

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

**SECOND APPEAL No.39 of 2017**

**JUDGMENT** : (Oral)

Vide the present appeal, the appellants/defendants have assailed the decree and judgment dated 1<sup>st</sup> September 2009, passed in O.S.No.246 of 2004 on the file of Principal Junior Civil Judge, Bapatla, as has been confirmed by decree and judgment dated 2<sup>nd</sup> November 2015 passed in A.S.No.54 of 2009 on the file of Senior Civil Judge, Bapatla.

2. The respondents herein filed O.S.No.246 of 2004 for partition of the plaint schedule property into four equal shares and to allot three such shares to them with metes and bounds and to deliver possession of the same.

3. Case of the respondents/plaintiffs is that the 1<sup>st</sup> plaintiff and his three elder brothers, namely, Sk.Azeez Saheb, Sk.Mohiddin Saheb and Sk.Sattar Saheb jointly purchased the plaint schedule property from Sk.Basheerunnisa Begum under registered sale deed dated 20<sup>th</sup> March 1972 for a valuable consideration and all of them are co-owners of the said property. They kept the plaint schedule site vacant for some time, as all of them are permanent residents of Murukondapadu. Subsequently, they raised a thatched hut in it jointly. Later, Sk.Azeez Saheb shifted his family from Murukondapadu to Bapatla and has been residing in that thatched house with the permission of the other co-owners. Subsequently, the

said Sk.Azeez Saheb died leaving behind the appellants herein as his legal heirs, and after his death also, the appellants have been in possession and enjoyment of thatched house and site. The other two brothers of 1<sup>st</sup> plaintiff i.e. Sk.Mohiddin Saheb and Sk.Sattar Saheb also died. Plaintiffs 2 and 4 are the legal heirs of Sk.Sattar Saheb and plaintiffs 3, 5 and 6 are the legal heirs of Late Sattar Saheb. While so, when the respondents/plaintiffs demanded the appellants/defendants to co-operate for partition of plaint schedule property, the appellants did not do so even after issuance of legal notice and claimed prescriptive title to the said property. Consequently, the respondents/plaintiffs filed suit O.S.No.246 of 2004.

4. The case of the appellants/defendants before the trial Court was that 1<sup>st</sup> appellant alone constructed the house in the suit schedule property under due recognition of the Government and has been residing therein and she is in possession and enjoyment of the property as a rightful owner for more than the Statutory period. The respondents/plaintiffs were never co-owners with the husband of 1<sup>st</sup> appellant and the respondents or their predecessors never lived along with the 1<sup>st</sup> appellant or her husband. The alleged sale deed, if any, will not confer or convey any right and it is void in the eye of law. The respondents/ plaintiffs have no possession over the plaint schedule property at any point of time.

5. Basing on the pleadings, the trial Court framed the following issue ;

*“Whether the plaintiffs are entitled for partition of the suit schedule property as prayed for ?”.*

6. Case of the respondents/plaintiffs is that the plaint schedule property was jointly purchased by 1<sup>st</sup> plaintiff and his three brothers as mentioned above under registered sale deed, dated 20<sup>th</sup> March 1972 from one Sk.Basheerunnisa Begum. Thereafter, they jointly raised a thatched hut therein and permitted one of them i.e. Sk.Azeez Saheb, who is the husband of 1<sup>st</sup> appellant and father of appellants 2 to 6, to shift his family from Murukondapadu and occupy the thatched house.

7. Out of four brothers, except the 1<sup>st</sup> plaintiff, all the remaining brothers passed away leaving behind plaintiffs 2 to 6 and appellants/defendants as their legal heirs. Plaintiffs 2 and 4 are the legal heirs of Sk.Mohiddin Saheb and plaintiffs 3, 5 and 6 are the legal heirs of Late Sk.Sattar Saheb. 1<sup>st</sup> defendant is the wife of Sk.Azeez Saheb and the rest of the defendants are their children.

8. In order to prove that the plaint schedule property is their joint property, the 1<sup>st</sup> plaintiff and the 6<sup>th</sup> plaintiff were examined as PWs.1 and 2. In their chief examination affidavits, they reiterated the same facts, which were stated in the plaint. In order to show that the plaint schedule property was jointly purchased by the 1<sup>st</sup> plaintiff and his brothers, they marked Ex.A-1, which is a registered sale deed, dated 20<sup>th</sup> March 1972, executed by one Sk.Bashirunnisa Begum in favour of 1<sup>st</sup> plaintiff and his three brothers. Exhibit A-1 shows that the 1<sup>st</sup>

plaintiff and his three brothers i.e. including the husband of 1<sup>st</sup> defendant, jointly purchased the plaint schedule property for a valuable consideration of Rs.900/-. From Ex.A-1, it is established that the plaint schedule property is the joint property of 1<sup>st</sup> plaintiff and his three brothers and all of them got equal rights over the property.

9. It is pertinent to mention here that this document was neither disputed nor denied by the appellants/defendants either in their written statement or in the chief examination affidavit of DW-1. It is also not the contention of the appellants/defendants that Sk.Azeez Saheb, who is the husband of 1<sup>st</sup> defendant and father of rest of the defendants, is not a party to Ex.A-1.

10. Regarding the contention raised by the appellants/defendants that the plaint schedule property belongs to the Government and the alleged sale deed/Ex.A-1 will not confer or convey any right to the respondents/plaintiffs as it is void in the eye of law, it is to be noted that in Ex.A-1, the vendor Bashirunnisa Begum stated that the plaint schedule land was allotted to her by the Government under RC.No.1589/DK/77, dated 06.05.1968. However, she did not state that plaint schedule land is an assigned land. Just because the plaint schedule land was given to the vendor Bashirunnisa Begum by the Government, it cannot be concluded that the plaint schedule land is an assigned land.

11. The contention of the appellants before the trial Court was that the plaint schedule land is Government land and the 1<sup>st</sup> appellant alone had constructed the house in the plaint schedule property and was residing therein. Neither the respondents/plaintiffs nor their predecessors in title had ever lived along with the 1<sup>st</sup> appellant or her husband. Further, the 1<sup>st</sup> appellant also contended that she has been in possession and enjoyment of the plaint schedule property as a rightful owner for more than the Statutory period and she acquired title over the property by way of adverse possession. In support of her contention, the 1<sup>st</sup> appellant examined herself as DW-1. In her chief-examination affidavit, she reiterated the same facts, which were stated in her written statement. In order to show that the plaint schedule land is a Government land, DW-1 filed Ex.B-1, which is a notice given under Section 7 of Act No.3 of 1905. In addition to that, she also examined one M.Veerawamy, who is working as Village Revenue Officer of West Bapatla and got produced Ex.X-1, which is the true extract of Adangal for the Fasali 1403. Both Exs.B-1 and X-1 pertain to Survey No.531/82, whereas, the Survey number of the plaint schedule land is 531/8. Both these documents belong to Fasali 1403. They did not disclose that the 1<sup>st</sup> appellant and her family members are residing in plaint schedule land prior to or subsequent to Fasali 1403. The said fact was also admitted by DW-2 during his cross-examination.

12. In view of the evidence on record, the learned trial Court observed that merely basing on Exs.B-1 and X-1, which are weak

pieces of evidence, it cannot be concluded that the plaint schedule land is a Government land and that the appellants are in possession of the same continuously, so as to enable them to claim adverse possession.

13. It is pertinent to mention here that the genuinity and validity of Ex.A-1 is already established, therefore, the question of appellants/defendants acquiring adverse possession, does not arise because their very possession over the plaint schedule property is by virtue of Ex.A-1. The contention of the appellants/defendants that they have excluded the respondents/plaintiffs, who are co-owners, by way of adverse possession as they have been in possession of the plaint schedule property for a period of 30 years, also cannot be accepted as there is no cogent and convincing document to believe the same.

14. To decide the suit in favour of the plaintiffs, the learned trial Court relied upon a decision given by this Court in the case of **Gade Ramulu & others v. District Collector, Srikakulam & others**<sup>1</sup>, wherein, it was held as follows :

*“A person who bases his title on adverse possession must show by clear and unequivocal evidence that his 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 persons doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession,*

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<sup>1</sup> 2003 (1) ALT 473

*therefore, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. The proof on these necessary facts for permitting a conclusion of perfection of title by adverse possession presupposes a specific pleading of such claim and adduction of evidence, oral or documentary in substantiation of the claim.”*

15. In view of above, the trial Court held that the appellants/defendants are required to adduce strong and cogent evidence to show that they have extinguished the title of plaintiffs by way of adverse possession. As the appellants failed to adduce such evidence, their plea is liable to be rejected. Accordingly, the suit was allowed in favour of the respondents/plaintiffs.

16. Being aggrieved, the appellants/defendants challenged the judgment by way of A.S.No.54 of 2009 before the Senior Civil Judge, Bapatla and the same was dismissed by decree and judgment dated 2<sup>nd</sup> November 2015. This Court find no illegality or perversity in the orders passed by the trial Court and the Appellate Court.

17. Thus, in the present appeal, the questions of law framed by the appellants/defendants have no bearing. The appeal is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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**SURESH KUMAR KAIT, J**

30<sup>th</sup> June 2017

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