

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.NO 1345 OF 1997

JUDGMENT

The unsuccessful plaintiff in O.S.No.59 of 1989 on the file of Principal Subordinate Judge, Ananthapur preferred this appeal against the decree and judgment, dated 01-09-1997, wherein the suit filed by the plaintiff for declaration of title and for permanent injunction was dismissed.

The appellant was the plaintiff and respondents were the defendants. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout the judgment.

The plaintiff filed suit for the aforesaid reliefs alleging that the plaintiff's father was in possession and enjoyment of the schedule property during his life time and after his death, the plaintiff has been in continuous possession and enjoyment of the schedule property by paying land revenue exclusively, openly and uninterruptedly and peacefully. The plaintiff with his hard labour reclaimed the land, made it fertile and raised crop in the schedule property for the last more than 50 to 60 years and perfected his title by adverse possession over the schedule property. While the matter stood thus, the plaintiff came to know that land was sub-divided into items 1 to 3 and assigned in favour of ancestors of defendants 2 to 6, but they were never in possession and enjoyment of the property. The plaintiff was not evicted by due process of law from the schedule property till the date of filing suit. The plaintiff alone has been in continuous possession and enjoyment of the property and neither of the defendants had any right or title to the schedule property. The subordinates of the 1st defendant issued a notice dated 28-02-1989 under Section 7 of Land Encroachment Act (for short "the Act") for summary eviction of the plaintiff from schedule property and earlier also similar notices were issued to

defendants 2 to 6. Thus, taking advantage of notices issued under Section 7 of the Act, defendant No.1 is trying to dispossess the plaintiff from the schedule property. Thereupon, the plaintiff got issued legal notice under Section 80 C.P.C. claiming title over the schedule property, but no useful purpose was served. Hence, the suit.

The 1st defendant filed written statement and resisted the claim of the plaintiff on the following grounds:

- a) The suit schedule property is a government assessed waste land and in the year 1961, it was subdivided into Sy.No.547/ 1, 2, 3. Out of total extent, an extent of Ac.15-00 cents was assigned to Mala Thimmappa, Mala Musalappa and Chakala Onnuramma.
- b) The assignees are in continuous possession and enjoyment of Ac.15-00 cents of land from the date of assessment in their own right.
- c) The plaintiff is not in possession of item No.4 of Sy.No.547. The Mandal Revenue Officer, Atmakur issued notice for summary eviction of the plaintiff from the property and initiated proceedings and removed from the possession by an order dated 29-03-1989 itself. Thus the plaintiff was not in possession of item No.4 in Sy.No.547 of Atmakur and thereby, the plaintiff is not entitled to claim any right in the schedule property.
- d) The plaintiff never claimed hostile title against the 1st defendant and thereby, the question of perfection of title by adverse possession does not arise. On this ground alone, the suit is liable to be dismissed and prayed for dismissal of the suit.

The other defendants remained exparte.

On the strength of above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff has perfected his title by adverse possession?
2. Whether the plaintiff is entitled for injunction as prayed for?
3. Whether the plaintiff is evicted from item No.4?
4. Whether the grant of pattas with respect to suit properties are valid and binding on the plaintiff?
5. To what relief?

During the course of trial, on behalf of the plaintiff, Pws.1 to 3 were examined and got marked Exs.A-1 to A-10. On behalf of defendants, DW.1 was examined and marked Ex.B-1.

Upon hearing arguments of the counsel for both the plaintiff and the 1st defendant, considering oral and documentary evidence, the trial Court dismissed the suit holding all the issues in favour of 1st defendant and against the plaintiff.

Aggrieved by the decree and judgment of the trial Court, the un-successful plaintiff preferred the appeal on various grounds. The main contentions raised in the grounds of appeal are as follows:

- (a) The trial Court totally ignored the evidence adduced by both the parties and passed decree and judgment, erroneously.
- (b) The plaintiff though proved his long continuous possession, the trial Court did not properly appreciate the evidence on record to come to conclusion that the plaintiff perfected his title by adverse possession.
- (c) The Trial court gave undue preference to the evidence of DW.1 who had no personal knowledge about possession and enjoyment of land by the plaintiff and erroneously believed the evidence of DW.1 and dismissed the suit.

Finally, the appellant requested this Court to re-appreciate the entire evidence both oral and documentary and set aside the judgment and decree under challenge and pass decree in favour of the plaintiff for the aforesaid reliefs.

Learned counsel for the plaintiff-appellant during the course of argument while reiterating the contentions raised in the grounds of appeal, contended that the plaintiff is in long continuous possession peacefully without any interruption by anybody to the knowledge of the 1st defendant that itself would sufficient to conclude that the plaintiff has perfected his title by adverse possession but the trial Court, by erroneous appreciation dismissed the suit without duly considering the

claim of the plaintiff based on evidence and committed an error and finally prayed to allow the appeal setting aside the decree and judgment of the trial Court and pass decree as claimed.

Learned Government Pleader for Appeals supported the findings recorded by the trial Court, more particularly contending that in the absence of any plea as to the date of claim of hostile or adverse title against the 1st defendant, the question of perfecting title by the plaintiff for the schedule property even if the plaintiff is continuing in possession for more than statutory period, the plaintiff is not entitled to claim declaratory relief on the strength of long continuous possession without setting up hostile title and prayed to dismiss the appeal.

Considering rival contentions, perusing the decree and judgment under challenge and the oral and documentary evidence on record, the points that arise for consideration is,

- 1) Whether the plaintiff is in long and continuous possession of the property claiming hostile title, over a statutory period of 60 years to the knowledge of the 1st defendant? If so, whether the plaintiff is entitled for declaration of title to the schedule property?
- 2) Whether the plaintiff is in possession and enjoyment as on the date of filing suit? If so, whether the defendants infringed or invaded legal right of plaintiff to continue in possession and enjoyment of the schedule property? If so, whether the plaintiff is entitled for permanent injunction restraining the defendants and their men from interfering with possession and enjoyment of the suit schedule property?

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POINT No.1:
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Undisputedly, the 1st defendant is the owner of the schedule property and land is assessed waste and the land in Sy.No.547 of Atmakur was sub-divided into 547/1, 2, 3 and 4 and the plaintiff is claiming to be in possession of item No.4 of Sy.No.547 of Atmakur.

In view of the undisputed ownership of the property of

the 1st defendant, the plaintiff while contending that his father was in

possession and enjoyment of the property and after his death, the plaintiff is continuing in uninterrupted possession and enjoyment of the property. Thereby perfected his title by adverse possession, at this stage it is apposite to advert to pleadings and relevant plea is extracted hereunder for better appreciation.

In para No.3 of the plaint, the plaintiff specifically pleaded as follows:

“ The survey Number 547 of Atmakur village measuring Ac.31-98 cents has been in possession and enjoyment of the father of the plaintiff and after his life time the plaintiff has been in possession and enjoyment for the past 50 to 60 years paying land revenue exclusively, openly asserting their exclusive rights uninterruptedly and peacefully. The plaintiff and his father by their hard labour and money to improve the land by removing stones and woods and shrubs. The land has been leveled and has become fertile and valuable. The plaintiff and his father being in possession for more than 50 years perfected their title by adverse possession in respect of Sy.No.547 of Atmkaur village measuring Ac.31-98 cents”.

It is clear from the plea in plaint extracted above, at best the plaintiff and his father are in possession and enjoyment of the property for more than 50 years. To claim adverse possession against the government, the plaintiff shall continue in possession and enjoyment of the property over a statutory period of 60 years from the date of setting up of hostile title. A bald allegation is made in para No.3 of plaint, that the plaintiff is continuing in possession and enjoyment of the property asserting exclusive title over the property. But even in the cause of action, the plaintiff did not disclose as to when the plaintiff asserted exclusive right over the property and continuing in possession and enjoyment of the same disclosing the acts amounting to assertion of hostile title. In the absence of any specific date of asserting exclusive right in the schedule property or setting up hostile title to the knowledge of the 1st defendant, the possession though long will not be converted into adverse possession. It is settled proposition of law that the pleading is the foundation of claim of adverse

possession or any right in the property. In the entire pleadings, there is no whisper as to the exact date of ascertaining exclusive right or setup hostile title over the property and thereby continuing in possession without interruption by anybody over a statutory period of 60 years while claiming adverse title against the Government.

In **Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria**^[1], the Apex Court highlighted the importance of purity of pleadings in civil cases and held as follows:

“ In Civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

In order to justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise.

In pleadings, whenever a person claims right to continue in possession of another property, it becomes

necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case”.

Even otherwise under Order 10 Rule 4 of C.P.C., where the plaintiff based his claim on the plea of fraud, misrepresentation, mistake or any other like cause has to disclose the full particulars of such claim. In the present case, the plea of adverse possession is set-up in the pleadings making a bald allegation that the plaintiff is continuing in possession asserting hostile title without disclosing further details of setting up hostile title or exclusive right over the schedule property to the knowledge of the 1st defendant who is the admitted owner of the property. In the absence of such details in the pleadings, it is difficult to accept the contention of the plaintiff for the reason that the defendant had no opportunity to rebut the specific plea in the absence of any details, in view of the principle referred in *Maria Margardia's case supra*.

It is the duty of the plaintiff to plead and prove requirements, which are essential for claiming adverse possession. In one of the oldest judgments of Privy Council in **Secretary of State for India v. Debendra Lal Khan**^[2], the Privy Council held that the ordinary classical requirement of adverse possession is that it should be “*nec vi. nec claim. 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.

Thus, the three requirements mentioned in the above judgment are *sine-qua-non* to lay claim of the plaintiffs basing on the adverse possession, but here there is absolutely no pleading and evidence to establish those three requirements.

In ***S.M. Karim Vs. Bibi Sakina***^[3], the 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.”

If the proposition laid down by the Apex Court in the decision cited supra, is applied to the present facts of the case, it is for the plaintiff who set up the claim of adverse possession has to plead and prove the three requirements and mere allegation that the plaintiff is in continuing long possession is not necessarily adverse possession and that their un-interrupted possession in the property is not a substitute for the plea of adverse possession.

In ***R. Chandevappa and others Vs. State of Karnataka*** and others^[4], the 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.”

In **D.N. Venkatarayappa and another Vs. State of Karnataka and others**^[5], the 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.”

In view of the principles laid down in the decisions referred supra which are binding precedents, it is for the plaintiff to disclose the date of setting up the hostile title and continuing in possession without any interruption over a statutory period of 60 years against the Government to claim adverse possession. Even in the evidence also, the plaintiff did not disclose the date of actual date or act which amount to setting up hostile title or asserting hostile title. In para No.3 of pleadings, the specific contention of plaintiff is that they are continuing in possession for over a period of 50 years, which is not sufficient to constitute to claim adverse possession against the government, since the requirement is 60 years uninterrupted continuous possession after setting up hostile title. Therefore, the pleadings and evidence on record are not sufficient to accept the contention that the plaintiff perfected his title by adverse possession.

In a recent judgment of the Apex Court in **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others**^[6], it was held as follows in Para 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."

The Apex Court in **Mandal Revenue Officer Vs. Goundal Venkaiah and another**^[7], relying on its earlier judgment in **Anakili Vs. A.Vedanayagam**^[8] 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.”

The Apex Court in **P.T. Munichikkana Reddy Vs. Revamma**^[9] 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.”

The Apex Court in **T. Anjappa and others Vs. Somalingappa and another**^[10] 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."

In the catena of decisions, it is the considered view of the Supreme Court that the plaintiff has to plead and prove the requirements to constitute the adverse possession and mere continuous possession, uninterruptedly over a long period is of no assistance. In Later judgment of **L.N.Aswathama and another Vs. P. Rakash**^[11] the Apex Court reiterated the requirements for establishing the adverse possession or prescription of title by adverse possession and burden of proof, in Para 18, held that long continuing possession by itself would not amount to adverse possession, if it was either permissive or without animus possessendi. To establish a claim of title by prescription, the possession of claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for over a statutory period. It is further held that the burden is on the plaintiff who asserted that they perfected title by adverse possession. In the present case, none of the requirements are pleaded and established by adducing cogent and satisfactory evidence to accept the plea of plaintiff that he perfected his title by adverse possession against the 1st defendant/Government.

Admittedly, the plaintiff is not claiming relief based on title but based on the possession. The plaintiff claiming title based on

possession and sought for declaration of title. His title was denied by defendant by issuing notice dated 28-02-1989 under Section 7 of the Act as pleaded in para No.6 of the plaint and the limitation starts from the date of receipt of notice and the limitation for filing suit is three years, from the date when right to sue first accrued under Article 58 of Limitation Act, so far as declaration is concerned, it is within time. However, the plaintiff admittedly had no title to the property and the 1st defendant alone is the owner of the property and failed to substantiate the contention of the plaintiff that he perfected his title by adverse possession.

In this case, the title of the plaintiff cannot be declared, since the relief under Section 34 of the Specific Relief Act (for short “ the S.R.Act”) is purely discretionary and such discretion has to be exercised judiciously. Further, the plaintiff is only encroacher or occupier of the property, however without any title and when the plaintiff did not approach the Court with clean hands, he is disentitled to claim equitable and discretionary relief under Section 34 of the S.R.Act. However, the proceedings produced before the trial Court marked as Ex.B.1 established that summary eviction order was passed and possession was taken over by Mandal Revenue Inspector. When the plaintiff is out of possession as per Ex.B.1, the relief which he is entitled to seek as on the date of filing of suit is declaration and recovery of possession, as per proviso to Section 34 of the S.R.Act. When the plaintiff failed to seek relief, which he is able to seek, on the date of filing suit, the Court cannot grant declaratory relief. On this ground also, the plaintiff is disentitled to claim declaration of title to the property.

On close analysis of entire pleadings and evidence on record, the plaintiff failed to establish perfection of his title by adverse possession but allegedly continuing in possession since a long time that was not sufficient to declare the right of the plaintiff over the

schedule property. The trial Court after appreciating the entire evidence on record held that the plaintiff is disentitled to claim relief of declaration under Section 34 of the S.R.Act and the finding of the trial Court is free from any legal infirmity and warrant no interference of this Court even after reappraisal of entire evidence. Hence, I find no ground to reverse finding of the trial court. Accordingly, finding of the trial Court is confirmed holding this point in favour of defendants and against the plaintiff.

POINT No.2:

In view of finding on point No.1, though the plaintiff claimed perpetual injunction under Section 38 of the S.R.Act, which is again purely a discretionary relief and when he is an encroacher according to the contention of the 1st defendant and even according to the plaintiff's case, he is in possession and enjoyment of the property without any title. Therefore, equitable relief of permanent injunction cannot be granted as possession is unlawful to exercise the discretionary power under Section 38 of the S.R.Act. Hence, the trial Court rightly declined to grant perpetual Injunction in favour of the plaintiff and the finding of the trial Court does not call for interference by this Court even after reappraisal of the entire evidence. Accordingly, the point is held in favour of the defendants and against the plaintiff.

In view of the findings on point No.1, the Appeal is devoid of merits and deserves to be dismissed.

Accordingly, the Appeal is dismissed, but without costs.
In consequence, Miscellaneous Petitions, if any, pending in this Appeal shall stand dismissed.

M. SATYANARAYANA
MURTHY, J

26-08-2015
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

PRE-DELIVERED JUDGMENT IN

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A.S.NO.1579 OF 1994

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APPEAL SUIT No. 1579 OF 1994

Date. -07-2014

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In view of the principles laid down in the above decisions, unless there is a pleading regarding claim of hostile title against the true owner, the vague allegation that they perfected their title by adverse possession cannot be substitute. On overall consideration of entire material available on record with reference to legal position referred supra, I find that the plaintiffs miserably failed to establish perfection of their title by adverse possession. Therefore, the plaintiffs are not entitled to claim a decree of declaration of title basing on possessory title. Though the trial Court did not frame any specific issue and did not record finding, since this court being the Court of 1st Appeal has to reconsider the evidence with reference to law and come to independent conclusion. Hence, by exercising powers conferred on this Court I hold that the plaintiff miserably failed to prove title by adverse possession consequently the point is held against the plaintiff and in favour of the defendant.

[\[1\]](#) AIR 2012 SC 1727

[\[2\]](#) AIR 1934 PC 23

[\[3\]](#) AIR 1964 SC 1254

[\[4\]](#) (1995) 6 SCC 309

[\[5\]](#) (1997) 7 SCC 567

[\[6\]](#) 2008 (6) ALD 121 (SC)

[\[7\]](#) 2010 (2) ALD 115 (SC)

[\[8\]](#) 2007 (14) SCC 308

[\[9\]](#) 2007 (6) SCC 59

[\[10\]](#) 2006 (7) SCC 570

[\[11\]](#) 2009 (13) SCC 229

