

**FIRST WORKSHOP FOR THE YEAR 2024 ON THE TOPIC  
OF “CIVIL SUITS – AN OVERVIEW”**

**DATED: 30-03-2024.**

**PAPER PRESENTATION ON DECLARATION AND INJUNCTION  
SUITS**

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## INTRODUCTION

The General power vested in the courts in India under the Civil Procedure Code is to entertain all the suits of a civil nature, excepting suits of which cognizance is barred by any enactment for the time being in force. However, courts do not have the general power of making declarations except in so far as such power is expressly conferred by statute. The utility and importance of the remedy of declaratory suits are manifest, for its object is to prevent future litigation by removing existing cause of controversy. It is certainly in the interest of the state that this jurisdiction of court should be maintained, and the causes of apprehended litigation respecting immovable property should be removed. However, a declaratory decree confers no new right, it only clears up the mist that has been gathering round the plaintiff's status or title.

**Chapter VI of the Specific Relief Act 1963 provides for Declaratory Decrees** under Section 34 of the Act and is the present law which governs declaratory reliefs in India. It reads:

➤ **34. Discretion of Court as to declaration of status or right:**

*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

**PROVIDED** that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

**Explanation:** A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

***Requirements Relief of Declaratory Decree:***

- The **Plaintiff has to prove that the defendant has denied or is interested in denying the character or title** of the Plaintiff and the Plaintiff has to establish that there must be some present danger to his interest.
- In the **State of M.P. v. Khan Bahadur Bhiwandiwala and Co. (1971)** the court observed that to obtain the relief of declaration the plaintiff must establish that -
  - He at the time of the suit is entitled to any legal character or any right to any property.
  - The defendant had denied or was interested in denying the character or the title of the plaintiff.
  - The declaration asked for was a declaration under which the plaintiff was entitled to legal character or to a right to property.
  - The plaintiff was not in a position to claim further relief than a bare declaration of his title. Since declaration is an equitable remedy, the court still has discretion to grant or refuse relief depending on the circumstances of each case.

**LEGAL CHARACTER or LEGAL STATUS:**

A man's status or legal status or 'legal character' is constituted by attributes, which the law attaches to him in his individual or personal capacity, the distinctive mark or dress as it were, with which the law clothes him. Legal character means a position recognized by law. According to Holland the chief variety of status among natural persons may be referred to the following causes: sex, minority, mental defect, rank, caste, official position, civil death, illegitimacy, profession, etc. Any person who has been denied of the legal character and not necessarily the legal right may sue against the person denying. A legal character constitutes of the attributes that the law attaches to him in his personal capacity such as marriage, adoption, divorce, legitimacy etc. Thus, the character or status should have been conferred by law on persons i.e. created by birth and not by contract. **In Samar Kumar Roy (died) through LR (Mother) vs. Jherna Bera, [AIR 2018 SC 334]**, the Hon'ble Supreme Court held that "the High Courts have uniformly taken the view that a suit

for declaration of a legal character filed under Section 34 of the Act can be filed by a third party plaintiff, or continued at the behest of the legal representative of a dead plaintiff'. It also further held that "a suit for declaration as to legal character which includes the matrimonial status of parties to a marriage when it comes to a marriage which allegedly has never taken place either de jure or de facto, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law".

**Chapter VIII of the Specific Relief Act 1963 provides for Perpetual Injunctions under section 38 of the Act.**

Section 38. Perpetual Injunctions when granted:

1. Subject to the other provisions contained in or referred to by this chapter, a perpetual injunction may be granted to the Plaintiff to prevent the breach of an obligation existing in his favor, whether expressed or by implication.
2. When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II.
3. When the defendant invades or threatens to invade the Plaintiff's right to or enjoyment of property, the Court may grant a perpetual injunction in the following cases, namely:-
  - where the defendant is trustee of the property for the plaintiff;
  - where there exist no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion,
  - where the invasion is such that the compensation in money would not afford adequate relief;
  - where the injunction is necessary to prevent a multiplicity of proceedings.

**Mandatory injunctions:**

If an Injunction forbids or prohibits the commission or continuance of an act like an act of trespass etc. It is known as Prohibitory or Mandatory Injunction. The relief of mandatory injunction is a discretionary relief and can be granted in the circumstances specified under section 39 of the Specific Relief Act, 1963. Section 39 of The Specific Relief Act deals with the relief of Mandatory Injunction, it states as under : “When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.” Mandatory Injunctions are contemplated under section 39 of the Specific Relief Act, and is granted where it is necessary to prevent the breach of an obligation of the erring party, and the party may be compelled to perform certain acts. Such Injunction can be granted under following circumstances:

1. There must be an obligation on part of the defendant to perform certain acts the breach of which, must be alleged by the plaintiff.
2. Such relief must be enforceable by the court.

➤ **Person Entitled to declaration and injunctive relief:**

- Person who is having Legal character and such **character recognized by law.**
- Person must have a right in property.
- It is **attached to an individual’s legal status** which shows one’s capacity for the title or character.
- In the case of **Hiralal v. Gulab (1953)**, it was observed that a variety of status among the natural person, can be referred under declaration e.g., **sex, minority, rank, caste, tribe, profession, etc.**
- The right to any property mentioned under **Section 34 of SRA** must be a right that existed at the date of the suit even if the enjoyment of such right is deferred e.g. Right of a Reversioner.
- The courts have made a **distinction between "right to property" and "a right in property"**.
- It has been held that to claim a declaration the Plaintiff need not show a right in property.

- In the case of **Tarak Chandra Das v. Anukul Chandra Mukherjee (1946)**, the court held that a declaration might be sought regarding a contingent right, it was further said that the Court had absolute discretion to refuse relief if considered the claim to be too remote or the declaration, if given, would be ineffective.
- to prevent the breach of an obligation existing in his favor, whether expressed or by implication.
- When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II.
- When the defendant invades or threatens to invade the Plaintiff's right to or enjoyment of property, the Court may grant a perpetual injunction in the following cases, namely:-
  - where the defendant is trustee of the property for the plaintiff;
  - where there exist no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion,
  - where the invasion is such that the compensation in money would not afford adequate relief;
  - Person who compels to perform certain acts, when an unlawful act obstructs the Lawful enjoyment of Plaintiff's rights over property. Eg. Removal of unlawful constructions made over the property of Plaintiff.

***When Suit for Declaration Does Not Lie:***

- A suit for declaration would not lie in all cases, some of which are enumerated as follows:
  - A **negative declaration cannot be allowed** (E.g., A declaration that the plaintiff did not infringe the trademark of the defendant).
  - A **suit for a declaration during the testator's lifetime that the will is invalid.**
  - **No suit** for declaration lies to **set aside a succession certificate granted under Act XXVII of 1860** (This act is replaced by the present-day legislation – The Indian Succession Act, 1925).

- **No one can ask for a declaration of a nonexistent right** as in the case of succession.

### **CONSEQUENTIAL RELIEF:**

There may be real dispute as to the plaintiff's legal character or right to property, and the parties to be arrayed, yet the Court will refuse to make any declaration in favour of the plaintiff, where able to seek further relief than a mere declaration, he omits to do so. The object of the proviso is to avoid multiplicity of suits. What the legislature aims at is that, if the plaintiff at the date of the suit entitled to claim, as against the defendant to the cause some relief other than and consequential upon a bare declaration of right, he must not vex the defendant twice; he is bound to have the matter settled once and for all in one suit.

### **IT IS A DISCRETIONARY RELIEF:**

Even though if the essential elements are established, yet it is a discretion of the Court to grant the relief. The relief of declaration cannot be claimed as a matter of right. In cases where the necessary parties are not joined the Court can reject the suit for declaration.

Under section 34 of the Act, the discretion which the Court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. The Court has to consider the nature of obligation in respect of which performance is sought. No hard and fast rule can be laid down for determining whether this discretionary relief should be granted or refused. The exercise of the discretion depends upon the chances of each case. A remote chance of succeeding an estate cannot give a right for obtaining a declaration that alienation by a limited owner is void.

### **Limitation governing to seek declaration and injunctive relief:**

<b>Article</b>	<b>Description</b>	<b>Period of Limitation</b>	<b>Time from which period begins to run</b>
Article. 56	To declare the forgery	Three years	When the issue or

	of an instrument issued or registered.		registration becomes known to the plaintiff.
Article. 57	To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Three years	When the alleged adoption becomes known to the plaintiff.
Article. 58	To obtain any other declaration.	Three years	When the right to sue first accrues.
Article. 64	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years.	The date of dispossession.
Article. 65	For possession of immovable property or any interest therein based on title.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.
Article. 113	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.
Article. 135	For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.
Article. 136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	1 [When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of

		<p>money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:</p> <p>Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</p>
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### **When a suit for declaration and injunction lies?**

Any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested to deny his title to such character or right.

***The Hon'ble Supreme Court has in the matter of Anathula Sudhakar vs. P Buchi Reddy & Ors, clarified the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief which reproduced as under:***

Para 11.1- When a Plaintiff is in lawful or peaceful possession of a property and such possession is disturbed or threatened by the defendant, a suit for injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a

better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

Para 11.2- Where the title of the Plaintiff is not disputed, but he is not in possession his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of his possession cannot seek the relief of injunction simpliciter, without claiming the relief for possession.

Para 11.3- Where the Plaintiff is in possession but his title to the property is dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the Plaintiff will have to sue for declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

- In view of the above judgment any person can file a suit for declaration and injunction with regard to any legal character or rights as to any property against any person who is denying or interested to deny his title or such character. In a suit for seeking declaration with regard to a right or title in respect of property along with consequential injunction the Plaintiff will have to pray for a declaration as contemplated under section 34 of the Specific Relief Act, 1963, an interim injunction during the pendency of the suit under order 39 of the Civil Procedure Code 1908 and a mandatory injunction under section 38 of the Specific Relief Act, 1963.

***The Hon'ble Supreme Court in the matter of Dalpat Kumar Vs Prahlad Singh and Ors has provided the manner in which a temporary injunction can be granted under order 39 rule 1(c) of the Civil Procedure Code 1908 in a suit for Declaration and Injunction which is reproduced as under:***

Para 4- Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit it is proved by affidavit or otherwise, that the defendant threatens to dispose the

plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court otherwise may by order grant temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as court thinks fit until the disposal of the suit or until further orders. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. It is settled law that grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that,

1. There is serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the Plaintiff/defendant;
2. The courts interference is necessary to protect the party from the species of injury. In other words, irreparable damage or injury would ensue before the legal right would be established in trial and
3. That comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than would be likely to arise from granting it.

Based on the aforesaid principles the **Hon'ble Supreme Court in the matter of Lakshmi alias Bhagyalashmi & Anr vs. E. Jayarani** set aside the order of the High Court which had in turn set aside the order of the Additional Judge City Civil Court which had granted interim injunction under order 39 Rule 1 and 2 of the Civil Procedure Code. On the basis of the pleadings and submissions of the Court observed that the Additional Judge City Civil Court has rightly granted interim injunction under order 39 rule 1 and 2 by categorically observing that the respective rights of the parties shall be decided at the time of final disposal of the Suit.

In a suit for declaration of rights or character and injunction the Plaintiff will have to substantiate/prove his rights as claimed thereof. Accordingly, the Court may in its

discretion award the rights so prayed along with permanent injunction if deemed fit and necessary in the facts of the case. Under section 35 of the Specific Relief Act, 1963 the declaration made under section 34 by any court will only be binding on the parties to the suit or any persons claiming through them respectively as a declaration under section 34 is a right in Personam and not a right in Rem. (**SNP Shipping Service Pvt Ltd vs. World Tanker Carrier Corporation**) AIR 2000 BOM 34.

➤ **Section 35 of Specific Relief Act, 1963 - Effect of Declaration:**

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

- The present provision lays down that the **declaration made under Section 34 is binding on:**
  - The **parties to the suit.**
  - **Persons claiming through them.**
  - **Trustees**, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.
- So, declaratory decree is “in personam” and not “in rem”. Thus a declaratory decree binds (a) the parties to the suit; (b) persons claiming through the parties; (c) where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. It is only the parties to the suit and the representatives in interest, but not the strangers who are bound by the decree. By virtue of this Section, a judgment is binding only if it is inter parties, which is not in *rem*, and does not operate as *res judicata*, may be admissible under Section 13 of the Evidence Act.

- **Person in possession of land is dispossessed:** When a person in possession of land has been dispossessed and sues to Recover it, the fact of his previous possession will not entitle him to a decree unless he sues under section — 9 of the Specific Relief Act (I of 1887) within six months of the date of dispossession. If he sues after the six months have expired, he must prove *prima facie* title, as was held in **Hanmantrav & another**

**vs. The Secretary of State for India, ILR (1901) 25 Bom 287.** 1. Possession is evidence of title, and that the plaintiff, who proves such possession and subsequent disturbance, shifts the burden of proof on the defendant when the *prima facie* title is made out. 2. When no such *prima facie* title is made out by the plaintiff who asks for a declaratory decree, he cannot obtain that decree on the mere ground that he was in possession and the defendant had no title. 3. Mere wrongful possession is insufficient to shift the burden of proof.

➤ **Section 110 of the Evidence Act:** Two conditions to satisfy section 110 of the Evidence Act:

- the possession of the plaintiff is not prima facie wrongful.
- the title of the defendant is not proved. A possession is not within the meaning of section 110, unless it is a possession according to title, would be to render that section meaningless, and to introduce a doctrine subversive of the established principles of property law.

➤ **Doctrine of possession follows title:**

- The maxim “possession follows title” is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else.
- **L.N. Aswathama And Anr vs P. Prakash, (2009) 13 SCC 229**, it was held that in law, possession follows title. The plaintiffs having established title to the suit property, will be entitled to decree for possession, unless their right to the suit property was extinguished, by reason of defendant being in adverse possession for a period of twelve years prior to the suit.
- In **Nazir Mohammed vs. J.Kamala, (2020) 19 SCC 57**, it was held that a decree of possession does not automatically follow a decree of declaration of title and ownership over property. It is well settled that, where a Plaintiff wants to establish that the Defendant’s original possession was permissive, it is for the Plaintiff to prove this allegation and if he fails to do so, it may be presumed that possession was adverse, unless there is evidence to the contrary.

## JUDICIAL PRECEDENTS:

1. In **Samar Kumar Roy (died) through LR (Mother) vs. Jherna Bera**, [AIR 2018 SC 334], the Hon'ble Supreme Court held that "*the High Courts have uniformly taken the view that a suit for declaration of a legal character filed under Section 34 of the Act can be filed by a third party plaintiff, or continued at the behest of the legal representative of a dead plaintiff*". It also further held that "*a suit for declaration as to legal character which includes the matrimonial status of parties to a marriage when it comes to a marriage which allegedly has never taken place either de jure or de facto, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law*".
2. In **Mallikarjunaiah vs. Nanjaiah and others**, [2019 (3) ALT 277 (SC)], the Hon'ble Supreme Court held that "*mere continuous possession howsoever long it may have been qua its true owner is not enough to sustain the plea of adverse possession unless it is further proved that such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner*".
3. In **Panakanti Muthyam Rao @ Venkata Muthyam Rao vs. State of Telangana, rep. by its Principal Secretary, Revenue Department, Hyderabad and others**, [2019 (3) ALT 343 (TS)], the Hon'ble High Court held that "*irrespective of whether a judgment is a reasoned one or not, it has the force of law as long as it remains in operation*". It also further held that "*a declaratory decree need not be executed and it would continue to operate with full force unless set aside*".
4. In **Ravinder Kaur Grewal vs. Manjit Kaur**, [2019 (5) ALT 38 (SC)], the Hon'ble Apex Court held that "*a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing*".

*person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."*

5. *In Jharkhand State Housing Board v. Didar Singh, (2019) 17 SCC 692 Hon'ble Apex Court held in para 11. "It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."*
6. *Grant of declaratory relief under the Specific Relief Act is discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction, Kandla Port v.Hargovind Jasraj, (2013) 3 SCC 182.*

7. *Suit seeking declaration of title of ownership of property, without seeking possession, when plaintiff not in possession, is not maintainable, **Union of India v. Ibrahim Uddin, (2012) 8 SC 148.***
8. *In a case where claim of ownership of property is subsequent to its acquisition, where acquisition proceedings attained finality, declaratory remedy of ownership cannot be granted. Suit of such nature cannot be filed, **Y.P. Sudhanva Reddy v. Karnataka Milk Federation, (2018) 6 SCC 574.***
9. *Suit for declaration of legal character of parties in regard to their alleged marriage can be filed under Section 34 by plaintiff and on his death can be continued by his LR at behest of plaintiff. Suit having not been filed under Hindu Marriage Act or Special Marriage Act, civil suit under Section 34 not barred by Sections 7 and 8 of Family Court Act, **Samar Kumar Ray v. Jharna Bera, (2017) 9 SCC 591.***
10. *Suit for permanent injunction to protect possession of one from interference by the other, between two private parties in respect of land which falls within State Ceiling Law without impleading State as party-defendant, liable to be dismissed, **Agnigundala Venkata Ranga Rao v. Indukuru Ramachandra Reddy, (2017) 7 SCC 694.***
11. *A trespasser cannot claim injunction against the owner, Tamil Nadu **Housing Board v. A. Viswam, (1996) 8 SCC 259.***
12. *Ordinarily injunction cannot be issued against a true owner or title holder in favour of a trespasser or a person in unlawful possession. However, injunction may be granted even against true owner of property, but only when person seeking relief is in lawful possession and enjoyment of property and also legally entitled to be in possession, and cannot be dispossessed, except by due process of law, **Padhiyar Prahladi Chenaji v. Maniben Jagmalbhai, (2022) 12 SCC 128.***

13. *Measurement record at the survey settlement cannot be the proof fo title over the land as is held in **State of Gujarath vs. Mali Ranchchod Kheta and others, 1996 (2) GLR 501.***
14. *Where the plaintiff seeks for a declaration of title, he mus prove it and he cannot take advantage of the weakness of the defendants, as is laid down in **R.K.Madhuryyajit Singh vs. Takhellambam Abung Singh, AIR 2001 Gau 181.***
15. *Mere denial of the title of the plaintiff by the defendant does not entitle him to get an injunction in his favour despite it may be sufficient for him to get a declaration in his favour. To get injunction, plaintiff must further establish that the defendant is trying to distrub his possession and enjoyment. Mere assertion of title would not entitle him to get an injunction, as was held in **Paramatna vs. Sampatti, AIR 1968 ALL 184.***
16. *In a suit for declaration and injunction, if the plaintiff proceeds on the ground that he is in possession and if the Court finds that the plaintiff is entitled for declaration but not for injunction as he was not in possession, the Court may grant a decree for declaration and for possession and ask the plaintiff to pay court-fee on the relief of possession. But it would be more appropriate if the Court asks the plaintiff to amend the plaint from that of injunction into one of possession, as was held in **Md. Aftabuddin vs. Chandan Bilasini, AIR 1977 Orissa 69.***
17. *It is to be seen that plaintiff has not examined any independent witness to prove his continuous possession since 1951 to 1976 i.e., the from the date of purchase till his alleged dispossession, and thus in view of these circumstances, it cannot be said that the plaintiff proved his possession over the suit land. Further, even assuming for a moment, that he was in possession of the suit property, his possession has to be termed as 'illegal' and as per the case of the respondent–Corporation, the encroachments were removed in accordance with Land Encroachment Act. If the plaintiff was really in possession, he would have challenged the proceedings initiated*

*under the Land Encroachment Act, but the plaintiff has not filed any documentary proof to show that he challenged the said proceedings, as was held in Mohd. Syed Bin Mubarak by L.Rs. and others Vs. A.P.S.R.T.C. rep. by its General Manager, 2023 (6) ALT 69.*

18. *Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession, K.M. Krishna Reddy Vs. Vinod Reddy and another, 2023 (6) ALT (SC) 1 (DB).*
19. *Revenue records neither creates nor extinguishes title to the property nor has any presumptive value on the title such entries are relevant only for the purpose of collecting land revenue. Mutation entry does not confer any right title or interest in favour of person and the object is only for fiscal purpose, held in Jitendra Singh vs State of M.P. 2021 SCCOnline SC 802*
20. *It was observed in Medilonda Venkata Murali Krishna Vs. M/s. Venspra Entrprises Vijawada Firm rep. by its Managing Partner, Pothina Venkateswara Swamy and others, 2023 (3) ALT 423 (DB), GANNAMANENI RAMAKRISHNA PRASAD and U. DURGA PRASAD RAO, that referring to its own decision in Yallowwa v. Shantavva [MANU/SC/0016/1997 = (1997) 11 SCC 159] the Apex Court held that the personal cause of action dies with the person but all the rest of causes of action which have an impact on proprietary rights and social legal status of the parties cannot be said to have died with such a person.*

### **CONCLUSION:**

If the plaintiff is not in possession, the suit for mere declaration would not be maintainable. Presumption as to possession and title, is concerned, it applies to all kinds of lands where the plaintiff proves his title, but not any act of possession and the defendant does not prove possession except unnoticed user of small part of land, the presumption that possession follows title, will come into play. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse

to the Government. In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government.