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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 08.12.2015**

% **RSA 261/2014**

OM PRAKASH & ORS Appellants

Through: Mr. J.K. Bhole & Mr. R.K. Sharma,
Advocates.

versus

PREM SINGH Respondent

Through: Mr. H.M. Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.16194/2014 (under Section 5 of the Limitation Act read with Order 41 Rule 3A CPC for seeking condonation of 2448 days delay in filing the present appeal)

1. This application has been filed by the appellants to seek condonation of 2448 days delay in filing the present second appeal.
2. This appeal is directed against the judgment and decree dated 05.10.2007 passed by Sh. M.C. Garg, Additional District Judge, Tis Hazari Courts, Delhi (as His Lordship then was) in RCA No.8/2006. The appeal has been preferred only on 18.09.2009, thereby entailing the aforesaid delay.
3. The explanation furnished by the appellants to seek condonation of

delay is that the appellants had preferred a review petition within the period of limitation before the First Appellate Court, which got decided only on 16.08.2014. The present appeal was filed within the period of limitation from the passing of the review order dated 16.08.2014. The appellants submit that the appellants had been diligently following up the matter in the review application. The appellants submit that the delay is technical in nature on account of the long time taken by the Appellate Court in deciding the review application.

4. Learned counsel for the appellants has placed reliance on the order dated 15.12.2008 passed in *Mohd. Salim Vs. Bhanumati & Others*, Application No.116855/2008 in FAO No.673/2008, wherein, in similar circumstances, the Allahabad High Court had condoned the delay of 1 year and 54 days in filing the appeal since the appellant had, in the meantime, filed a review application and the same was pending.

5. Learned counsel for the respondent has opposed the application. The submission of learned counsel for the respondent is that the appellants themselves were responsible for the delay in disposal of the review application and, therefore, the appellants cannot take advantage of the fact that the review application was pending during the said period.

6. Having heard learned counsel, I am of the view that the appellants have been able to sufficiently explain the delay in filing the present appeal. From the conduct of the appellants, it is seen that the appellants did not delay the filing of the review application and filed the same within the period of limitation. The appellants cannot be held responsible for the delay

by the First Appellate Court in disposing of the review for nearly seven years. The respondent/ appellant cannot raise a grievance in this regard because the respondent was also participating in the said proceedings. If the respondent was aggrieved by the said delay, it was open to him to oppose the adjournments; not seek adjournments on his own, and; also to seek expedited disposal of the review application by approaching this Court. The delay cannot be said to be deliberate since the review of the appellants was pending.

7. Consequently, the application is allowed and the delay of 2448 days in filing the present appeal is condoned.

RSA 261/2014 and C.M. No.16192/2014

8. The present second appeal is directed against the judgment & decree dated 05.10.2007 passed in RCA No.8/2006 by the learned First Appellate Court, namely the learned ADJ/ARCT, Delhi, whereby the first appeal preferred by the respondent/ plaintiff was allowed and the suit preferred by the original plaintiff for possession of the suit property was decreed.

9. The plaintiff filed the original suit bearing Suit No.991/2002 for recovery of possession of the suit property bearing Municipal No.4/18, Katra Kheman Ram, Andha Mughal, Beg Kere Khan, Delhi on the premise that he had inherited the suit property from his father Chaudhary Kheman Ram. He stated that the property was ancestral. He stated that late Sh. Ram Narain – the predecessor-in-interest of the defendant/ appellants was a tenant in respect of the suit property under Chaudhary Kheman Ram. He further stated that Chaudhary Kheman Ram had filed a suit for ejectment of

late Sh. Ram Narain, which was decreed. However, late Sh. Ram Narain continue to hold over the premises and to be in possession of the suit property.

10. He further disclosed that a suit for recovery of mesne profit was also filed by Chaudhary Kheman Ram, which was decreed in the year 1963. During this period, Sh. Ram Narain had died. The defendants being the legal representatives of late Sh. Ram Narain continue to hold the suit property after his death.

11. He stated that in the year 1973, defendant No.1 set up a hostile title in respect of the suit property, and filed a suit against the plaintiff for declaration that he is the owner of the property by way of adverse possession. This suit was dismissed.

12. He also disclosed that he filed a suit for recovery of rent of the suit property against the defendant No.4 in which defendant No.1 appeared as attorney of defendant No.4 and took the stand that defendant is owner of the suit property by way of adverse possession. The plaintiff claimed that the superstructure in the property was built by predecessor-in-interest of the defendant. The plaintiff claimed that he was entitled to possession in respect of the land by removing the superstructure. Since the defendants had failed to handover the property, the suit was filed by the plaintiff.

13. The suit was contested by the defendants. One of the defences raised, *inter alia*, was that the suit was barred by limitation. The defendants stated that the plaintiff's father Chaudhary Kheman Ram had obtained a decree of ejectment against the father of the defendants on 26.03.1957. However, this

decree was not executed within the statutory period of twelve years. They have claimed that the second suit for ejectment was not maintainable. The plaintiff had sent two notices dated 06.11.1970 and 09.07.1972 to defendant No.1, wherein the plaintiff described defendant No.1 as an unauthorized occupant and a trespasser. However, no such allegation was made qua defendants No.2 to 4. Therefore, the suit was not maintainable against the defendants No.2 to 4. The defendants claim that the permanent structure on the plot had been raised by defendant No.1, who had acquired title by adverse possession and no relief could be granted to the plaintiff after a lapse of more than 25 years from the date of decree of ejectment, i.e. 26.03.1957.

14. The Trial Court framed the issues on 22.11.1982; Issue No.3 being: *“Whether the suit is barred by limitation? OPD”*; Issue No.2 was: *“Whether the plaintiff has locus standi to file the present suit”*, and; Issue No.4 was: *“Whether the suit is not maintainable against the defendants No.2 to 4?”*. The Trial Court initially dismissed the suit vide judgment dated 10.08.1984. This judgment was carried in appeal, and in first appeal, the same was set aside vide order dated 20.03.1987. The case was remanded back to the Trial Court with a direction to return findings on Issues No.2, 3, 4, 6 & 7 on the basis of the pleadings and evidence on record. The Trial Court by the judgment and decree dated 01.02.2005 again dismissed the suit. While doing so, Issues No.2 & 4 were decided in favour of the plaintiff, while Issue No.3, i.e. *“Whether the suit was barred by limitation?”* was decided in favour of the defendant/ appellant.

15. The respondent/ plaintiff then preferred a regular first appeal being

RCA No.8/2006. The appellant/ defendants also preferred cross-objections qua the findings returned on Issues No.2 & 4 by the Trial Court. The First Appellate Court, by the impugned judgment, set aside the judgment of the Trial Court by holding that the suit was not barred by limitation, and consequently, while allowing the appeal, decreed the suit in favour of the appellants qua the suit property. The respondent/ defendant was granted liberty to remove superstructure within one month of passing of the decree. In the alternative, the plaintiff was held entitled to take possession of the land as well as building constructed thereupon.

16. The appellants then preferred a review application under Order 47 Rules 1 & 2 CPC read with Sections 114 & 115 CPC to seek review of the judgment dated 05.10.2007 primarily on the premise that the First Appellate Court had ignored the findings returned by the learned Additional District Judge while deciding the first appeal on 20.03.1987, whereby the case was remanded back to the Trial Court for fresh adjudication on Issues Nos.2, 3, 4, 6 & 7. It was also claimed that there were factual errors and legal errors in the judgment dated 05.10.2007. The First Appellate Court, however, rejected the review vide order dated 16.08.2014, whereafter the present second appeal has been preferred to assail the judgment & decree dated 05.10.1987 with an application to seek condonation of delay, which has been allowed hereinabove by the order passed today.

17. The submission of learned counsel for the appellants/ defendants is that the finding returned by the First Appellate Court on Issue No.3 is laconic, and that it raises a substantial question of law for consideration of this Court, namely: *“Whether the suit of the respondent/ plaintiff for*

possession was barred by limitation?''. Learned counsel submits that with the passing of the judgment & decree on 26.03.1957, the status of the tenant, namely Sh. Ram Narain, ceased to be that of a tenant *holding over*, as the occupation of Sh. Ram Narain was not with the consent of the landlord Chaudhary Kheman Ram and was hostile to him. Learned counsel submits that the possession of late Sh. Ram Narain in the face of the ejectment decree, and the decision of the execution proceedings launched by Chaudhary Kheman Ram, leave no manner of doubt that late Sh. Ram Narain was treated as a trespasser in the suit property post the passing of the said ejectment decree.

18. He further submits that late Sh. Ram Narain did not make any payment to the landlord Chaudhary Kheman Ram towards rent after the passing of the decree for ejectment dated 26.03.1957. He submits that Sh. Ram Narain, the tenant, expired on 05.12.1967 leaving behind the appellants as his legal heirs and representatives. On 06.11.1970, the respondent served a notice and demanded mesne profits and also vacant possession of the premises from the appellants herein. A similar notice was sent on 09.08.1972. These notices clearly show that the appellants were being treated as trespassers and not as tenants holding over in the suit property. Learned counsel submits that the suit filed by Sh. Rameshwar Dayal, S/o Sh. Ram Narain to seek a declaration of title on the premise of being in adverse possession was not even maintainable, as the plea of adverse possession can be raised as a defence and cannot be affirmed on the basis of a declaratory claim in a suit. He submits that filing of the said suit did not give cause of action to the respondent/ plaintiff.

19. Learned counsel further submits that the issue is not whether the appellant was entitled to protection against dispossession on the basis of adverse possession. The question is till when the respondent/ plaintiff could have filed the suit for possession, which was filed on 13.03.1981.

20. Learned counsel for the appellant placed reliance on the decision of this Court in ***Ram Singh Vs. Nathi Lal & Others***, AIR 1983 Delhi 114, to submit that after the passing of an ejectment decree, and after the demise of the tenant, his heirs and legal heirs remain in possession as unauthorized occupants/ trespassers. He submits that late Sh. Ram Narain, the original tenant died on 05.12.1967 and the possession of the appellants/ heirs of late Sh. Ram Narain post 05.12.1967 has been that of trespassers. The period for filing the suit for recovery of possession, thus, expired on 04.12.1979, whereas the suit was filed on 13.03.1981.

21. He also placed reliance on ***M/s Dr. Ambedkar Education Society v. M/s Kamakshi Buildings & Partnership Firm & Ors.***, 2000 AIHC 2029 and ***Lalit Mohan Ghosh Vs. Atal Mondal & Others***, AIR 1972 Cal.81. Reliance has also been placed on the observations made by Ms. Santosh Duggal, ADJ (as Her Ladyship then was) in her judgment dated 20.05.1987, whereby the initial judgment of the learned Sub-Judge, Delhi dated 10.08.1984 was set aside and Issues No.2, 3, 4 & 6 were remitted back to the Trial Court for deciding afresh. In the said judgment dated 20.05.1987, the learned ADJ made the following observations:

“26. It has, therefore, to be taken as established that the D.H Kheman Ram namely plaintiff’s father had, irrespective of the fact that the decree had not been put to execution, did not treat

Ram Narain, deceased as a tenant in the suit property, as evidenced by the fact that he sued him for recovery of mesne profits for use and occupation and not for rent. The Judgment of Hon'ble Delhi High Court on which the Ld. Counsel for the Appellant placed reliance reported in AIR 1983 Delhi-114 has a direct application to the facts of the present case because the facts are similar inasmuch as here also the ejectment decree was not put to execution and no permission even of the Competent Authority under the Slum Area Act had been applied for and that the decree remained un-executed against the tenant till his death, and thereafter a suit for recovery of possession has been brought against his legal heirs, which suit was held to be a perfectly maintainable.

27. On the basis of this authority, the suit of the plaintiff could not be held to be not maintainable because their predecessor in interest has not left any heritable rights to the defendants for possession of the property, and the plaintiff was entitled to come up with a suit for recovery of possession on the allegations that the defendants were unauthorized occupants.”

22. Learned counsel for the appellants lastly submits that the cross-objections preferred by the appellants have not been considered by the First Appellate Court, since there is no adjudication on the issue raised by the appellants with regard to the locus standi of the respondent to file the suit.

23. On the other hand, learned counsel for the respondent submits that there is no merit in the present appeal and it does not raise any substantial question of law for consideration of this Court. He submits that the present appeal is merely another attempt by the appellant to somehow retain possession of the suit property, despite the passing of the decree in favour of the father of the respondent/ plaintiff in 1957 and despite the passing of the appellate decree in question. He submits that the father of the respondent/

plaintiff initiated execution proceedings soon after obtaining the decree in 1957. Those execution proceedings did not culminate in the possession being delivered to the original plaintiff late Chaudhary Kheman Ram, or to the plaintiffs. Those execution proceedings were adjourned *sine die* – meaning thereby that the said execution proceedings are still pending. He submits that mere continuance of possession by the original tenant late Sh. Ram Narain, or thereafter by the appellants, does not tantamount to their possession being adverse to the title of the owner. The possession of the appellants became adverse to the plaintiffs only when, for the first time, they openly set up a title adverse to that of the plaintiff by seeking to exercise rights of ownership in the suit property. This happened only in the year 1973 when defendant No.1 set up a hostile title in respect of the suit property by filing a suit to seek a declaration of his title on the basis of adverse possession. It is only then that the plaintiff got notice that the appellants are setting up a title adverse to that of the plaintiff. Learned counsel submits that the said suit was withdrawn by the appellant and, thus, the claim of adverse possession was given up by appellant No.1. In any event, the present suit was filed by the plaintiff well within the period of limitation from the said date, i.e. on 13.03.1981. He further submits that even if the limitation is assumed to start on 06.11.1970 – when the plaintiff described the appellants/ defendants as trespassers, the suit was filed within 12 years thereof. Learned counsel submits that there is no merit or basis for the appellants to claim that their possession became adverse to the plaintiff, or his predecessor-in-interest, immediately upon the passing of the decree in 1957 in the suit filed by late Chaudhary Kheman Ram.

24. Having heard learned counsel and perused the entire record as well as the judgments of the two Courts below, I am of the view that there is no merit in the present appeal and it does not raise any substantial question of law for consideration of this Court.

25. The First Appellate Court has very exhaustively dealt with the issue of limitation in the impugned judgment dated 05.10.2007. The First Appellate Court observed that the decree for ejectment passed in 1957 initially could not be executed as such an objection was raised by late Sh. Ram Narain that slum permission had not been obtained. This objection was held to be not sustainable by the learned ADJ and even this Court dismissed the appeal of the appellants. However, even thereafter, the said decree could not be executed as there was no direction in the decree to remove the super structure set up by the appellants' predecessor-in-interest. Consequently, the execution application was adjourned *sine die* in May 1966. The First Appellate Court held that the non-execution of the decree made no difference to the status of Sh. Ram Narain. He continued to be a tenant *holding over* till his death, and thereafter, his Legal Heirs inherited the same status. The plea of the appellants that adverse possession could be claimed by merely remaining in possession of the property for a long time was rejected. The First Appellate Court, *inter alia*, placed reliance on ***Ram Barai Singh v. Tirtha Pada Misra***, AIR 1957 Cal 173, wherein the Court has held as follows:

“In the absence of an agreement to the contrary, the tenant's continuance of possession after the termination of the lease, coupled with the landlord's assent, would constitute a tenancy by holding over and the lease would be renewed from year to

year or from month to month, according to the purpose of the tenancy under S.106 of the Transfer of Property Act.”

26. The learned Judge also relied upon **Kunnabai, w/o Ganeshlal & Ors. v. Ashu, s/o Waman & Anr.**, 1998 (2) MHLJ 161, wherein the essential requirements for a claim of adverse possession were laid down in the following words.

“the person claiming adverse possession will also have to point out as to since when, i.e at what point of time, he started claiming possession adverse to the real owner and further will have to satisfy that even though his possession was of such nature that it cautioned the real or true owner of the property to take steps for obtaining possession, he remained in possession uninterruptedly, peacefully, without any obstruction from the true owner of the property. Therefore the concise statement of material facts constituting plea of adverse possession are necessary. A bare statement without there being any material particulars pleaded in the written statement if allowed to be proved, will lead the plaintiffs or true owner of the property into confusion and taken him by surprise at the trial.”

27. Reliance was also placed on **Surajmal Marwari & Ors. v. Rampearaylal Khandelwal & Ors.**, AIR 1966 Pat 8, in support of the plaintiff’s plea that the defendants/ appellants herein had not pointed out even a single overt act from which it could be ascertained as to when their possession became hostile or adverse, prior to the filing of the suit for declaration in 1973. The discussion found in the impugned judgment is elaborate and exhaustive. Even though the same is lengthy, I am tempted to quote the relevant extract from the said judgment as, in my view, it very correctly and appropriately analysed the issues arising in the present case in the light of the settled legal position. The relevant extract reads as follows:

“24. The questions to be determined by this court in this appeal are:

(i) What was the status of deceased Ram Narain after the order of eviction passed in 1957 till his death;

(ii) Whether the respondents acquired the possession of the suit property as trespassers and if so since when;

(iii) When did they raise the plea of adverse possession for the first time;

(iv) If the appellant inherited the suit property & if so, since when the limitation started running against him for filing the suit in question.

25. While deciding a plea of adverse possession and more so by a person who was (admittedly) once inducted into the premises as a tenant, i.e., permissible possession, the principle is that there is a presumption that the existing state of affairs continues. I should not be understood as saying that there can never be adverse possession at the instance of one, who was once upon a time a tenant against the owner but it will be a very uphill task and would require a clear proof. The rationale for this legal principle is that an owner is entitled to presume that the relationship continues. Otherwise, the owner may be thinking that it is in possession of a tenant while the period for prescription might be running..... ..

26. In the present case too, the bar of Slum Area (Clearance & Improvement) Act (which is applicable only to a tenant and not to a ranked trespasser) was raised. This continued till at least 1966. Thus at least till that date, the permissive nature of the possession was acknowledged. The execution which was filed in 1959 was adjourned sine die. In other words, in some ways, technically it is still pending. It was the notice dated 6.11.70 which first alleged trespass. It was perhaps in response to this notice that a suit was filed on 20.3.1973 claiming ownership

but this was withdrawn in the same year. The withdrawal in the facts of this case can also be presumed / inferred to operate as giving up of the claim of the hostile possession. The suit subject matter of appeal filed in 1982 was well within 12 years from 6.11.1970. Whatever might have been said in the said notice, the appropriate question is as to when the respondents/defendant (tenant or his heirs) first said: "We are no longer in possession as tenant. We do not want protection as tenant. We are in possession as owners and you are free to file a title suit for possession against us if you so wish." No such intention was manifest till 1973. On the contrary the events display a desire to use the protection of law available to tenants to remain in possession. Even otherwise, examining all these provisions, the conclusion is irresistible that for a property which was once tenanted, unless restoration is shown to the landlord (under Section 108-G of the Transfer of Property Act which is the statutory duty of the tenant) for a tenant to assert adverse possession and title is not to be readily accepted in absence of clear proof.

27. In appreciating the plea, the court has also to look into the entire conspectus of laws including landlord-tenant laws.

28. It would also be relevant to quote certain observation from the case of T Anjappa and ors vs Somalingappa and another reported as (2006) 7 SCC 570 where the concept of the adverse possession has been discussed and it has been held :

"The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly denies the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's right but denies them. The principle of law is firmly established that a person who basis 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 act 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”.

29. In another judgment titled as *Konda Lakshmana Bapuji vs Government of Andhra Pradesh* reported as 2002 AIR (SC) 1012;2002 (3) SCC 258 it was held :

“The question of a person perfecting title by adverse possessions is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is well settled proposition that mere possessions of the land, however, long it may be, would not ripen into possessory title unless the possessor has 'animus possidendi' to hold that land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to title of the true owner. But such an assertion of title must be clear and unequivocal thought it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist”.

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31. The judgment of the Supreme Court in Ajit Chopra V. Sadhu Ram and others AIR 2000 SC 212 seems to be direct in point. In the aforesaid case tenant denied relationship of landlord and tenant before the Rent Controller against the original owner. In appeal he was held to be a tenant and an eviction order was passed against him. A revision petition filed by him in the High Court was also dismissed and he was given three months time to vacate. In the mean while the suit property was sold to one Mr. R.C.Chopra who filed a suit for possession. He was not a party to the original eviction petition. The tenant set up the bar of limitation. However rejecting the plea of the tenant it was held ;

In the result, the judgment and decree which was passed in a previous suit under the Rent Control Act by which it was held that respondent was tenant and that he was required to vacate the premises on or before 19.12.1958, would not bar a fresh suit for recovery of possession from a tenant. Reason being that the tenant has not acquired title over the property by adverse possession. It is true that the appellant could have executed the decree passed in the said suit. He had not executed the same on the alleged grounds that there was a fresh agreement of tenancy. Whatever may be position, after lapse of three years it was not open to the appellant to file an application for executing the said decree under the Limitation Act, 1908, still there is, no bar under the Rent Act or under the Code of Civil Procedure for filing a suit for recovery of possession from the tenant, who had failed to deliver the possession on the basis of a decree passed against him, unless the defendant-tenant establishes that he has become owner of the suit property by adverse possession, the suit filed by the owner on the basis of his title cannot be dismissed despite the fact that application for the execution of the decree passed under the Rent Act

was barred after lapse of three years. The title of the plaintiff over the suit property was not extinguished (i) by the act of the parties including claim of adverse possession (ii) by the decree of the court or (iii) by not executing the decree which was passed in a previous suit. If there is any agreement between the parties after passing of the decree, permitting the tenant to continue in the premises, he may either be a tenant, licensee or a trespasser. Presuming that no fresh tenancy was created or license was granted then also respondent has failed to acquire title by adverse possession on the date of the suit ie 5.8.70, because as per the decree he was entitled to occupy the premises . By lapse of time, plaintiff has lost right to execute the previous decree as it became time barred but has not lost the title. Unless the title is extinguished, second suit by the owner if filed within period of limitation is not barred”.

32. From the aforesaid it is clear that a tenant even after termination of his lease would remain a tenant till such time he hand over the possession of the property to landlord or set up adverse possession openly to the knowledge of the landlord which must be perfected at least for a period of 12 years before the suit for possession is filed.

33. In the present case father of first respondent was inducted as tenant. Even though eviction order was passed against him, same could not be executed for the reason as stated above; status of the tenant does not change and consequently relationship between parties continued. As such his legal heirs cannot plead adverse possession without taking such plea openly to the knowledge of the landlord/owner which should have been perfected for the period more then 12 years, prior to such hostile declaration.

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39. *In the case of R.V Bhupal Persad vs State of Andhra Pradesh and others (Supra) relied upon by the respondents, Hon'ble Supreme Court dealt with the status of a person who was inducted as a tenant, and continued in possession of the property even after the termination of lease with or without the consent of the landlord. It was held that "possession of such person may not be lawful but would be juridical possession. Such person also cannot be ousted from the suit premises except in accordance with law. It would be relevant to take note of para 7 and 8 of the judgment which reads as under:*

"Section 105 of the Transfer of Property Act (for short the TP Act) defines 'lease' of immovable property as a transfer of a right to enjoy such property made for certain time, express or implied or in perpetuity, in consideration of a price paid or promised or of money a share of crops service or anything of value to be rendered periodically or on specified occasion to the transfer by the transferee, who accept the transfer on such terms' therefore the lessor of immovable property by contract in writing or otherwise can transfer his property to the lessee perpetuity in consideration of a price paid or promised or of money etc and the lessee accept the transfer on such terms. Under section 111 of the T P Act a lease of immovable property determines inter alia by efflux of the time limited. Section 116 envisages the effect of holding over and provides that' if a lessee or under lessee of property remains in possession there of after the

determination of the lease granted to the lessee and the lessor or his legal representatives accepts rent from the lessee or otherwise assents of his continuing in possession the lease is in absence of an agreement to the contrary is renewed from year to year or from month to month, according to the purpose for which the property is leased as specified in section 106. Section 106 of the TP Act deals with the duration of the certain cases in the absence of written contract or local usage.”

“Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the terms or expiry of the lease by efflux of time, the tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn) at page 633, the position of tenancy at sufferance has been stated thus; a tenant at sufferance is merely a fiction to avoid continuance in possession operating as a trespass, it has been described as the least and lowest which subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of the tenant holding over thus; The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term the common law rule is that he is a tenant on sufferance. The expression “holding

over” is used in the sense of retaining possession. A distinction should be drawn in between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will, with the assent of the landlord. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be tenant is also protected by law. Although he may not have a right to continue in possession after the termination of tenancy, his possession is juridical.

40. In the present case the status of the deceased tenant at the time of his death was that of a tenant by holding over as the late father of the appellant allowed him to remain in possession of the property after execution was adjourned sine die and could not be executed. His possession was not that of a trespasser. It was permissive possession. The respondents being the family members of the deceased tenant were permitted to use the property as they inherited the status of the deceased tenant. Till such time they claimed adverse possession of the property, their possession remained permissive or at the most that of a tenant by holding over. The moment a adverse title was set up by them, the appellant became compelled to file a suit for possession within 12 years since then to save the property. Thus the Judgment also does not come to the rescue of the respondents.

41. It may be observed here that after the termination of the lease of a tenant, his possession becomes permissive. It could be as a tenant by holding over which can also be converted in a

monthly tenancy if the landlord accept rent by virtue of section 116 of the Transfer of property Act or in the alternative, it could be merely permissive. In such a case there is no limitation prescribed under the Limitation Act to evict such a person unless and until the owner wants to do so. However, when such a person who was inducted lawfully and remains in possession of the property as a permissive user, sets up an adverse title then Article 65 comes in and the limitation starts running.

42 In view of that the submissions of Ld counsel for the respondent can not be appreciated for two reasons i.e., firstly the aforesaid judgment only distinguishes the case of rank trespasser and the one who remains in possession of the property by holding over or is tenant at sufferance. In the first case, the occupant can be thrown out by using reasonable force, in the second case, he can not be evicted except in accordance with law. Secondly this judgment also makes a distinction between a tenant by holding over and a tenant at sufferance. In the present case the status of the first respondent after the death of his father became only that of a tenant by holding over with the assent of the landlord as no objection was taken by father of the appellant or by the appellant till such time the respondents claimed adverse possession. Before that their possession was permissive and therefore the moment they set up an adverse title the appellant limitation began to run for the appellant to evict them on the basis of his title as prescribed under Article 65 of the Limitation Act.

47. In view of the aforesaid, it is held :

i) That on account of non execution of the ejectment order passed in 1957 which was inexecutable as there was no provision in the decree to remove the super structure, the status of Ram Narain in his life time remained as that of tenant by holding over.

ii) The respondents who are legal representative of the deceased tenant inherited similar rights as vested in the

deceased tenant till such time they set up the claim of ownership by way of adverse possession

iii) The claim of adverse possession was set up by respondent for the first time in 1973 by filing a suit for declaration to have become owner by adverse possession and thereafter when they also filed an application for supply of water connection which was within 12 years of the filing of the suit for possession.

iv) The appellant acquired ownership of the suit property from his father and has been held to be landlord/owner of the property and therefore was entitled to file the suit in question on the basis of the title; and as such the suit filed by him was within limitation in accordance with Article 65 of the Limitation Act.”

(Emphasis supplied)

28. I find myself in agreement with the said analysis of the issues by the learned First Appellate Court and learned counsel for the appellants has not been able to point out any error in the discussion found in the judgment of the First Appellate Court.

29. Even if the status of the appellants after the passing of the eviction decree became that of tenant at sufferance (because no rent was allegedly paid by the appellants, or accepted by the respondent), it makes no difference whatsoever in view of the law laid down by the Supreme Court in ***R.V. Bhupal Persad*** (supra). The possession of a tenant at sufferance, like that of a tenant holding over, is juridical and he cannot be evicted by use of reasonable force, like a trespasser can be. He can protect his possession against forcible dispossession. A tenant at sufferance cannot be termed as a trespasser. A tenant at sufferance – by merely retaining possession against the wishes and desire of the landlord, cannot be assumed to be staking rights

in the property as an owner. He cannot be seen as challenging or denying the title of the owner/ landlord. His possession cannot be described as “hostile” to the title of the landlord/ owner. He merely clutches on to the property till evicted by use of force under the authority of law.

30. In addition, I may also refer to judgment of the Patna High Court in ***Surajmal Marwari & Others Vs. Rampearaylal Khandelwal & Others***, AIR 1966 Pat 8. In this case, the defendants acknowledged being tenants of the plaintiff on 09.10.1922. Subsequently, documents were executed between the parties described as Kirayanamas, the last being sometime in 1932. The defendants paid rent to the plaintiff in terms of until 1938. On 03.01.1945, the plaintiffs issued a notice to quit calling upon the defendants to vacate the house and restore possession to the plaintiffs. Despite the same and further demands, the defendants did not vacate the premises and, consequently, the plaintiffs instituted the suit on 09.03.1953. The defence of the defendants was that the relationship of landlord and tenant came to end with effect from 22.02.1933 – on the expiry of one year from the date of the execution of the last Kirayanama. The defendants claimed that after that date they began to exercise acts of ownership by paying Chowkidar tax and Water Board Tax in their capacity as owner of the property. They claimed to be in adverse possession of the property at least since 1938-39, when they stopped making payment of rent to the plaintiffs. It was claimed that the suit filed in 1953 was barred by limitation. The Patna High Court, by placing reliance on Section 111 (h) of the Transfer of Property Act, rejected the claim of adverse possession. It observed as follows:

“7. The stand taken by the principal defendants is manifestly

*untenable having regard to the provisions of Clause (q) of Section 108 read with Clause (a) of Section 111 of the Act. Clause (a) of Section 111, no doubt, provides that a lease of immovable property is determined by efflux of the time limited thereby. But Clause (q) of Section 108 lays down that on the determination, the lessee is bound to put the lessor in vacant possession of the property. Having regard to these two provisions, it is abundantly clear that when the term of a lease has expired, the lessee can determine the lease by fulfilling his obligation of putting the lessor into possession of the property. **But if the lessee does not put the lessor into possession of the property, and on the contrary, remains in possession thereof then he does not become a trespasser in relation to the property, but his status is that of a tenant on sufferance. Such a case is governed by Section 118 of the Act***

(Emphasis supplied)

31. The Supreme Court in *Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & Others*, (2009) 16 SCC 517, analysed the concept of adverse possession and also referred to the decisions of the Courts world over, to held that the Courts are taking an unkind approach towards statutes of limitation overriding property rights. The relevant extract from the said decision reads as follows:

“14. In Secy. of State for India In Council v. Debendra Lal Khan, AIR 1934 PC 23, it was observed that the ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

15. This Court in P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314, while following the ratio of Debendra Lal Khan's case (supra), observed as under:

“4... ..But it is well-settled that in order to

establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be one the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heirs' title. It is a settled rule of law that as between co- heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to be knowledge of the other so as to constitute ouster.”

The court further observed thus:

“4The burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession.”

16. In S.M. Karim v. Bibi Sakina, AIR 1964 SC 1254, Hidayatullah, J. speaking for the court observed as under:

“5... .. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the

plaintiff had acquired "an absolute title was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

17. *The facts of R. Chandavarappa v. State of Karnataka, (1995) 6 SCC 309, are similar to the case at hand. In this case, this Court observed as under:*

"11. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

18. *In D.N. Venkatarayappa v. State of Karnataka and Ors., (1997) 7 SCC 567, this Court observed as under:*

"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in

continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession.”

19. In *Md. Mohammad Ali v. Jagadish Kalita*, (2004) 1 SCC 271, this Court observed as under:

“21. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

22. ...We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein.”

20. In *Karnataka Board of Wakf v. Govt. of India*, (2004) 10 SCC 779, this Court observed as under:

*“11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. **Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true***

owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”

The court further observed that:

“11... .. plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.”

21. *In Saroop Singh v. Banto, (2005) 8 SCC 330, this Court observed:*

“29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak, (2004) 3 SCC 376)

30. *‘Animus possidendi’ is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the*

requisite animus. (See Md. Mohammad Ali v. Jagdish Kalita and Ors., (2004)1 SCC 271)”

22. *This principle has been reiterated later in the case of M. Durai v. Muthu, (2007)3SCC114 . This Court observed as under:*

“7... .. In terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession.”

23. *This Court had an occasion to examine the concept of adverse possession in T. Anjanappa v. Somalingappa, (2006) 7 SCC 570 . The court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The court further observed that:*

“20 the classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.”

24. *In a relatively recent case in P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59, this Court again had an occasion to deal with the concept of adverse possession in detail. The court also examined the legal position in various countries particularly in English and American system. We*

deem it appropriate to reproduce relevant passages in extenso. The court dealing with adverse possession in paras 5 and 6 observed as under:

“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See Downing v. Bird 100 So. 2d 57 (Fla. 1958); Arkansas Commemorative Commission v. City of Little Rock 227 Ark. 1085 : 303 S.W.2d 569 (1957); Monnot v. Murphy 207 N.Y. 240, 100 N.E. 742 (1913); City of Rock Springs v. Sturm 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).

6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important

to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess cannot be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim."

25. *There is another aspect of the matter, which needs to be carefully comprehended. According to Revamma's case, the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, this Court observed that:*

"43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgments of Beaulane Properties Ltd. v. Palmer (2005) 3 WLR 554 and JA Pye (Oxford) Ltd. v. United Kingdom (2005) 49 ERG 90. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."

26. *With the expanding jurisprudence of the European Court of Human Rights, the Court has taken an unkind view to the concept of adverse possession in the recent judgment of JA Pye (Oxford) Ltd. v. United Kingdom which concerned the loss of ownership of land by virtue of adverse possession. In the said case, "the applicant company was the registered owner of a*

plot of 23 hectares of agricultural land. The owners of a property adjacent to the land, Mr. and Mrs. Graham ("the Grahams") occupied the land under a grazing agreement. After a brief exchange of documents in December 1983 a chartered surveyor acting for the applicants wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land." The Grahams continued to use the whole of the disputed land for farming without the permission of the applicants from September 1998 till 1999. In 1997, Mr. Graham moved the Local Land Registry against the applicant on the ground that he had obtained title by adverse possession. The Grahams challenged the applicant company's claims under the Limitation Act, 1980 ("the 1980 Act") which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse possession by another.

27. The judgment was pronounced in favour of *JA Pye (Oxford) Ltd. v. Graham* 2000 Ch. 676 : (2000) 3 WLR 242. The Court held in favour of the Grahams but went on to observe the irony in law of adverse possession. The Court observed that the law which provides to oust an owner on the basis of inaction of 12 years is "illogical and disproportionate". The effect of such law would "seem draconian to the owner" and "a windfall for the squatter". The court expressed its astonishment on the prevalent law ousting an owner for not taking action within limitation is illogical. The applicant company aggrieved by the said judgment filed an appeal and the Court of Appeal reversed the High Court decision. The Grahams then appealed to the House of Lords, which, allowed their appeal and restored the order of the High Court.

28. The House of Lords in *JA Pye (Oxford) Ltd. v. Graham* (2003) 1 AC 419 observed that the Grahams had possession of the land in the ordinary sense of the word, and, therefore, the applicant company had been dispossessed of it within the meaning of the Limitation Act of 1980.

29. We deem it proper to reproduce the relevant portion of the judgment in *Revamma's* case:

“51. Thereafter the applicants moved the European Commission of Human Rights (ECHR) alleging that the United Kingdom law on adverse possession, by which they lost land to a neighbour, operated in violation of Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

52. It was contended by the applicants that they had been deprived of their land by the operation of the domestic law on adverse possession which is in contravention with Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), which reads as under:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’”

This Court in Revamma's case also mentioned that the European Council of Human Rights importantly laid down three-pronged test to judge the interference of the Government with the right of "peaceful enjoyment of property.

“53. [In] Beyeler v. Italy [GC] No. 33202 of 1996

108-14 ECHR 2000-I, it was held that the "interference" should comply with the principle of lawfulness and pursue a legitimate aim (public interest) by means reasonably proportionate to the aim sought to be realised."

The Court observed:

"54. ... 'The question nevertheless remains whether, even having regard to the lack of care and inadvertence on the part of the applicants and their advisers, the deprivation of their title to the registered land and the transfer of beneficial ownership to those in unauthorised possession struck a fair balance with any legitimate public interest served.

In these circumstances, the Court concludes that the application of the provisions of the 1925 and 1980 Acts to deprive the applicant companies of their title to the registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other.

There has therefore been a violation of Article 1 of Protocol 1.'

55. The question of the application of Article 41 was referred for the Grand Chamber Hearing of the ECHR. This case sets the field of adverse possession and its interface with the right to peaceful enjoyment in all its complexity.

56. Therefore it will have to be kept in mind the courts around the world are taking an unkind view towards statutes of limitation overriding property rights."

(Emphasis supplied)

32. Reliance placed by the appellant on ***Lalit Mohan Ghosh*** (supra) and ***M/s Dr Ambedkar Education Society*** (supra) is wholly misplaced. ***Lalit Mohan Ghosh*** (supra) was a case where the Korfa tenant had remained in continuous possession of the suit property for more than 12 years after the expiry of the lease. The Court relied upon Section 48 C of the Bengal Tenancy Act to hold that the tenant had acquired a non-ejectable right in the suit lands. The long period for which the tenant remained in uninterrupted possession without any action by the landlord was only taken as a circumstance to infer that the landlord has assented to the continuation of the tenant's occupation. This decision does not say that where a landlord does not initiate action to evict a tenant after the expiry of the lease, the tenant acquires the right by adverse possession on expiry of 12 years of the lease. It also does not say that mere continuous possession of the tenant, after termination/ expiry of the lease is hostile or adverse to the landlord/ owner. This judgment, even otherwise, does not apply in the facts of the present case, as already noticed above.

33. The decision in ***M/s Dr Ambedkar Education Society*** (supra) was a decision rendered on its own facts. In that case, after the termination of the lease, the tenant had made constructions in the suit property after obtaining necessary permissions from the Municipal Corporation. The landlord had neither claimed rent for that period, nor objected to the construction made by the tenant and had allowed the period of 12 years to expire. In these circumstances, the Court concluded that the tenant had openly acted to challenge the title of the landlord and asserted his claim of ownership, and

hence, his possession was hostile to the landlord. The same is not true in the present case, as noticed above. The appellant, for the first time, set up a hostile title only in the year 1973 by filing a declaratory suit, which too, was withdrawn. The suit of the plaintiff was filed well within the period of limitation in 1981 from the time when the appellant filed the suit in 1973. The submission that late Sh. Ram Narain, or thereafter the appellants, did not make payment of rent after the passing of the decree for ejectment on 26.03.1957, and thus, it leads to the inference that the occupation of the late Sh. Ram Narain, or thereafter of appellants, was hostile to the landlord, has no merit. Mere non-payment of rent does not tantamount to hostile possession vis-à-vis the landlord. As noticed above, the suit was filed within the period of limitation even from the time when the plaintiff, for the first time, claimed the defendants/ appellants to be trespassers on 06.11.1970.

34. Reliance placed by the appellants on the judgment of this Court in ***Ram Singh*** (supra) is also of no avail. The issue considered by the Court in that case was whether the heirs of a deceased tenant, whose tenancy is protected under the Delhi and Ajmer Rent Control Act and against whom a decree for eviction has been passed, inherited any right in the tenancy. While dealing with the said issue and concluding that such heirs did not inherit the rights of a tenant, for the purpose of distinguishing the status of occupation of such heirs from that of a tenant, the Court used the expression that “*they may be called trespassers*”. The learned Single Judge in paragraph 8 of the said judgment held as follows:

“8. Thus it must be held that after determination of tenancy by the passing of a decree or order for eviction, the right of the tenants to remain in possession thereafter is personal to him, and not heritable by his heirs and legal representatives. Such right will devolve upon the heritable in the manner provided by the statute. In other words, the heirs and legal representatives of the statutory tenant remain in occupation of the tenancy premises without any right, title or interest and they may be called trespassers, unless the statute confers any right upon such heirs and legal representatives.”

35. The use of the expression ‘trespassers’ qua the heirs of the deceased tenant does not mean that their occupation is considered hostile to the landlord/ owner. In the light of the aforesaid discussion, it is clear that the said heirs are merely tenants at will or tenants at severance. The aforesaid observation made by this Court in **Ram Singh** (supra) is not premised on examination of the well-settled ingredients of hostile possession. Thus, the mere use of the expression “*they may be called trespassers*” does not change the nature of occupation of the heirs of the tenant.

36. Reliance placed on the observations made by the learned ADJ in the judgment dated 20.05.1987 is also misplaced inasmuch, as, the learned ADJ did not conclude that the possession of the appellants was hostile and adverse to the plaintiff.

37. There is no basis whatsoever for the appellants to claim that upon the passing of the decree for possession in favour of late Chaudhary Kheman Ram in the year 1957, the possession of late Sh. Ram Narain became adverse. His possession was juridical since he had come in possession as a tenant of the plot belonging to late Chaudhary Kheman Ram and thereafter raised construction thereon. He was not a trespasser. He was merely

holding over possession and resisting his dispossession by objecting to the execution of the decree on one or the other ground. Since the decree was not clear with regard to removal of the super structure, on technical issue, the execution proceedings were adjourned sine die. The learned First Appellate Court has rightly observed that the said execution proceedings, technically speaking, were never disposed of. Even if it were to be assumed – though it cannot be assumed as such an assumption would be contrary to the fact – that the decree obtained by late Chaudhary Kheman Ram was not executed within the period of limitation, i.e. 12 years, all that the same would entail would be a bar to execution of the said decree. It would not ripen the status of a tenant holding over, or a tenant at sufferance into that of an owner by adverse possession. When a tenant resists his disposition after termination of his tenancy or even after the decree for ejectment has been passed against him, he cannot be said to have openly declared his possession has hostile to that of the plaintiff/ landlord. Merely by resisting dispossession, he does not convey his intention of setting up a title adverse to that of the owner/ landlord. For his possession to become adverse, it is essential that he should openly declare and claim his own title as the owner of the tenanted premises, negating the right of ownership of the landlord. The ownership right over a corporeal property consists of a bundle of rights. Right to possession is only one of them. When a landlord transfers the right to possession in favour of a tenant, he still retains the title to the property as an owner. It is that right to title as an owner of the landlord which a tenant must clearly and emphatically deny and claim in himself be said right over the tenanted property – not merely on account of his possession, but also by asserting a legal title to claim that he is in adverse possession of the tenanted

premises. His clear intention to deny legal ownership of the landlord should manifest itself by acts, such as, by openly putting the owner to notice of such claim of ownership, or by such other overt act which would put the owner to notice that the tenant is claiming the ownership over the property. Unless that is done, there is no question of a tenant setting up a plea of adverse possession qua the landlord/ owner. In the facts of the present case the aforesaid overt claim of title from the side of the appellants came only in the year 1973 when the suit for declaration was filed by appellant No.1/ defendant No.1. The present suit was filed, undisputedly, on 13.03.1981, i.e. well within the period of 12 years as prescribed by Article 65 to the Schedule of the Limitation Act.

38. The submission of learned counsel for the appellants that the cross-objections of the appellants were not considered, is not correct. A perusal of the impugned judgment itself shows that the primary submission of the appellants with regard to the suit being barred by limitation has been exhaustively considered.

39. The only other issue sought to be raised by the appellants with regard to the locus standi of the respondent was really a non-issue, since it is not even disputed by the appellants that the respondent is the son and Legal Heir of late Chaudhary Kheman Ram, and therefore, succeeded to the property in question. It is not the appellants' case that late Chaudhary Kheman Ram interfered with the normal course of succession and divested the respondent/ plaintiff of any right in the suit property. It was not the appellants case that any other person had claimed and established his right as the legal heir of late Chaudhary Kheman Ram. In the absence of any such plea, the issue of

locus standi sought to be raised by the respondents was really a non-issue.

40. In view of the aforesaid discussion, the present second appeal is dismissed with costs in favour of the respondent which are quantified at Rs.30,000/-.

VIPIN SANGHI, J.

DECEMBER 08, 2015

B.S. Rohella