

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

R.S.A.NO. 1366 OF 2018 (DEC)

BETWEEN:

SRI. C M MEER LIYAKHAT ALI
S/O.LATE C M MEER DAWOOD,
AGED ABOUT 66 YEARS,
COFFEE PLANTER & BUSINESS MAN,
UPPALLI ROAD, CHICKMAGALURU - 577 101.

... APPELLANT

(BY SRI. SANGAMESH R.B., ADVOCATE)

AND:

1. SMT VASANTHAMMA
W/O KUMAR,
AGED ABOUT 57 YEARS,
- 2 . RAGHU
S/O KUMAR,
AGED ABOUT 32 YEARS,
- 3 . PRABHU
S/O KUMAR,
AGED ABOUT 33 YEARS,
- 4 . JOHN CARLO
S/O.K.CARLO,
AGED ABOUT 56 YEARS,
- 5 . ABDUL RAHMAN
S/O.ABDUL KAREEM,
AGED ABOUT 47 YEARS,
- 6 . GANESH
S/O.TANGAVELU,

AGED ABOUT 60 YEARS,

- 7 . SWAMY
S/O PONNA SWAMY,
AGED ABOUT 57 YEARS,
- 8 . SUSHEELAMMA
W/O.MANJUNATH,
AGED ABOUT 46 YEARS,
- 9 . GOVIND SWAMY
S/O CHINNASWAMY,
AGED ABOUT 63 YEARS,
- 10 BABU P.K.,
S/O KUNJAPILLA,
AGED ABOUT 63 YEARS,
- 11 JAYAMMA
W/O.CHINNASWAMY,
AGED ABOUT 71 YEARS,

ALL ARE RESIDING AT
HIREKOLALE ROAD,
UPPALLI,
CHICKMAGALUR TALUK-577 101.

... RESPONDENTS

(BY SRI. A. MADHUSUDHANA RAO., ADVOCATE FOR R1 TO R4 & R6
TO R11; NOTICE TO R5 SERVED & UNREPRESENTED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION
100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED:
05.04.2018 PASSED IN R.A.NO.61/2017 ON THE FILE OF THE
PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKMAGALURU,
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND
DECREE DATED 17.08.2017 PASSED IN O.S.NO.25/2016 ON THE
FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM.,
CHIKKAMAGALUR.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON
06.03.2024, COMING ON FOR PRONOUNCEMENT OF JUDGMENT,
THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by the plaintiff aggrieved by the Judgment and order dated 05.04.2018 passed in R.A.No.61/2017 on the file of Principal District and Sessions Judge, Chikkamagaluru, (First Appellate Court) by which the First Appellate Court while allowing the appeal filed by the defendants/respondents herein set aside the Judgment and decree dated 17.08.2017 passed in O.S.No.25/2016 on the file of Principal Senior Civil Judge and CJM, Chikkamagaluru, (trial Court) by holding that the defendants had proved that they have become owners to the suit Schedule `B' property by adverse possession.

2. Brief facts of the case:

The above suit in O.S.No.25/2016 is filed by the plaintiff seeking relief of declaration and possession contending interalia:

(a) That land in Sy.No.91 measuring 7 acres 35 guntas excluding 7 guntas of kharab situated at Uppalli

Village, originally belonged to one Sri.Ansari Mohammed Gouse. That the father of plaintiff namely Sri.C.M.Meer Dawood had two wives namely Smt.Sufiyabi and Smt.Meharunnisa. That said Sri.C.M.Meer Dawood purchased the entire extent of land in Sy.No.91 from said Sri Ansari Mohammed Gouse under two separate deeds of sale in the name of his two wives on 05.11.1980. Southern portion was purchased in the name of Smt.Sufiyabi under document No.2155/80-81 and northern portion was purchased in the name of Smt.Meharunnisa under document No.2154/80-81. That the khatha was mutated in the name of Smt.Sufiyabi in the revenue records. That Sri.C.M.Meer Dawood died in the year 1990 and Smt.Sufiyabi died on 07.02.2001 leaving behind her four daughters and a son namely Dilshad Jaffri, Faizunnisa, Shataz, Sartaj and C.M.Meer Liakhat Ali, the plaintiff herein.

(b) That the sisters of the plaintiff had filed suit in O.S.142/2002 for partition and separate possession of

their share in respect of the properties left behind by Smt.Sufiyabi. Said suit came to be decreed and sisters of the plaintiff filed FDP No.24/2009 for effecting partition. Court Commissioner was appointed in the said FDP proceedings who surveyed the land and prepared 11-E sketch. Property measuring 3.08 guntas and 7 guntas shown as block No.I and block No.II in 11-E sketch in Sy.No.91 of Uppalli village was allotted to the share of plaintiff. The said FDP proceedings were registered. The khatha has been made in favour of the plaintiff. The portion allotted to the share of the plaintiff is shown as Schedule A property to the plaint.

(c) That in view of pendency of suit for partition, the property was not taken care. Taking advantage of the same, defendants trespassed into the portion of Schedule A property and made encroachments thereon by putting up construction as shown in the rough sketch enclosed to the plaint. The portion of land encroached upon by the defendants is shown as Schedule B property.

(d) That the schedule A property is still an agricultural land and no portion has been acquired by any Panchayat or City Municipal Council, Chikkamagaluru. That the defendants have no manner of right, title, interest over Schedule A property or any portion thereof.

(e) That plaintiff demanded defendants to deliver possession of land illegally encroached upon by them. However, defendants did not concede to the demand made by the plaintiff. Cause of action arose on or around 10.02.2013 when the plaintiff noticed illegal structures on the Schedule B property. Hence, the suit for declaration that the plaintiff is the absolute owner of Schedule A property which consists of schedule B property and for possession of Schedule B property.

Schedule A and Schedule B properties described in plaint is as under;

SCHEDULE -A

*Land situated in Sy.No.91 of Uppalli Village,
Measuring 1 acre 10 guntas of agricultural land*

Plus 3.08 guntas and 7 guntas shown as Block No.III and Block No.I and Block No.II in the H-E Sketch appended to the Final Decree No.24/09 having the following boundaries:-

*Eastt: Block No. IV allotted to the share of
Smt. Dilshad Jafri*

West: Hirekolale Road.

*North: Property formerly belonged to
Smt. Meharunnissa*

South: Voni.

SCHEDULE-B

Block No. III and Block No.II in the 11-E sketch measuring 3.08 guntas and 7 guntas shown as Sy.No.91/9 and 91/10 of Uppalli village shown as SL Nos.1I to 9 in the rough sketch having the following boundaries.

East : Remaining Land in Schedule 'A' Property.

West : Hirekolale Road.

*North: Property formerly belonged to
Smt. Meherunnissa.*

Southi: Voni.

3. Defendants appeared and represented through their counsel. Except defendant Nos.1, 6, 7 and 11 no other defendants filed their written statements. The contesting defendants while denying the case of the plaintiff contended that:

(a) There is no cause of action to file the suit. That there is no pleading regarding cause of action for filing

the suit. That the plaintiff has not given the measurements of the area encroached upon by each of the defendants. That the boundaries shown in the plaint are incorrect. That there is a Government land measuring 11 guntas in Sy.No.90/15 and land measuring 15 guntas in Sy.No.90/11 of Uppalli village, Chikkamagaluru Taluk which are adjacent to property in Sy.No.91 of Uppalli village. That the suit is bad for non joinder of necessary parties as there are 40 to 50 houses in the said area. Some persons even have constructed houses in Sy.No.91 of Uppalli village.

(b) That during the year 1978 mother-in-law of Smt.Susheelamma by name Smt.Laxmamma and family members of defendant Nos.1, 6, 7 and 11 and others encroached upon the property in Sy.No.91 of Uppalli village and constructed houses in the said area. That they are residing in the said houses having obtained water, electricity and telephone connections.

(c) That since the defendants have encroached upon the property in the year 1978 the claim of the plaintiff that schedule property were purchased on 5.11.1980 is not valid as the possession has not been delivered under the said deeds of sale. That the plaintiff and the family members have not taken any steps against the defendants to vacate and hand over the property within 12 years from the date of their knowledge. That the defendants and their family members and others have occupied the properties on 15.08.1978 itself and having constructed the house thereon have been in possession and enjoyment of the same continuously, peacefully, openly without obstructions, interruptions to the knowledge of the plaintiff and his family members and whole world and adverse to the interest of the plaintiffs. As such, defendants have perfected their right by adverse possession. On these grounds sought for dismissal of the suit.

4. Based on the pleading, trial Court framed following issues:

"1. Whether the plaintiff proves that, he is the absolute owner of the "A" schedule property?

2. Whether the plaintiff proves that, the "B" schedule property is the part and parcel of the "A" schedule property?

3. Whether the plaintiff proves that, the defendants have illegally encroached the "B" schedule property?

4. Whether the defendant No.1, 6, 7 and 11 proves that, the court fee paid on the plaint is insufficient?

5. Whether the defendant No.1, 6, 7 and 11 proves that, they have perfected their title over the "B" schedule property by way of adverse possession?

6. Whether the plaintiff is entitled for the reliefs sought for in the suit?

7. What order or decree?"

5. Plaintiff examined himself as PW-1 and exhibited ten documents Ex.P-1 to P-10 and three witnesses have been examined on behalf of the defendants as DW-1 to DW-3 and have exhibited 65 documents marked as Ex.D-1 to Ex.D-65. The trial Court on appreciation of evidence answered issue Nos.1 to 3 and 6 in the affirmative and

issue Nos.4 and 5 in the negative and consequently decreed the suit.

6. Being aggrieved by the same, defendants 1, 6, 7 and 11 preferred regular appeal in R.A.No.61/2017 before the First Appellate Court. Considering the grounds urged First Appellate Court framed following points for its consideration:

"(1) Whether the plaintiff proves that defendants have encroached B-schedule property in his absence during the pendency of suit in O.S.No:142/2002 on the file of Addl. Civil Judge (SD), Chikkamagaluru for partition in between himself and his family members?

(2) Whether defendants prove that they have perfected their title over respective house property situated in B schedule property by way of adverse possession?

3) Whether the trial court has committed any error of law or facts and interference by this Court in the judgment and decree passed by the trial court is necessary?

(4) What order?"

7. On reappraisal of evidence the First Appellate Court answered point No.1 in the negative and point

Nos.2 and 3 in the affirmative. Aggrieved by the same, the plaintiff is before this Court.

8. This Court by order dated 03.04.2019 admitted the present appeal to consider the following substantial questions of law:

"1. When defendant Nos.2 to 5 and 8 to 10 had not filed their written statements, whether the first appellate court was right in holding that all the defendants have perfected their title to the suit property by adverse possession?"

2. When defendant Nos.1, 6, 7 and 11 claimed that they are in possession of government land Sy.No.90 and defendant Nos.1 and 7 did not even lead evidence in support of such contention, whether the first appellate court was right in holding that they have perfected their title by adverse possession ignoring Animus Possidendi on their part?"

9. Sri.Sangamesh R.B., learned counsel for the appellant reiterating the grounds urged in the memorandum of appeal submitted:

a) That it is only the defendant Nos.1, 6, 7 and 11 have filed the written statement claiming to have perfected their title by way of adverse possession. No other defendants have either filed written statement or

contested the matter. That only defendant Nos.6 and 11 have examined themselves as DW-1 and DW-2 and no other defendants have been examined.

b) As against the Judgment and decree passed by the trial Court it is only defendant Nos.1, 6, 7 and 11 have preferred appeal in R.A.No.61/2017 and the remaining defendants namely defendant Nos.2, 3, 4, 5, 8, 9 and 10 have not filed any appeal and have thus accepted the Judgment and decree passed by the trial Court.

c) That the First Appellate Court without appreciating the pleading and evidence in proper perspective erred in reversing the Judgment and decree passed by the trial Court which had held that the plaintiff had established his title over the suit schedule property and that the defendants had failed to prove their adverse possession over the same.

d) It is further submission that the defendants had taken up mutually destructive stand in that while they

claim to be in possession of land in Sy.No.90 belonging to the Government, they also pleaded to have perfected their title by adverse possession over the land in Sy.No.91 belonging to the plaintiff. Since the defendants had contended that they had encroached upon the property of the plaintiff in Sy.No.91 they had admitted the title of the plaintiff and all that required to be proved by the defendants was that they had occupied the property adverse and hostile to the interest of the plaintiff on and from the year 1978 and the defendants having failed to prove the ingredients of adverse possession, could not have been held to have perfected their title by adverse possession. He relies upon the following citations:

1. *T. Anjanappa and others Vs. Somalingappa and another reported in ILR 2006 KAR 4147*
2. *M. Durai Vs. Muthu and others reported in 2007 (3) SCC 114.*
3. *Janatha Dal Party Vs Indian National Congress, New Delhi reported in RFA No.2011 of 2005 dated 11.10.2013*

4. Shri. Uttam Chand (D) through Lrs Vs. Nathu Ram (D) through Lrs and Ors in Civil Appeal No. 190/2020 dated 15.01.2020

5. Revanna Vs. A. Ramaiah in RFA 806/2006 dated 08.04.2022

6. S.D. Nagaraju and others Vs. Sri. Shivaganga Education and Charitable Trust (R), Sira Town and others reported in 2016 (1) KCCR 597.

10. Sri.Madhusudhan Rao, learned counsel for defendants/respondents justifying the Judgment and order passed by the First Appellate Court submitted:

a) That the plaintiff had not disclosed as to when the cause of action arose specifically with respect to the date on which the encroachment alleged to have been made by the defendants. He submits that though in the plaint, the plaintiff has pleaded that cause of action arose on or around 10.02.2013, in the cross examination he has admitted that the defendants had put up constructions in the year 2001-2002. Thus, he submits that in view of the said admission the suit which was filed in the year 2016 is barred by limitation in view of the provisions of Article 64 of the Limitation Act.

b) That since the plaintiff has admitted in the cross examination regarding the construction of the houses made in the year 2001-2002, it shall be presumed that the plaintiff was having complete knowledge of the encroachment made by the defendants right from the year 2001 and he not having taken any action should be inferred against the plaintiff. That mere plea by the defendants that they had thought the property in their possession to be the Government land cannot take away the admission made by the plaintiff.

c) That since the defendants in the written statement have taken up a specific plea of they having put up construction in the year 1978 and that they had obtained electricity, water and telephone connections and have been in possession of the said houses, they have perfected their title by way of adverse possession. He refers to Ex.D-1 to D-65 documents produced by the defendants evidencing their long, open and continuous possession over the property and submits that the First

Appellate Court having adverted to these documents has come to just conclusion in holding that the defendants have perfected their title over the property by adverse possession.

d) That a single suit joining all the defendants without giving specific measurements and boundaries of the encroachment allegedly made by them is not maintainable.

e) That the description of the property at Schedule 'B' does not indicate the details of encroachments made by the different defendants. That in the absence of specific identity of the properties encroached upon by particular defendant, the suit/plaint is contrary to the provisions of Order VII Rule 3 CPC. Learned counsel relies upon the following citations:

1) Parsinni (Dead) by Lrs & Others V. Sukhi & Others reported in (1993) 4 SCC 375.

2) Ramiah V. N.Narayana Reddy (Dead) by Lrs reported in (2004) 7 SCC 541.

3) T.K.Mohammed Abubucker Dead by Lrs & Others Vs. P.S.M.Ahamed Abdul Khadar & Others reported in (2009) 14 SCC 224.

4) Ravinder Kaur Grewal and others Vs Manjit Kaur reported in (2019) 8 SCC 729.

5) Krishnamurthy S. Setlur (Dead) by Lrs Vs O.V.Narasimha Setty (Dead) by Lrs reported in (2019) 9 SCC 488.

11. Heard and perused the records.

12. The specific case of the plaintiff is that Schedule A property had been purchased by his father C.M.Meer Dawood in the name of his mother in terms of deed of sale dated 05.11.1980 and that in the decree passed in O.S.No.142/2002 and thereafter by virtue of order passed in FDP No.24/2009 he was allotted suit Schedule A property. That during the pendency of the suit the property could not be maintained and taking advantage of the same, defendants had encroached upon portion of Schedule A property which is described Schedule B to the plaintiff. As such, he has filed the suit.

13. The specific case of the defendants on the other hand is that they are not aware as to whom does the land in Sy.No.91 measuring 7 acres 35 guntas belong.

They are also not aware of the purchase made by C.M.Meer Dawood in names of his wives. That there is Government land measuring 11 guntas in Sy.No.90/15, 15 guntas in Sy.No.90/11 of Uppalli village which are adjacent to Sy.No.91 of Uppalli village. Some of the houses are constructed in Sy.No.90 and Sy.No.91. That in the year 1978 family members of defendants 1, 6, 7 and 11 and others encroached the properties in Sy.No.91 and constructed the house. That they have been in possession since 15.08.1978 continuously, peacefully, openly without interruption to the knowledge of the plaintiff and his family members. As such, they have perfected their title by way of adverse possession.

14. The trial Court after appreciating the evidence and pleading has held that ;

(a) since the plaintiff has based his claim on the sale deeds and the order passed in FDP No.24/2009 which fact has not been specifically denied by the defendants and that defendants 1, 6, 7 and 11 claimed to have

encroached upon the property in Sy.No.91 belonging to plaintiff, same amounts to admission of the title of the plaintiff.

(b) The trial Court further proceeded to appreciate the documentary evidence produced by the plaintiff, in that has held that Exs.P-3, 4, 6, 8 to 10 would substantiate the claim of ownership made by the plaintiff.

(c) Adverting to the contention of the defendants of they being in possession of the property since 1978, the trial Court has found that the defendants are not definite as to the survey number in which they have constructed their houses inasmuch as, on the one hand they claim that their houses are in Sy.No.90 which is a Government land and in that regard they have got RTC extract pertaining to Sy.No.90/11 and Sy.No.90/15 marked as Exs.D-1 and D-2 and on the other hand they claim to have constructed their houses in Sy.No.91. The trial Court thereafter having adverted to documents produced at Exs.D-3 to D-65 being tax paid receipts, self

assessment return of property tax, receipt books, khatha certificates, water, electricity bills etc., has opined though the said documents disclose construction of houses with amenities, they do not reflect if the houses are built on land in Sy.No.90/11 or Sy.No.90/15. However referring to Ex.P-5 -Map and the admission made by the defendants regarding location of Sy.No.91 has further opined that the defendants have constructed their houses in Sy.No.91.

(d) Further the trial Court has found that the documents produced by the defendants pertain to the year since 1995-96 and some of the documents pertaining to the year 1987-88 belong to defendants 2 and 3 and since the said defendants 2 and 3 have neither filed written statement nor entered the witness box, it has opined that the contesting defendants could not take advantage of the same.

(e) The trial Court thereafter having taken note of the provision of law requiring specific pleading in the claim for adverse possession, and that since defendants had neither pleaded nor deposed that their possession over the suit property was known to the plaintiff since 1978 and that since they believed the property in their possession to be a Government land, concluded that the defendants failed to plead, prove and establish their case of adverse possession.

(f) As regards contention of defendants on maintainability of the suit, the trial Court referring to provisions of Order 1 Rule 3(d) CPC and has held that since common question of law is involved, the suit as filed was maintainable. Accordingly, answered the issues and decreed the suit.

15. The First Appellate Court on the other hand;

(a) though concurred with the finding of the trial Court with regard to title of the plaintiff, differed with the reasoning and conclusion arrived at by the trial Court

with regard to defendants having encroached upon Schedule B property and being in possession since 1978 and thereby held they having perfected their title by adverse possession.

(b) The First Appellate Court referred to Exs.D-5 to D-66 produced by the defendants to substantiate their contention of they being in possession of the property since 1978. It further observed even though defendants 2 to 5, 8 to 10 have not contested the suit, the documents belonging to said non-contesting defendants produced by the contesting defendants could be relied upon. Referring to documents at Exs.P-5, D-7, D-49, D-53, D-54, D-60 the First Appellate Court found that the said documents would prove the payment of tax to the authorities during the year 1995-96 and further prove the existence of the houses on property in Sy.No.91 and as such, concluded that the plaintiff failed to prove the encroachment made by the defendants during the pendency of suit in O.S.No.142/2002.

(c) As regards the claim of adverse possession made by the defendants and the First Appellate Court referred to the pleadings in paragraph 11 of the written statement wherein the contesting defendants have pleaded that they have occupied the property on and from 15.08.1978 and has further opined that though in the written statement defendants contended to have constructed their houses in Sy.No.90 belonging to Government but in reality they have constructed the houses in Sy.No.91. Thus, the First Appellate Court proceeded to hold that from the inception itself defendants had constructed the house adverse to the interest of the owners and though DW-1 and DW-2 during the cross examination were suggested that they had constructed the houses with an intention to claim right over the Government land and that thereafter applied for grant of property based on their possession, concluded that such suggestion itself was sufficient to prove the animus to possess the property adverse to the right of the true owner.

(d) Thus, accordingly dismissed the suit of the plaintiff by holding that the defendants had proved their title by way of adverse possession to Schedule B property. It is this divergent view, impugned in this appeal by the plaintiff.

16. Before adverting to the rival submissions of the parties and the reasons assigned by the First Appellate Court for the purpose of answering substantial questions of law it is necessary to refer to the settled principles of law governing the issues at hand as emanating from the Judgments relied upon by the learned counsel for the appellant as well as the respondents.

17. Apex Court in the case of T.Anjanappa and others Vs Somalingappa and anr reported (2006) 7 SCC 570 at paragraph 12, 13, 14, and 20 has held as under:

12. The concept of adverse possession contemplates hostile possession i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's right but denies them. The principle of law is firmly established that a person

who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. *Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them;*

"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners. (See Vidya Devi v. Prem Prakash and Ors. (1995 (4) SCC 496)".

14. *Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession;*

"14. Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title

on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all". (See Annasaheb v. B.B. Patil (AIR 1995 SC 895 at p.902).

20. It is well recognized 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 so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by

adverse possession are that such possession in denial of the true owner's title must be peaceful, open and 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.

In the case of Saroop Singh Vs Banto and others reported in (2005) 8 SCC 330 at paragraph 28 to 30 has held as under:

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 12 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 adverse possession as noticed herein before, 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).

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, SCC para 21.)".

The Apex Court in the case of Kurella Naga Durva Vudaya Bhaskara Rao Vs Galla Jani Kamma alias Nacharamma reported (2008) 15 SCC 150 at paragraph 19 has held as under:

19. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to the defendant, the plaintiff was not the true owner, his possession hostile to plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.

In the case of Brijesh Kumar and anr Vs Sharda Bai (dead) by Lrs and others reported (2019) 9 SCC 369 at paragraph 13 and 14 has held as under:

13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in M. Venkatesh [M. Venkatesh v. BDA, (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387] . The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent-plaintiff failed to discharge the onus. Reference may also be made to Chatti Konati Rao v. Palle Venkata Subba Rao [Chatti Konati Rao v. Palle Venkata Subba Rao, (2010) 14 SCC 316 : (2012) 1 SCC (Civ) 452] , on adverse possession observing as follows: (SCC p. 322, para 15)

"15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights.

The plea of adverse possession is not a pure question of law but a blended one of fact and law.”

14. In view of our conclusions, the precedents cited by the respondents do not merit consideration. The order [Sharda Bai v. Ramlal, Second Appeal No. 657 of 1997, order dated 12-1-2016 (MP)] of the High Court is held to be unsustainable and is set aside. The order of the first appellate court dated 8-8-1997 is restored and the suit is dismissed.

In the case of Ravinder Kaur Grewal and others Vs Manjeet Kaur and others reported in (2019) 8 SCC 729 at paragraph 60 has held as under:

60. The adverse possession requires all the three classic requirements to coexist at the same time, namely, necvi i.e. adequate in continuity, necclam i.e., adequate in publicity and necprecario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser’s long possession is not synonym with adverse possession. Trespasser’s possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

The Division Bench of this Court in the case of Janatha Dal Party Vs Indian National Congress, New Delhi reported in AIR Karr 2014- 249 at paragraph 115 has held as under:

"115. From the aforesaid judgments, it is clear that Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908) is a residuary article applying to suits for possession not otherwise provided for. 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. 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. By reason of the Limitation Act, 1963, in a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. Once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession. 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 defendant's possession becomes adverse. Therefore when possession can be said to be adverse is the moot point."

The Co-ordinate Bench of this Court in the case of S.D.Nagaraju and others Vs Shivaganga Education and Charitable Trust (R), Sira Town and others reported in 2016 (1) KCCR 597 at paragraph 20 has held as under:

20. It is also well established that in a suit falling under Section (sic Article) 65 of the Limitation Act, plaintiff must establish his title to the property. He need not prove that he was in possession within 12 years. When the plaintiff has established his title to a land, the burden of proving that he has lost that title by reason of the adverse possession of the defendant lies upon the defendant. If the defendant fails to prove that he has been in adverse possession for more than 12 years, the plaintiff is entitled to succeed on the strength of his title. A person alleging that he has become owner of immovable property by adverse possession must establish that he was in possession of the property peaceably, openly and in assertion of a title hostile to the real owner. Stricter proof is required to establish acquisition of title by adverse possession for the statutory period.

18. As already noted, both the trial Court and the First Appellate Court have concurred on the one aspect of the matter, namely, plaintiff being the absolute owner of suit Schedule A property and defendants having encroached upon suit Schedule B property. The only aspect from point of substantial questions of law requiring consideration is whether the defendants have been successful in proving they having perfected their title by adverse possession and whether suit is barred by limitation. Therefore the arguments advanced on behalf

of the respondents regarding maintainability of the suit for want of detailed description of encroachment, joinder of cause of action, non joinder of parties need not be adverted to.

19. Both the Trial Court and First Appellate Court have taken note of and appreciated the plea of the defendants that though they claim to have been in possession of the property since the year 1978, they were unaware as to whom does the property encroached upon by them belong to and in which property have they actually put up constructions on. It is on record that the defendants had initially thought that they were squatting on the property belonging to the Government and continued to be so till the plaintiff filing the suit claiming his title over the property. This is evident from the very averment made in the written statement pleading their ignorance regarding acquisition of title to the property by the parents of the plaintiff and subsequently by the plaintiff in the FDP proceedings. This stand of the

defendants runs contrary to the settled principles of law with regard to claim of adverse possession which warrants the defendants to be specific and categorical as to against whom and from when they have set up the plea of adverse possession. This is also imperative for the purpose of determination of starting point of limitation under Article 65 of the Limitation Act as, the same does not commence from the date when the right of ownership arises to the plaintiff but commences from the date defendants' possession becomes adverse (***Saroop Singh supra***).

20. When the plaintiff in the instant case has been successful in establishing his title over the property it was incumbent upon the part of the defendants to have specifically pleaded and proved that the plaintiff had lost his title by reason of defendants being in possession of this property adverse to his interest for more than 12 years. It is in this intrinsic context the pleading and the evidence produced by the defendants needs to be

appreciated. Defendants 1, 6, 7 and 11 who have filed the written statement have not specifically pleaded as to from which date their possession become adverse to the interest of the plaintiff in particular. The trial Court has found that the documents produced by them would not support their plea. The trial Court has declined to look into the documents belonging to the non contesting defendants produced by contesting defendants. No fault on the said reasoning of the trial court can be found with as the factum of possession; date from which it became adverse to the true owner; and authenticity of the documents produced in justification of the claim; ought to have been pleaded, proved and established by the person to whom the said documents belong. Further particularly when the said persons are made parties to the suit and they choose not to contest the suit their non- pleaded case and evidence produced in that regard cannot be relied upon to hold them and others to be in possession of the property adverse to the interest of

plaintiff. Besides, the contesting defendants are required to independently plead and establish their case of they being in possession adverse to the interest of the plaintiff and they cannot rely upon the documents of some one else who though made party has neither filed written statement nor entered the witness box. Plea of adverse possession requires stricter proof by the person who specifically pleads so. The First Appellate Court therefore in the considered view of this Court erred in relying upon the documentary evidence which do not pertain to the contesting defendants.

21. The plaintiff at paragraph 6 of the plaint has specifically contended that the cause of action for the suit arose on 10.02.2013 when he noticed illegal structures in Schedule A property. The contesting defendants who had disputed the claim of the plaintiff and who set up plea of adverse possession were required to plead and prove as to the date from which their possession became adverse to the title and interest of the plaintiff. A generic plea of

they being in possession beyond 12 years particularly in the absence of their not having knowledge of plaintiff being owner of the property and they being under the impression of the land in their possession belonging to the Government would not meet the requirement of law governing adverse possession.

22. Learned counsel for the respondent relied upon the judgment of Apex Court in the case of Parsinni (Dead) by Lrs and others Vs Sukhi and others reported (1993) 4 SCC 375 wherein at paragraph 5 it has been held as under:

"5. The appellantsParty claiming adverse possession must prove that his possession must be 'nec vi, nec clam, nec precario' i.e. 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. When the appellants claimed title to the suit lands it is sufficient for them to show that their possession is overt and without any attempt at concealment so that the respondents against whom time is running, ought, if to exercise due vigilance to be aware of what is happening. The possession of the appellants was adverse to the respondents inasmuch as the respondents (sic appellants) ever since the marriage of the first appellant and her sister Chinto continued to remain in possession and enjoyment of the property in derogation of the right, title and interest hitherto held by the respondents. When they openly and to the knowledge of the

respondents continuously remained in possession and enjoyment and the entries in the revenue records establish that their possession and enjoyment is as owners, the consent of the respondents initially given to remain in possession till their marriage or death whichever is earlier does not prevent possession being adverse after their marriage. Without any let or hindrance they remained in possession and enjoyment excluding the respondents from sharing the usufruct from those lands. The test is whether the appellants are able to show that they held lands for themselves and if they did so the mere fact that there was acquiescence or consent at the inception on the part of the respondents make no difference.....

He further relied upon the Judgment of the Apex Court in the case of Ramiah Vs N.Narayana Reddy (Dead) by Lrs (2004)7 SCC 541 wherein at paragraph 9, it has been held as under:

"9. We do notThe question whether the article of limitation applicable to a particular suit is Article 64 or Article 65, has to be decided by reference to pleadings. The plaintiff cannot invoke Article 65 by suppressing material facts. In the present case, in suit No.357 of 1960 instituted by N.Narayana Reddy in the Court of Principal Munsif, Bangalore, evidence of the appellant herein was recorded. In that suit, as stated above, the appellant was the defendant. In his evidence, the appellant had admitted that he was in possession of the suit property up to 1971. This admission of the appellant in that suit indicates ouster from possession of the appellant herein. In the present suit instituted by the appellant, he has glossed over this fact. In the circumstances, both the courts below were right in coming to the conclusion that the present suit was barred by limitation. The appellant was ousted in 1971. The appellant had instituted the present suit only on 08.05.1984. Consequently, the suit has been rightly

dismissed by both the courts below as barred by limitation."

He further relied upon the judgment in the case of T.K.Mohammed Abubacker (d) by Lrs and others Vs T.S.M.Ahmed Abdul Khader and anr reported in (2009) 14 SCC 224 wherein at paragraph 31 it has been held as under:

31. The trial Court and the first appellate Court also noticed the significant fact that the plaint and the evidence of the plaintiff are wholly silent as to when, that is in which year, the defendants allegedly encroached upon the suit property. The plaint merely stated that during the absence of the plaintiff, the defendants had encroached upon the suit property in entirety. Neither the date, month or year is given. In that context, the trial court also observed that the defendants should be taken as having established their adverse possessory title also and consequently, the suit should be held to be barred by limitation. But even without the said finding, the suit was liable to be dismissed as neither the title of the plaintiff, nor previous possession of the plaintiff, nor encroachment by the defendants was made out.

23. The reliance placed on by the learned counsel for respondents on the judgment in the case of **Prasinni(supra)** is of no avail as the same is distinguishable. In that, the parties claiming adverse

possession were clear as to in whose property and against whom they continued to be in adverse possession openly, peacefully and continuously which is not the fact situation in the present case. Similarly in the case of **Ramiah (supra)** there was an admission by the party with regard to he having been ousted from the possession of the property in an earlier round of litigation, and that the suit was instituted after expiry of period of limitation thereof, which is not the case at hand. In the case of **T.K.Mohammed Abubacker(supra)** the plaintiff therein had neither made out his title nor his previous possession nor the encroachment by the defendants which is not the case at hand.

24. In the instant case, Exs.P-1 and P-2, the Index of Land and Record of Right reflect the names of the father and mother of the plaintiff, as well as the name of their predecessor in title. Exs.P-3 and P-4 is the RTC extract for the year 1991-92 to 2000-2001 which

refer to 7 acres 35 guntas of land including 7 guntas of kharab standing in the name of Smt.Sufiyabi and Smt.Meharunnisa, wives of Sri.C.M.Meer Dawood and their names having been mutated vide MR No.5/80-81 and MR No.54/80-81 to the extent of 3 acres 34 guntas each and the nature of land being shown as Mango groove. On the other hand Exs.D-1 and D-2 produced by the defendants refer to land in Sy.No.90 measuring 15 guntas which is not the subject property. Exs.D-3 to D-66 are the documents reflecting payment of property tax, electricity bills, self assessments returns, patta book etc., and as rightly taken note of by the trial Court, these document do not even remotely refer to the land in Sy.No.91 or even to land in Sy.No.90. Though both the Courts have referred to the map and have come to the conclusion of defendants encroaching upon the land belonging to the plaintiff, the same cannot be extended to be read and construed as fulfillment of ingredients of claim for adverse possession.

25. Defendant Nos.2 to 5 and 8 to 10 neither filed their written statements nor contested the suit. In absence of any pleading or proof by them in any manner whatsoever the first appellate court could not have held that all the defendants have perfected their title to the suit property by adverse possession. Defendant Nos.1, 6, 7 and 11 on the other hand initially claimed that they are in possession of government land Sy.No.90 and later contended that they are in possession of property belonging to the Plaintiff and did not even lead evidence in support of such contention. Defendants who are intending to defeat the property rights of Plaintiff are required to come clear by pleading and proving they have perfected their rights by adverse possession and same cannot be left to be inferred from the facts and circumstances of the matter.

26. Thus, for the aforesaid reasons and analysis above, this Court is of the considered view that First

Appellate Court not justified in holding that all the defendants had perfected their title to the suit property by adverse possession even when defendants 2 to 8 and 10 had not filed their written statement. Similarly the First Appellate Court was not justified in holding that defendants 1, 6, 7 and 11 had perfected their title by adverse possession when they were not clear as to the property in which they were in possession. The substantial questions of law are thus answered accordingly.

Consequently the following:

ORDER

1. Appeal is allowed.
2. The Judgment and order dated 05.04.2018 passed in R.A.61/2017 on the file of Principal District and Sessions Judge, Chikkamagaluru, is set aside.

3. The Judgment and decree dated 17.08.2017 passed in O.S.No.25/2016 on the file of Principal Senior Civil Judge and CJM, Chikkamagaluru, is confirmed.

**Sd/-
JUDGE**

SBN