JUGRAJ

v.

STATE OF PUNJAB

(Criminal Appeal No. 594 of 2005)

JANUARY 27, 2010*

[HARJIT SINGH BEDI AND A.K. PATNAIK, JJ.]

Penal Code, 1860:

s. 302/34 – Murder – Four persons alleged to have shot dead a local MLA – Conviction by trial court – Acquittal by High Court of three of the accused – Observation by High Court that medical evidence did not support prosecution case inasmuch as five incised injuries caused to deceased were inflicted at least two hours after his death and prosecution failed to explain these injuries – HELD: Out of four eye witnesses only two were examined – Presence of one of the two witnesses examined seems to be doubtful – There is delay in lodging FIR and despatch of special report – Story given by other eye-witness was concocted to explain the delay in lodging FIR – No reference of names of accused in FIR though one of the eye witnesses claimed to have come to know their names during incident – In the circumstances, the best that can be said for the prosecution is that the matter was finally determined in the early hours of the following day and the FIR was thereafter lodged and then ante timed – This appears to be the import of the judgment of High Court as well – Besides, save for recovery of the gun, which was stated to have been made pursuant to statement of the appellant, the evidence with regard to all accused was identical – The evidence as to who fired the gun is ambivalent – Besides, the gun did not belong to the appellant and was not despatched to Forensic Science Laboratory promptly – In the light of observations of High Court itself there seems to be uncertainty

* Judgment Recd. on 12.5.2010

with regard to the prosecution case – Courts below have somewhat stretched credibility beyond a point which requires interference by this Court – Judgments of courts below set aside and appellant acquitted – Delay in lodging FIR and despatch of special report as also in despatch of crime weapon to Forensic Science Laboratory – Evidence – Non-explanation of injuries on deceased caused two hours after his death.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 594 of 2005.

From the Judgment & Order dated 7.12.2004 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 597 of 2002.

WITH

Criminal Appeal No.595 of 2005.

Anurag Kishore, Abhinav Shrivastava and Kamakshi S. Mehlwal for the Appellant.

Goodwill Indeevar and Kuldeep Singh for the Respondent.

The following Order of the Court was delivered

ORDER

Criminal Appeal No. 594 of 2005

1. This appeal is directed against the judgment and order of the High Court of Punjab and Haryana dated 7th December, 2004 whereby the High Court has allowed the appeal of three of the co-accused but has dismissed the appeal of the appellant.

2. The facts of the case are as under:

2.1. At about 9:00p.m. on the night of December, 1, 1996, Bachhitter Singh, a former member of the Punjab Legislative

Assembly representing Kharar constituency was travelling in his jeep on the Landran-Kharar Road along with Sadhu Singh - P.W. 2, Narinder Singh P.W. 5, Gurmail Singh and one Ajit Singh Padiala. As they were passing by the warehouses at Landran, Bachhitter Singh told Narinder Singh P.W. 5 that as the bonnet of the jeep was loose, it should be properly fastened. On this Narinder Singh stopped the jeep and locked the bonnet and then returned to his seat when a Maruti car carrying four persons reached there. The driver of the car remained seated in the car with the engine on but the three passengers, all Sikh boys 20-25 years of age got out. Of the three persons one of them was armed with a .12 bore gun and the other two were armed with naked kripans. One of the boys who was armed with naked kripan got hold of Narinder Singh P.W. by his neck and thereafter gave two blows to Bachhitter Singh on his right flank. The second person started grappling with Bachhitter Singh on which the latter stumbled and fell down. The third person who was armed with a shot gun then fired a shot into the chest and arm of Bachhitter Singh. The assailants then broke the headlights of the jeep and drove away in their Maruti car. Sadhu Singh P.W. 2 accompanied by Ajit Singh left the site of the incident leaving Narinder Singh and Gurmail Singh to guard the dead body and made their way towards Kharar Police Station about 8 kms. away but as they reached close to Swaraj Tractor Factory just short of Kharar they came across a police Gypsy with S.H.O. Sub-Inspector Rajinder Singh on patrol duty. The Inspector along with Sadhu Singh and Ajit Singh returned to the place of incident and saw Bachhitter Singh lying dead on which they picked up his body and removed it to the Kharar Hospital. Sadhu Singh thereafter recorded the First Information Report at about 11:15p.m. the same night i.e. on the 1st of December, 1996 in which he did not name any of the assailants although he gave their physical description. A Special Report was allegedly despatched through Constable Jaspal Singh to the Magistrate shortly after midnight which was received by P.W. 9 - Gurmeet Kaur, Judicial Magistrate, Kharar at 9:15a.m. on 2nd December, 1996. The Sub Inspector also

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returned to the place of incident on the morning of the 2nd December, 1996 to carry out further investigations and amongst other items picked up two empty .12 bore shells and a piece of a broken sling of a shot gun and these were duly deposited in the Malkhana and subsequently despatched to the Forensic Science Laboratory. He also recorded the statements of the eye witnesses including Narinder Singh -P.W. 5. In the meanwhile, it appears that the accused made extra judicial confessions to P.W. 6 and P.W. 7 Kuljeet Singh and Kuldip Singh respectively and Jugraj Singh appellant also made a disclosure statement which led to the recovery of the .12. bore gun allegedly used in the murder. It transpired after investigation that this weapon belonged to Gurmail Singh, Jugraj Singh's first cousin and he too was prosecuted for offences punishable under Sections 29 and 30 of Arms Act and was duly convicted and has already undergone the sentence as of now. The Forensic Science Laboratory in its Report opined that the two spent cartridges recovered from the place of incident had been fired from the gun in question. The trial court in its judgment dated 13th August, 2002, held that the statements of Sadhu Singh P.W. 2 and Narinder Singh P.W. 5 inspired confidence, that there was no delay in the lodging of the FIR and if there was any it had been explained by the prosecution, that the refusal of the accused to join the identification parade was a point to be taken against them as there was no evidence to suggest that they had been shown to the witnesses prior to the proposed identification parade and that the extra judicial confessions made to P.W. 6 and P.W. 7 further corroborated the prosecution story. The trial court accordingly convicted and sentenced the accused as under:-

(i) Jugraj Singh, Kulwinder Singh, Kuljit Singh and Inderpreet Singh were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each for the offence under Section 302/34 and in default of payment of fine to further undergo rigorous imprisonment for a period of four years each.

(ii) Jugraj Singh, Kuljit Singh, Kulwinder Singh and Inderpreet Singh were also sentenced to undergo rigorous imprisonment for a period of two years each under Section 324/34 of the IPC. A

(iii) Jugraj was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1,000/- under Section 25 of the Arms Act, 1959 and in default of payment of fine to further undergo rigorous imprisonment for four months. It was also directed that all the sentences would run concurrently. B C

2.2. An appeal was thereafter taken to the High Court. The High Court by the impugned judgment dated 7th December, 2004 allowed the appeal of Kuldip Singh, Kulwinder Singh and Inderpreet Singh and dismissed the appeal filed by the present appellant Jugraj Singh. In arriving at its decision, the High Court D observed that the medical evidence did not support the prosecution story inasmuch as the five incised injuries caused to the deceased were inflicted at least two hours after his death and not immediately after he had sustained the gun shot injuries and that the prosecution had not been able to explain the E presence of these injuries, despite the fact that Gurmail Singh and Narinder Singh had been left behind to guard the spot after Sadhu Singh had left for the police station to report the murder. The High Court also held that the statements of Kuldip Singh, P.W. 6 with regard to the extra judicial confession of Jugraj and F Kulwinder Singh and of Ajit Singh P.W. 7 with respect to Kuljit Singh and Inderpreet Singh could not be believed and the story projected by them appeared to be a concocted one. The Court, however, held that the recovery of the gun from Jugraj Singh appellant in Criminal Appeal No. 595 of 2005 which had been G preceded by a disclosure statement was a material circumstance against him and the fact that the portion of the sling which had been broken off from the main part of the gun had been found by the Forensic Science Laboratory to be of the same make and quality, was positive corraboration that the H

A person who had shot the deceased was indeed Jugraj Singh. The Court then examined the circumstances with regard to the other three accused and found that there were no corroborating evidence to supplement the statements of the two eye witnesses with regard to their involvement and in conclusion
B observed as under:-

> "Our conclusion is irresistible that the matter was reported to the police some time at night but the case was finalized in the early hours on December 2, 1996, whereafter the special report was delivered to the
C Magistrate at 9:15a.m. The deceased had a gun shot injury on his chest with two corresponding exist wounds but no ante-mortem kirpan injuries. The post-mortem nature of the wounds as described by the Medical Board was such that they had been inflicted at least two hours after Bachhitter
D Singh had died, not immediately after the gun shot injuries. However, the above glaring defects in the prosecution case do not compel us to hold that Sadhu singh (P.W. 2) and Narinder Singh (P.W. 5) did not witness the occurrence. These two witnesses had accompanied the deceased in
E his jeep and did not witness the occurrence although their version was exaggerated and they had included Kulwinder Singh, Kuljit Singh and Inderpreet Singh also as accused. The recovery of the kirpans from Kulwinder Singh and Kuljit Singh and the car from Inderpreet Singh did not
F establish that they had also participated with Jugraj Singh in committing ;the murder of Bachhitter Singh."

3. We have heard the learned counsel for the parties at length in the appeal before us.

G 4. We find that out of the four eye witnesses only Sadhu Singh P.W. 2 and Narinder Singh P.W. 5 had been examined. Admittedly, Sadhu Singh P.W. 2, the author of the FIR did not know the accused by name or by face and had only given general descriptions as to their identities or features. Narinder
H Singh, P.W. 5, was however, very clear in his evidence when

he stated that he knew the names of the accused as they were calling out to each other by their pet names during the course of the entire incident. It has come in evidence that when Sadhu Singh had made his way to the Police Station to record the FIR, Narinder Singh P.W. 5 had also been present at that time. In this view of the matter, there appears to be some merit in the stand of the counsel for the appellant that had Narinder Singh been present at the place of incident or at the time of the recording of the FIR the names of the accused would have figured in the FIR itself. In this background, the delay in the lodging of the FIR and the delivery of the Special Report becomes significant. It is the admitted position that the incident happened at 9:00p.m., on the 1st of December, 1996 on the Landran-Kharar road about 8 kms. short of Kharar. Sadhu Singh had been at pains to say that he had to walk the distance of 8 kms. as the jeep had refused to start. Narinder Singh, P.W. the driver of the jeep too had stated likewise but they were confronted with their police statements where they had made no such claim. We are of the opinion that the story given by Sadhu Singh was concocted to explain, to a small extent, the delay in the lodging of the FIR. Be that as it may, even on admitted facts, the SHO, Rajinder Singh had reached the place of incident at about 9:30 or 10:00p.m. and the hospital at Kharar a short time later and the party had then moved on to the police station about ½ km. away from the hospital where the FIR had been recorded at about 11:15p.m. With the Special Report being delivered within Kharar itself at 9:15a.m. the next day as per the statement of Ms. Gurmeeet Kaur, the Judicial Magistrate. The prosecution, has, however, doubted the veracity of the statement of the Magistrate on the basis of the affidavit sworn by Constable Jaspal Singh who deposed that the copies of the Special Report had been handed over to him shortly after mid night and he had taken a copy first to the SSP, Ropar and to the Circle Officer Ropar about 35 kms. away and then returned to Kharar and handed over the report to the Magistrate at 3:30a.m. - a fact which has been denied by Ms. Gurmeet Kaur. It is, therefore, obvious that the best that can be said for

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A the prosecution is that the matter had been finally determined in the early hours of 2nd December, 1996 and the FIR had thereafter been lodged and then ante timed. This appears to be the import of the judgment of the High Court as well.

B 5. There is another significant circumstance in the prosecution story. It is the case of the prosecution that two shots had been fired at Bachhitter Singh which caused his immediate death. The Doctor, however, found five incised post mortem injuries on the dead body as well. No explanation is forthcoming as to how these had been caused inasmuch as that the dead C body had not remained unguarded even for a moment and though Sadhu Singh had left for the police station, Narinder Singh P.W. 5 and Gurmail Singh P.W. 2 had been left behind to guard the site and that the SHO Rajinder Singh had reached the spot within an hour or two as per the prosecution version. D We are further of the opinion that save for the recovery of the gun, the evidence with regard to all the accused was identical. The High Court has in its judgment clearly recognised this fact and has given clear and precise findings (quoted above), but nevertheless dismissed the appeal of Jugraj Singh while E acquitting the other three accused on the identical evidence.

6. Mr. Kuldip Singh the learned counsel for the State, has however, submitted that the fact that the gun had been recovered at the instance of Jugraj Singh and that the empty F shells had been found to match the gun was a circumstance in favour of the prosecution. It is true that the Report of the Forensic Science Laboratory does indicate that the cartridges had been fired from the gun. The question is as to who had fired the gun and to our mind the evidence on this is ambivalent. It G must also be seen that the empty cartridges had been despatched to the Forensic Science Laboratory on the 4th December, 1996 and the gun recovered a day later on the basis of the disclosure statement made by Jugraj Singh, had been despatched to the Forensic Science Laboratory on the 12th of December. We are unable to understand as to why the H

gun had not been despatched more promptly. Even otherwise, a connection between Jugraj Singh and the gun could have been found had it been said that he was the owner thereof. Incidentally, this is not the case as the gun was admittedly owned by Gurdeep Singh who was prosecuted, convicted and sentenced under Sections 29 and 30 of th Arms Act and his appeal is also before us today which we are told would be infructuous in a manner as he has already undergone his sentence. We are, therefore, of the opinion that in the light of the observations of the High Court itself there seems to be uncertainty with regard to the prosecution story and the courts below had somewhat stretched its credibility beyond a point which requires that we should interfere in the matter. A B C

7. We, accordingly, allow the appeal, set aside the judgment of the trial court as well as the High Court and acquit the appellant. He shall be released from custody forthwith if not wanted in any other case. D

8. Criminal Appeal No. 595 of 2005 filed by Gurdeep Singh is dismissed as having becomes infructuous as the appellant has already served the sentence.

R.P. Appeals disposed of.

A R. HANUMAIAH & ANR.

v.

SECRETARY TO GOVERNMENT OF KARNATAKA REVENUE DEPARTMENT & ORS.

(Civil Appeal Nos. 1588-1589 of 2008)

B FEBRUARY 24, 2010*

[R.V. RAVEENDRAN AND SWATANTER KUMAR, JJ.]

Suit:

C

Suit for declaration of title and injunction – Plaintiffs claiming to be owners of the suit land – Reliance placed on various documents – Trial court decreeing the suit – High Court setting aside the decree – On appeal, held: The suit D *land was a Government land – The land was not subjected to any land revenue – Documents relied on, do not establish title of the plaintiffs on the lands – Mysore Revenue Manual – Paras 236 and 376 – Karnataka Land Revenue Act, 1961 – s. 67.*

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Suit for declaration of title – Against Government and against private individual – Difference between – discussed.

Suit for declaration of title against Government – Grant of decree – Criteria for – Discussed.

F

Suit for declaration of title against Government – Onus to prove title – Held: It is for the claimants to establish their title to suit properties – Weakness of Government's defence or absence of contest, are not sufficient to decree declaratory G *suits against the Government.*

Adverse possession – Right adverse to the Government – Claim of – Held: To claim adverse possession, claimant's

* judgment Recd. on 24.4.2010

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possession should be actual, open and visible, hostile to the owner and continued during entire period necessary to create bar under the law of limitation.

Appellant-plaintiffs filed the present suit for declaration of title and consequential relief of permanent injunction in respect of the suit land (Survey Nos. 30 and 31), against the respondent-defendants. Appellants claimed to be owners of a tank in Survey No. 30 and a barren land in Survey No. 31. They claimed that the suit land was part of the land owned by their ancestors, and they were in continuous possession of the suit land as owners. The appellants filed a suit for permanent injunction when City Improvement Trusts Board attempted to interfere with their possession of the tank (Survey No. 30). Subsequently the present suit was filed wherein the appellants-plaintiff claimed title over the suit land Survey Nos. 30 and 31, placing reliance on Exs. P1, P2, P10, P11, P12 and P18. During pendency of the present suit, first suit was dismissed. Appeal against the order was also dismissed by High Court observing that the judgment would not affect the pending (present) suit. Plea of the respondent-defendants was that Survey No.30 was a Government tank shown as *Kharab* land in the revenue records and Survey No. 31 was also a government barren land shown in revenue records as Government *Kharab* land.

Trial court decreed the suit holding that appellants had made out their possession and title with regard to the suit property. High Court, in appeal, set aside the decree. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1. The appellants were not registered as the owners or khatedars or occupiers of the suit lands in any

A revenue records. They did not have any document of title referring to the suit properties. The appellants did not have possession. Even assuming that the tank in Survey No. 30 was repaired/ maintained by the ancestors of plaintiff at some point of time, there is no document to B show that the tank was used, maintained or repaired by the appellants or their predecessors during more than half a century before the filing of the suit. The suit has to fail. [Para 21] [926-B-D]

C 1.2. The High Court, being the first appellate court is the final court of fact. It has, after examining the evidence exhaustively recorded a finding that the appellants have not established their title or possession. There is no error in the findings and conclusions of the High Court. The D appellants who came to court claiming title, not having established title, their suit is liable to be dismissed. [Para 19] [925-D-E]

2.1. Suits for declaration of title against the Government, though similar to suits for declaration of title E against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the F Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The *second* difference is in regard to the G period for which title and/or possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, H title/possession for a period exceeding thirty years will

have to be established to succeed in a declaratory suit for title against Government. This follows from Article 112 of Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of Government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements. [Para 15] [921-G-H; 922-A-E]

2.2. Many civil courts deal with suits for declaration of title and injunction against Government, in a casual manner, ignoring or overlooking the special features relating to Government properties. Instances of such suits against Government being routinely decreed, either *ex parte* or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring

A the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted B or admitted. [Para 16] [922-G-H; 923-A-B]

2.3. Section 67 of Kârnataka Land Revenue Act, 1961 declares that all tanks and all lands which are not the property of any person are the property of the State C Government. Weakness of Government's defence or absence of contest, are not therefore sufficient to decree declaratory suits against the Government. It is for the appellants to establish their title to the suit properties. [Para 18] [924-E; 925-B-C]

D 2.4. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government : whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established E his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or F occupant of the property in the Revenue Records or Municipal Records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession – authorized or unauthorized; permissive; casual and occasional; furtive and G clandestine; open, continuous and hostile; deemed or implied (following a title). [Para 16] [923-C-E]

2.5. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will H 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. 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. [Para 17] [923-F-H; 924-A-B]

On facts:

3.1. Exhibit P18 is an extract of the register maintained by the Public Works Department showing the details of tanks in Bangalore Division. The said extract is in respect of Serial No.279 from the said register relating to a tank described as *'Maistry Kere'* or *'Maistry Palyada Kere'* in *Jakkasandra* village, the extent of the water body being 11 acres. The name of the tank is followed by the word 'private' in the register and gives particulars of the *Achkat* area of the tank (that is area of land irrigated by the said tank) in the year 1906-07. The appellants took the plea that the description of the tank as 'private' in the Tank Register would demonstrate that the tank did not belong to the Government and that it was privately owned. The High Court however held that the mere use of the word 'private' after the description of the tank, will

A not establish appellant's title or possession in regard to Survey No.30. [Para 5] [916-E-G]

3.2. A reading of Para 376 of the Mysore Revenue Manual shows that a private tank can be constructed by
B a private individual, either in his own land or on Government unoccupied land. It also shows that private individuals may restore Government tanks. Therefore it follows that when a tank is described as 'private' in the Tank Register, that by itself will not establish that the land
C where the tank is situated is private land. When a tank enumerated in the Tank Register maintained by the Government, adds to the description of the tank, by the word 'private', it merely shows that the tank in question had been constructed by a private individual but it does
D not lead to the inference that the land on which the tank is constructed belonged to a private individual. [Para 7] [917-G-H; 918-A-B]

3.3. Para 236 of the Manual shows that a private land on being converted into a private tank would not get full
E exemption or remission from payment of land assessment, but was extended only a partial remission. In fact, if a tank was constructed on a private land, the land would be continued to be assessed to land revenue with appropriate partial remission. On the other hand, if
F it is a Government unoccupied land on which a private individual is permitted to construct the tank, it will continue to be shown as Government *Kharab* land and will not be subjected to any land revenue. In this case neither Survey No.30 nor Survey No.31 is assessed to
G land revenue and are shown as Government *Kharab* land in all revenue records (vide Ex. D7, D8, D9, D10, D11 and D12). Unarable lands including tanks are described as *Phut Kharab*. The Tank register extract (Ex.D15) and other documents produced by respondents show that
H the tank was breached and BDA had formed a layout in

a major portion of the tank land and the remaining area was being developed into a park by the Forest Department. Therefore, Ex. P18 proves that Survey No.30 was not a land owned by a private individual and that it belonged to Government. [Para 8] [918-C-F]

3.4. Ex. P1 which is an extract of *Phut Pahani* (Inspection Statement showing the old survey numbers and corresponding new numbers of lands and full information regarding tenure and occupancy of the land, described in the Mysore Revenue Manual), did not relate to nor provide proof of ownership of any land. Ex.P1 merely disclosed that when it was inspected on 18.6.1871, survey no.25 of *Jakkasandra* measuring 10 acres 28 guntas was a tank and that it was repaired by predecessor of appellant. This document therefore does not help the appellants to prove title of their predecessor to the tank. Unless the title to the land on which the tank is situated is established, the mere fact that the tank was shown to have been maintained or repaired by any private individual will not make him the owner of the tank. At best it will show that the tank was maintained by him as a private tank for the purpose of irrigation. [Para 10] [919-D-F]

3.5. Ex.P2 (settlement deed) does not refer to the tank. It does not give the total extent of the land. It does not disclose whether Survey. Nos. 30 and 31 formed part of *Dalavai Dinne* owned by the ancestors of appellants at any point of time. The settlement deed merely shows that the predecessor of the appellants had settled certain land, known as *Dalavai Dinne* which was assessed to land revenue, to his son and does not help the appellant to establish title to either survey Nos. 30 or 31. While the settlement deed describes the land settled as land assessed to land revenue, significantly, Survey Nos. 30 or 31 which are now claimed by the appellants as part of

A *Dalavai Dinne* were never assessed to land revenue, but were always described as Government *Kharab* land. Ex.P1 and P2 are therefore of no assistance to the appellants. [Para 11] [919-G-H; 920-A-C]

B 3.6. Ex.P.10 and P11 are contract notes executed by contractors said to have been engaged by the predecessor of the appellants for execution of certain works relating to the tank at *Dalavai Palya*. They are not signed by the predecessor of the appellants. Even C assuming that the documents (Ex.P10 and P11) are genuine and related to a tank situated in Survey No.30, they would not help the appellants to establish title to Survey No. 30, or Survey. No. 31. [Para 12] [920-E-F]

3.7. Ex.P12 is said to be the Tank Majkur Register D Extract maintained by the Assistant Superintendent of Land Records, Bangalore Sub-Division, showing that Re-survey No.30 measured 11 acres 21 guntas and the entire extent was *karab* (tank) and it corresponded to old survey No.25. It also records that the tank was dug by and was E later repaired by predecesors of the appellants about 25 years ago and thereafter no one has repaired it and it is in the state of good repair. The date of inspection or entry is not mentioned and it does in no way help the appellants to prove title to the land. [Para 13] [920-H; 921-A-B]

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3.8. The land acquisition reference proceedings relied upon by the appellant did not relate to Survey Nos. 30 or 31. It is related to other lands and the issue before the court was a dispute between the appellant and some G other claimants. There is no adjudication of the title of the appellants or their ancestors in regard to Survey Nos. 30 or 31. Nor is there any finding by the court which can support the appellants' claim to Survey No.30 or Survey No. 31. Therefore, the High Court has rightly rejected the

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said judgment as not relevant for examining the title of the appellants. [Para 14] [921-C-E]

3.9. The first appellant had earlier filed a suit for a permanent injunction, claiming that he was in possession of Survey. No. 30 (tank). That suit and appeal therefrom were dismissed by recording a finding that he failed to establish possession. The observation of the High Court while dismissing the appeal from the decision in the earlier injunction suit, that the dismissal will not come in the way of plaintiff establishing title in the subsequent suit for declaration of title, will not dilute the finding recorded by the trial court and High Court that the first appellant was not in possession, which has attained finality. [Para 20] [925-F-H; 926-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1588-1589 of 2008.

From the Judgment & Order dated 4.9.2007 of the High Court of Karnataka at Bangalore in R.F.A. No. 448 & 529 of 1996.

Raju Ramachandran, Sanjay R. Hegde, Joseph Pookkatt, Bhardwaj, S. Iyengar, S.N. Bhat for the Appellants.

S.S. Javeli, Basava Prabhu Patil, S.K. Kulkarni, M. Gireesh Kumar, A.S. Kulkarni, Vijay Kumar, Anitha Shenoy, Rashmi Nanda Kumar for the Respondents.

The Order of the Court was delivered by

O R D E R

R.V. RAVEENDRAN J. 1. These appeals by special leave are by the plaintiffs in a suit (O.S.No.714 of 1982 before the City Civil Judge, Bangalore City) for a declaration of title and consequential relief of permanent injunction in respect of

A Sy.Nos. 30 and 31 of Jakkasandra Village, Begur Hobli, Bangalore South Taluk.

2. The case of plaintiffs in brief is as follows : Plaintiffs are the owners of a tank called "Maistry Kere" bearing Survey No.30, (Old Survey No.25) measuring 11 acres 21 guntas and B land bearing Survey No.31 (Old Survey No.26) measuring 1 acre 9 guntas situate in Jakkasandra Village, described in the plaint schedule as items 1 and 2. The said tank and land were earlier part of Block No.61 measuring 297 Acres 16 Guntas known as 'Dalavai Dinne', which belonged to their Great great C grandfather – Kurakalu Venkataramana Maistry. That the said Venkataramana Maistry executed a deed of settlement dated 7.1.1874 (Ex. P.2) settling the said Dalavai Dinne upon his son Chikkahanumaiah. The said Dalavai Dinne identified as Block No.61 was re-surveyed and allotted Re-Survey Nos.16, 19, 20, D 21, 23, 27 to 35. A portion of the said Dalavai Dinne measuring 102 acres was acquired for St. John's Medical College under final notification dated 30.4.1963. Another extent of 180 acres of land therein was acquired for forming of Koramangala Layout, under final notification dated 28.9.1965. After such E acquisition, the appellants were left with only Survey Nos.30 and 31 (suit schedule items 1 and 2 from out of the Dalavai Dinne) and they continued in possession thereof as owners. The documents trace their title for more than one and half centuries; and the suit properties have been owned and F possessed by the family from around 1850, originally by Venkataramana Maistry, later his son Chikkahanumaiah, thereafter his son Kurakalu Ramaiah, thereafter his son B.M. Ramaiah, and finally the plaintiffs. When the City Improvement Trusts Board (predecessor of Bangalore Development G Authority) attempted to interfere with their possession of Maistry Tank (Sy.No.30), the first appellant filed a suit (OS No.1 of 1976 in the Court of Civil Judge, Bangalore Rural District later renumbered as OS No.1305 of 1980 on the file of City Civil Court, Bangalore) for a permanent injunction. However, H subsequently the appellants filed a comprehensive suit –

O.S.No.714 of 1982, for a declaration of title and consequential injunction on 15.3.1982 against Government of Karnataka and Bangalore Development Authority in regard to Sy.Nos.30 and 31. During the pendency of the second suit, the first suit for injunction was dismissed on 16.9.1985 and the appeal filed by the appellant against the said dismissal was also dismissed by the High Court on 20.12.1994, with an observation that anything stated in the said judgment with reference to the title to the suit land (Sy.No.30) will not affect the pending suit for declaration of title in OS No. 714 of 1982.

3. The respondents resisted the said suit. According to them, Survey No.30 was a government tank shown as Kharab land in the revenue records. Survey No.31 was also government barren land shown as Government Kharab land in the revenue records. The appellants were neither the owners nor were they in possession of the said survey Nos.30 and 31. On the said pleadings necessary issues relating to title, adverse possession, relief claimed were framed and parties went to trial. Both sides let in oral and documentary evidence. After appreciating the evidence, the trial court by its judgment dated 19.4.1996 decreed the suit. It held that the appellants had made out their title and possession in regard to the suit properties. Feeling aggrieved, the respondents filed an appeal and a learned Single Judge of the High Court of Karnataka by the impugned judgment dated 4.9.2007, allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit. The High Court held that the appellants had neither made out title nor possession in respect of the suit properties. The said judgment and decree is challenged in this appeal by special leave.

4. The appellants claimed title, and possession on the basis of title. The revenue records, in particular Ex. D4, D5, D7 to D12, show the two survey numbers as 'Government tank' and 'Government barren land'. The names of appellants are not

A entered as owners in the revenue records. Though several documents have been marked by the parties, the entire case of appellants' in regard to title depends upon the documents Ex. P-1, P-2, P-10, P-11, P-12 and P-18. While the trial court held that these documents established the title of the appellants
B and consequently they were entitled to possession, the High Court on re-examination and re-appreciation of the evidence, in particular, the said documents, held that the appellants did not make out any title nor possession in regard to the suit properties. Therefore, the only question that arise for our
C consideration is whether Ex. P1, P2, P10, P11, P12 and P18 establish appellants' title to suit properties and whether the High Court committed an error in law in rejecting the said documents. In view of it, we will briefly analyse each of these documents.

D **Re : Ex P.18**

5. Exhibit P18 is an extract of the register maintained by the Public Works Department showing the details of tanks in Bangalore Division. The said extract is in respect of Serial No.279 from the said register relating to a tank described as
E Maistry Kere or Maistry Palyada Kere in Jakkasandra village, the extent of the water body being 11 acres. The name of the tank is followed by the word 'private' in the register and gives particulars of the Achkat area of the tank (that is area of land irrigated by the said tank) in the year 1906-07. The appellants
F contend that the description of the tank as 'private' in the Tank register would demonstrate that the tank did not belong to the government and that it was privately owned. The High Court however held that the mere use of the word 'private' after the description of the tank, will not establish appellant's title or
G possession in regard to Survey No.30.

6. The appellants relied on paras 236(b) and 376 of the Mysore Revenue Manual in support of their contention that private tanks existed in the State of Mysore and that the State
H Government recognized the natural right of private individuals

to construct and own tanks. The appellants contended that when the records maintained by the Government in the usual course of business, showed a particular tank as 'private', it was a clear admission that the tank was not a government tank but was privately owned. We may refer to the provisions of the Mysore Revenue Manual relied on by the appellants. Section IV thereof related to "Private enterprise tanks". Para 236(b) stated that there were about 318 private enterprise tanks in the State. Para 376 of the Manual deals with construction of Saguvali Kattes (irrigation tanks) by the landholders, the relevant extract of which is extracted below :

> "376 (1). The right of land-holders to construct "Saguvali Kattes" on their own lands is not affected by :-
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> (a) Section XX, paragraph 13 of the Rules of 1890 under the Land Revenue code, which relates to the construction of private tanks on Government unoccupied land: or
>
> (b) Appendix F to the said Rules, which relates to the restoration by private individuals of Government tanks and wells long in disuse.
>
> (2) Private individuals have the natural right to construct tanks on their own lands (Kandayam or Inam), so long as they do not thereby materially diminish the water flowing in defined channels through their lands for the benefit of Government works and private proprietors lower down such channels.
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> xxxxxxxx

7. A careful reading of para 376 of the Manual shows that a private tank can be constructed by a private individual, either in his own land or on Government unoccupied land. It also shows that private individuals may restore Government tanks. Therefore it follows that when a tank is described as 'private' in the tank register, that by itself will not establish that the land

A where the tank is situated is private land. To put it differently, when a tank enumerated in the Tank register maintained by the government, adds to the description of the tank, by the word 'private', it merely shows that the tank in question had been constructed by a private individual but it does not lead to the B inference that the land on which the tank is constructed belonged to a private individual.

8. Para 236 shows that a private land on being converted into a private tank would not get full exemption or remission from C payment of land assessment, but was extended only a partial remission. In fact, if a tank was constructed on a private land, the land would be continued to be assessed to land revenue with appropriate partial remission. On the other hand, if it is a Government unoccupied land on which a private individual is D permitted to construct the tank, it will continue to be shown as Government kharab land and will not be subjected to any land revenue. In this case neither Sy. No.30 nor Sy.No.31 is assessed to land revenue and are shown as Government Kharab land in all revenue records (vide Ex. D7, D8, D9, D10, E D11 and D12). Unarable lands including tanks are described as *Phut Kharab*. The Tank register extract (Ex.D15) and other documents produced by respondents show that Maistry Palya tank (Sl.No.279 in the Register) was breached and BDA had formed a layout in a major portion of the tank land and the F remaining area was being developed into a park by the forest department. We, therefore, cannot accept the contention of the appellant that Ex. P18, proves that Survey No.30 was a land owned by a private individual or that it did not belong to Government.

G **Re : Ex. P1 and P2**

9. Ex.P2 is the copy of the settlement deed dated 7.1.1874 executed by Venkataramana Maistry under which he settled upon his son Chikkahanumaiah, the Dalavai Palya, which was H a land assessed to land revenue, bounded East by

Jakkasandra boarder, South by Sabapathi Modaliyar Garden, West by Muni Reddy land and North by Srinangara Kere. Ex. P1 which is an extract of Phut Pahani chit of Jakkasandra, relating to revenue inspection of 18.6.1871. It shows that Survey No.25 measuring 10 acres 38 guntas in Jakkasandra village was a tank and described it as Phut Kharab land; that it formed part of Block No.61; and that the said tank was repaired by one Venkataramana Maistry. The appellants rely on Exs. P1 and P2 to prove the title of his ancestor Venkataramana Maistry in regard to the old tank situated in Survey No.25 measuring 10 acres 38 guntas and that the said survey No.25 was part of Block No. 61 (Dalayai Dinne in Jakkasandra) settled by Venkataramana Maistry on his son under the settlement deed (Ex.P2) dated 7.1.1874.

10. Phut Pahani is described in the Mysore Revenue Manual as an Inspection Statement showing the old survey numbers and corresponding new numbers of lands and full information regarding tenure and occupancy of the land. The Phut Pahani did not relate to nor provide proof of ownership of any land. Ex.P1 merely disclosed that when it was inspected on 18.6.1871, survey no.25 of Jakkasandra measuring 10 acres 28 guntas was a tank and that it was repaired by Venkataramana Maistry. This document therefore does not help the appellants to prove title of Venkataramana Maistry to the tank. Unless the title to the land on which the tank is situated is established, the mere fact that the tank was shown to have been maintained or repaired by any private individual will not make him the owner of the tank. At best it will show that the tank was maintained by him as a private tank for the purpose of irrigation.

11. Ex.P2 (settlement deed) does not refer to the tank. It does not give the total extent of the land. It does not disclose whether Sy. Nos. 30 and 31 formed part of Dalavai Dinne owned by the ancestors of plaintiffs at any point of time. The

A settlement deed merely shows that the Venkataramana Maistry had settled certain land known as Dalavai Dinne which was assessed to land revenue to his son Chikkahanumaiah and does not help the appellant to establish title to either survey Nos.30 or 31. The fact that the ancestors of the appellants B owned a large extent of land in Jakkaasandra village is not in dispute. In fact the appellant got compensation in regard to 102 acres of land acquired for St. John's Medical College and 180 acres of land acquired for Koramangala Layout aggregating to nearly 282 acres of land. While the settlement deed describes C the land settled as land assessed to land Revenue, significantly, survey Nos. 30 or 31 which are now claimed by the appellants as part of Dalavai Dinne were never assessed to land revenue, but were always described as Government Kharab land. Ex.P1 and P2 are therefore of no assistance to the appellants.

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Re : Ex. P10 & P11

12. The appellant next relied on Ex.P10 and P11 which are two contract notes. Ex.P10 is said to be of the year 1854-55. Ex.P.11 is said to be of the year 1865. These are contract notes E executed by contractors said to have been engaged to Venkataramana Maistry for execution of certain works relating to the tank at Dalavai Palya. They are not signed by Venkataramana Maistry. As noticed earlier, the fact that Venkataramana Maistry had constructed a tank or maintained F a tank, will not establish ownership to the land in which a tank was situated. Even assuming that the documents (Ex.P10 and P11) are genuine and related to a tank situated in Sy. No.30, they would not help the appellants to establish title to Sy. No. 30, or Sy. No.31.

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Re : Ex.P12

13. Ex.P12 is said to be the Tank Majkur Register Extract maintained by the Assistant Superintendent of Land Records, H Bangalore Sub-Division, showing that Re-survey No.30

measured 11 acres 21 guntas and the entire extent was karab (tank) and it corresponded to old survey No.25. It also records that the tank was dug by father of Ramaiah of Maistry Palya, that it was repaired by Ramaiah about 25 years ago and thereafter no one has repaired it and it is in the state of good repair. The date of inspection or entry is not mentioned and it does in no way help the appellants to prove title to the land.

Re : Judgment in Land Acquisition case

14. The appellant next relied upon the certified copy of the judgment of the reference court in LA. Misc. No.307 of 1966 by (Principal Civil Judge, Bangalore City) and connected cases (which the High Court took on record as evidence while hearing the appeal). The land acquisition reference proceedings did not relate to Sy Nos. 30 or 31. It is related to other lands and the issue before the court was a dispute between the appellant and some other claimants. The judgment sets out the case of the parties that Block No.61 called as Dalavai Dinne corresponded to survey Nos.16, 19, 20, 21, 23, and 27 to 35 and also refers to some of the documents which are produced in this case also. There is no adjudication of the title of the appellants or their ancestors in regard to Survey Nos. 30 or 31. Nor is there any finding by the court which can support the appellants' claim to Sy. No.30 or Sy.No. 31. Therefore, the High Court has rightly rejected the said judgment as not relevant for examining the title of the appellants.

Nature of proof required in suits for declaration of title against the Government

15. Suits for declaration of title against the government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the government. All lands which are not the property of any person or which are not vested in a local authority, belong to

A the government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the government, is not available to any person or individual. The *second* difference is in regard to the period for which title and/or
B possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/ possession for a period exceeding thirty years will have to be
C established to succeed in a declaratory suit for title against government. This follows from Article 112 of Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is
D obvious. Government properties are spread over the entire state and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion,
E create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

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16. Many civil courts deal with suits for declaration of title and injunction against government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against government being
G routinely decreed, either *ex parte* or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the government contests the suit or not, before a suit for declaration of title against a government is decreed, the plaintiff should establish, either his
H title by producing the title deeds which satisfactorily trace title

for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the government, grant declaratory or injunctive decrees against the government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the government : whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession – authorized or unauthorized; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

17. 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

A 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 B 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 C 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 D government. Be that as it may.

Position in this case

18. Section 67 of Karnataka Land Revenue Act, 1961 declares that all tanks and all lands which are not the property E of any person are the property of the state government. Sub-section (1) thereof which is relevant for our purpose is extracted below :

> "**67. Public roads, etc., and all lands which are not the** F **property of others belong to the Government.**—(1) All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and **tanks** and all G canals and water-courses and all standing and flowing waters, **and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property,** and except in so far as any rights of such persons may be established, in H or over the same, and except as may be otherwise

provided in any law for the time being in force, **are and are hereby declared to be with all rights in or over the same or appertaining thereto, the property of the State Government.** A

(emphasis supplied) B

Weakness of government's defence or absence of contest, are not therefore sufficient to decree declaratory suits against the government. It is for the appellants to establish their title to the suit properties.

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19. The respondents have relied upon several documents (mainly revenue records) to establish that the suit lands belong to the government. It is not be necessary to examine or refer to them, as the core issue is whether the appellants who filed the suit for declaration of title against the government, have D made out their title or possession to the suit properties. The High Court, being the first appellate court is the final court of fact. It has, after examining the evidence exhaustively recorded a finding that the appellants have not established their title or possession. We find no error in the findings and conclusions E of the High Court. We concur with the findings of the High Court, though for reasons slightly different from those of the High Court. The appellants who came to court claiming title, not having established title, their suit is liable to be dismissed.

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20. One more aspect requires to be noticed. The first appellant had earlier filed a suit (OS No.1 of 1976 renumbered as OS No.1305 of 1980) for a permanent injunction, claiming that he was in possession of Sy. No.30 (tank). That suit and appeal therefrom were dismissed by recording a finding that G he failed to establish possession. The observation of the High Court while dismissing the appeal from the decision in the earlier injunction suit, that the dismissal will not come in the way of plaintiff establishing title in the subsequent suit for declaration

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of title, will not dilute the finding recorded by the trial court and High Court that the first appellant was not in possession, which has attained finality.

21. No other material has been relied upon by the appellants to establish their title or possession. The appellants were not registered as the owners or khatedars or occupiers of the suit lands in any revenue records. They did not have any document of title referring to the suit properties. The appellants did not have possession. Even assuming that the tank in Sy.No. 30 was repaired/ maintained by the ancestors of plaintiff at some point of time, there is no document to show that the tank was used, maintained or repaired by the appellants or their predecessors during more than half a century before the filing of the suit. The suit has to fail.

22. For the aforesaid reasons, we find no ground to interfere with the judgment and decree of the High Court. The appeals are dismissed. The application for intervention is also dismissed.

K.K.T. Appeals dismissed.