

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

SECOND APPEAL No.362 of 2003

Between:

Koppisetty Ramana

and others.

....

Appellants

And

Emani Ramanamma.

....

Respondent

DATE OF JUDGMENT PRONOUNCED: **29.03.2016**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment?
Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Respondent

! Counsel for Appellants : Smt. Bobba Vijayalakshmi

**^ Counsel for Respondent : Sri V.L.N.Gopala Krishna
Murthy**

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> Head Note:

? Cases referred:

- 1) (1990) 4 SCC 706
- 2) 1998 (4) ALT 469 (DB)
- 3) (2000) 3 SCC 640
- 4) (2000) 7 SCC 60
- 5) (2002) 5 SCC 90
- 6) (2003) 4 SCC 161
- 7) (2004) 1 SCC 271
- 8) (2006) 7 SCC 570
- 9) (2007) 6 SCC 59
- 10) AIR 1995 SC 895
- 11) (2007) 3 SCC 114
- 12) AIR 2005 SC 4407

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

SECOND APPEAL No.362 of 2003

JUDGMENT:

This Second Appeal is filed by the defendants

questioning the judgment and decree dated 14.02.2003 in A.S.No.194 of 1997 passed by the VII Additional District Judge, Kakinada wherein the learned Judge allowed the appeal filed by the appellant/plaintiff and set aside the judgment and decree dated 28.12.1996 in O.S.No.146 of 1987 on the file of Principal Subordinate Judge, Kakinada and decreed the plaintiff's suit for declaration and possession.

2) The brief facts of the case are thus:

a) The case of the plaintiff is that originally plaint 'A' schedule property belonged to one Ghantasala Aadilakshmi and she sold the same under a registered sale deed dated 12.02.1961 to one Emani Bhanumathi who in turn gifted the same to plaintiff, who is her daughter-in-law through a registered gift deed dated 08.12.1981. While so, defendants 1 and 2 who are father and son entered into the said property claiming right over the same. When the plaintiff questioned their act, they threatened her with dire consequences. Then she filed a complaint before the SHO, PS Sarpavaram who charge sheeted the defendants in C.C.No.103 of 1984 before the II Additional Judicial First Class Magistrate, Kakinada, who after due enquiry found them guilty, of trespass and sentenced to pay fine. Defendants carried the matter in revision to the District Court wherein the learned Judge acquitted them on the ground that the case is of civil nature. Basing on the acquittal order, defendants again trespassed into the plaint schedule property and put their hayricks and started digging and taking

away the earth from the said land. Hence the suit.

b) The case of the defendants is that Ghantasala Adilakshmi was the original owner of the property and she let out the same to the 1st defendant on 05.07.1957 and since then he was in continuous possession and enjoyment of the property as a lessee and after that he purchased the same for Rs.92/- on 05.10.1966 and to that effect a receipt was also issued and since from the date of purchase he has been in possession and enjoyment of the property as owner.

c) The further case of the defendants is that plaintiff having influenced the Sarpavaram police launched criminal proceedings against them but the appellate Court set aside the conviction finding them not guilty. The further case of the defendants is that Ghantasala Adilakshmi had not delivered possession of the plaint schedule property to Emani Bhanumathi on 12.02.1961 as she herself was not in possession of the land by that date. Emani Bhanumathi had no right over the plaint schedule property as on 08.12.1981 therefore, she cannot convey any right under gift deed to the plaintiff. First defendant was in possession and enjoyment of the same from 1957 upto 05.10.1966 as a lessee and thereafter as owner. They denied the contention of the plaintiff that defendants trespassed into the property. Therefore, plaintiff is not entitled for declaration or possession as claimed. They prayed to dismiss the suit with exemplary costs.

d) Basing on the above pleadings, the trial Court framed the

following issues.

- 1. Whether the plaintiff is entitled for declaration that she is the owner of the plaint schedule property as claimed?*
- 2. Whether the plaintiff is entitled to eject the defendants 1 and 2 from the plaint 'A' schedule property and for recovery of vacant possession thereof as claimed?*
- 3. Whether the plaintiff is entitled to future profits from D1 and D2 and if so at what rate and for what period?*
- 4. Whether the suit is not maintainable at law?*
- 5. To what relief?*

e) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 were marked. DWs.1 to 5 were examined and Exs.B1 to B8 were marked on behalf of defendants.

f) On appreciation of facts and evidence the trial Court dismissed the suit holding that plaintiff is not entitled for declaration and ejectment of defendants and any mesne profits.

g) Aggrieved, the plaintiff filed A.S.No.194 of 1997 before VII Additional District Judge, Kakinada challenging the judgment of the trial Court.

h) After hearing both sides, the first appellate Court allowed the appeal with costs and decreed the suit as prayed for, granting two months time to the defendants to vacate the suit schedule property. Hence, the Second Appeal at the instance

of the aggrieved defendants.

3) The parties in this appeal are referred as they are arrayed before the trial Court.

4) The judgment of the trial Court would show in pra-8 it observed that Ex.B8 will not confer any title on the defendants for the reason by the date of oral sale dated 05.10.1966 allegedly executed by Ghantasala Aadilakshmi in favour D1, she had no alienable title or interest over the disputed property as she already conveyed the same to Emani Bhanumathi by virtue of Ex.A3—sale deed dated 18.02.1961.

a) Though trial Court negated the title of D1, still it considered his adverse possession in respect of suit property in the succeeding paras of its judgment. In para-13 it observed that as per recital in Ex.A3, D1 was a tenant to the disputed property under Ghantasala Aadilakshmi but there is no record that Aadilakshmi taken over the property from D1 prior to executing Ex.A3—sale deed in favour Emani Bhanumathi. It was observed, since D1 has been contending that he was in possession from 1957 onwards, unless the plaintiff establish by cogent evidence that Ghantasala Aadilakshmi recovered the possession from D1 prior to execution Ex.A3 and delivered vacant possession to Emani Bhanumathi, plaintiff cannot succeed. The trial Court observed, in the absence of plaintiff proving recovery of possession from D1 it is to be accepted that D1 was in continuous possession of the property from 1957. The trial Court further observed that as per PW2

disputes commenced with D1 since 1970 which would also show that even prior to Ex.A5 plaintiff was aware that D1 was claiming right over plaint schedule property. On all these observations the trial Court held that though plaintiff could prove the title over plaint schedule property by Ex.A5—gift deed, yet she is not entitled for declaration as D1 and his successors have been in possession and enjoyment of the disputed property beyond the statutory period and thereby perfected their title by way of adverse possession.

b) Then coming to Appellate Judgment in A.S.No.194 of 1997, learned Judge in Paras 11 and 12 of his judgment at first considered respective titles setup by the plaintiff under Ex.A.3 and by the defendants under Ex.B.8 and observed that admittedly Ghantasala Adilakshmi was the original owner of the suit property and from her Emani Bhanumathi purchased under Ex.A.3—registered sale deed dt:18.02.1961 and later gifted the same to her daughter-in-law i.e, plaintiff under Ex.A.5—gift deed dt:08.12.1981 and therefore, the plaintiff could establish her title. The learned Judge observed that whereas D.1 is concerned, he claimed that he was a tenant under Ghantasala Adilakshmi as per Ex.B.7—lease deed dt:05.05.1957 and later he purchased the suit property from her under an oral sale covered by Ex.B.8—receipt dt:05.10.1966. He observed that even if Ex.B.8 is held to be true, the first defendant cannot get title since G. Adilakshmi had no title or interest in the suit property by the date of Ex.B.8. He further observed that if really D.1 purchased the property, he would have obtained

possession of Ex.A.1—sale deed i.e, the title deed of G. Adilakshmi. He also noticed that as per Ex.A.1—sale deed, Adilakshmi purchased the suit property for a consideration of Rs.300/- by 1950 and she sold the same under Ex.A.3—registered sale deed dt:18.02.1961 to E.Bhanumathi for Rs.500/- which shows the value of the property by 1961 was Rs.500/-. In that view, no prudent owner would sell away the property in 1966 for a lesser price of Rs.92/- as claimed by D.1. Thus he held that plaintiff could establish her title and defendants failed in that regard.

c) Then the learned Judge considered the other plea of the defendants i.e, their adverse possession and barring of the suit by limitation. Having referred the case law filed by both sides, the learned Judge in Para 19 observed that since the suit was filed by the plaintiff basing on her title, the burden would be on the defendant to establish that he perfected his title by way of adverse possession. The appellate Court noticed that Art.65 of the Limitation Act is applicable to the instant case. Having thus fixed the burden of proving adverse possession on the defendants, learned Judge observed that the defendants failed to prove their possession adverse to the knowledge and interest of Bhanumathi or plaintiff beyond the statutory period of limitation. He noticed that defendants though claimed to have cultivated the land but they could not establish the same because the disputed property is a barren land but not a cultivable land and the defendants failed to produce any village

accounts or cultivation adangals. He also observed that the evidence of PW.2 that disputes commenced with D.1 from the year 1970 cannot be taken into consideration as by 1970 the property was not gifted to his mother and hence, there cannot be any dispute at all by then. Ultimately the Appellate Court held that it was for the defendants to prove that they perfected adverse title but they failed in that regard. Learned Judge also observed that unless the lease was determined and D.1 handed over the suit property and other property which was leased to him, Adilakshmi who sold away the part of the property to Gorla Gangamma and Rameshwarapu Chalapathi, could not have handed over the said property to them. With these observations, he allowed the appeal.

Hence, the instant Second Appeal by defendants.

5) Heard arguments of Smt. Bobba Vijayalakshmi, learned counsel for appellants/defendants and Sri V.L.N.Gopala Krishna Murthy, learned Counsel for respondent/plaintiff.

6) Impugning the appellate Judgment, learned counsel for appellants/ defendants argued that the defendants perfected their title by adverse possession beyond the statutory period of limitation as can be seen from the facts and evidence which would show that from 1957 till date they have been in continuous and uninterrupted possession of the suit property and they raised dry crops and also placed their hayrick and bricks in the suit property. The factum of lease was clearly mentioned in Ex.A.3 and no iota of evidence is produced by

the plaintiffs to show that before selling the property to Bhanumathi under Ex.A.3, the vendor G.Adilakshmi recovered the suit property from D.1. Further, PW.2 who is son of plaintiff admitted that disputes commenced in the year 1970 itself with D.1 relating to the suit property. All these would cumulatively show that the defendants have been enjoying the suit property adverse to the interest of Bhanumathi as well as the plaintiff. Though they have not specifically raised a plea in the written statement about the adverse possession, the substance of their plea is to the same effect. Learned counsel submitted that the appellate Court committed grave error in fixing the burden on the defendants and holding that they failed to discharge the same. Learned counsel thus prayed to allow the appeal.

Learned counsel placed reliance on the following decisions:

- (i) ***Achal Reddy vs. Ramakrishna Reddiar and others***^[1]
- (ii) ***Mohd. Iqbal vs. N.Prabhakar and another***^[2]
- (iii) ***Bank of India vs. Lekhimoni Das and others***^[3]
- (iv) ***Santakumari and others vs. Lakshmi Amma Janaki Amma (dead) by LRs and others***^[4]
- (v) ***P.John Chandy and Co. (P) Ltd. vs. John P.Thomas***^[5]
- (vi) ***Bondar Singh and others vs. Nihal Singh and***

others^[6]

(vii) ***Md. Mohammad Ali (dead) by LRs vs. Jagadish Kalita and others***^[7]

(viii) ***T. Anjanappa and others vs. Somalingappa and another***^[8]

7) Per contra, supporting the judgment learned counsel for respondent/plaintiff argued that as observed by the appellate Court, the defendants miserably failed to prove their title because Ex.B.8, even if assumed to be true, was long after Ex.A.3—sale deed and therefore, by the date of Ex.B.8, G. Adilakshmi had no title or interest in the suit property to convey to defendants. He further argued that the adverse possession is concerned, the defendants have not taken a specific plea in their written statement and even if the said claim is considered, still it being a suit for title and possession, when the plaintiff proved her title, the burden of proving the adverse possession against E.Bhanumathi and plaintiff rests on the defendants as per Art.65 of the Limitation Act. He relied upon the decision reported in ***P.T.Munichikkanna Reddy and others vs. Revamma and others***^[9] on the aspect of burden of proof. He argued that the defendants failed to prove their adverse possession against Bhanumathi and also plaintiff and therefore, the Appellate Court rightly granted decree in favour of the plaintiff. He thus prayed to dismiss this appeal.

8) In the light of above rival arguments, the following

substantial questions of law are framed for consideration in this second appeal:

- (i) Whether the Lower Appellate Court is right in holding that the appellants have not perfected title to the suit scheduled land when the evidence adduced on behalf of the respondents itself show the disputes with the appellants started right from 1970, when admittedly the appellants are lessees ?*
- (ii) Whether the suit is maintainable in the absence of notice under Sec.106 of Transfer of Property Act to the appellants herein to vacate?*
- (iii) Whether the Lower Appellate Court is right in coming to the conclusion that the appellants have not perfected their title to the suit property in view of the fact that they never demanded any rent and when appellants did not pay rent at any time and no owner would keep quiet without demanding rent unless appellants perfected title?*
- (iv) To what relief?*

9) **POINT Nos.1 and 3:** These two points are taken up together since they are more or less similar and relating to adverse possession of defendants. It is not in dispute that G.Adilakshmi was the original owner of suit schedule property and surrounding property and she purchased them in two items under Ex.A.1—registered sale deed. Then under Ex.A.3—registered sale deed dt:18.02.1961, she sold the suit property to E.Bhanumathi. In the said sale deed, the vendor mentioned that earlier the suit property was under the lease of D.1 but the lease was determined and she was selling the

property, free from obstructions from the lessee. Be that it may, E.Bhanumathi gifted the said property to the plaintiff who is her daughter-in-law under Ex.A.5—gift deed dt:08.12.1981. That is how the plaintiff traces her title to the suit property. According to her, she was enjoying the property by collecting soap nuts and other usufructs and in the year 1983, defendants 1 and 2 trespassed into the suit land. So the plaintiff filed C.C.No.103 of 1984 and the accused/defendants were convicted by the learned II Additional Judicial First Class Magistrate, Kakinada in the said C.C. However, the CRP No.54 of 1985 filed by the defendants was allowed by the III Additional Sessions Judge, Kakinada on the ground that it was a civil dispute. Hence the suit by the plaintiff for declaration of title and possession.

a) The case of defendants is that the property belonged to G.Adilakshmi and she inducted D.1 into tenancy under Ex.B.3—lease deed dt:05.05.1957 and ultimately she sold the suit property to him for Rs.92/- under an oral sale dt: 05.10.1966 and executed Ex.B.8—receipt. It is the case of the defendants that they are in continuous possession and enjoyment in their own right and Adilakshmi never gave possession to E.Bhanumathi. So also E.Bhanumathi was never in possession of plaint schedule property and she had no subsisting right to execute any gift deed dt:08.12.1981.

10) In the light of above rival contentions and evidence placed on record, it is clear that the suit is laid by the plaintiff

basing on her title and for recovery of possession. In a suit of this nature, the law is clear that Art.65 of Limitation Act would apply and when once the plaintiff establishes her title to suit property, the burden will be shifted to the defendants to prove adverse possession i.e, *nec vi, nec clam, nec precario* against Bhanumathi as well as plaintiff beyond the statutory period of limitation. Art.65 of the Limitation Act, 1963 prescribes limitation as follows:

	Description of suit	Period of limitation	Time from which period begins to run
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65.	For possession of immovable property or any interest therein based on title. Explanation.-- For the purposes of this article -- (a) where the suit is by a remainder man, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
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a) Then regarding the burden of proof, Hon'ble Apex Court has time and again reiterated that in a case based on title, Art.65 of the Limitation Act is applicable and it is suffice for the plaintiff to establish her title and the burden will be on the defendants to prove the adverse possession.

i) In ***Annasaheb Bapusaheb Patil and others vs.***

Balwant @ Balasaheb Babusaheb Patil (dead) by LRs and

heirs etc. ^[10] the Apex Court has observed thus:

“Para 13: Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

ii) In **Md. Mohammad Ali's** case (7 supra) cited by appellants, the Apex Court while delineating subtle distinction between the old Limitation Act, 1908 and the new Limitation Act, 1963 in the matter of burden of proof of adverse possession, has observed thus:

“Para 20: By reason of Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat

the plaintiff's claim to establish his title by adverse possession.

Para 21: For the purpose of proving adverse possession/ ouster the defendant must also prove animus possidendi."

iii) The above point was again reiterated by the Apex Court in ***P.T.Munichikkanna Reddy's*** case (9 *supra*) thus:

"3. New Paradigm to Limitation Act

Para 34: The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession."

iv) In ***M.Durai vs. Madhu and others***^[11] the Apex Court held that when once plaintiff proved his title, burden shifts to the defendants to establish that he perfected his title by adverse possession.

v) In ***Saroop Singh vs. Banto and others***^[12] referring Art.64 and 65 of Limitation Act, the Apex Court observed thus:

"Para 26: The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse

possession. As noticed hereinbefore, the first defendant-Appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.”

vi) In **T. Anjanappa**'s case (8 supra) cited by appellants, the Apex Court held thus:

“Para 20: It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.”

11) In the light of above precedential jurisprudence, it has to be seen at first, whether plaintiff could establish her title to deserve for decree. It is an undisputed fact that the Adilakshmi was the owner of the suit property and other surrounding property. The defendants have not disputed the factum of Adilakshmi executing sale deed in favour of Bhanumathi and also Bhanumathi executing gift deed in favour of plaintiff. Since his alleged oral sale covered by Ex.B.8—receipt was long after Ex.A.3—sale deed executed by G.Adilakshmi, the said oral sale even if held to be true, will not confer any title on D.1. Further, as rightly observed by the appellate Court, there

are some defects in the oral sale claimed by D.1. He claims to have purchased the property for Rs.92/- whereas Adilakshmi herself purchased the property in the year 1950 for Rs.300/-. Even she sold the said property for Rs.500/- to Bhanumathi. Therefore, it is hard to believe that she would sell the suit property for a throw away price of Rs.92/- to D.1. Further, D.1 did not secure the title deed of Adilakshmi at the time of oral sale. In contrast, Bhanumathi collected the title deed of Adilakshmi at the time of Ex.A.3. For these reasons, the parallel title setup by D.1 as against the plaintiff cannot be accepted. On the other hand, the plaintiff could establish her title by virtue of Ex.A.5—gift deed. Hence, going by the above precedents, the plaintiff *prima facie* deserves decree. However, the claim of adverse possession of defendants needs to be discussed.

12) Going by the law, the burden is heavy on the defendants to establish by cogent evidence that they have been enjoying the suit property to the knowledge of Bhanumathi and plaintiff, adverse to their interest beyond the statutory period.

a) Firstly, defendants claim continuous and adverse possession basing on the recitals in Ex.A.3. Their claim is that admittedly D.1 was the tenant under G.Adilakshmi and no evidence is placed by the plaintiff to show that Adilakshmi secured possession of the suit property from D.1 before selling the same to Bhanumathi and hence it shall be deemed that they are in continuous and uninterrupted possession. This

argument is untenable for the reason that though in Ex.A.3 Adilakshmi admitted that the suit property was initially under the lease of D.1 but she emphatically stated that the lease was determined and she was delivering the possession to Vendee without any obstructions from the lessee. If it is the contention of D.1 that inspite of the said recital, he still continued in possession more-so against the interest of Bhanumathi and plaintiff, it is for him to establish the said fact by adducing evidence. On the contrary, he cannot throw burden on plaintiff to show that Adilakshmi obtained receipt from D.1 delivering the suit property. As rightly observed by the appellate Court, the Commissioner's Report and other evidence would show that the property to the North of the disputed property was sold by Adilakshmi to Gangamma and Rameshwarapu Chalapathi. D.1 claimed the entire property including the said alienated property. Unless D.1 handed over the property to Adilakshmi, she could not convey and handover the property to Gorla Gangamma and Rameshwarapu Chalapathi. This would indicate that as recited in Ex.A.3, Adilakshmi got back the property from D.1 before alienating the same to Bhanumathi.

b) Nextly, the adverse possession was sought to be proved claiming that D.1 cultivated the land till 1966 as tenant by paying annual rent of Rs.15/- and after purchasing the same in the year 1966 he raised Chollu and Gantulu and also some Vegetable plants for about 4 or 5 years and later he used the land for keeping cattle and hayricks and bricks. DW.1—the son of D.1 gave evidence in that regard. However, the

documentary evidence including the photos filed by defendants would show that the suit property is a barren land and it never had any traces of cultivation. The defendants also not produced the copies of cultivation adangals showing that they have cultivated the suit land more-so to the knowledge and against the interest of Bhanumathi and plaintiff. So this argument cannot be accepted.

13) The defendants tried to clench the admission of PW.2 in their endeavor to prove their adverse possession. PW.2 made a stray admission in his cross-examination that the disputes commenced from the year 1970 onwards with D.1. Thus the claim of defendants is that ever since 1957 they were in possession of the suit property and therefore, in 1970 when Bhanumathi claimed property by virtue of her sale, the D.1 asserted his title and possession against her and in that view, the present suit which is filed long after, is barred by limitation. This argument does not hold water. PW.2 is the son of plaintiff. In his cross-examination no doubt he made some admissions. For instance, he deposed as if the suit property was in possession of plaintiff since 1970 when Bhanumathi handed over the possession. He also admitted that disputes commenced from the year 1970 onwards with D.1. He further admitted that D.1 used to come to the site and go away and he used to obstruct their entry into the site from the beginning. Now the point is whether these admissions would amount to establishment of adverse possession by the defendants.

PW.2 was born in the year 1959 and he was 11 years old by 1970. In view of his tender age by 1970, it is difficult to believe his words that his mother obtained possession of suit property in 1970 itself. In contrast, plaintiff (PW.1) in her evidence stated that she obtained possession of the property one week after execution of Ex.A.5. Therefore, the evidence of PW.2 with regard to delivery of possession cannot be viewed seriously. Similarly his other admission that the disputes commenced from the year 1970 onwards with D.1 also cannot be taken seriously as by 1970, PW.2 was only a tender aged boy. Therefore, his evidence will not clinch the adverse possession. So none of the points raised by the appellants would clinchingly establish that defendants have enjoyed the suit property openly, continuously and against the right, title and interest of Bhanumathi and plaintiff beyond the statutory period of limitation. The appellate Court upon proper consideration of the facts and evidence rightly held that the plaintiff deserved decree in her favour and the said finding does not suffer any legal infirmity. The other decisions cited by the appellants will not improve their case.

14) **POINT No.2:** It is the case of the plaintiff that the defendants are trespassers into the suit land and not the tenants as on the date of suit. Therefore, the question of their issuing quit notice under Sec.106 of Transfer of Property Act, does not arise. Hence, the argument that the suit is not maintainable without issuing notice under Sec.106 of T.P Act is unsustainable.

15) **POINT No.4:** In view of the above findings on the substantial questions of law raised by the appellants, I find no merits in this Second Appeal and the same is accordingly liable to be dismissed.

In the result, this Second Appeal is dismissed by confirming the judgment and decree dt:14.02.2003 in A.S.No.194 of 1997 passed by the VII Additional District Judge, Kakinada decreeing the plaintiff's suit. The time for eviction is two (2) months from the date of this judgment. No costs in this Second Appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 29.03.2016
Murthy/scs

[\[1\]](#) (1990) 4 SCC 706

[\[2\]](#) 1998 (4) ALT 469 (DB)

[\[3\]](#) (2000) 3 SCC 640

[\[4\]](#) (2000) 7 SCC 60

[\[5\]](#) (2002) 5 SCC 90

[\[6\]](#) (2003) 4 SCC 161

[\[7\]](#) (2004) 1 SCC 271

[\[8\]](#) (2006) 7 SCC 570

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

[\[10\]](#) AIR 1995 SC 895

[\[11\]](#) (2007) 3 SCC 114

[\[12\]](#) AIR 2005 SC 4407