



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

REGULAR SECOND APPEAL NO.1406 OF 2009 (DEC/INJ)

BETWEEN:

1. SMT. LAXMI
W/O NARAYANA NAIKA,
AGED ABOUT 67 YEARS.
2. MS. DEVAKI
D/O NARAYANA NAIKA,
AGED ABOUT 42 YEARS.
3. MS. JAYA
D/O NARAYANA NAIKA,
AGED ABOUT 39 YEARS.
4. SRI. SHIVARAMA
S/O NARAYANA NAIKA,
AGED ABOUT 38 YEARS.
5. SRI. VASUDEVA
S/O NARAYANA NAIKA,
AGED ABOUT 34 YEARS.
6. SRI. RAMESHA
S/O NARAYANA NAIKA,
AGED ABOUT 34 YEARS.
7. SRI. RAJESHA
S/O NARAYANA NAIKA,
AGED ABOUT 32 YEARS.
8. SRI. SATHISHA
S/O NARAYANA NAIKA
AGED ABOUT 23 YEARS

Digitally signed
by CHAYA S A
Location: HIGH
COURT OF
KARNATAKA



ALL ARE R/AT MATTATHAKDA
IN PERUVAJE VILLAGE,
KODIYALA POST, SULLIA TALUK,
DAKSHINA KANNADA - 577 002.

...APPELLANTS

(BY SRI. Y.K. NARAYANA SHARMA, ADVOCATE)

AND:

1. SMT. LALITHA
W/O RAMACHANDRA NAIKA
AGED ABOUT 52 YEARS,
R/AT HALEPETE, SULLIA KASBA VILLAGE,
SULLIA TALUK,
DAKSHINA KANNADA - 577 002.

2. SRI. B. CHANDRASHEKHARA
S/O B. VENKAPPA KAMATH,
AGED ABOUT 49 YEARS,
R/AT BALILA VILLAGE,
SULLIA TALUK,
DAKSHINA KANNADA - 577 002.

...RESPONDENTS

(BY SRI. K. CHANDRANATH ARIGA, ADVOCATE FOR R2;
R1 - SERVED AND UNREPRESENTED)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST
THE JUDGMENT AND DECREE DATED 06TH JULY, 2009 PASSED
IN REGULAR APPEAL NO.92 OF 1994 ON THE FILE OF THE
ADDITIONAL CIVIL JUDGE (SR.DN.) AND JMFC., PUTTUR,
DAKSHINA KANNADA, DISMISSING THE APPEAL AND
CONFIRMING JUDGEMENT AND DECREE DATED 17TH
SEPTEMBER, 1994 PASSED IN ORIGINAL SUIT NO. 70 OF 1989
ON THE FILE OF THE MUNSIFF AND JMFC, SULLIA, DAKSHINA
KANNADA.



THIS REGULAR SECOND APPEAL HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ***E.S. INDIRESH J.***, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH

CAV JUDGMENT

This appeal is preferred by plaintiffs challenging the judgment and decree dated 06th July, 2009 passed in Regular Appeal No.92 of 1994 on the file of the Additional Civil Judge (Sr.Dn.) and JMFC., Puttur, Dakshina Kannada (for short, hereinafter referred to as '*First Appellate Court*'), dismissing the appeal and confirming the judgment and decree dated 17th September, 1994 passed in Original Suit No.70 of 1989 on the file of the Munsiff and JMFC., Sullia (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of the plaintiffs seeking relief of Declaration and Injunction came to be dismissed.

2. For the sake of convenience, the parties in this appeal shall be referred to in terms of their ranking before the Trial Court.



3. The plaint averments are that the plaintiffs claims to be owner in possession of the Plaint 'A' Schedule property by adverse possession alleging that, the suit schedule property was granted to one Sundara Naika, who is the brother of the father of the plaintiffs 2 to 8 and husband of the plaintiff No.1 on 17th October 1960. It is stated that, adjoining to the Plaint 'A' Schedule property, land bearing Survey No.200/2 was granted to Narayana Naika, father of plaintiffs 2 to 8. The father of plaintiffs 2 to 8 viz., Narayana Naika was cultivating both the lands belonging to himself and his brother Sundara Naika, and further developed the same by raising cashew plants. Therefore, it is contended in the plaint that the said Narayana Naika, has perfected title in respect of the Plaint 'A' schedule property adversely against the defendants and to the knowledge of his brother Sundara Niak and defendants, he is continued to be in possession and enjoyment of Plaint 'A' schedule property. It is further stated that, the said Sundara Naika, died on 02nd January, 1967 leaving behind his daughter (defendant No.1-Lalitha). It is also averred that, the wife of Sundara Naika pre-deceased to him.



4. It is further stated in the plaint that, after the death of Sundara Naika, his daughter-defendant No.1, left the village and joined the Ashram at Puttur. It is also averred that, after the death of Sundara Naika, Assets of Sundara Naika devolved on his legal heirs, namely, Kashiamma (mother), Narayana Naika and the defendant No.1. The said Kashiamma died on 26th September, 1972 leaving behind a Will dated 15th January, 1971 bequeathing the properties belonging to her as well as share of her son Sundara Naika in favour of Narayana Naika, father of plaintiffs 2 to 8 and husband of plaintiff No.1. Therefore, it is stated that the plaintiffs became the owner of the Plaint 'A' Schedule property. Hence, plaintiffs have filed the instant suit seeking relief of declaration with consequential relief of permanent injunction in respect of the Plaint 'A' Schedule property, having perfected title by adverse possession.

5. It is also to be noted that the appellant/plaintiffs herein have filed IA.No.2 of 2023 before this Court, seeking leave of the Court to amend to the plaint stating that, by mistake, the Plaint Schedule property has been stated to be



situate at Peruvaje instead of Kodyala village and therefore, sought for changing the name of village as Kodyala. The appellant/plaintiffs also sought for inclusion of prayer 'b' in the plaint, seeking alternative relief of *one-half* share in the Plaint 'A' Schedule property and separate the share of the plaintiffs and put them into possession of the same.

6. After service of summons, defendant No.1 entered appearance and filed written statement denying the plaint averments. It is the specific contention of the defendant No.1 that, after the death of her father Sundara Naika, she left the company of her grandmother Kashiamma, who was cultivating the land in question. The defendant No.1 further stated that the Plaint 'A' Schedule property has been sold in favour of the defendant No.2 under the registered Sale Deed dated 29th January, 1987 and defendant No.2 is in possession of the same after the sale made by her. Accordingly, the defendant No.1 sought for dismissal of the suit.

7. The defendant No.2 has filed separate written statement adopting the specific contentions raised by defendant No.1. The defendant No.2 contended that, after the



purchase of Plaint 'A' Schedule property, plaintiffs started hostile attitude towards the defendant No.2. It is also stated by the defendant No.2 that, Khata and Revenue records were changed in the name of the defendant No.2 after the purchase of the Plaint 'A' Schedule Property under the Sale Deed dated 29th January, 1987 and the defendant No.2 has grown cashew and some of the fruit bearing trees in the Plaint 'A' Schedule property. Accordingly, the defendant No.2 sought for dismissal of the suit.

8. On the basis of the rival pleadings, the Trial Court formulated issues for its consideration.

9. In order to establish their case, plaintiffs examined 5 witnesses as PW1 to PW5 and got marked 13 documents as Exhibits P1 to P13. On the other hand, defendants examined 3 witnesses as DW1 to DW3 and got marked 23 documents as Exhibits D1 to D23. The Court Commissioner was examined as CW1 and marked the reports and sketch produced by the Court Commissioner as Exhibits C1 to C3.

10. The Trial Court, after considering the material on record, by its judgment and decree dated 17th September,



1994, dismissed the suit of plaintiffs and being aggrieved by the same, plaintiffs have preferred Regular Appeal No.92 of 1994 before the First Appellate Court. The said appeal was resisted by the defendants. The First Appellate Court, after re-appreciating the material on record, by its judgment and decree dated 06th July, 2009 dismissed the appeal and confirmed the judgment and decree passed by the Trial Court in Original Suit No.70 of 1989. Being aggrieved by the judgment and decree passed by the Courts below, appellant/plaintiffs have preferred this Regular Second Appeal under Section 100 of the Code of Civil Procedure.

11. This Court, by order dated 22nd February, 2010, admitted the appeal to consider the following substantial question of law:

"Whether the Courts below were justified in negating the grandmother of defendant No.1 derived that she did not have any right in the property when she, as a mother in terms of Sec.8 could have claimed as Class-I legal heir in respect of the property atleast to the extent of half share and which was over-looked by both the Courts below"



12. Heard Sri. Y.K. Narayana Sharma, learned counsel appearing for appellants and Sri. K. Chandranath Ariga, learned counsel appearing for the respondent No.2.

13. Sri. Y.K. Narayana Sharma, learned counsel for the appellants submit that both the courts below have committed an error and failed to consider the fact that the father of plaintiffs 2 to 8 viz., Narayana Naika was in exclusive possession and enjoyment of the Plaint 'A' Schedule property. He further argued that, DW1 has admitted in the evidence about the possession of the Plaint 'A' schedule property with Narayana Naika. It is also submitted by learned counsel that, there is no material before the Trial Court to show that the defendant No.1 had taken back the possession of the Plaint 'A' Schedule property from Narayana Naika after she returned from Ashrama and as such, both the Courts below committed an error in dismissing the suit of plaintiffs.

14. Learned counsel Sri. Y.K. Narayana Sharma, appearing for appellants argued that the possession of Plaint 'A' Schedule property is in the hands of Narayana Naika and same was within the knowledge of defendants and further the



defendant No.1 has not taken any steps to take back the possession of Plaint 'A' suit Schedule property and therefore, Trial Court ought to have granted relief of declaration in favour of the plaintiffs. It is also contended that, both the Courts below have not considered the alternative plea put-forth by the appellants in respect of the Will said to have been executed by late Kashiamma in favour of the father of plaintiffs 2 to 8.

15. It is also argued by learned counsel appearing for appellants that, since, Sundara Naika died intestate leaving behind his mother Kashiamma and defendant No.1, as per Section 8 of the Hindu Succession Act as the said Kashiamma was a Class-I heir, is entitled for property of late Sundara Naika. It is submitted by the learned counsel appearing for appellants that, both the courts below, without considering the aforementioned aspects, dismissed the suit erroneously and as such, same has to be interfered with before this Court.

16. It is further contended by learned counsel appearing for appellants that, though the plaintiffs have proved the Will produced at Exhibit P12 by examining the attesting witness as PW2, and the Scribe of the Will as PW3, both the



Courts below have ignored the fact that the plaintiffs have proved the Will beyond suspicious circumstances.

17. Learned counsel appearing for appellants further contended that, both the Courts below ignored the fact that the Revenue Records stand in the name of Narayana Naika (*father of plaintiffs 2 to 8*) and also the said Narayana Naika was cultivating the land belonging to him as well as his brother Sundara Naika as one unit without having 'Agalu' (boundary). Accordingly, he sought for interference of this Court.

18. By referring to the proposed amendment in application IA No.2 of 2023, learned counsel appearing for the appellant submits that the proposed amendment will not change the nature of the suit and it is only an alternative prayer, wherein the foundation has been made in the plaint averments itself. Therefore, he sought for allowing the application IA No.2 of 2023, by incorporating the additional prayer for alternative relief to the main relief sought for in the suit.

19. In order to buttress his arguments, learned counsel Sri. Y.K. Narayana Sharma, appearing for appellants refers to



the judgment of the Hon'ble Supreme Court in the case of **GANESH PRASAD vs. RAJESHWAR PRASAD** reported in *AIR 2023 SC (CIVIL) 1184* and in the case of **RAJESH KUMAR AGGARWAL AND OTHERS vs. K.K. MODI AND OTHERS** reported in *AIR 2006 SC 1647* and contended that application filed under Order VI Rule 17 of the Code of Civil Procedure has to be considered liberally as the plaint averments itself pay way for seeking additional alternative prayer of *one-half* share in the Plaint 'A' Schedule property.

20. By referring to the law declared by this Court in the case of **SMT. PUTTAMARAMMA vs. GIRIYAPPA AND OTHERS** reported in *(2016) 1 KCCR 73*, it is argued by learned counsel appearing for appellants that, the appellants can seek amendment of the prayer in the plaint even in the Second Appeal since the same has been permitted by this Court. Lastly, referring to the judgment of the Hon'ble Supreme Court in the case **KASHMIR SINGH vs. HARNAM SINGH AND ANOTHER** reported in *AIR 2008 SC 1749*, It is contended by the learned counsel appearing for appellants that, this Court is having ample jurisdiction under Section 100 of the Code of Civil



Procedure to interfere with the concurrent finding of facts, wherein both the Courts below have misconstrued the factual aspects on record. Accordingly, he sought for interference of this Court.

21. Per contra, Sri. K. Chandranath Ariga, learned counsel appearing for the respondent No.2 submitted that, both the Courts below have concurrently held that, the plaintiffs have not made out a case for relief of declaration and therefore, this Court is having limited jurisdiction to interfere with the concurrent finding of facts under Section 100 of the Code of Civil Procedure.

22. By referring to the evidence of PW1, learned counsel appearing for the respondent No.2 argued that the PW1 (plaintiff No.1) admits that the plaintiffs and the husband of plaintiff No.1 *viz.*, Narayana Naika have not visited the Ashram where the defendant No.1 was residing. It is also argued by learned counsel Sri. K. Chandranath Ariga that the PW1 herself stated that, after the death of Sundara Naik, the mother of Sundara Naika *viz.*, Kashiamma brought certain documents to her house.



23. By referring to Exhibit D6, learned counsel appearing for the respondent No.2 contended that, the revenue records in respect of the Plaint 'A' Schedule property stand in the name of the defendant No.1 and therefore, the appeal deserves to be dismissed. In this regard, learned counsel appearing for the respondent No.2 argued that, the DW3 is related to both the plaintiffs and defendants and DW3 admitted in the evidence about the cultivation of the land in question at the instance of the plaintiff No.1.

24. It is also argued by the learned counsel appearing for the respondent No.2 that, the suit was filed after the death of husband of plaintiff No.1 viz., Narayana Naika and therefore, the plaintiffs have not made out a case for granting relief of declaration. In order to buttress his arguments, learned counsel appearing for the respondent No.2 refers to the judgment of this Court in the case of **HUTCHEGOWDA vs. CHENNIGEGOWDA** reported in *AIR 1953 MYSORE 49* and argued that, the presumption of possession of Plaint 'A' Schedule property with the defendant No.1 has to be considered since the defendant No.1 was Minor and aged about



eight years at the time of death of her father Sundara Naika. It is submitted by the learned counsel appearing for the respondent No.2 that the appellants herein have filed an application seeking amendment of the plaint after an inordinate delay of four decades and same cannot be accepted. In this regard, learned counsel appearing for the respondent No.2 refers to the judgment of the Hon'ble Supreme Court in the case of **BACHHAJ NAHAR vs. NILIMA MANDAL AND ANOTHER** reported in (2008) 17 SCC 491 and argued that, belated application seeking modification of pleadings cannot be accepted even at the stage of consideration of appeal and therefore, the relief has to be granted to the parties based on the prayer made in the pleadings.

25. Sri. K. Chandranath Ariga, learned counsel appearing for the respondent No.2, by referring to judgment of this Court in the case of **AKKANAGAMMA AND OTHERS vs. R. NAGESHWARIAH AND ANOTHER** reported in AIR 1968 MYSORE 266 contended that, this Court has no jurisdiction in the second appeal to remand the matter to Trial Court, as the controversy between the parties has been already crystallised



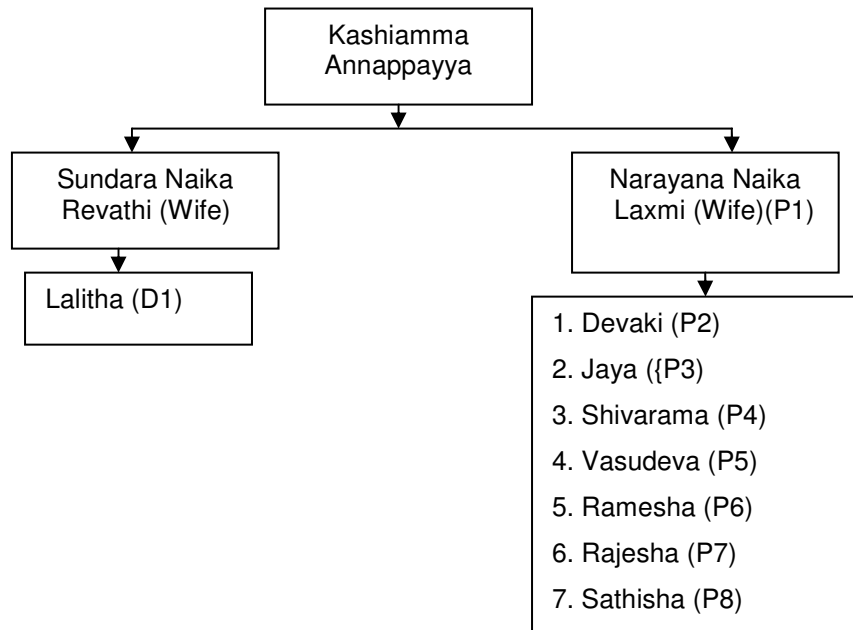
based on the pleadings on record. Finally, by referring to the Judgment of the Hon'ble Supreme Court in the case of **RAMACHANDRA REDDY (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS vs. RAMULU AMMAL (DEAD) THROUGH LEGAL REPRESENTATIVES** reported in (2025) 8 SCC 788, learned counsel appearing for the respondent No.2 argued that, there is no perversity in the judgment and decree passed by the Courts below.

26. Insofar as the arguments advanced by the learned counsel for the appellants as to the relief of adverse possession, Sri. K. Chandranath Ariga, learned counsel appearing for the respondent No.2 submitted that the said plea cannot be accepted in view of the judgment of the Hon'ble Supreme Court in the case of **KARNATAKA BOARD OF WAKF vs. GOVERNMENT OF INDIA AND OTHERS** reported in (2004) 10 SCC 779. Accordingly, learned counsel appearing for the respondent No.2 sought for dismissal of the appeal.

27. In the light of the submissions made by the learned counsel appearing for the parties, I have carefully examined the original records and the finding recorded by both the Courts



below. It is not in dispute that the husband of the plaintiff No.1 and father of the plaintiffs 2 to 8 viz., Late Narayana Naika and the father of the defendant No.1 viz., Late Sundara Naika are the children of Kashiamma. In order to understand the relationship between the parties, it is relevant to extract the genealogy of the parties, which reads as under:



28. It is to be noted that the mother of the defendant No.1 viz., Revathi predeceased her husband Sundara Naika (father of the defendant No.1). The father of the defendant No.1 Sundara Naika died on 02nd January, 1967. The husband of the plaintiff No.1 and father of plaintiffs 2 to 8 viz., Narayana



Naika died on 15th January, 1987. The mother of Sundara Naika and Narayana Naika viz., Kashiamma died on 26th September, 1972. It is not in dispute that the Special Deputy Tahsildar, Puttur by order dated 17th October, 1960, granted land bearing Survey No.134/3 measuring 3.67 acres at Kodyala Village, Sullia Taluk, which is described as Plaint 'A' Schedule property. It is also not in dispute that the land bearing Survey No.200/2 was granted in favour of Narayana Naika, which is adjacent to the land granted in favour of his brother Sundara Naika. It is the case of plaintiffs that the plaintiffs are in cultivation of land belonging to Sundara Naika and therefore, sought for declaration that the plaintiffs have perfected their title by adverse possession. It is also the case of plaintiffs that the defendant No.2, who is the son of sister of the plaintiff No.1, had purchased the Plaint 'A' Schedule property from the defendant No.1 as per the registered Sale Deed dated 29th January, 1987. It is also stated in the plaint that, after the death of Sundara Naika, the Assets of deceased Sundara Naika devolved on his heirs namely defendant No.1 and Smt. Kashiamma (mother of Sundara Naika) and Narayana Naika. The said Kashiamma died on 26th September, 1972



leaving behind a Will dated 15th January, 1971, bequeathing her right in favour of Narayana Naika and therefore, the said Narayana Naika got the property from his mother Kashiamma, on which basis the suit prayer is to seek relief of declaration by the plaintiffs as they have perfected their title through adverse possession. It is pertinent to mention here that the relief claimed by the plaintiffs in a suit as to declaration of title is on the basis of adverse possession and no relief has been claimed based on the Will dated 15th January, 1971 as well as by succession.

29. Perusal of the finding recorded by the Trial Court would indicate that, after the death of Sundara Naika, the defendant No.1 had lived with Kashiamma for few months and thereafter, joined the Ashram at Puttur. The defendant No.1 stated that the father of the defendant No.1 Sundara Naika was in possession of the Plaint 'A' Schedule property and has planted cashew plants. It is also to be noted that the defendant No.1, at the instance of plaintiffs joined Ramakrishna Seva Samaj Ashram situate at Puttar and at that time, she was minor aged about eight years and lived at Ashram till her



marriage. Perusal of the written statement of defendant No.2 makes it clear that the defendant No.2 is son of the sister of plaintiff No.1. It is also to be noted that the revenue proceedings were initiated in respect of the subject matter of the suit property pursuant to the change of mutation in favour of the defendant No.1, after the death of her father Sundara Naika. The plaintiffs preferred appeal before the jurisdictional Assistant Commissioner, however, as the grievance of the parties is in respect of title of Plaint 'A' Schedule property, the revenue records continued to be stand in the name of defendant No.1. Exhibit D17 is the order passed by the competent authority, dismissing the appeal preferred by plaintiffs on 11th March, 1992.

30. Perusal of the examination-in-chief of PW1 at paragraphs 1, 5 and 8 makes it clear that, Kashiamma was residing separately from Narayana Naika and joined the house of Narayana Naika as the defendant No.1 left the house and joined Ashram in Puttur. PW1 admits at paragraph 8 of the examination-in-chief that the said Kashiamma brought certain documents including the movable properties to the house of



Narayana Naika. Though the plaintiffs have examined the PW2, attesting witness to the Will dated 15th January, 1971 said to have been executed by Kashiamma, PW3-Scribe to the aforementioned Will, however, failed to prove the Will before the Trial Court in respect of Kashiamma has bequeathed the property as per alleged Will in favour of the father of plaintiffs 2 to 8 viz., Narayana Naika and they are claiming property based on the said Will. The entire case of the plaintiffs surrounded with the claim of Plaint 'A' Schedule property by adverse possession and not by acquiring the property as per the registered Will dated 15th January, 1971. It is also forthcoming from the evidence of DW2 that there is a strained relationship between the plaintiff No.1, Kashiamma as well as the defendant No.1. On careful consideration of the evidence on record, the property in question was leased in favour of one Shantha Baira by Sundara Naika. The DW3, who is the owner of land situate adjacent to the Plaint 'A' schedule property, deposed that the Plaint 'A' schedule property was in the possession of Sundara Naika till his death. He also deposed that, Narayana Naika was the son of his paternal aunt. The aforementioned aspects makes it clear that, Narayana Naika was not cultivating the



land during the lifetime of Sundara Naika. It is also deposed by the DW2 (defendant No.1) that, during the vacation of school, she was residing with her uncle Narayana Naika. Perusal of the evidence of DW2 and DW3 makes it clear that the Plaint 'A' Schedule property, which was under the lease of Shantha Baira, was sold by the defendant No.1 in favour of defendant No.2. The DW3, who is the close relative of plaintiffs deposed that the defendant No.1 was selling cashew nuts to the DW3 and the said fact would establish that, Narayana Naika and plaintiffs were not in continuous possession of the Plaint 'A' Schedule property.

31. It is also to be noted that, nothing is stated in the plaint or in the evidence of PW1 as to on which date onwards, plaintiffs are in possession of Plaint 'A' Schedule property adverse to the interest of the defendant No.1. Therefore, it is relevant to extract the judgment of Hon'ble Supreme Court in the case of **RAVINDER KAUR GREWAL AND OTHERS vs. MANJIT KAUR AND OTHERS** reported in (2019)8 SCC 729, particularly, paragraphs 59 to 62, which reads as under:

"59. 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.

60. *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 synonymous 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 large the 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.

61. *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 re-entry except as provided in Article 65 itself. Tacking is based on the fulfilment of certain conditions, tacking may be 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.*

62. *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.'

32. Following the law declared by Hon'ble Supreme Court in the above case, the plaintiffs have failed to prove as to seek relief of declaration by adverse possession. In respect arguments advanced by learned counsel appearing for appellants as to the amendment of plaint, seeking alternative prayer, the suit was instituted on 16th June, 1989 and the plaintiffs are seeking alternative prayer after a lapse of thirty four years. It is also to be noted that, issues have been framed



based on the pleadings on record and the Trial Court, rightly arrived at a conclusion that the plaintiffs have failed to prove that they have perfected title by adverse possession. Though the learned counsel appearing for the appellant/plaintiffs submitted that the nature of suit will not change on seeking alternative prayer claimed in the amendment application, however, it is well established principle in law that the belated application seeking amendment particularly after a period of thirty four years cannot be accepted. Plaintiffs were not diligent in pursuing the proceedings and have not approached the Court with clean hands.

33. It is also to be noted that the entire case of the plaintiffs before the Courts below is based on the relief claimed characterising to acquire suit property by adverse possession. If the amendment application is accepted and permitted the plaintiffs to amend the plaint at this belated juncture, it would definitely jeopardize the rights of the respondent/defendants. Hon'ble Supreme Court in the case of **BACHHAJ NAHAR** (supra) clearly held that there must be a fundamental claim in the pleadings and in the absence of such pleadings, the Court



cannot mould the relief and grant relief to the parties without there being a evidence on record. Hon'ble Supreme Court in the very same judgment also held that, when there is no prayer for a particular relief and no pleadings to support such a relief, the acceptance of such application will cause miscarriage of justice. It is also to be noted that, if the plaintiffs were diligent during the proceedings, there was no impediment for the plaintiffs to wait for a period of more than three decades to file necessary application for amendment of plaint. In that view of the matter, following the law declared by Hon'ble Supreme Court in the case of **BACHHAJ NAHAR** (supra), the application IA.2 of 2023 filed by appellant/plaintiffs for amendment of plaint cannot be accepted at this stage of the proceedings since, the third parties rights have been already created and the defendant No.1 sold the Plaint 'A' Schedule property to the defendant No.2 as per the registered Sale Deed 28th January, 1987. Therefore, any finding on the said Sale Deed, after a period of twenty nine years would affect the settled position of the defendant No.2. In that view of the matter, the judgments referred to by learned counsel appearing



for appellants cannot be accepted in the peculiar circumstances of the case with regard to amendment of plaint.

34. Though the learned counsel appearing for appellants submitted that the amendment application is permitted to be accepted in the appellate stage, however, as the third party rights have been created during the year-1987 in terms of Sale Deed dated 28th January, 1987, the prayer made by the appellant/plaintiffs cannot be accepted for amendment of plaint at this length of time i.e., after an inordinate delay more than three decades. It is also to be noted that, since, both the Courts below have held against the plaintiffs on facts, the appellant/plaintiffs cannot be permitted to make out new ground/prayer to interfere with the well reasoned judgment and decree passed by the Courts below.

35. In the case of **NAND RAM (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS vs. JAGDISH PRASAD (DEAD) THROUGH LEGAL REPRESENTATIVES** reported in (2020)9 SCC 393, Hon'ble Supreme Court held that, granting of declaration as to adverse possession without admitting the title of the real owner by the plaintiff is not



tenable. In the present case, the plaintiffs, have stated that the husband of plaintiff No.1 and father of plaintiffs 2 to 8 viz., Narayana Naika is not a owner of the Plaint 'A' Schedule property. Therefore, the said fact itself would disentitle the plaintiffs to claim relief of adverse possession.

36. It is also to be noted that the Hon'ble Supreme Court in the case of ***RUSSI FISHERIES P. LTD. AND ANOTHER vs. BHAVNA SETH AND OTHERS*** made in Civil Appeal No.109 of 2010 decided on 09th April, 2026, at paragraphs 31 to 35 held as under:

"31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

32. Long back in 1981, three judges of this Court in the case of Bholaram v. Ameerchand had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in Madhavan



Nair v. Bhaskar Pillai (Dead) by Lrs., wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

33. *In Kashibai w/o Lachiram v. Parwatibai w/o Lachiram and others,, a similar proposition of law was laid down by this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.*

34. *Similar is the situation in the case at hand. The High Court has not found any substantial question of law or a question of law worth consideration in the second appeal and, therefore, there was no occasion for it to have reappreciated the evidence so as to come to a different conclusion.*

35. *Again, in Kulwant Kaur v. Gurdial Singh Mann (Dead) by Lrs and others, it was emphasized that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case."*

37. Therefore, following the law declared by Hon'ble Supreme Court in the aforementioned cases, I am of the view



that the substantial question of law framed by this Court, favours the defendants and I do not find any perversity in the judgment and decree passed by the Courts below. Accordingly, Regular Second Appeal ***dismissed.*** Consequently, for the reasons stated above, IA.2 of 2023 filed by the appellant/plaintiffs for amendment of plaint stands ***dismissed.***

**Sd/-
(E.S. INDIRESH)
JUDGE**

ARK
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