

**A.F.R.**  
Judgment reserved on: 08.04.2026  
Judgment delivered on: 15.04.2026  
Neutral Citation No. - 2026:AHC:81856

**Court No. -39**

**Case :-** FIRST APPEAL No. - 17 of 2024

**Appellant :-** Raviprakash

**Respondent :-** Dalip Singh And 2 Others

**Counsel for Appellant :-** Jyoti Agrawal, Nitin Kumar Agrawal

**Counsel for Respondent :-** Akanksha Sharma

**Hon'ble Sandeep Jain,J.**

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 30.10.2023 passed by the Civil Judge(Senior Division)/FTC, Ghaziabad in O.S.no. 876 of 2021 Ravi Prakash vs. Dalip and others, whereby defendants application no. 41-C2 under Order VII Rule 11 CPC has been allowed and consequently, the plaint has been rejected.

**Plaint case**

2. The plaintiff appellant filed O.S. no. 876 of 2021 with the averments that on the basis of adverse possession he is the actual and physical owner of house no. KH – 11, area 1413.31 square yards i.e. 1181.668 m<sup>2</sup> situated in Block –H, Sector 18, GMP residential colony, Kavinagar, Ghaziabad, tehsil and District Ghaziabad, the boundaries of which have been mentioned at the end of the plaint, which is hereinafter referred to as the disputed property.

3. It was further averred that the disputed property was purchased by defendant no.1 on 20.4.1987, which comprises of 3 rooms, kitchen, 3 toilet, servant room, lobby, store, etc. which are constructed in an area of 92.90 m<sup>2</sup>. There is also boundary wall which is 7 feet high and the main gate is of iron, which is used for egress and ingress, which is locked. The property has been continuously in the occupation of plaintiff from 1.1.1996, in which his family members are also residing with him, since then, he is in the actual and physical possession of the disputed property. Since then, he has fixed his name plate on the main gate, which is known to all residents and also defendant no.1.

4. It was further averred that since plaintiff and his family members are residing in the disputed property as such, the District Magistrate Ghaziabad on 26.7.1997 issued him revolver license no. 262/97 on

which he purchased the revolver of 32 bore 0619(IOF). He also established his watch manufacturing factory in the year 1997 in the name of S.D. Watches India Ltd, in which he is director and he has shown his address as the disputed property. The trade tax number was obtained on the address of the disputed property by him in the year 1997, on the basis of which he is doing his watch business. On 30.4.2002 he obtained loan from Ford Credit Kotak Mahindra Ltd through agreement no. 41803313 for purchasing a car. On 17.2.1996 an agreement was executed between him and HMT Ltd in which he has shown his address as the disputed property. He also obtained a loan from Punjab National Bank ,Shastri Nagar, Ghaziabad in which security bond was registered in which he has disclosed his address as the disputed property, in which an agreement of guarantee was executed on 18.8.1998 and further, in the year 1998, he applied for obtaining a loan of ₹ 35 lakhs for his firm S.D Watches India Ltd from Punjab National Bank Ghaziabad, which was sanctioned on 7.8.1998 and in this loan also he has shown his address as the disputed property.

5. It was further averred that he applied on behalf of Delta Watch Private Limited to the Registrar of Companies, in which a show cause notice was issued under Section 75(4) of the Companies Act on 26.3.2004, to his wife Shashikala at her address as the disputed property. In the year 2004, he applied on behalf of his company to the Registrar of Companies, regarding which a confirmation was received on 23.1.2004, which was sent to his wife Shashikala on her address as the disputed property. He also submitted the annual return of his firm Delta Watches Private Ltd on 28.9.1999 disclosing his address as the disputed property. In the 1997, he also applied for the export import of components for his firm M/S S.D.Watch India Ltd for allotting IC number in which he also disclosed his address as the disputed property.

6. In the year 1996 he also obtained landline telephone no. 2701383 from BSNL which was installed on his address as disputed property. He started manufacturing Delta Watches from 20.1.2004 and for obtaining the trademark he disclosed his address as the disputed property, its receipt no. 241797 was issued on 20.1.2004. On 15.10.2005 for obtaining the trade mark of the watch in the name of Swiz Delta he applied to the Government of India disclosing his address as the disputed property. On 1.1.2007 the Election Commission of India issued voter card to him and his wife Shashikala on their address as the disputed property.

7. It was further averred that the house tax of the disputed property is being paid in the name of Major Vinod Kumar, who was the owner prior to defendant no.1. Since he and his family members are

continuously residing in the disputed property hence they are regularly depositing the house tax of the disputed property, its receipts dated 15.3.2008, 31.3.2009, 26.3.2011 and 29.3.2012 are in his possession, which proves that his occupation of the disputed property is open, peaceful and without any interference.

8. It was further averred that on 11.3.2005 he purchased a Honda City car no.UP-14 X- 8823 in which his address as the disputed property was shown and the car was insured on the same address having policy number HNC/00003472. His daughter Mahima and son Shyam were born in the disputed property on 16.10.2011 and 2.9.2019, respectively. His daughter Mahima was studying in class V in Holy Child School, Ghaziabad, and in the school record her address is of the disputed property. In the disputed property he, his wife and family members are continuously residing, the possession of which is also with him and due to this reason, his wife Shashikala on 13.7.2011 executed a power-of-attorney in his favour regarding khatauni no. 70 in which their address is of the disputed property.

9. It was further averred that he is the director of his company Dayal and Sons Electronics Private Limited in which his residential address is of the disputed property, which has also been confirmed by the income tax department of the Government of India. He has also obtained a gas connection on the disputed property from IGL on 28.4.2015 having connection no. BP 7000076153, from which he is continuously receiving gas, which is being used for cooking meals. His revolver license no. 262/97 was unfortunately lost regarding which he registered a FIR on 11.7.2015 at police station, Kavi Nagar Ghaziabad showing his address as the disputed property.

10. It was further averred that in the disputed property electrical connection no. 004/006851 is in the name of previous owner Capt. Vinod Kumar, but the payment is being made by him. Some of the electricity bills were paid by him through cheque and in the receipts dated 16.11.2010, 15.7.2009 and 5.7.2010 cheque no. 592245 drawn on SBI is mentioned. He also purchased a Creta car no.UP-14-DF 1607 in the year 2017 on his address as the disputed property, which was insured by policy no.HAX/S 6743753. A false FIR was registered by some anti-social elements against him at police station Mohanlalganj, Lucknow regarding which notice under Section 91/160 CrPC was issued by the above police station on his address as the disputed property. He has also obtained along with his family members, medical policy no. 254003/48/2010/536 in the year 2016, which is continuing till date, regarding which an enquiry was conducted by the Oriental Insurance Co. and on ascertaining that he is residing in the disputed property, policy was issued.

11. It was further averred that on 26.2.2020 he deposited the house tax, water tax & sewer tax with the Nagar Nigam Ghaziabad through cheque no. 006277/26.2.2020 for ₹ 20,472/- which was drawn on Federal Bank. He further deposited bills for the electric connection no. 8824355000 dated 1.12.2018 and 29.7.2020 through cheque no. 004342 for ₹ 4,133/- and cheque no. 006288 for ₹ 50,558/-, respectively, which also proved his possession of the disputed property.

12. It was further averred that since 1.1.1996 he is in continuous possession of the disputed property, he has shown his address of the disputed property in his business concerns, the defendant no.1 and others are fully aware of his actual, hostile and continuous possession of the disputed property. He is residing in the disputed property as owner for the last 25 years, which is in the knowledge of defendant no.1, which has not been objected by defendant no.1, and he has deprived the defendant no.1 from the use and occupation of the disputed property. The defendant no.1 was always aware of his ownership and possession of the disputed property, but the defendant no.1 never took any steps for dispossessing him from the disputed property, neither filed any case against him in any competent Court nor obtained any order or decree against him. No suit, appeal and execution proceeding for his ejection are pending in any competent Court.

13. It was further averred that since he was in continuous possession of the disputed property from 1.1.1996 as such, the limitation for filing the suit for dispossessing him from the disputed property has ended on 31.12.2008, and hence his possession of the disputed property has matured into ownership, and since 31.12.2008 he is the owner in possession of the disputed property and since then the defendant no.1 has lost his right to dispossess him, interfere in his ownership and possession of the disputed property and has also lost his right to alienate, mortgage, etc. the disputed property. The defendant no.1 has got no right, title and interest whatsoever, in the disputed property and in accordance with Section 27, Article 65 and 136 of the Limitation Act, all the rights of the defendant no.1 in the disputed property have ended.

14. It was further averred that the defendant no.1 has lost his right to dispossess him from the disputed property since his right has become time barred. Otherwise also, the defendant no.1 was incapable of dispossessing him but was in contact of land mafia for selling the disputed property, who was intending to dispossess him with their assistance.

15. It was further averred that defendant no.1 was in collusion with

some land mafia and Sandeep (defendant no. 3), and for usurping the disputed property, constituted a trust in the name of Dayal Educational Trust(defendant no. 2) and the defendant no. 3 was the chairman of the trust. It was averred that when the plaintiff became aware that the defendant no.1 was ready to transfer the disputed property in favour of defendant no. 2 and 3 in the month of January 2019, then he made a request to defendant no. 3 that by adverse possession from 1.1.1996 he has acquired ownership of the disputed property on 31.12.2008, hence defendant no. 3 should not get the property transferred in his name. It was further averred that the defendant no. 3 was well aware that the plaintiff and his family members are in continuous possession of the disputed property since 1.1.1996 and they have acquired ownership of the disputed property by adverse possession on 31.12.2008.

16. It was further averred that inspite of the above facts, defendant no.1 in collusion with some antisocial elements executed the gift deed of the disputed property in favour of defendant no. 2 and 3 on 18.1.2019, which was not shown to the plaintiff. It was further averred that defendant no. 2 and 3 are also well aware of his possession and ownership of the disputed property but they have also not taken any steps for his dispossession from the disputed property by filing any suit before the competent Court. It was further averred that defendant no.1 was a resident of Mohalla Patwarian Post Office Mandawar District Bijnor and the defendant no. 3 was a resident of 9/30 Sarvodaya Colony, Rana Pratap Marg, Lucknow, who never had any concern with the disputed property.

17. It was further averred that on 17.9.2021 the defendants no.1 and 3 along with some antisocial elements came to the disputed property and defendant no. 3 showed him a gift deed of the disputed property dated 18.1.2019, then the plaintiff became aware for the 1st time that the defendant no.1 has executed an illegal gift deed of the disputed property in favour of defendant no. 2, whereas, the ownership of the plaintiff in disputed property has matured on the basis of adverse possession on 31.12.2008. It was further averred that the defendant no.1 had no right to execute the above gift deed in favour of defendant no. 2, which was void and illegal, which neither affects the plaintiff's right in the disputed property nor any right, title and interest has vested in defendant no. 2 and 3 on its basis.

18. It was further averred that on 17.9.2021 the defendants made an unsuccessful attempt to dispossess him from the disputed property but due to the intervention of some influential people, the defendants could not succeed, but in future the defendants may again try to dispossess him and hence if, an injunction was not passed against the defendants then they will certainly dispossess the plaintiff from the

disputed property and if they succeed in doing so, then irreparable injury will be caused to the plaintiffs, hence, the necessity of filing the suit.

19. In the above backdrop, the plaintiff claimed the following reliefs:-

*(i) By decree of permanent injunction granted in favour of the plaintiff against the defendants, the defendants be restrained from interfering in the peaceful possession, ownership, usage and in any other manner whatsoever; and from dispossessing the plaintiff from the disputed property, and be also restrained from creating mortgage, obtaining loan and alienating in any other manner.*

*(ii) The plaintiff be also awarded the costs of the suit against the defendants.*

*(iii) Any other relief which the Court deems appropriate be also granted.*

#### **Defendants application 41-C2 under Order VII Rule 11 CPC**

20. During the pendency of the suit the defendants no.2 & 3 moved an application 41-C2 under Order VII Rule 11 CPC on the ground that no cause of action has arisen to the plaintiff for filing permanent injunction suit against true owner defendant no.1 and after executing gift deed dated 18.1.2019 in favour of defendant no. 2, whatever cause of action has been shown in paragraph 44 of the plaint is only fabricated and false cause of action. The plaintiff has accepted that the defendant no.1 purchased the disputed house on 20.4.1987 from Capt. Vinod Kumar, whose name was still recorded in the Nagar Nigam, Ghaziabad and electric connection was also in the name of Capt. Vinod Kumar, but he has not been arrayed as a party.

21. The plaintiff cannot claim ownership by adverse possession over residential house situated in abadi land. Under Article 25 of the Limitation Act the possession over house must be of 20 years for claiming ownership by adverse possession, but the plaintiff has only claimed ownership on the basis of only 12 years possession over residential house, which cannot be claimed by the plaintiff. The relief of permanent injunction is not available to a trespasser against true owner as such, no cause of action existed for the relief of permanent injunction. The plaintiff has not claimed relief of declaration hence, the relief of permanent injunction cannot be granted to him. The suit is barred under Section 34 of the Specific Relief Act since the relief of declaration was not claimed by the plaintiff. With these averments, it was prayed that the plaint be rejected.

#### **Objections of the plaintiff against the defendants application**

22. The plaintiff filed his objection paper no.46-C2 in which the averments of the defendants were denied. It was averred that no cause

of action has arisen to the plaintiff against Capt. Vinod Kumar, since at the time of filing of the suit, he was not having any right title and interest in the disputed property, since he had sold the disputed property. It was further averred that in respect of residential house, ownership on the basis of adverse possession can be claimed. It was further averred that the plaintiff was in possession of the disputed house since 1.1.1996 whereas, the suit was filed on 20.9.2021 after a duration of 25 years 8 months and 19 days, during this period, the plaintiff's possession of the disputed property has remained continuous. Article 25 of the Limitation Act is related to easementary rights, not to adverse possession. For claiming ownership on the basis of adverse possession only 12 years open, continuous and hostile possession, which must be in the knowledge of the owner, is required, hence the plaintiff's suit for the relief of permanent injunction was maintainable. The plaintiff was not a trespasser. The cause of action for filing the suit has arisen on 17.9.2021 since the defendants attempted to dispossess the plaintiff from the disputed property and also tried to mortgage the disputed property for obtaining loan and also tried to alienate it. The suit was not barred by Section 34 of the Specific Relief Act. With these averments it was prayed that the defendants application be rejected.

#### **Reasoning of the trial court**

23. The trial court opined that the plaint discloses that the electricity bill and the house tax of the disputed property was being deposited by the plaintiff in the name of Vinod Kumar, from whom the defendant no.1 Dalip Singh has purchased the disputed property, through sale deed. It was further opined that the plaint discloses that on 18.1.2019 the disputed property has been gifted by defendant no.1 to defendant no. 2 and 3, which proves that the plaintiff's possession of the disputed property has not remained continuous and without hindrance till 18.1.2019, whereas the suit was filed on 20.9.2021. The trial court opined that for claiming ownership on the basis of adverse possession, 12 years continuous possession was required, which was not proved from the plaint averments, hence the plaintiff has got no cause of action to file the suit. With this reasoning, the defendants application 41-C2 was allowed and consequently, the plaint was rejected under Order VII Rule 11 CPC, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 CPC.

#### **Submissions of the learned counsel of the parties**

24. Learned counsel for the plaintiff appellant submitted that the plaintiff was in continuous possession of the disputed property since 1.1.1996, which was proved from the plaint averments. The plaintiff has disclosed that he has obtained the telephone connection, gas

connection, revolver license, car registration, insurance policies, medical policy, showing the address of the disputed property. It was further submitted that the plaintiff is also director of several companies and in the records of the Registrar of Companies, the plaintiff's address is of the disputed property. In the income tax and trade tax the plaintiff's address of the disputed property is recorded. Learned counsel further submitted that plaintiff's children were also born in the disputed house, the plaintiff's wife has also mentioned the address of the disputed property, in her documents. It was further submitted that the voter card has also been issued on the address of the disputed property.

25. It was further submitted that the defendant no.1 was the owner of the property, who was well aware that the plaintiff was residing in the disputed property since 1.1.1996, but he took no steps for evicting the plaintiff from the disputed property. It was further submitted that since 1.1.1996 the possession of the plaintiff on the disputed property has remained open, hostile and continuous against the owner defendant no.1, as such, after the expiry of 12 years on 31.12.2008, the plaintiff has become the owner of the disputed property on the basis of adverse possession.

26. It was further submitted that the defendant's application under Order VII Rule 11 CPC is to be decided only on the basis of plaintiff's averments and documents of the plaintiff, and the written statement as well as the documents of the defendant are not to be considered at this stage. It was further submitted that the Court can also not examine the veracity of the plaintiff's averments and is bound to accept them as true. It was further submitted that from the plaintiff's averments it was prima facie proved that the plaintiff was residing in the disputed property as an owner since 1.1.1996, who has perfected his legal ownership in the disputed property on the basis of adverse possession on 31.12.2008, as such, the plaintiff's claim could not have been rejected by the trial court. With these submissions, it was prayed that the appeal be allowed and the matter be remanded back for deciding it on merits. In support of his contention learned counsel has relied upon the following case law:-

*(i) Karam Singh vs. Amarjit Singh and ors. 2025 INSC 1238.*

*(ii) Bhau Ram vs. Janak Singh and ors. (2012) 8 SCC 701.*

*(iii) Sunil Kumar Dubish vs. Sri Ramesh Chandra Dubish (Since Dead) and ors. 2026 (1) ARC 435.*

27. Sri Manish Goyal learned Senior Counsel for the respondents submitted that it is true that only the plaintiff's averments and the documents submitted by the plaintiff are to be considered only at the time of deciding the defendant's application under Order VII Rule 11

CPC. It was further submitted that the plaintiff has to prima facie prove that the true owner defendant no.1 was aware that the plaintiff was residing in the disputed property since 1.1.1996. Learned counsel further submitted that if this fact was not in the knowledge of defendant no.1, then the plaintiff cannot claim adverse possession against the above defendant.

28. It was further submitted that for obtaining the revolver license, for getting the car registered with RTO, for obtaining the insurance policy, for filing income tax return, for getting children admitted to a school, for establishing the company, for getting registered the directorship of the company with the Registrar of Companies, for obtaining export import licence, for getting the firm registered with trade tax, sales tax Department, for obtaining trademark – it is not required, that the address shown must be of the property, which is owned by the applicant. If a person is living in a rented/leased accommodation, even then, he can obtain the above mentioned documents and get his name entered in the official records.

29. It was further submitted that for obtaining the electricity connection in an accommodation and for mutation in the records of the municipality, the applicant is required to prove his ownership of the property, failing which, he can neither obtain the electricity connection nor can get his name mutated. Learned counsel submitted that the plaintiff has admitted that he's continuously depositing the house tax and other taxes attached to the property and the electricity bill of the electric connection installed in the disputed property, in the name of previous owner Capt. Vinod Kumar, which itself proves, that the plaintiff has never made any effort to deposit the above amounts in his name and has acknowledged Capt. Vinod Kumar, as the true owner of the disputed property, otherwise the plaintiff would not have deposited the electricity bill and other taxes in the name of previous owner Capt. Vinod Kumar.

30. Learned counsel further submitted that the plaintiff has nowhere mentioned how defendant no.1 was aware that he was residing in the disputed property since 1.1.1996, no documentary evidence regarding this fact has been submitted by the plaintiff before the court. It was further submitted that the plaintiff should have given legal notice to the defendant no.1 that he is residing in the disputed property since 1.1.1996 to prove his intention but no such action was taken by the plaintiff. Learned counsel submitted that it was necessary for the plaintiff to prove his hostile intention to claim ownership of the disputed property and mere possession of the disputed property, without hostile intention, is not sufficient for claiming ownership on the basis of adverse possession. Learned counsel further submitted that the plaintiff never proved his hostile intention against the real

owner i.e. defendant no.1, hence, the plaintiff has got no cause of action for filing the instant suit.

31. It was further submitted that the plaintiff has accepted that the defendant no.1 as owner has executed the gift deed of the disputed property in favour of defendant no. 2 and 3 on 18.1.2019, but no relief of cancellation of the disputed gift deed has been claimed by the plaintiff. The plaintiff has also not claimed relief of declaration that he be declared the owner of the disputed property on the basis of adverse possession, as such, the plaintiffs suit was barred by Section 34 of the Specific Relief Act. With these submissions, it was prayed that the appeal is meritless and be rejected.

32. The following issues arise for determination in this appeal:-

*(i) What are the essential ingredients of claiming ownership on the basis of adverse possession ?*

*(ii) Whether the plaintiff has prima facie proved from the plaint averments and documents submitted, that he has acquired ownership of the disputed property on the basis of adverse possession ?*

### **Interpretation of Order VII Rule 11 CPC**

33. The Apex Court in the case of ***Correspondence, RBANMS Educational Institution vs. B. Gunashekar and anr. 2025 SCC OnLine SC 793***, while considering the scope and purpose of Order VII Rule 11 CPC, has held as under:-

*“14. Let us first examine the scope and purpose of Order VII Rule 11 CPC. This Court in Dahiben v. Arvindbhai Kalyanji Bhamusali (Gajra) dead through legal representatives (2020) 7 SCC 366, explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:*

*“23.1 ...*

*23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

*23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in*

*the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

*23.4. In Azhar Hussain v. Rajiv Gandhi 1986 Supp SCC 315 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)*

*“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”*

*23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.*

***23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law.***

*23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:*

*“14. Production of document on which plaintiff sues or relies.-(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

*(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

**23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.**

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration (2004) 3 SCC 137.

**23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.** This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success* which reads as : (SCC p.562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P.) Ltd. v. Hede & Co.* (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* (1999) 3 SCC 267.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. *The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).*

23.15. *The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.*

24. *"Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

24.1. *In Swamy Atmanand v. Sri Ramakrishna Tapovanam (2005) 10 SCC 51 this Court held:*

*"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded"*

24.2. *In T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467 this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)*

*"5. ...The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ..."*

24.3. Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal* (1998) 2 SCC 70 this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal* (2017) 13 SCC 174 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

.....

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh* (1991) 4 SCC 1 held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

**14.1. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, sub-clauses (a) and (d) are stand alone grounds, that can be raised by the defendant in a suit. However, it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not**

merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.

15. Order VII Rule 11(a) CPC mandates rejection of the plaint where it does not disclose a cause of action. In *Om Prakash Srivastava v. Union of India* (2006) 6 SCC 207, this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. **Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant(s).** It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the defendant, the cause of action should be deemed to be unreal....

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17. At the same time, we are conscious of principle that only averments in the plaint are to be considered under Order VII Rule 11 CPC. **While it is true that the defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In T. Arivandandam (supra), this Court emphasized that where the plaint is manifestly vexatious and meritless, courts should exercise their power under Order VII Rule 11 CPC and not waste judicial time on matters that are legally barred and frivolous.**

(emphasis supplied)

34. The Apex Court in the case of ***Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) By Lrs.*** (2020)16 SCC 601, while considering whether the suit was barred by limitation for the purpose

of Order VII Rule 11 CPC, held as under:-

*“7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC.*

*8. At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the*

*Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial court.*

9. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence, is concerned, **as observed and held by this Court in Sham Lal [Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454 : (2009) 4 SCC (Civ) 741] ; N.V. Srinivasa Murthy [N.V. Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548 : AIR 2005 SC 2897] as well as in Ram Prakash Gupta [Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59] , considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) CPC.**”

*(emphasis supplied)*

35. The Apex Court in the case of ***Shri Mukund Bhavan Trust and others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another (2024)15 SCC 675***, was considering whether the suit was barred by limitation while deciding application under Order VII Rule 11 CPC. It was held as under:-

“13. As settled in law, when an application to reject the plaint is filed, **the averments in the plaint and the documents annexed therewith alone are germane**. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order 7 Rule 11 by considering the averments in the plaint. The court cannot look into the written statement or the documents filed by the defendants. The civil courts including this Court cannot go into the rival contentions at that stage...

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25. Continuing further with the plea of limitation, the courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. **Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order 7 Rule 11....**

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40. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. **However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the courts should not be hesitant in granting the relief and drive the parties back to the trial court.** We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction.”

(emphasis supplied)

36. It is apparent from the above law laid down by the Apex Court in the case of ***Correspondence, RBANMS Educational Institution*** (supra) that at the time of deciding Order VII Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it.

37. It is also apparent that the test for exercising the power under Order VII Rule 11 CPC is if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. The plaint should also disclose a real cause of action and if clever drafting has created the illusion of a cause of action, then it should be nipped in the bud at the 1st hearing, so that bogus litigation will end at the earliest stage. The court should also be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

38. It is also apparent that the court is not bound to accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In such situation the courts should not waste judicial time on matters that are legally barred and frivolous.

39. It is also apparent from the law laid down by the Apex Court in ***Raghwendra Sharan Singh*** (supra) and ***Shri Mukund Bhavan Trust*** (supra) that if from the plaint averments it is found that the suit was hopelessly barred by law of limitation then the same can be rejected

in exercise of powers under Order VII Rule 11 CPC.

### **Case law on adverse possession**

40. The Apex Court in the case of ***Uttam Chand (Deceased) through Lrs. vs. Nathu Ram(Dead) through Lrs. and others (2020) 11 SCC 263***, while examining the concept of adverse possession, held as under :-

*“11. In T. Anjanappa [T. Anjanappa v. Somalingappa, (2006) 7 SCC 570] , this Court has set aside the finding of the High Court that the defendants claiming adverse possession do not have to prove who is the true owner. If the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. The Court held as under: (SCC pp. 574-75, paras 12-14)*

*“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.*

*13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:*

*‘24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners.’ (See Vidya Devi v. Prem Prakash [ (1995) 4 SCC 496] , SCC*

p. 504, para 24.)

14. *Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:*

*'14. ... Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.*

15. *Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. (See Annasaheb Bapusaheb Patil v. Balwant [(1995) 2 SCC 543] , SCC p. 554, paras 14-15.)''*

12. *In Kurella Naga Druva Vudaya Bhaskara Rao [(2008) 15 SCC 150] , the payment of tax receipts and mere possession for some years was found insufficient to claim adverse possession. It was held that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the*

*plaintiff's title will not be sufficient. The Court held as under: (SCC p. 158, para 19)*

*“19. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and the High Court also held [Kurella Naga Druva Vudaya Bhaskara Rao v. Galla Janikamma, 2006 SCC OnLine AP 842 : (2009) 3 ALD 416] that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.”*

*13. In Brijesh Kumar v. Shardabai [ (2019) 9 SCC 369 : (2019) 4 SCC (Civ) 509] , the Court held as under: (SCC p. 374, para 13)*

*“13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in M. Venkatesh [ (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387] . The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. **The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent-***

**plaintiff failed to discharge the onus.** Reference may also be made to *Chatti Konati Rao v. Palle Venkata Subba Rao* [(2010) 14 SCC 316 : (2012) 1 SCC (Civ) 452] , on adverse possession observing as follows: (SCC p. 322, para 15)

‘15. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. **Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed.** A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law.’ ”

14. As to whether the plaintiff can claim title on the basis of adverse possession, this Court in a judgment *Ravinder Kaur Grewal v. Manjit Kaur* [(2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453] has held as under: (SCC p. 777, para 60)

“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, 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.”*

*15. The matter has been examined by a Constitution Bench in M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das [(2020) 1 SCC 1] wherein, it has been held that a plea of adverse possession is founded on the acceptance that ownership of the property vests in another, against whom the claimant asserts possession adverse to the title of the other. The Court held as under: (SCC pp. 703-706, paras 1142-1143 & 1147-1150)*

*“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.*

*1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. **To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse.** These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in*

*long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.*

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*1147. In Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038] , R.S. Sarkaria, J. speaking for a three-Judge Bench of this Court noted that the concept of possession is “polymorphous” embodying both a right (the right to enjoy) and a fact (the real intention). The learned Judge held: (SCC p. 278, para 13)*

*‘13. ... It is impossible to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of “possession”. Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. “Possession”, implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, ibid.)’*

*These observations were made in the context of possession in Section 29(b) of the Arms Act, 1959.*

*1148. In P. Lakshmi Reddy v. L. Lakshmi Reddy [1957 SCR 195 : AIR 1957 SC 314] , Jagannadhadas, J. speaking for a three-Judge Bench of this Court dwelt on the “classical requirement” of adverse possession: (AIR pp. 317-18, para 4)*

*‘4. Now, the ordinary classical requirement of adverse possession is that it should be nec vi nec clam nec precario. (See Secy. of State for India in Council v. Debendra Lal Khan [1933 SCC OnLine PC 65 : (1933-34) 61 IA 78] IA at p. 82.) The possession required must be*

*adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.'*

*The Court cited the following extract from U.N. Mitra's Tagore Law Lectures on the Law of Limitation and Prescription: (AIR p. 319, para 7)*

*'7. ... "An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and circumstances attending the appropriation), to hold the land against him (sic) who was in possession. (Angell, Sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession." '[ 6th Edn., Vol. I, Lecture VI, at p. 159]*

*This Court held: (AIR p. 319, para 7)*

*'7. ... Consonant with this principle the commencement of adverse possession, in favour of a person implies that the person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus.'*

*1149. In Karnataka Board of Wakf v. Union of India [(2004) 10 SCC 779] , S. Rajendra Babu, J. speaking for a two-Judge Bench held that: (SCC p. 785, para 11)*

*'11. ... 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.**

*The ingredients must be set up in the pleadings and proved in evidence. There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.*

*1150. In Annakili v. A. Vedanayagam [ (2007) 14 SCC 308] , this Court emphasised that mere possession of land would not ripen into a possessory title. The possessor must have animus possidendi and hold the land adverse to the title of the true owner. Moreover, he must continue in that capacity for the period prescribed under the Limitation Act.”*

*(emphasis supplied)*

41. Similarly, the Apex Court in the case of ***M.Radheshyamlal vs. V. Sandhya and Anr. (2024) 13 SCC 275*** has elucidated the essential principles governing adverse possession. It was held as under:-

*“15. Therefore, to prove the plea of adverse possession:*

*(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;*

*(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;*

*(c) The plaintiff must also plead and establish when he came into possession; and*

*(d) The plaintiff must establish that his possession was open and undisturbed.*

*It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.*

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*18. When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's*

*knowledge....”*

42. From the above law laid down by the Apex Court it is apparent that the person claiming ownership on the basis of adverse possession must establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The onus is also on such person to establish that his possession was open, hostile and continuous to the knowledge of the true owner.

43. It is also apparent that mere possession does not ripen into possessory title. Long possession is not synonymous with adverse possession. The possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. The party claiming adverse possession must also know, who is the actual owner of the property and must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge.

#### **Conclusion by this Court**

44. It is the case of the plaintiff that he is in possession of the disputed property from 1.1.1996, but the plaintiff has nowhere mentioned in his plaint, how he came in possession of the disputed property. It is apparent that the plaintiff has to plead and prove, how the disputed property came in his possession, but the plaint is silent on this material fact.

45. The plaintiff has averred that after entering the disputed property on 1.1.1996, he remained in its continuous possession, which was in the knowledge of the owner/defendant no.1, but it is not mentioned how his possession of the disputed property was in the knowledge of defendant no.1. Except a bald assertion in the plaint, no documentary evidence was submitted by the plaintiff to prove this fact. It is apparent that the disputed property is in Ghaziabad and the defendant no.1 resides in Bijnor, which is at a distance of about 150 kms from Ghaziabad. It is not a case where the true owner was residing nearby, who used to regularly visit the disputed property, who knowingly did not initiate any proceedings for eviction of the plaintiff. It is also not a case where the plaintiff gave a legal notice to the defendant no.1, intimating his intention of forcibly occupying the disputed property, by denying the ownership of defendant no.1 and even then, the true owner did not take any step for eviction of the plaintiff.

46. It was further apparent that for obtaining the revolver license, for getting the car registered with RTO, for obtaining the insurance policy, for filing income tax return, for getting children admitted to a

school, for establishing the company, for getting registered the directorship of the company with the Registrar of Companies, for obtaining export import licence, for getting the firm registered with trade tax, sales tax Department, for obtaining trademark – it is not required, that the address shown by the applicant must be of the property, which is owned by him. If a person is living in a rented/leased accommodation, or with a relative as a licensee, even then, he can obtain the above mentioned documents and get his name entered in the official records by mentioning the address of the rented/leased accommodation or the address where he is residing as a licensee, as his residential address. Hence, if the plaintiff has obtained the above documents from the State and Central Government it does not imply that his ownership of the disputed property has been accepted by them or the above documents were in the knowledge of the defendant no.1.

47. From the plaint averments it is prima facie proved that the plaintiff is in possession of the disputed property from 1.1.1996. But the plaintiff has himself admitted that the electricity connection in the disputed property is in the name of previous owner Capt. Vinod Kumar and he is continuously depositing electricity bills in the previous owners name, which proves that the plaintiff never asserted with the electricity department that he is the true owner of the disputed property. The plaintiff has similarly disclosed in the plaint that even in the records of the Nagar Nigam Ghaziabad, the name of previous owner Capt. Vinod Kumar is recorded and the plaintiff is depositing the house tax, water tax and sewer tax in the name of previous owner Capt. Vinod Kumar. This fact also proves that the plaintiff has made no effort to get his name mutated in the records of the Nagar Nigam Ghaziabad. Both the above facts, prove that plaintiff has acknowledged by depositing the electricity bill and property tax that the owner of the disputed property is Capt. Vinod Kumar, as such, the plaintiffs case of ownership by adverse possession is demolished. It is very surprising that why plaintiff failed to get the electricity connection transferred in his name and also failed to get his name mutated in the records of the Nagar Nigam, Ghaziabad, if he was the owner of the disputed property.

48. The plaintiff has also disclosed in the plaint that he has obtained loan from Punjab National Bank, Ghaziabad and has also submitted a security bond with the above Bank, a copy of which has been filed by the plaintiff which discloses that the plaintiff has mortgaged his property situated in village, Pargana and tehsil Hapur, District Ghaziabad. The plaintiff has not mortgaged the disputed property with the above Bank, because for mortgaging the disputed property, title deeds of the property were required, which were not available with the plaintiff, as such, this document does not support the

plaintiff's case, insofar as the ownership of the disputed property is concerned.

49. It is also apparent that the plaintiff has claimed ownership of the disputed property from 31.12.2008, i.e. after the expiry of 12 years from 1.1.1996. It is apparent that there is a calculation error on the part of the plaintiff, because if calculation of 12 years is made from 1.1.1996, then the plaintiff becomes owner of the disputed property by adverse possession on 1.1.2008, but the plaintiff has claimed that he became owner by adverse possession on 31.12.2008.

50. The Apex Court in the case of ***Anathula Sudhakar vs. P. Buchi Reddy(Dead) by Lrs. and others (2008)4 SCC 594***, while discussing the general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and /or possession with injunction as a consequential relief, held as under:-

*“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.*

*13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*

*13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.*

***13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.***

*14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely*

*denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.*

*15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.*

*16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.”*

51. The Apex Court in the case of ***T.V.Ramakrishna Reddy vs. M.Mallappa & Anr. (2021) 13 SCC 135*** has held that whenever title is disputed, suit for injunction must be accompanied by a prayer for declaration of title. It is quoted as under:-

*“15. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession.*

*It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*

*16. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.”*

**52. The Apex Court in the case of *Annamalai vs. Vasanthi and others 2025 INSC 1267*, held as under:-**

*“When a declaratory relief is essential:-*

*25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the consequential relief may not be available to the plaintiff. For example, a doubt as to plaintiff’s title to a property may arise because of existence of an instrument relating to that property. If plaintiff is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit for cancellation of the instrument which may be void or voidable qua him. If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him. However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession. Rationale of the aforesaid principle is that a void instrument /transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff’s right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts.”*

**53. The Apex Court in the case of *Padhiyar Prahladi Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128*, while considering whether injunction can be granted against true owner, held as under:-**

*“18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting*

*the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant — the true owner still be restrained from disturbing his/her possession and his/her possession be protected.”*

54. It is apparent that the plaintiffs title to the disputed property has not been acknowledged by the true owner or Court, as such the plaintiff ought to have claimed the relief of declaration of his ownership rights on the basis of adverse possession in the disputed property, but the plaintiff has not claimed it and has simplicitor claimed the relief of permanent injunction. It is also apparent that the plaintiff cannot be granted the relief of permanent injunction against the true owner, unless a declaration of his ownership in the disputed property is made by the Court.

55. It is also apparent that defendant no. 2 is the true owner of the property on the basis of the gift deed executed in his favour by defendant no.1 on 18.1.2019. For granting any relief to the plaintiff, the above gift deed has to be ignored by declaring it void, but the relief of getting declared the sale deed void and not binding on the plaintiff has not been claimed by the plaintiff. In view of this, the plaintiff has to seek declaration of his rights in the disputed property, which he has not claimed.

56. It is further apparent that without the relief of declaration, the plaintiff cannot be granted the relief of permanent injunction against the defendants. It is further apparent that the limitation for claiming the relief of declaration is 3 years. Since plaintiff is claiming ownership of the disputed property on the basis of adverse possession from 31.12.2008, he should have filed the suit within 3 years from this date. It is apparent that, the plaintiffs suit for the relief of declaration is time barred.

57. It is further apparent that the gift deed of the disputed property has been executed by the defendant no.1 in favour of defendant no. 2 on 18.1.2019, on the basis of which, the defendant no. 2 is the owner of the disputed property, but the plaintiff has not claimed its cancellation. The plaintiff could have filed suit for its cancellation within 3 years. The plaintiff has claimed in the plaint that he became aware of the gift deed on 17.9.2021, as such, the plaintiff could have filed suit for the cancellation of the gift deed within 3 years i.e. upto 17.9.2024, but no such suit has been filed by the plaintiff till date, hence on this ground also, the plaintiff cannot be granted any relief.

58. It is also apparent that the plaintiff has claimed that cause of action for filing the instant suit has arisen on 17.9.2021 when the defendants attempted to dispossess him from the disputed property, whereas, as per the plaintiff himself prior to it, the defendant no.1 has executed a gift deed on 18.1.2019 in favour of defendant no. 2 and 3.

59. It is evident that since the defendant no. 2 and 3 became owner of the disputed property on 18.1.2019, hence, the plaintiff cannot claim ownership of the disputed property on the basis of adverse possession, after this date. It is further apparent that if the plaintiff is still in the possession of the disputed property, then after 12 years from 18.1.2019 his claim of ownership on the basis of adverse possession will mature against defendant no. 2 and 3, not prior to it.

60. It is apparent that the plaintiff has neither claimed the relief of declaration of his rights in the disputed property nor claimed the relief of cancellation of gift deed dated 18.01.2019 as such, the plaintiff cannot be granted the relief of permanent injunction by the Court. It is apparent that there is a cloud on the title of the plaintiff in the disputed property which has not been removed by the plaintiff. It is further apparent that the relief of declaration of plaintiff's ownership in the disputed property and cancellation of the above gift deed, both have become time-barred hence, these reliefs cannot be granted to the plaintiff legally. In this situation, the plaintiff's suit for the simplicitor relief of permanent injunction is legally not maintainable against the defendants under Order VII Rule 11(d) CPC.

61. It is also apparent that from the plaint averments and documentary evidence, it is prima facie not proved that the true owner/defendant no.1 was aware of the plaintiff's adverse possession in the disputed property since 01.01.1996, as such, the plaintiff cannot claim adverse possession of the disputed property against defendant no.1. It is also apparent that the plaintiff by depositing the electricity bills and property tax has acknowledged that Capt. Vinod Kumar is the owner of the disputed property as such, the entire case of plaintiff claiming ownership on the basis of adverse possession, is demolished. In view of the above facts, the plaintiff has got no cause of action to file the instant suit and the plaintiff's suit is barred under Order VII Rule 11(a) CPC.

62. For the aforesaid reasons, the trial court has not erred in allowing the defendants application under Order VII Rule 11 CPC and rejecting the plaint. The appeal is meritless and is liable to be dismissed.

**63. Accordingly, the instant appeal is dismissed with costs.** Consequently, the impugned judgment and decree dated 30.10.2023

in O.S. no.876 of 2021 is affirmed.

64. Office is directed to send back the trial court record, forthwith.

**Order Date:- 15.04.2026**

Jitendra/Himanshu/Mayank

**(Sandeep Jain, J.)**