Supreme Court of India
Govt. Of Kerala vs Joseph on 9 August, 2023
Author: Abhay S. Oka
Bench: Abhay S. Oka, Sanjay Karol

2023 INSC 693 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL 3142 OF 2010

GOVERNMENT OF KERALA & ANR. …APPELLANTS

Versus

JOSEPH AND OTHERS …RESPONDENTS

JUDGMENT

SANJAY KAROL J.,

1. This appeal assails a judgement and order passed by the High Court of Kerala dated 5th August, 2009 in Second Appeal No.740 of 1995 by which the findings returned in the First Appeal dated 3rd April, 1995, by the District Judge, Thodupuzha, in Appeal Suit No. 3 of 1991 were overturned Signature Not Verified Digitally signed by and the land, subject matter of dispute, was stated to be Indu Marwah Date: 2023.08.09 15:42:44 IST Reason:

> rightfully belonging to the Respondents herein, namely Joseph, by virtue of the principle of adverse possession.
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> Background
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> 2. The property, subject matter of dispute, measures 30 cents bearing survey Nos.545/7/1, 545/8A2 and 545/8B3 of Kudayathoor village. The said property is stated to be Government Puramboke land. Such fact appears to be undisputed. The case put forward by the respondents, (claimants of adverse possession)1 against which the present appeal stands filed, is that Joseph had acquired title to the land of

which he had been in possession and in continued enjoyment of, since 1940.

3. The Tahsildar, District Thodupuzha, issued notice to the claimants for unauthorised occupation of Government land on 20th February 1982, and thus began the long-standing litigation that is before us. Joseph-the original occupier passed away on 9th August 1982. The Assistant Collector, Idukki, vide order dated 11th March 1983 dismissed the appeal filed against the order of the Tahsildar.

Hereafter referred as Claimants.

4. Legal representatives of the claimants filed a suit for injunction on 14th April 1983. The Court of the Munsiff allowed the suit on 31st July 1987 and on remand, vide order dated 16th December, 1989 from an appeal filed by the State, on the ground of the non-opportunity of production of evidence as also cross-examination of the witnesses for the State, confirmed its original decree with a judgement and order dated 21st July 1990.

First Appeal

5. The question, the Court in its wisdom framed for its consideration was whether the plaintiffs (respondents herein) had made out a case for declaration and injunction and whether the decree passed by the Court below was sustainable or not.

5.1 It was observed that the injunction was clearly a response to the notice dated 3rd of May, 1982, therefore, it was hit by Section 20 of the Kerala Land Conservancy Act, 19572. The Act permits only those suits which are filed against an order under the said act in respect of lands that 2 Hereinafter, The Act do not belong to the Government or are not puramboke land. The same was also hit by the Proviso to Section 20 which permits such suits to be filed within one year of the date of notice. In this regard, the notice in the present case was issued on 22nd February, 1982 and the suit was filed on 14th April, 1983 thereby being outside the permissible limit of one year.

5.2 It was observed that the witnesses produced by the plaintiffs were “rendering lip-service to the plaintiffs” and their testimonies in respect of the age of the trees planted on the disputed property varied greatly. No independent witness(es) or commission was taken to prove the age of the improvements made. A report relied on by the plaintiffs, takes note of improvements made on the disputed property, over 35 years ago and neither the report nor the person who prepared such report was before the Court. 5.3 Furthermore, it was observed that the plaintiffs could not adduce any evidence to prove their possession of the disputed property for more than the statutory period of 30 years. As per the of testimony of PW 1, the plaintiffs were residing on the land on the south of the disputed property before 1940. However, no other record was taken to prove the possession of the plaintiffs over the Government property. 5.4 It was observed that the title of the Government on land cannot be lost by placing reliance on “casual advertence” or on the basis of “scanty material”. It was then held that the classic requirement of adverse possession is that possession should be open, assertive, hostile and continuous. These requirements were absent in the case. Lastly it was held that just because it appears that the order of the Assistant Collector appears to have been passed as

if Avira (son of Joseph, respondent herein) was alive, even though the legal representatives applied to be impleaded, it could not be expected of quasi-judicial authorities to follow the procedure for amendment of cause title with the same rigidness as observed by the Civil Court and that those seeking to be impleaded owed a duty to satisfy the Court as to what became of their application for impleadment. Just because the order has been presumedly passed against a person no longer in the world of living, does not give the representatives of the plaintiffs (respondents herein) to treat the same as nullity. 5.5 In such terms, the judgment and decree passed by the Trial Court dated 21st July, 1990 was set aside vide judgment and order dated 3rd April, 1995.

Second Appeal-The Impugned Judgement

6. The learned Court below in its judgement dated 5th August, 2009 examined the decisions that led to the appeal before it and held that the lower Appellate Court's approach stating that the suit was barred by virtue of the Act was not a good law, as the suit filed by the respondents herein was a suit for declaration of perfected title by virtue of adverse possession and not, a challenge against the notice issued by the Tahsildar. The second aspect on which the High Court differs with the lower Appellate Court was on the point that the testimony of PWs1 to 6 stood unshaken.

6.1 It was observed that the Tahsildar, shorn of any basis had estimated the period of encroachment as 16 years as against the claim of 40 years. It was then held that on perusal of evidence as also other facts regarding the improvements in the property showed that the encroachment was done long before the L.C. proceedings in the suit. 6.2 It was concluded that the finding of there being no scope of adverse possession being given to the respondents herein is fallacious and is based on erroneous consideration of evidence. In that event, they would be entitled to the relief of adverse possession upon land which, as it stands recorded in the impugned judgement, they have been in possession for over 50 years.

6.3 In that view of the matter, the judgement of the Munsiff Court was upheld, granting the claimants adverse possession over the land in question and, overturning the judgement rendered by the Court of First Appeal.

Consideration By This Court

7. In deciding the present dispute, this Court must examine the same from two angles. One, whether the Judgement impugned, arising out of Second Appeal meets the established criteria for Second Appeal or not?; and two, whether the respondents herein are entitled to the relief of adverse possession or is the claim so made, barred by the Kerala Land Conservancy Act, 1957?

8. For an appeal to be maintainable under Section 100, Code of Civil Procedure ('CPC', for brevity) it must fulfil certain well- established requirements. The primary and most important of them all is that the appeal should pose a substantial question of law. The sort of question that qualifies this criterion has been time and again reiterated by this Court. We may only refer to Santosh Hazari v. Purushottam Tiwari3 (three-Judge Bench) wherein this Court observed as follows :

> "12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means — of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with — technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance.

...

14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first 3 (2001) 3 SCC 179 a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis." (Emphasis supplied) The principles laid down herein stood recently reiterated in Chandrabhan v. Saraswati4 (two-Judge Bench).

9. A perusal of the judgement impugned does not reflect any question of law, either substantial or "involving in the case" to have been framed by the Court in the Second Appeal. The Section 100, CPC jurisdiction is not akin to the jurisdiction conferred under Section 96 of CPC wherein it is open for the Court to consider both questions of fact and law. This jurisdiction is exercisable only when the Court is convinced that the dispute at hand involves a substantial question of law, and proceeding under this jurisdiction sans framing questions of such nature renders the proceedings to be 4 2022 SCC OnLine SC 1273 "patently illegal." [Umerkhan v. Bismillabi5 (two-Judge Bench)

10. Recently, a Bench of two learned Judges in Singaram v. Ramanathan6 held as under :

> "This is undoubtedly subject to various well known exceptions which, however, cannot permit the Second Appellate Court to interfere with the findings of fact as a matter of course. Such restrictions are placed on the High Court in order that there is finality to litigation at a particular level in the hierarchy of Courts. The limitation on the exercise of power by the High Court in the Second Appeal interfering with the judgment of the First Appellate Court is premised on high public policy. This

> limitation is sought to be secured by insisting upon the requirement that a Second Appeal is considered only when there is a substantial question of law. Therefore, the existence of substantial question of law and the judgment which revolves around answering the substantial questions of law are not mere formalities. They are meant to be adhered to." (Emphasis supplied)

11. In view of the principles laid down in the above stated judgements, the impugned judgement must be faulted with for not complying with the well-established contours of Section 100, CPC.

12. We have hitherto observed that the instant litigation has continued for a considerable period of time, i.e., four decades. Prudence would not be served by sending this matter back to the court below for consideration in light of the above 5 (2011) 9 SCC 684 discussion and, therefore, with an aim to put an end to the matter, this Court proceeds to examine the claim of adverse possession on its own merits, as is so argued across the bar.

13. Thus, this Court is required to consider as to whether the claimants have perfected their title over the property, subject matter of dispute, by adverse possession.

14. It is contended by the State that a question of adverse possession does not arise, on two grounds – one, that the land is undisputedly Government land and two, that the respondents had possession of such land only for a period of 15 years which is less than required period of 30 years, after which adverse possession could be claimed against the State. Further, it is submitted that Section 20 of the Act bars any suit or other legal proceedings against the Government in respect of any action taken by it under this Act in respect of unauthorised occupation of land, and, since the notice which initiated the present proceedings under the instant act, the proceedings that it gave rise to, were barred by law.

15. The provision reads as under-

> "20. Saving of suits by persons aggrieved by proceedings under this Act- No suit against the Government shall be entertained in any civil Court in respect of any order passed under this act except upon the ground and in respect of which such order has been passed is not and which is the property of government whether a poramboke or not.
>
> Provided that civil courts shall not take cognizance of any such suit has it shall be instituted within one year from the date on which the cause of action arose."

16. The Court of First Appeal records that the instant litigation is barred by the above stated provision of law as the suit for injunction had been filed in a manner of retaliation against the notice issued by the Tehsildar. The Second Appellate Court, per contra, records that the suit was not a suit for injunction but a suit for declaration of title, same having come to rest upon the respondents herein by virtue of adverse possession and, therefore, the above provision would not impede the proceedings.

17. A reading of the provision barring the jurisdiction of civil suits in respect of proceedings initiated under the act, reveals the following ingredients for such a bar to apply :

i) no suit in any Civil Court;

ii) in respect of any order under this Act;

iii) the only ground upon which such a suit would be entertained is if the notice issued is in regards of property that does not belong to the Government;

iv) the entertainment of a suit under the exception described in point No.(iii) is also circumscribed by the time limit of one year from the date of cause of action.

18. Applying the above-identified ingredients to the facts of the present case, for the bar to apply the civil suit instituted would have to be against an order passed by the competent authority under this Act in respect of unauthorised occupation of Government land. A perusal of the record shows that the original notice dated 3rd August,1982 was appealed before the Collector, Idduki, who dismissed the same. No challenge to the said order of dismissal was filed by the legal representatives of Avira. The recourse to the law that was taken, was in fact a suit for declaration before the Civil Court filed on 14th April, 1983 seeking a permanent injunction against any proceedings in respect of eviction and also possession and title of the land in question. The third ground i.e., the disputed property being a Government property, is the only ground that is met. The same is an undisputed fact.

19. However, the primary requirement of the civil suit being in connection with an action taken by the Government, remains unmet and therefore, on the basis of the third ground alone, the bar enshrined in this Section cannot be applied to the present case. Whether or not the respondents herein have any right over the above stated Government land is a question that is required to be considered independently.

20. The principle of adverse possession has been defined by the Privy Council in Perry v. Clissold7 in the following terms:

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

21. Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgements rendered by this Court, the following principles can be observed : 21.1 Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist- nec vi, i.e., adequate in continuity; nec clam, i.e., adequate in publicity; and nec 7 [1907] A.C. 73 precario, i.e., adverse to a

competitor, in denial of title and knowledge;

(a) In Radhamoni Debi v. Collector of Khulna8, the Privy Council held that-

"The possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor."

(b) Further, the Council Maharaja Sri Chandra Nandi v.

Baijnath Jugal Kishore9 observed-

"It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening."

(c) A Bench of three judges of this Court in Parsinni v.

Sukhi10 held that "Party 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."

(d) In Karnataka Board of Wakf v. Govt. of India (two- Judge Bench)11 it was held:-

"It is a well-settled principle that a party claiming adverse possession must prove that his possession is 8 1900 SCC OnLine PC 4 9 AIR 1935 PC 36 10 (1993) 4 SCC 375 11 (2004) 10 SCC 779 "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period." This case was relied on in the case of M. Venkatesh v. Bangalore Development Authority12 (three-Judge Bench), Ravinder Kaur Grewal v. Manjit Kaur13 (three-Judge Bench).

(e) This Court in a recent case of M Siddiq (D) through LRs v. Mahant Suresh Das & Ors.14 (five-Judge Bench) reiterated this principle as under -

> "748. 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." 21.2 The person claiming adverse possession must show clear and cogent evidence substantiate such claim;

12 (2015) 17 SCC 1 13 (2019) 8 SCC 729 14 (2020) 1SCC 1 This Court in Thakur Kishan Singh v. Arvind Kumar15 (two-Judge Bench) held that -

> "5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession..." Reference may also be made to M. Siddiq (supra).

21.3 Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;

(a) In Gaya Prasad Dikshit v. Dr. Nirmal Chander and Anr. (two-Judge Bench)16, this court observed- "1... It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough." 15 (1994) 6 SCC 591 16 (1984) 2 SCC 286 Reference may also be made to Arvind Kumar (supra); Mallikarjunaiah v. Nanjaiah17 (two-Judge Bench); Uttam Chand (supra).

21.4 Such clear and continuous possession must be accompanied by animus possidendi - the intention to possess or in other words, the intention to dispossess the rightful owner; in Karnataka Board of Wakf (supra) it was observed-

> "...Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature..."
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> (a) The case of Annakili v. A. Vedanayagam18 (two-Judge Bench) also shed light on this principle as under -
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> "24. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner.

For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession…" 17 (2019) 15 SCC 756 18 (2007) 14 SCC 308

(b) In Des Raj and Others v. Bhagat Ram19 (two- Judge Bench) this Court observed -

"21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his co-

owners and they were in know thereof."

(c) This court in L.N. Aswathama v. P. Prakash20 (two-

Judge Bench) had observed that permissive possession or possession in the absence of Animus possidendi would not constitute the claim of adverse possession.

(d) It was also held in the case of Chatti Konati Rao v.

Palle Venkata Subba Rao21 (two-Judge Bench) -

"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…" (Emphasis supplied) 19 (2007) 9 SCC 641 20 (2009) 13 SCC 229 21 (2010) 14 SCC 316 Referring to the above judgement Subha Rao (supra) this Court has reiterated the cardinality of the presence of Animus possidendi in a case concerning adverse possession in Brijesh Kumar & Anr. v. Shardabai (dead) by LRs.22 (two-

Judge Bench).

21.5 Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;

The prior position of law as set out in Gurudwara Sahab v. Gram Panchayat Village Sirthala23 (two-Judge Bench) was that the plea of adverse possession can be used only as a shield by the defendant and not as a sword by the plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of Ravinder Kaur (supra) had held that - "…Title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse

possession, can file a suit for restoration of possession in case of dispossession…" 22 (2019) 9 SCC 369 23 (2014) 1 SCC 669 The position in Ravinder Kaur (supra) was followed in Narasamma & Ors. v. A. Krishnappa (Dead) Through LRs.24 (three-Judge Bench).

21.6 Mere passing of an ejectment order does not cause brake in possession neither causes his dispossession;

In Balkrishna v. Satyaprakash24 (two-Judge Bench) this Court held :

> "…Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession." 21.7 When the land subject of proceedings wherein adverse possession has been claimed, belongs to the Government, the Court is duty-bound to act with greater seriousness, effectiveness, care and circumspection as it may lead to Destruction of a right/title of the State to immovable property.

In State of Rajasthan v. Harphool Singh25 (two-Judge Bench) it was held :

> "12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason 24 (2001) 2 SCC 498 25 (2000) 5 SCC 652 that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none." Further, in Mandal Revenue Officer v. Goundla Venkaiah26 (two-Judge Bench) it was stated :
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> "…It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers." 21.8 A plea of adverse possession must be pleaded with proper particulars, such as, when the possession became adverse. The court is not to travel beyond pleading to give any relief, in other words, the plea must stand on its own two feet.
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> This Court has held this in the case of V. Rajeshwari v. T.C.

Saravanabava27 (two-Judge Bench) :

> "…A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal…" 26 (2010) 2 SCC 461 27 (2004) 1 SCC 551 It has also been held in the case of State of

Uttrakhand v. Mandir Sri Laxman Sidh Maharaj28 (two-Judge Bench) :

"...The courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief..." Mandir Sri Laxman Sidh Maharaj (supra) was relied on in Dharampal (Dead) v. Punjab Wakf Board29 (two-Judge Bench) on the same principle.

21.9 Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant30 (two-Judge Bench) elaborated this principle as :

"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." 28 (2017) 9 SCC 579 29 (2018) 11 SCC 449 30 (1995) 2 SCC 543 This principle was upheld in the case of Mohan Lal v.

Mirza Abdul Gaffar31 (two-Judge Bench) -

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant." The Court in Uttam Chand (supra) has reiterated this principle of adverse possession.

21.10 Burden of proof rests on the person claiming adverse possession.

This Court, in P.T. Munichikkanna Reddy v.

Revamma32 (two-Judge Bench), it held that initially the burden lied on the landowner to prove his title and title. Thereafter it shifts on the other party to prove title by adverse possession. It was observed: – 31 (1996) 1 SCC 639 32 (2007) 6 SCC 59 "34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned : once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession...." The Court reiterated this principle in the case of Janata Dal Party v. Indian National Congress33 (two-Judge Bench):

"...the entire burden of proving that the possession is adverse to that of the plaintiffs, is on the defendant..." 21.11 The State cannot claim the land of its citizens by way of adverse possession as it is a welfare State. [State of Haryana v. Mukesh Kumar34 (two-Judge Bench)]

22. In the instant facts, for the respondents to be granted the enjoyment of the disputed property, clear, continuous and hostile possession would have to be established by way of cogent evidence and the animus possidendi must be demonstrated. We now proceed to examine whether these requirements are met with in the present case. 33 (2014) 16 SCC 731 34 (2011) 10 SCC 404

23. Here, we are concerned with the respondents staking claim on property which undisputedly belongs to the state. Keeping in view the principles hitherto reproduced, we may once again, with benefit, refer to Harphool Singh (supra), this Court observed :

> "12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in P. Lakshmi Reddy v. L. Lakshmi Reddy [AIR 1957 SC 314 : 1957 SCR 195] adverted to the ordinary classical requirement — that it should be nec vi, nec clam, nec precario — that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in Secy. of State for India in Council v. Debendra Lal Khan [(1933) 61 IA 78 : 1934 All LJ 153 (PC)] strongly relied on for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In Annasaheb Bapusaheb Patil v. Balwant [(1995) 2 SCC 543 : AIR 1995 SC 895] it was observed that a claim of adverse possession being a hostile assertion involving expressly or

> impliedly in denial of title of the true owner, the burden is always on the person who asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the courts must have regard to the animus of the person doing those acts." (Emphasis supplied)

24. The claimants via a claim of adverse possession seek to be declared the owners, by lapse of time of land belonging to the government. When faced with this situation, it is clear that the Court is required to consider this question "more seriously". The first part of burden of proof as discussed in Revamma (supra) is undoubtedly met with since the subject land being Government land, was never in dispute. The burden of proof once shifted, it was for the claimants to prove their possession to be openly hostile to the rights of the government.

25. By way of evidence adduced, nothing, save in except testimonies of villagers, has been brought on record. A perusal of such evidence also shows no decisive statements being made and instead, on the basis of the estimated age of trees on such land, is the length of possession of the respondents being calculated.

26. On separate analysis, the testimonies upon which the claimants seek to place reliance and which the impugned judgement terms as "unshaken", while undoubtedly pointing towards the long-term possession of the claimants on the land in question, are not of such a nature to satisfy the requirement of a "more serious and effective" enquiry.

27. A perusal of the testimonies reveals that consistency is lacking in terms of the age of the rubber trees. Certain witnesses claim the age to be 15 years while others claim the same to be 18 years.

28. In first appeal, the Court noted that no independent commission, or verification had been carried out of the age of the trees on the basis of which possession was being calculated. In view of this uncontroverted position, whether the standard of proof as held by this Court in Harphool Singh (supra) in no uncertain terms -

> "When the property was a vacant land before the alleged construction was put up, to show open and hostile possession which could alone in law constitute adverse to the State, in this case, some concrete details of the nature of occupation with proper proof thereof would be absolutely necessary and mere vague assertions cannot by themselves be a substitute for such concrete proof required of open and hostile possession." (Emphasis supplied) cannot be termed as met. An estimation of age of the trees cannot be, by any stretch, termed as sufficient proof required to disturb the title that undisputedly rests with the Government as also testified by PW-1 and PW-2. Proper and concrete proof as required would need for the claimants to show some proof of possession, other than statements which may be vague. It is also clear from the above discussion that merely a long period of possession, does not translate into the right of adverse possession. Surmises, conjectures and approximations cannot serve the basis for taking away the right over land resting with the State and place the said bundle of rights in the hands of one who did not have any such rights.

29. It is a matter of record that proceedings of ejectment of the claimant stood initiated before the concerned Tehsildar in which claimant neither pleaded nor claimed title by way of adverse possession. To the contrary, the unauthorised occupation was not disputed, with the only plea being taken of having planted certain trees (rubber trees), put to use for rubber tapping.

30. It is also a matter on record that such proceedings stood concluded by the appropriate authority (Tehsildar). By order dated 24th February, 1982 the appropriate authority (Tehsildar) had passed an order directing the claimant to not only vacate the land but also to pay compensation amounting to Rs. 354/-; these facts were never referred to in the plaint.

31. The Assistant Collector, Idduki, unequivocally stated the reason for non-assignment of land to the claimanst, for the same being set out for a public purpose. Noticeably, the order passed by the Tehsildar or the Assistant Collector was never ever subjected to challenge by the claimants either by resorting to the mechanism provided under the Act nor in the suit, the subject matter of consideration.

32. It is for the first time in the written statement that the factum of passing the order under The Act was brought to the notice of the Civil Court which fact was neither refuted to nor explained by way of replication.

33. That apart, joint reading of the testimonies of PW1 (Brajeetha), PW3 (Cherian) and PW4 (Narayanan), do not in any manner establish the factum of the claimant having ever claimed the possession hostile to that of true owner i.e., the State.

34. Their testimonies only establish plaintiffs/claimants' possession and having put the land to use for planting trees, though with a variation of period, i.e., about 15 to 40 years. Be that as it may, it has come on record with some variations that the rubber trees were planted just about 15 to 18 years prior to the date on which the depositions were recorded.

35. On oath, in a specific query put to PW 1 as to whether there is no record to establish suit the property to be in their possession from the year 1940 onwards, there is a categorical denial. Equally the witness denies having any proof of residing in the property, since 1940, adjacent to the property subject matter of the suit.

36. All that it is stated is that the property was being enjoyed, assuming the same to be theirs.

37. It is in this view of the matter, we find that the findings returned by the High Court holding the witnesses, more particularly PW1 to PW5 to have established the claimants' claims by way of adverse possession to be erroneous.

38. In view of the above, the appeal is allowed. The judgement of the High Court in S.A. 740 of 1995 dated 5th August,2009 is set aside, and the judgement rendered by the First Appellate Court in Appeal Suit No. 3 of 1991 dated 3rd April, 1995 is restored.

39. Interlocutory applications, if any, shall stand disposed of.

40. No order as to costs.

.....J.

(ABHAY S. OKA) .....J.

(SANJAY KAROL) Date : 9th August, 2023;

Place : New Delhi.