
(2013) 05 AHC CK 0499
In the Allahabad High Court
Case No : Second Appeal No. 1753 of 1976

Girish Chandra Singh (Deceased) Rep. by L.Rs. and Others	APPELLANT
Vs	
Sheo Nath and Others	RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Citation : (2013) 120 RD 337

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ram Niwas Singh, V.K. Chandel and Vinay Kumar Singh Chandel, for the Appellant; S.K. Verma, Bipin Lal Srivastava and Siddharth Verma, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This is plaintiff's appeal u/s 100 CPC (for short "CPC"). Suit No. 87/9 of 1951 u/s 229/209(C) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as Act No. 1 of 1951) was instituted by Girish Chandra and three others, seeking a declaration that the defendant No. 1 Shiv Nath has no concern with the property in dispute and his name has wrongly been entered in revenue records which should be corrected by issuing appropriate direction to concerned Tehsildar.

2. Defendants No. 2 to 10, though, were impleaded but para 5 of the plaint stated that with respect to dispute in question, they have no concern. Since, in the Government record, their names are mentioned along with plaintiffs, therefore, they have also been impleaded as defendants.

3. The plaint was filed in the Court of Additional Sub-Divisional Officer, Saidpur, District Ghazipur.

4. Shiv Nath Aheer, defendant No. 1 contested the suit by filing written statement dated 29.11.1957. In the additional pleas, he claimed that plaintiff is not Bhumidhar of the land in dispute and also not in possession thereof. Theory

of partition set up between the plaintiff and defendants No. 2 to 10 was false and concocted. Plaintiff and defendants No. 2 to 10 were big Zamindars, having a lot of property including plot No. 95, situate at village Kusahi, Tehsil Saidpur, district Ghazipur. They used to pay revenue of more than 250/-. However, they were not in possession of plot No. 95/1, which, in fact, was in possession of defendant No. 1, as Shikmi, since before enactment of Act, 1951. Thereafter, he (defendant No. 1), became Adivasi and acquired Sirdari rights since 30.10.1954. If there is otherwise entry in the revenue record, the same must have been managed by plaintiff and defendants No. 2 to 10, in collusion with Patwari, hence they cannot claim any benefit pursuant thereto. The suit is not maintainable. It is barred by limitation and principles of acquiescence and estoppel. He disputed, being a sharer (joint in possession), with the plaintiffs, in the suit land.

5. The Revenue Court formulated following issues:

1. Whether the plaintiff is the bhumidhar of the plot in dispute?
2. Whether defendant I set was Adivasi and now Sirdar in possession of the plot in suit?
3. Whether the suit is maintainable?
4. Whether the Court has jurisdiction to try the case?
5. Whether the suit is within time?
6. As per the provisions applicable at the relevant time for adjudication of issue No. 1, reference was made to Civil Court which was registered as Revenue Reference No. 1 of 1959 and decided by Munsif, Saidpur, District Ghazipur, vide order dated 21.5.1959. It answered the reference as under:

Therefore I hold that the plaintiffs are bhumidhars of the plot in suit in case the defendant 1st set is not held Sirdar of the plot in suit and that the plaintiffs are not the bhumidhars of the plot in suit in case the defendant 1st set is held to be the Sirdar of the plot in suit.

7. The aforesaid order was passed in the context of issue No. 2, which was to be decided by Revenue Court and the answer thereof would have material bearing on issue No. 1.

8. Thereupon the Additional S.D.M. Saidpur, decided suit, vide judgment dated 27.2.1960. Issue No. 2 was decided against defendant No. 1, holding that he was not Adivasi and, therefore, right of Sirdari did not accrue. In arriving the aforesaid findings, Trial Court (Revenue Court) held that reliance placed by defendant No. 1 on the judgment of Tehsildar, carried no weight since the said order was already set aside by Additional Commissioner, Varanasi, vide judgment dated 6.1.1959.

9. Aggrieved thereto, defendant No. 1 preferred Revenue Appeal No. 17 of 1960. The appeal was allowed by Civil Judge, Ghazipur, vide judgment and decree

dated 26.7.1961, recording its conclusions on various issues, as under:

(i) The plaintiffs have failed to prove that they are the Bhumidhars of the land in suit.

(ii) The plaintiffs have failed to prove that the land in suit is in their possession or that it was in their possession on the date of vesting.

(iii) The land in suit is in possession of defendant No. 1 in his own rights. He was sub-tenant prior to the abolition of the Zamindari and consequently he has acquired valuable rights under Act 1951. His rights under the said Act has now ripened and he has become Sirdar of the land in suit.

(iv) The plaintiffs have failed to prove that the possession of defendant No. 1 has been that of a "Sajhidar" of plaintiffs.

(v) Even if it is assumed that the possession of the land in suit by defendant No. 1 was without title, plaintiffs' suit has not been shown to have been filed within the period of limitation.

10. Against the judgment and decree dated 26.7.1961, the plaintiff came in Second Appeal No. 4992 of 1961. It was decided vide judgment dated 28.7.1967. This Court allowed Second Appeal and set aside judgment of Lower Appellate Court (hereinafter referred to as "LAC"). The matter was remanded with the direction to re-enter the appeal to its original number and decide first the date, on which, adverse possession of defendant No. 1 started over the plots in dispute, in order to determine the question of limitation, after deciding the date from which adverse possession started. The LAC was directed to re-decide the issue regarding limitation. This Court held that while holding the suit barred by time, there is no finding in the judgment of LAC, as to from which date defendant No. 1 was in adverse possession over the plot in dispute. This Court further observed:

The Appellate Court has recorded a finding that the defendant No. 1 was in possession of the plot in dispute before the abolition of zamindari. He has recorded no finding about the exact date from which the adverse possession to defendant No. 1 started. Limitation for filing a suit u/s 209 of the Abolition of Zamindari and Land Reforms Act is only three years and, therefore, it was incumbent upon the LAC to give the exact date from which the adverse possession of defendant No. 1 started over the plot in dispute. This the LAC has failed to do. Under these circumstances it is highly doubtful whether it can be categorically held that the plaintiffs' suit was barred by time. The LAC has alleged that limitation of three years would start from the date of vesting i.e. 1.7.1952 and suit was filed in 1957 and, therefore, the suit was barred by time but he has not mentioned the exact date when the adverse possession of defendant No. 1 over the plots in dispute started. Unless that finding is given the finding about the limitation given by the LAC must be treated to be vitiated.

11. It appears that the plaintiff-appellant moved review application but the same

was dismissed by a Division Bench vide order dated 16.3.1973. Pursuant thereto, the LAC heard entire matter afresh, and, vide judgment dated 19.5.1976, allowed appeal. The judgment of Trial Court (Revenue Court) has been set aside. This judgment, has been assailed and is impugned before this Court in this appeal.

12. Sri Ram Niwas Singh, learned Counsel for the plaintiff appellant, contended that LAC completely misread the documents and has also failed to look into the question of limitation, by first, recording a finding as to when possession of defendant No. 1 became adverse as directed by this Court vide judgment dated 28.7.1967, and secondly, it was not open to LAC to decide the matter afresh on its own, without being confined to consider and decide the issue(s) as directed by this Court in the judgment of remand. He further contended that revenue entries, made pursuant to the order passed by Tehsildar were already upset by Additional Commissioner, vide order dated 6.1.1959 in Appeal No. 181/4/57 and without caring to look into the aforesaid order of Additional Commissioner, entries which were made pursuant to Tehsildar's order dated 28.10.1957, have been relied on and believed, omitting the fact that order dated 28.10.1957 disappeared when appeal was allowed by Additional commissioner. Therefore, consequences flowing from order dated 28.10.1957 would also become non-est. The matter ought to have been examined in the light of the findings recorded in the appellate order dated 6.1.1959 of Additional Commissioner.

13. Per contra, Sri S.K. Verma, learned Senior Advocate and Sri Siddharth Verma argued that defendant was in possession of the land in dispute as "Shikmi" and not Sajhidar as claimed by the plaintiff. Since plaintiff failed to prove his case, therefore, the suit has rightly been dismissed by LAC.

14. When this appeal was admitted on 23.9.1976, this Court did not frame any substantial question of law since there was no such requirement u/s 100, C.P.C. at the relevant time. However, subsequently, through application No. 43991 of 2011 the appellant formulated following three substantial questions of law:

A. Whether the decree challenged in the appeal is vitiated for non-consideration of material evidence including the judgment of Additional Commissioner between the parties regarding correction of papers and is against the direction of the judgment of this Hon"ble Court remitting the matter for decision?

B. Whether the respondent No. 1 acquired Adivasi Rights of the disputed land and has acquired Sirdari rights after enforcement of U.P. Act No. 1 of 1951?

C. Whether the judgment and decree are vitiated on misreading of evidence and findings are perverse?

15. Arguments have been advanced by learned Counsel on the above questions. Having heard learned Counsels for the parties and perusing the record, my findings are as under.

16. When this Court remanded matter to LAC, the issue required to be

considered by the Court, was in respect of "adverse possession". It appears that this Court was earlier persuaded with the argument as if the defendant raised the plea of limitation by asserting that his possession on the property in dispute was adverse and, therefore, LAC was directed to consider as to from which date possession of defendant No. 1 became or came to be adverse, so as to determine question of limitation. The entire matter otherwise, was directed to be decided subsequently. The Court in so many words clearly said that unless finding, as to the exact date, when adverse possession of defendant No. 1 over plots in dispute started, is recorded, the findings in respect of limitation given by LAC, would be vitiated.

17. After remand, on the question of adverse possession, it does not appear that the parties advanced their case inasmuch as, defendant No. 1 in his written statement had clearly pleaded that earlier, his possession was as Shikmi, which turned into Sirdari rights from 30.10.1954 and, therefore, plaintiff is wrongly and illegally claiming that he is Bhumidhar of plot in dispute. Per contra, plaintiff was claiming that possession of defendant No. 1 was joint along with plaintiff, as Sajhidar, and, therefore, the defendant No. 1 never acquired Sirdari rights. Before this Court also, none of the parties claimed that anyone of them have ever pleaded the case of adverse possession. From the written statement of defendant No. 1 also, it does not appear that any plea of adverse possession was raised and requisite facts to invoke the aforesaid plea were pleaded. Adverse possession cannot be asserted, unless and until there are clear and specific pleadings, satisfying the basic aspects thereof.

18. Adverse possession is a plea to usurp title over immoveable property of another/others which otherwise a claimant does not possess. Its successful claim would mean that real owner shall be denuded of his title and the same would stand conferred upon the claimant. Pleadings, thus, are of utmost importance in order to claim a right founded on adverse possession. They have to be very clear and emphatic and to the extent of covering every necessary ingredient to satisfy the claim of adverse possession. No one can take advantage of default on the part of other side but has to set up his case on his own, failing which it is he, who has to suffer. Since the claim based on adverse possession results in defeating the very right/title of an otherwise rightful person, law is very strict in this regard. It needs a thorough and minute enquiry into the claim of the person, who asserts title on the basis of adverse possession.

19. Pleadings are necessary. Recently, the Apex Court has considered in detail the various authorities on the question of adverse possession in *Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbai Harijan and Others*, observed that 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.

20. The Court also referred to its earlier decision in D.N. Venkatarayappa and another Vs. State of Karnataka and others, , observing:

Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession.

21. In D.N. Venkatarayappa (supra), the Court emphasized the importance of pleading as also the pre requisites of plea of adverse possession and said:

3. ...What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the latter allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period. The classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario.

...ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

apart from the actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession.

A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lacks necessary animus for perfecting title by adverse possession.

...one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner.

...there is not even a whisper in the evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question.

But, the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the appellant came into possession by a derivative title from the

original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The Counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant.

Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession.

...person, who comes into possession under colour of title from the original grantee if he intends to claim adverse possession as against the State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period.

5. ... in claiming adverse possession certain pleas have to be made such as when there is a derivative title as in the present case, if the appellants intend to plead adverse possession as against the State, they must disclaim their 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 those circumstances the appellants' possession would become adverse. There is no material to that effect in the present case. Therefore, we are of the view that there is no substance in any of the contentions advanced on behalf of the appellants.

22. In *Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others*, , the necessity of pleading was emphasized and the Court in para 36 said:

In this connection, we may emphasise that 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 the fact necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendants Nos. 2 to 5 as the case may, be is rejected.

23. In *Prabhu Narain Singh Vs. Ram Niranjana (deceased by L.Rs.) and Others*, the Court observed:

A person claiming title to any land by adverse possession has to be very specific about the area of the land and the period over which he has been in possession.

24. In *Ramzan and Others Vs. Smt. Gafooran and Others*, , the Court observed:

27. It is, therefore, explicit that unless there is specific plea and proof that adverse possessor has disclaimed his right and asserted title and possession to the knowledge of the true owner within a statutory period and the true owner has acquiesced to it, the adverse possessor cannot succeed to have it established that he has perfected his right by prescription.

29. As pointed out above, where the defendants are not sure who is the true owner and question of their being in hostile possession then the question of denying title of true owner does not arise. At the most, the defendants have claimed and which is found to be correct by the Trial Court that they have been in possession of the disputed property since the inception of the sale-deeds in their favour. They came in possession, according to their showing, as owner of the property in question. It follows that they exercised their right over the disputed property as owner and exercise of such right, by no stretch of imagination, it can be said that they claimed their title adverse to the true owner.

25. The pleading must be specific to the date when possession become adverse. In AIR 1933 75 (Privy Council) , the property of a Mutt was alienated by Mahant by executing a Mukararri (permanent lease) in favour of one Munshi Naurangi Lal. The sale-deed of the land in dispute was also executed to another one and both the documents contain a stipulation that they were executed to meet expenses and necessities of Mutt. After the death of Mahant, a suit was filed by successor in office against the lessee and purchaser etc. claiming possession of property in dispute to Mutt. The defendants besides others, took the plea of adverse possession also. The question was, did possession of the concerned defendant became adverse to Mutt or Mahant representing the Mutt on the date of relevant assurance or date of death of the concerned Mahant. The Trial Court held latter date to be correct while the High Court took a contrary view and upheld the former date. The Privy Council held:

In other words a mahant has power (apart from any question of necessity) to create an interest in property appertaining to the Mutt which will continue during his own life, or to put it perhaps more accurately, which will continue during his tenure of office of mahant of the mutt, with the result that adverse possession of the particular property will only commence when the mahant who had disposed of it ceases to be mahant by death or otherwise. If this be right as it must be taken to be, where the disposition by the mahant purports to be a grant of a permanent lease, their Lordships are unable to see why the position is not the same where the disposition purports to be an absolute grant of the property nor was any logical reason suggested in argument why there should be any difference between the two cases. In each case the operation of the purported grant is effective and endures only for the period during which the mahant had power to create an interest in the property of the mutt.

(Emphasis added)

26. The pleading is necessary since burden also lies on the person who claims

adverse possession. In *Smt. Bitola Kuer Vs. Sri Ram Charan and Others*, the Court said:

"It is well settled that title ordinarily carries with it the presumption of possession and that when the question arises is to who was in possession of land, the presumption is that the true owner was in such possession. In other word" possession follows title. The inevitable Corollary from this principle is that the burden lies on the person who claims to have acquired title by adverse possession to prove his case.

27. In *T. Anjanappa and Others Vs. Somalingappa and Another*, , the pre-conditions for taking plea of adverse possession has been summarised as under:

It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent to as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

28. In order to defeat title of a plaintiff on the ground of adverse possession it is obligatory on the part of the respondent to specifically plead and prove as to since when their possession came adverse. If it was permissive or obtained pursuant to some sort of arrangement, the plea of adverse possession would fail. In *Md. Mohammad Ali (Dead) by Lrs. Vs. Sri Jagadish Kalita and Others*, , with reference to a case dealing with such an issue amongst co-sharers it was observed that "Long and continuous possession by itself, it is trite, would not constitute adverse possession. Even non-participation in the rent and profits of the land to a co-sharer does not amount to ouster so as to give title by prescription."

29. It was also observed in para 21 that for the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

30. In *L.N. Aswathama and Another Vs. P. Prakash*, said:

17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without

animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.

18. ...When a person is in possession asserting to be the owner, even if he fails to establish his title, his possession would still be adverse to the true owner. Therefore, the two pleas put forth by the defendant in this case are not inconsistent pleas but alternative pleas available on the same facts. Therefore, the contention of the plaintiffs that the plea of adverse possession is not available to defendant is rejected.

31. Where a plea of adverse possession is taken, the pleadings are of utmost importance and anything, if found missing in pleadings, it may be fatal to such plea of adverse possession. Since mere long possession cannot satisfy the requirement of adverse possession, the person claiming it, must prove as to how and when the adverse possession commenced and whether fact of adverse possession was known to real owner. (Wg. Cdr. (Retd.) R.N. Dawar Vs. Shri Ganga Saran Dhama,). In Parwatabai Vs. Sonabai and others, , it was stressed upon by the Apex Court that to establish the claim of adverse possession, one has to establish the exact date from which adverse possession started. The claim based on adverse possession has to be proved affirmatively by cogent evidence and presumptions and probabilities cannot be substituted for evidence. The plea of adverse possession is not always a legal plea. It is always based on facts which must be asserted, pleaded and proved. A person pleading adverse possession has no equities in his favour since he is trying to defeat the right of the true owner and, therefore, he has to specifically plead with sufficient clarity when his possession became adverse and the nature of such possession. [See Mahesh Chand Sharma (supra)].

32. In Parsinni (Dead) by Lrs. and Others Vs. Sukhi and Others, , it said that burden of proof lies on the party who claims adverse possession. He has to plead and prove that his possession is nec vi, nec clam, nec precario i.e., peaceful, open and continuous.

33. Besides, alternative plea may be permissible, but mutually destructive pleas are not permissible. The defendants may raise inconsistent pleas so long as they are not mutually destructive as held in Biswanath Agarwalla Vs. Sabitri Bera and Others, .

34. In Gautam Sarup Vs. Leela Jetly and Others, , the Court said that a defendant is entitled to take an alternative plea but such alternative pleas, however, cannot be mutually destructive of each other.

35. In AIR 1935 53 (Privy Council) , certain interesting questions cropped up which also attracted certain consequences flowing from annexation of province of Oudh in 1857 by the British Government. It appears that one Asghar Ali and his

cousin Muzaffar Ali granted a mortgage by conditional sale of the entire estate of Ambhapur (commonly known as the Taluka of Gandara) and certain villages to the then Maharaja of Balrampur. The mortgaged property situated in District Bahraich, which was in the Province of Oudh. The mortgagee brought an action to enforce his right, got a decree in his favour and ultimately possession of the property in 1922. The sons of Asghar Ali thereafter brought an action in Civil Court for recovery of their share of the mortgaged property on the ground that it was the absolute property of their father and on his death devolved on all the persons who were his heirs under the Mahomedan Law. They challenged Iqbal Ali's right to mortgage the whole of estate and impeached the mortgaged transaction on various grounds. The claim was resisted on the ground that succession to the estate was governed by the rule of primogeniture according to which the whole of the estate descended first to Asghar Ali and after his death to his eldest son Iqbal Ali. The defence having been upheld the claim was negatived by the Trial Court as well as the Court of appeal. Before the Privy Council the only question raised was whether the succession to the property was regulated by the rule of primogeniture or by Mahomedan Law.

36. The Privy Council while considering the above question observed that the Province of Oudh was annexed by the East India Company in 1856 but in 1857 during the First War of Independence by native Indians much of its part was declared independent. Soon after it was conquered by the British Government and it got reoccupation of the entire province of Oudh. Thereafter in March 1858 the British Government issued a proclamation confiscating, with certain exceptions "the proprietary right in the soil of the Province" and reserved to itself the power to dispose of that right in such manner as to it may seem fit. On 10th October 1859 the British Government (the then Government of India) declared that every talukdar with whom a summary settlement has been made since the re-occupation of the Province has thereby acquired a permanent, hereditary and transferable proprietary right, namely in the taluka for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluka. Pursuant to that declaration, Wazir Ali with whom a summary settlement of Taluka has already been made was granted a Sanad which conferred upon him full proprietary right, title and possession of the estate or Ambhapur. In the said grant, there contained a stipulation that in the event of dying intestate or anyone of his successor dies intestate, the estate shall descend to the nearest male heir according to rule of primogeniture. Subsequently, in order to avoid any further doubt in the matter, Oudh Estates Act (I of 1869) was enacted wherein Wazir Ali was shown as a Talukdar whose estate according to the custom of the family on or before 13.2.1856 ordinarily devolved upon a single heir. However, having noticed this state of affairs, the Privy Council further observed that this rule was not followed after the death of Wazir Ali and the Taluka was mutated in favour of his cousin Nawazish Ali. He was re-corded as owner of Taluka. Thereafter in 1892 Samsam Ali entered the joint possession with Nawazish Ali and after death of Nawazish Ali, Samsam Ali was recorded as

the sole owner. The system of devolution of the property was explained being in accordance with the usage of the family and when the name of Asghar Ali was recorded, he also made a similar declaration. Faced with the situation the appellant sought to explain the possession of Nawazish Ali as adverse possession but the same was discarded by the Privy Council observing:

The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

37. In *S.M. Karim Vs. Mst. Bibi Sakina*, , the Hon''ble Apex Court has held that the alternative claim must be clearly made and proved, adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point on limitation against the party affected can be found. A mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "a possible title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and prayer clause is not a substitute for a plea. Relevant paras 3 to 5 of the said judgment read as follows:

3. In this appeal, it has been stressed by the appellant that the findings clearly establish the benami nature of the transaction of 1914. This is, perhaps, true but the appellant cannot avail himself of it. The appellant's claim based upon the benami nature of the transaction cannot stand because section 66 of the CPC bars it. That section provides that no suit shall be maintained against any person claiming title under a purchase certified by the Court on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims. Formerly, the opening words were, no suit shall be maintained against a certified purchaser and the change was made to protect not only the certified purchaser but any person claiming title under a purchase certified by the Court. The protection is thus available not only against the real purchaser but also against anyone claiming through him. In the present case, the appellant as plaintiff was hit by the section and the defendants were protected by it.

4. It is contended that the case falls within the second sub-section under which a suit is possible at the instance of a third person who wishes to proceed against the property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner. Reliance is placed upon the transfer by Syed Aulad Ali in favour of the appellant which is described as a claim by the transferee against the real owner. The words of the second sub-section refer to the claim of creditors and not to the claims of transferees. The latter are dealt with in first sub-section, and if the meaning sought to be placed on the second sub-section by the appellant were to be accepted, the entire policy of the law would be defeated by the real purchaser making a transfer to another and the first sub-section would become almost a

dead letter. In our opinion, such a construction cannot be accepted and the plaintiff's suit must be held to be barred u/s 66 of the Code.

5. As an alternative, it was contended before us that the title of Hakim Alam was extinguished by long and uninterrupted adverse possession of Syed Aulad Ali and after him of the plaintiff. The High Court did not accept this case. Such a case is, of course, open to a plaintiff to make if his possession is disturbed. If the possession of the real owner ripens into title under the Limitation Act and he is dispossessed, he can sue to obtain possession, for he does not then rely on the benami nature of the transaction. But the alternative claim must be clearly made and proved. The High Court held that the plea of adverse possession was not raised in the suit and reversed the decision of the two Courts below. The plea of adverse possession is raised here. Reliance is placed before us on *Sukan v. Krishanand* ILR 32 Pat. 353, and *Sribhagwan Singh and Others Vs. Rambasi Kuer and Others*, , to submit that such a plea is not necessary and alternatively, that if a plea is required, what can be considered a proper plea. But these two cases can hardly help the appellant. No doubt, the plaint sets out the fact that after the purchase by Syed Aulad Ali, benami in the name of his son-in-law Hakim Alam Ali continued in possession of the property but it does not say that this possession was at any time adverse to that of the certified purchaser. Hakim Alam was the son-in-law of Syed Aulad Ali and was living with him. There is no suggestion that Syed Aulad Ali ever asserted any hostile title against him or that a dispute with regard to ownership and possession had ever arisen. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered, because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in AIR 1940 202 (Privy Council) , the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.

38. In *B. Leelavathi Vs. Honnamma and Another*, , the Hon"ble Supreme Court has held that the adverse possession is a question of fact which has to be specifically pleaded and proved and in the absence of any plea of adverse possession, framing of an issue and adducing evidence it would not be held that the plaintiffs had perfected towards the title by way of adverse possession. Para 11 of the judgment read as follows:

11. Plea of adverse possession had been taken vaguely in the plaint. No categorical stand on this point was taken in the plaint. No issue had been framed and seemingly the same was not insisted upon by the plaintiff-respondent.

Adverse possession is a question of fact which has to be specifically pleaded and proved. No evidence was adduced by the plaintiff-respondent with regard to adverse possession. Honnamma, the plaintiff in her own statement did not say that she is in adverse possession of the suit property. We fail to understand as to how the High Court, in the absence of any plea of adverse possession, framing of an issue and evidence led on the point, could hold that the plaintiff-respondent had perfected her title by way of adverse possession.

39. The principle of adverse possession has been dealt with by this Court in detail in detail in *Rama Shankar and another v. Om Prakash Likhdhari and others* (Second Appeal No. 304 of 2013 decided on 5.4.2013). Therein, after referring to relevant statutory provisions under the Limitation Act as also various judicial authorities (sic?) on the subject, it has been pointed that adverse possession in fact, is a plea of maturity of certain rights in immoveable property or (sic?) of prescription which results in extinction of ownership rights of one and transfer/conferment of such rights upon another.

40. The statutory period of limitation for adverse possession in various Limitation Acts, consistently has been held 12 years (See Act 14 of 1859, Act 9 of 1871, Act 15 of 1871, section 28 of Limitation Act, 1908 and section 27 of Limitation Act, 1963). It is true that though the judgment of this Court is binding on the parties and LAC was also under obligation to comply with the same, but, when the parties themselves neither pleaded nor pursued the case of adverse possession, LAC could not have been expected to proceed to decide the issue of adverse possession by first finding out the exact date on which adverse possession of defendant No. 1 started, as that would have been wholly presumptive and conjectural in the absence of any pleadings by the parties. It is also not shown that such issue was also argued before LAC.

41. It is in these facts and circumstances, I find it difficult to hold that the judgment in question is unsustainable for non-compliance of directions contained in the judgment dated 28.7.1967 in Second Appeal No. 4992 of 1961.

42. Proceeding further, it is evident from rival submissions of parties that the real issue was whether the possession of defendant No. 1 was that of Shikmi or Sajhidar, on the date of vesting. The Trial Court held the nature of above possession, as that of Sajhidar, but LAC has reversed this finding, holding that plaintiff having failed to prove his possession, as that of Bhumidhar, defendant No. 1 was in possession as sub-tenant (Shikmi). In arriving at this finding and conclusion, he has relied on various entries in revenue records which came into existence pursuant to Tehsildar's order dated 28.10.1957, but, unfortunately, it had completely failed to consider that the said order of Tehsildar having been set aside by Additional Commissioner, vide judgment dated 6.1.1959, those revenue entries, founded on Tehsildar's order, became non est and not to be relied on. On the contrary, it ought to have considered the order dated 6.1.1959, passed by Additional Commissioner and thereafter the appeal ought to have been decided. In the entire order passed by LAC, I find no reference to Additional

Commissioner's order dated 6.1.1959. When confronted, Sri Verma, learned Counsel appearing for defendant respondents, also could not point out from any part of impugned order, passed by LAC, that LAC, at all, has considered Additional Commissioner's order dated 6.1.1959 while passing the order. This fundamental error committed by LAC has misled it in recording findings, based on such document, which ceased to be valid after extinction, i.e., order of Tehsildar, whereupon those entries based. Issue No. 1 is answered accordingly.

43. It is in these facts and circumstances, I have no option but to set aside the impugned order passed by LAC and remand the matter to it to re-enter Appeal No. 17 of 1960, and decide the same, afresh in the light of observations made above and in accordance with law.

44. The remaining two questions noticed above, I am refraining from answering at this stage, for the reason, that this matter is being remanded to LAC, to decide the appeal afresh and any observation made at this stage, on the above two questions, is likely to prejudice interest of both the parties, in one or the other manner. In fact, now both the questions have to be answered by LAC, as the Court of fact.

45. The appeal, in view of the above, is allowed. The impugned order dated 19.05.1976 is hereby set aside. The matter is remanded to LAC to decide the same as directed above. Since it is a very old matter, LAC will proceed to decide it expeditiously, in accordance with law, preferably within three months from the date of presentation of a certified copy of this order. Subject to other business of the Court. No order as to costs.