

TARGETED SUIT**GJCU020036712022**

Received on :- 21/11/2022

Registered on :- 21/11/2022

Decided on :- 10/07/2026

Duration :- YY-MM-DD
03 - 07 - 19

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT CHHOTA UDEPUR**

Regular Civil Suit No.36/2022**Exhibit No. 92**

Plaintiffs	Age	Occupation
	yrs.	
1 Legal heirs of deceased Abdul Razak Ibrahim Foda		
1/1 Aminabibi wd/o. Abdul Razak Ibrahimbhai Foda	71	Farming
1/2 Imran Abdul Razak Foda No.1/1 & 1/2 residing at Zoz Road, Opp. Jakatnaka, Chhota Udepur, Ta. & District :- Chhota Udepur.	48	Business
1/3 Yashminbibi Abdul Razak Foda	43	H.H. work
1/4 Vasim Abdul Razak Foda Residing at Aman Society, Godhra, Ta. Godhra, District :- Panchmahals	38	Business
1/5 Javed Abdul Razak Foda	37	Business
1/6 Mujjafar Abdul Razak Foda	34	Business

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No.1/4 to 1/6, Residing at Zoz Road, Opp.
Jakatnaka, Chhota Udepur,
Ta. & District :- Chhota Udepur.

2	Altat Mohammadbhai Foda Manek Chokdi, Opp. Kusum Sagar Lake, Chhota Udepur, Ta. & District:- Chhota Udepur.	59	Business & Farming
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Versus

Defendants		Age	Occupation
		yrs.	
1	Isfakbhai Abdulsattar Foda,	76	Business
2	Mustakbhai Abdulsattar Foda,	60	Business
3	Sakilbhai Isfakbhai Foda,	42	Business
4	Sakilbhai Isfakbhai Foda,	39	Business
No.1 to 4 are residing at :- Gondra, Vejalpur, Behind old Jakatnaka, Foda Compound, At & Po. Godhra, Ta. Godhra, District :- Panchmahals,			
5	Harshadbhai Dahyabhai Patel,	68	Business
R/o.:- Sardarnagar Society, Near S. T. Depo, At & Po. Taluka & District :- Chhota Udepur.			

Suit U.Ss. 34 & 38 of Specific Relief Act For Declaration & Permanent Injunction

APPEARANCE:-

Ld. Advocate for the plaintiffs :- **Mr. U. S. Pandya**
 Ld. Advocate for the defendants No.1 to 4 :- **Mr. M.M. Makarani**
 Ex parte against defendant No.5

-:- J U D G M E N T -:-

1. The plaintiffs have filed this suit against the defendants, seeking reliefs of declaration and permanent injunction in respect of the NA land situated at Village Khutaliya, Taluka Chhota Udepur, bearing Khata No.109 admeasuring 93601 sq.ft. (*hereinafter referred to as the "suit land" for the sake of brevity*).

2. **Succinct facts of the plaint :-**

Succinct facts of the plaint in the present suit of the plaintiffs are as under;

- 2.1. That the plaintiffs are in actual physical and uninterrupted possession and occupants of the suit land. The plaintiffs have been in continuous, peaceful and uninterrupted possession of the suit land for more than 35 years. They have been paying the land revenue in respect of the suit land and have also initiated proceedings before the Revenue Authorities for recording their names in the revenue records as persons in actual possession and occupation of the suit land. In the year 2003, defendant No. 5 instituted Regular Civil Suit No. 72/2003 before the Ld. Principal Civil Judge, Chhota Udepur, in respect of the suit land. In the said proceedings, he admitted that the possession of the plaintiff no.2 over the suit land and failed to produce any documentary evidence to prove his alleged possession or entitlement over the suit land. Consequently, the said suit came to be dismissed by

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judgment & decree on dated 30.06.2004. Since the dismissal of the said suit, and even as of today, the plaintiffs have remained in actual and physical possession of the suit land. The defendants have never been in possession of the suit land. Despite the plaintiffs' long-standing and lawful possession, the defendants have repeatedly attempted to interfere with and dispossess the plaintiffs from the suit land.

- 2.2 It is further stated that on 16.11.2022 at around 11:00 a.m., while the plaintiffs were carrying out their business activities on the suit land, the defendants, acting in concert, unlawfully attempted to enter the suit land and interfere with the plaintiffs' possession. The defendants threatened the plaintiffs to vacate the land and remove their business materials, claiming that they intended to take over and conduct business on the suit land. The defendants further extended threats of physical violence and serious harm in the event of non-compliance by the plaintiffs. They created a disturbance and breached public peace by shouting and intimidating the plaintiffs. The plaintiffs informed the defendants that they had been in uninterrupted possession of the suit land for over 35 years and that such possession could not be disturbed except by due process of law. Nevertheless, the defendants persisted with their threats and attempts to interfere with the plaintiffs' possession. The situation was eventually defused through the intervention of local residents, who persuaded the defendants to leave the site. Even while departing, the defendants continued to threaten

the plaintiffs with future harm and consequences. The plaintiffs submit that they are in settled, continuous, peaceful, open, and uninterrupted possession of the suit land and are entitled to protection of such possession under law. The plaintiffs further contend that, having remained in possession for more than 35 years, they have acquired rights in respect of the suit land and are entitled to appropriate declaratory relief.

- 2.3 The plaintiffs have filed the present suit with the prayer to declared them as owner and occupants of the suit land and Declare the rights of the plaintiffs in respect of the suit land in accordance with law; Grant a permanent injunction restraining the defendants, their agents, servants, associates, and any person claiming through them from entering upon, interfering with, obstructing, disturbing, or dispossessing the plaintiffs from the suit land except by due process of law; Grant such other and further reliefs as this Hon'ble Court may deem fit and proper in the interest of justice.

3. **Written Statements of Defendants:-**

The summons/notices were duly served upon the defendants.

- 3.1 Ld Advocate Mr.M.M.Makarani, for defendants **no. 1 to 4**, has appeared and filed their **written statement** at **Exh. 11**.
- 3.1.1 In their written statement, the defendants have denied in toto the facts stated in the plaint. It is further stated that Survey No. 109 originally belonged to defendant No. 5 and

others and admeasured 18,616 sq. mts. The land was converted into non-agricultural (N.A.) tenure in the year 1982. Thereafter, 3,053.62 sq. mts. of land was sold to Bombay Minerals by a registered sale deed dated 24.11.1982; 1,813.76 sq. mts. of land was sold to the Administrator of Foda Chips Industries on 30.10.1983; 941.37 sq. mts. of land was sold to Foda Minerals on 11.08.1989; 1,748.10 sq. mts. of land was sold to Bombay Minerals on 01.05.1998; 2,346 sq. mts. of land was sold to Hasinabibi Yakub Khota on 20.02.2002; and 8,265.44 sq. mts. of land was sold to defendant Nos. 1 to 4 on 30.09.2003.

3.1.2 It is further stated that, subsequently, Imran Ishak Chintaman purchased 3,053.62 sq. mts. and 1,748.10 sq. mts. of land from Bombay Minerals, as well as 2,346 sq. mts. of land from Hasinabibi Yakub Khota, in the year 2022. It is also stated that Foda Chips Industries sold its 1,813.76 sq. mts. of land to Madara Sherbanu Sarfaraz and Madara Afsanabanu Irfan in the year 2019. According to the defendants, all the purchasers have been in possession of their respective properties for several years.

3.1.3 It is further stated that, in the sale deed executed in favour of defendant Nos. 1 to 4, plaintiff No. 1 signed as an attesting witness, being their cousin. It is also stated that defendant Nos. 1 to 4 purchased 8,265.44 sq. mts. of land in the year 2003; however, the sale deed remained pending on

account of deficit stamp duty under Section 32A and was released in the year 2010.

3.1.4 The defendants have further stated that the government taxes in respect of the land belonging to defendant Nos. 1 to 4 were paid in the name of plaintiff No. 1, and that the plaintiffs are seeking to misuse this circumstance. It is further contended that, after defendant Nos. 1 to 4 purchased 8,265.44 sq. mts. of land, the layout plan was duly sanctioned by the Town Planner. After deducting the area earmarked for the common plot and roads, defendant Nos. 1 to 4 remained in possession of 4,717.38 sq. mts. of land. Thereafter, upon obtaining approval from the Town Planner in the year 2015, a total of 72 plots were carved out from the said land. Accordingly, it is contended that the plaintiffs' claim over 93,601 sq. ft. of land is wholly untenable.

3.1.5 It is further stated that plaintiff No. 2 has no subsisting interest in the land, as he had already sold his 941.37 sq. mts. of land to Mohsin Mohammad Khalpa by registered Sale Deed No. 191 dated 01.04.2022. Likewise, 1,813.76 sq. mts. of land was sold to Madara Sherbanu Sarfaraz and Madara Afsanabanu Irfanbhai, and the plaintiffs have suppressed this material fact.

3.1.6 It is further stated that defendant No. 5 had filed Regular Civil Suit No. 72 of 2003 against plaintiff No. 2, which came to be dismissed on 30.06.2004 for non-production of evidence. According to the defendants, the plaintiffs cannot

derive any benefit from the said dismissal, as the suit was not decided on merits.

3.1.7 Lastly, defendant Nos. 1 to 4 have stated that, after filing the present suit, the plaintiffs wrongfully issued a public notice in a newspaper on 21.12.2022 claiming possession over the suit land. The defendants have, therefore, prayed for dismissal of the suit with costs.

3.2 Despite due service of summons, defendant No. 5 failed to enter appearance before the Court. Consequently, by order dated 23.08.2024, this Court directed that the suit be proceeded with ex parte against defendant No. 5. Thereafter, the proceedings continued ex parte as against defendant No. 5.

3.3 In response to the reply of defendant Nos. 1 to 4, the plaintiffs have filed their counter reply at Exh.15 wherein they have denied the contentions made therein in the written statements filed by the defendants.

4. Following issues have been framed at **Exhibit-36** by my learned Predecessor for the determination of this suit. After careful consideration of the pleadings, documentary as well as oral evidence on record, and final arguments advanced, I hereby answer the issues as follows:

ISSUES

(1) Whether the plaintiff prove that they are in possession of the suit property since last 35 years ?

Ans: In the Negative.

- (2) Whether the plaintiff prove that they are entitled for declaration and permanent injunction as prayed for ?

Ans: In the Negative

- (3) Whether the plaintiff prove that they are entitled for the relief as prayed for ?

Ans: In the Negative

- (4) What order and decree ?

Ans: As per final order.

5. Evidence:-

- 5.1 In the present suit, the following oral as well as documentary evidence has been adduced by the **plaintiffs** in support of their claim :-

[A] Oral Evidence :-

Sr. No.	Name of witnesses	Exhibit
1.	Deposition of Altaf Mohammadbhai Foda	54
2.	Deposition of Ratansing Kanubhai Rathva	58
3.	Deposition of Mahebubbhai Husainbhai Aalam	60

[B] Documentary Evidence :-

Sr. No.	Description of documents	Exhibit
1.	Land Revenue Tax Receipt (Dated 01/05/2019)	41
2.	Land Revenue Tax Receipt (Dated 20/04/2021)	42
3.	Land Revenue Tax Receipt (Dated 21/07/2023)	43
4.	Village Form No.9 Receipt of Education Cess	44

5.	Certified Copy of village Form No.7/12 of Revenue Survey No.109	45
6.	Certified Copy of application filed before the Sub-Registrar, Chhota Udepur on 15/12/2022	46
7.	Certified copy of application before the Chhota Udepur City Superintendent for enter name in land revenue record.	47
8.	Certified copy of judgment of RCS No.72/2023	48
9.	Certified copy of award of RCS No.72/2023	49
10	Office copy of public notice dated 20/12/2022	50
11	Public notice published in Gujarat Samachar	51
12	Panchqyas of the suit land	52
13	Rough map of the suit land	53

The Ld. Advocate for the plaintiffs has submitted closing pursis at **Ex. 61**.

- 5.2 The following oral as well as documentary evidence has been adduced by the **defendants** in support of their defence :-

[A] Oral Evidence :-

Sr. No.	Name of witnesses	Exhibit
1.	Deposition of Vasim Ishak Foda	81

[B] Documentary Evidence :-

Sr.No.	Description of documents	Exhibit
1.	Certified copy of Sale Deed No.519/2010	66

2	Certified copy of Index of Sale Deed No. 519/2010	67
3	Copy of Property Card of CTS No.109 of Khutaliya	68
4	Copy of Property Card of CTS No.109pk of Khutaliya	69
5	Copy of Property Card of CTS No.109/1 of Khutaliya	70
6	Copy of Property Card of CTS No.109/2 of Khutaliya	71
7	Copy of Property Card of CTS No.109/3 of Khutaliya	72
8	Copy of map of disputed land	73
9	Public Notice published in "Divya Bhaskar"	74
10	Revenue Tax receipt of Khata No.9	75
11	Education Tax receipt of Khata No.9	76
12	Education Tax receipt of Khata No.9	77
13	Education Tax receipt of Khata No.9	78
14	Revenue Tax receipt of Khata No.9	79
15	Education Tax receipt of Khata No.9	80

The Ld. Advocate for the defendants has submitted closing pursis at **Ex.85**.

6. Final Arguments :-

6.1 Arguments Advanced By The Plaintiffs:

6.1.1 I have heard the oral arguments of Ld. Advocate Mr. U. S. Pandya for the plaintiffs as well as gone through the written

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arguments filed by the plaintiffs at **Exh. 87**.

6.1.2 Learned Advocate Mr.Pandya has submitted that the plaintiffs have been in actual, peaceful, open, continuous, and uninterrupted possession of the suit land for more than 35 years. It is argued that the plaintiffs have been carrying on their business activities on the suit land throughout this period, have regularly paid the land revenue, and have also initiated proceedings before the Revenue Authorities for recording their names in the revenue records as persons in actual possession and occupation of the suit land.

6.1.3 It is further submitted that defendant No. 5 had earlier instituted Regular Civil Suit No. 72 of 2003 in respect of the suit land. In the said proceedings, defendant No. 5 admitted the plaintiffs' possession over the suit land and failed to produce any documentary evidence to establish his own possession or entitlement. Consequently, the said suit came to be dismissed by judgment and decree dated 30.06.2004. It is, therefore, contended that the plaintiffs' possession has remained undisturbed since then and that the defendants have never been in possession of the suit land.

6.1.4 Learned Advocate has further argued that on 16.11.2022 the defendants unlawfully attempted to enter the suit land, interfere with the plaintiffs' possession, and forcibly dispossess them by extending threats of physical violence. It is submitted that the defendants' illegal acts were resisted by the plaintiffs, who asserted that they had been in settled

possession of the suit land for more than 35 years and could not be dispossessed except in accordance with due process of law. The intervention of local residents prevented any untoward incident; however, the defendants continued to threaten the plaintiffs while leaving the spot.

6.1.5 It is further contended that the plaintiffs, being in long, continuous, peaceful, open, and uninterrupted possession of the suit land, are entitled to protection of such possession under law. Learned Advocate has submitted that, in view of the plaintiffs' long-standing possession and occupation of the suit land, they are entitled to the declaration sought in the suit as well as a permanent injunction restraining the defendants from interfering with or disturbing the plaintiffs' possession except by due process of law.

6.1.6 Learned Advocate has, therefore, prayed that the suit be decreed in favour of the plaintiffs by granting the declaration and permanent injunction as prayed for, together with such other reliefs as this Court may deem fit in the interest of justice.

6.2 **Arguments Advanced By The Defendants:**

6.2.1 I have heard the oral arguments of Ld. Advocate Mr. M.M.Makarani for the defendant no.1 to 4.

6.2.2 Learned Advocate Mr.Makarani has vehemently submitted that the present suit is wholly misconceived, devoid of merits, and liable to be dismissed. It is argued that the ownership and title of defendant Nos. 1 to 4 over the suit

land are undisputed and stand established by virtue of the registered sale deed at Exh.66 executed in their favour by the original owner, defendant No. 5. The plaintiffs have neither challenged the validity of the said sale deed nor produced any documentary evidence to impeach the lawful title of defendant Nos. 1 to 4.

6.2.3 It is further submitted that the suit suffers from non-joinder of necessary parties. According to the defendants, the original owner, defendant No. 5, had sold different portions of suit land to various purchasers by registered sale deeds from time to time. Despite being aware of these transactions, the plaintiffs have chosen to implead only defendant Nos. 1 to 4 and have failed to join the other purchasers, whose rights and interests are directly affected by the reliefs sought in the present suit. It is, therefore, contended that the suit is bad for non-joinder of necessary parties and is liable to fail on this ground alone.

6.2.4 Learned Advocate has further submitted that the plaintiffs have failed to establish the essential ingredients required for claiming title by adverse possession. It is argued that a person claiming ownership by adverse possession is under a legal obligation to specifically plead and strictly prove the date or point of time from which his possession became hostile and adverse to the true owner. In the present case, the plaintiffs have merely made a bald assertion that they have remained in possession for more than 35 years. However,

they have not specifically pleaded the date, month, or year from which their possession allegedly became adverse to the original owners of the suit land. In the absence of such foundational pleadings, the claim of adverse possession is legally untenable.

6.2.5 It is further argued that the plaintiffs have also failed to establish that their possession was open, continuous, uninterrupted, exclusive, and hostile to the knowledge of the true owners throughout the statutory period. Mere long possession, even if assumed, does not confer title unless all the legal requirements governing adverse possession are strictly satisfied. The plaintiffs have not produced any cogent and convincing documentary evidence to prove that they remained in adverse possession for the statutory period prescribed under law.

6.2.6 Learned Advocate has also invited the attention of the Court to the certified copies of the judgment and decree in Regular Civil Suit No. 72 of 2003, produced at Exh.48 & 49 by the plaintiffs themselves. It is submitted that the contents of the said proceedings completely belie the present case of the plaintiffs. The pleadings and findings in the earlier suit clearly demonstrate that the plaintiffs' present assertion of uninterrupted and hostile possession is false. It is further contended that the plaintiffs' own stand in the earlier proceedings amounts to an admission that they were not holding the suit land in adverse possession against the true

owner. Having relied upon the said judgment, the plaintiffs cannot now be permitted to take a contrary and inconsistent stand before this Court.

6.2.7 It is further submitted that the plaintiffs have utterly failed to prove that they have remained in possession of the suit land for the alleged period of 35 years or, in any event, for the statutory period necessary to perfect title by adverse possession. The evidence led by the plaintiffs is vague, inconsistent, and insufficient to establish continuous hostile possession against the true owner. On the contrary, the documentary evidence produced by the defendants establishes their lawful title and possession over the suit land.

6.2.8 On the aforesaid grounds, Learned Advocate has submitted that the plaintiffs have failed to prove either their entitlement to a declaration of ownership or their claim of adverse possession. It is, therefore, prayed that the suit be dismissed with costs.

:: REASONS ::

7. Before advertng to the legal facts and issues involved in the present matter, it is imperative to examine the jurisprudential principles governing civil litigation. In every civil suit, the rights and liabilities of the parties are adjudicated on the touchstone of the preponderance of probabilities. In other words, both the plaintiff and the defendant are required to establish their respective cases by demonstrating that their version is more probable than not, in accordance with the

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applicable standard of proof in civil proceedings. The Court is required to assess the evidence on the basis of reasonable probabilities and determine which version appears more credible and convincing.

Moreover, plaintiff is master of his suit and burden to prove his case lies upon him. He cannot take advantage of weakness of defendant and as per Legal Maxim. ***ACTORI INCUMBIT PROBATIO*** Means the burden of proof lies with the plaintiff. Further there is also maxim which states that ***ONUS PROBANDI*** which means burden of proof lies upon the person who ask relief. **Ss. 102 & 101 of Evidence Act 1872** are also base of this Maxim.

Hon'ble Apex Court in case of **Maya Gopinathan Versus Anoop S.B.**¹ also held that.....

18. We find an elucidation of Standard of Proof in the seminal decision by a bench of three Hon'ble Judges of this Court in **Dr. N.G. Dastane v. Mrs. S. Dastane**, (1975) 2 SCC 326. This Court eloquently settled the law in the following words:

24. *The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is*

1 2024 (0) AIJEL-SC 73571

said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved.

Keeping in view the aforesaid settled legal principles governing the standard of proof in civil proceedings, the issues arising for determination are examined hereinafter.

8. Issues No.1 to 3 :

Answers

(1) Whether the plaintiffs prove that they are in possession of the suit property since last 35 years ?	In the Negative.
(2) Whether the plaintiffs prove that they are entitled for declaration and permanent injunction as prayed for ?	In the Negative.

(3) Whether the plaintiffs prove that they are entitled for the relief as prayed for ?	In the Negative.
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8.1 Issues Nos. 1 to 3 are interconnected. Therefore, in order to avoid repetition, all the issues are taken up together and discussed as under:

8.2 It is the case of the plaintiffs that they have been in continuous possession of the suit land for the past 35 years. On the strength of such alleged possession, the plaintiffs have instituted the present suit seeking a declaration that they have become the owners of the suit land. However, the plaintiffs have not specifically pleaded that the declaration is sought on the basis of adverse possession. Nevertheless, as the claim of ownership is founded solely upon their alleged continuous possession for 35 years, it can reasonably be inferred that the declaration is, in substance, sought on the basis of adverse possession. Therefore, the burden lies upon the plaintiffs to prove the said fact. Since the plaintiffs claim ownership of the suit land on the basis of adverse possession, the burden lies upon them to establish all the essential ingredients of adverse possession. Before proceeding to determine the issues arising in the present case, it is necessary to examine the legal concept of adverse possession and the essential requirements that must be proved for a claim founded thereon to succeed.

8.2.1 The Hon'ble Supreme Court in **Karnataka Board of Wakf v. Govt of India and Ors.**² has held that adverse possession is a

2 (2004) 10 SCC 779 : AIROnline 2004 SC 494

hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is ***nec vi, nec clam, nec precario'***, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. It is further held that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: *(a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.* A person pleading adverse possession has not equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

8.2.2 In case of **Annakili Versus A.Vedanayagam**³ the Hon'ble Supreme Court has held that,

Claim by adverse possession has two elements :

(1) the possession of the defendant should become

3 2007 (14) SCC 308

adverse to the plaintiff; and

(2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.

8.2.3 In case of **L. N. Aswathama vs. P. Prakas**⁴ (Bench of Two Hon'ble Judges) it has been observed by the Hon'ble Apex Court that permissive possession or possession in absence of Animus possidendi would not constitute the claim of adverse possession.

8.3 It is, therefore, necessary to examine whether the plaintiffs have succeeded in proving that they have acquired title to the suit land by adverse possession in accordance with the aforesaid parameters

4 (2009) 13 SCC 229

8.4 As discussed hereinabove, it is incumbent upon the plaintiffs to specifically plead and strictly prove the precise point of time from which their possession allegedly became adverse to the true owner, as held in the judgment of *Karnataka Board of Wakf* (supra). However, upon a careful scrutiny of the plaint as well as the examination-in-chief of plaintiff No. 2 and the plaintiffs' witnesses, it is nowhere made clear that the plaintiffs are seeking a declaration on the basis of adverse possession. The plaintiffs have merely pleaded that they have been in continuous possession of the suit land. However, they have not specifically asserted that their possession was hostile to the title of the defendants or that they were holding the suit property adversely to them. Further, a perusal of the plaint reveals that the plaintiffs have failed to plead the exact date or even the specific period from which their possession allegedly assumed the character of adverse possession. The plaintiffs instituted the present suit in the year 2022 and have pleaded that they have been in possession of the suit land for the last 35 years. Thus, according to their own case, they claims that they have been in possession of the suit land since the year 1987. Consequently, the plaintiffs are required to establish the said fact by cogent, reliable, and convincing evidence. So far as the standard of proof in cases of adverse possession is concerned, In the case of **Government of Kerala & Anr. vs. Joseph and others**⁵ the Hon'ble Apex Court has laid down that the *proper and concrete proof as required would need for the*

5 2023 LiveLaw (SC) 621 : 2023 INSC 693

claimant to show some proof of possession and merely long period of possession does not translate into the right of adverse possession. Now, it is to be seen whether the plaintiffs have succeeded in establishing their claim of adverse possession in light of the aforesaid standard of proof. The evidence on record shall now be examined in the light of the aforesaid principles, as under:

- 8.5 To prove their possession, the plaintiffs have produced land revenue tax receipts at Exhibits 41 to 44. Upon perusal of the said receipts, it transpires that they merely show payment of land revenue by Plaintiff No.1 in the years 2019, 2021 and 2023. Except for the aforesaid receipts, no documentary evidence has been produced to establish that the plaintiffs have remained in possession of the suit land continuously since the year 1987.
- 8.6 Further, the plaintiffs have produced Village Form Nos. 7 and 12 relating to the suit land at Exhibit 45. A perusal of Village Form No.12, which is the Pahani Patrak of the suit land, reveals entries regarding cultivation for the period from years 1990-91 to 2004-05. However, upon careful scrutiny of the said record, it is evident that the names of the plaintiffs do not appear anywhere in the said entries during the aforesaid period. Except for the aforesaid documents, no other documentary evidence has been adduced by the plaintiffs to substantiate their claim that they have been in continuous, open, and uninterrupted possession of the suit land for the past 35 years.

- 8.7 Thus, considering the entire documentary evidence produced by the plaintiffs, it becomes apparent that no documentary material has been placed on record to establish that the plaintiffs have been in continuous possession of the suit land for 35 years prior to the institution of the suit.
- 8.8 Turning now to another important aspect of the matter, it is the case of the plaintiffs that defendant No.5, who was the original owner of the suit land, had instituted Regular Civil Suit No.72 of 2003 against plaintiff No.2 before the Court of the learned Civil Judge (Junior Division), Chhota Udepur. It is further the case of the plaintiffs that the said suit came to be dismissed and that defendant No.5 had admitted in his pleadings therein that plaintiff No.2 was in possession of the suit land. On the strength of such alleged admission, it has been vehemently argued on behalf of the plaintiffs that their possession over the suit land stands established.
- 8.9 In order to appreciate the said contention, it is necessary to examine the copy of judgment and decree passed in Regular Civil Suit No.72 of 2003, which have been produced at Exhibit 48 and 49 by plaintiffs. A perusal of the said judgment reveals that the suit filed by present defendant No.5 came to be dismissed. In the said suit, defendant No.5, as plaintiff, had averred as under:

"વાદીની માલીકી કબજા ભોગવટાની બીન ખેતીની જમીન
મોજે. ખુટાલીયા, તા.છોટાઉદેપુરની સીમમાં આવેલી છે. જેનો
સર્વે નં.૧૦૯ છે. જે જમીન હે.આ.પ્રતિ. ૧-૧૮-૧૬

Principal Senior Civil Judge., Chhota Udepur.

ક્ષેત્રફળની છે જે જમીનમાં રેવન્યુ રેકર્ડમાં વાદીનું નામ ચાલે છે. તેનું મહેસુલ વાદી ભરે છે. જે પૈકી વાદીના પિતાએ પ્રતિવાદી ને હે.આરે.૦-૯-૪૧/૩૭ ચોરસ મીટર ૯૪૧-૩૭ દક્ષિણ બાજુની જમીન રજીસ્ટર વેચાણ દસ્તાવેજથી આપેલી છે. જેની નોંધ નં.૩૩૯ પડેલી છે. જે જગ્યાએ પ્રતિવાદીએ તેમનું કારખાનું બનાવેલ છે. બાકીની ઉત્તર દક્ષિણ તરફની ખુલ્લી બિનખેતીની જમીન ૯૩૬૦૧ ચોરસ ફુટ જે વાદીની જમીન આવેલી છે. જેને આ કામના પ્રતિવાદીએ ડોલોમાઈટ પથ્થર નાખીને વાદીની જમીનને નુકશાન પહોંચાડે છે. તથા દબાણ કરે છે. આમ કરી પ્રતિવાદીને ત્રાસ આપી હેરાન કરવાનો પ્રયત્ન કરે છે. અને વાદીની માલીકી કબજાની જમીન પડાવી લેવા પ્રયત્ન કરી રહેલા છે. અને તા.૧૬/૦૬/૨૦૦૩ ના રોજ સવારે ૧૦ વાગે મોજે. ખુટાલીયા, તા. છોટાઉદેપુર વાદવાની જમીન ઉપર પ્રતિવાદીને ના પાડવા છતાં તેમના વાહનો દ્વારા પ્રવેશ કરી કરાવી દક્ષિણ બાજુ દબાણ કરી પથ્થરો નાખી કાયદો હાથમાં લઈ પ્રયત્ન કરેલો છે જેથી વાદીની જમીનમાં પ્રતિવાદીને અટકાવવા માટે વાદી આ દાવો દાખલ કરેલો છે અને કાયમી તાકીદની દાદ માંગેલી છે."

8.10 A careful reading of the aforesaid pleadings indicates that the plaintiff has consistently asserted his ownership and possession over the suit property and has alleged only an act of encroachment by the defendant over a portion thereof. The

averments that the defendant dumped dolomite stones, attempted to occupy the land, and sought to interfere with the plaintiff's possession cannot, by any stretch of imagination, be construed as an admission that the defendant had been in open, continuous, exclusive and hostile possession of the suit property for the statutory period. The pleadings, therefore, do not amount to an admission of adverse possession but merely acknowledge an alleged attempt of encroachment by the defendant. On the contrary it seems that the defendant No.5 had challenged the attempt of use and occupation of the suit land by present plaintiff No.2 on 16.06.2003 by instituting the said civil suit in the year 2003. Therefore, even if it is assumed for the sake of argument that the plaintiffs were in possession of the suit land at the relevant time, such possession cannot be said to have remained continue, peaceful, uninterrupted and unchallenged. The institution of the suit by the original owner clearly demonstrates an assertion of ownership rights and a challenge to the possession claimed by Plaintiff No.2.

- 8.11 One of the essential requirements for establishing adverse possession is continuous, uninterrupted and hostile possession against the true owner for the statutory period. Once the possession is challenged by the true owner through legal proceedings within the statutory period, the plea of uninterrupted possession loses considerable force. Therefore, the institution of Regular Civil Suit No.72 of 2003 itself constitutes a circumstance which substantially weakens the

plaintiffs' claim of adverse possession.

8.12 Further, the written statement filed by the defendant in the said suit, namely present plaintiff No.2, deserves consideration. The same has been reproduced in paragraph 2 of the judgment. plaintiff No.2 had pleaded as under:

"(૨) દાવો દાખલ થતા પ્રતિવાદીને નોટીસ કાઢવામાં આવેલ જે નોટીસ બજતા પ્રતિવાદી અત્રેની અદાલતમાં હાજર થઈ આંક-૧૭ થી દાવા અરજ તથા મનાઈ અરજીનો લેખિત જવાબ આપેલ છે અને તેમાં વાદીના દાવાનો ઈન્કાર કરતા ખરી હકીકત એવી જણાવેલ છે કે, વાદી પાસેથી દાવાવાળી જમીન ૧૮ વર્ષ ઉપરાંત થી વેચાણ રાખેલી છે. તેમા પ્રતિવાદીએ ડોલોમાઈટ પથ્થરનું કારખાનું નાંખેલ છે. જે જગ્યાએ જવા આવવા માટે તથા પથ્થરના કારખાનામાં આવ જાવ માટે વાહનો નો ઉપયોગ કરી માત્ર પ્રતિવાદીએ વેચાણ રાખેલી જમીનમાં જ ઉપયોગ કરતા આવેલા છે. કારખાનામાં જવા આવવા ખુબ જ ખર્ચો કરીને રસ્તો બનાવવામાં આવેલ છે. જેથી વાદીની અરજી રદ કરવા તથા દાવો રદ કરવા જણાવેલ છે."

8.13 The aforesaid admission made by plaintiff No. 2 unequivocally establishes that in year 2003, he was in possession only of the portion of the land purchased by him from defendant No. 5. Significantly, plaintiff No. 2 asserted

his possession exclusively on the strength of the said purchase and did not claim possession, much less hostile possession, over suit land belonging to defendant No. 5. In other words, plaintiff No. 2 expressly admitted that his possession was confined to the land lawfully purchased by him from defendant No. 5 under a valid conveyance and did not extend to any other portion of the suit land. Such an admission is wholly inconsistent with, and strikes at the very foundation of, the plaintiffs' case in the present suit that they have perfected title to the suit property by adverse possession over the preceding 35 years. It is well settled that a plea of adverse possession can succeed only upon proof of actual, open, continuous, exclusive and hostile possession of the property of the true owner, to the knowledge of the latter and in denial of his title, throughout the statutory period. The admission made by plaintiff No. 2, on the contrary, unequivocally establishes that his possession was referable solely to the land lawfully purchased by him from defendant No. 5 and not to any hostile assertion of title over the remaining land belonging to defendant No. 5. The said admission also completely belies the plaintiffs' plea that they had remained in continuous possession of the suit property for the preceding 35 years or, in any event, for the period prescribed in law for perfecting title by adverse possession.

8.13.1 Further, it is important to note here that there is also a legal maxim ***Animas Possidendi*** which means the

intention to possess property as one's own. In a claim of adverse possession, the claimant must establish *animus possidendi*, namely, the intention to possess the property to the exclusion of the true owner. It is held by the Hon'ble Apex Court in the case of **Chatti Konati Rao vs. Palle Venkata Subba Rao** ⁶(Bench of Two Hon'ble Judges), in para:15 as under:

15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed....(emphasis supplied)

8.14 Equally significant is the contention advanced by the learned advocate for defendant Nos. 1 to 4 that plaintiff No. 1 himself is an attesting witness to the registered sale deed dated 30.09.2003 executed by defendant No. 5 in favour of defendant Nos. 1 to 4 in respect of a portion of the suit land. A perusal of the registered sale deed produced at Exh. 66 leaves no manner of doubt that plaintiff No. 1 has subscribed his signatures thereto as an attesting witness. The recitals contained therein specifically record that defendant No. 5, as

6 (2010) 14 SCC 316

the vendor, was in lawful possession of the suit land on the date of execution of the sale deed and that vacant and peaceful possession of the portion conveyed thereunder was simultaneously delivered to defendant Nos. 1 to 4.

8.15 It further emerges from the record that the signatures of plaintiff No. 1 appear on pages 5 and 6 of the registered sale deed as an attesting witness, thereby establishing that he had knowledge of the execution of the transaction. It is true that an attesting witness cannot be presumed to have certified the correctness of every recital contained in the document. Nevertheless, the conduct of plaintiff No. 1 in voluntarily attesting the sale deed, without asserting any adverse claim or raising any objection to the transaction, constitutes a significant contemporaneous circumstance. If, as now pleaded, the plaintiffs had already been in continuous, peaceful, open, exclusive and hostile possession of the suit land for the preceding 35 years, it would have been wholly unnatural for plaintiff No. 1 to lend his attestation to a transaction wherein defendant No. 5 represented himself to be in possession of the suit land and purported to deliver possession of the portion sold to defendant Nos. 1 to 4, without any protest or reservation. His contemporaneous conduct is, therefore, manifestly inconsistent with the plea now advanced in the present suit.

8.15.1 The admissions made by plaintiff No. 2 in the earlier proceedings and the contemporaneous conduct of plaintiff No.1

in voluntarily attesting the registered sale deed are required to be appreciated cumulatively. Both these circumstances are irreconcilable with the plaintiffs' present plea that they had remained in continuous, open, exclusive and hostile possession of the suit property for the preceding 35 years. The plaintiffs have thus adopted mutually destructive and inconsistent stands regarding the nature and extent of their possession. It is a settled principle of law that a litigant cannot be permitted to approbate and reprobate or to blow hot and cold in the same breath. Such inconsistent stands materially impair the credibility of the plaintiffs' version and render their plea of adverse possession wholly unreliable.

8.15.2 Further, in the case of **Karam Kapahi v. Lal Chand Public Charitable Trust**⁷, the Hon'ble Supreme Court has observed that admissions, whether in pleadings or otherwise, are the best evidence against the party making them, and such admissions decisively bind the maker unless satisfactorily explained. In the present case, neither the admission made by plaintiff No. 2 nor the contemporaneous conduct of plaintiff No. 1 has been satisfactorily explained. On the contrary, both stand in direct conflict with the case pleaded in the present suit. These circumstances, therefore, strike at the very root of the plaintiffs' case and substantially discredit their plea of having possession over suit land for last 35 years or perfected title to the suit property by adverse possession. They equally demonstrate that the plaintiffs have failed to prove the

⁷ (2010) 4 SCC 753

foundational facts necessary to sustain their claim of having perfected title to the suit property by adverse possession.

8.16 Now adverting to the oral evidence led by the plaintiffs, it transpires that plaintiff No.2 has filed his examination-in-chief by way of affidavit at Exhibit 54, wherein he has supported the averments made in the plaint. However, during the course of his cross-examination, he has admitted that:

"આ સર્વે નંબર ૧૦૯ ની મીલકતના મુળ માલીક તે પ્રતિવાદી નં.૫ નાઓ હતા. એ વાત ખરી છે કે, આ જમીન તેઓએ એન.એ. કરેલી છે અને આ સર્વે નં. ૧૦૯ પૈકીની ૩૦૫૩.૬૨ ચો.મી.ની જગ્યામાંથી ૧૮૧૩.૭૬, ચો.મી.ની જગ્યા પ્રતિવાદી નં.૫ નાએ બોમ્બે મીનરલને વેચાણ કરેલી."

"એ વાત ખરી છે કે, બોમ્બે મીનરલે ૨૩૪૬ ચો.મી. જગ્યા તા.૩૦-૦૯-૨૦૦૩ ના રોજ હસીનાબેન બીબી ચાકુબ ખોટાને વેચાણ આપેલી. એ વાતની મને ખબર નથી કે, બોમ્બે મીનરલ તેમજ હસીનાબીબીનાઓએ ખરીદ કરેલ જમીન ઈમરાન ઈશાક ચીંતામણને વેચાણ આપેલી. એ વાત ખરી છે કે, અમો ફોદા ચીપ્સ ઈન્ડસ્ટ્રીએ ખરીદ કરેલી જગ્યા મદારા અફસાનાબાનુ ઈરફાનને ૨૦૧૯-૨૦૨૦ માં વેચાણ આપેલી છે."

"એ વાતની મને ખબર નથી કે, પ્રતિવાદી નં.૧ થી ૪ નાએ રજીસ્ટર નં.૫૧૯/૨૦૦૩ થી તા.૩૦-૦૯-૨૦૦૩ ના રોજ

૮૨૬૫.૪૪ ચો.મી. જમીન પ્રતિવાદી નં.૫ પાસેથી વેચાણ
રાખેલી છે."

- 8.17 The aforesaid admission clearly reveals that several transactions in respect of different portions of the suit land have taken place during the period for which possession is claimed by the plaintiffs. It further emerges that various persons, including defendants Nos.1 to 4, have acquired title and interest in portions of the suit land. Thus, the title to different portions of the suit land has been transferred by defendant No.5 in favour of defendants Nos.1 to 4 and certain other persons who have not been impleaded as parties to the present suit.
- 8.18 Despite the aforesaid position, the plaintiffs have chosen to institute the present suit only against the present defendants and have not impleaded all those persons who have acquired title to portions of the suit land by purchasing the same. Therefore, it is evident that all the necessary parties, namely, the persons who have purchased portions of the suit property, have not been impleaded in the present proceedings. In a suit seeking a declaration of ownership by adverse possession against the true owners of the property, the presence of all such purchasers is indispensable for the complete and effective adjudication of the dispute. The non-joinder of these necessary parties, therefore, constitutes a serious infirmity and is a significant circumstance that militates against the plaintiffs' claim.

- 8.19 Further, the plaintiffs have failed to disclose the names and particulars of the other purchasers to whom defendant No. 5 has sold the other portions of the suit land. In case of **M.Radheshyamlal Versus V.Sandhya And Another Etc.**⁸ the Hon'ble Apex court has held that

When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint

- 8.20 So far as the relief of permanent injunction for protection of possession is concerned, it is not in dispute that defendant Nos. 1 to 4 are the true owners of the portion of the suit land purchased by them under the registered Sale Deed dated 30.09.2003. The law is well settled that a decree of permanent injunction cannot be granted against the true owner at the instance of a person whose claim to title has failed. In **Prahladji Chenaji (Dead) through LRs v. Maniben Jagmalbhai (Dead) through LRs**,⁹ the Hon'ble Supreme Court held that once the title dispute is decided against the plaintiff

8 2024 (0) AIJEL-SC 73408

9 2022 (0) AIJEL-SC 68485

and the defendant is found to be the true owner, the plaintiff is not entitled to a decree of permanent injunction. In the present case, this Court has already recorded a finding that the plaintiffs have failed to establish their plea of acquisition of title by adverse possession. Consequently, defendant Nos. 1 to 4, being the true owners of the suit land, cannot be restrained by a decree of permanent injunction from exercising their lawful rights over the property.

- 8.21 As per the settled principle, there are three aspects for all litigant in civil suit to prove his case. plaintiff has to prove his pleading with necessary proofs. The same are as follows:

1 Pleading	2 Proof	3 Proved
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It is relevant to mention here the legal maxim ***Ei incumbit probatio qui dicit, non qui negat*** which means that the burden of proof lies upon the person who asserts a fact and not upon the one who denies it.

- 8.22 In view of the foregoing discussion, this Court is of the considered opinion that the plaintiffs have failed to establish, by cogent and convincing evidence, that they have been in possession of the suit land for the past 35 years, or that their possession has been continuous, uninterrupted, open, peaceful, and hostile for the statutory period so as to perfect title by adverse possession. Consequently, the plaintiffs have failed to discharge the burden of proof cast upon them. Accordingly, I answer **Issue No. 1 to 3** in the '**Negative**'.

9. **Issue No.4 :- What order and Decree :-** In view of the foregoing discussion and finding, following final order is passed regarding **Issue No.4** in the interest of justice.

-:: FINAL ORDER ::-

- (a) The present suit of the plaintiffs is hereby dismissed.
- (b) Each party to bear its own cost of suit.
- (c) Decree be drawn accordingly.

Judgment pronounced on this **10th** day of **July, 2026** in the open Court.

Date : 10.07.2026

Place: Chhota Udepur

(A.H.Makrani)

Principal Senior Civil Judge

Chhota Udepur

UIC: GJ01137

V.N.Tadvi