

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 1065 of 2021

CALCUTTA LANDING & SHIPPING CO. LIMITED
(PRESENTLY KNOWN AS CLS LIMITED).

VS.

SMT. MANBASA DEVI, SINCE DECEASED AND DULY
SUBSTITUTED BY MR. KUMAR OMPRAKASH & ORS.

For the petitioners:

Mr. Sabyasachi Chowdhury,
Mr. Aniruddha Chatterjee,
Mr. S.E. Huda,
Mr. A.K. Singh,
Mr. Ajit Pandey
Ms. Niharika Singh,
Ms. Shubhangiri Singh.

For the respondents:

Mr. Probal Kumar Mukherjee,
Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya.

Heard on : 25.04.2022

Judgment on : 18.05.2022

Biswajit Basu, J.:

1. The revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for declaration of title and is directed against the Order No. 42 dated March 24, 2021 passed by

the 4th Court of learned Civil Judge (Junior Division) at Howrah in the said suit being Title Suit No. 543 of 2015. On the death of the original plaintiff, the present opposite party nos. 1 to 5 have been substituted in the said suit in her place as plaintiffs.

2. The petitioner by an application under Order VII Rule 11 of the Code of Civil Procedure prayed for rejection of the plaint of the said suit *inter alia*, on the grounds that the plaint does not disclose any cause of action against the defendant no. 1 and the suit is barred by limitation as well as under Section 34 of the Specific Relief Act, 1963.

3. The learned Trial Judge by the order impugned has dismissed the said application holding that bare perusal of the plaint discloses some causes of action for the plaintiffs to file the suit and those are not illusory, whether the defendants have any right, title and interest over the suit property or whether the documents filed by the plaintiffs are strong enough to prove their case cannot be decided without holding a proper trial.

4. Mr. Sabyasachi Chowdhury, learned advocate for the petitioner, impugning the said order of the learned Trial Judge, argues as follows:-

I. Article 58 of the Schedule to the Limitation Act, 1963 prescribes that to get a relief of declaration in a suit, the suit is required to be filed within three years from the date when the right to sue first accrues to the plaintiff, successive violation of the right would not give rise to fresh cause and the suit would be liable to be dismissed if it is filed beyond the said period of limitation counted from the day when the right to sue first accrues to the plaintiff, to

fortify his said argument he lends support of the decisions of the Hon'ble Supreme Court in the case of ***KHATRI HOTELS PRIVATE LIMITED AND ANOTHER VS. UNION OF INDIA AND ANOTHER*** reported in **(2011) 9 SCC 126**, in the case of ***L.C. HANUMANTHAPPA(SINCE DEAD) REPRESENTED BY HIS LEGAL REPRESENTATIVES VS. H.B. SHIVAKUMAR*** reported in **(2016) 1 SCC 332**, in the case of ***DAHIBEN VS. ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS*** reported in **(2020) 7 SCC 366** and the decision of the learned Single Judge of this Court in the case of ***GPT HEALTHCARE PVT. LTD. VS. SOORAJMULL NAGARMULL & OTHERS.*** reported in **2018 SCC OnLine Cal 3800**.

II. The cause of action of the present suit arose on different dates, as stated in paragraph 27 of the plaint, first of such dates being October 15, 2011 the suit was required to be filed within three years from the said date as mandated under Article 58 of the Schedule to the Limitation Act, 1963, but the suit since has been filed beyond the said period of limitation on April 08, 2015, it is barred by limitation, consequently, the plaint of the suit is liable to be rejected under Order VII Rule 11 of the Code.

III. The plaintiffs are admittedly out of possession of the suit property, in the suit the plaintiffs are praying relief of declaration only without any relief of possession, therefore the suit, as it is

framed, is clearly barred under the proviso appended to Section 34 of the Specific Relief Act, 1963. To explain the object of the said provision of the said Act, the decision of the Hon'ble Supreme Court in the case of **VENKATARAJA AND OTHERS VS. VIDYANE DOURERADJAPERUMAL (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS** reported in **(2014) 14 SCC 502** is referred.

IV. It would appear from the averments of the plaint that prior to this suit, the original plaintiff (since deceased) had filed another suit for eviction of the petitioner from the suit property being Title Suit No. 157 of 1990 and the petitioner in its written statement filed in the said suit challenged the title of the plaintiff and asserted its independent right, title and interest over the suit property. The said suit got dismissed for default on December 20, 1995. The plaintiff, even after assertion of such hostile title by the defendant no.1 over the suit property remained inert and as a consequence thereof, after expiry of the period of limitation of twelve years, prescribed under Article 65 of the Schedule to the Limitation Act, 1963, the title of the defendant no. 1 over the suit property has been perfected by way of adverse possession, therefore, right of the plaintiffs to get the relief of possession in the present suit has been permanently extinguished in terms of Section 27 of the Limitation Act, 1963 in consequence thereof, in the present suit the plaintiffs have no scope to seek the further relief of recovery of possession to get rid of the bar of the said

proviso appended to Section 34 of the Specific Relief Act, 1963, the decision of the Hon'ble Supreme Court in the case of ***RAVINDER KAUR GREWAL AND OTHERS VS. MANJIT KAUR AND OTHERS*** reported in **(2019) 8 SCC 729** is referred on the scope of Section 27 of the Limitation Act, 1963.

5. Mr. Probal Kumar Mukherjee, learned senior advocate for the plaintiffs/opposite parties on the other hand, supporting the order of the learned Trial Judge, argues as follows:-

I. The reliefs sought for in the suit are based on the cause of action accrued to the plaintiffs on nine different dates, to ascertain the maintainability of the suit, one particular date from the said nine dates cannot be picked up in isolation of others as the prayer for decree of declaration and mandatory injunction concerns distinct reliefs spanning over separate incidents forming the basis of causes of action, which arose on the dates stated in the body of the plaint and in the documents appended thereto.

II. The period of limitation prescribed under Article 58 of the Schedule to the Limitation Act, 1963 no doubt starts from the date when the right to sue first accrues to the plaintiff, in the present suit such right first accrued to the plaintiffs when the original plaintiff received the reply dated January 13, 2015 from the concerned authority of the Howrah Municipal Corporation against her application under the Right to Information Act, 2005 whereby the plaintiff was informed that by the order of the Mayor of the said

Municipality dated October 15, 2011 the holding has been separated and the suit property has been mutated in the name of defendant no. 1, the suit was filed within three years from the said date. Therefore, it cannot be alleged that the suit is barred by limitation. The decision of the Hon'ble Supreme Court in the case of **SHAKTI BHOG FOOD INDUSTRIES LTD. VS. CENTRAL BANK OF INDIA AND ANOTHER** reported in **2020 SCC OnLine SC 482** is relied on to contend that the knowledge of the plaintiff about the infringement of his right is a relevant consideration in ascertaining when the right to sue was first accrued to the plaintiff.

III. The averments of the plaint should not be read with myopic view, it has to be read as a whole without addition or subtraction of any words and in conjunction with the documents relied on in the plaint. In support of such contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the case reported in **(2020) 7 SCC 366 (supra)** and **SOPAN SUKHDEO SABLE AND OTHERS VS. ASSISTANT CHARITY COMMISSIONER AND OTHERS** reported in **(2004) 3 SCC 137**.

IV. In the suit different reliefs based on different cause of action have been prayed for, even if one of the reliefs are found to be time barred, the plaint cannot be partially rejected, in support of the said submission the decision of the Hon'ble Supreme Court in the case of **D. RAMACHANDRAN VS. R.V. JANAKIRAMAN AND OTHERS** reported in **(1999) 3 SCC 267** is relied on.

V. A suit by the landlord to recover possession from a tenant is governed by Article 67 of the Schedule to the Limitation Act, 1963 not by Article 65 thereof. The said Article 67 prescribes period of limitation of twelve years from the date of determination of tenancy, in the plaint it has disclosed that a suit for eviction of the petitioner from the suit property being Title Suit No. 279 of 2017 has been filed before the learned 2nd Court of Civil Judge(Senior Division), District-Howrah after determination of the tenancy of the petitioner by a notice and the said suit has been filed within period of limitation prescribed under Article 67 of the Schedule to the Limitation Act, 1963; to contend that Section 27 of the Limitation Act, 1963 does not apply to the suit for possession filed in the specific Civil Court, the decision of the Hon'ble Supreme Court in the case of ***PATEL NARANBHAI MARGHABHAI AND OTHERS VS. DECEASED DHULABHAI GALBABHAI AND OTHERS*** reported in **(1992) 4 SCC 264** is referred.

Let me now consider the aforesaid submissions of the learned advocate for the parties and the materials-on-record.

6. The Hon'ble Supreme Court in its different decisions not only has clarified the scope of Order VII Rule 11 of the Code but also has laid down the guidelines to deal with an application under the said provision, before proceeding with the present matter, it is profitable to quote the following observations of the Hon'ble Supreme Court from some of the said decisions:-

(a) “**23.2.** The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.” [(2020) 7 SCC 366 (supra)]

(b) “**12.** ...The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. ...” [AZHAR HUSSAIN vs. RAJIV GANDHI reported in 1986(Supp) SCC 315].

(c) “**9.** A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit- before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. ...” [SALEEM BHAI AND OTHERS vs. STATE OF MAHARASHTRA AND OTHERS reported in (2003) 1 SCC 557].

(d) “**13.** It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.” [(2004) 3 SCC 137 (supra)]

7. The defendant no. 1 in the application under Order VII Rule 11 of the Code although questioned the maintainability of the suit on different grounds but the main thrust was on the grounds of limitation and that the suit is barred under Section 34 of the Specific Relief Act, 1963. Following the aforementioned guidelines of the Hon’ble Supreme Court, let me now

consider whether the learned Trial Judge was justified in rejecting the said application under Order VII rule 11 of the Code.

8. The plaintiffs in the suit are seeking the relief of declaration of their right, title, interest over the suit property with a further declaration that the defendant no. 1 has no right, title, interest over it, the said relief is the main relief the plaintiffs are seeking in the suit, the other reliefs sought for in the suit are consequential and/or incidental to the said main relief. The said main relief is under paragraph “a” of the prayer in the plaint which is reproduced below for ready reference:-

“a. For a decree for declaration that the plaintiff is the absolute owner in respect of the ‘suit property’, morefully described in the Schedule –“A” hereunder written having her -/ 17/- annas right, title interest and possession in the same and the defendant no. 1 being the Trespasser had/has got no manner of right, title, interest or possession in the same in any lawful manner whatsoever nor it has got any right to raise construction at the ‘suit property’ on the basis of “C” Schedule noted purported Sanctioned Plan or to make an unauthorized construction thereon.”

9. The first point falls for consideration is whether the reliefs sought for in the suit are barred by limitation, as urged by the defendant no. 1. In the plaint at paragraph 27, the plaintiff has asserted that the cause of action of the suit arose on different dates, of which the first was **15.10.2011**. The limitation to file a suit for obtaining the relief of declaration is governed by Article 58 to the Schedule of the Limitation Act, 1963. Under the said Article 58, the prescribed period of limitation to file a suit is three years from the date when the right to sue *first* accrues. The Hon’ble Supreme Court in the case reported in **(2011) 9 SCC 126 (supra)** has laid down that successive violation will not give rise to a fresh cause and the suit will be liable to be

dismissed if it is filed beyond the period of limitation counted from the day when the right to sue first accrued, paragraph 30 of the said decision being relevant to the context is reproduced below:-

“30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give raise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

The Hon’ble Supreme Court in the cases reported in **(2016) 1 SSC 332(supra)** and **(2020) 7 SCC 366(supra)** has expressed the same view. The decision of the Co-ordinate Bench of this Court in a case reported in **2018 SCC OnLine Cal 3800(supra)** on this point is no different.

10. Right to sue should have accrued to the plaintiff to get the relief of declaration against the defendant and in terms of Article 58 to the Schedule of the Limitation Act, 1963 the date of the *first* accrual of such right to sue alone counts. Nonetheless, before identifying such first date of accrual of right to sue, it is necessary to understand what ‘right to sue’ means, it ordinarily signifies the right to seek relief in a Court of law accrues with the cause of action, for better appreciation of the coinage ‘right to sue’, the following judicial expositions needs to be quoted:-

“There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is

instituted...” [MT. BOLO vs. MT. KOKLAN AND OTHERS reported in AIR 1930 PC 270]

“6. ...The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted” [STATE OF PUNJAB vs. GURDEV SINGH reported in (1991) 4 SCC 1]

11. The question when right to sue exactly accrues depends on the facts and circumstances of each case; the infringement of the right complained of *when* came to the knowledge of the plaintiffs is an essential, relevant and integral consideration in answering the said question.

“16. ...The language of Art.120 makes, it is true, no reference of knowledge of the plaintiffs, but there may conceivably be cases where the nature of right imports knowledge of certain facts and in such cases, the right to sue cannot be said to arise unless the plaintiffs have the necessary knowledge...” [See SHEONANDAN PRASAD SAO vs. UGRAH SAO AND OTHERS reported in AIR 1960 Patna 66]

12. An abstract date without any reference to the knowledge of the plaintiff about infringement of his right cannot be treated as the first date of accrual of right to sue for the purpose of reckoning period of limitation prescribed under the said Article 58.

In the present case, if the said period is reckoned from the *first date* i.e. October 15, 2011, out of the nine dates of accrual of alleged causes of action disclosed in the plaint, the suit is certainly barred by limitation but it is not if the said period is counted from date when the original plaintiff (since deceased) for the first time had knowledge of infringement of her right.

12. In the plaint, the plaintiffs have alleged that the original plaintiff(deceased) applied under the Right to Information Act, 2005 to the Howrah Municipal Authority to get the information about the illegal mutation and separation of the suit holding in the name of the defendant no. 1 and from the reply dated January 13, 2015 of the said Authority she for the *first* time came to learn that as per the order dated October 15, 2011 of the Mayor of the said Municipality, such mutation was done and the holding was separated. Therefore, it is preposterous to suggest that October 15, 2011 when the said mutation and separation of holding was done, was the first date of accrual of cause of action to the plaintiffs to file the suit.

The decision reported in **(2020) SCC Online SC 482 (supra)** although is not a straight pointer to the issue but in the said decision, the Hon'ble Supreme Court has calculated the period of limitation of a suit governed under Article 113 of the Schedule to the Limitation Act, 1963 from the date of issuance of follow-up legal notice treating the said date as the date of accrual of cause of action.

In all reality, the original plaintiff became aware of the infringement of her right when she received the said reply dated January 13, 2015, if the period of limitation is counted from the said date, the suit is not barred by limitation, as alleged.

14. The next issue falls for consideration is whether the suit is barred under Section 34 of the Specific Relief Act, 1963. Admittedly, the plaintiffs are not in possession of the suit property but they omitted to seek the relief

of possession, whether such omission brings the suit within the mischief of the proviso appended to Section 34 of the Specific Relief Act, 1963 needs to be looked into also. The failure of the plaintiffs to seek further relief of possession generally, would not entail the dismissal of the suit without affording an opportunity to the plaintiffs to include the unsought relief, provided it is saved by limitation. In this context it is apposite to quote the paragraphs 23 and 24 of the decision of the Hon'ble Supreme Court in the case reported in **(2014) 14 SCC 502 (supra)**:-

“23. The very purpose of the proviso to Section 34 of the 1963 Act, is to avoid the multiplicity of the proceedings, and also the loss of revenue of court fees. When the Specific Relief Act, 1877 was in force, the 9th Report of the Law Commission of India, 1958, had suggested certain amendments in the proviso, according to which the plaintiff could seek declaratory relief without seeking any consequential relief, if he sought permission of the Court to make his subsequent claim in another suit/proceedings. However, such an amendment was not accepted. There is no provision analogous to such suggestion in the 1963 Act.

24. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earliest. (Vide Parkash Chand Khurana v. Harnam Singh and State of M.P. v. Mangilal Sharma.)”

15. Let me now examine whether the plaintiffs are entitled to get the opportunity of such amendment. The defendant no. 1 contends that its title over the suit property since has been perfected by adverse possession, the right of the plaintiffs to seek further relief of possession has been extinguished by the operation of Section 27 of the Limitation Act, 1963.

To bring home such claim, the defendant no. 1 is required to prove that its possession over the suit property is *nec vi, nec clam, nec precario* i.e. that the said possession is adequate in continuity, in publicity and is adverse to the title of the plaintiffs. It is profitable to quote Justice O.W. Holmes to understand the ethical justification of the law of adverse possession:

“man like a tree in the cleft of a rock, gradually shapes his roots to the surroundings, and when the roots have grown to a certain size, can’t be displaced without cutting at his life.”

The legal position as to the acquisition of title to land by adverse possession has been succinctly stated by the Judicial Committee of the *Privy Council* in *Perry vs. Clissold* [(1907) AC 73, at Page 79]:-

“It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is for ever extinguished, and the possessory owner acquires an absolute title.”

16. The original plaintiff (since deceased) claiming to be the lessor of the suit property, upon service of a notice, filed Title Suit No. 157 of 1990 for eviction of the defendant no. 1 from the suit property. The defendant no. 1, in the said suit, filed written statement denying the title of the plaintiff and claiming title adverse to the title of the plaintiff as the purchaser of the suit property. The said suit was dismissed for default on December 20, 1995. The said fact is borne out of the plaint of the present suit. In paragraph 25A

at internal page 19 of the amended plaint the plaintiffs have averred as follows:-

“25A. ...*The defendant no.1 in its written statement and/or in their various written objections either in this suit or earlier suits viz. Title Suit NO. 157 of 1990 of this Learned Court, since been dismissed for default on 20.12.1995 had/has categorically renounced its character by setting up title and claiming title to the suit property by defendant no. 1 itself...*”

In spite of setting up of such hostile title, the plaintiffs remained inert and not only allowed the defendant no. 1 to be in peaceful possession of the suit property but also allowed it to mutate its name with the records of the Howrah Municipal Corporation in respect of the suit property and to obtain a building sanction plan for construction of building thereon. The legality of the said actions of the defendant no. 1 although are under challenge in the present suit but those challenges cannot stand on their own without declaration of the title of the plaintiffs over the suit property.

17. The prescription of the period of limitation for recovering possession or for negation of the right and interest of the owner is the core and essence of law of adverse possession. In this context some relevant observations of the Hon’ble Supreme Court are quoted below:-

“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won’t affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it.”[Karnataka Board of Wakf vs. Government of India and others. (2004) 10 SCC 779]

“22. Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the

defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, on the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession."

[Amrendra Pratap Singh vs. Tej Bahadur Prajapati (2004) 10 SCC 65]

18. *Vigilantibus Non Dormientibus Jura Subveniunt*, the legal maxim means that the law assists only those who are vigilant, and not those who sleep over their rights. A person who had a right to possession over a suit property, when has allowed his right to extinguish by his inaction, he cannot recover the property from the person in adverse possession, a necessary corollary thereto is that a person in adverse possession is entitled to hold his possession over the suit property against the owner who is not in possession. Article 65 of the Schedule of the Limitation Act, 1963 prescribes period of limitation of twelve years for filing a suit for possession of immovable property. The starting point of limitation of twelve years is counted from the point of time when the possession of the defendant over

the suit property becomes adverse to the title of the plaintiff, the said Article 65 is an independent article applicable to all suits for possession based on proprietary title.

19. The said Article 65 should be read with Section 27 of the Limitation Act, 1963 which is under the caption “*Extinguishment of right to property*” and reads as follows:-

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

The following passage from **U.N. Mitra’s Law of Limitation & Prescription, 15th Edition, 2018, Vol. I, P. 798** would be helpful to understand the scope of the aforesaid provision:-

“The principle of the section is that if the person having the right to possession suffers his right to be barred by the law of limitation his title itself is extinguished in favour of the party in possession. So far as this section is concerned, it expressly provides that when there exists a cause of action in favour of a person to file a suit for possession, then if, the suit is not filed within a period of limitation prescribed and the period of limitation stands determined, then not only period of limitation comes to an end, but his right will also come to an end and it will stand extinguished. This section assists the person in possession to acquire prescriptive title by adverse possession.”

20. The aforesaid view gets support of the decision of the Hon’ble Supreme Court in the case reported in **(2019) 8 SCC 729 (supra)**, paragraph 58 of the said report being relevant is quoted below:-

“58. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of the Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed

to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. ...”

21. The full Bench of Madras High Court in the case of **Valliamma Champaka vs. Sivathanu Pillai (1964)1 MLJ 161 [MANU/TN/0416/1963]** has graphically analysed the scope of Section 27 of the Limitation Act, 1963 and has laid down that the said provision of the said Act is an exception to the well accepted rule that the limitation bars only the remedy but does not extinguish the title, the said provision lays down a rule of substantive law by declaring that after the lapse of period, the title ceases to exist and not merely the remedy.

22. The argument of the plaintiffs/opposite parties that Section 27 of the Limitation Act, 1963 has no manner of application in the present case, is on a complete misreading of the decision of the Hon'ble Supreme Court reported in **(1992) 4 SCC 264 (supra)** inasmuch as the said case before the Hon'ble Supreme Court was from The Bombay Agricultural Debtors Relief Act, 1947 and in the said decision it has been held that by virtue of Section 51A thereof, except the provisions of Sections 4, 5 and 12, all other provisions of the Limitation Act, 1963 stand excluded by necessary implication and in view thereof there is no question of any determination of period of limitation to institute a proceeding or suit for possession consequently, no question of the applicability of the said Section 27.

23. This Court is also unable to convince itself to accept the argument of the plaintiffs/opposite parties that the limitation to file a suit for recovery of possession of the suit property from defendant no. 1 is governed by Article 67 of the Schedule to the Limitation Act, 1963 as the parties stand in a relationship of landlord and tenant and a suit being Title Suit no. 279 of 2017 has already been filed within the said period of limitation against the defendant no. 1 inasmuch as the jural relationship of landlord and tenant stood extinguished on the acquisition of title of the defendant no. 1 over the suit property by adverse possession on the expiry of period of limitation prescribed under Article 65 of the Schedule to the Limitation Act, 1963, Article 67 thereof has no manner of application in the present case as the said Article applies to determine the period of limitation for recovery of possession only when the jural relationship of landlord and tenant continues to exist without interference of any situation e.g. the lessor remained inactive for long period even when the right of the lessor to get the possession of the suit property was resisted by the lessee on the claim of acquisition of title by purchase.

24. The Court under Section 34 of the Specific Relief Act, 1963 is to exercise its discretion to declare the status or right of the plaintiff to which he is entitled to. In the present case, as discussed above, the plaintiffs are not entitled to a declaration of the legal character of their right, title and interest over the suit property as the same has already been extinguished by virtue of Section 27 of the Limitation Act, 1963, consequently they are also not entitled to the other reliefs prayed for in the suit as the said prayers are

ancillary and/or incidental to the main prayer of the plaintiffs for declaration of their said legal character.

25. The proviso to Section 34 of the Specific Relief Act, 1963 mandates that plaintiff being able to seek further relief than a mere declaration of title, omits to do so, Court shall not make any such declaration. In the present case in view of the fact that the title of the defendant no. 1 over the suit property has been perfected by adverse possession, the plaintiffs are not able to seek the relief of possession as such, there is no scope to afford the plaintiffs the opportunity to amend the plaint to include the unsought relief.

In conclusion, this Court holds that the connected suit is not maintainable, the learned Trial Judge has acted with material irregularity in dismissing the application under Order VII Rule 11 of the Code, as such the order impugned is set aside, and the said application is allowed, in consequence thereof, the plaint of **Title Suit No. 543 of 2015 [SMT. MANBASA DEVI (since deceased) represented by MR. KUMAR OM PRAKASH AND OTHERS -VS- CALCUTTA LANDING AND SHIPPING CO. LTD. AND OTHERS.]** is rejected.

With the above, C.O. 1065 of 2021 is allowed without any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)