

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

SECOND APPEAL No.517 of 2002

JUDGMENT:

The present appeal, under Section 100 of C.P.C, is directed against the judgment and decree, dated 28.01.1999, in A.S.No.2 of 1996 on the file of the Senior Civil Judge, Pithapuram. The learned Senior Civil Judge, while allowing the appeal, has set aside the judgment and decree passed by the District Munsif, Pithapuram, in O.S.No.111 of 1987, dated 30.10.1995.

For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid O.S.

The suit in O.S.No.111 of 1987 was filed by the appellant herein as the sole plaintiff for declaration and possession and also for ejectment of defendant Nos.1 to 4 from the plaint schedule property, which is a vacant site and thatched shed situated in Raparthy village of Pithapuram Mandal, East Godavari District, within the boundaries shown in the plaint schedule.

The case of the plaintiff has been that he purchased the plaint schedule property under registered sale deed, dated 08.04.1987, from the 5th defendant and since the date of purchase, he has been in possession and enjoyment thereof, and the 5th defendant, who purchased the same under registered sale deed, dated 10.07.1960, had been in possession and enjoyment of the suit property till it was sold

to the plaintiff. Therefore, the plaintiff added the 5th respondent as a proforma party. According to the plaintiff, defendant Nos.2 and 3, who are the sons of defendant Nos.1 and 4, own a house near the plaint schedule property. With an intention to grab the plaint schedule property, defendant Nos.1 to 4 proclaimed in the village that they would trespass into the plaint schedule property and after filing of the suit, they trespassed into the plaint schedule property and, therefore, the aforesaid suit is filed for declaration and possession.

The 1st defendant filed a separate written statement, whereas defendant Nos.2 to 4 filed a memo adopting it. According to them, the sale deeds, dated 08.04.1987 and 10.07.1960, are not true, valid and binding upon them. They averred that there was a small shed about 26 years ago and later it was enlarged with bigger dimensions and the Gram Panchayat began to levy taxes since 1980 or 1981 and the 1st defendant has been paying the tax. They also averred that since the beginning, they have been using the suit site and shed for cooking purpose and cattle 'makam' and the 1st defendant and his predecessors- in-interest had been in possession and enjoyment of the plaint schedule property for 27 years and, thus, they have perfected their title by adverse possession. According to them, neither the 5th defendant nor the plaintiff was ever in possession and enjoyment of the plaint schedule property and the 5th defendant never resided in Raparathi village. They further stated that the plaintiff filed the suit

maliciously with a view to make forcible entry into the plaint schedule property and, thus, they sought for dismissal of the suit.

The learned District Munsif, basing on the aforesaid pleadings, settled the following five issues for trial:

- “1. Whether the plaintiff is entitled for the relief that he is the owner of the plaint schedule property ?
2. Whether the trespass pleaded by the plaintiff subsequent to the suit is correct ?
3. Whether the plaintiff is entitled to the possession of the suit land?
4. Whether the defendants have perfected their title to the plaint schedule property by way of adverse possession ?
5. To what relief ?”

To substantiate their respective cases, the plaintiff, besides examining himself as PW.1, also examined two more witnesses as PWs.2 and 3, and marked Exs.A1 to A5, whereas on behalf of the defendants, the 4th defendant was examined as DW.1 and another witness was examined as DW.2, and marked Exs.B1 to B4. Ex.B1 is the registered sale deed, dated 21.04.1984, executed by Godugula Kondaraju in favour of Surneedi Manikyam, Ex.B2 is the bunch of property tax receipts, Ex.B3 is the copy of caveat petition in O.P.No.11 of 1987 and Ex.B4 is the relevant entry in Ex.A3 register, the description thereof is mentioned in the appendix of evidence.

The learned District Munsif, elaborately dealing with the documentary evidence and the oral evidence let in by the parties, respectively, and even referring to the tax receipts under Ex.B2 and the definition of the term ‘possession’, arrived at the opinion that

defendant Nos.1 to 4 were in permissive possession of the plaint schedule property and their possession cannot invade the right and title of the plaintiff and, thus, doctrine of possession follows title is aptly applicable to the case on hand and, thereby, held issue No.1 in favour of the plaintiff recording the finding that the plaintiff is entitled to declaration as prayed for. On issue No.2, the learned District Munsif, observing that since defendant Nos.1 to 4 were already in permissive possession and enjoyment of the plaint schedule property even by the time of purchase of property by the plaintiff under Ex.A1 - registered sale deed, dated 08.04.1987, the question of trespass by the defendants subsequent to filing of the suit does not arise, settled the issue against the plaintiff. On issue No.3, in view of the findings tendered on issue No.1, held that the plaintiff is entitled to possession of the suit property. On issue No.4, since it was already held that defendant Nos.1 to 4 were in permissive possession from 1984 onwards, held that the plea of adverse possession is not available to defendant Nos.1 to 4 and, thus, trial Court settled the issue against the defendants. On issue No.5, in view of the findings recorded on issue Nos.1 to 4, the suit was decreed.

When the defendants preferred appeal in A.S.No.2 of 1996 before the learned Senior Civil Judge, Pithapuram, the learned Senior Civil Judge, having elaborated the pleadings once again, the issues and the findings recorded by the learned District Munsif, formulated the following three points for consideration:

- “1. Whether the appellants – defendants have trespassed into the plaint schedule property in the year 1993?
2. Whether the appellants – defendants have perfected their title by adverse possession?
3. Whether the respondent – plaintiff is entitled to recover possession of the plaint schedule property?”

The learned Senior Civil Judge, then referring to P.Ws.1's evidence, wherein he has admitted that he was in possession and enjoyment of the plaint schedule property for one year after his purchase indicating that he was in possession till 08.04.1988 and has not explained why he has not taken steps for amendment of the relief of possession in the year 1988 itself, answered the 1st point against the plaintiff. On point No.2, considering the possession of defendant Nos.1 to 4 for the last 26 years prior to filing of the suit itself including the possession of their predecessors-in-interest, opining that the plaintiff got a collusive document from the 5th defendant, who was not a resident of Raparthi and who could not take possession of the plaint schedule property, and keeping in view, that the defendants have not disputed the sale deed under Ex.A1 and PW.1 did not even whisper about the passing of consideration in his evidence and also keeping in view, Article 64 of the Limitation Act 1963 (for short, 'the Act') that a suit is barred if not laid within 12 years from the date of dispossession and also Article 65 of the Act, where the possession of property or any interest therein is based on title, arrived at that Article 64 of the Act applies and recorded finding in favour of the defendants

and against the plaintiff, more so observing that the evidence of DW.2 cannot be discredited. On point No.3, in view of the findings on point Nos.1 and 2, the learned Senior Civil Judge recorded a finding that plaintiff is not entitled to recover possession of the plaint schedule property and, accordingly, allowed the appeal setting aside the judgment and decree of the trial Court with costs throughout. Aggrieved thereby, the present second appeal is preferred.

The following substantial questions of law have been formulated at the time of admitting the present Second Appeal:

- “1. Whether the lower appellate Court is justified in allowing the plea of adverse possession of suit land without any evidence on record?
2. Whether the burden of proof of adverse possession is on defendants or plaintiff?
3. Whether the lower appellate Court has rightly applied the statutory provisions under Article 65 of Limitation Act, 1963?”

Heard Sri N. Vijay, learned counsel for Sri M. Krishna Mohan Rao, learned counsel for the appellant, and Sri T. Durga Prasad Rao, learned counsel for the respondents.

Learned counsel for the appellant - plaintiff would submit that the lower appellate Court was not justified in throwing burden of proof on the plaintiff and just carrying away by mere possession of defendant Nos.1 to 4, though, the trial Court recorded a finding that the possession of defendant Nos.1 to 4 was permissive possession, reversed the well-considered judgment and decree. It is also his

submission that Article 65 of the Act would apply, but not Article 64 of the Act and, therefore, the lower appellate Court was not justified in allowing the plea of adverse possession of the suit schedule land basing on the evidence on record.

Learned counsel for the appellant placed reliance in **ABUBAKAR ABDUL INAMDAR v. HARUN ABDUL INAMDAR AND OTHERS**¹ as to what are the attributes of adverse possession to be set up by the party who pleads adverse possession. The expression of the Honourable Supreme Court in paragraph No.‘5’, on which the learned counsel relies, is relevant. It is thus:

“With regard to the plea of adverse possession, the appellant having been successful in the two courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely. It is true that some evidence, basically of Municipal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court caught the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was

¹ (1995) 5 SCC 612

rightly reversed by the High Court requiring no interference at our end.”

Learned counsel also places reliance in **A. Venkata Narayanamma v. Molakalapalli Lakshmamma**². He refers to the expression of the learned Single Judge of this Court contained in paragraph Nos. ‘36’ to ‘52’. Learned Single Judge, in fact, referred to various decisions and expressed that the entries in revenue records are only for fiscal purpose and such long continuous possession as per the entries in adangals etc., would not create or confer any title in immovable property and, therefore, the long continuous possession of the property is insufficient to claim title by adverse possession in the absence of proof of continuous possession for over a statutory period of 12 years and the time from which possession adverse to the opposite party commences.

In relation to the person on whom the burden of proof rests where adverse possession is pleaded, the learned counsel placed reliance in **Siddiquinnisa Begum (died) per LRs v. S. Begum (died) per LR**³, rendered by a learned Single Judge of this Court, relying on the expression contained in paragraph No.‘70’ thus:

“I also reject the contention of the counsel for the appellants that the plaintiffs ought to have filed the suit within 12 years from the date of their dispossession and that because they have not done so, the suit is liable to be dismissed as barred by limitation. Such a contention would

² 2016 (2) ALD 696

³ 2015 (1) ALD 374

have had some basis under the Limitation Act, 1908 but after the coming into force of the Limitation Act, 1963, such a plea is impermissible. In *C. Natrajan v. Ashim Bai*, (2007) 14 SCC 183, the Supreme Court explained the change of law brought about by Parliament in the Limitation Act, 1963 from the pre-existing law under the Limitation Act, 1908. It held:

“16. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession.

17. In *Mohd. Mohammad Ali v. Jagadish Kalita* it was held: (SCC p. 277, para 20)

“20.... 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 plaintiffs claim to establish his title by adverse possession.”

(See also *P.T. Munichikkanna Reddy v. Revamma*, *Binapani Paul v. Pratima Ghosh*, *Kamakshi Builders v. Ambedkar Educational Society* and *Bakhtiyar Hussain v. Hafiz Khan*.)”

On behalf of the respondents, learned counsel relies on a decision of the Honourable Apex Court in **Md. Mohammad Ali v. Jagadish Kalita**⁴ for the proposition that for ascertaining whether plea of adverse possession was raised, court may construe the entire pleading and cumulative effect of the averments made in written statement. He placed reliance on the expression contained in paragraph Nos. '21' and '22' thus:

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

However, in the event, the case of the defendant was that the predecessors-in-interest of the plaintiff ceased to be his co-sharers for any reason whatsoever, it was not necessary for them to raise a plea of ouster. We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein.”

He also referred to the ruling in **T. Anjanappa v. Somalingappa**⁵ in relation to what constitutes adverse possession as expressed in paragraph '20' thereof. He further relies in **P. Lakshmi Reddy v. L. Lakshmi Reddy**⁶ in relation to the classical requirement of adverse possession. The learned counsel lays emphasis on the expression in paragraph No. '4' thus:

⁴ (2004) 1 SCC 271

⁵ (2006) 7 SCC 570

⁶ AIR 1957 Supreme Court 314

“Now, the ordinary classical requirement of the adverse possession is that it should be nec vi nec clam nec precario. (See Secretary of State for [India v. Debendra Lal Khan](#), 61 Ind App 78 at p 82 : (AIR 1934 PC 23 at p. 25) (A). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See [Radhamoni Debi v. Collector of Khulna](#), 27 Ind App 136 at p. 140 (PC) (B)). But it is well-settled that in order to establish adverse possession of one co-heir as against another it is enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession, who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. (See [Corea v. Appuhamy](#), 1912 AC 230 (C)). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other. There are cases which have held that adverse possession and ouster can be inferred when one co-heir takes and maintains notorious exclusive possession in assertion of hostile title and continues in such possession for a very considerable time and the excluded heir takes no steps to vindicate his title. Whether that line of cases is right or wrong we need not pause to consider. It is sufficient to notice that the Privy Council in [N. Varada Pillai v. Jeevarathnammal](#), AIR 1919 PC 44 at p. 47 (D) quotes,

apparently with approval, a passage from *Culley v. Deod Taylerson*(1840) 3 P and D 539 : 52 RR 566 (E) which indicates that such a situation may well lead to an inference of ouster 'if other circumstances concur'. (See also Govindrao v. Rajabai, AIR 1932 PC 48 (F). It may be further mentioned that it is well-settled that the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession.

He further relies in **D.N. Venkatarayappa v. State of Karnataka**⁷ in relation to doctrine of disclaimer in the context of plea of adverse possession put up by one party and the burden resting to wholly disclaim on the party who pleads adverse possession. Paragraph No.'3', which is relied on by the learned counsel for the respondents, is relevant for the present purpose. It is thus:

“The petitioners, admittedly, had purchased the property in the years 1962-63 and 1963-64 from the original allottees. The Government have allotted those lands as per Saguvali Chit containing prohibition of alienation of the land. Subsequently, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 197 was enacted totally prohibiting the alienation up to a particular period. The proceedings were initiated against the petitioners for ejectment under the said Act. All the authorities have concurrently held that the alienation in favour of the petitioners was in violation of the above Rules and the said Act and hence the sales are voidable. When the case had come up before this Court, this Court while upholding the constitutionality of the Act directed the authorities to go into the question of adverse possession raised by the petitioners. The learned Single Judge has

⁷ (1997) 7 SCC 567

extracted the pleadings on adverse possession of the petitioners. Therein, the High Court had pointed out that there is no express plea of adverse possession except stating that after the purchase of the lands made by them, they remained in possession and enjoyment of the lands. What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the latter allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period. The classical requirement of adverse possession is that it should be nec vi, clam, nec precario. After considering the entire case law in that behalf, the learned Single Judge has held thus:

"The contention raised by the petitioners that they have perfected their title in respect of the lands in question by adverse possession, has to fail on two counts. Firstly, the crucial facts, which constitute adverse possession have not been pleaded. The pleadings extracted above, in my view, will not constitute the crucial facts necessary to claim title by adverse possession. It is not stated by the petitioners in their pleadings that the petitioners at any point of time claimed or asserted their title hostile or adverse to the title of the original grantees/their vendors. In my view, mere uninterrupted and continuous possession without the animus to continue in possession hostile to the rights of the real owner will not constitute adverse possession in law.

In case of Lakshmi Reddy (AIR 1957 SC 314) relied upon by Sri Narayana Rao at Paragraph 7 of the judgment, the Supreme Court, following the decision of the Privy Council in State for [India vs. Debendra Lal](#)

[Khan](#) (AIR 1934 PC 23), has observed that the ordinary classical requirement of adverse possession is that it should be nec vi nec clam nec precario and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

In the case of [State of West Bengal vs. Dalhousie Institute Society](#) (AIR 1970 SC 1778), the Supreme Court, on the basis of the materials on record, which were referred to by the High Court, took the view that in the said case, the respondent had established his title to the site in question by adverse possession. Further, the said decision proceeds on the basis that the grant made by the Government was invalid in law. That is not the position in the present case. The alienation in question was only voidable. The petitioners came into possession of the lands in question by virtue of the sale deeds which are only voidable in law. Therefore, they have come into possession by virtue of the derivative title as observed by the Supreme Court in the case of Chandevappa ((1995) 6 SCC 309). Further, in the case of Kshitish Chandra ((1981) 2 SCC 103), the observation made by the Supreme Court at paragraph 8 of the judgment relied upon by Sri Narayana Rao in support of his contention that the only requirement of law to claim title by adverse possession is that the possession must be open and without any attempt at concealment and it is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner is concerned, I am of the view that the said observation must be understood with reference to the observations made in Paragraph-7 of the judgment. At paragraph-7 of the Judgment, the Supreme Court has observed thus:

‘7... For instance, one of the most important facts which clearly proved adverse possession was that the plaintiff had let out the land for cultivatory purposes and used it himself from time to time without any protest from the defendant. During the period of 45 years, no serious attempt was made by the municipality to evict the plaintiff knowing full well that he was asserting hostile titled against the municipality in respect of the land.’

Further, this Court, in the case of DANAPPA REVAPPA KOLLI v. GURUPADAPPA KALLAPPA PATTANA SHETTI (ILR 1990 Karnataka 610), while referring to the decision of the Supreme Court in Kshitish Chandra's case (supra), relied upon by Sri Narayana Rao in support of the plea of adverse possession, has observed that apart from that actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect this title by adverse possession. The observations made in the said decision reads thus:

"5. ... Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all the adverse possession because it lack necessary animus for perfecting title by adverse possession."

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner. Therefore, I am of

the view that none of the decisions relied upon by Sri Narayana Rao in support of the plea of adverse possession set up by the petitioners, is of any assistance to the petitioners.

Further, admittedly, there is not even a whisper in the evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question. What is stated by the petitioners, in substance, is that they came into possession of the lands in question by virtue of the sale deeds executed by the original grantees. The Supreme Court, in paragraph 11 of the decision in Chandavarappa's case (*supra*), has observed thus:

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

is unable to bring to our notice any such plea having been taken by the appellant."

Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession and, therefore, the Act does not apply as laid down by the Supreme Court in Manchegowda case ((1984) 3 SCC 301). The law laid down by the Supreme Court in Chandevappa's case (supra) fully applies to the facts of the present case. In the said case, while considering the claim of adverse possession the purchaser of a granted land from the original grantee, the Supreme Court has observed that the person, who comes into possession under colour of title from the original grantee if he intends to claim adverse possession as against State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period. It is also relevant to point out that sub- section (3) of Section 5 of the Act provides that where a granted land is in possession of a person, other than the original grantee of his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer, which is null and void under the provisions of sub- section (1) of Section 4. Since I have negatived the contention of Sri Narayana Rao that the original grantees are not Scheduled Castes, it follows that the lands in question are granted lands within the meaning of clause (b) of sub- section (1) of Section 3 of the Act. Therefore, the burden is on the petitioners, who had admittedly come into possession of the lands in question, to establish that

they have acquired title to the lands in question by a transfer, which is not null and void under the provisions of sub-section (21) of Section 4 of the Act. In the instant case, the petitioners have failed to discharge the said burden. On this ground also, the petition should fail. Secondly, the grants made in favour of the original grantees are admittedly free grants. The Rule governing the grant prohibited alienation of the lands in question permanently. The lands in question were granted to Scheduled Caste person taking into account their social backgrounds, poverty, illiteracy and their inherent weakness from being exploited by the affluent section of the society. Under these circumstances, the conditions were imposed that the grantees should not alienate the lands granted to them, Sections 66A and 66B of the Land Revenue Code authorise the State to resume the land for violation of the terms of the grant. Therefore, if the terms of the grants, which are hedged with conditions, and the class of persons to whom the lands are granted, are taken into account and considered, it is not possible to accept the contention of the learned Counsel for the petitioners that the title in the lands had passed absolutely to the grantees. I am of the view that the title to the lands continued to remain in the State and what has been transferred to the grantees is the right to continue to be in possession of the lands granted to them and enjoy the same in perpetuity subject to the condition that they do not violate the conditions of the grant. This view of mine is supported by the Division Bench decision of this Court in the case of [Rudrappa vs. Special Deputy Commissioner \(Writ Appeal No. 1210/1987 decided on 17.6.1996\)](#), wherein in Paragraph-3 of the judgment, the Division Bench of this Court, while considering similar grants, has taken the view that the grantee was not given

absolute title in respect of the land granted. The relevant portion of the judgment at Paragraph-8, reads as follows:

‘8. ...It is clear from the terms of the grant that the appellant's predecessor in title, the grantee could not alienate the land for certain period and if the land was alienated, it was open to the Government to cancel the grant and resume the land in question. If the grant was hedged in with several conditions of this nature, the same cannot be said to be absolute moreover, it must be noticed that the grant was made at an upset price. In the circumstances, proceedings initiated by the respondents cannot be stated to be barred by limitation or is it possible to sustain the plea of adverse possession raised on behalf of the appellant’."

Learned counsel also places reliance in **The State Bank of Travancore v. Arvindan Kunju Panicker**⁸ for the proposition that a permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of the true owners for a period of twelve years or more.

Since the substantial questions of law have been formulated in view of reversal findings recorded by the learned lower appellate Court, it is necessary to look into the findings recorded by the lower appellate Court. On a perusal of the findings recorded by the lower appellate Court, it is clear that the lower appellate Court completely carried away by the fact of possession of defendant Nos.1 to 4 for a period of 27 years prior to the institution of the suit, but however,

⁸ AIR 1971 SC 996

somehow, overlooked the fact that as to when the plea of adverse possession did commence. It is all the more necessary for defendant Nos.1 to 4 to prove on what date their possession became adverse to the interest of the plaintiff. Mere plea in the written statement that the document in favour of the plaintiff was obtained by the plaintiff from the 5th defendant and it is a collusive transaction and, therefore, it is not valid and binding on them is no ground to hold that the defendant Nos.1 to 4 are not exempted from proving the plea of adverse possession set up by them. In fact, when the plea of adverse possession is put forth, the entire burden rests on them to rule out the permissive possession or to prove disclaimer on the part of either the 5th defendant or the plaintiff of their title over the plaint schedule property. None of these essential ingredients have been established by defendant Nos.1 to 4 in their evidence. Merely because the suit schedule property is abutting their house and the same is being used for cooking purpose and cattle makam for about 27 years by the defendants and by their predecessors-in-title, certainly, it would not satisfy the essential ingredients of the plea of adverse possession. There is no need to refer to each of the decisions touching the attributes of adverse possession and whether the party established the same. The classical decision in **P. Lakshmi Reddy (6 supra)** is a concrete example to hold that defendant Nos.1 to 4 are under obligation to prove that their possession has been adequate in continuity, in publicity and in extent to show that their possession is adverse to the plaintiff's interest. Therefore, the lower appellate Court

completely went wrong in holding that defendant Nos.1 to 4 proved the plea of adverse possession and, therefore, the findings recorded by the lower appellate Court are liable to be set aside.

Accordingly, the Second Appeal is allowed setting aside the judgment and decree passed by the learned lower appellate Court and restoring the judgment and decree passed by the learned trial Court. No order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

28.06.2018
v v



JUSTICE A.SHANKAR NARAYANA