Tribhuvanshankar vs Amrutlal on 13 November, 2013

Equivalent citations: AIRONLINE 2013 SC 546

Author: Dipak Misra

Bench: Dipak Misra, Anil R. Dave

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10316 OF 2013
(Arising out of S.L.P. (C) No. 15927 of 2008)

Tribhuvanshankar … Appellant

Versus

Amrutlal …Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. This appeal, by special leave, is from the judgment and order of the High Court of Madhya Pradesh, Bench at Indore, in Second Appeal No. 33 of 1995 passed on 8.2.2008.

3. The appellant-plaintiff instituted Civil Suit No. 259A/86 in the Court of Civil Judge Class-II, Mhow, District Indore, for eviction of the respondent-defendant from the suit-premises and for mesne profits. The case of the appellant-plaintiff was that he had purchased the suit property vide registered sale deed dated 1.4.1976 on payment of sale consideration of Rs.4500/- to the vendor, one Kishanlal. The respondent-defendant was in possession of the said suit property as a tenant under the earlier owner Kishorilal on payment of rent of Rs.15/- per month. It was averred in the plaint that it was an oral tenancy and after acquiring the title the appellant informed the respondent about the sale by the earlier owner. Despite assurance given by the respondent to pay the rent to him, it was not honoured which compelled the appellant to send a notice on 14.12.1977 and, eventually, he terminated the tenancy with effect from 31.1.1978. The respondent, as pleaded, had replied to the

notice stating, inter alia, that the appellant was neither the landlord nor the owner of the property. On the contrary, it was stated in the reply that the respondent was the owner of the premises.

4. The grounds that were urged while seeking eviction were: (i) the defendant was in arrears of rent since 1.4.1976 and same was demanded vide notice dated 14.12.1977, which was received on 3.1.1978 and despite receiving the notice, the defendant defaulted by not paying the rent within two months; (ii) that the said accommodation was bona fide required by the plaintiff for construction of his house and the accommodation is an open land;

(iii) the said accommodation was bona fide required by the plaintiff for general merchant shop i.e. non-residential purpose and for the said purpose the plaintiff did not have any alternative accommodation in his possession in Mhow City.

5. In the written statement, the defendant disputed the right, title and interest of the plaintiff, and denied the relationship of landlord and tenant. That apart, a further stand was taken that the appellant had no right under the M.P. Accommodation Control Act, 1961 (for brevity "the Act") to file the suit for eviction. It was set forth by the respondent-defendant that he was never a tenant under Kishorilal and, in fact, the accommodation was in a dilapidated condition and a 'banjar' land and the respondent was in possession for 18 to 19 years and it was to the knowledge of Kishorilal and his elder brother. For the purpose of business he had constructed a Gumti, got the gate fixed and when the business relating to sale of furniture commenced there was no objection from Kishorilal or his brother or any family member. The possession, as put forth by the respondent, was uninterrupted, peaceful and to the knowledge of Kishorilal who was the actual owner. It was also set forth that when Kishorilal desired to sell the premises, he was put to notice about the ownership of the defendant but he sold the property without obtaining sale consideration with the sole intention to obtain possession by colluding with the appellant- plaintiff. Alternatively, it was pleaded that the premises is situate in the Cantonment area and the Cantonment Board has the control over the land and neither Kishorilal nor the appellant had any title to the same.

6. The learned trial Judge framed as many as 26 issues. The relevant issues are, whether the suit accommodation was taken on rent by the defendant for running his wood business in the year 1973 from the earlier landlord Kishorilal; whether defendant is in continuous, unobstructed and peaceful possession since 18 years which was within the knowledge of Kishorilal, his elder brother and their family members; whether defendant had become owner of the suit accommodation by way of adverse possession; and whether the sale deed had been executed without any consideration for causing damage to the title of defendant.

7. The learned trial Judge, on the basis of evidence brought on record, came to hold that the sale deed executed by Kishorilal in favour of the appellant was without any sale consideration; that the relationship of landlord and tenant between the parties had not been established; and that the respondent had become the owner of the suit accommodation on the basis of adverse possession. Being of this view, the trial court dismissed the suit.

8. Being dissatisfied with the aforesaid judgment and decree the plaintiff preferred Civil Regular Appeal No. 5 of 1994 and the lower appellate court, reappreciating the evidence on record and considering the submissions raised at the bar, came to hold that the appellant- plaintiff had not been able to prove the relationship of landlord and tenant; that the conclusion arrived at by the learned trial Judge that the sale-deed dated 1.4.1976 due to absence of sale consideration was invalid, was neither justified nor correct; and that there being no clinching evidence to establish that the defendant had perfected his title by adverse possession the finding recorded by the learned trial Judge on that score was indefensible. After so holding, the learned appellate Judge proceeded to hold that as the plaintiff had established his title and the defendant had miserably failed to substantiate his assertion as regards the claim of perfection of title by way of adverse possession, the plaintiff on the basis of his ownership was entitled to a decree for possession. To arrive at the said conclusion he placed reliance on Punia Pillai vs. Panai Minor through Pandiya Thevan[1], Bhagwati Prasad v. Chandramaul[2] and Amulya Ratan Mukherjee and ors. V. Kali Pada Tah and ors.[3]

9. Facing failure before the appellate court the defendant preferred Second Appeal No. 33 of 1995 before the High Court. The appeal was admitted on the following substantial questions of law: -

> "(1) Whether a decree could be passed in favour of plaintiff though such plaintiff fails to establish the relationship of landlord and tenant?
>
> (2) Whether the 1st Appellate Court committed the error of law in pronouncing the error of law in pronouncing the judgment and decree on question of title? And (3) Whether the 1st Appellate Court has erred in law in holding that the possession of the defendant is not proved and that the defendant has not acquired the title by adverse possession?"

10. The learned single Judge by judgment dated 8.2.2008 adverted to Sections 12(1)(a) and 12(1)(e) of the Act and came to hold that once the plaintiff had failed to establish the relationship of landlord and tenant which is the sine qua non in a suit for eviction, the plaintiff could not have fallen back on his title to seek eviction of the tenant. Be it noted, the learned single Judge placed reliance upon Rajendra Tiwary v. Basudeo Prasad and another[4] wherein the decision in Bhagwati Prasad (supra) had been distinguished. The learned single Judge dislodged the judgment and decree passed by the lower appellate court and affirmed that of the learned trial Judge.

11. We have heard Mr. A.K. Chitale, learned senior counsel appearing for the appellant and Mr. Puneet Jain, learned counsel appearing for the respondent.

12. Questioning the legal acceptableness of the decision of the High Court the learned senior counsel has raised the following contentions: -

> a) The learned single Judge has erroneously opined that a suit cannot be decreed by civil court for possession on the basis of general title even if the landlord-tenant relationship is not proved. A manifest error has been committed by the learned Judge not following the law laid down in Bhagwati Prasad (supra) which is applicable on all

fours to the case at hand, solely on the ground that the said decision has been distinguished in Rajendra Tiwary's case.

b) Though three substantial questions of law were framed, yet the learned single Judge without considering all the questionss affirmed the judgment of the trial court wherein it had come to hold that the defendant had established his title by adverse possession despite the same had already been annulled on reappreciation of evidence by the lower appellate court.

c) Assuming a conclusion is arrived at that there should have been a prayer for recovery of possession by paying the requisite court fee, the appellant, who has been fighting the litigation since decades should be allowed to amend the plaint and on payment of requisite court fee apposite relief should be granted.

13. Countering the aforesaid submissions Mr. Puneet Jain, learned counsel appearing for the respondent, has proponed thus: -

i) The analysis made by the High Court that when the relationship between the landlord and tenant is not proven in a suit for eviction, possession cannot be delivered solely on the bedrock of right, title and interest cannot be found fault with. There is a difference between a suit for eviction based on landlord-

tenant relationship and suit for possession based on title, and once the relationship of landlord and tenant is not proven there cannot be a decree for eviction.

ii) The High Court has correctly distinguished the decision rendered in Bhagwati Prasad (supra) in Rajendra Tiwary (supra) as the law laid down in Bhagwati Prasad is not applicable to the present case and hence, the submission raised on behalf of the appellant that once the right, title and interest is established, on the basis of general title, possession can be recovered is unacceptable.

iii) The alternative submission that liberty should be granted to amend the plaint for inclusion of the relief for recovery of possession would convert the suit from one for eviction simpliciter to another for right, title and interest and recovery of possession which is impermissible. That apart, when the suit was dismissed and the controversy travelled to appellate court the plaintiff was aware of the whole situation but chose not to seek the alternative relief that was available which is presently barred by limitation. It is well settled in law that the Court should decline to allow the prayer to amend the plaint if a fresh suit based on the amended claim would be barred by limitation on the date of application.

14. At the very outset, we may straight away proceed to state that the finding returned by the courts below that has been concurred by the High Court to the effect that there is no relationship of landlord and tenant between the parties is absolutely impeccable and, in fact, the legality and propriety of the said finding has not been assailed by the learned senior counsel for the appellant. As far as right, title and interest is concerned, the learned trial Judge had not believed the sale deed

executed by the vendor of the appellant-plaintiff in his favour for lack of consideration and also returned an affirmative finding that the defendant was in possession for long and hence, had acquired title by prescription. The learned appellate Judge on reappreciation of the evidence brought on record had unsettled the findings with regard to the title of the plaintiff as well as the acquisition of title by the defendant by way of adverse possession. He had granted relief to the plaintiff on the ground that in a suit for eviction when the title was proven and assertion of adverse possession was negatived by the court, there could be a direction for delivery of possession. As has been stated earlier the High Court has reversed the same by distinguishing the law laid down in Bhagwati Prasad (supra) and restored the verdict of the learned trial Judge.

15. Keeping these broad facts in view, it is necessary to scrutinize whether the decision in Bhagwati Prasad which has been assiduously commended to us by Mr. Chitale is applicable to the case. In Bhagwati Prasad (supra) the defendant was the appellant before this Court. The case of the plaintiff was that the defendant was in possession of the house as the tenant of the plaintiff. The defendant admitted that the land over which the house stood belonged to the plaintiff. He, however, pleaded that the house had been constructed by the defendant at his own cost and that too at the request of the plaintiff because the plaintiff had no funds to construct the building on his own. Having constructed the house at his own cost, the defendant entered into possession of the house on condition that the defendant would continue to occupy the same until the amount spent by him on the construction was repaid to him by the plaintiff. In this backdrop, the defendant resisted the claim made by the plaintiff for ejectment as well as for rent. The learned trial Judge held that the suit was competent and came to the conclusion that the plaintiff was entitled to a decree for ejectment as well as for rent. The High Court agreed with the trial court in disbelieving the defendant's version about the construction of the house and about the terms and conditions on which he had been let into possession. The High Court opined that the defendant must be deemed to have been in possession of the house as a licensee and accordingly opined that a decree for ejectment should be passed. Dealing with various contentions raised before this Court it was ruled that the defendant could not have taken any other plea barring that of a licensee in view of the pleadings already put forth and the evidence already adduced. In that context, this Court opined that the High Court had correctly relied upon the earlier Full Bench decision in Abdul Ghani v. Musammat Babni[5] and Balmukund v. Dalu[6]. An opinion was expressed by this Court that once the finding was returned that the defendant was in possession as a licensee, there was no difficulty in affirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. In that context it was observed thus: -

> "15. ... In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejectment passes by the trial Court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was obviously impressed by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be built to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law."

16. Before we proceed to state the ratio in Rajendra Tiwary's case, we think it seemly to advert to the principle stated in Biswanath Agarwalla v. Sabitri Bera and others[7] as the same has been strongly relied upon by the learned senior counsel for the appellant. In the said case, the question that was posed is whether a civil court can pass a decree on the ground that the defendant is a trespasser in a simple suit for eviction. In the said case the learned single Judge of the Calcutta High Court, considering the issues framed and the evidence laid, had held that although the plaintiffs had failed to prove the relationship of landlord and tenant by and between them and the defendant or that the defendant had been let into the tenanted premises on leave and licence basis, the respondent-plaintiffs were entitled to a decree for possession on the basis of their general title. This Court took note of the relief prayed, namely, a decree for eviction of the defendant from the schedule premises and for grant of mesne profit in case the eviction is allowed at certain rates. The Court proceeded on the base that the plaintiff had proved his right, title and interest. The Court observed that the landlord in a given case, although may not be able to prove the relationship of landlord and tenant, yet in the event he proves the general title, may obtain a decree on the basis thereunder. But regard being had to the nature of the case the Court observed that the defendant was entitled to raise a contention that he had acquired indefeasible title by adverse possession. The Court referred to the decision in Bhagwati Prasad (supra) and, eventually, came to hold as follows: -

> "27. The question as to whether the defendant acquired title by adverse possession was a plausible plea. He, in fact, raised the same before the appellate court. Submission before the first appellate court by the defendant that he had acquired title by adverse possession was merely argumentative in nature as neither there was a pleading nor there was an issue. The learned trial court had no occasion to go into the said question. We, therefore, are of the opinion that in a case of this nature an issue was required to be framed." Thereafter, the two-Judge Bench issued the following directions:
>
> -
>
> "29. However, we are of the opinion that keeping in view the peculiar facts and circumstances of this case and as the plaintiffs have filed the suit as far back as in the year 1990, the interest of justice should be subserved if we in exercise of our jurisdiction under Article 142 of the Constitution of India issue the following directions with a view to do complete justice to the parties.
>
> i) The plaintiffs may file an application for grant of leave to amend their plaint so as to enable them to pray for a decree for eviction of the defendant on the ground that he is a trespasser.
>
> ii) For the aforementioned purpose, he shall pay the requisite court fee in terms of the provisions of the Court Fees Act, 1870.
>
> iii) Such an application for grant of leave to amend the plaint as also the requisite amount of court fees should be tendered within four weeks from date.

iv) The appellant-defendant would, in such an event, be entitled to file his additional written statement.

v) The learned trial Judge shall frame an appropriate issue and the parties would be entitled to adduce any other or further evidence on such issue.

vi) All the evidences brought on record by the parties shall, however, be considered by the court for the purposes of disposal of the suit.

vii) The learned trial Judge is directed to dispose of the suit as expeditiously as possible and preferably within three months from the date of filing of the application by the plaintiffs in terms of the aforementioned Direction (i)."

17. At this stage it is necessary to dwell upon the facet of applicability of the said authorities to the lis of the present nature. As per the exposition of facts, the analysis made and the principles laid down in both the cases, we notice that the civil action was initiated under the provisions of Transfer of Property Act, 1882. In Bhagwati Prasad's case the Court opined that a decree for ejectment could be passed on general title as the defendant was a licensee. In Biswanath Agarwalla's case the Court took note of the concept of general title and the plausible plea of adverse possession and granted liberty to the plaintiff to amend the plaint seeking a decree for recovery of possession and pay the required court fee under the Court-fees Act, 1870. That apart, certain other directions were issued. We may repeat at the cost of repetition that the suits were instituted under the Transfer of Property Act. The effect of the same and its impact on difference of jurisdiction on a civil court in exercising power under the Transfer of Property Act and under special enactments relating to eviction and other proceedings instituted between the landlord and tenant, we shall advert to the said aspects slightly at a later stage.

18. Presently, we shall analyse the principles stated in Rajendra Tiwary (supra). In the said case the respondent-plaintiff had filed a suit for eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 on many a ground. The learned trial Judge, appreciating the evidence on record, dismissed the suit for eviction holding that there was no relationship of landlord and tenant between the plaintiff and the defendant. However, he had returned a finding that the plaintiff had title to the suit premises. The appellate court affirmed the judgment of the learned trial Judge and dismissed the appeal. In second appeal the High Court reversed the decisions of the courts below and allowed the appeal taking the view that a decree for eviction could be passed against the defendant on the basis of the title of the plaintiff and, accordingly, remanded the case to the first appellate court on the ground that it had not recorded any finding on the question of the title of the parties. It was contended before this Court that as the trial court was exercising limited jurisdiction under the Rent Act, the question of title to the suit premises could not be decided inasmuch as that had to be done by a civil court in its ordinary jurisdiction and, therefore, the High Court erred in law in remanding the case to the first appellate court for deciding the question of title of the plaintiff and passing an equitable decree for eviction of the defendant. The Court posed a question whether on the facts and in the circumstances of the case the High Court was right in law holding that an equitable decree for eviction of the defendant could be passed under Order VII Rule 7 of the Civil

Procedure Code and remanding the case to the first appellate court for recording its finding on the question of title of the parties to the suit premises and for passing an equitable decree for eviction against the defendant if the plaintiffs were found to have title thereto. Answering the question the learned Judges proceeded to state thus:

-

> "It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses
>
> (f) and (h), respectively, of Section 2 of the Act."

19. In course of deliberation, the two-Judge Bench distinguished the authorities in Firm Sriniwas Ram Kumar v. Mahabir Prasad[8] and Bhagwati Prasad (supra) by observing thus: -

> "15. These are cases where the courts which tried the suits were ordinary civil courts having jurisdiction to grant alternative relief and pass decree under Order VII Rule 7. A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different." [Emphasis supplied]

20. Thereafter, the learned Judges proceeded to express thus:

> "16. In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted." [Underlining is ours]

21. At this juncture, we may fruitfully refer to the principles stated in Dr. Ranbir Singh v. Asharfi Lal[9]. In the said case the Court was dealing with the case instituted by the landlord under Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had decided the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While adverting to the issue of title the Court ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In the said case the learned Judges referred to the authority in LIC v. India Automobiles & Co.[10] wherein the Court had observed that in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case.

22. On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in Bhagwati Prasad (supra) and Bishwanath Agarwalla (supra) are distinguishable, for in the said cases the suits were filed under the Transfer of Property Act where the equitable relief under Order VII Rule 7 could be granted.

23. At this juncture, we are obliged to state that it would depend upon the Scheme of the Act whether an alternative relief is permissible under the Act. In Rajendra Tiwari's case the learned Judges, taking into consideration the width of the definition of the "landlord" and "tenant" under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, had expressed the opinion. The dictionary clause under the Act, with which we are concerned herein, uses similar expression. Thus, a limited enquiry pertaining to the status of the parties, i.e., relationship of landlord and tenant could have been undertaken. Once a finding was recorded that there was no relationship of landlord and tenant under the Scheme of the Act, there was no necessity to enter into an enquiry with regard

to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, the learned appellate Judge while upholding the finding of the learned trial Judge that there was no relationship of landlord and tenant between the parties, there was no warrant to reappreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Act. But, it has committed an illegality by affirming the judgment and decree passed by the learned trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly we set aside the said affirmation.

24. Presently we shall proceed to address ourselves, which is necessary, as to what directions we should issue and with what observations/clarifications. In Rajendra Tiwary (supra), the two- Judge Bench had observed that the decision rendered by this Court did not preclude the plaintiff for filing the suit for enquiry of title and for recovery of possession of the suit premises against the defendant. In the said case a suit for specific performance of contract filed against the defendant was pending. The Court had directed that the suit to be filed by the plaintiff for which a three months' time was granted should be heard together with the suit already instituted by the defendant. In the present case, the suit was instituted on the basis of purchase. A plea was advanced that the defendant had already perfected his title by prescription as he was in possession for 18 to 19 years. The trial court had accepted the plea and the appellate court had reversed it. The High Court had allowed the second appeal holding that when the relationship of landlord and tenant was not established, a decree for eviction could not be passed. We have already opined that the High Court could not have affirmed the judgment and decree passed by the trial court as it had already decided the issue of adverse possession in favour of the defendant, though it had neither jurisdiction to enquire into the title nor that of perfection of title by way of adverse possession as raised by the defendant. Under these circumstances we are disposed to think that the plaintiff is entitled under law to file a fresh suit for title and recovery of possession and such other reliefs as the law permits.

25. At this juncture, we think it apt to clarify the position, for if we leave at this when a fresh suit is filed the defendant would be in a position to advance a plea that the right of the plaintiff had been extinguished as he had not filed the suit for recovery of possession within the time allowed by law. It is evincible that the suit for eviction was instituted on 21.3.1978 and if the time is computed from that day the suit for which we have granted liberty would definitely be barred by limitation. Thus, grant of liberty by us would be absolutely futile. Hence, we think it imperative to state the legal position as to why we have granted liberty to the plaintiff. We may hasten to add that we have affirmed the judgment of the High Court only to the extent that as the relationship of landlord and tenant was not established the defendant was not liable for eviction under the Act. The issue of right, title and interest is definitely open. The appellant is required to establish the same in a fresh suit as required under law and the defendant is entitled to resist the same by putting forth all his stand and stance including the plea of adverse possession. The fulcrum of the matter is whether the institution of the instant suit for eviction under the Act would arrest of running of time regard being had to the concept of adverse possession as well as the concept of limitation. The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the

true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession or user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. It has been held in Secy. Of State for India In Council v. Debendra Lal Khan[11] that the ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario

26. In S.M. Karim v. Mst. Bibi Sakina[12] , it has been ruled that 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.

27. In Karnataka Board of Wakf v. Govt. of India[13] it has been opined that adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Thereafter, the learned Judges observed thus: -

> "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."

28. It is to be borne in mind that adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his willful neglect but also on account of the possessor's constant positive intent to remain in possession. It has been held in P.T. Munichikkanna Reddy and others v. Revamma and others[14].

29. Regard being had to the aforesaid concept of adverse possession, it is necessary to understand the basic policy underlying the statutes of limitation. The Acts of Limitation fundamentally are principles relating to "repose" or of "peace". In Halsbury's Laws of England, Fourth Edition, Volume 28, Para 605 it has been stated thus: -

> "605. Policy of the Limitation Acts. – The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant

might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

30. These principles have been accepted by this Court keeping in view the statutory provisions of the Indian Limitation Act. The fundamental policy behind limitation is that if a person does not pursue his remedy within the specified time frame, the right to sue gets extinguished. In the present case the pivotal point is whether a good cause because a litigant cannot deprive the benefit acquired by another in equity by his own inaction and negligence, as assumed by the plaintiff, has been lost forever as he has not been able to prove the relationship of landlord and tenant in a suit for eviction which includes delivery of possession.

31. Keeping in view the aforesaid principles it is required to be scrutinized whether the time spent in adjudication of the present suit and the appeal arrests the running of time for the purpose of adverse possession. In this regard, we may profitably refer to the decision in Mst. Sultan Jehan Begum and Ors. v. Gul Mohd. and Ors.[15] wherein following principles have been culled out: -

"(1) When a person entitled to possession does not bring a suit against the person in adverse possession within the time prescribed by law his right to possession is extinguished. From this it only follows that if the former brings a suit against the latter within the prescribed period of limitation his right will not be extinguished.

(2) If a decree for possession is passed in that suit in his favour he will be entitled to possession irrespective of the time spent in the suit and the execution and other proceedings.

(3) The very institution of the suit arrests the period of adverse possession of the defendant and when a decree for possession is passed against the defendant the plaintiff's right to be put in possession relates back to the date of the suit.

(4) Section 28 of the Limitation Act merely declares when the right of the person out of possession is extinguished. It is not correct to say that that section confers title on the person who has been in adverse possession for a certain period. There is no law which provides for 'conferral of title' as such on a person who has been in adverse possession for whatever length of time.

(5) When it is said that the person in adverse possession 'has perfected his title', it only means this. Since the person who had the right of possession but allowed his right to be extinguished by his inaction, he cannot obtain the possession from the person in adverse possession, and, as its necessary corollary the person who is in adverse possession will be entitled to hold his possession against the other not in possession, on the well settled rule of law that possession of one person cannot be disturbed by any person except one who has a better title."

32. In Sultan Khan s/o Jugge Khan v. State of Madhya Pradesh and another[16] a proceeding was initiated for eviction of the plaintiff under Section 248 of the M.P. Land Revenue Code, 1959. Facing eviction plaintiff filed a suit for declaration of his right, title and interest on the bedrock of adverse possession. His claim was that he had been in uninterrupted possession for more than 30 years. Repelling the contention the learned Judge observed thus:

> "It must, therefore, be accepted that filing of the suit for recovery of possession, by itself, is sufficient to arrest the period of adverse possession and a decree for possession could be passed irrespective of the time taken in deciding the suit. If this principle is applied to the proceedings under Section 248 of the Code, it must be held that in case a person has not perfected his title by adverse possession before start of the proceedings, he cannot perfect his title during the pendency of the proceedings. Adverse possession of the person in possession must be deemed to have been arrested by initiation of these proceedings."

33. We have referred to the aforesaid pronouncements since they have been approved by this Court in Babu Khan and others v. Nazim Khan (dead) by L.Rs. and others[17] wherein after referring to the aforesaid two decisions and the decision in Ragho Prasad v. P.N. Agarwal[18] the two-Judge Bench ruled thus: -

> "The legal position that emerges out of the decisions extracted above is that once a suit for recovery of possession against the defendant who is in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding halt. We are in respectable agreement with the said statement of law. In the present case, as soon as the predecessor-in-interest of the applicant filed an application under Section 91 of the Act for restoration of possession of the land against the defendant in adverse possession, the defendant's adverse possession ceased to continue thereafter in view of the legal position that such adverse possession does not continue to run after filing of the suit, we are, therefore, of the view that the suit brought by the plaintiff for recovery of possession of the land was not barred by limitation."

34. Coming to the case at hand the appellant had filed the suit for eviction. The relief sought in the plaint was for delivery of possession. It was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the plaintiff to act and to take back the possession. Under these circumstances, after the institution of the suit, the time for acquiring title by adverse possession has been arrested or remained in a state of suspension till the entire proceedings arising out of suit are terminated. Be it ingeminated that if by the date of present suit the defendant had already perfected title by adverse possession that would stand on a different footing.

35. In view of the aforesaid analysis, we permit the appellant- plaintiff to institute a suit as stated in paragraph 24 within a period of two months from today.

36. Resultantly, the appeal is allowed leaving the parties to bear their respective costs.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
November 13, 2013.

---

[1] AIR 1947 Madras 282
[2] AIR 1966 SC 735
[3] AIR 1975 Cal 200
[4] AIR 2002 SC 136
[5] 25 All 256
[6] 25 All 498
[7] (2009) 15 SCC 693
[8] AIR 1951 SC 177
[9] (1995) 6 SCC 580

[10] (1990) 4 SCC 286
[11] (1933-34) 61 IA 78 : AIR 1934 PC 23
[12] AIR 1964 SC 1254
[13] (2004) 10 SCC 779
[14] (2007) 6 SCC 59
[15] AIR 1973 MP 72
[16] 1991 MPLJ 81
[17] AIR 2001 SC 1740
[18] 1969 All LJ 975