that title can be based on adverse possession. This Court has observed thus:

> "23. This Court had an occasion to examine the concept of adverse possession in *T. Anjanappa v. Somalingappa*, 2006 (7) SCC 570. 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 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 the property, though it is not necessary that should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.""

At the same time, this Court has also observed that the law of adverse possession is harsh and Legislature may consider a change in the law as to adverse possession.

39. In the light of the aforesaid discussion, when we consider the decision in *Gurdwara Sahib v. Gram Panchayat Village Sirthala & Anr.*, (2014) 1 SCC 669 decided by two-Judge Bench wherein a question arose whether the plaintiff is in adverse possession of the suit land this Court referred to the Punjab & Haryana High Court decision on *Gurdwara Sahib Sannauli v. State of Punjab* (2009) 154 PLR 756 and observed that there cannot be 'any quarrel' to the extent that the judgments of courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. The discussion made is confined to para 8 only. The same is extracted hereunder: In the light of the aforesaid discussion, when we consider the decision in *Gurdwara Sahib v. Gram Panchayat Village Sirthala & Anr.*, (2014) 1 SCC 669 decided by two-Judge Bench wherein a question arose whether the plaintiff

is in adverse possession of the suit land this Court referred to the Punjab & Haryana High Court decision on *Gurdwara Sahib Sannauli v. State of Punjab* (2009) 154 PLR 756 and observed that there cannot be 'any quarrel' to the extent that the judgments of courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. The discussion made is confined to para 8 only. The same is extracted hereunder:

> "4. In so far as the first issue is concerned, it was decided in favour of the plaintiff returning the findings that the appellant was in adverse possession of the suit property since 13.4.1952 as this fact had been proved by a plethora of documentary evidence produced by the appellant. *However, while deciding the second issue, the court opined that no declaration can be sought on the basis of adverse possession inasmuch as adverse possession can be used as a shield and not as a sword. The learned Civil Judge relied upon the judgment of the Punjab and Haryana High Court in Gurdwara Sahib Sannuali v. State of Punjab (2009) 154 PLR 756* and thus, decided the issue against the plaintiff. Issue 3 was also, in the same vein, decided against the appellant.
>
> 8. *There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."*
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> (emphasis supplied)

It is apparent that the point whether the plaintiff can take the plea of adverse possession was not contested in the aforesaid decision and none out of the plethora of the aforesaid decisions including of the larger Bench were placed for consideration before this Court. The judgment is based upon the proposition of law not being questioned as the point was not disputed. There no reason is given, only observation has been recorded in one line.'

40. *It is also pertinent to mention that the decision of this court in Gurudwara Sahib v. Gram Panchayat Village, Sirthala (supra) has been relied upon in State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj*, (2017) 9 SCC 579. In the said case, no plea of adverse possession was taken nor issue was framed as such this Court held that in the absence of pleading, issue and evidence of adverse possession suit could not have been decreed on that basis. Given the aforesaid, it was not necessary to go into the question of whether the plaintiff could have taken the plea of adverse possession. Nonetheless, a passing observation has been made without any discussion of the aspect that the court below should have seen that declaration of ownership rights over the suit property could be granted to the plaintiff on strength of adverse possession (see: *Gurudwara Sahib v. Gram Panchayat, Sirthala).* The Court observed:

> "24. By no stretch of imagination, in our view, such a declaration of ownership over the suit property and right of easement over a well could be granted by the trial court in the plaintiff's favour because even the plaintiff did not claim title in the suit property on the strength of "adverse possession". Neither were there any pleadings nor any issue much less evidence to prove the adverse possession on land and for grant of any easementary right over the well. *The courts below should have seen that no declaration*

(70)

of ownership rights over the suit property could be granted to the plaintiff on the strength of "adverse possession" (see Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669. The courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief. This principle is fully applied to the facts of this case against the plaintiff."

(emphasis supplied)

41. *Again in Dharampal (Dead) through LRs v. Punjab Wakf Board,* (2018) 11 SCC 449, the court found the averments in counterclaim by the defendant do not constitute plea of adverse possession as the point of start of adverse possession was not pleaded and Wakf Board has filed a suit in the year 1971 as such perfecting title by adverse possession did not arise at the same time without any discussion on the aspect that whether plaintiff can take plea of adverse possession. The Court held that in the counterclaim the defendant cannot raise this plea of adverse possession. This Court at the same relied upon to observe that it was bound by the decision in *Gurdwara Sahib v. Gram Panchayat Village Sirthala* (supra), and logic was applied to the counterclaim also. The Court observed:

"28. In the first place, we find that this Court in *Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 has held in para 8 that a plea of adverse possession cannot be set up by the plaintiff to claim ownership over the suit property but such plea can be raised by the defendant by way of defence in his written statement in answer to the plaintiffs claim. We are bound by this view.*

34. Applying the aforementioned principle of law to the facts of the case on hand, we find absolutely no merit in this plea of Defendant 1 for the following reasons:

34.1. First, Defendant 1 has only averred in his plaint (counterclaim) that he, through his father, was in possession of the suit land since 1953. Such averments, in our opinion, do not constitute the plea of "adverse possession" in the light of law laid down by this Court quoted supra.

34.2. Second, it was not pleaded as to from which date, Defendant 1's possession became adverse to the plaintiff (the Wakf Board).

34.3. Third, it was also not pleaded that when his adverse possession was completed and ripened into the full ownership in his favour.

34.4. Fourth, it could not be so for the simple reason that the plaintiff (Wakf Board) had filed a suit in the year 1971 against Defendant 1's father in relation to the suit land. Therefore, till the year 1971, the question of Defendant 1 perfecting his title by "adverse possession" qua the plaintiff (Wakf Board) did not arise. The plaintiff then filed present suit in the year 1991 and, therefore, again the question of perfecting the title up to 1991 qua the plaintiff did not arise."

(emphasis supplied)

42. In *State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj* (supra) and *Dharampal (dea.d) through LRs v. Punjab Wakf Board* (supra), there is no discussion on the aspect whether the plaintiff can later take the plea of adverse possession. It does not appear that proposition was contested and earlier binding decisions were also not placed for consideration of the Court. As there is no independent consideration of the question, we have to examine mainly the decision in *Gurdwara Sahib v. Gram Panchayat Village Sirthala* (supra).

43. When we consider the decision rendered by Punjab & Haryana High Court in *Gurdwara Sahib Sannauli* (supra), which has been referred by this Court in *Gurudwara Sahib v. Gram Panchayat, Sirthala* (supra), the following is the discussion made by the High Court in the said decision:

> "10. I have heard learned Counsel for the parties and perused the record of the appeal. I find force in the contentions raised by learned counsel for the respondents. In Bachhaj Nahar v. Nilima Mandal and Anr. J.T. 2008 (13) S.C. 255 the Hon'ble Supreme Court has authoritatively laid down that if an argument has been given up or has not been raised, same cannot be taken up in the Regular Second Appeal. It is also relevant to mention here that in Bhim Singh and Ors. v. Zile Singh and Ors., (2006) 3 RCR Civil 97, this Court has held that no declaration can be sought by a plaintiff about ownership based on adverse possession as such plea is available only to a defendant against the plaintiff. Similarly, in R.S.A. No. 3909 of 2008 titled as State of Haryana v. Mukesh Kumar and Ors. (2009) 154 P.L.R. 753, decided on 17.03.2009 this Court has also taken the same view as aforesaid in Bhim Singh's case (supra)."

There is no independent consideration. Only the decision of the same High Court in *Bhim Singh & Ors. v. Zila Singh & Ors.* AIR 2006 P&H 195 has been relied upon to hold that no declaration can be sought by the plaintiff based on adverse possession.

44. In *Bhim Singh & Ors.* (supra) the plaintiffs had filed a suit for declaration and injunction claiming ownership based on adverse possession. Defendants contended that plaintiffs were not in possession. The Punjab & Haryana High Court in *Bhim Singh & Ors. v. Zila Singh & Ors. (supra) has assigned the reasons and observed thus:*

> "11. Under Article 64 of the Limitation Act, as suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of *adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned:* "when the possession of the defendant becomes adverse to the plaintiff." Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession.
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> 12. I am supported by a judgment of Delhi High Court in 1993 3 105 PLR (Delhi

72

Section) 70, Prem Nath Wadhawan v. Inder Rai Wadhawan.

13. The following observations made in the Prem Nath Wadhawan's case (supra) may be noticed:

> "I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties and have also perused the record. I do not find any merit in the contention of the learned Counsel for the plaintiff that the plaintiff has become absolute owner of the suit property by virtue of adverse possession as the plea of adverse possession can be raised in defence in a suit for recovery of possession, but the relief for declaration that the plaintiff has become absolute owner, cannot be granted on the basis of adverse possession."
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> (emphasis supplied)

The Punjab & Haryana High Court has proceeded on the basis that as per Article 65, the plea of adverse possession is available as a defence to a defendant.

45. Article 65 of the Act is extracted hereunder:

	Description of suit	Period of limitation	Time from which period begins to run
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.

[SCA © 192 3]

46. The conclusion reached by the High Court is based on an inferential process because of the language used in the IIIrd Column of Article 65. The expression is used, the limitation of 12 years runs from the date when the possession of the defendant becomes adverse to the plaintiff. Column No.3 of Schedule of the Act nowhere suggests that suit cannot be filed by the plaintiff for possession of immovable property or any interest therein based on title acquired by way of adverse possession. There is absolutely no bar for the perfection of title by way of adverse possession whether a person is suing as the plaintiff or being sued as a defendant. The inferential process of interpretation employed by the High Court is not at all permissible. It does not follow from the language used in the statute. The large number of decisions of this Court and various other decisions of Privy Council, High Courts and of English courts which have been discussed by us and observations made in Halsbury Laws based on various decisions indicate that suit can be filed by plaintiff on the basis of title acquired by way of adverse possession or on the basis of possession under Articles 64 and 65. There is no bar under Article 65 or any of the provisions of Limitation Act, 1963 as against a plaintiff who has perfected his title by virtue of adverse possession to sue to evict a person or to protect his possession and plethora of decisions are to the effect that by virtue of extinguishment of title of the owner, the person in possession acquires absolute title and if actual owner dispossesses another person after extinguishment of his title, he can be evicted by such a person by filing of suit under Article 65 of the Act. Thus, the decision of *Gurudwara Sahib v. Gram Panchayat, Sirthala* (supra) and of the Punjab & Haryana High Court cannot be said to be laying down the correct law. More so because of various decisions of this Court to the contrary.

47. In *Gurudwara Sahib v. Gram Panchayat:, Sirthala* (supra) proposition was not disputed. A decision based upon concession cannot be treated as precedent as has been held by this Court in *State of Rajasthan v. Mahaveer Oil Industries*, (1999) 4 SCC 357, *Director of Settlements, A.P. v. M.R. Apparao*, (2002) 4 SCC 638, *Uptron India Limited v. Shammi Bhan* (1998) 6 SCC 538. Though, it appears that there was some expression of opinion since the Court observed there cannot be any quarrel that plea of adverse possession cannot be taken by a plaintiff. The fact remains that the proposition was not disputed and no argument to the contrary had been raised, as such there was no decision on the aforesaid aspect only an observation was made as to proposition of law, which is palpably incorrect.

48. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

49. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such

(74)

as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

50. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

51. In India, the law respect possession, persons are not permitted to take law in their hands and dispossess a person in possession by force as observed in *Late Yashwant Singh* (supra) by this Court. The suit can be filed only based on the possessory title for appropriate relief under the Specific Relief Act by a person in possession. Articles 64 and 65 both are attracted in such cases as held by this Court in *Desh Raj v. Bhagat Ram* (supra). In *Nair Service Society* (supra) held that if rightful owner does not commence an action to take possession within the period of limitation, his rights are lost and person in possession acquires an absolute title.

52. In *Sarangadeva Periya Matam v. Ramaswami Gounder*, (supra), the plaintiff's suit for recovery of possession was decreed against Math based on the perfection of the title by way of adverse possession, he could not have been dispossessed by Math. The Court held that under Article 144 read with Section 28 of the Limitation Act, 1908, the title of Math extinguished in 1927 and the plaintiff acquired title in 1927. In 1950, he delivered possession, but such delivery of possession did not transfer any title to Math. The suit filed in 1954 was held to be within time and decreed.

53. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on 'title' as envisaged in the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession.

54. In Article 65 in the opening part a suit "for possession of immovable property or any interest therein based on title" has been used. Expression "title" would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions.

55. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in *presenti* to obtain it, not *in futuro*. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property.

56. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, 'de jure possession', constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

57. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam *i.e.*, adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. *Animus possidendi* under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

58. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/ owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be

evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

61. Resultantly, we hold that decisions of *Gurudwara Sahab v. Gram Panchayat Village Sirthala* (supra) and decision relying on it in *State of Uttarakhand v. Mandir Shi Lakshmi Siddh Maharaj* (supra) *and Dharampal (dead) through LRs v. Punjab Wakf Board* (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

62. Let the matters be placed for consideration on merits before the appropriate Bench.

2019(10) SCALE 510

MAHESH KUMAR *Appellant*

VS

STATE OF HARYANA *Respondent*

CORAM: L. NAGESWARA RAO AND HEMANT GUPTA, JJ.

CRIMINAL LAW — IPC — SECTION 304B — EVIDENCE ACT, 1872 — SECTION 113B — Dowry death. — Ingredients of offence — Failure to prove either the demand of dowry or that any such demand was raised soon before her death — Appellant-husband got married to deceased on 26.5.1991 — Prosecution case that soon after the marriage, she was ill-treated by her husband, father-in-law, mother-in-law and sister-in-law as they demanded dowry — It was on 8.2.1994 that complainant, father of deceased received information that his daughter had expired in a hospital and it was alleged that her death was caused by administration of poison by the accused — Trial Court held that the prosecution had proved its case only against appellant-husband and mother-in-law of deceased whereas in respect of father-in-law and sister-in-law, no specific role was assigned to them — In appeal, High Court granted benefit of doubt to mother-in-law and acquitted her of charges while confirming conviction of appellant-husband — Prosecution relied upon the statement of father and brother of deceased which had been made basis of conviction by the Courts

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Judgment dated August 7, 2019 in Crl.A. No. 1042 of 2012.

authorities that he had in fact passed in Physics at the B.Sc., Part I Examination from Bhagalpur University. According to his submission the High Court should not have given a final decision on this point when the question of interpolation of figure '1' in the marks-sheet has been left open.

8. The High Court has undoubtedly observed in the impugned order that the appellant had neither in the earlier writ petition nor in the present writ petition nor in any of his affidavit in reply stated that he had as a matter of fact passed in Physics at B. Sc., Part I Examination from Bhagalpur University. On the other hand the appellant throughout insisted on basing his claim on the marks-sheet which he had attached with the admission form and which had been held not to be genuine. The High Court, while dealing with the question of equitable estoppel, again observed:

> "It will bear repetition to say that the petitioner who had not undisputedly now passed B.Sc., Part I Examination with Physics but by making use of wrong mark sheet had led the Principal to admit him, is not entitled to invoke the principle of estoppel against the University."

The learned Counsel for the appellant was not able to point out any material on the record from which it could be shown that the High Court is wrong in making these observations and that the appellant had at any stage asserted that as a matter of fact he had passed in Physics as contended. We are, therefore, unable to find any error in the impugned order.

9. In the High Court it was not the appellant's case that he should be allowed an opportunity to show that he had actually passed in Physics as is now prayed by his Counsel. Indeed, all along he was being asked to furnish proof of his having so passed in Physics. Since no such plea was raised in the High Court we are unable to make any order in the terms suggested by Shri Desai. In case, however, he is in a position to furnish proof of this fact he may approach the authorities concerned. It was the appellant himself who had without furnishing any such proof rushed to the Court with a misconceived prayer. The appeal must fail and is dismissed with costs.

(1972) 4 Supreme Court Cases 274

(From Kerala High Court)

[BEFORE G. K. MITTER, K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]

THE STATE BANK OF TRAVANCORE ... Appellant;

Versus

ARAVINDAN KUNJU PANICKER AND OTHERS ... Respondents.

Civil Appeal No. 378 of 1967, decided on March 19, 1971

Evidence Act, 1872 (1 of 1872)—Section 114—Presumption of jointness in a Hindu family—Onus on person alleging dissension.

Limitation Act, 1963—Article 65—Permissive possession without assertion of adverse title—Knowledge of true owners—No adverse possession can be claimed.

Hindu Law—Joint family—Presumption.

Adverse possession—Criteria for—Property obtained as agent—Property transferred—Whether purchasers had adverse possession.

Transfer of Property Act, 1882—Lien—Another person paying amount payable in the Court on behalf of the decree-holder—Possession of land obtained by decree-holder—Whether lien over the property available.

78

One Tharwad, the original owner of the suit property disposed the property to a third party. Three junior members of the Tharwad family obtained a decree for the recovery of that land for a certain amount. They having failed to pay up the amount, Krishnan Krishnan relative paid it and took the delivery of the land at their instance. The property then was purchased through a decree by a creditor of the said payee and was soon sold again to another person. The purchase was made on behalf of one Kuruvilla who mortgaged it to a bank. The mortgagor having failed to discharge the debt, the Bank (which afterwards was amalgamated with the appellant Bank) obtained a mortgage decree against him. The members of the Tharwad then brought a suit for the possession of the land. The first plaintiff in the Court below claimed himself to be the Karanavan of the Tharwad.

Held:

(*i*) The Tharwad was undivided and the original first plaintiff was the Karanavan of that family. A Hindu family is presumed to be joint unless the contrary is established. (Para 7)

(*ii*) No sale deed or any other document was executed in favour of Krishnan nor could the plaintiff in that suit validly alienate the property as they were only junior members of the family. As Krishnan paid the amount that was payable by the Tharwad and took possession of the property, he could only have a lien over the property for the amount advanced by him. On purchasing the rights of Krishnan they had merely stepped into his shoes. (Para 8)

(*iii*) A permissive possession could not be converted into an adverse possession unless it was proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more. There was no evidence to show that either Krishnan or the subsequent purchasers asserted any hostile title to the suit property to the knowledge of the true owners at any time before the suit. (Para 9)

Appeal *dismissed*. O-M/369/S

The Judgment of the Court was delivered by

Hegde, J.—This appeal by special leave is directed against the decision of a single Judge of the Kerala High Court in a second appeal. Therein the learned Judge allowed the appeal of the plaintiffs, reversed the judgment and decree of the first appellate Court and restored that of the trial Court.

2. In order to decide the points arising for decision in this appeal, it is necessary to set out in brief the facts of the case. This litigation has a long history. The property concerned in the suit is 99 cents in extent but it contains some buildings. It is situate in a municipal town of Kottayam taluk. It appears that the property has now become very valuable. This property admittedly at one time belonged to an Ezhava Marumakkathayam Tharwad. Three junior members of that Tharwad sold that property to a third party in 1063 M. E. (Mallayalam Era). Three other junior members of that Tharwad sued for the recovery of that property in 1074 M.E. after setting aside the alienation which according to the plaintiffs therein was not valid and binding on the Tharwad. That suit was decreed and the plaintiffs therein were allowed to recover possession of that property on their paying the alienee a sum of Rs. 454/-. The decree-holders were unable to pay that sum. They applied to the Court to permit one Krishnan Krishnan, a relation of theirs to deposit the amount in question into court and take delivery of the property. The Court allowed that application. Thereafter the said Krishnan Krishnan deposited Rs. 454/- into court through the plaintiffs' lawyer and took delivery of the property in 1082 M. E. through court. Kunjappi Velu, a creditor of Krishnan

Krishnan filed a suit against him in 1089 M. E., obtained a decree and thereafter put up the property in question for sale and purchased the same in court auction. He took delivery of that property through court in 1102 M. E. The said Kunjappi Velu sold the property to one Punnen Thomas very soon after he took delivery of the property. This purchase by Punnen Thomas was for and on behalf of one Kochu Thommen Kuruvilla. Punnen Thomas executed a release deed in favour of Kuruvilla in 1121 M. E. On 8-5-1128 M. E. Kuruvilla mortgaged the suit property for Rs. 37,000/- in favour of Travancore Forward Bank Ltd., Kottayam. As Kuruvilla did not discharge that debt, the bank obtained a mortgage decree against him. The Travancore Forward Bank Ltd. was amalgamated with the State Bank of Travancore (the appellant herein). Thereafter the State Bank of Travancore was impleaded as an additional plaintiff in that suit. On 12-8-1121 M. E., four members of the Ezhava Marumakkathayam Tharwad referred to earlier instituted the suit from which this appeal arises seeking possession of the suit property. The first plaintiff (since deceased) claimed to be the Karanavan of the Tharwad. Their case is that Krishnan Krishnan who deposited Rs. 454/- into court and took delivery of the suit property was only an agent of the Tharwad. He had no right in that property. He was entitled to keep possession of the property until the amount deposited by him into court was repaid to him. It was further alleged in the plaint that there was an agreement between Krishnan Krishnan and the plaintiffs in the suit wherein the deposit was made that Krishnan Krishnan should redeliver the property to the Tharwad on receiving the amount in question. The plaintiffs in the present case offered to pay to Krishnan Krishnan's representative the sum of Rs. 454/-.

3. The agreement alleged to have been entered into between the plaintiffs in the first suit and Krishnan Krishnan has neither been accepted by the first appellate Court nor was it relied upon by the High Court. There is no reliable evidence in support of that agreement.

4. The trial Court came to the conclusion that Krishnan Krishnan in law can only be an agent of the plaintiffs in the first suit. He can only have a lien over the suit property and the subsequent purchasers of his right can have no better title than what Krishnan Krishnan had. That Court also repelled the contention of the contesting defendants that Krishnan Krishnan or those who acquired his rights had perfected their title to the suit property by adverse possession. It held that the possession of Krishnan Krishnan was permissive and the same could not be considered as being adverse to the real owners. It further held that the property in question was always in the possession of the tenants and it was never in the possession of Krishnan Krishnan or those who purchased his rights. It also held that there is no evidence to show that either Krishnan Krishnan or the subsequent purchasers of the suit property even to the knowledge of the true owners asserted hostile title to the property. The trial Court also did not accept the contention of the defendants that the plaintiffs have not succeeded in proving that the Tharwad which was the original owner of the suit property is joint or original first plaintiff was Karanavan of that Tharwad when the suit was instituted.

5. In appeal the learned appellate Judge came to the conclusion that the plaintiffs had not established that the Tharwad in question is undivided nor have they proved that the original first plaintiff was the Karanavan of the Tharwad when the suit was instituted. He further came to the conclusion that Krishnan Krishnan must be held to have acquired an absolute title to the suit property as the plaintiffs have not succeeded in pro-

80

ving the agreement pleaded by them. It upheld the contention of the defendants that Krishnan Krishnan and thereafter his successors in interest had acquired full title to the property by adverse possession.

6. In second appeal a learned single Judge of the High Court disagreed with each one of the conclusions reached by the first appellate Court and agreed with those reached by the trial Court. Dealing with the question whether the Tharwad in question is an undivided Tharwad, he pointed out that the evidence of the plaintiffs in that regard stands unrebutted. He also accepted the contention of the plaintiffs that the first plaintiff was the Karanavan of that Tharwad when the suit was instituted. He further held that on the basis of the material on record, the only conclusion possible is that Krishnan Krishnan took possession of the suit property as the agent of the plaintiffs in the first suit and as such his possession was permissive. He agreed with the trial Court that the actual possession of the property was always with the tenants and the possession of Krishnan Krishnan and that of his successors in interest has not been shown to be adverse to that of the true owners. Each one of these findings were challenged before us.

7. We shall first take up the questions whether the plaintiff's Tharwad was divided or undivided and further whether the original first plaintiff was the Karanavan of the Tharwad when the suit was instituted. On these questions the evidence is completely one sided. The plaintiffs have adduced evidence to show that the Tharwad is undivided and that the original first plaintiff was the Karanavan of the Tharwad. There is no reason to disbelieve that evidence. That evidence was unrebutted. That apart, a Hindu family is presumed to be joint unless the contrary is established. There is no evidence on record to rebut that presumption. We agree with the learned Judge of the High Court that there was no basis for the first appellate Court for doubting the fact that the original first plaintiff was the Karanavan of the Tharwad at the relevant time.

8. Now coming to the question as to the nature of the possession of Krishnan Krishnan, the High Court has not relied on the agreement pleaded by the plaintiffs. There is no reliable evidence to support that agreement. But the evidence adduced in this case including unimpeachable documentary evidence clearly shows that assistance of Krishnan Krishnan (Krishnan Krishnan was the father of some of the then members of the Tharwad) was sought by the plaintiffs in that suit to tide over the difficulty in the matter of depositing the required amount into Court. As mentioned earlier the amount in question was deposited into Court through the plaintiff's lawyer and Krishnan Krishnan took possession of the suit property in execution of the decree in favour of the plaintiffs in that suit. No sale deed or any other document was executed in favour of Krishnan Krishnan nor could the plaintiffs in that suit validly alienate that property as they were only junior members of the family. We agree with the High Court that as Krishnan Krishnan paid the amount that was payable by the Tharwad and took possession of the property, he could only have a lien over the property for the amount advanced by him. Neither Vellu nor Kuruvilla who purchased the rights of Krishnan Krishnan can in law have greater rights in that property than what Krishnan Krishnan had. On purchasing the rights of Krishnan Krishnan they had merely stepped into his shoes.

9. Now coming to the question of adverse possession, there is conclusive evidence to show that the suit property was at all times in the possession of the tenants of the Tharwad referred to earlier. Krishnan Krishnan, Vellu and Kuruvilla at best could have only collected the rent. The evidence in

this regard has been discussed in detail by the learned Judge of the High Court. It is not necessary to deal with that evidence over again. We accept the conclusion of the learned Judge that the suit property was all along in the possession of the tenants. Further as Krishnan Krishnan had only a lien over the property for the amount advanced by him his possession of the suit property which in this case is symbolical, must be held to be a permissive possession. The possession of Vellu and Kuruvilla for the same reason must be held to be permissive possession. A permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twleve years or more. There is no evidence to show that either Krishnan Krishnan or Vellu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before he present suit.

10. In the result we agree with the conclusions reached by the learned Judge of the High Court and dismiss this appeal with costs.

(1972) 4 Supreme Court Cases 278

(From Patna High Court)

[BEFORE S. M. SIKRI, C. J. AND A. N. RAY AND D. G. PALEKAR, JJ.]

HARDEO NARAIN SINGH ... Appellant;

Veesus

SURAJDEO SINGH AND OTHERS ... Respondents.

Civil Appeal No. 1041 of 1970, decided on August 12, 1971

Election—The Repreeentation of the People Act, 1951—Section 116-A—Reference —Charge of corrupt practices by the candidate and his workers—High Court finding undue influence exerted upon voters by the appellant candidate—High Court declaring election void—Appreciation of evidence by Supreme Court—Whether election void.

The appellant and the respondent were the candidates from the same constituency in the general election in which the appellant was elected. At the day of the polling when the polling at the Kayeea booth was in progress, it was alleged that the appellant alongwith his proposer-worker Nagendra Singh, who was armed with a gun, was dissuading the voters from exercising their franchise or to vote for the appellant. A voter, Dukhan Yadav, not having acceded to their command was shot at by Nagendra Singh at the instance of the appellant, resulting in pellet injury to Dukhan Yadav. The F. I. R. was recorded on the spot. Many voters were waiting in queue to cast their votes. The gun shot on the cry of 'maro, maro' raised by the agents of the appellant scared away the voters. The election of the appellant was challenged mainly on the ground of commission of corrupt practices by the appellant and his election agent and by other persons with the consent of the appellant. The High Court found the case in respect of exercise of undue influence at Kayeea polling station as well as canvassing of votes in favour of the appellant to be true and thus declared the election of the appellant void. The decision of the High Court was challenged in appeal under Section 116-A of the Representation of the People Act, 1951.

Held, the first information report was really the most contemporaneous documentary evidence which supported the case of the election petition. The report of the presiding officer also indicates that the number of persons who cast their votes prior to the firing incident was large. The oral evidence of a large number of witnesses, including the Magistrate who was on duty at the Kayeea polling station, and the Sub-Inspector of

(82)

(In pursuance of the above order, the District Munsif of Narasaraopet submitted his findings.)

JUDGMENT.

The finding has been received. The learned District Munsif has in a well considered judgment come to the decision that the 1st defendant was liable under the mortgage deed but his minor sons have not been proved to be so. The directions in my order in regard to the circumstances under which the minors could be held liable were explicit, but no advantage was sought on behalf of the plaintiffs to prove facts which could make the minors liable under the mortgage. After hearing learned counsel for the parties, I am of the opinion that the finding of the lower Court must be confirmed.

An application was presented on behalf of the 1st defendant under the Madras Agriculturists Relief Act IV of 1938 to the lower Court. The learned District Munsif however refused to entertain it on the ground that the case was sent back for a finding by this Court. This was perfectly correct. The application should have been made to this Court and not to the District Munsif. The application presented to that Court is in this Court and the requisite court fee thereon has been undertaken by learned Counsel on behalf of the 1st defendant to be made up in the course of the day. As soon as the necessary court fee is paid, the application will go back to the District Munsif for enquiry as to whether the 1st defendant is an agriculturist and whether the debt or any portion of the same can be scaled down under the provisions of that Act. This will be done after opportunity to file a counter affidavit is given to the other side.

The report as regards this application will be submitted within a month. Four days for objections.

The final decree will be passed after the receipt of the report.

(In pursuance of the directions contained in the above judgment the District Munsif of Narasaraopet submitted his finding.)

JUDGMENT.

It has now been found that the 1st defendant is an agriculturist. A decree will, therefore, be passed against him for a sum of Rs. 700 and interest at 6¼ per cent., from 1-10-1937 to the date of the decree and at 6 per cent. thereafter. As to costs, the plaintiffs will have to pay the costs of defendants 2 and 3 throughout and will similarly get the costs from the 1st defendant to the extent of the amount decreed against him. There will be a decree for sale of the mortgaged property against the share of the 1st defendant. Three months for redemption.

N. R. R. *Decree accordingly.*

PRIVY COUNCIL.

Raja Rajgan Maharaja JAGATJIT SINGH *v.* Raja PARTAB BAHADUR SINGH.

Lord Thankerton, Lord Macmillan, Sir George Rankin and Sir Charles Clauson.

28th April, 1942. From Oudh.

Criminal Procedure Code, S. 145—Attachment and receivership in proceedings under—Suit for mere declaration of title—Competency—Limitation—Applicability of Art. 120 of the Limitation Act—Inapplicability of Arts. 47, 142 and 144—Defendant's plea of perfection of title by adverse possession under S. 28 of the Limitation Act—Burden of proof—Adverse possession against an existing title must be actual and not constructive.

Where immoveable property has been attached and placed in the possession of a receiver in proceedings under S. 145 of the Criminal Procedure Code but there has been no order for possession in favour of any party under that section, a suit by one of the parties to the dispute for a declaration of his title to the property without asking for possession is perfectly competent and is governed by Art. 120 of the Limitation Act. To such a suit which is rightly confined to a mere declaration of title and is neither in form nor in substance a suit for possession of immovable property, neither Art. 142 nor Art. 144 of the Limitation Act can be said to apply; nor is the applicability of Art. 47 of the Limitation Act attracted as there has been no order for possession by a Magistrate under S. 145 of the Criminal Procedure Code.

Where it is pleaded by the defendant that the title to the lands in suit held by the plaintiff's predecessor under the first settlement of 1865 had been extinguished under S. 28 of the Limitation Act by the adverse possession of the defendant or his predecessors for the appropriate statutory period of limitation, it is for the defendant to establish that such period of adverse possession had been completed prior to the possession taken in proceedings under S. 145 of the Criminal Procedure Code by the receiver, who thereafter held for the true owner.

It is well established that adverse possession against an existing title must be actual and cannot be constructive.

Messrs. *C. S. Rewcastle, S. Hyam* and *Robert Ritson* for the Appellant.

Mr. *W. Wallach* for the Respondent.

JUDGMENT.

Lord Thankerton.—The dispute in the present appeal relates to the ownership of certain plots of land which lie on the boundary of, or between, the estates owned by the parties in the Kheri District of Oudh. The suit was instituted on 23rd January 1933, by the Deputy Commissioner of Kheri as Manager of the Court of Wards Isanagar Estate in the Court of the Additional Subordinate Judge of Kheri against the present appellant, the Maharaja of Kapurthala. The plaintiff prayed for a declaratory decree that he was the rightful proprietor of the lands in suit. After trial, the Subordinate Judge delivered his judgment and dismissed the suit, except in respect of certain small areas of land not contested by the defendant, by decree dated 22nd December 1933. The plaintiff appealed to the Chief Court, and, while the appeal was pending, the Isanagar Estate was released from the superintendence of the Court of Wards, and the present respondent, the Raja of Isanagar, was substituted as appellant in the Chief Court in place of the original plaintiff. By decree dated 7th May 1936, the Chief Court set aside the decree of the Additional Subordinate Judge and decreed the suit. The present appellant appeals from the decree of the Chief Court.

The lands in suit are claimed by the respondent to form part of his villages of Debipurwa and Harisinghpur, while the appellant claims that, with the exception of the areas not contested by him, the lands in suit form part of his villages of Parsa and Binjaha, which lie on the east side of the respondent's villages. The two lists attached to the plaint set out the plots in suit list "A" consisting of 53 plots measuring 42·97 acres, claimed to form part of Debipurwa, and list "B" consisting of 193 plots measuring 247·63 acres claimed to form part of Harsinghpur. The plots in suit are shewn in red on two maps also attached to the plaint and marked "C" and "D." The total acreage in suit is thus 290·60 acres, out of which the appellant conceded that eleven small plots and portions of other plots were owned by the respondent. These concessions are shewn in two lists for each of the respondent's two villages, and the total area thus conceded is about 73 bighas out of the 464 bighas in suit, the equivalent of the 290·60 acres already mentioned; in other words, between one-sixth and one-seventh of the area of the lands in suit admittedly belongs to the respondent.

There are four important stages in the history of the lands in suit, as to the facts of which there is little dispute between the parties. The first stage relates to the first regular settlement of Kheri District which was made in the year 1865, and was in fact concluded in 1867. There were then disputes between the respondent's predecessor, and Colonel Boileau, the then proprietor of Parsa and Binjaha, and predecessor of the appellant. These disputes were compromised, and the demarcation of the boundary was made upon the agreement of the two adjacent proprietors. It was held by both Courts below, and is agreed by the parties that by the first settlement the title of the parties' predecessors was determined, and that the boundary then demarcated established the title of the respondent's predecessor to the lands now in suit and is the boundary as now claimed by the respondent in his plaint.

The second stage relates to the second settlement of the Kheri District, which took place during the years 1896-1899. By this time the Maharaja of Kapurthala had succeeded Colonel Boileau, and disputes arose between him and the Raja of Isanagar as to the demarcation of the boundary, and two proceedings were commenced in the Court of the Deputy Collector of Kheri, one in respect of the boundary between Parsa and Debipurwa and the other in respect of the boundary between Parsa and Harisinghpur. After a report from the Amin of the court, Mr. Habibullah, the then Deputy Collector of Kheri, by a judgment in each proceeding, dated 8th September 1899, demarcated the boundaries on a line which varied slightly the boundary line shewn on the map submitted by the Amin. This may be

84

conveniently referred to as the Habibullah boundary line. There is no doubt that Mr. Habibullah had no power to determine questions of title, and that, under S. 23, Oudh Land Revenue Act (17 of 1876), his duty was to determine the boundary on the basis of actual possession. Further, the land in suit in the present case is the area which lies between the boundary fixed by the first settlement, and the boundary fixed by Mr. Habibullah, which shifted the boundary westward to the advantage of the Maharaja of Kapurthala and to the disadvantage of the Raja of Isanagar. This was agreed by the parties and found by both Courts below.

The third stage relates to two proceedings before Mr. Fazal Ali in the year 1903. As Deputy Collector of Kheri, Mr. Fazal Ali gave judgment on 24th November 1903, in an application by the Maharaja of Kapurthala against the Raja of Isanagar, for demarcation of the boundary between the plaintiff's village Parsa and the defendant's villages Harsinghpur, Debipurwa and Ram Loke, the last-named of which lies immediately to the south of Debipurwa. Under S. 41 (1), United Provinces Revenue Act (3 of 1901), all disputes regarding boundaries fell to be decided, as far as possible, on the basis of existing survey maps ; but, if that were not possible, the boundaries were to be fixed on the basis of actual possession. Mr. Fazl Ali accepted the boundary line laid down by Mr. Habibullah and declined to allow fresh enquiry regarding possession or inclusion of the land on the basis of possession ; he rejected the objections of the Isanagar estate and ordered the erection of boundary pillars. Almost at the same time proceedings were instituted in the Court of of Mr. Fazl Ali as Deputy Magistrate of the First Class under S. 145, Criminal P. C., against the Raja of Isanagar and the Inspector of Kapurthala in connexion with the " boundary dispute of village of Parsa, Police Station Dhaurahra." On 17th December 1903, Mr. Fazl Ali, as Deputy Magistrate, on an application of the same date by the parties charged, made an order in the following terms :

" Bhagwan Din, general agent of Kapurthala and Jiwan Sahai, general agent of the Isanagar estate, presented this application and stated that there is no dispute between them ; rather the Kapurthala estate has entered into possession of this land according to settlement of boundary line. It is

Ordered

That now there is no need of proceedings under S. 145, Criminal Procedure Code. Therefore (the case) be consigned to records and by sending a copy of this order, the police be informed of this agreement."

The application contained the following statement :

" The petitioners beg to submit that in the above-noted case notice has been issued from this Court regarding settlement of dispute in respect of boundary of village Parsa against the villages of the Isanagar estate situate on the boundary limit and the date of hearing has been fixed for to-day. Now the parties therein do not desire to get survey made because the case for demarcation of boundary of village Parsa belonging to Kapurthala against the villages of Isanagar situate on the boundary limit, which was pending, has already been decided by this Court on 24th November 1903. This land regarding which the decision under S. 145, Criminal Procedure Code, was sought to be is in possession of the Kapurthala estate. As mutually between the parties at this time, settlement of demarcation has been made according to possession and the boundaries have been separated, therefore submitting this application, it is prayed that this case be consigned to records."

It will be noted that the appellant's village Binjaha is not mentioned in either of these proceedings. The fourth stage is important as shewing the state of possession of the lands in suit at the date when the present suit was instituted on 26th January 1933. In the year 1931 there were two cases—Nos. 39 and 41—under S. 145, Criminal P. C., in the Court of the Magistrate of the First Class at Kheri, which involved the appellant and respondent in respect of the land now in dispute. In No. 39, on 4th May 1931, the Magistrate ordered the case to be filed as the parties had satisfied him that no breach of the peace need be apprehended. But Case No. 41 was commenced on a report by the Sub-Inspector of Police dated 14th October 1931, and on 24th October 1931, at the same time as he ordered the parties to attend the Court on 26th November, the Magistrate considering the case as one of emergency, ordered the plots referred to in the report to be attached pending his decision under S. 145, and appointed the Tahsildar, Tahsil Nighasan, District Kheri, as receiver. These plots appear to have been the three small plots, a suit for possession of

which by the present appellant had been finally dismissed by the Chief Court by decree dated 26th November 1929. These three plots amounting to 1·30 acre are included in the lands presently in suit. By two orders dated 7th November 1931, the Magistrate ordered the Tahsildar to take possession of the plots contained in a list attached to the first of these orders, and in addition to these plots, "if you find that there are any other plots in dispute, they should also be attached or taken possession of." It is common ground that the Tahsildar, acting under these orders, took possession of the lands presently in suit on 23rd February 1932, and that he was still in possession when the present suit was instituted on 26th January 1933. As the result of applications by the parties who were agreed that, pending the decision of a civil Court, the lands should remain attached and 'that the proceedings should meantime be consigned to records, the lands to be released to the party who succeeded in the civil suit, the Magistrate made an order filing the case meantime dated 6th April 1932.

In the first place, their Lordships are clearly of opinion, contrary to the view of the Subordinate Judge, but in agreement with the view of the Chief Court, that it was for the appellant to establish that the title to the lands in suit held by the respondent's predecessor under the first settlement of 1865 had been extinguished under S. 28, Limitation Act, by the adverse possession of the appellant or his predecessors for the appropriate statutory period of limitation, completed prior to the possession taken under attachment on 23rd February 1932, by the Tahsildar, who thereafter held for the true owner. Their Lordships are further of opinion that the present suit, which was subsequently instituted, was rightly confined to a mere declaration of title, and was neither in form nor substance a suit for possession of immovable property.

In the second place, on the question of the errors of procedure of the Subordinate Judge in placing the burden of proving his possession within the limitation period on the respondent and ultimately refusing to allow the respondent to lead evidence in rebuttal of the appellant's evidence of adverse possession, it is enough to say that the appellant's counsel felt constrained to state that he could not defend the exclusion of evidence by the learned Judge, and that, if otherwise successful in his appeal, he should ask that the case should be remanded in order to give the respondent the opportunity which was so denied to him. The Chief Court held that the appellant had failed to prove adverse possession, and found it unnecessary to remand the case.

With regard to the statutory period of limitation, Art. 47 of the Act does not apply, as there has been no order for possession by the Magistrate under S. 145, Criminal P. C. As the suit is one for a declaration of title, it seems clear that Arts. 142 and 144 do not apply, and their Lordships agree with the Chief Court that the suit is governed by Art. 120. This leaves for consideration the main issue of proof of adverse possession by the appellant and his predecessors, and the appellant is at once faced by a difficulty which proved fatal to his success before the Chief Court, viz., that unless he can establish adverse possession of the lands in suit as a whole, he is unable, on the evidence, to establish such possession of identified portions of the lands in suit. Before their Lordships, the appellant's Counsel conceded that, in order to succeed in the appeal, he must establish adverse possession of the lands in suit as a whole. He further conceded that his case on that point rested either (a) on the Habibullah decision of 1899, on which he succeeded before the Subordinate Judge, or (b) on the compromised proceedings under S. 145 in 1903. He conceded that neither the Habibullah decision nor the boundary proceedings in 1903 amounted to a judicial decision. The appellant maintained that the Habibullah decision, given under S. 23 of the Act of 1876, was good evidence of the state of possession at that time, and of the possession of the whole of the land in dispute by Kapurthala. He maintained that it must be assumed that Mr. Habibullah did his duty and that the decision was based on actual possession; under S. 35,

(86)

Evidence Act, it was good evidence of the fact of possession. Unfortunately for this contention it appears on the face of the judgment that possession was only proved in respect of land under cultivation, and that the boundary line laid down by Mr. Habibullah was largely an arbitrary line, and, at least to that extent, was not based on actual possession by Kapurthala, and it is well established that adverse possession against an existing title must be actual and cannot be constructive. This element in the decision may well have been largely due to the vagaries of the river, for we find, for instance, in Ex. A-19 that the total cultivated area of Parsa was reduced from 1383 acres of the first settlement to 163 acres in 1896. Mr. Harcourt Butler (afterwards Sir Harcourt Butler), Settlement Officer, remarked in this statement:

"Nearly the whole of this village is in the belly of the river. A strip of high land remains with 3 little sites, but that is in danger."

With reference to Binjaha, Ex. A-291 shows that the cultivated area was 753 acres at the first settlement, and 44 acres in 1897. The same Settlement Officer remarks:

"The river has cut in and completely spoiled the village since the year of survey. The assets are now inconsiderable."

Their Lordships are of opinion that, on this ground alone, the Habibullah decision does not provide the necessary foundation for the appellant's case. In 1903 Kapurthala applied for a fresh demarcation of the boundary of his village Parsa with the respondent's villages. Binjaha was not included. As already stated, Mr. Fazal Ali declined to allow fresh inquiry as to possession and ordered erection of boundary pillars on the Habibullah boundary line, and rejected Isanagar's objections, among which was an allegation that he was in possession. That decision adds nothing to the Habibullah decision. But the appellant really rests his case on the proceedings under S. 145, and their compromise. The appellant submitted that the terms of the compromise as stated in the application of 17th December 1903, and in the order of that date, constitute an admission by Isanagar of the fact of possession by Kapurthala of the whole lands now in suit, and, further, an admission of title in the sense that Isanagar is estopped from denying Kapurthala's right to possess the whole lands. It may be noted that the second of these contentions is separate from the plea of limitation based on adverse possession. Their Lordships are unable to accept either of these contentions. In the first place, there is no express admission of title, and there is no ground for the necessary implication of such an admission. In the second place there is no sufficiently clear evidence as to the area of possession which is referred to. The land possessed is referred to in the application as "this land, regarding which the decision under S. 145, Criminal Procedure Code was sought" and, in the order as "this land." That land could only be identified by the report of the police, out of which the proceedings arose, and which has not been produced. It seems that it did not refer to Binjaha, and it need not necessarily have referred to the whole of the lands in suit so far as they lie on the Parsa boundary. The appellant's attempt to derive an admission of his possession of the whole lands in suit from the 1903 compromise fails, in the opinion of their Lordships, on the terms and circumstances of the compromise, but further any such admission is rendered improbable by reason of certain facts which are either admitted or proved.

In the first place, by the appellant's admission in this suit, he makes no claim to adverse possession of between one-sixth and one-seventh of the lands in suit, and a large part of the remainder claimed by the appellant consists of unidentified portions of plots. Secondly, it is clear that under the decision of 26th November 1929, the appellant cannot claim the three small plots, which were the subject of that decision, and are included among the lands presently in suit. In the third place, there is evidence which shows the serious invasion by the river of culturable lands, with serious restriction of the area of land cultivated. The Chief Court have dealt with much of this evidence, and their Lordships find it unnecessary to go into detail in the matter, but it may be noted, incidentally, that the pillars ordered to be erected by Mr. Fazal Ali in 1903, had not—at least as

(87)

regards 33 of the pillars—been erected by June 1908, "because the demarcation line lies in the middle of the river." (Exhibit 236). Their Lordships are therefore of opinion that the appellant has failed to prove adverse possession of the whole of the lands in suit, and, as he admits that he has no case for identified portions of the lands in dispute, the appeal must fail. Their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs in this appeal.

N. R. R. *Appeal dismissed.*

Messrs. *Borrow Rogers & Nevil* : Solicitors for the Appellant.

Mr. *T. L. Wilson & Co.* : Solicitors for the Respondents.

PRIVY COUNCIL.

SHAH RAM CHAND v. PANDIT PARBHU DAYAL and others.

Lord Thankerton, Sir George Rankin and Sir Madhavan Nair.

20th April, 1942. From Allahabad.

Transfer of Property Act, Ss. 60 and 82—Owner of part of the mortgaged property allowed to redeem that part—Integrity of the mortgage not broken—Owner of another part not entitled to claim the right to redeem his part alone—Mortgagee releasing part of the mortgaged property—Liability of that part to contribute under S. 82.

Under S. 60 of the Transfer of Property Act the integrity of a mortgage is not broken except where the mortgagee has purchased or otherwise acquired as proprietor a certain portion of the property mortgaged, and the last clause of that section is intended to preclude mortgagors or persons deriving title from them from claiming, independently of agreement, to have an equity to redeem their own share on payment of a proportionate part of the mortgage money except in the circumstances above mentioned. Hence the fact that the mortgagee has allowed the owner of one part of the mortgaged property to redeem that part does not have the effect of breaking the integrity of the mortgage so as to let in the right of the owner of another part of the mortgaged property to redeem his part by the payment of the proportionate amount of the debt.

The release of part of the property by the mortgagee does not not take away as regards that part the liability to contribute which S. 82 of the Transfer of Property Act imposes upon the different parts.

39 Mad. 419 and 40 Mad. 968 : Approved.

Messrs. *Sir Thomas Strangman* and *A. G. P. Pullan* for the Appellant.

Mr. *S. P. Khambatta* for the Respondent.

JUDGMENT.

Sir George Rankin.—This appeal is by the plaintiff in a redemption suit which was brought in the Court of the Subordinate Judge of Agra in 1924. It has reference to a village called 'Muthamai in the District of Agra, which at one time belonged to a zamindar called Nawal Singh. In this village the plaintiff inherited the interest of the mortgagee under a mortgage of 1893 granted by Nawal Singh to the plaintiff's grandfather; having brought a suit (No. 50 of 1911) to enforce that mortgage the plaintiff purchased Muthamai at the judicial sale in 1923 and thus became vested with the right and title which Nawal Singh had possessed in 1893. The question now raised is as to the amount which he must pay to free Muthamai from the prior charge created by a mortgage granted by Nawal Singh in 1882 over three other villages as well as Muthamai. Is it the whole sum outstanding upon the mortgage of 1882? Or is he, in the events which have happened, entitled to redeem Muthamai on payment of a part thereof, and if so how much must he pay? Both Courts in India have held that he must pay the whole sum outstanding, which is Rs. 30,000. S. 60, Transfer of Property Act (IV of 1882), is a statement of the right to redeem. It requires payment or tender of "the mortgage money" which has been defined by Cl. (a) of S. 58 as "the principal money and interest of which payment is secured for the time being." S. 60 as it stood until 1929 concludes as follows:

"Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

Four mortgages are involved in the case—the first three being granted by Nawal Singh in his lifetime and the fourth after his widow's death by his reversionary heirs. (a) 6th January 1882: to Bast Ram and Ram Kishen: for Rs. 25,000 with interest at 6¼ per cent. with yearly rests: a simple mortgage of four villages—Muthamai, Phulaechi, Sherpur and Salempur.

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particulars by his brother Ranveer (PW 2). The very fact that harassment or cruelty on Pushpa did not abate even after her coming back to the matrimonial home with a son and the fact that she had been assaulted even a few days prior to the incident, in our opinion, tests of Section 304-B of the Penal Code stood satisfied. Ranveer (PW 2) informed his brother Hazari Ram (PW 1), about the harassment meted out to Pushpa. He was asked to go there. He went there to find his daughter dead; her cremation having already taken place.

29. The learned trial Judge, as also the High Court commented upon the manner in which the police made all efforts to help the accused. The investigating officer purported to have recorded a supplementary statement of Hazari Ram (PW 1) which, according to the learned trial Judge, was not at all necessary. Recording of the said supplementary statement has been disbelieved by the courts below.

30. In this view of the matter, we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is, therefore, dismissed.

(2007) 14 Supreme Court Cases 183

(BEFORE S.B. SINHA AND H.S. BEDI, JJ.)

C. NATRAJAN .. Appellant;

Versus

ASHIM BAI AND ANOTHER .. Respondents.

Civil Appeal No. 4803 of 2007†, decided on October 11, 2007

A. Civil Procedure Code, 1908 — Or. 7 R. 11(d) — Rejection of plaint — Whether barred by any law — Scope and applicability — Or. 7 R. 11(d) applies only if allegations made in the plaint taken to be correct in their entirety appear to be barred by any law and court is not entitled to consider the case of the defence — The question whether the suit is barred by limitation or not, would depend upon the facts and circumstances of each case — High Court allowed the prayer made under Or. 7 R. 11(d) on the ground that the suit was barred by limitation — Held, High Court ex facie committed an error in arriving on such finding — Question which was raised before the trial court under Or. 7 R. 11(d) was different from the one raised before the High Court — Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act

The appellant herein filed a suit against the respondents for declaration of the plaintiff's title to the suit property; for consequential injunction, restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Alternatively, if for any reason the

† Arising out of SLP (C) No. 18129 of 2006. From the Judgment and Final Order dated 10-10-2006 of the High Court of Judicature at Madras in CRP (PD) No. 1143 of 2006

court came to a conclusion that the plaintiff is out of possession, for recovery of vacant possession of the suit property. The said suit was filed in the year 2001. Cause of action of the said suit was said to have arisen in 1994 when the defendants allegedly trespassed over the suit property.

The respondent filed an application under Order 7 Rule 11(*d*) CPC praying for rejection of the plaint on the premise that the suit was barred by limitation. The trial court dismissed the application on the ground that the question of limitation is a mixed question of fact and law to be considered during the trial by casting the issue suitably. The High Court set aside the order of the trial court stating that the period of limitation, as per Article 58 of the Limitation Act, 1963 (hereinafter referred to as "the Act") expired in 1997 itself and also holding that Article 65 of the Act had no application.

Allowing the appeal with costs, the Supreme Court

Held :

An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act. (Paras 8 and 9)

The question which was raised before the learned trial Judge was different from the question raised before the High Court. Before the learned trial Judge the provisions of the Limitation Act were brought in with reference to the identification of the property. It was not contended that the suit was barred by limitation in terms of Article 58 of the Limitation Act, 1963. The High Court, therefore ex facie committed an error in arriving on the aforementioned finding. (Paras 10 to 13)

Popat and Kotecha Property v. *SBI Staff Assn.*, (2005) 7 SCC 510, *followed*

Balasaria Construction (P) Ltd. v. *Hanuman Seva Trust*, (2006) 5 SCC 658, *relied on*

Sopan Sukhdeo Sable v. *Asstt. Charity Commr.*, (2004) 3 SCC 137; *N.V. Srinivasa Murthy* v. *Mariyamma*, (2005) 5 SCC 548; *Mohan Lal Sukhadia University* v. *Priya Soloman*, AIR 1999 Raj 102; *Khaja Quthubullah* v. *Govt. of A.P.*, AIR 1995 AP 43; *Vedapalli Suryanarayana* v. *Poosarla Venkata Sanker Suryanarayana*, (1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC); *Arjan Singh* v. *Union of India*, AIR 1987 Del 165; *Jugolinija Rajia Jugoslavija* v. *Fab Leathers Ltd.*, AIR 1985 Cal 193; *National Insurance Co. Ltd.* v. *Navrom Constantza*, AIR 1988 Cal 155; *J. Patel & Co.* v. *National Federation of Industrial Coop. Ltd.*, AIR 1996 Cal 253; *SBI Staff Assn.* v. *Popat & Kotecha Property*, (2001) 2 Cal LT 34, *referred to*

B. **Limitation Act, 1963 — Arts. 58 and 64 & 65 — Suit for declaration of title and consequential possession — In a suit for possession as the consequence of declaration of plaintiff's title, Art. 58 will have no application — Arts. 142 & 144 of Limitation Act, 1908 compared vis-à-vis Arts. 64 & 65 of new Act of 1963 — Under old Act in terms Arts. 142 & 144 it was obligatory on the part of the plaintiff to aver and plead that he not only has title owner of the property but also having possession of the same for a period of more than 12 years — However, in the new Act under Arts.**

64 & 65 the burden would be on the defendant to prove that he has acquired title by adverse possession — Limitation Act, 1908, Arts. 142 and 144

a If the plaintiff is to be granted a relief of recovery of possession, the suit could be filed within a period of 12 years. It is one thing to say that whether such a relief can be granted or not after the evidence is led by the parties but it is another thing to say that the plaint is to be rejected on the ground that the same is barred by any law. In the suit which has been filed for possession, as a consequence of declaration of the plaintiff's title, Article 58 will have no application. (Para 14)

b The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse c possession. (Paras 16 to 18)

Mohd. Mohammad Ali v. *Jagadish Kalita*, (2004) 1 SCC 271; *P.T. Munichikkanna Reddy* v. *Revamma*, (2007) 6 SCC 59; *Binapani Paul* v. *Pratima Ghosh*, (2007) 6 SCC 100; *Kamakshi Builders* v. *Ambedkar Educational Society*, (2007) 12 SCC 27; *Bakhtiyar Hussain* v. *Hafiz Khan*, (2007) 12 SCC 420; *Prem Lala Nahata* v. *Chandi Prasad Sikaria*, (2007) 2 SCC 551, *relied on*

d *S.M. Karim* v. *Bibi Sakina*, AIR 1964 SC 1254 : (1964) 6 SCR 780, *distinguished*

Bishun Dayal v. *Kesho Prasad*, AIR 1940 PC 202, *referred to*

The defendant claimed possession and did not accept that the plaintiff was in possession. An issue in this behalf was, therefore, required to be framed and the said question was, therefore, required to be gone into. Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In a situation of this nature the application under Order e 7 Rule 11(*d*) was not maintainable. The contentions raised by the respondent may have to be gone into at a proper stage. Lest it may prejudice the contention of one party or the other at the trial, no observations are being made at this stage. (Para 19)

SA-M/A/36872/S

Advocates who appeared in this case :

f K.K. Mani, R. Thiagarajan, C.K.R. Levin Sekar and Mayur R. Shah, Advocates, for the Appellant;

K.S. Mahadevan, Rajesh Kumar and S. Krishna Kumar, Advocates, for the Respondents.

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1.	(2007) 12 SCC 420, *Bakhtiyar Hussain* v. *Hafiz Khan*	192*c*
g 2.	(2007) 12 SCC 27, *Kamakshi Builders* v. *Ambedkar Educational Society*	192*c*
3.	(2007) 6 SCC 100, *Binapani Paul* v. *Pratima Ghosh*	192*b-c*
4.	(2007) 6 SCC 59, *P.T. Munichikkanna Reddy* v. *Revamma*	192*b-c*
5.	(2007) 2 SCC 551, *Prem Lala Nahata* v. *Chandi Prasad Sikaria*	192*f*
6.	(2006) 5 SCC 658, *Balasaria Construction (P) Ltd.* v. *Hanuman Seva Trust*	190*a*, 190*c-d*
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10. (2004) 1 SCC 271, *Mohd. Mohammad Ali* v. *Jagadish Kalita* 192*a*
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16. AIR 1987 Del 165, *Arjan Singh* v. *Union of India* 190*f-g*
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19. AIR 1964 SC 1254 : (1964) 6 SCR 780, *S.M. Karim* v. *Bibi Sakina* 191*e-f*, 192*c*
20. AIR 1940 PC 202, *Bishun Dayal* v. *Kesho Prasad* 192*e-f*

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2. The appellant herein filed a suit against the respondents claiming, inter alia, for the following reliefs:

"(*a*) For declaration of the plaintiff's title to the suit property;

(*b*) For consequential injunction, restraining the defendants, their men, agents, servants, etc. from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

(*c*) Alternatively, if for any reason this Honourable Court comes to a conclusion that the plaintiff is out of possession, for recovery of vacant possession of the suit property;

(*d*) Directing the defendant to pay the costs of this suit."

3. The said suit was filed in the year 2001. Cause of action of the said suit was said to have arisen in 1994 when the defendants allegedly trespassed over the suit property. The respondent on or about 8-8-2001 filed an application under Order 7 Rule 11(*d*) of the Code of Civil Procedure praying for rejection of the plaint on the premise that the suit was barred by limitation, inter alia, stating:

"2. I beg to submit that the respondent-plaintiff in the plaint Para 4 with respect to the question of limitation has averred that he had the knowledge of the mistake with regard to the boundaries in the sale deed only on 2-11-1998 for the purpose of satisfying the court to admit the plaint.

3. I beg to submit that the averments are made knowing to be false. The following admitted facts would clearly establish the same:

(*a*) The plaintiff admits in Para 3 (3 and 3) that he had the defective title on 24-11-1974. He further contended that mistake was repeated again on 14-9-1979. Such mistakes even after 2 decades have not been rectified by any instrument. The plaintiff lost his right long before to rectify the alleged mistake. Now, he has misused and

92

abused this Hon'ble Court and filed the suit after the period of limitation.

(*b*) The respondent-plaintiff filed the suit describing the suit property in accordance with his sale deed dated 14-9-1979 before the District Munsif of Tambaram in OS No. 501 of 1994 on 28-3-1994. The said suit was filed for the relief of permanent injunction based on the sale deed and possession of the sale property alleging that he was in possession of the sale property. We have filed an application in IA No. 805 of 1994 on 8-4-1994 to vacate the interim injunction granted in IA No. 604 of 1994 filed by the respondent-plaintiff. We have clearly pointed out that the main issue was the identification of the property. Hence the issue was decided in the interim application by the learned District Munsif, Tambaram on 27-6-1994. The learned District Munsif, Tambaram gave a clear finding that the respondent-plaintiff has to identify the property.

(*c*) The respondent-plaintiff had clear knowledge of the mistake with regard to the boundaries not only on 8-4-1994 but also on 27-6-1994.

(*d*) Therefore, the suit reliefs are barred by limitation."

4. In the counter-affidavit filed on behalf of the petitioner, it was stated:

"This respondent further submits that the points for rejection of the plaint are untenable.

This respondent never admits that he had defective title in any of the paragraphs much less in Para 3 of the plaint. It is stated that the description with regard to boundaries is only a mistake.

This respondent submits that Order 7 Rule 11(*d*) is not applicable to the facts of this case. This suit is filed for declaration and for permanent injunction, alternatively for recovery of possession. The suit is filed within 12 years. Moreover the suit for declaration and injunction is also been filed within 3 years from the date of judgment passed in OS No. 501 of 1997 and OS No. 502 of 1997 on the file of District Munsif Judicial Magistrate, Alandur. Hence, this suit is not barred by any law."

5. The learned Principal Subordinate Judge, Chengalpet, by reason of his judgment and order dated 31-3-2006 rejected the said application of the respondent, opining:

"The suit property as shown in the schedule to OS No. 502 of 2001 is found to be same as described in the sale deed dated 14-9-1979 in favour of the plaintiff and its patent documents of title. Now the plaintiff has described and suit property in the schedule to the present plaint as per present lie on the ground on the averments that the boundaries of the property, purchased by him under the sale deed dated 14-9-1979 were wrongly mentioned for a larger extent, as the mistake crept patent title deed dated 13-3-1964 and that the mistake came to his knowledge only on 2-11-1998. As held by the Supreme Court in *Popat and Kotecha*

93

Property v. *SBI Staff Assn.*[1] averments in the plaint alone would be looked into while considering an application for rejection of plaint under Order 7 Rule 11 CPC and that the plea raised in the written statement are irrelevant at such stage. In the present case the plea of the plaintiff that he came to know about the mistake regarding the boundary description in the sale deed dated 14-9-1979 only on whether he had knowledge earlier is question of fact to be considered during the trial in the suit. As such the plaint on ... is a mixed question of fact and law to be considered during the trial by casting the issue suitably. Hence the present petition for rejecting the plaint is balance to be dismissed. The point is answered accordingly."

6. The respondent preferred a civil revision petition thereagainst. By reason of the impugned order, a Division Bench of the High Court reversed the said judgment of the trial court opining that the period of limitation, as per Article 58 of the Limitation Act, expired in 1997 itself, stating:

"A perusal of the typed set of papers would show that the present suit has been filed by the respondent-plaintiff for the relief of declaration of title of the suit property and consequently injunction and in the alternative for recovery of possession. Article 58 of the Limitation Act provides for three years as the limitation period to initiate proceedings from the date of cause of action, whereas Article 65 of the Act prescribes for twelve years for a suit filed for possession of immovable property or any interest therein based on title. The earlier suit filed by the petitioners in OS No. 502 of 1997 for permanent injunction has been decreed as against the respondent herein and it is only the revision petitioners who are in continuous possession. The respondent filed the present suit mainly for declaring his title to the suit property. Thus, only Article 58 of the Limitation Act is only applicable and not Article 65 of the Act. Admittedly, the suit is filed beyond the period of 3 years as contended by the learned counsel for the petitioners and, therefore, the plaint itself is liable to be rejected."

7. Order 7 Rule 11(*d*) of the Code of Civil Procedure reads as under:

"11. *Rejection of plaint.*—The plaint shall be rejected in the following cases:

(*a*)-(*c*) * * *

(*d*) where the suit appears from the statement in the plaint to be barred by any law;

(*e*)-(*f*) * * *"

8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to

1 (2005) 7 SCC 510 : 15(4) CTC 489

consider the case of the defence. (See *Popat and Kotecha Property* v. *SBI Staff Assn.*[1])

9. Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act.

10. The question which was raised before the learned trial Judge was different from the question raised before the High Court. Before the learned trial Judge, as noticed hereinbefore, the provisions of the Limitation Act were brought in with reference to the identification of the property. It was not contended that the suit was barred by limitation in terms of Article 58 of the Limitation Act, 1963. The High Court, therefore, in our opinion, ex facie committed an error in arriving on the aforementioned finding. The scope of applicability of the Limitation Act vis-à-vis Order 7 Rule 11 of the Code of Civil Procedure has been considered in some recent decisions of this Court to which we may advert to.

11. In *Popat and Kotecha Property* v. *SBI Staff Assn.*[1] this Court, inter alia, opined: (SCC p. 517, para 23)

> "*23.* Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

It was further opined: (SCC p. 517, para 25)

> "*25.* When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo case*[2] the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case."

2 *Sopan Sukhdeo Sable* v. *Asstt. Charity Commr.*, (2004) 3 SCC 137

95

12. However, we may notice that another Division Bench of this Court, in *Balasaria Construction (P) Ltd.* v. *Hanuman Seva Trust*[3] stated the law thus: (SCC p. 661, para 8)

> "*8.* After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(*d*) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(*d*) of the Code of Civil Procedure."

13. In the said decision, it may be placed on record, on the question as to whether Order 7 Rule 11(*d*) can be applied when a suit was filed on the premise that a suit is barred by limitation, this Court noticed: (*Balasaria Construction case*[3], SCC pp. 660-61, para 4)

> "*4.* This case was argued at length on 30-8-2005. Counsel appearing for the appellant had relied upon a judgment of this Court in *N.V. Srinivasa Murthy* v. *Mariyamma*[4] for the proposition that a plaint could be rejected if the suit is ex facie barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in *Popat and Kotecha Property* v. *SBI Staff Assn.*[1] in respect of the proposition that Order 7 Rule 11(*d*) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to whether the words 'barred by law' occurring in Order 7 Rule 11(*d*) CPC would include the suit being 'barred by limitation' was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different High Courts in *Mohan Lal Sukhadia University* v. *Priya Soloman*[5], *Khaja Quthubullah* v. *Govt. of A.P.*[6], *Vedapalli Suryanarayana* v. *Poosarla Venkata Sanker Suryanarayana*[7], *Arjan Singh* v. *Union of India*[8] wherein it has been held that the plaint under Order 7 Rule 11(*d*) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order 7 Rule 11 CPC. A contrary view has been

3 (2006) 5 SCC 658
4 (2005) 5 SCC 548
5 AIR 1999 Raj 102
6 AIR 1995 AP 43
7 (1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC)
8 AIR 1987 Del 165

taken in *Jugolinija Rajia Jugoslavija* v. *Fab Leathers Ltd.*[9], *National Insurance Co. Ltd.* v. *Navrom Constantza*[10], *J. Patel & Co.* v. *National Federation of Industrial Coop. Ltd.*[11] and *SBI Staff Assn.* v. *Popat & Kotecha Property*[12]. The last judgment was the subject-matter of challenge in *Popat and Kotecha Property* v. *SBI Staff Assn.*[1] This Court set aside the judgment and held in para 25 as under: (SCC p. 517)

> '25. When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo case*[2] the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case.' "

14. If the plaintiff is to be granted a relief of recovery of possession, the suit could be filed within a period of 12 years. It is one thing to say that whether such a relief can be granted or not after the evidence is led by the parties but it is another thing to say that the plaint is to be rejected on the ground that the same is barred by any law. In the suit which has been filed for possession, as a consequence of declaration of the plaintiff's title, Article 58 will have no application.

15. Learned counsel appearing on behalf of the respondent, however, placed strong reliance upon a decision of this Court in *S.M. Karim* v. *Bibi Sakina*[13] to contend that alternative plea cannot be considered for arriving at a conclusion that he has been dispossessed.

16. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession.

9 AIR 1985 Cal 193
10 AIR 1988 Cal 155
11 AIR 1996 Cal 253
12 (2001) 2 Cal LT 34
13 AIR 1964 SC 1254 : (1964) 6 SCR 780

17. In *Mohd. Mohammad Ali* v. *Jagadish Kalita*[14] it was held: (SCC p. 277, para 20)

> "*20.* ... By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession."

(See also *P.T. Munichikkanna Reddy* v. *Revamma*[15], *Binapani Paul* v. *Pratima Ghosh*[16], *Kamakshi Builders* v. *Ambedkar Educational Society*[17] and *Bakhtiyar Hussain* v. *Hafiz Khan*[18].)

18. In *S.M. Karim*[13] this Court was considering a question of benami as also adverse possession. In the aforementioned context, it was opined: (AIR p. 1256, para 5)

> "*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. The cited cases need hardly be considered because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in *Bishun Dayal* v. *Kesho Prasad*[19] the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea."

(See also *Prem Lala Nahata* v. *Chandi Prasad Sikaria*[20].)

Such a question does not arise for our consideration herein.

19. We have noticed hereinbefore that the defendant, inter alia, on the plea of identification of the suit land vis-à-vis the deeds of sale, under which the plaintiff has claimed his title, claimed possession. The defendant did not accept that the plaintiff was in possession. An issue in this behalf is, therefore, required to be framed and the said question is, therefore, required

14 (2004) 1 SCC 271
15 (2007) 6 SCC 59
16 (2007) 6 SCC 100
17 (2007) 12 SCC 27 : AIR 2007 SC 2191
18 (2007) 12 SCC 420
19 AIR 1940 PC 202
20 (2007) 2 SCC 551

98

to be gone into. Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In a situation of this nature, in our opinion, the application under Order 7 Rule 11(*d*) was not maintainable. The contentions raised by the learned counsel for the respondent may have to be gone into at a proper stage. Lest it may prejudice the contention of one party or the other at the trial, we resist from making any observations at this stage.

20. For the reasons mentioned above, the impugned judgment cannot be sustained. The same is, therefore, set aside. The appeal is allowed with costs. Counsel's fee assessed at Rs 25,000 (twenty-five thousand).

(2007) 14 Supreme Court Cases 193

(BEFORE DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.)

STATE OF UTTAR PRADESH .. Appellant;

Versus

ATAR SINGH AND OTHERS .. Respondents.

Criminal Appeal No. 54 of 2001†, decided on November 12, 2007

Penal Code, 1860 — Ss. 302/149 and 323/149 — Acquittal by High Court upheld — Circumstances casting doubt on prosecution case — Prosecution failed to explain the injuries sustained by one of the accused — Prosecution also failed to explain reasons for non-arrest of that accused when he had appeared before police and was sent for medical examination — Motive of murder assigned by prosecution, being an incident of kidnapping and abduction of daughter of one of the accused by brother-in-law of PW 1 about 6 months before, found to be stale, unconvincing and improved — Prosecution version not corroborated by any independent witness — Even though in FIR names of some other persons had been noted as witnesses, none of them had been examined — Though a dying declaration was alleged to have been recorded by investigating officer but in absence of any explanation as to why it was not recorded by a Magistrate in the usual course, High Court treated the statement of the deceased to be one recorded under S. 161 CrPC and not a dying declaration — Though considered in isolation these circumstances may not be sufficient to direct acquittal, but considering the cumulative effect of the circumstances which weighed with High Court, view taken by it, held, cannot be said to be not plausible — Interference with order of acquittal not called for (Para 14)

Balak Ram v. *State of U.P.*, (1975) 3 SCC 219 : 1974 SCC (Cri) 837; *V.N. Ratheesh* v. *State of Kerala*, (2006) 10 SCC 617 : (2007) 1 SCC (Cri) 50; *Surendra Paswan* v. *State of Jharkhand*, (2003) 12 SCC 360 : 2004 SCC (Cri) Supp 415. *relied on*

Bhagwan Singh v. *State of M.P.*, (2002) 4 SCC 85 : 2002 SCC (Cri) 736; *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033; *Ramesh Babulal Doshi* v. *State of Gujarat*, (1996) 9 SCC 225 : 1996 SCC (Cri) 972; *Jaswant Singh* v. *State of Haryana*, (2000) 4 SCC 484 : 2000 SCC (Cri) 991; *Raj Kishore Jha* v. *State of Bihar*, (2003) 11 SCC 519 : 2004 SCC (Cri) 212; *State of Punjab* v. *Karnail*

† From the Final Judgment and Order dated 13-4-2000 of the High Court of Judicature at Allahabad in Crl. A. No. 2124 of 1980