

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.6111 OF 2009**

**KRISHNAMURTHY S. SETLUR (D)  
THROUGH LRS. ...APPELLANT(S)**

**VERSUS**

**O.V. NARASIMHA SETTY (D) BY LRS. & ORS ...RESPONDENT(S)**

**WITH**

**CIVIL APPEAL NO. 12267 OF 2018**

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.2760 OF 2011)

**NAGAR COUNCIL SIRHIND ...APPELLANT(S)**

**VERSUS**

**BHAGAT RAM & ORS. ...RESPONDENT(S)**

**WITH**

**CIVIL APPEAL NO. 10332 OF 2018**

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.10343 OF 2016)

**M.E. MUNIRAJEGOWDA & ORS. ...APPELLANT(S)**

**VERSUS**

**SRI UTHANALLAPPA @ UTHANALLIGA  
SINCE DECEASED BY HIS LRS. ...RESPONDENT(S)**

**ORDER**

1. The instant appeals involve a preliminary issue as to whether plaintiff can take the plea of adverse possession in view of the interpretation of Article 65 of the Limitation Act, 1963. A Three-Judge

Bench of this Court in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.* (Civil Appeal No.7764 of 2014) has decided the similar issue on 7<sup>th</sup> August, 2019, by holding as under:

“56. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, ‘de jure possession’, constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

57. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. *Animus possidendi* under hostile colour of title is required. Trespasser’s long possession is not synonym with adverse possession. Trespasser’s possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

58. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of

possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

61. Resultantly, we hold that decisions of *Gurudwara Sahab v. Gram Panchayat Village Sirthala* (supra) and decision relying on it in *State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj* (supra) and *Dharampal (dead) through LRs v. Punjab Wakf Board* (supra) cannot be said to be laying down the law correctly, thus

they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

62. Let the matters be placed for consideration on merits before the appropriate Bench.”

2. The preliminary issue involved in the instant appeals is wholly covered by the above decision. In view of the answer, let the matters be placed for consideration on merits before the appropriate Bench.

.....**J.**  
**(Arun Mishra)**

**New Delhi;**  
**August 08, 2019.**

.....**J.**  
**(Vineet Saran)**