

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Second Appeal No.82 of 2015

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JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.18-12-2014 in A.S.No.53 of 2013 of the Principal District Judge, Kadapa confirming the judgment dt.24-04-2013 in O.S.No.471 of 2011 of the Senior Civil Judge, Kadapa.

2. The appellant herein is the defendant in the suit. The suit was initially filed by the respondent for permanent injunction restraining the appellant/defendant from interfering with the respondent/ plaintiff's peaceful possession and enjoyment of the plaint schedule property.
3. The plaint schedule property is an extent of Ac.0.05 cts of land in Prakash Nagar Colony in Kadapa Municipal Corporation.
4. It appears that an Advocate Commissioner was appointed in the suit and he filed a report pointing out that there is an encroachment of $\frac{1}{2}$ cent on the southern side of the suit site. In view of this, the plaintiff amended the plaint and sought relief of declaration of his title over the plaint schedule property and for a mandatory injunction for removal of the encroachment made on the southern side of the plaint schedule property apart from permanent injunction restraining the appellant/defendant from interfering with his peaceful possession and enjoyment of the plaint schedule property.
5. The admitted case of the parties is that the original owner of the plaint schedule property is one D.S.Ratnam who had been

granted DKT patta on 27-11-1972 i.e. Ex.A-1=Ex.B-1. He died in 1990.

6. While the defendant contends that her sister Anasuyamma paid a sum of Rs.65/- to the Government and obtained an agreement of sale from the said D.S.Ratnam for a consideration of Rs.1300/- in 1981 and obtained delivery of possession of this plaint schedule property, the plaintiff contended that after the death of D.S.Ratnam, his wife executed a gift settlement deed Ex.A-2 on 14-07-2008 in favour of her son D.S.Dasha Kumar and delivered possession to him and the said D.Dasha Kumar executed a registered sale deed Ex.A-3 on 21-1-2009 in favour of the plaintiff.
7. Plaintiff alleged that the defendant, who belongs to the S.T. community, is threatening to report to the police and foist a false case against him under the provisions of S.C. & S.T. (POA) Act, 1989; that possession of the plaint schedule site of Ac.0.05 cts except the half cent on the southern side is with the plaintiff; and therefore, the title of the plaintiff should be declared over the plaint schedule property while directing the defendant to remove the encroachment made by her by way of mandatory injunction; and permanent injunction should also be granted restraining her from interfering with his possession and enjoyment of the plaint schedule property.
8. The defendant apart from pleading that her sister Anasuyamma obtained plaint schedule property under the agreement of sale of 1981 alternatively also raised the plea of adverse possession claiming that she was in possession and enjoyment of the entire plaint schedule property and the wife of

D.S.Ratnam has no right to execute Ex.A-2 in favour of her son and her son has no right to execute Ex.A-3 in favour of plaintiff.

9. The trial Court framed the following original issues and additional issues:

“Originally Issues:

1. Whether the plaintiff is entitled for permanent injunction as prayed for?

2. To what relief?

Additional Issues:

1. Whether the plaintiff is entitled for declaration of his right and title over the plaint schedule property?

2. Whether the plaintiff is entitled for mandatory injunction for removal of encroachment on the southern side of the plaint schedule property and in ½ cent as prayed for?”

10. The plaintiff examined P.Ws.1 to 3 and marked Es.A-1 to A-3. Defendant examined D.W.1 and marked Exs.B-1 to B-8.

11. By judgment dt.24-04-2013, the trial Court decreed the suit.

12. The trial Court held that while the plaintiff had proved his title by marking Exs.A-2 and A-3, the defendant, who had relied on the agreement of sale in favour of her elder sister, did not mark it as an exhibit. It further held that the plea of adverse possession is contrary to the plea of acquisition of title under agreement of sale and that the defendant also failed to prove her possession and enjoyment of the suit site for a continuous period of 12 years to the knowledge of the real owner and without any obstruction or objection from the real owner. It also noted that the defendant had failed to examine her elder sister Anasuyamma to show her title and possession. It relied on the judgment in **Kalal**

Thimmanna and others Vs. Sri Krishna Reddy and another,
wherein this Court held that if a party sets up title to property under a sale deed, he cannot turn round and plead perfection of title to property by adverse possession.

13. It also took note of the fact that title to the property could not pass under agreement of sale and therefore even if the agreement of sale in favour of the defendant's elder sister Anasuyamma existed, no title could pass to defendant under it or to her sister Anasuyamma. Having regard to the Advocate Commissioner's report which established the encroachment of the half cent in southern side of the suit schedule property, it therefore, granted relief of mandatory injunction apart from a perpetual injunction as prayed for.
14. Questioning this judgment, the defendant filed A.S.No.53 of 2013 before the Principal District Judge, Kadapa.
15. By Judgment dt.18-12-2014, the said appeal was also dismissed.
16. The appellate Court also approved and followed the reasoning of the trial Court.
17. Challenging the same, this Second Appeal is filed.
18. Learned counsel for the appellant would contend that the Court below had not considered the plea of acquisition of title by adverse possession raised by the defendant in depth. She would also contend that voluminous evidence was placed on record in the trial Court to prove the possession of the defendant of the subject property and the same was not properly considered by the Courts below.

19. Admittedly, the original pleading of the defendant was that her sister Anasuyamma had obtained title to the property under an agreement of sale. The said agreement of sale has not been marked as an exhibit. Even assuming that there is such an agreement of sale, it is settled law that title to property would not pass under an agreement of sale. This principle has been well recognized by the Supreme Court in **Suraj Lamp and Industries Private Limited Vs. State of Haryana and another**. Having taken the plea of acquisition of title under agreement of sale, it is not open to the defendant to take the plea of acquisition of title by adverse possession. This principle has been well recognized by the Supreme Court in **Mohanlal (Deceased), thro' his L.Rs. Kachru and others Vs. Mirza Abdul Gaffar and another** and in **L.N.Aswathama and another Vs. P.Prakash**.

20. It is important to note that the plaintiff has claimed title to Ac.0.05 cents of land and on the basis of Advocate Commissioner's report filed in the trial Court, it was established that half cent only was under the occupation of the defendant. In respect of the vacant area of the plaint schedule property i.e 4 ½ cents, the possession is presumed to be with the title holder i.e. the plaintiff. In respect of the extent of half cent since the title of the defendant has not been found established and the title of the plaintiff is found established by both the Courts below by placing reliance on Exs.A-2 and A-3 and the evidence of P.Ws.1 and 2, I am of the view that the Court below had committed no error in decreeing the suit by rejecting the contentions of the defendant.

21. I do not therefore find any question much less any substantial question of law for consideration in the Second

Appeal.

22. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

23. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 31-03-2015

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