

(2009) 11 GUJ CK 0033
In the Gujarat High Court

Case No : Appeal from Order No. 374 of 2009 with Civil Application No. 11454 of 2009 in Appeal From Order No. 374 of 2009

Dharmeshkumar Chandulal Purohit

APPELLANT

Vs

Ghanshyamdas Bachomal Rangwani and Others

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r), Order 43 Rule 1(r), 151
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 27
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 20

Citation : (2010) 1 GLH 160

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Mihir Joshi, with Mr. Arpit P. Patel, for the Appellant; J.R. Nanavaty with Mr. Sunil B. Parikh, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The appellant - original plaintiff has filed this Appeal From Order under Order 43, Rule 1(r) of the CPC challenging the order dated 12.10.2009 passed by the 3rd Additional Senior Civil Judge, Ahmedabad (Rural), below an application Exh. 5 in Special Civil Suit No. 86 of 2008, whereby application Exh. 5 filed by the appellant has been rejected and the status-quo granted earlier has been ordered to be vacated. The learned Trial Judge has, however, granted stay against the operation and implementation of the order till 30.10.2009 so as to enable the appellant to approach this Court. On 30.10.2009, this Court has passed an order observing that for paucity of time, the matter cannot be taken up and hence, stay granted by the trial Court against implementation of the order is extended upto 05.11.2009. Today, the matter is heard at length. Mr. Mihir Joshi, learned Senior Counsel appearing with Mr. Arpit P. Patel for the appellant-original plaintiff has made his submissions at great length. Similarly,

Mr. J.R. Nanavaty, learned Senior Counsel appearing with Mr. Sunil B. Parikh for the respondents - original defendants has also made his submissions.

2. The case of the appellant is that the family business was run by the family of the respondent No. 1 in the name of three firms, namely, M/s. Shakti Bricks Works, Amar Bricks Works and Bhagyoday Bricks Works. The father of the appellant was inducted as partner by oral Partnership in M/s. Shakti Bricks Works as working partner and had actively participated in the business of the firm. The suit land was purchased in the name of Shakti Bricks Works by executing three different Deeds in 1975. The business of the partnership firm was closed down in 1984.

3. It is the case of the appellant that the accounts of the partnership firm and the business were settled and by virtue of settlement, the suit land was given to Shri Chandulal Purohit, the father of the appellant in 1984. since then the appellant has occupied and possess the suit land and there is consistently uninterrupted possession of the suit land, within the knowledge of the respondents. The appellant has paid taxes, revenue charges, made a construction over the suit land and paid the electricity bills. The appellant's name reflects as occupier of the suit land in electricity bills as well as Government records. The respondent No. 1 has admitted in Special Civil Application No. 14152 of 2007 that the possession of the suit land is with the appellant. The Panchnama drawn in the proceedings of Special Civil Suit No. 583 of 2001 and 84 of 2002 filed by the appellant also reflects that the possession of the suit land is with the appellant. The appellant had challenged the order of competent authority declaring the land excess and also filed two suits to protect the possession of the suit land. In the said proceedings, there is clear averment that the appellant is in possession and use of the suit land. The photographs produced also prove the use of the suit land by the appellant. As such, the defendants had not taken any action or objected to use and possession of the suit land by appellant, being aware and accepted that the suit land is handed over to the appellant against the settlement. There is no contrary evidence to show the possession, use or any action taken by the respondent from 1984 till 2007.

4. It is also the case of the appellant that the respondents have not produced any evidence to show the possession, use or any attempt to protect the suit land. There is no explanation by the respondent, about any action taken or any attempt to pay tax or revenue dues for the period from 1984 till the Special Civil Application No. 8670 of 2001 and allied matters are heard in the year 2007.

5. To show that the possession of the suit land is with the appellant, the appellant had filed Appeal No. 10 of 1999 challenging the suit land declared as excess land. The respondents have not taken any action after 1994 and not challenged the order declaring the suit land excess. In 1999, ULC Repeal Act came into force. The appellant filed Regular Civil Suit No. 538 of 2001 against the State and other persons who attempted to take possession as allottees as a result of ULC proceedings, for protection of the possession and challenging the

action of the State Government. In these proceedings, panchnama was drawn which shows that the suit land is occupied by the appellant. The suit was dismissed for default. Thereafter, restoration application was filed which was also rejected and Special Civil Application filed by the appellant against the said rejection order is pending before this Court.

6. The respondent filed Special Civil Application No. 8670 of 2001 in the year 2001 challenging the ULC proceedings contending that notices u/s 10 were served to stranger, namely, Hariram Tolaram and challenged the validity of the proceedings. Regular Civil Suit No. 84 of 2001 was filed by the appellant challenging the order dated 25.10.1993 passed by the competent authority under ULC Proceedings, for protection of possession of the suit land. It contained the averments of appellant's possession of the suit land since the year 1984.

7. It is also the case of the appellant that the three petitions pertaining to ULC proceedings were disposed of by this Court on 29.03.2007. The petition of the respondent No. 1 was allowed and the appellant's petition as well as the petition filed by one of the allottees were dismissed. The said proceedings were pertaining to ULC proceedings. There was no issue with regard to possession as well as inter-se rights between the parties. The appellant challenged the order dated 29.03.2007 passed by the learned Single Judge of this Court in Letters Patent Appeal before the Division Bench. The said Letters Patent Appeal was also disposed of by making an observation that in the proceedings under Article 226, appreciation of evidence is not permissible and liberty was given to the appellant to resort to the remedy under the Civil law.

8. Immediately after passing of the order in the three writ petitions on 29.03.2007, the respondent No. 1 executed Sale Deed in favour of respondent Nos. 2 to 6 pending the Letters Patent Appeal filed by the appellant against the order of the learned Single Judge. In the Sale Deed, there is an incorrect statement that the possession was with the respondent No. 1 and it was handed over to the respondent Nos. 2 to 6. After execution of the sale deed, the respondent No. 1 applied to the Collector for possession of the suit land from the appellant. Thereafter, the respondent No. 1 filed another petition being Special Civil Application No. 14152 of 2007 seeking direction against the Govt, authorities to take possession from the appellant which indicates an admission on the part of the respondent No. 1 that the appellant is in possession of the suit land. The said petition came to be withdrawn by the respondent No. 1. During the pendency of Special Civil Application No. 14152 of 2007, the respondent No. 1 filed Misc. Civil Application No. 1999 of 2008 and obtained the order of status-quo qua the suit land and that too, without joining the appellant as party-respondent, though it was well within the knowledge of the respondent No. 1 that the appellant is seriously contesting the issue. The respondent No. 1 amended the Misc. Civil Application after the appellant filed an application for joining as party in the Misc. Civil Application.

9. Since the Division Bench in the Letters Patent Appeal permitted the appellant

to resort to civil proceedings, the appellant filed Special Civil Suit No. 86 of 2008 on the ground of right, title and interest as being vested in favour of the appellant due to consistent and uninterpreted occupation, possession and use of the suit land since the year 1984 within the knowledge of the respondent No. 1, by adverse possession, in which the source of possession was shown that the land is given to the father of the appellant, as a result of the settlement of the partnership firm M/s. Shakti Bricks Works. In this suit, the appellant preferred injunction application Exh. 5 which came to be rejected and it is this order which is under challenge in the present Appeal From Order.

10. Mr. Mihir Joshi, learned Senior Counsel appearing with Mr. Arpit P. Patel for the appellant - original plaintiff has submitted that for the purpose of deciding the issue arising on the basis of possession and adverse possession, at the time of deciding application Exh. 5, the source cannot be the base but the actual physical possession reflecting on record as on the date of filing suit would be the relevant factor. The source of deriving right by way of adverse possession is the matter of complete scrutiny of evidence, which cannot be decided or considered as base, at the time of deciding application Exh. 5. He has, therefore, submitted that the learned Trial Judge has committed an error in law in rejecting the application Exh. 5 on the ground that there is no evidence of source. He has further submitted that the suit is based on the consistent possession and unobstructed use thereof by the appellant - plaintiff within the knowledge of the respondents - defendants and in that case, for the purpose of deciding the issue at the stage of application Exh. 5, the criteria would be who holds the possession of the land and none else. He has further submitted that in the present case, the respondent No. 1 has himself admitted the possession of the suit land with the appellant even prior to filing "the suit. Hence, no other evidence is required to prove the possession of the appellant. The respondent No. 1 has not produced any evidence showing that he paid or attempted to pay taxes and revenue charges nor he has given any explanation as to why from 1984 till 2001, he remained silent and did not object to the possession and use of the suit land by the appellant. Even no proceedings or action to protect the suit land had been taken by the respondent No. 1 till the year 2001. Even in the year 2001, the respondents filed Special Civil Application No. 8670 of 2001 for getting benefit after repeal of the ULC Act. As against that, the appellant has taken all actions to protect the land and borne the expenses and filed proceedings challenging the order of the Competent Authority declaring the land excess and also filed suit against the Government and third parties to protect the possession of the suit land. He has, therefore, submitted that there is no reason for the learned Trial Judge to disbelieve and/or doubt the plea regarding the possession of the suit land of the appellant. He has further submitted that for establishing the possession of the suit land by the appellant, several documentary evidence were produced along with the suit. These documents, inter alia, include Exh. 3/38, application for floating the Scheme for constituting the Society, photograph Exh. 3/39, contents of Regular Civil Suit No. 538 of 2001 and 84 of 2002 as well as

Special Civil Application No. 14152 of 2008, panchnama drawn by the Court Commissioner in the proceedings of Regular Civil Suit No. 538 of 2001 and 84 of 2002 (3/39). the written arguments and the contents of the rejoinder filed by the appellant, the documents produced along with the list vide Exh. 76/1 to 76/10 which includes the electricity bills, tax bills, Court Commissioner Report and other Govt, communications where also the appellant is shown as occupier of the suit land. Mr. Joshi has further submitted that the evidence produced before the Court clearly indicates that the construction of the appellant was in the grantable area of land under ULC Act. The said construction is in the area of land of 1,000 Sq. Yds. and it was not objected since 1984 by the respondent No. 1 and had not claimed any right over the same. Even for the rest of the land of the said Survey Number, the respondent No. 1 had not taken any action against the ULC proceedings till the Repeal Act came into force. This itself shows that the suit land was given to the appellant and the appellant is holding the possession of the suit land.

11. Mr. Joshi has further submitted that the sale deed executed by the respondent No. 1 in favour of respondent No. 2 to 6 is null and void and it is only with a view to create complications. The contents of the sale deed with regard to possession and payment of taxes are absolutely false. In absence of the exchange of actual consideration and the possession, sale deeds is not legally tenable. Clause 21 of the Sale Deed shows two persons appointed as Power of Attorney who have signed the Sale Deed. The Power of Attorney Jivatram A. appears to be a brother of the respondent No. 5; the Power of Attorney Arjun Gangaram is son of respondent No. 4; the respondent Nos. 1 & 2 also appear to be closely related to the respondent Nos. 2 & 3. The respondent No. 1 has committed breach of the status-quo order by getting the entries made in the revenue record.

12. Mr. Joshi has further submitted that the respondents moved review application before this Court suppressing the fact of filing Special Civil Application No. 14152 of 2007 and attempted to get ex-parte order, without joining the appellant as party, though they were aware about the appellant contesting the issue seriously. He has, therefore, submitted that considering all these aspects and conduct of the respondents, the plea of an apprehension shown by the appellant should not have been discarded by the learned Trial Judge.

13. Mr. Joshi has further submitted that the electricity bills, municipal tax bills and the Govt, communications show the appellant as occupier of the land. The appeal filed by the appellant against the ULC order, Regular Civil Suit No. 538 of 2001, Regular Civil Suit No. 84 of 2002 as well as the applications submitted by the appellant are the documents which consistently support the claim of the appellant that the appellant is in possession of the suit land since 1984. The respondents have not disputed the possession of the suit land by the appellant, except alleging to be encroacher, that too, the respondents adopted such stand in the year 2007 and never before. Once the respondent No. 1 himself has

admitted the possession of the appellant and the respondent No. 1 is not able to produce any evidence occupying, possessing or using the suit land, after the year 1984, at any time and is not able to prove his possession, the presumption in favour of the appellant about the possession as pleaded is bound to follow.

14. Mr. Joshi has further submitted that the learned Trial Judge has not appreciated and considered the difference between the title and the possession. It is the basic case of the appellant based on possession and the title is claimed on the ground of adverse possession due to holding possession and use of the suit land for more than 12 years consistently without any interruption and within the knowledge of the respondent No. 1. He has, therefore, submitted that the learned Trial Judge should have accepted the title of the appellant by way of adverse possession as a consequence of holding the possession and use of the suit land and not on the basis of the source of entry. He has further submitted that the concept of ownership, possession and deriving the title by adverse possession are different. Merely because there were no documents about the partnership, it cannot be presumed that the appellant was not holding the possession or interest in the suit land, more particularly, in absence of contrary evidence with regard to the possession of the suit land. Mr. Joshi has further submitted that the observation made by this Court in the judgment and order passed in Special Civil Application No. 8670 of 2001 and other allied matters were with regard to the ULC proceedings and not based on the evidence on record and the present suit as well as on the point of right derived by the appellant by way of adverse possession. If the interim relief as prayed for is granted in favour of the appellant, it would not cause any prejudice to the respondents and they would not suffer any irreparable loss. The respondent No. 1 was declared as the owner of the land in question by this Court in the proceedings challenging the ULC proceedings and they are quite different then the nature and issue of the present suit proceedings. The respondent Nos. 2 to 6 cannot be considered as persons vested with the right on the basis of the alleged sale deed. Since the appellant holds actual physical possession and is having right and interest in the suit land by way of adverse possession, the appellant is entitled for the injunction as prayed for till the suit is decided. He has, therefore, submitted that the impugned order passed by the learned Trial Judge on 12.10.2009 below an application Exh. 5 in Special Civil Suit No. 86 of 2008 deserves to be quashed and set aside and the same should have been allowed.

15. Mr. Joshi, learned Senior Advocate in support of the submission that the appellant is claiming the title to the property on the principle of adverse possession, relied upon the decisions of the Hon''ble Apex Court in the case of 1996 I AD 1002 (SC) wherein while deciding the application of the applicant for restraining the defendants from interdicting his possession pending the suit for declaration of title simpliciter, held that in a suit for declaration of title simpliciter, the Court has power under Order 39, Rules 1 and 2 or even in Section 151 to grant ad interim injunction pending suit. In the case before the Hon''ble Apex Court, admittedly the appellant was in possession of the property. In view of his

apprehension that there was a threat to his possession, his only remedy would be whether he will be entitled to the declaration sought for. When he sought to protect his possession, if he was otherwise entitled according to law, necessarily the Court had to consider whether protection was to be given to him pending the suit. Merely because there was no dispute as regards the corporeal right to the property, it does not necessarily follow that he was not entitled to avail of the remedy under Order 39, Rules 1 and 2 CPC. Even otherwise also, u/s 151 CPC, the Court has got inherent power to protect the rights of the parties pending the suit. Therefore, the application under Order 39, Rules 1 and 2 is maintainable.

16. Mr. Joshi further relied upon decision of the Hon''ble Apex Court in the case of Balkrishan v. Satyaprakash and Ors., reported in (2001) 2 SCC 498 wherein it is held that a person claiming title by adverse possession has to prove three nee - nec vi, nec clam and nee precario. In other words, he must show that his possession is adequate in continuity, in publicity and in extent. The Court further held that in spite of the order of the Tahsildar against the appellant which was not acted upon, nor executed, the appellant continued in possession of the suit land, and, therefore, the continuity of his possession of the suit land was neither interrupted nor lost. Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession.

17. Mr. Joshi, learned Advocate in respect of his submission that the appellant is in settled possession, relies on the decision of the Hon''ble the Apex Court in case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, wherein it is held that the "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt of concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Supreme Court in Puran Singh and Others Vs. The State of Punjab, , has laid down tests which may be adopted as a working rule for determining the attributes of "settled possession". The Court further observed that :-

"In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court. The person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. The law will come to the aid of a person in peaceful and settled possession by injunctioning even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of

unreasonable force. "

18. Mr. J.R. Nanavaty, learned Senior Counsel appearing with Mr. Sunil B. Parikh for the respondents on caveat has submitted that the respondent No. 1 is the owner and occupier of land bearing Survey No. 152/A and 152/B situated at Mouje Naroda, Ahmedabad city which was originally in occupation and ownership of one M/s. Shakti Bricks Works, a partnership firm, who initially had six partners and the respondent No. 1 was one of them. On coming into force of the Urban Land Ceiling Act, one of the partners, namely, Mohanlal K. Sukhwani filled up his form under Rule 6 (1) of the ULC Act on behalf of M/s. Shakti Bricks Works. Thereafter, the said partnership firm was dissolved on 03.03.1980 by dissolution agreement under which the business of the partnership firm remained in the hands of the respondent No. 1 and another person. This fact was reduced in writing vide dissolution deed dated 03.03.1980. Vide further dissolution agreement dated 11.05.2001, the business of the firm was given to the respondent No. 1 and out of two partners, one of the partners had left the firm and, therefore, the partnership came to an end and the respondent No. 1 is having exclusive charge of the said property, business etc. of the partnership firm. Mr. Nanavaty has further submitted that Shri Sukhwani died on 27.12.1999 which fact was also brought to the notice of the competent authority who was to decide form filed u/s 6 of the ULC Act. The respondent No. 1 has also preferred an application u/s 20 of the Act for granting exemption from the calculation of excess vacant land. Despite the fact that the said application was pending before the competent authority, without giving any opportunity of hearing to the respondent No. 1 and issuing notice to a totally stranger, namely, Mr. Tolaram Hariram, the competent authority passed an order dated 25.10.1993 declaring 20,407.62 Sq. Mts. of land as excess vacant land. The respondent No. 1, therefore, challenged the said order of the competent authority in Special Civil Application No. 8670 of 2001 before this Court seeking quashing and setting aside of the said order dated 25.10.1993. The respondent No. 1 has also raised contention in the said petition that the procedure laid down u/s 10 (1), 10 (3) and 10 (5) of the ULC Act was not followed by the competent authority and, therefore, on that ground also, the order dated 25.10.1993 deserves to be quashed and set aside.

19. Mr. Nanavaty has further submitted that the appellant claiming himself to be the owner and occupier of the disputed land and also a partner of the firm filed Civil Application in the above Special Civil Application No. 8670 of 2001 for being joined as party-respondent. The appellant has thereafter preferred Special Civil Application No. 5963 of 2002. inter alia, praying for quashing and setting aside of the order dated 25.10.1993 and to declare the appellant to be in the actual and physical possession of the said land. One more petition was filed before this Court being Special Civil Application No. 452 of 2001 by the persons who claimed allotment of the disputed land in pursuance of the order dated 25.10.1993 u/s 23 of the Act. All the three petitions were heard together and this Court vide its order dated 29.03.2007 allowed the Special Civil Application preferred by the

respondent No. 1 and quashed and set aside the order dated 25.10.1993 passed by the competent authority. The Court has also dismissed Special Civil Application No. 5963 of 2002 preferred by the appellant and held therein that the appellant had completely failed to produce even single piece of evidence or document to show his ownership on the said land and to show that he was a partner of the said partnership firm. This Court further held that since there was no basis or proof of the ownership of the appellant on the said land, the appellant has no right, title or interest and, therefore, the said Special Civil Application preferred by the appellant was dismissed. Mr. Nanavaty has further submitted that this Court declared the respondent No. 1 as the owner and possessor of the land and by quashing and setting aside the order dated 25.10.1993, directed the State authorities to hand over the vacant and peaceful possession of the said land to the respondent No. 1 vacating the appellant from the said land who has illegally encroached on the said land.

20. Mr. Nanavaty has further submitted that the appellant, all throughout was claiming the possession on the basis of the fact that his father was a partner in the partnership firm and on dissolution of the partnership firm, the disputed property was handed over to him. Since this plea was not accepted in any of the earlier proceedings, in the present proceedings, he has now taken a new plea that he was in possession by virtue of adverse possession and since 1984, the possession of the disputed property was with him. This plea of the appellant cannot be accepted on the well settled principles of law. For this purpose, he relied on the decision of the Apex Court in the case of Achal Reddi v. Ramakrishna Reddiar and others, AIR 1990 SC 553 wherein it is held that the principle of 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 a contract, it cannot be adverse.

21. Mr. Nanavaty further submitted that the appellant was not in possession of the disputed land and in any case, he cannot be said to be in settled possession of the disputed land. On the contrary, documentary evidence suggests that the respondent No. 1 is in possession of the disputed land. For this purpose, the respondent No. 1 in his petition being Special Civil Application No. 8670 of 2001 filed before this Court has specifically made an averment that he is in possession of the land in question and since there was no notice regarding the proceedings for the land, the alleged paper possession could not have been taken by the authorities under the ULC Act. This Court has not accepted the plea of the appellant in earlier proceedings that the father of the appellant has received the possession of the disputed land in the settlement of accounts on dissolution of the partnership firm in 1984. Even in Letters Patent Appeal, the Division Bench has shown the indulgence only to the extent that the appellant should resort to civil proceedings establishing his title over the property. Despite this fact, he has filed the suit claiming declaration from the Civil Court that he is the absolute owner and in exclusive possession of the disputed land. Knowing fully well that the respondent No. 1 has sold the property to the respondent Nos. 2 to 6 and

registered sale deed has been executed, no relief for cancellation of sale deed has been prayed for by the appellant. Even with regard to the appellant's claim regarding settled possession, Mr. Nanavaty has submitted that by virtue of the provisions of ULC Act, the State Government was believed to be in possession of the disputed land till 2007. During this period, he cannot be said to be in possession of the land and the said period cannot be counted for considering the settled possession. In this connection, he relied on the decision of the Apex Court in the case of Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others, .

22. Considering this factual background and the settled legal position, Mr. Nanavaty has submitted that the learned Trial Judge has rightly refused the interim relief and no interference is called for in the impugned order passed by the learned Trial Judge.

23. Having heard learned Advocates appearing for the parties and having considered their rival submissions as well as the impugned order in light of the relevant facts placed before the Court as well as the authorities cited before the Court, the Court is of the view that the appellant cannot claim the title on the basis of an adverse possession in view of the binding decision of the Apex Court in the case of Achal Reddi v. Ramakrishna Reddiar and others wherein it is held that in the case of an agreement of sale the party who obtains possession, acknowledges title of the vendor even though the agreement of sale may be invalid. It is an acknowledgment and recognition of the title of the vendor which excludes the theory of adverse possession. The well-settled rule of law is that if a person is in actual possession and has a right to possession under a title involving a due recognition of the owner's title his possession will not be regarded as adverse in law, even though he claims under another title having regard to the well-recognised policy of law that possession is never considered adverse if it is referable to a lawful title. The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties stipulating for a total divestiture of all the rights of the transferor in the property, and in case in which there is a mere executory agreement of transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely against the transferor. 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 a contract, it cannot be adverse. The appellant was all throughout claiming his possession as legal one on the basis of the dissolution of partnership firm in 1984. It is his say that his father was one of the partners of the firm Shakti Bricks Works and as a result of the settlement of accounts on dissolution of the firm, the said property was received by him. Till the appellant was canvassing

this plea before various authorities, it cannot be said that he was in adverse possession of the disputed land. When the appellant failed in all his attempts for getting that declaration from the competent Court, he is now claiming the title of the property on the basis of the adverse possession. This plea is, therefore, not available to the appellant and his possession cannot be said to be an adverse possession. Various documents referred to by the appellant did not establish that the appellant was in possession of the suit property. Since the respondent No. 1 is declared to be the lawful owner of the suit property, the appellant is not entitled to claim any injunction against the lawful owner.

24. The possession of the appellant cannot be considered as adverse possession even in view of the proceedings taken under Urban Land Ceiling Act. Till this Court declared the possession of the State Government as illegal and directed the State Government to hand over the possession to the lawful owner, the appellant cannot be said to be in adverse possession. For this purpose, he relies on the decision of the Apex Court in the case of *Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others*, wherein it is held that a tribal may acquire title by adverse possession over the immovable property of another tribal by reference to para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogeneous reading.

25. In the above view of the matter, the appellant is not entitled to the relief prayed for by him in the injunction application and the learned Trial Judge is justified in rejecting the injunction application. The Court is in complete agreement with the finding arrived at and the conclusion drawn by the learned Trial Judge which does not call for any interference by this Court while exercising its appellate jurisdiction under Order 43, Rule 1 (r) of the Code of Civil Procedure.

26. It is, however, made clear that any observation and/or finding arrived at by the trial Court as well as by this Court in the present order is of prima facie in nature and the learned Trial Judge while deciding and disposing of the suit is not bound to accept all these observations and/or findings as conclusive one. The suit shall be decided on the basis of the evidence, oral as well as documentary, that may be led before the Trial Court and the same shall be decided on its own merits.

27. The Appeal From Order is accordingly dismissed.

28. Since the Appeal From Order is dismissed, Civil Application does not survive and it is accordingly disposed of.

29. At this stage, Mr. Arpit A. Patel, learned Advocate appearing for the appellant

has prayed for stay against operation of this order and submitted that the interim protection granted by the trial Court which is continued till this date shall be further continued for four weeks so as to enable the appellant to approach the Apex Court. Mr. Sunil Parikh, learned Advocate appearing for the respondent has strongly objected to this request. Having regard to the facts and circumstances of the case, the Court does not find any substance in the request made by Mr. Patel for the appellant. Hence, the request is rejected.