IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.129 of 2009

(Against the Judgment and decree dated 04.03.2009 passed by the learned Additional District Judge-F.T.C., Sahibganj in Title Appeal No.19 of 2007)

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1 (a) Md. Ekramuddin
1 (b) Md. Salauddin
Both resident of Ok, Road, Asansol, MC, Dakhin Dhadka, P.O. & P.S.- Asansol Dist. Burdwan, West Bengal 713302
1 (c) Akbari Khatun, w/o Md. Ulfat, Domhani Bazzar P.O. & P.S. Domohani, Dist. Barddhaman West Bengal 713334
1 (d) Sarwari Begum, w/o Md. Sabir Ansari R/o Behisti Mohalla, P.O. & P.S. Asansol, Dist. Barddhaman, Dakhin Dhadka, West Bengal 713302
1 (e) Zeenat Parween, w/o Md. Adinul Islam, r/o Nadipar Setla Danga, Railpur P.O. & P.S. Jamgram, Dakhin Dhadka, Dist. Barddhaman, West Bengal 713302
1 (f) Akhtari Begam, w/o Md. Mansur Ansari, r/o Sher Talab Sitla, P.O, P.S. Asansol North, Dist. Barddhaman,, Dakhin, Dhadha, West Bengal 713302
1 (g) Anwari Begum w/o Md. Mumtaz r/o Gosai Dangal, Dhadka P.O, P.S. Asansol, Dist. Barddhaman, West Bengal 713302

.... …. Appellants

Versus

1 (a). Md. Kesar
1 (b) Md. Salim
1 (c) Md. Sanaullah
1 (d) Md. Manaullah
1 (e) Md. Jamal
All sons of late Alimuddin, resident of Mazhar Tola, Ekra Colony, P.O. Sahibganj P.S. Borio (j), Dist. Sahibganj
1 (f) Yasmin Parween, wife of late Imtiyaaj Alam @ Ladda, daughter of late Alimuddin, resident of Habibpur, Near Masjid, P.O. Sahibganj, P.S. Sahibganj (T), Dist. Sahibganj
1 (g) Muneja Khatoon, wife of Md. Afroj Alam, daughter of late Alimuddin, resident of Pirpainti, near Masjid, P.O. & P.S. Pirpainti, Dist. Bhagalpur.
1 (h) Md. Rukhasana Khatoon, wife of Md. Raja Ansari @ Alimuddin, resident of Bhalsawa, P.O. Rupnagar, P.S. Rupnagar, Dist. Samyapur Badali, New Delhi.
2. Mustafa
3. Nisar
4. Shahabuddin
5. Samsuddin
6. Md. Kashim
   All are sons of late Abdul Hussain
7. Jabeena Khatoon d/o late Abdul Hussain
   All are resident of Mazhartola, P.O.+ P.O. Borio (J), Dist. Sahibganj

... . …. Respondents

For the Appellant : Mr. Shashank Shekhar, Advocate
For the Respondents : Mr. Manjul Prasad, Sr. Advocate
: Mr. Arbind Kumar Sinha, Advocate
: Mr. Praveen Kr. Verma, Advocate
: Mr. S.N.P. Rai, Advocate

PRESENT
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This second appeal has been preferred under Section 100 of Code of Civil Procedure against the judgment and decree dated 04.03.2009 passed by the learned Additional District Judge-F.T.C., Sahibganj in Title Appeal No.19 of 2007 whereby and where under, the learned first appellate court in the judgment of reversal has allowed the appeal and dismissed the judgment and decree passed by the Sub-Judge-I, Sahibganj in Title Suit No.33 of 1997 dated 15.06.2007.

3. The case of the plaintiff in brief is that the plaintiff is Muslim by law guided by Hanafi school of Muslim Law. The plaintiff is the daughter of late Mehtabi. The suit land belonged to the mother of the plaintiff and her name has been entered in Register No.II and the plaintiff had been in physical possession of the suit land. During the life time of Most. Mehtabi, the said Mehtabi created verbal 'hiba' voluntarily in respect of the suit land accompanied by delivery of possession on 10.05.1977 and since then, the plaintiff has been owing and possessing the suit land. Most. Mehtabi when she was alive used to tell the plaintiff that some persons are behind her for the purpose of getting the suit land in their favour. Hence, she has created 'hiba' in favour of the plaintiff.

Most. Mehtabi died on 05.04.1996 leaving behind her only daughter being the plaintiff as her legal heir. The plaintiff before filing the suit came to know that Most. Mehtabi transferred the suit land in Calcutta in the year 1979 by registered instrument of sale. During the pendency of the suit, the plaintiff came to Sahibganj and came to know that the defendant has completed the construction of the house in the year 1998 over the suit land secretly and illegally. It is also the case of the plaintiff that Most. Mehtabi was a *pardanasin* lady and she has no right to transfer the suit land hence, she cannot execute any instrument of sale in favour of the defendant. Hence, the plaintiff filed the suit with the following prayers:

(i) For declaration that the defendant has got no right, title and possession on the suit land and that the plaintiff has right, title and possession on the suit land,

(ii) It be declared that the said instrument of sale if executed in favour of the defendant by the said Most. Mehtabi is ingenuine, invalid and absolutely void

(ii) (a) Direction to the defendant for removing construction of the house at his cost from plot no.1144.

(iii) Permanent injunction restraining the defendant from interfering with the peaceful rights of the plaintiff.

4. The defendant in his written statement besides challenging the suit on various technical grounds has pleaded that the claim of the plaintiff of verbal 'hiba' and delivery of possession and acceptance of the suit land are all false and deny creation of any 'hiba' in favour of the

Mehtab Bibi. The defendant pleaded that the claim of the suit land by way of inheritance by the plaintiff is contrary to her case of accruing ownership on the basis of 'hiba'. The defendant further pleaded that to save the limitation; a false case has been put up by the plaintiff. The defendant then pleaded that the plaintiff has directly or indirectly admitted execution of the sale deed in favour of the defendant by Mehtabi in the plaint itself. The defendant next pleaded that he constructed a pukka residential building over the suit land in the year 1981 and has been residing there throughout till the date of filing of the written statement. The defendant next pleaded that he has been paying municipal tax as well.

5. On the basis of rival pleadings of the parties, the learned trial court settled the following eight issues:-

(1) Is the suit as framed maintainable?

(2) Has the plaintiff got any cause of action for the suit?

(3) Is the suit barred by law of limitation, estoppel and acquiescence?

(4) Has the plaintiff got right, title and possession over the suit land?

(5) Is the deed executed by Mostt. Mehtabi in favour of the defendant in respect of the suit land is void and not genuine and does it confer any right and title to the defendant?

(6) Is the plaintiff entitled to a decree as claimed?

(7) To what other relief or reliefs, the plaintiff is entitled to?

(8) Is the suit property undervalued and court fee paid insufficient?

6. In support of her case, the plaintiff examined altogether six witnesses and proved documents which have been marked Ext. 1 to Ext. 3. On the other hand, from the side of the defendants also, five witnesses were examined and the defendants proved the documents which have been marked Ext. A to Ext. G.

7. The learned trial court first took up issue nos. 4 and 5 together and after considering the evidence in the record came to the conclusion that no permission was sought for sale of the land by Mehtabi to the defendants from the Deputy Commissioner even though the suit land was of Khasmahal Area of Santhal Pargana and the sale deed vide Ext. A and the 'hiba' made by the mother of the plaintiff in her favour are not valid. The learned trial court also came to the conclusion that the plaintiff is the only heir and successor of her mother Mahtabi and the plaintiff was not in possession of the suit land in view of the evidence in the record and the defendant came in possession of the suit land after execution of the sale deed in his favour. So the possession of the defendants is a permissive possession and the defendants have not claimed the suit on the basis of any adverse possession. Hence, the sale deed executed by Most. Mahtabi in favour of the defendants in respect of the suit land has not conferred any right and title to the defendant. Hence, the plaintiff has got right, title over the suit land being the only

heir of Most. Mahtabi and decided the two issues accordingly. The learned trial court thereafter took up issue no. 8 and came to the conclusion that the court fee is paid insufficiently and decided the said issue in favour of the plaintiff. The learned trial court next took up issue no.3 and on the basis of the fact that the plaintiff stated that she has no knowledge about the sale deed marked Ext. A executed by Mahtabi in favour of the defendants and she came to know about it only on 07.11.1997 and the defendants claimed right and title over the suit land. So the suit is not barred by limitation as the sale deed is *ab initio void* and the suit does not become barred by law of limitation. The learned trial court thereafter took up issue no.1, 2, 6 and 7 together and held that the suit is maintainable against valid cause of action and that the plaintiff is entitled to a decree and the plaintiff has right, title over the suit land and directed the defendants to make delivery of possession of the suit land to the plaintiff within two months and ordered that otherwise the plaintiff will be entitled to get delivery of possession of the suit land by the process of the court in accordance with law.

8. Being aggrieved by the judgment and decree passed by the learned trial court, the defendants-appellants filed Title Appeal No.19 of 2007 in the court of District Judge, Sahibganj which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment and decree.

9. The learned first appellate court made independent appreciation of evidence in the record and took note of the fact that the learned trial court has held that the plaintiff is not in possession of the

suit land and the defendants came in possession of the suit land after the alleged execution of the sale deed in the year 1979. So it is a permissive possession of the defendants over the suit land and the said finding of the learned trial court was never challenged. Hence, the learned first appellate court found fault with the learned trial court that as the trial court itself has recognized the possession of the defendants over the suit land after the execution of the sale deed in the year 1979 to be specific on 05.11.79 and as the suit was filed in the year 1997 i.e. 18 years after the possession of the defendants over the suit land, the prayer for recovery of possession ought not have been granted by the learned trial court as the same was barred by limitation under Article 65 of the Schedule of the Limitation Act, 1963. The contention of the plaintiff-appellant that the plaintiff-appellant was not aware of the construction of the building over the suit land did not find favour by the learned first appellate court on the ground that it is highly unlikely that a person visiting frequently a land cannot notice the construction of a house over a land. The learned first appellate court also referred to the judgment of a Bench of this Court in the case of **Safiran Bibi @ Safiram & Ors. vs. Manager Mirza** reported in **AIR 2007 Jharkhand-3 a**nd went on to hold that the suit is barred by Section 27 of the Limitation Act, 1963 which reads as under:-

> ***"27. Extinguishment of right to property.—****At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

10. The learned first appellate court was of the view that Article 65 of the Limitation Act is applicable to the facts of the case and hence,

limitation was of 12 years. Hence, the learned first appellate court answered all the issues framed by the learned trial court against the plaintiff and went on to observe that as the suit is barred by limitation, hence exhaustive evidence is not required to be discussed and allowed the appeal and dismissed the Title Suit No.33 of 1997 being barred by limitation.

11. At the time of hearing of this appeal vide order dated 06.05.2016, the following substantial question of law was formulated:-

> "Whether the finding of the lower appellate court is perverse regarding the adverse possession in the absence of any pleading to that effect in the written statement or in the absence of any issue framed by the court below?"

12. Mr. Shashank Shekhar, learned counsel for the appellants submits that since Ext. A is a void document and the plaintiff came to know about the same in the year 1997, so, even though the defendants were in possession of the suit land by constructing the house in the year 1981, the recovery of possession could have been passed after more than 12 years i.e. in a suit instituted in the year 1997. Learned counsel for the appellants further submits that the learned first appellate court failed to consider that the Ext. D series which is the rent receipts issued in favour of Mahtabi is the proof of possession of Mahtabi. Learned counsel for the appellants next submits that the learned first appellate court could not properly appreciate the evidence in the record in its proper perspective and has not dealt in length the testimonies of witnesses of both the parties. Relying upon the judgment of Hon'ble Supreme Court of India in

the case of **Santosh Hazari vs. Purushottam Tiwari**, reported in **(2001) 3 SCC 179**, paragraph no.15 of which reads as under:-

> *"15. A perusal of the judgment of the trial court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi v. Bijendra Narain Choudhary [AIR 1967 SC 1124]). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises,*

> *the appellate court is entitled to interfere with the finding of fact. (See Madhusudan Das v. Narayanibai [(1983) 1 SCC 35 : AIR 1983 SC 114]) The rule is — and it is nothing more than a rule of practice — that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh [AIR 1951 SC 120]) Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one." (Emphasis supplied)*

It is next submitted by Mr. Shashank Shekhar that the said view of **Santosh Hazari vs. Purushottam Tiwari** (supra) has been followed by the three judge Bench decision of the Hon'ble Supreme Court of India in the case of **Madhukar vs. Sangram** reported in **(2001) 4 SCC 756** and submits that while reversing a finding of fact, the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding, so that the same can satisfy the court hearing a further appeal that the first

appellate court had discharged the duty expected of it and the first appellate court has failed to discharge the onus of making out a justifiable case for reversing the judgment of the trial court.

13. Mr. Shashank Shekhar next relied upon the judgment of Hon'ble Supreme Court of India in the case of **Narasamma & Ors. vs. A. Krishnappa (Dead) Through Lrs.** reported in **(2020) 15 SCC 218**, paragraph no.33 and 39 of which reads as under:-

> *"33. In Karnataka Board of Wakf case [Karnataka Board of Wakf v. Union of India, (2004) 10 SCC 779, para 11], it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that "… The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."*
> *39. The legal position, thus, stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date."*

and submits that the plea of adverse possession is to be specifically pleaded and the plea of title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

14. Mr. Shashank Shekhar next relied upon the judgment of Hon'ble Supreme Court of India in the case of **L.N. Aswathama & Anr. vs. P. Prakash** reported in **(2009) 13 SCC 229**, paragraph no.17 of which reads as under:-

> *"17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner*

> *for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide P. Periasami v. P. Periathambi [(1995) 6 SCC 523] , Md. Mohammad Ali v. Jagadish Kalita [(2004) 1 SCC 271] and P.T. Munichikkanna Reddy v. Revamma [(2007) 6 SCC 59] .)" (Emphasis supplied)*

and submits that to establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years and in this case as rightly held by the learned trial court since the possession of the defendants were permissive possession. Hence, the learned first appellate court ought not to have returned the finding that the defendants had acquired title by adverse possession and plaintiff is not entitled to any relief.

15. Mr. Shashank Shekhar next relied upon the judgment of Hon'ble Patna High Court in the case of **Bhauri Lal Jain & Anr. vs. Sub-Divisional Officer of Jamtara & Ors.** reported in **AIR 1973 Patna 1**, paragraph no.20 of which reads as under:-

> *"20.Coming to the question whether title by adverse possession could be acquired after the 1949 Act came in, it will be useful to refer to the impugned provisions of the Act. Section 42 of the Act reads thus:-*
> *"The Deputy Commission may, at any time, either of his own motion or on an application made to him, pass an order for ejectment of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of*

this Act or any law or anything having the force of law in the Santhal Parganas." The other two sections, namely, Sections 64 and 69, of the Act may also be quoted:-

"64. All applications made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be made within one year from the date of the accruing of the cause of action.

Provided that there shall be no period of limitation for an application under Section 42."

"69. Notwithstanding anything contained in any law or anything having the force of law in the Santhal Parganas, no right shall accrue to any person in-

(a) land held or acquired in contravention of the provisions of Section 20, or,

(b) land acquired under the Land Acquisition Act, 1894, for the Government of for any local authority or for a railway company, while such land remains the property of the Government or of any local authority or of a railway company, or,

(c) land recorded or demarcated as belonging to the Government or to a local authority which is used for any public works, such as a road, canal or embankment, or is required for the repair or maintenance of the same while such land continues to be so used or required, or,

(d) a vacant holding retained by a village Headman, Mul Raiyat and members of their family, or a landlord, or,

(e) village Headman's official holding, grazing land, Jaherthan and burning and burial grounds."

Analysing the aforesaid provisions, it is manifest that Section 69 (a) has made it clear beyond doubt that notwithstanding anything contained in any law or anything having the force of law in the Santhal Parganas, no right shall accrue to any person in any land held or acquired in contravention of the provisions of Section 20 of the Act. Section 20 has already been quoted and it prohibits transfer, settlement or lease in any manner, unless the right to transfer is recorded in the record of rights, in respect of any Raiyati holding. Therefore, although the law of limitation has been made applicable by Section 3 of Regulation III of 1872, which provision has not been repealed by the Act, still Section 69 makes it clear beyond any shadow of doubt that no right will be acquired or accrued in contravention of Section 20 of the Act. The proviso in Section 64 that there will be no period of limitation for filing an application under Section 42 of the Act also seems to achieve the same object. Therefore, the application of acquisition of title by adverse possession under Section 28, read with Articles 142 and 144, of the Limitation

> *Act is explicitly excluded in the Act, as urged by the learned Advocate-General. Contravention of provisions of sub-sections (1) and (2) of Section 20 will be a continuing wrong because of Section 69. Similar bar against accrual of any right in case of lands mentioned in Cls. (b), (c), (d) and (e) of Section 69, as quoted above, clearly points out that no right by adverse possession could be acquired by encroachment also on the lands mentioned. The bar contained in Section 69 (a) is comprehensive enough to include cases of encroachment as well, as a case of encroachment could not be put in higher pedestal than a case of an invalid transfer, the idea behind Section 69 being to prohibit accrual of adverse possession in those lands in Santhal Parganas. It may, however, be made clear that sub-sections (1) and (2) of Section 20 of the Act are prospective, as conceded to by the Advocate-General and do not bar acquisition of title by adverse possession in respect of contravention of the Regulation, as distinct from the contravention of the Act." (Emphasis appellants)*

and submits that application of acquisition of title by adverse possession under Section 28 read with Article 142 and 144 of the Limitation Act is explicitly excluded in the Santhal Parganas Tenancy (Supplementary Provisions) Act (14 of 1949), before amendment of Bihar Scheduled Areas Regulation (1 of 1969) and submits that besides the above general principle of law, the special statute namely Santhal Parganas Tenancy (Supplementary Provisions) Act (14 of 1949) is an additional bar for acquisition of title by adverse possession.

16. Mr. Shashank Shekhar next relied upon the judgment of Hon'ble Supreme Court of India in the case of **Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan & Ors.** reported in AIR 2009 SC 103, paragraph no.32 of which reads as under:-

> *"32. Reverting to the facts of this case, admittedly, the appellants at no stage had set up the case of adverse possession, there was no pleading to that effect, no issues were framed, but even then the trial court decreed*

> *the suit on the ground of adverse possession. The trial court judgment being erroneous and unsustainable was set aside by the first appellate court. Both the first appellate court and the High Court have categorically held that the appellant has miserably failed to establish title to the suit land, therefore, he is not entitled to the ownership. We endorse the findings of the first appellate court upheld by the High Court."*

and submits that at no stage, the defendants having set up a case of adverse possession, there being no pleading nor there is any issue regarding the adverse possession, the learned first appellate court ought not to have returned the finding regarding the adverse possession of the defendants over the suit land. It is lastly submitted by the learned counsel for the appellants that the impugned judgment and decree passed by the first appellate court being not sustainable in law, as the learned first appellate court has returned the finding regarding the adverse possession of the defendants over the suit land, the same be set aside and the judgment and decree passed by the learned trial court being the court of Sub-Judge-I, Sahibganj in Title Suit No.33 of 1997 dated 05.06.2007 be restored.

17. Mr. Manjul Prasad, learned Senior Advocate appearing for the respondents on the other hand defends the impugned judgment and decree passed by the learned first appellate court. Mr. Prasad categorically submitted that the contention of the plaintiff as well as with due respect to the Bench which formulated the substantial question of law vide order dated 06.05.2016, that the learned first appellate court has returned the finding regarding the adverse perfection by the defendants over the suit land by way of adverse possession, is a misnomer as the first appellate court has not returned in the finding whatsoever regarding

the adverse possession of the defendants over the suit land. It is next submitted by Mr. Prasad that in the last 12 lines of page no.8 of the impugned judgment, the learned first appellate court has quoted the placitum of the case of **Safiran Bibi @ Safiram & Ors. vs. Manager Mirza** (**supra**) and the only mistake the learned first appellate court has committed is that instead of putting the said placitum in a separate paragraph or a sub-paragraph, he has quoted the same in the middle of the paragraph and basing upon that, it is contended by the plaintiff-appellants that the learned first appellate court has returned the finding of fact regarding perfection of title to the defendants over the suit land by the prescription of adverse possession. Mr. Prasad further submits that the learned first appellate court simply basing upon the finding of fact arrived at by the learned trial court that the plaintiff is not in possession of the suit land and the defendants have been in possession of the suit land after execution of the sale deed by the mother of the plaintiff namely Mahtabi in favour of the defendant dated 09.11.79 and constructed a house in the year 1981 and has only applied the period of limitation prescribed under Article 65 of the Schedule of Limitation Act, 1963 and held that since the undisputed fact as has been arrived at by the learned trial court is that the plaintiff is not in possession and the defendants have been in possession of the said land, the learned trial court ought not have passed a decree of recovery of possession as made by it in the judgment impugned before the learned first appellate court by the defendants who is the respondents in this appeal, as such a suit was barred by limitation. It is then submitted by Mr. Prasad that there is no

dispute by the plaintiff who was the respondent before the learned first appellate court regarding the finding of fact arrived at by the learned trial court that the plaintiff is not in possession of the suit land and that the defendants have been in possession of the suit land after execution of the sale deed by the mother of the plaintiff on 09.11.79; which the trial court held to be a permissive possession. Hence, the learned trial court observed that though it was not the case of the defendants, yet the defendant could not have perfected his title by way of adverse possession because his possession was permissive. It is further submitted by Mr. Prasad that had the plaintiff been having any grievance in respect of such finding of fact by the learned trial court, opportunity was open for him to either file a suit or at least a cross objection before the learned first appellate court but having not done so, the plaintiff who are the appellants herein has acceded to such finding of fact by the learned trial court and it is not open for the plaintiff to agitate the finding of fact returned by the learned trial court which was also relied upon by the learned first appellate court; for the first time in this second appeal. Mr. Prasad submits that there is no quarrel of settled principle of law passed by the Hon'ble Supreme Court of India and the Hon'ble Patna High Court; which were relied upon by the learned counsel for the appellants that they are the settled principle of law but the fact is that in this case since the learned first appellate court has not given any finding whatsoever that the defendant has perfected his title by way of adverse possession, the ratio of those judgments has no relevance nor any applicability, so far as this appeal is concerned. It is further submitted by

Mr. Prasad that since the finding of facts are concurrent and the learned first appellate court has not come to any finding of fact different from the finding of fact by the learned trial court. Hence, the ratio of **Hazari vs. Purushottam Tiwari** (**supra**) is not applicable to the facts of this case. It is lastly submitted by Mr. Prasad that the substantial question of law formulated vide order dated 06.05.2016 with due respect to the Bench has never existed in the facts of the case and as there is no infirmity or illegality passed by the learned first appellate court, this appeal being without any merit be dismissed.

18. Having heard the submissions made at the Bar and after carefully going through the materials in the record, this Court finds substance in the submission made by the learned Senior Advocate Mr. Manjul Prasad. The placitum which has already been mentioned in paragraph no. 9 of this Judgment and the last twelve lines of page no.8 of the learned first appellate court are again repeated for better appreciation of the matter :-

Placitum of AIR 2007 Jharkhand-3	Last twelve lines of page no.8 of the impugned judgment
Fraudulent transfer suit for declaration of right, title and possession by owner-defendant claimed title and possession on basis of registered sale deed – But said documents found to be fabricated one and not executed by plaintiff/owner – However, defendant was in possession of suit house continuously for more than statutory period, to knowledge of plaintiff- Thus, defendant had acquired title by adverse possession – Plaintiff not entitled to any relief.	A.I.R. 2007 Jharkhand-3 the Hon'ble Justice has given his finding that a Fraudulent transfer suit for declaration of right, title and possession by owner-defendant claimed title and possession on basis of registered sale deed – But said document found to be fabricated one and not executed by plaintiff/owner. However, defendant was in possession of suit house continuously for more than statutory period, to knowledge of the plaintiff. The defendant had acquired title by

	adverse possession plaintiff is not entitled to any relief and the suit is barred by Section 27 of Limitation Act.

It is crystal clear that the placitum of the reported judgment has been reproduced in the last twelve lines of the impugned judgment which has been underlined above in the second column of the above tabular chart; for better appreciation.

19. After carefully going through the impugned judgment and decree passed by the learned first appellate court, this Court finds that absolutely no finding has been arrived at by the learned first appellate court regarding the adverse possession of the defendants over the suit land. Hence, certainly, the sole substantial question of law formulated vide order dated 06.05.2016 is not relevant as the learned first appellate court has not given any finding regarding the adverse possession of the defendant over the suit land, the perversity of such a finding in the absence of any pleading to that effect in the written statement or in the absence of any issue framed by the learned trial court does not arise.

20. It is a settled principle of law that in the absence of any specific pleading regarding the ingredients of the three classic requirements to co-exist at the same time, namely, adequate in continuity, adequate in publicity and adverse to a competitor, in denial of title and his knowledge a party to a suit cannot be entitled to a decree for adverse position. Moreover *Animus possidendi* under hostile colour of title is also required; as has been observed by the Hon'ble Supreme Court

of India in the case of **Ravinder Kaur Grewal & Others vs. Manjit Kaur & Others** reported in **(2019) 8 SCC 729** paragraph-60 of which reads as under:-

> *"60. 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, S.A.No.16 of 1998 (R) 9 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 synonymous 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 large the 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." (Emphasis supplied)*

21. It is also a settled principle of law that a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed has been held by the Hon'ble Supreme Court of India in the case of **Karnataka Board of Wakf v. Government. of India & Others (2004) 10 SCC 779** inter alia observed as under: (SCC p. 785, para 11)

> *"11. Xxxxx Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims*

> *adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."*

22. But since the learned first appellate court has not given any finding regarding the adverse possession hence, certainly the impugned judgment and decree passed by the learned first appellate court cannot be set aside on an imaginary ground that the finding of adverse possession has been given by the learned first appellate court. The sole substantial question of law is answered accordingly.

23. Under such circumstances, there being no substantial question of law involved in this appeal, this Court finds that there is no merit in this appeal as the learned first appellate court has not given any independent finding of fact but has only relied upon the finding of fact arrived at by the learned trial court hence as the first appellate court agreed with the view of the trial court, the first appellate court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice. As the first appellate court has only rightly applied the period of limitation prescribed in Article 65 of Schedule of the Limitation Act, 1963 to the facts of the case and held that the suit is barred by limitation, hence there is no justifiable reason to interfere with the impugned judgment and decree passed by the first appellate court. Thus, this appeal being

without any merit is dismissed on contest but under circumstances without any costs.

24. Let a copy of this Judgment along with the Lower Court Records be sent back to learned court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 29th. September, 2022
AFR/ Sonu-Gunjan/-