



\$~1 & 2 (Appellate Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EX.S.A. 1/2019 & CM APPL 6642/2019

SOHAN LAL Appellant

Through: Mr. Pradeep Kumar, Adv.

versus

SOHAN LAL PASSI (DECEASED) THR LRS

..... Respondent

Through: Mr. Mohinder JS Rupal, Adv.
for R1

+ EX.S.A. 3/2019 CM & APPL 12629/2019

SHYAM LAL & ORS Appellants

Through: Mr. Atul Kumar Sharma, Adv.

versus

SOHAN LAL PASSI (DECEASED) THR LRS

..... Respondent

Through: Mr. Mohinder JS Rupal, Adv.
for R1

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGEMENT (ORAL)

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06.05.2022

1. Both these appeals arise out of order dated 1st October, 2018, passed by the learned Additional District Judge (“the learned ADJ”) in M.C.A. No. MCA/DJ/17/17 (*Sohan Lal Passi v. Roop Ram*).

2. This case is a classic example of the malaise to which the



Supreme Court, with dismay, alludes in the following passages from its judgment in **Rahul S. Shah v. Jinendra Kumar Gandhi**¹:

“22. These appeals portray the troubles of the decree-holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree.

23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Council in **General Manager of the Raj Durbhunga v. Coomar Ramaput Sing**², which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in **Shub Karan Bubna v. Sita Saran Bubna**³, wherein it recommended that the Law Commission and Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”

3. The predecessor of the respondents in these petitions, Sohan Lal Passi, was the successful plaintiff in a suit instituted by him on 26th September 1968, for recovering possession of a land situated at Plot No. 5, Wazir Nagar, Kotla Mubarakpur, New Delhi (“the suit property”). A decree, in his favour was passed on 13th October, 1972.

¹ (2021) 6 SCC 418

² 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605

³ (2009) 9 SCC 689 : (2009) 3 SCC (Civ) 820



4. Half a century has elapsed since then. Possession of the land was never obtained by Sohan Lal Passi who, like Beckett's hero, kept waiting, till he passed into eternity sometime in 1974.

5. His successors continue to fight for the fruits of the decree passed on 13th October, 1972. In the process, the petitioners, who claim to be in "adverse possession" of the suit property for over 50 years, continue to enjoy the property. They have, thus far, successfully managed to obstruct, in every possible manner, the execution of the decree by Sohan Lal Passi or, after his death, by his successors.

6. With this prefatory background, we may proceed, in somewhat greater detail, to the facts.

Facts

7. Sohan Lal Passi filed Suit 477/1968 before the learned Civil Judge against one Roop Ram, seeking recovery of arrears of rent of ₹ 825/- as well as possession the suit property. Sohan Lal Passi claimed to be owner of the said property, of which Roop Ram was a tenant at a monthly rent of ₹ 25/-. The suit averred that Roop Ram was in arrears of rent for the period 1st December, 1965 to 31st August, 1968, totalling to an amount of ₹ 825/-. It was also alleged, in the plaint, that Roop Ram had constructed temporary huts on the suit property and let out the huts to various persons, without the consent of Sohan Lal Passi. On Roop Ram failing to vacate the suit property despite



termination of the tenancy by Sohan Lal Passi *vide* notice dated 20th April, 1968, or to cough up the arrears of rent, Sohan Lal Passi, as already noted, filed Suit 477/1968, seeking recovery of arrears of rent as well as recovery of possession of the suit property after evicting Roop Ram and the allegedly illegal sub-tenants therefrom.

8. Roop Ram set up a defence, in the suit, that the sub-tenants had directly attorned as tenants with Sohan Lal Passi and were, therefore, necessary parties to the suit. He denied being a tenant under Sohan Lal Passi. Rather, contended Roop Ram, the suit property had been let out by Sohan Lal Passi directly to various persons namely Hira Lal, Dal Chand, Ram Chand, Kool Chand, Deva Ram, Lala Ram, Chhotay Lal, Chhotu Ram, Gordhan and Bhoori Lal Prabhat, each of whom was alleged to be paying rent @ ₹ 2/- per month to Sohan Lal Passi. These persons, alleged Roop Ram, had constructed huts/*jhuggis* on the suit property, and Sohan Lal Passi had assigned the task of collecting rent from the said *jhuggi* owners to Roop Ram. Roop Ram alleged that, in 1966, the said tenants stopped paying rent and that he himself vacated the suit property in December, 1967.

9. The learned Sub Judge, who tried the suit, framed the following issues:

- “1. Is the suit bad for non-joinder of necessary parties and to what effect?
2. Was the defendant living as a tenant on 525 sq. yds. of land in suit and at what rent?
3. Did the defendant pay rent at the rate of Rs. 25/- per month till December, 1967?



4. Did defendant surrender back the possession of the tenanted land to the plaintiff in December, 1967? If so, how and to what effect?
5. Relief.
6. Whether the defendant is entitled for suspension of rent? If so since when?"

10. Issues 1 to 4 were not contested by Roop Ram, who did not oppose grant of possession of the suit property to Sohan Lal Passi. The learned Sub Judge, therefore, decided the said issues in favour of Sohan Lal Passi, holding that the suit was not bad for non joinder of necessary parties and that Roop Ram was a tenant in the suit property @ ₹ 25/- per month. In as much as Roop Ram had not paid rent till December, 1967 or surrendered possession of the suit property, the learned Sub Judge decreed the suit by directing payment of rent to Sohan Lal Passi for the period December, 1965 to July, 1966 @ ₹ 25/- per month, aggregating to ₹ 200/-, and granting recovery of possession of the suit property to Sohan Lal Passi.

11. An application for execution of the aforesaid judgment and decree, which was filed by Sohan Lal Passi in 1979, was dismissed for non-prosecution and, subsequently, restored by order dated 14th August, 2003, passed by this Court.

12. Claiming that it was only in 2009 that they came to know of the passing of the aforesaid decree on 13th October, 1972, various persons who were squatting on the suit property, including the petitioners in these petitions, filed objections to the execution application of Sohan



Lal Passi. These objections were initially dismissed by the learned Civil Judge by order dated 1st June, 2010. This order was, however, set aside by the learned Additional District Judge (“the learned ADJ”) *vide* a detailed judgment dated 29th August, 2012, which remanded the matter to the learned Civil Judge for recording evidence and reconsidering the matter.

13. The evidence of the various objectors was accordingly recorded by the learned Civil Judge, and they were also cross examined with respect to their depositions. The exercise of cross examination was completed in respect of all the objectors except the appellant in Ex. SA 1/2019, Sohan Lal (not to be confused with Sohan Lal Passi, who is Respondent 1).

14. Sohan Lal, as an objector to the execution proceedings, was cross examined in part.

15. The learned Civil Judge, *vide* a detailed order dated 7th November, 2015, rejected the objections filed by the objectors, including the appellants in the present appeal. He noted the fact that the main contention of the objectors was that they were in possession of the suit property since 1950, and had been residing there since birth. They, accordingly, claimed possessory title over the suit property by dint of adverse possession.

16. The learned Civil Judge framed the following issues:



“1. Whether the objectors are in possession of the suit property since 1950, if so, then whether they are the owner by way of adverse possession? OPO

2. Whether the decree is not executable against the objections as they were not made part to the suit and the decree was obtained by collusion and fraud? OPO

3. Relief.”

17. Having framed the aforesaid issues, the learned Civil Judge proceeded to hold that the evidence of all the objectors, except for Sohan Lal (the appellant in Ex S A 1/2019) would be taken into account.

18. Apropos the various issues framed by him, the learned Civil Judge held thus:

(i) On the aspect of the right of the objectors to continue in possession of the suit property by dint of perfection of their title by adverse possession, the learned Civil Judge noted that, in support of their stand, the objectors had placed on record electricity bills, water bills, bills relating to gas connection, house tax receipts, etc., as evidence of their having been in possession of the suit property since long. He also noted the objector's contention that Sohan Lal Passi had not challenged the fact that they had been in possession of the suit property since long, and was, rather, adopting a stand that the appellants/ executors were illegal sub-tenants of Roop Ram.

(ii) The learned Civil Judge, thereafter, proceeded to rely on



the following passage from the judgment of the Supreme Court in *Annakili v. A. Vedanayagam*⁴:

“Claim by adverse possession has two elements (1) the possession of the defendant should become adverse to the plaintiff and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. *Animus Possidendi as is well known is a requisite ingredient of adverse possession.* It is now a well settled principal of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. For the said purpose not only *animus possidendi* must to shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.”

Relying on the afore-extracted passage from *Annakili*⁴, the learned Civil Judge held that the onus to prove perfection of title by adverse possession was on the person so claiming. Noting the fact that the appellants/objectors had never disclosed the date from which either they, or their parents/predecessors came into possession of the suit property, or the manner in which they came into such possession, the learned Civil Judge held that no case for claiming perfection of their title by adverse possession could be said to exist. He held that adverse possession was completely distinct from continuous possession over a long period of time. Mere continuous possession, he observed, did not ripen into title, or entitle the possessor to continue to remain in possession. It was only when possession

⁴ AIR 2008 SC 346



was assumed in a manner adverse to the interest of the true owner and continued in such adverse character for over twelve years, that the right of the owner to reclaim possession could be contested on the ground of adverse possession. A party claiming adverse possession was required, therefore, to establish that she/he had entered into the suit property adversely to the rights of the actual owner; in the present case, adversely to the right of Sohan Lal Passi. The manner in which the parents of the objectors/appellants had assumed possession of the suit property was, it was observed, not disclosed at any point. As such, there was no evidence to indicate that their possession of the suit property, if any, was adverse to the rights of Sohan Lal Passi. No averment to the said effect was forthcoming in the objections filed by them, or in the affidavit tendered by them in evidence. The period for which the objectors/appellants continued in possession of the suit property was also not forthcoming from their pleadings.

(iii) As against this, the learned Civil Judge noted that the clear case of Sohan Lal Passi was that the objectors/appellants were illegal sub-tenants of Roop Ram. Once a decree for recovery of possession stood passed against Roop Ram in 1972, the learned Civil Judge observed that the objectors/appellants could not continue in the suit property.

(iv) The learned Civil Judge relied, for this purpose, on the evidence of one Lily Passi, who was examined as the sole



witness of Sohan Lal Passi, who stated, in the affidavit filed by her by way of evidence, that the objectors/appellants were sub-tenants of Roop Ram. Nothing had been elicited from Lily Passi, in cross examination, to discredit this evidence tendered on affidavit.

(v) In view of the decree for recovery of possession which already stood passed in favour of Sohan Lal Passi and against Roop Ram on 13th October, 1972, the learned Civil Judge held that the onus, which was on the objectors/appellants, to establish perfection of title by way of adverse possession, had not been discharged by them.

(vi) The learned Civil Judge also noted the fact that, during cross examination of Sohan Lal Passi, the objectors/appellants adopted a stand that Roop Ram had surrendered his tenancy to Sohan Lal Passi, whereafter Sohan Lal Passi had started taking rent from other occupants of the suit property, including the objectors/appellants. This, observed the learned Civil Judge, was completely contrary to the stand otherwise canvassed by the objectors/appellants, of perfection of title by adverse possession. The objectors/appellants were, therefore, observed the learned Civil Judge, adopting stands which were mutually contradictory to each other.

(vii) The learned Civil Judge also noted that, in further cross examination, a suggestion was put to the witnesses that Roop



Ram was collecting rent on behalf of Sohan Lal Passi from the parents of the objectors. This, he noted, was yet a third line of defence that the objectors/appellants had sought to adopt.

(viii) The objectors were, therefore, noted the learned Civil Judge, vacillating in their stance, claiming at one point that they had perfected title over the suit property by adverse possession at another, that Roop Ram had surrendered his tenancy to Sohan Lal Passi, with whom the objectors/appellants had directly attorned as tenants and, at a third, that Roop Ram was collecting rent on behalf of Sohan Lal Passi, from the forefathers of the objectors/appellants.

(ix) In any event, noting the fact that the appellants/objectors had failed to lead any evidence to establish perfection of title by way of adverse possession vis-à-vis Sohan Lal Passi, and the fact that the appellants/objectors were illegal sub-tenants also stood vouchsafed by the evidence of Lily Passi, which remained undisturbed in cross examination, the learned Civil Judge decided Issue 1, regarding the stand of the appellants/objectors that they had perfected their title by way of adverse possession, having been in the suit property since 1950, against the appellants/objectors and in favour of Sohan Lal Passi.

(x) The learned Civil Judge proceeded to hold Issue 2, regarding the objection to the executability of the decree dated 13th October, 1972 on the ground that the appellants/objectors



who were necessary parties to the *lis* had not been impleaded, in favour of Sohan Lal Passi and against the appellants/objectors, noting that, as the appellants/objectors had failed to prove their claim of adverse possession, they had no right to restrain Sohan Lal Passi from executing the decree or recovering possession of the suit property.

(xi) The learned Civil Judge also noted the fact that, though it had been sought to be alleged that the decree dated 13th October, 1972, was collusive and obtained by fraud, no evidence, worth the name, indicating the existence either of fraud or collusion had been placed on record. This issue was also, therefore, decided in favour of Sohan Lal Passi and against the appellants/objectors.

Following the aforesaid, the learned Civil Judge dismissed the objections filed by the appellants/objectors.

19. The appellants/ objectors appealed, against the aforesaid decision dated 7th November, 2015 of the learned Civil Judge, to the learned ADJ *vide* MCA 13/17, which has come to be decided by the impugned order/ judgment dated 1st October, 2018.

20. The learned ADJ noted the fact that the order, dated 7th November, 2015 of the learned Civil Judge, dismissing the objections of the appellants/objectors, was being assailed on the ground that the learned Civil Judge had erred in failing to take into account the



documents placed on record by the appellants/objectors, indicating that they were in adverse possession of the suit property since 1950. The contention of the appellants/objectors, that no document evidencing ownership of Sohan Lal Passi over the suit property had been placed on record, was also taken into account by the learned ADJ. Sohan Lal, the appellant in Ex S A 1/2019, advanced an additional plea that his evidence had not been completely recorded as his cross examination was incomplete. He also contended that the decree dated 13th October, 1972 had been obtained by fraud and collusion and was, therefore, a nullity.

21. Dealing with the aforesaid issues, the learned ADJ has held that Sohan Lal could not be claimed to be prejudiced as a result of the recording of his evidence being incomplete, as similar objections had been taken by all objectors and the objections of other objectors had been examined and considered by the learned Civil Judge.

22. The learned ADJ also took into account the evidence of Lily Passi, on which the learned Civil Judge had relied. It was noted that, in her cross examination, she denied the suggestion put to her that the appellants/objectors had been residing in the suit property since 1950. The learned ADJ noted the fact that, while arguing that the forefathers of his clients were tenants of Sohan Lal Passi in the suit property, learned Counsel for the appellants/objectors had, while cross examining Lily Passi, suggested that the appellants/objectors had perfected their title to the suit property by adverse possession, which was also denied by Lily Passi. These suggestions, noted the learned ADJ, were mutually contradictory as the appellants/objectors were



contending, in one breath, that they were tenants of Sohan Lal Passi and, in another, that they had perfected title over the suit property by adverse possession. These contradictory pleas, noted the learned ADJ, could not be simultaneously permitted to be urged by the appellants/objectors who, as she notes, never set up a case of ownership over the suit property.

23. Once the appellants/objectors had sought to contend that they were tenants under Sohan Lal Passi, the learned ADJ held that, by operation of Section 116 of the Evidence Act, 1872⁵, they were estopped from challenging the title of possession of Sohan Lal Passi. The contention that no evidence had been produced to establish ownership of Sohan Lal Passi over the suit property was, therefore, rejected by the learned ADJ.

24. Apropos the plea of adverse possession, the learned ADJ substantially echoed the view of the learned Civil Judge. She held that a party claiming perfection of title by adverse possession was required to indicate the identity of the true owner, the manner in which the party had come into possession of the property, adverse to the interest and title of the true owner, and that the party had continued to remain in adverse possession of the property in question for a period of twelve years. In the present case, the learned ADJ noted that these ingredients had neither been pleaded nor proved. All that was sought

⁵ **116. Estoppel of tenant; and of licensee of person in possession.**—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.



to be contended was that the appellants/objectors had been in continuous possession over the suit property since 1950 – which was also not established on evidence, having been specifically denied by Lily Passi in her evidence in chief, which remained undisturbed in cross examination. In any event, in the absence of any evidence of the date from which the predecessors-in-interest of the appellants/objectors came into possession of the suit property or the manner in which they did so, the learned ADJ held that no substantial plea of adverse possession could be said to have been set up or established by the appellants/objectors.

25. Relying on the judgment of the Supreme Court in *S.M. Karim v. Bibi Sakina*⁶, the learned ADJ held on the aspect of adverse possession in Paras 13 and 14 of the impugned order thus:

“13. It is a settled law that mere possession for howsoever length of time does not result in converting the possession into adverse possession. What is essential is that there must be intention on the part of person claiming adverse possession to dispossess the true owner. The intention needs to be open and hostile enough to bring the same to the knowledge of true owner and he should have an opportunity to object. A person who bases his title on adverse possession must show by clear and unequivocal evidence that possession was *hostile to the real owner* and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitutes adverse possession regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of the case. The crux of the matter is that the possession must start with a wrongful dispossession of a rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (*S. M. Karim v. Bibi Sakina*⁶)

⁶ AIR 1964 SC 1254



The objectors have not been able to show that he had acquired the property as owner by way of adverse possession.

Merely paying the house tax and electricity bills would not confer title of the property on the objectors in the capacity of owner by way of adverse possession.

14. In the entire objections, these averments are missing, therefore, even if it is shown through documents that the objectors were in possession for more than 12 years before filing the objections, it would not suffice to prove the plea of adverse possession. Hence, this plea is also turned down.”

26. In as much as the appellants/objectors were seeking, in one breath, to contend that they were tenants under Sohan Lal Passi and, in another, that they had perfected title over the suit property by adverse possession, both of which contentions had been found to be unsustainable both by the learned Civil Judge as well as by the learned ADJ, the learned ADJ holds, in the impugned judgment, that the issue regarding the failure to implead necessary parties did not survive for consideration.

27. On the aforesaid reasoning, the learned ADJ has dismissed the appeal preferred by appellants/objectors against the order dated 7th November, 2015 of the learned Civil Judge.

28. The appellants/objectors have carried out the matter in second appeal to this Court.

Rival Contentions

29. I have heard in detail, Mr. Pradeep Kumar and Mr. Atul Kumar



Sharma, who appeared for the appellants in Ex. SA 1/2019 and Ex. SA 3/2019 respectively.

30. Mr. Pradeep Kumar, learned Counsel for the appellant in Ex. S A 1/2019 reiterated, generally, the stance adopted before the Court below. He submits that his clients have been in possession of the suit property since 1950, having been born in the suit property, which was in occupation of their forefathers/predecessors in interest prior thereto. He reiterates the contention that the decree dated 13th October, 1972 was collusive in nature, as was manifested by the fact that Roop Ram did not even contest Issues 1 to 4 which were, therefore, decided in favour of Sohan Lal Passi and against Roop Ram. He submits that the entire proceedings were bad for non-joinder of his clients, despite Sohan Lal Passi being aware of the fact that they were in possession of the suit property.

31. He reiterates the contention, urged before the Courts below, that his clients were in adverse possession of the suit property since 1950. He also points out that, so far as his client was concerned, there was a fatal procedural error, as the recording of evidence of his client had not been completed and, nonetheless, the decision adverse to his client had been returned by the Courts below. To a specific query from the Court, as to the issue which, according to him, would stand established if his client's evidence had been taken into account, Mr. Pradeep Kumar submits that the evidence recorded from his client would clearly establish that he had been in adverse possession of the suit property since 1950 or prior thereto and the fact that the decree dated



13th October, 1972 was collusive in nature. He submits that the Courts below, without any substantial evidence, erred in treating the appellants/objectors as sub-tenants in the suit property, under Roop Ram.

32. Mr. Atul Kumar Sharma, learned Counsel for the appellant in Ex. S A 3/2019, substantially reiterated these contentions.

Analysis

33. Having heard learned Counsel for the parties and examined the record, I am completely unable to agree with the submissions advanced at the Bar. The orders passed by the learned Civil Judge and the learned ADJ appear, to me, to be unexceptionable, both in respect of the findings returned on facts as well as in law.

34. As has been held by the learned Civil Judge and the learned ADJ, there is no substantial evidence, led by the appellants/objectors, to establish their claim to perfection of title by adverse possession. All that was averred was that the appellants/objectors had been in possession of the suit property since 1950, as they had allegedly been born in the suit property which was in the possession of their parents prior thereto. The date from which the parents of the appellants/objectors came into possession remains undisclosed. The manner in which the parents of the appellants/objectors came into possession of the suit property also remains undisclosed. It is fundamental to a claim of adverse possession that the acquisition of



possession, by the claimant, must be in a manner adverse to the actual owner. Without any details forthcoming, regarding the date from which the parents/forefathers of the appellants/objectors had come into possession of the suit property, or the manner in which they had done so, the learned Civil Judge and the learned ADJ are perfectly justified in their finding that no substantial claim of adverse possession could be set out.

35. The law, in this regard, stands authoritatively enunciated by the decision in ***Ravinder Kaur Grewal v. Manjit Kaur***⁷, rendered by three Hon'ble Judges of the Supreme Court. The following passages from the said decision exposit the position in law that obtains in this regard:

9. In ***Balkrishan v. Satyaprakash***⁸, decided by a coordinate Bench, the plaintiff filed a suit for declaration of title on the ground of adverse possession and a permanent injunction. This Court considered the question, whether the plaintiff had perfected his title by adverse possession. This Court has laid down that the law concerning adverse possession is well settled, a person claiming adverse possession has to prove three classic requirements i.e. *nec — nec vi, nec clam* and *nec precario*. The trial court, as well as the first appellate court, decreed the suit while the High Court dismissed it. This Court restored the decree passed by the trial court decreeing the plaintiff suit based on adverse possession and observed: (SCC pp. 501-03, paras 6-7, 14 & 17)

“6. The short question that arises for consideration in this appeal is : whether the High Court erred in holding that the appellant had not perfected his title by adverse possession on the ground that there was an order of a Tahsildar against him to deliver possession of the suit land to the auction-purchasers.

⁷ (2019) 8 SCC 729

⁸ (2001) 2 SCC 498



7. The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three “nec” — nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In **S.M. Karim v. Bibi Sakina**⁶ speaking for this Court Hidayatullah, J. (as he then was) observed thus : (AIR p. 1256, para 5)

‘5. ... Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.’

10. In **Des Raj v. Bhagat Ram**⁹, a suit was filed by the plaintiff for declaration of title and also for a permanent injunction based on adverse possession. The courts below decreed the suit of the plaintiff on the ground of adverse possession. The same was affirmed by this Court. This Court considered the change brought about in the Act by Articles 64 and 65 vis-à-vis to Articles 142 and 144. Issue 1 was framed, whether the plaintiff becomes the owner of the suit property by way of adverse possession? This Court has observed that a plea of adverse possession was indisputably be governed by Articles 64 and 65 of the Act. This Court has discussed the matter thus : (SCC pp. 648-50, paras 20, 22, 24, 26-27 & 31)

“20. A plea of adverse possession or a plea of ouster would indisputably be governed by Articles 64 and 65 of the Limitation Act.

22. The mere assertion of title by itself may not be sufficient unless the plaintiff proves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the appellant-defendants themselves had earlier filed two suits.

⁹ (2007) 9 SCC 641



28. We are also not oblivious of a recent decision of this Court in ***Govindammal v. R. Perumal Chettiar***¹⁰ wherein it was held : (SCC p. 606, para 8)

‘8. ... In order to oust by way of adverse possession, one has to lead definite evidence to show that to the hostile interest of the party that a person is holding possession and how that can be proved will depend on facts of each case.’

31. We, having regard to the peculiar facts obtaining in the case, are of the opinion that the *respondent-plaintiff had established that he acquired title by ousting the appellant-defendants by declaring hostile title in himself which was to the knowledge of his co-sharers.*”

(Emphasis supplied)

11. In ***Kshitish Chandra Bose v. Commr. of Ranchi***¹¹ a three-Judge Bench of this Court considered the question of adverse possession by a plaintiff. The plaintiff has filed a suit for declaration of title and recovery of possession based on Hukumnama and adverse possession for more than 30 years. The trial court decreed the suit on both the grounds, “title” as well as of “adverse possession”. The plaintiff’s appeal was allowed by this Court. It has been observed by this Court that adverse possession had been established by a consistent course of conduct of the plaintiff in the case, possession was hostile to the full knowledge of the municipality.

18. It is apparent from the aforesaid discussion that title is acquired by adverse possession.

21. In ***S.M. Karim v. Bibi Sakina***⁶, a question arose under Section 66 of the Code of Civil Procedure, 1908 which provides that no suit shall be maintained against a certified purchaser. The question arose for consideration that in case possession is disturbed whether a plaintiff can take the

¹⁰ (2006) 11 SCC 600

¹¹ (1981) 2 SCC 103



alternative plea that the title of the person purchasing benami in court auction was extinguished by long and uninterrupted adverse possession of the real owner. If the possession of the real owner ripens into title under the Act and he is dispossessed, he can sue to obtain possession. This Court has held that in such a case it would be open for the plaintiff to take such a plea but with full particulars so that the starting point of limitation can be found. A mere suggestion in the relief clause that there was an uninterrupted possession for several 12 years or that the plaintiff had acquired an absolute title was not enough to raise such a plea. Long possession was not necessarily an adverse possession and the prayer clause is not a substitute for a plea of adverse possession. The opinion expressed is that the plaintiff can take a plea of adverse possession but with full particulars. The Court has observed : (AIR p. 1256, para 5)

“5. As an alternative, it was contended before us that the title of Hakim Alam was extinguished by long and uninterrupted adverse possession of Syed Aulad Ali and after him of the plaintiff. The High Court did not accept this case. *Such a case is, of course, open to a plaintiff to make if his possession is disturbed. If the possession of the real owner ripens into title under the Limitation Act and he is dispossessed, he can sue to obtain possession, for he does not then rely on the benami nature of the transaction. But the alternative claim must be clearly made and proved.* The High Court held that the plea of adverse possession was not raised in the suit and reversed the decision of the two courts below. The plea of adverse possession is raised here. Reliance is placed before us on *Sukan v. Krishnanand*¹² and *Sribhagwan Singh v. Rambasi Kuer*¹³, to submit that such a plea is not necessary and alternatively, that if a plea is required, what can be considered a proper plea. But these two cases can hardly help the appellant. No doubt, the plaint sets out the fact that after the purchase by Syed Aulad Ali, benami in the name of his son-in-law Hakim Alam, Syed Aulad Ali continued in possession of the property but it does not say that this possession was at any time adverse to that of the certified purchaser. Hakim Alam

¹² 1951 SCC OnLine Pat 165 : ILR (1953) 32 Pat 353

¹³ 1956 SCC OnLine Pat 74 : AIR 1957 Pat 157



was the son-in-law of Syed Aulad Ali and was living with him. There is no suggestion that Syed Aulad Ali ever asserted any hostile title against him or that a dispute with regard to ownership and possession had ever arisen. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for “several 12 years” or that the plaintiff had acquired “an absolute title” was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in *Bishun Dayal v. Kesho Prasad*¹⁴, the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.”

(Emphasis supplied)

22. In *Mandal Revenue Officer v. Goundla Venkaiah*¹⁵, this Court has referred to the decision in *State of Rajasthan v. Harphool Singh*¹⁶ in which the suit was filed by the plaintiff based on acquisition of title by adverse possession. This Court has referred to other decisions also in *Annakili v. A. Vedanayagam*¹⁷ and *P.T. Munichikkanna Reddy v. Revamma*¹⁸. It has been observed that there can be an acquisition of title by adverse possession. It has also been observed that adverse possession effectively shifts the title already distanced from the paper owner to the adverse possessor. Right thereby accrues in favour of the adverse possessor. This Court has considered the matter thus : (SCC pp. 483-85, paras 48 & 50-51)

¹⁴ 1940 SCC OnLine PC 41 : AIR 1940 PC 202

¹⁵ (2010) 2 SCC 461 : (2010) 1 SCC (Civ) 466 : (2010) 1 SCC (Cri) 1501

¹⁶ (2000) 5 SCC 652

¹⁷ (2007) 14 SCC 308

¹⁸ (2007) 6 SCC 59



“48. In *State of Rajasthan v. Harphool Singh*, this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. *The suit filed by the respondent against his threatened dispossession was decreed by the trial court with the finding that he had acquired title by adverse possession.* The first and second appeals preferred by the State Government were dismissed by the lower appellate court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the respondent-plaintiff could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below : (SCC p. 660, para 12)

‘12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in *P. Lakshmi Reddy v. L. Lakshmi Reddy*¹⁹, adverted to the ordinary classical requirement — that it should be *nec vi, nec clam, nec precario* — that is the possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus.’

¹⁹ AIR 1957 SC 314



50. Before concluding, we may notice two recent judgments in which law on the question of acquisition of title by adverse possession has been considered and reiterated. In *Annakili v. A. Vedanayagam*, the Court observed as under : (SCC p. 316, para 24)

‘24. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title.’

51. In *P.T. Munichikkanna Reddy v. Revamma*²⁰, the Court considered various facets of the law of adverse possession and laid down various propositions including the following : (SCC pp. 66 & 68, paras 5 & 8)

‘8. ... to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially “wilful neglect” element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

²⁰ (2007) 6 SCC 59



2. Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.”

(Emphasis supplied)

23. In ***P.T. Munichikkanna Reddy v. Revamma***, this Court has observed as under : (SCC pp. 65-68 & 73, paras 2, 6, 8 & 30)

“2. The respondent-defendants in their written statement denied and disputed the aforementioned assertion of the plaintiffs and pleaded their own right, title and interest as also possession in or over the said 1 acre 21 guntas of land. *The learned trial Judge decreed the suit inter alia holding that the appellant-plaintiffs have acquired title by adverse possession as they have been in possession of the lands in question for a period of more than 50 years.* On an appeal having been preferred thereagainst by the respondents before the High Court, the said judgment of the trial court was reversed holding:

‘(i) ... The important averments of adverse possession are twofold. One is to recognise the title of the person against whom adverse possession is claimed. Another is to enjoy the property adverse to the title-holder's interest after making him known that such enjoyment is against his own interest. These two averments are basically absent in this case both in the pleadings as well as in the evidence....

(ii) The finding of the court below that the possession of the plaintiffs became adverse to the defendants between 1934-1936 is again an error apparent on the face of the record. As it is



now clarified before me by the learned counsel for the appellants that the plaintiffs' claim in respect of the other land of the defendants is based on the subsequent sale deed dated 5-7-1936.

It is settled law that mere possession even if it is true for any number of years will not clothe the person in enjoyment with the title by adverse possession. As indicated supra, the important ingredients of adverse possession should have been satisfied.'

8. Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "wilful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

2. Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.

30. In **Karnataka Board of Wakf v. Union of India**²¹, the law was stated, thus :

'11. In the eye of the 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. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a

²¹ (2004) 10 SCC 779



party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity, and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M.Karim v. Bibi Sakina⁶, Parsinni v. Sukhi²² and D.N.Venkatarayappa v. State of Karnataka²³)

Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.”

(Emphasis supplied)

25. In *Krishnamurthy S. Setlur v. O.V. Narasimha Setty*²⁴, the Court pointed out the duty of the plaintiff while claiming title based on adverse possession. The suit was filed by the plaintiff on 11-12-1981. The trial court held that the plaintiff has perfected the title in the suit lands based on adverse possession, and decreed the suit. This Court has observed that the plaintiff must plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession. The question arose for consideration whether tenant's possession could be treated as possession of the owner for computation of the period of 12 years under the

²² (1993) 4 SCC 375

²³ (1997) 7 SCC 567

²⁴ (2007) 3 SCC 569



provisions of the Act. What is the nature of pleading required in the plaint to constitute a plea of adverse possession has been emphasised by this Court and another question also arose whether the plaintiff was entitled to get back the possession from the defendants? This Court has observed thus : (SCC pp. 578-79, paras 12-13)

“12. Section 27 of the Limitation Act, 1963 operates to extinguish the right to property of a person who does not sue for its possession within the time allowed by law. *The right extinguished is the right which the lawful owner has and against whom a claim for adverse possession is made, therefore, the plaintiff who makes a claim for adverse possession has to plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession.* The question whether possession is adverse or not is often one of simple fact but it may also be a conclusion of law or a mixed question of law and fact. The facts found must be accepted, but the conclusion drawn from them, namely, ouster or adverse possession is a question of law and has to be considered by the court.

13. As stated, this civil appeal arises from the judgment of the High Court in ***O.V. Narasimha Setty v. Krishnamurthy S. Setlur***²⁵ filed by the original defendants under Section 96 CPC. The impugned judgment, to say the least, is a bundle of confusion. It quotes depositions of witnesses as findings. It quotes findings of the courts below which have been set aside by the High Court in the earlier round. It criticises the findings given by the coordinate Bench of the High Court in the earlier round of litigation. It does not answer the question of law which arises for determination in this case. *To quote an example, one of the main questions which arises for determination, in this case, is whether the tenant's possession could be treated as possession of the owner in computation of the period of twelve years under Article 64 of the Limitation Act, 1963.* Similarly, as an example, the impugned judgment does not answer the question as to whether the

²⁵ 1999 SCC OnLine Kar 710



decision of the High Court dated 14-8-1981 in RSA No. 545 of 1973 was at all binding on the legal representatives of Iyengar/their alienees. Similarly, the impugned judgment does not consider the effect of the judgment dated 10-11-1961 rendered by the trial court in Suit No. 94 of 1956 filed by K.S. Setlur against Iyengar inter alia for reconveyance in which the court below did not accept the contention of K.S. Setlur that the conveyance executed by Kalyana Sundram Iyer in favour of Iyengar was a benami transaction. Similarly, the impugned judgment has failed to consider the effect of the observations made by the civil court in the suit filed by Iyengar for permanent injunction bearing Suit No. 79 of 1949 to the effect that though Shyamala Raju was in possession and cultivation, whether he was a tenant under Iyengar or under K.S. Setlur was not conclusively proved. Similarly, the impugned judgment has not at all considered the effect of Iyengar or his legal representatives not filing a suit on title despite being liberty given to them in the earlier Suit No. 79 of 1949. *In the matter of adverse possession, the courts have to find out the plea taken by the plaintiff in the plaint. In the plaint, the plaintiff who claims to be owner by adverse possession has to plead actual possession. He has to plead the period and the date from which he claims to be in possession. The plaintiff has to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge of the real owner of the land. He has to show a hostile title. He has to communicate his hostility to the real owner.* None of these aspects have been considered by the High Court in its impugned judgment. As stated above, the impugned judgment is under Section 96 CPC, it is not a judgment under Section 100 CPC. As stated above, adverse possession or ouster is an inference to be drawn from the facts proved (sic) that work is of the first appellate court.”

(Emphasis supplied)

26. In ***P.T. Munichikkanna Reddy v. Revamma***, the plaintiff claimed the title based on adverse possession. The Court observed : (SCC pp. 66-67, paras 5-6)



“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. (See *Downing v. Bird*²⁶ ; *Arkansas Commemorative Commission v. City of Little Rock*²⁷ ; *Monnot v. Murphy*²⁸ *City of Rock Springs v. Sturm*²⁹)

(Emphasis supplied)

38. In *Radhamoni Debi v. Collector of Khulna*³⁰ it was observed that to constitute a possessory title by adverse possession, the possession required to be proved must be adequate in continuity in publicity, and in the extent to show for a period of 12 years.

40. In *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhaji Harijan*³¹ , relying on *T. Anjanappa v. Somalingappa*³² , observed that title can be based on adverse possession. This Court has observed thus : (*Hemaji Waghaji Jat case*, SCC p. 525, para 23)

“23. This Court had an occasion to examine the concept of adverse possession in *T. Anjanappa v. Somalingappa* . The Court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The Court further observed that : (SCC p. 577, para 20)

‘20. ... The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and

²⁶ 100 So 2d 57 (Fla 1958)

²⁷ 227 Ark 1085 : 303 SW 2d 569 (1957)

²⁸ 207 NY 240 : 100 NE 742 (1913)

²⁹ 39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929)

³⁰ 1900 SCC OnLine PC 4 : (1899-1900) 27 IA 136 : ILR (1900) 27 Cal 943

³¹ (2009) 16 SCC 517

³² (2006) 7 SCC 570



continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.'"

At the same time, this Court has also observed that the law of adverse possession is harsh and the legislature may consider a change in the law as to adverse possession.

43. Again in *Dharampal v. Punjab Wakf Board*³³, the Court found that the averments in counterclaim by the defendant do not constitute plea of adverse possession as the point of start of adverse possession was not pleaded and Wakf Board has filed a suit in the year 1971 as such perfecting title by adverse possession did not arise at the same time without any discussion on the aspect that whether the plaintiff can take plea of adverse possession. The Court held that in the counterclaim the defendant cannot raise this plea of adverse possession. This Court at the same relied upon to observe that it was bound by the decision in *Gurdwara Sahib v. Gram Panchayat Village Sirthala*³⁴, and logic was applied to the counterclaim also. The Court observed : (SCC pp. 455-56, paras 28 & 34)

34. Applying the aforementioned principle of law to the facts of the case on hand, we find absolutely no merit in this plea of Defendant 1 for the following reasons:

34.1. First, Defendant 1 has only averred in his plaint (counterclaim) that he, through his father, was in possession of the suit land since 1953. Such averments, in our opinion, do not constitute the plea of "adverse possession" in the light of law laid down by this Court quoted supra.

³³ (2018) 11 SCC 449 : (2018) 5 SCC (Civ) 148

³⁴ (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630



34.2. Second, it was not pleaded as to from which date, Defendant 1's possession became adverse to the plaintiff (the Wakf Board).

34.3. Third, it was also not pleaded that when his adverse possession was completed and ripened into the full ownership in his favour.

34.4. Fourth, it could not be so for the simple reason that the plaintiff (Wakf Board) had filed a suit in the year 1971 against Defendant 1's father in relation to the suit land. Therefore, till the year 1971, the question of Defendant 1 perfecting his title by "adverse possession" qua the plaintiff (Wakf Board) did not arise. The plaintiff then filed present suit in the year 1991 and, therefore, again the question of perfecting the title up to 1991 qua the plaintiff did not arise."

(Emphasis supplied)

51. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation in Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, *nec vi* i.e. adequate in continuity, *nec clam* i.e. adequate in publicity and *nec precario* i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due



diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. *Animus possidendi* under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.”

(Underlining and Bold supplied, Italics in original)

36. Adverse possession, therefore, requires *nec vi, nec clam* and *nec precario*. The possession of the adverse possessor must, therefore, be adverse in continuity, in publicity and in extent. Equally, *animus possidendi* is necessary. The intent to possess the property must be exclusively by the adverse possessor. The adverse possessor must, additionally, intend to take possession of the property to the hostile interest of the actual owner. He is required to establish that, by a consistent course of conduct, he has acquired possession hostile to the actual owner, with the owner's knowledge. Uninterrupted possession, of howsoever length, does not ripen into adverse possession or result in creation of title in favour of the possessor.

37. Full particulars of these elements is required to be pleaded by a person asserting perfection of title by adverse possession. The possessor is required to state the date from which he came into possession as well as the date on which the possession became adverse to the interest of the actual owner, if at all it did. Assertion of



uninterrupted possession or of acquisition of an absolute title by dint thereof are insufficient to make out a case of perfection of title by adverse possession. The possessor must hold the land adverse to the title of the true owner. *Animus possidendi* must be shown to exist at the time of commencement of the possession and must continue throughout the period of twelve years.

38. *Animus possidendi* indicates a specific positive intention, on the part of the adverse possessor, to dispossess the actual owner. It is only where such positive intention to dispossess the actual owner exists that the title shifts from the actual owner to the adverse possessor. Adverse possession must, therefore, start with a wrongful dispossession of the rightful owner and must remain actual, visible, exclusive, hostile and continued over the statutory period. Physical possession and *animus possidendi* are its most well-defined *indicia*.

39. A person claiming adverse possession is required, therefore, to show (i) the date on which he came into possession, (ii) the nature of his possession, (iii) whether the factum of possession was known to the true owner, (iv) the period for which he remained in possession and (v) that his possession was open and undisturbed.

40. As adverse possession was an essential inequitable plea, seeking to divest a true owner of his right, all these elements have necessarily to be pleaded and proved. Adverse possession, therefore, requires *animus possidendi* under hostile colour of title.



41. Read in the light of the law laid down in the aforesaid passages, as well as the pleadings of the appellants/objectors, and the evidence led by them, no exception whatsoever, can be taken, to the findings of the learned Civil Judge or the learned ADJ, that the appellants/objectors had failed to make out a case of perfection of title by adverse possession.

42. The learned Civil Judge and the learned ADJ are also justified in their finding that the appellants/objectors were vacillating in their stance, especially in the questions and suggestions put by them to Lily Passi. Ms. Lily Passi, in her affidavit by way of examination-in-chief, deposed that the objectors/appellants were the successors in interest of the sub tenants of Roop Ram, and that their predecessors in interest were paying rentals to him. She further deposed that the objectors/appellants initially entered on the suit property as permissive occupants under Roop Ram and that their predecessors in interest claimed their title through Roop Ram. As such, she asserted that the objectors/appellants were bound by the decree passed against Roop Ram on 13th October, 1972. She further clarified that the objectors/appellants “never asserted (before anybody whatsoever) hostile title to the aforesaid piece and parcel of land/ immovable property subject matter of this action or any part thereof” and that the suit property “was always in the actual physical possession of Roop Ram” and, after his death, of his legal heirs. She reiterated the fact that no hostile title had been set up by the objectors/appellants at any point of time, thus:

“Till the filing of these objections petitions, the Judgment Debtors and / or the present objectors, jointly or severally,



never claimed that the actual physical possession of the site subject matter of these execution proceedings was that of the objectors, jointly or severally, and / or that the objectors were in hostile / adverse possession of the aforesaid site or any part thereof - till the date on which the objections of Smt. Rukmani Devi were finally dismissed by Shri Rakesh Tiwari, learned Additional District Judge, Delhi (in this cause by judgment and order dated 07th July 2009). Smt. Rukmani Devi (now JD) consistently claimed that she was in settled physical possession of the entire land / immovable property subject matter of this action / decree dated 13th October 1972. At no point of time did any of the present objectors claim any other or independent right, much less adverse possession / title by prescription to the said land or any part thereof;

Even at the cost of repetition, I say that prior to the date on which Smt. Rukmani Devi had initially filed her objection petition claiming to be in hostile (and consequently illegal) possession of the land / immovable property subject matter of these executing proceedings (i.e. the decree dated 13th October 1972), nobody, including the present objectors had ever claimed to be in hostile / adverse possession of the land / immovable property subject matter of these execution proceedings;”

43. Lily Passi affirmed her affidavit in evidence in Examination-in-Chief on 21st August, 2015. She was cross examined by learned Counsel for the objectors/appellants. She denied the suggestion that the objectors/appellants were tenants of her father Sohan Lal Passi, and not of Roop Ram. She also denied the suggestion that the suit property had been surrendered by Roop Ram in favour of Sohan Lal Passi. Equally, she denied the suggestion that Roop Ram was collecting rent from the objectors/appellants on behalf of Sohan Lal Passi or was paying the rentals, so collected, to Sohan Lal Passi.

44. As such, notes the learned ADJ, the appellants/objectors were contending, on the one hand, that they were tenants under Sohan Lal



Passi and at another, that Roop Ram had been appointed as a rent collector to collect rent from the appellants/objectors by Sohan Lal Passi and, in their affidavit before the Court, that they had perfected their title by adverse possession.

45. The adoption of such contradictory stances, as the learned Civil Judge and the learned ADJ correctly observed, clearly indicated the nefarious intention of the appellants to continue in possession of the suit property apparently *in perpetuo*, to the prejudice of the rights of the actual owner thereof.

46. Besides, the evidence of Lily Passi effectively agitates the appellant's plea of perfection of title by adverse possession. There is complete want of bonafides in the stand adopted by the appellants/objectors at every point of time. In view thereof, it cannot be said that the findings of the learned Civil Judge or the learned ADJ are faulty either in fact or in law.

47. In so far as the plea of the decree dated 13th October, 1972, being collusive in nature, is concerned, the plea has merely to be stated to be rejected. Collusion and fraud are strong expressions. The law regarding collusion and fraud stands crystallised over a period of time, through countless decisions of the Supreme Court. One may note, in this context, *UOI v. K.C. Sharma and Company*³⁵, *Ranganayakamma v. K. S. Prakash*³⁶ and *Sukhdei v. Bairo*³⁷ etc.

³⁵ (2020) 15 SCC 209

³⁶ (2008) 15 SCC 673

³⁷ (1999) 4 SCC 262



48. A plea of collusion or fraud, in order to sustain, has to be supported by clear pleadings as well as evidence. Neither are there any pleadings, nor is there any evidence worth the name, to support any allegation of collusion or fraud, as would vitiate the decree dated 13th October, 1972. The findings of the learned Civil Judge and ADJ rejecting the aforesaid plea of collusion/ fraud, therefore, are in order and are required to be upheld.

49. The ground position is absolutely clear. The appellants/objectors were, and continue to be, in unauthorised possession of the suit property. It cannot be believed that they remained unaware of the decree which was passed on 13th October, 1972 till 2009.

50. Rather, once the objectors/appellants realised that the execution proceedings were underway, they raised belated objections to the decree. Completely oblivious of the rights of Sohan Lal Passi, as the owner of the suit property, to acquire possession thereof, and with an attempt to frustrate the decree which had been passed as far back as on 13th October, 1972, the appellants have, with absolute impunity, been raising one indefensible plea after another, at every stage of the proceedings, as a result of which Sohan Lal Passi was unable to secure the fruits of the decree passed in his favour on 13th October, 1972 during his lifetime and, as on date, his legal heirs continue to have to battle to get the benefits of the said decree. This, therefore, is a classic example of the malaise underscored by the judgment of the Supreme



Court in ***Rahul S. Shah¹***.

51. The petitioners have enjoyed the possession of the suit property for fifty years as on date after the passing of the judgment and decree in favour of Sohan Lal Passi on 13th October, 1972. They have so, thus far, successfully obstructed the execution of the decree. This enjoyment has, at some point of time, to come to an end.

52. I am, therefore, completely unimpressed by the submissions advanced by learned Counsel for the appellants in these cases.

53. The manner in which the appellants have sought to defeat the decree passed in favour of Sohan Lal Passi half of a century ago is shocking, and requires stern action by the Court, to prevent such unholy attempts in future. The respondent's would, therefore, be entitled to costs, which must be commensurate with the enjoyment, by the appellants, of the respondent's land, for over half a century as on date.

54. As a result, these appeals are dismissed with costs of ₹ 5,00,000/-, to be paid by *each* of the appellants in these appeals. The costs would be paid by way of cross cheques favouring the respondents, to be deposited with the Registrar General of this Court within a period of two weeks from today.

55. The appeals of the appellants having been dismissed, the matter is directed to be listed before the executing Court for ensuring



immediate execution of the Decree dated 13th October, 1972, without any further delay.

56. The appeal stands dismissed in the aforesaid terms.

C.HARI SHANKAR, J

MAY 6, 2022
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