

## Dr. Satyanarayana S. Melkote and Others Vs State of A.P. and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Nov. 15, 2002

**Acts Referred:** Civil Procedure Code, 1908 (CPC) " Section 80  
Limitation Act, 1963 " Article 112

**Citation:** (2003) 3 ALD 377 : (2003) 4 ALT 270

**Hon'ble Judges:** V.V.S. Rao, J

**Bench:** Single Bench

**Advocate:** M.R. Harsha, for the Appellant; Government Pleader for Respondent Nos. 1 to 3 and T. Krishna Reddy, for the Respondent

**Final Decision:** Dismissed

### Judgement

V.V.S. Rao, J.

The plaintiffs are the appellants. Dr. G.S. Melkote, a freedom fighter initially filed the suit being O.S.No. 603 of 1977 on the file of the Court of the III Additional Judge and later the same was transferred to the Court of the I Additional Chief Judge, City Civil Court,

Secunderabad, as O.S. No. 49 of 1980. During the pendency of the suit, Dr. G.S. Melkote (GSM) died and his legal representatives - three sons

and two daughters, plaintiffs 2 to 6 were brought on record. The suit was filed for declaration and consequential injunction in respect of the suit

schedule property mainly on the ground of adverse possession. The land ad measuring 3250 Sq.yds. bearing Municipal No. 3-5-80/1 situated at

Narayanaguda is the suit schedule property. The Trial Court dismissed the suit on two grounds, namely, that the plaintiffs failed to prove

possession over and above 30 years and that the provisions of Section 80 of the Code of Civil Procedure, 1908 (CPC) were not complied with

before filing the suit. In this appeal also, these are the only two points that arise for consideration. Before proceeding any further, it is necessary to

briefly refer to the case of the plaintiffs and defendants (the parties are called by that nomenclature).

2. The sum and substance of the case filed by GSM is as follows. GSM was friend and doctor of one Sir Nawab Nizamat Jung (SNJ). As a token

of gratitude for doctor's as well as service, SNJ offered the suit schedule property to GSM as a gift. The latter declined to take the same and then

SNJ offered to sell the land. There were negotiations. A price of Rs. 24,000/- was settled. GSM issued a cheque for Rs. 10,000/-on 21-5-1945

towards part sale consideration to SNJ, the original owner of the suit schedule property. GSM was put in possession of the same, who

constructed a compound wall with permission from the Municipal Corporation of Hyderabad dated 13-12-1951. Whatever be the reason, SNJ

later gifted the property to the defendants: Government of Andhra Pradesh, District Collector, Hyderabad and Tahsildar, Hyderabad Urban - for

construction of a Government Unani Hospital. The Government could not do so. They addressed a letter to GSM on 10-9-1957 calling upon him

to construct a clinic and offered the suit schedule land on long lease. It was not agreed to by GSM. He wanted the land as a freehold without any

vesting of ownership in the Government. The defendants issued an order being G.O. Ms. No. 1057, Health Department, dated 5-5-1959, calling

upon GSM to handover possession of the land. He sent a reply on 9-6-1959 claiming absolute ownership by virtue of adverse possession. When

the Government again issued a notice dated 22-2-1971 demanding the cost of the land and mesne profits which were denied by GSM by issuing

reply notice on 4-8-1971. By issuing another registered notice, the Government demanded possession from GSM, which was replied to and

ultimately GSM filed the suit for declaration of title and consequential injunction.

3. The defendants demurred the suit contending that there was no enforceable agreement, that GSM was not in possession since 1945, that the suit

does not lie without complying with the provisions of Section 80 of CPC. It was further stated in the written statement as follows. The cheque

under which GSM alleged to have paid part consideration was returned back by SNJ and that possession was not delivered to GSM in June,

1945. The property was gifted by SNJ to the Government under registered gift deed dated 12-4-1947 and on 7-5-1951, SNJ wrote a letter to

the Government stating that he was prepared to give the suit schedule land with ultimate ownership remaining with the Government for the purpose

of construction of clinic and requested the Government to permit the plaintiff to construct compound wall to prevent trespass by others. In

response thereto, the Government vide their letter dated 26-5-1951 addressed the Inspector General of Medical and Health Services informing

that the Government is agreeable with the proposal and permitted the plaintiff to construct a compound wall. The Government also imposed a

condition that if GSM failed to construct clinic, the Government, as owner, would utilise the suit schedule land for any other suitable purpose. Dr.

GSM did not construct nursing home nor did he pay single instalment of the sale consideration of Rs. 24,000/-. The possession of GSM was only

permissive. The registered gift deed in favour of the Government became final and the Government was in possession of the property.

4. In the light of the pleadings, the Trial Court framed the following issues.

1. Whether the suit land agreed to be purchased by the plaintiff under an agreement of sale with late Sir Nizamath Jung in 1945 and whether in

pursuance thereof he paid Rs. 10,000/- and possession of the plaint schedule property was delivered to the plaintiff ?

2. Whether in 1951 Sir Nizamath Jung wrote a letter asking the plaintiff to have a compound wall constructed around the land and in pursuance

thereof whether the plaintiff constructed compound wall and is continuing in possession of the suit land since then?

3. Whether the plaintiff is the absolute owner of the suit property and is entitled to declaration of his title to the plaint schedule property?

4. Whether the gift in favour of the Government by Sir Nizamath Jung was not accepted by the Government?

5. Whether the suit land was leased out by the defendant to the plaintiff as pleaded by the defendant?

6. Whether the plaintiff is entitled to declaration and permanent injunction prayed for?

6(a). Whether the plaintiff is not liable to be evicted under Land Encroachment Act?

7. Whether the suit is bad for non-joinder of parties as pleaded in the written statement?

8. Whether the suit is defective due to non-compliance of Section 80 CPC notice?

9. To what relief, if any, is the plaintiff entitled to?

Additional Issue:

Whether the suit is barred by limitation?

5. Dr.GSM examined himself as P.W.1 besides examining one M. Narsimlu, a civil contractor as P.W.2. The plaintiffs also marked Exs.A1 to

A31. The defendants examined D.W.1 and marked Ex.B1, letter addressed by GSM to the Director of Medical Services. On consideration of the

oral and documentary evidence, the Trial Court as noticed above, held that the suit is not barred by limitation. On other issues, findings were

recorded against the plaintiffs and in favour of the defendants.

6. In this appeal, Sri M.R. Harsha, learned Counsel for the appellants submits that there was a concluded agreement of sale between SNJ and

GSM for purchase of the suit land. Pursuant to such agreement to sell, Dr. GSM was put in actual possession in May, 1945 pursuant to which a

compound wall was constructed with permission of the Municipal Corporation. SNJ wanted to gift the property to the Government, but the

Government did not accept the gift. He also submits that the possession of GSM was not permissive and was adverse to the possession of the

Government and others. GSM was in possession for 30 years before filing the suit and perfected his title by adverse possession. As the

Government did not accept the gift, they were never in possession and ownership does not lie with the Government. Lastly, he would submit that

the finding of the Trial Court that the requirement of Section 80 of CPC is not complied with is not correct as there is exchange of notices between

GSM and the Government which is sufficient compliance with the provisions of Section 80 CPC.

7. Sri M. Jagannadha Sarma, learned Government Pleader for Land Acquisition submits that the property was gifted by the original owner to the

Government. If GSM had any valid agreement, he ought to have filed the suit or taken steps for specific performance of the agreement allegedly in

force with SNJ. By not enforcing his right, he cannot now be heard that he had a valid and enforceable agreement and by obtaining possession

under agreement of sale, the vendee cannot plead adverse possession. In such an event, the vendee is entitled only to protection u/s 53-A of the

Transfer of Property Act against third parties but not against the real owner. The learned Government Pleader also submits that the plaintiffs did

not challenge the gift deed which was very much in the knowledge of GSM and when the alleged agreement between GSM and SNJ was not

reduced to writing, it has to be proved by attending facts and circumstances. The correspondence between SNJ and GSM, especially letters dated

24-2-1945, 15-4-1945, 18-3-1945 do not constitute agreement of sale. Even if the offer was made to GSM, SNJ returned the cheque and,

therefore, the offer did not materialise into enforceable agreement. When the agreement itself did not materialise, it is improbable that GSM would

have been put in possession of the land pursuant to the alleged agreement of sale. The construction of compound wall by GSM was with the

permission of the Government which was sought by SNJ and the construction of compound wall with municipal permission does not in any manner

alter or change the nature of possession of GSM which was only permissive. The learned Government Pleader in support of his various

submissions placed reliance on the decisions of the Supreme Court in Achal Reddi v. Ramakrishna Reddiar AIR 1990 SC 553, Roop Singh

(Dead) Through LRs Vs. Ram Singh (Dead) Through LRs., , State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., and Marwari

Kumhar and Others Vs. Bhagwanpuri Guru Ganeshpuri and Another, .

8. In this appeal, the points that arise for consideration are:

(1) Whether the first plaintiff (deceased Dr. G.S. Melkote) perfected his title by adverse possession? And

(2) Whether the suit was not maintainable for non-issuance of notice as required u/s 80 of the Code of Civil Procedure, 1908?

In Re Point No. 1

9. Two questions are required to be considered, namely, whether there was a concluded contract of sale between GSM and SNJ and whether

pursuant to such concluded contract of sale, possession was delivered to GSM It is also required to be considered whether pursuant to the gift

executed by SNJ in their favour, the Government acted upon the gift and exercised their rights of ownership and whether they permitted Dr.GSM

to construct a clinic on payment of annual rent and/or consideration for long lease.

10. The learned Counsel for the appellants placed reliance on Exs.A24, 22, 22(a) and 23 in support of his submission that in March, 1945 there

was a concluded contract between the first plaintiff and Nizamath Jung to purchase the suit property for Rs. 25,000/- and that after the agreement,

GSM made part payment of Rs. 10,000/- and he was put in possession. By Ex. A24, SNJ addressed GSM offering to sell the land at Rs. 12/-

per square yard. There appears to have been negotiations pursuant to which SNJ addressed Ex.A22 dated 18-3-1945 informing GSM that the

final price of the suit land would be Rs. 25,000/- and that he should take the offer as final opinion by treating the difference between the original

price and reduced price i.e., Rs. 5,000/- as his contribution to the clinic or nursing home. On Ex.A22, GSM endorsed {which is marked as

Ex.A22(a)} His acceptance of the offer. By Ex.A23 SNJ asked GSM to get the sale deed drawn up and that all expenses for stamps, registration

etc., will be borne by GSM. Ex.A23 also refers to Fateh Bagh for which GSM was to pay rent and for which purpose GSM had requisitioned for

rent. Thereupon, a cheque dated 2-5-1945 drawn on Central Bank of India for Rs. 10,000/-was issued by GSM to SNJ. However, the same was

cancelled by both SNJ and GSM and was returned to GSM. Indeed, GSM in his cross-examination as P.W.1 admits that the cheque was

cancelled by both. The conclusion is hence irresistible that there was no concluded contract between GSM and SNJ.

11. Did SNJ handover possession of the property to GSM pursuant to Exs.A22, A22(a) and A23. The submission is that GSM was already in

possession of the property as the same was adjacent to his tenanted premises and that though there is no documentary evidence to show that

possession was handed over, the circumstances warrant an inference that possession was delivered. For this purpose, strong reliance is placed on

Ex.A25 dated 2-6-1945 addressed by SNJ to GSM. It is necessary to extract Ex. A25.

My Dear Dr. Melkote,

Regarding the private access to the plot of land on which a portion of your clinic will be situated, the question will have to be settled by the

Anjuman Committee. I intend placing my recommendation before it for consideration as soon as possible, if you kindly let me know whether you

agree with my suggestion that the private road shall be used only by you and for conveying patients to the private wards of the clinic - at least two

rooms of which will bear the name ""Ahmed Ward"". As I have explained to you personally this is to be as a token of friendship between us and as a

permanent recognition of the fact that the concession made by us in accepting Rs. 5,000/- less for the plot of the land was in effect a contribution

of that amount by us to the clinic. And this you have already expressed clearly in your letter to me dated 26th March, 1945.

12. By reading Ex.A25 as well as other documents referred to hereinabove, it is not possible to come to a conclusion even on balancing of

probabilities that GSM was put in possession of the property. The contention that even while negotiations were on, GSM was in possession of the

property cannot be accepted, for there is not even a whisper about this in the plaint. In the plaint, it was alleged that GSM was put in possession of

the property on or after 21-5-1945 when Ex.A26 cheque was given by GSM. Further, Ex.A25 disclosed that GSM's request for having private

accesses to the plot of the land on which a portion of GSM's clinic was situated, was not accepted by SNJ stating that the questions have to be

settled by Anjuman Committee. On the basis of these documents, it is not possible to hold that possession was delivered to GSM in May, 1945.

13. The oral evidence of P.W.1 is also of not much help. In support of his cast, GSM deposed as P.W.1 that since May, 1945 he was in

possession of the suit property continuously and uninterruptedly up to the date of filing the suit. He also examined P.W.2, who supervised the

construction of compound wall. The construction of compound wall was admittedly pursuant to Ex.A5 municipal permission dated 13-12-1951.

The same is of not much help to the plaintiffs because if they have to succeed the suit on the ground of adverse possession, they have to prove that

GSM was in possession of the land for more than 30 years. Be it noted that under Article 112 of the Limitation Act for claiming adverse

possession against the Government, a person has to show that he is continuously in hostile possession adverse to the interest of the Government for

more than 30 years. The suit was filed in 1977 and even if construction of compound wall is taken as evidence of possession, it is only with effect

from December, 1951, that is to say, for a period of 26 years and not 30 years.

14. Reading the evidence of P.W.1, it is clear, there are circumstances which would improbabilise the contention that GSM was in possession

from 1945. He was a freedom fighter and in his cross examination he stated that he came into contact with SNJ for the first time in 1944. He also

stated that there was political turmoil during 1942 to 1947 and that on 21-8-1942, he was arrested for his participation in Quit India Movement

and released after three months. He was again arrested on 15-8-1947 and released in November, 1947 for conducting negotiations with the

Government. After November, 1947, he was not in Hyderabad State and he came back to Hyderabad after police action in the State of Nizam.

As a freedom fighter he was "on and off arrested and released. This strongly improbabilises P.W.1 being in continuous possession since 1945.

Further, as rightly contended by the learned Government Pleader, when the cheque was returned by SNJ, the same was cancelled by the vendor .

and vendee and, therefore, notwithstanding Exs.A24, A22 and A22(a), it cannot be said that there was a concluded contract. When there was no

concluded contract, it is quite improbable that possession could have been handed over to GSM in May, 1945. On the contrary, there is evidence

to show that P.W.1 was put in possession only sometime in 1951 and as presently seen it is also admitted by P.W.1 in one of the letters.

15. The documents relied on by the learned Counsel for the appellants: Exs.A22 to A25 do not in any manner support the contention of the

plaintiffs that GSM was in possession of the property with effect from May, 1945. The other documents to which a reference may be made

presently are dated January, 1951 and onwards. Even these documents show that GSM was in possession since 1951 and not since May, 1945.

Further, there are Exs.A4, A7, A2, A3, A5, A8 and A18 (mentioned herein in chronological order) would reveal that possession of GSM dates

back to 1951 only. Ex.A1 is a Demi Official letter dated 3-1-1951 addressed by the Revenue Secretary to GSM. It denotes that SNJ gave the

land to the Government free for construction of a Government Unani Hospital and that the Government would consider abrogating the contract on

a formal application made by SNJ to enable SNJ to again enter into a fresh contract with GSM By Ex.A4, SNJ requested GSM to construct a

compound wall on the west side of the land. Ex.A2 is a letter from the Unani Dispensary addressed to SNJ reiterating that the land was granted to

the Government for construction of Unani Hospital and that the Government agreed to give this land back to GSM for construction of a nursing

home. This also mentions that the land was under the supervision of the Unani Dispensary and after suspending the supervision, SNJ was

requested to take responsibility for protecting the land. Ex.A3 is important and reads as under.

Despatch No. 5 Dated 12th November 1951-2/4th November, 1951

In reply, state that the letter No. 226, dated 31st October, 1951 is received. Thanks. Hereafter, responsibility of supervision shall not remain with

the Unani Dispensary, Narayanaguda in respect of the said land.

Dated 4-1-1951

Sd/-

Nizamath Jung

15. Ex.A3 states that ""hereafter ....."" the responsibility to protect the land lies with SNJIGSM and not with the Government. This

clinchingly shows that till the date the land was handed over to GSM, possession was with the Government and not with SNJ or GSM. Ex.A7 is a

letter from the Government dated 10-9-1957 addressed to GSM It refers to the gift by SNJ to the Government and also informs the desire of SNJ

to handover the land to GSM for a specified period retaining ownership with the Government as trustees of the endowment. The Government

informed the decision to give first preference to lease out the land to GSM provided the tatter is agreeable to construct a hospital or a dispensary

or a nursing home freely accessible to general public. To this, GSM sent a reply which is marked as Ex.A8 in which GSM admitted that the said

land has had been in possession for over six years. Ex.A8 is dated 26-3-1958 and therefore, even according to GSM he had been in possession

of the land from 1951 or 52. In this letter, the gift by SNJ to the Government was admitted, but he, for the first time raised objection for the

proposal put up by the Government and SNJ. He agreed to construct a clinic accessible to general public if proprietary right of the whole property

is given to him for construction of clinic and alternatively he proposed to buy the land on outright sale basis subject to paying the consideration in

instalments spread over to 15-20 years. Thereafter, the Government issued G.O.Ms.No. 1057, dated 5-5-1959 marked as Ex.A9 disagreeing

with the proposal of GSM and directing the Chief Engineer of Public Works Department to take possession of the land pursuant to the decision

taken by the Government to takeover the land for construction of a building for running a Government Unani Clinic.

16. Dr.GSM who admitted in Ex.A8 that he had been in possession from 1951 or 1952 onwards sent his objection to Ex.A9 vide his letter dated

9-6-1959 marked as Ex.A10. In this letter he claimed that he has a right to put up a clinic or to purchase the land and that the Government cannot

take back possession from him. He also stated in Ex.A10 that SNJ gave the land as a free gift in recognition of his services to SNJ. When in

Ex.A10 GSM asserted his right to purchase the land from the Government or SNJ., admitting gift in favour of the Government, what emerges is a

situation where GSM accepted the ownership of the Government and/or SNJ. In such a situation, his possession cannot be adverse to the real

owner. GSM never questioned the gift by SNJ in favour of the Government nor did he file a suit for specific performance of the alleged agreement

of oral sale against SNJ. He accepts the gift. He also made a proposal to take the land on lease for 99 years with proprietary rights or in the

alternative buy the land on instalment basis. Therefore, his possession can never be adverse to the real owner.

17. Here, a reference may be made to State of Rajasthan v. Harphool Singh (supra), wherein it was observed:

So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to

be considered more seriously and effectively for the reason that it ultimately involve destruction of right/title of the State to immovable property and

conferring upon a third party encroacher title where, he had none. The decision in Dr. J.N. Banavalikar Vs. Municipal Corporation of Delhi and

another, , adverted to the ordinary classical requirement - that it should be nee vi nee clam nee precario - that is the possession required must be

adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein 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 required animus. In the decision reported in Secretary of State for India in Council v. Debendra Lal Khan 61 IA

78 : 1934 All LJ 153 (PC), strongly relied for the respondents, the Court laid down further that it is sufficient that the possession be overt and

without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is

happening and if the rights of the crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In

Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc., , it was observed that a claim

of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the

person who assert such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such

claim, the Courts must have regard to the animus of the person doing those acts.

18. In Marwari Kumar v. Bhagwanpuri Guru Ganeshpuri (supra) also, the Supreme Court reiterated its earlier view and observed that in the

absence of proof as to time and manner in which possession got converted into open, hostile and adverse the claim for adverse possession could

not be upheld.

19. The concerned officials of the Government initiated action for taking possession pursuant to Ex.A10. The Additional Government Pleader

issued a Demand Notice dated 22-7-1971 marked as Ex.A17 to GSM to deliver vacant and peaceful possession and to pay an amount of Rs.

65,000/- towards mesne profits for use and occupation of the land. GSM sent a reply through his Counsel marked Ex.A18 dated 4-8-1971. In his

reply to Ex.A17, GSM inter alia stated as under:

After sometime, somewhere in 1950 again when the said Nawab Saheb fell seriously ill, my client being the family doctor attended for him; and

again the said Nawab suggested to make a Gift of the said land to my client. But my client refused the offer of Gift and suggested to accept the

price of O.S. Rs. 24,000/-, as agreed before. In fact, the said Nawab, for reasons best known to him, appear to have made a Gift of the land to

Government somewhere in 1947 for the purpose of constructing a Unani Hospital. But the Government expressed their unwillingness to construct a

Unani Hospital; and relinquished their interest. Whereupon, the said Nizamath Jung came to the site and handed over the open piece of land again

somewhere in 1950, and permitting my client to continue in possession as before.

That somewhere in 1951 necessary plans were submitted and permission was obtained for the construction of a Clinic, Nursing Home etc.; and a

compound wall was laid by late Nizamath Jung; but before any payment could be made the said Nawab died. Thus from the date of handing over

possession as long back as 1945 or at least from 1950 onwards my client is in continuous possession and enjoyment of the properly exercising

rights of ownership, adversely and openly to the knowledge of one and all.

20. In Ex.A18 also, GSM admitted that SNJ came to the site and handed over possession in 1950 and permitted him to continue in possession as

before and that he had been in continuous possession since then. P.W.1 did not explain to the admission made in Ex.A18. Therefore, Ex.A8 dated

26-3-1958 and Ex.A18 dated 4-8-1971 proved the contention of the Government that possession was delivered by SNJ with the permission of

the Government to GSM only in 1951 and not in 1945. A reference to other documents: Exs.A20 and 21 may not be necessary, for they are

exchange of notices between the then Tahsildar and GSM and action by Tahsildar to take possession and stay orders issued by the Government.

Ex.B1 is a letter addressed by GSM dated 16-4-1951 to the Inspector-General, Medical and Health Services (Medical), Hyderabad in reply to a

letter of the latter bearing No. 4565/12/1:4/51/M, dated 11-4-1951. It is necessary to extract the same.

In reply to your letter No. 4565/12/1:4/51/ M, dated 11-4-1951, conveying to me the decision of the Government to give me the plot of land in

Narayanguda on certain conditions, I am hereby conveying to you my willingness to accept the terms and conditions laid down in the said letter.

I contacted Nawab Nizamath Jung Bahadur yesterday i.e., on 15-4-1951. He is anxious that I should take over the land and start construction

immediately. I am awaiting your final decision and will enter into possession and start construction immediately after hearing from you in reply to

this letter.

21. As soon from the above, Ex.B1 also indicates that it is only in April, 1951 or thereafter possession was delivered to GSM and not in 1945.

Further, when the possession dates back to 1945 or 1951, the defendants had been asserting their right to ownership by reason of registered gift

deed and even offered the land to GSM on lease basis or sale basis. GSM in Ex.A8 and Ex.B1 accepted the position and agreed to take the land

on lease with proprietary interest or sale on instalments. In the light of admitted fact situation, the question of adverse possession does not arise.

The learned Government Pleader also submits that when a person comes into possession based on an agreement of sale or lease, such person

cannot claim adverse possession. It is settled law that when a person comes into possession by reason of agreement of sale, he accepts the title of

the vendor and, therefore, the decree of adverse possession is not available.

22. In *Achal Reddi v. Ramakrishna Reddiar* (supra), the Supreme Court while considering this aspect of the matter held:

..... In the case of an agreement of sale the party who obtains possession, acknowledges title of the vendor even though the agreement of

sale may be invalid. It is an acknowledgment and recognition of the title of the vendor which excludes the theory of adverse possession. The well

settled rule of law is that if a person is in actual possession and has a right to possession under a title involving a due recognition of the owner's title

his possession will not be regarded as adverse in law, even though he claims under another title having regard to the well recognised policy of law

that possession is never considered adverse if it is referable to a lawful title. The purchaser who got into possession under an executory contract of

sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an

essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties

stipulating for a total divestiture of all the rights of the transferor in the property, and in a case in which there is a mere executory agreement of

transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies

estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely

against the transferor. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and

continuance of possession is legal and proper, referable to a contract, it cannot be adverse.

23. In *Roop Singh* (supra), the apex Court again considered the issue and after referring to its earlier decisions in *Thakur Kishan Singh (dead) Vs.*

Arvind Kumar, and Mohan Lal (Deceased) through his Lrs. Kachru and Others Vs. Mirza Abdul Gaffar and Another, , observed thus:

If the defendant got the possession of suit land as a lessee or under a batai agreement then from the permissive possession it is for him to establish

by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long

time does not result in converting permissive possession into adverse possession.

It was again observed:

..... Once it is admitted by implication that plaintiff came into possession of the land lawfully under the agreement and continued to remain

in possession till the date of the suit, the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed

out hostile animus of retaining possession as an owner after getting in possession of the land.

24. For the above reasons, I am of the considered opinion that possession of GSM was only from 1951 and in any view of the matter, his

possession was never adverse to the possession of the real owner or the Government. It must also be held that as admittedly possession was

claimed since 1951 and the suit was filed in 1971, the plaintiffs are not entitled for declaration of title based on adverse possession. The point is

answered accordingly in favour of the defendants and against the plaintiffs.

In Re Point No. 2:

25. The Trial Court framed the issue as to whether the suit is defective due to non-compliance of Section 80 of CPC. It answered the issue in the

affirmative against the plaintiffs. The learned Counsel for the appellants, as noticed earlier, relies on Ex.A18 in support of the contention that in the

facts and circumstances of this case, it amounts to notice u/s 80 CPC. The submission is devoid of any merits and cannot be countenanced.

Section 80 CPC requires a person to serve notice to the Government or any public officer against whom the suit is intended and wait for expiration

of two months next after notice is delivered. The mere service of notice cannot be compliance u/s 80 CPC. A notice is required stating the cause of

action, name and description of the plaintiff and the relief claimed. The notice also should contain details of the grievance thereof.

26. The Government issued Ex.A9 Government Order informing their decision to take back the land and construct Unani Hospital. GSM sent

Ex.A10 dated 9-6-1959 in response to G.O. Ms. No. 1057, dated 5-5-1959 (Ex.A9). Thereafter, the Additional Government Pleader issued

Ex.A17 notice demanding possession, to which GSM sent another reply dated 4-8-1971 which is marked as Ex.A18. In Ex.A18, notice through

his lawyer, to which a reference has already been made, GSM, while requesting the Additional Government Pleader to advise the Government

from taking any hasty action against him informed that any action taken will be resisted holding the Government responsible. The purport of Section

80 CPC is not mere demur of a governmental action nor indicating the stand that the governmental action would be opposed. It must be a

precursor of the impending action by way of suit and not an information that any governmental action would be opposed. A person need not

inform any other person that the latter's intention will be opposed, for, it is right of every person to oppose and make out a counter grievance in

any suit. As Section 80 CPC requires a person filing a suit against the Government or public authority to put the latter on sixty days notice so that

such Government or public officer can make efforts having regard to the factual situation that might be projected in Section 80 CPC.

27. The learned Counsel for the appellants relied on the decisions in *The State of Madras Vs. C.P. Agencies and Another*, *J.S. Basappa Vs.*

*Provincial Government of Madras (now Andhra Pradesh), and Wallu Ram Vs. Union of India (UOI)*,

28. In *State of Madras v. C.P. Agencies*, (supra), the Supreme Court was concerned with the validity of a suit notice u/s 80 CPC. The suit notice

was indeed issued. The question was whether it is valid. It is not a case where the plaintiff in one of his replies/ explanations to the Government

stated that he would oppose any action by the Government. Be that as it may, the Supreme Court after referring to AIR 1927 176 (Privy Council)

explained the purport of Section 80 CPC as under.

..... that Section 80 is express, explicit and mandatory and admits of no implications or exceptions. Section 80 peremptorily requires that

no suit shall be filed against the Government or a public officer in respect of anything done in his official capacity until after the expiry of two months

from the service of a notice in the manner therein prescribed stating the cause of action, the name, description and place of residence of the plaintiff

and the reliefs which he claims ..... The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the

case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of

the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or

he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise

reliefs asked for.

The Supreme Court also observed that though the terms of Section 80 CPC are to be strictly complied with, that does not mean that the terms of

the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common sense. The learned Counsel relies on these

observations and contends that Ex.A18, which contains the name of the plaintiff, property in dispute etc., has sufficiently complied with Section 80

CPC. The submission is devoid of any merits and, therefore, is rejected.

29. In J.S. Basappa v. Provincial Govt. of Madras (supra), decided by a Division Bench of this Court, the plaintiff did issue a notice u/s 80 CPC,

but there was a variance in the averments in the notice and the plaint and the Trial Court, therefore, held that there is no sufficient compliance with

Section 80 CPC. The Division Bench reversed this finding on the ground that -

..... The conclusion of the learned Judge in this behalf is founded on the difference in the statements between the suit notice and the plaint.

When it is alleged in the suit notice that it was under mistake that the plaintiff paid the tax, in the plaint it was averred that it was on account of

coercion that he had paid the tax. We cannot agree that the difference notice above has any material bearing on the consideration of the

question.....The cause of action complained of is in this case the illegal levy of tax and in addition to other particulars as required by Section

80 has been furnished in the notice. The circumstances under which the tax was collected are not quite material in the decision of the question and

so it could not be said that the notice and the plaint are so much at variance as to entail the dismissal of the suit.....

30. In Wallu Ram v. Union of India (supra) also, the plaintiff issued a notice before filing a suit against the Union of India claiming the amounts

which were recovered from him by the Railways on the ground that while reducing his pay excess amount was paid. The plaintiff issued a notice.

The Trial Court found it defective. A learned Single Judge of Punjab High Court came to a conclusion on facts that notice issued by Wallu Ram

sufficiently satisfies the requirements of Section 80 CPC.

31. The decision of this Court in J.S. Basappa v. Provincial Government of Madras (supra) and the decision of the Punjab High Court in Wallu

Ram v. Union of India (supra) do not in any manner help the appellants.

32. In the result, for the above reasons, the appeal fails and the same is accordingly dismissed with costs.