

Amrut

***IN THE HIGH COURT OF BOMBAY AT GOA***

***SECOND APPEAL NO.85 OF 2004***

- 1 Shri Raghu Ganesh Shet Parkar,
- 2 Smt. Premabai Raghu Shet Parkar,  
both deceased, by their heirs,
  - (a) Shri Sadanand Raghu Parkar  
about 55 years of age, and his wife,
  - (b) Smt. Kanhopatra Sadanand Parkar,  
(since Deceased) about 50 years of age,  
both residing at Camarconda,  
Kirlapal, Goa, House No.
    - (b)1. Devata alias Vidhya Sudesh Parab  
and her husband
    - (b)2. Sudesh Madhukar Parab  
both residing at Panchwada,  
Usgao, Ponda, Goa.
    - (b)3. Sidharth alias Sidharud  
Sadanand Parker and his wife
    - (b)4. Vandana Sidharth Parker
    - (b)5. Lav Sadanand Parker
    - (b)6. Ankush Sadanand Parker

(b)7. Sushma Sadanand Parker

(b)8. Raghu Sadanand Parker

All residents of House no. 1023,  
Haluli Kirlapal, Dharbandora, Goa.

..... Appellants

Versus

1 Mr. Vinayak Sagun Shet Parkar,  
Since deceased, by his heirs,

(a) Shri Rajendra Vinayak Shet Parkar  
about 32 years of age,

(b) Shri Dilip Vinayak Shet Parkar  
about 30 years of age.

(c) Shri Sanjay Vinayak Shet Parkar  
about 28 years of age.

(d) Smt. Sulabh Vinayak Parkar  
about 34 years of age.

(e) Smt. Geeta Vinayak Shet Parkar  
about 31 years of age.

(f) Miss. Teja Vinayak Shet Parkar  
about 24 years of age.

2. Smt. Satyawati alias Suman Vinayak  
Shet Parkar,  
67 years of age,

3. Smt. Savitri Tukaram Shet Parkar,  
75 years of age,

4. Dr. Ramkrishna Tukaram Shet Parkar,  
49 years of age, and his wife
5. Smt. Shashi Ramakrishna Shet Parkar,  
48 years of age,
6. Shri. Pundalik Tukaram Shet Parkar,  
47 years of age,
7. Shri. Mahesh Tukaram Shet Parkar,  
42 years of age,
8. Shri. Ramesh Tukaram Shet Parkar,  
38 years of age, since deceased,  
represented by his legal heirs
- 8(a) Smt. Meena Ramesh Shet Parkar  
major, widow.
- 8(b) Master Pranav Ramesh Parkar,  
10 years of age, by his next friend,  
the Respondent No.8(a).
- 9 Smt. Rekha Tukaram Shet Parkar  
35 years of age,
- 10 Smt. Shanti Laxmikant Shirodkar  
50 years of age, and her husband
- 11 Shri. Laxmikant Shirodkar  
about 55 years of age,
- 12 Shri. Vishwanath alias Nonu Anant  
Shet Parkar, since deceased,  
by his legal representatives.

- (a) Shri. Damu Viswanath Shet Parkar
- (b) Shri. Gautam Viswanath Parkar
- (c) Smt. Varsha Viswanath Shet Parker.
- 13. Smt. Sheilaja Viswanath Parkar  
about 57 years of age
- 14. Shri Pandu alias Pandurang Anant  
Shet Parkar, since deceased,  
70 years of age.
- 14.a. Anant Pandurang Parkar
  - b Laxmi Anant Parkar  
both residing at House No. 689,  
Kamati - Bhat - Karai, Shiroda, Goa.
  - c Kiran Pandurang Parkar
  - d. Ujwala Kiran Parkar  
both residing at House No. 865/16,  
Pandagal, Shiroda, Goa.
  - e. Ravindra alias Santosh Pandurang Parkar
  - f. Sushma Ravindra Parkar  
both residing at House No. 865/16,  
Pandagal, Shiroda, Goa.
  - g. Prashant Pandurang Parkar
  - h. Pradhyna Prashant Parkar  
both residing at House No.  
865/16, Pandagal, Shiroda, Goa.

- i. Vishant Parkar
- j. Smt. Vishant Parkar  
both residing at House  
No.865/16, Pandagal, Shiroda, Goa.
- k. Shoba Subhash Gawas
- l. Shubash Gawas  
both residing near Shantadurga  
Temple, Ravanfond, Margao, Goa.
- m. Vasanti Suresh Sawant
- n. Suresh Sawant  
both residing at Vasanti,  
Khursabhat, Margao, Goa.
- 15 Smt. Shantabai Pandurang Shet Parkar  
68 years of age.
- 16 Shri. Gajanan Nilkant Shet Parkar,  
70 years of age, since deceased,  
represented by his legal heirs:
  - a. Shri. Pramod Gajanan Parkar and his wife
  - b. Smt. Pratima Pramod Parkar
  - c. Shri. Laxmikant Gajanan Parkar  
major, bachelor, all resident  
of Hollulem, Camarconda,  
Kirlapal, Sanguem, Goa.
  - d. Smt. Prashanti Prashant Bhinge  
and her husband

- e. Shri. Prashant Balkrishna Bhinge  
both resident of Talaulim, Durbhat,  
Ponda-Goa.
- f. Smt. Nisha Mahableshwar P. Khorjuvenkar  
and her husband
- g. Shri. Mahableshwar V. P. Khorjuvenkar  
both resident of Mapusa-Goa.
- h. Miss. Jaimini Gajanan Parkar,  
major, unmarried.
- i. Miss. Sarojini Gajanan Parkar  
major, unmarried, both resident  
of Hollulem, Camarconda,  
Kirlapal, Sanguem, Goa.
- 17. Smt. Draupadi Gajanan Shet Parkar  
( since deceased )  
65 years of age.
- 18. Shri. Tantu Nilkant Shet Parkar  
( Since deceased )  
63 years of age,  
  
Smt. Vijaya Tatu Parker  
Mr. Prasad Tatu Parkar  
Both residing at Halluli Kirpal,  
Dabal, Goa.
- 19. Shri. Hari Damu Raikar  
Since deceased, by his  
legal representatives:-
  - (a) Shri. Rohidas Hari Raikar

62 years of age and his wife

- (b) Smt. Pramila Rohidas Raikar  
58 years of age.
- (c) Shri. Tulxidas Hari Raikar,  
60 years of age and his wife
- (d) Smt. Vandana Tulxidas Raikar  
58 years of age.
- (e) Shri. Ashok Hari Raikar  
49 years of age and his wife.
- (f) Smt. Daya Ashok Raikar  
42 years of age.
- (g) Shri. Suhas Hari Raikar  
43 years of age, and his wife.
- (h) Smt. Surekha Suhas Raikar  
38 years of age.
- (i) Shri. Santosh Hari Raikar  
43 years of age, and his wife.
- (j) Smt. Jeevan Santosh Raikar  
35 years of age.
- (k) Shri. Guru Hari Raikar  
52 years of age, and his wife
- (l) Smt. Chitra Guru Raikar  
46 years of age.
- (m) Shri. Ratnakar Hari Raikar

Since deceased, by his legal heirs:

- (m1) Kum. Reena Ratnakar Raikar
- (m2) Kum. Gaurish Ratnakar Raikar
- (m3) Kum. Vinay Ratnakar Raikar
- (n) Smt. Supriya Ratnakar Raikar  
52 years of age.
- (o) Smt. Seeta Motichandra Kanekar  
and her husband
- (p) Shri. Motichandra Kanekar.
- 20. Smt. Jay Hari Raikar,  
deceased by her legal representatives at  
Serial Nos.19(a) to (p).

Respondents nos.1(a) to 1(f), 2, 16,17  
and 18 are residing at H. No.640,  
Hollulem, Camarconda, Kirlapal,  
Sanguem, Goa.

Respondents nos.3 to 13 are residing  
at House No.1136A, Thal, Shiroda, Goa.

Respondents nos.14 and 15 are  
residing at House No.926, Paz, Shiroda, Goa.

Respondent nos. 19(a) to 19(p)  
are residing at House No. 844,  
Carai, Shiroda, Goa.

..... Respondents

Mr. M. B. Da Costa, Senior Advocate with Ms. Karishma Custa Betquecar, Advocate for the Appellants.

Mr. Sudin Usgaonkar, Senior Advocate with Mr. I. Agha, Advocate for Respondent Nos. 1(a to f), 2, 3, 5, 6, 7 and 8.

***Coram : N.M. Jamdar, J.***

***Date : 9 November 2017.***

**ORAL JUDGMENT:**

By this Second Appeal, the Appellants-Original Plaintiffs have challenged the judgment and order passed by the learned Additional District Judge, South Goa, partly allowing the appeal arising from the judgment and decree passed by the learned Civil Judge Junior Division, Sanguem Goa. The learned Civil Judge had decreed the suit and directed the Respondents-Defendants to hand over the possession of the suit property and also granted an injunction in favour of the Appellants. The learned District Judge, by the impugned Judgment and decree declared that the Appellants-Plaintiffs and the Respondents-Defendants were occupying and holding the property as shown in the exhibit specified and that the Appellants-Plaintiffs and the Respondents-Defendants are both restrained from interfering with each others possession, and set aside the decree directing handing over the possession. Being aggrieved, the original Plaintiffs have filed the present Second Appeal.

2. The Appellants filed a Special Civil Suit No.18 of 1978 in the Court of Civil Judge Senior Division, Quepem on 9 October 1978. It was the case of the Appellants that in the year 1912, the then Government had issued a grant known as '*Aforamento*' to Ganesh Parkar. The grant was for a land identified in the plan annexed to the plaint, which as of today is known as survey no.19/1 of Village Camarconda, Sanguem Taluka. The Government subsequently transferred the grant to the original Plaintiff No.1 Raghu, the son of Ganesh Parkar. According to the Appellants, the Respondents-Defendants were allowed to erect their residential houses since they did not have any shelter and they were distantly related. It is further the case of the Appellants that after the tenancy legislation was brought into force, the Respondents started interfering with the possession. The proceedings under Section 145 of Criminal Procedure Code were initiated and culminated in favour of the Appellants in the year 1973. According to the Appellants, inspite of this position, the Respondents interfered with the possession of the Appellants in respect of the suit property. It was the contention of the Appellants that the Respondents have no right, title in the suit property. On these averments, the Appellants filed a suit for recovery of possession and for an injunction.

3. The Respondents-Defendants filed their written statement and contended that the property given as *Aforamento* to Ganesh was not for himself alone, but as a representative of the

family. It was contended that by a mutual understanding, a peaceful division of the property had taken place. Right from the year 1940, the Respondents were in possession of the suit property. It was contended that the Respondents have a right of ownership in respect of the houses and it is not correct that they only have right to reside. It was contended that the Appellants are not entitled to the relief of permanent or temporary injunction in view of the long standing possession of the Respondents, which was peaceful, continuous and open. The allegation that the Respondents tried to disturb the possession of the Appellants was denied. On these and other grounds the Respondents resisted the prayers made by the Appellants.

4. The parties led their oral and documentary evidence. The learned Civil Judge framed issues as to whether the Appellants proved that the *Aforamento* was transferred in the name of Plaintiff No.1 and whether the Respondents were permitted by the Appellants to erect the residential houses. The learned Civil Judge has also framed the issues regarding the reliefs of possession and injunction. After considering the evidence on record, the learned Civil Judge held that the *Aforamento* was given to Ganesh for himself and not as a representative of a family which included the Respondents. The learned Civil Judge did not accept this theory of joint ownership put up by the Respondents. The learned Judge held

that the *Aforamento* was validly transferred in favour of Plaintiff No.1. It was also noted that there was no dispute that the annual *foro* or the quit rent was also paid by the Appellants. The learned Civil Judge, after holding in favour of the Appellants, held that the Respondents failed to produce any title document and the possession of the title holder has to be protected from a person who has no title. Accordingly, by judgment and decree dated 15 December 2001, the Civil Judge decreed the suit and directed the Respondents to hand over the possession of the suit property and also granted relief of injunction.

5. The Respondents filed a Regular Civil Appeal No.28 of 2002 in the District Court, Margao. The learned District Judge framed issues as to whether the Plaintiffs-Appellants proved that the *Aforamento* allotted to Ganesh, father of Plaintiff No.1 was transferred to Plaintiff No.1 as a legal heir and whether the Plaintiffs-Appellants proved that the Defendants encroached upon the land and committed a trespass in the year 1978. The learned District Judge also framed an issue as to whether the Respondents proved that the Plaintiffs-Appellants accepted the lawful and peaceful possession of the Defendants or certain portion as specified. The learned District Judge held that the title of the Plaintiffs-Appellants was proved however held that the Plaintiffs-Appellants accepted the lawful and good possession of the Defendants-Respondents over the portion specified. The learned

District Judge, after holding the factum of title in possession of the Appellants in their favour, proceeded to consider the aspect of possession. The learned District Judge held that in the proceedings under Section 145 of the Criminal Procedure Code, it was held that the Plaintiffs-Appellants were in possession of 79,305 square metres and the learned Magistrate had held in favour of the Respondents in respect of the other portion. The learned District Judge held that in view of this long standing possession and the factum of possession of the Defendants being admitted by the Plaintiffs, a decree of possession against the Defendants could not be sustained and it was appropriate that since both parties were in long standing possession they therefore be restrained by order of injunction against each other. The learned District Judge accordingly partly allowed the appeal and declared that the Plaintiffs and respective Defendants are occupying/holding the property as shown on Exhibit Pw4/O/Exh.30. Challenging the judgment and decree passed by the learned District Judge passed on 8 April 2004, the Appellants/Original Plaintiffs have filed the Second Appeal.

6. The Second Appeal was admitted on 29th November 2007 on the following substantial question of law.

*Whether the learned Appellate Court could have protected the purported possession of the Respondents when there was no plea on the part of the Respondents that they were*

*claiming right to the said portions by adverse possession.*

7. Heard Mr. M. B. Da Costa, learned Senior Advocate for the Appellants and Mr. Sudin Usgaonkar, learned Senior Advocate for the Respondents on the question of law so framed. The learned counsel have taken me through the records and proceedings.

8. Mr. D'Costa, the learned Senior Advocate for the Appellants submitted: Foundation of the present suit is the title of the Appellants/Plaintiffs and the Respondents, since they do not have any title, must hand over the possession of the property. Both Courts have concurrently recorded the finding that the Appellants are the owners of the suit property. The Respondents had never claimed or put up the case of adverse possession and in any case only on the basis of long standing possession, unless all ingredients of adverse possession are established, the learned District Judge could not have reversed the decree of possession in favour of the Respondents who admittedly have no right to the suit property. There was no counter claim nor cross appeal filed by the Respondents challenging the finding of the learned Civil Judge regarding the title of the Appellants. Without there being any prayer an injunction it could not have been granted against the Appellants-Plaintiffs by the District Court. The claim of the

Respondents was of title by way of succession and not of adverse possession. The question of law framed will have to be answered in favour of the Appellants.

9. On the other hand, Mr. Usgaonkar, learned Senior Advocate for the Respondents submitted: That there was no cause of action at all for filing the suit. By showing an incident of the year 1978, artificially a cause of action as sought to be made out. In the proceedings taken under Section 145 of the Criminal Procedure Code, it was the case of the Appellants themselves that the Respondents are in settled possession and they have been granted lease. The plaint lacks any material particulars or has no specific averment and the plaint even does not give details of the area in possession. It is not necessary that the words '*adverse possession*' have to be used in the written statement and it is enough that the ingredients of adverse possession are present and that the Court is entitled to look into the pleadings and uphold the claim of adverse possession if all the factum are present. In view of long standing accepted possession of the Respondents, the Appellants were not entitled for grant of any injunction. If it is found that injunction in favour of the Respondents was improperly granted by the District Court, the Respondents will not claim the said relief and therefore there is no illegality or perversity committed by the District Judge in passing the order.

10. I have considered the rival contentions. The case of the Appellants is specific. It is asserted that the *Aforamento* was given to the father of Plaintiff No.1 and thereafter it was transferred to Plaintiff No.1. The Division Bench of this Court in the case of *Shankar Raghunath Jog v M/s Sociedade De Fomento Industrial Pvt. Ltd. and others*,<sup>1</sup> has held that the *Aforamento* granted as per the provisions of Articles 72 and 76 of Decree No.3602, the grantee acquires the ownership of the land by complying with the stipulations referred to therein. The Appellants after asserting the title in this manner have sought a relief of possession from the Respondents.

11. Two reliefs were sought by the Appellants. One, seeking possession from the Respondents. Second, an order of injunction. The relief of possession was founded on the title of the Appellants. The relief of injunction was based on the disturbance by the Respondents. If the relief of possession is granted, as the learned Civil Judge has held that, the relief of injunction is not of much relevance. Therefore, it will have to be seen as to whether the order passed by the learned District Judge reversing the decree of possession granted by the learned Civil Judge in favour of the Appellants, was correct in law.

12. Both, the learned Civil Judge and the learned District

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<sup>1</sup> 2015 SCC OnLine Bom 6413

Judge, framed the issue as regards the title of the Appellants. The issue was answered in favour of the Appellants. The case of the Respondents that the *Aforamento* was given to the original grantee for the benefit of the entire family was specifically negated by both the Courts. The Respondents could not produce any evidence whatsoever in furtherance of their case. The Appellants had produced the certificate issued in the year 1912 in respect of the property, which specifically mentioned the name of Ganesh, father of Plaintiff No.1. The endorsement thereafter by the office of Administration dated 10 January 1964 transferring the *Aforamento* in favour of Plaintiff No.1, was also placed on record. The map of the Directorate of Land Survey, in which the grant was acknowledged, was also produced on record. The names of the Respondents appeared in the Revenue records, only in the Other Rights column, that too only for the houses. The receipt of payment of *foro* or the quit rent by the Plaintiffs, was on record. As against these documents showing the title of the Plaintiffs, nothing was produced by the Respondents from which it could be established that they had any semblance of ownership rights in respect of the suit property. The findings of the learned Civil Judge that the Appellants are the owners of the suit property was not challenged by the Respondents in appeal and therefore, both the Courts have concurrently held in favour of the Appellants on the aspect of ownership in which there is no error. Mr. Usgaonkar, the

learned Senior Advocate for the Respondents has addressed the Court on this premise.

13. First to deal with the contention of Mr. Usgaonkar regarding lacunas in the plaint. The reading of the plaint does not indicate any such lacuna. There is a clear assertion that the Appellants are the owners of the property which have been clearly demarcated in the annexures to the plaint. It is not disputed that the Respondents occupied the certain portion of the property and possession is sought on the basis of the title. For the purpose of injunction it is averred that the Respondents disturbed the possession of the Appellants some time in the year 1978 and there are pleadings to that effect. These are adequate pleadings and it cannot be said that the plaint lacks any particulars or that the case was not specific.

14. Once the suit is instituted based on title and possession is sought, the Defendants either will have to show that they have better title or that they are in adverse possession or such other grounds available in law. As far as the aspect of better title of the Respondents is concerned, there is no arguments advanced claiming for better title then the Appellants.

15. The main argument advanced by Mr. Usgonkar is of

adverse possession. Mr. Usgaonkar, submitted that in the written statement all ingredients of adverse possession are present and from the record itself it can be seen that the Respondents are entitled to claim protection under Article 65 of the Limitation Act, 1963. Mr. Usgaonkar relied upon a decision of the learned Single Judge of this Court ( *Couto,J* ) in *Anant Lakshiman Lad & Others v Yeshodi Deuli & Others*,<sup>2</sup> to contend that even though specifically the case of adverse possession is not pleaded, it is open to the Court to give the benefit of concept of adverse possession in favour of the Defendants if all ingredients are seen to be present on record. Mr. D'Costa, on the other hand relied upon a decision of the Apex Court in the case of *P. T. Munichikkanna Reddy and others v Revamma and others*.<sup>3</sup> According to Mr. D'Costa, the decision in the case of *Anant Lad* arising from completely different premise and different point of law, and the law as regards the adverse possession is settled by the Apex Court in the case of *L.N. Aswathama and Another v P. Prakash*<sup>4</sup>.

16. The concept of adverse possession is referable to Article 65 of the Limitation Act, 1963. Article 65 deals with suit for possession of immovable property or any interest therein based on title for which a period of limitation is 12 years. Article states that the time from which the period begins to run is when the

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<sup>2</sup> 1990(1) GLT 264

<sup>3</sup> (2007)6 SCC 59

<sup>4</sup> (2009)13 SCC 229

possession of the Defendant becomes adverse to the Plaintiff.

17. On the legal position governing the aspect of Adverse Possession, a review of earlier decisions was taken by the Apex Court in the case of *P.T. Reddy*. The Apex Court also emphasized a shift in the approach on the concept of adverse possession. The plea of adverse possession is primarily based on the presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. To claim adverse possession, there has to be an open, continuous and hostile possession, and an abandonment by the true owner. The claim of adverse possession will have to be considered vis-a-vis the right of the true owner. The Apex Court observed that the intention of the statute of limitation is not to punish the one who neglected to assert the right, but to protect those who are in possession under the claim of right or colour of title. To assess the claim of adverse possession, an element of willful neglect on the part of the owner has to be established. The specific positive intention on the part of the adverse possessor to dispossess will effectively shift the title from the owner in favour of the adverse possessor. It was observed that the intention to dispossess needs to be open and hostile enough to bring the same to the knowledge and the Plaintiffs who has opportunity to object.

18. In the case of *Karnataka Board of Wakf v Govt. of India*<sup>5</sup>, the Apex Court summarised the tests to be applied while determining the claim of adverse possession. A person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner and it is for him to clearly plead and establish all facts necessary to establish his adverse possession. The Apex Court has emphasized that whenever plea of adverse possession is put forth, inherent in the plea is that someone else is the owner of the property. The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

19. As regards the decision of the learned Single Judge of this Court in the case of *Anant Lad* rendered in the year 1985, the legal position will have to be considered as per the subsequent decisions of the Apex Court referred to above. Even otherwise the case of *Anant Lad* arose from completely different set of facts and was on different legal principle. The learned Single Judge was considering the provisions of Portuguese Civil Code of 1867 more

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<sup>5</sup> (2004) 10 SCC 779

particularly Article 515 which has a concept of *bonafide*, open and uninterrupted and peaceful possession as against the possession in bad faith. This was the case where the party claiming adverse possession was in possession on the basis of a deed which the party was under bonafide impression that it was a valid title deed and on the basis of such deed the claimant continued of long period of time almost more than 30 years and it is in that context and the Portuguese law that the learned Single Judge had rendered his decision. Therefore the decision in the case of *Anant Lad* is not applicable in the facts of the present case.

20. Turning now to the case of the Respondents based on the plea of adverse possession. Even assuming the contention of Mr. Usgaonkar is correct that the words '*adverse possession*' need not be specifically used and if it can be seen from the pleadings that all ingredients are present for extension of such benefits, the question is whether such was the case of the Respondents. In the written statement the stand of the Respondents is enumerated. The written statement will have to be considered in toto and in the context of the plaint filed. In para 1 of the written statement, it is the contention of the Respondents that the suit is bad in law for non joinder. Secondly it is stated that the *Aforamento* was taken by Ganesh Sadashiv Xet not for himself individually but as a representative of the entire joint family then existing among him

and the ancestors of the Respondents. Therefore, there is clear assertion that the Appellants are not the owners and the Respondents are joint owners of the property. Thereafter, there is an averment in para 2 that the property was divided in mutual understanding with separate specified portions, which is in the peaceful and continuous possession of the ancestors of the Defendants-Respondents. This assertion is immediately followed by a specific denial that the title was transferred in favour of the Plaintiff No.1. It is again reiterated that the name of Plaintiff no.1 appears as a representative, which included the Respondents. In para 4 of the written statement, the assertions of the plaintiff in para 3 were denied and it was stated that the Respondents-Defendants have right of ownership in respect of the house and it is not correct that they only have a right to reside. Again it was asserted that the Appellants and their ancestors were not sole owners of the property. Thereafter in para 5 the averment regarding the incident of trespass was denied. In para 5, though it was stated that the Respondents were accepted as good lawful and peaceful possession of the property, it is suffixed by averment, this will lead the Appellants-Plaintiffs being disentitled to claim any permanent or temporary injunction. In para 8 and para 10 there are references by the Respondents regarding their exclusive, peaceful, continuous and open possession because of which the Plaintiffs are estopped. In para 14 there is an assertion that the Respondents are in peaceful

and continuous possession as they are exclusive owners for more than 40 years.

21. The written statement of the Respondents clearly indicate that the defence to the title set up by the Appellants was that the Respondents are joint owners of the suit property along with the original grantee. It is only for the purpose of resisting the relief of injunction, the aspect of long possession was put forth. There was a clear separation of defences for both the reliefs. Long standing possession was consciously restricted to resist the claim of injunction, while continuing to asserting the title as a joint owner. Nowhere there is an indication that the Respondents were giving up their claim of joint ownership. Reading of the written statement as a whole shows that the Respondents had contested the suit on merits disputing the title of the Appellants and resisted order of an injunction on the basis of their possession. The case pleaded was thus not of adverse possession.

22. Even if the factors relied upon are proved, they by themselves are not sufficient to establish adverse possession in view of the law laid down by the Apex Court in case of *P.T. Reddy*. It is not enough that there is long peaceful possession but there must be a case of specific intention to dispossess the real owner. The animus to dispossess the real owner and factum of possession are essential

ingredients. Mere long standing possession will not translate into an adverse possession. No such intention to dispossess nor any animus is established. Firstly, therefore, the case of adverse possession was not taken and the suit was resisting by setting up a title. Secondly, even if all the factors set up by the Respondents are proved, they do not pass the test of adverse possession.

23. The learned Civil Judge therefore rightly decreed the suit based on the title after accepting the claim of the Appellants. The learned District Judge, after upholding the finding of title in favour of the Appellants, on a strange reasoning non suited the Appellants. The mere long standing possession of the Respondents, without the ingredients of adverse possession being present, was not enough to reverse the decree of possession. In fact the Respondents were claiming title for themselves. The view taken by the learned District Judge is perverse and completely contrary to the law governing the aspect of adverse possession. The contention of Mr. Usgaonkar, that the learned District Judge had rightly extended the benefit of adverse possession to the Respondents cannot be accepted. Since the Appellants are rightful owners of the suit property and since there is no defence on the part of the Respondents, the decree of possession must be restored in favour of the Appellants.

24. Mr. D'Costa, submitted that the Respondents are occupying certain residential structures and the Appellants have no intention to dispossess them from their residential houses as they may claim the benefit of mundkarship. The claim of the Respondents of mundkarship is kept open to be adjudicated in appropriate proceedings. However, that aspect of the matter will not preclude the grant of decree of possession on the basis of title to the Appellants.

25. As far as the aspect of injunction is concerned, once the title of the Appellants over the suit property is accepted, there is no error in the view taken by the learned Civil Judge that the rightful owner need to be protected. Even otherwise the grant of decree of possession adequately protect the rights of the Appellants.

26. As a result, the question of law framed is answered in favour of the Appellants. The Second Appeal is allowed. The judgment and decree passed by the learned District Judge dated 8 April 2004 in Regular Civil Appeal No. 28 of 2002, is set aside. The judgment and order passed by the learned Civil Judge Junior Division, Sanguem in Regular Civil Suit No. 36/2000 dated 15 December 2001, is restored. No order as to costs.

***N.M. Jamdar, J.***