

Bench: M Sharma, G Mittal

Shri Shahabuddin vs State Of U.P And Ors. on 1/4/2005

JUDGMENT

Gita Mittal, J.

1. This appeal filed by the defendant in suit No. 18/1980 is directed against the judgment and decree dated 31st March, 1982 by the learned Additional District Judge in the case entitled the State of Uttar Pradesh vs Shahabuddin whereby the learned trial judge decreed the suit of the respondent only for the relief of possession.

2. The State of Uttar Pradesh, respondent herein, brought a suit for possession and mesne profits against Sh. Shahabuddin appellant herein on the allegations that the respondent-plaintiff was the owner of the land bearing Khasra No. 68 in Khewat No. 108 Khatauni No. 303 of the last Jamabandi for the year 1960-61 situated in Village Okhla, Delhi. It was stated in the plaint that the total area of the said khasra No. 68 is 125 bighas and that the plaintiff had been in possession of the land since before 1 08-09. On or about 17th August, 1971 the defendant had put up barbed wire fencing on 4 Bighas and 4 Biswas out of the land comprising in Khasra No. 68 which were shown in green color in the plan annexed with the plaint. Inasmuch as the land was part of canal land, it was stated that the defendant was prosecuted under Section 70 of the Northern Indian Canal and Drainage Act VIII, 1973. The defendant is stated to have instituted a suit praying for an injunction against the officers of the Okhla Canal and Drainage interfering in the claimed possession of the defendant or otherwise dispossessing him by force in any manner being civil suit No. 718/1971. It was contended that the appellant obtained an exparte injunction that states quo be maintained and while the officers of the present respondent-(defendant in Suit No. 718/1971) were thus restrained from interfering with the alleged possession of the appellant, the appellant put barbed wire fencing on the suit land and made temporary construction thereon.

3. The appellant appears to have withdrawn this suit with liberty to file a fresh suit on the same cause of action and thereafter is stated to have filed a suit against the respondent and the Divisional Canal Officer, Upper Division Agra Canal, Mathura (U.P.) In this suit for permanent injunction which was registered as suit No. 1137/1971, the respondent had contended that the appellant had no right or authority to retain possession of the land. Value of the land was claimed to be Rs. 1,000/- per year. The respondent claimed Rs. 3,000/- as mesne profits for the last three years.

4. In these circumstances the plaintiff brought the suit seeking the decree for possession and recovery of Rs. 3,000/- on account of mesne profits for the past three years. The respondents had also made a prayer for recovery of mesne profit in the future at the rate of Rs. 1,000/- per year from the date of the suit till delivery of possession.

5. The suit was instituted on the 17th May, 1976 inter alia on these allegations :-

"4. The defendant is in possession of the land in suit for the last more than 70 years. This land is adjacent to the abadi of village Okhla, so the defendant and his forefathers have been using the land as Gher/ghitwar for tethering cattle, storing manures, preparing cow-dung cakes etc. etc. and for that purpose super-structures were raised. No objection was ever raised by the officials of the plaintiff. The plaintiff is estopped from filing this suit by the act, conduct and acquiescence of her officials. The land in suit never remained in possession of the plaintiff in any capacity during the last more than 70 years. The possession of the defendant is open, peaceful, continuous, without any interruption, hostile and adverse to the knowledge of the plaintiff and her officials. The defendant has acquired ownership rights by adverse possession. The officials of the plaintiff considering their fault for not taking any action for dispossession of defendant within limitation, they tried to

dispossess the defendant summarily through their own officials by prosecuting the defendant under Section 70 of the Northern Indian Canal and Drainage Act No. 8 of 1873, so the defendant in September 1971 filed a suit for injunction against the Upper Divisional Agra Canal of Okhla Delhi for permanent injunction restraining them from interfering in possession of this defendant or other dispossessing him by force in any other manner.

That the plaintiff's officials inspite of temporary injunction granted by Shri K.S. Malik, the then Sub Judge, Delhi malafidely tried to dispossess this defendant through their own machinery by summary procedure and by getting imposed recurring fine. This defendant had to file a writ in the High Court whereupon the officials of the plaintiffs were refrained from taking any action for dispossession except by a regular suit in due course of law."

"7. The plaintiff has no subsisting right, title or interest and the defendant has no right to dispossess the defendant."

6. In the written statement dated 30th September, 1976 filed by the appellant-defendant, it was claimed that the defendant was in possession of 4 Bighas 4 Biswas of land out of this Khasra No. 68 for the last more than 70 years since the days of his forefathers. The appellant disputed the assertion on behalf of the plaintiff that it took possession of the land only on 17th August, 1971. So far as the possession of this piece of land comprising 4 Bighas 4 Biswas on Khasra No. 68 is concerned, the appellant/defendant stated thus :-

"4. xxxx The defendant is in possession of the land in suit for the last more than 10 years. This land is adjacent to the abadi of village Okhla, so the defendant and his forefathers have been using the land as Gher/ghitwar for tethering cattle, storing manures, preparing cow-dung cakes etc. and for that purpose super-structures were raised. No objection was ever raised by any officials of the plaintiff. The plaintiff is estopped from filing this suit by the act, conduct and acquiescence offer officials. The land in suit never remained in possession of the plaintiff in any capacity during the last more than 70 years. The possession of the defendant is open, peaceful, continuous, without any interruption, hostile and adverse to the knowledge of the plaintiff and her officials. The defendant has acquired ownership rights by adverse possession. The officials of the plaintiff considering their fault for not taking any action for dispossession of defendant within limitation, they tried to dispossess the defendant summarily through their own officials by prosecuting the defendant under Section 70 of the Northern India Canal and Drinage Act No. 8 of 1873, so the defendant in September 1971 filed a suit for injunction against the Upper Divisional Agra Canal of Okhla Delhi for permanent injunction restraining them from interfering in possession of this defendant or other dispossessing him by force in any other manner.

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This defendant had to ;file a Writ in the High Court whereupon the officials of the plaintiffs were refrained from taking any action for dispossession except by a regular suit in due course of law."

7. Further in para 5 of its written statement the respondents denied that it had put barbed wire fencing and made temporary construction under the cover of injunction in suit No. 718/1971. It was contended that the barbed wire fencing and super structure of the defendant existed long prior to the filing of the suit. In reply to para 7 of the pliant, the defendant stated thus :-

"7. Para No. 7 of the plaint is incorrect and denied. The plaintiff has no subsisting right, title or interest and the defendant has acquired ownership rights by adverse possession. This defendant has every right to retain the possession of this land and the plaintiff has no right to dispossess the defendant."

The (Appellant) defendant had thus contested the claim of the plaintiff and in its written statement had also raised objections to the sufficiency of the court fee and the entitlement of the plaintiff/respondent to the release claimed. It was asserted that the suit was barred by time and that the plaintiff/respondent was estopped from filing the suit on account of conduct of its officials. The respondent-defendant had stated that the plaintiff was not the owner of the land.

The respondent-plaintiff disputed the averments in the written statement and filed its replication to the same.

8. On the pleadings of the parties, the trial court framed the following issues on the 18th November, 1976:-

"1. Whether the suit is properly valued for purposes of court-fee and jurisdiction ? OPP

2. Whether the plaintiff has paid proper court fee? OPP

3. Whether the suit is time barred? OPP

4. Whether the plaint has been signed, verified and filed by a duly authorised person? OPP

5. Whether the plaintiff is owner of the suit land? OPP

6. Whether the plaintiff is estopped from filing this suit, by acts, conduct and acquiescence of its officials? OPD

7. Whether the plaintiff is entitled to mesne profits. If so, at what rate and to what amount? OPP

8. Whether the decree for future mesne profits can be granted in this suit? OPP

9. Relief."

9. The matter thereafter proceeded to evidence. The plaintiff examined 16 witnesses in support of its case. The defendant also led detailed evidence of 10 witnesses in its evidence. The Learned trial court proceeded to judgment and vide its judgment and decree dated 31st March, 1982, was pleased to reject the claim of the respondent for mesne profits on the ground of insufficiency of evidence but found in favor of the respondent so far as its claim of possession was concerned. Accordingly the relief for possession was decreed. The learned trial judge appointed a Local Commissioner and held that the appellant-defendant was liable to be evicted from the land wherever he was in possession in the aforesaid Khasra No. 68. The respondent was also held entitled to costs for the relief of possession only.

This judgment and decree has been impugned before us only by the appellant/defendant on the findings of the learned trial court recorded on issue Nos. 3, 5 and 9.

It is noteworthy that the appellant/respondent did not address arguments on issue Nos. 1, 2, 4, 6 and 8 and as such these were issues held in favor of the respondent defendant.

10. The challenge made before this court on behalf of the appellant rests mainly on its claim of continuous possession from the time of his forefathers. Written submissions to buttress the oral arguments were also filed on behalf of the appellant. Learned Senior Counsel appearing for the appellant has vehemently contended that the appellant had led unimpeachable evidence of revenue records from 1935 to 1972 to the effect that the appellant was in physical possession of the land for the entire period. It was also urged that the appellant had himself stepped into the witnesses box as DW 1 and established beyond doubt that he and his forefathers had been tethering their cattle on the subject land, that there was barbed wire fencing around the same beside a hut with a chapper/tin roof. According to learned counsel, the case of the appellant was established beyond any

doubt in view of the statements given in favor of the appellant defendant by independent witnesses who were not from the village or even the community of the appellant. In this behalf, we were taken through the testimony of DW 4 Shri Siri Kishan, DW 5 Sh. Khyali Ram and DW 6 Sh. Uday Singh. It was argued that these independent witnesses have clearly stated that they are not interested witnesses and have no relation with the appellant/defendant or his forefathers. The judgment and decree was impugned on the ground that the testimonies of these independent witnesses and the revenue records in favor of the appellant have not been given the deserving weight and consideration which ought to have been given. In support of the assertion that the testimony of these witnesses was truthful, it was pointed out that the witness DW 4 Sh. Siri Kishan was 90 years of age at the time of his deposition.

11. The appellant has urged that the trial judge has erred in failing to consider that the appellant and his forefathers have been in continuous and absolute possession of the suit land after making a barbed wire fencing and that there was a hut like structure on the suit land. The finding of the learned trial judge to the effect that possession of vacant land follows title and that the land being in long uncultivated/banjar/fallow shows that there was a presumption of possession of the land in favor of the respondent has been challenged on the ground that this was erroneous in the face of the revenue records for 37 years which was produced on behalf of the appellant and established actual physical possession of the appellant. The appellant has also faulted the findings of the learned trial judge which were based upon the sale deed Ex PW 16/1 which was dated 25th February, 1941 and purported to have been executed by one Asbari on behalf of her minor son of Shahabuddin to contend that the reliance by the respondent on this sale deed itself showed the appellant to be the owner of part of the land and therefore falsified the ownership claimed by the respondents. According to the appellant, the reasoning of the learned trial judge with regard the land being 'nautare' (freshly cultivated) or 'banjar qadim' (becoming fallow recently) and 'banjar jadid' (being fallow since long) has no bearing on the issue of adverse possession. According to the appellant, the only issue was the appellant was in possession of the land. The appellant has urged that he was not claiming to be in possession through cultivation but by means other than cultivation. It is stated that he was tethering his cattle and conducting other activities relating to cattle on the land question. The appellant has also contended that plaintiff/respondent was unable to prove or establish their claim that stone ballast had been extracted from Khasra No. 68.

12. Appearing for the appellant, Mr. Valmiki Mehta, Senior Counsel placed reliance on the statutory provisions of Section 27 of the Limitation Act and the decision of the Apex Court of entitled Wuntakai Yalpi Chenabasavana Gowd v. Rao Bahadur Y. Mahabaleshwarappa to urge that once a person is in physical possession, unless and until there is specific interruption of such adverse possession, a mere act or wish of the actual owner has no relevance. Placing reliance on the pronouncement in 1993(2) UJ (SC) 737 entitled Parsinni(Dead) by LR's and Ors. v. Sukhi it is contended that the revenue entries in favor of the appellant establishes his plea of adverse possession and militate against the title of the defendant/respondent.

The appellant also urged that there can be adverse possession of even a tank or a part thereof belonging to a municipality if there is hostile assertion of title and no steps are taken by the municipality to evict the trespasser as was held by the Apex Court in

entitled Kshitij Chandra Bose v. Commissioner of Ranchi.

To support the plea that even banjar land is capable of adverse possession, the decision of the Apex Court in (1974) 1 SCR 381 entitled Rajender Singh and Ors. v. Santa Singh and Ors. and 1986 RLR 37 (para 10 at page 39) entitled Sobha Bhanot v. Capt. Ranbir Bhanot was cited. In support of the submission that temporary construction consisting of a kachha wall and khaprail are capable of possession, learned senior counsel drew our attention to the pronouncement in AIR 1997 SC 94 para 10 at page 97 in Har Chand's case. Strong reliance was placed on a judgment of this court reported at 1986 RLR 371 page 39 para 101, to support the submission that in case a witness is found to be lying on one point, then his entire testimony cannot be discarded. This judgment was cited to submit that DW 4 was erroneously disbelieved on the ground that he had wrongly given the name of the appellant's father as Jeewan whereas it was actually Sharbiti. Lastly, it was

urged that the respondent cannot be allowed to take away valuable vested right which are statutorily provided in favor of the appellant by virtue of Section 27 of the Limitation Act and on the vague plea of the respondent that the entries in the revenue records are the result of manipulation.

13. Learned counsel appearing for the respondent has strongly disputed the submissions made on behalf of the appellant and has urged that the bald plea of being in possession of the appellant/defendant does not by itself establish the case of the defendant of having perfected title by adverse possession in respect of the land of the respondent plaintiff. It was contended, that even assuming without admitting, that the case of the appellant to the extent that its claim of possession was correct, the same was not sufficient to extinguish the title of the respondent-plaintiff. The appellant-defendant had failed to establish that it was really in absolute or exclusive possession of the land for the statutory period of 30 years or that it had ever asserted a title hostile to them of the plaintiff. Learned counsel appearing for the respondent/plaintiff had vehemently disputed the legality and correctness of the revenue record produced before the learned trial judge and urged that the same were manipulated.

It was pointed out that the records produced by the appellant were false and that they were in contradiction with the case set up by the appellant before the court. It was urged that the appellant/defendant had illegally encroached upon the property in 1971 and under the shield of the interim orders obtained by it, had attempted to raise construction on the land of the respondent. Our attention was also drawn to the provisions of the land revenue rules in support of the meaning of the expression 'Nauature Banjar Jadid and Banjar Qadim'. It was also pointed out that the alleged temporary construction on the suit land which was relied upon by the appellant/defendant, also finds mention for the first time in the revenue records produced by the appellant or the year 1972 which establishes the respondent's case. It is therefore contended that the evidence of the defendant has been set up and procured merely to support his pleas. According to learned counsel, in the alleged Khasra Girdawari claimed to have been issued by the Patwari on 5th August, 1972 and was proved on record as Ex D-10, some structure is shown for the first time and this established the respondents' plea that the appellant-defendant has undertaken illegal activity under the shield of the interim injunction in his suit. There was no cultivation whatsoever of the land and that the observations of the learned trial judge are based on the records produced by the appellant defendant and cannot be faulted as such. The land is shown to be nauature in the year 1935 and thereafter as 'banjar qadim' up to 1960-1961. It is shown as 'nauature' again in Ex D-8 which is the Khasra girdawari for the period 1961-1965 which position remains for 3 1/2 years up to 1971(Ex D-9) Reliance is also placed on the sale deed dated 25th February, 1991 (being Ex PW 16/1), on behalf of the respondents to urge that the appellants mother sold 4 Bighas and 4 biswas of land in Khasra No. 68 vide this conveyance deed. It has been pointed out that the jamabandi of 1935-36 relied upon by the plaintiff showed possession of only 4 bighas 4 biswas of land and therefore the only land in possession of the appellant predecessor in interest in khasra No. 68 was this land which was disposed of in 194 in favor of the Jamia Milia Islamia. It was submitted that the defendant appellant did not claim possession over any other portion of Khasra No. 68 and that, assuming that the defendant was in possession of any land in Khasra No. 68, the same stood transferred by this sale deed of 25th February, 1941 and therefore the claim set up in respect of the respondents land ought not to be believed.

14. We have heard learned counsel for the parties and have been taken through the entire record. Before us, the entire arguments on behalf of the appellant as noticed above rested on the sole plea that the appellant defendant had established that the appellant, and prior to him his predecessor in interest, were in possession of the land admeasuring 4 bighas 4 biswas in the aforesated khasra No. 68 for the last 70 years and that therefore by such act of uninterrupted possession of over thirty years the possession of the defendant had perfected by prescription into title by adverse possession.

15. Therefore the core question which arises for consideration before us is as to whether the appellant was in possession of the suit property as claimed and whether such possession stood fructified into ownership of the land the appellant-defendant by virtue of Section 27 of the Limitation Act.

16. Law draws a distinction between possession and occupation. Mere occupation of another's property is not by itself construed as "possession" in the eyes of law. For an occupation of another's property to amount to possession in the eyes of law, two ingredients are required to be satisfied as held in the judgment reported at 1994 (30) DRJ 597 entitled Shri Sham Lal v. Rajinder Kumar etc. We have also so held in our decision dated 15th October, 2004 in RFA 484/2004 entitled Prabhu Dayal v. Roop Kumar and Ors.:-

"13. Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider

(i) the person possessing,

(ii) the things possessed and,

(iii) the person excluded from possession.

A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and a master."

17. A person may come into possession of another's property by lawful or unlawful means. Thus, possession by virtue of occupation as a lessee; licensee; other permissive occupations as under an agreement to sell, by virtue of being a co-sharer in the property, under testamentary bequest or by a sale deed, are all lawful possessions. However, possession as a trespasser or other than by lawful means is unlawful possession. In law, every unlawful possession is not adverse possession.

18. The position in law, as to the nature of possession which would amount to adverse possession and the necessary ingredients thereof, have fallen for consideration in several pronouncements of Supreme Court of India. The same is also the subject matter of Article 65 of the Limitation Act, 1963 and Section 27 of the Limitation Act which read as under:-

"27. Extinguishment of right to property:- At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

Article 65 of the Limitation Act:-

Description of suit Period of Time from Limitation which period begins to run For possession of immovable Twelve When the possession property or any Years interest therein of the defendant based on title. becomes adverse to the plaintiff.

Explanation:- For the purposes of this article-

(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.

So far as land owned by the State is concerned, the requisite period prescribed is 30(thirty) years.

19. In the judgment reported at entitled Amrendra Pratap Singh v. Tej Bahadur Prajapati and Ors., it was held as hereunder:

"22. What is adverse possession? Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of section 27 of the Limitation Act, at the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title. It is that extinguishing of the real owner which comes to vest in the wrong-doer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and re-enter into possession, has defaulted and remained inactive for a period of 12 years which the law considers reasonable for attracting the said penalty. Inaction for a period of 12 years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of 'dealing' with one's property which results in extinguishing one's title in property and vesting the same in the wrong doer in possession of property and thus amounts to 'transfer of immovable property' in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section."

20. A claim of adverse possession, therefore, involves three elements, namely, hostile intention; long and uninterrupted possession and exercise of the right of exclusive ownership, openly and to the knowledge of the real owner.

21. In the judgment reported at Vasantiben Prahladji Nayak and Ors. v. Somnath Muljibhai Nayak and Ors., it was held by the Supreme Court that in cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but it commences from the date when the defendant's possession became adverse.

22. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to contract, it cannot be adverse. It cannot be regarded as adverse in law. In this regard, we may appropriately refer to the pronouncements of

the Apex Court in The State Bank of Travancore v. Arvindan Kunju Panicker; AIR 1990 (4) SCC 706 Achal Reddy v. Ramakrishna Reddiar and Ors.; JT 1995 (1) SCC 370 - (Also reported at

entitled Annasaheb Bapusaheb Patil and Ors. v. Balwant Alias Balasaheb Babusaheb Patil (dead) by LR's etc.

23. It is also a settled principle of law that mere long possession of a person for a period of 12 years without intention to possess the suit land adversely to the title of the plaintiff and to the latter's knowledge cannot result in acquisition of title by prescription. The animus to hold the land adversely to the title of the true owner can be said to have started only when the defendant derived knowledge that his possession over the suit land had been alleged to be an act of encroachment. In this behalf, reference may be made to the judgment reported at Deva (dead) through LR's v. Sajjan Kumar (dead) by LR's; AIR 1993 Delhi 19 Wing Commander (Retired) R.N. Dawar v. Shri Ganga Saran Dhama; Thakur Kishan Singh (dead) v. Arvind Kumar; entitled Gaya Prashad Dikshit v. Dr. Nirmal Chander and Anr., the Apex Court observed as follows:-

"1. We have heard the learned counsel on behalf of the appellant and after hearing him and perusing the judgment of the High Court, we find ourselves wholly in agreement with the view taken by the High Court that mere termination of the license of a licensee does not enable the licensee to claim adverse possession, unless and until he sets up a title hostile to that of the licensor after termination of his license. It is not merely unauthorised possession on termination of his license 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 license 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 continuances of unauthorised possession even for a period of more than 12 years is not enough. Here in the present case there is nothing to show that at any time after termination of his license by Dr. Rama Shanker or by the first respondent the appellant asserted hostile title in himself. The High Court was, therefore, right in taking the view that the appellant had not established any title by adverse possession and in that view of the matter, the suit of the first respondent for recovery of possession of the premises from the appellant was not barred under Article 65 which is the only article of the Limitation Act, 1963 applicable in the present case. We accordingly confirm the judgment of the High Court and dismiss the appeal."

24. For the purpose of proving adverse possession, a defendant has to establish ouster of the real owner and must also prove animus decedendi. A person claiming adverse possession is bound to plead and prove ouster of the owner and/or his predecessor in interest from the property in question. It is obligatory on the part of such person to specifically plead and prove the date since when his possession became adverse to the owners. The nature of the possession also has to be specifically mentioned.

It was so held by the Supreme Court in its pronouncements reported at entitled Md. Mohammed Ali v. Sh. Jagdish Kalia,

25. The Courts have construed the requirements even more stringently in cases concerned with State property. In entitled

State of Rajasthan v. Harphool Singh (dead) through his LR's in para 12 it was thus held that :-

"13. The High court without even a cursory scrutiny of the legality and propriety of the finding in order to ascertain at least as to whether they are based upon any legally acceptable evidence and the necessary legal ingredients of 'adverse possession' stood substantiated, mechanically seem to have accorded its approval to the claim of title made by the plaintiff merely on the basis that both the Courts below have found the plaintiff to be owner of the property. Indisputably the State was the owner and the question is as to whether its title has been extinguished and the plaintiff had acquired and perfected title to the same by adverse possession. In order to substantiate such a claim of adverse possession the ingredients of open, hostile and continuous

possession with the required animus as laid down by Courts should be proved for a continuous period of 30 years. Admittedly, the plaintiff claims to have put up the construction in 1955 and absolutely there is no concrete and independent material to prove the same except an oral assertion. The story of his father having been there even earlier to 1955 was not projected either before the ADM when the plaintiff submitted his defense, or in the plaint when the suit was filed but for the first time introduced only at the stage of trial when examined as PW1. 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. Even if the plaintiff's allegations and claims, as projected in the plaint, are accepted in toto, the period of so-called adverse possession would fall short by 5 years of the required period. There is no scrap of paper or concrete material to prove any such possession of the plaintiff's father nor was there any specific finding supported by any evidence, in this regard. The father of the plaintiff was also an employee of the Telephone Department. It is not as though, if their story of such long possession is true, there would be no correspondence or record to show that his father or the plaintiff were there before 1981. the relevance of the electricity bill to the property in question itself has been questioned and no effort has been taken by the plaintiff to correlate the electricity and water bill to the property claimed by examining any official witnesses connected with those records. While that be the factual position, it is beyond comprehension as to how anyone expected to reasonably and judiciously adjudicate a claim of title by objective process of reasoning could have come to the conclusion that the legal requirement of 30 years of continuous, hostile and open possession with the required animus stood satisfied and proved on such perfunctory an slender material on record in the case. The first appellate court as well as the High Court ought to have seen that perverse findings not based upon legally acceptable evidence and which are patently contrary to law declared by this Court cannot have any immunity from interference in the hands of the appellate authority. The trial court has jumped to certain conclusions virtually on no evidence whatsoever in this connection. Such lackadaisical findings based upon mere surmises and conjectures, if allowed to be mechanically approved by the first appellate court and the second appellate court also withdraws itself into recluse apparently taking umbrage under Section 100, Cr.P.C the inevitable casualty is justice and approval of such rank injustice would be only result in gross miscarriage of justice.

We are of the view, on the materials on record that the plaintiff could not be held to have substantiated his claim of perfection of title by adverse possession to the public property. The Courts below could not have legitimately come to any such conclusion in this case. The judgment and decree of the courts below are set aside and the plaintiff's suit shall stand dismissed. No costs. Before parting with this case, we may observe that our decision need not stand in the way of the legal heirs of the plaintiff, if they so desire to approach the concerned authorities to seek for assignment of the land in their favor, for value."

26. A person claiming title by adverse possession has to show that he has asserted hostile title as well as done some overt act to assert such claim. Even mere continuance of unauthorised possession by licensee after termination of license for more the an 12 years does not enable a licensee to claim title by adverse possession. Ouster of the real owner does not mean actual driving out of the co-sharers from the property. In any case, it will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession.

27. Ouster of the real owner in the property and the nature of the ouster has fallen for consideration before the Apex Court in AIR 1957 SC 314 entitled P. Lakshmi Reddy v. L. Lakshmi Reddy; entitled Mohd. Zainulabudeen v. Sayeed Ahmed Mohender; (1995 Vol. 4 SCC 496) entitled Vidya Devi @ Vidya

Vati (dead) by LRs v. Prem Prakash; entitled Md.

Mohammad Ali (dead) by LRs. v. Sri Jagdish Kalita and Ors.

28. A claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the real owner, the burden is always on the person who asserts such a claim to plead and prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such a case the Court must have regard to the animus of the person doing such.

29. It is thus implicit that a claim of adverse possession can arise only against the real owner of the property. In a case where title itself of the plaintiff is disputed, the plaintiff would have to establish lawful title in accordance with law. In such a case, the defendant also would have to establish by clear and cogent evidence as to the manner in which it had expressed hostile intention and a claim adverse to that of the real owner of the property. It may not be wrong to state that the defendant or his adverse possession would have to assert as to the name and particular of the person against whom it was claiming title by adverse possession.

30. Actual possession without the required animus militates against the claim of title based on adverse possession. Thus, mere unlawful possession does not mean adverse possession. A trespasser's possession is adverse to the true owner only when the adverseness of the trespasser's claim is within an owner's knowledge. There must be on the part of the trespasser, an expressed or implied denial of title of a true owner and animus of exclusive ownership. (Ref.

entitled Basanti Dei v. Bijayakrushna Patnaik and Ors.)

31. So far as property of the State is concerned, the question of a person claiming adverse possession requires to be considered most seriously inasmuch as it ultimately involves destruction of right and title of the State to immovable property conferring upon a third party an encroacher, a title where, he had none. In order to substantiate such a claim of adverse possession, the ingredients of open, hostile and continuous/possession with the required animus should be proved for a continuous period of 3 years.

32. When the property was a vacant land before the alleged construction has been put up, to show open and hostile possession which could alone in law constitutes adverse possession to the State, some concrete details of the date of absolute and exclusive occupation, nature of occupation with proof thereof would be absolutely necessary and a mere bald assertions cannot by themselves be a substitute for concrete proof required of open and hostile possession. The person claiming adverse possession as against the State must disclaim the State's title and plead this hostile claim to the knowledge of the State and that the State had not taken any action within the prescribed period. It is only in such circumstances that the possession would become adverse. The pleadings and proof have to be clear and cogent. (Ref. . R. Changevarappa v. State of Karnataka;

D.L. D.N. Venkatarayappa and Anr. v. State of Karnataka and Ors. and entitled State of Rajasthan v. Harphool Singh (dead) the rough his LR.)

33. It is seen that persons claiming title by virtue of adverse possession have placed reliance on evidence in the nature of mutation in revenue records, electricity bills etc. Such documents, by themselves, do not establish the nature of possession as adverse possession. It has been held that the documentary evidence has to be co-related to the animus possidendi. Thus, mutation in revenue record of the property in the name of one of the co-sharers would not amount to ouster of others unless there in a clear declaration that title of other co-sharers was denied and disputed. In this behalf, reference may be made to dicta of the Apex Court laid down in

entitled Darshan Singh and Ors. v. Gujjar Singh (dead) by LR and Anr. and entitled Md. Mohammed Ali (dead) by LR v. Sri

Jagdish Kalita and Ors. It has also been held that mere non-payment of rent and taxes may be one of the factors for proving adverse possession but it cannot be the sole factor in Karbalai Begum v. Mohd. Sayeed and Anr.; (at page 56) Ejas Ali Qidwai and Ors. v. Special Manager, Court of Wards, Balram Pur Estate and Ors.;

1995 (1) AD (Delhi) 272 entitled Harbans Kaur and Ors. v. Bhola Nath and Anr. AIR 1932 Oudh 46 entitled Suraj Bali v. Lala Mahadev Parsad.

34. Claims of adverse possession based on mere non-participation in rent and taxes or on mere denial of the owner's title which were rejected are to be found . Karbalai Begum v. Mohd. Sayeed and Anr.; (also reported at 1995 (2) SCC 543) entitled Anu Sahed Bala Sahed v. Balwant @ Bala Saheb and in JT 1995 Vol 4 SC 607 (also reported at entitled Vidaya Devi @ Vidya Vati v. Prem Parkash.

35. In the light of the above, it is apparent that both pleadings and the evidence has to be clear, unequivocal and specific as to on what date and even in which month the property was occupied and the date of the dispossession of the real owner. All questions relating to the date and nature of a person's possession whether the factum of his possession was known to the owner and the legal claimants and the duration for which such possession has continued and also the question whether the possession was open and undisturbed are all questions of facts and have to be asserted and proved. The attributes of adverse possession is that it begins with disseisin or ouster of the owner. It remains an "inchoate" title or a growing title till expiration of the statutory period of its continuous open and hostile assertion and enjoyment. Before title of adverse possession is perfected, all presumptions and intendments are in favor of the real owner. Burden of proving adverse possession is a very heavy one. No court can take the plea of acquisition of title by adverse possession casually and it is settled law that much importance should not be attached to the mere evidence of witnesses who casually and cavalierly simple deposed that the land was in possession of somebody and/or another. Mere oral evidence may not be sufficient to substantiate a claim of adverse possession. The party who so pleads must show something more than that. In this behalf, reference may be made to the observations made in AIR 1921 Patna 234 entitled Gajadhar Prasad and Ors. v. Musamad Dulhin Gulab Kuer and Ors.

36. This court in the judgment reported at 1995 1 AD Delhi 272 and 1995 (57) DLT 101 Harbans Kaur and Ors. v. Bhona Nath. para 23 held as under :-

"23. Furthermore, the mere oral evidence is not sufficient enough to substantiate the claim of adverse possession by a party. The party who pleads adverse possession must show something more than that. I am supported in my above view by the observations as reported in Gajadhar Prasad and Ors. v. Mst. Dulhin Gulab Kuer and Ors., AIR 1921 Patna 234 that no Court should take the plea of acquisition of title by adverse possession casually and no importance should be attached to the evidence of witness who simply deposed that the land was in possession of somebody or other. Burden of proving adverse possession is a very heavy one."

37. In the instant case the defendant had urged that it had perfected its title by adverse possession and as such the onus of proving such a plea had fallen on the appellant defendant. In support of this plea the appellant had produced oral testimony as well as the evidence of defendants 4 to 6. Defendant No. 4 Shri Sri Kishan on whose deposition the appellant has largely rested his case has stated that he has seen the land in dispute and that it measures about 4 bighas in his deposition recorded on 27th July, 1978. According to this witness, he was seeing the defendant in possession of the suit land since his childhood and that he had first seen possession of Jeevan in the land in dispute. He has made a categorical assertion in the examination in chief that Jeevan was the father of the defendant. This witness said that he has seen barbed wire fencing around this disputed land for the last 80 - 90 years and that he has also seen a chapper over there since then. However in his cross examination, this witness did not know the khasra number in which the land fell or the date on which he was born. He resides in a village about one furlong from the disputed land. He was categorical that Jeevan was born when DW 4 was about 11 years of age. He stated that he saw the defendant in possession of this land for the first time about 20 years ago.

38. It is noteworthy that though this witness (DW 4) claims to be a contemporary of the father of the defendant, he does not even know his name. He was unable to state the exact particulars or measurement of the land and the variation in the period of occupation was of about 10 years. Furthermore this witness has claimed that he has seen barbed wire fencing and chapper on the land for about 80/90 years. This is not the

case of even the defendant. We have no reason to disagree with the learned trial judge who found this witness completely untrustworthy and his testimony deserving no credence.

39. The appellant has examined DW 5 Khyali Ram. In his deposition given on 22nd September, 1978 stated that the defendant was in possession of the suit property which was alleged to be about 4 - 4 -+ bigha situated in village Okhla and that it was located about 1 -+ furlong from his village. According to this witness, the defendant had built one house with cement sheet roofs and puce walls about 5/6 years ago. The land is alleged to be surrounded by barbed wire fencing and that the defendant tethers is cattle and keeps fodder and cow dung cakes, boonga and bitora. This witness alleged that the defendant was carrying out business of milk and agriculture. This witness also stated that he was seeing the possession of the defendant continuously since he age of his discretion. The testimony of the witness was challenged in his cross examination when he stated that he did not know the ownership of the land. The witness could not deny whether the land was owned by the U.P. Government or not or even the area or the khasra number in the suit property was located. He admitted his association with the defendant and also admitted that the suit property was located at a distance of only about 400 to 500 feet from the canal bridge and was near Okhla The witness could not give the year from which he had been seeing the defendant in possession of the suit property. It is not the appellant's case that he has built a "house" on the land that too only five or six years ago.

40. The deposition of DW 6 Sh. Uday Singh dated 22nd September, 1978 is as vague as the evidence of the other witnesses inasmuch as he does not give any material particulars of the dates of occupation, possession and construction. This witness also stated that the puce structure of one room having cemented sheet roof was built about 5 to 7 years ago and that there was barbed wire fencing around the land. It has been asserted that prior to the puce structure, there was a jhompri and that the defendant was using the land as a gher for fodder and kept boonga and bitora and that he was seeing possession of the defendant since the age of his discretion. However in his cross examination this witness categorically admitted that the canal department is the owner of the land in dispute which is in possession of the defendant. It was also admitted that the canal department was raising construction of a building near the land in dispute. This witness could not deny as to whether the canal department was in possession of the land in dispute prior to 17th August, 1971.

41. The deposition on 27th July, 1978 of the appellant- defendant himself as DW 1 was in similar terms. He stated that his father had died about 50 years ago when he was only a child. The appellant admitted that his mother was alive even on the date of his deposition. It is further noteworthy that in his deposition, the defendant has stated that he derived knowledge of his father's possession from his mother. The mother is stated to be alive and could have been the best evidence in support of the as tertian that the father of the defendant had come into possession of the suit property the date of such hostile occupancy and assertion of title and was not produced in the witness box. The defendant claimed that his father was in possession of the land prior to his coming into possession. It is not disputed that the residential house of the appellant was not located on the suit property and was within Okhla abadi. This witness claimed that he had put chapper on the walls on this land about 50 years age and that about 3/6 years back he put cement roof sheets in place of the chapper. It was alleged that the appellant father had placed barbed wire fencing on this land about 50 - 60 years ago and that the appellant was merely effecting repairs. The appellant claimed to be utilising the land by way of a gher/gitwar and keeping cattle and fodder. The appellant claimed that he has been in possession of this land as owners. In his cross examination, this appellant stated that he was only about 51/52 years old at the time of his deposition. Therefore if this witness was to be believed, then his deposition relates to events which occurred when he was about one year of age. The testimony of this witness to this effect that the walls underneath "chapper were constructed 50 years ago" or that his "father placed barbed wire fencing around the land about 50/60 years ago" cannot be believed as this witness would not have the capacity to discern such events which would have occurred when he was about one year of age.

42. It is noteworthy that neither the appellant nor his witnesses DW 4 to 6 give a single date or material particular on which either the appellant/defendant or his claimed predecessor in interest, that is his father, came into possession of the land. There is no evidence of the date of either installation of the barbed wire or

construction of the walls or putting of the chapper or the cement sheets in terms of the date or documents of any kind supporting purchase of the material etc for installation/construction thereof on record. There is no dispute that DW 4 to 6 are associates/acquaintances of the defendant and there is every probability that they would be interested in ensuring the claimed interest of the defendant.

43. We find that none of the witnesses have claimed that the appellant was carrying any agricultural activity on the suit property in question. Vague averments in this behalf have however been made in their oral deposition. The same is not supported by any mention or details in any documents or even in the revenue records placed on record in the evidence of the appellant/defendant.

44. We also find that there is contradiction and discrepancy in the depositions of the witnesses with regard to the date of the alleged construction and the dates on which it was effected.

45. The appellant-defendant has claimed that it was using the suit property merely for tethering his cattle. The defendant and his witnesses have claimed that he had put fodder for the cattle and also put cow dung cakes on the suit land. It has been asserted that a "gher" and "gitwar" was located on the land.

46. Tethering of cattle on open land would not amount to absolute or exclusive possession. The cattle must be moved for grazing and put under cover at night. Admittedly the land was banjar land and would not provide for grazing of cattle. Furthermore the tethering of cattle would result in availability of cattle dung which may have been utilised for making the dung cakes.

47. So far as the documentary evidence is concerned, strong reliance has been placed on the evidence of DW 3 who has given a deposition as Patwari into Village and has sought to prove the revenue entries in favor of the defendant. The evidence of DW 7, DW 8, DW 9 and DW 10 is to the same effect. It is noteworthy that DW 10 Sh. Tara Chand Kanungo in his cross examination had stated that there were no rooms constructed on the suit property in the year 1961-62 and also had admitted the fact that the tethering of the buffaloes on the suit land was not mentioned in the Khasra girdawaris.

48. No details of crops whatsoever are mentioned in the Khasra girdawari. The defendant had also not set up any case that he was undertaking agriculture or had grown any crops on the land. There is again neither any pleading nor any evidence by the defendant on record in this behalf.

49. The documents produced by the appellant also do not reflect existence of any "gher" or "gitwar". No construction existed according to these till 1971. The same supports the contemporaneous evidence on record that the appellant tried to encroach under the shield of the court order. The appellant also commenced litigation in 1971.

50. We may refer to the contents of Ex D2 to Ex D10 relied upon by the appellant to prove its case of claimed possession. Ex D2 refers to the land as nautahre which means freshly cultivated. The area of the land is shown as 4 bighas 4 biswas and also shows the land as 'banjar jadid'. Ex D2 relating to the year 1935-36 and Ex D3 for the year 1939-40 again reflects the same land as 'nautahre' i.e. freshly cultivated. Ex D4 for the year 1943-44, D5 for the year 1947-48 refer to the land position as being the same. Ex D6 which is the khasra girdawari for the years referring to the kharif crop of 1973 and the rabi crop of 1974 refer to land being under cultivation. This was never the case of the appellant. Ex D7 is a copy of the jamabandi for the year 1960-61 which shows the name of the cultivator as the department of Agra canal through Shahabuddin. The land of khasra No. 68 is shown as nautahre and 4 bighas 4 biswas as banjar qadim. Ex D8 is the khasra girdawari for the kharif crop 1961 to rabi crop 1962 which shows the government is the owner. The cultivator is shown as the department of Agra Canal through Shahabuddin. It is also stated thereon that the land is without revenue as prescribed and owned by the Government. The same position subsists on Ex D9 as already noticed hereinabove, on Ex D10 it is the khasra girdawari for the kharif crop 22nd October, 1969 to rabi crop 16th March, 1973. In this khasra girdawari, the land is shown as "gair mumkin" and a "chabootri gitwar" has been

shown. These documents were produced and proved on record by the appellant-defendant himself and the same established that there was no construction whatsoever prior to Ex D10.

51. Learned counsel appearing for the respondent-plaintiff has drawn our attention to the meaning of the expressions banjar jadid, banjar qadim, gher mumkin and nautare on the aforesaid documents of the revenue authorities which are relied upon by the appellant-respondent. We find that these expressions are defined under the Land Revenue Rules framed under the Punjab Land Revenue Act, 1887 and are defined as under :-

"(a) banjar jadid : land which has remained unsown for four successive harvests ;

(b) banjar qadim : land which has remained unsown for eight successive harvests ;

(c) ghair mumkin : land which has for any reason become unculturable, such as land under roads, buildings, streams canals, tanks, or the like, or land which is barren sand, or ravines.

52. Learned counsel has pointed out that the revenue records relied upon by the appellant-defendant are procured and manipulated inasmuch as the same reflect the land of 4 bighas 4 biswas allegedly under the possession of the appellant to be as 'nautare' for 40 years i.e. to say that the same were under fresh cultivation for 40 years. According to learned counsel for the respondent, the land of barely 4 bighas 4 biswas would not take even one whole day for cultivation. So far as the title of the respondent is concerned, reliance has been placed on Ex P3 which has been proved on record as the jamabandi for the year 1911-12 where the land is stated to be of the government G" Agra canal. The land being entire khasra No. 68 previous khasra No. 108. The respondents have also relied upon a police report lodged on 22nd August, 1971 by the Sub-Divisional Officer of the Okhla Road Works in respect of encroachment by the appellant on a part of the land in field No. 68 of Village Okhla.

53. It is also noteworthy that in the memorandum of appeal filed by the appellant, the appellant himself has taken the following ground :-

"12. The word 'nau tore' appears in relevant Jamabandis right from the year 1935-36 i.e., earliest jamabandis produced by the defendant. The same has been carried forward from year to year. The relevant Khasra No. 68 may have been carved out from the main Khasra as its Min (Part) at a time even earlier to 1935-36 and by the addition of words, 'nau tore' it only came to acquire a description which was repeated from year to year. In any event, carrying forward of this description from year to year may at best amount to a clerical error in as much as the original character ascribed to it was not amended while making later entries in Jamabandis. Even otherwise, the character and description is not the crux of the problem. The learned trial court wrongly assigned too much value to the said words as appearing in Jamabandi. The crux of the matter is whether the land in dispute was in possession of the defendant or his predecessors. The fact of possession stands amply proved by the entry pertaining to possession without payment of rent or license fee to the defendant."

Therefore according to the appellant/defendant itself, the only documentary evidence relied upon by it did not deserve to be given any evidentiary value. The entries which describe the appellant as "cultivator" are rendered worthy as this was not the case of the appellant.

54. None of the revenue records produced by the appellant/defendant show existence of any structure on the suit property till 1971. Furthermore the evidence of the appellant in this behalf itself is not trustworthy and there is no credible evidence of the claimed date on which the construction of the temporary structure took place.

55. In this view of the matter, the findings of the trial judge to the effect that the possession of the defendant was ever furtive or permissive cannot be faulted. The documentary evidence produced by the appellant

defendant himself shows that the owner ship of the land was that of the State.

56. The appellant-defendant has not challenged these entries before any revenue authorities which reflect the name of the real owner. The appellant-defendant therefore has never asserted a hostile title. On the contrary, it is evident from his own documents that he has accepted the ownership of the respondent.

57. In view of the aforestated position in law, we are of the view that it is a fact that the suit land was vacant land and was lying uncultivated. Even as per the documents produced by the appellant i.e. from the jamabandi of 1935-36, the land was uncultivated till 1971. Even if the defendant had been tethering his cattle on the open land or being preparing dung cakes, the same did not amount to absolute or exclusive possession in law. The learned trial judge has hold the nature of such possession to be "furtive" or at the most permissive possession of which nobody took notice".

In view of the evidence produced on record, we have no reason to disagree with the findings of the learned trial judge and hold that the possession of the defendant was because of trespass on land of the respondent. We also hold that there is no evidence on record to establish either the fact that the barbed wire fencing or the construction had been in place for over 30 years prior to the institution of the suit. It is however the admitted position in the evidence of the appellant himself and his witnesses that the permanent structure came up after 1971. Giving the benefit of a couple of years, this would perhaps lend credence to the entry made in the revenue record for 1971 which has been exhibited as Ex D10 on record of the defendant. In view of the position in law, it is also to be seen that even it were held that the appellant/defendant was in possession, then whether such position simplicitor would entitle the appellant to claim ownership by rights of adverse possession. It is settled law that a person claiming ownership by adverse possession has to not only show continuity and hostility of possession but also show that he has asserted a title adverse to the real owner. We find, in the instant case, that the appellant/defendant has neither pleaded nor made any deposition to the effect that he had at any point of time asserted a title on the suit land which was adverse or hostile to them of the real owner. The entire scheme of the appellant rests on the bald and sole plea that he was in possession of the land for over 50 or 60 years. In view of the aforestated pronouncement of the Apex Court in the case of State of Rajasthan v. Harphool Singh by which we are bound, we hold that the defendant has only failed to assent any title hostile to the title of the real owner at any point of time and as such has failed out to make out a case of ownership by adverse possession. It is noteworthy that though the appellant had challenged the ownership of the land by the plaintiff before the learned trial judge, no such issue was raised before us. However it has been held in several pronouncements noticed above that a defendant claiming entitlement to ownership of adverse possession has also to assert as to who the real owner was against whom the defendant was asserting a hostile title. In the instant case there is neither a whisper of an averment in the written statement of the appellant/defendant nor any evidence oral or documentary to the effect that the defendant ever asserted such hostile title. In this view of the matter and in the light of the law laid down by the Apex Court, in our view, the findings of the learned trial judge to the effect that the defendant did not acquire title of adverse possession in respect of the suit property was wholly justified and deserves to be upheld.

58. We have also carefully gone through the judgments cited on behalf of the appellant. There can be no dispute to the propositions of law laid down. We have found that the evidence on behalf of the appellant-defendant is not conclusive of the fact that the appellant was either in absolute exclusive position of the land for 30 years or that there was any assertion of hostile title by the appellant. For this reason, the judgments reported at and

do not further the case of the appellant. We have

also examined the revenue records produced by the appellant and found that they do not support the case set up by the appellant either in his pleadings or in the oral evidence led on his behalf. Furthermore, the appellant himself has challenged the revenue records in the grounds of appeal which we have set out in extenso here-in-above and as such the judgment of the Apex Court reported at 1993(2) UJ (SC) 737 also does not

assist the appellant in any manner what's ever. So far as the testimony of DW 4 is concerned, we have noticed that he is an unreliable witness for reasons other than the wrong name of the appellant's father given by him.

59. Person pleading adverse possession has no equities in his favor. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. In this behalf, reference may be made to the judgment reported at entitled Dr. Mahesh Chand Sharma v. Smt. Raj Kumari Sharma. Para 36 thereof reads as under:-

"36. In this connection, we may emphasise that a person pleading adverse possession has no equities in his favor. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant or by defendants 2 to 4 as the case may be, is rejected."

60. In 1999(3) Ad Delhi 32 entitled Rama Kanta Jain v. M.S. Jain and Ors. it was thus held:-

"15. Furthermore, it is a well established principle of law that a person who puts forward a hostile title to the title of the true owner is not entitled to any equities in his favor inasmuch as he wants to defeat the title of the true owner. It was observed in a case as reported in Mahesh Chand Sharma v. Raj Kumari Sharma and Ors. para 36 In this connection we may emphasise that a person pleading adverse possession has no equities in his favor. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession."

In the instant case we find that the appellant has failed to discharge the burden of proof on him to establish the plea of title by adverse possession.

In view of the foregoing, we find no reason to disagree with the findings of the learned trial judge.

For all the foregoing reasons, we find no merit in the appeal which is hereby dismissed.