

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No.464 OF 1997

JUDGMENT :

The unsuccessful plaintiff No.1-Zebunnisa Begum, who died during the pendency of the suit, and her legal representatives preferred the appeal challenging the decree and judgment, dated 22.01.1997, in O.S.No.88 of 1993 passed by the Subordinate Judge, Nalgonda, whereunder the suit filed by the plaintiff for declaration of title and for perpetual injunction was dismissed.

2. The ranks given to the parties in O.S.No.88 of 1993 before the trial Court will be adopted through out this judgment.

3. The plaintiffs filed the suit for declaration of title to plaint 'A' schedule property and for perpetual injunction to restrain the defendants from interfering with the plaint 'A' schedule property alleging that the land in Survey No.1484, D.No.2057 admeasuring 1333 sq. yards situated at Pangal Revenue Village originally belongs to Syed Meersaheb, who died intestate about 30 years ago, leaving behind him, his four sons viz. Syed Younus, Syed Yahaya, Syed Jainulabuddin and Syed Haron Rasheed, his four daughters viz. Noorunnisa Begum, Radrunnisa Begum, Kareemunnisa Begum and Jebunnisa Begum (1st plaintiff). The property was partitioned among the legal heirs by metes and bounds and since the date of partition the respective parties are enjoying the said property in their own right. The share of the 1st plaintiff is 2667 sq. yards along with other lands, which was disposed of by her to third parties. Thus, the 1st plaintiff became absolute and exclusive owner of the property to an extent of 2667 sq. yards which is more fully described in schedule annexed to the plaint. Since the date of

partition, the 1st plaintiff and after her death plaintiffs 2 and 3 have been in possession and enjoyment of the property and their names were mutated in the revenue records. Even otherwise, she perfected her title by virtue of long, continuous adverse possession for more than the statutory period of 12 years.

4. Though the land is in exclusive possession and enjoyment of the 1st plaintiff and her heirs, the name of Yahya Khadri was shown as pattedar though he was neither in possession nor owner of the property.

5. The 3rd plaintiff became exclusive owner of plaint 'C' schedule property measuring 1334 sq. yards.

6. Defendants 1 and 2 disputed the title of the plaintiffs without any manner of right whatsoever in the suit schedule property and when the plaintiff started construction of the schedule property after obtaining necessary permission from defendants 1 and 2, suddenly, defendants 1 and 2 cancelled the permission on the ground that the plaintiffs are not the owners of the property and it is a site earmarked for public purpose i.e. park. Therefore, the plaintiffs sought the aforesaid reliefs.

7. The 1st defendant filed written statement denying the material allegations, *inter alia*, contending that the plaintiffs are not the owners of the plaint schedule property and the same is earmarked as park surrounded by plots in the lay out approved by the concerned authorities. The surrounding purchasers of the suit schedule property constructed houses after obtaining necessary approval from defendants 1 and 2 and that the suit schedule property is within the limits of the 1st defendant municipality. Therefore, the plaintiffs applied for construction of building and

obtained approval, but later on enquiry, the defendants came to know that they are not the owners of the property and revoked the permission as it was in breach of master plan and prayed for dismissal of the suit.

8. On transfer of the suit to the trial Court from original Court additional written statement was filed by the defendants in the suit contending that the land was earmarked for park by the Town Planning Authorities and the plaintiffs cannot have two reliefs in the same suit and sought for dismissal of the suit with costs.

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

1) *Whether the plaintiff is entitled for perpetual injunction as prayed for?*

2) *To what relief?*

10. Additional issues:

1) *Whether the plaintiffs are entitled for declaration as prayed for?*

2) *Whether the suit is under valued and court fee paid is insufficient?*

3) *To what relief?*

11. The plaintiffs also filed O.S.No.89 of 1993 against the defendants for grant of perpetual injunction restraining the respondents from interfering with 'A' and 'B' schedule properties. The plaintiffs also filed another suit i.e O.S.No.90 of 1993 for declaration that proceedings No.G1/116/91, dated 28.08.1991, and proceedings No.G1/65/91, dated 28.08.1991 passed by the 1st defendant are null and void raising the same contention that they became owners of the property.

12. Initially, the suit O.S.No.88 of 1993 was decreed and the same was set aside in the appeal and remanded to the trial Court on

account of pendency of two other suits. O.S.No.88 of 1993 was clubbed with other suits, recorded evidence in O.S.No.88 of 1993.

13. During the course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A.1 to A.44 were marked. On behalf of the defendants none were examined and no documents were marked.

14. On hearing argument of both counsel, considering material available on record, the trial Court dismissed the suit holding that the plaintiffs miserably failed to prove their title to the schedule property and declined both the reliefs i.e. declaration of title and perpetual injunction in respect of 'A', 'B' and 'C' schedule property. The trial Court also dismissed O.S.No.89 of 1993 and O.S.No.90 of 1993 by common judgment.

15. Aggrieved by the decree and judgment in O.S.No.88 of 1993, the unsuccessful plaintiffs preferred the present appeal raising several contentions.

16. The main contentions urged in the grounds of appeal are as follows:

- a) The trial Court did not consider oral and documentary evidence adduced to prove title to 'A', 'B' and 'C' schedule property and failed to consider Exs.A.36 to A.44 and not even mentioned in the judgment. Therefore, the approach of the trial Court is erroneous.
- b) The trial Court did not consider the plan marked before it to know whether any park was shown or site was earmarked for public purpose. In the absence of any such earmarking, the finding of the

trial Court is erroneous.

- c) The defendants having approved the plan, after raising construction, ought not to have revoked the plan on the ground that the site is earmarked for public purpose i.e park and the same was disproved by producing master plan of Meerbagh Street and if those documents are considered, the trial Court would not have dismissed the suit. Finally prayed to set aside the decree and judgment passed by the trial Court and pass a decree in their favour for the aforesaid reliefs.

17. During the course of hearing, learned counsel for the plaintiffs/appellants would contend that the voluminous documentary evidence particularly pahanies and other revenue records clinchingly establish that the 1st plaintiff and after her death, plaintiffs 2 and 3 became the owners of 'A' to 'C' schedule property and even otherwise the plaintiffs perfected their title by adverse possession, because of their long continuous uninterrupted possession in the schedule property. But, the trial Court totally ignored the plea of perfection of title by adverse possession and committed an error. It is further contended that the plaintiffs alone are in possession of the property. In the absence of any rebuttal evidence by the plaintiffs, the Court ought to have believed their evidence and pass a decree, but erroneously dismissed the suit without any legal basis and prayed to allow the appeal setting aside the decree and judgment passed in O.S.No.88 of 1993 by the Subordinate Judge, Nalgonda, pass decree in favour of plaintiffs granting aforesaid reliefs.

18. None appeared for the respondents/defendants despite

granting several adjournments.

19. Considering the contentions of the learned counsel for the appellants, perusing oral and documentary evidence and the judgment under challenge, the points that arise for consideration are as follows:

- 1) ***Whether the plaintiffs proved their title to the schedule property, if so, are they entitled to a decree for declaration of their title?***
- 2) ***Whether the suit claim of the plaintiffs for perpetual injunction is barred by principles of res judicata?***
- 3) ***Whether the plaintiffs are entitled for perpetual injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property?***

POINT No.1:

20. The first and foremost contention of plaintiffs 2 and 4/appellants is that the property originally belongs to her ancestors and in the partition the schedule property to an extent of 2667 sq. yards and another property was allotted to the share of the 1st plaintiff and after her death, plaintiffs 2 and 4 are in continuous possession and enjoyment of the said property.

21. The defendants denied the title of the plaintiffs while contending that it is a public place earmarked for park. Therefore, the plaintiffs cannot be declared as owners of the schedule property.

22. When the plaintiffs filed the suit for declaration of their title under Section 34 of the Specific Relief Act, it is for the plaintiffs to establish their independent title notwithstanding the weakness of defence set up by the defendants. They produced Ex.A.1 to A.34. Ex.A.1 is the municipal permission during 1991. Ex.A.2 is the

approved plan. Ex.A.3 is the municipal permission for construction. Ex.A.4 is the approved plan. All the four documents at best proved that permission for construction was granted, but mere grant of permission or approval of plan would not confer any title over any immovable property. Therefore, Ex.A.1 to A.4 are of no assistance to prove the title of the plaintiffs. Exs.A.5 to 35 are only pahanies and receipts evidencing payment of non agricultural land assessment. Pahanies are only a record maintained by the Revenue Department and the entries therein would not confer or create title to immovable property, as per the settled law laid down by this Court in **N.S.Srinivas and others v. Madduri Mallareddy and others**^[1], wherein, it was held as follows:

“Even the certified copies of revenue extracts are not conclusive of title or right to the land. Such an entry is only prima facie evidence of possession and a right to hold the land, but it does not confer any title. Therefore, it is for the parties who claim title to the property to establish the same by adducing evidence of the nature and source of title and the character of right acquired and other pieces of evidence bearing on the subject. That evidence has to be considered by the civil Court. The revenue courts have no jurisdiction to conclusively decide the question of title.”

23. If the principle laid down in the above judgment is applied to the present facts of the case, Exs.A.1 to A.34 would not create or confer any title to immovable property since the revenue records are maintained for limited purpose i.e. for collection of revenue, not for any other purpose. In fact the Supreme Court in **Baleswara Tewari (died) by LRs v. Sheo Jatan Tiwari and others**^[2] at para 12, it was held as follows:

“16. Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least

concerned with entries. It is common knowledge in rural India that a raiyat always regards the lands he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the act confers title to the land he tills".

The pahanies are the paradise of patwaries and except in few occasions the ryth is unconcerned with the entries. Hence much credence cannot be given to the entries in revenue records to conclude that the plaintiffs are owners of the schedule property.

24. One of the contentions urged before me is that the plaintiffs marked Exs.A.35 to A.44, but those documents were neither referred anywhere in the judgment nor listed in the appendix of evidence. Even the trial Court did not look into those documents while pronouncing the judgment, no doubt, that there are nine documents, which were not included in the appendix of evidence and not discussed anything while answering additional issue No.1 in O.S.No.88 of 1993 along with issue No.1 in another suit in para 31 of the judgment. Ex.A.35 is the proceedings of the Municipal Commissioner, dated 07.04.1999, approving plan for raising construction in favour of Rukia Sultana (Plaintiff No.3) and Ex.A.36 is receipt of property tax, dated 07.04.1999. Ex.A.37 is the ownership certificate issued by the Municipality for the H.No.6.6.556/1 of Ravindernagar certifying that Rukia Sultana, the 3rd plaintiff, is the absolute owner of the house. Similarly, Ex.A.38 is the ownership certificate issued by the Mandal Revenue Officer, Nalgonda, certifying that Rukia Sultana, the 3rd plaintiff, is the absolute owner of house bearing No.6.6.556/1 along with surrounded land to an extent of 1334 sq. yards in Survey No.1484 situated at Ravindernagar Colony, Nalgonda. The certificate of ownership issued by either Municipality or Mandal Revenue Officer

is not sufficient to establish the title to the property, at best it is a corroborative piece of evidence. Therefore, those documents i.e. Ex.A.36 to A.38 are of no use to establish title to the property of the plaintiffs. Exs.A.39 and A.40 are only special notices issued in revision of tax to Rukia Sultana, the 3rd plaintiff and tax receipt issued to the 3rd plaintiff dated 24.11.1999. Similarly, Exs.A.41 and A.42 are only Photostat copy of tax receipts and original tax receipt issued to the 3rd plaintiff, Rukia Sultana, evidencing payment of property tax for house situated at Ravindernagar Colony, Nalgonda. Ex.A.43 is the approved plan. Ex.A.44 is the master plan. All these documents would establish that the defendants approved plan for construction of a house by the 3rd plaintiff and none of the documents would disclose about granting permission either to the 1st plaintiff or the 2nd plaintiff for raising any construction or evidencing payment of tax for the immoveable property to the Municipal Corporation. Even assuming for a moment that those documents issued certifying that the 3rd plaintiff is the owner of the house would not create any title to the immoveable property. The title can be created to immoveable property either by transfer *intervivos* or by testament any dispossession or perfection of title to the property by adverse possession or presumption. But none of those documents would establish any of the modes of acquisition of title to property to accept the contention of the plaintiffs that they became absolute owners of the property.

25. When I adverted to the oral evidence of Pws.1 and 2, it is totally silent whether the property was allotted to them in the registered partition or oral partition. Moreover, they did not disclose any details as to the partition and the properties allotted to their respective share. The evidence of PWs.1 and 2 is most casual and

not inspiring confidence of the trial Court. When the plaintiffs claiming title to the property, it is for them to establish that they are absolute owners of the property by virtue of partition as pleaded by them by producing satisfactory evidence. Curiously, no iota of evidence is brought on record evidencing allotment of property in the partition among the legal heirs and allotment of the suit schedule property to any of the plaintiffs. The documents whatever produced before this Court may establish that the plaintiffs are in possession of the property. Mere continuation of possession of immoveable property would not confer any title, unless they perfected the title by adverse possession. Here, the plaintiffs made a bald allegation that by virtue of their long continuous uninterrupted possession, they perfected title to the property. But the pleading is totally silent as to when they claim hostile or adverse title to the defendants and continuing in possession, thereafter for a statutory period of 12 years. The evidence is also silent as to the date of claiming hostile or adverse title and their continuation in possession for over statutory period of 12 years in the schedule property. In the absence of the plea and evidence, it is difficult to sustain the contention of the plaintiffs that they perfected title by adverse possession against the defendants. Time and again 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.”

26. In view of the principles laid down in the above judgment of

non plea and evidence as to the continuous possession and enjoyment of the property for a statutory period of 12 years from the date of claiming hostile title, the plaintiffs are not entitled to claim title by adverse possession.

27. A perusal of entire oral and documentary evidence did not disclose that the plaintiffs are the registered owners of the property or the property was allotted in the partition among the legal heirs of the original owner. It is settled law that in a suit for declaration, the plaintiffs have to prove their title independently and not entitled to take advantage of the weaknesses set up by the defendants in **Union of India and others v. Vasavi Co-operative Housing Society Ltd. and others**^[4] the Supreme Court placing reliance on various earlier judgments held that in a suit for declaration under Section 34 of the Specific Relief Act, the plaintiffs have to prove their positive case independently and they must succeed or fail on the strength of their case, not entitled to take advantage of the weaknesses in the evidence set up by the defendants. In a similar case in **Union of India and Ibrahim Uddin and another**^[5] the Apex Court reiterated the same principle. The law declared by the Apex Court in the above judgments would directly applicable to the present facts of the case.

28. In the present case, the plaintiffs though contended that the property was allotted to their share, they did not produce satisfactory and cogent evidence to prove the factum of allotment of property in the partition among the legal heirs of original owner and also failed to establish their perfection of title by adverse possession. Therefore, the plaintiffs are not entitled to claim declaration of title to the property.

29. The plaintiffs filed O.S.No.90 of 1993 to declare that the proceedings issued by the defendants as null and void as the said proceedings were issued revoking the plan on the ground that the schedule property is earmarked for public purpose i.e. park and the plaintiffs are not the owners. The specific issues framed in both the suits touching the title of the plaintiffs and the issues framed in O.S.No.90 of 1993 were held against the plaintiffs under common discussion. But no appeal was preferred against the decree passed in O.S.No.90 of 1993. When three suits are disposed of by common judgment and the issues in two suits touching the title of the plaintiffs, filing of an appeal only against the decree and judgment in O.S.No.88 of 1993 are not in accordance with law and in view of attaining finality of decree in O.S.No.90 of 1993 the claim of the plaintiffs is barred by principles of res judicata.

30. On close analysis of entire oral and documentary evidence, I find no piece of paper to establish that the schedule property was allotted to the share of the plaintiffs except establishing that they are in possession and enjoyment of the property. Mere continuation in possession of the property is of no use to claim title except by adverse possession. Moreover, no other evidence is produced to establish allotment of property in the partition.

31. Learned counsel for the appellants mainly contended that no evidence was adduced on behalf of the defendants and in the absence of any evidence rebutting the evidence of plaintiffs, the Court has to pass a decree believing the case set up by the plaintiffs, but this contention has no legal basis, in view of law declared by the Apex Court in **Vasavi Co-operative Housing Society Ltd. and others's case** (2nd supra). Therefore, failure to adduce any evidence by the defendants is of no assistance to claim

declaratory relief.

32. The trial Court after close analysis of entire evidence except referring Exs.A.35 to A.44 held that the plaintiffs miserably failed to establish their title to the property. Even after adverting to the other documents marked as Exs.A35 to A.44, I find nothing in support of plaintiffs' claim and mere failure to refer the documents is of no use to upset the decree passed by the trial Court, when I find nothing in the other documents to establish the title of the plaintiffs. Hence, I find no legal infirmity in the finding recorded by the trial Court, warranting interference of this Court. Consequently, I have no slightest hesitation to uphold the said finding. Accordingly, the finding of the trial Court is upheld. This point is held in favour of the defendants and against the appellants/plaintiffs.

POINTS 2 AND 3:

33. The plaintiffs claimed an injunctive relief under Section 38 of the Specific Relief Act to restrain the defendants from interfering with their peaceful possession and enjoyment of the property both in O.S.Nos.88 and 89 of 1993. The trial Court decided the issues by common discussion in para 30 of its judgment and concluded that the plaintiffs are not entitled to claim any injunction.

34. O.S.No.88 of 1993 was filed initially for declaration of title and issue of perpetual injunction restraining the defendants from interfering with 'A' and 'B' schedule property and later it was converted for perpetual injunction with regard to 'A' to 'C' schedule property. Whereas, O.S.No.89 of 1993 is filed for perpetual injunction in respect of 'A' and 'B' schedule property. The relief claimed in O.S.No.88 and 89 of 1993 for grant of perpetual injunction is identical, property involved in O.S.No.88 of 1993 is 'A' to 'C' schedule, whereas, O.S.No.89 of 1993 is 'A' and 'B' schedule

property only. The trial Court negated both the reliefs of perpetual injunction in O.S.Nos.88 and 89 of 1993, but appeal is filed only against the decree and judgment in O.S.No.88 of 1993 ignoring the decree and judgment in O.S.No.89 of 1993 where the relief of perpetual injunction was declined in respect of 'A' and 'B' schedule properties. When a common judgment is pronounced and issues were decided by common discussion between the same parties and in respect of the same property, the findings in O.S.No.89 of 1993 which attained finality would operate as res judicata as held by the Apex Court in **Narayana Prabhu Venkateswara Prabhu v. Narayana Prabhu Krihsna Prabhu (dead) by L.Rs**^[6] and **Sheodan Singh v. Daryao Kunwar**^[7]. In both the judgments, the Supreme Court held that this Court in **Tangella Sesham Raju and others v. APSRTC, Hyderabad and others**^[8] reiterated the same principle.

35. In view of the law declared by the Apex Court and this Court, consistently, the claim of the plaintiffs for perpetual injunction either consequential or independent is barred by principles of res judicata. On this ground alone the plaintiffs are disentitled to claim perpetual injunction under Section 38 of the Specific Relief Act which is purely equitable and discretionary.

36. When the plaintiffs are claiming perpetual injunction, it is their duty to establish that they are in lawful possession and enjoyment of the property by the date of filing the suit and that the defendants made any attempt to infringe or invade the legal right of the plaintiffs. But, no such evidence is brought on record to prove that the defendants made any attempt to infringe or invade the legal right of the plaintiffs in the schedule property except proving that the

approved plan issued by the defendants was revoked. Therefore, on this ground also the plaintiffs are disentitled to claim an injunctive relief under Section 38 of the Specific Relief Act. Accordingly, points 2 and 3 are answered against the plaintiffs and in favour of the defendants.

37. In view of my findings on Points 1 to 3, I find no grounds warranting interference of this Court, the appeal is devoid of merits and deserves to be dismissed.

38. In the result, the appeal is dismissed confirming the decree and judgment, dated 22.01.1997, passed by the Subordinate Judge, Nalgonda, in O.S.No.88 of 1993. There shall be no order as to costs.

M.SATYANARAYANA MURTHY,J

20.08.2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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DATE: 20.08.2015

[\[1\]](#) 2005(1) ALT 169
[\[2\]](#) AIR 1997 SC 2089
[\[3\]](#) AIR 1964 SC 1254
[\[4\]](#) AIR 2014 SC 937
[\[5\]](#) (2012)8 SCC 148
[\[6\]](#) AIR 1977 SC 1268
[\[7\]](#) AIR SC 1332
[\[8\]](#) 2002(6)ALT 710(DB)