A NARASAMMA & ORS.

v.

A. KRISHNAPPA (DEAD) THROUGH LRS.

(Civil Appeal No. 2710 of 2010)

AUGUST 26, 2020

B **[SANJAY KISHAN KAUL, AJAY RASTOGI AND ANIRUDDHA BOSE, JJ.]**

Suit – Possession – Predecessor-in-interest of the respondents (original plaintiff) filed a suit against the predecessor-in-interest of the appellants (original defendant) in respect of a schedule property – Original plaintiff claimed himself to be the full and absolute owner of the schedule property and sought directions for defendant to remove the temporary structure on the schedule property and put the plaintiff in vacant possession of the said property – The suit was resisted by the original defendant and it was stated that plaintiff's brother had executed sale agreement on 10.10.1976 in favour of defendant's wife and she was put in possession of the schedule property – However, sale deed was not registered – Defendant also pleaded adverse possession in his written statement – It was also stated that a General Power of Attorney was executed in favour of defendant's wife on 08.08.1988 by plaintiff's brother – The trial Court held that it was a case of continuous possession since 1976, thus defendant had perfected their title to the schedule property and relief of possession to plaintiff was declined – However, the judgment of the trial Court also showed inconsistencies in documents i.e. agreement of sale, General Power of Attorney, affidavit and deposition of DW-2 – The High Court decreed the suit against the heirs of the original defendant, as original defendant expired – On appeal, held: The High Court re-examined in extenso the evidence produced by both the parties and affirmed the findings arrived at by the trial Court regarding the inconsistencies in the agreement of sale and General Power of Attorney – Further, it was also held that the General Power of Attorney dated 08.08.1988 revealed that plaintiff's brother was in possession of property as on 08.08.1988 – As the sale deed was not registered and ground taken that there was bar/prohibition on transfer of land was not proved – There is no reason to disturb the

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concurrent findings of the courts below – Thus, plea of possessed title of defendant's wife was not established on basis of the documents propounded – As far as alternative plea of adverse possession is concerned, the claim of title from 1976 and plea of adverse possession also from 1976 cannot simultaneously hold – In order to establish adverse possession an enquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial – In the instant case, this fact has not been proved – The plea of adverse possession is lacking in all material particulars – The legal position stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date – Therefore, appellants directed to hand over vacant and peaceful possession of the schedule property.

Dismissing the appeal, the Court

HELD: 1. It is relevant to note that on the crucial issue of the factual matrix regarding the documents and the conclusion to be drawn from them, both the Courts are *ad idem*. Not only grave doubt has been thrown on the story of the appellants herein, but both Courts also record that the documents sought to be propounded by the appellants, i.e., the Agreement of Sale, the Power of Attorney and the affidavit, have too many discrepancies to be treated worth their while. This is apart from the fact that the non-registration of the title document in favour of defendant's wife-appellant 1 herein, was sought to be explained away on the ground of there being a bar/prohibition on transfer of land, which aspect was however not proved by the appellants by leading any evidence. There is also adverse comment on the testimony of the witnesses, who appeared on behalf of the appellants, more so DW-2, who was alleged to have scribed Exhibits D-1 and D-2. As noticed above, the conclusion of the Trial Court was that this witness had either forgotten all facts or had given tutored evidence as he claimed that both Exhibits D-1 and D-2 were prepared on the same date while the documents were twelve (12) years apart. In fact, the Trial Court has succinctly set out that the treasury seals were found to be erased and fresh dates affixed on Exhibit D-1, the signature of plaintiff was also found to be erased at a particular place, as also the fact that his name was traced on in

the General Power of Attorney, Exhibit D-2. These findings have been categorically affirmed by the High Court, which is the last court on facts. [Para 24][541-B-F]

2. There is no reason to disturb these concurrent findings of the Courts below, and even if this Court independently examines the evidence, there is no reason why we would come to a different conclusion. [Para 25][541-G]

3. The plea of the original defendant that his wife possessed title was not established on the basis of the documents sought to be propounded. It is also relevant that none of the parties chose to implead her as a party. Once the case of the original defendant was that it is his wife who had derived title, and alternative plea was of her adverse possession, then to establish that plea, at least, she ought to have been examined. [Para 28][542-C-D]

4. This Court may also note that on the one hand, the appellants herein have sought to take a plea of bar of limitation vis-a-vis the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. [Para 29][542-E-F]

5. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial. [Para 34][544-B]

6. In the facts of the present case, this fact has not at all been proved. The possession of the wife of the defendant, is stated to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars. [Para 35][544-C]

7. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out. [Para 36][544-D]

8. 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. [Para 38] [544-F]

Karnataka Board of Wakf v. Government of India & Ors. **(2004) 10 SCC 779 : [2004] 1 Suppl. SCR 255;** *Mohan Lal (Deceased) Thr. LRs. v. Mirza Abdul Gaffar & Anr.* **(1996) 1 SCC 639 : [1995] 6 Suppl. SCR 638;** *P.T. Munichikkamma Reddy & Ors. v. Revamma & Ors.* **(2007) 6 SCC 59 : [2007] 5 SCR 491;** *M. Siddiq (Dead) Through LRs (Ram Janmabhumi Temple Case) v. Mahant Suresh Das & Ors.* **(2020) 1 SCC 1;** *Ram Nagina Rai & Anr. v. Deo Kumar Rai (Deceased) by LRs & Anr.* **(2019) 13 SCC 324 – relied on.**

Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors. **(2019) 8 SCC 729 – referred to.**

Case Law Reference

[2004] 1 Suppl. SCR 255	**relied on**	**Para 16**
(2019) 8 SCC 729	**referred to**	**Para 20**
[1995] 6 Suppl. SCR 638	**relied on**	**Para 22**
[2007] 5 SCR 491	**relied on**	**Para 22**
(2020) 1 SCC 1	**relied on**	**Para 22**
(2019) 13 SCC 324	**relied on**	**Para 37**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2710 of 2010.

From the Judgment and Order dated 20.03.2009 of the High Court of Karnataka at Bangalore in R.F.A. No. 411 of 1999 (DEC).

P. R. Ramasesh, Adv. for the Appellants.

A Ms. Kiran Suri, Sr. Adv., Ashok Bannidinni (for M/s. Bannidinni And Co.), Advs. for the Respondents.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

B 1. A plaint was laid before the City Civil Judge at Bangalore by A. Krishnappa, predecessor-in-interest of the respondents herein (original plaintiff) against Sri Jayaram, predecessor-in-interest of the appellants herein(original defendant) under Order VII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code'), being O.S. No.4268/1989 in respect of the schedule property to the plaint being C described as a portion of property bearing Revenue Site No.9, part of Corporation No.2, 2nd main road, 1st block, Goraguntepalya, Bangalore–22 (hereinafter referred to as 'schedule property').

2. The original plaintiff stated that he and his late brother, Mr. A. Muniswamappa, were full and absolute owners of agricultural land D measuring 2 acres and 22 guntas in Survey No.8/4 of Goraguntepalya, Yeswanthpur Hobli, Bangalore North Taluk. The said land was an ancestral property, and in a family partition drawn among the plaintiff's uncles, the plaintiff and his elder brother by a registered Partition Deed dated 29.8.1956, the said land fell to the share of the plaintiff and his E elder brother, Mr. A. Muniswamappa. In a portion of the said land, the two brothers formed a revenue layout and sold the revenue sites to different persons, while retaining some of the sites. The area was subsequently included within the limits of the Corporation of the City of Bangalore (hereinafter referred to as 'the Corporation') for which betterment charges and other taxes were collected by the Corporation. F Mr. A. Muniswamappa passed away on 4.9.1988 and was survived by his two wives but no children. The wives were stated to be residing in the residence of the original plaintiff.

3. The original plaintiff stated that the Revenue Sites bearing Nos.8 and 9 were assigned as Site No.2 by the Corporation, which collected G betterment charges of Rs.4,320/- for both the sites which fell under the aforementioned common Site No. 2. The *khata* of the property was made out in the name of the original plaintiff who paid taxes and, thus, he claimed full and absolute ownership of the revenue site in question, which was being maintained by him as a *karta* of the joint family comprising of himself and his late brother, Mr. A. Muniswamappa. H

4. It is the case of the original plaintiff that during the lifetime of his late brother, Mr. A. Muniswamappa, the original defendant approached them after having resigned from his job in B.H.E.L. to permit him to occupy the schedule property, to facilitate him to eke out his livelihood by running a fuel depot. This was acceded to and the portion of the land was given free of rent to the original defendant on the condition that whenever original plaintiff and his elder brother directed the defendant to vacate the schedule property, he would oblige. This arrangement was accepted by the original defendant for running a fuel depot as a licensee. This arrangement is stated to have continued till before the plaint was instituted, when the original defendant made an attempt to lease out the schedule property. It is conceded that the original defendant was permitted to put a temporary structure for running a fuel depot on the specific condition that when he was called upon to vacate that land, he would remove the structure. In view of the endeavour of the original defendant to induct third parties in the schedule property, the original plaintiff got issued a legal notice dated 3.7.1989, calling upon him to surrender possession and withdrawing permission to occupy the same. There was no response to the notice, and thus, a suit was laid on these allegations seeking a decree in the following terms:

> "a) The plaintiff is the full and absolute owner of the schedule property;
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> b) Directing the defendant to remove the temporary structure put up by him on the schedule property and put the plaintiff in vacant possession of the schedule property;
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> c) To pay the mesne profits from the date of suit till the delivery of the possession;
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> d) To grant such other relief or reliefs as this Hon'ble Court deems fit to grant under the circumstances of the case; and
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> e) To award costs of the suit."

5. The suit was resisted by the original defendant and a different narrative was sought to be set out. On the ownership of the property, the same was denied as the original defendant disclaimed any knowledge of the same. It was stated that a notice for payment of betterment charges and to furnish particulars for the assessment of tax for the building from the Corporation were also issued to the wife of the original defendant, Smt. Narasamma (appellant 1 herein). The other averments have been

A generally denied and the narrative put forth was that the elder brother of the original plaintiff, Mr. A. Muniswamappa, sold Revenue Site No.9 measuring 30 ft. x 40 ft. to Smt. Narasamma for a consideration of Rs.11,000/-, out of which Rs.8,500/- was paid and the balance of Rs.2,500/- was to be paid upon the execution of the sale deed. A sale agreement was stated to have been executed on 10.10.1976 in favour of
B Smt. Narasamma and she was put in possession of the schedule property. She was also authorized to put up construction on the property and enjoy the said property as owner. The sale deed was, however, not registered as there was a prohibition on registration of piece lands. Mr. A. Muniswamappa is stated to have relinquished the ownership rights in
C favour of Smt. Narasamma making her the absolute owner of the schedule property. A house was constructed with tiles and asbestos sheets, along with a compound wall around the entire site where she resided along with family members including the original defendant from 1976. They began to run a fuel depot in a portion of the house from the same
D year. Some fruit trees were also planted. The averments in respect of possession in para 13 are as under:

> "13. …The possession and enjoyment of the above said site property in the occupation of the defendant and his family has been continuous and peaceful since from 10.10.1976 which is the
E date of sale in favour of the defendant's wife. Thus the defendant has been in continuous possession and enjoyment of the site property said above for more than 12 years, to the knowledge of the plaintiff and other public including the wives of late Sri A. Muniswamappa who are still alive."

F 6. The aforesaid portion of the written statement has been extracted as this is stated to be the basis of the plea of adverse possession, which was sought to be advanced subsequently.

7. The original defendant has stated that even after a lapse of more than ten (10) years, the prohibition for sale of piece land was not lifted, but the balance sum of Rs.2,500/- was received and a General
G Power of Attorney was executed in favour of Smt. Narasammaon 8.8.1988 by Mr. A. Muniswamappa declaring her right of possession and enjoyment of the schedule property as owner. An affidavit of the same date is also stated to have been executed acknowledging the receipt of the entire sale consideration and conferring upon her the right of the
H ownership of the property. Even thereafter the sale deed was undisputedly

not executed and the running of the fuel depot is stated to have been discontinued after some years of occupation and a cycle repair shop was being run thereafter. In para 14 the specific plea of adverse possession was raised, which reads as under:

> "14. …The defendant also submits that his wife has also got the prescriptive right of ownership over the said site property by way of adverse possession."

8. The original defendant also pleads that the area of the site property came to be acquired by the Bangalore Development Authority (hereinafter referred to as 'B.D.A.'), and an award was passed with the Award Notice dated 30.10.1981 in respect of the acquisition of the land in Survey No.8/4 issued to the original defendant. Smt. Narasamma was served with a notice dated 8.9.1986 for furnishing the information to assess the building for property tax as was required under the Karnataka Municipal Corporation Act, 1976, and betterment charges were demanded from her when Corporation Site No.2 was allocated, after being renumbered, to comprise of the schedule property. The betterment charges are stated to have been tendered by Smt. Narasamma, but the Corporation informed her that the receipt of the same was stopped and that a fresh notice would be issued for the same. It is the original defendant's case that Revenue Site No.9 was sold to his wife which was renumbered as Site No.2 by the Corporation but the suit had been filed in respect of the same property with different measurements and different name of boundaries to confuse the issues and deny the lawful right of the defendant's wife. Late Mr. A. Muniswamappa, being the elder brother, was stated to be the head of his family during his lifetime and was dealing in selling of sites which fell to the share of the two brothers. This dealing was not objected to by anybody including the original plaintiff. The original plaintiff's right over the schedule property is, thus, denied. The allegation of the endeavour to lease it out to a third party has also been denied. It is contested that the suit is liable to be dismissed with costs.

9. On these pleading of the parties, the following issues were framed by the Trial Court:

> "(1) Whether the plaintiff proves that the valuation made and court fee paid are proper and correct?
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> (2) Whether the plaintiff proves description of suit property?

A (3) Whether the plaintiff proves his title to suit property?

(4) Whether the defendant proves that his wife has perfected title to suit property by adverse possession as pleaded?

(5) Whether the plaintiff proves that the defendant was permitted to occupy and put up a structure in the suit property as alleged?

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(6) Whether the plaintiff is entitled to have possession of suit property from the defendant as claimed?

(7) Whether plaintiff proves cause of action for the suit?

(8) Whether the plaintiff is entitled to past and future mesne profits from the defendant and if so, at what rate and from which date?

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(9) To what relief, the parties are entitled?"

10. On trial taking place, the plaintiff appeared as a witness in support of his claims and exhibited documents, while the defendant also appeared along with two other witnesses in support of his case exhibiting documents. The Trial Court by the judgment and decree dated 12.3.1999 found Issue Nos.1, 2 and 4 in the affirmative, while the other issues were found in the negative and it dismissed the suit with costs. A close examination of the Trial Court judgment shows that a finding was reached that the property in question was joint family property and thus, in any case, late Mr. A. Muniswamappa, in the absence of any partition, could not have alienated, at least, the half share of the original plaintiff unless there was a family necessity, though he was selling different revenue sites. However, the crucial aspect was that no evidence was produced by the original defendant to substantiate the plea that there was bar on registration of revenue sites in the year 1976 and thereafter. The Agreement of Sale, Exhibit D-1, was closely examined, as also the Power of Attorney being Exhibit D-2. The inconsistencies and the contradictions in the deposition of DW-2, one Mariswamy Naik who scribed Exhibit D-1 and Exhibit D-2, and who was closely related to the original defendant, resulted in a finding that these two crucial documents were not proved. In fact, the observation on his demeanour was that this witness had either forgotten all facts or has given tutored evidence. This finding, *inter alia*, was based on the deposition of DW-2 that both Exhibits D-1 and D-2 were prepared and written by him on the same date, while the two documents were dated twelve (12) years apart and Exhibit D-2 was not hand written. The treasury seals were found to be erased and

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fresh dates affixed on Exhibit D-1. In this Exhibit, the signature of late Mr. A. Muniswamappa was also found to be erased at a particular place, as also the fact that his signature had been erased and thereafter traced one in the General Power of Attorney, Exhibit D-2. Moreover, the Notary was not examined qua the execution of the General Power of Attorney and the affidavit.

11. On the plea of adverse possession, there is a detailed discussion of the legal position. The *khata* of the schedule property stood in the name of the original plaintiff. A notice was issued to the wife of the original defendant by the Corporation as an occupier. However, the Trial Court found that it was a case of continuous possession since 1976 to the knowledge of the original plaintiff and his brother who never obstructed the possession of Smt. Narasamma till 1989 and, thus, they could be said to have perfected their title to the schedule property, their possession being continuous, open, uninterrupted and hostile. Relief of possession to the original plaintiff was, thus, declined. In view of the finding on adverse possession it was opined that mesne profits were also to be declined.

12. An appeal was filed against the aforesaid judgment and decree before the High Court of Karnataka at Bangalore, which was registered as RFA No.411/1999. The appeal was allowed by the impugned judgment dated 20.3.2009 decreeing the suit with costs against the legal heirs of the original defendant (who passed away in the meantime) giving them time to hand over vacant and peaceful possession of the property within three (3) months from the date of the judgment.

13. On the SLP being filed notice was issued and status quo in relation to possession was directed by the order dated 13.5.2009. On 19.3.2010 leave was granted and interim orders were made absolute.

14. The matter was thereafter finally heard only now in 2020, and we have given our thoughtful consideration to the submissions of the learned counsel for the appellants herein and learned senior counsel for the respondent herein (now represented through his LRs as he passed away on 19.4.2018). We have also examined the records placed before us in these proceedings, as also the impugned judgment.

15. The High Court noticed that the plea of the appellants herein was that the original plaintiff was not the absolute owner of the schedule property, and that the wife of the original defendant, Smt. Narasamma,

A was not impleaded and without impleading her as the one who claimed ownership, the suit was not maintainable. This plea was negated on the ground that both on admission and finding, the original plaintiff and deceased Mr. A. Muniswamappa were brothers with the latter dying issueless, and that no partition had taken place during Mr. A. Muniswamappa's lifetime or thereafter, and the family continued to B stay together. The High Court, as the first appellate court, re-examined *in extenso* the evidence produced by both the parties and affirmed the finding arrived at by the Trial Court that the document Exhibit D-1, Agreement of Sale, contained too many manipulations and alterations to be treated as a reliable document. The position was the same qua Exhibit C D-2. The affidavit purported to be dated 8.8.1988 was exhibited as Exhibit P-13, but there is no reference to any Agreement of Sale dated 10.10.1976 therein. Further, the date of issuance of stamp paper had also been altered. The contents of Exhibit P-13 were inconsistent with the Agreement of Sale dated 10.10.1976, as it purported to state that the deceased Mr. A. Muniswamappa was in possession of the schedule D property on 8.8.1988. Thus, the final court on facts has also disbelieved all these documents.

16. That brought the High Court to the main aspect which resulted in the appeal being allowed, i.e., the failure of the appellants herein on their plea of adverse possession. Once again, there is an elaborate E discussion on the various judicial pronouncements of this Court on the plea of adverse possession, emphasising that the success of this plea requires the person claiming the same to prove that he is in possession and that, "his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in F continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."[1]

17. Accordingly, the findings of the High Court are contained in G para 65 as under:

> "65. In view of the foregoing discussion and for the reasons stated hereinbefore, I hold that:
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> I. There is no specific plea of adverse possession.

H [1] Karnataka Board of Wakf v. Government of India & Ors., (2004) 10 SCC 779, para 11

II. The alleged adverse possessor was not examined before the trial Court.

III. The defendant having pleaded that his wife was in possession of suit schedule property under agreement of sale dated 10.10.1976 has miserably failed to prove the document and delivery of possession under said agreement.

IV. General Power of Attorney dated 8.8.1988 stated to have been executed by deceased Muniswamappa had not been proved by defendant. The said document would reveal that as on 8.8.1988, deceased Muniswamappa was in possession of suit schedule property."

18. In view of the aforesaid, the appeal was allowed as the original defendant had failed to prove that his wife, Smt. Narasamma, had perfected her title to the schedule property by way of adverse possession.

Plea of the Appellants:

19. Learned counsel for the appellants herein sought to contend that the suit was barred by limitation as the induction of the original defendant's wife was in 1976, while the suit was filed on 9.8.1989, i.e., beyond the period of twelve (12) years. The genuineness of the Agreement of Sale dated 10.10.1976 was stated not to have been questioned, nor was the suit amended to include the prayer for cancellation of this document. Once the Agreement of Sale coupled with the General Power of Attorney has been put on record, the burden to disprove the same was pleaded to have shifted on to the respondent herein.

20. It was also contended that the schedule property being joint family property, the sale by any brother would be binding to the extent of half share and the entire transfer could never have been nullified. On the demise of Mr. A. Muniswamappa, the original plaintiff ought to have impleaded his two widows as parties to the suit. The finding of the High Court on the plea of adverse possession was sought to be assailed on the ground that the original plaintiff and Mr. A. Muniswamappa did not claim possession during the latter's lifetime, which establishes that they considered the possession to be legitimate. It was contended that the appellants herein were well within their rights to set up an alternate plea inconsistent with the main contention of claiming title under a document, as the same was permitted by law, and assistance was sought from the judgment of this Court in ***Ravinder Kaur Grewal & Ors. v. Manjit***

A ***Kaur & Ors.***[2] to contend that the perfection of title by way of adverse possession could be a shield available in the defence of the appellants herein.

Plea of the Respondent:

B 21. On the other hand, learned senior counsel for the respondent herein contended that once the original plaintiff had proved the title, the burden would shift upon the original defendant to establish the Agreement of Sale and General Power of Attorney, or for that matter even perfection of title by adverse possession. There were concurrent findings of both the courts qua the aspect of the failure of the original defendant to establish C and prove the documents, which would show that there was no Agreement of Sale coupled with possession.

22. It was also submitted that since after the death of Mr. A. Muniswamappa, the original plaintiff was the *karta* of the family, and was paying betterment charges as well as tax from 1985 to the D Corporation till the date of the suit. He could also prosecute the suit on behalf of the family and there was no dispute within the family including the wives of late Mr. A. Muniswamappa. On the plea of adverse possession, it was submitted that it was not an alternate plea, but rather an inconsistent plea, which was not permissible for the appellants herein to plead so. The judgment in ***Ravinder Kaur Grewal & Ors.***[3] case is E concerned only with the aspect of whether a person claiming the title by virtue of adverse possession could file a suit, and the requirement of pleadings and proof of adverse possession as per settled law have not been interfered with. In support of this plea, learned counsel relied upon the following four judicial pronouncements of this Court:

F i. ***Karnataka Board of Wakf v. Government of India& Ors.***[4]

ii. ***Mohan Lal (Deceased) Thr. LRs. v. Mirza Abdul Gaffar & Anr.***[5]

iii. ***P.T. Munichikkamma Reddy & Ors. v. Revamma& Ors.***[6]

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[2] (2019) 8 SCC 729
[3] (supra)
[4] (supra)
[5] (1996) 1 SCC 639
H [6] (2007) 6 SCC 59

iv. ***M. Siddiq (Dead) Through LRs (Ram Janmabhumi Temple Case) v. Mahant Suresh Das& Ors.***[7]

Conclusion:

23. We have examined the rival contentions of the parties in the conspectus of the facts set out hereinabove.

24. It is relevant to note that on the crucial issue of the factual matrix regarding the documents and the conclusion to be drawn from them, both the Courts are *ad idem*. Not only grave doubt has been thrown on the story of the appellants herein, but both Courts also record that the documents sought to be propounded by the appellants, i.e., the Agreement of Sale, the Power of Attorney and the affidavit, have too many discrepancies to be treated worth their while. This is apart from the fact that the non-registration of the title document in favour of Smt. Narasamma, appellant 1 herein, was sought to be explained away on the ground of there being a bar/prohibition on transfer of land, which aspect was however not proved by the appellants by leading any evidence. There is also adverse comment on the testimony of the witnesses, who appeared on behalf of the appellants, more so DW-2, who was alleged to have scribed Exhibits D-1 and D-2. As noticed above, the conclusion of the Trial Court was that this witness had either forgotten all facts or had given tutored evidence as he claimed that both Exhibits D-1 and D-2 were prepared on the same date while the documents were twelve (12) years apart. In fact, the Trial Court has succinctly set out that the treasury seals were found to be erased and fresh dates affixed on Exhibit D-1, the signature of late Mr. A. Muniswamappa was also found to be erased at a particular place, as also the fact that his name was traced on in the General Power of Attorney, Exhibit D-2. These findings have been categorically affirmed by the High Court, which is the last court on facts.

25. We find no reason to disturb these concurrent findings of the Courts below, and even if we independently examine the evidence, there is no reason why we would come to a different conclusion.

26. We also note that insofar as the title of the wife of the original defendant is concerned, there is no doubt that it was an HUF property and was so managed; all technical objections sought to be raised by the appellants herein have been repelled. However, despite this, the only

[7] (2020) 1 SCC 1

A reason for the High Court to reverse the conclusion of the Trial Court was that the original defendant had not been able to establish the plea of adverse possession.

27. If we examine the judgments of the courts below, more so in the context of the reasons which persuaded the High Court to interfere
B with the conclusions, which are set out in para 65 of the impugned judgment and extracted by us in para 17 hereinabove, it is our view that the finding that there was no specific plea of adverse possession would be difficult to sustain. We have already stated as to how and in what manner this plea has been set out in the written statement and extracted
C above. However, that is as far as it goes.

28. We have already observed, as aforesaid, that the plea of the original defendant that his wife, Smt. Narasamma, possessed title was not established on the basis of the documents sought to be propounded. It is also relevant that none of the parties chose to implead her as a
D party. Once the case of the original defendant was that it is Smt. Narasamma who had derived title, and alternative plea was of her adverse possession, then to establish that plea, at least, she ought to have been examined.

29. We may also note that on the one hand, the appellants herein
E have sought to take a plea of bar of limitation vis-à-vis the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to
F prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. We fail to appreciate how, on the one hand the appellants claimed that the wife of the original defendant, appellant 1 herein, had title to the property in 1976 but on their failure to establish title, in the alternative,
G the plea of adverse possession should be recognised from the very date.

30. We also find that the reliance placed by learned counsel for the appellants in ***Ravinder Kaur Grewal & Ors.***[8] is also misplaced. The question which arose for consideration before the three Judge Bench

H [8] (supra)

was whether, a suit could be maintained for declaration of title and for permanent injunction seeking protection on a plea of adverse possession, or that it was an instrument of defence in a suit filed against such a person. In fact, if one may say, there was, for a long time a consistent view of the Court that the plea could only be of shield and not a sword. The judgment changed this legal position by opining that a plea to retain possession could be managed by the ripening of title by way of adverse possession. However, to constitute such adverse possession, the three classic requirements, which need to co-exist were again emphasized, *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.

31. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned counsel for the respondent herein, which succinctly set forth the legal position.

32. In ***Karnataka Board of Wakf*** [9] case, 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…."

33. The aforesaid judgment in turn relied upon the judgment in ***Mohan Lal (Deceased) Thr. LRs.***[10], which observed in para 4 as under:

> "4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription *nec vi*, *nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by

[9] (supra)
[10] (supra)

A implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

34. In order to establish adverse possession an inquiry is required B to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial.[11]

35. In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated to be on account of consideration paid. Assuming that the C transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

36. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse D possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out[12].

37. We may also note another judicial pronouncement in ***Ram Nagina Rai & Anr. v. Deo Kumar Rai (Deceased) by LRs & Anr.***[13] E dealing with a similar factual matrix, i.e., where there is permissive possession given by the owner and the defendant claims that the same had become adverse. It was held that it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title 12 years hence from that time.

F 38. 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.

39. We have, thus, no hesitation in coming to the conclusion that the appeal is meritless and is accordingly dismissed with costs.

G 40. In view of the current position and the long possession of the appellant, we grant time to the appellants herein to hand over vacant and

[11] P.T. Munichikkanna Reddy & Ors. (supra)

[12] M. Siddiq (Dead) Through LRs (Ram Janmabhumi Temple Case) v. Mahant Suresh Das & Ors. (supra)

H [13] (2019) 13 SCC 324

peaceful possession of the schedule property on or before 31.12.2020 subject to furnishing of the usual undertaking within a period of four (4) weeks from today. A

Ankit Gyan Appeal dismissed.