

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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APPEAL SUIT No.686 of 1997

JUDGMENT:

The unsuccessful plaintiff in O.S.No.282 of 1996 on the file of III Additional Subordinate Judge Court, Vijayawada, preferred this appeal challenging the judgment and decree dated 03.02.1997, whereunder the suit filed by the plaintiff for declaration of title and other consequential relief was dismissed.

2. For convenience of reference, the ranks given to the parties in O.S.No.282 of 1996 on the file of III Additional Subordinate Judge Court, Vijayawada, will be adopted throughout the judgment.

3. The plaintiff filed the suit claiming relief to declare that he is absolute owner of the plaint schedule property and for consequential permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaint schedule property alleging that the plaint schedule property stands in the name of the defendant, but she has not been in possession and enjoyment of the property at any point of time and that the plaintiff is in occupation of the same for the last 14 years i.e., from January, 1982 and that he perfected his title by adverse possession to the knowledge of the defendant.

4. The plaintiff is the son-in-law of the defendant and when the plaintiff is in continuous possession and enjoyment of the property, the defendant tried to interfere with the same on 06.10.1996 at 5:00 PM and threatened the tenants to get them evicted. Thus, the attempt made by the defendant would amount to infringement of legal right of the plaintiff. Hence, the suit.

5. The defendant remained *ex parte*.

6. During course of trial, on behalf of the plaintiff, PW.1 – K.V.Subbarama Sastry was examined and Ex.A.1 was marked.

7. Upon hearing argument of both the counsel, the trial Court disbelieved the case of the plaintiff and dismissed the suit as the plaintiff failed to prove perfection of his title by adverse possession for a period of 12 years from the date of setting up adverse title.

8. Aggrieved thereby, the plaintiff preferred the present appeal on four grounds mainly contending that the dismissal of the suit when the defendant remained *ex parte* is an error committed by the trial Court and the trial Court ought to have believed the oral evidence of PW.1 coupled with documentary evidence, but on erroneous consideration of facts and law dismissed the suit without any legal reasoning and prayed to set aside the judgment and decree of the trial court and pass a decree declaring that the plaintiff is the owner of the plaint schedule property and grant perpetual injunction in favour of the plaintiff restraining the defendant from interfering with the possession and enjoyment of the suit schedule property.

9. During hearing, Sri V.V.L.N.Sarma, the learned counsel for the plaintiff, would contend that when the defendant remained *ex parte*, the trial Court ought to have believed, what PW.1 stated and decreed the suit and that the plaintiff established that he is in possession and enjoyment of the plaint schedule property for more than 14 years i.e., from January, 1982. But the trial Court without considering the said evidence, dismissed the suit and requested this Court to appreciate the evidence of PW.1 and pass appropriate judgment and decree in favour of the plaintiff.

10. Considering the contentions of the learned counsel for the plaintiff and perusing the judgment and decree of the trial Court, the point that arises for consideration in this appeal is:

Whether dismissal of the suit by the trial Court when the defendant remained

ex parte is legal, if not, liable to be set aside and a decree in favour of the plaintiff declaring that he is the absolute owner of the plaint schedule property and a perpetual injunction in favour of the plaintiff restraining the defendant and her men from interfering with the peaceful possession and enjoyment of the plaint schedule property be granted?

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POINT:

11. The first and foremost contention raised by the learned counsel for the plaintiff is that the procedure adopted by the trial Court in dismissal of the suit when the defendant remained

ex parte is erroneous. The dismissal of the suit by the trial Court is against Order VIII Rules 5 and 10 of C.P.C. Undoubtedly, the defendant before the trial Court did not contest the matter, but still the suit was dismissed, as the plaintiff failed to prove perfection of title to the property by adverse possession.

12. Order VIII Rule 5 of C.P.C. deals with specific denial. According to Order VIII Rule 5(1) of C.P.C., every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. According to Order VIII Rule 5(2) of C.P.C., where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

13. Even from bare reading of Order VIII Rules 5(1) and (2) of C.P.C., it is clear that the discretion is conferred on the Court to direct the plaintiff to prove a particular fact and merely because the defendant did not contest the matter, the Court need not pronounce the judgment against the defendant.

14. Order VIII Rule 10 of C.P.C. which was introduced by Code of Civil Procedure (Amendment) Act, 2002 though not applicable and according to it, where any party

from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up. The procedure prescribed under Order VIII Rule 10 of C.P.C. is only to pronounce the judgment and pass a decree against the defendant, who did not file the written statement. Undoubtedly, the Court has to pronounce the judgment under Order VIII Rule 10 of C.P.C., but a similar question came up before the Hon'ble Apex Court in **Ramesh Chand Ardawatiya Vs. Anil Panjuwani**, wherein it was held as follows:

“But there is substance in the other limb of this submission made by the learned senior counsel for the defendant-appellant. Even if the suit proceeds *exparte* and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of C.P.C. is attracted and the Courts acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A *prima-facie* proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded *exparte* the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the trial Court would scrutinize the available pleadings and documents, consider the evidence adduced and would do well to frame the ‘points for determination’ and proceed to construct the *exparte* judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

15. In another judgment of the Hon'ble Apex Court in ***C.N. Ramappa Gowda Vs. C.C.C. Chandregowda***, it was held as follows:

“It is only when the Court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, Court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. If the Court is clearly of the view that the plaintiff's case even without any evidence is *prima-facie* unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial Court which is seized of

the trial of the suit.

But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the Court to record an *exparte* judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the *exparte* judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the case of speedy trial.

It was further held as follows:

“The trial Court while accepting the plea of the appellant/plaintiff ought to have recorded reasons even if it were based on *exparte* evidence that the plaintiff had succeeded in proving the jointness of the suit property on the basis of which a decree of partition could be passed in his favour. But the trial Court has decreed the suit without assigning any reason how the plaintiff is entitled for half-share in the property. The same is absolutely cryptic in nature wherein the trial Court has not critically examined as to how the affidavit filed by the plaintiff in support of his plea of jointness of the family was proved on relying upon the documents without even discussing the nature thereof indicating that the suit property was a joint property.”

16. In ***Board of Trustees of Martyr Memorial Trust and another Vs. Union of India and others***, when similar question came up while dealing with judicial process can exercise power and the duties and interest to pronounce reasoned judgment by due application of mind, the Hon'ble Apex Court held as follows:

“Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor brief orders are always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focussed consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the Court must be examined with the seriousness it deserves.”

17. If these principles are applied to the present facts of the case, dismissal of the suit for failure of the plaintiff to establish his perfection of title by adverse possession cannot be found fault.

18. In another recent judgment in ***S. Guravaiah and others Vs.***

S.Ramesh and others, a Division Bench of this Court while dealing with Order VIII Rule 10 of C.P.C. held that the Courts are not expected to pass a cryptic judgment and required to pass a reasoned judgment, however remanded the matter to the trial Court with a direction to the defendants to file a petition to set-aside the *ex parte* decree. In any view of the matter, the case of the plaintiff is based on perfection of his title by adverse possession.

19. In the plaint, it is averred that the property belongs to the defendant and she is not in possession of the same. Moreover, the plaintiff claims to be in possession of the property since January, 1982, but to the knowledge of the defendant, there is no specific plea as to when the plaintiff set up the hostile title or adverse title against her. Mere continuing in possession for a long period would not ripen into adverse possession. To claim right by way of adverse possession, the plaintiff must plead and prove that he is continuing in possession for over a statutory period of 12 years from the date of setting up hostile title to the knowledge of the defendant.

20. In one of the oldest judgments of Privy Council in ***Secretary of State for India Vs. Debendra Lal Khan***, the Privy Council observed that the ordinary classical requirement of adverse possession is that it should be “*nec vi, nec clam, nec precario*” and the possession required must be adequate in continuity, in publicity and in extent to show that possession is adverse to the competitor.

21. In ***S.M. Karim Vs. Bibi Sakina***, the Hon'ble Apex Court observed as under:

“Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere suggestion in the relief clause that there was an uninterrupted possession for “several 12 years” or that the plaintiff had acquired “an absolute title was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is

not a substitute for a plea.”

22. In another decision in ***R. Chandevareappa and others Vs. State of Karnataka and others***, the Hon’ble Apex Court laid down the principles regarding adverse possession and necessity of pleadings and held as follows :

“The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant.”

23. In ***D.N. Venkatarayappa and another Vs. State of Karnataka and others***, the Hon’ble Apex Court highlighted the crucial pleadings to constitute adverse possession and held as follows :

“Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession.”

24. In a recent judgment of the Hon’ble Apex Court in ***Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others***, it was held as follows in Para 23 :

“23. There is another aspect of the matter, which needs to be carefully

comprehended. According to *Revamma's* case, the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, this Court observed that "Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgments of *Beaulane Properties Limited Vs. Palmer* (2005) 3 WLR 554 and *JA Pye (Oxford) Limited Vs. United Kingdom* (2005) 49 ERG 90. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."

25. The Hon'ble Apex Court in ***Mandal Revenue Officer Vs. Goundal Venkaiah and another***, relying on its earlier judgment in ***Anakili Vs. A.Vedanayagam*** held as follows :

"Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. For the said purpose, not only *animus possidendi* must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title."

26. The Hon'ble Apex Court in ***P. T. Munichikkana Reddy Vs. Revamma*** considered various facets of the law of adverse possession and laid down various propositions including the following:

"Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie

in it being open, continuous and hostile. To assess a claim of adverse possession, two-prolonged enquiry is required: 1. Application of limitation provision thereby jurisprudentially “willful neglect” element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner. 2. Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.”

27. The Hon’ble Apex Court in ***T. Anjappa and others Vs. Somalingappa and another*** held as follows:

“The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other’s rights but denies them. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner’s right excluded him from the enjoyment of his property. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person’s title. Possession is not held to be adverse if it can be referred to a lawful title. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner(that is, with the intention of excluding all person from it, including the rightful owner), he is in adverse possession of it. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.”

28. During examination of PW.1, he produced a tax receipt dated 02.05.1992 marked as Ex.A.1 evidencing payment of tax by the plaintiff for the year 1992. This receipt, at best, shows that the plaintiff paid tax and mere payment of property tax is

not sufficient to conclude that the plaintiff is continuing in possession and enjoyment of the property setting up hostile title over a period of 12 years from such date. Therefore, Ex.A.1 is of no assistance to the claim of the plaintiff to establish perfection of title by adverse possession.

29. In view of the law declared by the Privy Council and Hon'ble Apex Court, the plaintiff must not only plead but also prove that he is continuing in possession of the property for over a statutory period of 12 years from the date of setting up hostile title to the knowledge of the defendant otherwise the plaintiff is disentitled to claim relief of declaration on account of perfection of his title by adverse possession. In the present case, except making a bald allegation that the plaintiff perfected his title by adverse possession, no date of setting up of hostile title or adverse title against the defendant and to knowledge of defendant is disclosed in the entire body of the plaint and even in the evidence before the trial court, there is no whisper that he is continuing in possession for over a statutory period of 12 years from the date of setting up hostile title against the defendant to her knowledge. Therefore, the question of accepting the contention that the plaintiff perfected his title by adverse possession does not arise, as he miserably failed to establish the three requirements referred to in ***Secretary of State for India's*** case (5 supra) to claim right by perfection of his title by adverse possession. Therefore, the trial Court rightly dismissed the suit and it warrants no interference of this Court even after reappraisal of the material on record.

30. On reappraisal of the entire evidence, I find no substance in the contention of the plaintiff to grant a decree and the trial Court did commit no error in dismissing the suit. Hence, the judgment and decree of the trial Court is hereby confirmed holding this point in favour of the defendant and against the plaintiff.

31. In the result, the Appeal Suit is dismissed, but without costs.

32. Consequently, Miscellaneous Petitions, if any, pending in this Appeal Suit shall stand closed.

M.SATYANARAYANA MURTHY, J

Dated: 08.09.2015

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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APPEAL SUIT No.686 of 1997

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Date: 08.09.2015

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