

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.370 of 2010

JUDGMENT:

This second appeal by the unsuccessful plaintiff under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for short) is directed against the decree and judgment dated 18.01.2010 of the learned VII Additional District Judge (Judge, Fast Track Court), Vijayawada passed in AS.No.112 of 2008 whereby the learned Additional District Judge while dismissing the said first appeal had confirmed the decree and judgment dated 02.06.2008 of the learned III Additional Junior Civil Judge, Vijayawada passed in OS.No.2962 of 2004 filed for a declaration that the plaintiff is in exclusive possession of the suit schedule property prior to 1992 and that the said possession was confirmed by the possessory sale agreement dated 28.05.1992 and perfected title by adverse possession and for consequential perpetual injunction restraining the defendants, their men, agents, followers, servants etcetera from ever interfering with the plaintiff's peaceful possession and enjoyment over Ac.4.00 cents of agricultural land out of total extent of Ac.8.97 cents in R.S.No.322-1 of Pathapadu village of Vijayawada Rural Mandal more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff, for brevity) and the learned counsel for the caveator-respondent/1st defendant ('the 1st defendant, for brevity) at the stage of admission. I have perused the material record.

3. The learned counsel for the plaintiff had contended that the following substantial questions of law are involved in this appeal and therefore, the appeal deserves to be admitted for disposal on merits.

1. Whether the findings of the first appellate Court as to Ex.A1 and A2 based on the admission of DW1 regarding possession of the property is hit by the admission made by the DW1?

2. Both the Courts below failed to appreciate the legal proposition of passing of Judgment forthwith based on admission of DW1 as to Ex.A1 & A2 under order 12 rule 6 of CPC?

3. Whether the Courts below went wrong in reading the plea in the plaint in right perspective?

4. Whether the courts below at least failed to grant injunction irrespective of suit property based on Ex.A1 & A.2 invoking Section 53 of Transfer of Property Act?

5. Whether the courts below failed to consider possessory title of the appellant/plaintiff and erred in dismissing the suit as well as the appeal on wrong premises?

6. Whether the courts below failed to apply the principles underlie under Section 27 of the limitation Act?

7. Whether the plea of adverse possession was not properly appreciated by the courts below?

8. Whether the trial Court has erroneously held that the possession of the appellant as permissive?

[Reproduced verbatim]

4. Now it is to be examined as to whether or not any substantial questions of law are really involved in the second appeal; and, whether the appeal deserves to be admitted or is liable to be dismissed at the stage of admission. Before proceeding further, it is necessary to refer to the cases of both the sides.

4.1 The case of the plaintiff, in brief, is this: - 'The plaintiff had purchased the suit land from the 1st defendant. At the first instance i.e., on 04.07.1985 the plaintiff had entered into an agreement with the 1st defendant for purchase of the suit land at Rs.26,000/- per acre i.e., for a total consideration of Rs.1,04,000/-. On that day itself, the plaintiff had paid Rs.20,000/- to the 1st defendant towards advance with a specific understanding to pay the entire balance of sale consideration within four months and obtain a regular registered sale deed for the suit land in the name of the plaintiff. The plaintiff had accordingly paid the balance of sale consideration in the year 1989 and the possession of the land was delivered to the plaintiff. Thereafter the 1st defendant had executed a possessory sale agreement dated 28.05.1992 in favour of the plaintiff confirming the possession of the plaintiff over the suit land. Thus the plaintiff has been in possession and enjoyment of the suit land since the year 1989 as absolute owner and is paying the land revenue

to the Government and his name is also entered in revenue records and the land is mutated in his name as owner and possessor. On 04.01.1993 the 2nd defendant had got issued a legal notice to the plaintiff stating that the suit land was under equitable mortgage with the 2nd defendant bank. Then the plaintiff got issued a reply notice setting out his right, title and interest and also possession over the suit land and also making an accusation that the 1st defendant had cheated the plaintiff by suppressing the mortgage in respect of the suit land with the 2nd defendant bank. Therefore, the plaintiff who is in possession and enjoyment of the suit land as absolute owner for more than 12 years openly and to the knowledge of the 1st defendant and having perfected title by adverse possession is constrained to file the suit for the aforementioned reliefs.'

4.2 The suit against the 2nd defendant bank was dismissed as not pressed on 29.11.2004.

4.3 The case of the 1st defendant, in brief, is this: - 'The 1st defendant never executed and never entered into an agreement of sale with the plaintiff in respect of the suit land. The 1st defendant had borrowed Rs.20,000/- on 04.07.1985 from the plaintiff and had executed a demand promissory note in respect of the said loan amount. However, on the demand of the plaintiff to give some security for the said amount, the 1st defendant had executed the alleged agreement of sale dated 04.07.1985 in favour of the plaintiff only as a security for the amount borrowed. On 28.05.1992 the 1st defendant had borrowed another sum of Rs.70,000/- from the plaintiff. On that the plaintiff had obtained another promissory note from the 1st defendant for Rs.1,04,000/- by including Rs.20,000/- which was earlier borrowed from the plaintiff with interest thereon. The plaintiff had then obtained a possessory sale agreement from the 1st defendant on the same day i.e., 28.05.1992. Thus, the plaintiff had obtained a possessory sale agreement in respect of the suit land from the 1st defendant as a security for the total amount borrowed. The plaintiff had suppressed the real facts and had filed the suit as if he had

purchased the suit land. In fact the 1st defendant had not sold the land to the plaintiff and the plaintiff was never in possession of the land in any capacity. The 1st defendant is alone in continuous possession and enjoyment of the suit land as an absolute owner. Since the prices of the lands are increasing abnormally due to urbanisation, the plaintiff had filed the suit with a dishonest intention to grab the suit land with the help of above agreement which was executed by the 1st defendant as a security for the amount borrowed.'

4.4 Based on the above pleadings, the trial Court had framed the following issues.

1. Whether the plaintiff is entitled to get the relief of declaration that he is in exclusive possession of the schedule property prior to 1992 by virtue of possessory sale agreement dated 28.05.1992 and by virtue of adverse possession?

2. Whether the plaintiff is entitled to get the relief of permanent injunction against defendant No.1 as prayed for?

3. To that relief?

4.5 At trial, the plaintiff and his supporting witnesses were examined as PWs1 to 4 and exhibits A1 to A10 and X1 were marked. The 1st defendant was examined as DW1 and exhibit B1 was marked on the side of the 1st defendant.

4.6 On merits, the trial Court had dismissed the suit of the plaintiff with costs. As already noted, the first appeal preferred by the aggrieved plaintiff was also dismissed. Hence, the plaintiff is before this Court.

5. The learned counsel for the plaintiff would contend as follows: 'That the trial Court having accurately considered the facts and evidence had disbelieved the theory sought to be advanced by the 1st defendant that the suit agreement was executed as a security for the amount borrowed and had recorded a finding in paragraph 21 of its judgment that it is of the considered opinion that the plaintiff has proved his case that he has been in continuous possession and enjoyment of the suit land for more than 12 years i.e., prior to 1992 by virtue of exhibit A2-possessory agreement of sale. But, the trial

Court had erred in holding that the possession of the plaintiff over the suit land did not ripen into an adverse right and that the possession of the plaintiff over the suit land by virtue of possessory agreement of sale is not adverse and that, therefore, the plaintiff has not perfected title to the suit land by adverse possession. Being aggrieved of the said and other erroneous findings of the trial Court to that extent, the plaintiff had preferred an appeal.

The first appellate Court had erroneously recorded a finding that the plaintiff is not in possession of the property and had held that the trial Court had erred in arriving at a finding as to possession of the plaintiff in respect of the suit land on the strength of exhibits A1 and A2-agreements and the Court below had further erroneously held that the findings of the trial Court as to possession of the suit property are not correct. But, the court below went on to deal with the issue of adverse possession pleaded by the plaintiff on the assumption that the findings of the trial Court as to possession of the plaintiff over the suit property are correct and had erroneously confirmed the finding of the trial Court that the plaintiff did not perfect title by adverse possession and that the plaintiff is not entitled to claim adverse possession against the true owner having come into possession of the property by virtue of an agreement of sale with possession. The court below has not taken into consideration exhibit A9-certificate issued by the panchayat secretary, which confirms the possession of the plaintiff over the suit land since the year 1992. Thus the Court below had failed to consider the admission of DW1 regarding possession of the property and the Court below did not properly appreciate the evidence in the form of exhibits A1 and A2 and the oral evidence of DW1.

The Court below went wrong in reading the pleadings in the right perspective and failed to hold that the plaintiff is entitled to the reliefs claimed in the suit. The Courts below had failed to consider the possessory title of the plaintiff and had erred in dismissing the suit and appeal successively. The Courts below failed to appreciate the provision of law in Section 27 of the Limitation Act and had failed to properly appreciate the plea of adverse possession and had erroneously held that the possession of the plaintiff is permissive possession and that a person holding possession by virtue of a possessory sale agreement cannot claim adverse possession against the

true owner. The court below erred in un-necessarily interfering with the finding of the trial Court which upheld the possession claimed by the plaintiff over the suit land even prior to the year 1992. The Courts below had erred in not properly appreciating and not believing the evidence on the side of the plaintiff.' Having so contended he had urged forcefully that the aforementioned substantial questions of law are involved in this appeal.

6. On the other hand, the learned counsel for the 1st defendant had contended that the Courts below had recorded concurrent findings of facts particularly on the issue of the plaintiff's disentitlement to raise the plea of adverse possession against the 1st defendant as he had admittedly claimed possession by way of a possessory sale agreement by admitting the title of the 1st defendant and that the said concurrent findings are supported by cogent and valid reasons and that, therefore, no questions of law much less the alleged substantial questions of law are involved in this second appeal and this second appeal does not deserve admission. He had further submitted that all the questions raised on a perusal would show that the said questions are pure questions of fact and not even mixed questions of fact and law.

7. Without dilating the matter any further and proceeding on the assumption that the 1st defendant had agreed to sell the plaint schedule property and that at the first instance i.e., on 04.07.1985 the plaintiff had entered into an agreement of sale under exhibit A1 for purchase of the suit land for a total consideration of Rs.1,04,000/- and that on that day itself the plaintiff had paid Rs.20,000/- to the 1st defendant towards advance and that later the plaintiff had paid the balance sale consideration in the year 1989 and got possession of the suit land and that thereafter the 1st defendant had executed the possessory agreement of sale dated 28.05.1992 in favour of the plaintiff under exhibit A2 by confirming the possession of the plaintiff over the suit land and that the plaintiff has been in possession and enjoyment of the suit land since 1989 as a possessory agreement holder, let this Court examine as to whether the plaintiff, in the facts and circumstances of the

case, is entitled to a declaration that he had perfected title to the plaint schedule property by adverse possession and is, therefore, entitled to the reliefs claimed in the suit.

8. Going by the admitted case of the plaintiff, the 1st defendant was the absolute owner of the plaint schedule property and that the 1st defendant agreed to sell the plaint schedule property to the plaintiff and finally the possessory agreement of sale under exhibit A2 was executed by the 1st defendant and that under the said agreement, the 1st defendant had confirmed the possession of the plaintiff over the plaint schedule property and that since 1989 the plaintiff is in peaceful possession and enjoyment of the property having originally come into possession of the property as a purchaser under an agreement of sale. Admittedly, the plaintiff did not obtain a regular registered sale deed. There is no explanation from the plaintiff as to why he did not take a regular registered sale deed when exhibit A2-possessory agreement was entered into after payment of the entire balance of sale consideration and obtaining delivery of possession even by the year 1989. The plaintiff did not admittedly seek specific performance of the agreement of sale. Be that as it may. The plaintiff pleads that after the possessory agreement of sale under exhibit A2 was executed, the property was mutated in his name and he was paying the land revenue as owner and possessor. It is settled law that the agreement of sale does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property. This view gets reinforced from the ratio in the decision in **Sunil Kumar Jain v. Kishan and others**^[1]. On a reading of Section 54 of the Transfer of Property Act it is manifest that a mere contract for sale of immovable property does not create any interest in the immovable property [see **Rambaran Prosad v. Ram Mohit Hazra and others (AIR 1967 SC 744)**]. The law is also well settled that entries in revenue records either pursuant to mutation or without mutation also do not confer title. The view of this Court finds support from a decision in **Suraj Bhan and others v. Financial Commissioner and others**^[2] wherein

it was held as follows:

It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or *Jamabandi* have only 'fiscal purpose' i.e., payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil Court *vide Jattu Ram v. Hakam Singh and others [AIR 1994 SC 1653]*.

The Supreme Court in several judgements has held that the revenue records do not confer title. In **Corporation of the City of Bangalore v. M. Papaiah and another**^[3] the Supreme Court held that 'It is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law.' In **Guru Amarjit Singh v. Rattan Chand and others [(1993) 4 SCC 349]** the Supreme Court has held that "the entries in jamabandi are not proof of title". In **State of Himachal Pradesh v. Keshav Ram and Ors. [(1996) 11 SCC 257]** the Supreme Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff. Therefore, on the basis of possession which was obtained pursuant to an agreement of sale coupled with the entries in revenue records, the plaintiff cannot either claim ownership or title in view of the settled legal position.

9. Taking up now the plea of the plaintiff in regard to adverse possession, in the first place it is trite to note that both the Courts had recorded concurrent findings of fact that the plaintiff did not succeed in establishing the said plea. In **K. Mallikharjuna Vara Prasad v. K. Poornachander Rao (died) and others**^[4] it was held that whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property and that the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. A perusal of material record would reveal that the plaintiff neither pleaded nor established as required under law the plea of adverse possession. The decision in **Chatti Konati Rao v. Palle Venkata Subba**

Rao^[5] reiterates the settled proposition of law that mere possession however long does not necessarily mean that it is adverse to the true owner and that adverse possession really means the hostile possession which is expressly or impliedly in denial of the title of the true owner and that in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner and that the classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owners title must be peaceful, open and continuous. Coming to the case on hand, when the origin of possession is under a possessory agreement of sale it is for the plaintiff claiming adverse possession to plead and prove the *animus possessendi*; and it is for the plaintiff to plead and prove as to when the possession as an agreement holder distorted to one of hostile in nature, the starting point of such possession, the date of the knowledge of the real owner of such animus and hostility and the other facts such as when the possession operationalized as adverse possession. As noted, the adverse possession must be adequate in continuity, publicity and extent and a pleading is required at least to show when the possession of the agreement holder became adverse so that it would be clear as to when the starting point of limitation against the 1st defendant who would be affected can be found. There is no pleading and proof as to when the possession became adverse, if at all it did, and a mere assertion that there was an uninterrupted possession for several years or that the plaintiff had acquired title under an agreement of sale is not enough to raise such a plea of perfection of title by adverse possession. In **Mohan Lal (deceased through his LRs) v. Mirza Abdul Gaffar**^[6] it was held that when a party is in possession of suit land pursuant to an agreement, the plea of title by adverse possession is not available to him. A possession can be held to be adverse when the possession by that person does not acknowledge the right of the opposite party but denies the rights. The plaintiff is not claiming title by adverse possession pursuant to an invalid sale or a void sale.

10. The learned counsel for the plaintiff having placed reliance on the

decision in **Durgampudi Padmamma v. Kallutla Kotamma (died) and**

another ^[7] had contended that the courts below did not notice and apply the provision of Section 27 of the Limitation Act to the case on hand. His submission is that after the lapse of a period of more than 12 years the remedy of the 1st defendant who is the vendor under the agreement of sale stood extinguished as the said provision not only bars the remedy but also extinguishes the right. The facts of the above cited case would disclose that the document in the cited case dealt with an out an out sale transaction and that under the said document the execution of no other document was contemplated and the vendors had covenanted that they and their legal representatives are not going to dispute the title of the vendee under the said document and that the vendors and their legal representatives also did not dispute the fact that the vendee had acquired title against them by long possession and prescription. Reverting to the instant case facts, a perusal of exhibit A2 agreement of sale would show that it is an executory contract.

There is a clear recital in exhibit A2 agreement that the 1st defendant would execute a regular registered sale deed in respect of the plaint schedule property either in favour of the plaintiff or his nominee at the expenses of the plaintiff. Therefore, under this agreement, the sale is not complete and there was a contemplation to execute a regular registered sale deed. However, such regular registered sale deed was not executed. No suit was filed seeking specific performance. Therefore, the plaintiff is only an agreement holder but, not a purchaser having right, title and interest since the plaintiff had not obtained a regular registered sale deed from the 1st defendant even assuming for a moment that the suit sale agreements, exhibits A1 and A2, are true. An important facet of the case is that even according to the case of the plaintiff, the 1st defendant had mortgaged the suit schedule land while obtaining a loan from the 2nd defendant-Central Bank and had created an equitable mortgage by deposit of title deeds. Therefore, the 1st defendant is asserting his right, title and interest over the property as the owner thereof and had not abandoned his ownership. If really the property was sold and

the 1st defendant had given up his rights with the distinct understanding that he shall have no right of title to the property, he ought not to have mortgaged the property with the bank while borrowing a loan. There was no mental attitude on the part of the 1st defendant that the property ceased to belong to him altogether. Since there was a contemplation of a further document pursuant to the sale agreement under exhibit A2, the plaintiff/transferee under exhibit A2 agreement though in possession would be holding the property as an agreement holder but not either with any clear animus that he has become absolute owner of the property or in complete negation of any right or title of the transferor. His enjoyment is solely as an agreement holder in recognition of the title of the 1st defendant. Mere possession of the plaintiff as an agreement holder however long does not necessarily mean that it is adverse to the true owner. In **Achal Reddi v. Ramakrishna Reddiar and others** ^[8] the Supreme Court held as follows:

In the case of an executory contract of sale where the transferee is put in possession of the property in pursuance of the agreement of sale and where the parties contemplate the execution of a regular registered sale deed the animus of the purchaser throughout is that he is in possession of the property belonging to the vendor and that the former's title has to be perfected by a duly executed registered deed of sale under which the vendor has to pass on and convey his title. The purchaser's possession in such cases is of a derivative character and in clear recognition of and in acknowledgment of the title of the vendor. The position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is a clear manifestation of the intention of the owner to divest himself of the right over the property. On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the

conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself.

In this cited case the Supreme Court has in vivid terms laid down that when possession of the purchaser is under executory contract of sale, his possession cannot be said to be adverse and it was clarified that adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse. In **Ram Gopal v. Additional Custodian Evacuee Property**^[9] the Supreme Court held as follows:

It may be that Abdul Aziz Khan had tried to get back the property, section 53A of the Transfer of Property Act would come to the aid of the appellant in defence. But the present suit has been filed to establish the right of the appellant as owner of the property and in such a suit the appellant cannot take the benefit of section 53A of the Transfer of Property Act. We, therefore, hold in agreement with the High Court that the suit is clearly barred under section 46(a) of the Act.

From the above two precedents it is thus obvious that a person who had obtained the possession of the property under executory terms of the contract of sale, cannot ask for declaration of his title even on the ground that he had remained in possession of the property for more than 12 years period by contending that his possession is adverse to the vendor who is the real owner. In the case on hand, the two agreements of sale do not deal with an out and out sale transition. Under exhibit A2 agreement of sale the execution of a further document was contemplated. There is no covenant to understand that the sale is an out and out sale and that there is divestiture of title from the vendor to the vendee under the agreement. The trial Court upheld the plea of possession of the plaintiff by virtue of exhibit A2 agreement of sale. However, the first appellate court did not accept the plea of possession of the plaintiff and held that the finding of the trial Court in regard to the possession of the plaintiff is incorrect. Though the first appellate Court did not accept the plea of possession of the plaintiff, it had dealt with the issue of adverse possession and acquisition of title by the plaintiff by adverse possession on the assumption that the plaintiff is in possession of the property. Though the

courts below did not concur in regard to the possession of the plaintiff over the suit land, both the courts had concurrently recorded findings that the plaintiff did not acquire title by adverse possession against the 1st defendant, who is the vendor under the exhibits A1 and A2 agreements of sale. On a careful perusal of the material record this Court is satisfied that both the Courts had accurately considered the facts and appreciated the evidence in proper perspective while recording the findings on the aspect that the plaintiff did not acquire title to the property by adverse possession. Therefore, the said findings on the aspect that the plaintiff did not acquire title to the property by adverse possession and, therefore, the plaintiff is not entitled to a declaration prayed for being purely mixed question of fact and law, it cannot be said that either pure questions of law or substantial questions of law are involved in this second appeal. The concurrent findings well supported by reasons, which are valid and cogent, call for no interference in this second appeal. None of the questions that were sought to be raised are substantial questions and there is no substance in the questions raised. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. In the case on hand, as this Court finds that no substantial questions of law are involved, this second appeal is liable for dismissal at the stage of admission in view of the settled legal position and in view of the narrow compass of Section 100 of the Code. Accordingly this Court finds that no case is made out for admitting the second appeal.

11. In the result, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

24th July, 2015

Note: Issue CC by 03.08.2015

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- [\[1\]](#) AIR 1995 SC 1891
- [\[2\]](#) (2007) 6 SCC 187
- [\[3\]](#) (1989) 3 SCC 612
- [\[4\]](#) 2006(6) ALD 333
- [\[5\]](#) (2010) 14 SCC 316
- [\[6\]](#) AIR 1996 SC 910
- [\[7\]](#) 2015 (3) ALD 490
- [\[8\]](#) AIR 1990 SC 553
- [\[9\]](#) AIR 1966 SC 1438