

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**S.A. No.94/2007**  
**Mishrilal through Legal Heirs v/s Samarthmal & Others**  
**Indore, dated 06.09.2018**

Shri C.L. Yadav, learned senior counsel along with Shri S.S. Thakur, learned counsel for the appellant.

Shri D.S. Kale, learned counsel for the respondents.

1. The present Second Appeal is arising out of the judgment dated 05.04.2005 passed by the Civil Judge, Class-I Kukshi in Civil Suit No.44-A/2000, by which the suit as well as the counter claim has been dismissed.

2. The undisputed facts of the case reveal that one Narayan was the owner of the suit property and an agreement took place in respect of sale of suit property on 13.01.1978 and it was an oral agreement. The suit property is a house. Thereafter, the agreement was reduced in writing on 08.04.1978. As the terms and conditions of the agreement were violated, a legal notice (Exhibit-P/2) on behalf of Narayan to Mishrilal, the present appellant/plaintiff, was served terminating the agreement.

Mishrilal preferred a civil suit praying for injunction in the matter and a counter claim was preferred by Narayan, the owner of the property, claiming possession of the suit property. The suit as well counter claim both were dismissed and an appeal was preferred by Narayan against dismissal of the counter claim, as he was claiming possession of the suit property.

3. The undisputed facts also reveal that Narayan was the titleholder of the property and now the legal heirs of Narayan are on record. The appellate Court vide judgment and decree dated 11.12.2006 has allowed the appeal and has held that Narayan is entitled for possession of the suit property.

4. Learned senior counsel for the appellant has argued before this Court that the appellate Court has erred in law and facts in holding that Article 65 of the Limitation Act, 1963 is attracted, whereas in the present case, Article 66 is attracted. His contention is that the notice terminating the agreement (Exhibit-P/2) was issued on 19.06.1981. He has further argued that the counter claim was filed on 05.12.2000 i.e. after expiry of 12 years, and therefore, in light of Article 66 of the Limitation Act, 1963, the counter claim was rightly dismissed and the appellate Court could not have allowed the counter claim taking into account Article 65 of the Limitation Act, 1963.

This Court while admitting the present Second Appeal has framed the following substantial question of law:-

“Whether the lower appellate Court was justified in allowing in allowing the counter claim preferred by the respondent with aid of Article 66 of the Indian Limitation Act ?”

Learned counsel for the parties have fairly stated before this Court that there is a typographical error in the substantial question of law and in place of Article 66, Article 65 should be substituted.

Resultantly, the following substantial question of law has to be answered by this Court:-

“Whether the lower appellate Court was justified in allowing in allowing the counter claim preferred by the respondent with aid of Article 65 of the Indian Limitation Act ?”

5. In the present case, as stated earlier, the respondents are the titleholder of the property and there is no dispute about it. Article 65 and 66 of the schedule appended to the Limitation Act, 1963 reads as under:-

65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
<i>Explanation – for the purposes of this article –</i>			
	(a) Where the suit is by a remainder-man, a reversionary (other than a landlord); or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversionary or devisee, as the case may be falls into possession;		
	(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female the possession of the defendant shall be deemed to become adverse only when the female dies.		
	(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		
66.	For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.

6. The present case is a case where titleholder of the property is claiming possession. In case, arguments canvassed

by learned senior counsel are accepted, the titleholder of the property cannot file a suit claiming possession in spite of the fact that he is the owner of the property. The appellant was placed in possession by respondents and in the present case it is certainly Article 65, which is attracted.

7. The Apex Court in the case of *Md. Mohammad Ali (Dead) by LRs v/s Jagadish Kalita reported in 2004 (2) M.P.L.J. 259* has dealt with a similar issue. Paragraph-20 of the aforesaid judgment reads as under:-

“By reason of [Limitation Act](#), 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by [Art. 65](#) of the 1963 [Limitation Act](#), the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the [Limitation Act](#), 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession.”

In the aforesaid case, it has been held by the Apex Court that in case the plaintiff succeeds in establishing that he is the titleholder, Article 65 of the Limitation Act, 1965 will be applicable.

8. This Court in the case of *Pataria & Others v/s Mst. Chitia & Others reported in 1992 (2) M.P.J.R 281* has again held that in case title is proved, the limitation shall be governed by Article 65 of the Limitation Act, 1963. Paragraph-11 of the aforesaid judgment reads as under:-

“11. It is, thus, clear that a suit for possession of immovable property or in the interest therein being based on title and not merely possessory title is governed by Article 65 of the new Limitation Act. Once the title of the plaintiff is proved, a suit cannot be defeated unless and until the defendant has pleaded and proved acquisition of title in him by adverse possession. A mere failure on the part of the plaintiff in alleging and

proving his possession over the suit property at any time within the period of 12 years calculated back from the date of the suit would be immaterial and irrelevant.”

9. In the present case, the plaintiff has filed a suit claiming injunction and defendant/respondent before this Court has filed a counter claim for possession and the Apex Court in the case of *Gurbachan Singh v/s Bhag Singh & Others reported in (1996) 2 SCC 770* in paragraphs-2, 3 and 4 has held as under:-

“2. The contention raised in the courts below was that in a suit for perpetual injunction, the respondents could not lay any counter claim for possession. Order 8 Rule 6(A)(1) of the C.P.C., 1908 as amended in 1976 reads thus:

"A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up by way of counter-claim against the claim of the plaintiffs, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:-

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court."

3. It is true that Rule 6A(a) was introduced by Amendment Act of 1976. Preceding the amendment, it was settled law that except in a money claim, counter claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter claim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter claim or set off must be pleaded by way of defence in the written statement before the

defendant filed his written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter claim pecuniary jurisdiction of the court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction.. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained, by operation of Order 8 Rule 6 (A)(1) of CPC.

4. It is sought to be contended that the counter-claim was not filed within the time given for laying the same. It would appear from the list of the dates given by the petitioner himself that the counter-claim was filed within two months from the date of the suit itself.”

In the aforesaid, it has been held by the Apex Court that in case a suit is filed claiming injunction, counter claim for possession can also be entertained.

10. The undisputed facts of the case also reveal that the agreement was terminated by the defendant/respondent (Narayan). The Apex Court in the case of *Gaya Prashad Dikshit v/s Dr. Nirmal Chander & Others reported in AIR 1987 SC 930* again while dealing with almost similar situation has held that the termination of licence of the licensee does not enable the licensee to claim adverse possession.

11. In the present case also by no stretch of imagination, the plaintiff could have claimed adverse possession, as he was in permissive possession on account of the agreement. Later on the agreement was terminated and in those circumstances, the counter claim claiming possession was filed. Not only this the plea of possession is not available to

the appellant/plaintiff.

12. The Apex Court in the case of *Mohan Lal (Deceased) Through His LRs. Kachru & Others v/s Mirza Abdul Gaffar & Others* reported in (1996) 1 SCC 639 in paragraph-4 has held as under:-

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi nec clam nec precario. Since the appellant's claim is founded on [Section 53-A](#), it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

In light of the aforesaid, as the appellant came into possession on account of the agreement and later on the agreement came to an end on account of notice dated 19.06.1981, the plea of adverse possession is not available to him.

13. This Court has carefully gone through the plaint and it is not a case where suit for specific performance of contract was filed by the plaintiff. He was simply claiming injunction in the matter, and therefore, the appellate Court was justified in allowing the counter claim preferred by the respondent/defendant with the aid of Article 65 of the Limitation Act, 1963.

The substantial question of law is answered accordingly.

With the aforesaid, the present Second Appeal stands dismissed. A decree be drawn accordingly.

Certified copy, as per rules.

**(S.C. Sharma)**  
**Judge**

**Ravi**