

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA No. 27 of 2009

Shri Dhana Chakma,

son of late Ananda Kumar Chakma,
Tilakpara, P.O. Chailengta,
P.O. Longtarai, District – Dhalai,
State of Tripura.

..... Appellant

- V e r s u s -

- 1. Smt. Sonalaxmi Debbarma,**
daughter of late Mangal Chandra
Debbarma, Village- Mainama, P.S &
Sub-Division – Longtarai, Dhalai,
State of Tripura
- 2. Smt. Sandhya Rani Debbarma,**
daughter of late Mangal Chandra
Debbarma, Village- Mainama, P.S &
Sub-Division – Longtarai Valley,
Dhalai, State of Tripura.
- 3. Shri Sachin @ Sachin Debbarma,**
son of late Mangal Chandra
Debbarma, Village- Mainama, P.S &
Sub-Division – Longtarai Valley,
Dhalai, State of Tripura.
- 4. Shri Swapan Debbarma,**
son of late Mangal Chandra
Debbarma, Village- Mainama, P.S &
Sub-Division – Longtarai Valley,
Dhalai, State of Tripura.
- 5. Shri Sajal Debbarma,**
son of late Mangal Chandra
Debbarma, Village- Mainama, P.S &
Sub-Division – Longtarai Valley,
Dhalai, State of Tripura.
- 6. Shri Satya Debbarma,**
son of late Manindra Debbarma,
Village- Vitar Mainama, P.S & Sub-
Division – Longtarai Valley, Dhalai,
State of Tripura.

- 7. Smt. Rupali Debbarma,**
wife of Sri Rajulal Debbarma,
resident of Vitar Mainama, P.S &
Sub-Division – Longtarai Valley,
District-Dhalai, State of Tripura.
- 8. Shri Ras Mohan Chakma,**
son of late Indradhan Chakma,
resident of village - Tilakpara, P.S &
Sub-Division – Longtarai Valley,
District-Dhalai, State of Tripura.
- 9. Shri Biralal @ Begam Chakma,**
son of late Santi @ Malafa Chakma,
resident of village - Chailengta, P.S
& Sub-Division – Longtarai Valley,
District-Dhalai, State of Tripura.
- 10. Shri Braja Mohan Chakma,**
son of late Indradhan Chakma,
resident of village - Tilakpara, P.S &
Sub-Division – Longtarai Valley,
District-Dhalai, State of Tripura.
- 11. Shri Samir Kumar Chakma,**
son of late Pitiaya Chakma, resident
of village - Tilakpara, P.S & Sub-
Division – Longtarai Valley, District-
Dhalai, State of Tripura.
- 12. Shri Billamangal Sarkar,**
son of Shri Nibaran Sarkar, resident
of Mainama, P.S & Sub-Division –
Longtarai Valley, District-Dhalai,
State of Tripura.
- 13. Legal Heirs of Ramdhan Sarkar,**
 - (a) **Smt. Rupashi Sarkar,**
wife of late Ramdhan Sarkar,
resident of Chailengta, P.S & Sub-
Division – Longtarai Valley, District-
Dhalai, State of Tripura.
 - (b) **Smt. Gita Sarkar,**
daughter of late Ramdhan Sarkar,
resident of Chailengta, P.S & Sub-

Division–Longtarai Valley, District-Dhalai, State of Tripura.

- (c) **Smt. Sandhya Sarkar**,
daughter of late Ramdhan Sarkar,
C/O- Shri Nikhil Das (Teacher), Vill
& P.O. Manu, District-Dhalai, State
of Tripura.
- (d) **Shri Bishnu Sarkar**,
son of late Ramdhan Sarkar,
resident of Chailengta, P.S & Sub-
Division – Longtarai Valley, District-
Dhalai, State of Tripura.
- (e) **Shri Bidhan Sarkar**,
son of late Ramdhan Sarkar,
resident of Chailengta, P.S & Sub-
Division – Longtarai Valley, District-
Dhalai, State of Tripura.

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. H. Deb, Advocate.
For the respondents : Mr. Samarjit Bhattacharjee, Advocate.

Date of hearing : 05.02.2015

Date of delivery
of Judgment & Order : **26.02.2015**

Whether fit for reporting:

Yes	No
√	

JUDGMENT & ORDER

This appeal questions the legality of the judgment and decree dated 12.05.2009 and 31.05.2009 respectively delivered by the first appellate court, the District Judge North Tripura, Kailashahar, now Unakoti Judicial District in Title Appeal

No.20 of 2008 on the following substantial questions of law this appeal was admitted by this Court on 21.08.2009:

(i) Whether the sale deed dated 07.01.2006 (Exhibit-L) executed by Defendant No.1 to 5 to Defendant No.7 without delivery of possession is a sham transaction as liable to be cancelled.

(ii) Whether the deposition of D.W.1, D.W.2 and D.W.4 are to be taken to corroborate possession of suit land by the plaintiff;

(iii) Whether due to death of Ramdhan Sarkar, W/S filed by Billamangal Sarkar by swearing affidavit admitting the possession of suit land by plaintiff can be taken into evidence of possession of plaintiff in the suit land;

(iv) Whether restoration case under Section 187 of TLR and LR Act was with the suit land with Billamangal Sarkar (Exhibit-F, order dated 07-08-90) or with one Bhaighya Chakma with other land; and

any other substantial questions of law which would be pertinent for deciding the present appeal.

[2] It is required to be noted that by the impugned judgment and decree dated 12.05.2009, the first appellate court reversed the judgment and decree dated 26.03.2008 and 31.03.2008 respectively.

[3] For purpose of appreciating the substantial questions, the essential facts are required to be introduced at the outset.

The appellant instituted the suit for declaration of his title by way of adverse possession and for cancellation of the deed executed by the defendants No.1 to 5 in favour of the defendant No.7 (Exbt.L). The defendants No.1 to 5 are the legal heirs of Mangal Chandra Debbarma, who was admittedly the true

owner of the suit land as described in the schedule appended to the plaint. According to the appellant, the defendants No.13 & 14 had been possessing the said suit land in violation of the provisions of Section 187 of the Tripura Land Revenue and Land Reforms Act for a long period beyond the prescription. Even such illegal possession has been recorded in the relevant Khatians (Exbts.1 & 2). It has been further asserted that during the lifetime of Mangal Chandra Debbarma, he did not take any initiative for restoring the possession as per the procedure laid down in Section 187 of the TLR & LR Act, 1960. On 15.10.1987, Billamangal Sarkar and Ramdhan Sarkar, the defendants No.13 & 14 respectively executed an unregistered deed for recording the transfer of possession (Exbt.3) and handed over the possession physically to the plaintiff, the appellant herein. Thereafter, the plaintiff continued in the said possession adversely against all interests of the true owner. During the lifetime of Mangal Debbarma he did not take any initiative to restore or recover the said land from the plaintiff. Mangal Debbarma admittedly died on 14.03.2001. The defendants No.1 to 9, 11 and 12 filed a joint written statement resisting the claim of the plaintiff. Their contentions as reflected in the written statement are that the plaintiff is glove in hand with the defendants No.13 & 14. The purported unregistered deed of transfer is mere a paper transaction. They have denied to have the title of Mangal

Chandra Debbarma extinguished during his lifetime. They have also denied that the plaintiff possessed the suit land on and from 15.10.1987 as claimed. They further asserted that after the death of Mangal Chandra Debbarma, the defendants No.1 to 5 became the owner and possessor of the suit land and those defendants sold the suit land to the defendant No.7 by a registered deed. Apart that, they have asserted as under:

"That, Mangal Ch. Debbarma was the original owner and possessor of the suit land along with other land. Defendant Nos.13 & 14 during life time Mangal Ch. Debbarma left the area due to extremist problem about 22 years ago handing over the land to him. After their departure said Mangal Ch. Debbarma exclusively possessed the suit land along with other land within the knowledge of the plaintiff and other people of the locality. Said Mangal Ch. Debbarma grew banana and planted trees (jum) in the suit land. Khatians also created in his name. Said Mangal Ch. Debbarma died on 14.03.2001, leaving behind defendant Nos.1 to 5 as his legal heirs and after his death the defendant Nos.1-5 became owner and possessor of the suit land along with other land. Defendant Nos.1 to 5 sold the suit land to defendant No.7 after receipt of consideration money vide registered deed dated 07.01.2006 and handed over the possession of the suit land to the defendant No.7. The defendant No.7 after purchase and after getting possession of the suit land started cultivation and planted trees in the suit land within the knowledge of the plaintiff and other people of the locality. The plaintiff never possessed the suit land in any time or at present also he is not in possession of the suit land or any part of it. The plaintiff is the man of the defendant Nos.13 & 14. As the defendant Nos.13 & 14 were thus thrown out of the land. The unregistered deed which were executed by defendant Nos.13 & 14 in favour of the plaintiff as alleged is nothing but a paper transaction an inadmissible and it has no force in the eye of law. The cunning plaintiff tried to grab the suit land illegally. The boundary of the suit land as mentioned in the plaint is not correct one. The correct boundary is of the suit land is as are. On the North- Sri Raju Kr. Debbarma, on the South- Pravabati Chakma, on the East- Pravabati Chakma and on the West-

Harendra Debbarma. The alleged unregistered deed executed by defendant Nos.13 and 14 in favour of plaintiff is nothing but a collusive and manipulated documents and alleged handing over the possession by the defendant Nos.13 and 14 in favour of plaintiff is also an utter and as such the suit is not maintainable."

[4] It can be gathered from the records that the trial court framed the issues apart from the maintainability of the suit or existence of the cause of action as under :

"(4) Has the plaintiff acquired right, title, interest and possession in the suit land by virtue of adverse possession?"

(5) is the sale deed executed by the defendant Nos.1,2,3,4 & 5 in favour the defendant Nos.6 & 7 legal or illegal liable to be cancelled."

[5] The plaintiff adduced 6(six) witnesses but one since was not cross-examined, his examination-in-chief was not taken into consideration by the trial court whereas the defendants adduced 7(seven) witnesses. On analysis of the oral and documentary evidence led by the parties, the trial court has observed as under:

"Rather aforesaid exhibited khatians show Mangal Debbarma as title holder of the land concerned. Exhibit-L, the purchase deed of defendant No.7 executed by defendant Nos.1 to 5 shows that defendant No.7 purchased land measuring 1.82 acres in present dag Nos.1919,1920,1988,1889,1890 and 1896 corresponding to old dag Nos.780 and 777. But instant suit of the plaintiff is regarding land measuring 1.82 acres of the aforesaid present dags. P.W.1 deposed that he got possession of the suit land form Billamangal Sarkar and Ramdhan Sarkar, i.e. the defendant Nos.13 & 14 on 15.10.1987 and since then till date he has been possessing the suit land adversely denying right, title and interest of original owner Mangal Debbarma and subsequently of his successors peacefully without any disturbance from

anybody and within the knowledge of all and he has been possessing it adversely. As the Exhibit-3, the unregistered deed of transfer has no legal value, I am now to scrutinize the oral evidence adduced by the parties in support of possession etc. P.W.2 Gopal Bhusan Chakma though submitted deposition in the form of affidavit did not turn up for cross-examination. P.W.3 Sanat Kumar Chakma deposed that on and from 15.10.1987 the plaintiff the plaintiff has been possessing the suit land adversely denying right, title and interest of Mangal Debbarma and after his death denying the right, title and interest of his successors, i.e., defendant Nos.1 to 5. He deposed that Billamangal and Ramdhan executed the deed of transfer of possession of the suit land. Since that transfer deed vide Exhibit-3 has no evidentiary value I cannot give weight to that document Exhibit-3. P.W.4 Raj Kumar Debbarma deposed that plaintiff has been possessing the suit land from 15.10.1987 by purchasing the possession from Billamangal and Ramdhan with effect from 15.10.1987 till date adversely and denying right, title and interest of Mangal Debbarma till his death and after death denying right, title and interest of defendant Nos.1 to 5, the successors of Mangal Debbarma. The plaintiff has been possessing the suit land although without any interruption by anybody. P.W.5. Gunadhar Chakma also deposed the same thing regarding adversely possessing the suit land by plaintiff. In cross-examination, P.W.5 deposed that he does not know who was the previous owner of the suit land. He cannot say whether plaintiff purchased the suit land from Billamangal and Ramdhan on 15.10.1987. He was not present at the time of handing over of possession to Dhana Chakma. He cannot say who handed over the possession of the suit land to Dhana Chakma. P.W.6 Jahar Lal Deb deposed that he wrote the Exhibit-3. He explained it after writing. It was executed in his presence. Dhana Chakma paid Rs.3,100/- to Billamangal Sarkar and Ramdhan Sarkar. He cannot say if Ramdhan and Billamangal had any title in the scheduled land. They sold the possession only. D.W.1 Rupali Debbarma deposed that she purchased the suit land from defendant Nos.1 to 5 by registered deed dated 07.01.2006. She got possession accordingly. In cross-examination she admits that she knows Dhana Chakma after institution of this case. The suit land is near the house of Dhana Chakma. It is 15/20 cubits away from the house of Dhana Chakma. Mangal Debbarma died in the year 2000 or 2001. Sons and daughters of Mangal Debbarma handed over possession of the suit land to her on 07.01.2006. She cannot say the names of persons who was

present at the time of handing over of possession. So, doubt has arisen regarding handing over of possession of suit land by defendant Nos.1 to 5 to the defendant No.7. In cross-examination she also states that she knew Billamangal and Ramdhan Sarkar. She does not know whether Ramdhan and Billamangal had been possessing the suit land since 1975. Remarkable thing is that she could not say in whose presence possession was handed over to her. D.W.2 Sachin Debbarma, the son of Mangal Debbarma deposed that his father Mangal Debbarma was the original owner and possessor of the suit land. His father died on 14.03.2001. During life time his father possessed the suit land growing banana etc. Defendant Nos.13 & 14 illegally possessed a part of the suit land during life time of his father. But they left the area due to extremist problem leaving the land before 22 years ago. So from this deposition of D.W.2 it is clear that Billamangal and Ramdhan were in possession of the suit land during life time of Mangal Debbarma and they left the area 22 years ago leaving the suit land. But astonishing matter is that Exhibit-1 and Exhibit-2 finally published on 28.09.1989 shows that Ramdhan and Billamangal had been in possession of the suit land illegally. This D.W.2 also deposed that defendant No.13 was lawfully ousted from the possession of the land but Exhibit-L shows that Billamangal was ordered to be ousted by order dated 07.08.1990 of Collector, Kailashahar, North Tripura from the land of Bhagya Chakma and not from the land of Mangal Debbarma. An upto date finally published Khatian being marked as Exhibit-1 and Exhibit-2 do not reflect that Billamangal and Ramdhan were at all ousted from the suit land. Aforesaid exhibited khatians do not show that order of Collector dated 07.08.1990 was at all effected. In the deposition D.W.2, the son of Mangal Debbarma also deposed that after death of his father he and his brothers and sisters had been possessing the suit land. But Exhibit-1 and Exhibit-2 do not reflect to support this submission of son of Mangal Debbarma, the D.W.2. In cross-examination D.W.3 admits that the suit land is adjacent to the house of Dhana Chakma and the house of Mangal Debbarma is 4/5 K.M. away from the suit land. In cross-examination D.W.2 Sachin Debbarma, the son of Mangal Debbarma admitted that Ramdhan and Billamangal remained in his father's land for 10/15 years illegally. He cannot say the year of their stay in the suit land. So it is clearly admitted by D.W.2, the son of Mangal Debbarma that Ramdhan and Billamangal illegally possessed the suit land for 15 years during the

tenure of Mangal Debbarma. He also admits that Billamangal was evicted from the land of his father by course of law. He cannot say the date of eviction. But no evidence has been adduced that Ramdhan and Billamangal were at all evicted from the suit land in course of law. So the son of Mangal Debbarma, i.e., D.W.2 admitted in cross-examination that Ramdhan and Billamangal illegally possessed the suit land for 15 years which proves that Billamangal and Ramdhan adversely possessed the suit land beyond statutory period during the tenure of Mangal Debbarma. D.W.3 Rasamoy Chakma deposed that Mangal Debbarma possessed the suit land by growing banana etc. The sons and daughters of Mangal Debbarma sold the suit land to Rupali Debbarma in the first part of 2006. D.W.4 Samir Kumar Chakma deposed that original owner Mangal Debbarma possessed the suit land. After his death his sons and daughters came into possession of the suit land.”

The other DWs stated about Mangal’s possession over the suit land and they confirmed that by the sale deed, Exbt.L the suit land was transferred to the defendant No.7.

Based on such findings, the suit had been decreed in favour of the plaintiff.

[6] Being aggrieved, the defendants No.1 to 5, 6,7,8,9, 11 & 12 filed an appeal under Section 96 of the C.P.C. against the judgment of the trial court as stated in the court of the District Judge, North Tripura, Kailashahar, now Unakoti Judicial District being Title Appeal No.20 of 2008. By the judgment dated 12.05.2009, the said appeal was allowed dismissing the suit. For reversing the judgment of the trial court, the first appellate court observed as under:

"8. It is an admitted fact that Mongol Deb Barma is the original owner of the suit land. According to the plaintiff, defendants Nos. 13 and 14 were in possession of the suit land denying the right, title and interest of Mongol Deb Barma and the defendant Nos. 13 and 14 on 15.10.1987 transferred the suit land to the plaintiff and thus, the plaintiff acquired title over the suit land by way of adverse possession. On the other hand, it is the case of the defendants that Mongol Deb Barma was the original owner of the suit land and he was in exclusive possession of the suit land and during his lifetime none possessed the suit land and after his death the defendants Nos.1 to 5 being the legal heirs of Mongol Deb Barma rightly transferred the suit land to the defendant No.7.

9. I have perused the evidence on record and I find that in the instant case the defendants produced Khatian Nos.226/1, 266/2, 266/3 and these khatians have marked as Ext. C, Ext.D and Ext. E respectively. From these khatians I find that the suit land has been recorded in the name of Mongol Deb Barma. From the khatians I further find that the names of Billamangol Sarkar and Ramdhan Sarkar have been shown in column No.24 stating that transfer has been made illegally against the provision of section 187 of the TLR & LR Act. Nowhere in the column No.24 of the Khatian it has been stated that Billamongal Sarkar and Ramdhan Sarkar are possessing the suit land. The plaintiff produced the deed, by which Billamongol Sarkar and Ramdhan Sarkar transferred the suit land to him on 15.10.1987 and it has been marked as Ext.3. I find that this Ext. 3 is an unregistered document and as such, this document is not admissible in evidence. The defendants further produced the survivorship certificate and it has been marked as Ext.B. From the Ext.B it transpires that the defendant Nos.1 to 5 are the legal heirs of late Mongol Deb Barma. The defendants further produced the sale deed, by which the defendant defendants Nos. 1 to 5 transferred the suit land to the defendant No.7 and it has been marked as Ext.L. From Ext.B it is clearly established that the defendant Nos. 1 to 5 are the legal heirs of Mongol Deb Barma and as such, in my considered opinion they have absolute right to transfer the suit land to any person according to their own choice. Thus, I find that as per Ext.L the defendant No.7 acquired title over the suit land on the strength of the sale deed.

10. I have perused the judgment passed by the learned Civil Judge (Sr. Division), North Tripura,

Kailashahar and I find that the judgment passed by the learned Civil Judge (Sr. Division), North Tripura, Kailashahar is not well reasoned and he has misread the evidence on record for arriving at his findings. Thus, in my considered opinion the judgment passed by the learned Civil Judge (Sr. Division), North Tripura, Kailashahar is liable to be set aside.

11. The evidence on record does not show that the plaintiff acquired any title over the suit land by way of adverse possession, because the plaintiff failed to prove that Billomongol Sarkar and Ramdhan Sarkar adversely possessed the suit land denying the right, title and interest of Mongol Deb Barma. In order to prove that Billamongol Sarkar and Ramdhan Sarkar were possessing the suit land denying the title of Mongol Deb Barma, in my view the plaintiff should have examined Billomongol Sarkar and Ramdhan Sarkar in this case. But, record shows that Billomongol Sarkar and Ramdhan Sarkar were not examined by the plaintiff in support of his case and no explanation has also been put forward by the plaintiff for non-examination of Billomongol Sarkar and Ramdhan Sarkar. Thus, the findings of the learned Civil Judge (Sr. Division), North Tripura, Kailashahar that the plaintiff has acquired title over the suit land by way of adverse possession is also not tenable in the eye of law.

[7] The finding of the first appellate court is entirely based on the entries recorded in the Khatian being Khatian Nos.266/1 & 266/2 equivalent to Exbts.No.1 & 2. The first appellate court has observed that there is no entry in those Khatians as to the possession of Billamangal Sarkar and Ramdhan Sarkar and he has referred the entry made in column No.24 of those Khatians. The first appellate court has read the entry No.24 wrongly or even that he has not at all read those entries.

In the Khatian No.266/1

Against Dag No.780(P) corresponding new No.1896, the entry is moyaji (meaning, same as) plot No.1889. Against plot No.780(part) corresponding to new plot No.1888, the following entry has been made:

'Transferred illegally against Section 187. Possession Billamangal Sarkar, son of Nibaran Sarkar, resident on the plot'.

In regard to plot No.780(P) corresponding to new plot No.1889, the following entry has been made:

'Transferred illegally against Section 187. Possession Ramdhan Sarkar, son of Mahim Sarkar, resident on the plot'.

In regard to plot No.780(P) corresponding to new plot No.1890, the following entry has been made:

'Moyaji plot No.1888.'

In regard to plot No.780(P) corresponding to new plot No.1920, the following entry has been made:

'Moyaji Plot No.1888.'

In the Khatian No.266/2

In regard to plot No.777(P) corresponding to new plot No.1919, the following entry has been made under column No.24:

'Transferred illegally against Section 187. Possession Billamangal Sarkar, son of Nibaran Sarkar, resident on the plot'.

In regard to plot No.779(P) corresponding to new plot No.1893, the following entry has been made under column No.24:

'Moyaji plot No.1919.'

In regard to plot No.776-1996(P) corresponding to new plot No.1916, the following entry has been made under column No.24:

'Moyaji plot No.1919.'

In regard to plot No.7979(P) corresponding to new plot No.1894, the following entry has been made under column No.24:

Transferred illegally against Section 187. Possession Ramdhan Sarkar, son of Mahim Sarkar, resident on the plot'.

In regard to plot No.779(P) corresponding to new plot No.1895, the following entry has been made under column No.24:

'Moyaji plot No.1894.'

And

In regard to plot No.779(P) corresponding to new plot No.1897, the following entry has been made under column No.24:

'Moyaji plot No.1919.'

It appears that those Khatians were finally published on 28.09.1989. Thus, the finding as returned by the first appellate court is entirely perverse for misreading of the Exbts.1

& 2 corresponding to Exbts.C & D. Hence, that finding stands set aside.

[8] This Court has no hesitation also to observe that the trial court has committed serious error of law by decreeing the suit on the basis of possession of Billamangal Sarkar and Ramdhan Sarkar by returning the finding that during lifetime of Mangal Debbarma, Ramdhan and Billamangal possessed the suit land for 15 years i.e. for beyond statutory period illegally, adversely denying right, title and interest of Mangal Debbarma by growing in the suit land and the possession of suit land by Dhana Chakma is continuous as recorded under Exbts.1 & 2. Those entries remain unrebutted. In this regard, the trial court has been oblivious of the provisions of Section 187 of the TLR & LR Act, 1960 which is a special provision for protecting the land owners belonging to the Scheduled Tribes and the underlying principle laid therein is for protecting the land owners belonging to the Scheduled Tribes from illegal or adverse possession from the non-tribal persons. Section 187 of the TLR & LR Act, 1960 provides as under:

"187 (1) No transfer of land by a person who is a member of the Scheduled Tribes shall be valid unless—

(a) the transfer is to another member of the Scheduled Tribes; or

(b) where the transfer is to a person who is not a member of any such tribe, it is made with the previous permission of the collector in writing in the manner prescribed, or

(c) the transfer is by way of mortgage to a Co-operative society or to a bank or to the Central or the State Government;

Provided that the land transferred to a co-operative society or to a bank by way of mortgage in pursuance of clause (c) shall not be transferred by such society or bank to a person who is not a member of the scheduled tribes without the permission of the collector in writing."

[* the other part is not relevant in the context.]**

[9] By TLR & LR Act (6th Amendment) Act, the word 'transfer' has been explained under Section 187D(2) of the Act as under:

"For the purpose of Section 187, 187B, 187C and 187D, the word 'transfer' shall mean sale, mortgage, lease, exchange and gift as defined in Transfer of Property Act, 1882 and include parting with fully or partly of ownership or possession of any land or any interest therein in any other possession of any land or any interest therein in any other manner whatsoever but shall not include the requisition and acquisition of land under any law for the time being in force."

[10] As such, it is apparent that no court of law can brush aside the said provisions of law for purpose of declaring the title on adverse possession in regard to a land owned by a tribal person in favour of a non-tribal person. That apart, the observation that has been made that Exbt.3, the unregistered deed of transfer of possession is inadmissible in the evidence and that cannot be read, is absolutely unsustainable. Even though the said deed cannot be read or used as evidence of transfer in view of Section 49 of the Registration Act, 1908 which provides as under:

"49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—"

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt,

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]"

But that can be read for collateral purpose as the said proviso to Section 49 of the Registration Act, 1908 would not be applicable to the fact reduced in writing that the possession had been handed over to the plaintiff by Billamangal Sarkar and Ramdhan Sarkar, the defendants No.13 & 14 respectively. In this regard, reliance may be placed on the decision of the apex court in **Satish Chand Makhan vs. Govardhan Das Byas and others**, reported in **AIR 1984 SC 143**, where it has enunciated that:

"The undersigned draft lease agreement Exhibit B-2 was clearly inadmissible in evidence under Section 49 of the Registration Act, except for the collateral purpose of providing the nature and character of possession of the defendants. The document Exh. B-2 was admissible under the proviso to Section 49 only for a collateral purpose of

showing the nature and character of possession of the defendants.”

[11] On over all reading of the substantial questions of law as formulation by this Court as no other substantial questions of law have been suggested from the appellant and on scrutinizing the records, the following points have surfaced to be considered by this Court:

(i) Whether the plaintiff acquired title on adverse possession and

(ii) whether the sale deed dated 07.01.2006, Exbt.L is required to be cancelled or not?

[12] Mr. H. Deb, learned counsel appearing for the appellant has submitted that the plaintiff had been possessing the suit land adversely w.e.f. 15.10.1987 when the defendants No.13 and 14 handed over the possession by executing the unregistered deed (Exbt.3) openly against the true owner namely, Sri Mangal Debbarma and the true owner failed to recover the possession from the plaintiff during his lifetime. He has further submitted that the documentary evidence (Exbts.1 & 2) has clearly established that Mangal Debbarma was never in possession in the suit land. Even though it has been asserted by the defendants No.1 to 9, 11 & 12 that the defendants No.13 & 14 left the possession for the extremists problem and then Mangal Debbarma came into possession but at the same it would be apparent from the record that in the same written statement they have also claimed the said land was recovered from Mangal

Debbarma following the due process of law. Mr. Deb, learned counsel has submitted that there is no evidence that the suit land was ever recovered from the defendants No.13 & 14 and hence, during lifetime of Mangal Debbarma the title by prescription had matured in favour of the plaintiff.

[13] From the other side, Mr. Samarjit Bhattacharjee, learned counsel appearing for the respondents No.1 to 9,11 & 12 has submitted that the plaintiff has failed to prove his possession adverse against the true owner. Moreover, he has raised a jurisprudential objection as regards the maintainability of a suit for declaration of title on adverse possession in view of the decision of the apex court in **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Anr.**, reported in **(2014) 1 SCC 669**, where it has been held that the appellant claims ownerships by adverse possession on the grounds that it is in possession of the land for sufficiently long period which fact has been established and therefore, the suit could not be dismissed. We however, find that this relief has been denied on the ground that the suit was not maintainable inasmuch the declaration to this effect on the basis of adverse possession cannot be sought and the plea of the adverse possession can only be used as defence by the defendant.

It has been further observed in **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Anr.**, as under:

"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."

[14] Let us take first the jurisprudential objection as raised from the respondents. In the aftermath of **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Anr.** and on consideration of the said decision, this Court in **Makhanbala Chakraborty Dead by LRs. & Others vs. Pranab Kanti Basu and others** in RSA No.10 of 2008 decided on 26.09.2014 has observed as under:

[14] There cannot be any amount of equivocality that when the possession becomes adverse if the true owner does not sue the adverse, possessor for recovery of the possession of the immovable property or interest based on title, his right to property extinguishes after 12 years. Similarly, by operation of Article 112 such right extinguishes after 30 years when the possession becomes adverse for the State. This doctrine of right on adverse possession favours the settlers against the absentee owner. In one decision being *Albert J. Lawrence Vs. Town of Concord : 439 Mass. 416*, the Supreme Judicial Court reversed the decision of the superior and appeal courts in the U.K and affirmed the ancient doctrine. In *Lawrence vs. Concord*, it has been held that adverse possession as a doctrine assumes that the adverse possessor may be acting with hope and even the intent to conceal that he has no valid interest in the property because his use is open to the World to see and he appears to be acting as though he were a true owner, the inner workings of his mind are irrelevant. So long as a man is in possession of the land claiming title, however, wrongly and with whatever degree of knowledge that he has no right, so long the real owner is out of

possession in a constructive as well as an actual sense. *"It is of the nature of the statute of limitations when applied to civil actions, in effect, to mature a wrong into a right, by cutting off the remedy."*

In India we have witnessed the legislative change as regards the continuous possession. In Article 144 of the Limitation Act, 1908 it was mere continuous possession for 12 years that used to covert the right of the true owner extinguished but in Article 65 of the Limitation Act it is not mere continuous possession for 12 years that extinguishes the right of the true owner to recover but it is the continuous, open and adverse possession that extinguish the right of the true owner. Mere being in the continuous possession under Article 65 read with Section 27 of the Limitation Act, 1963 would not limit the right of the true owner to recover his immovable property based on the title. There cannot be any other interpretation that if the adverse possession is proved beyond the period of limitation as stated, the right of the true owner over the immovable property be extinguished.

[15] Is possession is fact or a right? This question must be taken to mean, by possession and right, what the law means by those words and not something else which Philosophers or Moralists may mean by them. For the courts we have nothing to do either, except in a legal sense. If these had always steadily in mind the question would hardly have been asked. A legal right is nothing but a permission to exercise certain natural powers and upon certain conditions to obtain protection, restitution or compensation by the aid of the public force. Just so far as the aid of the public force is given a man, he has a legal right, and this right as the same whether his claim is founded in the righteousness or in equity. Just so far as possession is protected, it is a such a source of legal rights as ownership is when it secures the same protection.

Every right is a consequence attached by the law to one or more facts which the law defines, and wherever the law gives anyone special rights not shared by the body of the people, it does so on the ground that certain special facts, not true of the rest of the World, are true of him. When a group of facts thus singled out by the law exists in the case of a given person, he is said to be entitled to the corresponding rights, meaning thereby, that the law helps him to constrain his neighbours, or some of them,

in a way in which it would not, if all the facts in question were not true of him. Hence, any word which denote such a group of facts connotes the right attached to it by way of legal consequences and any word which denotes the right attached to a group of facts connotes the group of facts in like manner.

Oliver Wendell Holmes, Jr. in his lecture on The Common Law has pointed out certain features of possessions:

"The word "possession" denotes such a group of facts. Hence, when we say of a man that he has possession, we affirm directly that all the facts of a certain group are true of him, and we convey indirectly or by implication that the law will give him the advantage of the situation. Contract, or property, or any other substantive notion of the law, may be analyzed in the same way, and should be treated in the same order. The only difference is, that, while possession denotes the facts and connotes the consequence, property always, and contract with more uncertainty and oscillation, denote the consequence and connote the facts. When we say that a man owns a thing, we affirm directly that he has the benefit of the consequences attached to a certain group of facts, and, by implication, that the facts are true of him. The important thing to grasp is, that each of these legal compounds, possession, property, and contract, is to be analyzed into fact and right, antecedent and consequent, in like manner as every other. It is wholly immaterial that one element is accented by one word, and the other by the other two. We are not studying etymology, but law. There are always two things to be asked: first, what are the facts which make up the group in question; and then, what are the consequences attached by the law to that group. The former generally offers the only difficulties.

Hence, it is almost tautologous to say that the protection which the law attaches by way of consequence to possession, is as truly a right in a legal sense as those consequences which are attached to adverse holding for the period of prescription."

[Emphasis added]

[16] What *Oliver Wendell Holmes, Jr.* has observed in his lecture on The Common Law finds its reverberation in *Kshitish Chandra Bose vs. Commissioner of Ranchi*, reported in (1981) 2 SCC 103, where a three Judges' Bench of the apex court has observed as under:

"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."

[Emphasis added]

[17] In *Balkrishan*, the apex court has approvingly extracted the principle laid down in *S.M. Karim Vs. Mst. Bibi Sakina*, reported in AIR 1964 SC 1254. For reference para-7 of *Balkrishan* is extracted:

"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. Mst. Bibi Sakina* speaking for this Court Hidayatullah, J. (as he then was) observed thus:

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

[18] In *Secretary of State for India in Council vs. Debendra Lal Khan*, reported in AIR 1934 PC 23, the Privy Council had the occasion to consider the effect of legislation which was in force at that time that if the plaintiff can establish that those from or through whom he derived right, for 60 years been in possession adverse to the crown, whether any right of the crown thereto is extinguished and whether the

plaintiff has succeeded in his claim of title based in adverse possession.

"As to what constitutes adverse possession, a subject which formed the topic of some discussion in the case, their Lordships adopt the language of Lord Robertson in delivering the judgment of the *Board in Radhamoni Debi v. Collector of Khulna (1)* (at p.140 of 27 I.A),, where his Lordship said that '*the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.*'

The classical requirement is that the possession should be *nec vc nec clam nec precario*. Mr. Dunne for the Crown appeared to desiderate that the adverse possession should be shown to have been brought to the knowledge of the Crown, but in their Lordships' opinion there is no authority for this requirement. It is sufficient that the possession be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. If the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. The Limitation Act is indulgent to the Crown in one respect only, namely in requiring a much longer period of adverse possession than in the case of a subject; otherwise there is no discrimination in the statute between the Crown and the subject as regards the requisites of adverse possession. It may be added that it is not necessary in order to establish adverse possession that the proof of acts of possession should cover every moment of the requisite period. Though the possession,

" be not proven to have continued every quarter, month or year, yet ordinary possession will be sufficient *ad victeem causae*, albeit it be proponed in the terms of a continual possession, *quia probatis extremis praeesumuntur media*, if the distance be not great" : *Stair's Institutions of the Law of Scotland*, 4., 40. 20.

" The fact of possession may be continuous though the several acts of possession are at considerable intervals.

How many acts will infer the fact is a question of proof and presumption independent of prescription : *Millar on Prescription*, p. 36."

The Privy Council after distinguishing the nature of possession has held that the Crown's right was extinguished creating title of the plaintiff on adverse possession.

[19] In *P. Lakshmi Reddy Vs. L. Lakshmi Reddy*, reported in *AIR 1957 SC 314*, it has been held by the apex court that the statute of limitation does not attach to the claim, there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued, is to ascertain the time when the plaintiff could first have maintained his action to a successful result. It definitely implies that if the adverse possession expires the period of limitation, a plaintiff can bring an action based on such extinguishment to assert his right and in that event he might succeed in the suit.

[20] In *T. Anjanappa and Ors. vs. Somalingappa and Anr.* reported in (2006) 7 SCC 570, this aspect again fell for consideration of the apex court and it has been observed as under:

"19. In Halsbury's Laws of England, 1953 Edition, Volume-I it has been stated as follows:

At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgement. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him.

20. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

[Emphasis added]

[21] In *Des Raj and Ors. vs. Bhagat Ram (Dead) By LRs. and Ors.*, reported in (2007) 9 SCC 641, a two Judges' Bench of the apex court has held in contrast to what has been held in *Gurduwara Sahib* as under:

19. Only because the parties did not use the terminology which they should have, ipso facto, would not mean that the ingredients for satisfying the requirements of statute are absent. There cannot be any doubt whatsoever that having regard to the changes brought about by Articles 64 and 65 of the Limitation Act, 1963 vis-a-vis Articles 142 and 144 of the Limitation Act, 1908, the onus to prove adverse possession would be on the person who raises such a plea. It is also furthermore not in dispute that the possession of a co-sharer is presumed to be possession of the other co-sharers unless contrary is proved.

20. A plea of adverse possession or a plea of ouster would indisputably be governed by Articles 64 and 65 of the Limitation Act.

21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-a-vis his co-owners and they were in know thereof.

22. 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 therefore would be 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 plaintiffs 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 go to show that even prior to institution of the said suit the plaintiff-respondent has been in hostile possession thereof.

23. Express denial of title was made by the plaintiff-respondent in the said suit in his written statements. The courts, therefore, in the suits filed by the defendants - appellants, were required to

determine the issue as to whether the plaintiff- respondent had successfully ousted the defendants - appellants so as to claim title himself by ouster of his co-owners.

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 knowledge of the defendants - appellants.

25. The parties went to trial fully knowing their respective cases. The fact that they had been co-owners was not an issue. The parties proceeded to adduce evidences in support of their respective cases. Defendants -Appellants, keeping in view of the fact that they have unsuccessfully been filing suit for partition, were also not prejudiced by reason of purported wrong framing of issue. They knew that their plea for joint possession had been denied. They were, therefore, not misled. They were not prevented from adducing evidence in support of their plea.

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.

27. Mr. Das has relied upon a decision of this Court in *Saroop Singh v. Banto* : (2005) 8 SCC 330, in which one of us was a member. There is no dispute in regard to the proposition of law laid down therein that it was for the plaintiff to prove acquisition of title by adverse possession.

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

...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....

29. Yet again in *T. Anjanappa and Ors. v. Somalingappa*, it was held:

'12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.'

30. In this case, however, a finding of fact has been arrived at by all the three courts. They have analysed the evidences on record. They have taken into consideration the correct legal position operating in the field as also conduct of the parties. They, in our opinion, applied the correct principles of law as regards 'burden of proof.'

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

32. We, therefore, find no infirmity in the impugned judgment. The appeal is dismissed. In the facts and circumstances

of the case, there shall, however, be no order as to costs.”

[Emphasis added]

[22] What has distinctly appeared is that in *Balkrishna*, a two Judges’ Bench of the apex court has held that the plaintiff had acquired rights of bhumiswami (the owner) on the basis of the adverse possession of the suit land.

In *Kshitish Chandra Bose*, a three Judges of the apex court has held that 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 to evict the trespasser, his title by prescription would be complete after thirty years.

In *Des Raj and Ors*, a two Judges Bench of the apex court again held that having regard to the peculiar fact obtaining the case, the apex court was of the opinion that the plaintiff-respondent had established that he acquired title by ousting the defendants-appellants by declaring hostile title in himself which was to the knowledge of the co-sharers. Such, declaration of title on adverse possession has got the approval of the apex court in that case.

None of those precedents are considered in *Gurduwara Sahib* for holding that even if the plaintiff is found to be adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. The conflict between the decisions of *Balkrishna*, *Kshitish Chandra Bose*, *Des Raj and Ors*. in one side and *Gurduwara Sahib* on the other, has taken the centre stage in the controversy in this appeal. Even though the maintainability of a declaratory suit for title on adverse possession at the instance of the plaintiff has not been expressly considered by the apex court except in *Gurduwara Sahib*, but when the apex court observes that no infirmity is found in the decree declaring title on adverse possession of the plaintiff it is to be invariably inferred that it approves such declaration.

[23] In *Balkrishna*, the apex court has declared that the plaintiff had acquired the rights of the owner on the basis of adverse possession over the suit land. Even in *Kshitish Chandra Bose*, the law has been positively stated that “title by prescription would be complete after 30 years.” In *Des Raj and Ors*., the title has been affirmed on adverse

possession in favour of the 'the plaintiff-respondent'. Adverse possession can never be used as the sword but as the shield is no doubt a moral convention but it was never tested on the touchstone of law. What *Oliver Wendell Holmes, Jr.* has observed is of considerable significance that it is almost tautologous to say that the protection which the law attaches by way of consequence to possession is as truly as a right in a legal sense as those consequences which are attached to the adverse holding for the period of prescription. Section 27 of the Limitation Act categorically provides that if within a period prescribed by law of limitation any person fails to institute suit for recovery of possession of any property 'his right to such property shall be extinguished'. Such possession known as the adverse possession is not a mere fact, it creates a definite right in favour of the squatter on extinguishment of the right of the true owner. When the law recognises that right the said right has to be considered as the right attached to it by way of legal consequences. Whether a person who had acquired such right should wait for infinite periods to be sued by a person whose interest in the property has been extinguished or the right as matured by way of adverse possession should be acknowledged as has been acknowledged in respect of registering a conveyance executed by a squatter, inasmuch as the Registrar does not have the right to question the title of the transferor cannot be held to be left in the lurch for stairs decision as referred. This aspect may require further dilation. But in view of the decision rendered by the three Judges' Bench in *Kshitish Chandra Bose*, this Court would go by the decision of the larger Bench that 'the title by prescription would be complete' after the expiry of the period of limitation from the day when the possession becomes adverse. If the title by prescription becomes complete after expiry of the period of limitation there is no embargo for the civil court to declare such right. Apart that it would bury the uncertainty as to the title and nip the complex disputes at the bud.

[24] Equity and righteousness are the core of the justice. If any law stands contrary to those principles it is only expected that the legislature would bring about the necessary change in the law, if they are of the opinion that such change is required in the changed circumstances. The apex court in *Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and Ors.*, reported in

2008 AIR SCW 6996 has been persuaded to observed that:

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

35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.

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

[15] In view of this, the jurisprudential objection must fail as already observed that the first appellate court misread the documents Exbts.1 & 2 equivalent to Exbts. C & D and based on such perverse reading reversed the finding of the trial court. Even the trial court has considered the possession of the defendants No.13 & 14 for purpose of decreeing the suit in favour of the appellant. The title on adverse possession claimed

to have matured in favour of the plaintiff can be decided on his possession alone, since the plaintiff belongs to the Scheduled Tribe and his possession shall not be hit by Section 187 of the TLR & LR Act as stated. It has been categorically asserted that from 15.10.1987 the plaintiff has been possessing the suit land adversely denying the right, title and interest of the true owner. By evidence, it has been well proved that on 15.10.1987 he came into possession and such fact has been recorded in the unregistered deed dated 15.10.1987 (Exbt.3). It further appears that the respondents, the defendants No.1 to 9, 11 & 12 did not prove that they were in possession over the suit land or their predecessor had been in the possession over the suit land, which they continued to hold. Rather, the said respondents, the principal defendants in the suit have taken a contradictory stand as to the fact of their predecessors coming into possession over the suit land. From the testimonies as laid by the plaintiff, this Court is of the view that he has sufficiently proved that he had been in the possession for more than 12 years since 15.10.1987 and thus, this Court has no hesitation to hold that the title over the suit land on adverse possession has matured in favour of the plaintiff on extinguishing all rights of the true owner. However, the sale deed dated 07.01.2006 (Exbt.L) cannot be declared liable to be cancelled inasmuch as the said deed has been executed by the persons having apparent competent to transfer

the title but in view of the declaration as made, the title deed dated 07.01.2006 will no force whatsoever and be treated inoperative for all purposes. As such, the respondents No.1 to 9 are restrained from disturbing the possession of the plaintiff by any means inasmuch as this Court has declared title in favour of the plaintiff by prescription and his possession on the suit land.

The suit is therefore, decreed in terms of the above.

[16] Having held so, this appeal stands allowed.

Draw the decree accordingly.

Thereafter, send down the LCRs.

JUDGE

Sujay