



2026:CGHC:19765

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**SA No. 647 of 2003**

**1** - Ramjanak S/o Devdhari Aged About 38 Years Caste Harijan (Chamar) Occupation Agriculture, R/o Village Sarna, Tahsil Wadrafnagar Distt. Surguja Chhattisgarh

**2** - Manikchand S/o Devdhari Aged About 27 Years Caste Harijan (Chamar) Occupation Agriculture, R/o Village Sarna, Tahsil Wadrafnagar Distt. Surguja Chhattisgarh

**... Appellants**

**versus**

**1** - Mohd.Kasim (Dead Through Lrs) As Per Hon'ble Court Order Dated 30-11-2018 And 14-01-2025

**1.1** - Sunnat Nisha (Died And Deleted) As Per Court Order Dated 25-11-2025.

**1.2** - Mohd. Zaharuddin (Died And Deleted) As Per Court Order Dated 25.11.2025, Through Lrs-

**1.2.1** - Jumratan Nisha W/o Late Mohammad Zaharuddin Aged About 58 Years R/o Village Sarna, P.S. Raghunathpur, Distt. Balrampur Ramanujganj, Chhattisgarh.

**1.2.2** - Jakki-Ullah S/o Late Mohammad Zaharuddin Aged About 40 Years R/o Village Sarna, P.S. Raghunathpur, Distt. Balrampur Ramanujganj, Chhattisgarh.

**1.2.3** - Navi-Ullah S/o Late Mohammad Zaharuddin Aged About 37 Years R/o Village Sarna, P.S. Raghunathpur, Distt. Balrampur Ramanujganj, Chhattisgarh.

**1.2.4** - Nasim-Ullah S/o Late Mohammad Zaharuddin Aged About 31 Years R/o Village Sarna, P.S. Raghunathpur, Distt. Balrampur Ramanujganj, Chhattisgarh.

**1.2.5** - Tarikun Nisha D/o Late Mohammad Zaharuddin Aged About 34 Years R/o Village Sarna, P.S. Raghunathpur, Distt. Balrampur Ramanujganj, Chhattisgarh.

**1.3** - Smt. Hadisun D/o Late Mohd Kasim Aged About 47 Years R/o Village Bhawar, P.S. Babhani, Distt - Sonbhadra Uttar Pradesh

**1.4** - Smt. Tarikun D/o Late Mohd Kasim Aged About 45 Years R/o Village - Asnahr, P.S. Babhani, Distt. Sonbhadra Uttar Pradesh

**1.5** - Smt. Rashida Khatoon D/o Late Mohd Kasim Aged About 43 Years R/o Village Sarna, P.S. Raghunathpur, Distt. Balrampur-Ramanujganj Chhattisgarh

**2** - Mohd Yasin S/o Late Abdul Mazid Aged About 53 Years Muslim, Occupation Agriculture, R/o Village Sarna, Tahsil Wadrafnagar, Paul, District Surguja Chhattisgarh

**3** - Mohd. Ali S/o Late Mohd. Raffique Aged About 27 Years Caste Muslim, Agriculturist And R/o Village Asanhar, P.S. Babhani, Tahsil Dudhi, Distt. Sonbhadra Uttar Pradesh

**4** - Mohd Sameed Ali S/o Late Mohd Raffique Aged About 24 Years Caste Muslim, Agriculturist And R/o Village Asanhar, P.S. Babhani, Tahsil Dudhi, Distt. Sonbhadra Uttar Pradesh

**5** - Smt. Vaisran Wd/o Late Mohd. Raffique Aged About 60 Years Agriculturist And R/o Village Asanhar, P.S. Babhani, Tahsil Dudhi, Distt. Sonbhadra Uttar Pradesh

**6** - Mohd. Zamruddin S/o Usman Aged About 23 Years R/o Village Ashahhar, P.S. Babhani, Tahsil Dudhi, Distt. Sonbhadra Uttar Pradesh

**7** - Mohd. Hasim (Dead Through Lrs) As Per Hon'ble Court Order Dated 30-11-2018 And 14-01-2025

**7.1** - Gulbahar S/o Late Mohd. Hasim Aged About 60 Years R/o Village Sarna, P.S. Raghunathpur, Distt. - Balrampur-Ramanujganj

Chhattisgarh

**7.2** - Gulzar S/o Late Mohd. Hasim Aged About 43 Years R/o Village Sarna, P.S. Raghunathpur, Distt. - Balrampur-Ramanujganj Chhattisgarh

**7.3** - Smt. Sonafun D/o Late Mohd. Hasim, W/o Munna Aged About 56 Years R/o Village Sarna, P.S. Raghunathpur, Distt. - Balrampur-Ramanujganj Chhattisgarh

**7.4** - Smt. Zamirun (Died) Through Lrs As Per Honble Court Order Dated 28-01-2026

**7.4.1** - Mohammad Hasnain S/o Islam Aged About 65 Years R/o Village Barwatola, Ward And Post Duddhi, Sonbhadra, District : Sonbhadra, Uttar Pradesh

**7.4.2** - Mohammad Nasim S/o Hasnain Aged About 25 Years R/o Village Barwatola, Ward And Post Duddhi, Sonbhadra, District : Sonbhadra, Uttar Pradesh

**7.4.3** - C. Sakina Bano D/o Hasnain Aged About 25 Years R/o Village Barwatola, Ward And Post Duddhi, Sonbhadra, District : Sonbhadra, Uttar Pradesh

**7.5** - Smt. Sitare D/o Late Mohd. Hasim, W/o Munna Aged About 46 Years R/o Village Sarna, P.S. Raghunathpur, Distt. - Balrampur-Ramanujganj Chhattisgarh

**8** - The State Of Chhattisgarh Through District Collector, Ambikapur, Distt. Surguja Chhattisgarh

**... Respondents**

Date of Hearing : **27.3.2026**

Date of Pronouncement : **29.4.2026**

|                            |   |                                                                   |
|----------------------------|---|-------------------------------------------------------------------|
| For Appellants             | : | Mr. Sushil Dueby, Advocate along with Mr. Aman Upadhyay, Advocate |
| For Respondents No.1 & 2   | : | Ms. Hamida Siddiqui, Advocate                                     |
| For State/Respondent No. 8 | : | Mr. Topilal Bareth, Panel Lawyer                                  |

**Hon'ble Shri Justice Rakesh Mohan Pandey**

**CAV Judgment**

- 1) This second appeal has been preferred by the appellants/defendants No. 6 and 7 under Section 100 of CPC against the judgment and decree passed by the learned IInd Additional District Judge, Ambikapur, District Sarguja in First Civil Appeal No. 37-A/2002 dated 1.9.2003, whereby the appeal preferred by the defendants No. 6 and 7 was dismissed and the judgment and decree passed by the Civil Judge, Class-I, Ramanujganj in Civil Suit No. 41-A/2000 dated 22.3.2002 were affirmed.
- 2) This second appeal was admitted for hearing vide order dated 23.12.2004 on following substantial questions of law :-
  1. Whether the Courts below committed an error of law in holding that the document (Ex. P/1) an unregistered sale-deed confers any title upon plaintiff?
  2. Whether the correct test in relation to perfection of title by way of adverse possession has not been applied by the Courts below and the finding is perverse on the face of record ?
  3. Whether the lower appellate Court was obliged under the law to make an enquiry in relation to valid service of summons upon defendant No. 6 & 7 in the present facts and circumstances of the case.
- 3) The learned Counsel appearing for the appellants does not want to press substantial question of law no. 3. The prayer is accordingly allowed. This appeal is confined to substantial question of law no. 1 and 2 only.
- 4) The plaintiffs namely Mohd. Kasim and Mohd. Yasin instituted a

civil suit claiming therein relief of declaration of title and permanent injunction over the suit property described in Schedule-A appended to the plaint inter-alia on the ground that suit property was sold by one Mohd. Rafique, who was the father of defendants No. 1 and 2 and husband of defendant No. 3 through un-registered sale-deed dated 15.4.1964 (Ex. P/1) and possession was handed over to plaintiffs and defendant No. 5, namely, Mohd. Hasim. They pleaded that defendants No. 1 to 3 executed a registered sale-deed of the suit property in favor of defendants No. 6 and 7 namely Ramjanak and Manikchand on 19.9.2000. They further pleaded that sale-deed dated 19.9.2000 does not contain signature of defendant No. 2 and same is forged one. They further pleaded that suit property was sold to them through un-registered sale-deed dated 15.4.1964 in consideration of Rs. 150/- and a sewing machine on stamp paper of 10 paise and since then, the plaintiffs are in possession. Plaintiffs also pleaded that revenue record has already been rectified pursuant to sale-deed dated 15.4.1964 and they have raised construction of a house over it. Plaintiffs took plea of adverse possession making statement that they are in continuous and hostile possession over the suit property since date of purchase and this fact was within the knowledge of defendants No. 1 to 3 and thus they have perfected their right over the suit property. Plaintiffs alleged the subsequent mutation of suit property in favor of defendants No. 1 to 3 and they sought for reliefs of declaration and permanent

injunction against defendants No. 1 to 3, 4, 6 and 7.

- 5)** Defendants No. 1 to 4 filed written statement and denied the plaint averments. They alleged un-registered sale-deed dated 15.4.1964 and pleaded that sale-deed dated 19.9.2000 was executed pursuant to power-of-attorney given by Shammad Ali. They further pleaded that pursuant to said sale-deed, possession has already been handed over to defendants No. 6 and 7. They also pleaded that suit property was purchased by Mohd. Rafique in the year 1961 in sale consideration of Rs. 200/- and his name was entered in revenue record vide order dated 27.8.1961. They stated that Mohd. Rafique remained in possession of suit property during his lifetime, and after his death names of his children and wife i.e. defendants No. 1 to 3 were entered in revenue record.
- 6)** Defendants No. 6 and 7 (appellants herein) were proceeded ex-parte. Learned trial court framed issues and decreed the suit vide judgment and decree dated 22.3.2002. Defendants No. 6 and 7 challenged the judgment passed by learned trial court by filing regular appeal, which was dismissed vide judgment and decree dated 1.9.2003.
- 7)** Mr. Sushil Dubey, learned counsel appearing for the defendants No. 6 and 7 submits that learned courts below committed error of law in holding that un-registered sale-deed dated 15.4.1964 confers title upon plaintiffs. He further submits that when sale consideration exceeds Rs.100/-, the document requires

mandatory registration under Section 17 of the Registration Act, 1908 [hereinafter to be referred as 'Registration Act '] and due to its non-registration, sale-deed dated 15.4.1964 is inadmissible in evidence. He contends that learned courts below fell in error while holding that the plaintiffs have perfected their title by way of adverse possession, whereas the essential requirements to establish adverse possession have not been satisfied. He further contends that plaintiffs were in possession of suit property pursuant to an un-registered sale-deed, thus their possession was at most permissive. He submits that possession of suit property was handed over to defendants No. 6 and 7 immediately after execution of sale-deed dated 19.9.2000. He has placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of **Karnataka Board of Waqf Versus Government of India and Others**<sup>1</sup> and **Ram Nagina Rai and Others Versus Deo Kumar Rai (deceased) by Lrs and Another**<sup>2</sup>. He has also placed reliance on the judgment rendered by co-ordinate in the matter of **Phul Bai (dead) through Lrs Versus Samaru Ram Sahu and Others**<sup>3</sup>. He prays to allow this second appeal.

8) On the other hand, Ms. Hamida Siddiqui, learned counsel appearing for the plaintiffs/ respondents No. 1 and 2 submits that according to the proviso appended to Section 49 of Registration Act, an un-registered document can be admitted in evidence for

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1. 2004 SCC OnLine SC 505

2. (2019) 13 SCC 324

3. (2020) SCC OnLine Chh 1195

collateral purpose and contents of such document can be proved by leading evidence. She further submits that an unregistered document affecting the immovable property and required by Registration Act to be registered may be received as evidence. With regard to adverse possession, she submits that plaintiffs have categorically pleaded in the plaint that they remained in possession of suit property since the date of execution of sale-deed dated 15.4.1964 and plaintiff-witnesses, namely, Mohd. Kasim (PW/1), Udaychand Pandey (PW/2) and Shobhnath (PW/3) have proved possession of the plaintiffs over suit property and execution of sale-deed dated 15.4.1964. She contends that as plaintiffs remained in continuous possession for more than 12 years, they perfected their right and learned courts below rightly granted decree of title and permanent injunction in their favor. She has placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of **Vidhyadhar Versus Manikrao and Others<sup>4</sup>**, **Muruganandam Versus Muniyandi (Died) Through Lrs.<sup>5</sup>**, **R. Hemalatha Versus Kashthuri<sup>6</sup>** and **M/s K.B. Saha and Sons Pvt. Ltd. Versus M/s Development Consultant Ltd<sup>7</sup>**.

9) I have heard learned counsel for the parties and perused the record with utmost circumspection.

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4. AIR 1999 SC 1441

5. 2025 SCC OnLine SC 1067

6. 2023 SCC OnLine SC 381

7. (2008) 8 SCC 564

**10)** Plaintiffs have claimed right over suit property by virtue of an unregistered sale-deed (Ex. P/1) dated 15.4.1964. This document would show that suit property was sold by Mohd. Rafique S/o Abdul Majid for sale consideration of Rs. 150/- in presence of witnesses namely Kartik, Ramnarayan Yadav and Sheshman. This document was executed on a stamp paper of 10 paise. Mohd. Hasim made a complaint (Ex. P/2) to Sarpanch, Gram Panchayat Sarna, who issued a certificate (Ex. P/3) certifying the continuous possession of Mohd. Hasim from year 1964 till 2000.

**11)** Mohd. Kasim (PW/1) deposed that he remained in possession of the suit property since date of purchase and he developed it investing Rs. 20,000/-. He admitted that Mohd. Rafique was his elder brother. In para-16, he admitted that witnesses to the sale-deed have died and the value of sale-deed is more than Rs. 100/- and it was executed on a stamp paper of 10 paise. In para-20, he admitted that suit property was purchased by Lt. Mohd. Rafique from one Anjani Kumar in sale consideration of Rs. 200/- and thereafter his name was entered in revenue record.

**12)** Udaychand Pandey (PW/2) deposed that suit property was purchased by the plaintiffs for sale consideration of Rs. 200/- in cash and a sewing machine. He stated that plaintiffs have constructed a house over the suit property and they are in possession of the same. In cross-examination, this witness admitted that unregistered sale-deed was executed in his

presence and sale consideration was paid to Mohd. Rafique.

**13)** Shobhnath (PW/3) deposed that plaintiffs are in possession of suit property since last 35 years and it was purchased for sale consideration of Rs. 150 and a sewing machine. This witness described the boundaries of suit property and in para-12, he admitted that suit property was purchased by Mohd. Rafique from Anjani Kumar. Defendants failed to examine any witness.

**14)** The points for determination before this Court are as under :-

- (1) Possession of plaintiffs over the suit property and plea of adverse possession
- (2) The unregistered sale-deed executed in favor of plaintiffs dated 15.4.1964 and its validity.
- (3) Proviso appended to Section 49 of Registration Act.

#### Discussion on the plea of adverse possession

**15)** Doctrine of adverse possession states that when a person holds the property owned by another individual for an uninterrupted period of more than 12 years, he would become the lawful owner of the land. The essentials to prove adverse possession are –

- (i) immovable property – a property in dispute must be immovable in nature.
- (ii) actual and exclusive possession – a person claiming it must have its actual possession i.e. his physical presence to claim adverse possession is mandatory.
- (iii) uninterrupted possession – possession by a person must be uninterrupted and continuous.

(iv) possession for a definite period – possession may be continuous and that too, for definite period i.e. 12 years.

The burden to prove adverse possession lies upon the person who is claiming such defence. To prove adverse possession, a person would need to prove (i) date from which the property was under his possession, from which 12 years are going to be calculated ; (ii) such person is also required to prove the date from which the adverse possession of the property came to knowledge of the owner and the date from which the possession of property came to knowledge of immediate predecessors ; (iii) he is required to prove that possession of the property was peaceful and (iv) person making claim needs to prove beyond doubt that the property owner despite having knowledge of possession did not take any action against the possessor.

**16)** In the present case, plaintiffs in para-4 pleaded that suit property was sold by Mohd. Rafique through un-registered sale-deed dated 15.4.1964 and possession was handed over. In para-7, again it is pleaded that after execution of deed dated 15.4.1964, physical possession was handed over and they are in possession since then. In para-12, it is pleaded that since the date of execution of deed, they are in continuous possession of the suit property and thus they have perfected their right.

**17)** Plaintiffs failed to establish the date from which the property was under their peaceful possession from which the period of 12 years

started. There is no plea with regard to the date from which adverse possession of the property came into knowledge of the owner. Hon'ble Supreme Court in the matter of **Brijesh Kumar and Another Versus Shardabai (Dead) through LRs and Others**<sup>8</sup> held that to constitute adverse possession there must be assertion of a hostile possession in denial of title of the true owner and onus would be on the person claiming adverse possession to prove the nature of his possession. Relevant paragraph 13 reads as under :-

13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in M.Venkatesh (supra). The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession. the factum of possession known and hostile to the other parties. continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open. hostile and continuous to the knowledge of the true owner. The respondent-plaintiff failed to discharge the onus. Reference may also be made to Chatti Konati Rao & Ors. vs. Palle Venkata Subba Rao. (2010) 14 SCC 316, on adverse possession observing as follows:

"15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse

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8. (2019) 9 SCC 369

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 that 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. The plea of adverse possession is not a pure question of law but a blended one of fact and law."

**18)** In the matter of **Amrendra Pratap Singh v. Tej Bahadur Prajapati and Others**<sup>9</sup>, Hon'ble Supreme Court held that if a person despite not having right of possession does so and continues in possession perfects the title over land beyond period of 12 years in such a circumstance the original owner loses title. It was further held that it is essential requirement to establish the fact that person who is claiming adverse possession had no right to hold the possession of land.

But in the present case plaintiffs have claimed right over the property on the basis of un-registered sale deed and at the same time they have taken plea of adverse possession, thus claim of the plaintiffs over the suit property is contradictory and self destructive.

**19)** At this juncture, the principles laid down by the Hon'ble Supreme Court in the matter of **Achal Reddy Versus Ramakrishna**

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9. (2004) 10 SCC 65

**Reddiar and others**<sup>10</sup> are to be seen wherein the transaction of July 10, 1946 between one Dasu Reddi and Varada Reddi was executed only with regard to an agreement for sale and based upon it Varada Reddi came in possession thereof. In that factual scenario, it was held that the purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. Relevant paragraphs 9 and 10 read as under :-

“9. ....In the case of an agreement of sale the party who obtains possession, acknowledges title of the vendor even though the agreement of sale may be invalid. It is an acknowledgement and recognition of the title of the vendor which excludes the theory of adverse possession. The well-settled rule of law is that if person is in actual possession and has a right to possession under a title involving a due recognition of the owner's title his possession will not be regarded as adverse in law, even though he claims under another title having regard to the well recognised policy of law that possession is never considered adverse if it is referable to a lawful title. The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties stipulating for a total divestiture of all the rights of the transferor in the property, and in case in which, there is a mere executory agreement of transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the

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10. (1990) 4 SCC 706

contract remained executory in stage, was in his own right and adversely against the transferor. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse. ”

“10. In the case of an executory contract of sale where the transferee is put in possession of the property in pursuance of the agreement of sale and where the parties contemplate the execution of a regular registered sale deed the animus of the purchaser throughout is that he is in possession of the property belonging to the vendor and that the former's title has to be perfected by a duly executed registered deed of sale under which the vendor has to pass on and convey his title. The purchaser's possession in such cases is of a derivative character and in clear recognition of and in acknowledgement of the title of the vendor” ..... “On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself.....”

20) Likewise, in the matter of **Ram Nagina Rai** (supra), Hon'ble Supreme Court held that adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of the title of the true owner and the person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed. It was also observed that where the possession can be referred to a lawful title, it would not be considered to be adverse. Relevant paragraphs 8, 9 and 17 read as under :-

"8. .... Adverse possession means a hostile assertion i.e. a possession which is .....Adverse possession expressly or impliedly in denial of the title of the true owner. The person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed. In deciding whether the acts alleged by the person constitute adverse possession, regard must be given to the animus of the person doing such acts, which must be ascertained from the facts and circumstances of each case. It is needless to observe that where the possession can be referred to a lawful title, it would not be considered to be adverse, the reason being that the person whose possession can be drawn to a lawful title, will not be permitted to show that his possession was hostile to another's title. Simply put, one who holds possession on behalf of another, does not by mere denial of the other's title, make his possession adverse so as to give himself the benefit of the statute of limitation."

9. ....All through, as is evident from the material evidence on record and their contentions, the defendants have tried to show that they have been in continuous possession of the property for more than 60 years. But there is no iota of evidence to show as to when the defendants' possession in fact became adverse to the interest of the plaintiff. Except for the change of Khatian sometime in the year 1970 by the defendants and the payment of taxes for being in possession of property, no material is produced by the defendants to show whether the possession was really hostile to the actual owner.....

17. Applying the test of nec vi, nec clam, nec precario i.e. "without force, without secrecy, without permission" as an established test for finding adverse possession, we find that the defendants have not proved their possession to be adverse to that of the real owner inasmuch as they entered into possession as licensees to begin with and there is nothing on record to

show as to when the permissive possession became adverse to the interest of the real owner. "Animus possidendi" is one of the ingredients of adverse possession, and unless the person possessing the property has the requisite hostile animus, the period of prescription does not commence.

**21) In the matter of Roop Singh (Dead) Through Lrs. Versus Ram**

**Singh (Dead) Through Lrs.**<sup>11</sup>, Hon'ble Supreme Court held that defendant entered into the possession of the premises as a tenant and his possession was permissive and there was no pleading or proof as to when it became adverse and hostile. Relevant paragraphs 7 and 9 read as under :-

7. .... Further, the fact-finding courts after appreciating the evidence held that the defendant entered into the possession of the premises as a batai, that is to say, as a tenant and his possession was permissive and there was no pleading or proof as to when it became adverse and hostile. .... If the defendant got the possession of suit land as a lessee or under a batai agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. ....

9. .... It is also to be stated that the pleas of adverse possession and retaining the possession by operation of Section 53-A of the Transfer of Property Act are inconsistent with each other. Once it is admitted by implication that the plaintiff came into possession of the land lawfully under the agreement and continued to remain in possession till the date

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11. (2000) 3 SCC 708

of the suit, the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed out hostile animus of retaining possession as an owner after getting in possession of the land."

**22)** Yet, in the matter of **Karnataka Board of Waqf** (supra), it has been held by Hon'ble Supreme Court that an owner would be deemed to be in possession of a property so long as there is no intrusion and non-use of the property by the owner even for a long time won't affect his title. It was further held that a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*" that is peaceful, open and continuous. Relevant paragraph 11 reads as under :-

**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, (1996) 8 SCC 128].

- 23)** In the instant case, plaintiffs have set up their interest upon the alleged transaction dated 15.4.1964 and adverse possession but right, title and interest of plaintiffs in absence of execution of a registered deed of sale cannot be held to be extinguished in view of the provisions prescribed under Section 54 of Transfer of Property Act, 1954 [hereinafter to be referred as 'TP Act'] read with Section 17 of Registration Act. In such circumstances, the possession of the plaintiffs at the most could be held to be of permissive in nature and cannot be held to be ripen by way of adverse possession.

Discussion on validity of un-registered sale-deed and the proviso appended to Section 49 of Registration Act.

- 24)** Section 17 of the Registration Act deals with documents of which registration is compulsory. Section 17 (1) (b) states that other non-testamentary instruments which purport or operate to create,

declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred and upwards, or in immovable property requires registration. Section 17 (1) (b) is reproduced herein below :-

**“17. Documents of which registration is compulsory.”-(1)** The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

**(b)** other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property” ”

**25)** A contract of sale of immovable property is a contract that a sale of such property shall place on terms settled between the parties. While a sale is a transfer of ownership, a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property. Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favor of the transferee nor by itself create any interest or charge in the property. In the instant case, there was transfer of immovable property exceeding Rs. 100/- through unregistered document therefore in view of the above quoted

provisions, execution of registered instrument to sale was mandatory. Hon'ble Supreme Court in the matter of **Ramesh Chand (D) Thr. Lrs. Versus Suraj Chand and Another**<sup>12</sup> while dealing with similar issue held as under :-

**13.** The TP Act envisages five different modes for transferring a property but for the purpose of the present appeal we are only concerned with one of the modes i.e., by way of "Sale" and the same is dealt under section 54 of the TP Act which defines "sale" and a "contract for sale" as follows:

**"54. 'Sale' defined.**— 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

**Sale how made.** – Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

**Contract for sale.**— A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

14. Perusal of above said provisions lays down a specific mode of execution of sale deed with respect to immovable property for concluding the sale of a property. In sale for an immovable property the value of which exceeds Rs. 100/-, the three requirements of law are that the transfer of property of sale must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered. Unless the sale deed is in writing, attested and registered, the transaction cannot be construed as sale, or in other words, the property will not be transferred.
  
15. There is a difference between a sale deed and an agreement for sale, or a contract for sale. A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. While a sale is a transfer of ownership; a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property. Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property. If after entering into a contract for sale of property, the seller without any reasonable excuse avoids executing a sale deed, the buyer can proceed to file a suit for specific performance of the contract.
  
16. The scope of an agreement for sale has been highlighted by this court in the case of Suraj Lamp and Industries Private Limited (2) through Director v. State of Haryana, wherein this Court observed that:
 

"16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property.

This Court in *Narandas Karsondas v. S.A. Kamtam*, [(1977) 3 SCC 247] observed:

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See *Ram Baran Prasad v. Ram Mohit Hazra*, [AIR 1967 SC 744]). The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'.... The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

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37. ... that only on execution of conveyance, ownership passes from one party to another...."

17. In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra*, [(2004) 8 SCC 614] this Court held:

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor

from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.
19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

17. In the instant matter, undisputedly plaintiff claims that there is only an agreement to sell, and there

is no sale deed executed in his favour by the father. As per the settled position of law, this document does not confer a valid title on the plaintiff as it is not a deed of conveyance as per Section 54 of the TP Act. At best, it only enables the plaintiff to seek for specific performance for the execution of a sale deed and does not create an interest or charge on the suit property.

**26) In M/s K.B. Saha (supra), R. Hemalatha (supra) and Muruganandam (supra),** Hon'ble Supreme Court has dealt with Section 49 of Registration Act and consistently held that an un-registered document affecting immovable property may be received in evidence in a suit for specific performance and proviso also enables the said document to be received in evidence of a collateral transaction. In **M/s K.B. Saha (supra)**, Hon'ble Supreme Court has also culled out certain principles while dealing with the scope of Section 49 of Registration Act, which are :-

1. A document required to be registered, if un-registered is not admissible in evidence under Section 49 of Registration Act.
2. Such un-registered document can however be used as evidence for collateral purpose as provided in proviso to Section 49.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would be using it as a collateral purpose.

Same proposition of law has been enunciated by the Hon'ble Supreme Court in the matter of **S. Kaladevi Versus V.R. Somasundaram**<sup>13</sup>.

**27)** However, in present case it is not in dispute that sale-deed dated 15.4.1964 is an un-registered document which requires to be registered. Such document could not be used as evidence for collateral purpose. The collateral transaction was not an independent act, rather the transaction was required to be effected by registered document, therefore it was not admissible in evidence to prove a valid transaction between the parties.

**28)** It is a settled position of law that a registered sale-deed carries a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. A person alleging that sale-deed is a sham must satisfy a rigorous standard of pleading by making clear, cogent, convincing averments and provide material particulars within their pleadings and evidence.

**29)** The Hon'ble Supreme Court in the matter of **Hemalatha (D) by Lrs. vs. Tukaram (D) by Lrs. and Ors.**<sup>14</sup>, held that there must be

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13. (2010) 5 SCC 401

14. 2026 LiveLaw (SC) 79

clear pleadings and convincing averments to establish the factum of a sham transaction. It is also held that the mere usage of words like fraud is not sufficient. Relevant paragraphs 31, 34 & 35 read as under :-

“31. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered instrument as a “sham”. Adopting the principles enunciated in Prem Singh and Ors. vs. Birbal and Ors., (2006) 5 SCC 353 1, Jamila Begum (Dead) Through Lrs. vs. Shami Mohd. (Dead) Through Lrs. and Anr., (2019) 2 SCC 727 2, and Rattan Singh and Ors. v. Nirmal Gill & Ors., (2021) 15 SCC 300 3, this Court “27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.....” “16. Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.....” “ 33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered.....” reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate

that the Deed was never intended to operate as a bona fide transfer of title.

34. The person alleging that a registered Deed is a sham must satisfy a rigorous standard of pleading by making clear, cogent, convincing averments and provide material particulars in his pleadings and evidence. This Court is of the view that the test akin to a test under Order VI Rule 4 CPC is applicable to such a pleading and clever drafting creating illusion of cause of action would not be permitted and a clear right to sue would have to be shown in the plaint.]
35. As pointed out by this Court in *I.T.C. Limited vs. Debts Recovery Appellate Tribunal and Ors.*, (1998) 2 SCC 70, the ritual of repeating a word like 'fraud' or creation of an illusion in the plaint can certainly be unraveled and exposed by the Court at the nascent stage of litigation without waiting for a full trial. Mere suspicion or nebulous averments without material particulars would not be sufficient to dislodge the presumption under Sections 91 and 92 of the Indian Evidence Act, 1872."

**30)** In the matter of **Vidhyadhar** (supra), it is held that where a party to the suit does not appear in the witness-box to state their case on oath or refuses to be cross-examined, a presumption can be drawn that the case set up by him is not correct. Relevant paragraph 17 reads as under :-

17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh and Anr.* This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh and Ors.* and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai*

Krishnarao Deshmukh . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors. , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.

**31)** In the present case, defendants No. 6 and 7 (appellants herein) were proceeded ex-parte and ex-parte judgment and decree was passed against them. They did not file written statement but at the same time, plaintiffs were under obligation to prove their case. Plaintiffs themselves pleaded that a registered sale-deed was executed by defendants No. 1 to 3 in favor of defendants No. 6 and 7. They alleged it to be a forged document but they failed to challenge the said sale-deed. The suit property was recorded in the names of defendants No. 1 to 3 in revenue record after death of Mohd. Rafique and they had right to execute a valid sale-deed in favor of defendants No. 6 and 7. In absence of challenge to the said sale-deed, it cannot be held that the said document is forged one and not binding upon defendants No. 1 to 3.

**32)** In view of the discussion made herein-above, it can be safely concluded that plaintiffs have not proved the essentials required to establish adverse possession and at most, their possession can be held to be permissive. It is also held that the sale-deed dated

15.4.1964 is an un-registered document which requires to be registered and it was not admissible in evidence to prove a valid transaction between the parties. Thus, the substantial question of law No. 1 and 2 are answered in affirmative in favor of appellants / defendants No. 6 and 7. The suit filed by the plaintiffs is dismissed and the judgment and decree passed by the learned Trial Court and learned First Appellate Court are hereby set aside.

**33)** In result, this second appeal is **allowed**.

**34)** A decree be drawn accordingly.

**Sd/-**  
**(Rakesh Mohan Pandey)**  
**JUDGE**

Ajinkya

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