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Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.3159-3160 of 2019

Neelam Gupta & Ors. **...Appellant(s)**

Versus

Rajendra Kumar Gupta & Anr. **...Respondent(s)**

With

Contempt Petition (C) Nos. 517-518 of 2020
IN
Civil Appeal Nos. 3159-3160 of 2019

Rajendra Kumar Gupta **...Appellant(s)**

Versus

Neelam Gupta and Ors. **...Alleged Contemnors/ Respondents**

J U D G M E N T

C.T. RAVIKUMAR, J.

1. The legal representatives of original defendant No.1 viz., appellant Nos. 1 to 3 herein and original

defendant No. 2 in Civil Suit No.195A/95, are in appeal against the judgment dated 11.07.2014 passed by the High Court of Chhattisgarh at Bilaspur in Second Appeal No.401/2003, reversing the concurrent judgments of the Courts below and the consequently, drawn decree dated 25.07.2014.

2. The facts, in succinct, that led to the impugned judgment and decree are as follows:-

"Respondent No.1 herein viz., Rajendra Kumar Gupta filed Civil Suit No.195A/95 (evidently, renumbered) admittedly on 24.12.1986, against the original defendants, namely, Ashok Kumar Gupta and Rakesh Kumar Gupta for recovery of possession of suit schedule property based on title besides claiming damages to the tune of Rs. 10,500/- and future damages at the rate of Rs. 1000/- per acre and for costs. It was averred that he purchased the suit schedule property

admeasuring 7.60 acres comprised in Khasra No.867/1 of Mowa village in Tehsil and District Raipur, as per registered sale deed dated 04.06.1968 from one Late Sh. Sitaram Gupta, who was the common cousin of himself and the original defendants. Furthermore, he averred that since its registration he had been enjoying peaceful possession of the suit schedule property under *Bhumiswami Rights* till he was dispossessed by the original defendants in the month of July, 1983."

3. The original defendants jointly filed a written statement on 04.04.1990 contending that their father, Sh. Ramesh Chandra Gupta, and father of the plaintiff, Sh. Kailash Chandra Gupta, purchased the suit schedule property in the name of their nephew Late Sh. Sitaram Gupta, on 15.03.1963. They further contended that Ramesh Chandra Gupta and Kailash Chandra Gupta had also purchased another land admeasuring 5 acres

comprised in Khasra No.924 of the same village. It was also contended by them that their father had installed electric pump and dug well besides constructing three rooms in the suit schedule property for dairy purpose. They averred, rather admitted, that upon the death of plaintiff's father on 25.12.1967, the suit schedule property was transferred in the name of the plaintiff in the year 1968 and his name was recorded in the revenue records, albeit claimed that its possession still remained with them. They went on to contend that Ramesh Chandra Gupta and Kailash Chandra Gupta were members of joint family and they had joint business of bangles in Firozabad in the State of Uttar Pradesh and that in the year 1952 they started the business of bangles in Raipur by opening a shop in the name and style 'Laxmi Bangles Store'. According to them, in the year 1973 their father had opened another shop of bangles at Dhamtari and on 31.03.1976 an oral partition had taken place

between their father viz., the original defendant No.1 and plaintiff's family whereunder land in Khasra No.924 admeasuring 5 acres and the bangle shop at Dhamtari were given to the plaintiff and his family and the suit schedule property and the bangle shop at Raipur were allotted to the share of defendant's family. They had also contended that till the aforementioned partition effected on 31.03.1976, the plaintiff was a member of the Joint Hindu Family. In their joint written statement, they had also taken up the pleas of adverse possession and limitation, as special objections on the ground of being in possession of the suit schedule property for more than 12 years.

4. Based on the rival pleadings, the Trial Court had framed 11 issues as hereunder:-

> *"1. Did the Plaintiff by purchasing the suit land through registered sale deed dated 04/06/1968 get the possession of the suit land?*

2. Whether the Plaintiff is Bhumiswami of the suit land?

3. Did the father of the Defendants purchased the suit land in the name of his nephew in 1963 and 1967, since then the Defendants are in possession of the suit land?

4. Whether the Defendants within the knowledge of the Plaintiff have completed 12 years of continuous and uninterrupted possession on the suit land?

5. Did the father of the Defendants transfer the suit land in the name of the Plaintiff on papers on 04/06/1968 all the lands of Sitaram in which suit land is also included.

6. Whether there is income of Rs. 1000 per year from the suit land?

7. Is the claim of the Plaintiff is barred by Limitation?

8. Did the Defendants in the year 1983 forcible take possession of the suit land.

9. Is the Plaintiff entitled to get the possession of the suit land from the Defendants?

10. Is the Plaintiff entitled to get damages of Rs. 10500/- from the defendants/

11. Reliefs and costs?"

5. The Trial Court answered issue Nos.2 & 8 to 10 in the negative and issue Nos.6 & 7 in the affirmative. Furthermore, it was held that the evidence on record would reveal that prior to the year 1952, the father of the first respondent-plaintiff and father of original defendants were carrying on business in Bangles jointly and Bangle shops were opened in Raipur in the year 1952, and thereafter, in Dhamtari in the year 1973 as joint business. Joint business would create strong presumption of joint family. The Trial Court also held that the age of the aforesaid Sitaram, the vendor who was the common cousin of the plaintiff and the original defendants, was shown in Ext.P1/C – sale deed dated 04.06.1968, as 22 years and hence, at the time of purchase of the said suit schedule property, Sitaram must have been aged only 17 years. Consequently, it was held thus: -

> *"Till otherwise is not proved this evidence of age shows the incapacity of self earning and creates strong presumption that the suit land was purchased by the income of joint family. The defendants have also stated that on the suit land their father had in the year 1964 installed electric pump, dugged well and constructed gate, fencing and three rooms, which statement is unrebutted and that also clears that the suit land was joint family property.*
>
> *By the aforesaid analysis, it is clear that the suit land was purchased by the joint family in the name of Sitaram and after purchase suit land was the Joint Hindu Family Property which was purchased by father of the Defendants in the year 1963 jointly with his brothers in the name of Sitaram."*
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> *(underline supplied)*

6. After holding that the suit land was Joint Hindu Family property the Trial Court continued to consider the question whether by the purchase of the suit land under Ext.P1/C - sale deed dated 04.06.1968 the plaintiff–first respondent herein accrued any right in the suit land based on Ex-P-1C. In that regard, the Trial Court held that since the suit schedule property was

purchased in the year 1963, in the name of Sitaram out of the income of joint family, it became the joint family property and there was no evidence to show that Sitaram was then the head of the family. Consequently, the Trial Court held that Sitaram had no right to sell the suit land under Ext.P1/C – sale deed dated 04.06.1968 and, therefore, the execution of Ext.P1/C was without any authority or right and, therefore, it is void. That apart, the Trial Court upheld the contention of the original defendants that the suit was barred by limitation as the plaintiff–the first respondent was aware of the possession of defendant in the suit schedule property adverse to his interest since 1968. Based on such observations, conclusions and findings, the Trial Court dismissed the suit.

7. Aggrieved by the dismissal of the suit, the plaintiff-first respondent challenged the judgment and decree of

the Trial Court in Civil Appeal No. 17 A of 2002 before the Third Additional District Judge, Raipur.

8. The First Appellate Court as per the judgment dated 09.04.2003 dismissed the appeal and confirmed the dismissal of the suit. Nonetheless, on an analysis of the evidence on record, the First Appellate Court interfered with the finding of the Trial Court that the suit schedule property was a Joint Hindu Family property and held thus: -

> *"The Trial Court had dismissed the suit by holding that the suit land was the Joint Hindu Family property and further that the suit was barred by time but I have after analysis of evidence held that the suit land was never the Joint Hindu Family property of the parties but have also held that the suit of the Plaintiff is barred by time. Under these circumstances, the finding recorded by the Trial Court against issue No. 7 for dismissing the suit is found to be in order. Hence, no case is made out to interfere with the judgment dated 13/10/1999 passed by the Trial Court."*
>
> *(underline supplied)*

9. It is feeling aggrieved by the judgment and decree of the First Appellate Court dated 09.04.2003 to the extent it is adverse to him that the plaintiff-first respondent herein filed the S.A. No.401/2003 which culminated in the impugned judgment. As noted hereinbefore, as per the impugned judgment the High Court reversed the concurrent judgment and decree of dismissal of the suit and allowed the same after setting them aside. After allowing the appeal under the impugned judgment the suit of the plaintiff-first respondent herein was decreed on the following terms:-

> *"(A) Plaintiff is entitled for recovery of possession of the suit land bearing Khasra No. 867/ 1, area 7.60 acres situated at village Mowa, Tahsil and District Raipur from the defendants No. 1 and 2; and it is directed that defendants shall deliver the vacant and peaceful possession of the Schedule suit land to the plaintiff herein."*

10. A scanning of the impugned judgment of the High Court would reveal that the High Court virtually found

that the appreciation of evidence by the courts below was perverse and on a proper appreciation of evidence on record felt that the plaintiff-first respondent herein had succeeded in establishing title over the suit land. Paragraphs 10 and 11 of the impugned judgment assume relevance in the context of the challenge made against the sale by the appellants herein and they read thus: -

> *"10. The Commissioner, by its order dated 29th March, 1988 again confirmed the order of Sub Divisional Officer, Raipur by dismissing the appeal filed by the defendants herein and declined to direct mutation in name of the defendants in the suit land. Thus, the document Ex.P-4 clearly recites the admission on the part of the defendants that the suit land is held by the plaintiff in his bhumiswami rights and to whom they cultivated the suit land for two consecutive years i.e. 1973 and 1974, not only this, defendants have clearly stated in document Ex.P-4 that they have cultivated the suit land only for more than two years. The date of the said document is 27.1.1981; and the instant civil suit has been filed on 24.12.1986.*
>
> *11. Coming back to the sale deed (Ex.P-1) dated 4.6.1986 by which the plaintiff has purchased the suit land on 4.6.1986, which clearly recites that the delivery of possession by erstwhile owner Sitaram*

Agrawal in favour of plaintiff coupled with the admission on the part of the defendants that the suit land was held by plaintiff only for the two consecutive years i.e. 1973 and 1974, they were in permissive possession of the suit land as Adhiyadar; therefore, it is held that the trial Court as well as first appellate Court have committed manifest illegality in holding that the plaintiff has failed to establish his title over the suit land. On the contrary it is held that the plaintiff has satisfactorily pleaded and established his title over the suit land and finding recorded by the two courts below with respect to the plaintiff's title is liable to be set aside."

11. The contentions of the appellants 1, 2 & 3 herein, who are legal representatives of original defendant No.1 as also appellant No.4 who was the original defendant No.2 is that the alleged sale effected as per Ext.P1/C – sale deed dated 04.06.1968 was merely on paper and was bogus and sham document. According to them, Sitaram, the common cousin of original defendants as also the plaintiff got no right to transfer the suit schedule property to the plaintiff as he himself had not accrued any right over the suit schedule property based on sale

deed registered in the year 1963. It is their contention that the said property was purchased in the name of Sitaram by father of original defendants along with his brothers for the joint family (and thus in sum-and-substance) as their *benami* and hence, he was not the real owner of the suit schedule property. That apart, they would contend that they have perfected the title over the suit schedule property by way of adverse possession since they have been in continuous possession of the suit schedule property since the year 1968. That apart, it is contended that as rightly held by the Trial Court as also the First Appellate Court, the suit filed by the plaintiff-first respondent was barred by limitation as it was not filed within 12 years from the date of alleged sale.

12. Per contra, the learned counsel appearing for the first respondent would contend that the High Court was perfectly justified in interfering with the judgments and

decree of the courts below as they were outcome of perverse appreciation of evidence. To buttress this contention, he relied on Section-4 of Benami Transactions (Prohibitions) Act, 1988 and Article 65 of the Limitation Act, 1963 and the decisions rendered thereunder and relied on by the High Court. It is the contention that in Ex- P-4, the respondent – defendants categorically admitted that they were placed in possession of a suit land in 1973 and continued in possession up to 1974 as Adhiyadar (lessee) and hence, their possession could be termed only as permissive possession and it could never be said to be adverse possession except by proving that their possession is adverse to the title of the property to the knowledge of the true owner viz. the plaintiff for a period of 12 years or more. He would further contend that by no stretch of imagination possession of defendants as Adhiyadar

(lessee) could be said to be adverse and it could only be permissive possession.

13. A careful analysis of the impugned judgment would reveal that while reversing the concurrent judgment of dismissal of the suit, the High Court found various perversities in the manner of appreciation of evidence. The High Court found that the defendants had never challenged the Ex- P- 1C sale deed dated 04.06.1968. Consequently, it was found that possession was transferred to the plaintiff in 1968 pursuant to the sale deed and Ex-P-2 and P-3, Khasra entries for the period of year 1971-1972 to 1977 and 1978 would further reveal the ownership and possession of the plaintiff over the suit schedule property. It was further found that though the defendants had contended that there occurred an oral partition of the properties in the year 1976 between the family of the plaintiff and the defendants whereunder,

the defendants received the suit schedule property and shop at Raipur and the plaintiff received shop at Dhamtari and land in Khasra No. 924, the First Appellate Court held that the said oral partition was not proved by the defendants/the appellants herein and the said finding of the First Appellate Court had become final. The High Court had also taken note of the fact that earlier the defendants filed Ex- P-4 application dated 27.01.1981 (produced as Annexure P-13 in these proceedings) before Tahsildar, Raipur stating that they had been or they had cultivated the suit land for two years i.e. 1973 and 1974 as Adhiyadar (lessee) and thereby acquired the rights of occupancy tenants and their names be recorded in revenue records. It was found that in the said application they had again admitted the ownership of plaintiff over the suit schedule property. Ex- P-4 application was rejected by the Tahsildar as per order dated 22.06.1985 and the same was upheld by the Sub-

Divisional Officer and later by the Commissioner as per orders dated 29.10.1986 and 29.03.1988 respectively. The High Court also found that the contents of Ex-P-4 application dated 27.01.1981 filed before Tahsildar, Raipur was admitted by defendant No. 1 while being cross-examined ultimately to arrive at the conclusion that such permissive possession could not be converted as adverse possession except by proving their possession adverse to the title of the plaintiff for a continuous period of 12 years or more. Obviously, the High Court found that the contentions raised to claim the occupancy tenancy before the Tahsildar and the contentions *qua* adverse possession before the Civil Court are contradictory in nature. The High Court relied on the decision of this court in ***Indira v. Arumugam and Anr.***[1] to hold that when the suit is one for possession based on title and when once title is established on the

[1] AIR 1999 SC 1549

basis of relevant documents and other evidence brought on record in such suit unless the defendant could prove adverse possession for the prescriptive period, the suit of the plaintiff could not be dismissed. Relying on the decision of this court in ***Saroop Singh v. Banto and Ors.***[2], the High Court held that in the light of Article 65 of the Limitation Act, the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence from the date the defendant's possession became adverse. Furthermore, it was held that when plaintiff's title and possession over the suit schedule property within twelve years from the date of institution of the suit is proved, it is for the defendants to prove title by adverse possession and in that regard, the starting point of limitation in terms of Article 65 of the Limitation Act would commence from the date of defendant's possession becoming adverse

[2] (2005) 8 SCC 330

and not from the date when the right of ownership is acquired by the plaintiff. Suffice it to say, that the concurrent judgment of dismissal of the suit by the Trial Court and the First Appellate Court on the ground that the suit was barred by limitation was set aside by the High Court under the impugned judgment assigning such reasons.

14. While considering the rival contentions raised before us to challenge/ sustain the impugned judgment indisputable facts based on evidence on record and certain well settled position *qua* the laws involved on the factual matrix involved in the case on hand require to be borne in mind. The Trial Court dismissed the suit mainly on two counts, firstly, holding that the suit schedule property is a Joint Hindu Family property and therefore, the common cousin Sitaram had no right to sell the property as per Ext.P1/C dated 04.06.1968 to the plaintiff

(First respondent herein) and secondly, that the suit was barred by limitation. The judgment dated 09.04.2003 passed by the First Appellate Court in Civil Appeal No. 17 A / 2002 would reveal that after appreciating the evidence the First Appellate Court set aside the finding of the Trial Court that the suit schedule property is a Joint Hindu Family property. As a matter of fact, even after interfering with the said finding and holding it otherwise the First Appellate Court sustained the judgment of dismissal of the suit concurring with the finding of the Trial Court that the suit filed by the plaintiff was barred by limitation. Thus, it is evident that though, the Trial Court and the First Appellate Court are *ad idem* on the issue on limitation they were at issues upon the finding as to whether the suit schedule property is the Joint Hindu Family property. Despite the reversal of the finding of the Trial Court the defendants, who were respondents before the First Appellate Court, had not

chosen to file appeal and had allowed the finding that the suit schedule property is not a Joint Hindu Family property to become final, for reasons best known to them. The First Appellate Court, *inter alia,* considered, rather, re-appreciated the oral testimony of the original defendant No.1-Shri Ashok Kumar Gupta who was examined as DW-1 and also documentary evidence. On such appreciation, it was held that the suit schedule property is not a Joint Hindu Family property of the four sons of late Mangal Sen Gupta, viz., plaintiff's father late Shri Ramesh Chand Gupta, defendant's father Late Shri Ramesh Chand Gupta, Late Ram Prasad and Beniram Gupta. It is despite all such conclusions and finding that the respondents before the first appellate court viz., the appellants herein did not file cross-appeal or cross-objection to challenge the adverse finding that the suit schedule property is not a Joint Hindu Family property before the High Court. Suffice it to say that in the said

circumstances the appellants cannot be permitted to canvass that suit schedule property is a Joint Hindu Family Property.

15. That apart, a scanning of the impugned judgment would reveal that the High Court has picked up certain crucial perversities that infected the judgments of the courts below. In Stroud's Judicial Dictionary of Words & Phrases, 4th Edn., the expression 'perverse' has been defined thus: -

> *"Perverse. – A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.*
>
> *In the decision in Arulvelu & Anr. v. State Rep. by Public Prosecutor & Anr.[3] this Court held that 'perverse finding' would mean a finding which is not only against the weight of evidence but is altogether against the evidence itself.*
>
> *In the decision in General Manager (P), Punjab & Sind Bank and Others v. Daya Singh[4],*

[3] (2009) 10 SCC 206
[4] (2010) 11 SCC 233

> *this Court held perverse finding as one which is based on no evidence or one that no reasonable person would arrive at. Furthermore, it was held that unless it is found that some relevant evidence had not been considered or that certain inadmissible material had been taken into consideration the finding could not be said to be perverse."*

16. Bearing the aforesaid position as to perverse finding we will proceed to consider whether the impugned judgment is to be sustained in view of the indisputable or undisputed facts and the decisions of precedential value applicable to such situations and circumstances revealed from the evidence on record. Before proceeding to undertake such a consideration it is not inappropriate to refer to the settled positions of law with respect to pleadings in civil proceedings before a civil court.

17. The ordinary rule of law is that evidence can be permitted to be given only on a plea properly raised and

not in contradiction of the plea (see the decision in ***Mrs. Om Prabha Jain v. Abnash Chand & Anr.***[5]*).*

18. In the decision in ***Ram Sarup Gupta (dead) by LRs v. Bishun Narain Inter College and Others***[6], this Court held: -

> *"….It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."*

19. In ***Kashi Nath (Dead) through LRs. v. Jaganath***[7], this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence could not be looked into or relied on. In ***Damodhar Narayan Sawale (D) through LRs. v. Tejrao Bajirao Mhaske***[8], this Court held:-

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[5] (AIR 1968 SC 1083)
[6] (1987) 2 SCC 555
[7] (2003) 8 SCC 740
[8] 2023 SCC OnLine SC 566

> *"……the well neigh settled position of law is that one could be permitted to let in evidence only in tune with his pleadings. We shall not also be oblivious of the basic rule of law of pleadings, founded on the principle of secundum allegata et probate, that a party is not allowed to succeed where he has not set up the case which he wants to substantiate."*

20. Now, for undertaking a consideration as mentioned above, we will firstly refer to the pleadings of the defendants in their jointly filed written statement. In paragraph 1-a, thereof it was averred thus: -

> *"1-a… True and correct position is that plaintiff's father late Kailash Chand; defendants' father late Ramesh Chandra; late Ram Prasad Gupta; and Beni Ram Gupta, all sons of Mangal Sen Gupta, were members of Hindu Undivided Family and all of them were doing their business of manufacturing glass bangles in Firozabad (Uttar Pradesh) in the name and style of Ganesh Glass Bangles. In the year 1952, the father of the defendants and father of plaintiff opened a shop in Raipur City in the name of Lakshmi Bangle Stores. Thereafter Defendants' Father Late Ramesh Chandra and Plaintiff's father purchased suit lands on 15.03.1963 in the name of their nephew late*

Sitaram for a total price of Rs. 8,950/. Because late Sitaram was a member of the Joint Family…"

"… In the year 1968, late Ram Prasad who was the brother of Defendant's father requested Defendants' father to transfer the suit lands and other lands which are in the name of his (Ram Prasad's) son Sitaram in favour of any other member. Because Sitaram's condition is not sound and he can ruin and fritter away suit lands under influence from anyone. Thereafter Defendants' father transferred suit lands and other lands which were in the name of Sita Ram, in favour of the plaintiff on 4.6.1968 at an estimated price, although those lands were purchased for Rs. 16,000/- and suitable amendments were made in the records also. But suit lands were always maintained and occupied by the defendants herein and their father. In the year 1973, brothers of Defendants' father opened a bangle shop in Dhamtari and plaintiff and his brother Surinder used to sit in this shop. Later on, an oral partition was arrived at in between the Defendants' father and Plaintiff's family according to which the shop in Dhamtari and agricultural lands of khasra no. 924 measuring 5.00 acres situated in Village Mowa were given to plaintiff and his family. Whereas suit lands herein and the shop in Raipur fell to the share of defendants."

21. In paragraph 1-b, thereof it was averred as under:-

> *"1-b. In fact suit lands were always and even today also are in possession of defendants and their father and after the aforesaid partition, defendants and their father and after the aforesaid partition, defendants and their father became absolute and exclusive owners of the suit lands and plaintiff has absolutely no right or interest in the suit lands."*

22. It is true that in paragraphs 9 and 10 of the written statement special objections were taken as under: -

> *"9. Even if it is presumed that defendants are not the owners of the suit lands described in paragraph 1 above, then also defendants have become owner of the suit lands due to their constant and uninterrupted possession thereof since last more than 12 years and which was within the full knowledge of the plaintiff. Therefore suit of the plaintiff is liable to dismissed on this ground alone."*

> *"10. THAT Suit is beyond the prescribed limitation and as such is liable to be dismissed with costs."*

23. Now, having noted the aforementioned specific averments in the written statement and the positions of law regarding pleadings referred above, we will refer to the oral evidence of original defendant No.1, who was examined as DW-1. The chief examination of DW-1

would reveal that in contradiction to the averment that the defendants' father late Ramesh Chandra and plaintiffs' father purchased suit lands on 15.03.1963, Ashok Kumar Gupta deposed that the disputed land were purchased in jointness by his father and his three brothers, namely, Beni Ram Gupta, late Ram Prashad Gupta and late Kailash Gupta and hence, it was a joint family. He would also depose that it was so purchased in the name of Sita Ram Gupta in the year 1963. It is to be noted that while being cross examined, he would depose: -

> *"disputed lands were purchased by my father in the name of Sita Ram. But neither the original nor the copy of that sale deed has been filed. We did not give any application for mutation of our names on the disputed lands in the year 1976 after partition had been arrived at."*

24. We have referred to the pleadings and the evidence adduced by the defendants not for the purpose of re-visiting the findings of the First Appellate Court that

the suit schedule property is not a joint family property. We will reveal the *raison d'etre* therefor, a little later.

25. In view of the non-availability of the contention for the appellants that the suit schedule property is a Joint Hindu Family property. The next question is whether the finding of the High Court that the plaintiff is the owner of the suit schedule property is the correct conclusion on assimilation of facts and appreciation of evidence. We have no hesitation to answer it in the affirmative. The sale deed dated 04.06.1968 (Ext.P1/C) is a registered sale deed whereunder the plaintiff had purchased the suit land from late Shri Sita Ram Aggarwal.

26. It is a fact that the Trial Court held Ext.P1/C-sale deed dated 04.06.1968 as void on twin grounds. As a matter of fact, the Trial Court held that in Ext.P1/C the age of Sh. Sitaram was shown as 22 years and hence, when the suit land was purchased in the name of Sitaram

on 15.03.1963, Sh. Sitaram must have been aged 17 years. Further, it was held:-

> *"Till otherwise is not proved this evidence of age shows the incapacity of self-earning and creates strong presumption that suit land was purchased by the income of joint family."*

27. The Trial Court further held in paragraphs 16 and 17 of its judgment thus:-

> *"16. Now the analysis of the point that did the Plaintiff purchases the suit land through Exhibit P-1 sale deed or whether any right on the suit land accrues to the Plaintiff on the basis of document Exhibit P-1 C. According to previous paragraph the burden to prove the illegality of Exhibit P-1C is on the Defendants and to prove Exhibit P-1 illegal Defendants have failed and in the previous concluded issue it is held that the suit land after being purchased in the name of Sitaram was the property of joint family. There is no evidence that shows that Sitaram was the head of the family therefore, it is held that Sitaram had no right to sell the suit land by the sale deed Exhibit P-1 C executed without any authority or right is void.*
>
> *17. Another ground for concluding that Exhibit P-1 C is void is that when it is proved that the Plaintiff on the date of sale i.e. 04/06/1968 was one of the member of joint family and was minor at that time*

> *then what was the need for which one member of the joint family to sell the Suit land to another member of the same joint family. On the date of sale the Plaintiff being the purchaser was minor and had no capacity of earning money on his own. The business of Plaintiff's father was joint business. It appears that the intention of the joint family behind that action was to keep the suit land and other properties of sitaram in the name of the Plaintiff. But it is pertinent to mention that even after such intention Exhibit P-1 C is not transfer on papers only and therefore Exhibit P-1 does not bear any legal weightage."*

28. It is to be noted that though the First Appellate Court reversed the finding of the Trial Court that suit land is a Joint Hindu Family property, it did not consider in detail and arrive at any positive finding as to the correctness or otherwise of the declaration of the Trial Court of Ext.P1/C as void. At any rate, the Frist Appellate Court did not set it aside. At the same time, it may be possible to infer from the following recital from paragraph 17 of the judgment of the First Appellate Court that it held the finding of the Trial Court that sale of

suit land by Sitaram in favour of the plaintiff did not confer any title to the plaintiff as not one in accordance with law: -

> *"……But the Trial Court had treated the suit property as Joint Hindu Family property and has further held that sale of the suit land by the Sitaram in favour of the plaintiff does not confer any title on the plaintiff which finding is not in accordance with law."*

29. In the contextual situation, especially with reference to the observation and finding of the Trial Court on the ground of minority at the time of purchase of suit land, be it that of Sitaram or plaintiff, we think it only appropriate to observe and hold thus, in the fitness of things: -

Section 6(h) of the Transfer of Property Act provides *inter alia,* that no transfer can be made "to a person legally disqualified to be a transferee." Section 7 of the Transfer of Property Act deals with persons competent to transfer. It provides that every person

competent to contract is competent to transfer property to the extent and in the manner allowed and prescribed by any law for the time being in force. Section 11 of the Indian Contract Act, 1872, provides as to who are competent to contract and it provides that every person is competent to contract who is of the age of majority according to the law to which he is subject (of course the reference is to the Indian Majority Act, 1875) and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

30. Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The conjoint reading of all the aforesaid relevant provisions would undoubtedly go

to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property. In such circumstances, it can only be said that Sh. Sitaram had no legal disability or disqualification at the time of purchase of suit land on 15.03.1963 in his name as also the plaintiff, as a transferee, at the time of execution of Ext.P1/C - sale deed on 04.06.1968. It is nobody's case that at the time of execution of Ext.P1/C Sitaram had not attained majority.

31. Owing to the oscillative stand of the defendants/the appellants over the sale deed dated 15.03.1963 and 04.06.1968, and on account of the disentitlement of the defendants to resurrect the contention that the suit land is a Joint Hindu family property coupled with the indisputable position obtained from the materials on

record that admittedly suit land was purchased in the name of Sh. Sita Ram, we find absolutely no reason to ascribe voidness to the said sale deed dated 15.03.1963 as also Ext.P1/C sale deed dated 04.06.1968 or to hold that they did not have the effect of transfer of ownership. Though, the defendants did not raise a contention specifically on the ground that Sh. Sita Ram was a benami, the said question whether such a contention is available and can be sustained by the defendants to invalidate the said sale deeds have been gone into by the High Court taking note of the contention that though it was purchased in his name in the year 1963 he did not have right to transfer the suit land to the plaintiff as per Ext.P1/C-sale deed. In that regard, Section 4 of the Benami Transaction Act, 1988 was referred to by the High Court. After referring to Sub-sections 4 (1) and (2) thereof, the High Court held that no suit, claim or action to enforce a right in respect of any property held benami

shall lie against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property because of the prohibitory nature therefor. Relying on the decision of this Court in ***R. Rajagopal Reddy (D) by LRs. v. Padmini Chandrasekharan (D) by LRs.***[9] and in view of the prohibition contained in the aforesaid provisions, the High Court virtually held such a contention that Sh. Sita Ram was not the owner of the property with right to alienate, (of course, on attaining majority) as also the challenge against the right acquired by the plaintiffs pursuant to the purchase of the suit land under Ext.P1/C as meritless. Suffice it to say that in view of the reasons assigned by the High Court and given by us *supra*, there can be no doubt with respect to the transfer of the ownership of the suit land from Sh. Sita Ram to the plaintiff on the strength of Ext.P1/C sale deed.

[9] AIR 1996 SC 238

32. The question that survives further consideration is whether the High Court was right in declining to accept the appellants' contention that they perfected the title over the suit land by adverse possession. While being cross examined as DW-1, the original defendant No.1 would depose thus: -

> *"An application was given by me and my brother in the Court of Tehsildar for mutation of our names on the disputed lands on the ground of lease and our possession of the lands. Ext. P4 is that application and it bears my signature and portion A-A and signature of my brother at B-B."*

33. During further cross examination, he would depose: -

> *"Our name was not legally mutated on the disputed lands in the revenue court under Application Ext. P4."*

34. We have already found that the High Court was perfectly correct in holding that the plaintiff had acquired ownership over the property on the strength of Ext.P1/C sale deed. In such circumstances, the claim put

forth as relates perfecting the title by adverse possession as also the suit being barred by limitation have to be considered with reference to the oral testimony of DW-1 as extracted above and the other allied evidences and also the various decisions referred to and relied on by the High Court to negate the said claim based on adverse possession. The deposition of DW-1 himself would go to show that the original defendants applied for getting occupancy right over the said property and in that regard filed Ext.P4 and at the same time sought for entering their names in place of the plaintiff in respect of the suit land in revenue records. However, such a mutation had never happened. In fact, the evidence would reveal that the defendants made an application on 27.01.1981 (Ext.P4) before the Tehsildar, Raipur, stating that they have taken the suit land on lease as a Adhiyadar from plaintiff in 1973-1974 and cultivated the same for more than two years and thereby they became the

absolute owners of the property in question. In the said application in paragraph (1) they stated specifically that they took agricultural lands on lease (*patta*) from the plaintiff Rajendra Kumar under his ownership. It is a fact borne out from the records that the said application was rejected by the Tehsildar vide order dated 22.06.1985 and the appeal against the same was dismissed by Sub-Divisional Officer, Raipur on 29.10.1986. Though, the matter was further taken up before the Commissioner, he confirmed the order of the SDO as per order dated 29.03.1988. These evidence available on record were duly taken note of and dealt with by the High Court. The factum of submission of Ext.P4 application and the passing of orders thereon, as above, are indisputable and undisputed and hence, in the teeth of evidence, as above, the defendants/the appellants cannot claim adverse possession against the respondent/the plaintiff. In view of the above indisputable and undisputed facts

as also the rejection of the contention of voidness of the sale deeds referred above, the defendants would not be justified in claiming that they had perfected the title by adverse possession and at the same time the aforesaid position would reveal that their possession was permissive in nature. The conclusion so arrived by the High Court based on proper appreciation of the evidence, in detail, as is discernible from the impugned judgment is nothing but the outcome of correct appreciation of the materials on record.

35. It is also a fact that the defendants earlier took up a contention that there occurred an oral partition of the properties between the family of plaintiff and defendants in the year 1976 whereunder they received the suit land and the bangle shop at Raipur. The First Appellate Court after considering the said case declined to accept the claim regarding oral partition and held the oral partition

as not proved and that finding of the First Appellate Court was also permitted to become final by the appellants herein.

36. Now, we will revert back to the claim of adverse possession raised by the appellants. In this context, it is also relevant to refer to the decisions of this Court relied on by the High Court to reject their claim of the adverse possession. In ***Indira's*** case (supra), whereunder this Court held that once the plaintiff proved his title, the defendant in order to claim ownership had to establish on the basis of relevant documents and other evidence to prove the plea of adverse possession for the prescriptive period and unless it is so proved, the plaintiff could not be non-suited.

37. We have already taken note of the fact that the High Court had duly taken note of Ext.P4 application submitted by the defendants, and also the evidence of

DW-1, while being cross examined which were not given due weight by the Courts below. We have also found that the High Court has rightly reached the conclusion that the appellants herein had only permissive possession over the scheduled land and it was not adverse possession. In the contextual situation the following decisions including the one in ***Saroop Singh v. Banto***[10], relied on by the High Court, assume much relevance. Paragraphs 28, 29 and 30 of ***Saroop Singh's*** decision read thus: -

> *"**28**. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As*

[10] (2005) 8 SCC 330

noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

29. *In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak [(2004) 3 SCC 376].)*

30. *"Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita [(2004) 1 SCC 271])"*

38. The decision of this Court in ***M. Durai v. Muthu and Others***[11], reiterated the law laid down, as above in ***Saroop Singh's*** case, and further held thus: -

"7. The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-à-vis the Limitation Act,

[11] (2007) 3 SCC 114

> *1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."*

39. The law laid down in ***Saroop Singh's*** case was again reiterated by this Court in the decision in ***Prasanna & Ors. v. Mudegowda (D) by LRs***[12] and ***Vasantha v. Rajalakshmi***[13].

40. In the light of ***Saroop Singh's*** case there can be no doubt that once the plaintiff proves his title over suit property it is for the defendant resisting the same claiming adverse possession that he perfected title through adverse possession and in that regard, in terms of Article 65 of the Limitation Act, 1963 the starting point of limitation would not commence from the date when the

[12] 2023 SCC OnLine SC 511
[13] 2024 SCC OnLine SC 132

right of ownership arises to the plaintiff but would commence only from the date the defendant's becomes adverse.

41. In the decision in ***Brij Narayan Shukla (D) through LRs. v. Sudesh Kumar alias Suresh Kumar (D) through LRs. and Ors.***[14], this Court while considering the question whether tenants of original owner could claim adverse possession against transferee of land lord held that tenants or lessees could not claim adverse possession against their landlord/lessor, as the nature of their possession is permissive in nature.

42. In the contextual situation, especially in view of the nature of the evidence adduced by the defendants in setting up and supporting the claim of adverse possession, the decisions of this Court in ***Ravinder Kaur***

[14] (2024) 2 SCC 590

Grewal and Ors. v. Manjit Kaur and Ors.[15] and the decision of a Constitution Bench in ***M. Siddiq (D) through LRs (Ram Janmabhumi Temple case) v. Mahant Suresh Das and Ors.***[16] require reference. Paragraph 60 of the decision in ***Ravinder Kaur Grewal's*** case, in so far as it is relevant, reads thus: -

> *"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……"*

43. In the case on hand, the evidence on the part of the defendants/appellants herein would reveal that instead of establishing '*animus possidendi*' under hostile colour

[15] (2019) 8 SCC 729
[16] (2020) 1 SCC 1

of title they have tendered evidence indicating only permissive possession and at the same time failed to establish the time from which it was converted to adverse to the title of the plaintiff which is open and continuous for the prescriptive period.

44. In ***M. Siddiq's*** case (supra) paragraphs 1142 and 1143 assume relevance and they, in so far as relevant to this case, run as under: -

> *"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes*

then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case."

45. Upon considering the evidence on the part of the appellants herein (the defendants), we have no hesitation to hold that the requirements to co-exist to constitute adverse possession are not established by them. So also, it can only be held that the reckoning of the period of limitation from the date of commencement

of the right of ownership of the plaintiff over the suit land instead of looking into whether they had succeeded in pleading and establishing the date of commencement of adverse possession and satisfaction regarding the prescriptive period in that regard, was rightly interfered with, by the High Court.

46. There can be no doubt that being concurrent cannot be a ground for confirmation and as held by this Court in ***D.R. Rathna Murthy v. Ramappa***[17], concurrent findings could be set aside if perversity is found with the impugned decision.

47. The upshot of the discussion as above is that the well-merited decision of the High Court in the impugned judgment invite no interference in exercise of appellate jurisdiction and the appeals are liable to be dismissed.

[17] (2011) 1 SCC 158

Hence, the captioned appeals are dismissed. No order as to costs.

Contempt Petition (C) Nos. 517-518 of 2020

IN

Civil Appeal Nos. 3159-3160 of 2019

48. The Contempt Petition arises out of an order passed on 27.03.2015 in Civil Appeal Nos. 3159-3160 of 2019 when it was remaining only as SLP Nos. 6995-6996 of 2015. This court, while issuing notice ordered thus: -

> *"Status quo regarding possession, as it exists today, shall be maintained by the parties, till further orders."*

On 27.10.2020 this court passed another order, wherein, inter-alia, it was ordered:

> *"It is made clear that on the next occasion, the contempt petition as well as CA Nos. 3159-3160/2019 shall be disposed of finally."*

49. The alleged contempt is that pending the Civil Appeal and after the passing of the order of status quo regarding possession, the respondents in the contempt petition viz., the appellants created third party rights in the property. Obviously, with the dismissal of the civil appeals the impugned judgment and decree of the High Court got confirmed and the declaration that the first respondent in the appeal – plaintiff is entitled to recovery of possession of the suit property mentioned specifically therein has become final. Therefore, indisputably, in terms of the judgment and decree the appellants herein are bound to deliver vacant and possession of the scheduled suit land to the plaintiff viz., the first respondent.

50. Since the same is executable we do not propose to go into the contentions in the contempt petition and are inclined only to close the contempt petition in view of the

judgment in Civil Appeal Nos. 3159-3160 of 2019 and to discharge the notice issued to alleged contemnors and to leave the first respondent in the Civil Appeals viz., the plaintiff to execute the decree, in accordance with law.

51. Accordingly, the contempt petition is closed as above.

....., J.
(C.T. Ravikumar)

....., J.
(Sanjay Kumar)

New Delhi;
October 14, 2024