

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+ C.C.C.A. No. 86 of 2005

% 19-02-2016

#G.Narayan Reddy

....Appellant

Vs.

\$ P. Narayana Reddy

.... Respondent

!Counsel for the Appellant : M/s.Bharadwaj Associates

Sri Vedula Venkata Ramana senior counsel

Counsel for the Respondent : Sri K.Raghuveer Reddy

<Gist :

>Head Note:

? Cases referred:

1. (2015) 7 SCC 601
2. (2009) 12 SCC 101
3. (2004) 10 SCC 779
4. (2005) 8 SCC 330
5. (2009) 13 SCC 229
6. 2003(3) ALT 716 (D.B)
7. AIR 1953 Patna 365
8. AIR 1919 Privy Council 44
9. AIR 1970 SC 1778
10. AIR 1951 SC 469
11. AIR 2003 SC 1905(1)
12. 2011(1) ALT 1 (SC)
13. AIR-1976-SC-634
14. AIR-1969-SC-1144
15. AIR 2003 SC 1880
16. AIR 2003 SC 1989=2003(9) SCC 606
17. AIR 1963 SC 1516=1964(1) SCR 980
18. AIR 1953 SC 235
19. 965(3) SCR 550
20. AIR 2003 SC 4548=8 SCC 752=(8) Supreme Today 194
21. (2004)1 SCC 271
22. 2002 (1) SCC 134
23. 2000 (5) SCC 652
24. 2000 (1) SCC 434
25. (2000) 8 SCC 123
26. 2003(5)ALD 241(DB)
27. 2002(2)ALD 753(DB)
28. (2000)3 SCC 350
29. (2000) 7 SCC 543=AIR 2000-SC-3272
30. 2005 (6) SCC 202
31. AIR 2010 SC 818.

32. 2005(2) ALD 675 (FB)
33. 2011 AIR SC 3590
34. AIR 2015 SC 3360
35. (2004)1 SCC 271
36. 2001 3 SCC 537 at paras 10 to 14
37. 1989 (1) SCC 101
38. 1991 4 SCC 139
39. 2000 (5) SCC 488
40. 2013 (4) ALD 725
41. AIR 1989 SC 38
42. Third report of the Law Commission of India,
43. AIR 1932 PC 165 at 167=ILR(60)-Cal-1
44. AIR-1941-PC 6
45. AIR-1962-SC 1716
46. *Halsbury's Laws of Englan*, 4th Edition, Volume-28, para-605(page-266.
47. 1906 ILR 29 Madras 305
48. 2007(3) MLJ 85 at 91
49. AIR 1997 Guj 46
50. (2007) 3 SCC 569
51. AIR 1968 SC 1165
52. 2001(5)ALT197
53. AIR 1964 SC 1254
54. (2004) 10 SCC65
55. (1981)2 SCC 764
56. (2005) 8 SCC 330
57. (2004) 3 SCC 376
58. (2011)10 SCC 404
59. AIR 2009 SC 103
60. (2007)6 SCC 59
61. AIR 1966 SC 605
62. 1985(3) APLJ 83
63. AIR-1955-Mysore-33
64. AIR 1953 Patna 365
65. AIR 1946 PC 51
66. AIR 1919 PC I 44
67. AIR 1959 AP 79 (FB)
68. AIR 1973 All.201
69. AIR 1970 SC 1778
70. AIR 1951 SC 469

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A.No. 86 of 2005

JUDGMENT:

The unsuccessful plaintiff in O.S.No.2268 of 2003 on the file of the VIII Additional Senior Civil Judge (Fast Track Court), City Civil Court, Hyderabad, by name G.Narayana Reddy filed against the defendant, P.Narayana Reddy, (for more convenience hereafter being referred plaintiff-appellant as **G** and defendant-respondent as **P** and for more

clarity, sister of **G** was given in marriage to **P**, both were originally staying at Hyderabad and now both at abroad) **for declaration that plaintiff is lawful owner of the plaint schedule property** of 401 square yards in S.No.300, house bearing No.2-3-703/2 of Amberpet, Hyderabad; within the boundaries described of South and East-House Nos.2-3-703/3/A and 1 respectively and North and West-road; **for order restoring possession of the suit property to the plaintiff and for such other reliefs**, impugning the dismissal decree and judgment dated 22.03.2005, filed the present appeal.

2. The contentions in the grounds of appeal are that the decree and judgment of the trial Court are contrary to law, weight of evidence and probabilities of the case and outcome of improper appreciation of the pleadings, issues framed and the evidence on record, that trial Court should have seen that Ex.A.2 is inadmissible for want of stamp duty and registration and the same is void in law and no rights flow in favour of the defendant therefrom, that the trial Court should have seen that the plaintiff **G** is the absolute owner of the property by virtue of Ex.B.1=A1 (B1 is original sale deed,1963 and CC of it is A.1) and is entitled for the relief of declaration of title and for possession, however, the trial Court failed to see that the defendant **P** has not even produced any evidence in support of his plea of adverse possession and the demand notices issued by Water Works Department under Exs.B.8 to B.29 for the years, 1971 to1973 did not substitute his case and that too when the suit property stands in the name of the plaintiff **G** in the municipal records and Exs.B.3 and B.5 dated 13.10.1984 and 05.08.2005 respectively relied on by the defendant **P** clearly show the tax being paid by the plaintiff **G** and the trial Court was erred therefrom in holding that the judgment in O.S.No.7098/1991 became final, whereas it was only an injunction suit, in fact the finding therein that the gift is invalid in law operates against the defendant **P** herein, that was failed to consider by the trial Court including the fact that the plaintiff **G** was in possession throughout until he was dispossessed in the year, 1992 by the defendant **P** by virtue of injunction order obtained in the injunction suit O.S.No.7098 of 1991 and the question of his filing the suit within three

years after execution of Ex.B.2 does not arise and the trial Court erred in improper appreciation of the evidence of P.Ws.1 and 2 or in relying upon the evidence of D.Ws.1 to 3. Hence to set aside the dismissal decree and judgment of the trial Court and allow the appeal decreeing the plaintiff- **G**'s suit as prayed for.

3)(a). The learned counsel for **G** in support of the above grounds of appeal contended that besides the dowry asking and taking is opposed to public policy and also an offence under the Dowry prohibition Act and consequently the un registered document executed to meet the demand for not even a pasupukunkuma gift to sister or daughter to give to brother-in-law at time of marriage does not confer or create any rights, otherwise also from the transaction is a nullity being opposed to public policy and virtually thereunder any subsequent entry into possession does not give any right much less to claim with any plea of adverse possession to oppose the suit prayers for possession even declaration sought if otherwise not entitled for no need to ask and that no way effects the entitlement to possession of said property, there is no any delivery of possession pursuant to Ex.B.2 un-registered gift deed which confers no rights thereunder to **P** even from the recitals therein and there is no proof from the **P** to set up adverse possession for which burden lies to establish the three ingredients of “***Nec vi, Nec clam and Neck Precario***” and there is no any positive evidence as to when from **P** sets up hostile title with animus against **G** for claiming adverse possession, that such possession even to be established for more than 12 years with such animus open, peaceful and uninterrupted possession and in the absence of which mere length of possession does not extinguish the title of **G** in order to create any right by prescription in favour of **P** by adverse possession over the property and the trial Court went wrong in improper appreciation of the evidence.

3)(b). In this regard and in support of the contentions, **G** placed reliance upon the three Judge Bench expression of the Apex Court in ***Rajasthan Housing Board Vs. New Pink City Nirma Sahkari Samithi Ltd. and***

another^[1] paras 25-29 which read:

"25. In the instant case, the transaction is ab-initio-void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person, who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. **Such a prohibited transaction opposed to public policy, cannot be enforced.** Any other interpretation would be defeasive of the very intent and protection carved out under section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.

26. In *State of Madhya Pradesh Vs. Babu Lal & Ors.* [1977 (2) SCC 435] the provisions contained in section 165(6) of M.P. Land Revenue Code, 1959 came up for consideration before this Court. The High Court directed the State to file a suit for declaring the decree null and void. The decision was set aside. It was held that the case was a glaring instance of violation of law as such the High Court erred in not issuing a writ. The decision of the High Court was set aside. The transfer which was in violation of proviso to section 165(6) transferring the right of Bhuswami belonging to a tribe was set aside.

27. This Court in *Lincal Gamango & Ors. Vs. Dayanidhi Jena & Ors.* [AIR 2004 SC 3457] while considering the provisions of Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 which prohibited alienation of rural property by a tribal to a non-tribal, declared such transaction to be null and void. This Court while relying upon the decision in *Amrendra Pratap Singh Vs. Tej Bahadur Prajapati & Ors.* [AIR 2004 SC 3782] has **laid down that no right can be acquired by adverse possession on such inalienable property. Adverse possession operates on an alienable right. It was held that non-tribal would not acquire a right or title on the basis of adverse possession.** Relevant discussion is extracted hereunder:

"7. We find both these reasons given by the High Court are not sustainable. Coming first to the second point, we find that there is a decision of this Court direct on the point. It is reported in AIR 2004 SC 3782, *Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Ors.* The matter related to transfer of land falling in tribal area belonging to the Scheduled Tribes. The matter was governed by Regulations 2, 3 and 7-D of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 viz. the same Regulations which govern this case also. The question involved was also regarding acquisition of right by adverse possession.

Considering the matter in detail, in the light of the provisions of the aforesaid Regulation, this Court found that one of the questions which falls for consideration was-whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of aboriginal tribe?-(Para 14 of the judgment). In context with the above question posed, this Court observed in Para 23 of the judgment as follows:

".....**The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant.....**"

“This Court then noticed two decisions -one that of the **Privy Council reported in AIR 1923 P.C.205 Madhavrao Woman Saundalgekar Vs. Raghunath Venkatesh Deshpande and Karimullakhan Vs. Bhanupratapsingh, holding that title by adverse possession on inam lands, Watan lands and Debutter was incapable of acquisition since alienation of such land was prohibited in the interest of the State.** We further find that the decision in the case of ***Madhiya Nayak*** (supra) relied upon by the High Court was referred to before this Court and it is observed that the question as to whether a non-tribal could at all commence prescribing acquisition of title by adverse possession over the land belonging to a tribal which is situated in a tribal area, was neither raised nor that point had arisen in the case of ***Madhiya Nayak***. It is further observed that the provisions of Section 7-D of the Regulations are to be read in the light of the fact that the acquisition of right and title by adverse possession is claimed by a tribal over the immovable property of another tribal but not where the question is in regard to a non-tribal claiming title by adverse possession over the land belonging to a tribal situate in a tribal area. It is, therefore, clear in view of the decision in the case of ***Amrendra Pratap Singh*** (supra) that a non-tribal would not acquire right and title on the basis of adverse possession. Therefore, the second ground for setting aside the order passed by the appellate court falls through. Therefore, the other factual aspect about the possession of the respondents over the disputed land and entries in their favour may also not be of much consequence, in any case, this aspect of the matter has to be seen and considered afresh in the light of other facts and circumstances of the case.”

This Court in ***Amrendra Pratap*** (supra) has laid down that the **expression ‘transfer’ would include any dealing with the property** when the word ‘deal with’ has not been defined in the statute. Dictionary meaning as the safe guide can be extended to achieve the intended object of the Act. The transaction or the dealing with alienable property to transfer title of an aboriginal tribe and vesting the same in non-tribal was construed as transfer of immovable property. Extending the meaning of the expression ‘transfer of immovable property’ would include dealing with such property as would have the effect of causing or resulting in transfer of interest in immovable property. When the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. When the intendment of the Act is that the property should remain so confined in its operation in relation to tribals that the immovable property to one tribal may come but the title in immovable property is not to come to vest in a non-tribal the intendment is to be taken care by the protective arm of the law and be saved from falling prey to unscrupulous devices, and this Court concluded any transaction or dealing with immovable property which would have the effect of

extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of ‘transfer of immovable proper’.

Thus, what was laid down by the three Judge Bench expression of the Apex Court in ***Rajasthan Housing Board (supra)*** is a **prohibited transaction opposed to public policy, cannot be enforced, however, the right in the property ought to be one which is alienable and is capable of being acquired by the competitor, adverse possession operates on an alienable right, even transaction is prohibited.** The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant.

3)(c). The other decision relied upon is a Division Bench expression of the Apex Court in ***Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale and others***^[2] that the relationship between the parties is also one of the important considerations in considering the claim of title by adverse possession with pleading and proof of *animus possidendi* with peaceful, open and continuous possession to constitute any adverse possession which is lacking in the facts.

3)(d). The other decision of the Division Bench of the Apex Court in ***Karnataka Board of Wakf Vs. Government of India and others***^[3] particularly placing reliance upon paras 11 and 12 that in the eye of law an owner would be deemed to be in possession of the property so long as there is no intrusion. Non-use of property by owner even for long time will not affect his title. But the position will be altered when another person takes possession of the property and asserts rights over it and the person having title omits or neglects to take legal action against such person for years together. **“The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner”**. 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 peaceful, open and continuous and it 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. Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion of the actual owner are the most important factors that are to be accounted in cases of this nature since adverse possession plea is blended question of fact and law and the person pleading adverse possession has no equities in his favour since he trying to defeat the rights of true owner and it is for him to clearly plead and establish all facts necessary to establish his adverse possession and whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property. The plea of title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

3)(e). The contention therefrom is when the defendant claims title under the void gift by recognizing the original owner i.e., the plaintiff, there can be no *animus possidendi* with hostile title much less by wrongful dispossession of the plaintiff and there is no even sufficient pleading and in the absence of such *animus possidendi* the claim for adverse possession is unsustainable from any length of possession even leave about no certainty as to when actually entered possession much less continued with animus when from.

3)(f). The other decision placed reliance is ***Saroop Singh Vs. Banto and others*** ^[4] where it was observed in a suit of plaintiff for possession based on title the onus to prove acquisition by adverse possession lies on the defendant once the plaintiff proved his title and the defendant having not raised plea of adverse possession from any length of possession. The plaintiff's suit held not time barred for possession devoid of requisite animus to make it adverse to commence the prescription period for the claim of adverse possession and the *animus possidendi* is one of the

ingredients of adverse possession and for that placed reliance on **Karnataka Board of Wakf** *supra*.

3)(g). The other decision placed reliance is **L.N.Aswathama Vs. P.Prakash**^[5] in relation to person in possession to claim adverse possession against true owner to maintain a suit to seek declaration of claim of title by prescription. In para 17, it was observed that to establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding 12 years and it is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without *animus possidendi* and the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced and unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.

3)(h). It is also the submission by the counsel for the appellant referring to the judgment of a Division Bench of this Court in **R.V.S.Vara Prasad and others Vs. Dr. V.Ramdas**^[6] on the contention that earlier injunction suit in O.S.No.7098 of 1991, no way operates as *res judicata* in the present suit.

4)(a). Whereas, it is the contention in the course of submissions by learned counsel for the successful defendant **P** of the trial Court as respondent herein, in support of the trial Court's decree and judgment, saying nothing to interfere with the trial Court's dismissal decree and judgment for the very unregistered gift deed that is invalid from the date of execution, the possession delivered as pleaded, the defendant perfected title by adverse possession long back and further the earlier suit for injunction in favour of the defendant against the plaintiff was even granted that was made final and operates as *res judicata* otherwise, besides suit for declaration to be filed within three years after injunction suit plaint

denying title. It also contended that the very possession under invalid document empowers to adverse possession and the trial Court was right in its conclusion by placing reliance on the expression of the Patna High Court in **Sm.Kheni Mahatani Vs. Charan Napit**^[7] saying under unregistered sale deed which is inadmissible in proving title, nevertheless it could be referred to as explaining the nature and character of the possession thereof held by the party and from the transfer effected in violation of the law, the transferee would be deemed to be in adverse possession ever since the date of the transfer. For that conclusion, the learned Single Judge of the Patna High Court referred several earlier expressions of the Calcutta High Court, Patna High Court, Allahabad High Court and of the Privy Council in AIR 1946 PC 51 saying unregistered documents are admissible to show nature of possession as a collateral purpose and so far as the unregistered sale deed not admissible to prove title but explaining character of possession mainly placed reliance on the expression of the Privy Council in **N.Varada Pillai Vs. Jeevarathnammal**^[8] wherein it was held that gift though invalid as not being made by a registered document could be looked into as explaining the nature and character of possession thenceforth. In fact, said Privy Council expression arising out of Madras High Court's judgment is a short and crisp of a Four-Judges Bench in **Varada Pillai (7 supra)** in relating to the unregistered gift where under donee enters in possession and holding it for over 12 years held perfected title by adverse possession, saying when the donor did not effect a registered gift deed but allowed donee to enter into possession of the gifted property and the donee thus remained in possession for over 12 years, and his title became perfected as against the donor and his heirs. It was also observed in this regard that the gift must be a registered one under Section 123 of the Transfer of Property Act and under Section 91 of the Evidence Act the recitals cannot be used as evidence of a gift having been made. But, the defendant's case is that Doraiswamy although may have acquired no legal title under said gift transaction, in fact, took possession of the property when it was transferred in her name and retained such possession until her death in December,

1911 and after which it passed to the defendant as her successor and accordingly the plaintiff's claim is barred by upwards of 12 years adverse possession and the High Court upheld the contention in arriving a right conclusion.

4)(b). The **P** also placed reliance upon three more judgments viz., **State of West Bengal Vs. The Dalhousie Institute Society**^[9] where under Articles 64 and 65 of the Limitation Act, 1963 the question of title by adverse possession was the issue from the facts of the grant of land in favour of the Institute when not as per law being invalid and evidence when showing grantee was in open, continuous and uninterrupted possession thereunder with enjoyment for over 60 years. The Institute treated as owner not only by Municipal Corporation but also by Government. The persons in possession thereby of the Institute acquired title by adverse possession and entitled to compensation money for the land subsequently acquired under the Land Acquisition Act. For that conclusion, the Apex Court placed reliance on the earlier expression in **Collector of Bombay Vs. Municipal Corporation of the City of Bombay**^[10] and from that quoted following:

"The position of the respondent Corporation and its predecessor in title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market and such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the respondent Corporation took possession of the land under the invalid grant and this possession has continued openly, as of right and uninterruptedly for over statutory period, thereby the respondent Corporation acquired right to hold the land in perpetuity and the above extract establishes that a person in such possession clearly acquires title by adverse possession."

4)(c). The other decision placed reliance by **P** is **Bondar Singh and others Vs. Nihal Singh and others**^[11] where it was held that though an unregistered sale deed not admissible in evidence of contents, it can be looked into for collateral purpose, such as, to see nature of possession of the party over the property and the plaintiffs claiming title over the land by adverse possession since they were in possession of the land by virtue of the unregistered and unstamped sale deed executed in their favour by the

predecessors in interest of the defendants, whereas the defendants are alleging that the plaintiffs were trespassers, however admitting their possession since life time of their father and order of Revenue Authority also establishing the plaintiffs' possession for last 26 years and the claim of the defendants regarding taking over of possession from the plaintiffs when found to be false plaintiffs in hostile and continuous possession, thereby proved prescriptive right perfected by adverse possession.

4)(d). The other decision placed reliance is ***Md.Nooman and others Vs. Md.Jabed Alam and others***^[12] of the Apex Court on the principles of *res judicata* where on facts it was a suit of Court of limited jurisdiction for eviction against father of the appellants that was ended in dismissal by the trial Court and confirmed in appeal and thereafter the plaintiff filed another suit claiming declaration of title and possession against very same property and the defendant contested taking the plea of *res judicata* and limitation, where though the trial Court decreed the suit and reversed by the 1st appellate Court, the 2nd appellate Court-cum-High Court held earlier decree and judgment operates as *res judicata* and when the matter came for consideration before the Apex Court in a civil appeal, it was observed that the question of title is directly and substantially in issue between the parties in the earlier suit for eviction operates as *res judicata* in the subsequent suit for declaration of title and recovery of possession between the parties, as rightly held by the High Court.

5). From above rival contentions of both sides, heard at length with reference to the above propositions on the factual matrix.

6). The points arise for consideration in deciding the appeal are:

- 1) Whether the defendant has perfected any right by adverse possession against the plaintiff over the suit schedule property also by virtue of the invalid gift deed and whether any possession pursuant to which with *animus possidendi*, peaceful and uninterrupted for more than the statutory period and that extinguished the plaintiff's right and title otherwise over the property as the plaintiff is original owner not in dispute in the factual scenario?
- 2) If not, whether the trial Court's decree and judgment is

unsustainable and requires interference by this Court while sitting in appeal, and if so, to what extent and with what observations including as to any operation of *res judicata* of the earlier injunction suit or any of its findings to the present suit for declaration and possession?

3) To what relief?

POINT Nos.1&2:

7. Before coming to decide plaintiff's entitlement to declaration of title and possession or the suit claim is barred by limitation and adverse possession and otherwise also by principles of *res judicata*, coming to scope of appreciation of evidence and powers and limitations in this regard of the 1st appellate court, more particularly from Order XLI, Rules 33 and 24 C.P.C. and from several expressions of the Apex Court including- **Koksingh Vs Deokabai**^[13]; **Gaisi Ram Vs Ramji Lal**^[14] and **Madan Lal Vs. Yogabai**^[15]; the 1st appellate court is competent to grant relief if finds appropriate on any facts though that was not granted by the trial Court in rendering complete justice and prevent to the extent possible scope for further litigation and to give finality to the *lis*. But as held in **Banarsi Vs Ramphal**^[16] and **Pannalal Vs State of Bombay**^[17] there are three limitations on the said power-Viz., it must not be to the prejudice of persons not parties (Rule 24), if given up a claim not to revive on its own and if part of the *lis* in the claim for relief not appealed (by cross objections or otherwise) and made final, Court cannot grant relief on the un-appealed portion and the relief to be granted may be lesser to the plea, but not higher or totally outside the pleadings and evidence^[18]. Among the defendants to the suit, generally they won't prefer appeal and it is not a bar to decide their claims inter se in spite of non-filing of appeal or cross-objections with any specific plea. In **Nirmalabala Ghosh Vs Balaichand Ghosh** (three judge Bench)^[19] - it was held that Order XLI Rule 33 is undoubtedly expressed in terms which are wide, but it has to be applied with discretion, and to cases where interference in favour of appellant necessitates interference also with a decree which has by

acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties.

8). Coming to the appreciation of evidence, it is no doubt from experience and knowledge of human affairs depending upon facts and circumstances of each case and regard must be had to the credibility of the witness, probative value of the documents, relationship of the parties in actions and inactions, lapse of time if any in proof of the events and occurrences, from consistency to the material on record to draw wherever required the necessary inferences and conclusions from the broad probabilities and preponderances, from the overall view of entire case to judge as to any fact is proved or not proved or disproved and the conclusions arrived by the trial court are sustainable or not.

9). Coming to the proof of facts, out of the facts in issue, to the extent of relevant facts as to what is meant by proved, not proved or disproved with reference to Section 3 of the Evidence Act and nature of proof in civil matters, including in a suit based on title concerned, in ***R.V.E.***

Venkatachala Gounder Vs. A.V.& V.P. Temple^[20] at paras 25-28, the Apex Court discussed that, in civil cases the proof is by preponderance of probabilities, including in suits relating to ejectment or declaration of title or for possession; and the onus shifts from initial burden on the plaintiffs if able to establish from preponderance of probabilities the entitlement on the defendant to rebut the same, including with specific claim on their part, if any. It is in explaining the earlier propositions of law that, in a suit for ejectment, plaintiff shall win or lose his case only on his own strength principle, since it does not mean the onus of proof is statically always on the plaintiff or it shall never shifts on the defendant, even if the plaintiff is able to establish his case from preponderance of probability with reference to Section 3 of Evidence Act. It was clearly held that in a suit for ejectment, once plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lies on the plaintiff shall be held to have been discharged so as to prove the plaintiff's title for

entitlement of the relief. Further, in cases relating to proof of title or possession based on right or title where defendant pleads adverse possession concerned, on whom burden of proof lies and how onus probandi shifts concerned, in ***Md.Mohammad Ali V. Jagdish Kalita***^[21] it was held in relation to the proof in an ejectment suit by plaintiff to shift burden on the defendant pleading adverse possession that plaintiff's proof of title is enough to succeed and ***it is for the defendant to prove any plea of adverse possession and in the absence of which once plaintiff has proved his title, he is entitled to declaration or possession with any consequential reliefs as the case may be.***

10. Before coming to decide how far the trial Court was correct or not in arriving at the findings impugned in the appeal concerned, the basic principle of law that also to be kept in mind by the appellate Court is that, where trial Court rely on facts and probabilities basing on credibility also with opportunity to observe the demeanor of the witnesses, the findings of the trial Court when based on reasons and by consideration of the contents of the documents and oral evidence and on all facts and relevant circumstances, merely because some other view is also possible, the appellate Court shall not ordinarily or casually interfere with and reverse the findings in the trial Court's judgment. In case the appellate Court desires to reverse the judgment and decree of the trial Court, it should discuss the findings and set aside the same, which are contrary to law or weight of evidence or probabilities of the case or perverse or arbitrary or superficial or capricious or unsustainable, either on fact or on law. Same is the expression in ***Veerayee Ammal v. Seení Ammal***^[22] at para-14; ***State of Rajasthan v. Harphool Singh***^[23] at para-(b) and ***Ishwar Dass Jain v. Sohan Lal***^[24] at 437-k).

11. From the above general principles on appreciation of evidence and the scope of the appeal *lis vis-à-vis* the powers of the 1st appellate Court, before coming to the factual matrix of the case on hand it is necessary to consider from the points formulated above, how far the

earlier suit operates as *res judicata* or any finding in the earlier suit to prevent to raise the same issue in the present suit.

12. **Now, coming to the question of the earlier suit operates as *res judicata* or not concerned:** as per Section 11 of CPC particularly from Explanation 8 an issue heard and finally decided by a Court even of limited jurisdiction competent to decide such issue shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised. It is to say from the expression placed reliance by the defendant of the Apex Court in ***Md.Nooman (11 supra)*** is within the Explanation-8 of Section 11 of CPC as the earlier eviction suit by Court of limited jurisdiction since competently decided by going into the title in dismissing the claim for eviction, the subsequent suit for declaration of title and recovery of possession held operates as *res judicata*. In fact, in ***Md.Nooman (11 supra)*** the Apex Court relied upon its earlier expression in ***Shamim Akhtar Vs. Iqbal Ahmad and another*** ^[25] where in a suit under the Rent Act, the question of title held can be incidentally gone into and final determination of title must be left to the decision of competent Court for the case arising out of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and among other expressions in saying to bar a second suit for title, the question of title has to be expressly raised and decided between the parties earlier and that to be shown proved by referring to Calcutta and Patna High Courts' expressions in that regard to the conclusion where title was in issue in the earlier suit even of limited jurisdiction that operates as *res judicata* to the subsequent suit for declaration of title. It is, in fact, at cost of repetition within the purview of Explanation-8 of Section 11 CPC, whereas the present case on hand is different but for if at all to say from that expression of any finding therein where necessary to decide to bind the parties to the subsequent lis.

13. Here, coming to the case on hand, the earlier suit is for prohibitory injunction relief and the plaintiff therein (who is the defendant herein-P) did

not base his case on title but for from alleged possession based on unregistered gift deed at his marriage time and his possession was approved in decreeing the suit that was no doubt made final even by appeal filed ended in dismissal without deciding on merits for non-prosecution. It is to say even there is no prayer in the earlier suit of **P** as plaintiff therein of he perfected title by adverse possession and acquired right thereby to declare his title, but for a bare injunction and in the plaint pleaded by **P** of **G** (defendant therein) executed an unregistered gift deed in his favour and put him in possession. **Then, the trial Court should have been granted in that earlier suit for injunction, the relief till evicted through due process of law to continue the possession;** for against a true owner no injunction can be granted for no entitlement except till evicted through due process of law at best and that too for the unregistered gift does not create right much less confer title to claim title thereunder, that was undisputedly as the original title holder **G** executed, and that too, a person claiming adverse possession has no equities in law. Thus from that perusal, the earlier suit for injunction in O.S.No.7098/1991 practically no way operates as *resjudicata* to maintain the present suit of **G** for the relief of declaration of title and recovery of possession, but for as referred supra, any finding in reference to any issue answered from necessity of deciding the lis between the same parties **P** & **G** that reached finality to bind them, being same parties herein litigating for same property as per the settled law including from the expression in **B.Narasimha Reddy Vs. Bhaskara Rao Joshi** ^[26].

14. In this regard, coming to the other decisions placed reliance of the Division Bench expressions of this Court of suit for injunction will not operate as *res judicata* to the subsequent suit for declaration of title and possession; **K. Lakshminarasimha Chary vs. K.Satyanarayana** ^[27] referring to **Sajjadanashin Sayed Vs. Musa Dadabhai Ummer** ^[28] and **Gram Panchayat of Village, Naulakha Vs. Ujagar Singh and others** ^[29] including **Mulla on CPC** and **Halsbury's Laws of England** ^[30] in

holding that a judgment is not a conclusive if any matter came collaterally in question or if any matter was incidentally cognizable and that Judicial approach today is justice oriented and no Court ought to base its decision on technicalities alone, to the conclusion that the principles of *resjudicata* applies in cases where findings on fact are given collaterally or incidentally on an issue in a suit.

15. Further in ***R.V.S.Vara Prasad (5supra)*** referring to ***Gram Panchayat-Naulakha and Sajjadanashin Sayed supra*** that the earlier suit was only suit for injunction and not one based on title and no question of title was gone into or decided therein and thereby that decision cannot bind on the question of title and even if in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a later suit or proceeding where title is directly in question, unless it is established that it was necessary in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title. Even mere framing of an issue on title may not be sufficient as pointed out in that case. In ***Sajjadanashin Sayed supra*** it is held further that "Where title to property is the basis of the right of possession, a decision on the question of possession is *res judicata* on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title." The same was relied upon in the subsequent expressions of Apex Court in ***Annaimuthu Thevar v. Alagammal*** ^[31] and ***Ramchandra Dagdu Sonavane V. Vithu Hira Mahar.*** ^[32]

16. Coming to the other question whether finding in earlier suit binds parties in subsequent suit concerned, in ***Nooman*** supra a finding on the question of title recorded in a suit for eviction would how far be binding in a subsequent suit for declaration of title and recovery of possession between the same parties is the question that arisen for consideration before the

Apex Court, where held the answer to the question would depend on, in what manner the question of title was raised by the parties and how it was dealt with by the court in the eviction proceedings; ordinarily, in a suit for eviction even if the court goes into the question of title and examines the issue in an ancillary manner and in such cases any observation or finding on the question of title would certainly not be binding in any subsequent suit on the dispute of title; but there may be exceptions to the general rule and ultimately held on facts from case on hand that the High Court was right in holding that the finding recorded in favour of the plaintiff in the earlier suit for eviction would operate as res judicata in the subsequent suit for declaration of title and recovery of possession between the parties.

17. ***Having regard to the above and in the factual matrix referred supra, the earlier suit for injunction since not based on title but for on previous possession, same no way operates as res judicata to maintain the present suit, so also any finding therein in deciding the present suit for the entitlement by plaintiff to declaration and possession or not, including on the claim of adverse possession by defendant.***

18. **From this, now coming to consider the entitlement by plaintiff to declaration and or possession or not, including on the claim of adverse possession by defendant;** the fact that the **G** is the original owner of the property is established as **P** himself by his admitting and exhibiting the Ex.B.1 registered sale deed dt.05.08.1963 (original of Ex.A1) standing in the name of **G** as titleholder and in claiming that title of **G** conveyed to him(**P**) under the Ex.B.2 unregistered gift deed dt.21.02.1966 (original of Ex.A2) which is even not duly stamped, once marked without objection, the objection relating to the stamp duty not left open to raise (though the appellate Court can otherwise under Section 61 of the Stamp Act), from the unregistered document of gift which is contrary to Sections 123 to 128 of the Transfer of Property Act no way conferred any title or right in favour of **P** from **G** pursuant to the document and the contents of the document

otherwise cannot be looked into, but for to say the collateral purpose if any from the unregistered document under Section 49 of the Registration Act as to nature of possession and enjoyment by **P**, the alleged donee, from **G**, the alleged donor. Whether such possession of **P** when from it commenced and with what animus possidendi continuously, openly and uninterruptedly in hostility to the right of **G** from any such claim of unlawful possession and enjoyment and whether it extinguishes the right of **G** under Section 27 of the Limitation Act with reference to acquiring of any title by adverse possession by **P**, as per Article 65 of the Limitation Act is concerned, it is necessary to mention the pleadings and the evidence on record.

19. The plaint averments in the suit for declaration of title and possession of **G** in nutshell are that, it is in connection with the marriage of sister of **G** with **P**, when **P** wanted huge amount of dowry and insisted immovable property of Hyderabad city being given to him as security as amount could not be arranged in full on pain of marriage being held up for other brothers of **G** had no immovable properties that could be made available for purpose of satisfaction of **P** and at request of mother of **G**, he was constrained to sign a document as gift-(Ex.B2) of his self acquired property-(Ex.B1) which is the suit schedule property as security in part fulfillment of dowry and so even asked to and given his original sale deed-(Ex.B1), that was not intended to act upon nor was ever acted upon and the amount that was agreed upon was paid to **P** in due course, but documents were not returned to **G** by **P** and said document of gift deed neither registered nor attested and it does not create any right or interest in favour of **P**, being null and void *abinitio* and **G** a non-resident Indian given his house on rent to a tenant by name Gopaldas (P.W-2) and his brother Subash and left for U.S.A. on 03.11.1991 with his wife and children and **P** filed earlier permanent injunction suit O.S.No.7098 of 1991 dated 15.12.1991 with false allegations that **G** was trying to disturb his alleged possession of said property with the help of unsocial elements twice in November and middle of December, 1991, when **G** was still in U.S.A., in collusion with other respondents 1 and 2 of the suit namely Rukkamma-

mother of **G** and G.Sudhakar Reddy-an Inspector of Police, one of the four brothers of **G**, who was hardly 13 years at the time of the marriage of his sister and the **P**'s-G.P.A-Mohan Reddy and said Sudhakar Reddy threatened the **G**'s tenant supra to vacate and hand over possession to Mohan Reddy and unable to withstand the pressure, **G**'s tenant vacated the suit premises by kept it under lock and addressed a letter to **G** asking him to come back and resume possession and before vacating the suit premises, the tenant recovered Rs.8,000/-rental deposit paid to **G** from said Mohan Reddy by passing on a receipt and after **G** had to return to India on 18.06.1991 and took possession of the house by broke open the lock under intimation to police and placed two police guards to safeguard his possession and while so, said Mohan Reddy, G.P.A. of **P** with connivance of the said guards and the Inspector of Police, Amberpet P.S. and with anti-social elements attacked and smashed the doors and windows and thrown away **G**'s belongings and the matter was reported to the Inspector of Police, Amberpet P.S. who booked a trespass case against **G** herein instead against said Mohan Reddy, the G.P.A. of **P**, and the trespass by gaining into possession is an organized crime through anti-social elements and police help and under the guise of temporary injunction order in I.A.No.1483 of 1991 in O.S.No.7098 of 1991 by playing fraud on Court and **G** thus left with no other course than contested the suit and the temporary injunction was later vacated and it was **G** herein who was in possession of the suit property and not **P** and thereafter **G** could not prolong his stay in India being NRI and left USA again on 10.06.1993 entrusting the matter to his Advocate Padmakar Rao and it was hoped that at the trial, the Court would look into the material evidence not to mention that the cause of action for O.S.No.7098 of 1991 was missing and delivered judgment on merits; however, contrary to that, the Court held that **G** failed to adduce any evidence and decreed the suit for injunction, virtually exparte and under these circumstances hit by the Limitation Act **G** was denied the opportunity to agitate his rights on merits by way of first appeal and the possession obtained by criminal trespass against the real owner came to be perpetuated by the injunction decree in O.S.No.7098 of 1991 is not maintainable in law and thereby filed the present suit for

declaration of title of him-G as rightful owner and for recovery of effective possession by setting up cause of action on 14.10.1996 when O.S.No.7098 of 1991 was decreed and thereafter he was unsuccessful in agitating that injunction suit decree before the High Court and the Apex Court where SLP was dismissed on 24.11.2003.

20. The written statement filed by **P** on 30.01.2004 in opposing the suit claim of **G** is with contest while denying of the plaint averments and by disputing any existence of cause of action and maintainability of the suit, by saying outcome of suppression of material facts and second round of litigation having unsuccessful in contesting the earlier suit for injunction including in the appeal and by agitating up to Supreme Court unsuccessfully in SLP in saying this Court by entertaining declaration and possession suit cannot sit against the earlier suit for injunction made finally in the legal battle. The other contest is that the plaint averments of **P** to marry the sister of **G** wanted huge amount of dowry and insisted immovable property in the city to give as security till arranging of the money and from request of **G**'s mother for his other brothers got no property **G** given his property as a security by signing on an unregistered gift deed as security to fulfill the dowry amount and also give the original sale deed though not intended to act upon or even consider later paid the amount, **P** did not return the document or gift deed and earlier title deed are denied as untrue and incorrect facts. The further contest of **G** let out the property to Gopaldas and Subash and after filing of suit O.S.No.7098 of 1991 for injunction against **G** by **P** in collusion with his mother, brother, etc., the **P**'s G.P.A. Holder and Sudhakar Reddy threatened the tenant of **G** who could not withstand the pressure, vacated by kept the premises under lock and key calling **G** to resume possession and **G** returned back to India on 18.06.1991 and broke open the lock and resumed possession under intimation to police by kept the police guards to keep up his possession and the GPA Holder of **P** with the connivance of Police Inspector of Amberpet P.S. and other anti-social elements occupied the premises by thrown away the things of **G** as an organized crime under the guise of injunction obtained in the permanent injunction suit supra and also denied

as not true and created averments. The further contest of **P** is that **G** suffered the decree in O.S.No.7098 of 1991 and unsuccessfully agitated up to the Supreme Court has no right to impugn the same reached finality and thereby not entitled to suspend the operation of that permanent injunction decree by maintaining present suit.

21. It is also contended by **P** that he is the absolute owner and possessor of the suit property that was conveyed to him by a gift deed executed by **G** (Ex.B.2) and ever since he is in possession of the property and as on the date of execution of the gift deed itself he has put in actual and physical possession of the property and original title deed of the property also given to him by **G** and it is **P** who has been paying the monthly tax, electricity and water consumption charges and in view of the strained relationship between them, **G** made attempts to interfere with **P**'s possession, which constrained **P** to maintain O.S.No.7098/1991 for injunction and also obtained temporary injunction and though the temporary injunction order was later vacated, he filed appeal C.M.A.No.292 of 1992 that was allowed and **G** suppressed the factum of C.M.A. order of injunction in favour of **P** in the injunction suit pending trial and it was ultimately decreed and that the said injunction suit decree was on merits and not an ex parte decree and judgment and the appeal filed also with delay condonation application ended in dismissal including in revision against the dismissal order confirmed so also before the Apex Court unsuccessfully and **P** thereby in lawful possession of the property with right and title and the findings in the earlier suit for injunction also became final.

22. It is also contended that the plaintiff's contest of he is in deemed possession under law and is deprived of the enjoyment of the property because of the permanent injunction decree in O.S.No.7098 of 1991 held untenable and contradictory as not open to say **G** in possession as he himself claims deprived of enjoyment and possession and the decree for perpetual injunction in favour of **P** itself shows said averments in present plaint as untrue and **G** has not stated as to when he was dispossessed and in seeking possession for himself not in possession and there is no

meaning in saying recovery of effective possession for not at all in possession and the alleged illegal taking possession by **P** is untrue and it is **G** who made attempts to trespass and dispossess **P** that could be prevented by **P** including by maintaining the suit for injunction and an F.I.R was also registered against **G** for the attempts of trespass, etc. It is further averred that by virtue of the long standing, continuous and uninterrupted possession over the suit property, **P** perfected his title by adverse possession also as **G** is out of possession for more than 30 years and lost any of his rights that were extinguished and the suit claim is thereby also barred by limitation and sought for dismissal of the suit.

23. It is from the above pleadings before the trial Court the following issues and additional issues were formulated:

ISSUES:

- 1) Whether the gift deed dated 05.12.1966 is valid and binding on the plaintiff?
- 2) Whether judgment in O.S.No.7098 of 1991 became final against the plaintiff and binding on him?
- 3) Whether the plaintiff is entitled for declaration over the suit property?
- 4) Whether the plaintiff is entitled for possession?
- 5) To what relief?

ADDITIONAL ISSUE:

- Whether the defendant perfected title to the schedule property by adverse possession?

24. It is pursuant to which in the course of trial, on behalf of the plaintiff-**G**, besides himself as P.W.1 one Gopal Das, alleged ex-tenant of him was examined as P.W.2 and placed reliance upon Exs.A.1 to A.37 viz.,

- | | |
|--------|---|
| Ex.A.1 | Certified copy of registered sale deed dt.5.8.1963 |
| Ex.A.2 | Zerox copy of gift deed dt.21.2.1966 |
| Ex.A.3 | Passport showing departure and arrivals in India |
| Ex.A.4 | <u>Rent receipt</u> dt.7.10.1991 |
| Ex.A.5 | Certified copy of plaint in O.S.No.7098/1991 |
| Ex.A.6 | Letter dt.5.4.1992 along with translated copy in English written by |

the then tenant Mr.Subash

- Ex.A.7 Copy of application to Home Minister of A.P. dt.15.7.1992
- Ex.A.8 Certified copy of orders of High Court of A.P. dt.23.10.92 in CMP No.16914/1992 in CRP No.2304 of 1992.
- Ex.A.9 Certified copy of common orders in I.A.Nos.957/91 and 1483/91
- Ex.A.10Copy of application dt.26.5.1992 for disconnection of water supply along with two receipts showing payment of existing arrears by the plaintiff.
- Ex.A.11Copy of application dt.5.6.1993 for disconnection electricity supply along with receipts of payment of arrears.
- Ex.A.12Certified copy of judgment and decree in O.S.No.5098/1995.
- Ex.A.13Copy of complaint dt.28.6.1992 to S.H.O., Amberpet
- Ex.A.14Copy of application dt.3.7.1992 to the Asst.Commissioner of Police.
- Ex.A.15Copy of letter dt.8.8.1992 to S.H.O., Amberpet.
- Ex.A.16Copy of another application dt.21.9.1992 to the S.H.O.
- Ex.A.17Copy of orders of High Court.dt.23.4.86 in WP No.4833/1986.
- Ex.A.18Notice issued by the Asst.Medical Officer, Hyderabad to the tenant Subash
- Ex.A.19Notice issued by the Asst.Medical Officer, Hyderabad to the tenant Subash
- Ex.A.20Letter issued by the M.C.H. authority in favour of plaintiff.
- Ex.A.21Letter issued by the M.C.H. authority in favour of plaintiff.
- Ex.A.22Encumbrance certificates obtained from Registration authorities.
- Ex.A.23Encumbrance certificates obtained from Registration authorities.
- Ex.A.24Tax assessment register by M.C.H. Hyderabad from1992 to 2004.
- Ex.A.25Tax passbook in favour of the plaintiff.
- Ex.A.26Tax Receipt
- Ex.A.27Tax Receipt
- Ex.A.28Tax Receipt
- Ex.A.29Tax Receipt
- Ex.A.30Domestic service ration card
- Ex.A.31Bill payment passbook in favour of plaintiff issued by APSEB
- Ex.A.32Orders of water supply department
- Ex.A.33Water bill paid by the plaintiff
- Ex.A.34Water bill paid by the plaintiff
- Ex.A.35Water bill paid by the plaintiff
- Ex.A.36Copy of declaration affidavit of plaintiff.
- Ex.A.37Copy of document No.644 of 1983

After closure of **G**'s evidence, on behalf of defendant-**P**, his G.P.A-Mohan Reddy was examined as D.W.1 and one G.Rukkamma (mother of **G** & mother in law of **P**) and **P**(defendant) were examined as D.Ws.2 and 3 respectively and placed reliance upon Exs.B.1 to B.34 viz.,

- Ex.B.1Original sale deed Doc.No.2259/63 dt.5.8.1963
- Ex.B.2Original Gift Deed dt.21.2.1966 in favour of P.Narayan Reddy
- Ex.B.3Copy of M.C.H.Tax receipt dt.13.10.84.
- Ex.B.4Original Provisional receipt for cheque dt.31.3.1978.
- Ex.B.5Copy of M.C.H. Tax receipt dt.5.8.05
- Ex.B.6Tax receipt issued by M.C.H. dt.9.8.76.
- Ex.B.7Tax receipt issued by M.C.H. dt.19.8.81
- Ex.B.8Demand notice issued by Water Works Dept. dt.7.1.73.
- Ex.B.9 Demand notice issued by Water Works Dept.dt.8.12.72

Ex.B.10 Demand notice issued by Water Works Dept.dt.6.11.72
 Ex.B.11 Demand notice issued by Water Works Dept.dt.7.4.72
 Ex.B.12 Demand notice issued by Water Works Dept.dt.3.4.72
 Ex.B.13 Demand notice issued by Water Works Dept.dt.2.3.72
 Ex.B.14 Demand notice issued by Water Works Dept.dt.3.1.72
 Ex.B.15 Demand notice issued by Water Works Dept.dt.5.11.71
 Ex.B.16 Demand notice issued by Water Works Dept.dt.7.10.71
 Ex.B.17 Demand notice issued by Water Works Dept.dt.3.6.72
 Ex.B.18 Demand notice issued by Water Works Dept.dt.3.8.72
 Ex.B.19 Demand notice issued by Water Works Dept.dt.4.8.72
 Ex.B.20 Demand notice issued by Water Works Dept.dt.6.9.72
 Ex.B.21 Demand notice issued by Water Works Dept.dt.6.12.73
 Ex.B.22 Demand notice issued by Water Works Dept.dt.4.1.73
 Ex.B.23 Demand notice issued by Water Works Dept.dt.5.5.73
 Ex.B.24 Receipt issued by Public Works Dept.dt.3.11.72
 Ex.B.25 Receipt issued by Public Works Dept.dt.3.4.72
 Ex.B.26 Receipt issued by Public Works Dept.dt.2.3.72
 Ex.B.27 Receipt issued by Public Works Dept.dt.7.9.72
 Ex.B.28 Receipt issued by Public Works Dept.dt.2.8.73
 Ex.B.29 Receipt issued by Public Works Dept.dt.4.1.73
 Ex.B.30 Tax receipt issued by M.C.H., dt.3.3.72.
 Ex.B.31 Tax receipt issued by M.C.H., dt.6.9.75
 Ex.B.32 Cess receipt issued by Water Supply Board dt.13.7.92.
 Ex.B.33 Original ration card
 Ex.B.34 Copy of judgment in CMA No.292/92 on the file of the A.C.H.(temporary)
 CCC, Hyderabad.

25.(i). It is from the above evidence, the trial Court observed for plea of adverse possession from **P**'s written statement by relied on Ex.B.2 gift deed to the claim that, in **Bondar Singh (10 supra)** the claim of plaintiff therein was based on unregistered and unstamped sale deed and it was held plaintiff perfected title by adverse possession against the real owner defendant by virtue of his possession under the unregistered sale deed and here also **P**'s claim is under Ex.B.2 unregistered and void gift deed and the suit filed by **G** about 37 years after Ex.B.2 gift deed dated 21.02.1966 and **P** also filed in support of his possession besides oral evidence of him as D.W.3 as two others as D.Ws.1 and 2 relying upon other documents Ex.B.1 original sale deed dated 05.08.1963 of **G** who executed the Ex.B.2 gift deed and Exs.B.3 and B.32 the tax receipts of which Ex.B.16 is the oldest water consumption demand from 07.10.1971 and the oldest one is Ex.B.5 dated 05.08.2005 and **G** has not filed any payment of tax receipts and Exs.A.4 to A.29 though **G** relied upon as tax assessment register and receipts, Ex.A.24 tax assessment register shows the name of the owner Narayan Reddy and there is no surname

mentioned to say it is of **G** or **P** and Ex.A.25 Hyderabad Municipal Corporation Tax Payment Passbook, not even before surname of **G** as G.Narayan Reddy but for Exs.A.26 to A.29 that bear the surname of **G-G.Narayan Reddy** which are the documents subsequent to the filing of injunction suit in O.S.No.7098 of 1991 and cannot be given much weight, and on the contrary, Exs.B.3, B.4, B.7 all stand in the name of G.Narayan Reddy, the others in the name of **P-P.Narayan Reddy** and at least from Ex.B.8 dated 07.01.1973, the tax receipts etc. showing the name of **P**, he perfected his title to the property by adverse possession from the year, 1972 and as per Exs.B.8 to B.32 which is more than 12 years from which **P** perfected title by adverse possession and **G's** right and title over the property is extinguished and there is nothing even to say by **G** of he paid the alleged dowry amount due subsequently if at all any receipt for claiming the unregistered gift by handing over of original sale deed of **G** to **P** executed and given nominally and as security and not acted upon for no action even taken pursuant thereto to get back the documents if true and P.W.2 so-called tenant under **G** is an introduced witness and Ex.A.6 is not even written by P.W.2 but his brother Subash who was not even examined and same not even proved and even the notice issued by **G** under Exs.A.18 and 19 to the Municipal Corporation authorities and Ex.A.17 writ petition copy of Subash no way improves the case of **G** much less to say Subash was tenant of **G** for any period and **G** not even filed any suit much less for declaration of title at least within three years after the suit for injunction filed by **P** and once the earlier suit for injunction made final it is binding between the parties and it also operates as *res judicata* to the present suit.

25.(ii). However, ultimately held referring to **Grampanchayat of Village Naulakha** and **Sajjadanshin Sayed** supra that referred in **R.V.S.Vara Prasad** supra of earlier suit is not *res judicata* to maintain the present suit for declaration of title but for after injunction suit decree, **G** could have filed the suit within 3 years and thereby also the suit claim is barred by limitation apart from **P** perfected title by adverse possession in dismissing **G's** suit claim.

25.(iii). Now same is impugned with the contentions referred in detail supra in the appeal filed by **G** and the contentions propounded with reference to the propositions by both sides therefrom raised supra for answering. **From this, as answered already the present suit claim is not barred by resjudicata and there is no finding in earlier suit even to bind.**

26. **Now coming to the appeal claim and contention by plaintiff of the claim of adverse possession made by defendant is unavailable under the Ex.B2 document concerned**, it is not only a connection of at the marriage of sister of **G** with **P**, when **P** wanted dowry and asked immovable property of Hyderabad city being given to him as security as amount could not be arranged in full on pain of marriage being held up for other brothers of **G** had no immovable properties that could be made available for purpose of satisfaction of **P** and at request of mother of **G**, he was constrained to sign a document as gift-(Ex.B2) of his self acquired property-(Ex.B1) which is the suit schedule property as security in part fulfillment of dowry and so even asked to and given his original sale deed-(Ex.B1), that was not intended to act upon nor was ever acted upon and the amount that was agreed upon was paid to **P** in due course, but documents were not returned to **G** by **P** and said document of gift deed neither registered nor attested and it does not create any right or interest in favour of **P**, being null and void *abinitio*, but also deposed from evidence of **P** as D.W-1 and mother of **G** as D.W-2 that Rs.9,000/- cash given as dowry out of Rs.25,000/- and to meet the rest Rs.16,000/- in lieu of it the property was given that belongs to **G** to **P** and **G** was compensated with other agricultural lands of the family and thereby as per the arrangement the property was given to **P** and delivered possession by execution of the said gift deed supra. It is showing therefrom of to meet the dowry requirement, the property was given at the time of marriage of **P** with sister of **G** as gift by execution of the document, though what **G** stating supra of given nominally and later amount paid by him and property not reconveyed and

documents not returned, quite unbelievable for no one could not keep quite without further recourse. *There is no proof in this regard from G*, further same is disproved from the evidence of mother of **G** supra, apart from no prudent person would keep quiet if true of the version and asked to return the documents and if given as security without even a demand notice or legal recourse for getting back the documents, that too, the **G** is an Advocate by profession even by then undisputedly and there are no receipts even if at all paid muchless pleading any date of payments and respective amounts and with any little proof in this regard but for his self-serving version, to the alleged version to give credence. In fact, **P** specifically besides denied said version, disproved also from evidence of his mother-in-law (no other than mother of **G**). The further contest of **G** let out the property to Gopaldas and Subash and after filing of suit O.S.No.7098 of 1991 for injunction against **G** by **P** in collusion with his mother, brother, etc., the **P**'s G.P.A. Holder and Sudhakar Reddy threatened the tenant of **G** who could not withstand the pressure, vacated by kept the premises under lock and key calling **G** to resume possession and **G** returned back to India on 18.06.1991 and broke open the lock and resumed possession under intimation to police by kept the police guards to keep up his possession and the GPA Holder of **P** with the connivance of Police Inspector of Amberpet P.S. and other anti-social elements occupied the premises by thrown away the things of **G** as an organized crime under the guise of injunction obtained in the permanent injunction suit supra, same is even not substantiated of **P**'s alleged wrongful entry under the guise injunction and not in possession prior to that. In fact, the evidence of **P** and mother of **G** supra as D.Ws-1 and 2 not only in this suit, but also in the earlier suit disproves said contest of **G** herein. It is mainly contended by **P** that he is the absolute owner and possessor of the suit property that was conveyed to him by a gift deed executed by **G** (Ex.B.2) and ever since he is in possession of the property and as on the date of execution of the gift deed itself he was put in actual and physical possession of the property and same is substantiated by evidence of D.W-2 (mother of **G**) not only in this suit but also in earlier suit for injunction including the own brothers also of **G** in support of the said claim of **P** and disproving the

claim of **G**. The fact that original title deed of the property also given by **G** to **P** besides not in dispute by **G** his inaction to get back the document atleast by notice if at all **G**'s version and substantiates **P**'s version. **P** has also been proved paying the property tax, electricity and water consumption charges and in view of the strained relationship between them, **G** made attempts to interfere with **P**'s possession, which constrained **P** to maintain O.S.No.7098/1991 for injunction was his plea and temporary injunction in support of it also granted *ex parte* and though later vacated, with reversal order on the C.M.A.No.292 of 1992 pending injunction suit supra that injunction order was in force and from the decree of the suit continues later and the so called letting out to Subhash is not even proved for not even examined and so also the receipts said to have been given by him in dispute not proved by summoning him, leave about the further discussion to undertake in foregoing paras on adverse possession in this regard. As stated supra, the evidence of **P** and his mother-in-law as DW2&3 also disproves said version of **G**. Thus what was laid down by the three Judge Bench expression of the Apex Court in ***Rajasthan Housing Board*** supra of a **prohibited transaction opposed to public policy, cannot be enforced even considered to equally apply herein to say **P** does not get any rights under the unregistered Gift deed which is void and opposed to public policy, that does not take away claim of adverse possession to plead and prove. What was laid down in the expression referring to several earlier expressions is that the right in the property ought to be one which is alienable and is capable of being acquired by the competitor to claim any sort of rights over the property. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant. Thus, the contention of **G** of adverse possession claim with any plea and proof is unavailable to **P** from Ex.B2 document to said claim, is untenable and with no basis.**

27. Before discussing further facts so far as the adverse possession is concerned, it is practically a blending of limitation and prescription, though Section 27 of the Limitation Act (for short, 'the Act') no way speaks conferment of title to wrong doer, but extinguishment of title of true owner.

Section 27 of the Act is the only exception to the general effect of the act in barring only the remedy and not the right. This section, in cases of recovery of possession, if an action is not brought within the period stipulated, destroys the very right, known as the doctrine of adverse possession. This section even not contemplated any seeking of declaration of true owner, but for the person claiming adverse possession against the true owner to claim acquiring title by prescription. Subject to further discussion to undertake with reference to Articles 64 and 65 of the Act hereunder, suit for declaration need not be asked in the present facts but for ejectment to recover possession and for that proving of title is enough leave about admitted facts need not be proved even. No doubt, if use of property/its care or attempt to regain is foregone for a period and an adverse title being established is not opposed to through the instrumentality of law or otherwise, the other person does acquire a right by prescription, even this is baffling for a reasonable man as to how does some years of illegality turn into a legality. The Supreme Court in the recent past in about three expressions observed that adverse possession is an area where justice and law do not happily coincide and the twelve years period under Articles 64 & 65 of the Act are too short to extinguish right if proved by other side of perfected right by adverse possession, to increase the period atleast to 30 years, if not to delete this concept of adverse possession as affront to the notions of justice, equity and run counter to modern ideas of proprietary rights and international conventions.

27(i). Needless to say, from the scope of adverse possession claim and keeping in mind the inherent unjust nature of this principle, courts have been consistently insisting on a very rigid satisfaction of conditions for the claim of adverse possession to be specifically pleaded and proved.

27(ii). **The relevant provisions mainly are Section 27 and Articles 64 to**

67 of the Act, 1963. Before going to it, it is necessary to mention that Schedule is an extension of the Section which includes it and material put into a schedule because it is too lengthy or detailed to be conveniently accommodated in a section, or because it forms a separate document. It is often found convenient to incorporate part of the operative provisions of an Act in the form of a schedule as stated by *Francis Bennin* in *Statutory Interpretation* while adverting to the importance to the schedule and the same quoted with the approval of the Full Bench of this Court in *Mohd.Siddiq Ali Khan V. Shahsun Finance Ltd*^[33].

Section 27 - Extinguishments of right to property: At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Coming to Articles 64 & 65 out of Part V of the Articles in the Schedule to the Limitation Act:

64.	<u>For possession of immovable property based on previous possession and not on title</u> , when the plaintiff while in possession of the property has been dispossessed.	<u>Twelve years</u>	<u>The date of dispossession.</u>
65.	<u>For possession of immovable property or any interest therein based on title.</u>	<u>Twelve years</u>	W h e n the possession of the defendant becomes adverse to the plaintiff.
<u>Explanation</u> – for the purposes of this article -			
	(a) Where the suit is by a remainder-man, a reversionary (other than a landlord); or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversionary or devisee, as the case may be falls into possession;		
	(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female the possession of the defendant shall be deemed to become adverse only when the female dies.		
	(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		

27(iii). ***The other relevant provision is Article 58 out of Part III of the***

Articles in the Schedule to the of the Limitation Act, 1963.

58.	To obtain any other declaration.	Three years	When the right to sue first accrues.

Article 58 is replaced by Article 120 of old Act, 1908. Article 120 provides **six years** limitation and the time from which it is to commence, as to **when the right to sue accrues**. Whereas, Article 58 provides **three years** limitation and the time from which it is to commence, as to **when the right to sue first accrues**. Thus, the difference is right to sue accrues and right to sue first accrues. It is to say on right to sue first accrues as to when right to sue of a suit based on multiple causes of action, the period of limitation will begin to run from the date of when right to sue first accrues. In this regard, the Apex Court in **Khatri Hotels Private Limited Vs. Union of India**^[34] observed that the right to sue first accrues for declaration of title under Article 58 of the Act of three years began to run from the date when in the pleading (written statement) denied title of other party. It was therefrom held the suit for declaration filed beyond three years therefrom is barred by limitation and same is casually referred in para-29 of the latest expression of the Apex Court **L.C.Hanumanthappa Vs. H.B.Shivakumar**^[35], where the issue is amendment whether relates back to date of suit or not in the suit for specific performance of the contract for sale. In fact, Section 21 of the Act takes care of it, enabling the Court while permitting to say it relates back.

27(iv). In fact, in **Khatri Hotels** supra, it was mainly referring to bar of declaratory relief from first denial, if not filed within three years under Article 58 of the Act, 1963; and it was not dealt with the scope of Section 27 and Articles 64 to 67 of the Act, 1963. **It is important to note here that the scope of Section 27 and Articles 64 and 65 of the Act, 1963 are dealing with right of recovery of possession and not with title, though Section 27 alone speaks of person claiming adverse possession by prescription to seek for declaration.** Of which, as per Article 64 of the Act, 1963 for possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the

property has been dispossessed, the limitation period is 12 years from date of actual dispossession; whereas, as per Article 65 of the Act, 1963 for possession of immovable property or any interest therein based on title (and not on previous possession and with no need of saying when the plaintiff was and if so, while in possession of the property has been dispossessed), the limitation period is 12 years, **when the possession of the defendant becomes adverse to the plaintiff**. That is the reason why and from scope of the provisions of law, in cases relating to possession based on right or title, where defendant pleads adverse possession concerned, in ***Md.Mohammad Ali V. Jagdish Kalita***^[36] it was held that it shifts burden on the defendant pleading adverse possession where plaintiff proved his right, as plaintiff's proof of right or title is enough to succeed for recovery of possession (without need of claiming title even merely defendant denied plaintiff's title) and it is for the defendant to prove from any plea of adverse possession and in the absence of which, once plaintiff has proved his title he is entitled to the relief of possession with any further relief of declaration or other consequential reliefs like injunction etc, as the case may be. Further in same lines, the Apex Court in ***Karnataka Board of Wakf*** supra among other decisions relied therein and referring to it later reiterating the scope of law particularly at paras 11 and 12 that adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. Party claiming adverse possession must plead and prove that his possession is peaceful, open and continuous and it 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. Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion of the actual owner are the most important factors that are to be accounted in cases of this nature since adverse possession plea is blended question of fact and law and the person pleading adverse possession has no equities in his favour since he trying to defeat the rights of true owner and it is for him to clearly plead

and establish all facts necessary to establish his adverse possession and whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property and by placed reliance on **Karnataka Board of Wakf supra**, in **Saroop Singh supra**, it was observed further that in a suit of plaintiff for possession based on title the onus to prove acquisition by adverse possession lies on the defendant once the plaintiff proved his title and the defendant having not raised plea of adverse possession from any length of possession. The plaintiff's suit held not time barred for possession devoid of requisite animus to make it adverse to commence the prescription period for the claim of adverse possession and the *animus possidendi* is one of the ingredients of adverse possession and for that placed reliance on **Karnataka Board of Wakf supra** and as per **L.N.Aswathama supra**, at Para 17, it was observed that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without *animus possidendi* and the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced and unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.

27(v). **Therefore, even title claim under Article 58 supra is barred by limitation for not filing within three years from cause of action first accrues to say first denial, that is not a bar to the recovery of possession either under Article 64 supra based on previous possession from date of dispossession within 12 years or under Article 65 supra based on right or title for which even for a defendant where has set up adverse possession to establish when from the possession of the defendant becomes adverse to the plaintiff and to show the suit claim for recovery of possession based on title thereafter not filed within 12 years, to extinguish title of the plaintiff under Section 27 of the Limitation Act to bar recover of possession based on title.**

27(vi). From the above, even the present suit for relief of declaration shown not filed within three years from denial of plaintiff-G's title is a bar under Article 58 supra, that is not a bar to the suit relief for recovery of possession under Article 65 supra based on right or title of the G unless to non-suit G, P has to plead and proof perfected title by adverse possession. It is needless to say once the scope of Section 27 and Articles 64 and 65 of the Act, 1963 dealing with right of recovery of possession are not dealt with by the expression in *Khatri* supra and *L.C.Hanumanthappa* supra, based on the principle laid down in *M/s A-One Granites Vs. State of U.P.*^[37], referring to earlier expressions in *Municipal Corporation of Delhi Vs. Gurunam Kaur*^[38] and *State of U.P. Vs. Synthetics and Chemicals Limited*^[39] and *Arneethdas Vs. State of Bihar*^[40] including referring to Article 141 of the Constitution of India on the principle of sub-silentio, same was followed by the Division Bench of this Court in *Gadda Balaiah vs The Joint Collector, Ranga Reddy*^[41]. In *Gadda Balaiah* supra, it was observed that: "The Supreme Court proceeded to examine question on a sub silentio assumption of the validity of the transaction. No arguments were advanced and the Court did not address itself to it. This judgment falls squarely within the description of sub silentio judgments. The test set out by Salmond was approved by the Supreme Court in *Municipal Corporation of Delhi V. Gurnam Kaur*^[42]. It is observed in Para 11 of said Judgment as under:

"A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words: "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

In fact, the Supreme Court in a later decision of *A-One Granites* held

that a judgment sub silentio is not law declared within the meaning of Article 141 of the Constitution of India”.

27(vii). **Thus, above expression of Khatri supra or any other referring to Article 58 supra no way bars the suit for recovery of possession under Article 64 or 65 supra even claim of relief of declaration of title though need not be asked and asked and even same barred by Article 58 of the Act.**

28). From the above, now coming back to adverse possession and period of limitation and right by prescription concerned:

28.(I).(i). Limitation is defined in THE LAW LEXICON-2nd Edition reprint, 2009 at pages 1128 & 1129 as “in the ordinary sense, restriction or circumspection. In legal and popular sense it refers to the time prescribed by the authority of law within which an action may be brought or some act done, to preserve a right and after the time no action can be legally brought.

As per NOLO’S plain-English law dictionary “The legally prescribed time limit in which a law suit must be filed”. It is a law fixing the periods of time within which a person has to file his claim within the court against the defendant to enforce. It is the law which sets the maximum period which one can wait before filing a lawsuit, depending on the type of case or claim. The Statutes of limitation, which are the Acts limiting the time within which actions shall be brought, differ depending up on the type of legal claim and time prescribed by the law.

The rules of Limitation are though not meant to destroy the rights of parties; they are definitely meant to see that parties must seek their remedies within the time fixed by the Legislature.

It is aptly said by John Voet that, controversies are restricted to a fixed period of time, lest they should become immortal while men are mortal.

28.(I).(ii). Prescription is defined in THE LAW LEXICON-2nd Edition reprint, 2009 at pages 1502 & 1503 as “A title acquired by use and time, and allowed by law. It is a manner of acquiring the ownership of property by the effect of time and under the conditions regulated by law in the ordinary sense, a restriction or circumspection. **At common law, prescription is the mode of acquiring title by long continued enjoyment with uninterrupted possession. Three things are necessary to establish a right by prescription:** (i). Use and occupation or enjoyment, (ii). The identity of the thing enjoyed & (iii). That it should be adverse to the rights of some other person.

28.(I).(iii). The statutory law on Limitation & Prescription-was established in India in stages. Earlier there were two systems prevailing- viz., in the territories within the jurisdiction of Courts established by Royal charter in the presidency towns of Calcutta, Madras and Bombay, the English law and in the Muffusil courts, the law laid down by regulations. The very first Limitation Act was enacted for all courts in India in 1859 as Act, XIV/1859-that came into force in 1862, followed by Act, IX/1871; that later by Act, XV/1877 that was also repealed by another Legislation in the year, 1908^[43] and finally took the form of the Indian post Independence new Limitation Act in 1963, which received the assent of the president of India on dt. 05-10-1963 and on same day published in the Gazette of India, Extraordinary, part-II. The 'Statutory Law of Limitation' prescribes the time-limit for different suits or other proceedings within, which an aggrieved person can approach the court for redress or justice. The suit, if filed after the expiry of time-limit, is struck by the law of limitation.

It's basically meant to protect the long and established user and to indirectly punish persons who go into a long slumber over their rights.

28.(I).(iv). Limitation & Condition: The principle difference between Limitation & Condition is that a Condition doesn't defeat the estate when broken until it is avoided by the act of the grantor, but a limitation marks the period which is to determine the estate, without entry of claim.

28.(I).(v). Limitation & Obligation: A legally enforceable obligation for neglect to lay action within time prescribed though ceases legal enforceability, it doesn't cease the obligation. Thus, Statute of Limitations alters the common law by introducing limitations to the right of action with an object to secure and quiet men in their actions and under the penalty of losing the right of action in case of neglect to sue within the prescribed time. For example in case of pronote, the debt is not abolished even suit not filed for its recovery within time, but for remedy in the judicial forum that is denied by reason of the creditors default to lay action within time.

28.(I).(vi). Thus, Limitation & Prescription are not totally the new concepts to Indian law as not for first time borrowed the concept from any Anglo Saxon Law, but for to say the Anglo Saxon Law was imposed on us by legislations during the British colonial rule. Hindus in fact foresaw the concept at the drawn of their civilization in visualizing practical problems and designing the concept to serve the purpose and object viz., to prevent fraudulent and stale claims from arising after all evidence has been lost or after the facts have become obscure through the passage of time or the defective memory, death, or disappearance of witnesses. **Various texts of Hindu authors like Manu prescribed the period of limitations for several civil and property rights and enforcement of criminal prosecutions.** It is no doubt true, under the Hindu Jurisprudence, there was only law of prescription and not limitation in property rights, like acquisition of title by prescription over immovable property by person in possession against the true owner openly and uninterruptedly for over 20 years or the like. **Under the Hindu uncoded Laws, there was no Limitation and prescription relating to the properties of Deities, women and children as those used to be under the control of one or other human being either as elder family member for women and children or elder of the village for the deity and their control and possession is always regarded as trustees and thus no question of claiming adverse possession from any length of possession even with hostile enjoyment by abusing the status.** Gradually after the advent of the British Colonial Rule the age old

concepts given goby and the English & Roman law are adopted and imposed.

28.(I).(vii). Thus, the Statutes of limitations date back to early Roman-law, applied to us and later following with modifications to it by us both in civil and criminal actions. The statute of limitations is thereby not only to put the claimant to be diligent to lay his claim for legal enforceability within the prescribed time limit, but also to serve as defense that is ordinarily asserted by the defendant to defeat an action, if brought against him after the appropriate time has elapsed. Therefore, generally the defendant must plead the defense before the court upon answering the plaintiff's claim. If the defendant does not do so, he is regarded as having waived the defense and will not be permitted to use it in any subsequent proceedings.

28.(I).(viii). The Statutes of limitations are thus enacted by the legislature, that sets the maximum time after an event that legal proceedings based on that event may be initiated; known collectively as periods of prescription. It is to say, Lawsuits are unlikely to be successful if they are filed after the end of the statute of limitations time period.

28.(I).(ix). Pursuing remedy within time and with reasonable diligence is said in equity a ***VIGILANTIBUS ET NON DORMIENTIBUS LEX SUCCURRIT***. The provisions of the statute of limitation have the remedy and not the rights, thus it is part of adjectival law and form part of ***lex-fori***, to say the law of Limitation as not a substantive law, but for part of adjectival law saying to make a claim regarding the legal enforceability of substantive law-rights only within the prescribed time and otherwise, the substantive rights lost legal enforceability-in the sense gives substantive right on opposite party to oppose the claim. It is thereby law permits to lay a claim not only for eviction of encroacher by owner with in prescribed period, but also the wrong doer's right to lay a claim that he got prescriptive right against the owner who lost his substantive right of enforceability for slept over during the prescribed period, with no action against him, though such a second type of legal claim is not based on equity.

28.(I).(x). Thus, either parties interse (but for acknowledgement of right to be within statutory period for legal enforceability as per the Limitation Act or acknowledgement of time barred debt from the subsisting obligation as valid consideration to enforce under Sec.25 of the Indian Contract Act) or even a court; cannot extend the time period unless the statute provides such authority. With respect to civil lawsuits, a statute must afford a reasonable period in which an action can be brought. A statute of limitations is unconstitutional if it immediately curtails an existing remedy or provides so little time that it deprives an individual of a reasonable opportunity to start a lawsuit. Depending upon the period stated in the statutes, the parties themselves may prescribe time period by agreement, as a provision in a contract, to enforce; though no right to prescribe time beyond what is prescribed by the statute, but for by acknowledgement to give fresh or extended cause of action.

28(I).(xi). The Laws of Limitation are thereby known as statutes of peace and repose, statues that manifest the policy of law in lending its aid only to those who are vigilant and not those who sleep over their rights- (Vigilantibus Non Dormientibus Juria Subvenient). Limitation laws suggest that all disputes/claims/remedies should be kept alive only for a legislatively fixed period of time, for otherwise disputes would be immortal when man is mortal. **Though arbitrarily fixed limits may seem unfair to some, however they are most pragmatic in so far as there is rarely any justice in stale claims- and evidence also gets destroyed, hence keeping remedy alive serves no useful purpose.**

28(I).(xii). The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide-as held in ***Nerendra Nath Dey Vs. Suresh Chandra Dey***^[44]; ***General Accident Fire and Life Assurance Corp. Ltd., Vs. Janmaahmoed Abdul Rahim***^[45] & ***Boota Mal Vs. Union Of India***^[46].

28(I).(xiii). A **statute of limitation** is thus an enactment in a common law legal system that sets the maximum time after an event that legal proceedings based on that event may be initiated; known collectively as periods of prescription; to say Law suits are unlikely to be successful if they are filed after the end of the statute of limitations time period; as Legal claims presented or instituted after expiry of the time prescribed, law of prescription applies, which prevents them from filing the case. These statutes of limitations were adopted specifically to control Sycophants. The purpose and effect of Statutes of Limitation is to neither to take away the substantial rights of claimant not to protect the opposite party; but for on principles of equity and to prevent stale and belated claims to rise after long lapse of time; as Statutes of limitations are intended to encourage the resolution of legal claims within a reasonable amount of time. Courts and legislatures have had to reconsider the purpose of time limits in dealing with the controversial issues with reference to nature of lis. There are three main reasons behind the policy of law of limitation that support the existence of Statutes of Limitation, namely: (a) that a plaintiff with good causes of actions should pursue them with reasonable diligence; (b) that a defendant might have lost evidence to disprove a stale claim; and (c) that long dormant claims have more of cruelty than justice in them as per *Halsbury's*^[47].

28(I).(xiv). The period fixed to enforce a claim is different from the prescribed period when to commence from any enforceable disability to not to reckon, as limitation once started will not stop. In this regard, the general rule is that the limitation period begins when the plaintiff's cause of action accrues or is made to be aware of the injury that might have happened and attached with no legal disability to the enforcement of right from the time of injury unless in matter requires knowledge and special knowledge when from the period to commence-(like proof of knowledge to the claim of adverse possession by ouster among coparceners and co-owners etc.). The statute of limitations may begin either when the harmful event such as fraud or injury, occurs-(the "standard rule" as to when the time begins to be "when the plaintiff has a complete and present cause of

action") or when it is discovered-(the "discovery rule" where applies) or when the person capable of discovering assumed office like in the case of a Trustee of an endowment.

28(l).(xv). The law of limitation is a kind of imperfect perfection which may not destroy the substantive right as such, but imposes a bar on right of action, in contra distinction to prescription^[48].

28(l).(xvi). The law of limitation is based on laches and delay. Although such limitations periods generally are mainly, though not purely, issues of law prescribed by Statutes, unspecified limitations periods known as laches may apply in situations of equity which are subject to broad judicial discretion (*i.e.*, a judge will not issue an injunction if the party requesting the injunction waited too long to ask for it).

28(l).(xvii).Important Exceptions & Exclusions to it are:

A. Fraud upon the court: By which the court is impaired in the impartial performance of its legal task, it is fundamentally opposed to the operation of justice and thereby that it is not subject to any statute of limitation.

B. International crimes: Subject to International conventions and treaties to which the countries are parties prescribing any period of limitation for international crimes, usually those are not subject to statute of limitations, nor to prescription.

C). Heinous crimes: Crimes that are considered exceptionally heinous by society have no statute of limitations. As a rule, there is no statute of limitations for murder.

D). Continuing violations doctrine: In tort law, if a defendant commits a series of illegal acts against another person, or, in criminal law, if someone commits a continuing crime, the period of limitation may begin to run from the last act in the series.

(E) Special Legislations: Where a special legislation provides separate period of limitation, the general law under Indian Limitation Act has no application. In *Subrahmanyam Vs. Devanadha Swamy*

Devasthanam^[49] it was held that the Limitation Act, 1963 is not applicable to the properties of the religious institutions which contain separate provisions of Limitation. A special enactment prevails over general enactment, when both operate on same field *Rajkot Municipal Corp., Vs. State*^[50].

28(l).(xviii). *The concepts of Limitation and prescription are thus correlated, to say if the claim is not enforced within the prescribed period of limitation law, it not only lasts legal enforceability, but also prescribes right on opposite party-defendant and that is the basic difference between limitation and prescription. To say in more precise, legal claims if instituted after expiry of the time prescribed, law of prescription applies, which prevents the claimants from filing the claims legally.*

28(l).(xix). Law of Limitation and Prescription regarding immovable property under the Limitation Act: Section 27 of the Act operates to extinguish the right to property of a person who does not sue for its possession within the time allowed by law. In *Krishnamurthy S.Setlur vs O.V.Narasimha Setty*^[51] the Apex Court held further that- the right extinguished is the right which the lawful owner has and against whom a claim for adverse possession is made, therefore, the person who makes a claim for adverse possession has to plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession. The question whether possession is adverse or not is often one of simple fact but it may also be a conclusion of law or a mixed question of law and fact. The facts found must be accepted, but the conclusion drawn from them, namely, ouster or adverse possession is a question of law and has to be considered by the court.

28(l).(xxi). On possessory title and scope of Art.64, the Supreme Court (3JB) held in *Nair Service Society Ltd. Vs. Alexander*^[52] that even if the time for filing a summary suit under Section 9 the Specific Relief Act, 1877

expired, the dispossessed person could still file a suit for possession on the basis of prior possession. Such a suit is described as one based on 'possessory title'. But in such a suit filed by the dispossessed plaintiff beyond the period specified in section 9 of the Specific Relief Act, 1877 (or Section 6 of the 1963 Act) defendant who dispossessed the plaintiff could defend himself by proving title and if he proved title, he could remain in possession. After an exhaustive examination of the law on this aspect, Hidayatullah, J. (as he then was) observed as follows (p 1173): "When, however, the period of 6 months has passed, questions of title can be raised by the defendant and if he does so, the plaintiff must establish a better title or fail." The difference between the right to possession in summary suit under the specific Relief Act and a regular suit based on 'possessory title' was explained further as follows (p.1173) "....the right is only restricted to possession only in a suit under Section 9 of the specific Relief Act but does not bar a suit on prior possession within 12 years and title need not be proved, unless the defendant can prove one". On the question whether the defendant, inspite of dispossessing the plaintiff, could, by proving title, remain in possession, it was held that the defendant could, in such a situation, be permitted to retain his possession if he proved title. It was stated that the law was so laid down in Asher vs. Whitcock [1865 (1) QB 1] and was accepted by the House of Lords in Perry vs. Clissold [1907 AC 73], that was also the law applicable in our country and it was this principle that was engrafted into Articles 64 and 65 of the Indian Limitation Act, 1963. The said articles were, it was held, declaratory of the law.

Relying upon ***Nair Service Society Ltd.*** supra and several other earlier and subsequent expressions to it, in another expression of the Apex Court (3JB) of Rame Gowda (D) By Lrs vs M. Varadappa Naidu, dt.15.12.2003, the principles laid down are the following:

"It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to

take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram and Ors. Vs. Delhi Administration* (1968) 2 SCR 455, *Puran Singh and Ors. Vs. The State of Punjab* (1975) 4 SCC 518 and *Ram Rattan and Ors. Vs. State of Uttar Pradesh* (1977) 1 SCC 188. The authorities need not be multiplied. In *Munshi Ram & Ors.'s case* (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.'s case* (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula

which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession.”

The Apex Court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession':

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

28(l).(xxii). On the scope of Article 64 & 65 and the difference to the same from Articles 142 and 144 of the repealed Act, besides the above expressions cited by both sides those were discussed in the earlier paras, it was well laid down by this Court in ***Mahendra C Mehata Vs. M/s.KCPHS Ltd., Hyderabad***^[53] that person claiming adverse possession must know that someone else was the real owner of the property in his possession and that he is holding it adverse to him. Possession however long without the said animus does not amount to adverse possession. Article 65 is enacted in the Limitation Act, 1963 in respect of the suits based on title. Therefore, when the suit is based on title, the plaintiff need not prove that he was in possession of the land sought to be recovered within 12 years of the suit. Suits falling under Article 64 of the Act, 1963 are based purely on previous possession of the

plaintiff and therefore is not covered by Art.65, because he is not claiming recovery of possession basing on his title. Therefore, if the appellants establish their title to the suit land, the burden of proof would be on respondents to establish that they have perfected their title to the suit land by adverse possession, and appellants need not establish that they were in possession of the suit land within 12 years from the date of the suit. In a suit falling under Art.65, the defendant, who wants to defeat rights of the plaintiff, has to establish his adverse possession which has the effect of extinguishing the title of the owner by operation of Sec.27 of the Act and if he fails to do so plaintiff cannot be non-suited merely because he was not able to prove possession within 12 years. Articles 142 and 144 of the repealed Act had given rise to a good deal of confusion with respect to suits for possession by owners of property. Article 64 of the present Act petitioner replaces Article 142 but is restricted to suits based on promissory title so that an owner of property does not lose his right to the property unless the defendant in possession is able to prove adverse possession. Articles 64 and 65 correspond to Articles 142 and 144 of the Limitation Act of 1908. Article 142 dealt with the suit for possession of immovable property, when the plaintiff, while in possession of the property, had been dispossessed or had discontinued the possession; in such a case the period of limitation was 12 years from the date of the dispossession or discontinuance. Article 144 related to suits for possession of immovable property or any interest therein not specifically provided for in the schedule to the Act of 1908. The period of limitation was 12 years from the date when the possession of the defendant became adverse to the plaintiff. It may be seen that Article 144 was in the nature of a residuary article, which would come in for application only if there was no other specific provision in the other Articles of that Act. In other words if in a given situation Article 142 could apply then residuary Article 144 would be ruled out of the application. Articles 142 and 144 gave rise to a good deal of confusion by owners of property. The law as it stood appeared to favour a trespasser as against an owner because the decisions had held that in an ejectment action by the owner of the property it was not sufficient for him to establish his title but he had also to go further

and establish that he was in possession of the property within 12 years before the date of the institution of the suit, in order to redress this anomaly. Articles 64 and 65 were suitably altered. Article 64 deals with suits based on possession and not on title; in such a case the plaintiff, who while in possession had been dispossessed could file a suit within a period of 12 years from the date of dispossession. For the purpose of Article 64 there is no question of proving any title. Article 65 relates to suits for possession based on title. In such a case the period of limitation is 12 years when the possession of the defendant became adverse to the plaintiff. If in a suit falling under Article 65 if the defendant wants to defeat the rights of the plaintiff, he has to establish his adverse possession for a period of 12 years, which has the effect of extinguishing the title of the owner by the operation of Section 27 of the present Act. If he fails to do so, then the plaintiff cannot be non-suited merely because he was not able to prove possession within 12 years. A person in possession of property acquires rights by prescription, if he has been in such possession adversely to the true owner. On the other hand Article 64 operates negatively and it destroys right of a person without creating right in another person. It may be that the negative and positive aspect of limitation may coincide, for instance, when a person acquires title by adverse possession, the title of the true owner is extinguished.

29) Adverse possession, ouster vis-à-vis tacking, estoppel etc. co-relation: The concept of adverse possession can be dealt with in relation to estoppel, co-owners, co-heirs, co-parceners, benami transactions, minor's property, public rights, Section 53-A of Transfer of Property Act, trusts, licences, leases, riparian rights, limited owners, mortgagors, mortgages, invalid transactions, symbolic possession, institution of suit, Section 145 Cr.P.C. proceedings etc., and these are only illustrative and cannot be said to be exhaustive since this concept may have to be dealt with in the context of different types of facts and circumstances.

30) Doctrine of tacking is one relating to computation of period of

adverse possession. Where a person has been in possession without title short of statutory period and another person succeeds such person and completes the rest of the period, such person is entitled to compute the whole period for invoking the concept of adverse possession. This principle cannot be extended in case of independent trespassers.

31) In the land mark expression of Apex Court on the basic requirements of adverse possession in ***S.M. Karim v. Mst. Bibi Sakina***^[54], it has been ruled that 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. The claim to rights and interests in relation to property on the basis of possession has been recognized in all legal systems. **Uninterrupted and uncontested possession for a specified period, hostile to the rights and interests of true owner, is considered to be one of the legally recognized modes of acquisition of ownership. The prescription of periods of limitations for recovering possession or for negation of the rights and interests of true owner is the core and essence of the law of adverse possession.** Permissive possession or possession without a clear intention to exercise exclusive rights over the property is not considered as adverse possession.

32) In ***Amrendra Pratap Singh vs. Tej Bahadur Prajapati***^[55], it was held that the essential requisites to establish adverse possession are that the possession of the adverse possessor must be neither by force nor by stealth nor under the license of the owner. It is important to note that the starting point of limitation of 12 years under Article 65, Schedule I of the Limitation Act is to be counted from the point of time “when the possession of the defendants becomes adverse to the plaintiff” for a suit for possession of immovable property or any interest therein based on title. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title. Article 64 governs suits for possession based on possessory right and 12

years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which bears the heading – “Extinguishment of right to property”. It lays down: “At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.” That means, where a cause of action exists to file a suit for possession and if the suit is not filed within the period of limitation prescribed, then, not only the period of limitation comes to an end, but the right based on title or possession, as the case may be, will be extinguished. The section assists the person in possession to acquire prescriptive title by adverse possession. When the title to property of the previous owner is extinguished, it passes on to the possessor and the possessory right gets transformed into ownership. Section 27 is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy. It means that since the person who had a right to possession has allowed his right to be extinguished by his inaction, he cannot recover the property from the person in adverse possession and as a necessary corollary thereto, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession.

33) It was clarified by a three-Judge Bench of the Supreme Court in ***Kshitish Chandra Bose vs. Commissioner of Ranchi*** ^[56] of what the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded.

34) It was also clarified in a series of decisions that while possession shall be open and exclusive and in assertion of one’s own right, the fact that the possessor did not know who the real owner was, will not make his possession any the less adverse. The intention to exclude others from the

control of property is an essential element of factual possession. The intention to possess the property exclusively implies the intention to exclude all others including the true owner whether known or unknown to the adverse possessor.

35) The rationale for adverse possession rests broadly on the considerations that title to land should not long be in doubt, the society will benefit from someone making use of land the owner leaves idle and that persons who come to regard the occupant as owner may be protected. The maxim that law and equity does not help those who sleep over their rights is invoked in support of prescription of title by adverse possession. In other words, the original title holder who neglected to enforce his rights over the land cannot be permitted to re-enter the land after a long passage of time. A situation lasting for a long period creates certain expectations and it would be unjust to disappoint those who trust on them. Another justification for the law of adverse possession is captured in the quote that possession is “nine points of the law”.

36) In ***Saroop Singh v. Banto***^[57], relying upon earlier expression in ***Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak***^[58] the Apex 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.

37) The Supreme Court of India has in the recent expressions, viz., ***State of Haryana Vs. Mukesh Kumar***^[59] referring to ***Hemaji Waghaji vs. Bhikhabhai Khengarbhai***^[60] and same by referring to the earlier expressions particularly of ***P.T.Munichikkanna Reddy vs. Revamma***^[61] pointed out the need to have a fresh look at the law of adverse possession. Borrowing the language from the judgment of the High Court (Chancery Division) of England in ***J.A. Pye (Oxford) Ltd. vs. Graham***¹⁷, the Supreme Court in the former case, described the law of adverse

possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner “and a windfall for dishonest person who had illegally taken possession of the property”. The Supreme Court, after extensively quoting from ***Munichikkanna Reddy*** supra reiterated the observation therein that the law ought not to benefit a person who in 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. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation. It was therefrom observed as follows: “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.”

38) Needless to say till such legislation brings a change on the concept of adverse possession, as on date and same so long as it is in the statute book, the claim of benefit of adverse possession by persons can no way be negated by any Court of law unless the apex Court within its constitutional powers declare any law with modification to abide.

39) From the above, coming back to further facts including from earlier judgement-Ex.A12, in O.S. No.7098 of 1991 (Ex.A-12) **P**-as plaintiff therein the suit for bare injunction by showing three defendants including **G**-the plaintiff herein as second defendant and his brother as 3rd defendant and mother as 1st defendant, contended that he married daughter of the 1st defendant and sister of D-2 and D-3 and D-2 executed gift deed dated 21.02.1966 (Ex.B-2=Photostat copy of it Ex.A-2) for the suit property of 401 Square yards and he was inducted into physical possession and since

then in exclusive possession and enjoyment and D2-**G** was reimbursed by his other brothers and mother with cash and other properties to compensate and the suit property by virtue of the same gifted by all the brothers of D2 and D3 and later there were strained relations between **P** and **G** and ever since **P** left India, **G** and other defendants are trying to take over possession and to induct third parties into it and on 25.11.1991 they unsuccessfully made an attempt which could be thwarted by timely action of **P**'s GPA holder. In that suit for bare injunction supra from plaint as to how and when he was inducted into possession, it was by saying the gift was made and it was executed and possession was delivered as contemporaneous. The **G**'s written statement contest was that he is the owner of the said property which he purchased under original of Ex.A-1 registered sale deed dated 05.08.1963 and the alleged gift deed does not create any title or interest in **P** and it is **G** that in possession as it's owner all along and about 10 years back it was in possession of **G**'s tenant Gopaldas and his brother and while so **G** left U.S.A on 03.11.1991 and in his absence a plan was hatched by **P** and other defendants to appropriate the property and to alienate, that he effectively redeemed the pledge he made by offering his self-acquired property supra as security in fulfillment of dowry over period of 20 years and made it clear to every one concerned as early as 1987 that he has thus extracted himself from the commitment to pay any more money, yet as it transpires now **P** with ulterior motive not returning the documents concerned and the cash he received from his father who died in 1988 while he was alive by realization of amount, that **G** is shuttling between U.S.A and India and sought for dismissal. It is claim thereby of property not delivered but original title deed and so called gift deed delivered under which the property was purchased and same was not even returned and in claiming as security for the amount of dowry properly given and later paid. Curiously if paid and if really for security no prudent person could keep quite without asking for return of document atleast by mentioning as to when paid and as to it was given as security only the original gift deed and original title deed, thus to be returned, it was not done as discussed in earlier paras supra in this regard to avoid repetition of facts. In the earlier suit for injunction from the pleadings, he

did not set up any title much less any previous possession but for saying he got right under the gift supra. The gift deed exhibited is not only not duly stamped but un-registered. A gift without registration does not confer any right over the property even exhibited without proper stamp duty, though objection regarding deficit stamp duty taken waived and not open to raise, apart from if it is not a contemporaneous document but only a oral gift acknowledgement subsequently which is also not legally valid to create any right thereunder. Here the crux is under the unenforceable and void document, if in possession of the property to any claim, in the earlier suit for injunction does not even a claim of adverse possession specifically, from the issues framed therein were whether alleged gift true, valid and binding and whether plaintiff therein in lawful possession with right and title and entitlement to permanent injunction as referred supra, plaintiff has no lawful title no right conferred on him by that document, however, the trial Court ultimately granted the injunction saying P.Ws 1 to 3 therein Mohana Reddy, one Rukkamma and Dr.Rama Krishna Reddy deposed with regard to the gift and execution of the document and hand over of original title deed for the suit house property with possession and they are attestors' to the deed of gift and held same proved including from evidence of P.W-3 Dr.G.Rama Krishna Reddy-no other than brother of **G** and said Rukkamma-no other than mother of **G** of suit property gifted to **P** at the marriage time and there from proved pursuant to the said oral gift the document executed thereby even though required to be registered not registered. It was observed further off besides proof of execution, property was also delivered to the **P** and he was in actual possession since that gift besides he was hand over the original title deed also by **G** and **P** was paying taxes and while **P** was at America authorized his brother Mohan Reddy as power of attorney. **G** having admitted the gift contended same does not create any rights for un-registered, besides disputing giving of property by gift at the time of marriage of his sister and contended that he benevolently permitted **P** to stay in the property by paying taxes and electrical charges and by further saying **P** later left and **G** came into possession through tenant Gopaldas. Further, said Gopaldas not even examined and that **G** did not even come to witness box to dispute any of

the facts and therefrom held **G** who opposes the injunction suit failed to prove his contentions and **P** in possession by payment of taxes to the municipal and electricity from the property mutated in his name and his mother-in-law-cum-mother of **G** also supported the same was also brother of **G** as P.Ws2 and 3 and thereby even under the invalid un-registered gift document dated 21.02.1966 once **P** came into possession, he is in adverse possession and thereby perfected title by adverse possession and entitled to injunction.

40) No doubt, so far as adverse possession concerned there was no specific plea in the plaint to give such a finding there was no even any issue even indirectly framed and the finding has no basis even to say that conclusive finding if at all to operate to bind the **G** herein as 2nd defendant therein from the marking of the judgment Ex.A-12. Thus, the judgment besides no way resjudicata as observed, not even any of the findings operates as estoppel against the **G** herein.

41) From the above, coming to present plaint for declaration of title and possession reliefs from averments detailed and discussed in the earlier paragraphs, now so far as the claim of possession concerned, the **G** claims that while he was in possession, under the guise of injunction order, **P** came into possession. The claim of **P** in the earlier suit is pursuant to gift deed dated 21.02.1966 he was given possession and since then he is in possession. **G** as D-2 in the injunction suit supra did not come to witness box and there was no oath against oath. In this background, it is to be seen whether **P** came into possession of the property pursuant to the un-registered gift with effect from that day or a subsequently came into possession after earlier suit for injunction, either pursuant to injunction order, that was even dismissed, reversed and allowed in C.M.A No.292 of 1992 of **P** entitled to injunction, leave about the suit was decreed by judgment dated 14.10.1996. As referred supra in the earlier suit **G** has pleaded in his written statement as 2nd defendant, that he left U.S.A on 03.11.1991 and in his absence **P** hatched a plan with other defendants therein to gain the entry. The chief-examination affidavit

of **G** in present title suit covered by the appeal is by referring to his plaint averments and in the cross-examination he deposed about he admitted about execution of Ex.A-2=original Ex.B-2 gift settlement saying as security for falls short of dowry amount and even later paid the amount, Ex.B-1 and B-2 documents were not returned. As discussed supra, no notice even issued much less in writing calling for return of the documents that is voucher sale deed and said gift deed and did not take any legal recourse for its return. He denied the suggestion of having voluntarily gifted at the time of marriage and executed the document to which his mother is also one of the attester he is deposing falsely. So far as Ex.A-6 letter said to have been executed by tenant of **G** alleged Subash brother of Gopaldas on 05.04.1992 in Hindi it is admitted that by the time the letter addressed, **G-P.W-1** herein was in America and there is nothing to show sent by post or otherwise with any proof but for saying through some other person coming to U.S.A the letter is sent and not even named so called some other person to give any credence to such version and said Subash not even examined. In fact that letter appears to be a subsequent creation for not even mentioned in the plaint and not even shown if at all really addressed through whom he received much less by name any person and importantly in the Ex.A-7 application of him to Home Minister dated 15.07.1992 so called letter dated 05.04.1992 no way find place that is also one of the circumstances to say the Ex.A-6 is a creation. Pending suit for declaration and possession, injunction order obtained was only not to alienate. **G** admitted that Crime No.133 of 1992 registered by P.S.Amberpet against him on the report of **P** and even he has stated given complaints to police against **P** under Exs.A-13 to A-16 no action was taken. **G** further deposed that Ex.A-32 is the order of Water Supply Department including name of **G** to the premises and he denied the suggestion of the corrections not attested in Ex.A-32 by officials and the Department and he cause corrected himself for purpose of the suit. **G** admitted in the cross-examination that to say **P** trespassed through his G.P.A holder-cum-brother, he did not file any private complaint case and denied the suggestion of he was never in possession after the gift deed and thereby he did not take any steps for the alleged trespass, which is not

true. He deposed that P.W-2 Gopaldas not a tenant but for his brother Subash thereby P.W-2's evidence as if tenant cannot be given credence. Further what P.W-1 deposed of the tenant was threatened and thereby unable to bear with, kept the premises in lock and key and informed him. In fact P.W-2 in the cross-examination stated he was not threatened by **P** or anybody and he himself voluntarily vacated and he does not remember to whom he handed over the key if voluntarily vacated and if really in occupation before alleged vacation. He deposed that there was none as mediator between them for alleged oral lease. P.W-2 deposed that there are no any receipts for payment of any rent as tenant, though denied the suggestion of never a tenant and he was set up. In the cross-examination, P.W-2 further deposed that his brother Subash is younger to him and he is not a bed ridden but for diabetic. The non-examination of said Subash, even to prove alleged Ex.A-4 (so called rent receipt) of Subash by **G** also speaks against said claim of **G**. This is the only evidence of **G** and on behalf of the defence among D.Ws 1 to 3, D.W-3 is the defendant-**P**, leave about D.W-1 G.P.A holder of **P** and D.W-3 is mother-in-law of **P** and no other than mother of **G**, she was also witness in earlier suit as referred supra against **G**, own son and supporting case of the son-in-law **P**. It is her evidence in chief affidavit that at the time of marriage of **P** with her daughter, the suit property which was purchased in the name of **G**, was gifted to **P** on behalf of their entire family and **G** was reimbursed the value of the suit property by giving of agricultural land to **G** later of Aripiral village of Torrur mandal and said gift deed cause prepared by **G** and **G** & **P** signed before her and other family members and later she attested the same. She further deposed that the actual and physical possession was handed over to **P** on the date of said gift deed and since then **P** is in possession, and **P** is absolute owner thereby. She also deposed same version in the earlier suit for injunction and in her cross-examination she deposed that **G** who is her one of the sons besides Rama Krishna Reddy and Sudhakar Reddy, after marriage of Rama Krishna Reddy of 01.09.1963, six months later separated from family and it is with his money he purchased the suit property in his name during that period and he constructed the house therein and after giving of the property to **P** at the

marriage **P**, **G** was compensated with other agricultural land of the family of **G** and his brothers and mother. She deposed that dowry fixed was Rs.25,000/- for the marriage and for that cash given of Rs.9,000/- and the suit property given in lieu of the balance by gift and **P** did not agree for marriage without giving of entire dowry or any property equivalent and denied the suggestion of but for **G** the other sons of her did not cooperate to perform marriage and the property of **G** was thereby given as security and later the amount due was paid by **G** to **P**. She deposed that in the earlier suit filed against **G** by **P** in the year 1991 in O.S. No.7098 of 1991. She deposed that **G** herein is residing at Amberpet in his house adjacent to the suit property and she does not know whether **G** resided at any time at Begumpet and she did not reside at Begumpet and she deposed that she is residing with her youngest son Sudhakar Reddy and denied the suggestion and at the force of Sudhakar Reddy she is deposing falsehood. She deposed that **P** stayed in suit house about one year or so and afterwards moved to DLRL quarters allotted to him and denied the suggestion of **G** is residing in suit premises. Importantly in the cross-examination of D.W-2 mother of **G** though in her chief-examination she categorically deposed at the time of said gift executed at the marriage of **P** with sister of **G** and daughter of her on 22.02.1966, the property was delivered by **G** to **P**, there is no specific suggestion in the cross-examination of D.W-2 by **G** of the property was not delivered and she is deposing falsehood, but for the suggestion of the property was not given as gift but as security and the amount even paid by **G** to **P**, the documents were not returned. Coming to D.W-3, **P** in his chief-examination he deposed several facts including of gift deed date, he is in possession as possession was given to him and enjoying the property in his own right by paying municipal taxes, electricity charges and also obtained water connection and paying water charges, with continuous possession since 1966 February and that **G** never in possession from 1966 February. In the cross-examination **P** deposed that under Ex.B-33 original ration card of the year 1973 there are entries up to 1973 and referring suit premises' address. He denied the suggestion of same is a fabricated document. It is important to note from that document, even exhibited the same by **P** as

plaintiff in earlier suit for injunction as Ex.A-33 therein. The authenticity having not even disputed in the earlier suit much less can be now, leave about there is no basis to dispute, and the same establishes with entries up to 1973 even of **P** in occupation of the suit property even by then to say **P**'s possession of the suit property and also the evidence of mother of **G**-cum-mother-in-law of **P** of execution of gift deed and putting of **P** in possession on that day and **G** is not in possession therefrom. Thus, from said evidence more particularly with reference to that Ex.B-33 original ration card of the year 1973 there are entries up to 1973 and referring suit premises' address of **P**, presumption backwards to Ex.B-2 gift deed dated 22.02.1966 can be drawn besides also to draw under Section 114 of the Indian Evidence Act there from the presumption forwards from the old documents the existence of which cannot be disputed and Ex.B-33 as Ex.A-32 even filed by **P** in his earlier suit for injunction since it was exhibited and there is nothing to suggest anything to believe the alleged fabrication. The drawing of presumption backwards and forwards in this case on hand can be taken aid from the settled expression of the Apex Court in **Ambika Prasad Thakur Vs. Ram Ekbal Rai** ^[62] with reference to Section 114 and also to draw the inference under Section 3 of Indian Evidence Act. Said expression also reiterated in **Anjali Devi V. S.Lingaswamy** ^[63] by this Court. It is also because evidence of D.W-1 and D.W-3/**P** also supports the evidence of D.W-2 supra. D.W-3 deposed that he was allotted DLRL lab quarters in the year 1973 and shifted thereafter to that quarter and denied the suggestion of since 1968 itself he shifted to Malakpet and staying in the lab quarters. He deposed that the suit premises has been leased out by him after he shifted to lab quarters in 1973 in saying in his possession since before and after the gift deed date. He deposed that P.W-2 during the years 1990 and 1991 was tenant under him and denied the suggestion of he was tenant under **G** in that period or **P** forcibly got him vacated with threats. He deposed that Ex.B-2 gift deed executed prior to his marriage which is in the year 1966 and denied the suggestion of to meet the demand for additional dowry it was nominally executed and as security and with no intention to give or convey that

property. He deposed that he does not remember whether his brothers were paid Rs.9,000/- as dowry at the time of Varapooja. He denied the suggestion of subsequently **G** paid balance amount to him and demanded to give back the property to him. This suggestion also shows **P** is in possession and **G** asked to give back possession and what **G** claimed as if he was in possession and only after 1991-92 under the guise of injunction suit **P** came into possession. He deposed that though he cannot say his entry into physical possession of the suit property was on the exact date of gift deed or not, it was immediately after the gift deed. He denied the suggestion of **G** allowed him after marriage of him with **G**'s sister to stay in the suit premises for he has no other house. Even from that suggestion **P** is in possession of the property from 1966 is one way corroborating. He deposed that he did not demand **G** to register Ex.B-2 unregistered gift deed or to execute any other registered document after his marriage with sister of **G**. He deposed that even Ex.B-2 was voluntarily executed and gifted the property to him by **G** and that was also not asked by him. He deposed that Ex.A-37 reveals **G** sold away part of his property and it is not related to suit property and denied the suggestion of **G** paying electricity charges, house tax and water charges to suit property or brother of **P** (D.W-1) trespassed into the suit property. In the re-examination **P** deposed further that Ex.A-36 of 1983 in the affidavit obtained his address shown at West Marredpally because in the suit property under his possession a tenant was residing.

42) From this evidence what the gift Ex.B-2 document contents not in dispute. Even it speaks **G** is donor and absolute owner and possessor it was dated 21.02.1966 and the same is bearing house No.2-3-703/2 standing on a plot of 401 Square yards at Amberpet and the donor/**G** out of love and affection for the donee/**P** is making the gift of said house property at the time of his marriage as marriage gift and thereby transfers to the donee free from all encumbrances. All the property described in the schedule of the property to hold the same by the donee absolutely forever and the donee accepts said transfer and the donee is entitled to enjoy absolutely in whatever manner he likes and donor shall not have any

objection and the gift is irrecoverable and the donor have no right to question the gift of the property to the donee and not entitled to interfere in its enjoyment by the donee and the donor shall take all steps to get transfer of the house property in the name of the donee in the municipal and other records. It is in fact outright gift and even there is no specific reference of delivery of possession there is giving and acceptance and voucher sale deed of 1963 under which donor got title (**G**) also undisputedly along with original gift deed given to the donee (**P**) and the covenant further from the undisputed facts of the terms though it is otherwise not admissible but for nature of possession, since attention drawn to rely even by **G** on the contents, it clearly speaks the donee shall absolutely enjoy the property and donor shall not have any right or interference. Thus, without possession, the question of enjoyment does not arise and even donor undertakes to transfer in municipal records the property in the name of donee. All that itself is sufficient to say there is possession also given and that substantiates the evidence discussed supra and possession if not contemporaneous atleast from the date of gift deed or atleast from next day pursuant thereto and the evidence further shows **P** as a donee in possession of the property after that gift under Ex.B-2 dated 21.02.1966 or from next day 22.02.1966 till 1973 even from Ex.B-33 herein marked already as Ex.A-33 in earlier suit and even later. Even in the earlier suit for injunction plaint copy marked as Ex.A-5 relied by **G** there is at page-2 para-2 specific mention of **P** was inducted into actual and physical possession of the suit property as per the gift, on the date of gift dated 21.02.1966 and ever since in absolute possession and enjoyment without interference from anybody and **G** was even compensated for the gift with other agricultural lands by **G**'s brothers and mother who also deposed in support of it, on behalf of **P**, as referred supra and also from memo of evidence at page No.14 of Ex.A-12 judgment and **G**'s mother in the present suit also deposed on behalf of **P** as D.W-2 saying **P** was inducted into possession pursuant to the gift and since then in possession and **G** was compensated for the gift property given to **P** with other agricultural lands of the family. The above evidence categorically shows pursuant even to the invalid document of gift executed by **G** as

donor in favour of **P** as donee and put him in possession of the property and allowed enjoyment and covenanted for the same with full knowledge of by delivering possession, **P**'s possession since then is when open, peaceful and uninterrupted and that is sufficient to say in support of the plea of **P** of he perfected title by adverse possession right from 1966 pursuant to the said gift original Ex.B-2=Ex.A-2. Once these are the admissions including cross-examination of D.W-3 supra and D.W-2 supra what are the documents showing as if one Subash was tenant for some time or he filed writ petition against municipal authorities for running paints industry in the premises, to which the counsel is no other than **G** has practicing advocate as can be seen from Ex.A-17 herein to say, **G** knows all the legal implications and made the covenant and put him in possession and later conceived the idea to get back the property in one way or the other is apparent from the attending facts and circumstances. Said Subash not even examined to prove the version though material witness with no reason for non-examination even hale and healthy as per P.W-2 brother of Subash. A perusal of Ex.A-25 shows only the initials for payment made with dates for 1991-92 on 14.07.1992 and so on, not with any initials or date and it doubts the genuineness of getting only after litigation started in the own suit, so also the receipts Exs.A-26 to 29 after the filing of the suit, so also Ex.A-31 to 35. Ex.A-36 is shown on the stamp purchased on 17.01.1990 for Rs.5/- in the name of **P** as resident of somewhere at Hyderabad, which stamp used for the affidavit given by **G** and **G** not even shown resident of the suit premises, but for at Barkatpura. There is explanation from **P** of by then he was staying at that address as in suit premises tenant was residing. **G** referred in his affidavit of a sale deed executed by him in favour of one Sri P.Narasinga Rao in 1983 for premises bearing No.2-3-703/2C and **P** as D.W-3 in his evidence in cross-examination when confronted stated said referred premises does not relate to suit property but some other.

43) Coming to the documents placed relied on by **P**, Ex.B-10=A-10 in earlier suit filed by **P** herein shows it is standing in his name and it was dated 16.11.1972 demand notice issued by Hyderabad Water Works

Department so also Ex.B-11=A-11 of 1972 in the name of **P** so also Ex.B-13=A-13 in old suit of 1972 so also Ex.B-13=A-13, B-14=A-14, B-15=A-15 in old suit, B-16=A-16 in old suit of the year 1971 so also Ex.B-17=A-17, B-18=A-18 and B-19, B-20=A-19 and A-20 of 1972 so also from Ex.B-21 B-22=A-21, A-22 of 1972, Ex.B-23, B-24=A-23, A-24 of 1972-73 so also Ex.B-25, B-26=A-25, A-26 and so also Ex.B-27, B-28=A-27, A-28, B-29, B-30=A-29, A-30 and Ex.B-31=A-31 of the year 1975, Ex.B-32 municipal revision notice=Ex.A-8 of earlier suit for injunction of the year 1972 and Ex.B-33 ration card already discussed. This documentary evidence also shows **P** while in exclusive possession and enjoyment in his own way paying taxes. Though payment of taxes does not confer title, this also coupled with other facts establishes **P**'s exclusive possession and enjoyment of the suit property right from 21/22-2-1966. The contention that **P** in possession even by virtue of said gift document which conveyed no title by recognizing title of **G** and not in adverse to the right to claim possession by **G**, with any *nec-vi nec-calm and nec-precario*, is untenable, for **P** in possession and enjoyment ever since the gift document in own right by paying taxes and not on behalf of **G**. As answered supra, even taken from the evidence of D.W-2 and D.W-3 for balance dowry amount the property was given as gift and same is opposed to public policy and against to Law and the gift thereby void, it does not run adverse possession is untenable, as it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void but for the property transfer is prohibited by law and in such event to say no adverse possession that can be claimed in respect of such property as answered supra. Even from **Vishwanath Bapurao Sabale** Supra of relationship between the parties is also one of the important considerations in considering the claim of title by adverse possession with pleading and proof of *animus possidendi* with peaceful, open and continuous possession to constitute any adverse possession, same was also laid down way back in **Puttathayamma vs. Rathanarajiah**^[64]; however, from the facts proved supra, there is nothing to say the possession is permissive or otherwise and not adverse

possession, for the reason the Physical fact of exclusive possession and the *animus possidendi* to hold as of right by **P** in exclusion of the actual owner **G** over and beyond statutory period is made out which extinguishes the right and title of **G**, even the Gift unregd. Not conveyed or conferred right or title, suffice therefrom to count adverse possession. The very possession under invalid document empowers to claim adverse possession for not a case of the land is unalienable to say adverse possession concept has no application. The trial Court in fact relied up on the expression of the Patna High Court in **Sm.Kheni Mahatani Vs. Charan Napit**^[65] saying under unregistered sale deed which is inadmissible in proving title, nevertheless it could be referred to as explaining the nature and character of possession thereof held by the party and from the transfer effected in violation of the law, the transferee would be deemed to be in adverse possession ever since the date of the transfer. For that conclusion, the learned Single Judge of the Patna High Court referred several earlier expressions of the Calcutta High Court, Patna High Court, Allahabad High Court and of the expression of the Privy Council in **Rattan v, Parma Nand**^[66] saying unregistered documents are admissible to show nature of possession as a collateral purpose and so far as the unregistered sale deed not admissible to prove title but explaining character of possession mainly placed reliance on the expression of the Privy Council in **N.Varada Pillai Vs. Jeevarathnammal**^[67] wherein it was held that gift though invalid as not being made by a registered document could be looked into as explaining the nature and character of possession thenceforth. In fact, said Privy Council expression arising out of Madras High Court's judgment is a short and crisp of a Four-Judges Bench in **Varada Pillai (7 supra)** in relating to the unregistered gift where under donee enters in possession and holding it for over 12 years held perfected title by adverse possession, saying when the donor did not effect a registered gift deed but allowed donee to enter into possession of the gifted property and the donee thus remained in possession for over 12 years, and his title became perfected as against the donor and his heirs. It was also observed in this regard that the gift must be a registered one

under Section 123 of the Transfer of Property Act and under Section 91 of the Evidence Act the recitals be used as evidence of a gift having been made. But, the defendant's case is that Doraiswamy although may have acquired no legal title under said gift transaction, in fact, took possession of the property when it was transferred in her name and retained such possession until her death in December, 1911 and after which it passed to the defendant as her successor and accordingly the plaintiff's claim is barred by upwards of 12 years adverse possession and the High Court upheld the contention in arriving a right conclusion. **Bondar Singh** supra is also a similar case based on an unregistered sale deed, even not admissible in evidence, it can be looked into for collateral purpose, such as, to see nature of possession of the party over the property and the party claiming title over the land by adverse possession since in possession of the land by virtue of the unregistered and unstamped sale deed executed in their favour by the predecessors in interest of the other party who are while admitting the possession claims as trespasser and the plaintiff's possession for last 26 years proved and the claim of the defendant regarding taking over of possession from the plaintiff when found to be false, from plaintiff in hostile and continuous possession thereby held proved prescriptive right perfected by adverse possession. Similar are the expressions even earlier saying where no arrangement proved to show possession permissive and not adverse, the possession is adverse from not otherwise vide **Mudragada Satyanarayana V. Jammi Veerraju**^[68] and if in possession under invalid document by virtue of which the transferee gets no title or right, his possession is adverse to the transferor to count for adverse possession as person in possession claiming right of his own against the real owner under invalid document is tantamount to denial of title vide, **Bharit V The Hon'ble Board Of Revenue**^[69] following the apex Court's expression in **State of West Bengal v. Dalhousie Institute Society**^[70], where it was held that a person in possession under an invalid grant acquired title by adverse possession and for that referred the earlier expression of the apex Court in **Collector**

of Bombay v. Municipal Corporation of the City of Bombay^[71] where the Court observed:

"..... the position of the respondent Corporation and its predecessor in title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the respondent Corporation took possession of the land under the invalid grant."

44) Having regard to the above, when **P** perfected title by adverse possession from his open, peaceful and uninterrupted possession in his own way of enjoyment and not on behalf of **G** the original owner under the void gift, right from said un-registered gift deed dated 21.02.1966 (Ex.B-2) the plaintiff's suit for declaration which is beyond three years barred by law under Article 58 of the Limitation Act, though otherwise maintainable for recovery of possession under Article 65 of the Act, since the right and title of **G** since extinguished and right by adverse possession created in favour of **P**, **G** is not entitled to the suit reliefs and thereby, the trial Court when dismissed the suit, for this Court while sitting in appeal there is nothing to interfere.

45) In the result, the appeal is dismissed, as the dismissal decree and judgment of the trial Court is otherwise sustainable for nothing to interfere. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

Dr.Justice B.Siva Sankara Rao

Dt.19 .02.2016
cbs/ksh

^[1] (2015) 7 SCC 601

^[2] (2009) 12 SCC 101

^[3] (2004) 10 SCC 779

^[4] (2005) 8 SCC 330

^[5] (2009) 13 SCC 229

^[6] 2003(3) ALT 716 (D.B)

- [\[7\]](#) AIR 1953 Patna 365
- [\[8\]](#) AIR 1919 Privy Council 44
- [\[9\]](#) AIR 1970 SC 1778
- [\[10\]](#) AIR 1951 SC 469
- [\[11\]](#) AIR 2003 SC 1905(1)
- [\[12\]](#) 2011(1) ALT 1 (SC)
- [\[13\]](#) AIR-1976-SC-634
- [\[14\]](#) AIR-1969-SC-1144
- [\[15\]](#) AIR 2003 SC 1880

- [\[16\]](#) AIR 2003 SC 1989=2003(9) SCC 606
- [\[17\]](#) AIR 1963 SC 1516=1964(1) SCR 980
- [\[18\]](#) AIR 1953 SC 235
- [\[19\]](#) 1965(3) SCR 550
- [\[20\]](#) AIR 2003 SC 4548=8 SCC 752=(8) Supreme Today 194
- [\[21\]](#) (2004)1 SCC 271
- [\[22\]](#) 2002 (1) SCC 134
- [\[23\]](#) 2000 (5) SCC 652
- [\[24\]](#) 2000 (1) SCC 434
- [\[25\]](#) (2000) 8 SCC 123
- [\[26\]](#) 2003(5)ALD 241(DB)
- [\[27\]](#) 2002(2)ALD 753(DB)
- [\[28\]](#) (2000)3 SCC 350
- [\[29\]](#) (2000) 7 SCC 543=AIR 2000-SC-3272
- [\[30\]](#) *Volume* 16 para 1538, IV edition,
- [\[31\]](#) 2005 (6) SCC 202
- [\[32\]](#) AIR 2010 SC 818.
- [\[33\]](#) 2005(2) ALD 675 (FB)
- [\[34\]](#) 2011 AIR SC 3590
- [\[35\]](#) AIR 2015 SC 3360
- [\[36\]](#) (2004)1 SCC 271
- [\[37\]](#) 2001 3 SCC 537 at paras 10 to 14
- [\[38\]](#) 1989 (1) SCC 101
- [\[39\]](#) 1991 4 SCC 139
- [\[40\]](#) 2000 (5) SCC 488
- [\[41\]](#) 2013 (4) ALD 725
- [\[42\]](#) AIR 1989 SC 38
- [\[43\]](#) Third report of the Law Commission of India,
- [\[44\]](#) AIR 1932 PC 165 at 167=ILR(60)-Cal-1
- [\[45\]](#) AIR-1941-PC 6

- [\[46\]](#) AIR-1962-SC 1716
- [\[47\]](#) *Halsbury's Laws of England*, 4th Edition, Volume-28, para-605(page-266.
- [\[48\]](#) 1906 ILR 29 Madras 305
- [\[49\]](#) 2007(3) MLJ 85 at 91
- [\[50\]](#) AIR 1997 Guj 46
- [\[51\]](#) (2007) 3 SCC 569
- [\[52\]](#) AIR 1968 SC 1165
- [\[53\]](#) 2001(5)ALT197
- [\[54\]](#) AIR 1964 SC 1254
- [\[55\]](#) (2004) 10 SCC65
- [\[56\]](#) (1981)2 SCC 764
- [\[57\]](#) (2005) 8 SCC 330
- [\[58\]](#) (2004) 3 SCC 376
- [\[59\]](#) (2011)10 SCC 404
- [\[60\]](#) AIR 2009 SC 103
- [\[61\]](#) (2007)6 SCC 59
- [\[62\]](#) AIR 1966 SC 605
- [\[63\]](#) 1985(3) APLJ 83
- [\[64\]](#) AIR-1955-Mysore-33
- [\[65\]](#) AIR 1953 Patna 365
- [\[66\]](#) AIR 1946 PC 51
- [\[67\]](#) AIR 1919 PC I 44
- [\[68\]](#) AIR 1959 AP 79 (FB)
- [\[69\]](#) AIR 1973 All.201
- [\[70\]](#) AIR 1970 SC 1778
- [\[71\]](#) AIR 1951 SC 469