

(2025) 11 BOM CK 1763
In the Bombay High Court
Case No : Second Appeal No. 326 Of 1994

Anjanabai Rajaram Gore

APPELLANT

Vs

Manjulabai Baban Gaikwad

RESPONDENT

Date of Decision : 03-11-2025

Acts Referred:

Limitation Act, 1963 — Section 27

Citation : (2025) 11 BOM CK 1763

Hon'ble Judges : Gauri Godse, J

Bench : Single Bench

Advocate : Rahul Motkari, Manasi Pawar, Girish Agrawal , Chitra Darekar

Final Decision : Dismissed

Judgement

Gauri Godse, J

BASIC FACTS:

1. This appeal is preferred by the original defendant to challenge the concurrent judgments and decrees directing the defendant to deliver possession of the suit land. The decree also directs payment of mesne profits to the plaintiff. The suit is filed for possession on the ground that the plaintiff is the owner of the suit property and the defendant is occupying the same unauthorizedly. The second appeal is admitted vide order dated 22nd April 1994 on the question of law framed in ground no.10, which reads as under:

"10. Now, it is well – settled law that if the plea of adverse possession is raised and if the defendant proves that the defendant is in possession for more than 12 years, whether the defendant establishes or fails to establish the plea of adverse possession, it cannot save the starting point and ending point, so far as the limitation is concerned. A.I.R.1963 Mysore 1 is the first and the leading case and the principles laid down therein are not even considered."

PLAINTIFF'S CASE:

2. The suit property is a landed property originally owned by one Baban Gaikwad, i.e. husband of the respondent (plaintiff). Baban Gaikwad died issueless on 13th January 1971, and all his properties, including the suit property, devolved upon the plaintiff. At the relevant time, the plaintiff was a minor aged 17 years. After the death of Baban, the plaintiff's name was recorded in the revenue record. Since the plaintiff was a minor, the properties were looked after by the plaintiff's father as her guardian. The appellant (defendant) is the real sister of the plaintiff. The defendant got her name recorded in the 7/12 extract by a Mutation Entry No.49 dated 7th December 1971. The plaintiff's father expired in 1982, and thereafter, the plaintiff started managing all her properties, including the suit property.

3. On 26th March 1984, the plaintiff learnt for the first time of the revenue record in the name of the respondent. Hence, she applied to delete the respondent's name and prayed to enter her name in the revenue record. It is the plaintiff's contention that on 26th March 1984, she learnt about the Mutation Entry No.49. Hence, on 12th June 1984, the plaintiff filed an application for the correction of the mutation entry. After the necessary inquiry, the defendant's name was deleted vide order dated 12th October 1984, and the plaintiff's name was recorded in the revenue record by Mutation Entry No.182. However, the defendant was in possession of the suit property. Hence, the plaintiff filed the suit for possession on 29th June 1987.

DEFENDANT'S CASE:

The defendant filed a written statement and denied the suit claim. She contended that she had been in possession of the suit land since 1971 as an owner. As per the application

dated 7th December 1971, the defendant's name was entered in the record of rights by mutation entry no. 49, as the land was gifted to her by the plaintiff. She claimed to have spent huge amounts on improvements to the land. In the alternative, the defendant claimed to have perfected her title by way of adverse possession.

FINDINGS BY BOTH COURTS:

4. The trial Court held that the plaintiff is the owner of the suit land, and it was proved that, for the first time on 26th March 1984, she learnt of the revenue record showing the defendant's name as the owner of the suit land. Thus, the trial Court held that the defendant was a trespasser on the suit land and was not entitled to continue in possession. The defendant's contention that she was in possession of the suit land since 1971 as an owner was disbelieved. The defendant's alternative theory of perfection of title by way of adverse possession was held in the negative. The suit was held to be within limitation and thus, the trial Court decreed the suit for possession and mesne profits. The first appellate Court re-examined the evidence on record and confirmed the trial Court's findings and confirmed the decree for possession with a modification by directing

payment of damages .

SUBMISSIONS ON BEHALF OF THE APPELLANT:

5. Learned counsel for the appellant submitted that in 1971, the plaintiff was major, and she executed a gift deed in favour of the defendant pursuant to which her name was entered as owner in the revenue record. To support the defendant's contention that the plaintiff was a major in the year 1971, learned counsel for the appellant relied upon the evidence affidavit of the plaintiff, indicating that her age on the date of filing the evidence affidavit dated 23rd January 1989, was 45 years. Hence, it was contended that in 1971, the plaintiff was major. The 7/12 extract produced on record since 1971 shows that the defendant was in possession of the suit property and she cultivated the same. The defendant's name was for the first time deleted on 12th October 1984 on the ground that the defendant did not have any title document. However, the defendant's possession is established as her name is entered in the occupation column in the revenue records since 1971. Learned counsel for the appellant thus submitted that the defendant has been in continuous and unobstructed possession since 1971, to the knowledge of the plaintiff. Hence, the suit filed on 29th June 1987 was barred by limitation.

6. Learned counsel for the appellant submitted that the question of law is framed by referring to the decision of the full bench of the Mysore High Court in the case of Lingamma Vs. Putte Gowda and Another. [AIR 1963 Mysore 1FB] 1961 0 Supreme(Kar) 96 He, however, submits that the decision is under the old Limitation Act, and it may not be relevant now in view of the subsequent settled legal principles based on the new Act. According to the learned counsel for the appellant, as per Article 65 of the Limitation Act, the limitation for possession of an immovable property based on title is 12 years when the possession of the defendant becomes adverse to the plaintiff.

7. Learned counsel for the appellant submits that there is no dispute that the possession is with the defendant. The plaintiff does not plead the source or date of the defendant's possession. The plaintiff also does not plead that up to a particular date, she was in possession of the suit land. On 6th December 1971, the plaintiff made an application to record the defendant's name in the revenue records, as she had

gifted the suit land to the defendant. Hence, 6th December 1971 would be the relevant date for computing the limitation period, as the defendant's possession became adverse in 1971. Hence, the suit filed beyond 12 years from 1971 is barred by the law of limitation.

8. Learned counsel for the appellant submits that both the Courts failed to take into consideration that the cause of action pleaded by the plaintiff regarding deletion of the defendant's name from the revenue record cannot be the relevant date for computing the period of limitation for seeking possession on the ground of title. Therefore, the suit is liable to be dismissed on the ground that it is

barred by limitation. Learned counsel for the appellant, therefore, submits that the question of law framed in this second appeal be answered in favour of the appellant by holding that the suit is liable to be dismissed as barred by limitation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

9. Learned counsel for the respondent (plaintiff) relies upon paragraphs 2 to 4 of the plaint. He submits that on the date of filing of the suit, the plaintiff was 33 years old. Hence, it is evident that the plaintiff was 17 years old on the date of the death of her husband, and the properties were looked after by her father as her guardian. The defendant has not pleaded or proved that the suit property was gifted to her. The defendant only relies upon Mutation Entry No.49 to contend that she was in continuous possession based on a gift executed by the plaintiff. In a reply filed by the defendant to the notice issued by MSEB, the defendant has claimed ownership. He submits that the defendant has claimed ownership based on the gift by relying upon Mutation Entry No.49. Hence, she would not be entitled to claim perfection of title by way of adverse possession as she has disputed the plaintiff's title. He submits that Mutation Entry No. 49 is cancelled on the ground that the plaintiff never gifted the property to the defendant. It is further held while cancelling Mutation Entry No.49 that the plaintiff's statement was never recorded while effecting Mutation Entry No.49.

10. To support his submissions, learned counsel for the plaintiff relied upon the decision in the case of Karnataka Board of Wakf Versus Government of India and Others (2004) 10 Supreme Court cases 779. He submits that the Hon'ble Apex Court held that adverse possession is a hostile possession by clearly asserting a hostile title in denial of the title of the true owner. It is held that the concept of adverse possession contemplates possession, that is, peaceful, open and continuous. The possession must be adequate in quantity and publicity and in extent to show that the possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be an actual, visible, exclusive, hostile, and continued over the statutory period. It is further held that a person pleading an adverse possession has no equities in his favour. 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. It is thus held that the pleas on title and adverse possession are mutually inconsistent, and the latter does not begin to operate until the former is renounced.

11. Learned counsel for the plaintiff, therefore, submits that in the facts of the present case, when the defendant claims to be in possession as the owner of the suit property based on the gift as recorded in Mutation Entry No.49, there is no question of the defendant being in adverse possession. Hence, in a suit filed based on title, the starting point of limitation would be the date of knowledge of the plaintiff regarding the defendant's possession as an owner.

12. Learned counsel for the plaintiff relied upon the decision of the Hon'ble Apex Court in the case of Neelam Gupta and Ors. V. Rajendra Kumar Gupta and Anr.

AIROnline 2024 SC 678 He submits that the Hon'ble Apex Court held that the defendant who claims to have perfected title by adverse possession and fails to establish "animum possidendi" under hostile colour and fails to controvert the adverse effect on the plaintiff's title, the requirements to constitute adverse possession were not established by the defendant. He thus submits that the proof of adverse possession as contemplated under Article 65 of the Limitation Act would be required to be considered in reference to the contentions raised by the defendant. He submits that in the present case, the defendant claims to be in possession as owner pursuant to the gift as recorded in Mutation Entry No.49. Hence, the possession of the defendant cannot be said to be adverse to the plaintiff since 1971 for the purpose of computing the period of limitation for seeking possession on the ground of title.

13. On a similar proposition regarding the plea of adverse possession and the computation of the period of limitation under Article 65 of the Limitation Act, learned counsel for the plaintiff relied upon the following decisions:

- (i) M. Radhesyam Lal V/s V. Sandhya & Anr. Etc. 2024(3) CCC 001 (S.C.)
- (ii) Ghewarchand & Others V/s Mahendra Singh & Others (2018) 10 SCC 588
- (iii) Dharampal (Dead) Through Legal Representatives V/s Punjab Wakf Board & Others (2018) 11 SCC 449
- (iv) Krishnamurthy S. Setlur V/s O. V. Narasimha Setty & Others (2007) 3 SCC 569
- (v) Saroop Singh V/s Banto & Others (2005) 8 SCC 330

14. Learned counsel for the plaintiff also relied upon the decision of the Hon'ble Apex Court in the case of Prem Nath Khanna and Ors. v. Narinder Nath Kapoor (Dead) Through Lrs and Ors. AIR 2016 Supreme Court 1433 to support his submissions that mere mutation entry would not confer any title, and it cannot be a ground to claim to have acquired title over the suit property by pleading adverse possession. He submits that when the defendant cannot claim to have acquired title over the suit property by pleading adverse possession, the question of computation of the limitation period from 1971 would not arise in the present case. He thus submits that the suit is well within the limitation based on the cause of action of 26th March 1984 pleaded by the plaintiff.

ANALYSIS AND FINDINGS:

15. To examine the rival submissions made on behalf of the parties, I have carefully perused the record of the second appeal. There is no dispute that the suit property was originally owned by the plaintiff's husband. There is also no dispute that on the death of plaintiff's husband, all his properties, including the suit property, devolved upon the plaintiff as his only heir and legal representative.

16. Both the learned counsels for the parties argued on the age of the plaintiff on the date when the plaintiff's name was entered into the revenue record on 13th

January 1971. For deciding the question of law framed in this second appeal, the plaintiff's age on 13th January 1971 would be irrelevant. The issue to be decided in the present second appeal is whether the suit filed based on title is within the limitation under Article 65 of the Limitation Act. The plaintiff pleaded that she, for the first time, learnt about Mutation Entry No.49 on 26th March 1984. This contention is supported by the order passed by the learned Tahsildar on 12th October 1984, deleting the defendant's name and entering the plaintiff's name in the revenue record. While cancelling the mutation entry in the name of the defendant, it was held that the plaintiff's statement was never recorded. There was no proof of any gift by the plaintiff in favour of the defendant. The defendant challenged the order for effecting Mutation Entry No.182 in the name of the plaintiff. However, admittedly, the appeal was dismissed. Hence, the deletion of the defendant's name from the revenue record stands confirmed.

17. In these circumstances, the plaintiff claimed the cause of action as of 26th March 1984, to seek possession from the defendant. In response to the plaintiff's claim, the defendant contended that she has been in unobstructed possession since 1971. For the purpose of deciding whether the defendant's possession is adverse to the plaintiff, it is necessary to examine the defendant's plea and the source of possession. The defendant has contended that she was put in possession of the suit property by the plaintiff by way of gift, which is recorded in Mutation Entry No.49. Thus, the defendant has raised inconsistent pleas of being in possession as owner pursuant to the gift executed by the plaintiff and also perfecting title by way of adverse possession.

18. The defendant has not produced any document of gift to support her contention of ownership. At the same time, the defendant has also pleaded perfection of title by way of adverse possession. It is a well-established legal principle that for seeking perfection of title by way of adverse possession, the defendant has to plead and prove unobstructed and peaceful possession for more than 12 years adverse to the plaintiff, which means the defendant had to admit that the plaintiff is the true owner and the defendant's possession is adverse to the plaintiff. However, in the present case, the defendant claims ownership by way of gift. But the gift is not proved. Hence, even according to the defendant's contention, the defendant's possession cannot be termed as adverse to the true owner.

19. So far as the plaintiff's knowledge of Mutation Entry No.49 is concerned, the plaintiff's contention that she learnt about the same on 26th March 1984 is supported by the order passed by the learned Tahsildar on 12th June 1984, which stands confirmed. The learned Tahsildar ordered deletion of the respondent's name and entering the name of the plaintiff on the ground that there was no title document in the name of the respondent.

20. There is no material on record to indicate that the plaintiff was aware of Mutation Entry No.49. Based on the evidence on record, both courts accepted the plaintiff's contention that on 26th March 1984, she learnt that the defendant's

name was entered in the revenue record and pursuant to the application filed by her, defendant's name was deleted and the plaintiff's name was entered. The plaintiff thus pleaded that the defendant was not entitled to retain the possession and she was in unauthorised possession. There is no material on record to show that the defendant's possession was adverse to the plaintiff. The defendant failed to prove her plea of perfection of title by way of adverse possession. Hence, both the Courts have rightly accepted the cause of action pleaded by the plaintiff for seeking possession on the ground of title and held the suit to be within limitation.

LEGAL PRINCIPLES:

21. The Hon'ble Apex Court, in the decision of the Karnataka Board Wakf, explained the essentials of adverse possession. It is held that in the eye of the law, the owner would be deemed to be in possession of the property, so long as there is no intrusion. It is held that the pleas on title and adverse possession are mutually inconsistent, and the latter does not begin to operate until the former is renounced. Adverse possession is a hostile possession by clearly asserting a hostile title in denial of the title of the true owner. It is thus held that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", which means peaceful, open and continuous. The Hon'ble Apex Court, thus, explained the plea of adverse possession in the following words in paragraph 11:

"..... Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. 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."

emphasis applied by me

22. The Hon'ble Apex Court in the case of Prem Nath Khanna held that a party cannot claim to have acquired title over the suit property by pleading adverse possession only in the absence of the name of the opponent in the revenue records, and the burden lies heavily on that person alleging adverse possession to prove that the possession has become adverse. Mere possession for a long time does not make it adverse possession.

23. The Hon'ble Apex Court in the case of Neelam Gupta held that in terms of Article 65, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but would commence from the date the defendant's possession becomes adverse. The legal principles settled by the Hon'ble Apex Court on the point of adverse possession as contemplated under Article 65 of the Limitation Act are based on the legal principles settled by the Hon'ble Apex Court in the case of Saroop Singh. In the decision of Saroop

Singh, the Hon'ble Apex Court compared the relevant provisions of the Limitation Act, 1908 and Article 65 of the Limitation Act, 1963 and held that when the plaintiff had proved the title, it was for the defendant to prove the acquisition of the title by adverse possession. It was further held in the facts of that case that when the defendant did not raise any plea of adverse possession, the suit was not barred by limitation. Thus, it was held that, under Article 65, the limitation period does not commence from the date on which the plaintiff's right of ownership arises, but from the date on which the defendant's possession becomes adverse. It is further held that "animus possidendi" is one of the ingredients of adverse possession; unless the person possessing the land has a requisite animus, the period for prescription does not commence.

24. The Hon'ble Apex Court in the case of M. Radheshyamlal held that when a party claims adverse possession, he must know who the actual owner of the property is, and he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge.

25. The Hon'ble Apex Court in the case of Ghewarchand held that the plaintiffs were justified in filing a suit for declaration and possession within twelve years of noticing the assertion of the right, title and interest over the suit property by the defendants. It was, therefore, held that the suit was within limitation by applying Article 65 of the Limitation Act.

26. In the decision of Krishnamurthy Setlur, the Hon'ble Apex Court held that Section 27 of the Limitation Act, 1963 operates to extinguish the right to property of a person who does not sue for its possession within the time allowed by law. It is further held that the right extinguished is the right which the lawful owner has and against whom a claim for adverse possession is made; therefore, the plaintiff who makes a claim for adverse possession has to plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession.

27. Learned counsel for the respondent has also relied upon the decision in the case of Dharampal. This decision is discussed by the three-judge bench of the Hon'ble Apex Court in the case of Ravinder Kaur Grewal v. Manjit Kaur (2019) 8 SCC 729. It is held that in Dharampal the Court found that the averments in the counterclaim by the defendant do not constitute a plea of adverse possession, as the point of start of adverse possession was not pleaded, and the Wakf Board had filed a suit in the year 1971, as such perfecting title by adverse possession did not arise. It is held that, without any discussion on the aspect of whether the plaintiff can take the plea of adverse possession, the Court held that, in the counterclaim, the defendant cannot raise this plea of adverse possession. In the decision of Ravinder Kaur Grewal, the Apex Court held that there is absolutely no bar for the perfection of title by way of adverse possession, whether a person is suing as the plaintiff or being sued as a defendant. Hence, it is held that the law laid down in Dharampal cannot be said to be laying down the correct law.

28. In the decision of down in the case Ravinder Kaur Grewal, the law laid of Krishnamurthy Setlur is also considered. On the aspect of the limitation period under Article 65 of the Limitation Act, on the right to sue for possession, it is held as under:

"51. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation in Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff."

"56. There is the acquisition of title in favour of the plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on "title" as envisaged in the opening part under Article 65 of the Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonymous with adverse possession. " "60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded . Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

29. Thus, the legal principles on the point of limitation for filing a suit for possession based on the title to the suit property can be summarised as under:

a) In terms of Article 65, the starting point of limitation does not commence from

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

b) Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise, the right to recover possession based on the title is absolute, irrespective of limitation, in the absence of adverse possession by the defendant for 12 years.

c) The owner will be justified in filing a suit for declaration and possession by applying Article 65 of the Limitation Act within twelve years of noticing the assertion of the right, title and interest over the suit property by the defendant.

d) When the plaintiff proves the title, it is for the defendant to prove the acquisition of the title by adverse possession.

e) When a person is trying to defeat the right of the true owner, it is obligatory on the part of that person to clearly plead and share all the facts necessary to prove the plea of adverse possession.

f) Once the title of the plaintiff over the suit property was established and there was no starting point of the possession being adverse, the suit cannot be held to be barred by the law of limitation.

g) "Animus Possidendi" is one of the ingredients of adverse possession; unless the person possessing the land has a requisite animus, the period for prescription does not commence.

h) Animus possidendi under the hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner;

the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time.

i) A person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, (e) his possession was open and undisturbed, and he must plead and prove that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge.

j) A person pleading adverse possession has no equities in his favour. 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.

CONCLUSIONS:

30. Thus, from the legal principles discussed above, it is clear that for deciding the starting point of limitation, the issue of the defendant's possession becoming adverse to the

plaintiff would be relevant. In the facts of the present case, the suit is filed on title. There is no dispute that the plaintiff's husband was the exclusive owner of the suit property, and after his death, the suit property devolved upon the plaintiff as the sole heir of her husband. The defendant is the plaintiff's real sister, who has claimed to be in possession as the owner based on a gift by the plaintiff in her favour; however, she could not prove the gift or her ownership. The defendant has, in the alternative, vaguely claimed to have perfected title by way of adverse possession. But, she has not pleaded and proved the relevant ingredients for establishing perfection of title by way of adverse possession.

31. As discussed in the preceding paragraphs, it is a well-established legal principle that under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise, the right to recover possession based on the title is absolute, irrespective of limitation, in the absence of adverse possession by the defendant for 12 years.

32. There is no material on record to show that the defendant's possession was adverse to the plaintiff. Hence, as contemplated under Article 65 of the Limitation Act, there was no starting point for computing the period of limitation of 12 years. However, the plaintiff establishes the relevant date as 26th March 1984, the date on which the plaintiff knew that the defendant was claiming possession as an owner. The defendant failed to prove her plea of perfection of title by way of adverse possession. Thus, the defendant is in unauthorised possession and thus is a trespasser. Hence, both the Courts have rightly held that the suit for possession filed on 29th June 1987 based on the title is well within the limitation. Hence, the question of law is accordingly answered in favour of the respondent. In view of the findings of fact recorded by both the Courts, the impugned judgments and decrees would not require any interference by this Court.

33. Hence, for the reasons recorded above, the Second Appeal is dismissed.