

claim of appellants/contesting respondents on land in dispute i.e. their alleged title is highly disputed. Their claim is essentially based on a revenue entry which is under Class 10-A (non occupancy tenants) in a Non Z.A. land whereas from the documents on record which are more than 30 years old, produced from a proper custody has a presumptive value that land in dispute was granted to predecessors of appellants on lease under Government Grants Act which was not extended after 1997.

30. A simple denial on behalf of appellants/contesting respondents to said document could not be accepted especially when they have never filed any suit under U.P. Tenancy Act to crystalize their rights, therefore, I am of considered opinion that in view of T.V. Ramakrishna Reddy (supra), since title is highly disputed, therefore, relief sought for interim injunction is rightly rejected by trial Court. Therefore, there is no illegality in impugned order, hence, present FAFO stands dismissed.

31. So far as present writ petition is concerned, State/Irrigation Department has approached this Court after about 5 years, though explanation mentioned in writ petition is not happily worded except reference to some judgments on issue. Still considering that above referred facts clearly depicts that appellants/contesting respondents have not able to prove their title on basis of above referred entry as well as that Revisional Court, on one hand, returned a finding that impugned order therein was passed without hearing the appellants/revisionists but on other hand, returned a finding that long revenue entry could not expunged in a summary proceedings without appreciating the documents placed before it as well as their

legal value and the law on issue, therefore, Court is of considered opinion that impugned order in present form passed by Board of Revenue does not survive, hence, set aside and matter is remitted back to Board of Revenue to decide the same fresh and in case it is found that matter was required to be heard by affording opportunity to both parties which was not granted by S.D.M. while passing the order dated 22.08.2016, the matter may be remitted back to said Authority or if the Board of Revenue thinks fit that issue can be decided by Board itself, a reasoned order will be passed after hearing rival parties expeditiously, preferably within six months.

32. In overall circumstances, connected FAFO stands **dismissed** and present writ petition stands **allowed** in part with above observations.

33. This order will not come in the way if the rival parties approach concerned Court under U.P. Tenancy Act to crystalize their right in accordance with law, if so advised.

(2024) 11 ILRA 196
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.11.2024

BEFORE

THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ- B No. 2398 of 2019

Shahid Hussain ...Petitioner
Versus
Board of Revenue U.P. & Ors.
 ...Respondents

Counsel for the Petitioner:

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(A) Land Laws and Specific Performance - Agreement to Sale and Adverse Possession - Concurrent findings of Revenue Courts under challenge - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Section 209 - Ejectment of persons occupying land without title , Section 210 - Consequence of failure to file a suit under Section 209 - Section 229-B - Suit for declaration of rights - Executory Contract - Permissive Possession - Adverse Possession - Specific Performance - Provisions of Sections 209 and 210 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 do not apply to cases where possession is permissive, such as under an executory contract of sale - Possession under an executory contract of sale is permissive and does not constitute adverse possession. (Para - 15,17,18)

Petitioner claimed possession over a plot under an agreement to sell executed in 1973 - with partial payment made and possession given - sale deed was never executed - Petitioner filed a suit for specific performance in 2011 - later sought declaration under Section 229B of U.P. Zamindari Abolition and Land Reforms Act, 1950 - dismissed by three revenue courts - claiming ownership based on adverse possession. (Paras - 2 to 9)

HELD:- Possession under an agreement to sale is permissive, not adverse, and thus cannot form the basis for claiming title under Section 210 of the Act. Petitioner failed to establish adverse possession or ownership under law. No ground to interfere in concurrent findings of three Revenue Courts. (Para - 18,19)

Petition dismissed. (E-7)

List of Cases cited:

1. Puttu Singh & ors. Vs Kirat Singh & ors., 1966 R.D. 42
2. Bharit & ors. Vs The Hon'ble B.O.R, U.P. at Alld. & ors., AIR 1973 ALL. 201
3. Achal Reddy Vs Ramakrishana Reddiar & ors., (1990) 4 SCC 706

(Delivered by Hon'ble Saurabh Shyam
Shamshery, J.)

Factual Matrix

1. An agreement to sale dated 12.11.1973 was executed by father of original Respondent-4 in favour of petitioner with regard to plot in dispute i.e. plot no. 1141, area 1 acre 07 dismal, located at Village Pakbara, Tehsil and District Moradabad, for Rs. 9,000/- out of which Rs. 7,000/- was paid and possession of property was given to petitioner and rest of Rs. 2000 was required to be paid at the time of execution of sale deed.

2. Petitioner remained silent for many decades and kept waiting for execution of sale-deed and finally filed a suit for specific performance in the year 2011. The relevant relief sought in suit is mentioned hereinafter :-

“ (अ) यह कि वादी द्वारा योजित प्रस्तुत मूलवाद हेतु संविदा के विनिर्दिष्ट अनुपालन की आज्ञा पारित की जाकर प्रस्तुत मूलवाद के प्रतिवादी को आदेश दिया जाये कि वह न्यायालय द्वारा अनुमन्य अवधि के अन्दर वादी के पक्ष में निष्पादित विक्रय अनुबन्ध पत्र दिनांकित

12.11.1973 के अनुपालन में वादी से विक्रय प्रतिफल की शेष धनराशि अंकन रुपये 2000/- (दो हजार) प्राप्त कर प्रस्तुत मूलवाद में वर्णित सम्पत्ति कृषि भूमि गाटा क्रमांक 141 जिसका क्षेत्रफल 0-4330 हे० तथा भूराजस्व अंकन रुपये 21-40 पैसे स्थित ग्राम पाकबडा तहसील व जनपद मुरादाबाद का विक्रय पत्र वादी के पक्ष में विधिवत रूप में निष्पादित कराकर कार्यालय उपनिबंधक, मुरादाबाद में नियमानुसार पंजीकृत करा दे, प्रतिवादी द्वारा उक्त में विफल रहने के परिणामस्वरूप न्यायालय की सहायता से उक्त वर्णित प्रश्नगत सम्पत्ति कृषि भूमि गाटा क्रमांक -1141 जिसका क्षेत्रफल- 4330 हे० तथा भूराजस्व अंकन रू० 21.40 पैसे स्थित ग्राम पाकबडा तहसील व जनपद मुरादाबाद का विक्रय पत्र वादी के पक्ष में निष्पादित किया जाकर नियमानुसार उपनिबन्धक, मुरादाबाद में पंजीकृत कराकर उक्त वर्णित सम्पत्ति / कृषिभूमि पर वास्तविक भूस्वामी एवं संक्रमणीय भूमिधर के रूप में पुनः सांकेतिक रूप में अधिपत्य स्थापित करा दिया जाये।”

3. The above suit is still pending. An Amin's report dated 16.08.2017 submitted in said suit is placed on record that the petitioner is in possession of plot in dispute.

4. In the same year original Respondent-4 has filed a suit for permanent injunction against petitioner, which is also

still pending. An Amin's report dated 30.05.2011 was submitted in said suit is also on record that petitioner has possession over plot in dispute.

5. In the same year, petitioner has also filed a suit under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "Act, 1950") that he be declared "संक्रमणीय भूमिधर काश्तकार" over plot in dispute since his possession on plot in dispute was more than 12 years and that original contesting respondent has failed to execute agreement for sale. In written statement contesting defendant/original contesting respondent denied execution of agreement to sale.

6. In above suit following issues were framed:-

“क- यह कि घोषणात्मक डिक्री इस अमर की फरमाई जावे की वादी प्रश्नगत आराजी काश्त गाटा सं० - 1141 रकबई 0.433 है० मौजा पाकबडा तहसील व जिला मुरादाबाद व संक्रमणीय भूमिधर काश्तकार है तथा इसका अमलदरामद कागजात माल में कराया जावे।

ख- यह कि वाद का हर्जा एवं खर्चा वादी को प्रतिवादीगण से दिलाया जावे।

ग- यह कि अन्य कोई अनुतोष जो मुफीद वादी हो न्यायालय उचित समझे वादी को दिलाया जावे।

7. The above suit was dismissed vide order dated 17.09.2018 on ground that,

agreement to sale was not executed and even original contesting respondent had no power to execute the agreement to sale, since he was only a Sirdar, who could not execute a sale-deed or agreement to sale and possession if any, was only permissive that with permission of contesting original respondent/ original defendant. Relevant part of it is reproduced hereinafter :-

“विद्वान अधिवक्ताओं के तर्कों को सुनने के पश्चात् वाद में निर्धारित वाद बिन्दुओं का निस्तारण निम्न प्रकार किया जाता है।

1. क्या वादी विवादित सम्पत्ति पर काबिज है और वादी कब्जे के आधार पर विवादित सम्पत्ति का स्वामी व भूमिधर है। यदि हाँ तो उसका प्रभाव?

उक्त वाद बिन्दु को सिद्ध करने का भार वादी पर है। वादी के द्वारा अपने मौखिक साक्ष्य में स्वयं को व गवाह मौ० याकूब व यशपाल सिंह को परीक्षित कराया है। वादी शाहिद हुसैन ने जिरह में स्वयं कहा है कि "प्रश्नगत मुआयदाबय कचहरी में लिखा गया था, पहले बताया कि घर पर लिखा गया था। जिस दिन मुआयदाबय लिखा गया उस दिन कचहरी खुल रही थी या बन्द थी मुझे याद नहीं मुझे यह भी याद नहीं कि मुआयदाबय जिस दिन लिखा गया उस दिन कौन-कौन लोग आये थे यह मुआयदाबय रजिस्टर्ड कराया या नहीं इसकी मुझे जानकारी नहीं है। मुझे यह भी नहीं पता कि नन्हे अनपढ़ आदमी थे या नहीं मुझे यह भी याद नहीं कि मुआयदाबय की

तहरीर पर नन्हे के अंगूठे हैं या हस्ताक्षर? यह रूपये नन्हे की बीमारी के समय अकेले में दिये थे नन्हे ने मुझे आराजी निजाई का कब्जा तहरीर लिखने के बाद दिया था। वादी शाहिद हुसैन जिरह में यह साबित नहीं कर पाये कि मुआयदाबय कहाँ हुआ था धनराशि 7000/- के सम्बन्ध में यह साबित नहीं कर पाये कि रूपये उसने नन्हे को अकेले में दिये थे या किसी के सामने दिये थे। इस प्रकार मुआयदाबय का निष्पादन भली प्रकार सिद्ध नहीं है। जहाँ तक प्रश्नगत भूमि पर कब्जा होने के सम्बन्ध में उसमें शाहिद हुसैन ने स्वयं कहा कि उनका कब्जा नन्हे की रजामन्दी से है। इस सम्बन्ध में प्रतिवादी के विद्वान अधिवक्ता की ओर से प्रस्तुत किये गये तर्क पर बल पाता हूँ कि काश्तकार की इजाजत से हुए कब्जे के आधार पर किसी व्यक्ति के भौमिक अधिकार परिपक्व नहीं होते। इस प्रकार वादी अपने वाद पत्र में किये गये कथनों के गौसवाना कब्जे के आधार पर प्रश्नगत भूमि का संक्रमणीय भूमिधर घोषित किया जाये सिद्ध नहीं है।

प्रतिवादी के विद्वान अधिवक्ता का यह भी तर्क है कि यदि नन्हे द्वारा प्रश्नगत भूमि का वादी के पक्ष में मुआयदाबय लिखा भी गया होता तो उक्त मुआयदाबय एक शून्य दस्तावेज की श्रेणी में हुआ क्योंकि नन्हे अपने आजीवन प्रश्नगत भूमि के सीरदार काश्तकार रहे और सीरदार काश्तकार को भूमि के

सम्बन्ध में कोई हस्तान्तरण विलेख निष्पादित करने का अधिकार प्राप्त नहीं है। उनका यह भी तर्क है कि वादी के पक्ष में मुआयदाबय होने की स्थिति में भी उन्हें प्रश्नगत भूमि पर कब्जे के आधार पर कोई अधिकार प्राप्त नहीं होते। उन्होंने अपने इस तर्क के समर्थन में आर.डी. 2017 पृष्ठ 71 राधा स्वामी सत्संग बनाम स्टेट आफ यू.पी. व आर.डी. 2005 (99) पृष्ठ 672 अशोक कुमार द्विवेदी बनाम अष्टम अपर जिला जज व आर.डी. 2015 (129) पृष्ठ 7 इन्द्रपाल देव बनाम डिप्टी डायरेक्टर ऑफ कंसोलीडेशन, व आर.डी. 1985 पृष्ठ 292 ब्रह्मा बनाम बोर्ड आफ रेवेन्यू प्रस्तुत करते हुए तर्क दिया कि मुआयदाबय के आंशिक अनुपालन में दिये गये कब्जे के आधार पर धारा-164 जि०वि०अधि० के प्रावधान लागू नहीं होते। मैं प्रतिवादी के विद्वान अधिवक्ता की ओर से प्रस्तुत किये गये तर्कों एवं उनकी ओर से प्रस्तुत की गयी विधि व्यवस्थाओं के आधार पर इनके तर्कों में बल पाता हूँ और वादी के विद्वान अधिवक्ताओं के तर्कों में कोई बल नहीं पाता हूँ। प्रश्नगत भूमि पर यदि वादी का कब्जा मान भी लिया जाये तो भी वादी को उसके आधार पर प्रश्नगत भूमि पर किसी प्रकार के भौमिक अधिकार प्राप्त नहीं होते। इसके अतिरिक्त पत्रावली पर उपलब्ध उद्धरण खतौनी वर्ष 1417-1422 से स्पष्ट है कि राजस्व अभिलेखों में प्रश्नगत भूमि प्रतिवादी श्री शमशुद्दीन पुत्र नन्हे निवासी

ग्राम पाकबडा मुरादाबाद का नाम दर्ज चला आ रहा है इस सम्बन्ध में वादी के द्वारा सक्षम न्यायालय में भी कोई चाराजोई नहीं की गई। अतः वाद बिन्दु संख्या-1 नकारात्मक रूप से वादी के विरुद्ध निर्णीत किया जाता है।

वाद बिन्दु संख्या -2- क्या वादी का वाद पोषणीय नहीं है।

इस वाद बिन्दु को सिद्ध करने का भार प्रतिवादी पक्ष पर है। वाद बिन्दु सं० 1 में की गयी विवेचना के आधार पर वादी का वाद पोषणीय नहीं हो पाता है। तथा यह वाद बिन्दु सकारात्मक रूप से प्रतिवादी सं० -1 शमशुद्दीन के पक्ष में निस्तारित किया जाता है।

वाद बिन्दु संख्या -3- क्या वादी अन्य कोई अनुतोष पाने का अधिकारी है।

वाद बिन्दु सं०-1 व वाद बिन्दु सं०-2 की की गई विवेचना पर वादी किसी अनुतोष को पाने का अधिकारी नहीं है। अतः दावा वादी निरस्त होने योग्य है, निरस्त किया जाता है।

आदेश

सम्यक विचारोपरान्त दावा वादी निरस्त किया जाता है। यदि कोई स्थगन आदेश हो तो उसे निरस्त किया जाता है। वाद अमल दरामद पत्रावली आवश्यक कार्यवाही दाखिल दफ्तर हो।”

8. The aforesaid judgment was challenged by way of filing of an appeal before the Commissioner, Moradabad

however, it was dismissed by order dated 25.05.2018. Relevant part thereof is reproduced hereinafter:-

“उक्त तर्कों एवं अवर न्यायालय की सम्बन्धित वाद पत्रावली पर उपलब्ध अभिलेखों के अनुसार मैं अपीलकर्ता के विद्वान अधिवक्ता के उक्त तर्कों में कोई बल नहीं पाता हूँ क्योंकि वादी द्वारा अपने वाद पत्र में किसी भी प्रक्रम में या किसी भी प्रस्तर में भूमि पर कब्जा मुखालफाना का कोई तथ्य ही अंकित नहीं किया, बल्कि उनके द्वारा स्वयं अपने वाद पत्र के पैरा-02 व पैरा-06 में यह तथ्य अंकित किये गये हैं कि प्रतिवादी के पिता नन्हें पुत्र इतवारी के विक्रय हेतु अनुबन्ध कर धनराशि प्राप्त कर उन्हें इस भूमि पर कब्जा करा दिया गया। इस प्रकार यह कब्जा किसी भी प्रकार से कब्जा मुखालफाना की श्रेणी में नहीं आता, बल्कि स्वीकृति से कब्जे की श्रेणी में आता है, जिसके आधार पर कोई भी लाभ दिये जाने का प्राविधान जमींदारी विनाश अधिनियम में नहीं है। इसके अतिरिक्त, यह तथ्य अत्यन्त महत्वपूर्ण एवं प्रासंगिक है कि वर्ष 1973 जिस समय कि वादी विक्रय हेतु अनुबन्ध के सम्बन्ध में रसीद अवर न्यायालय की पत्रावली पर कागज सं०-3/8 के रूप में प्रस्तुत करते हैं। तत्समय प्रतिवादी के पिता उक्त भूमि के सीरदार थे और सीरदार को भूमि को विक्रय करने का कोई अधिकार प्राप्त नहीं था, जबकि वर्ष

1975 तक समस्त धनराशि प्राप्त कर भूमि को विक्रय किये जाने का कथन वादी द्वारा किया गया है। ऐसी स्थिति में जबकि 1977 से पूर्व किसी भी सीरदार को भूमि को विक्रय करने से पूर्व 10 गुना या 20 गुना जमा कर भूमिधरी के अधिकार प्राप्त करने होते थे और कोई भी सनद या ऐसा कोई तथ्य भी कभी वादी द्वारा अपने कथन में अंकित नहीं किया गया, तब ऐसी स्थिति में यह विक्रय हेतु अनुबन्ध किये जाने का या विक्रय किये जाने का कोई भी अधिकार प्रतिवादी सं०-01 के पिता को नहीं था। यद्यपि उक्त अनुबन्ध एक अनुबन्धित विलेख है जो साक्ष्य में ग्राह्य नहीं है, परन्तु उसको भी निष्पादित किये जाने का कोई अधिकार प्रतिवादी सं०-01 के पिता को नहीं था। इस कारण वादी अपने वाद को साबित करने में पूर्णतया विफल रहा है, जिसको अवर न्यायालय द्वारा विभिन्न वाद बिन्दुओं में की गयी विवेचना में स्पष्ट किया गया है। अवर न्यायालय द्वारा पारित आदेश एक न्यायोचित आदेश है। अपीलकर्ता द्वारा ऐसे कोई साक्ष्य एवं तथ्य प्रस्तुत नहीं किये गये, जिससे कि अवर न्यायालय के प्रश्नगत आदेश में किसी हस्तक्षेप का औचित्य पाया जाये। अतः उक्त तथ्यों के परिप्रेक्ष्य में अपीलकर्ता की अपील बलहीन होने के कारण निरस्त किये जाने योग्य है।”

9. A challenge to aforesaid order was referred preferred before the Board of

Revenue by way of filing a second appeal, which got dismissed by order dated 09.08.2018, at the stage of admission. Relevant part of order is reproduced hereinafter:-

“मैंने उभयपक्ष के विद्वान अधिवक्ता के तर्कों को सुनने एवं पत्रावली पर उपलब्ध साक्ष्यों/अभिलेखों का परिशीलन किया। पत्रावली के अवलोकन से विदित होता है कि नन्हे पुत्र इतवारी द्वारा शाहिद हुसैन को विक्रय हेतु अनुबंध किया गया था, जबकि नन्हे विवादित भूमि के सीरदार थे उन्हें सीरदार की भूमि को अनुबंध/विक्रय का कोई अधिकार नहीं था और वादी शाहिद हुसैन द्वारा कोई ऐसा साक्ष्य अपने वाद में प्रस्तुत किये जिससे मे बल हो। दोनों पक्षों को सुनने एवं विधि व्यवस्थाओं के परीक्षणों/विवेचना के आधार पर दोनों अवर न्यायालयों द्वारा समान तथ्यों के आधार पर आदेश पारित किया गया है। इसमें हस्तक्षेप किये जाने की आवश्यकता नहीं है। इस प्रकार द्वितीय अपील ग्राह्यता स्तर पर निरस्त किये जाने योग्य है।

अतः उपरोक्त तथ्यों के आधार पर द्वितीय अपील ग्राह्यता स्तर पर निरस्त किया जाता है। बाद आवश्यक कार्यवाही दाखिल दफ्तर हो। ”

Argument on behalf of Petitioner

10. Sri R.C. Singh, learned Senior Advocate, assisted by Sri Deepak Kumar Pandey, learned counsel for petitioner, argued that since no proceeding was taken

by father of original defendant/ original respondent under Section 209 of Act, 1950 (Ejectment of persons occupying land without title) within the prescribed limitation, therefore, its consequence as provided under Section 210 of Act, 1950 would follow i.e. petitioner would become Bhumidhar, however, all Revenue Courts failed to appreciate it.

11. Learned Senior Advocate further submitted that agreement to sale as well as petitioner's possession over plot in dispute was not disputed and whether vendor had power to execute the agreement or not was not the issue before Revenue Courts, therefore, it was wrongly considered against petitioner/plaintiff.

12. Petitioner/ plaintiff has perfected his right on basis of adverse possession. Learned Senior Advocate has placed reliance on **Puttu Singh and others Vs. Kirat Singh and others, 1966 R.D. 42 and Bharit and others Vs. The Hon'ble Board of Revenue, U.P. at Allahabad and other, AIR 1973 ALL. 201.**

Argument of Contesting Respondent

13. Sri N.C. Rajvanshi, learned Senior Advocate assisted by Sri Ram Pandey, learned counsel appearing for Respondent-4, i.e., contesting respondent by referring Sections 209 and 210 of Act, 1950 argued that petitioner would not fall within the ambit of 'persons' mentioned in Section 209 of Act, 1950 since according to his case he was put in possession on plot in dispute with consent of vendor, whereas to avail consequence of not filing a suit under Section 209 of Act, 1950 as provided under Section 210 of Act, 1950 would be available only if possession was without

consent of Bhumidhar, which is not the case in hand.

Discussion and Analysis

14. Present case requires interpretation of Sections 209 and 210 of Act, 1950 and for reference both are reproduced hereinafter:-

209. Ejectment of persons occupying land without title.-- (1) *A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force; and-*

(a) where the land forms part of the holding of a bhumidhar, or asami without the consent of such bhumidhar, or asami;

(b) where the land does not form part of the holding of a bhumidhar, or asami without consent of the Gaon Sabha, shall be liable to ejectment on the suit in cases referred to in Clause (a) above of the bhumidhar, or asami concerned and in cases referred to in Clause (b) above of the Gaon Sabha and shall also be liable to pay damages.

(2) To every suit relating to a land referred to in Clause (a) of subsection (1) the State Government shall be impleaded as a necessary party."

"210. Consequence of failure to the suit under Section 209.--*If a suit for eviction from any land under Section 209 is not instituted by a bhumidhar or asami, or a decree for eviction obtained in any such suit is not executed within the period of limitation provided for institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall-*

(a) where the land forms part of the holding of a bhumidhar with

transferable rights, become a bhumidhar with a transferable rights of such land and the right, title and interest of an asami, if any, in such land shall be extinguished;

(b) where the land forms part of the holding of a bhumidhar with non-transferable rights, become a bhumidhar with non-transferable rights and the right, title and interest of an asami, if any, in such land shall be extinguished;

(c) where the land forms part of the holding of an asami on behalf of the Gaon Sabha, become an asami of the holding from year to year.

Provided that the consequences mentioned in Clauses (a) to (c) shall not ensue in respect of any land held by a bhumidhar or asami belonging to a Scheduled Tribe."

15. A plain reading of Section 209(a) of Act, 1950, pre-supposes that possession was without consent of Bhumidhar, Sirdar or Asami or the Gram Sabha and if possession of person was a permissive one, a suit cannot be maintained under Section 209 of Act, 1950, therefore, its consequence as contemplated in Section 210 of Act, 1950 would not follow.

16. If case of petitioner is considered in view of averments, it would be a case of an "executory contract" since possession was handed over only on basis of "agreement to sale", awaiting complete execution of remaining conditions of said sale and only after its execution, it would become a 'sale' when title of property got vested with purchaser.

17. Supreme Court in the case of **Achal Reddy Vs. Ramakrishana Reddiar and others, (1990) 4 SCC 706** has considered a difference between an 'executory contract' and 'sale' and for

reference its para 9 and 10 being relevant are mentioned hereinafter :-

“9. There is no controversy that the plaintiff has to establish subsisting title by proving possession within 12 years prior to the suit when the plaintiff alleged dispossession while in possession of the suit property. The first appellate court as well as the second appellate court proceeded on the basis that the plaintiff is not entitled to succeed as such possession has not been proved. The concurrent findings that the plaintiff had title in spite of the decree for specific performance obtained against him, when that decree had not been executed are not assailed by the appellant in the High Court. The appellant cannot, therefore, urge before us on the basis of the findings in the earlier suit to which he was not a party that Ex. A. 1 sale deed is one without consideration and does not confer valid title on the plaintiff. The sole question that has been considered by the High Court is that of subsisting title. We have to consider whether the question of law as to the character of the possession Varada Reddi had between 10.7.1946 and 17.7.1947 is adverse or only permissive. 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 acknowledgement and recognition of the title of the vendor which excludes the theory of adverse possession. The well-settled rule of law is that if 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 toto 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 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 stopping 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.

10. In the case of an executory contract of sale where the transferee is put in possession of the property in pursuance of the agreement of sale and where the parties contemplate the execution of a regular registered sale deed the animus of the purchaser throughout is that he is in possession of the property belonging to the vendor and that the former's title has to be perfected by a duly executed registered deed of sale under which the vendor has to pass on and convey his title. The purchaser's possession in such cases is of a derivative character and in clear recognition of and in acknowledgement of the title of the vendor. The position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers

the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is a clear manifestation of the intention of the owner to divest himself of the right over the property. On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself. The correctness of the decision in Annamalai v. Muthiah (supra) cannot, therefore, be doubted.

(Emphasis supplied)

18. The above consideration is squarely applicable in present case on facts also that a purchaser who got into possession under an executory contract of sale would be on only permissive in character, he cannot contend that his possession was adverse and it will remain as a permissive possession in contradiction to a possession in the case of sale. Judgments relied by learned Senior Advocate for petitioner in **Puttu Singh (supra)** and **Bharit (supra)** would,

therefore, not be applicable in present case since it was in regard to ‘sale’ and not in regard to an ‘executory contract’. Present case is squarely covered by **Achal Reddy (supra)** on facts as well as on law against the petitioner’s case.

Conclusion

19. The outcome of above discussion is that there is no ground to interfere in concurrent findings of three Revenue Courts. Therefore, present writ petition is accordingly, dismissed.

(2024) 11 ILRA 205

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.11.2024

BEFORE

**THE HON’BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ- B No. 3143 of 1993

Beer Singh

...Petitioner

Versus

Board of Revenue Alld. & Ors.

...Respondents

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(A) Land Revenue Law - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Section 198(2) - Writ jurisdiction - Article