

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.746 OF 1997

JUDGMENT:

The plaintiff in O.S.No.580 of 1983 on the file of the Principal District Munsif Court at Kovvur and respondent No.1 in A.S.No.9 of 1990 on the file of the Subordinate Judge, Kovvur, preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the C.P.C.') aggrieved by the decree and judgment, dated 01.10.1996, passed by the appellate Court in A.S.No.9 of 1990 reversing the judgment, dated 27.09.1989, passed by the trial Court in O.S.No.580 of 1983.

2. For convenience of reference, the ranks given to the parties before the trial Court in O.S.No.580 of 1983 will be adopted throughout the judgment.

The plaintiff filed the suit for bare injunction to restrain the defendants from interfering with his possession and enjoyment over the suit schedule property alleging that he is the retired Principal residing at Basivireddipet, Nidadavole, and the 1st defendant is the plaintiff's eldest brother's son and defendants 2 and 3 are the undivided sons of the 1st defendant. The 4th defendant is the plaintiff's younger brother's son. The plaintiff's elder brother, by name, Suryaprakasa Rao, who worked in Parry and Company for some time, died issueless on 31.08.1981 and he was very close to the plaintiff during his lifetime and treated him with affection. Way back in 1962, Suryaprakasa Rao, out of his love and affection towards plaintiff, executed a settlement deed for an extent of 810 sq. yards of site to the West of the plaint schedule house and delivered it to him. After the above settlement in 1962, Suryaprakasa Rao also gifted a dilapidated building with site admeasuring 435 sq.

yards lying to the East of schedule property to the plaintiff and the same is shown as A B F E in the plaint plan which is described as Item No.1 in the suit schedule property. Immediately, the plaintiff took possession of the building and the site, leased out to the tenants. Later on, the plaintiff applied for mutation of his name in the place of Suryaprakasa Rao on 22.12.1967. But, it was returned with an objection that the plaintiff has to obtain consent of Suryaprakasa Rao. Accordingly, the plaintiff resubmitted the application for mutation and later constructed a house in the schedule property. Thus, the plaintiff alone has been in possession and enjoyment of the property in his own right to the exclusion of real owner and to his knowledge and thus perfected his title by adverse possession. It is specifically stated that the plaintiff spent Rs.25,000/- for construction of the house and leased out the same to one Velagala Tata Reddy. To the East of the terraced building, there is a vacant site, which leads to the main road with measurement of 15 yards. The building opens towards East and there used to be a gateway on the eastern compound wall leading to Canal Road abutting to the compound wall and there was also a pial shown as G H in the plan and its width is one yard. The vacant site is shown as Item No.2 in the plaint schedule.

On 21.10.1983, all the defendants came in a body with Crobars and dug out the compound wall though their highhanded act was resisted by the plaintiff. The plaintiff gave reply with true facts to the legal notice issued by the defendants claiming right over the schedule property.

It is specifically contended that the defendants are proclaiming in the village that they would dispossess the plaintiff from the schedule property. Therefore, to protect his possession, the plaintiff filed the suit for injunction simplicitor restraining the defendants from interfering with his peaceful possession and enjoyment over the suit schedule property.

3. The 1st defendant filed written statement denying the plea raised by the plaintiff. He contended that he never made any attempt to interfere with the plaintiff's possession over the suit schedule property and he has nothing to do with the same and he was neither necessary nor proper party to the suit.

4. Defendants 2 and 3 filed joint written statement, which was adopted by the 4th defendant. They admitted the relationship with the plaintiff and *inter alia* contended that Supraprakasa Rao executed a registered Will on 25.02.1981 in sound, disposing state of mind making various bequests in favour of grand sons of his brother Appa Rao and defendants 2 to 4 being legatees under the Will are entitled to the suit schedule property and as such they are in possession of the property as on the date of filing the suit.

5. The defendants denied the alleged gift of 435 sq. yards of site, which is shown as Item No.1 in the plaint schedule and that the plaintiff has no right to claim any relief in the suit.

They contended that a suit for bare injunction is not maintainable, as Suryaprakasa Rao issued a legal notice on 12.05.1981 to the plaintiff demanding him to vacate Item No.1, as he was in occupation of the same as a licensee. The defendants denied the title of the plaintiff and the appropriate remedy for the plaintiff is to seek a declaration of title with consequential relief. Therefore, the defendants prayed for dismissal of the suit.

6. Basing on the above pleadings, the trial Court framed as many as three issues and one additional issue which are as follows:

1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. Whether the 1st defendant is not a necessary party to this suit?
3. To what relief?

Additional Issue:-

Whether the plaintiff has perfected his title by adverse possession?

7. During the course of enquiry, on behalf of the plaintiff, PWs.1 to 4 were examined and Exs.A1 to A11 were marked and on behalf of the defendants, DWs.1 to 3 were examined and Ex.B1 was marked.

8. Upon hearing argument of both the learned counsel, considering the oral and documentary evidence available on record, the trial Court decreed the suit in favour of the plaintiff.

9. Aggrieved by the decree and judgment dated 27.09.1989 passed by the trial Court in O.S.No.580 of 1983, defendants 2 and 3 preferred A.S.No.9 of 1990 and the learned Subordinate Judge, Kovvur, allowed the same by judgment dated 01.10.1996 reversing the findings recorded by the trial Court.

10. Aggrieved by the same, the plaintiff filed the present appeal raising several substantial questions of law and most of the substantial questions in paragraph No.16 of the grounds of appeal are the questions of fact and questions of law, but not the substantial questions of law. Only questions (b) and (c) are the substantial questions of law, which are as under:

(b) Whether on the facts and in the circumstances, the finding of the trial Court that the plaintiff perfected his title to the plaint schedule property by adverse possession is not sustainable?

(c) Whether the defendants are entitled to resist the suit for permanent injunction when the oral and documentary evidence conclusively establish that the plaintiff has been in continuous possession and enjoyment of the suit property?

11. During hearing, learned counsel for the plaintiff vehemently contended that there is sufficient pleading to claim title by adverse possession and referred various dates of cause of action of the plaint. He further contended that the plaintiff is in possession and enjoyment over the suit schedule property and his possession cannot be disturbed by any third party and drawn the attention of this Court to the findings of the appellate Court in committing errors and supported the judgment of the trial Court in all respects.

12. **In Re Q.No.(1) (Addl. Issue before trial Court):-**
Indisputably, the suit is filed for bare injunction by paying Court fee of Rs.56/- under Section 26 (c) of the Andhra Pradesh Court Fees and Suits Valuation Act (for short, 'the Act') and claimed title by adverse possession and curiously both the trial Court and the appellate Court framed point for consideration and recorded a finding though the scope of the trial Court in an injunction simplicitor is limited. More curiously, the plaint is silent as to the date when the plaintiff set up hostile title to the knowledge of the defendants, who are claiming title as legatees under the registered Will allegedly executed by late Supraprakasa Rao, who allegedly gifted the suit schedule orally. It is settled law that pleadings are the heart and sole of the civil litigation. But, without raising any specific plea as to when the plaintiff claimed hostile title against the true owner, he sought for a declaratory relief that he perfected his title by adverse possession. He paid Court fee of Rs.56/- under the Act without any pleading as to the date.

13. In **MARIA MARGARIDA SEQUERIA FERNANDES v. ERASMO JACK DE SEQUERIA**^[1], the Supreme Court highlighted the importance of purity of pleadings in civil cases and held as under:

“61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once

the title is prima facie established, it is for the person who is resisting the titleholder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.

72. The court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

76.

77. The courts must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case."

14. The pleadings are bereft of the details as to the date of claiming hostile title against the defendants, who are claiming to be the

real owners under the registered Will executed by Supraprakasa Rao. In view of the principle laid down in the above judgment, it is the duty of the defendants to plead and prove the requirements, which are essential for claiming adverse possession; otherwise, they are not entitled to defend the claim of the plaintiff that he perfected his title by adverse possession.

15. Though the scope of the suit for injunction is limited, in view of the vehement argument advanced by learned counsel for the appellant, I am forced to record a finding on this question.

16. In **SECRETARY OF STATE FOR INDIA v. DEBENDRA LAL KHAN**^[2], the Privy Council observed that the ordinary classical requirement of adverse possession is that it should be '*nec vi. nec clam, nec precario*' and the possession required must be adequate in continuity, in publicity and in extent to show that possession is adverse to the competitor. Thus, these three requirements mentioned in the above judgment are *sine-qua-non* to defend the claim of the defendants basing on the adverse possession, but here there is absolutely no pleading and evidence to establish these three requirements.

17. The Apex Court in **S.M. KARIM v. BIBI SAKINA**^[3] held 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.””

18. In ***R. CHANDEVARAPPA AND OTHERS v. STATE OF KARNATAKA AND OTHERS***^[4], the Apex Court laid down the principles regarding adverse possession and highlighted the necessity of pleadings and held as under:

“The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant’s possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant.”

19. In the later judgment in ***D. N. VENKATARAYAPPA AND ANOTHER v. STATE OF KARNATAKA AND OTHERS***^[5], the Apex Court reiterated the same principle and held as under:

“Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees. the petitioners cannot claim that they have perfected their title by adverse possession.”

20. Similarly, in ***HEMAJI WAGHAJI JAT v. BHIKHABHAI KHENGARBHAI HARIJAN AND OTHERS***^[6], ***MANDAL REVENUE OFFICER v. GOUNDAL VENKAIAH AND ANOTHER***^[7], ***ANAKILLI v. A. VEDANAYAGAM***^[8], ***P.T. MUNICHICKANA REDDY v.***

REVAMMA^[9], **T. ANJAPPA AND OTHERS v. SOMALINGAPPA**

AND ANOTHER^[10] and **L.N. ASWATHAMA AND ANOTHER v. P.**

RAKASH^[11] the Apex Court held that the pleadings are necessary to constitute adverse possession since the adverse possession starts from the day when the plaintiff set up hostile title to the knowledge of the real owner. But, in the present facts and circumstances of the case, there is absolute no pleading as to when the plaintiff is in continuous possession setting up hostile title to the knowledge of the true owner, but adduced evidence that he is in continuous possession.

21. The trial Court believed this contention and in the recent judgment of the Supreme Court in **M. VENKATESH AND OTHERS v. COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY AND OTHERS (Manu/SC/1081/2015)**, the Full Bench highlighted the concept of adverse possession. Even according to the principles laid down in the above judgments, the plaintiff is required to plead and prove that he is in continuous possession and enjoyment of the property over a period of 12 years against the true owner. In the absence of such pleading and evidence, the claim of the plaintiff that he perfected his title by adverse possession cannot be held. Though the finding is unnecessary in a suit for bare injunction in view of the trial Court judgment and the grounds urged before this Court, I have recorded my finding.

22. The plaintiff is claiming title over the property by oral gift which is not valid under the provisions of Section 123 of the Transfer of Property Act read with Section 17 of the Indian Registration Act, but claimed adverse possession not as alternative plea.

23. In **CHAPSIBHAI DHANJIBHAI DANAD v. PURUSHOTTAM**^[12] the Supreme Court at paragraph No.19

discussed about alternative pleas or inconsistent plea and held as under:

“19. Ch. IV of the Act deals with the disturbance of easements' and [Section 33](#) therein provides that the owner of any interest in the dominant heritage or the occupier of such heritage may institute a suit for the disturbance of the easement provided that the disturbance has actually caused substantial damage to the plaintiff. Under Explanation II read with Explanation I to the section, where the disturbance pertains to the right of free passage of light passing through the openings to the house, no damage is substantial unless the interference materially diminishes the value of the dominant heritage. Where the disturbance is to the right of the free passage of air, damage is substantial if it interferes materially with the physical comfort of the plaintiff. In *Rayachand v. Maniklal* I.L.R. 1946 Bom. 184 (F.B.) it was held that an easement by prescription under [Sections 12](#) and [15](#) of the Act is in fact an assertion of a hostile claim of certain rights over another man's property and in order to acquire the easement the person who asserts the hostile claim must prove that he had the consciousness to exercise that hostile claim on a property which is not his own and where no such consciousness is proved he cannot establish a prescriptive acquisition of the right. Therefore, if the owner of a dominant tenement has, during the period of prescription, exercised rights on the footing that he is the owner but which he later on claims as an easement over a servient tenement, then, his exercise of those rights is not exercised as an easement and he must fail in a claim for an easement. As already stated, a party to a suit can plead inconsistent pleas in the alternative such as the right of ownership and a right of easement. But, where he has pleaded ownership and has failed, he cannot subsequently turn around and claim that right as an easement by prescription. To prove the latter, it is necessary to establish that it was exercised on some one else's property and not as an incident of his own ownership of that property. For that purpose, his consciousness that he was exercising that right on the property treating it as someone else's property is a necessary ingredient in proof of the establishment of that right as an easement.”

24. If the principle laid down is applied to the present facts of the case, inconsistent pleas are impermissible in alternative but when the plaintiff set up title by way of oral gift and failed to prove such gift,

he cannot turn and set up a plea of adverse possession. Even otherwise, the plaintiff is not entitled to claim any right in the property by way of adverse possession in a suit for bare injunction, in view of principle laid down by the Apex Court in **GURDWARA SAHIB v. GRAM PANCHAYAT VILLAGE SIRTHALA**^[13].

25. **In Re Q.No.2**:- One of the contentions of the plaintiff is that he is in possession and enjoyment of the property and on the other hand, the defendants claiming right over the property as legatees under a registered Will executed by Suraprakash Rao, the donor of the plaintiff, by oral gift. More curiously, notice, Ex.A4, was issued to the plaintiff by Suryaprakash Rao himself during his lifetime calling upon the plaintiff to vacate the premises denying his right to continue in possession. Thus, the title of the plaintiff was denied by the alleged donor of the plaintiff during his lifetime and he allegedly executed a registered Will in favour of the defendants, but the rights of the defendants based on a Will cannot be decided in a suit for bare injunction. Thus, the right of the plaintiff to continue in possession was denied long back both by Supraprakash Rao, the alleged original donor of the property to the plaintiff, and, after his death, by the defendants specifically. Thus, there is a clear dispute as regards title between the plaintiff and the defendants and in such case, the remedy open to the plaintiff is to claim a declaratory relief in view of the judgment of the Apex Court in **ANATHULA SUDHAKAR v. P. BUCHI REDDY**^[14], wherein the Apex Court laid down principles as to maintainability of suit for bare injunction. Even, according to it, when the plaintiff proved lawful possession and attempted to invade or infringe his legal right, a suit for bare injunction is maintainable. In view of the settled legal position laid down by this Court and the Apex court, Courts need not go into the title of the property and they shall not record finding regarding title except for limited purpose of deciding the lawful possession as on the date of filing the suit.

26. Yet the relief of injunction is claimed against the legal heirs of the deceased Suryaprakasa Rao, who are claiming title over the property under testamentary dispossession and for any reason, the defendants proved their title to the property in a comprehensive suit. Therefore, the plaintiff is not entitled to claim a perpetual injunction as per the provisions under Section 38 of the Specific Relief Act. In **MAHADEO SAVLARAM SHELKE AND OTHERS v. PUNA MUNICIPAL CORPORATION AND OTHERS**^[15], the Apex Court held that no injunction could be granted against the true owner at the instance of unlawful possession. Even if the principle laid down in the above judgment is applied to the present case, the plaintiff is not entitled to claim perpetual injunction under Section 38 of the Specific Relief Act, which is purely discretionary in nature. Thus, the appellate Court rightly allowed the appeal. Therefore, I find no illegality in the judgment of the appellate Court and consequently the appeal is liable to be dismissed.

27. In the result, the appeal is dismissed confirming the judgment and decree dated 01.10.1996 in A.S.No.9 of 1990 on the file of the Subordinate Judge, Kovvur. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:04.08.2016
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^[1] AIR 2012 SC 1727

^[2] AIR 1934 PC 23

^[3] AIR 1964 SC 1254

^[4] (1995) 6 SCC 309

- [\[5\]](#) (1997) 7 SCC 567
- [\[6\]](#) 2008 (6) ALD 121 (SC)
- [\[7\]](#) 2010 (2) ALD 115 (SC)
- [\[8\]](#) 2007 (14) SCC 308
- [\[9\]](#) 2007 (6) SCC 59
- [\[10\]](#) 2006 (7) SCC 570
- [\[11\]](#) 2009 (13) SCC 229
- [\[12\]](#) AIR 1971 SC 1878
- [\[13\]](#) (2014) 1 SCC 669
- [\[14\]](#) AIR 2008 SC 2033
- [\[15\]](#) (1995) 3 SCC 33