DISTRICT COURT : BHANDARA
WORK-SHOP
SUMMARY/GIST OF PAPERS OF
THIRD WORKSHOP HELD ON 15TH MARCH,2015

SUBJECTS :-

1. **COMPENSATION TO VICTIMS (SECTIONS 357, 357-A AND 357-B OF CODE OF CRIMINAL PROCEDURE).**

2. ARTICLE 64 AND ARTICLE 65 OF LIMITATION ACT.

The workshop on the subjects "compensation to victims (sections 357, 357-A and 357-B of Code of Criminal Procedure) and Article 64 and Article 65 of Limitation Act" was held on 15-03-2015 at District Court, Bhandara under the Chairmanship of Hon'ble Principal District and Sessions Judge, Bhandara. The discussion was opened by reading the summary of paper on the subject "compensation to victims (sections 357, 357-A and 357-B of Code of Criminal Procedure)". Thereafter the discussion on the topic and case laws relating to the subject was made. After completion of discussions on criminal subject, summary of another paper on the subject "Article 64 and Article 65 of Limitation Act " was read. Thorough discussions were made on both the subjects. Relevant case laws were discussed. The difficulties raised by the Judicial Officers were discussed and solved.

Que.No. 1 : Whether Magistrate can award any sum as compensation ?

Answer : S.357(3)-No limit is mentioned in the sub-section, and therefore, a Magistrate can award any sum as compensation- Of Course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant- Thus, even if the trial for cheque dishonour was before a Court of Magistrate of First Class in respect of a cheque which covers an amount exceeding Rs.5,000/- the Court has power to award compensation to be paid to the complainant. ***(AIR 1999 SC 3762)***

Que.No. 2 : Whether compensation can be awarded to the victim, if the accused is acquitted ?

Answer : Yes, the Hon'ble Supreme Court in ***Bodhisatva Gautam v. Subhra Chakraborty's, AIR 1996 SC, 922*** ruled that compensation to victim under such conditions will be justified even when the accused was not convicted.

Que.No. 3 : Whether interim compensation can be awarded to the victim ?

Answer : Yes, as per ruling cited Supra.

Que.No. 4 : When there is no issue of adverse possession before Trial Court and first appellate Court, whether second appellate Court can give its finding on it ?

Answer : No, Second appellate Court cannot for first time give a finding on it. ***(AIR 1998 SC 1132)***

Que.No. 5 : Whether actual physical possession by claimant is necessary for claiming adverse possession ?

Answer : Actual physical possession by the claimant is not necessary. Fact that property in question was in possession of tenants would be of no consequence. ***(Smt. Chandrakantaben J.Modi v. Vadilal Bapalal Modi. AIR 1989 SC 1269)***

Que.No. 6 : Whether termination of licence can enable licennsee to claim adverse possession ?

Answer : Mere termination of the licence of a licensee does not enable the licensee to claim adverse possession, unless and until he sets up a title hostile to that of the licensor after termination of his licence. It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that

the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that itself cannot enable the licensee to claim title by adverse possession. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough. ***(Gaya Prasad Dikshit v. Dr. Nirmal Chander. AIR 1984 SC 930)***

Que.No.7 : Whether adverse possession can be claimed without making any plea in the pleadings ?

Answer : With regard to the plea of adverse possession, the appellant having been successful in the two courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely. It is true that some evidence, basically of Municipal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court caught the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was rightly reversed by the High Court requiring no interference at our end.

DISTRICT COURT, BHANDARA
THIRD WORKSHOP

SUMMARY OF LEGAL WORKSHOP PAPER ON THE SUBJECT "COMPENSATION TO VICTIMS(SECTIONS 357,357-A AND 357-B OF CODE OF CRIMINAL PROCEDURE)"

Initially, the criminal justice system in India was focused on punishment as part of the crime without much attention on the suffering of victims of crime. The rights of prisoners were protected even after their

conviction whereas little concern was shown for the rights of victims of crime.

Expressing concern for the plight of victims of crime Hon'ble Justice V.R. Krishna Iyar commented " the criminal law in India is not victim oriented and the suffering of victim, often immeasurable are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victim."

No concern is shown for the poor victim of crime who is left to suffer the aftermath of his victimisation except awarding him monetary compensation in certain cases. In response to the UN Declaration, in India the Code of Criminal Procedure was amended in 2008 as to widen the definition of 'victim' as contained in Section 2(wa) of the Code. The term victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and includes his/her guardian or legal heir.

The legislative framework regarding compensatory relief to victims of crime in India may be traced to the Code of Criminal Procedure. The Probation of Offenders Act, 1958 and the Motor Vehicles Act, 1988 also contain provisions for award of compensation to victims of crime. Besides these legislations, the constitutional scheme for compensatory victim is to be found in the form of decisions of the Supreme Court while interpreting fundamental rights or directive principles of State Policy or Articles 32, 136 and 142, when the Court may direct payment of compensation to victim's of crime.

Compensatory Provisions in Cr.P.C.

Sub-sections (1) and (3) of Section 357 of Cr.P.C. vest power in the trial Court to award compensation to victim of crime whereas similar power is conferred to the appellant and revisional court under sub-section (4).

The Court may appropriate the whole or any portion of fine recorded from the offender to be paid as compensation to the victim of crime.

The compensation ordered to be paid under Section 357(1) may be for costs, damage or injury suffered or loss caused due to death or monetary loss incurred due to theft or destruction of property etc.

Sub-section (3) further empowers the court, in its discretion, to order the accused to pay compensation to victim of his crime, even though no fine has been imposed on him.

Under Section 357 an order of compensation can be passed by the trial Court, appellate Court or by the High Court or Court of Session in revision, at the time of passing judgment, out of the fine imposed, in four cases.

(a) to the complainant, for meeting expenses properly incurred in the prosecution;

(b) to any person, who has suffered loss or injury by the offence, when he can recover compensation in a Civil Court.

(c) to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof;

(d) to a *bona fide* purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.

Sub-section (3), however, enables the Court to order payment of compensation even in cases where substantive sentence of imprisonment only is awarded.

The section must be taken to exclude those expenses in regard to which the Court has no discretion e.g. payment of Court and process

fees.

The imposition of fine is a condition precedent to making an order under sub section (1). ***(Pamula Saraswathi v. State of A.P., AIR 2003 SC 2416)***. Compensation can be allowed only out of "whole or any part of the fine recovered.". Any person is entitled to compensation for the loss or injury caused by the offence, and it includes the "wife, husband, parent and child" of the deceased victim. In awarding such compensation, the Court is to take into consideration various factors such as capacity of the accused to pay, the nature of the crime, the nature of the injury suffered and other relevant factors. ***(Sarwan Singh, 1978 Cr LJ 1598 : AIR1978 SC 1525)***

The payment of compensation must be reasonable. The quantum of compensation depends upon facts, circumstances, the nature of the crime, the justness of the claim of the victim and the capacity of the accused to pay. If there are more than one accused, quantum may be divided equally unless their capacity to pay varies considerably. Reasonable period for payment of compensation, if necessary by instalment, may be given. Where power of speech had been impaired permanently compensation to the victim was enhanced. ***(Hari Kishan and State of Haryana v. Sukhbir Singh, 1989 Cr LJ 116 : AIR 1988 SC 2127)***. Where a homeopath operated a lady for causing abortion and the lady died within few hours, the Supreme Court reduced the sentence of imprisonment but enhanced fine from Rs.5,000 to one lac, which was ordered to be deposited in a nationalised bank in the name of the minor son of the deceased. ***(Jacob George (Dr.) v. State of Kerala, (1994) 3 SCC 430 : 1994 Cr LJ 3851 (SC)***

The power to award compensation under section 357(3) is not ancillary to other sentences but it is in addition thereto. ***(Balraj v. State of U.P. AIR 1995 SC 1935 : 1995 Cr LJ 3219)***

Compensation for infringement of right to life under Art.21 is an appropriate public law remedy. It does not bar any additional claim for

compensation under the private law or u/s 357, Cr.P.C. ***(Sube Singh v. State of Haryana, AIR 2006 SC 1117 : 2006 Cr LJ 1242)***

In ***Bhim Singh v. State of J. & K.,AIR 1986 SC 498***, the Apex Court observed that "compensation for illegal arrest and detention is an area which unearthed new doctrines pertaining to compensatory jurisprudence in India. In this case, the appellant was

a Member of the J.& K., Legislature Assembly who was arrested by the police in connivance with the local A.D.M. while on his way to attend the assembly session. He was maliciously and deliberately arrested and detained in police custody in order to prevent him from attending the assembly session. Allowing the petition, Justice Chinnappa Reddy, speaking for the Apex Court observed that where a person has been arrested and detained with a malicious and mischievous intent and his legal and constitutional rights are invaded, the malice and the invasion is not washed away by his being set free. The Court has the jurisdiction to order compensation to the victim. The State was therefore, directed to pay a compensation of Rs.50,000/- to the petitioner for the violation of his legal and constitutional right.

The question of award of compensation to a victim of rape came up for adjudication before the Supreme Court in the historic ***Bodhisatva Gautam v. Subhra Chakraborty's, AIR 1996 SC 922***, case. The Court in this case noted :

> *"Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is, therefore, a most dreaded crime. It is violative of the victim's most cherished right, namely right to life, which includes right to live with human dignity as contained in Art. 21 of the Constitution."*

The Court ordered that the accused shall pay an interim compensation of Rs.1000/- per month to the victim (woman) of his crime (i.e. rape) during the entire period of trial proceedings. The Court further ruled that “compensation to victim under such

conditions will be justified even when the accused was not convicted.

In State of Maharashtra v. Christian Community Welfare Council of India, AIR 2004 SC 7 (para 10), the Supreme Court was called upon to decide whether the compensation paid by the State to the victim can be recovered from the guilty officer. Hon'ble Justice Shri Hedge, speaking for the Court held that it will depend on the fact whether the alleged misdeed by the officer concerned was committed in the course of the discharge of his official duties and whether it was beyond or in excess of his lawful authority. If it was found that the appellant officers did cause the death of the deceased and exceeded their lawful authority, then they cannot escape the liability to compensate the heirs of the deceased victim.

In R. Gandhi v. Union of India, (2004) Cri.LJ 510 (Mad.), the District Collector of Coimbatore had recommended that the State Government shall pay Rs.33,19,003/- as compensation to those families of Sikhs and others living in Coimbatore, who were victims of arson and rioting in the wake of assassination of the former Prime Minister of India, Shri Rajeev Gandhi. The High Court of Madras, upheld the order of the District Collector. Hon'ble Justice Shri S.A.Kadar of the Court observed :

> *“Legally and morally by all canons of fair play, by all principles of justice, equity and good conscience, the State of Tamil Nadu is bound to pay compensation to victims as assessed and recommended by this senior*

officer i.e. the Collector of Coimbatore."

In yet another landmark case on victim's compensatory relief, namely, D.K. Basu v. State of West Bengal, AIR

1997 SC 610, the Supreme Court, inter alia made the following observation :

> *"The monetary and pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for the redressal of the established infringement of the fundamental right to life of a citizen by the public servants. The State is vicariously liable to which defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State; which shall have the right to be indemnified from the wrongdoer*.

In Delhi Democratic Working Women Forum v. Union of India, (1994) 4 Scale 608, seven military jawans raped six village girls who were travelling by train. The Court directed the Central Government to pay Rs.10000/- to each victim as compensation and ordered that the names and identity of the victimised girls be kept secret to save them from social stigma. The Court also directed the National Women Commission to prepare a rehabilitation scheme for such victims and expressed the need for setting up of a Criminal Injuries Compensation Board which should decide the quantum of compensation to be paid to victims of rape after taking into consideration their shock, suffering as well as loss of earning due to pregnancy and the expenses of child birth, if caused as a result of rape.

In the case of SAHELI (a women social activist organisation) v. Commissioner of Police, Delhi, AIR 1990 SC 513, the Apex Court directed

the Delhi administration to pay Rs.75,000/- as exemplary compensation to the mother of a nine year old boy who died due to beating by police officer while extracting information from him regarding the offence. The dispute in this case was related to the land lord (house owner) trying to oust the appellant (mother of the deceased boy) from his house and the police was allegedly favouring the land lord.

In the recent decision delivered on 28-11-2014 in Criminal Appeal No.420/2012 (Suresh & another vs. State of Maharashtra) the Hon'ble Apex Court has laid down that:

> *" At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record the finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much award of such compensation can be interim, Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factor as may be found relevant in the facts and circumstances of an individual case."*

It is significant to note that a new section 357-A has been inserted by Cr.P.C. (Amendment) Act,2008 (5 of 2009) with effect from December 31, 2009, which envisages 'Victim Compensation Scheme.' The section reads as under :

"357-A. Victim Compensation Scheme.-(1) Every State Government in coordination with the Central Government, shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal authority, as the case may be, shall decide the quantum of

compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendation or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry, award adequate compensation by completing the enquiry within two months.

(6) The State or District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority may deem fit.

While sub-section (1) is an enabling provision, sub-sections (2) to (6) prescribe the modalities for giving effect to the "victim compensation scheme".

In State of ***Rajasthan v. Sanyam Lodha, (2011) 13 SCC 262,*** a public interest litigation was filed by a legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the Chief Minister's Relief Fund under the Rajasthan Chief Minister's Relief Fund Rules, 1999. It was alleged that during the period January 2004 to August 2005, challans/charge-sheets were filed in 392 cases relating to rape of minor

girls, out of which, 377 minor girls did not get any relief or assistance from the Relief Fund; 13 were granted relief ranging from Rs.10,000 to 50,000; one victim (minor K) was given Rs.3,95,000/, and another victim (minor S) was given Rs.5,00,000. It was contended that when discretion vested in the Chief Minister in respect of the Relief Fund is exercised in a manner that 377 victims are ignored and 13 are paid amounts varying from Rs.10,000 to 50,000 and two victims alone are paid Rs.3,95,000 and Rs.5,00,000,it leads to inferences of arbitrariness and discrimination. It was further contended that disbursement of monetary relief to the victim cannot be in the absolute discretion or according to the whims and fancies of the Chief Minister, and grant of monetary relief under the Relief Fund should not become distribution of government largesse to a favoured few.

The High Court allowed the writ petition. It was of the view that all minor victims of rape are required to be treated equally for the purpose of grant of relief by the Chief Minister under the Relief Fund. This was challenged by State before the Supreme Court.

Referring to Section 357-A of Cr.P.C., the Supreme Court observed that it requires every State Government, in coordination with the Central Government to prepare a scheme for providing funds or the purpose of payment of compensation to the victims who require rehabilitation (or who have suffered loss or injury as a result of the crime). This section also does not provide that

the compensation should be an identical amount. The victim may also sue the offender for compensation in a civil proceeding. There also, the quantum may depend upon the facts of each case. Therefore, the inference that the monetary relief awarded under the Relief Fund should be identical for all victims of rape under the age of twelve years, is illogical and cannot be accepted. Holding that whenever the discretion is exercised for making a

payment from out of the Relief Fund, the Court will assume that it was done in public interest and for public good, for just and proper reasons.

Accordingly, the Supreme Court concluded that since the Relief Fund is expected to be utilised for various purposes, it may not be proper or advisable to grant huge amounts in one or two cases, thereby denying the benefit of the fund to other needy persons who are also the victims of catastrophes. The amount granted should therefore be reasonable, to meet the immediate need of coming out of the trauma/catastrophe. However, neither two payments of huge compensation from the Relief Fund can form the basis for issuing a direction to pay similar amounts to other victims of rape, nor is it possible to hold that failure to give uniform ex gratia relief is arbitrary or unconstitutional.

In ***Labha Singh v. State of Haryana, (2012)11 SCC 690,*** the accused persons were of the age of 82 years, 72 years and 62 years respectively. The incident was of 1985 and the Supreme Court noticed that in the past 27 years, the accused persons have already undergone part of the sentence. The Supreme Court was of the view that sending the accused persons to jail after a lapse of such a long period would not be justified and ends of justice would meet if direction is given to each of the accused to pay Rs.1 lakh to the

complainant/injured persons. Accordingly, while reducing the sentence to the period already undergone by them, it was directed to the accused persons to deposit the said amount of Rs.1 lakh each before the trial court within two weeks, and the trial court was directed to disburse the amount equally among the injured persons.

The legislature has made responsibility as to payment of compensation to the victim to the District Legal Services Authority or the State Legal Services Authority as the case may be on recommendations from the

Court on making proper inquiry. In exercise of powers conferred by section 357-A of Cr.P.C. the Government of Maharashtra in co-ordination with the Central Government has framed the scheme for the purpose of compensation to the victims or their dependents, who have suffered loss or injury as a result of a crime and who required rehabilitation which is called as the '**Maharashtra Victim Compensation Scheme, 2014**'. Under the said scheme '**dependents**' means – wife, husband, father, mother, unmarried daughter, minor children and includes other legal heirs of the victim who on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority.

Under this scheme there is provision of constitution of "The Victim Compensation Fund from which amount of compensation under this scheme will be paid to the victim or their dependents'. State Government has to allot separate budget for the purpose of the scheme every year. It is also provided there-in that amongst other sources of Victim Compensation Fund the source i.e. the receipt of amount of fine imposed u/s.357 of the Code and ordered to be deposited by the Courts in the Victim Compensation Fund. As such, the Court can order the amount of fine imposed to be deposited with the victim Compensation Fund through District Services Authority which is to be maintained by the Maharashtra State Legal Services Authority.

Sections 357-B

Section 357-B provides that compensation payable to a victim shall be in addition to the payment of fine under Section 326-A or section 376-D of the Indian Penal Code. The need of this new provision was based on the corresponding insertion made.

(i) in section 326-A of the Indian Penal Code wherein it has been prescribed that any fine imposed under this section shall be paid to the victim. Simultaneously, the court has also been vested with power to ensure that the

fine imposed must be just and reasonable to meet the medical expenses of the treatment of the victims:

(ii) in section 376-D of the Indian Penal Code wherein it has been again prescribed that any fine imposed under this section shall be paid to the victim. Simultaneously, the court has also been vested with power to ensure that the fine imposed must be just and reasonable to meet the medical expenses and rehabilitation of the victims.

Insertion of this corresponding provision as section 357-B in the Code is meant to give effect to the abovementioned provisions of the Indian Penal Code, wherein fine is a necessary component of the sentence to be awarded to a victim of the said offence.

Sd/-

(S.R.Sharma)
District Judge-1 & Addl.Sessions Judge,
Bhandara.

DISTRICT COURT, BHANDARA
THIRD WORKSHOP

SUMMARY OF LEGAL WORKSHOP PAPER ON THE SUBJECT
"ARTICLE 64 AND ARTICLE 65 OF LIMITATION ACT"

Both articles 64 and 65 are rules of limitation, the only difference being that in the former the onus lies on the plaintiff to prove his dispossession within 12 years while in the latter it is for the defendant to prove when his possession became adverse.

A suit for declaration of title and recovery of possession is governed by Art. 65 of new Act which is different from Art.142 of the old Act inasmuch that under Art.142, the plaintiffs had to prove title and also

possession within 12 years from the institution of the suit. Under Art. 65, if the plaintiffs bring a suit for possession over immovable property or any interest therein on the basis of title, the plaintiffs are required to prove only the title and not the subsisting title.

When the character of suit is one of declaration of title and recovery of possession, Art.65 of the Limitation Act is applicable.

In suit for declaration and injunction in respect of claim for immovable property, period of limitation is 12 years and not 3 years.

Where an application by decree-holder for delivery of possession under O.21, R.97 of the Civil Procedure Code is dismissed, against a third party in possession, the decree-holder is entitled to institute a suit for possession against such party under O.21, R.103 of the Code and the limitation for such suit is one year from the date of

the order under Art. 98 of the Limitation Act, 1963. A purchaser, from the decree-holder under a private sale, after the dismissal of the decree-holder's application under O.21, R.97, is however, not bound to sue within one year of the order, and his suit for possession will be governed by Art. 65 of the Act. ***(AIR 1971 Bom. 16)***

Where the plaintiff has neither title nor possession within 12 years of the suit, his suit for possession is barred by limitation. ***(AIR 1973 SC 2341).***

The combined effect of S.6 of the Specific Relief Act and Arts.64 and 65 of the Limitation Act of 1963 may be summed up as follows :

(1) An owner of property is ousted from possession by force by a trespasser. The owner can sue the trespasser for possession solely on the ground of such dispossession without proving his title. The limitation for such a suit will be 6 months from the date of such dispossession under S.6(2)(a) of the Specific Relief Act.

(2) Even where the owner does not bring such a suit within the period of 6 months, he can sue for possession on the basis of his proprietary title. The right to bring such a suit is saved by S.6(4) of the Specific Relief Act. The period of limitation for such a suit will be 12 years under Art.65 of the Limitation Act, 1963.

(3) A is the owner of property. B is in lawful possession of it. A dispossesses B otherwise than in due course of law. B can recover back the property from A under S.6 of the Specific Relief Act solely on the ground of his dispossession otherwise than in due course of law, although he has no manner of title to the property as against A and although A is the owner of the property. It must be remembered in this connection that B's possessory title though good against all

persons other than the true owner, is of no avail against the owner namely, in this case, A. In spite of this fact, he can recover the property even from A, solely on the ground of his dispossession otherwise than in due course of law. But this he can do only under S.6 of the Specific Relief Act. If he fails to sue within the period of 6 months prescribed by that section, he cannot subsequently sue A for the recovery of the property. The reason is that as against A, the true owner, he has no manner of title and it is only a suit based on title that is saved by S.6(4) of the Specific Relief Act.

(4) A is the owner of property. B is in unlawful possession of it. C who has also no title to the property dispossesses B by force and without recourse to law. In this case also, B can recover back possession from C solely on the ground of his dispossession otherwise than in due course of law and without proving any title to the property. Such a suit will be one under S.6 of the Specific Relief Act and will be governed by the six months period of limitation under that section.

But even if B fails to bring such a suit within the period of 6 months

under S.6 he can still sue C on the basis of his possessory title by reason of his previous possession. Such a suit will also be one-based on title within the meaning of S.6(4) of the Specific Relief Act and will be saved by that provision. The limitation for such a suit will be 12 years under Art.64 of the Limitation Act, 1963. In this connection, it must be noted that such a suit is only one based on previous possession and dispossession and not on "title" within the meaning of Art.64 although it is a suit based on title within the meaning of S.6(4) of the Specific Relief Act. As already explained above, the context in which the word "title" is used in Arts.64 and 65

shows that it is used in those articles in a limited sense as including only proprietary title as distinguished from possessory title, although ordinarily the word title is wide enough to include both proprietary and possessory titles.

Further, apart from the express provision in S.6(4) which saves the right to bring a separate suit on the basis of title, proprietary or possessive, the suit contemplated by S.6 of the Specific Relief Act (to which suit alone the limitation of 6 month's period under the section is applicable) is one which is based solely and purely on the dispossession of the plaintiff otherwise than in due course of law and not on any manner of title- including even the title created by plaintiff's previous possession. In fact, the question of title in any form whatsoever whether it is proprietary or possessory, is irrelevant in such a suit. Hence, a suit based on the title created by the plaintiffs' previous possession is not contemplated by S.6 at all and hence is not a suit to which the six months period of limitation under the section applies at all. Considered from this point of view, S.6(4) really serves only as an Explanation to S.6 rather than as a substantive part of the section. Thus, we are left with the position that a suit based on possessory title i.e., a title created by the fact of plaintiff's previous possession, is governed by the 12 years' rule under Art.64 of the limitation Act of 1963 and not by S.6 of the

Specific Relief Act, 1963 even if it may be a case in which the plaintiff has been dispossessed otherwise than in due course of law.

(5) In all the cases considered above, the suit that is brought after the expiry of the 6 months period under S.6 of the Specific Relief Act is by the dispossessed person who fails to avail himself of the summary remedy provided under that section. It has

been seen that such a suit is maintainable by the true owner against a trespasser or by a previous trespasser against a subsequent trespasser who ousts him but is not maintainable by a trespasser against the true owner.

The position may now be considered from the point of view of the dispossessing person i.e., the person who dispossesses another and against whom a decree is passed under S.6 of the Specific Relief Act. Such a person may also bring a suit notwithstanding such decree, to vindicate his title to the property. Thus, where a trespasser who is forcibly ejected by the true owner of the property sues and obtains a decree against the true owner in a suit under S.6 of the Specific Relief Act, the true owner can afterwards sue on the basis of his title and recover possession from the trespasser who has been successful in the suit under S.6 of the Specific Relief Act. The true owner's suit will be governed by Art.65 of the Limitation Act,1963.

But suppose a true owner is ejected by force by a trespasser. In a suit under S.6 of the Specific Relief Act a decree is passed in favour of the true owner. He obtains possession in execution of such decree. In such a case, the trespasser cannot afterwards sue the true owner for possession. The reason is that as against the true owner, the trespasser has no title.

Similarly, suppose a property belonging to A is in the unlawful possession of B; C ousts B from such possession forcibly; B then obtains a decree against C in a suit under S.6 of the Specific Relief Act, C cannot afterwards sue B for possession on title. The reason is that as between B and

C, B has the better title as he was in possession previously to C and such possession gave B a title against all persons except the true owner, A.

The possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. ***(AIR 1981 SC 707)***

Mere possession of the property is not sufficient to establish adverse possession. The person who sets up title by adverse possession must aver as to when possession commenced. Mere possession over a long time without a claim of right does not create a proprietary right. Possession should as well be peaceful and continuous. Mere possession however long does not necessarily mean that it is adverse to the true owner.

The expression “adverse possession” means a hostile possession, that is, a possession which is expressly or impliedly in denial of the title of the true owner.

Where possession of a land was given by the owner to a person who has lent him money for the purpose of the latter taking the receipt from the land in lieu of interest on the loan, the latter's possession under the arrangement is not hostile to the owner and will not enable him to acquire title by adverse possession against the owner. **(AIR 1951 SC 247)**

Normally a person cannot prescribe with regard to his own property. But, under certain circumstances, the possession of a person may be adverse to himself. Thus, where A is in possession of his own land, but under a lease from B is under the wrong impression that it belongs to B who asserts a title thereto, A's possession would be B's possession and consequently adverse to A.

Where a Muhammadan executed a gift deed of his property in favour of his minor grand daughter and delivered
possession to the minor represented by himself as her guardian, it was held

that his possession would be that of the donee and adverse to himself. **(AIR 1971 Mad 184.)**

It is necessary in order to acquire a title by adverse possession that the possession of the wrongdoer must be continuous for the prescribed period of limitation. It follows that where there is a break in the adverse possession of the wrongdoer, limitation ceases to run against the lawful owner of the property. **(AIR 1971 SC 2556)**

The delivery of symbolical possession in execution of a decree to the decree-holder or to the auction-purchaser is, as against the defendant in the suit, equivalent to the delivery of actual possession. It will follow from this that the delivery of such possession to the decree-holder or auction-purchaser will operate as dispossession of the defendant and will put an end to the adverse possession of the defendant. **(AIR 1966 SC 470).**

An attachment of immovable property under the Civil Procedure Code does not affect the possession of the property. Hence, such attachment does not interrupt the adverse possession of the property. ***(AIR 1939 Mad 456)***.

Adverse possession is possession which is in contravention of the right of another to such possession. Hence, possession cannot be adverse against a person who is not entitled to possession.

Possession of co-owner cannot be adverse. Possession of a property belonging to several co-sharer by one co-sharer shall be deemed that he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue record in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of other co-sharers was denied. ***(Darshan Singh vs Gujjar Singh, 2002(1) Bom.C.J.588 S.C.)***

Plea of adverse possession against minor. Not available against minor whose property has been purchased without permission of Court under

section 8 of Hindu Minority and Guardianship Act, 1956. Any secret animus to hold property adversely would not be relevant to conclude adverse possession in absence of specific evidence to that effect. ***(Subash Appa s/o Pundlik Appa Meti..vs.. Maruti Laxmanrao Sawarkar 2006(1) Bom.C.J.603.)***

The Supreme Court has also clarified in case of ***Des Raj ..vs.. Bhagat Ram (AIR 2007 SC (Supp) 512*** as under :

> *"In case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the Courts below was as to whether the plaintiff had been in possession of the property in hostile declaration of his title vis-a-vis his co-owners and they were in know thereof.*
>
> *Mere assertion of title by itself may not be sufficient unless the plaintiff roves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the defendants appellants themselves had earlier filed two suits. Such suits were filed for partition. In those suits the defendants appellants claimed themselves to be co-owners of the properties. A bare perusal of the judgments of the Courts below clearly demonstrate that the plaintiff had even thereon asserted hostile title claiming ownership in himself. The claim of hostile title by the plaintiff over the suit land, therefore, was, thus, known to the appellants. They allowed the first suit to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, as has been contended on behalf of the appellants before the Courts below, that a co-owner can bring about successive suits for partition as the cause of the action therefore would be continuous one. But it is equally well settled that pendency of a suit does not stop running of 'limitation'. The very fact that the defendants despite the purported entry made in the revenue settlement record of rights in the year*

1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties in village Samleu and/or otherwise enjoy the unsufruct thereof, clearly go to show that even prior to institution of the said suit the plaintiff-respondent had been in hostile possession thereof."

Where the question was one of adverse possession against the Government, Arts.142 and 144 of the Act of 1908 were to be read with Art.149 of that Act (corresponding to present Art.112. And so reading them, it was clear that no adverse possession could be effectively pleaded against the Government for a period of less than sixty years. ***(AIR 1951 SC 469)***. Under the present Art.112 the period of sixty years is now reduced to thirty years.

The Hon'ble Supreme Court of India, in two recent decisions, namely, ***Hemaji Waghaji vs. Bhikhabhai Khengarbhai, AIR 2009 SC 103,*** and ***State of Haryana vs. Mukesh Kumar, 2011(10) SCC 404,*** has pointed out the need to have a fresh look at the law of adverse possession. In those cases the Hon'ble Supreme Court described the law of adverse possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner "and a windfall for dishonest person who had illegally taken possession of the property". The Hon'ble Supreme Court further observed that "The law ought not to benefit a person who in clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongly taken possession of the property of the true owner. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation."

In the latest case of ***State of Haryana vs. Mukesh Kumar***

(2011) 10 SCC 404, the Hon'ble Supreme Court highly criticised the doctrine of adverse possession. In this case the State of Haryana (Police Department) set up the plea of adverse possession which was not accepted by the trial Court and appellate Court. The Hon'ble Supreme Court described the law of adverse possession as archaic and "needs a serious relook" in the larger interest of the people. It was observed, " Adverse possession allows a trespasser, a person guilty of a tort, or even a crime, in the eye of law to gain a legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change."

In the above said ruling the observations made by the Hon'ble Apex Court at paragraph 39 are also relevant. The Hon'ble Apex Court observed "the Government instrumentalities including Police, in the instant case have attempted to possess land adversely. This, in our opinion, is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy". Then, it was said "if this law is to be retained according to the wisdom of Parliament, then at least the law must require those who adversely possess land to compensate the title owners according to the prevalent market rate of the land or property." Then at paragraph 40, it was observed that Parliament must seriously consider at least to abolish "bad faith" adverse possession i.e., adverse possession achieved through intentional trespassing. At paragraph 41, it was also observed that if the Parliament decides to retain the law of adverse possession, the duration of possession (i.e.,limitation period) under the law of Limitation should be extended to 30 to 50 years, "rather than a mere 12". It was pointed out that "a longer statutory period would decreases the frequency of adverse possession suits

and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title."

Sd/-
(S.R.Sharma)
District Judge-1 & Addl.Sessions Judge,
Bhandara.