

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

**SECOND APPEAL Nos.1029 and 1044 of 2016**

**COMMON JUDGMENT:**

These two Second Appeals arise between the same parties in respect of the same property and so they are being disposed of by this common judgment.

2. S.A.No.1029 of 2016 has been filed challenging the judgment and decree dt.09-09-2015 in A.S.No.154 of 2012 of the II Additional District Judge, West Godavari at Eluru confirming the judgment and decree dt.06-08-2012 in O.S.No.393 of 2011 of the Additional Senior Civil Judge, Eluru, West Godavari District.

3. S.A.No.1044 of 2016 is filed by the appellants challenging the judgment and decree dt.09-09-2015 in A.S.No.20 of 2013 of the II Additional District Judge, West Godavari at Eluru confirming the judgment and decree dt.06-08-2012 in O.S.No.323 of 2007 of the Additional Senior Civil Judge, Eluru, West Godavari District.

4. The subject matter of both suits is an extent of Ac.1.85 cents in R.S.No.914 of Lakshmipuram village, Pedavegi Mandal, West Godavari District.

5. The appellants in both these appeals had initially filed O.S.No.697 of 2006 on the file of the I Additional Junior Civil Judge, Eluru for a perpetual injunction restraining the 1<sup>st</sup> respondent in both

the appeals as well as respondent Nos.2 and 3 in S.A.No.1029 of 2016 from interfering with their alleged possession and enjoyment of the plaint schedule property. They claimed that the property was the property owned by Dhulipala Basava Bramham; that he executed Ex.B-2 General Power of Attorney in favour of one Pujari Veerayya; and the said G.P.A. holder executed registered sale deed Ex.B-1 in their favour on 04-02-2005 transferring title and possession of the said property to the 1<sup>st</sup> appellant. They also set up Ex.B-7 agreement of sale dt.05-03-1990 in favour of Pujari Veeraiah executed by Dhulipala Basava Bramham. They contended that respondents in S.A.No.1029 of 2016 offered to buy land on the western side of the plaint schedule property but failed to buy it since the appellants offered better price and with a view to cause trouble to the appellants in the cultivation and enjoyment of the plaint schedule property, they attempted to dispossess the appellants from the said property.

6. The 1<sup>st</sup> respondent in S.A.No.1029 of 2016 filed a written statement, which was adopted by respondent Nos.2 and 3. He contended that the plaint schedule property originally belong to late Dhuliapala Narasimham; that 1<sup>st</sup> respondent's father Venkaiah had been inducted in possession as a cultivating tenant by late Dhulipala Rama Brahman himself and on his death, the 1<sup>st</sup> respondent was continuing as cultivating tenant; that on his death, it devolved on Basava Brahman and his sons and they were enjoying the same along

with other items of joint family; that Basava Brahman died on 05-04-2000 in Narasaraopet, Guntur District leaving behind his widow and other children; and these children executed Ex.A-2 registered sale deed in his favour. He contended that since Basava Brahman was represented by Pujari Veerayya and since Basava Brahman, the principal under the G.P.A., himself died on 05-04-2000, the G.P.A. Ex.B-2 became void, and acting on the said G.P.A., there could not have been any sale deed Ex.B-1 dt.04-02-2005 executed by G.P.A. holder Pujari Veerayya in favour of the 1<sup>st</sup> appellant. He also claimed that he was given pattadar pass book Ex.A-3.

7. With the same pleadings, the 1<sup>st</sup> respondent filed O.S.No.323 of 2007 for declaration that he was the absolute owner of the plaint schedule property and for relief of recovery of possession after evicting the appellants from the property. He also sought Rs.67,000/- towards past profits and future profits till he put back into possession of the property.

8. He alleged that after obtaining temporary injunction in I.A.No.2293 of 2006 in O.S.No.697 of 2006, the 1<sup>st</sup> appellant dispossessed him and therefore he should be restored back possession.

9. O.S.No.697 of 2006 was transferred and renumbered as O.S.No.393 of 2011 on the file of the Additional Senior Civil Judge, Eluru, West Godavari District.

10. Joint trial was conducted and evidence was recorded in O.S.No.323 of 2007. Respondents examined P.Ws.1 to 4 and marked Exs.A-1 to A-3. The appellants examined D.Ws.1 to 4 and marked Exs.B-1 to B-7.

11. By judgment and decree dt.06-08-2012, O.S.No.323 of 2007 was decreed and O.S.No.393 of 2011 was dismissed.

12. The trial Court held on appreciation of evidence that Ex.A-1 death extract of Basava Brahman produced by 1<sup>st</sup> respondent shows that he died on 05-04-2000; once he died, Ex.B-2 G.P.A. dt.23-03-1994 became void and null; and consequently, Pujari Veerayya as G.P.A. Holder of Basava Brahman had no right to execute Ex.B-1 dt.04-02-2005 in favour of 1<sup>st</sup> appellant. It therefore concluded that under Ex.B-1 sale deed, no rights were acquired by the 1<sup>st</sup> respondent. It further held that the evidence of P.Ws.1 to 4 proves the execution of Ex.A-2 sale deed; therefore Ex.A-2 sale deed is valid and 1<sup>st</sup> respondent thus established title to the plaint schedule property. It further held that 1<sup>st</sup> respondent had alleged that the appellants had entered into the plaint schedule property under the guise of interim injunction order obtained in O.S.No.697 of 2006 and therefore they are also entitled to recovery of possession. It also granted past profits and directed future profits be determined on a separate application. It held that since the appellants were claiming title under Ex.B-1 which was found to be not valid, they are not

entitled to the discretionary relief of perpetual injunction and that the appellants had not approached the Court with clean hands.

13. Challenging the judgment and decree in O.S.No.393 of 2011, the appellants filed A.S.No.154 of 2012 and challenging the judgment and decree in O.S.No.323 of 2007, they filed A.S.No.20 of 2013 before the II Additional District Judge, West Godavari District at Eluru.

14. The lower appellate Court confirmed the findings of the trial Court as regards title of the 1<sup>st</sup> respondent and as regards the grant of relief of delivery of possession to him. It thus dismissed A.S.No.154 of 2012 and partly allowed A.S.No.20 of 2013 as regards grant of past mesne profits, and held that 1<sup>st</sup> respondent is entitled to future mesne profits from the date of suit till the date of delivery of the property in separate proceedings. It granted 2 months time for delivery of possession. The lower appellate Court also held that after the death of Basava Brahman, the G.P.A. Ex.B-2 executed by him became null and void and there could not be any transfer of property on the basis of the said G.P.A. by Pujari Veerayya under Ex.B-1 to the 1<sup>st</sup> appellant. It refused to allow the appellants to plead adverse possession since there is no such plea raised in the pleadings or evidence adduced by them. It held that even if the possession of Pujari Veerayya is only permissive in the light of Ex.B-2 G.P.A.;

it is not sufficient for them to get the relief of injunction against the true owner i.e. 1<sup>st</sup> respondent.

15. Assailing the same, the Second Appeals are filed.

16. Learned counsel for appellants contended that the appellants were in uninterrupted continuous possession of the subject land for more than 12 years and have perfected their title by adverse possession and the lower appellate Court erred in rejecting the said plea.

17. It is settled law that the commencement of the date of adverse possession has to be specifically pleaded by appellants and they must adduce evidence in that regard (**Dr.Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others**<sup>1</sup>). This they failed to do.

18. Also, the plea of acquisition of title under a document and the plea of adverse possession are mutually inconsistent and once the plea of acquisition of title under a document is taken by appellants, they are not entitled to raise the plea of adverse possession. (**Arundhati Mishra (Smt.) Vs. Sri Ram Charita Pandey**<sup>2</sup>)

19. The other contention raised by the learned counsel for appellants is that 1<sup>st</sup> respondent ought to have sought the relief that the sale deed obtained by 1<sup>st</sup> appellant should be cancelled and he cannot merely seek declaration of title and delivery of possession.

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<sup>1</sup> (1996) 8 SCC 128

<sup>2</sup> (1994) 2 SCC 29

20. There is no merit in this plea either because the basis of the relief of declaration and title is the pleading that the sale deed in favour of the 1<sup>st</sup> appellant is void, since it was executed after the death of the principal Basava Brahman on 05-04-2000. Where a document is void, there is no necessity to seek relief of its cancellation (**Prem Singh and Ors Vs. Birbal and Ors**<sup>3</sup>).

21. Both the Courts below have correctly appreciated the evidence on record and come to the conclusion concurrently that 1<sup>st</sup> respondent has been able to establish title to the plaint schedule property and that appellants have failed in that regard. Therefore I do not find any substantial question of law arising for consideration in these Second Appeals warranting interference by this Court under Section 100 of C.P.C.

22. Therefore, these Second Appeals are accordingly dismissed.  
No costs.

23. As a sequel, miscellaneous petitions, if any pending, in these Appeals shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 20-03-2017  
Vsv/\*

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<sup>3</sup> (2006) 5 SCC 353