

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.1828 of 2002

JUDGMENT:

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful defendant is directed against the decree and judgment, dated 29.07.2002, of the learned III Additional District Judge, Guntur, passed in OS.No.145 of 2001.

2. I have heard the submissions of *Sri N. Vijay*, learned counsel appearing for the appellant-defendant and of Sri S. Chandrasekhar, learned counsel appearing for the 3rd respondent. 1st respondent/sole plaintiff died during the pendency of this appeal suit. His legal representatives are brought on record as respondents 2 & 3. Though 2nd respondent is served with notice, he did not enter appearance. I have perused the material record.

3. The parties in this appeal shall hereinafter be referred to as the plaintiff (since died) and the defendant as arraigned in the original suit for convenience and clarity. The contesting respondent, who is one of the LRs of the deceased sole plaintiff, shall be referred to as 3rd respondent.

4. Since this is a first appeal suit and as this Court is the last Court of fact, it is necessary to refer to the pleadings of the parties.

5. The plaint averments, in brief, are as follows: -

The defendant is the wife of Ramakoti Reddy, who is the elder brother of the plaintiff. The said Ramakoti Reddy died, on 28.04.1990, intestate and issueless leaving behind him, the defendant. Ramakoti Reddy, during his life time, executed a gift deed, on 17.10.1968, bearing document no.5806 of 1968 in

favour of the plaintiff conveying Ac.1.91 cents in D.No.778 and Ac.0.25 cents in D.No.1057 of Ankireddypalem with absolute rights and delivered possession of the said two items of property on the same day to the plaintiff. The plaintiff accepted the said gift and acted upon it. The said items are morefully described in item nos.1 & 2 of the plaint schedule. Ramakoti Reddy also executed another gift deed, on 07.03.1969, bearing document no.777 of 1969 conveying Ac.1.00 cents in D.No.1057 and a tiled house in an extent of 150 Square Yards of site of Ankireddy palem village with absolute rights and delivered possession of the afore-said two items of property to the plaintiff on the same day. The plaintiff accepted the gift of the said two items and acted upon it. The said items are morefully described in item nos.3 & 4 of the plaint schedule. Thus, the plaintiff became the absolute owner of the above said four items of the plaint schedule property from the respective dates of the gift deeds executed by late Ramakoti Reddy. As Ramakoti Reddy is not having any children, he gifted the plaint schedule properties to the plaintiff out of love and affection towards the plaintiff and his children and as the plaintiff has been looking after him at the relevant time. By then, the said Ramakoti Reddy discarded his wife, the defendant herein, having settled Ac.0.90 cents of property in D.No.795 of Ankireddy palem under document, dated 17.08.1968. However, Ramakoti Reddy later joined his wife, the defendant, and filed a suit in OS.No.90 of 1979 on the file of I Additional District Court, Guntur, for cancellation of the afore-said gift deeds executed in favour of the plaintiff in respect of the plaint schedule property. The said suit was decreed with costs, on 10.04.1981. Aggrieved thereof, the plaintiff preferred AS.No.281 of 1982 before the High Court. The said appeal suit was allowed by judgment, dated

20.09.1988. Ramakoti Reddy preferred LPA.No.195 of 1989. The said LPA was dismissed by judgment, dated 07.06.1996. It is apt to note that during the pendency of the LPA, Ramakoti Reddy died, on 28.04.1990; and, the defendant was brought on record as his legal representative. As such, the judgments in AS.No.281 of 1982 & LPA.No.195 of 1989 are binding on the defendant. During the pendency of the LPA, Ramakoti Reddy filed CMP.No.10546 of 1989 under Order XXXIX Rule 1 CPC for grant of temporary injunction restraining the plaintiff interfering with his alleged possession of the plaint schedule property in OS.No.90 of 1979. The High Court, on 04.08.1989, was pleased to grant interim injunction in respect of item no.1 of the plaint schedule property holding that the plaintiff has admitted that he allowed one Sreeramareddy to be in possession of that extent and further granted a conditional injunction in respect of items 2 & 3 of the plaint schedule property in favour of late Ramakoti Reddy and against the plaintiff subject to the condition that Ramakoti Reddy should deposit a sum of Rs.1,000/- per annum commencing from 1989-1990 to be deposited on or before 31.01.1990; and, so far as the house property (item no.4 of the plaint schedule property) is concerned, *status quo* as on the date of order, i.e., 04.08.1989 was granted. By virtue of the said injunction orders, Ramakoti Reddy dispossessed the plaintiff from the plaint schedule property using all force, during the month of August, 1989. The plaintiff reliably learnt that the defendant did not continue to deposit the afore-said amount for the last few years. Eventually, by virtue of the dismissal of LPA, CMP.No.10546 of 1989 was also dismissed and there is no injunction as such against the plaintiff herein relating to the four items of the plaint schedule property. As such, the possession and enjoyment of the

plaint schedule property by the defendant after the dismissal of the LPA, on 07.06.1996, is illegal. The defendant is not entitled to be in possession and enjoyment of the plaint schedule properties which belong to the plaintiff as per the gift deeds executed by late Ramakoti Reddy in favour of the plaintiff and also in view of the judgment of the High Court in AS.No.281 of 1982. The gift deeds are not nominal, but, were genuine and were acted upon. The defendant has no right, title or interest in the plaint schedule properties. Hence, this suit is filed for recovery of possession of the plaint schedule properties and for other reliefs.

6. The averments in the written statement of the defendant, in brief, are as follows:

Most of the allegations in the plaint are not correct. The defendant is the widow of late Ramakoti Reddy, who is no other than the elder brother of the plaintiff. Admittedly the defendant and Ramakoti Reddy separated and lived separately since 1946 till they re-united. Plaintiff had number of children; and, as ill-luck would have it the defendant was not blessed with children. Ramakoti Reddy was naturally affectionate towards the plaintiff's children, who were living in the other portion of the same house. Differences arose between the defendant and the plaintiff's wife and the same were exploited by the plaintiff resulting in estrangement between the defendant and her husband. At that time Ramakoti Reddy was made to execute a registered Will, dated 24.07.1967, bequeathing Ac.1.91 ½ cents of land to the plaintiff's children on the same day on which the plaintiff obtained a nominal sale deed not supported by consideration for the house in his favour. Later, differences were further widened by the busybodies in the village supporting the plaintiff; and,

Ramakoti Reddy was made to execute two deeds – one settlement deed and the other a gift deed in respect of items 1 to 4 of the plaint schedule property with a view to pressurise the defendant to come back to the husband and live with him. This defendant came back and lived with him; no-doubt by way of assurance Ramakoti Reddy executed a maintenance deed giving Ac.0.90 cents of land and cash of Rs.500/- to the defendant. Thus, the defendant and her husband-Ramakoti Reddy began to live together. Thereupon Ramakoti Reddy called upon the plaintiff to re-convey the property to him as the purpose was achieved; but, the plaintiff proved truant. The plaintiff also failed to look after Ramakoti Reddy even in that short period as agreed to as a condition precedent in the deed. Therefore, Ramakoti Reddy cancelled the deeds by a revocation deed, dated 24.05.1973. However, the scribe, who scribed the earlier deeds got the revocation deed drafted by another scribe of his choice and mischievously and fraudulently referred to only two items covered by the deed, dated 17.10.1968, that is, Ac.1.91 ½ cents and Ac.0.25 cents of land. Ramakoti Reddy was gullible. In spite of all the said paper transactions, Ramakoti Reddy was in possession of all his properties. He intended to sell an item of property; then, the plaintiff issued a registered notice, dated 06.04.1976, claiming title to the property and attempted to pay cist. Then Ramakoti Reddy was advised to file a suit and get all deeds cancelled. Therefore, he filed OS.No.64 of 1976 in Sub-Court, Guntur, which was later withdrawn and transferred to the I Additional District Court, Guntur and was renumbered as OS.No.90 of 1979. The suit was decreed on merits holding that the said deeds, dated 17.10.1968 & 07.03.1969 are nominal. The appeal preferred by the plaintiff was allowed, on 10.04.1981. LPA preferred by Ramakoti Reddy was dismissed, on 17.06.1996.

Thereafter, plaintiff filed EP.No.6 of 1997 to recover possession of the property. The EP was dismissed by order, dated 01.11.1997. Hence, the plaintiff filed the present suit. Notwithstanding the said litigation, right from the beginning, Ramakoti Reddy was in possession and was exercising rights in the property as an owner with that animus inspite of the two deeds, dated 17.10.1968 and 07.03.1969. Though in the deeds it is mentioned that the property is delivered, the said clauses are mentioned in the routine drafting; and, in-fact the same are neither true nor established by any evidence at all. In the settlement deed, dated 17.10.1968, it was specifically averred that it was being executed subject to the agreement that the plaintiff shall maintain and look after Ramakoti Reddy for his life time; and that in case the plaintiff does not do so, Ramakotireddy has a right to revoke the deed and get back the title to the property. The failure of the plaintiff, to look after Ramakoti Reddy well, is clear from the admissions in the evidence of DW1. As such, the plaintiff has no title to the said two items at any rate since the revocation deed was executed in 1973. In-fact, in the order in the CMP.No.10546 of 1989, it was specifically mentioned as 'since possession of Ramakoti Reddy was admitted temporary injunction is granted and regarding the other two items injunction was granted subject to the deposit of Rs.1,000/- per year every year beginning from 1989-1990 first payable on or before 31.01.1990.' The said order only confirms the *status quo* and prior possession. Ramakoti Reddy has never delivered possession of any item of the plaint schedule to the plaintiff and has all along been in possession as an owner in his own right. Even otherwise, ever since he executed the revocation deed, on 24.05.1973, he made it so clear that he was holding the property adverse. The suit filed 24 years later is hopelessly barred

by time; and, the defendant perfected her title to the property by adverse possession. With regard to Ac.1.00 cents of land covered by the latter deed of 07-03-1969, it was under the lease of Devagiri Reddemma and the deed made it clear that it is subject to the said lease under him and rents alone can be collected in that period and possession can be taken only after the expiry of the lease. Plaintiff categorically admitted that he and his family never cultivated the said land leased out to Reddemma Reddy. He never claimed that lease was attorned to him. Therefore, inspite of the 1969 deed, Ramakoti Reddy was enjoying the same as the owner. Insofar as the house, the plaintiff had to admit that Ramakoti Reddy continued in possession as before but to save his face said that he permitted him and his wife, the defendant, to live in it as long as Ramakoti Reddy is alive and that all that was oral. Hence, it is clear that the said two items covered by the deed, dated 07.03.1969, were held adversely by Ramakoti Reddy and the defendant since then, as before, and so they perfected their title to the said two items. The order of the High Court directing to deposit Rs.1000/- per year is only a condition for granting the said order and does not interdict the adverse possession; and the said order confirms the *status quo ante*. Hence, the plaintiff has no title to any of the items of the plaint schedule property. Moreover, the plaintiff has to establish that he has possession of the property within 12 years before suit based on title was instituted. In this case, he never had any title. His oral deposition that he allowed the defendant and her husband to be in possession is false and a face saving statement. In any event, once the said Ramakoti Reddy filed OS.No.64 of 1976, on 15.04.1976, his adverse possession begins and his animus is made clear. A suit for possession therefore ought to have been filed before

15.04.1988 extinguishing his title to the same, that is, even before AS.No.281 of 1982 was decided on 20.09.1988. By now the suit is hopelessly barred. All the plaint schedule items are in possession of Ramakoti Reddy during his life time and thereafter with the defendant. The plaint simply repeats the wording saying that the defendant is indulging in acts of waste and is damaging the property. The said allegation is false. The defendant claims title to the property and she is interested in keeping it perfectly alright. Thus, there is no need to dispossess her. The suit is not tenable in law. The allegations that the plaintiff took possession of the property after the deeds, dated 17.10.1968 and 07.03.1969 and that he was in possession till June, 1989 are specifically denied. The falsity of the said allegation is clear from the fact that Ramakoti Reddy could not have allowed the plaintiff to be in possession even after his success in the District Court and till the plaintiff succeeded in the High Court. Hence, the suit is not maintainable in law and has to be dismissed with costs.

7. Taking into consideration the above pleadings, the trial Court framed the following issues for trial.

1. Whether the plaintiff is entitled for possession of the suit property and if so, the plaintiff is entitled for past and future profits?
2. Whether the suit is barred by time?
3. Whether the plaintiff has got title to the suit property?
4. Whether the defendant perfected her title to the suit property by adverse possession?
5. To what relief?

[Reproduced verbatim]

8. At trial, the sole plaintiff was examined as PW1 and exhibits A1 to A33 were marked on the side of the plaintiff; and, the defendant was examined as DW1 and exhibits B1 to B9 were marked on the side of the defendant.

9. On merits and by the judgment impugned, the trial Court decreed the suit of the plaintiff. Therefore, the defendant is before this Court.

10. Learned counsel for the defendant contended as follows:

The judgment and decree of the trial Court are erroneous, contrary to law and against weight of evidence. The trial Court erred in holding that the finding recorded regarding possession in AS.No.281 of 1982 and LPA.No.195 of 1989 operates as *res judicata*. The trial Court ought to have seen that OS.No.90 of 1979 was filed for cancellation of gift deeds, dated 17.10.1968 and 07.03.1969 executed by the plaintiff and that no issue was framed in the said suit with regard to possession and that in AS.No.281 of 1982 and in LPA.No.195 of 1989 also no issues were framed at all with regard to possession. The said finding regarding possession is an incidental finding. The trial Court ought to have seen that *res judicata* applies only if the issue is directly and substantially in issue in a prior litigation; and, that if a matter was only collaterally and incidentally in issue and decided in an earlier proceeding the finding would not operate as *res judicata* in a latter proceeding where the matter is directly and substantially in issue. As in the present case the finding regarding possession was only an incidental finding in the prior litigation, the said finding does not operate as *res judicata*. The trial Court should have seen that the suit in OS.No.90 of 1979 is mainly with regard to the fraud committed by the defendant therein and that in the plaint in the said suit, the circumstances in which the nominal gift deeds, dated 17.10.1968 and 07.03.1969, were executed were explained. The pleadings in OS.No.90 of 1979 make it manifest that there was no specific dispute regarding possession. The trial Court ought to have seen that in the plaint in OS.No.90 of 1979 at para 8 it was specifically

averred that since the plaintiff in that suit was in possession of the suit properties no other relief was asked for in that suit except cancellation of the said two gift deeds. The plaintiff as PW1 in his cross examination stated that the entire lands covered under exhibits A1 & A2 were in his possession for a period of five to six years and that subsequent thereto the possession of the property went to the possession of Ramakoti Reddy. Even assuming the above admission to be true without conceding, exhibits A1 & A2 were executed on 17.10.1968 and 07.03.1969; and, 5 to 6 years thereon the approximate year would be 1975; OS.No.90 of 1979 (originally OS.No.64/1976) was filed on 15.04.1976 and taking that date as the date of hostile possession, the limitation of 12 years prescribed under Article 64 & or 65 had elapsed on 15.04.1988 and the present suit for recovery of possession filed on 24.11.1997 is beyond the limitation prescribed under the Limitation Act. The trial Court erred in holding that the cause of action to file the present suit has arisen only after the dismissal of LPA.No.195 of 1989 and it failed to see that the prior litigation for cancellation of gift deeds, dated 17.10.1968 and 07.03.1969 is not a bar for filing a suit for recovery of possession of suit lands. Plaintiff issued a registered notice with acknowledgment due, under exhibit B5, wherein it was admitted that the property therein was delivered to Ramakoti Reddy and that the cist was also being paid by Ramakoti Reddy. This exhibit B5 was not at all considered by the trial Court. PW1 further admitted in his cross examination that it is after 1 or 2 years of the execution of exhibits B7 & B8, the disputes started between him and his brother; that his brother wanted the property to be conveyed back to him and therefore the differences arose between them and that in those 1 or 2 years after the execution of exhibits B7 & B8 he was living

in the same house purchased from S. Syamala Reddy. This admission clearly goes to show that Ramakoti Reddy continued to reside in the house covered under exhibits B7 & B8 even after execution of the gift deeds and disproves the plaintiff's case that he was in possession of that house since the date of execution of gift deed till his alleged dispossession in 1988. The present plaintiff as DW1 in OS.No.90 of 1979 admitted in his cross examination that since 1971 Ramakoti Reddy has been cultivating Ac.1.91 cents of land covered under the gift deed, dated 17.10.1968, till date of his cross examination i.e.12.2.1981, while he was cultivating the rest of the land. It was further admitted that he does not know as to who was paying cist for Ac.1-91 ½ cents from 1971. The admissions of the plaintiff as DW1 in OS.No.90 of 1979 were not explained either in the pleadings or in his depositions. The plaintiff, therefore, cannot be permitted to take contrary stand regarding possession of plaintiff schedule lands more particularly item no.1 as per Section 17 of the Indian Evidence Act. The plaintiff pleaded in para 4 & 5 of the plaint with regard to the dispossession by Ramkoti Reddy after 20.9.1988, while in his deposition he stated that he delivered the suit properties to his brother-Ramakoti Reddy. The trial Court ought to have seen that plaintiff should have filed suit for possession within the limitation prescribed, since limitation once started will not stop to run as per Section 9 of the Limitation Act. The trial Court ought to have seen that the allegation in the plaint that the plaintiff was dispossessed pursuant to an injunction order in LPA is false as plaintiff till the institution of the present suit had not filed any application in the LPA stating the alleged fact of dispossession of plaintiff pursuant to the injunction order or has filed any criminal complaint alleging forcible dispossession.

11. Per contra, leaned counsel for the respondent no.3 while supporting the decree and judgment of the trial Court, *inter alia*, contended as follows:

Ramakoti Reddy admittedly executed two registered gift deeds, dated 07.10.1968-exhibit A1 and 07.03.1969-exhibit A2, in respect of item nos.1 & 2 and items 3 & 4 of the plaint schedule properties. The suit filed by Ramakoti Reddy in OS.No.90 of 1979 on the file of I Addl. District Court, Guntur, for cancellation of the said two registered gift deeds was decreed against this plaintiff. This plaintiff's appeal in AS.No.281 of 1982 was allowed by this Court. Ramakoti Reddy filed LPA.No.195 of 1989 before this Court. During pendency of the said appeal, Ramakoti Reddy died, on 28.04.1990, intestate and issueless. The sole defendant was added as a party appellant in the LPA. The LPA was dismissed. Thus, the contention of Ramakoti Reddy and later of his wife, the defendant in the instant proceeding, that the gift deeds were nominal and not acted upon were disbelieved by competent Courts; and, the two registered gift deeds, exhibits A1 & A2, were held valid. No-doubt, the plaintiff filed E.P.No.6 of 1997 for recovery of possession of the property from the defendant herein. That EP was dismissed on technical grounds. Thereafter, the present suit is filed for recovery of possession. The landed property was mortgaged under exhibits A4 & A5 to the Union Bank of India. Ramakoti Reddy admitted that the plaintiff is in possession of the property and mortgaged the title deeds and obtained loan. The property under exhibits A1 & A2 was given to Ramakoti Reddy after reunion of Ramakoti Reddy with his wife and such permissive possession was given at the intervention of elders with the understanding to cultivate the land. In the LPA, it was held possession was given to the plaintiff after executing exhibits A1 & A2. Cist receipts were

also produced by the plaintiff. The interim injunction order reveals that permissive possession of Ac.1.91 guntas was given to Ramakoti Reddy. The conditional *status quo* orders are not complied with. Mere custody of gift deeds does not lead to any adverse conclusion against the donee. Theory of adverse possession was raised first time in E.P.No.6 of 1997. The version is cleverly changed to one of adverse possession. No single witness was examined on behalf of the defendant. Plea of adverse possession is based on some contradictions and omissions in the pleadings. No plea of ouster is raised. Hence, the plea of adverse possession is not proved. The decree and judgment of the trial Court are sustainable under facts and in law.

11.1 In support of his contentions, learned counsel relied upon the following decisions:

1. **Sharadamma v. N. Basappa**¹
2. **Wg.Cdr.(Retd) R.N. Dawar v. Shri Ganga Saran Dhama**²
3. **State of Karnatka v. M.Muniraju**³
4. **Mahendra C. Mehta v. Kousalya Co-op.Housing Society Ltd.,**⁴
5. **MD.Mohammad Ali v. Jagadish Kalita**⁵

I have gone through the decisions.

12. In the light of the pleadings and submissions, the following points arise for determination in this appeal suit.

1. Whether the respondents 2 & 3, who are the legal representatives of the deceased plaintiff, are entitled to recover possession of the plaint schedule property from the appellant/defendant?

¹ AIR 1996 KARNATAKA 186

² AIR 1993 DELHI 19

³ AIR 2002 KARNATAKA 287

⁴ 2001 (5) ALD 102

⁵ (2004) 1 SCC 271

2. Whether Ramakoti Reddy, late husband of the defendant, perfected title to the plaint schedule properties by adverse possession? And, if so, whether the plaintiff's suit is barred by law of limitation and is liable for dismissal?
3. Whether the decree and judgment of the trial Court are unsustainable under facts and in law, as being contended by the appellant-defendant?
4. To what relief?

13. **POINTS 1 & 2:-**

At the outset, it is to be noted that Ramakoti Reddy, late husband of the defendant, originally filed a suit, OS.No.90 of 1979 (re-numbered) on the file of I Additional District Court, Guntur, (hereinafter referred to as the 'former suit', for brevity) against the plaintiff herein for cancellation of the two registered Gift Deeds, dated 17.10.1968-exhibit A1 (exhibit A4 in the former suit) and 07.03.1969-exhibit A2 (exhibit A5 in the former suit) respectively executed in respect of item nos.1 & 2 and 3 & 4 of the present plaint schedule. In the former suit, Ramakoti Reddy averred in the plaint that since he is continuing in possession of the properties, the relief of cancellation of gift deeds would be sufficient and there is no need to seek the relief of recovery of possession of the properties. The trial Court decreed the said suit with costs in favour of Ramakoti Reddy *vide* judgment, dated 10.04.1981. The copy of the decree in the said suit is exhibit A3. The appeal in AS.No.281 of 1982 preferred by the plaintiff herein, that is, the defendant in that suit was allowed, *vide* judgment, dated 20.09.1988, of this Court. The copy of the decree in AS.No.281 of 1982 is exhibit A4. Being aggrieved, Ramakoti Reddy preferred LPA.No.195 of 1989 on the file of this Court. The said LPA was dismissed, on 07.06.1996.

The copy of the judgment in the said LPA is exhibit A6. Thus, both the deeds, exhibits A1 & A2, were held to be valid and the said finding as between plaintiff and Ramakoti Reddy has become final and binding on the parties. The vital plea in the defence is perfection of title by adverse possession. In that view of the matter, the respondents 2 & 3 herein, who are the legal representatives of the deceased plaintiff, would be entitled to the relief of recovery of possession of the plaint schedule properties subject, however, to the finding on the issue related to adverse possession and bar of limitation.

13.1 The suit is instituted for recovery of possession. Since the plaintiff's case is that the four items of plaint schedule property covered by exhibits A1 & A2 were respectively delivered by Ramakoti Reddy on the respective dates of exhibits A1 & A2 and that the said gift deeds were acted upon and were held valid in the former suit, the plaintiff brought the instant suit for recovery of possession by *inter alia* pleading that by virtue of the orders, dated 04.08.1989, passed in CMP.No.10546 of 1989, Ramamkoti Reddy forcefully dispossessed the plaintiff from the said properties. Be it first noted that item no.1 of the plaint schedule property is Ac.1-91 ½ cents of dry land and item no.2 is 0.25 cents of dry land in Door No.1057. The said properties are covered by exhibit A1-gift/gift settlement deed. Item no.3 is Ac.1.00 cents in Door No.1057 and item no.4 is 150 Square yards of site and a tiled house with Door No.2-112. The said properties are covered by exhibit A2-gift deed. All the properties are of Ankireddypalem. Before proceeding further, it is apt to note the relevant pleading in the plaint as regards dispossession of the plaintiff from the plaint schedule property. The said relevant pleading is verbatim as follows: -

‘(h) It is submitted that while the 2nd appeal was pending before the Hon’ble High Court said Ramakotireddy has filed C.M.P.1046/89 under Order 39 R.1 C.P.C for grant of temporary injunction relating to the plaint schedule property restraining the plaintiff herein from interfering with his alleged possession of the plaint schedule properties in O.S.No.90/79 which are the same properties as that of this plaint schedule and the Hon’ble High Court was pleased to grant interim injunction relating to Ac.1-91 cents against this plaintiff holding that this plaintiff has admitted that he allowed said Sreeramareddy to be in possession of that extent, and further the Hon’ble High Court has granted a conditional injunction in favour of Late Ramakotireddy and against the plaintiff herein in the same order in C.M.P.1046/89 in L.P.A.195/89 dated 4.8.89 relating to items 2 and 3 of plaint schedule properties subject to the condition that said Ramakotireddy should deposit a sum of Rs.1,000/- (Rs.One Thousand only) per annum commencing from 1989-1990 to be deposited first on or before 31.1.90 and the Hon’ble High Court in the same order has granted status quo so far as the house property is concerned as on date of order i.e. 4.8.1989. By virtue of said orders late Ramakotireddy has dispossessed the plaintiff from possession of the schedule property.

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4. The plaintiff submits that after the Hon’ble High Court has passed its judgment in A.S.No.281/82 dated 20.9.1988 said Ramakotireddy has dispossessed the plaintiff from the plaint schedule properties using all force by virtue of injunction orders in C.M.P.10546/89 in L.P.A.195/89 dated 4.8.89, during the month of August, 1989 and ever since said Ramakotireddy was in possession and enjoyment of the plaint schedule properties illegally inspite of the 1st appellate court’s judgment and decree, till he died on 28.4.90 and the defendant has continued in possession and enjoyment of the plaint schedule properties illegally thereafter and even after dismissal of L.P.A 195/89 on 07.06.1996.’

Further, in the paragraph under the sub-head 'cause of action', it is specifically pleaded as follows: - ' And during the month of August, 1989 under the guise of injunction when the plaintiff was dispossessed from the plaint schedule properties by Ramamkoti Reddy and later when the defendant continued in illegal possession of the properties even after 28.04.1990 on which date Ramakoti Reddy died.' Thus, the precise pleading is that by virtue of the orders, dated 04.08.1989, made in CMP.No.10546 of 1989, Ramakoti Reddy forcefully dispossessed the plaintiff from the plaint schedule properties.

13.2 The defence of the defendant portrays the circumstances under which the two gift deeds have come to be executed and a plea that a deed of revocation was executed by Ramakoti Reddy revoking the gifts of Ac.1.91 ½ cents and Ac.0.25 cents under exhibit A1 gift settlement deed by virtue of the said revocation deed, dated 25.04.1973, which is not exhibited. It was also specifically contended in the defence that Ramakoti Reddy never delivered possession of any item of the plaint schedule properties to the plaintiff and that all along he has been in possession as owner in his own right. In this context, it is necessary to advert to the defence plea of adverse possession coupled with bar of limitation. The relevant pleading in the written statement is verbatim as follows: -

'3. Notwithstanding the said litigation, right from the beginning Ramakotireddy was in possession exercising rights in the property as an owner – with that animus inspite of the two deeds dt.17.10.1968 and 7-3-1969. Though the deeds as is usual in the routine drafting mentioned about delivery of possession it is neither true nor established by evidence at all. In fact in the Settlement Deed dt.17.10.1968 it was specifically averred that it was being executed subject to the agreement that the plaintiff shall maintain and look after the said Ramakotireddy for his life time and in case the plaintiff

does not do so properly, Ramakotireddy has a right to revoke the deed and get back the title to the property. He did not do so is clear from his admissions in evidence as D.W.1 and handed over the said property of Ac.1.91 ½ cents and Ac.0.25 cents in 1970 itself. So the plaintiff has no title to the said two items at any rate since 1973 revocation deed. In fact in the order in the C.M.P.No.10546/1989 made specific mention that as possession of the said Ramakotireddy was admitted temporary injunction is granted and regarding the other two items of Ac.1.00 and Ac.8.25 injunction was granted subject to the deposit of RS.1000/- per year every year beginning from 1989-90 only payable on or before 31-1-1990. the said order only confirms the status quo and prior possession. So the said Ramakotireddy has never delivered possession of any item of the plaint schedule to the plaintiff and has all along been in possession as an owner in his own right. Even otherwise, ever since he executed the revocation deed on 24.5.73 he made it so clear that he was holding the property adverse. If the earlier deeds as now held by the High Court are nominal, to the plaintiff. So this suit filed 24 years later is hopelessly barred by time and the defendant perfected her title to the property by adverse possession, taking on the period in which Ramakotireddy adversely held the property.

4. With regard to Ac.1.00 of land covered by the latter deed of 7-3-69, it was under the lease of Devagiri Reddemma Reddy and the deed made it clear that it is subject to the said lease under him and rents alone can be collected in that period and possession can be taken only after the expiry of the lease. Plaintiff categorically admitted that he and his family never cultivated the said ac.1.00 leased out to Reddemma Reddy. He never claimed to have been attorned to by the lease. So inspite of the 1969 deed Ramakotireddy was enjoying the same as the owner. Regarding the house, the plaintiff had to admit that Ramakotireddy continued in possession as before but to save his face, said that he permitted him and his wife, the defendant to live in it as long as Ramakotireddy is alive and all that was oral. So it is clear that the said two items covered by the deed dt.7-3-1969 were held adversely by Ramakotireddy and the defendant since then, as before and so they perfected their title to the said 2 items. The order in 1989 in the High Court directing the deposit of Rs.1000/- per year is only a condition for granting the said order and does not interdict the adverse possession. An order of that type only confirms

the status quo ante. Hence the plaintiff has no title to any of the items of the plaint schedule.

5. Moreover, the plaintiff has to establish that he has possession of the property within 12 years before suit based on title. In this case he never had any time. His oral deposition that he allowed them to be in possession is false and a face saving statement. In any event once the said Ramakotireddy filed O.S.64/76 on 15-4-76 the adverse possession begins, at the least, and his animus is made clear and no suit for possession having been filed before 15-4-1988 extinguishing his title to the same i.e. even before his Appeal A.S.281/82 in the High Court was decided on 20-9-1988. By now it is hopelessly barred. Once limitation starts, it does not stop at all. Infact that all the schedule items are in the possession of Ramakotireddy and thereafter the defendant, since before 5-4-76 i.e. from 1970 onwards Ramakotireddy was in possession and enjoyment, paying the Govt. cist to the schedule land is categorically admitted. Hence, the suit is hopelessly barred by time.

13.3 The pleadings of both the parties are extracted verbatim as the issue of adverse possession is crucial and as the result of the *lis* rests upon the finding on the said issue.

13.4 I have gone through the evidence of both the sides.

13.5 The only witness examined on the side of the plaintiff is the sole plaintiff.

13.6 Learned counsel for the defendant/appellant while making his first set of submissions pointed out certain excerpts from the deposition of the plaintiff-PW1 and based his submissions on the said portions of the testimony of PW1. I shall now deal with the said first set of submissions made on behalf of the defendant. **Firstly**, it was pointed out that though the plaintiff's specific plea is that the Ramakoti Reddi, the late husband of the defendant, having obtained a *status quo* order in CMP.No.10546 of 1989, on 04.08.1989, forcefully

dispossessed the plaintiff from the plaint schedule properties by virtue of the said order, the plaintiff-PW1 categorically deposed in his examination in chief as under: -“The Hon’ble High Court was pleased to grant interim injunction relating to the first three items of the suit schedule and passed order of status quo regarding the 4th item as on that date of the order in CMP.10546 of 1989. By the date of the passing of the injunction in CMP.10546 of 1989, I was in possession and enjoyment of properties covered by that order; and, in pursuance of the order of injunction in CMP.10546 of 1989, my elder brother Ramakoti Reddy was put in possession of the properties (items 1 to 3); and, I am continuing to be in possession of item no.4-house. After the demise of my elder brother, Ramakoti Reddy, on 28.04.1990, his body was brought to the house (item no.4); and, all the funeral rites were held at that house; and, my sister-in-law, the defendant, also attended those funeral rites in that house; and, ever since, the defendant has been in possession and enjoyment of that house.’ Based on this portion of the deposition of PW1, it was contended on behalf of the defendant that this part of the deposition which is quite contrary to the pleading in the plaint belies the pleaded contentions in the plaint that forceful possession of the properties took place in August, 1989. **Secondly**, it was contended that the deposition shows that PW1 voluntarily gave possession of items 1 to 3 and that in so far as item no.4 house, the defendant entered possession of the same at the time of performance of funeral rites of her husband and that, thereafter, she continued in possession thereof ever since the date of death of her husband. **Thirdly**, it was pointed out by the learned counsel for the defendant that PW1 in his deposition in the instant suit, stated in his cross examination as follows: - “The entire land covered under exhibits

A1 & A2 were in my possession for a period of five or six years. Subsequent thereto, the possession of the property as above went to the possession of Ramakoti Reddy. (witness adds: By the date of suit, OS.No.90 of 1979 I was in possession of the property).’ **Fourthly**, it was pointed out that in his deposition in the former suit, the plaintiff herein as DW1 deposed to the following effect: - ‘Plaintiff (in the said suit) asked him to cultivate and enjoy Ac.1.91 ½ cents covered by exhibit A4 (in the said suit) so that the plaintiff therein can make a living and he agreed and delivered possession of that land to the plaintiff therein and that this took place in 1970.’ Based on these portions of evidence, it was urged that the plaintiff did not state in his evidence as to when he regained possession of the properties, which Ramakoti Reddy was permitted to enjoy, and that PW1 only categorically stated that he does not remember the date on which he was put back in possession of the property; but, only asserted that he was put in possession of the property subsequently; and, that he further stated that he does not remember the year in which that took place; and, that it was suggested to him (PW1) that he was never put in possession of the property subsequent to 1970. **Fifthly**, it was also pointed out on behalf of the defendant that PW1 also deposed as follows: - ‘After 1989 my brother demanded me to deliver the possession of the property before the elders and I delivered the possession of the property before the elders and I delivered the possession of the property to him as per his interest. I did not obtain any document showing the delivery of possession of the property to my brother. I delivered possession of the property to my brother after disposal of appeal in AS.No.281 of 1982 on the file of the High Court. In spite of my success in appeal in A.S.No.281 of 1982 I delivered

possession of the property to my brother as per the mediation held by the elders. Right from the date of execution of exhibits A1 & A2, I was in possession and enjoyment of the property till the date of my handing over delivery of possession of the same to my brother in 1989. My delivery of possession of property to my brother is only on intervention of the elders in that matter and the representation of my elder brother that he is not able to meet the needs and there is no other reason.' Placing reliance on this portion of the evidence, it was contended on behalf of the defendant that the plaintiff (PW1) introduced a theory of permissive possession, which is not the pleaded case. **Sixthly**, it was urged that exhibit B5, a copy of notice, dated 05.04.1976, which was got issued by the plaintiff herein to Ramkoti Reddy and another, which is exhibit A17 in the former suit, on a perusal discloses that the plaintiff herein mentioned that his brother, Ramakoti Reddy, was in possession and enjoyment of the properties namely Ac.1.91 ½ cents and 0.25 cents and that the said notice was issued when an attempt was made by Ramakoti Reddy to sell the property to the second addressee in the said notice. And, based on the said recital in the said notice it was contended that the possession of Ramakoti Reddy of the above said items of properties by the year 1976 is admitted. **Seventhly**, it was submitted that on a harmonious consideration of the entire deposition of PW1, the plaintiff, it follows that he miserably failed to prove that the dispossession from the plaint schedule property took place in August, 1989, as was pleaded in the plaint. **Finally**, it was argued by the learned counsel for the defendant that a careful consideration of the entire deposition of PW1 makes it manifest that what has been pleaded is not translated into evidence and what has been stated in the evidence does not find support from

the pleadings and that the law is well settled that pleading is no evidence and that any amount of evidence not supported by pleading shall not be looked into and that, therefore, neither the pleading which is unsubstantiated nor the evidence brought on record without any foundation in the pleading is of no avail to the plaintiff to show that the plaintiff was dispossessed in August 1989 from the plaint schedule properties and that, therefore, it follows that the plaintiff failed to establish that the suit was brought within twelve years from the date of dispossession either by means of permissive possession or forceful dispossession.

13.7 It is apt to also note that the next set of submissions made on behalf of the defendant are based on the interim order in CMP.10546 of 1999, as one of the contentions of the plaintiff is that by virtue of the said order passed on 04.08.1989, forceful dispossession from the properties took place in August, 1989. The said order reads as under: -

‘So far Ac.1.91 is concerned, it is the defendant’s case that he allowed the plaintiff to be in possession thereof. In this view of the matter there shall be an injunction as prayed for to the extent of the said item.

So far the remaining two items of Ac.0.25 cents and Ac.1.00 are concerned, we are inclined, in the circumstances of the case to grant injunction in favour of the plaintiff, subject to the condition that the plaintiff shall deposit a sum of Rs.1000/- per annum commencing for the year 1989-90. The first deposit shall be made on or before 31-1-90.

So far the house is concerned, status quo as on today shall be continued.’

Based on this order it was urged on behalf of the defendant as under: ‘A plain perusal of the order shows that an interim order was granted in favour of Ramakoti Reddy restraining the plaintiff herein from interfering with Ramakoti Reddy’s possession in respect of Ac.1.91 cents by recognising his possession as

on that date. In so far as remaining two items viz., Ac.0.25 cents and Ac.1.00 cents, injunction is granted on certain conditions regarding deposit of certain amounts. So far as the house is concerned, *status quo* was directed to be continued. From the said order, it is apparent that even during the pendency of the former proceedings, Ramakoti Reddy was in possession and, therefore, his possession was protected by granting the above said orders.'

13.8 It was also pointed out that the plaintiff tried to explain away the said orders by stating as follows: -

'Hon'ble High Court was pleased to grant interim injunction relating to Ac.1-91 cents against this plaintiff holding that this plaintiff has admitted that he allowed said Sreeramareddy to be in possession of that extent, and further the Hon'ble High Court has granted a conditional injunction in favour of Late Ramakotireddy and against the plaintiff herein in the same order in C.M.P.1046/89 in L.P.A.195/89 dated 4.8.89 relating to items 2 and 3 of plaint schedule properties subject to the condition that said Ramakotireddy should deposit a sum of Rs.1,000/- (Rs.One Thousand only) per annum commencing from 1989-1990 to be deposited first on or before 31.1.90 and the Hon'ble High Court in the same order has granted status quo so far as the house property is concerned as on date of order i.e. 4.8.1989. By virtue of said orders late Ramakotireddy has dispossessed the plaintiff from possession of the schedule property.'

Having so pointed out it was further urged that the suit is not brought based on the permissive possession but was brought on the basis of forceful dispossession and that the plea of forceful dispossession is not established/proved and that the plaintiff failed to prove that the suit was brought within 12 years from the date of dispossession by whatever means, that is, by means of permissive possession given to Ramakoti Reddi or by

means of forceful dispossession. It was urged that when once the plea of forceful dispossession is not established, it is not possible to accept that the suit was brought within twelve years from the date on which the possession of the properties was lost.

13.9 It was also submitted on behalf of the defendant that the fact that Ramakoti Reddy was in possession all through is fortified by the following set of facts: - 'After the former suit filed by Ramakoti Reddy was dismissed, the plaintiff herein filed EP.No.6 of 1979 in the former suit on the file of III Addl. District Court, Guntur, for handing over possession of the plaint schedule properties. The said EP was dismissed holding that the Execution Petition is not maintainable as there is no decree directing Ramakoti Reddy (since died) or his wife to deliver possession of the property to the plaintiff herein. Thereupon the present suit is brought for recovery of possession by pleading that the plaintiff herein was forcefully dispossessed in August, 1989, by virtue of the above said orders of this Court in CMP.10546 of 1999.' Based on the said submissions, it was urged that all the above pointed out aspects of the matter lend support to the case of the defendant as regards long/adverse possession of her husband, Ramakoti Reddy.

13.10 In summation it was submitted on behalf of the defendant that apart from not establishing the pleaded case and in trying to make out a case, which is not pleaded, the plaintiff also made the admissions, which are quite contrary to his pleaded case of forceful dispossession. Thus, the sum and substance of the case and the argument of the defendant/appellant is that the suit was brought on the basis of forceful dispossession in August 1989, by virtue of the orders, dated 04.08.1989, of this Court in CMP.10546 of 1999, but the said

plea was not established; and, hence, there is no evidence whatsoever adduced by the plaintiff as to the date and manner of dispossession of the plaintiff from the four items of the plaint schedule property and hence, there is no evidence to prove that the suit was brought within 12 years from the date of alleged dispossession.

13.11 To examine the legal validity of the sum and substance of all contentions of the defendant, now it is necessary to take notice of the change in law brought about by the Limitation Act, 1963, from the earlier Limitation Act, 1908.

Articles 64 and 65 of the Limitation Act read thus:

64.	For possession of immovable property based on previous possession and not on title, when the plaintiff which in possession of the property has been dispossessed.	Twelve years	The date of dispossession
65.	For possession of immovable property or any interest therein based on title. Explanation.- For the purposes of this article – (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may bay, 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	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

	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.		
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In **Md. Mohammad Ali v. Jagadish Kalita**⁶, the Supreme Court held thus:

By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession.

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

This position has again been reiterated in **Saroop Singh v. Banto**.⁷ So as per the 1908 Act, the plaintiff not only had to prove his title but also had to prove his possession within twelve years preceding the date of institution of the suit in order to recover possession of immovable property. But under the 1963 Act, there has been a change in law. Hence, in a suit attracting Article 64 and

⁶ (2004) 1 SCC 271
⁷ AIR 2005 SC 4407

65 of the said Act, the plaintiff has only to prove his title and it is for the defendant to prove acquisition of title by adverse possession. In the case on hand, the former suit filed by Ramakoti Reddi for cancellation of the two deeds exhibit A1 & A2 was eventually dismissed and hence, it follows that the said two deeds are valid and binding on the parties. Once, title of the plaintiff to the four items of the plaint schedule property is thus established, the plaintiff need not prove that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove and establish his title by adverse possession, if he/she wants to defeat the plaintiff's claim. Hence, all the contentions of the defendant in support of the plea that the plaintiff failed to establish that the suit was brought within 12 years from the date of dispossession are of no avail to the defendant. Hence, it follows that the defendant can non suit the plaintiff if only the defendant succeeds in establishing the plea of adverse possession. Therefore, it is to be now examined as to whether the defendant established that either she or her late husband, Ramakoti Reddi, who died, on 28.04.1990, perfected title to the plaint schedule properties by adverse possession?

13.12 Hence, it is necessary to now turn to the defence of adverse possession and the evidence of the defendant in support of the said plea, as the pleaded defence is already referred to supra, in detail. In **K. Mallikharjuna Vara Prasad v. K. Poornachander Rao (died) and others**⁸ it was held that whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property and that the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to

⁸ 2006(6) ALD 333

operate until the former is renounced. Therefore, the self same plea that the gift deeds are invalid and the Ramakoti Reddy is still the owner which is inconsistent with the plea of adverse possession is not available to the defendant more particularly in view of the finality of the decree in the former suit dismissing the suit for cancellation of the deeds of gift, exhibit A1 & A2. Further, the plea of adverse possession which is inconsistent with the plea of ownership of Ramakoti Reddy is impermissible as the said two pleadings are mutually inconsistent and as adverse possession does not begin to operate unless the plea of ownership is renounced. The fact that the defendant has taken a plea of adverse possession reflects that it is inherent in the said plea that the plaintiff is the owner of the plaint schedule property. The decision in **Chatti Konati Rao v. Palle Venkata Subba Rao**⁹ reiterates the settled proposition of law that mere possession however long does not necessarily mean that it is adverse to the true owner and that adverse possession really means the hostile possession which is expressly or impliedly in denial of the title of the true owner and that in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner and that the classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owners title must be peaceful, open and continuous. Coming to the case on hand, it is for the defendant claiming adverse possession to plead and prove the *animus possessendi*; the starting point of such possession, the date of the knowledge of the real owner of such animus and hostility and the other facts such as when the possession operationalized as adverse possession. As noted, the adverse possession must

⁹ (2010) 14 SCC 316

be adequate in continuity, publicity and extent and a pleading is required at least to show when the possession became adverse so that it would be clear as to when the starting point of limitation against the plaintiff who would be affected can be found. Keeping in view the legal position, I have carefully read the deposition of the defendant. There is not even a whisper about adverse possession in her examination in chief. In her cross examination, she admitted about the sales of the subject properties. She admitted that her husband died even during the pendency of the former suit and that she was impleaded as his legal representative in the said suit and that after her impleadment, the former suit was decreed against her. Her evidence shows that she is not aware of various factual aspects of the matter as her husband was looking after the former suit till his death. It is not in dispute that the conditional order in CMP.No.10546 of 1989 is not complied with by adherence to the conditions imposed in the said orders. Thus, on evaluation of the evidence of the defendant, it is obvious that the pleading as regards adverse possession remained a pleading and is not translated into evidence much less reliable evidence. Hence, there is absolutely no evidence on the side of the defendant in support of the plea of adverse possession and therefore the said plea is not proved.

13.13 Before parting, it is to be noted that in support of his contentions, learned counsel for the defendant/appellant relied upon the following decisions:

1. Narayan Jivangouda Patil and another v. Puttabai and others¹⁰.

This decision is relied upon in support of the proposition that injunction

¹⁰ AIR (82) 1945 Privy Council 5

obtained by an opposite party restraining a party from interference with the possession of the property does not preclude the enjoined party from bringing a suit for possession and, therefore, such party who fails to bring a suit within twelve years of dispossession shall not be entitled to seek exclusion of the period during which the injunction order is in force for purposes of limitation. This is a decision rendered under the Limitation Act, 1908. However, this proposition is not disputed.

2. Rajender Singh and others v. Santa Singh and others¹¹. This decision was also relied upon in support of the proposition that the suit filed by the plaintiff after expiry of 12 years is barred by law of limitation and that the pendency of the former suit does not provide for exclusion of time and that on the ground that the former suit is pending, the plaintiff is not entitled to contend that the plaintiff is entitled to exclusion of time and plead that the present suit is within the period of limitation. The plaintiff is not seeking any exclusion of time in this case to bring the present suit within the period of limitation.

3. Sajjadanashin Sayed MD.B.E.EDR v. Musa Dadabhai Ummer and others¹²; V. Rajeshwari v. T.C.Saravanabava¹³; and, Siddiquinnisa Begum v. Shamsunnissa Begum¹⁴. These decisions are relied upon on the aspect of *res judicata* and the import and purport of the words ‘directly and substantially in issue in the former suit.’ In the case on hand, this Court did not rely upon any findings in the former suit with regard to possession of the plaintiff herein or of Ramakoti Reddy. Further, in this judgment no finding is

¹¹ (1973) 2 SCC 705

¹² (2000) 3 SCC 350

¹³ (2004)1 SCC 551

¹⁴ 2015(1) ALD 374

recorded based on the principle enshrined in the doctrine of *res judicata*; and, hence, the decisions are of no help to the defendant to advance her defence.

4. Kashi Nath (dead) through LRs v. Jaganath¹⁵ V. Rajeshwari v. T.C.Saravanabava¹⁶. This decision was relied upon in support of the proposition that an adverse inference can be drawn when pleadings and evidence are self contradictory. There is no dispute with this proposition. However, in view of the findings supra and in the facts and circumstances of the case, the ratio is not helpful to the case of the defendant.

5. Ramaiah v. N. Narayana Reddy¹⁷. This decision is relied upon in support of the proposition that the plaintiff has to prove that he was in possession of the suit land within 12 years of the date of the suit and that by skilful drafting of the pleading, a party cannot avoid inconvenient Article prescribing period of limitation. There is no dispute in this case as to which Article of the Indian Limitation Act would apply and the change in the legal position brought about by the Limitation Act, 1963. This Court, in-fact, recorded a finding that the defence of adverse possession is not established and that on the proof of title and in the absence of establishment of the defence of adverse possession, the suit for recovery of possession deserves to be decreed.

13.14 In view of the afore-stated reasoned findings and legal position obtaining, this Court holds that the respondents 2 & 3, who are the legal representatives of the deceased plaintiff, are entitled to recover the possession of the plaint schedule property from the appellant-defendant as the appellant-defendant failed to establish the plea of adverse possession and on the other

¹⁵ (2003) 8 SCC 740

¹⁶ (2004) 1 SCC 551

¹⁷ (2004) 7 SCC 541

hand, the right to recover possession of the plaint schedule property is established. Points 1 & 2 are accordingly answered.

14. POINT No.3: -

In view of the foregoing discussion and the answers recorded supra under point nos.1 & 2, this Court finds itself in agreement with the well reasoned findings of the trial Court and holds that there is no error in the impugned judgment of the trial Court and that the trial Court is justified in decreeing the suit. Point is accordingly answered.

15. POINT No.4: -

In the result, the appeal suit is dismissed, however, without costs. The appellant-defendant is granted a time of three months from the date of receipt of a copy of this judgment for delivering vacant peaceful possession of the plaint schedule properties to the respondents 2 & 3. It is needless to state that on the failure of the defendant so to do, the said respondents shall be at liberty to recover possession of the plaint schedule properties by following the procedure established by law.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

25.04.2018
Vjl