

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal Nos.1019 of 2010

JUDGMENT:

This appeal under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) is filed by the unsuccessful plaintiff assailing the decree and judgment dated 22.07.2010 of the learned X Additional Chief Judge, (Judge, Fast Track Court) City Civil Court, Hyderabad passed in AS.No.489 of 2004. The learned Additional Chief Judge while dismissing the said appeal had confirmed the decree and judgment of the trial Court dated 30.08.2004 passed in OS.No.1725 of 1999 filed by the sole plaintiff against the sole defendant (since died) for declaration of title and recovery of plaint schedule house property and damages at the rate of Rs.1,000/- per month from the date of suit till date of delivery of possession and for other reliefs.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for brevity) and the learned senior counsel for the respondents 2 to 4/defendants 2 to 4, who are brought on record on the death of the sole defendant. I have perused the material record.

3. At the time of admission of this appeal, the grounds nos.4 to 11 mentioned in the memorandum of grounds of appeal were taken note of. However, the learned counsel for the appellant had stated at the time of hearing that the questions already formulated need not be considered and that they may be eschewed from consideration and that in the place of the said questions, the substantial questions, which are involved, may be reframed. Accordingly and as desired, the questions earlier framed are deleted. After hearing the learned counsel for both the sides, the following substantial questions of law were formulated by this Court.

1. **Whether any sale deeds executed in violation of the Prohibitory order of the Hon'ble Court are valid?**

2. Whether the court can deny the relief basing on the judgment passed in the previous *lis* without going into merits of the case *denovo*?

4. To adjudicate the *lis* and answer the above substantial questions, it is necessary to refer to the pleadings of the parties. The parties shall hereinafter be referred to, to the extent necessary, with their names for convenience and clarity.

4.1 The case of the plaintiff, in brief, is as follows:

The plaintiff is the owner of the suit schedule property bearing door no.14-3-46 admeasuring 80 square yards situate at Goshamahahal, Hyderabad having purchased it for valuable consideration under a registered sale deed bearing document no.367 of 1989 dated 13.04.1989 from Ch. Sharada, who is the lawful owner of the property. The said Sharada in her turn had purchased the property from one Salamma for valuable consideration. Since the date of the said purchase, the plaintiff has been paying property tax to the MCH and her name is mutated in municipal record. After purchasing the property, she had filed RC.43 of 1990 on the file of the II Additional Rent Controller, Hyderabad against the defendant (since died) for eviction. The RC was allowed since the defendant had remained *ex parte*. EP.14 of 1990 was filed and delivery of the property was obtained. After such delivery, the construction, being an old construction, had collapsed. Subsequently, on the application of the defendant, the *ex parte* order was set aside and possession was restored. Later, RCC was dismissed on merits. The rent appeal preferred by the plaintiff was also dismissed. The CRP filed was also dismissed confirming the finding of the Rent Controller that there was no landlady and tenant relationship between the plaintiff and the defendant and that the dispute has to be determined by a civil Court. There were a series of litigations between the defendant and one Salamma and her son-Yadagiri. The plaintiff was impleaded as a party at a later stage to some of the suits. The sole defendant and his mother-Eswaramma filed a suit in OS.2070 of 1987 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad against Salamma and Sharada for declaration of ownership and perpetual

injunction in respect of the present suit schedule property. That suit was dismissed. An appeal was preferred by them and the same is pending. After obtaining back the possession in the rent control proceedings, the defendant had raised temporary structure over the plaint schedule open land; but, the MCH has not taken any action on the complaint of the plaintiff herein. The plaintiff had purchased the property for valuable consideration. The defendant had illegally occupied the property by playing fraud on the Additional Rent Controller. The defendant had failed to vacate the property inspite of a notice calling upon him to handover possession and pay damages. Hence, the suit is filed.

4.2 The defence of the sole defendant-Sivakoti (since died) is this:

The sale deed dated 13.04.1989 obtained from Ch. Sharada by the plaintiff is sham and collusive. That document was obtained to make a false claim. That sale deed in favour of the plaintiff was executed in violation of prohibitory order passed in IA.No.1604 of 1987 in OS.No.2070 of 1987 on the file of I Additional Judge, City Civil Court, Hyderabad. The vendor of the plaintiff-Ch. Sharada had no right and interest in the property and, therefore, she is not competent to execute the sale deed. The said Sharada claims to have obtained a sale deed from one Salamma on 29.09.1986. The said Salamma is not the owner and possessor of the property and, therefore, the alleged sale deed dated 29.09.1986 is invalid. The suit schedule property was originally purchased by Sivalingam who is the father of this defendant. That property was purchased by Sivalingam benami in the name of Salamma, his wife. Sivalingam gave the schedule property to this defendant and his mother-Eswaramma for their maintenance in the year 1955 and since then this defendant and his mother are living in the schedule house exercising all rights of ownership and possession and they are paying taxes to MCH. The electricity service connection was obtained to the schedule house in the name of this defendant and he is paying electricity consumption charges. The said Eswaramma is the first wife; and, Salamma is the second wife of Sivalingam. Salamma never exercised rights of ownership and possession over the schedule house at any time. This defendant and his

mother are in continuous and uninterrupted possession and enjoyment of the schedule house since November 1955 and thereby they had perfected their title to the schedule property by adverse possession. Sivalingam died on 27.09.1985 at Hyderabad leaving behind him this defendant and his mother-Eswaramma. One Yadagiri came to the plaintiff schedule house in September 1986 at about 12:30 PM along with a group of antisocial elements and made an attempt to dispossess this defendant and his mother-Eswaramma from the said house by force. The said attempt was resisted. This defendant and his mother- Eswaramma had filed OS.No.3413 of 1986 and had obtained an interim injunction against Salamma and Yadagiri from the Court of VI Junior Civil Judge, City Civil Court, Hyderabad. In spite of Prohibitory orders, Salamma had executed a sale deed in favour of Sharada. The said sale deed is invalid. Sharada filed SC.173 of 1987 against this defendant and his mother for recovery of arrears of rent and that suit was dismissed as not pressed on 07.09.1989. This defendant and his mother filed OS.No.2070 of 1987 against Salamma and Sharada for relief of declaration of ownership and perpetual injunction. The said Sharada had executed the sale deed in favour of this plaintiff in violation of prohibitory order of injunction in IA.1604 of 1987 in the said suit. The rent control case filed by the plaintiff was initially decreed ex parte and that ex parte decree was executed; after obtaining delivery a major portion of the property except a hall was demolished and the electricity and water connections were removed. But, the said ex parte order was set aside and the rent control case had finally ended in dismissal with the dismissal of the CRP by the High Court. On an application the possession of the house property was restored by ordering redelivery to this defendant. The vendor of the plaintiff and her vendor's vendor have no right and interest in the property and the sale deeds executed by them are invalid. The plaintiff had derived no better title to the suit property. The plaintiff having obtained delivery in the earlier rent control proceedings had caused extensive damage to the premises and at that time, this defendant was constrained to stay in a rented house by paying Rs.600/- per month and hence he is entitled to the said amount spent as damages and also the amount spent on repairs of the premises after redelivery and restitution of

possession to this defendant. In view of the earlier judgments and findings of the Courts, the plaintiff is estopped from seeking any reliefs in respect of the suit schedule property. Hence the suit may be dismissed.

4.3 Be it noted that the plaintiff filed a rejoinder dealing with various chronology of events to which a reference will be made at the appropriate stage.

4.4 Having regard to the above pleadings, the following issues were framed for trial.

1. Whether the plaintiff is entitled for the relief of declaration as prayed for?

2. Whether the plaintiff is entitled for recovery of the possession of the suit schedule property?

3. Whether the plaintiff is entitled for perpetual injunction as prayed for?

4. Whether the plaintiff is entitled for the damages as prayed for?

5. Whether the order in RC.No.43/1990 and CRP.No.1278/99 are operates as res judicata?

6. To what relief?

4.5 At trial, the husband of the plaintiff was examined as PW1 and the wife of the sole defendant (since died) was examined as DW1. Exhibits A1 to A23 were marked. On merits, the trial Court had dismissed the suit. The appeal preferred by the plaintiff, as already noted, was dismissed by the Court below.

5. The learned counsel for the appellant had contended as follows:

The evidence brought on record shows that Eswaramma and Salamma are the wives of Sivalingam. The suit property was purchased in the name of

K. Salamma in the year 1955. Even if it is admitted that the said transaction is a benami transaction, Eswaramma and Salamma are co-sharers of the property. Hence, Eswaramma cannot claim adverse possession against a

co-sharer. She was in permissive possession. If the transaction under the sale deed in favour of Salamma is to be treated as a benami transaction, after the death of Sivalingam the property stood devolved upon Salamma and Eswaramma being his two wives and hence, Eswaramma alone cannot be declared to be the owner of the property by adverse possession. DW1 deposed that elders decided to provide a house to his mother for residence. His statement goes to show that his possession is permissive possession. Permissive possession can never become adverse to the rightful owners. The Courts below had ignored the findings given in the maintenance proceedings filed by the sole defendant (since died) and his mother- Eswaramma against Sivalingam. The suit schedule property, according to the version of the sole defendant, was given towards maintenance of Eswaramma for her life time. The Courts gave much importance to status quo orders ignoring the fact that the status quo orders were granted in the other suit which is a mere suit for injunction. There was no order passed prohibiting Salamma from alienating the property. The Courts below had failed to see that entries in revenue records do not confer title. Exhibit A15- assessment register of the Municipal Corporation would show that the property was mutated in the name of the plaintiff/appellant herein. The courts below ought to have seen that in the suit-OS.2070 of 1987 it was admitted that the suit schedule property was purchased by Salamma in the year 1955 and that she is the second wife of Sivalingam. The courts below ought to have seen that earlier the suit-OS.2068 of 1989 (old 3413 of 1986) was filed and that therefore the later suit-OS.2070 of 1987 is not maintainable on the same cause of action. It is not imperative for a landlord to rush to a court and seek declaration of title to the property when the tenant denies title. Proof of ownership is sufficient. The title of Salamma, the original owner is not disputed. The sale deed executed by Salamma in favour of Sharada and the sale deed executed by Sharada in favour of the plaintiff herein are valid. The courts below ought to have seen that mere payment of property tax does not confer title. The courts below had failed to appreciate that even assuming that Sivalingam had purchased the property in the name of his wife Salamma, she became absolute owner and such a transaction cannot be said to be benami

transaction as there is a contribution of the wife to the earnings of the husband. The courts below had erroneously considered the title deed of the plaintiff as invalid as it was obtained inspite of the existence of a prohibitory order.

6. On the other hand, the learned senior counsel for the respondents/plaintiffs having supported the concurrent findings in the judgments of the courts below had stated as follows:

None of the questions raised are pure questions of law; and they are only a blend of facts and law; and no substantial questions of law are involved. Hence, there is no necessity to interfere with the decrees and judgments of the courts below which are rendered after recording concurrent findings supported by cogent and valid reasons. The findings in the maintenance order of the criminal court are not binding on the civil court as rightly held by the Courts below. Even assuming that the property is of Salamma, when her husband Sivalingam had given possession of the property to Eswaramma and Sivakoti a very long time back in the year 1955, she had kept quiet and did not take any steps for recovery of possession; she had taken a false plea of tenancy and the said plea could not be proved by her or the purchasers who had purchased from her during the pendency of the proceedings. As against her, who is claiming to be the real owner, Eswaramma and Sivakoti by being in adverse possession had perfected title by prescription; and as per the provision of Section 27 of the Limitation Act her right, title and interest, if any, was divested and got extinguished as the title vested in Eswaramma and Sivakoti by prescription and adverse possession as per law. Hence, Salamma having lost her title to property by extinguishment of her right to property was not having any right, title and interest to convey the same to Sharada in the year 1986. Therefore, Sharada did not acquire any right, title and interest in the schedule house property and hence, it follows that the plaintiff herein who is a purchaser from Sharada has no right, title and interest in the suit schedule house property. Hence, the appeal may be dismissed being devoid of merit.

7. I have carefully gone through the pleadings and the evidence and I have noted the submissions. Be it noted that this second appeal is coming along with the connected second appeal in SA.No.1008 of 2010 and both the appeals were heard together as desired by the learned counsel for both the sides and this appeal is being disposed of simultaneously along with the aforementioned second appeal. It is apt to mention that the suit –OS.No.2070 of 1987 which is subject matter of the connected second appeal was originally filed by Eswaramma and Sivakoti against Salamma and Sharada and to that suit, the present plaintiff was impleaded as the 3rd defendant. That suit was filed for declaration of title on the basis of adverse possession and prescriptive title and for a perpetual injunction not to enforce the sale deed executed by Salamma in favour of Sharada. It is pertinent to further note that the said suit - OS.2070 of 1987 was decreed by the trial Court and the decree of the trial Court was confirmed by the Court of first appeal. It is needless to mention that the result in the connected second appeal (SA.No.1008 of 2010) will have a bearing on the result on this second appeal and vice versa. Therefore, this Court has first taken up the said second appeal separately to examine as to whether the sole defendant herein, now being represented by the legal representatives, and his mother-Eswaramma are entitled to the relief of declaration of title and the other relief prayed for in that suit against Salamma (since died) and others including the plaintiff herein as that suit was more comprehensive as the plaintiff in this second appeal is claiming title through the purchaser from Salamma. In that second appeal, this Court having deeply examined the facts, the evidence, the contentions which are common and the legal issues had held that Sivakoti, the 1st defendant herein, and his mother-Eswaramma had established their plea of adverse possession and acquisition of title by prescription to the subject property, which is common in both the matters.

8. Coming to the contention that the two sale deeds obtained respectively by Sharada from Salamma and from Sharada by the appellant/Saraswati Bhagat are not illegal and not void *ab initio* despite the fact that the said sale deeds were obtained notwithstanding the orders of injunction and during the

pendency of the suit, it is to be noted that the said contention is legally correct as it is settled law that any transfer *pendente lite* is neither illegal nor void *ab initio* but remains subservient to the rights eventually determined by the Court in the pending litigation. This contention of the counsel finds support from the decision in **Thomson Press (India) Limited v. Nanak Builders And Investors Private Limited And Others**^[1].

However, this finding is by itself not enough to advance the case of the plaintiff herein who is a purchaser from Sharada who in turn had purchased from Salamma as this Court has already confirmed in the connected second appeal, the concurrent findings of fact which are recorded by the Courts below, to the effect that Sivakoti-the 1st defendant herein and his mother-Eswaramma had perfected title to the suit schedule house by adverse possession and prescription. In fact, in the other second appeal, this Court while referring to the plea of adverse possession and prescription of title in view of the provision of Section 27 of the Limitation Act had inter alia held as under:

‘Eswaramma and Siva Koti (the sole defendant herein) had acquired title by prescription and that the title or right to the schedule property of Salamma stood extinguished on the determination of the period limited to her for instituting a suit for possession of the property. Therefore, the above said provision of law not only extinguished the right to property of Salamma but also had vested the plaintiffs-possessors with the title to the property. There is one more dimension to this case. In spite of the established facts that Eswaramma and Sivakoti having entered into possession way back in 1955 and had started exercising rights of ownership and were and are enjoying the property in their own right, neither Sivalingam during his life time nor Salamma till her death had instituted a suit for declaration of her title with consequential relief or for recovery of possession. When Salamma’s title and right to the schedule property stood extinguished and the plaintiffs-Eswaramma and Sivakoti had acquired title by adverse possession and prescription, no title was available to Salamma to convey the same to her purchaser-the 2nd defendant, Sharada, under registered sale deed dated 29.09.1986 as by that time the right to suit schedule property of Salamma stood extinguished and her remedy to sue for recovery of possession was barred by law of limitation. The law is well settled that no one can convey a better title than what he has. Therefore, no valid title and interest in the suit schedule property passed to the 2nd defendant-Sharada from Salamma whose right was extinguished by operation of the provision of Section 27 of the Limitation Act; and, as a sequel it must be held that no

title passed from the 2nd defendant-Sharada to Saraswati Bhagat, the 3rd defendant therein/appellant/plaintiff herein and, therefore, the title remained vested with Eswaramma and Sivakoti and hence, they are entitled to continue to remain in property. On their deaths, their legal representatives are entitled to continue to remain in the property.

The above stated finding in the connected second appeal by itself is enough to non suit the plaintiff in this suit.

9. It is relevant to refer to the decision in **Gurudwara Sahib v. Gram Panchayat village Sirthala and another**^[2]. In this cited decision the facts are as follows:

‘The Appellant is the original Plaintiff. It had filed the suit for decree of declaration to the effect that it had become owner of the suit property by adverse possession. Declaration was also sought to the effect that the Revenue record showing ownership of Respondent No. 1 herein i.e. Gram Panchayat (Defendant in the suit) is liable to be corrected in the name of the Appellant and the auction already held by the Gram Panchayat of the land in dispute is null and void. Consequential relief of permanent injunction restraining Gram Panchayat from dispossessing the Appellant from the disputed land was also prayed for. This suit was partly decreed by the trial court granting relief of injunction. First Appeal against that part of the judgment whereby relief of declaration was denied was dismissed by the learned Additional District Judge and the Second Appeal preferred by the Appellant has also been dismissed by the High Court of Punjab and Haryana vide judgment dated 22nd September 2011. The Appellant had, therefore, filed a civil appeal before the Supreme Court with the plea that its suit be decreed in entirety and had claimed ownership by adverse possession on the ground that it is in possession of the land in dispute for sufficiently long period which fact has been established and, therefore, its suit could not be dismissed.’

In the above factual back drop, the Supreme Court held as follows:

‘There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the Plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the Appellant and the Appellant is arrayed as Defendant that it can use this adverse possession as a shield/defence.

10. In view of this settled legal position and since it was found that the 1st defendant-Sivakoti and his mother-Eswaramma had perfected title by adverse possession and as this suit is filed by the plaintiff against the 1st defendant-Sivakoti (since died) and his legal representatives, the claim of adverse possession can be used by them as a shield or defence to successfully contend that the plaintiff herein is not entitled to evict them from the suit schedule property, since the plaintiff herein had not acquired any title to the property, she being a purchaser from Sharada, who in her turn had not acquired valid title while obtaining a sale deed in the year 1986 from Salamma.

11. I have carefully gone through the pleadings and analytically examined the evidence in this case. Having regard to the facts and the evidence and the reasons assigned, this Court finds that the plaintiff herein is not entitled to seek either declaration of title or recovery of possession of the schedule house property from the defendants as they had perfected title by adverse possession being the legal heirs of deceased 1st defendant-Sivakoti.

12. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

12th October, 2015
Vjl

[\[1\]](#) (2013) 5 SCC 397

[\[2\]](#) (2014) 1 SCC 669