



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5075 OF 2010 (DEC/INJ)

BETWEEN:

S. PAKEERAPPA S/O. LATE KUNTAERAPPA,
SINCE DECEASED BY HIS LRS.

1. NEELAMMA WD/S. PAKEERAPPA,
AGE: 81 YEARS, OCC. AGRICULTURE,
R/O. BABUJI NAGAR, 7TH WARD,
HOUSE NO.94/95, BELLARY-583101.
2. K.P. KUMAR OMKARESHWARA
AGE: 56 YEARS, OCC. GOVERNMENT TEACHER,
R/O. BABUJI NAGAR, 7TH WARD,
HOUSE NO.94/95, BELLARY-583101.
3. K.P. UMA MAHESHWAR
AGE: 50 YEARS, OCC. AGRICULTURE,
R/O. BABUJI NAGAR, 7TH WARD,
HOUSE NO.94/95, BELLARY-583101.
4. K.P. DANESHAWAR
AGE: 48 YEARS, OCC. GOVT. SERVICE,
R/O. BABUJI NAGAR, 7TH WARD,
HOUSE NO.94/95, BELLARY-583101.
5. K.P. NAGARATHNAMMA
AGE: 46 YEARS, OCC. HOUSEHOLD,
R/O. BANDIMOT, 6TH WARD,
HARIJAN COLONY, BELLARY-583101.



6. K.P. RUKMANI
AGE: 44 YEARS, OCC. HOUSEHOLD,
R/O. TIMBLAPUR, HARIJAN COLONY,
BELLARY-583101.
7. K.P. PARVATHAMMA
AGE: 42 YEARS, OCC. HOUSEHOLD,
R/O. BABUJI NAGAR, 7TH WARD,
HOUSE NO.94/95, BELLARY-583101.
8. K.P. VEERASH KUMAR
AGE: 40 YEARS, OCC, ADVOCATE,
R/O. BANDIMOT, 6TH WARD,
HARIJAN COLONY, BELLARY-583101.

...APPELLANTS

(BY SRI. SANGRAM S. KULKARNI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS DEPUTY COMMISSIONER,
BELLARY.
2. TASHILDAR
BELLARY DISTRICT, BELLARY-583101.

...RESPONDENTS

(BY SRI. M. KESHVAREDDY, AAG AND
SRI. DAYANAND SANGRESHI, HCGP FOR R1 AND R2)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED IN R.A.NO.37/2006 PASSED BY THE FAST TRACK COURT II, BELLARY DATED 08.09.2009 CONFIRMING THE JUDGMENT AND DECREE PASSED BY THE CIVIL JUDGE (SR.DN.) BELLARY IN O.S.NO.7/2003 DATED 08.02.2006, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 28.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

This appeal is filed under Section 100 of C.P.C. by the plaintiff assailing the concurrent finding of the Trial Court in O.S.No.7/2003 dated 08.02.2006 and the First Appellate Court in R.A.No.37/2006 dated 08.09.2009.

2. The factual matrix that is necessary for the purpose of this appeal is as below:

- i) The plaintiff filed suit for declaration to declare that he is the absolute owner and in possession of the suit schedule property by adverse possession having enjoyed it for more than 73 years since from the lifetime of his grandfather and sought a decree for permanent injunction restraining the defendants from trespassing into the suit schedule property and thereby interfering in the peaceful possession and enjoyment of the same. It was stated that his father had been in possession and enjoyment of the suit schedule property since the year



1930 and he died in 1949. Thereafter the possession and enjoyment continued with the father of the appellants, till he died and thereafter the possession is continued with the appellants. It is contended that everyone including the defendants are in the knowledge that the plaintiff is cultivating and raising crops in the suit schedule property, irrigating the land through the well situated in it. During the year 1964-65 the plaintiff had dug a well in the suit land by obtaining loan from the government through Block Development Officer (BDO). A pump house was also built and since the year 1966, the same is being used without anybody's interference. Land revenue for occupancy was also paid by the father of the plaintiff and by the plaintiff.

- ii) It is also the case of the plaintiff that the suit schedule property which is Sy.No.562/B has been assigned as a town survey number



recently. But however, the enjoyment and possession continued with the appellant.

- iii) It was learnt by the appellant that the respondents are trying to assign the schedule land to others. A suit was filed by the plaintiff in O.S.No.686/1991 on the file of the Munsiff Court, Ballari, for injunction which came to be decreed.
- iv) It was further contended that an application came to be filed by the appellant before the Assistant Commissioner, Ballari to regularize his unauthorized occupation for more than 73 years. The said application came to be rejected by order dated 16.11.2002 against which an appeal was filed before the Deputy Commissioner of Ballari. In the meanwhile, defendant No.2 issued a notice calling upon the plaintiff to vacate the suit schedule property and held a threat to the possession and



enjoyment of the same. Therefore, the plaintiff was constrained to file this suit.

3. On service of summons, the defendants appeared and filed the written statement contending as below:

- (i) The defendants denied the case of the appellant. *Inter alia* they contended that they are the owners in possession of the suit land and thereby denied the possession and enjoyment of the suit schedule property by the plaintiff.
- (ii) They admitted that O.S.No.686/1991 was filed by the plaintiff, and the same came to be decreed. They also admitted that an application was filed before the Assistant Commissioner for regularization of the possession and it was dismissed and that a notice was issued by the defendants on 07.12.2002 to the plaintiff to vacate the suit land. It is contended that the suit land is in the vicinity of the Municipal limits



of Ballari and has been assigned a town Sy.No.655 as per the notification dated 19.03.1991 and therefore, the regularization of such lands coming within the limits of town municipality is impermissible. Therefore, they contended that the ingredients that are necessary for claiming adverse possession are not available and as such they sought for dismissal of the suit.

4. On the basis of the above pleadings, the following issues were framed by the Trial Court.

"ISSUES

1. *Does plaintiff prove that he is the absolute owner of the suit property?*
2. *Does plaintiff further prove his lawful possession and enjoyment of the suit property as on the date of this suit?*
3. *Does plaintiff further proves the alleged interference caused by the defendant?*



4. *Does defendant No.2 proves that the plaintiff is an unauthorised occupant in the Government land?*
5. *Whether the plaintiff is entitled for the relief of declaration and enjoyment?*
6. *What order or decree?*

ADDITIONAL ISSUE FRAMED ON 13.07.2005

1. *Does the plaintiff prove that he has perfected his title to the suit property by way of adverse possession as claimed for?"*

5. The plaintiff was examined as PW.1 and three witnesses were examined as PW.2 to PW.4 and Exs.P.1 to P.29 were marked. The official of defendant No.2 was examined as DW.1 and Ex.D.1 to Ex.D.53 were marked. After hearing both the sides, the Trial Court answered issue Nos.1 to 3 and 5 and additional issue No.1 in the **negative** and answered issue No.4 in the **affirmative** and dismissed the suit.

6. Being aggrieved the plaintiffs approached the First Appellate Court in R.A.No.37/2006. After hearing the arguments by both the sides, the First Appellate Court framed following points for determination.



- "1. *Whether the plaintiff/appellant has established that, he is absolute owner of the suit schedule property?*
2. *Whether the plaintiff/appellant has established that he has perfected his title over the suit schedule property by adverse possession?*
3. *Whether the finding given by the Trial Court on issues No.1 to 5 and Additional Issue No.1 are correct?*
4. *Whether the judgment and decree of the trial court needs to be interfered with?*
5. *What order?"*

6. It answered the point Nos.1, 2 and 4 in the **negative**, point No.3 in the **affirmative** and dismissed the appeal.

7. Being aggrieved, the plaintiffs have approached this Court in second appeal.

8. During the pendency of this appeal, the appellant died and his legal heirs were brought on record.



9. While admitting the appeal, this Court has framed the following substantial question of law:

"Whether the Trial Court as well as the First Appellate Court have committed serious error in dismissing the suit filed for the relief of specific performance by ignoring the material evidence on record more particularly on the ground that an application for regularisation of unauthorised occupation and payment of tax amount to the absence of unequivocal animus and thus, the judgments have become perverse and illegal?"

10. The arguments by learned counsel Sangram S. Kulkarni for appellants and learned Additional Advocate General Sri M. Keshavareddy for respondents were heard.

11. Learned counsel appearing for the appellants submitted that the possession of the plaintiff over the suit schedule property which is Sy.No.562/B measuring 2.92 acres of Village and Taluka Ballari has been confirmed in a judgment of the Court in O.S.No.686/1991 dated 09.01.1997. By virtue of the said judgment, the defendants have been restrained from interfering and obstructing the peaceful possession and



enjoyment of the plaintiff. However, liberty was given to the respondents to take action in accordance with law. He further submits that the plaintiff made an application before the Assistant Commissioner for regularization of the possession of the plaintiff and the same came to be rejected. Thereafter, defendant No.2/Tahasildar, issued a notice on 07.12.2002 asking the plaintiff to vacate the suit schedule property and not to cultivate any crops in the property. Therefore, the plaintiff was constrained to file the present suit. It is his contention that the possession of the plaintiff and his father has been established by documentary evidence including the patta book. Therefore, he submits that the possession and the payment of the land revenue to the government in respect of the suit schedule property is an indication that the plaintiff had the animus to perfect his title over the suit schedule property. It is the contention of the learned counsel appearing for the appellants that the assertion of the possession and payment of the land revenue and enjoying the suit schedule property by digging a well and irrigating the land for more than 70 years is a clear indication that the plaintiff had *animus possidendi* and therefore, the plaintiff has perfected the title over the suit schedule



property. It is submitted that the plaintiff has to show an uninterrupted hostile possession over the suit schedule property as against the government for more than 30 years and such possession having been established by the plaintiff, the Trial Court and the First Appellate Court erred in holding that the plaintiff has failed to show the animus.

12. He further submitted that earlier the Hon'ble Apex Court had ruled that the plea of adverse possession can only be used as a shield, but not as a sword. But in a later decision in the case of ***Ravinder Kaur Grewal vs. Manjit Kaur***¹, held that the plea of adverse possession can also be used as a sword. In paragraph Nos.56 and 59 of the said judgment, the Hon'ble Apex Court has held as below:

"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

¹ AIR 2019 SC 3827



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. xxxx

58. xxxx

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."

(emphasis supplied)

13. *Per contra*, the learned Additional Advocate General appearing for the respondents submits that there is no pleading for adverse possession and the ingredients of the adverse possession are not established by the plaintiff/appellants. It is contended that the specific pleadings and assertion of the title by the plaintiff over the suit schedule property bringing such animus to the knowledge of the defendants is an essential ingredient. Therefore, he submits that the pleadings and the evidence do not show such ingredients and therefore, the Trial Court as well as the First Appellate Court were justified in dismissing the suit. It is submitted that in the case on hand, appellants claim absolute title by inheritance and then seek adverse possession. These are



mutually exclusive and contradictory claims and therefore, it cannot be said that the plaintiff had established his case. He submits that when the plaintiff admits filing of the application for regularization, admittedly he become an unauthorized occupant and will not come in the purview of the possessor who had adverse animus against the title of the defendants. Therefore, he submits that the dismissal of the suit by the Trial Court as well as the First Appellate Court is justifiable.

14. In this regard, he places reliance on the judgment in the case of **Karnataka Board of Wakf vs. Government of India and Others²**, where the ingredients of adverse possession are culled out. In paragraph No.11, the Hon'ble Apex court held as below:

"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

² (2004) 10 SCC 779



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. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma]"

(emphasis supplied)



15. He also relied on the judgment in the case of ***Israel Gaddi vs. Karuna Datta Mishra and others***³ where Patna High Court had observed in paragraph Nos.25 and 27 as below:

"25. With respect to third substantial question of law regarding the claim of defendant of Adverse Possession, learned counsel for the appellant has submitted that the defence taken by the defendant as owner of the suit property and also in alternative adverse possession of the suit property cannot be tenable. Learned counsel for the respondent on the other hand submitted that the plaintiff cannot take advantage of the weakness of the defendant. The plaintiff has to prove his case on its own leg and in this case he has failed to prove his ownership and possession on the suit land. Moreover, he failed to describe even the suit property. The defendant has claimed the suit property as owner and no issue was framed with respect to adverse possession in the trial Court and the same was neither pressed nor decided by the Courts below.

26. xxxx

27. The principle with respect to adverse possession has been elaborated in catena of the Hon'ble Supreme Court. In P. Periasami v. P. Periathambi, (1995) 6 SCC 523 : (AIR Online 1995 SC 127) the Hon'ble Supreme Court held that "whenever the plea of adverse possession is

³ 2023 SCC OnLine Pat 11837



projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."

(emphasis supplied)

16. He further relied on the judgment in the case of **Mandal Revenue Officer vs. Goundala, Venkaiah and another⁴**. In paragraph Nos.46 and 47 of this judgment, the Hon'ble Apex Court held as below:

"46. In our considered view, the approach adopted by the High Court was ex facie erroneous because the absence of final order in the proceedings initiated under the Encroachment Act cannot lead to an inference that the authority concerned had recognised the possession of Gonda Mallaiah over the schedule land. That apart, even if this Court was to presume that the proceedings initiated against Gonda Mallaiah under the Encroachment Act had been dropped, the said presumption cannot be overstretched for entertaining the respondents claim that their possession was open and hostile qua the true owner i.e. the Government. The payment of land revenue by Gonda Mallaiah and/or the respondents and making of applications by them to the Government for assignment of the schedule land or regularisation of their possession, completely

⁴ (2010) 2 SCC 461



demolish their case that their possession was open and hostile and they have acquired title by adverse possession.

47. In this context, it is necessary to remember that it is well-nigh impossible for the State and its instrumentalities including the local authorities to keep everyday vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularised. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers."

(emphasis supplied)

17. In the light of the above submissions, this Court has to examine the findings of the both the courts below in the light of the substantial question of law framed by this Court.



"Whether the Trial Court as well as the First Appellate Court have committed serious error in dismissing the suit filed for the relief of specific performance by ignoring the material evidence on record more particularly on the ground that an application for regularisation of unauthorised occupation and payment of tax amount to the absence of unequivocal animus and thus, the judgments have become perverse and illegal?"

18. Before considering the substantial question of law which has been framed by this Court, it is necessary to note that initially the suit was filed on 04.01.2003 seeking a declaration of the right of the plaintiff in the form of title, but the exact words in respect of the adverse possession were not incorporated. The prayer column of the plaint was not happily worded and it seems that plaintiff sought for declaring the plaintiff's right, title and interest in the plaint schedule land and he left it to the Court to decide what kind of right, title and interest he had in the suit schedule property. Later in the year 2005, the plaintiff got amended the plaint by adding paragraph No.4(a) and by adding the word 'adverse possession' in the prayer. This amendment to the plaint appears to be an afterthought.



19. A perusal of the plaint would disclose that the plaintiff is claiming the adverse position on the ground that he has been in enjoyment of the suit schedule land since 1930 from the time of his father. He contends that, the possession of the suit schedule land was openly and to the knowledge of everybody, including the defendants, was enjoyed by the plaintiff and his father. He also contends that he has dug a well in the scheduled land by obtaining loan from the government through the Block Development Officer, Ballary in or around the year 1964-65 and he has been raising crops. Since the well dug in the suit schedule property failed, he could not raise the wet or garden crops and the geologist had given a certificate to the effect that the plaintiff's well dug in the suit schedule land has failed. The documentary evidence was also produced by the plaintiff in this regard. Later the plaintiff had built a pump house and obtained electric connection in the year 1966. It is averred in the plaint that the enjoyment of the suit schedule property was peaceful and continuous. When the defendants were trying to assign the scheduled land to others, he had filed a suit in O.S.No.686/1991 before the learned Munsiff Court, Ballary for injunction. The said suit came to be decreed. It is relevant to



note the observations of the Court in that judgment so that the intention of the plaintiff could be ascertained. The said judgment produced at Ex.P.1, at paragraph No.4, narrates the issues framed in the said suit, which are as below:

- "1) Whether plaintiff proves his lawful possession over the suit schedule property as alleged on the date of suit?*
- ii) Whether suit property is a Government Property?*
- iii) Whether plaintiff proves that alleged interference and obstruction by the defendant?*
- iv) Whether plaintiff is entitled to the relief of injunction sought for?*
- v) What order or decree?"*

20. Thereafter, issue Nos.1 to 4 were answered in the ***affirmative***. It is worth to note that the learned Munsiff while discussing issue No.1 in paragraph No.8 observes as below:

*"8.*** Of course the learned advocate for the plaintiff though has contended in his written arguments that there is settled possession of the plaintiff over the suit property. But taking into consideration of the documents and material available before the court it suffice to make*



observation that the said possession of the plaintiff over the suit property in any way cannot be termed as settled possession and on the other hand it can be said that the plaintiff is in possession of the plaintiff of the suit property without any authorization and he has continued his possession over the suit property. Therefore taking into cumulative effect of the said documents produced by the plaintiff it has to be said that the plaintiff has proved his possession over the suit property though not established that his possession is lawful one or authorized by any competent authority."

21. Thus, it is evident that the Court observed that it is not a settled possession, but it is a simple possession over the suit schedule property. Thereafter while considering the issue No.2, the Court observes that the suit is not pertaining to the declaration of title and therefore, the question of title was only corollary in nature and as such, it declined to state anything about the title. It rightly did not enter into the question of title, as it was not the scope of the said suit.

22. A perusal of the plaint in the present appeal shows that, apart from paragraph 4(a), the plaintiff, in paragraph 7, contends that the defendants have lost their rights by adverse possession, as the plaintiff and his predecessor have been in



open, peaceful, and exclusive possession and enjoyment of the suit schedule property, adversely to all and to the knowledge of the defendants. It is this aspect, which requires to be proved by the plaintiff satisfactorily.

23. The perusal of the judgment of the Trial Court shows that it analyses the documents produced in paragraph Nos.7 and 8 and then in paragraph No.9, it poses a question as to whether the documents produced would establish that the plaintiff has perfected his title to the suit schedule property. In paragraph No.10, it observes as below:

"No doubt, the father of the plaintiff has paid land revenue to the government. Simply because, father of the plaintiff was cultivating the government land unauthorisedly, it cannot be said that, he has acquired any title to the suit property during his lifetime. After the death of the father of the plaintiff, though the plaintiff continued his possession and enjoyment over the suit property, but the said property cannot be termed as ancestral property to the plaintiff. If the father of the plaintiff had acquired title, then only. The property left by him can be considered as ancestral property in the hands of the plaintiff. The plaintiff also continued his cultivation in respect of the suit property and believing that, it is the government land. He has also



applied to the authorities to grant government land to him stating that, he is in cultivation since many years. The evidence of PW. 1 is contrary to the records produced before the court. At the time of filing the suit, the plaintiff had approached the court claiming to be the absolute owner in lawful possession of the suit property. On that basis, he has deposed his evidence claiming to be the absolute owner and inherited the suit property from his father. His admissions made in the cross-examination makes it clear that the suit property which is the government land is still continued as government land in the records."

(emphasis supplied)

24. The Trial Court observes that after such deposition, the plaintiff has got amended the plaint adding paragraph No.4(a). It observes that, there is no evidence of the plaintiff to prove the ingredients of the adverse possession, since the intention of the plaintiff or his father to possess the suit property, by way of adverse possession is not disclosed. There was no evidence as to at which point of time, the possession of the plaintiff or his father had turned hostile to the government. It also observes that simply because the plaintiff and his father had cultivated the suit property unauthorizedly, such cultivation cannot be considered as the lawful possession and it will not



prove the title of the plaintiff, as absolute owner. Then the Trial Court observes the ingredients that are necessary for declaring the title on the basis of the adverse possession and opines that, when the plaintiff has failed to prove his animus to possess the land as a title holder, it declined to grant the relief claimed by the plaintiff.

25. The First Appellate Court, in the impugned judgment, notices that the plaintiff had never challenged the authority of the defendants and their title to the suit schedule property, nor exhibited animus over the right and interest of the defendants while enjoying the property. It also observes that, all through, he was paying the land revenue for having been in occupation of the schedule property. It observes that the patta book also shows that he was an occupant, but not as an owner. When he had made a representation for grant of the land, an endorsement had been issued as per Ex.P.10 and the prayer for assignment could be considered after the land was transferred to 'Ayan'. Therefore, the First Appellate Court holds that the plaintiff or his father never showed their animus *prossidendi* in enjoying the property as against the interest of the government. However, the



impugned judgment of the First Appellate Court shows the fact that the plaintiff was in possession of the property for about 73 years cannot be disputed. The conduct of the defendants showed that, they have accepted the possession of the plaintiff over the suit schedule property. The First Appellate Court says that it is different that the defendants are not in a position to grant some relief to the plaintiff, but the defendants are aware of the long standing occupation of the plaintiff and his predecessor in interest.

26. In other words, the First Appellate Court opined that the plaintiff was in possession and enjoyment of the suit schedule property as the occupant and he paid the land revenue to the defendants/government as an occupant. He never had showed the animus that he is in possession and enjoyment of the property as a title holder. All along his contention was that he was an occupant and the land has to be regularized to him. Therefore, the First Appellate Court has relied upon the Exs.P.6 and P.15 in this regard. Ex.P.6 happens to be the notice dated 02.12.2002, which directed the plaintiff to vacate the suit schedule property, issued by the Tahasildar of Ballari. Ex.P.15 is



the acknowledgment for having received an application for regularization of the occupied land. It is pertinent to note that all other documents produced by the plaintiff establish that he and his predecessors in title are in possession and enjoyment of the property. The Ex.P.21 shows that, it is a document written in Telugu and is dated 27.11.1933. It is relevant to note that Ex.P.10 is an endorsement dated 16.07.1934. In this endorsement, the Office of the Collector, Bellary had informed the father of the plaintiff that the question of assignment will be considered after the land is transferred to Ayan. It seems that an application was made for the assignment, but that was not considered, but it was postponed for some reason. Thus, it is evident that the possession and enjoyment of the plaintiff and his predecessors in the interest over the suit schedule property was not as an assignee or a grantee. The predecessors of the plaintiff/appellant had acknowledged the nature of the possession, which was given to them and they sought for an assignment. Such an assignment was declined as per Ex.P.10.

27. Therefore, the First Appellate Court has come to the conclusion that the animus to say that the plaintiff is holder in



title, adverse to the interest of the real owner, that is the defendants is not established.

28. The law on the point is fairly settled. The judgment of the Hon'ble Apex Court in the case of **Ravinder Kaur Grewal vs. Manjit Kaur** (supra) considers all the facets of the law relating to adverse possession. In this judgment, in paragraph Nos.2, 6 and 8 it has considered the law laid down by it in the case of **P.T. Munichikkanna Reddy vs. Revamma**⁵ in *extenso*. It has stated as below:

"2. The respondent-defendants 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 appellant-plaintiffs 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

⁵ (2007) 6 SCC 59



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 1934-1936 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.

7. xxxx

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."

(emphasis supplied)

29. The Hon'ble Apex Court notes that 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 and the right thereby accrues in favour



of the adverse possessor as intent to dispossess is an express statement of urgency and intention to upkeep the property. It may be noted that in the case on hand, right from the beginning, the predecessors in interest of the plaintiff were in possession of the property and they had been trying by making several representations to the government that the land may be assigned to them. For obvious reasons, as may be seen from Ex.P.10, such request for assignment was declined. Thus, it is for the plaintiff to show that since when they started asserting their right, title and interest over the suit schedule property and to the knowledge of the defendants. Their possession continued in view of the documents which are produced by the plaintiff. The possession was never disturbed, except when the suit in O.S.No.686/1991 was filed. Obviously, from 1933 to 1991 there was no such obstruction by the defendants. The defendants knew that the plaintiff is occupant. But simply because the land revenue is paid, it cannot be said that the plaintiff had asserted his title over the suit schedule property. The animus to assert his possession as title holder is not established by the plaintiff.



30. Now the question would be whether an application for regularizing the ownership of the property would amount to an animus. It is worth to note that the First Appellate Court notices that the plaintiff filed an application for regularization in the year 1991 as per Ex.P.15. If an application was filed for regularization, it is an admitted fact by the plaintiff that he was in unauthorized occupation of the land. If the land has been occupied unauthorizedly, then what is reflected in Ex.P.10 appears to be contrary to their contention. In Ex.P.10 they had sought for assignment which was declined. In other words, the defendants had declined to recognize the possession of the plaintiff as title holders. Thereafter, it is not known when exactly the possession of the plaintiff became adverse to the title of the defendants.

31. The digging of the well in the suit schedule property, obtaining loan for such digging of the well and a report by the geologist regarding the failure of the well, can only be termed as the acts done for the improvement of the land. Obviously, the plaintiff and his predecessors in interest were in occupation and they had never asserted their ownership over the land.



Therefore, if we apply the observation made by the Hon'ble Apex Court in the case of ***Munichikkanna*** as reproduced (supra), it is evident that a positive assertion by the adverse possessor that he is the title holder and such assertion was to the knowledge of the plaintiff has not been brought out by the plaintiff. Therefore, digging of the well, raising loan from the government and making such improvements would not *ipso facto* show that the animus was made known to the defendants/government. In that view of the matter, the view of the First Appellate Court that the animus *possidendi* had not been established by the plaintiff has to be accepted. Simple enjoyment of the property for more than 70 years, without anybody's obstruction and paying land revenue would not result in perfection of the title by adverse possession. The intention or the animus of the possessor to the knowledge of the rightful owner, that the possessor is in possession as an owner is essential. This animus having not been established, the First Appellate Court was justified in dismissing the appeal.

32. It is to be noted that the First Appellate Court has considered the grievance of the appellant/plaintiff. It has observed that though, it can sympathize with the plaintiff, for his



prolonged possession over the suit schedule property, it holds that the ingredient of the adverse possession is not proved. Therefore, the appeal is bereft of any merits.

33. For aforementioned reasons, the appeal is ***dismissed.***

34. The judgment of Trial Court in O.S.No.7/2003 dated 08.02.2006 and the judgment of the First Appellate Court in R.A.No.37/2006 dated 08.09.2009 are confirmed.

SD/-
(C M JOSHI)
JUDGE

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