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HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 204 of 2014

Judgment reserved on 27/11/2025

Judgment delivered on 23/02/2026

1 - Pal Sai S/o Gyan Sai Aged About 69 Years R/o Kerju, P.S. And Tah. Sitapur, Distt. Surguja C.G., Chhattisgarh

2A - Gunjmati W/o Late Anil Singh Aged About 58 Years R/o Baneya, P.S. And Tah. Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

2A.a - Jaspal Singh S/o Late Anil Singh Aged About 35 Years R/o Baneya, P.S. And Tah. Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

2A.b - Ganesh S/o Late Anil Singh Aged About 30 Years R/o Baneya, P.S. And Tah. Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

2B - Chhabil Sai (Dead Through Lrs) S/o As Per Honble Court Order Dated 30-01-2025

2B.a- Murchhand Singh S/o Late Chhabil Sai Aged About 46 Years R/o Occupation - Agriculturist R/o Village Kerju, Tahsil Sitapur, District Surguja (C.G.)

2B.b- Deelip Kumar S/o Late Chhabil Sai Aged About 29 Years R/o Occupation - Agriculturist R/o Village Kerju, Tahsil Sitapur, District Surguja (C.G.)

2B.c- Dulari Bai W/o Late chhabil Sai, aged about 65 years, R/o Village Kerju, Tahsil Sitapur, District Surguja (C.G.)

2B.d- Chintamani, W/o Prem Singh, D/o Late Chhabil Sai, aged about 34 years, R/o Village Jamnimuda, Raja Ama, Tahsil Pathalgon, District Jashpur (C.G.)

2B.e- Geeta, W/o Dev Kumar, D/o Late Chhabil Sai, aged about 30 years, R/o Village Sokhapara, Kodekela, Gharjiabathan, Tahsil Pathalgon, District Jashpur (C.G.)

2C - Bad Sai S/o Late Prasann Ram Aged About 55 Years R/o Faradbahar, P.S. And Tah. Jashpur, Distt. Jashpur C.G., District : Jashpur, Chhattisgarh

2D - Chamar Sai S/o Late Ram Sai Aged About 57 Years R/o Kerju, P.S. And Tah. Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

2E- Neelamber S/o Late Ram Sai Aged About 55 Years R/o Kerju, P.S. And Tah. Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

... Appellants

versus

1A - Girvar S/o Hawal Sai Aged About 61 Years R/o Kerju, P.S. And Tah. Sitapur, Distt. Surguja C.G., Chhattisgarh

1B- Hirdan S/o Hawal Sai Aged About 52 Years R/o Kerju, P.S. And Tah.

Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

2 - State Of C.G. Through- Collector, Ambikapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

... Respondents

(Cause title taken from Case Information System)

For Appellants	:	Mr. Shahid Ahmed Ansari, Advocate
For Respondents No. 1A & 1B	:	Mr. Ashok Kumar Shukla and Mr. Vikas Dhritlahare, Advocates
For Respondent No.2/State	:	Mr. Kalpesh Ruparel, Panel Lawyer

Hon'ble Shri Ravindra Kumar Agrawal, Judge

C.A.V. Judgment

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908, has been preferred by the appellants/defendants calling in question the legality, validity and propriety of the judgment and decree dated 12.05.2014 passed by the learned 2nd Additional District Judge, Ambikapur, District Surguja (C.G.) in Civil Appeal No.50-A/2012, whereby the appeal preferred by the respondents/plaintiffs has been allowed and the judgment and decree dated 19.03.2012 passed by the learned Civil Judge Class-II, Sitapur, District Surguja in Civil Suit No.31-A/1989 (earlier Civil Suit No.12A/2007) dismissing the suit as barred by limitation has been set aside, and the respondents/plaintiffs have been held entitled to recovery of possession of the suit land as described in

Schedule-B appended to the impugned judgment and decree. The appellants, being aggrieved by the reversal of the trial Court's findings on limitation and possession, have raised various substantial questions of law relating to limitation, amendment of pleadings under Order VI Rule 17 CPC, accrual of cause of action, and the legality of the findings recorded by the first appellate Court.

2. The second appeal is admitted on 07.12.2015 on the following substantial question of law:-

> "Whether the learned lower appellate Court was justified in reversing judgment and decree of the trial Court and grant decree in favour of plaintiff by holding that the suit was within limitation?"

3. The facts of the case as emerges from the pleadings of the case are that, the dispute in the present second appeal pertains to agricultural land admeasuring 9.75 acres situated in various Khasra numbers at Village Kerju, Tahsil Sitapur, District Surguja (C.G.) (hereinafter referred to as "the suit land"). The parties to the lis are closely related and are descendants of two real brothers, namely, Jagan Sai and Lagan Sai. The respondents/plaintiffs are the sons and legal representatives of Jagan Sai, whereas the appellants/defendants are the sons and legal representatives of Lagan Sai.

It is the case of the appellants/defendants that Jagan Sai

died about 36 years prior to the institution of the suit and Lagan Sai died about 12 years prior to the Surguja Settlement operations. According to the plaintiffs, the suit land originally belonged to their predecessor-in-interest Jagan Sai and they are the title holders thereof. On the contrary, the case of the defendants is that their names were mutated in the revenue records in the year 1954-55 and they have been in continuous, open and peaceful possession of the suit land since then.

The respondents/plaintiffs instituted a civil suit on 22.06.1989 before the Court of Civil Judge Class-II, Ambikapur (now Sitapur), being Civil Suit No.31-A/1989, seeking declaration of title over the suit land and permanent injunction against the defendants. Notably, in the original plaint, no specific relief of recovery of possession was claimed, though it was alleged that the defendants were interfering with the land.

The appellants/defendants filed their written statement denying the plaint allegations in toto and contended that the suit was barred by limitation. It was specifically pleaded that the defendants were in possession since 1954-55 and their names had been duly recorded in the revenue records. It was further contended that the plaintiffs had no subsisting right, title or interest over the suit land and the suit was liable to be dismissed.

On the basis of pleadings, the learned trial Court framed four issues relating to title, possession, limitation and relief. By judgment and decree dated 12.02.1996, the trial Court declared

the title in favour of the plaintiffs but dismissed the suit for permanent injunction on the ground that the defendants were found to be in possession since 1954-55 and the plaintiffs had not claimed the relief of recovery of possession. Thus, though declaration was granted, consequential relief was refused.

Aggrieved by the partial dismissal of the suit, the plaintiffs preferred Civil Appeal No.27-A/2003 before the learned District Judge, Ambikapur. During the pendency of the said appeal, the plaintiffs moved an application under Order VI Rule 17 CPC on 10.11.1998 seeking amendment of the plaint for incorporating the relief of recovery of possession.

The defendants opposed the said amendment by filing a detailed reply contending that the amendment was highly belated, barred by limitation and would change the nature of the suit. It was specifically urged that since the defendants were in possession since 1954-55, any claim for recovery of possession was hopelessly time barred and could not be introduced by way of amendment.

The first appellate Court, by judgment and decree dated 21.07.2003, affirmed the findings of the trial Court on Issues No.1 and 2 relating to title, but set aside the findings on Issues No.3 and 4 relating to limitation and possession. The matter was remanded to the trial Court with direction to decide the application under Order VI Rule 17 CPC and thereafter to record fresh findings on the issues concerning limitation and recovery of possession.

After remand, the trial Court again registered the matter as Civil Suit No.31-A/1989 and by judgment dated 02.09.2003 dismissed the suit holding it to be barred by limitation and also rejected the application under Order VI Rule 17 CPC.

The plaintiffs again preferred Civil Appeal No.25-A/2003 before the 1st Additional District Judge, Ambikapur. By judgment and decree dated 24.01.2005, the appellate Court set aside the judgment dated 02.09.2003 and remanded the matter to the trial Court once again with direction to afford opportunity to the parties to adduce evidence on the amendment application and to decide the same in accordance with law.

Pursuant to the second remand, the learned Civil Judge Class-II afforded opportunity to both sides. The defendants produced revenue records and other documentary evidence in support of their possession. However, the plaintiffs failed to produce fresh evidence as directed. The trial Court allowed the amendment application under Order VI Rule 17 CPC but ultimately, by judgment and decree dated 19.03.2012, dismissed the suit holding that the claim for recovery of possession was barred by limitation.

Against the said judgment and decree dated 19.03.2012, the plaintiffs preferred Civil Appeal No.50-A/2012 before the learned 2nd Additional District Judge, Ambikapur. By the impugned judgment and decree dated 12.05.2014, the appellate Court allowed the appeal, reversed the findings of the trial Court on

limitation, and decreed the suit directing recovery of possession of the suit land as described in Schedule-B of the judgment.

The appellants/defendants, being aggrieved by the reversal of well-reasoned findings of the trial Court, particularly on the question of limitation, accrual of cause of action, and permissibility of amendment introducing a time-barred relief, have preferred the present second appeal under Section 100 CPC raising substantial questions of law relating to limitation, amendment of pleadings, accrual of cause of action, evidentiary appreciation, and alleged perversity in the findings of the first appellate Court.

4. Mr. Shahid Ahmed Ansari, learned counsel for the appellants/defendants would submit that, the judgment and decree dated 12.05.2014 passed by the learned 2nd Additional District Judge, Ambikapur in Civil Appeal No.50-A/2012 is contrary to the settled principles of law governing limitation, amendment of pleadings and recovery of possession. The first appellate Court has reversed the well-reasoned findings of the trial Court without proper appreciation of pleadings, documentary evidence and settled legal position.

It is contended that admittedly the names of the predecessors of the appellants, namely Gyan Sai and Prasann Sai, were mutated in the revenue records in the year 1954-55. The defendants have been in open, peaceful and continuous possession of the suit land since then. The plaintiffs instituted the suit in the year 1989, i.e., after more than three decades from the

date when the alleged adverse entry came into existence.

Under Article 65 of the Limitation Act, 1963, a suit for possession based on title is required to be filed within 12 years from the date when possession becomes adverse to the plaintiff. In the present case, the cause of action, if any, arose in the year 1954-55 when the names of the defendants' predecessors were recorded and they entered into possession. Therefore, the suit filed in 1989 is ex facie barred by limitation.

The learned trial Court rightly recorded a categorical finding that the claim for recovery of possession is time barred. The first appellate Court has erred in reversing this finding without assigning cogent reasons.

It is further submitted that in the original plaint, the plaintiffs had not claimed the relief of recovery of possession. The trial Court in its first judgment dated 12.02.1996 specifically held that the defendants were in possession since 1954-55 and since no relief of possession was claimed, the suit for injunction was liable to be dismissed.

Only during the pendency of the appeal, by application dated 10.11.1998 under Order VI Rule 17 CPC, the plaintiffs sought to introduce the relief of recovery of possession. By that time, even assuming the plaintiffs had any cause of action, the claim was already barred by limitation.

It is well settled that an amendment introducing a time-

barred relief cannot ordinarily be permitted, and even if permitted, such amendment does not relate back so as to defeat the law of limitation. The first appellate Court has failed to consider that valuable rights had accrued in favour of the defendants by lapse of time, which could not be defeated by allowing a belated amendment.

Learned counsel would submit that the original suit was one for declaration and permanent injunction. By introducing the relief of recovery of possession, the nature of the suit was fundamentally altered from a suit for prohibitory relief to a suit for ejectment.

Such amendment, particularly after recording findings on possession and after lapse of considerable time, seriously prejudiced the defendants and caused irreparable injury. The first appellate Court failed to appreciate that amendment cannot be allowed to fill lacunae in the plaintiff's case or to overcome an adverse finding.

It is contended that even assuming the plaintiffs have some title, it is an admitted and proved fact that they were not in physical possession of the suit land for decades. A decree for recovery of possession after such inordinate delay, in the face of long and settled possession of the defendants, is unsustainable in law.

The first appellate Court has ignored the principle that long, continuous and hostile possession ripens into title by adverse possession when not challenged within the statutory period.

The learned counsel for the appellants specifically draws attention to the statement of plaintiffs' own witness Asaru. In paragraph 4 of his deposition, he clearly stated:

> "जगनसाय ने लगभग पौने दस एकड़ की जमीन प्रेमवश इन लोगों को (पालसाय वगैरह) को कमाने खाने के लिए दिया था।"

Further, in paragraph 11, he admitted:

> "उक्त जमीन को जगनसाय ने सर्वे सेटलमेंट के 10-12 साल बाद पालसाय वगैरह को दिया था वे लोग उसी समय से कमाते-खाते आ रहे हैं।"

These admissions clearly establish that the defendants and their predecessors were in possession for several decades. The first appellate Court has completely ignored this crucial admission, thereby rendering its findings perverse.

It is submitted that the cause of action, if any, first arose when the revenue entries were made in 1954-55 and when the defendants entered into possession. The plaintiffs cannot contend that cause of action arose on the date of amendment. The limitation is to be computed from the date of dispossession or adverse possession, not from the date when the relief is incorporated in the plaint.

The learned counsel submits that the first appellate Court has misread evidence, ignored material admissions, and failed to properly consider the law of limitation and amendment. The

impugned judgment suffers from perversity inasmuch as it overlooks admitted long possession of the defendants and grants relief of possession after more than 30 years.

Such findings, being contrary to record and settled legal principles, give rise to substantial questions of law within the meaning of Section 100 CPC.

Lastly, it is submitted that the appellants and their predecessors have been cultivating and enjoying the suit land openly for decades. The plaintiffs remained silent for an unreasonable period and woke up only after lapse of statutory limitation. Equity and justice are in favour of protecting long-settled possession rather than unsettling it on technical grounds.

In view of the aforesaid submissions, learned counsel for the appellants prays that the impugned judgment and decree dated 12.05.2014 passed by the learned 2nd Additional District Judge, Ambikapur in Civil Appeal No.50-A/2012 be set aside and the judgment and decree dated 19.03.2012 passed by the learned trial Court dismissing the suit as barred by limitation be restored.

5. Mr. Ashok Kumar Shukla, learned counsel appearing for respondents No.1A and 1B/plaintiffs would respectfully submit that, the title of the plaintiffs over the suit land stands conclusively established. Both the trial Court in its earlier judgment dated 12.02.1996 and the first appellate Court in judgment dated 21.07.2003 categorically recorded findings in favour of the plaintiffs

on Issues No.1 and 2 relating to title. These findings were never set aside on merits and have attained finality. The defendants have failed to produce any document of title in their favour. Mere mutation in revenue records does not confer ownership. It is settled law that revenue entries are only fiscal in nature and do not create or extinguish title. Thus, the plaintiffs are the recorded and declared title holders of the suit land.

It is submitted that the present suit is essentially one based on title. Under Article 65 of the Limitation Act, 1963, limitation for recovery of possession based on title is 12 years from the date when possession of the defendant becomes adverse to the plaintiff. The burden to prove adverse possession lies heavily on the defendants. In the present case, the defendants have neither specifically pleaded the date from which their possession became hostile nor proved the necessary ingredients of adverse possession, namely: actual possession, open and hostile assertion, denial of title of true owner, continuous and uninterrupted possession for 12 years. In absence of clear pleading and strict proof, adverse possession cannot be presumed.

The appellants heavily rely upon mutation entries of 1954-55. It is respectfully submitted that mutation entries do not amount to declaration of hostile title. Mutation is effected for revenue purposes and does not extinguish the title of the true owner. The mere recording of name in revenue records cannot be equated with open and hostile assertion of ownership against the true title

holder. The defendants have not proved that the plaintiffs had knowledge of any hostile claim in 1954-55. Therefore, limitation cannot be computed mechanically from the date of mutation.

Learned counsel draws attention to the statement of witness Asaru, relied upon by the appellants themselves, wherein it has been stated that: “जगनसाय ने लगभग पौने दस एकड़ की जमीन प्रेमवश इन लोगों को कमाने खाने के लिए दिया था।” This statement clearly indicates that the possession of the defendants was permissive in nature. If land was given “कमाने खाने के लिए”, it establishes that possession originated with the consent of the true owner. Permissive possession can never become adverse unless there is a clear and unequivocal repudiation of the true owner’s title, which must be communicated and proved. No such evidence exists on record. Thus, the defendants’ own reliance on the above statement demolishes their plea of adverse possession.

It is submitted that the amendment sought by the plaintiffs was merely to add the consequential relief of recovery of possession. The foundational facts relating to title and possession were already pleaded in the original plaint. It is well settled that when a plaintiff seeks declaration of title and it is found that he is not in possession, the Court may permit amendment to incorporate relief of possession to avoid multiplicity of proceedings. The amendment did not introduce a new cause of action. It was based on the same set of facts. Therefore, it was rightly allowed.

It is submitted that once amendment is allowed, it ordinarily relates back to the date of institution of the suit unless specifically directed otherwise. Since the suit was filed in 1989 and the defendants failed to prove that their possession became adverse 12 years prior to the institution of the suit, the plea of limitation is unsustainable.

The first appellate Court is the final Court of fact. It has re-appreciated the entire oral and documentary evidence and has recorded findings in favour of the plaintiffs. In a second appeal under Section 100 CPC, interference is permissible only on substantial question of law. Re-appreciation of evidence or substitution of factual findings is impermissible unless the findings are perverse. In the present case, the findings of the first appellate Court are based on evidence and correct application of law. No perversity has been demonstrated.

The defendants cannot claim that any vested right accrued in their favour merely due to lapse of time. In absence of proof of hostile possession for the statutory period, no right by adverse possession can arise. Equity follows the law. When title is established in favour of plaintiffs and adverse possession is not proved, recovery of possession must follow.

The learned first appellate Court has correctly appreciated, the settled position of law regarding mutation entries, the burden of proof of adverse possession, the permissive nature of defendants'

possession, and the maintainability of amendment. The decree directing recovery of possession is therefore just, legal and in consonance with settled principles.

In view of the aforesaid submissions, learned counsel for respondents No.1A and 1B respectfully prays that the present second appeal being devoid of merit and not involving any substantial question of law, deserves to be dismissed with costs, and the judgment and decree dated 12.05.2014 passed by the learned 2nd Additional District Judge, Ambikapur be affirmed.

6. Mr. Kalpesh Ruparel, learned Panel Lawyer appearing for respondent No.2/State submits that, the State has been arrayed as a party through the Collector, Surguja, in view of the fact that the dispute pertains to agricultural land recorded in revenue records. The State does not claim any independent right, title or interest over the suit land and has been impleaded in a formal capacity. The dispute is essentially inter se between private parties regarding title and possession over the suit property. Therefore, the State confines its submissions to the extent of legality of revenue entries and procedural compliance.

7. I have heard learned counsel for the parties at length and perused the entire record with utmost circumspection.

8. The second appeal was admitted on the substantial question of law as to whether the learned first appellate Court was justified in

reversing the judgment and decree of the trial Court and in holding that the suit was within limitation. The controversy, therefore, essentially revolves around the applicability of Article 65 of the Limitation Act, 1963, the nature of possession of the defendants, and the legal effect of amendment of pleadings under Order VI Rule 17 CPC.

9. The learned trial court, while deciding the issue No. 3, which was with respect to limitation to file this suit, has considered in para 7 of its judgment that, at the time of survey settlement, the suit property was in ownership and possession of the ancestors of the plaintiff and defendant, namely Jagan and Lagan, and the father of the defendant No. 1- Gyan Sai, Prasanna Sai, Ram Sai and Baiga were minors at the time of survey settlement. Therefore, the land was recorded in the name of Jagan, and in the record of right of 1954-55, the name of defendant No. 1- Gyan Sai, Prasanna Sai, Ram Sai, and Baiga was recorded in the year 1954-55, which was well within the knowledge of the father of the plaintiff, Jagan Sai, and therefore, the cause of action first arose at the time when the name of Gyan Sai and his brothers were recorded in the revenue record, and since the cause of action was arose in the year 1954-55, the plaintiffs made prayer for possession by way of amendment incorporated on 02.02.2012, which is barred by limitation as provided under Article 65 of the Limitation Act, 1963.

10. It is not in dispute that the relief of possession was amended in the relief column of the plaint vide order dated 26.11.2011. It transpires

from the record that the application for amendment was filed on 10.11.1998, which was allowed on 26.11.2011, and amendment was incorporated. From perusal of the order dated 26.11.2011, it transpires that at the time of hearing of the application of Order VI Rule 17 CPC, the defendants have not raised any objection in that application for amendment in the plaint and the same was allowed on 26.11.2011. Once no objection have been raised by the defendants and the application for amendment was allowed, the said amendment could relates back from the date of institution of the suit and the doctrine of relation back came into play.

11. In the case of **Prithi Pal Singh and another v. Amrik Singh and others, (2013) 9 SCC 576**, the Hon'ble Supreme Court has held in paragraphs 9 and 11 that:-

> "9. After remand the learned Single Judge reconsidered the second appeal and dismissed the same. The learned Single Judge extensively dealt with the question whether the amendment made in the plaint would relate back to the date of institution of the suit or the same will be treated as effective from the date of this Court's order and held: [Amrik Singh case, RCR (Civil) pp. 506-09, paras 8-12]
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> > "8. The admitted facts now stand that the plaintiff and vendor are the co-sharers. The

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fate of the present appeal hinges upon the question "whether the amendment allowed by the Apex Court vide its judgment dated 10-11-1994 will operate from the date of the order or is deemed to have been incorporated as a part of the plaint from the date of the institution of the suit?" If the amendment is considered to be part of the plaint from the date of institution of the suit, the plaintiff is bound to succeed, otherwise the suit shall fail if the amendment is found to become operative from the date of the order of the Apex Court allowing amendment. It is settled principle of law that at that time of consideration of the plea of amendment, the Court is not required to go into the question of merits of the amendment sought. A party seeking the amendment may ultimately succeed or fail on the basis of the amendment is not the relevant consideration at the time the plea of amendment is to be considered. Only consideration at the time is whether such an amendment is necessary, relevant and relate to the controversy involved in the lis. The Hon'ble Supreme Court by allowing the

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amendment of the plaint vide its order dated 10-11-1994 observed that the amendment should have been allowed, on the basis of the admitted facts, Whether the suit is barred by limitation or is within limitation, all depends upon the effective date of amendment. Mr Goel, the learned counsel for the appellants has referred to the judgment passed in Tarlok Singh v. Vijay Kumar Sabharwal. In this case, the parties had entered into an agreement to sell. A suit for perpetual injunction was instituted on 23-12-1987. During the pendency of the suit, an application under Order 6 Rule 17 CPC came to be filed on 17-7-1989 for converting the suit for injunction into the one for specific performance of agreement dated 18-8-1984. The amendment was allowed on 25-8-1989. A plea was raised that the suit for specific performance is barred by limitation. This plea was considered by the Apex Court wherein following observations have been made: (SCC pp. 368-69, para 6)

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6. Shri Prem Malhotra, the learned counsel for the respondent. contended that since the respondent had refused performance the suit must be deemed to have been filed on 23-12-1987 and, therefore, when the amendment was allowed, it would relate back to the date of filing the suit which was filed within three years from the date of the refusal. Accordingly, the suit is not barred by limitation. Shri U.R Lalit, the learned Senior Counsel for the appellant, contended that in view of the liberty given by the High Court the appellant is entitled to raise the plea of limitation. The suit filed after expiry of 3 years from 1986 is barred by limitation. The question is: as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on 6-4-1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated 25-

8-1989, the suit must be deemed to have been instituted on 25-8-1989 and the suit was clearly barred by limitation. We find force in the stand of the appellant. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from 6-4-1986. Suit merely for injunction laid on 23-12-1987 would not be of any avail nor the limitation began to run from that date. Suit for d perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order 6 Rule 17 CPC on 12-9-1979. It will operate only on the application being ordered. Since the amendment was ordered on 25-8-1989 the crucial date would be the date on which the amendment was ordered by which e date, admittedly, the suit is barred by limitation. The courts below, therefore, were not right in decreeing the suit."

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9. In Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559 initially, a suit for prohibitory injunction was filed in the year 1988 claiming possession of the suit property. Later in the year 1989, an application under Order 6 Rule 17 CPC was made for conversion of the suit into one for declaration of title of the suit property and consequential relief of delivery of possession alleging that during the pendency of the suit, defendant dispossessed the plaintiff in January 1989. The amendment was refused. However, in appeal before the Hon'ble Apex Court, the conditional amendment was allowed. The Hon'ble Apex Court observed as under. (SCC pp. 563-64, paras 11 & 13)

> 11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of

permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been

earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

* * *

13.... The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed.

10. From the ratio of the aforesaid judgments, following points emerge:

(a) merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment;

(b) the dominant purpose of the amendment is to minimise the litigation;

(c) the amendment once allowed and incorporated relates back to the date of the initial institution of the suit;

(d) the Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.

11. This principle has been enunciated by the Hon'ble Apex Court in Siddalingamma v. Mamtha Shenoy, (2001) 8 SCC 561 wherein the Court observed: (SCC P.566, para 10)

10.... On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the court excludes the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition"

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12. Mr C.B. Goel, learned counsel has strenuously argued that the a amendment in the present case should be treated to have effected only from 10-11-1994 and the suit for pre-emption is deemed to have been instituted on the said date on the ground of the plaintiff being co-sharer. His precise contention is that the suit for pre-emption filed in the year 1994 under clause 'Fourthly' Section 15(1)(b) is barred by time having been filed beyond one year from the date of the sale in question. To appreciate this contention, the sole question is whether a new relief has been introduced way of amendment. In Tarlok Singh, initially, the suit was for permanent prohibitory injunction. However, by way of amendment, a new relief of specific performance was introduced which was held to be barred by time as the cause of action for the relief of specific performance had accrued to the plaintiff in the said case from the c date of the execution of the agreement to sell dated 21-12-1984. Relief of specific performance was introduced in the year 1989 which was admittedly beyond three years from the

date cause of action accrued. I have already extracted the relevant observations of the Hon'ble Supreme Court in regard to the amendment. Applying the test to the fact of the present case, the plea of Mr Goel is not sustainable. In the instant case, it was a suit for pre-emption from the initial day. Initially, the ground for seeking relief was that the plaintiff is the brother of the defendant vendor This was one of the grounds available under law by virtue of clause Secondly of Section 15(1)(a) of the Act. This provision has, however, come to be struck down by the Supreme Court in Atam Parkash. The plaintiff by asking for amendment sought to introduce an additional ground on the plea that besides being the brother, he is also a co-sharer in the suit land. As observed by the Hon'ble Supreme Court, and is evident from the judgment impugned as also the report of the trial court dated 7-3-2006, there is sufficient material/evidence already on record prior to the introduction of the amendment to establish that the plaintiff is the co-sharer with the defendant vendor.

Through the amendment only, a new ground has been incorporated and not the new relief. Since the suit seeking the relief of pre-emption was instituted within the time, by introduction of a new ground to support the relief, the suit cannot become time-barred. In the present case, the doctrine of relation back of the amendment has to apply as no new or fresh relief has been incorporated. Apart from above, there is another reason to decline the prayer of the appellants. It is settled law as is evident from the ratio of the judgment in Siddalingammas, that the court in appropriate cases while allowing the amendment, may restrict the application of doctrine of relation back and permit the amendment from the date of the amendment. In the present case, the order of the Apex Court dated 10-11-1994 is clear and unambiguous in its terms. No such restriction has been imposed. To the contrary, the amendment rejected by this Court has been allowed primarily on the ground that the amendment is based upon admitted facts on record. I am of the

> considered view that the intention of the Apex Court in allowing the amendment was/is to apply the amendment without excluding the doctrine of relation back which normally and generally governs the amendment of pleadings." (emphasis supplied)
>
> 11. In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time."

The learned First Appellate Court has considered the starting point of time of the cause of action. The learned First Appellate Court has considered that the trial Court has held that, the plaintiff was the title holder of the suit property, which was affirmed by the learned Appellate Court vide its judgment dated 21.07.2003, passed in Civil Appeal No. 27-A/2003 and he stated that the

property of schedule-B admeasuring 9.75 acres was given to the defendants to earn their livelihood, who have filed an application before the Tahsildar, Sitapur for partition of the said property in the year 1986 and then the plaintiff had filed the suit in the year 1986, when they came to know about the dispute, and thus the cause of action was first arose in the year 1986. The suit filed by the plaintiff was dismissed by the learned trial Court for the reason that he has not claimed for possession of 9.75 acres of land and during pendency of the first appeal, the plaintiffs had filed an application under Order VI Rule 17 CPC for which the matter was remitted back by the learned Appellate Court and the learned trial Court has allowed the application for amendment and then the amendment was incorporated in the plaint, therefore, the cause of action arose in the year 1986 and within 12 years, the suit for possession was filed by the plaintiffs. It has also been observed that the defendants have not claimed their title by adverse possession and have not filed any counter suit, therefore, the plaintiffs cannot be non-suited. The learned First Appellate Court has considered that the cause of action was arose in the year 1986 and the suit is filed well within its limitation period and has passed a decree in favour of the plaintiffs.

12. At the outset, it is well settled that in a second appeal under Section 100 CPC, interference by the High Court is confined strictly to substantial questions of law. The first appellate Court is the final Court of fact, and its findings cannot be disturbed unless shown to be perverse, based on no evidence, or contrary to settled legal

principles. In **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar**, (1999) 3 SCC 722. the Hon'ble Supreme Court held that the High Court cannot interfere with concurrent findings of fact unless such findings are perverse or based on misreading of evidence. In the present case, the first appellate Court has reappreciated the evidence and recorded a reasoned finding that the suit is within limitation and that the plaintiffs are entitled to recovery of possession. The appellants have failed to demonstrate any perversity or legal infirmity in such findings.

13. The principal defence of long possession since 1954–55 and reliance on mutation entries does not advance the appellants' case. The evidence, including the testimony relied upon by them, indicates that the initial possession was permissive in nature. Mutation entries are fiscal in character and do not confer or extinguish title, as held in **Suraj Bhan v. Financial Commissioner,** (2007) 6 SCC 186. In any event, the appeal does not substantively press a claim of adverse possession, and there is no material demonstrating hostile assertion of title so as to attract limitation under Article 65 of the Limitation Act. The first appellate Court has rightly concluded that the defendants failed to establish facts necessary to non-suit the plaintiffs on limitation.

14. As regards the amendment incorporating the relief of recovery of possession, the original suit was for declaration of title and

permanent injunction. Upon a finding that the plaintiffs were not in possession, the amendment merely sought consequential relief flowing from the same cause of action and foundational pleadings. In **Sampath Kumar v. Ayyakannu**, (2002) 7 SCC 559 the Supreme Court held that an amendment adding relief of possession in a suit for declaration may be permitted even if limitation has expired, provided it is based on the same cause of action and avoids multiplicity of proceedings. Likewise, in **Baldev Singh v. Manohar Singh**, (2006) 6 SCC 498 it was reiterated that amendments necessary for determining the real controversy should ordinarily be allowed if they do not introduce a new cause of action. The amendment in the present case did not alter the fundamental nature of the suit but only sought consequential relief after adjudication of title.

15. The contention that the cause of action arose in 1954–55 merely on the basis of mutation is legally untenable. The first appellate Court, being the final Court of fact, has carefully examined the pleadings and evidence and recorded clear findings that the plaintiffs' title stands established, the defendants failed to displace that title, the amendment was legally permissible, and the suit is within limitation under Article 65. No perversity, misreading of evidence, or misapplication of law has been shown. The substantial question of law is accordingly answered in favour of the respondents/plaintiffs and against the appellants.

16. In view of the foregoing analysis, this Court holds that the learned first appellate Court was fully justified in reversing the judgment and decree of the trial Court and in decreeing the suit by holding it to be within limitation. The appellants have failed to establish any substantial question of law warranting interference under Section 100 CPC.

17. Accordingly, the second appeal being devoid of merit deserves to be and is hereby **dismissed**.

18. Parties to bear their own costs.

19. An appellate decree be drawn accordingly.

Sd/-
(Ravindra Kumar Agrawal)
Judge

ved

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HEAD NOTE

Amendment made in the plaint would relate back to the date of institution of the suit unless otherwise directs by the Court while allowing the application for amendment.