

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

SECOND APPEAL No.323 OF 2000

JUDGMENT:

The instant Second Appeal is preferred by the plaintiffs, having been unsuccessful before the trial Court in O.S. No.91 of 1986, in view of dismissal of suit by the judgment and decree, dated 30-03-1995, by the learned District Munsif, Hindupur, as well as before the First Appellate Court in A.S. No.19 of 1995, by the judgment and decree, dated 15-10-1999, passed by the learned Additional District Judge, Hindupur.

2. The plaintiffs sought the reliefs of declaration of title and consequential permanent injunction restraining the defendants, their men, agents etc., from interfering with the possession and enjoyment over the plaint schedule property, measuring 50 yards East to West and 45 yards North to South out of Acs.5.15 cents, comprised in Survey No.464.9, with nine (09) tamarind trees, one Kanuga tree and one Ragi tree etc., situated at Lepakshi village Polam, Hindupur Mandal, Anantapur District, on the basis of continuous and uninterrupted possession and enjoyment over the same for more than 100 years by their ancestors originally and later by them.

3. The appellants herein are the plaintiffs before the trial Court, while respondents are defendants. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the trial Court.

4. The case of the plaintiffs is, that plaintiff Nos.1 to 3 are

brothers and sons of one Chinnapa Reddy, who is son of Chowdappa. Plaintiff Nos.4 and 5 are sons of late G.C. Chowdi Reddy, who is elder brother of plaintiff Nos.1 to 3. The grandfather of plaintiff Nos.1 to 3 and their father, who is paternal grandfather of plaintiff Nos.4 and 5, were storing hayricks and manure pits in the suit schedule land right from the beginning, having raised cattle sheds. During life time of father of plaintiff Nos.4 and 5 i.e., six years prior to the institution of suit, though, division was effected among him and plaintiff Nos.1 to 3, still, for convenience sake, the suit schedule land is being enjoyed jointly by plaintiff Nos.1 to 3, who are having $1/4^{\text{th}}$ right each and plaintiff Nos.4 and 5, who are together having $1/4^{\text{th}}$ right.

i) It is also their case that their ancestors raised Tamarind trees, Kanuga trees and Ragi trees etc., which are aged 25 to 60 years. They pleaded other aspects stating that they have perfected their title by continuous possession for more than 60 years and sought to declare the title and to grant consequential permanent injunction.

ii) Admittedly, no notice under Section 80 of Code of Civil Procedure, 1908 (for short 'CPC'), was issued to defendant Nos.1 and 2. However, they got dispensed with the same by making an application under Section 80 (2) CPC seeking leave of the Court.

5. Answering the plaint, defendant No.2 – Mandal Revenue Officer, Lepakshi, filed written statement questioning the maintainability of suit itself on the ground that no notice under Section 80 CPC was issued which is a mandatory requirement. According to defendant Nos.1 and 2, Survey No.464-9,

admeasuring Acs.5-15 cents is classified as communal (straw yard and manure heaps) poromboke in order Dis.No.6710/36, dated 10-07-1936. The contention of the plaintiffs that they were storing hayricks, manure pits, construction of huts by several villagers since time immemorial is incorrect as the said land was converted from Government dry to straw yard and manure heaps poromboke as early as 29-07-1956.

i) It is according to them, the then Tahsildar of Hindupur having conducted due inquiry, opined the need of granting house site pattas to the needy villagers of Gongatipalli, hamlet of Lepakshi village and, accordingly, issued house site pattas to 48 beneficiaries in S.No.464-9, out of them, seven persons have constructed houses and in the remaining vacant place the other beneficiaries could not construct the houses due to poverty. As such, it cannot be said that the land in Survey No.464-9 is being put to use for straw yard and manure heaps from time immemorial by the plaintiffs.

ii) It is also according to them, the Commissioner – Sri C. Ramachandra Reddy appointed by the Court, has inspected the land on 21-05-1986 in the presence of the Mandal Revenue Officer, and found that the suit schedule site claimed by the plaintiffs was already assigned to the landless poor persons, Viz., Veerajinappa of Gongatipalli village in D.Dis.No.322/1384. Thus, the enjoyment of the plaintiffs was an unauthorized encroachment by the plaintiffs during the periods mentioned in the written statement.

iii) The defendants also stated that the father of plaintiff

Nos.4 and 5, G. Chinnapareddy, was also allotted plot No.16. Thus, defendants 1 and 2 resisted the claim of the plaintiffs.

6. On perusal of the record, the learned District Munsif, Hindupur framed the issues on 21-01-1993, which read thus:

“

- 1) Whether the plaintiff is entitled for permanent injunction as prayed for?
- 2) To what relief? ”

Somehow, the learned District Munsif lost sight of the reliefs claimed by the plaintiffs, since the plaintiffs have claimed relief of declaration of their title basing on adverse possession also and consequential permanent injunction. However, since the parties entered trial basing on their respective stands by examining the witnesses and marking the documents, and suit itself was disposed of by the trial Court and, even, the first appellate Court disposed of the appeal, perhaps, without properly probing into what were the reliefs claimed and what were the issues settled for trial by the trial Court, it is unreasonable, at this stage, to remit the matter to the trial Court for disposal afresh, as necessary pleadings and the evidence are available on record touching the reliefs sought by the plaintiffs and defended by the defendants.

7. Before the trial Court, plaintiff No.1 examined himself as PW.1, besides examining PWs.2 to 6, amongst whom, PW.6 is the Court Commissioner - C. Ramachandra Reddy, and marked Ex.A-1, which is plaint plan, whereas, on behalf of defendants, DWs.1 to 3 were examined and marked Exs.B-1 to B-4. That apart, report of PW.6, Court Commissioner, and plan drawn by him are marked as Exs.C-1 and C-2.

8. It is not in dispute that the suit land belongs to the Government. The claim of the plaintiffs is based on adverse possession. But, admittedly, there is nothing on record through the evidence of the plaintiffs from what point of time their possession has become hostile so far as the Government is concerned. The plaintiffs except stating that for more than 100 years or 70 years, their ancestors had been in possession and enjoyment of the suit land and, thereafter, they have been in possession and enjoyment, there is nothing on record to substantiate their stand. The documentary evidence marked on behalf of the plaintiffs is only the plaint plan, which is marked Ex.A-1, and they have not chosen to file certified copies of revenue records to prove their continuous possession.

9. This apart, the evidence let in by the defendants, more particularly, through Exs.B-1 to B-4, would condemn the case of the plaintiffs. Ex.B-1 is the representation of Villagers of Gongatipalli, hamlet of Lepakshi belonged to Scheduled Caste made to the then Tahsildar, Hindupur requesting for allotment of 0-05 cents each by issuance of pattas. Ex.B-2 is a publication notice calling for objections, Ex.B-3 is proposals of Revenue Inspector, Hindupur, which reflects that no objections were received, and Ex.B-4 is Adangal extract showing the names of one Devaiah and Mutha Reddy for Faslies 1381, 1382, 1383. DW.1 is the Mandal Reenue Officer whose evidence shows that the suit land was government communal poromboke and prior to 1973, all the villagers used the said land for keeping their manure heaps and on representation from the villagers of Gongatipalli as in Ex.B-1, the Revenue Inspector was directed to conduct survey and to convert the classification from Communal Poromboke to Gramanatham

Porombok for allotment of house sites, and Ex.B-2 notice, dated 06-11-1973 was published for conversion of the land, calling for objections and, no objections were received from anybody including the plaintiffs, and even no request was received from them stating that they were in possession and enjoyment of the suit land and to allot the same to them. Later, the land was divided into house site plots and allotted to the landless poor people and even, the father of plaintiff Nos.4 and 5 was also allotted plot No.16. Thus, it is clear that the evidence of DW.1 clinches the issue. No doubt, he was cross-examined elaborately by the learned counsel for the plaintiffs, but nothing useful to prove the long uninterrupted possession and the date of commencement of hostile possession, is elicited. That has been the reason why, the trial Court having recorded the finding to the effect that the plaintiffs were in unauthorized possession of the government land and were not entitled to permanent injunction, dismissed the suit, by judgment and decree, dated 30-03-1995.

10. As against the said judgment, the appellants preferred the appeal which was also dismissed by the Appellate Court. A perusal of the judgment of the first Appellate Court also would show that the Appellate Court elaborately considered the evidence on record let in by both sides and holding that the plaintiffs were unauthorized occupants, dismissed the appeal, confirming the judgment and decree passed by the trial Court.

11. Heard Sri R.N. Hemendranath Reddy, learned counsel for the appellants – plaintiffs, and the learned Government Pleader for Arbitration (Andhra Pradesh).

12. The learned counsel for the plaintiffs would submit that the Court below acted illegally in deciding the suit as it was filed seeking the reliefs of declaration of title and consequential permanent injunction, but without framing an issue regarding the title of the plaintiffs over the suit land, proceeded with the suit. He would also submit that it was improper on the part of both the Courts below in deciding the issue by framing only one issue, when the suit is filed for declaration of title and permanent injunction. On the other hand, the learned Government Pleader for Arbitration would submit that though, the issue for declaration of title is not framed, but finding has been tendered, since the evidence let in by both the parties was based on the relief of declaration of title also, and the mere fact that no issue was settled for trial in regard to the declaration of title is not a ground, at this stage, either to remit the matter or to allow the instant appeal where definite findings even recorded by the Courts below consistently. The learned Government Pleader also placed reliance on the decision in **Bhim Singh and others v. Zile Singh and others**^[1], for the proposition that plea of adverse possession is available only to a defendant against plaintiff and no declaration could be sought by plaintiff in regard to ownership on the basis of adverse possession and mere long possession cannot be taken as adverse possession. The learned Government Pleader also placed reliance on the decision of Hon'ble Supreme Court in **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others**^[2], as to the indispensable ingredients to be proved when adverse possession is claimed and, thus, the submission of the learned

Government Pleader is, that plea of adverse possession is not available to the plaintiffs, and such a plea is only available to the defendants.

13. So far as the nature of land is concerned, admittedly, it is a communal Porombok, as narrated in the above, where conversion was also effected by issuing necessary proceedings by the Revenue Authorities and even allotment proceedings were also issued by dividing the land into plots, and as many as 48 beneficiaries were allotted including the father of plaintiff Nos.4 and 5, in whose favour, plot No.16 was allotted as seen from the evidence of DW.1.

14. When plea of adverse possession is not at all available to the plaintiffs, the question of seeking declaration on the basis of continuous possession and perfection of title and non-framing of issue in regard to perfection of title by adverse possession is of no consequence to find fault with the judgments rendered by both the Courts below. In the case of **Bhim Singh** (Supra 1), it is clear that the plea of adverse possession is only available to the defendant against plaintiff, but plaintiff cannot seek ownership based on adverse possession. The effect of Articles 64 and 65 of the Limitation Act, 1963, have been discussed in the said judgment. However, it is unnecessary to refer to the details thereto as it is well-settled that plaintiff cannot seek declaration of title based on adverse possession. In that view of the matter, failure to frame an issue touching the relief of declaration of title based on adverse possession is of no consequence at all, and to the same effect is also the decision in **Hemaji Waghaji Jat** (Supra 2).

15. When viewed, in the above context, the question agitated by the plaintiffs in the instant second appeal to the effect that the trial Court as well as the First Appellate Court overlooked the fact of failure to settle an issue in regard to the relief of declaration of title and thereby acted illegally, is of any assistance to the appellants herein either to remit the matter or to allow the instant second appeal.

16. Thus, the instant second appeal is devoid of merit so also the substantial question of law, as formulated by the appellants herein, and consequently, the instant second appeal stands dismissed. No order as to costs.

17. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

November 07, 2015.

Mgr

[\[1\]](#). AIR 2006 Punjab and Haryana 195

[\[2\]](#). (2009) 16 SCC 517