REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7764 OF 2014

RAVINDER KAUR GREWAL & ORS. ...APPELLANT(S)

VERSUS

MANJIT KAUR & ORS. ...RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (CIVIL) NOS.8332-8333 OF 2014

RADHAKRISHNA REDDY (D) THROUGH LRS. ...PETITIONER(S)

VERSUS

G. AYYAVOO & ORS. ...RESPONDENT(S)

J U D G M E N T

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 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? 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" 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 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 Rs. 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) 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 or

> other 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.
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> 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.
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> (emphasis supplied)"

8. In *Balkrishan vs. Satyaprakash & Ors.,* 2001 (2) SCC 498, decided by a Coordinate Bench, the plaintiff filed a suit for 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.
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> 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:
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> > "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:
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> > "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."
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> 15. In our view, the Madras High Court correctly laid down the law in the aforementioned cases.
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> 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."
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> (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-à-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.
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> 22. The mere assertion of title by itself may not be sufficient unless the 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.
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> 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.
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> 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.
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> 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)
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> > "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."
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> 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."
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> (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 plaintiff's 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.
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> 3. In the suit the plaintiff based his claim in respect of plot No. 1735, Ward No. 1 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.
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> 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:

"(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."
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> (emphasis supplied)

12. In *Lallu Yashwant Singh (dead) by his legal representative v. Rao Jagdish 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:
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> > "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."
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> 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:
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> > "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 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."
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> 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."
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> (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 wrong-doer, 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 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."
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> (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 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 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 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, 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:

"(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 as**

> **intent 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 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)

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."
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> (emphasis supplied)

24. In *P.T. Munichikkanna Reddy v. Revamma,* (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. Sturm 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 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 re-vested 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 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 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."
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> (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 conferred 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 sub-tenant. 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 Ltd. 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 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 Harijan & 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:

> "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."
>
> (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 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 plaintiff's 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 (dead) 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. Nillima 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.
>
> 12. I am supported by a judgment of Delhi High Court in 1993 3 105 PLR (Delhi 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."
>
> (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	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.

	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.		

46. The conclusion reached by the High Court is based on an inferential process because of the language used in the III[rd] 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 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-à-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 Shri 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.

.....J.
(Arun Mishra)

.....J.
(S. Abdul Nazeer)

New Delhi; **.....J.**
August 07, 2019. **(M.R. Shah)**