



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 338 of 2014**  
**Date of decision: 22.09.2026**

State of H.P. & others ...Appellants.

Versus

Prittam Singh ...Respondent.

*Coram:*

***The Hon'ble Mr. Justice Romesh Verma, Judge.***

*Whether approved for reporting?*<sup>1</sup>Yes

For the appellants : Mr. Diwakar Dev Sharma, Additional Advocate General.

For the respondent : Mr. N.K. Thakur, Senior Advocate with Mr.Divya Raj Singh, Advocate.

**Romesh Verma, Judge (Oral):**

The present Regular Second Appeal arises out of the judgment and decree as passed by the learned Additional District Judge (II), Una, dated 03.12.2013, whereby the appeal filed by the plaintiff was allowed and the judgment and decree passed by the learned Civil Judge (Junior Division), Court No. 3, Una, dated 28.05.2012, dismissing the suit for possession filed by the plaintiff, was set aside and a decree for possession was passed in favour of the respondent/plaintiff.

2. The facts, as emerge in the present case, are that the plaintiff/respondent filed a suit for possession in the court of the

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**Whether reporters of Local Papers may be allowed to see the judgment?**

learned Civil Judge (Junior Division), Court No. 3, Una, on 07.11.2006.

As per the case set up by the plaintiff, he is a permanent resident of village Haroli, Sub-Tehsil Haroli, District Una, and is an agriculturist having land in village Haroli, District Una. The plaintiff was in service, posted as a peon in the Block Development Office, Una, and retired in the year 2000 on superannuation. The land measuring 0-06-56 hectares, comprised in Khasra No.1992 min, new Khasra No.1094, Khewat No. 126 min, Khatoni No. 384 min, as entered in the Misal Haqiat Bandobast for the year 1997-1998, situated in village Haroli, Sub-Tehsil Haroli, District Una, was illegally, unauthorizedly and without the consent of the plaintiff utilized by the defendants for the construction of the road.

3. As per the case as set up by the plaintiff, though the suit land has been utilized by the State, the same has neither been acquired nor the compensation amount has been paid by the State. It was stated that due to the illegal and unauthorized construction of the road, the plaintiff suffered a loss of crops on the suit land and the adjoining land of the plaintiff has become barren due to the construction of the road. In the months of May-June, 2006, the defendants, through their agencies, started illegally threatening to widen the road in the adjoining land of the plaintiff and deployed heavy machinery for executing the work of widening of the road. Though the plaintiff requested the officers of the defendants not to carry out any

unauthorized widening of the road through the suit land without adopting due process of law, but the agencies of the defendants refused to do so. Therefore, under such circumstances, the plaintiff/respondent filed a suit for grant of decree for possession of the land measuring 0-06-56 hectares, comprised in Khasra No. 1992 min, new Khasra No. 1094, Khewat No. 126 min, Khatauni No. 384 min, as entered in the Misal Haqiat Bandobast for the year 1997-1998, situated in village Haroli, Sub-Tehsil Haroli, District Una, H.P.

4. The suit filed by the respondent/plaintiff was contested by the defendants by filing written statement, wherein preliminary objections with respect to maintainability, estoppel, limitation, cause of action, etc. were raised. On merits, all the averments made in the plaint were specifically denied and refuted. As per the defence of the defendants, the main PWD Una-Jaijon road has been in existence since 1971-1972 and buses are plying on the same since the time of the construction of the road. Thus, the department pleaded that it constructed this road with the express consent of the plaintiff. The possession of the department was open and hostile to the knowledge of the plaintiff and that the defendants have become owners of the suit land by virtue of adverse possession. Primarily, the defendants contested the suit filed by the plaintiff on the ground of having acquired title by adverse possession.

5. The plaintiff filed replication to the written statement filed by the defendants and reiterated all the averments made in the plaint. In the replication, it was stated by the plaintiff that the defendants have no right, title or interest to construct the road without acquiring the land and without adopting due process of law, including the payment of compensation to the plaintiff. It was also stated that the plea of adverse possession is not available to the defendants.

6. The learned trial court framed the issues on 19.09.2007 in the following manner:

1. Whether the plaintiff is entitled for the decree of possession, as prayed for? OPP.
2. Whether the plaintiff is estopped by his act and conduct and acquiescence to file the present suit, as alleged? OPD.
3. Whether the present suit is not maintainable, as alleged? OPD.
4. Whether the present suit is barred by limitation, as alleged? OPD.
5. Whether the plaintiff has no cause of action to file the present suit, as alleged? OPD.
6. Whether the suit is bad for non-compliance of provisions of Section 80 CPC, as alleged? OPD.
7. Relief.

7. The learned trial court directed the respective parties to adduce evidence in support of their contentions and vide its judgment and decree dated 28.05.2012, the learned trial court, i.e., the Civil

Judge (Junior Division), Court No. 3, Una, dismissed the suit filed by the plaintiff.

8. Feeling aggrieved, the plaintiff, preferred an appeal under Section 96 of the CPC before the court of the learned Additional District Judge (II), Una, on 23.07.2012. The learned first appellate court, vide its impugned judgment and decree, accepted the appeal preferred by the plaintiff and decreed the suit for possession filed by him. It was ordered that decree for possession of the land measuring 0-06-56 hectares, comprised in Khasra No. 1992 min, new Khasra No. 1094, Khewat No. 126 min, Khatauni No. 384 min, as entered in the Misal Haqiat Bandobast for the year 1997-1998, situated in village Haroli, Sub-Tehsil Haroli, District Una, is passed in favour of the plaintiff and against the defendants. It was held that defendants are at liberty to acquire the land in accordance with law.

9. Feeling aggrieved by the impugned judgment passed by the learned Additional District Judge (II), Una, the State/defendants have approached this Court by instituting the present Regular Second Appeal.

10. It is contended by Mr. Diwakar Dev Sharma, learned Additional Advocate General, that the impugned judgment passed by the learned Additional District Judge is erroneous and liable to be set aside. He submitted that the first appellate court failed to appreciate the fact that by virtue of adverse possession, the State had become

the owner of the suit land and therefore, no decree for possession could have been passed in favour of the plaintiff. He further submitted that after allowing the present Regular Second Appeal, the suit filed by the plaintiff/respondent deserves to be dismissed.

11. On the other hand, Mr. N.K. Thakur, learned Senior Counsel, assisted by Mr. Divya Raj Singh, learned counsel for the plaintiff/respondent, defended the impugned judgment and decree passed by the learned first appellate court. He submitted that this Court, while exercising powers under Section 100 of the CPC, ought not to interfere with the well-reasoned judgment passed by learned first appellate court. He submitted that the learned court below has rightly come to the conclusion that the land owned by the plaintiff was utilized by the State for the construction of the road. Therefore, on the strength of title, the suit for possession was rightly decreed by the learned first appellate court.

12. Though, this Court had framed the substantial question of law on 06.09.2014 in the following manner:

“Whether on account of misappreciation of the pleadings and misreading of the oral as well as documentary evidence available on record, the findings recorded by both Courts below are erroneous and, as such, the judgment and decree impugned in this appeal being perverse and vitiated is not legally sustainable?”

13            However, in the present case, the suit filed by the plaintiff-respondent was ordered to be dismissed by the learned trial Court and aggrieved thereby when an appeal was filed by the plaintiff-respondent, the learned first Appellate Court allowed the appeal and decreed the suit as filed by the plaintiff-respondent.

14            Therefore, with the consent of the parties, the following substantial question of law is being re-framed:

“Whether on account of misappreciation of the pleadings and misreading of the oral as well as documentary evidence available on record, the findings recorded by the learned first Appellate Court are erroneous and, as such, the judgment and decree impugned in this appeal being perverse and vitiated is not legally sustainable?

15.           I have heard the learned counsel for the parties and have also gone through the material available on record carefully.

16.           The plaintiff/respondent had approached the learned trial court for the grant of decree for possession on the strength of title, stating that he is the owner of the land measuring 0-06-56 hectares, comprised in Khasra No. 1992 min, new Khasra No. 1094, Khewat No. 126 min, Khatoni No. 384 min, as entered in the Misal Haqiat Bandobast for the year 1997-1998, situated in village Haroli, Sub-Tehsil Haroli, District Una. As per the case as set up by the plaintiff, the defendants unauthorizedly and without the express consent of the plaintiff utilized the suit land by constructing the road through the

same. It is the case of the plaintiff that the said construction was raised by the defendants in an unauthorized manner without obtaining prior consent of the plaintiff and moreover, without the payment of compensation. The plaintiff pleaded that no person can be deprived of his property without following due process of law, including the payment of compensation and therefore, he prayed for the grant of a decree for possession on the strength of title.

17. The defendant-State has primarily taken a plea of adverse possession, contending that the plaintiff is estopped from filing the present suit, the suit is not maintainable and further that the suit is apparently time-barred and could not be entertained.

18. The plaintiff-respondent, in order to corroborate and substantiate his case, examined himself as PW-1 and filed his affidavit in which all the averments as made in the plaint have been reiterated. It has been contended in the affidavit that the suit land is owned by him and the defendants, in an illegal, unauthorized manner and without the consent of the plaintiff and without acquiring the suit land, have raised the construction of the road and even the amount of compensation has not been paid for the said utilization of land.

19. In the cross-examination, the defendants could not extract anything favourable from the plaintiff. He stated that he does not know that the road was constructed in the year 1970-1971. He admitted that over the road the vehicles are plying and the said road has been

incorporated in the official records. He stated that the road was constructed about 30 to 35 years ago.

20. The plaintiff also examined Ranjeet Singh as PW-2. He has placed on record his affidavit, whereby he has also deposed on the same lines as has been done by PW-1 Pritam Singh. He has stated in his deposition that the disputed land is measuring 0-06-56 hectares and the same is in the ownership of the plaintiff. As per this witness, the State of Himachal Pradesh, through Public Works Department, constructed the road over the suit land, however, after utilizing the same, neither the land has been acquired, nor the amount of compensation has been paid to the plaintiff and the said construction has been done without the prior and express consent of the plaintiff and behind his back. As per this witness, the plaintiff had requested the SDO/Junior Engineer to acquire the suit land and to pay the amount of compensation, however, nothing was done by the officers of the defendants.

21. In the cross-examination, he has stated that the name of the road is Haroli-Jaijon road. He stated that he does not know when this road was constructed by the department.

22. In order to rebut the case of the plaintiff, the State/defendants examined Shri B.S. Patyal as DW-1 who filed his affidavit in examination-in-chief. He has stated that the department constructed the road to the knowledge of the plaintiff and the

defendants have become the owner of the suit land by way of adverse possession.

23. In the cross-examination, this witness has categorically admitted that Khasra No. 1094, land measuring 0-06-56, is owned by the plaintiff Pritam Singh. He admitted that the said land was not acquired by the State of Himachal Pradesh. He admitted that without acquiring the land, the road cannot be constructed over the same.

24. DW-2 is the statement of Sunil Kumar, who was working as a Junior Engineer in the Public Works Department, Division Una. In his deposition, he has stated that as per the record, Una-Jaijon Road was constructed in the year 1971-1972 and the entry of the same is in the measurement book as maintained by the official record.

25. In his cross-examination, he has admitted that in the revenue record, the State/defendants have got no right, title over the suit land. He has admitted that the State has got no right to interfere over the land being owned by someone else.

26. The plaintiff has placed on record the copy of Misal Haqiat, Ext.P-1, which categorically reveals that Pritam Singh, plaintiff, is the owner of the suit land. The legal notice has been placed on record as Ext. PW-1/B, dated 06.06.2006, whereby the State was called upon to acquire the suit land or to restore the same to its original position and to hand over the vacant possession of the land to the plaintiff. Exhibit P-4 is the copy of Misal Haqiat for the year 1986-

1987, which also shows the ownership and possession of the suit land in favour of the plaintiff/respondent.

27. The learned trial court dismissed the suit primarily on the ground that since there is an admission on the part of the plaintiff regarding the issuance of application Ext. PW-1/A and notice Ext. PW-1/B, which shows the admission of plaintiff that the road is existing at the spot since 35-36 years and he had acquiesced to the construction of the road, having full knowledge thereof, and since the suit had not been filed within a period of 12 years from the date of construction, the same was barred by limitation.

28. The plaintiff, feeling aggrieved and dissatisfied by the judgment and decree passed by the learned trial court, preferred an appeal before the learned first appellate court, which came to be allowed and the suit was ordered to be decreed in favour of the plaintiff.

29. It has been contended by Mr. Diwakar Dev Sharma, learned Additional Advocate General appearing for the State, that the defendants/State have acquired title over the suit land on the strength of adverse possession and therefore, the findings returned by the learned first appellate court are erroneous, illegal and liable to be set aside.

30. The Hon'ble Apex Court in ***Vidya Devi vs. State of Himachal Pradesh & others (2020) 2 SCC 569*** has held that no

person can be forcibly dispossessed of his property without any legal sanction and without following the due process of law and depriving him/her of payment of just and fair compensation. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution. The Hon'ble Apex Court has further held that the State cannot be permitted to utilize the land of its own citizens without the payment of compensation. The plea of title cannot be defeated until and unless the title is acquired by virtue of adverse possession by the other side. The relevant paras of the same are reads as under:-

*"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right 2 in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article The State of West Bengal v. Subodh Gopal Bose and Ors. AIR 1954 SC 92. 2 Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353.*

*12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai<sup>4</sup>, wherein this Court held that:*

*“ 6. ... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.” (emphasis supplied)*

*12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. 12.13. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.*

*12.14. In Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.,<sup>10</sup> this Court while dealing with a similar fact situation, held as follows : “There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 9 P.S. Sadasivaswamy v. State of T.N. (1975) 1 SCC 152. 10 (2013) 1 SCC 353. 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked*

*repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.” (emphasis supplied)*

13. *In the present case, the Appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant.”*

31. To the similar effect, the Hon'ble Apex Court in **(2022) 7 SCC 508** titled as **Sukh Dutt Ratra and another vs. State of H.P. and others** has laid down the exposition of law including the plea of limitation taken up by the State. The relevant paras of the same reads as under:

*“14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in Entick v. Carrington<sup>17</sup> and by this court in Wazir Chand v. The State of Himachal Pradesh<sup>18</sup>. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth*

of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains – can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

18. There is a welter of precedents on delay and laches which conclude either way – as contended by both sides in the present dispute – however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held:

'11....."Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two

circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

21. Having considered the pleadings filed, this court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings."

32. In the present case though the defendants had set up the plea of adverse possession but the said plea is contrary to the judgment as passed by the Hon'ble Apex Court in **State of Haryana & another vs. Amin Lal (Since deceased) through his LRs & others** 2024 SCC Online 3368. The relevant paras of the same are reads as under:

"10. The appellants claim that due to their long and continuous possession of the suit property since 1879-80, they have perfected their title, is also not sustainable in law. However, it is a fundamental principle that the State cannot claim adverse possession over the property of its own citizens. In [Vidya Devi v. State of H.P1](#), this Court emphatically held that the State cannot be permitted to take the plea of adverse possession. The relevant paragraphs from this judgment are reproduced hereunder:

*“12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi v. MIDC* [*Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure (2020) 2 SCC 569 for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.*

*12.10. This Court in *State of Haryana v. Mukesh Kumar* [*State of Haryana v. Mukesh Kumar*, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.*

*12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.”*

*11. Allowing the State to appropriate private property through adverse possession would undermine the constitutional rights of citizens and erode public trust in the government. Therefore, the appellants' plea of adverse possession is untenable in law. The appellants' possession, as evidenced by the Misal Hakiyat of 1879-80 (Exhibit DW10/1), was permissive and conditional. The entry describes the possession as “Bikhar Bahali Kaza,” meaning till the existence of an orchard. Such permissive possession cannot be the basis for a claim of adverse possession.”*

33. The Hon’ble Apex Court, in the said judgment, held that it is a fundamental principle that the State cannot claim adverse possession over the property of its own citizens. After relying upon the

judgment in ***Vidya Devi's case (supra)***, the Hon'ble Apex Court further held that the State cannot be permitted to take the plea of adverse possession. Allowing the State to appropriate private property through adverse possession would undermine the constitutional rights of citizens and would erode public trust in the government. Therefore, it was held by the Hon'ble Apex Court that the plea of adverse possession taken by the State is not tenable in the eyes of the law.

34. In the present case also, though, the defence was tried to be projected that since 1977 the defendants are in continuous and uninterrupted possession of the suit property though the ownership of the plaintiff was accepted by the State. The plaintiff on the basis of title can file the suit at any stage until and unless the other side perfects his or her title by means of adverse possession. In the present case, the defendants have failed to plead and prove adverse possession as rightly held by the learned First Appellate Court.

35. The defendants have set up the plea of adverse possession, meaning thereby they have acknowledged the title of the plaintiff over the suit land. The ingredients of adverse possession have neither been pleaded nor proved by the defendants. The pleading qua adverse possession is cryptic, vague and confusing. Plea of adverse possession has been raised by the defendants halfheartedly. They have failed to prove the essential ingredients as have been laid down by the Hon'ble Supreme Court.

36. 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 rights of true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

37. Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and willful neglect, but also on account of possessor's positive intent to dispossess. Therefore, it is important to take into account before stripping somebody on his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the owner of the property on paper. The intention is a mental element which is proved and disproved through positive acts. Existence of some events can go a long way to weaken the presumption of intention to dispossess, which might have painstakingly grown out of long possession which otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one ways; firstly, due compliance on this court attracts the Limitation Act and it also assists the court to unearth the intention to dispossess.

38. The intention to dispossess needs to be open and hostile enough to bring the same to the knowledge and the plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving or omission of the right to defend or care for the integrity of property on the part of the owner of the property on paper. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence. Intention implies knowledge on the part of adverse possessor.

39. The issue is that intention of the adverse user gets communicated to the owner of the property on paper. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the owner of the property on paper. Intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

40. The Hon'ble Supreme Court has laid down the exposition of law qua adverse possession in the following manner:

(i) In **T. Anjanappa and others vs. Somalingappa and another**, (2006) 7 SCC 570, the Hon'ble Supreme Court held as under:

*"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. 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 denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.*

*13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them.*

*"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner.*

*14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the*

*rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.*

*"Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.*

*Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.*

(ii) In **Chatti Konatri Rao and others vs. Palle Venkata Subba Rao**, (2010) 14 SCC 316, the Hon'ble Apex Court further held as under:

"13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of *Karnataka Board of Wakf vs. Government of India and Ors.* (2004) 10 SCC 779. It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. 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. (See *S.M. Karim v. Bibi Sakina* AIR 1964 SC 1254, *Parsinni v. Sukhi* (1993) 4 SCC 375 and *D.N. Venkatarayappa v. State of Karnataka* (1997) 7 SCC 567) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature.

*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. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma*

14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.

15. *Animus possidendi* as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds

*property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law."*

41. Since, the defendant has failed to plead and prove the essential ingredients of adverse possession in consonance with the exposition of law as laid down by the Hon'ble Apex Court, as referred hereinabove, the learned Courts below have rightly decreed the suit filed by the plaintiff based on the title.

42. The learned First Appellate Court, after appreciating the oral as well as documentary evidence placed on record and on the basis of the title, decreed the suit as filed by the appellant/plaintiff and has rightly come to the conclusion that he is entitled for possession of the suit land and in alternative the respondents were directed to acquire the suit land in accordance with law.

43. In view of the exposition of law as laid down by the Hon'ble Apex Court, ***State of Haryana & another vs. Amin Lal***

(supra) the plea of adverse possession is not available to the present appellants/State. The plaintiff has approached the court on the strength of the title, and until and unless the said plea is negated by the opposite side on account of acquiring the title on the basis of adverse possession, then in all eventuality, suit filed by the plaintiff deserves to be decreed.

44. As far as the plea of limitation is concerned, the Hon'ble Apex Court in the judgment in *Sukh Dutt Ratra's case (supra)*, has categorically held that State cannot shield itself behind the ground of delay and laches in such a situation, there cannot be limitation to doing justice. It has been held by the Hon'ble Apex Court that now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where, by his conduct and neglect, he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material.

45. The Hon'ble Apex Court, on the point of limitation and adverse possession, has laid down the law in the cases as cited supra. Therefore, in the considered opinion of this court, the learned first appellate court has not committed any error or illegality in passing the

impugned judgment and it does not call for any interference in the attending facts and circumstances of the case.

46. It is well settled principles of law that that no person can be deprived of his property without adopting due process of law, therefore, under such circumstances, the plea as set up by the appellants-State is not tenable in the facts and circumstances of the case, once they have utilized the land of the respondent without adopting due process of law the relief as sought by the plaintiff cannot be denied.

47. The Hon'ble Apex Court in **Angadi Chandranna vs Shankar & others, 2025 SCC Online SC 877** has discussed the scope of interference while invoking provision of Section 100 of CPC.

The relevant paras of the same are as under:

*"28. It is thus clear that Under [Section 100](#), Code of Civil Procedure, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.*

*29. The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence. Under [Section 103](#), Code of Civil Procedure, the High Court has got power to determine the issue of fact. The Section lays down:*

*Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,-*

*(a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or*

*(b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in [Section 100](#).”*

48. No other point urged by the learned counsel for the parties.

49. The substantial question of law is answered accordingly.

50. Consequently, in view of the observation as made hereinabove, this court does not find any illegality, perversity or jurisdictional error in the impugned judgment. Therefore, the present appeal, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending application(s), if any, shall also stand disposed of.

**(Romesh Verma)**  
**Judge**

**22<sup>nd</sup> September, 2026.**  
(vt)