IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 153 of 2013

Reserved on: 10.12.2024

Decided on: 07.01.2025

Gurdev & others …Appellants.

Versus

Todar …Respondent.

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1]Whether approved for reporting? Yes.

For the appellants: Mr. K.D. Sood, Senior Advocate, with Mr. Vivek Thakur, Advocate.

For the respondent: Mr. G.R. Palsra, Advocate.

Sushil Kukreja, Judge

The present regular second appeal has been maintained by appellants, who were defendants before the learned Trial Court (hereinafter referred to as "the defendants") under Section 100 CPC against the judgment and decree, passed by the learned Additional District Judge, Mandi, dated 21.02.2013, in Civil Appeal No. 47 of 2011, whereby the appeal preferred by the defendants against the judgment and decree, dated 31.05.2011, passed by learned

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

Civil Judge (Junior Division), Chachiot at Gohar, District Mandi, H.P., in Civil Suit No. 20 of 2006, was dismissed.

2. The key facts of the case can tersely be summarized as under:

2(a). Respondent-Shri Todar, who was plaintiff before the learned Trial Court (hereinafter referred to as "the plaintiff") filed a suit for declaration and injunction against the defendants (appellants herein). The plaintiff averred that land comprised in Khata No. 27, Khatauni No. 27, bearing Khasra No. 347/134 (new), measuring 4-03-13 bighas, situated in Mauza Chhol, H.B. No. 22, IllaquaBaniur, Tehsil Chachiot, District Mandi, H.P. (hereinafter referred to as the suit land) was recorded in the ownership and possession of defendant No. 1-Sidhu Ram. As per the plaintiff, the revenue entries were wrong, illegal and one Smt. Sukri widow of Narangu, who was resident of village Tandi and Chhol, was previous owner of the suit land. Smt. Sukri sold land measuring 4-10-0 bigha out of the suit land to the plaintiff for a sale consideration of Rs.9000/- and to this effect writing of sale was executed by Smt. Sukri on 11.06.1985, in presence of witnesses, i.e., the then President, Gram Panchayat

Nandi, Tehsil Chachiot. Smt. Sukri handed over the possession of the suit land to the plaintiff and last installment of balance sale consideration was paid by the plaintiff to Smt. Sukri on 10.02.1986 in presence of witnesses. Thereafter, the suit land remained in open, peaceful, continuous and uninterrupted possession of the plaintiff for more than twelve years and he has become owner of the same on the basis of the said sale.

2(b). Smt. Sukri, behind the back of the plaintiff, wrongly and illegally bequeathed the suit land in favour of defendant No. 1, through alleged Will No. 46, dated 16.05.1995 and on 14.12.2004 Smt. Sukri died. Subsequently, defendant No. 1, secretly got mutation of inheritance attested in his name qua the suit land without the knowledge of the plaintiff. Defendant No. 1, wrongly and illegally, without any delivery of possession sold the suit land to defendants No. 2 and 3, vide sale deed No. 135, dated 16.03.2006. The plaintiff further averred that the suit land was sold to him by Smt. Sukri and possession of the same also remained with him during the lifetime of Smt. Sukri, therefore, he became owner of the suit land by way of adverse possession.

2(c). As per the plaintiff, defendant No. 1 had no right, title and interest over the suit land, as his name was incorporated in the revenue record on the basis of wrong and illegal Will. It was further contended that defendant No. 1 sold the suit land to defendants No. 2 and 3 without any delivery of possession to them. The sale deed, whereby defendant No. 1 sold the suit land to defendants No. 2 and 3, is wrong, illegal, null and void and the same does not confer any right, title and interest upon defendants No. 2 and 3 and it is not binding upon the plaintiff.

2(d). The plaintiff also averred that during the third week of March, 2006, the defendants started threatening to forcibly dispossess the plaintiff from the suit land on the basis of alleged Will and Sale deed and the plaintiff for the first time came to know about the alleged Will, Sale deed and revenue entries, which were appearing in the name of the defendants. As per the plaintiff, since the third week of March, 2006, the defendants started causing unlawful interference in the peaceful possession and enjoyment of the plaintiff. The plaintiff time and again asked the defendants to admit his claim over the suit land, however the defendants during the first week of April, 2006, finally declined his claim.

Lastly, the plaintiff prayed that his suit for declaration and injunction be decreed.

3(a). Defendant No. 1, by filing separate written statement, contested the suit of the plaintiff. In the written statement, preliminary objection viz., maintainability, locus standi, want of valid cause of action etc. were raised and on merits defendant No. 1 averred that Smt. Sukri was the previous owner of the suit land. The replying defendant denied that Smt. Sukri ever sold land measuring 4-10-0 bigha to the plaintiff and to this effect any writing of sale was executed and possession of the suit land was handed over to the plaintiff. It was further averred by the replying defendant that Smt. Sukri never sold any piece of land to the plaintiff, therefore, there was no question of sale consideration, last installment and handing over the possession etc.

3(b), As per defendant No. 1, copy of writing is fake, fictitious and forged one. Since no sale was ever made by Smt. Sukri in favour of the plaintiff, therefore, no question of possession and becoming of owner of the suit land arise. Defendant No. 1 also averred that Smt. Sukri died on 14.12.2004 and she had validly, legally and rightly

bequeathed the suit land in his favour, through registered Will No. 46, dated 16.05.1995, and to this effect mutation was openly attested in his favour, thus the plaintiff has no right, title and interest over the suit land in any manner. The replying defendant also denied that he had sold the suit land to defendants No. 2 and 3 without delivery of possession, as alleged. He has averred that previously Smt. Sukri was owner-in-possession of the suit land and subsequent to her death, the suit land came in his possession and after the sale, the same came in exclusive possession of defendants No. 2 and 3. As per defendant No. 1, the plaintiff took two contradictory pleas, i.e., he became owner of the suit land by way of alleged sale and conversely he also alleged that he became owner by way of adverse possession and he cannot be allowed to do so, as per the provision of law.

3(c). Defendant No. 1 further averred that Will was right and legal one and his name has rightly been incorporated in the revenue record and he had rightly sold the suit land to defendants No. 2 and 3 with delivery of possession. As per defendant No. 1, the plaintiff was never owner and not in possession of the suit land, thus there was

no question of declaring him owner-in-possession of the suit land.

4(a). Defendants No. 2 and 3 filed a joint written statement, wherein they averred that previously the suit land was recorded in the ownership and possession of defendant No. 1 and to this effect revenue entries were correct. It was further averred that previously Smt. Sukri was owner-in-possession of the suit land and the plaintiff was neither owner nor in possession of the suit land. Defendant No. 1 legally sold and delivered the possession of the suit land to them and thereafter they became *bonafide* purchasers. The replying defendants denied the possession of the plaintiff over the suit land and averred that they are in exclusive possession over the same.

4(b). Defendants No. 2 and 3 averred that the plaintiff never remained in possession of the suit land, therefore, there is no question of interference, threatening and dislodging. The plaintiff had no right, title and interest over the suit land. Lastly, the replying defendants prayed for dismissal of the suit filed by the plaintiff.

5. The plaintiff filed replication to the written statements filed by defendant No. 1 and defendants No. 2 & 3, wherein the claims of the defendants were denied and the averments made in the plaint were reiterated. The plaintiff averred that he had purchased the suit land from Smt. Sukri through an unregistered writing of sale, dated 11.06.1985, and in case the same is not valid, then he had become owner of the suit land by way of adverse possession on the basis of above unregistered writing of sale, as he remained in open, peaceful continuous and uninterrupted possession of the suit land.

6. On 12.10.2006, on the basis of the pleadings of the parties following issues were framed by the leaned Trial Court for determination and adjudication:

> **"1. Whether Smt. Shukri Devi widow of Narangu has sold the suit land to theplaintiff vide writing dated 11.6.1985 for sale consideration of Rs.9000/- and possession of suit land was also handed over to the plaintiff by Smt. Shukri Devi as alleged? OPP**
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> **2. Whether Smt. Shukri Devi has wrongly and illegally bequeathed the suit land in favour of defendant No. 1 vide Will No. 46 dated 16.5.1995 behind the back of the plaintiff as alleged? OPP**
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> **3. Whether the defendant No. 1 on the basis of wrong revenue entry of the suit land has wrongly and illegally sold the suit land vide sale deed No. 135 dated 16.3.2006 to**

defendant No. 2 and 3 without delivery of possession as alleged? OPD

4. **Whether the plaintiff is entitled for relief of permanent prohibitory injunction as alleged? OPP**

5. **If issue No. 1 is not proved then whether the plaintiff is in open, peaceful continuous and uninterrupted possession of the suit land on the strength of unregistered sale deed dated 11.6.1985 and the plaintiff has become owner of the suit land by way of adverse possession as alleged? OPP**

6. **Whether the suit of the plaintiff is not maintainable? OPD**

7. **Whether the plaintiff has no locus standing to file the present suit? OPD**

8. **Whether the plaintiff has no enforceable cause of action to file the present suit? OPD**

9. **Relief."**

7. The learned Trial Court, after partly deciding issue No. 1 in favour of the plaintiff, issue No. 3 to 5 in favour of the plaintiff (issues No. 2 and 6 to 8 were not pressed), decreed the suit of the plaintiff.

8. Feeling aggrieved and dissatisfied, the defendants approached the learned Additional District Judge, Mandi, District Mandi, H.P., by filing an appeal under Section 96 of CPC read with Section 21 of the H.P. Courts Act, 1976, but the same was dismissed, hence the instant appeal, which has been admitted for hearing on the following substantial questions of law:

"1. Whether the findings of the Court below are perverse, based on misreading of oral and documentary evidence as also the pleadings of the parties and drawing of wrong inferences from the facts proved on record, particularly, deed Ext. PW-2/A, sale deed PD and the Will PA/

2. Whether the court below has relied upon inadmissible oral and documentary evidence, particularly, Ext. PW-2/A which was an unregistered document admittedly creating interests of more than Rs.100/- in immovable property and could not be made the basis for holding the plaintiff the owner of the property much less by way of adverse possession?

3. Whether the appellants were bonafide purchaser for consideration having bought the property for consideration of Rs.1,76,000/-, more particularly, when Ext. PW-2/A did not confer any title on the plaintiff?

4. Whether the suit of the plaintiff was maintainable when the plaintiff was entitled to no relief in the absence of prayer of specific performance of the agreement being sought?

5. Whether the findings that the plaintiff become owner by way of adverse possession is sustainable and the suit on the plea of adverse possession was maintainable at the instance of the plaintiff?

6. Whether in view of the contradictory pleas of the plaintiff of ownership and adverse possession, the reliance placed on the report Ext. PW-5/A is sustainable when the document Ext. PW-2/A was proved to be forged and fictitious document?"

9. The learned counsel for the appellants contended that the claim of the plaintiff of adverse possession could not have been founded on the basis of

inadmissible oral and documentary evidence, particularly, Ex. PW-2/A, which was an unregistered document, creating interest in immovable property of more than Rs.100/-. He further contended that the relief of declaration and injunction could not have been granted to the plaintiff without seeking specific performance of the alleged agreement of sale. He also contended that defendants No. 2 and 3, being bona fide purchasers for consideration, were put in possession over the suit property, having purchased the same from defendant No. 1 on the basis of valid sale deeds, Ex. PD and Ex. PE, and the same having not been challenged, prevail over the unregistered document, Ex. PW-2/A.

10. On the other hand, the learned counsel for the plaintiff/respondent contended that the plaintiff has filed the suit against the defendants claiming ownership of the suit land by way of adverse possession on the strength of the sale deed Ex. PW-2/A, which can be read for collateral purpose, as the same having not been registered. He further contended that the plaintiff had been able to prove that he is in possession of the suit land since 11.06.1985 and for the same a suit has been filed on 18.04.2006, therefore, the

plaintiff has perfected his title over the suit land by way of adverse possession.

11. I have heard the learned counsel for the appellants, learned counsel for the respondent and has meticulously examined the entire records.

12. Before adverting to the merits of the case, it would be apposite to have a look into the legal position.As far as interference in the second appeal is concerned, the Hon'ble Apex Court, in a catena of decisions, has held that the scope of interference in the second appeal is very limitedwhen there are concurrent findings recorded by the Courts below. A very strong case is required to be established by the appellant. The second appeal can only be admitted on substantial questions of law. In the case of ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gurjar,*** reported in ***(1999) 3 SCC 722,*** it has been held by Hon'ble Supreme Court as under: 3

> ***"3. After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that***

> ***the case in the Court did not involve any substantial question of law. The proviso to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence.***
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> ***… … … … … … … …***
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> ***5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the tower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence.***

13. In the case of ***Laxmidevamma vs. Ranganath,*** reported in ***(2015) 4 SCC 264,*** the Apex Court has held that the concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. The relevant portion of the judgment (supra) is as under:-

> ***"16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that plaintiffs have established their right in 'A' schedule property. In the light of concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for re-appreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff***

> ***has earmarked the 'A' schedule property for road and that she could not have full fledged right and on that premise proceeded to hold that declaration to plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 C.P.C., concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained."***

14. The Hon'ble Apex Court in case of ***Adiveppa & Others vs. Bhimappa & Others (2017) 9 SCC 586*** has held that unless the findings of facts, though concurrent, are found to be extremely perverse so as to affect the judicial conscious of a judge, they would be binding on the Appellate Court. The relevant portion of the judgment (supra) is as under:

> ***"14. Here is a case where two Courts below, on appreciating the entire evidence, have come to a conclusion that the Plaintiffs failed to prove their case in relation to both the suit properties. The concurrent findings of facts recorded by the two Courts, which do not involve any question of law much less substantial question of law, are binding on this Court.***
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> ***15. It is more so when these findings are neither against the pleadings nor against the evidence and nor contrary to any provision of law. They are also not perverse to the extent that no such findings could ever be recorded by any judicial person. In other words, unless the findings of facts, though concurrent, are found to be extremely perverse so as to affect the judicial conscious of a judge, they would be binding on the Appellate Court."***

15. From the above decisions, it is clear that this Court is not required to re-open concurrent findings of fact in second appeal in the absence of any perversity.

16. In the case on hand, in order prove its case, the plaintiff himself appeared in the witness-box as PW-1. In support of his case he examined PW-2 Shri Nokh Singh, the then Pradhan Gram Panchayat Nandi, PW-3 Shri Sevku @ Gurdas, PW-4 Shri Lal Singh and PW-5 Shri Tulsi Ram, Field Kanungo.

17. On the other hand, defendant Shri Sidhu Ram appeared in the witness-box as DW-1 and he also examined one Shri Gurdev as DW-2 in support of his case.

18. The case of the plaintiff is that he has become owner of the suit land by way of adverse possession on the basis of the sale deed, Ex. PW-2/A, stated to have been executed by Smt. Sukri in his favour on 11.06.1985. As per the plaintiff, he purchased the suit land from Smt. Sukri on 11.06.1985 for Rs.9000/- and in this respect a writing was prepared, which was scribed by Pradhan Shri Nokh Singh in presence of witnesses Kamala Ram, Gurdass and Thanku and since then he is in possession of the suit land and has perfected his title by way of adverse possession. The further case of the plaintiff is that the alleged Will executed by Smt. Sukri in favour of defendant No. 1, on the basis of mutation

of inheritance, attested in his (defendant No. 1), name, is null and void and is not binding upon him. The further case of the plaintiff is that defendant No. 1 had wrongly and illegally sold the suit land to defendants No. 2 and 3 without any delivery of possession, which is also null and void and not binding upon his rights.

19. Plaintiff-Shri Todar, while appearing in the witness-box as PW-1, stated that on 11.06.1985 he purchased the suit land from Smt. Sukri for Rs.9000/- and he had paid Rs.2500/- and Rs.600/- earlier and paid Rs.2000/- on 11.06.1985 to Smt. Sukri. The plaintiff further deposed that a writing (Mark X), which was scribed by Pradhan Shri Nokh Singh at the instance of Smt. Sukri, was prepared, in presence of witnesses Kamala Ram, Gurdass and Thanku. He has further deposed that the remaining amount of Rs.3900/- was to be paid to Smt. Sukri Devi in the month of Magh and she assured to get the mutation done in his favour. On 10.02.1986 he paid Rs.3900/- and to this effect a writing was made on the back side of Mark-X by Ward Member Lal Singh in presence of witnesses Tankhu Ram, Khima Ram and Devnu and Smt. Sukri Devi affixed her thumb impression thereon and the witnesses appended their

signatures. The plaintiff also deposed that he was put in possession of the suit land on 11.06.1985 and since then his possession was open, continuous and uninterrupted and to the knowledge of the owner of the suit land. Smt. Sukri died in the year 2004. He has deposed that Smt. Sukri wrongly executed Will in favour of defendant Sidhu and defendant Sidhu got wrongly attested the mutation of the suit land in his favour on the basis of the Will.As per the plaintiff, neither Sukri Devi nor the defendants remained in possession of the suit land after 11.06.1985. He deposed that defendant Sidhu, on the basis of wrong revenue record got executed the sale deed of the suit land in favour of the defendants No. 2 and 3, that too without delivering possession of the suit land and the defendants, on the basis of wrong revenue record are threatening the plaintiff to dispossess him from the suit Land.

20. Shri Nokh Singh, the then Pradhan Gram Panchayat Nandi, while appearing in the witness-box as PW-2, deposed that he knew the parties and had also seen the suit land. As per this witness, Smt. Sukri Devi sold the suit land to plaintiff-Todar and he scribed the sale deed at the instance of Smt. Sukri Devi on 11.06.1985, in presence of

witnesses Tankhu Ram, Kamala Ram and Gurdass. He further deposed that sale deed, Mark-X, is now Ex PW-2/A. The plaintiff purchased the suit land for Rs.9000/- and out of Rs.9000/- a sum of Rs.5100/- was already paid and balance amount of Rs.3900/- was paid in the month of Magh. He has stated that Smt. Sukri Devi put the plaintiff in possession of the suit land on 11.06.1985 and since then the plaintiff is in possession of the same and he has become owner thereof. This witness also stated that Patwari and Kanungo also visited the spot and they found the possession of the plaintiff. The defendants were called on the spot, but they did not come. The defendants never remained in possession of the suit land. As per this witness, contents of Ex.PW-2/A were explained to Smt. Sukri Devi by him and thereafter she put her thumb impression over the same. Subsequently, witnesses Kamala Ram, Gurdass, Tankhu and he had put signatures, which are Mark-B to Mark-E, respectively.

21. PW-3-Shri Sewku @ Gurdass stated that on 11.06.1985 Ex. PW-2/A was executed in his and in presence of Kamala Ram, Tankhu Ram and plaintiff-Todar made payment of Rs.2000/- to Smt. Sukri Devi and balance amount of Rs.3900/- was to be paid in the month of Magh.

He has further deposed that Ex. PW-2/A was scribed by Shri Nokh Singh and its contents were readover and explained to Smt. Sukri Devi and after understanding the same correct, she put her thumb impression thereon, which is Mark-A. Subsequently, all the above witness, including him, appended their signatures on Ex. PW-2/A. As per this witness, Smt. Sukri Devi put the plaintiff in possession over the suit landon 11.06.1985 itself and on 13.07.2006 Patwari and Kanungo visited the spot and the defendant were called, but they did not come, and at that time the plaintiff was found cultivating possession over the suit land.

22. Shri Lal Singh, who appeared in the witness-box as PW-4, deposed that he knew the parties to the suit and had also seen the suit land. As per this witness, Smt. Sukri Devi sold land measuring four bighas and some biswansi to the plaintiff and to this effect document, Ex. PW-2/A, was executed, which was scribed by Shri Nokh Singh, Pradhan. He has further deposed that the plaintiff had already paid some amount to Smt. Sukri Devi and balance amount of Rs.39000/- was to be paid later on. Considering the contents of Ex.PW-2/A correct, Smt. Sukri Devi put her thumb impression over the same and thereafter the

witnesses also put their signatures thereon. He stated that Mark-Y, qua receiving the payment of Rs. 3900/-, on Ex. PW-2/A was written by him. He has also stated that contents of Mark-Y were explained to Smt. Sukri Devi and subsequently she put her thumb impression on it and witnesses also signed the same. As per this witness, Patwari and Kanungo also visited the spot in presence of village people and they found the plaintiff in cultivating possession of the suit land.

23. Shri Tulsi Ram, Field Kanungo, who appeared in the witness-box as PW-5, stated that as per Tehsildar Chachiot Order No. 1277, dated 30.06.2006, he alongwith Patwari went to the spot and both the parties were called on the spot, but the defendants did not come. He further stated that he recorded the statements of the people present and also prepared his report, Ex.PW-5/A, which he submitted to Tehsildar, Chachiot. The plaintiff was found in cultivating possession over the suit land. All the plaintiff's witnesses were cross-examined at length by the learned counsel for the defendants, however, nothing favourable could be elicited from their lengthy cross-examination.

24. On the other hand, defendant No. 1-Sidhu Ram appeared in the witness-box as DW-1 and deposed that Smt. Sukri Devi was his grandmother and he used to reside with her who expired in the year 2004. Smt. Sukri Devi had executed a Will of her movable and immovable property in his name and mutation of the suit land was attested in his favour, on the basis of that Will. He has further deposed that after the mutation, he became owner and subsequently he sold the suit land in favour of defendants No. 2 and 3 alongwith its possession. As per this witness, the plaintiff neither remained in possession over the suit land nor Smt. Sukri executed any sale deed of the suit land in favour of the plaintiff and she never received money in lieu thereof. He further deposed that Ex.PW-2/A is forged one and in his presence Patwari and Kanungo neither visited the spot nor he was called on the spot.

25. Shri Gur Dev, who appeared in the witness-box as DW-2, deposed that he alongwith Mohan purchased land, measuring 4-3-13 bighas, through sale deed from defendant No. 1 for Rs.1,79,000/- alongwith its possession. He further deposed that they were owners in cultivating possession of the suit land and they used to pay the revenue. He also

stated that the plaintiff had filed a false suit just to grab the suit land. In cross examination, he stated that no person from the village was present on the spot, when possession of the suit land was delivered to them, except defendant No. 1-Sidhu.

26. The perusal of *jamabandi* for the year 2002-03, Ex. PA, shows that khasra No. 347/134 was owned and possessed by late Smt. Sukri widow of Narangu and its remark column No. 12 shows that vide mutation No. 135, dated 20.06.2005, the property owned by Smt. Sukri was devolved upon defendant No. 1 by way of testamentary succession. Ex. PD is the copy of alleged sale deed executed by defendant No. 1 in favour of defendants No. 2 and 3 with respect to the sale of khasra No. 347/134, khatauni No. 27/27 measuring 4-3-13 bighas.

27. Ex.PE is the Will allegedly executed on 16.05.1995 by late Smt. Sukri in favour of defendant No. 1, being her grandson, bequeathing her property. Ex. PF is the death certificate of Smt. Sukri, wherein it has been mentioned that she had died on 14.12.2004.

28. As per the report of the Kanungo, Ex. PW-5/A, the suit land was found to be in the joint cultivation of the plaintiff alongwith his brother Shri Ram Singh @ Dyalu. The perusal of Ex. PW-2/A clearly shows that Smt. Sukri had sold her land in mauza Chhol measuring 4-10-0 bighas in favour of the plaintiff on receiving the consideration of Rs.9000/- in various installments and on 11.06.1985 she had handed over the possession of the above mentioned land in favour of the plaintiff.

29. The learned counsel for the appellants vehemently argued that the alleged sale deed, Ex.PW-2/A, which is an unregistered document is not admissible in evidence and no reliance can be placed upon the same and the entire approach of the learned Courts below by placing reliance upon the same is erroneous, thus liable to be set-aside.

30. At this stage, it would be relevant to note that Section 17 of the Registration Act specifies the documents, whose registration is compulsory. Under clause (b) of sub-section (1) thereof, other non-testamentary instruments which purport or operate to create, declare, assign, limit or

extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, are included. A sale deed purporting to convey right and title in the property undoubtedly falls in this category of instruments. Section 49 of the Registration Act lays down the effect of non- registration of documents required to be registered. For proper and better appreciation, this provision is reproduced hereunder:

> ***"49. Effect of non-registration of documents required to be registered.-****"No document required by Section 17 or by any provisions of the Transfer of Property Act, 1882 to be registered shall-*
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> *(a) affect any immovable property comprised therein; or*
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> *(b) confer any power to adopt; or*
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> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.*
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> *Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."*

31. The proviso to Section 49 of the Registration Act, which is relevant for the present purpose, carved out an exception to the rule contained in the main provision as regards the effect of an unregistered document requiring registration and receiving of such document as evidence of

any transaction. The proviso permits such document to be received as evidence under two contingencies, namely (1) as a piece of evidence of a contract in a suit for specific performance in Chapter II of the Specific Relief Act, 1877 and (2) as evidence of any collateral transaction not required to be effected by registered document.

32. The proviso to Section 49 of the Registration Act is a subject matter of debate and discussion in various judgements of the Apex Court. In ***K.B. Saha & Sons Pvt. Ltd. vs. Development Consultant Ltd.***,(***2008) 8 SCC 564,*** the Hon'ble Supreme Court has considered the true meaning and purport of "collateral fact/collateral purpose" with reference to the decided case law. The question that arose before the Supreme Court was, whether the memorandum of agreement whereunder the suit property was leased out was admissible in evidence, as the same was not registered. In paragraph 34 the Hon'ble Supreme Court culled out the following principles:

> ***"34.From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:-***
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> ***1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.***

> ***2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.***
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> ***3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.***
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> ***4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.***
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> ***5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of providing an important clause would not be using it as a collateral purpose."***

33. In ***Bondar Singh & Others vs. Nihal Singh & Others***,***(2003) 4 SCC161***, a suit was instituted with a prayer to grant declaration that plaintiffs had become owners of the suit land by way of adverse possession and also for injunction to restrain the defendants from interfering with the possession of plaintiffs on the suit land. The claim of possession was traceable to an unregistered sale deed dated 09.05.1931. The Hon'ble Supreme Court considered the issue whether the unregistered sale deed can be looked in to assess the possession claim. On thoroughly analyzing the evidence on record, the Hon'ble Supreme Court observed that:

> ***"5……However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is***

> ***the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized....".***

34. Needless to state that a transfer of immovable property by way of sale can only be by a deed of conveyance/sale deed. In the absence of a deed of conveyance/sale deed (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. However, as observed by the Hon'ble Supreme Court in the aforesaid decisions, although the unregistered sale deed is not sufficient to prove the title of any person, it can be still read in evidence for the collateral purposes. Hence, having regard to the principles delineated in the above decisions with reference to admissibility of an unregistered sale deed, it is necessary to consider the issue in this case. As observed earlier, the perusal of Ex. PW-2/A clearly shows that by means of this document, Smt. Sukri had sold the suit land in favour of the plaintiff and also handed over possession of the same, thus, document, Ex. PW-2/A, though unregistered can be looked into for collateral purpose i.e., for the purpose of the nature of possession of the plaintiff over the suit land. This document, alongwith the statements of witnesses of the

plaintiff, clearly shows that the plaintiff was put in possession of the suit land on 11.06.1985 and it further shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized.Thus, the plaintiff has been able to show his possession over the suit land from 11.06.1985.

35. Now, the question, which arises for consideration is as to whether the possession of the plaintiff over the suit land from 11.06.1985 was actual, exclusive, open, uninterrupted and hostile to the true owner for a period exceeding twelve years and whether the plaintiff had perfected his title over the suit land by way of adverse possession.

36. Before proceeding to decide this question, it is essential to take note of the law governing the claim of adverse possession. Adverse possession is not a right conferred by any statute. It is a common law concept, wherein upon extinguishment of rights by virtue of lapse in the period of limitation within which a person has to institute a suit, the other person gets a right of adverse possession. The law in respect of adverse possessionis now well settled. It should be *nec vi, nec clamandnecprecario.* A

person to claim adverse possession should be in possession of the property which should be adequate in continuity, adequate in publicity, adverse to competitor in denial of title and to his knowledge.The Hon'ble Supreme Court in its various judgments has held that the possession must be open, clear, continuous and hostile to the claim or possession of the other party. All the three classic requirements must coexist- *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 knowledge. In ***Karnataka Board of Wakf v. Govt. of India (2004) 10 SCC 779***, the Hon'ble Supreme Courtobserved as under:

> ***"11……. It is a well-settled principle that a 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……..."***

37. In ***T. Anjanappa & others vs. Somalingappa and another 2006 (7) SCC 570***, the pre-conditions for taking plea of adverse possession has been summarized as under:

> ***"20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true***

> ***owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent to as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverese possession are that such possession in denial of the true owner's title must be peaceful, open and 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 there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."***

38. In ***Annakili vs. A. Vedanayagam& others, AIR 2008 SC 346,***the Hon'ble Supreme Court pointed out that a claim of adverse possession has two elements (i) the possession of the defendant becomes adverse to the plaintiff; and (ii) the defendant must continue to remain in possession for a period of 12 years thereafter. *"Animus possidendi"* is held to be a requisite ingredient of adverse possession, well known in law. The relevant portion of the judgment (supra) is as under:

> ***"22……..It is now a well settled principle of law that mere possession of the land would not ripen into possessor 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 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."***

39. In ***Ravinder Kaur Grewal v. Manjit Kaur (2019) 8 SCC 729,*** a three-Judges Bench of the Hon'ble Supreme Court reaffirmed the long-standing right of adversepossession, meaning thereby that even a suit can be filed to claim titleon the basis of adverse possession. Some decisions of the SupremeCourt to the contrary were over-ruled by this judgment.The relevant portion of the judgment (supra) is as under:

> ***"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 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 his title by adverse possession to question alienation and attempt of dispossession.***
>
> ***52. … … … … … …***
>
> ***53. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated."***

40. Thus, a suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession. Law of adverse possession does not entitle only the defendant for acquisition of title by way of adverse possession, but it may be perfected by a person who is filing a suit.

41. In the instant case, the suit property was purchased by the plaintiff by way of an unregistered sale deedfrom Smt. Sukri on 11.06.1985 for Rs.9000/-. From the statements of the plaintiff's witnesses and also from the material documents, i.e.Ex.PW-2/A and report of field Kanoongo, Ex. PW-5/A, the plaintiff has clearly proved that he has been in peaceful and physical possession of the suit land since 11.06.1985 to the knowledge of the defendants and he had been setting up a hostile title thereto as against the defendants..The deposition of the plaintiff's witnesses in respect of plaintiff being in possession of the property continuously since he purchased the property with adequate publicity, adverse to the defendants could not be impeached in their cross-examination.The plea of adverse possession raised by the plaintiff is thus clearly established.In other

words the plaintiff has perfected his title by way of adverse possession

42. In view of what has been discussed above, no perversity or illegality has been committed by the Courts below in decreeing the suit of the plaintiff. In nutshell, no question of law much less any substantial question of law is involved in the present appeal. Therefore, having regard to the aforesaid facts and circumstances, the present second appeal cannot be entertained in light of the settled legal position that scope of second appeal under Section 100 of Code of Civil Procedure is very limited. Therefore, the present Second Appeal deserves to be dismissed and accordingly stands dismissed with no order as to costs.

Pending applications, if any, shall also stand(s), disposed of.

(Sushil Kukreja)
Judge

7th January, 2025
(virender)