A DES RAJ AND ORS.

v.

BHAGAT RAM (DEAD) BY LRS. AND ORS.

FEBRUARY 20, 2007

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Limitation Act, 1963—Articles 64 and 65—Adverse possession—Determination—Parties being co-sharers—Long and continuous possession of plaintiff—Plea of adverse possession—Sustainability of—Held: Plaintiff is C *to prove acquisition of title by adverse possession—Mere assertion of title by itself not sufficient unless plaintiff proves animus possidendi—Plaintiff established that he acquired title by ousting defendants by declaring hostile title in himself which was to the knowledge of his co-sharers from 1968 onwards—Thus, plaintiff perfected his title by adverse possession and ouster* D *and is not vitiated in law.*

Parties were co-owners. Respondents were in possession of the property in village S and the appellants in village P. In 1953 revenue settlement record of rights were prepared and joint ownership of land in village S was recorded. Appellants filed suit for partition and possession of land situated in village S E **in 1968 and another suit in 1978. Both the suits were dismissed. Respondent continued to possess the properties situated at village S and in 1986 filed suit for declaration of his title raising plea of adverse possession. Trial Court decreed the suit holding that the respondents were in exclusive continuous peaceful possession of the suit land to the exclusion of other co-owners, prior** F **to settlement in 1953 and the appellants had actual knowledge thereof. Appellant filed an appeal. First appellate Court dismissed the same holding that the co-sharers did not arrive at any arrangement and the repudiation of title of the appellant by the respondent was open and hostile. Appellants then filed second appeal which was dismissed. Hence the present appeal.**

G **Appellants contended that the parties being co-sharers, it was obligatory on the part of the respondent to plead and prove ouster; and that the Trial Judge as also the Appellate Courts erred in holding that the respondent perfected his title by adverse possession.**

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Dismissing the appeal, the Court A

HELD: 1. In the instant case, a finding of fact has been arrived at by all the three courts. They have analysed the evidences on record. They have taken into consideration the correct legal position operating in the field as also conduct of the parties. They applied the correct principles of law as regards 'burden of proof'. Having regard to the peculiar fact in the case, the respondent B had established that he acquired title by ousting the appellants by declaring hostile title in himself which was to the knowledge of his co-sharers.

[Paras 32 and 33] [901-G-H; 902-A-B]

2.1. The plaintiff-respondent had remained in possession for a long time C i.e. since 1953. The respondent did not specifically plead ouster in the plaint but muffosil pleadings, as is well known, must be construed liberally. Pleadings must be construed as a whole. Only because the parties did not use the terminology which they should have, ipso facto, would not mean that the ingredients for satisfying the requirements of statute are absent. [Paras 18, 19 and 21] [899-A-B-D] D

2.2. A plea of adverse possession or a plea of ouster would be governed by Articles 64 and 65 of the Limitation Act. The onus to prove adverse possession would be on the person who raises such a plea. Furthermore, the possession of a co-sharer is presumed to be possession of the other co-sharers E unless contrary is proved. [Paras 21 and 22] [899-E-F]

2.3. Mere assertion of title by itself may not be sufficient unless the plaintiff proves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the appellants themselves had F earlier filed two suits. Such suits were filed for partition. In those suits the appellants claimed themselves to be co-owners of the plaintiff. A bare perusal of the judgments of the courts below clearly demonstrates that the plaintiff had even therein asserted hostile title claiming ownership in himself. Therefore, the claim of hostile title by the plaintiff over the suit land, was, G thus, known to the appellants. They allowed the first suit to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, that a co-owner can bring about successive suits for partition as the cause of action therefor would be continuous one. But, it is equally well-settled that pendency of a suit does not

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A stop running of 'limitation'. The very fact that the appellants despite the purported entry made in the revenue settlement record of rights in the year 1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties in Village S and/or otherwise enjoy the usufruct thereof, clearly go to show that even prior to institution of the said suit the respondent had been in hostile possession B thereof. [Para 24] [899-G-H; 890-A-D]

2.4. Express denial of title was made by the respondent in the written statements filed in the suit. Therefore, the courts in the suits filed by the appellants, were required to determine the issue as to whether the respondent C had successfully ousted the appellants so as to claim title himself by ouster of his co-owners. In any event the respondent made his hostile declaration claiming title for the property at least in his written statement in the suit filed in the year 1968. Thus, at least from 1968 onwards, the plaintiff continued to exclusively possess the suit land with knowledge of the appellants. [Paras 25 and 26] [890-D-F]

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2.5. The parties went to trial fully knowing their respective cases. The fact that they had been co-owners was not an issue. The parties proceeded to adduce evidences in support of their respective cases. Appellants keeping in view the fact that they have unsuccessfully been filing suit for partition, were E also not prejudiced by reason of purported wrong framing of issue. They knew that their plea for joint possession had been denied. Therefore, they were not misled. They were not prevented from adducing evidence in support of their plea. [Para 27] [890-F-H]

2.6. Article 65 of the Limitation Act, 1963 would in a case of this nature F have its role to play, if not from 1953, but at least from 1968. If that be so, the finding of the High Court that the respondent perfected his title by adverse possession and ouster cannot be said to be vitiated in law. It was for the respondent to prove acquisition of title by adverse possession. [Paras 28 and 29] [890-H; 891-A-B]

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Devasahayam (D) by LRs. v. *P. Savithramma and Ors.*, [2005] 7 SCC 653; *Saroop Singh* v. *Banto and Ors.*, [2005] 8 SCC 330; *Govindammal* v. *R. Perumal Chettiar and Ors.*, (2006) 11 SCALE 452 and *T. Anjanappa and Ors.* v. *Somalingappa and Anr.*, [2006] 7 SCC 570, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5846 of 2000. A

From the final Judgment and Order dated 31.8.1998 of the High Court of Himachal Pradesh at Shimla in R.S.A. No. 320/1990.

R.K. Dash, Javed Mahmud Rao, Shahid Ali Rao and Musharraf Chowdhary for the Appellants. B

E.C. Agrawala, Mahesh Agrawal, Rishi Agrawala and Gaurav Goel for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. The defendants are the appellants. The parties were co-owners. The suit properties are situate in two villages; 232 bighas and 10 biswas in village Samleu and 76 bighas in village Punjoh.

2. It is not in dispute that whereas the plaintiffs - respondents had all along been in possession of the property situate in village Samleu, the D appellants are in possession of village Punjoh. Allegedly, in the revenue settlement record of rights prepared in the year 1953, joint ownership of lands situate in village Samleu was recorded. However, it was observed therein that if the predecessors of the appellants "do not give share" to the plaintiff respondent in the land in village Punjoh, the plaintiff-respondent may ask for the review of the order. E

3. On the plea that the land situate in village Punjoh was jointly recorded, it was urged that the entry in the said record of rights attained finality.

4. Indisputably, however, the appellants had filed two suits; one in the year 1968 and another in 1978. In the aforementioned suits, a prayer for F partition and separate possession was claimed by the appellants herein in respect of 2/3rd share in the entire land situate in village Samleu. Admittedly, the 1968 suit was dismissed in 1977 and the 1978 suit was dismissed in 1984.

5. Plaintiff - respondent continued to possess the properties situate at G village Samleu.

6. Plaintiff - respondent filed a suit in the year 1986 for declaration of his title as also permanent injunction.

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A 7. In paragraph 8 of the plaint, the plea of adverse possession was raised, which reads as under :

> "The plaintiff has been in possession as owner in adverse possession on the land of the defendant No. 1 to 12, area 155 Bigha 0 Biswa of the land for 12 years. Hence it is appropriate to declare the
B possession and ownership by way of adverse possession of the plaintiff on the land in disputed land and the defendant Nos. 1 to 22 are intending to alienate the land on the basis of mere entry in the papers. Therefore, it is proper to restrain the defendant Nos. 1 to 22 from selling, leasing out and transferring the land by any means."

C 8. The Trial Court in view of the pleadings of the parties framed the following issues:

> "1. Whether the plaintiff has become owner of the suit property by adverse possession as alleged?
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> D 2. Whether the defendants are in joint possession of the suit property as co-sharers?
>
> 3. Relief."

9. By reason of a judgment and decree dated 9.10.1987, the learned Trial E Judge opined that the plaintiff had been in exclusive continuous peaceful possession of the suit land to the exclusion of the other co-owners prior to settlement which took place in the year 1953.

10. Analysing the evidences brought on records, the learned Trial Judge opined:

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> "As per statements PW-1 Bhagat Ram plaintiff and Hishiara and others during settlement in the year 1953, as per copies of Tankih No. 4 Ex. P-4, No. 10 Ex. P-16 and No. 11 Ex. P-15, it is evident that present plaintiff Bhagat Ram had asserted his hostile possession and ousters of other co-owners even during settlement in the year 1953 and as per
G the copy of plaint Ex. P-1 in civil suit No. 42/74 instituted by Hushiara and others, Bhagat Ram had denied the title of other co-owners on which suit for joint possession against present plaintiff Bhagat Ram was filed on 2-3-1968 for joint possession. Bhagat Ram has denied the title of other co-owners during May, 1967 which led other co-owner

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to file suits for joint possession against present plaintiff Bhagat Ram which were admittedly dismissed as abatted on 24-12-1977 Ex. P-11 and 11-01-1984 Ex. P-12. It is thus evident that Bhagat Ram had been making open assertion of his hostile title coupled with exclusive possession and enjoyment to the knowledge of other co-owners which is essential for adverse possession against co-owners was held in *Krishnan and ors, Appellants* v. *Krishanoo and ors Respondents* AIR (1985) H.P. 103"

11. It had been categorically held that assertion of exclusive possession by the plaintiff was clear and explicit and the defendants appellants had actual knowledge thereof.

12. The First Appellate Court dismissed the appeal preferred by the appellants herein affirming the said view holding that 'no arrangement was arrived at between the co-sharers' to the effect that the respondents would be cultivating the land on behalf of other co-sharers stating:

"...Be it noticed that no such arrangement was shown to have been ever agreed by the parties nor the contesting defendants have pleaded any such arrangement in the written statement. The arrangement contemplated in Tankih [Ex. P-2] with regard to denial of share of Bhagat Ram in the joint land of village Panjoh, was a reason for Bhagat Ram to claim an exclusive title in the disputed land situate at village Samleu and the offer itself was not a part of any mutual arrangement. Since the contesting defendants did not allow Bhagat Ram to have a share in the joint land of Panjoh, Bhagat Ram staked his claim of exclusive ownership in the disputed land situated at Samleu Pargna Chuhan and did not allow the contesting defendants to have any share in the disputed land of Samleu for that reason. This was a clear and open denial of the title of the contesting defendants in the disputed land, may be for the reason that the contesting defendants had not allowed the plaintiff to have a share in the joint land of village Panjoh. So, it is not correct that the plaintiff was in possession of the disputed land under some mutual arrangement."

13. It was further held that repudiation of title of the defendant by the plaintiff was open and hostile.

14. In the Second Appeal preferred by the appellants, the High Court

A while determining the same, opined:

> "In the present case, the plaintiff has specifically pleaded that he is in continuous possession of the land in dispute in open and unequivocal denial of title of defendants No. 1 to 22-A, since prior to 1952-53. As stated above, the longstanding revenue entries since
B 1952-53 record the plaintiff to be in exclusive possession of the land in dispute.
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> Ex. P.1 is the copy of the plaint of the suit instituted by some of the defendants in the year 1968, against the present plaintiff. This plaint is dated 29.2.1968. By virtue of this suit, the plaintiffs therein, who are
C the defendants in the present case, had prayed for joint possession of the land, which is the subject matter of this suit. In para 3 of this plaint, it has been averred that the plaintiff in the present case, was in exclusive possession of the land in dispute and that he was asserting and claiming himself to be the sole owner thereof."

D 15. Referring to the two suits filed by the appellants herein, the High Court held :-

> "Therefore, on the basis of the material coming on the record, especially in the form of Ex. P-1, Ex. DW 2/A, Ex. P-11 and Ex. P-12, it is
E established that the plaintiff is coming in adverse possession of the land in dispute in complete denial of the title of the defendants No. 1 to 22-A and to their knowledge at least since 1968. The suit out of which the present appeal has arisen was filed on 20.8.1986, that is, after about 18 years from the date of denial of title of defendants 1 to 22-A by the plaintiff. The adverse possession as on the date of suit
F having continued for more than the statutory period of twelve years has, thus, ripened into ownership."

16. Mr. R.K. Dash, learned senior counsel appearing on behalf of the appellants, would submit that the parties hereto being co-sharers, it was obligatory on the part of the plaintiff to plead and prove ouster. According
G to the learned counsel, the learned Trial Judge as also the Appellate Courts committed a manifest error in arriving at the conclusion that the plaintiff perfected his title by adverse possession.

17. Mr. E.C. Agrawala, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgments.
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18. We have noticed hereinbefore the factual aspects of the matter which are neither denied nor disputed. Admittedly, the plaintiff respondent had remained in possession for a long time i.e. since 1953.

19. It may be true that in his plaint, the plaintiff did not specifically plead ouster but muffosil pleadings, as is well known, must be construed liberally. Pleadings must be construed as a whole.

20. In *Devasahayam (D) by LRs.* v. *P. Savithramma and Ors.*, [2005] 7 SCC 653, this Court opined:

> "The pleadings as are well-known must be construed reasonably. The contention of the parties in their pleadings must be culled out from reading the same as a whole. Different considerations on construction of pleadings may arise between pleadings in the mofussil court and pleadings in the Original Side of the High Court."

21. Only because the parties did not use the terminology which they should have, ipso facto, would not mean that the ingredients for satisfying the requirements of statute are absent. There cannot be any doubt whatsoever that having regard to the changes brought about by Articles 64 and 65 of the Limitation Act, 1963 *vis-a-vis* Articles 142 and 144 of the Limitation Act, 1908, the onus to prove adverse possession would be on the person who raises such a plea. It is also furthermore not in dispute that the possession of a co-sharer is presumed to be possession of the other co-sharers unless contrary is proved.

22. A plea of adverse possession or a plea of ouster would indisputably be governed by Articles 64 and 65 of the Limitation Act.

23. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-'-vis his co-owners and they were in know thereof.

24. Mere assertion of title by itself may not be sufficient unless the plaintiff proves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the defendants appellants

A themselves had earlier filed two suits. Such suits were filed for partition. In those suits the defendants appellants claimed themselves to be co-owners of the plaintiff. A bare perusal of the judgments of the courts below clearly demonstrates that the plaintiff had even therein asserted hostile title claiming ownership in himself. The claim of hostile title by the plaintiff over the suit land, therefore, was, thus, known to the appellants. They allowed the first suit B to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, as has been contended on behalf of the appellants before the courts below, that a co-owner can bring about successive suits for partition as the cause of action therefor would be continuous one. But, it is equally well-settled that pendency of a suit does C not stop running of 'limitation'. The very fact that the defendants despite the purported entry made in the revenue settlement record of rights in the year 1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties in Village Samleu and/ or otherwise enjoy the usufruct thereof, clearly go to show that even prior to institution of the said suit the plaintiff-respondent had been in hostile D possession thereof.

25. Express denial of title was made by the plaintiff-respondent in the said suit in his written statements. The courts, therefore, in the suits filed by the defendants appellants, were required to determine the issue as to whether the plaintiff- respondent had successfully ousted the defendants appellants E so as to claim title himself by ouster of his co-owners.

26. In any event the plaintiff made his hostile declaration claiming title for the property at least in his written statement in the suit filed in the year 1968. Thus, at least from 1968 onwards, the plaintiff continued to exclusively F possess the suit land with knowledge of the defendants appellants.

27. The parties went to trial fully knowing their respective cases. The fact that they had been co-owners was not an issue. The parties proceeded to adduce evidences in support of their respective cases. Defendants Appellants, keeping in view of the fact that they have unsuccessfully been G filing suit for partition, were also not prejudiced by reason of purported wrong framing of issue. They knew that their plea for joint possession had been denied. They were, therefore, not misled. They were not prevented from adducing evidence in support of their plea.

28. Article 65 of the Limitation Act, 1963, therefore, would in a case of

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this nature have its role to play, if not from 1953, but at least from 1968. If that be so, the finding of the High Court that the respondent perfected his title by adverse possession and ouster cannot be said to be vitiated in law. A

29. Mr. Das has relied upon a decision of this Court in *Saroop Singh* v. *Banto and Ors.*, [2005] 8 SCC 330, in which one of us was a member. There is no dispute in regard to the proposition of law laid down therein that it was for the plaintiff to prove acquisition of title by adverse possession. B

30. We are also not oblivious of a recent decision of this Court in *Govindammal* v. *R. Perumal Chettiar & Ors.* (2006) 11 SCALE 452, wherein it was held: C

> "...In order to oust by way of adverse possession, one has to lead definite evidence to show that to the hostile interest of the party that a person is holding possession and how that can be proved will depend on facts of each case"

31. Yet again in *T. Anjanappa and Ors* v. *Somalingappa and Anr.*, [2006] 7 SCC 570, it was held: D

> "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." E F G

32. In this case, however, a finding of fact has been arrived at by all the three courts. They have analysed the evidences on record. They have taken into consideration the correct legal position operating in the field as also conduct of the parties. They, in our opinion, applied the correct principles H

A of law as regards 'burden of proof'.

33. We, having regard to the peculiar fact obtaining in the case, are of the opinion that the plaintiff- respondent had established that he acquired title by ousting the defendants appellants by declaring hostile title in himself which was to the knowledge of his co-sharers.

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34. We, therefore, find no infirmity in the impugned judgment. The appeal is dismissed. In the facts and circumstances of the case, there shall, however, be no order as to costs.

N.J. Appeal dismissed.

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