IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 31 of 2012
Reserved on: 01.04.2026
Date of Decision: 20.05.2026

State of H.P. & Ors ...Appellants

Versus

Jai Dev (deceased) through LRs ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Appellants No.1 & 2	:	Mr Ashok Sood, Senior Advocate, with Mr Khem Raj, Advocate.
For the Appellant No.3	:	M/s Akhil Mittal and Abhinav Purohit, Advocates.
For the Respondents No. 1 (a) to 1(c)	:	Mr V.S. Chauhan, Senior Advocate, with Mr Arsh Chauhan, Advocate.
For the Respondents No. 1(d) to 1(f)	:	None

Name of respondents No.1(g) deleted vide order dated 29.09.2023.

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1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 30.09.2011 passed by the learned District Judge, Mandi (learned Appellate Court) vide which the judgment and decree dated 19.11.2008 passed by the learned Civil Judge (Junior Division) Court No.2, Mandi, District Mandi, H.P. (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit seeking a declaration that he has become the owner of the suit land described in para-1 of the plaint by way of the adverse possession and the revenue entries to the contrary are null and void. A decree of permanent prohibitory injunction for restraining the defendants from interfering with the suit land was also prayed. It was asserted that some portion of the suit land was in exclusive ownership and possession, and some portion was in exclusive possession of the plaintiff's grandfather in the year 1955-56. The defendant No.1 acquired about one thousand bighas of land, including the

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suit land. However, no compensation was paid to the plaintiff or his grandfather. The defendants did not take possession of the acquired land, and the suit land remained in the exclusive possession of the plaintiff's grandfather, the plaintiff's father and the plaintiff. Defendant No.3 tried to take forcible possession of the suit land and dispossess the plaintiff on 15.12.1969, but they were not allowed to do so. The plaintiff's possession over the suit land is continuous, hostile, notorious, uninterrupted, and to the knowledge of the defendants, and the plaintiff has become the owner by way of adverse possession. The plaintiff filed an application for restoration of the land under the standing order No. 28, para No. 87 A of the Land Acquisition Act. The proceedings remained pending before the learned Deputy Commissioner, and no order was passed. The defendants started interfering with the plaintiff's possession. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by the defendants by filing a written statement taking preliminary objections regarding lack of maintainability, cause of action, *locus-standi* and the suit being barred by limitation. The contents of the plaint were denied on the merits. It was asserted that the defendants have

been in possession of the suit land since the year 1955-1956, after its acquisition by the State. The defendants had taken possession of the suit land from the plaintiff's predecessor, and they used the suit land for producing fodder and grazing animals. Year-wise record of green fodder produced from the farm area was entered in the Crop Register maintained in the Government Livestock, Farm Kamand, District Mandi, H.P. The defendants also raised buildings and improved the suit land. The suit was filed without any basis. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The following issues were framed by the learned Trial Court on 21.07.2007:

1. Whether the plaintiff has become the owner of the suit land by way of adverse possession, as alleged? OPP.
2. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction, as prayed? OPP.
3. Whether the suit is not maintainable, as alleged? OPD
4. Whether the plaintiff has no locus standi to sue as alleged? OPD
5. Whether the suit is barred by limitation, as alleged? OPD
6. Whether the plaintiff is having no cause of action to file the present suit, as alleged? OPD

7. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW1), Tula Ram (PW2) and Shiv Kumar (PW3). The defendants examined Yograj (DW1).

7. Learned Trial Court held that the plaintiff failed to prove the adverse possession. The plaintiff had not challenged the correctness of the acquisition. The evidence of the defendants showed that the land was being used for grazing cattle and growing fodder. Hence, the learned Trial Court answered issues 1 to 5 in negative, issue No.6 in the affirmative and dismissed the plaintiff's suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal, which was decided by the learned District Judge, Mandi, District Mandi, H.P. (learned Appellate Court). Learned Appellate Court held that it was not disputed that some portion of the suit land was in exclusive ownership, and some portion was in possession of the plaintiff's grandfather. The defendants claimed that the suit land was acquired along with the other land, but they did not produce any evidence of acquisition. The defendants failed to prove that they had taken possession of the suit land after its

acquisition. The revenue entries and the mutation were insufficient to prove the defendants' possession. Learned Trial Court erred in holding that the suit land was validly acquired by the State of H.P. Hence, the learned Appellate Court allowed the appeal and set aside the judgment and decree passed by the learned Trial Court.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants have filed the present appeal, which was admitted on the following substantial questions of law vide order dated 24.12.2012: -

1. Whether First Appellate Court committed error of law in ignoring 56 years long standing entries of ownership and possession of the defendants over the suit land for the last 56 years simply on the ground that the defendants have not produced the supporting documents of acquisition proceedings and Award of suit land on the basis of which revenue entries were made in favour of the defendants in the year 1955-56, particularly when fact of acquisition of suit land admitted by the plaintiff?
2. Whether the First Appellate Court had committed illegality in granting relief of declaration of ownership and possession to the plaintiff when only the claim of title on the basis of adverse possession as pleaded by the plaintiff was rejected, not upheld by both the Courts below?
3. Whether under law, a strong presumption of truth is attached to constant, long-standing revenue entries of ownership and possession of the defendants, which have not been rebutted by any oral or documentary evidence by

the plaintiff, the onus of rebutting the same heavily lies on the plaintiff?

4. Whether, once the acquired land and property vests in the defendants free from all encumbrances under Section 16 of the Land Acquisition Act, whether its original owner or their successors (in the present case, the plaintiff) has any right to claim adverse possession on such acquired land?

5. Whether the courts below erred in not deciding the issue of limitation when apparently the suit is time-barred on the face of it as land was acquired and mutation was attested 56 years ago in favour of the defendants?

6. Whether the First Appellate Court misconstrued and misread the case law referred to in the impugned judgment, which is neither applicable nor attracted to the facts and circumstances of the present case by any stretch of imagination?

10. I have heard Mr Ashok Sood, learned Senior Counsel, assisted by Mr Khem Raj, learned counsel for appellants No.1 and 2, M/s Akhil Mittal and Abhinav Purohit, learned counsel for appellant No.3, and Mr V.S. Chauhan, learned Senior Counsel, assisted by Mr Arsh Chauhan, learned counsel for respondents No.1 (a) to 1(c).

11. Mr Ashok Sood, learned Senior Counsel for appellants No.1 and 2, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment passed by the learned Trial Court. The plaintiff had not obtained any demarcation to identify the land in his possession. The plaintiff

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had admitted in the plaint that the land was acquired by the State of H.P., and this fact was not in dispute. The ingredients of adverse possession were not satisfied, and the learned Appellate Court erred in decreeing the suit. Hence, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside. He relied upon the judgments in ***Himat Rai vs. Kehar Singh 2008(4) CCC 778, H.N. Jagannath and others vs. State of Karnataka and others (2018) 11 SCC 104, Indira Nehru Gandhi vs. Raj Narain AIR 1975 SC 2299, Mandal Revenue Officer vs. Goundla Venkaiah and another (2010) 2 SCC 461, R. Hanumaiah and another vs. Secretary to Govt of Karnatka, Revenue Department and others (2010) 5 SCC 203, Charan Dass vs. State of H.P. 2024 (3) Shim. LC 1382, Jeet Singh (since deceased) through LRs vs. Molu Ram (since deceased) through L.Rs 2010(4) CCC 417, Karnatka Board of Wakf vs Government of India & Ors. 2004(3) CCC 326, Gajinder Singh & Ors. vs. Narotam Singh & Ors. 1996(1) CCC 384 (2)*** and ***Komiah vs. Subbulakshmiamal and Soundaraja decided on 01.03.2002*** in support of his submission. He has also filed written arguments, which have been perused by me.

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12. Mr Akhil Mittal, learned counsel for appellant No.3, submitted that the ingredients of adverse possession were not satisfied. It is not possible for the State and its instrumentalities to keep vigilance over a vast track of the open land owned by it. Therefore, a plea of adverse possession against the State should be viewed differently from the plea against a private person. The learned Appellate Court held that the defendants had failed to prove the taking of possession. An official act is presumed to be validly done. The revenue entries are recorded in the defendants' favour, which proves their possession. There was no necessity to prove the delivery of possession. Learned Appellate Court erred in allowing the appeal. Hence, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside. He relied upon the judgments in ***Bangalore Development Authority vs. N. Jayamma (2017) 13 SCC 159, State of Kerala vs. Bhaskaran Pillai (1197) 5 SCC 432*** and ***Smt. Mitra vs. State of Karnataka 2024 Supreme (Online) (KAR) 8868*** in support of his submission.

13. Mr V.S. Chauhan, learned Senior Counsel for the respondents No.1 (a) to 1(c), submitted that the defendants had failed to produce any evidence to prove the delivery of

possession to them. The learned Trial Court had not adverted to this aspect, and the learned Appellate Court had rightly set aside the judgment passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

14. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

CMP No. 9616 of 2025
Application for Additional Evidence

15. Before adverting to the merits of the case, it is necessary to dispose of an application for leading the additional evidence. It has been asserted that the learned Appellate Court had reversed the well-reasoned judgment passed by the learned Trial Court on the ground that the defendants had not produced the record of the acquisition of the suit land. The defendant remained under the impression that the acquisition of the suit land was not in dispute. Mutation No. 41 was attested in the defendants' favour on 24.03.1958 based on the acquisition, notification and the award. The record of acquisition could not be traced earlier, despite the best efforts. The copies of two

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notifications published in H.P. Rajpatra on 21.06.1955 and 06.07.1956, and a letter written by the Land Acquisition Collector to Assistant Animal Husbandry Officer, Mandi, regarding taking possession of the suit land and disbursement of compensation to interested persons were traced. The applicants/defendants want to produce the letters to establish their defence. The documents are copies of public record and are, *per se*, admissible. Hence, it was prayed that the present application be allowed and the documents be taken on record.

16. The application is opposed by filing a reply, making a preliminary submission regarding the lack of maintainability. The contents of the application were denied on the merits. It was asserted that the applicants had failed to establish what prevented them from producing the record at the time of leading the evidence before the learned Trial Court. The record was in the applicants' possession at the time of filing the main suit and leading the evidence. No explanation has been provided for not producing the documents earlier. The ingredients of Order 41 Rule 27 of CPC have not been satisfied. The application has been filed to fill the lacuna left by the applicants/defendants in their evidence. The additional evidence would cause a serious

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prejudice to the other side. Therefore, it was prayed that the application be dismissed.

17. A rejoinder denying the contents of the reply and affirming those of the application was filed.

18. It was laid down by the Hon'ble Supreme Court in ***Sanjay Kumar Singh v. State of Jharkhand, (2022) 7 SCC 247: (2022) 3 SCC (Civ) 699: 2022 SCC OnLine SC 292*** that the Appellate Court should not generally travel beyond the record of the Trial Court, but an exception has been created under Order 41 Rule 27 of CPC. It was observed at page 249: -

> "7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case, and the evidence has a direct and important bearing on the main issue in the suit, and the interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate

> court is to be considered is whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment, or for any other substantial cause of like nature.
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> 8. As observed and held by this Court in ***A. Andisamy Chettiar v. A. Subburaj Chettiar [A. Andisamy Chettiar v. A. Subburaj Chettiar, (2015) 17 SCC 713 : (2017) 5 SCC (Civ) 514]***, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore, is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

19. It was held in ***Sopanrao v. Syed Mehmood, (2019) 7 SCC 76: (2019) 3 SCC (Civ) 467: 2019 SCC OnLine SC 821*** that where the documents were not filed before the learned Courts below, and no application was filed for leading additional evidence, the documents cannot be taken on record. It was observed at page 81:

> "**13.** At this stage, it would be pertinent to point out that the appellant-defendants, during the course of this appeal, have filed a number of applications to place on record certain documents which were not on the record of the trial court. No explanation has been given in any of these applications as to why these documents were not filed in the trial court. These documents cannot be looked

> into and entertained at this stage. The defendants did not file these documents before the trial court. No application was filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, for leading additional evidence before the first appellate court or even before the High Court. Even the applications filed before us do not set out any reasons for not filing these documents earlier, and do not meet the requirements of Order 41 Rule 27 of the Code of Civil Procedure. Hence, the applications are rejected, and the documents cannot be taken into consideration."

20. It was held in ***Jagdish Prasad Patel v. Shivnath, (2019) 6 SCC 82: (2019) 3 SCC (Civ) 112: 2019 SCC OnLine SC 492*** that the additional evidence can be led when the Trial Court had refused to admit the evidence, the evidence was not available despite the exercise of due diligence and the evidence is required by the Court to effectively adjudicate the dispute pending before it. It was observed at page 96: -

> "29. Under Order 41 Rule 27 CPC, the production of additional evidence, whether oral or documentary, is permitted only under three circumstances, which are:
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> (I) where the trial court had refused to admit the evidence, though it ought to have been admitted;
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> (II) the evidence was not available to the party despite the exercise of due diligence; and
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> (III) the appellate court required the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.
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> An application for the production of additional evidence cannot be allowed if the appellant was not diligent in producing the relevant documents in the lower court.

> However, in the interest of justice and when satisfactory reasons are given, the court can receive additional documents."

21. It was laid down by the Hon'ble Supreme Court in ***Sanjay Kumar Singh v. State of Jharkhand, (2022) 7 SCC 247,*** that additional evidence can be taken if the conditions laid down under Order 41 Rule 27 are satisfied. It was observed: -

> 7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case, and the evidence has a direct and important bearing on the main issue in the suit, and the interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even one of the circumstances in which the production of additional evidence under Order 41 Rule 27CPC by the appellate court is to be considered is whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

22. A similar view was taken in the ***North Eastern Railway Administration. vs. Bhagwan Das, (2008) 8 SCC 511,*** wherein it was observed: -

> "13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary, is not admitted, but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist. The circumstances under which additional evidence can be adduced are:
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> (i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted [clause (a) of sub-rule (1)], or
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> (ii) the party seeking to produce additional evidence establishes that, notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed [clause (aa), inserted by Act 104 of 1976], or
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> (iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause [clause (b) of sub-rule (1)].
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> 14. It is plain that under clause (b) of sub-rule (1) of Rule 27 Order 41 CPC, with which we are concerned in the instant case, evidence may be admitted by an appellate

authority if it "requires" to enable it to pronounce judgment, or for any other substantial cause. The scope of the Rule, in particular of clause (b), was examined way back in 1931 by the Privy Council in ***Parsotim Thakur v. Lal Mohar Thakur [AIR 1931 PC 143]***. While observing that the provisions of Section 107 as elucidated by Order 41 Rule 27 are clearly not intended to allow the litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows : (AIR p. 148)

> "... Under clause (1)(b), it is only where the appellate court 'requires' it (i.e. finds it needful) that additional evidence can be admitted. It may be required to enable the court to pronounce judgment, or for any other substantial cause, but in either case, it must be the court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but 'when on examining the evidence as it stands some inherent lacuna or defect becomes apparent'."

15. Again in ***K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526 : (1964) 2 SCR 35]*** a Constitution Bench of this Court while reiterating the aforenoted observations in ***Parsotim case [AIR 1931 PC 143]*** pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Thus, the question

> whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits."

23. In the present case, the only reason assigned for non-production of the evidence is that the learned Appellate Court had reversed the judgment of the learned Trial Court on the ground that the record of acquisition of the suit land was not produced, and it has become necessary to produce the record, which shows that the purpose of the application is to get rid of the findings recorded by the learned Appellate Court. This is not permissible, and the application is liable to be dismissed on this short ground alone.

24. The documents sought to be produced on record are not relevant to the adjudication of the dispute pending before the Court. The applicant is relying upon the photocopy of Rajpatra containing the notifications dated 21.06.1955 and 06.07.1956. The plaintiff has not disputed the fact that the suit land was acquired by the State. The only dispute is whether the possession was taken by the State as per the law or not. The applicant is seeking to produce on record a letter dated 11.04.1957 in which a request was made to Tehsildar, Sadar,

regarding the taking of possession. This document does not show whether the possession was, in fact, taken pursuant to the letter. The applicant also relied upon a letter dated 16.05.1957, which mentions the disbursal of the compensation of ₹1,50,000/- for the cattle breeding farm Katola. This document also does not show the delivery of the possession. Reliance is also placed upon the letter dated 17.06.1957. However, this letter mentions that all the houses and land had been vacated by the inhabitants, but in some cases, the threshing floors were still being occupied by ex-tenants due to the bad weather and foot and mouth disease among the livestock. These persons could not thrash their crop and were likely to finish it within a day or two, after which they would vacate the thrashing floor as well. The letter does not mention the suit land and will not assist the Court in adjudicating the dispute pending before the Court.

25. The applicant is seeking to rely upon the copies of Missal Haqiyat and jamabandies, which are not material in the absence of evidence of taking possession.

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26. Therefore, the additional evidence cannot be taken on record. Consequently, the present application fails, and it is dismissed.

Substantial Question of Law Nos. 1, 3 and 4:

27. These substantial questions of law are interconnected with each other and are being taken together for consideration.

28. It is undisputed that the suit land was acquired by the State. The plaintiff specifically asserted this fact in para 3 of the plaint. He admitted, while appearing as PW1, that he had filed an application (Ext.PW1/M). This application specifically mentions that the suit land and other land were acquired by the State for the Department of Animal Husbandry from the year 1955-56. Therefore, the fact that the suit land was acquired by the State of H.P. is undisputed.

29. Section 16 of the Land Acquisition Act provides that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. It was laid down by the Hon'ble Supreme Court in ***Prahlad Singh v.***

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Union of India*, *(2011) 5 SCC 386, that the vesting of the acquired land in the government takes place as soon as possession is taken by the Collector after passing an award under Section 11. A legal presumption of vesting cannot be raised in favour of the acquiring authority without taking possession. It was observed:

> **"13.** We have given our serious thought to the entire matter and carefully examined the records. Section 16 lays down that once the Collector has made an award under Section 11, he can take possession of the acquired land. Simultaneously, the section declares that upon taking possession by the Collector, the acquired land shall vest absolutely in the Government free from all encumbrances. In terms of the plain language of this section, vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an award under Section 11. To put it differently, the vesting of land under Section 16 of the Act presupposes actual taking of possession, and till that is done, the legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority. Since the Act does not prescribe the mode and manner of taking possession of the acquired land by the Collector, it will be useful to notice some of the judgments in which this issue has been considered.
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> **14.** In ***Balwant Narayan Bhagde v. M.D. Bhagwat [(1976) 1 SCC 700]*** Bhagwati, J. (as he then was), speaking for himself and Gupta, J., disagreed with Untwalia, J., who delivered a separate judgment and observed: (SCC pp. 711-12, para 28)
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> > "*28*. ... We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act,

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1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. *There can be no hard-and-fast rule laying down what act would be sufficient to constitute the taking of possession of land*. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. *But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession*. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any

> fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."
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> (emphasis supplied)

15. In ***Balmokand Khatri Educational and Industrial Trust v. State of Punjab [(1996) 4 SCC 212]*** the Court negatived the argument that even after finalisation of the acquisition proceedings possession of the land continued with the appellant and observed: (SCC p. 215, para 4)

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976, by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now a well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas, and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

16. In ***P.K. Kalburqi v. State of Karnataka [(2005) 12 SCC 489]***, the Court referred to the observations made by Bhagwati, J., in ***Balwant Narayan Bhagde v. M.D. Bhagwat [(1976) 1 SCC 700]*** that no hard-and-fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land, and observed that when there is no crop or structure on the land, only symbolic possession could be taken.

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18. In ***Sita Ram Bhandar Society v. Govt. of NCT of Delhi [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268]*** and ***Omprakash Verma v. State of A.P. [(2010) 13 SCC 158 : (2010)***

4 SCC (Civ) 823] it was held that when possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. A similar view was expressed in the recent judgment in ***Brij Pal Bhargava v. State of U.P. [(2011) 5 SCC 413 : (2011) 2 Scale 692]***

19. The same issue was recently considered in ***Banda Development Authority v. Moti Lal Agarwal [(2011) 5 SCC 394]***, decided on 26-4-2011. After referring to the judgments in ***Balwant Narayan Bhagde v. M.D. Bhagwat [(1976) 1 SCC 700], Balmokand Khatri Educational and Industrial Trust v. State of Punjab [(1996) 4 SCC 212], P.K. Kalburqi v. State of Karnataka [(2005) 12 SCC 489], NTPC Ltd. v. Mahesh Dutta [(2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375], Sita Ram Bhandar Society v. Govt. of NCT of Delhi [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268], Omprakash Verma v. State of A.P. [(2010) 13 SCC 158 : (2010) 4 SCC (Civ) 823]*** and ***Nahar Singh v. State of U.P. [(1996) 1 SCC 434]*** this Court laid down the following principles:(***Banda Development Authority case [(2011) 5 SCC 394***], SCC p. 411, para 37)

> "*(i)* No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
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> *(ii)* If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
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> *(iii)* If a crop is standing on the acquired land or a building/structure exists, mere going on the spot by the authority concerned will, by itself, not be sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent

witnesses and get their signatures on the panchnama. Of course, the refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land, and it will be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and getting their signatures on such a document.

(v) If the beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A), and a substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

20. If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in ***Banda Development Authority case [(2011) 5 SCC 394]*** it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama.

30. This Court also held in ***Jit Ram v. State of H.P., 2013 SCC OnLine HP 1376*** that the delivery of symbolic possession or the possession merely on paper is not enough. It is essential that actual possession be taken. It was observed:

> **11.** In ***Mrityunjoy Bose v. State of Bihar, AIR 1967 Patna 286***, the Division Bench has held that the taking of possession referred to in Sections 16, 17(1), 34 and 48(1) of the Land Acquisition Act is of the same nature. Their Lordships have further held that unless the party to the suit can show that possession over that portion of the disputed land, which is notified as having been withdrawn from acquisition, is of the nature required by either Section 16 or Section 17(1) of the Act, the legality of the order of withdrawal cannot be successfully challenged. Their Lordships have further held that the Government loses its rights to withdraw from acquisition only from the date when the Collector takes possession under Sections 16 or 17, so that title vests free from all encumbrances in the Government. Their Lordships have held as under:
>
> > "44. So far as the application of S. 48(1) is concerned, it seems clear that the Government loses its right to withdraw from acquisition only from the date when the Collector takes possession under Section 16 or S. 17 of the Act, so that title vests free from all encumbrances in the Government. There seems to be no reason to suppose that the word 'possession' in sub-section (1) of Section 48 means possession of a kind different from that taken over under Section 16 or Section 17 of the Act. It is also from the date of taking over such possession that interest becomes payable under Section 34 of the Act.

> 45. As I have been unable to find that the Government took possession of the lands in question under any law, much less under Section 16 or Section 17 of the Act, I am unable to hold that they acted illegally in withdrawing portions of the lands from acquisition. For the same reason, I cannot hold that the petitioners are entitled to interest from any particular date.
>
> 53....Possession for the purpose of Ss. 17 and 17(1) must be possession as a full owner, in consequence of which lands vest absolutely in the Government free from all encumbrances. It cannot be of the same nature as any previous possession which the Government might have taken either as a lessee, or mortgagee, or licensee, or under some other colour of title, or even as a trespasser. Though the Act is silent as to the mode of taking possession either under S 16 or S 17(1) of the Act, there seems to be no doubt that either actual occupation by the Collector or his agents, or taking symbolic possession (where actual possession is already with the Collector), or doing something equivalent to effective possession is contemplated. Here, admittedly, no such formal taking of possession either under S. 16 or under S. 17(1) has been alleged to have been done. The petitioners' case all along has been that by virtue of the appropriate notification, any resistance by the petitioners, the Forest Department took over actual possession from 1954. That possession cannot, therefore, be held to be possession for the purpose of S. 48(1) of the Land Acquisition Act. Hence, there is no illegality in the withdrawal from acquisition in respect of a portion of the disputed lands."
>
> *****

14. The Apex Court in ***Jethmull Bhoraj v. State of Bihar (1972) 1 SCC 714*** has held that the Government becomes the owner of the lands notified for acquisition only when

the Collector takes possession of those lands either under Section 16 or under Section 17(1). Their Lordships have further held that the possession of any land notified for acquisition is taken when the Collector has made an award under Section 11 and not before it. But an exception is provided under Section 17(1). In cases of urgency, if the Government so directs, the Collector may, though no award has been made under Section 11, on the expiration of the 15 days from the publication of the notices mentioned in Section 9(1), take possession of any waste or arable land and the land shall thereupon vest absolutely with the Government free from all encumbrances. Their Lordships have further held that the Collector cannot take possession of the land in question unless the Government directs him to do so. Their Lordships have held as under:

> "10. The next point that arises for decision is whether the delivery of the lands notified for acquisition was taken under Section 17(1) as contended by the appellant. The Government becomes the owner of the lands notified for acquisition only when the Collector takes possession of those lands either under Section 16 or under Sec. 17(1). Both those provisions provide that when the Collector takes possession under those provisions, the lands notified for acquisition shall vest absolutely in the Government free from all encumbrances. Until and unless possession is taken under either of those provisions, the lands notified for acquisition do not vest in the Government. Section 48(1) of the Act provides:
>
> > "Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any lands of which possession has not been taken."
>
> 11. Section 36 is not relevant for our present purpose. Possession referred to in Section 48

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necessarily is the possession taken either under Section 16 or under Section 17(1). Section 17(1) says:

> "In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9 sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government free from all encumbrances."

Ordinarily, possession of any land notified for acquisition is taken when the Collector has made an award under Section 11 and not before it. But an exception is provided under Section 17(1). In cases of urgency, if the Government so directs, the Collector may, though no award has been made under Section 11, on the expiration of the 15 days from the publication of the notice mentioned in S. 9(1), take possession of any waste or arable land and the land shall thereupon vest absolutely with the Government free from all encumbrances. From this provision, it is plain that the Collector cannot take possession of the land in question unless the Government directs him to do so. The Government directs him to do so only in cases of urgency. Even when the Government directs the Collector to take possession, he cannot do so until the expiration of 15 days from the publication of a notice under Section 9(1). There is no material on record to show that the Government had given to the Collector any direction under Section 17(1); nor is there any material to show that the lands in question had been taken possession of by the Collector under Section 17(1). It is true that in the order-sheet

maintained by the Land Acquisition Officer, a note was made on October 17, 1959:"

> "Shri B.P. Yadav Kgo, to deliver possession at the spot to the representative of the R.O. on 16-11-59. Draft addressed to R.O. is signed."

But there is nothing to show that this order was implemented. According to the respondent, this order was not implemented."

In the instant case, no direction was ever issued by the State Government to the Collector to take over the possession.

15. In ***Balwant Narayan Bhagde v. M.D. Bhagwat (1976) 1 SCC 700***, Hon'ble Justice Untwalia, J. has taken the view that even the delivery of so-called "symbolical" possession is delivery of "actual" possession of the right title and interest of the judgment-debtor. However, the majority view is contrary to the same. His Lordship Bhagwati, J. (concurring) (for himself and Gupta, J.) has held that there can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. The majority view reads as under:

> "**Bhagwati, J.** (on behalf of himself and Gupta J.): - We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned brother Untwalia, J., in regard to delivery of 'symbolical' and 'actual' possession under Rules 35, 36, 95 and 96 of Order XXI of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our

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learned brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute the taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly

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necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.

We are of the view, on the facts and circumstances of the present case, that the Tahsildar took actual possession of that part of the land which was waste or arable and handed it over to the Principal of the Agricultural College. It is true that the Special Land Acquisition Officer in his letter dated 13th December, 1961 to the Commissioner stated that possession of the entire land was still with the appellant and it was not actually taken possession of by the Principal, Agricultural College, But it is obvious that this statement was made by the Special Land Acquisition Officer because he thought that actual possession of the land could not be regarded as having been taken, unless the appellant was excluded from the land and since the appellant immediately, without any obstruction, entered upon the land and continued in possession, "the land was not actually taken possession of by the Principal, Agricultural College". This was a plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such an act on the part of the appellant did not have the effect of obliterating the consequences of vesting. There can, therefore, be no doubt that actual possession of 19 acres 16 gunthas of waste and arable land was

> taken by the Tahsildar on 3rd April, 1959, and it became vested in the Government. (Neither the Government nor the Commissioner could thereafter withdraw from the acquisition of any portion of this land under S. 48(1) of the Act."

16. Their Lordships of the Hon'ble Supreme Court in ***Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab, (1996) 4 SCC 212*** have laid down that the normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Their Lordships have held as under:

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976, by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now a well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas, and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would be tantamount only to illegal or unlawful possession.

17. Their Lordships of the Hon'ble Supreme Court in ***National Thermal Power Corporation Limited* v. *Mahesh Dutta* (2009) 8 SCC 339** have again discussed the principles of taking of possession of acquired land in cases of urgency. Their Lordships have held as under:

> "16. It is a well-settled proposition of law that in the event possession of the land, in respect whereof a Notification had been issued, had been taken over, the State would be denuded of its power to withdraw from the acquisition in terms of Section

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48 of the Act. Whether actual or symbolic possession had been taken over from the land owners is essentially a question of fact. Taking over possession in terms of the provisions of the Act would, however, mean actual possession and not symbolic possession. The question, however, is as to whether the finding of fact arrived at by the High Court that physical possession, indeed, had been taken over by the Collector is correct or not.

"26. These decisions, as noticed hereinbefore, do not lay down an absolute rule. The question as to whether actual physical possession had been taken in compliance with the provisions of Section 17 of the Act or not would depend upon the facts and circumstances of each case.

27. When possession is to be taken over in respect of the fallow or Patit land, a mere intention to do so may not be enough. It is, however, the positive stand by the appellant that the lands in question are agricultural land and crops used to be grown therein. If the lands in question are agricultural, not only must actual physical possession be taken, but also they were required to be properly demarcated. If the land had standing crops, as has been contended by Mr Raju Ramachandran, steps in relation thereto were required to be taken by the Collector. Even in the said certificate of possession, it had not been stated that there were standing crops on the land on the date on which possession was taken. We may notice that delivery of possession in respect of immovable property should be taken in the manner laid down in Order XXI Rule 35 of the Code of Civil Procedure.

28. It is beyond any comprehension that when possession is purported to have been taken of the entire acquired lands, actual possession would be taken only of a portion thereof. The certificate of

possession was either correct or incorrect. It cannot be partially correct or partially incorrect. Either the possession had actually been delivered or had not been delivered. It cannot be accepted that possession had been delivered in respect of about 10 acres of land, and the possession could not be taken in respect of the remaining 55 acres of land. When the provisions of Section 17 are taken recourse to, vesting of the land takes effect immediately."

18. The Apex Court in ***Prahlad Singh v. Union of India (2011) 5 SCC 386*** has held that no hard-and-fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land, and when there is no crop or structure on the land, only symbolic possession could be taken. Their Lordships have held as under:

"16. In P.K. Kalburqi V. State of Karnataka, the Court referred to the observations made by Bhagwati, J., in Balwant Narayan Bhagde V. M.D. Bhagwat that no hard-and-fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land, and observed that when there is no crop or structure on the land, only symbolic possession could be taken.

20. If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in Banda Development Authority case it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a panchanama

in the presence of independent witnesses and their signatures were obtained on the panchnama.

21. A reading of the Khasra girdawari and jamabandis, copies of which have been placed on record, shows that actual and physical possession of the acquired land is still with the appellants. Jamabandis relate to the year 2005-2006. Copies of notice dated 10-2-2011/11-2-2011 issued by the Uttar Haryana Bijli Vitran Nigam Ltd., relate to Appellant 1, Prahlad Singh and this, prima facie, supports the appellants' assertion that physical possession of the land is still with them.

22. Respondents 3 to 6 have not placed any document before this Court to show that actual possession of the acquired land was taken on the particular date. Therefore, the High Court was not right in recording a finding that the acquired land will be deemed to have vested in the State Government."

19. Their Lordships of the Hon'ble Supreme Court in ***Banda Development Authority, Banda v. Moti Lal Agarwal (2011) 5 SCC 394*** have again discussed the rule of taking possession. Their Lordships have held as under:

"37. The principles that can be culled out from the above-noted judgments are:

(i) No hard and fast rule can be laid down as to what act would constitute the taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If a crop is standing on the acquired land or a building/structure exists, mere going on the spot by the concerned authority will, by itself, not be sufficient for taking possession. Ordinarily, in such

cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, the refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land, and it will be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and getting their signatures on such a document.

(v) If the beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A), and a substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

38. In the light of the above discussion, we hold that the action of the concerned State authorities to go to the spot and prepare a panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to the BDA. The utilisation of the major portion of the acquired land for the public purpose for which it was acquired is clearly indicative of the fact that actual possession of the acquired land had been taken by the BDA. Once it is held that possession of the acquired land was handed over to the BDA on

30.6.2001, the view taken by the High Court that the acquisition proceedings had lapsed due to non-compliance with Section 11A cannot be sustained.

20. In ***Brij Pal Bhargava v. State of Uttar Pradesh (2011) 5 SCC 413***, their Lordships of the Hon'ble Supreme Court have held that whether the possession was taken is a question of fact, which is required to be taken into consideration pragmatically. Their Lordships have held as under:

> "12. Shri Vikas Singh, learned senior counsel appearing on behalf of Mathura Vrindavan Development Authority (respondent No. 3), pointed out that it would be impossible for the Collector or Revenue officers to enter each bigha of land for taking possession thereof and, therefore, the pragmatic approach has to be adopted by the Court while considering whether possession has been taken or not. The learned senior counsel also pointed out that the documents show that actual possession was taken. He also tried to point out the photograph, suggesting that not only the possession has been taken, but a number of other activities of construction were going on at the land, including drawing the layout thereof and building the roads therefor. The learned senior counsel relied on the reported decision in ***Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi [(2009) 10 SCC 501]***, as also in ***Dahyabhai Ranchhoddas Dhobi v. State of Gujarat [(2010) 7 SCC 705]***, where the view has been taken about the pragmatic approach to be adopted by the Courts in deciding as to whether the possession was taken or not.
>
> 13. Seeing the report and the orders passed, we are thoroughly convinced that not only the possession was taken, but there are activities going on at the behest of the Mathura Vrindavan Development

Authority. This is apart from the fact that this is a pure question of fact, which has been answered by the High Court in no uncertain terms. In this view of the matter, we are of the clear opinion that even on this count, the appellants must fail.

21. Their Lordships of the Hon'ble Supreme Court in ***Raghbir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792*** have again discussed the mode of taking possession as under:

"23. The respondents have not produced any other evidence to show that actual possession of the land, on which the crop was standing, had been taken after giving notice to the appellant or that he was present at the site when possession of the acquired land was delivered to the Senior Manager of HSIIDC. Indeed, it is not even the case of the respondents that any independent witness was present at the time of taking possession of the acquired land.

29. In view of the above discussion, we hold that the record prepared by the revenue authorities showing delivery of possession of the acquired land to HSIIDC has no legal sanctity, and the High Court committed a serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and the same vested in the State Government in terms of Section 16.

31. A similar view was expressed in C. ***Padma v. Deputy Secretary to the Government of Tamil Nadu (supra), Star Wire (India) Ltd. v. State of Haryana (supra), Municipal Council, Ahmednagar v. Shah Hyder Beig (supra)*** and ***Swaika Properties (P) Ltd. v. State of Rajasthan (supra)***. In all the cases, the challenge to the acquisition proceedings was negatived primarily on the ground of delay. An additional factor that influenced this Court was that

> physical possession of the acquired land had been taken by the concerned authorities. In none of these cases, the landowners appear to have questioned the legality of the mode adopted by the concerned authorities for taking possession of the acquired land. Therefore, these judgments cannot be relied upon for sustaining the High Court's negation of the appellant's challenge to the acquisition of his land."
>
> **22.** The possession of Khasra No. 161 has not been taken over as per the modes prescribed by the Hon'ble Supreme Court in the judgments cited hereinabove. It is settled law by now that only when the possession is taken under Section 17(1) of the Act, the Government cannot withdraw from acquisition under Section 48 of the Act.

31. Therefore, the defendants were required to prove that they had taken possession as per Section 16 of the Land Acquisition Act to complete the acquisition proceedings.

32. Yog Raj Chauhan (DW1) stated that the suit land is in possession of the department. The compensation for the suit land was also paid. The fodder is grown on the acquired land. The mutation (Ext.DW1/A1 to Ext.DW1/D21) of the acquisition was made in the defendants' favour.

33. The report of the Patwari on the mutation (Ext.DW1/B1) reads that the State had acquired the land in favour of the Animal Husbandry Department. Therefore, the mutation was being prepared. The order dated 24.03.1958 reads

that as per the order of the Land Acquisition Collector, the land was acquired, and the ownership and possession be transferred in the name of the Animal Husbandry Department.

34. The mutation is silent regarding the delivery of the possession by the land owners to the Collector. It merely relies upon the letter written by the Collector regarding the acquisition. Therefore, this mutation does not show the delivery of the possession.

35. Yog Raj Chauhan (DW1) stated in his cross-examination that he had joined the previous month. He could not identify the suit land, but he had heard that the land adjacent to the temple was the suit land. This statement shows that this witness is not aware of the location of the suit land, and his testimony that the suit land is in possession of the defendants is not believable. Further, he had joined in the year 2008, as per his testimony, and he cannot be a witness to prove the delivery of possession to the defendants.

36. Therefore, there is no infirmity in the findings recorded by the learned Appellate Court that the suit land had

not vested in the State as per the provisions of the Land Acquisition Act.

37. A heavy reliance was placed upon the revenue record to submit that the defendants are in possession. However, it has been found above that the entry in favour of the State was made by way of the mutation recorded on the basis of a letter written by the Land Acquisition Collector. The mere writing of the letter is not sufficient unless evidence of delivery of possession is brought on record, which is lacking in the present case. Therefore, the revenue entries in favour of the defendants would be of no benefit to them, and the learned Appellate Court had rightly held that the revenue entries are not sufficient to establish the defendants' possession.

38. The judgments cited at the bar relate to the adverse possession. Once it has been found out that the land had not validly vested in favour of the State, these judgments would become meaningless, and, no advantage can be derived from ***Bangalore Development Authority*** (supra), ***Bhaskaran Pillai*** (supra), ***Smt. Mitra*** (supra), ***Mandal Revenue Officer*** (supra),

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Charan Dass (supra), ***Jeet Singh (since deceased) through LRs*** (supra), and ***Himat Rai*** (supra).

39. The judgment in ***Indira Nehru Gandhi*** (supra) deals with the election petition and is not relevant. Similarly, the judgment in ***H.N. Jagannath*** (supra) deals with the challenge to acquisition and is not relevant because no one has challenged the acquisition in the present case. The judgment in ***Komiah*** (supra) deals with a paper entry, but the same cannot be followed in view of the binding precedents of the Hon'ble Supreme Court and this Court, as noticed above. Therefore, no advantage can be derived from the cited judgments by the defendants.

40. The record of the delivery of possession was essential to prove that the suit land was acquired as per the law, and mere production of the revenue record was not sufficient in the present case. The presumption of truth attached to the revenue entries was rebutted by the fact that there was no proof of the taking of possession, and revenue entries were based merely on the letter written by the Land Acquisition Collector. The acquisition was not complete unless there was proof of delivery

of possession, which is lacking in the present case. Therefore, these substantial questions of law are answered accordingly.

Substantial Question of Law No.2:

41. The learned Trial Court had passed a decree of declaration declaring the plaintiff as owner in possession of the suit land and the revenue entries to be null and void. A consequential relief of permanent prohibitory injunction was granted to the plaintiff. Therefore, no decree for possession was passed, as noticed in the substantial question of law, and this substantial question of law does not arise.

Substantial Question of Law No.5:

42. It has been found above that the acquisition was not complete in the absence of proof of taking over the possession. Further, the right to sue would not accrue by the attestation of the mutation. It was laid down by the Karnataka High Court in ***State of Karnataka v. Mohammed Kunhi, 1990 SCC OnLine Kar 396: ILR 1991 Kar 1500*** that a mere adverse entry in the revenue record will not have the effect of commencement of the period of limitation. It was observed at page 1512:

18. Unlike the Limitation Act, 1908, the Limitation Act, 1963, contains only three Articles in respect of suits relating to declarations, i.e., Articles 56, 57 and 58. Undoubtedly, the relief of declaration sought in the suit does not fall under Article 56 or under Article 57. Therefore, it has to necessarily fall under Article 58, which is a residuary article insofar as the suits relating to declarations are concerned. Article 58 of the Limitation Act, 1963, is equivalent to Article 120 of the Limitation Act, 1908, with the difference that the limitation begins to run in the case of Article 58 when the right to sue first accrues, whereas in the case of Article 120 of the Limitation Act, 1908, the limitation begins when the right to sue accrued. Therefore, the word "first" contained in Column No. 3 of Article 58 after the words 'right to sue' is not found in Article 120 of the Limitation Act, 1908. The contention of the learned Government Advocate is that the right to sue first accrued to the plaintiffs when the entries in the revenue records were changed from redeemed to unredeemed in the year 1918 and continued till the date of filing of the suit; that the plaintiffs were also aware of this fact of changing the description of the land from redeemed to unredeemed when they purchased the suit property on 21st June 1965 as per Exs. P-1 to P-3. There is no doubt that P.W. 1 stated in the cross-examination that when they purchased the suit property, the revenue record described the suit property as an unredeemed estate. The learned Government Advocate also brought to our notice the averments made in the plaint as to how the cause of action arose. In Para-12 of the plaint, the plaintiff has stated thus:

> "12. The cause of action for this suit accrued to the plaintiffs against the Defendant on and from 17-8-1966, 18-8-1966, 30-11-1966, 9-10-1967, 9-9-1969, 14-1-1971, 18-1-1971, 2-6-1973 and subsequently at Kundacherry Village, Bhagamandala Nadu, Mercara Taluk, Coorg District

> and at Mercara, Coorg District, within the jurisdiction of this Honourable Court."

It is not each and every entry in the Record of Rights that would give rise to a cause of action. As to when a cause of action would accrue to the plaintiffs has been the subject of interpretation in several decisions. In ***Mt. Bolo v. Mt. Koklan [AIR 1930 PC 270],*** their Lordships considered the meaning and effect of the right to sue in Column No. 3 of Article 120 of the Limitation Act, 1908 and held thus:

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

This was again reaffirmed in ***Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar. [AIR 1931 PC 9.]*** The Supreme Court in ***Mst. Rukhmabai v. Lala Laxminarayan [AIR 1960 SC 335.]*** after referring to the decisions of the Privy Council in ***A.I.R. 1930 P.C. 270 [AIR 1930 PC 270.]*** and ***A.I.R. 1931 P.C. 9 [AIR 1931 PC 9.]*** has held that if there are successive invasions or denials of a right, then it can be held that a person's right has been clearly and unequivocally threatened so as to compel him to institute a suit to establish that right. The Supreme Court has also further held thus:

> "The legal position may be briefly stated thus: The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. *Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardises the said right*." (Emphasis supplied)

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It may be relevant to notice the facts of ***Rukmabai's case [AIR 1960 SC 335]*** as stated in Para-34 of the very Judgment, which are as follows:

> "The facts relevant to the question of limitation in the present case may be briefly restated: The trust deed was executed in 1916. The suit house was constructed in 1920. If, as we have held, the trust deed as well as the construction of the building were for the benefit of the family, its execution could not constitute any invasion of the plaintiff's right. Till 1926, the plaintiff's father, Ratanlal, was residing in that house. In 1928, when Daga challenged the trust deed, the family compromised the matter and salvaged the house. From 1936 onwards, the plaintiff has been residing in the suit house. It is conceded that he had knowledge of the litigation between Rukmabai and Chandanlal claiming the property under the trust deed; but, for that suit, he was not a party and the decision in that litigation did not in any way bind him or affect his possession of the house. But in the execution of the decree, the Commissioner appointed by the Court came to the premises on February 13, 1937, to take measurements of the house for effecting partition of the property, when the plaintiff raised an objection, and thereafter, in 1940, filed the suit. From the aforesaid facts, it is manifest that the plaintiff's right to the property was not effectively threatened by the appellant till the Commissioner came to divide the property. It was only then that there was an effectual threat to his right to the suit property, and the suit was filed within six years thereafter. We, therefore, hold that the suit was within time."

From the aforesaid facts, it is clear that the mere adverse entry in the Record of Rights in respect of the property in possession of the plaintiff cannot be taken as a real threat to the right of the plaintiff to the property in his

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possession. Rukhamabai was not a party to the proceeding. Her right to the property came to be threatened only when the order was tried to be executed, and she was tried to be dispossessed. Their Lordships further held that even if it was considered that Laxminarayan had the knowledge of the litigation between Rukhmabai and Chandanlal claiming the property under the trust deed, but, for that suit, he was not a party and the decision in that litigation did not in any way bind him or affect his possession. In the instant case, it may be relevant to notice that the entries on which the reliance was placed changing the suit land from redeemed to unredeemed to form a basis for a starting point of limitation, even if it were in the knowledge of the plaintiffs the same could not affect the right of the plaintiffs adversely because those entries were not made in accordance with law, after due notice to the plaintiffs. As such as held by the Supreme Court in ***Khader's case [(1990) 2 SCC 271: AIR 1990 SC 1225],*** they were void and non est. Therefore, they cannot be of any value as it cannot be held that the same affected the rights of the plaintiffs in any manner. In ***C. Mohammad Yunus v. Syed Unnissa [AIR 1961 SC 808],*** it has been further reiterated that 'there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right'. There is no such clear and unequivocal infringement of the right of the plaintiffs or real threat to the right of the plaintiffs by the entries which have no legal effect in the eyes of the law. Further, the very order dated 17th August 1966 - Ex. P-9 itself shows that the Government was not sure whether the suit-scheduled property was redeemed sagu or unredeemed sagu. They also did not assert in the Government Order dated 17th August 1966 that the suit schedule property was redeemed sagu only. This conduct on the part of the Government would also show that the entries made from the year 1918 till the date relied upon by the learned Government Advocate to non-suit, the

plaintiffs were not treated even by the State Government as final and conclusive and affecting the right of the plaintiffs. We may also refer to two more decisions of the Supreme Court having a bearing on the point. In ***Gannon Dunkerley and Co. Ltd. v. The Union of India [(1969) 3 SCC 607: AIR 1970 SC 1433.]*** It has been held thus:

> "In our Judgment, there is no right to sue until there is an accrual of the right asserted in the suit, and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

Thus, in ***Gannon's case [(1969) 3 SCC 607: AIR 1970 SC 1433.]*** the decision of the Privy Council in ***A.I.R. 1930 P.C. 270 [AIR 1931 PC 9.]*** was again restated. In ***Raghubir Jha v. State of Bihar [1986 Supp SCC 372: AIR 1986 SC 508],*** the Supreme Court held that the limitation would begin to commence only on the communication of the termination of the proceedings and not on the date the order was passed by the first authority. In the instant case, there is no evidence adduced by the defendant, nor is there any material brought on record in the cross-examination of P.W. 1 that the right to sue accrued much earlier than the date of the suit. As in the instant case, the entries in the record of rights, being non-est, cannot be held to affect the right, title and interest of the plaintiffs and their predecessors-in-title in possession of the suit property. Such entries cannot also be held to be a threat to the title of the plaintiffs who are in possession of the suit property so as to give rise to the cause of action sufficient for the commencement of the period of limitation. However, the learned Government Advocate has placed reliance on a decision of this Court in ***Dada Jinnappa Khot v. Shivalingappa Ganapati Bellaniki ILR 1989 Kar 993***. That was a case in which a learned single Judge of this Court recorded a specific finding that, in the light of the application filed by the defendant before the Tahsildar in the year 1967 denying the title of the plaintiff, there was a real threat to the plaintiff's right and therefore on that

> date the right to sue accrued because the plaintiff was also a party to that application. Thus, it is clear that the Decision in ***D.J. Khot's case [ILR 1989 Kar 993]*** is confined to the facts of that case. Therefore, the contention of the learned Government Advocate that the change of entries from redeemed to unredeemed in the year 1918 and the continuation of the same in the subsequent years was a real threat to the rights of the plaintiffs cannot be accepted, because those entries are held to be void and non est. Therefore, the contention based on the change of entries from redeemed to unredeemed is rejected.

43. A similar view was taken by the Punjab and Haryana High Court in ***Ibrahim v. Sharifan*, *1979 SCC OnLine P&H 186: AIR 1980 P&H 25,*** wherein it was observed at page 26:

> **7.** It may be observed at the outset that the word 'first' occurring in Article 58 of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of a mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that mutation was sanctioned in favour of the defendant after the death of Akbar, and in case such an entry furnishes a cause of action, then certainly the suit would be barred by limitation. Even Mr Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of a mutation did not furnish any cause of action, and in support of his contention, he relied on a Division Bench judgement of this Court in ***Niamat Singh v. Darbari Singh etc., (1956) 58 PLR 461***. In our view, the contention of the learned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutations in the name of the defendant after the death of her father, Akbar or her mother, Smt.

> Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land of her share. In this situation, no cloud was cast on the title of the plaintiff by the mere entry of the mutation in the name of the defendant. Further, there is no proof on the record to show that before April 1969, by any act or assertion of the defendant, the right of the plaintiff was ever actually jeopardised. The defendant is occupying a house in the village.
>
> **8.** The assertion of the plaintiff is that it was given by him to her out of compassion, while the plea of the defendant is that she occupied it as of right. Be that as it may, the fact remains that so far as the agricultural land is concerned, the defendant, after the sanction of the mutations, never asserted her right to her share in the land in dispute; nor did she ever get any rent or produce, and it was in the year 1969 that she tried to assert her right and interfere with the possession of the plaintiff. In this situation, mere entry of a mutation in the name of the defendant would not furnish any cause of action to the plaintiff. This view of ours finds full support from the judgment of the Division Bench in ***Niamat Singh's case***. Thus, we do not agree with the learned single Judge that the cause of action arose when the mutation was entered in the name of the defendant and consequently, reverse the finding on issue No. 4 and hold that the suit filed by the plaintiff is within limitation.

44. It was held by this Court in ***Prakasho Devi versus Basheshar Singh (2001) 2 ShimLC 354***that the attestation of mutation does not confer a right to sue upon a person. It was observed:

> 12. Article 58 of the Limitation Act, 1963 provides for a limitation of three years to obtain a declaration, and the period begins to run "when the right to sue first accrues".

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Article 58 is a residuary Article under the Limitation Act, 1963. The suit for declaration, which was not governed by any other Article in the Act, was covered by residuary Article 120 of the 1908 Act, and such a suit now indeed is governed by Article 58 of the 1963 Act.

13. It may be noticed that the limitation period of three years commences from the date when the right to sue first accrues, but the question is when the right to sue accrues. In my view, the right to sue would accrue when the right in respect of which a declaration is sought is denied or challenged. A mere entry in the revenue papers of the name of the defendants as co-owner of the property, without any act of denial on the part of such defendant(s), will not provide a cause of action. There is no scope of dispute that the mutation of a l/4th share of Chuhru was wrongly attested in favour of the defendants, and it is only because of this illegal attestation of mutation that entries in the revenue record showing the defendants as co-sharers to the extent of l/4th share of Chuhru were incorporated. In these circumstances, the right to sue would accrue to the plaintiffs only when their possession was threatened or an application for partition on the basis of these entries was filed in the Revenue Court.

14. As far back as 1930, in ***Mst Bolo appellant v. Aft. Koklan and others, respondents, AIR 1930 Privy Council 270***, a Judicial Committee interpreting the provisions of Article 120 of the 1908 Act observed:

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. No doubt Mt. Koklan's right to the property arose on the death of Tara Chand, but in the circumstances of this case, their Lordships are of the opinion that there was no infringement of, or any clear and unequivocal threat to her rights till the year 1922, when the suit,

> as stated above, was instituted" (Emphasis supplied)

15. This principle was re-stated and followed in ***Annamalai Ct-ieitiar v. Muttukaruppan Chettiar, AIR 1931 PC 9***. In ***Mst Rukhmabai, appellant v. Lal Laxminarayan and others, respondents, AIR 1960 Supreme Court 335***, a contention was raised that plaintiff respondent had knowledge of fraudulent character of the trust deed for 10 years, during the pendency of the partition suit instituted in the year 1929, but the suit was filed in the year 1940 much after the limitation of six years under the 1908 Act from the date of knowledge and therefore, the suit would be barred under Article 120 of the 1908 Act. The Apex Court, interpreting the provisions of Article 120 of the Limitation Act of 1908 and heavily relying upon Mt Bolo, held:

> "33. The legal position may be briefly stated thus: The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiffs in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardises the said right" (Emphasis supplied)

16. In ***Zorawar Singh and another Appellants v. Dip Chand and others, respondents, AIR 1929 Allahabad 331***, it was observed that a suit for declaration may be a repeated cause of action and each new cause would give a fresh right to sue.

17. In ***Faqira and another, plaintiffs-appellants v. Hardewa and others, defendants-respondents, AIR 1928 Allahabad 172***, the Full Bench of the Allahabad High Court had occasion to interpret Article 120 of the Limitation Act,

1908. In that case, there was a wrong entry in the khewat, and the advantage of that wrong entry was likely to be taken by the defendants. The fact of such an entry was never brought to the notice of the plaintiffs. In this background, the Full Bench speaking through Mukerji, J. held :

> "The right to sue, within the meaning ot Article 120 of the Limitation Act, accrued to the plaintiff on the filing of the application for partition and not earlier," (Emphasis supplied)

18. It tlitis, is settled law that the cause of action to obtain a declaration under Article 58 of the Limitation Act will only accrue when the rights of a plaintiff are invaded by an overt act.

19. In ***Thakurain Chhabraj Kuer, defendant-appellant v. Ram Deo Singh and others, plaintiffs-respondents, AIR (29) 1942 Oudh 346***, a Division Bench of Oudh High Court held that so long as a mutation does not injure the plaintiff, he need not come to the Court at all and, therefore, a plaintiff is not out of time if he institutes a suit within six years (under the 1908 Act) of the injury which the entry creates and which is his cause of action. This statement of law was reiterated in ***C. Mohammad Yunus, appellant v. Syed Unnissa and others, respondents, AIR 1961 Supreme Court 808***. In this case, their Lordships emphasised that a suit for a declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Article 120 (now Article 58), and there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.

20. In ***Fateh Ali Shah and others v. Muhammad Bakhsh and others, AIR 1928 Lahore 516***, a Division Bench of the Lahore High Court held that the plaintiff in possession need not bring a suit on first denial of his title, and he needs to take proceedings within six years (under the old

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Act) from the time when his rights are actually jeopardised. The Division Bench observed:

> "If a plaintiff is in possession or enjoyment of the property in suit, he is not obliged to sue for a declaration of title on the first or each succeeding denial of his title by the defendant. He may look upon each denial with complacency or, at his option, may institute a suit to falsify the assertions of the other side. But when he finds that his rights are being actually jeopardised by the action or assertion of the defendant, then he must take proceedings within six years from the date of such actions or assertions: ***AIR 1922 Lah. 94, AIR 1925 Lah. 391*** and ***140 P.R. 1907***; Dist."

45. This position was reiterated in ***Dharam Singh & others versus Prem Singh & Ors 2002 (1) Shim. LC 49***, wherein it was held:

> 17. Article 58 of the Limitation Act specifically provides a limitation of three years to obtain a declaration that is not provided under any other Article. Under this Article, the limitation period of three years commences from the date when the right to sue first accrues. However, the question would be when a right to sue accrues. In my view, the right to sue accrues when the right in respect of which a declaration is sought is denied or challenged. A mere entry in the revenue papers, in the name of appellants, in the column of possession, without any act of denial of the possession of the respondent on the part of appellants, will not provide a cause of action.
>
> 18. The Supreme Court in ***Mst. Rukhmabai v. Lala Laxminarayan and others, AIR 1960 SC 335***, interpreting the provision of Article 120 of the Limitation Act of 1908 and relying upon ***Mt. Bolo v. Mt. Koklan and others, AIR 1930 Privy Council 270***, held:

> 'There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. No doubt Mt. Koklan's right to the property arose on the death of Tarn Chand, but in the circumstances of this case, their Lordships are of the opinion that there was no infringement of, or any clear and unequivocal threat to her rights till the year 1922, when the suit, as stated above, was instituted".(Emphasis supplied)

19. In ***Fateh AH Shah and others v. Muhammad Bakhsh and others, AIR 1928 Lahore 516***, a Division Bench of the Lahore High Court held that the plaintiff in possession need not bring a suit on the first denial of his title, and he needs to take proceedings within six years (under the old Act) from the time when his rights are actually jeopardised. The Division Bench observed:

> "If a plaintiff is in possession or enjoyment of the property in suit, he is not obliged to sue for a declaration of title on the first or each succeeding denial of his title by the defendant. He may look upon each denial with complacency or, at his option, may institute a suit to falsify the assertions of the other side. But, when he finds that his rights are actually being jeopardised by the action or assertion of the defendant, then he must take proceedings within six years from the date of such actions or assertions: ***AIR 1922 Lah 94, AIR 1925 Lah. 391 and 140 RR. 1907***: Dist".

20. It is no longer res-integra that persons continuing in possession in spite of adverse entry in the revenue papers need not seek any declaration until their possession is threatened. Reference may be made to ***Ghulam Mohammad Khan and others v. Sammundar Khan and others, AIR 1936 Lahore 37***. In that case, the adverse entry was made in the year 1905-06. The suit was filed much

after the period of limitation under Article 120 of the 1908 Act. In the plaint, it was urged that the entry was made in the jamabandi behind the back of the plaintiffs, and they learnt about these entries for the first time in the year 1929-30. The defendants traversed the allegations. In this background, the Division Bench held that the cause of action in all such cases "would accrue when the plaintiff feels aggrieved, and in these circumstances, on the plaintiff's allegations, these suits will be within time."

21. Otherwise, also, entries in the revenue record for which there is no foundation do not create any title (See ***Jattu Ram v. Hakam Singh and others, JT 1993 (5) SC 423; Guru Amarjit Singh v. Rattan Chand and others, AIR 1994 SC 227; Guru Amarjit Singh v. Rattan Chand and others, (1993) 4 SCC 349***).

46. A similar view was taken in ***Sairu Ram vs. Prem Chand, Latest HLJ 2004(1) 663 (HPHC)***and held as under*:*

22. It was next contended on behalf of the defendant that even if Art. 113 is applied, the suit having been filed beyond three years of the order of mutation would be barred by time.

23. There is no merit in the contention; it is well settled that mutation does not confer title. A cause of action would accrue to the plaintiffs only when there is an invasion of or a threat to his rights and title. The order of mutation, even otherwise, having been passed by an authority having no jurisdiction, was a nullity and capable of being ignored.

24. In ***Ghulam Mohammad Khan and others Vs. Samundar Khan and others [1936 Lahore 37]*** dealing with a suit filed under Section 45, Punjab Revenue Act, 1887, which provision is para material to Section 46 of the HP. Land Revenue Act, 1953, it has been held that to such suits Article 120, Limitation Act, 1908 (corresponding to Article 113, Limitation Act, 1963) applies and the terminus a quo

> in such cases is when the cause of action accrues and that reading Article 120, Limitation Act 1908 with Section 45, Punjab Land Revenue Act, 1887, the cause of action would accrue when the plaintiff feels aggrieved.
>
> 25. It has been held in ***Kewal Krishan Purl and another vs. The State of Punjab and others [1977 P&H 347]*** that the right to sue will accrue only where there is an unequivocal threat to infringe the right of the plaintiff.
>
> 26. Taking into consideration the averments in the plaint as to the threat to infringe the rights of the plaintiff, the suit is well within time under Article 113, Limitation Act, 1963.

47. It was laid down by the Hon'ble Supreme Court in ***Daya Singh v. Gurdev Singh, (2010) 2 SCC 194: 2010 SCC OnLine SC 136*** that the period of limitation starts running when the actual right is infringed. It was observed (at page 198 of SCC):

> **14.** In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention, the learned Senior Counsel strongly relied on a decision of the Privy Council in ***Bolo v. Koklan [(1929-30) 57 IA 325: AIR 1930 PC 270]***. In this decision, Their Lordships of the Privy Council observed as follows: (IA p. 331)
>
> > "... There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

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15. A similar view was reiterated in ***C. Mohammad Yunus v. Syed Unnissa AIR 1961 SC 808,*** in which this Court observed: (AIR p. 810, para 7)

> "7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues, and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."

In ***C. Mohammad Yunus [AIR 1961 SC 808]***, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to a cause of action.

16. Keeping these principles in mind, let us consider the admitted facts of the case. In Para 16 of the plaint, it has been clearly averred that the right to sue accrued when such right was infringed by the defendants about a week back, when the plaintiffs had for the first time come to know about the wrong entries in the record-of-rights and when the defendants had refused to admit the claim of the plaintiffs. Admittedly, the suit was filed on 21-8-1990. According to the averments made by the plaintiffs in their plaint, as noted hereinabove, if this statement is accepted, the question of holding that the suit was barred by limitation could not arise at all. Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants was made when they refused to admit the claim of the appellants, i.e. only seven days before the filing of the suit. Therefore, we are of the view that within three years from the date of infringement, as noted in Para 16 of the plaint, the suit was filed. Therefore, the suit, which was filed for declaration on 21-8-1990, in our view, cannot be held to be barred by limitation.

48. It was laid down in versus ***Rulda Ram v. Sanju Ram, 2013 SCC OnLine HP 4341,*** that mere entry of the name does not confer a person the right to sue. The right to sue accrues when the rights of a person are threatened. It was observed:

> 14. In ***Mt. Bolo v. Mt. Koklan, AIR 1930 Privy Council 270***, the expression "right to sue" has been succinctly explained as under:
>
> > "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. No doubt Mr Koklan's right to the property arose on the death of Tara Chand, but in the circumstances of this case, their Lordships are of the opinion that there was no infringement of, or any clear and unequivocal threat to her rights till the year 1922, when the suit, as stated above, was instituted."
>
> 15. In ***Shiam Lal v. Mohamad Ali Asghar Husain, AIR 1935 Allahabad 174***, a learned single Judge has held that a mere entry of names does not debar the person against whom the entry is made for all time to come from suing for a declaration. Any new invasion of rights which amounts to a fresh denial of title confers on the owner in possession a fresh right to sue. The right to sue accrues when there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.
>
> 16. In ***Rukhmabai v. Lala Laxminarayan, AIR 1960 SC 332***, their Lordships of the Hon'ble Supreme Court have held that there can be "right to sue" until there is an accrual of the right asserted in the suit and its infringement, or at

least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted. Their Lordships have held as under:

> "31. The argument on the question of limitation is put thus: The plaintiff, respondent herein, had knowledge of the fraudulent character of the trust deed as early as 1917 or, at any rate, during the pendency of the partition suit between Rakhmabai and Chandanlal instituted in the year 1929, and the suit filed in 1940, admittedly after six years of the said knowledge, would be barred under Art. 120 of the Limitation Act. Article 120 of the Limitation Act reads:

Description of suit: Period of limitation

Time from which period begins to run.

120. Suit for which no period of Limitation is provided elsewhere in this Schedule.

Six years, when the right to sue accrues.

This Article was subject to judicial scrutiny both by the Judicial Committee as well as by the High Courts of various States. The leading decision on the subject is that of the Judicial Committee in ***Mt. Bolo v. Mt. Koklan, 57 Ind App 325 at p. 331 : (AIR 1930 PC 270 at p. 272).*** Therein Sir Benod Mitter observed:

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

32. The said principle was restated and followed by the Judicial Committee in ***Annamalai Chettiar v. Muthukaruppan Chettiar, ILR 8 Rang 645 : (AIR 1931 PC 9), and in Gobinda Narayan Singh v. Sham Lal Singh, 58 Ind App 125 : (AIR 1931 PC 89***). The further question is, if there are successive invasions or denials of a right, when it can

be held that a person's right has been clearly and unequivocally threatened so as to compel him to institute a suit to establish that right. In ***Pothukutchi Appa Rao v. Secy. of State, AIR 1938 Mad 193 at p. 198***, a Division Bench of the Madras High Court had to consider the said question. In that case, Venkatasubba Rao, J., after considering the relevant decisions, expressed his view thus:

> "There is nothing in law which says that the moment a person's right is denied, he is bound at his peril to bring a suit for declaration. The Government, beyond passing the order, did nothing to disturb the plaintiff's possession. It would be most unreasonable to hold that a bare repudiation of a person's title, without even an overt act, would make it incumbent on him to bring a declaratory suit."

He adds at p. 199:

> "It is a more difficult question, what is the extent of the injury or infringement that gives rise to, what may be termed, a compulsory cause of action?"

17. Their Lordships of the Hon'ble Supreme Court in ***C. Mohammad Yunus v. Syed Unnissa, AIR 1961 SC 808***, have held that a suit for declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Article 120. Under the Article, there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right. Their Lordships have held as under:

> "7. The surplus income of the institution is distributed by the trustees, and the plaintiffs are seeking a declaration of the right to receive the income and also an injunction restraining the defendant from interfering with the exercise of their right. The High Court held that plaintiff No. 1

was at the date of the suit 19 years of age and was entitled to file a suit for enforcement of her right even if the period of limitation had expired during her minority within three years from the date on which she attained majority by virtue of Ss. 6 and 8 of the Indian Limitation Act, Apart from this ground which saves the claim of the first plaintiff alone, a suit for a declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Art. 120 of the Limitation Act and in such a suit the right to sue arises when the cause of the action accrues. The plaintiffs claiming under Fakruddin sued to obtain a declaration of their rights in the institution, which was and is in the management of the trustees. The trial judge held that the plaintiffs were not "in enjoyment of the share" of Fakruddin since 1921, and the suit filed by the plaintiffs more than 12 years from the date of Fakruddin's death must be held barred, but he did not refer to any specific article in the first schedule of the Limitation Act which barred the suit. It is not shown that the trustees have ever denied or are interested in denying the right of the plaintiffs and defendant No. 2; and if the trustees do not deny their rights, in our view, the suit for declaration of the rights of the heirs of Fakruddin will not be barred under Article. Section 120 of the Limitation Act merely because the contesting defendant did not recognise that right. The period of six years prescribed by Art. 120 has to be computed from the date when the right to sue accrues, and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right. If the trustees were willing to give a share and on the record of the case it must be assumed that they being trustees appointed under a scheme

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> would be willing to allow the plaintiffs their legitimate rights including a share in the income if under the law they were entitled thereto, mere denial by the defendants of the rights of the plaintiffs and defendant No. 2 will not set the period of limitation running against them."

18. In ***Rukshmanibehn v. Vadilala N. Jadawala, 1994 (1) G.L.H. 237***, a Division Bench of the Gujarat High Court has explained the expression "right to sue" as under:

> '7. As already noted, Article 58 of the Limitation Act, 1963, which Article learned counsel for the defendant wants to use to apply to the pleas of the plaintiffs, stipulates that the time of three years for a suit to obtain any other declaration would begin to run "when the right to sue first accrues". The word "first" found in Article 58 could not have a separate or an independent significance, unless the right to sue accrues. It is the element of accrual of the right to sue that is decisive, and only when the right to sue has accrued, then it has got to be found out as to when it "first" accrued. Hence, the pronouncement which has been spoken on Article 120 of the Old Limitation Act, 1908, does form a firm guidance to find out as to when the right to sue accrues for the purpose of Article 58 of the Limitation Act, 1963.
>
> 8. There must be accrual of the right to sue for the plaintiff, in the sense that infringement or at least a clear and unequivocal threat to infringe that right by the defendant should happen. So far, the right of the plaintiff is not infringed, or there is no positive and overt act on the part of the defendant to infringe the right of the plaintiff, there would not be accrual of the right to sue. When the plaintiff states and proves his case that on a particular date there was an infringement or at least a clear and unequivocal threat to infringe the right of the

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> plaintiff, the defendant, if he wants to demonstrate a contrary position, must plead and prove the same. Some overact on the part of the defendant towards infringement or threat to infringe is expected to make it incumbent for the plaintiff to institute the suit. Then only could it be stated that the right to sue has accrued. A hostile attitude remaining dormant in the mind of the defendant and which never got expressed in any overt act of his, by infringing or at least clearly and unequivocally threatening to infringe the right of the plaintiff, will not bring the case within the purview of the set of expressions "right to sue accrues". The above propositions gleaned from the pronouncements which we have referred to above, though do not require reiteration, yet we have recapitulated them for the purpose of guiding ourselves to assess the facts of the case to find out as to whether the suit of the plaintiffs is barred as contended by the defendant."

19. In ***Dhanno v. Hari Ram, (1997-2) 115 P.L.R. 393***, learned Single Judge of Punjab and Haryana High Court has held that the plaintiff can file suit as and when a cloud has been cast on the title of the plaintiff and the cause of action arises in such like cases when the defendant/defendants threaten the plaintiffs to take forcible possession of the land from him. Learned Single Judge has held as under:

> "13. Reliance upon Section 108 of the Indian Evidence Act is wholly misplaced. This section deals with the burden of proving as to whether a person is alive who has not been heard of for seven years. In view of the fact that Smt. Dhanno is stated to have married Gainda sometime in the year 1943; she automatically stands divested of her right in the land on account of section 59 of the Punjab Tenancy Act. This way, the plaintiffs, along with Punnu,

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became owners of the extent of l/3rd share in the joint holding. Admittedly, the land has remained in cultivating possession of the plaintiffs as well as defendants, and so the mere entries in the revenue record specifying certain shares do not cast any doubt on their valuable right, and the plaintiffs are well within their right to seek correction of these revenue entries in the register of mutation, etc., as and when an attempt is made to dispossess them. Thus, a cause of action arises in such like cases when the defendant/defendants threaten the plaintiffs to take forcible possession of the land from him. Mere entry of mutation in the name of the defendant does not furnish any cause of action to the plaintiffs. This precise point came up for consideration in ***Ibrahim's case*** (supra), and the Court, after considering the provisions contained in Article 58 of the Limitation Act, held that the use of the word 'first' in Article 58 is of no significance at all, and so the plaintiff can file suit as and when a cloud has been cast on the title of the plaintiff. Reliance was placed on the earlier decision of the Division Bench in the case reported as ***Niamat Singh v. Darbari Singh, (1956) 58 PLR 461,*** wherein it was held as under:

> "If an adverse entry is made against a person who is in actual physical possession of the property and if he continues to retain possession of the said property despite this entry in the revenue papers, he is under no obligation to bring a suit.
>
> If, however, his rights are actually jeopardised by the actions or assertions of the defendant, then he must take proceedings within six years from the date of such actions or assertions. In other words, the time begins to run not from the date on which an adverse

> entry is made but from the date on which there is a fresh denial of the plaintiff's rights."

20. In ***Bhagwanti Devi v. Mat Ram, (2003-3) 135 P.L.R. 585***, a learned Single Judge of the Punjab and Haryana High Court, while discussing Article 58 of the Limitation Act, has held that when the plaintiff continues to be in possession of the suit land along with the defendant, cause of action in such case would arise when there is threat to his title.

> "13. It could not be disputed that the plaintiff is a partner of the firm, and as a partner, he enjoys the benefits of the firm, including the possession of the property purchased by virtue of the conveyance deed dated 29.4.1968, Ext. D1. Since the plaintiff continues to be in possession of the suit land along with the defendant, his suit could not be dismissed on the ground that it is beyond the period of limitation. The cause of action in such a case would arise only when there is a threat to his title. According to the plaintiff, such a threat arose when Improvement Trust, Hansi, served a notice under Section 9 regarding the acquisition of land comprising Khasra No. 1075. At this stage, on inspection of the record, he came to know about the omission of his name in the sale deed and in the mutation."

21. In ***Manti v. Sarwati Devi, (2004-1) 136 P.L.R. 397***, a learned Single Judge of the Punjab and Haryana High Court has held that even if entries in the revenue record are wrong, a party can choose to ignore the same till a real threat to title is apprehended. Learned Single Judge held as under:

> 11. I have considered the rival submission and perused the record. There is no serious dispute about the substantive rights of the parties. Even learned counsel for the appellants does not dispute

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that Mata Chand, having pre-deceased Dalip Chand, the heirs of Mata Chand will not be entitled to the share of Dalip Chand in view of Entry-II of Class II[nd] of the Schedule to the Hindu Succession Act read with Section 8 of the said Act. The only question is of limitation. I am of the view that Article 58 of the Schedule to the Limitation Act will govern the limitation, and the lower appellate court was in error in observing that Article 58 of the Act cannot apply. Even so, the contention of the learned counsel for the appellants that the suit is barred by limitation cannot be accepted. Though the limitation is three years, the time from which this period begins to run is when the right to sue first accrues. It is not possible to accept that the right to sue accrued in the year 1966 when mutation was sanctioned, as rightly held by the lower appellate court, nor did it accrue when a gift of part of the land was made. The parties were in joint possession, and it is not shown that their shares were separated. Though learned counsel for the appellants mentioned that there was a separation of joint holding, there is no material on record to indicate the separation of shares and the date of separation, if any. Even if entries in the revenue record are wrong, a party can choose to ignore the same till a real threat to the title is apprehended. Reference in this regard may be made to the decision of a Division Bench of this Court in ***Ibrahim v. Smt. Sharifan, AIR 1980 P&H 25***, it was observed: "it may be observed at the outset that that the word 'first' occurring in Article 58 of the Actis of no significance at all for deciding the issue of limitation so for as the facts of the case in hand are concerned as the main point which requires determination is whether mere entry of a mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration

> or not." It was further held that where no cloud is cast on the title of the plaintiff, mere entry of mutation in the name of the defendant in the absence of any other act of the defendant, cause of action does not accrue to the plaintiff for the purpose of Article 58 of the Schedule to the Limitation Act."

22. In ***Ibrahim v. Sharifan, 1979 P.L.J. 469***, a Division Bench of the Punjab and Haryana High Court has held that mere entry of a mutation in the name of the defendant would not furnish any cause of action to the plaintiff, and a cause of action arose to the plaintiff when the defendant actually threatened to take forcible possession of the land from the plaintiff. The Division Bench has held as under:

> "6. While controverting the aforesaid findings of the learned Single Judge, it was contended by Mr. Aggarwal, learned counsel for the appellant, that cause of action arose to the plaintiff in April, 1969, when the defendant actually threatened to take forcible possession of the land from the plaintiff and that mere sanction of the mutation with respect to half share of the land in dispute in the name of the defendant did not give any cause of action to the plaintiff, especially when he had continued to be in exclusive possession of the land without any interference of any kind by the defendant. ON the other hand, it was contended by Mr. Kapur, learned counsel for the respondent, that a cloud was actually cast on the right of the plaintiff in the year 1957 after the death of Akbar mutation of inheritance was sanctioned in favour of the plaintiff, the defendant and their mother in equal shares; that the right to sue first accrued to the plaintiff, on the date when the said mutation was sanctioned and the suit having been filed beyond the period of three years was clearly barred by time.

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7. After giving our thoughtful consideration to the entire matter, we find that there is considerable force in the contention of the learned counsel for the appellant.

8. It may be observed at the outset that the word 'first' occurring in article 58 of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that the mutation was sanctioned in favour of the defendant after the death of Akbar, and in case such an entry furnished a cause of action, then certainly the suit would be barred by limitation. Even Mr Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of mutation did not furnish any cause of action, and in support of his contention, he relied on a Division Bench judgment of this Court in *Niamat Singh* v. *Barbari Singh*, 1956 P.L.R. 461. In our view, the contention of the learned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutations in the name of the defendant after the death of Akbar or her mother, Smt. Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land, her share. In this situation, no cloud was cast on the title of the plaintiff by the mere entry of the mutation in the name of the defendant. Further, there is no proof on the record to show that before April, 1960, by any act or assertion of the defendant, the right of the plaintiff was ever actually jeopardised. The defendant is occupying a house in the village. The assertion of the plaintiff is

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> that it was given by him to her out of compassion, while the plea of the defendant is that she occupied it as of right. Be that as it may, the fact remains that so far as the agricultural land is concerned, the defendant, after the sanction of the mutations, never asserted her right to her share in the land in dispute, nor did she ever get any rent or produce any that it was in the year 1969 that she tried to assert her right and interfere with the possession of the plaintiff. In this situation, mere entry of a mutation in the name of the defendant would not furnish any cause of action to the plaintiff. Our view finds full support from the judgment of the Division Bench in ***Niamat Singh's*** case. Thus, we do not agree with the learned Single Judge that the cause of action arose when the mutation was entered in the name of the defendant and consequently, reverse the finding on issue No. 4 and hold that the suit filed by the plaintiff is within limitation."

23. Their Lordships of the Hon'ble Supreme Court in ***Daya Singh v. Gurdev Singh (dead) by LRs., (2010) 2 SCC 194*** have held that the right to sue accrues when there is a clear and unequivocal threat to infringe a right. Their Lordships have held as under:

> "13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the schedule, which has prescribed the period of limitation, relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.
>
> 14. In support of the contention that the suit was filed within the period of limitation, the learned senior counsel appearing for the plaintiffs/appellants before us submitted that there

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could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention, the learned senior counsel strongly relied on a decision of the Privy Council reported in ***AIR 1930 PC 270 [Mt. Bolo v. Mt. Koklan***]. In this decision, their Lordships of the Privy Council observed as follows:

> "There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

15. A similar view was reiterated in the case of ***C. Mohammad Yunus v. Syed Unnissa [AIR 1961 SC 808]*** in which this Court observed:

> "The period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued, and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."

In the case of ***C. Mohammad Yunus*** (supra), this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry into the revenue record cannot give rise to a cause of action.

16. Keeping these principles in mind, let us consider the admitted facts of the case. In para 16 of the plaint, it has been clearly averred that the right to

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> sue accrued when such right was infringed by the defendants about a week back, when the plaintiffs had for the first time come to know about the wrong entries in the record of rights and when the defendants had refused to admit the claim of the plaintiffs. Admittedly, the suit was filed on the 21st of August, 1990. According to the averments made by the plaintiffs in their plaint, as noted hereinabove, if this statement is accepted, the question of holding that the suit was barred by limitation could not arise at all. Accordingly, we are of the view that the right to sue accrues when a clear and unequivocal threat to infringe that right by the defendants is made when they refused to admit the claim of the appellants, i.e. only seven days before filing the suit. Therefore, we are of the view that within three years from the date of infringement, as noted in Paragraph 16 of the plaint, the suit was filed. Therefore, the suit which was filed for declaration on 21st of August, 1990, in our view, cannot be held to be barred by limitation."

24. This Court in ***Shiam Singh v. Chaman Lal, 2011 (2) Shim. L.C.-1*** has held that the limitation begins to run not from the date of the entry affecting the right of the person concerned, but from the date when he feels aggrieved by the entry, and it is the satisfaction of such person as to when he feels aggrieved by the entry. This Court has held as under:

> "14. It is well settled that for a suit for declaration, referred to in Section 46, limitation begins to run not from the date of the entry affecting the right of the person concerned, but from the date when he feels aggrieved by the entry, and it is the satisfaction of such person as to when he feels aggrieved. Defendant cannot be heard to say that he (the plaintiff) felt aggrieved by the entry at some

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> earlier point of time or when the entry was actually made."

49. A similar view was taken in ***Shankar Lal v. Ramesh Chander, 2016 SCC OnLine HP 3993,*** wherein it was held:

> **15.** The learned counsel appearing for the defendants has contended qua the suit of the plaintiffs being barred by limitation, it standing instituted beyond the prescribed period mandated in Article 58 of the Limitation Act. However, the aforesaid submission cannot stand accepted by this Court, as the aforesaid apposite article of the Limitation Act while prescribing the commencement of the relevant period of limitation proclaims qua the relevant commencement for computing therefrom the period of limitation encapsulated therein occurring on an accrual of "right to sue", right to sue whereof holds a connotation qua its spurrings or occurrings arising on actual and threatened invasion(s) qua the settled right of the plaintiff(s) upon the suit property. In sequel when the connotation borne by the apposite statutory parlance 'right to sue' is qua its upsurging on the defendant(s) committing overt act upon the suit property hence theirs explicitly pronouncing theirs casting cloud qua the title of the plaintiff(s) qua the suit land whereupon even if mutations qua the suit property stood attested on 24.12.1994 and 20.11.1999 whereas the suit of the plaintiff stood instituted in the year 2001 would not render it to be construable to stand instituted beyond limitation, as merely on attestation of relevant mutations which palpably are nonest besides stand recorded in deprivation of the vested rights of the plaintiffs qua the suit property no title hence standing invested upon the suit land qua defendant No. 2 rather when the plaintiffs' title to the suit land stood explicitly annulled besides came under a cloud by the proactive overt act of defendant No. 2 executiing sale deeds respectively on 3.11.1999 and 5.5.2001, with defendant No. 1 constituted the latter period to enliven thereat the relevant cause of action or it begot the commencement of the relevant period of limitation for the plaintiffs' instituting a suit. In sequel thereto, with the

> plaintiffs therefrom instituting the suit within the statutorily mandated period of limitation prescribed in the relevant Article of the Limitation Act renders it to be construable to be within limitation.

50. Therefore, the suit cannot be held to be barred by limitation, and this substantial question of law is answered accordingly.

Substantial Question of Law No.6:

51. The learned Appellate Court had not misconstrued or misread the case law. Hence, this substantial question of law is answered accordingly.

Final Order:

52. In view of the above, there is no infirmity in the judgment and decree passed by the learned Appellate Court. Hence, the present appeal fails, and it is dismissed

53. Pending application(s), if any, also stand(s) disposed of.

54. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

20th May, 2026
(Nikita)