

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Second Appeal No.541 of 1999

JUDGMENT:

This Second Appeal was maintained by Kadiyala Sharanappa, S/o. Kadiyala Svappa. Said Svappa was the sole plaintiff in O.S.No.16 of 1989 on the file of the learned Senior Civil Judge, Vikarabad, Rangareddy District. During pendency of the First Appeal in A.S.No.97 of 1996 on the file of the learned I Additional District Judge, Rangareddy District at Saroornagar, Svappa died and his son Sharanappa came on record as his legal representative in the First Appeal. Before proceeding further, it is also necessary to mention that the said Sharanappa also died pending the Second Appeal and his wife Veeramma and son Veeranna came on record as co-appellants 2 & 3 as per the orders in S.A.M.P.No.26 of 2011 dated 12.09.2014 and further from death of said Veeramma, W/o. Sharanappa, on 13.08.2011, the factum of Veeranna, her son as sole heir is on record as appellant No.4 is recorded on 09.09.2011.

2. Out of the seven respondents-defendants to the Second Appeal, from death of defendant No.1 Lakshmappa for other defendants are his sons already on record is recorded by memo dated 02.07.2014, including of the factum of respondent No.7-defendant No.7 Mogadampalli Ravi

(unmarried) died and issue less and his mother pre-deceased was also recorded for no more legal representatives to bring on record. The Second Appeal was admitted on 19.08.1999 by formulating the following substantial question of law:

- (1) Whether, once the sale is held to be illegal, the possession by the vendee will become adverse from the date of the sale or not?

3. The admission of Second Appeal from the formulation of the substantial question of law supra is outcome of the contentions in the grounds of Second Appeal including as to involvement of the substantial questions of law are that the impugned judgment and decree of the first appellate Court are erroneous, contrary to law and facts of the case on record and also against the principles of equity and natural justice, particularly in reversing the well considered judgment of the trial Court, despite the entries in the revenue records and oral evidence proves the title of sole plaintiff-late first appellant otherwise by adverse possession as held by the trial Court; and the learned first Appellate Court Judge went wrong in holding that the entries in the revenue records cannot establish the factum of possession, even the defendants failed to prove any of the entries are wrong, though otherwise to be presumed from the entries to be correct, more particularly with reference to the Pahanies for the years 1977-78 to 1988-89 covered by exhibits A1 to A14 with reference to the oral evidence placed on record that continuously show the

possession and enjoyment of the plaintiff even the sale was invalid; and the learned District Judge in passing the reversal judgment in the First Appeal did not properly appreciate the voluminous evidence produced by the plaintiff-appellant that could not be rebutted by the defendant and thus the Second Appeal is to be allowed and the First Appeal reversal decree and judgment is to be set aside.

4. Pending the Second Appeal, the appellants filed S.A.M.P.No.1813 of 2017 on 16.08.2017 raising additional grounds in seeking to receive saying the fourth appellant's grandfather late Sivappa as sole plaintiff filed the suit (originally in the vacation Court as O.S.No.25 of 1989 and later it was transferred to the regular Court as O.S.No.16 of 1989 on the file of the learned Senior Civil Judge, Vikarabad) against the defendants, that was decreed by the trial Court on 03.10.1996 after the full-fledged trial and the defendants' appeal in A.S.No.97 of 1996 was however allowed on 16.12.1998 by the learned I Additional District Judge, Rangareddy District at Saroornagar erroneously and in filing the Second Appeal against it by his father as appellant No.2 for his grandfather (died pending the First Appeal) some of the grounds on question of law not mentioned and thereby the substantial question of law arise on that could not be framed even these aspects born by the pleadings and evidence on

record of the suit and thereby, having come to know are now raising the following additional grounds of appeal as to whether the lower appellate Court was right in not considering that the plaintiff's possession over the suit property covered by the invalid oral sale from enjoyment with possession since then in acquisition of right by prescription, including to draw presumption backwards from the date of said oral sale in 1973 of said possession as of right that is also reflecting in Pahanies, which the lower appellate Court did not properly consider and the lower appellate Court is thereby not correct in not believing the plaintiff's possession including from the admissions made by DW1 that the plaintiff's name was shown in the Pahanies, since 1973 as cultivator, from which the trial Court held that the right, title and possession of the plaintiff proved in decreeing the suit, which could not have been reversed by the lower appellate Court.

5. The sum and substance of the additional grounds raised thereby is the plea of adverse possession is the alternative. In fact, the original ground No.3 speaks the contention of lower appellate Court failed to consider in its finding of the plaintiff failed to prove the title of ownership even by adverse possession despite the revenue records with reference to the oral evidence. Thereby, the question of considering/ receiving the additional grounds does not arise for the same originally

covered in the original grounds of appeal regarding the plea of adverse possession and in formulation of the substantial question of law while admitting the Second Appeal also referred the same, since covered to say no further substantial question of law even required to be formulated.

6. Now, to decide the Second Appeal with respect to the above substantial question of law involved, heard both sides at length and perused the entire material on record.

7. The averments in the plaint in nut shell, in support of the prayer for declaration of the plaintiff as the absolute owner of the plaint schedule property, with alternative claim of adverse possession, for the extent of Ac.7.04 guntas forming part of Survey No.64 of Davalapur Village, Yalal Mandal, Rangareddy District (bounded by North-Maisamma temple, South-Land of Bheemsetti Bheemaiah, East-Land of Batta Nagappa and West-Hillock) and to grant perpetual injunction restraining the defendants and their men from interfering in any manner with the plaintiff's peaceful possession and enjoyment of the same and for costs, are that said Survey No.64, consists of total extent of Ac.27.32 guntas, jointly belongs to the defendant No.1-Mogadampalli Lakshmappa (the other defendants are his sons) and his brother Mogadampalli Ramaiah and out of it, an extent of

Ac.10.00 was sold away to one Bheemsetti Bheemaiah (plaint schedule southern boundary) prior to 1970 and it was mutated in his name and out of remaining Ac.17.32 guntas an extent of Ac.9.36 guntas fell to the share of Mogadampalli Ramaiah i.e., the brother of defendant No.1 supra and said Ramaiah sold away the same in favour of the sole plaintiff, under registered Sale Deed, bearing document No.16/ 70, dated 12.01.1970 (Ex.A15) and the defendant No.1 is one of the attestors of said Sale Deed and the remaining extent available is the plaint schedule of Ac.7.04 guntas out of said Survey No.64 that was also sold in favour of the plaintiff in the year 1973 for Rs.7,000/- and since then the plaintiff has been in continuous possession and enjoyment by paying land revenue to the Government and the same is evident from the entries in the revenue records i.e., Pahanis –exhibits A1 to A12 for the years 1977-78 to 1988-89 and exhibits A17 to A19 for the years 1991 to 1993 and the plaintiff otherwise acquired title over the same by adverse possession from open, continuous and uninterrupted possession for more than the statutory period and the defendants thereby lost any right over the plaint schedule property and however, they started denying the plaintiff's right and tried to interfere with the plaintiff's possession and enjoyment since last week of April 1989, which made the plaintiff to file the suit on 15.05.1989, as the

defendants made vain attempt to dispossess the plaintiff on 11.05.1989.

8. The written statement of the defendants, in opposing the suit claim and denying the plaint averments, that was filed in October 1990 about one year five months after the date of filing of the suit is with the context that the so-called sale set up by the plaintiff of the suit property in 1973 for Rs.7,000/- and put him in possession and since then with possession and enjoyment by paying land revenue is untrue. The name of plaintiff was recorded in the pahanies only in respect of the land of Ac.9.36 guntas he purchased from brother of defendant No.1 (under Ex.A15) for same also in same survey number and not for the suit land that belongs to the defendants and any such entry no way bind the defendants from any such revenue record claimed, apart from those will not confer right and title nor any conclusive evidence of possession so to claim, much less to the claim of adverse possession and plaint is also bereft of the sale transaction particulars, since the sale set up is a false one and the suit claim is baseless for plaintiff has no manner of any right or possession and the defendants are the absolute owners with exclusive possession and enjoyment of the suit land and the question of denying the title of plaintiff over the suit land and any alleged interference does not arise, besides

not true, for those are created for the purpose of the suit by setting up untrue cause of action of alleged interference as if with possession of plaintiff, the boundaries described also not correct, but with intentional wrong description to have undue advantage, if any, and the suit claim is liable to be dismissed.

9. In fact, the plaintiff supra in the plaint description no way mentioned as any boundary holder for what is part of the property of Ac.9.36 guntas purchased under the original of Ex.A15 in 1970; leave about once purchased by the registered Sale Deed, is it believable of three years later, the alleged purchase under oral sale, without any scrap of paper. It is leave apart Ac.9.36 guntas purchased under Ex.A15-Sale Deed dated 12.01.1970 under the same Survey number for Rs.2,500/-.

10. From the above pleadings with the infirmities supra, the trial Court framed as many as four issues as extracted under:

- 1) Whether the plaintiff purchased suit lands from the defendants as alleged?
- 2) Whether the plaintiff has perfected title by way of adverse possession over the suit land?
- 3) Whether the plaintiff is entitled for declaration of title over the suit lands and for consequential injunction?
- 4) To what relief?

11. During the trial, the plaintiff came to the witness box as PW1 and got examined two more witnesses as PWs 2 & 3 by names Venkat Rao and Sharna Reddy and placed reliance upon Exhibits A1 to A19 viz., A1 to A12 and A17 to A19 are the revenue pahanis referred supra, Ex.A15-Sale Deed referred supra, Ex.A16-Sethwar for the year 1976-77 and A13 and A14 are the land revenue receipts. On behalf of the defendants, Laxmaiah deposed as DW1 besides two more witnesses cause examined as DWs 2 & 3 by names Ashappa and Sakriya Naik and placed reliance upon Exhibits B1 to B14 viz., certified copies of the revenue pahanies for the years 1973-74, 1974-75, 1976-77, 1989-90 to 1993-94 as exhibits B1 to B8, Panchanama as Ex.B9, Land revenue receipts as exhibits B10 to B13 and Pattedar pass book as Ex. B14.

12. What the trial Court from the above evidence in answering the issues observed in decreeing the plaintiff's suit was that, PW1 in his chief examination referring to exhibits A1 to A19 deposed as in plaint and what PW2 deposed of he knows both parties and the plaintiff purchased suit lands from defendant No.1 in the year 1973 for Rs.7,000/- and he was Patwari of the village and since 1970 itself the plaintiff was cultivating suit lands by paying land revenue and he only came to know about said purchase when the plaintiff told him and there is no document executed for such sale in his presence

and Sharna Reddy-PW3 stated present with plaintiff at that time. Whereas said Sharna Reddy-PW3 deposed of defendant No.1 sold Ac.7.00 to the plaintiff about 23 years back for Rs.7,000/- and no documents were executed at that time. PW3 further stated that he went to the house of PW1 when called and was thereby present and PW2 was also present at that time. In fact, what PW2 deposed is he was not present and he was only informed about the same. It shows no credibility to be given to said version contradictory in the depositions of PWs 2 and 3, before the trial Court. The trial Court however observed at paragraph No.7 of the judgment that the evidence of PWs 1 to 3 coupled with Exhibits A1 to A19 show the plaintiff's possession from the date of said purchase orally. Though it is the context of defendants of there was no such sale by defendant No.1 to plaintiff and it is the defendants in possession of the suit property and not the plaintiff, that what even DW1 deposed and in the same lines DWs 2 & 3, the adjacent cultivators to the suit land, from their say of only the defendants are in possession and enjoyment of the suit land and not by the plaintiff at any time. The trial Court therefrom observed at paragraph Nos.10 & 11 of the judgment that the Pahanies recorded the name of plaintiff as Pattedar and possessor for all the years except for the year 1984-85 of showing the land in fallow and the

plaintiff's brother Eshwarappa was recorded in the pahanies 1978-79 and 1979-80 (Exhibits A2 & A3) whereas in the Exhibits A4 & A5 mentioned the name of Somappa, S/o. Eshwarappa is recorded in column No.17. Unless the entries are corrected or changed those cannot be said as false. The name of defendant No.1 could not find place prior to 1972 to 1974, but for in Ex.B1-Pahani for the year 1974-75 and in Ex.B2-Pahani for the year 1976-77, the name of defendant No.1 is not referred in the possessory column. Ex.B9-Panchanama is subsequent to the date of suit to give no importance to it. The evidence of defendants thereby no way destroy the case of the plaintiff of he purchased the suit land from defendant No.1 and he is in continuous possession and enjoyment and PW1 deposed that the purchase was on the "Yeruvaka Purnima" day and the possession from the date of said oral sale can be considered adverse and thereby, held of the plaintiff purchased the suit land from the defendants orally and perfected title by adverse possession and consequently entitled to the relief of declaration and injunction sought for in decreeing with no costs.

13. What the lower appellate Court in reversing the said judgment of the trial Court, having formulated the three points for consideration of

- 1) Whether the plaintiff has got title to the suit property?

2) Whether the plaintiff is entitled for the declaration and injunction prayed for?

3) To what relief?;

observed is that from the very case of plaintiff's alleged oral purchase from defendant No.1 of the suit property itself admits right and title over the property that of the defendants and the claim based on oral sale for declaration with consequential relief of injunction to confirm title thereunder is not sustainable for there is no registered and written document for the so-called sale worth more than Rs.100/- by transfer of title over the property for oral sale will not transfer the title over the property and the learned trial Judge did not apply his mind to this in relying upon the evidence of plaintiff and for no ground to ignore the evidence of defendants, that too when admittedly the plaintiff purchased nine acres and odd under Ex.A15 under the registered Sale Deed earlier in 1970, it is difficult to believe subsequently without even a paper orally purchased the suit property from the defendants. Leave about law presumes possession with title of the real owner, to claim contra by any person he must plead and prove. In fact, exhibits A16 to A19 relate to the extent of Ac.9.36 guntas that what the land the plaintiff purchased under original of Ex.A15 - registered Sale Deed of 1970. Even all pahanies placed reliance by the plaintiff are taken true, from the entries referred even by the

trial Court, there is no continuous possession of more than 12 years of the plaintiff even to claim adverse possession including under the guise of oral purchase. As Exhibits A2 to A5 for the years 1979 to 1982 show possession of the property with one Eshwarappa and one Somappa S/o. Eshwarappa and not the plaintiff. The plaintiff in his pleadings and evidence is also silent as to how they were shown in possession. That was not even properly considered by the trial Judge.

14. From the above, in deciding the Second Appeal from the substantial questions of law rightly framed as to

- (1) Whether, once the sale is held to be illegal, the position by the vendee will become adverse from the date of the sale or not? and
- (2) To what relief?

and as also held by the lower appellate Court of there is not only no continuous possession, as also can be seen from the record, particularly with reference to the additional material papers filed by the defendants on 28.09.1999, which are not new but copies of Exhibits B1 to B14 which include the Pattedar Pass Book issued in favour of the defendants for the suit property; which gives presumption of genuineness of the entries from Section 6 of the Record of Rights Act, 1971 of the defendants in possession being the owners and recorded as pattedar the defendant No.1, for other defendants are his sons. In fact, pending the first appeal, by order in

I.A.No.1792 of 1996 dated 06.11.1996, there was suspension of the trial Court's decree and judgment until further orders. The Xerox certified copy shows the factum of the trial Court's decree and judgment was suspended pending the first appeal and even referring to the pahanies placed reliance on by the plaintiff. The ownership from column No.11 of Ex.A2-Pahani for the year 1978-79 still shows the name of defendant No.1 as Pattedar and owner and column No.18 refers one Eshwarappa, S/o. Mallappa as person who cultivated in that Fasli and the plaintiff's name is not recorded either as Pattedar or possessor. Coming to Ex.A1 of the year 1977-78, the name of defendant No.1 at column No.11 clearly speaks as Pattedar and owner and at column No.16 the person who cultivates mentioned as Shivappa, S/o. Mallappa, that does not mean the plaintiff got possession in own right, but for under the pattedar at best. Similarly from Ex.A3 Pahani for the year 1979-80, the name of defendant No.1 at column No.11 mentioned as owner and pattedar and the person who cultivated mentioned as Eshwarappa s/o. Mallappa and not even the plaintiff. Thus it shows if at all on behalf of the defendant No.1 there was any cultivation by any of them with permission or as tenant or share cropper and nothing to presume adverse possession. So also from Ex.A4 Pahani for the year 1980-81, once at column No.11 the name of

defendant No.1 shows as owner and pattedar, even at column No.16 the person who cultivated mentioned as Somappa S/o. Eshwarappa and in fact, PW1 is son of Mallappa and not Eshwarappa, apart from the fact of his name is Sivappa and not Somappa, so also from Ex.A5 Pahani for the year 1981-82 in the same line. Coming to Ex.A6 Pahani for the year 1982-83, the name of defendant No.1 at column No.11 mentioned as pattedar and owner and at column No.16 mentioned the name of Shivappa S/o. Mallappa. The name of plaintiff was mentioned in the Fasli so also from Ex.A7 pahani for the year 1983-84. Coming to Ex.A8-Pahani for the year 1984-85, the pattedar is defendant No.1 and there is no other name at column No.16 as to any other person in possession. In Ex.A9 Pahani for the year 1985-86, the name of defendant No.1 was mentioned as Pattedar and owner and at column No.13 the person in possession was mentioned as Shivappa, S/o. Mallappa-plaintiff. In Ex.A10 Pahani also, the name of defendant No.1 as Pattedar and owner was mentioned and at column No.13 of the person in possession the plaintiff's name was mentioned and there for the first time at column No.15 as to nature of possession as "Kani Khariddar" and in fact, there is no any registered sale so to mention either in Ex.A10 or Ex.A11 Pahani for the year 1987-88. Even in Ex.A12 Pahani for the year 1988-89 the name of defendant No.1 was mentioned

at column No.12 as pattedar and the plaintiff is in possession. If at all there is a so-called oral purchase besides not believable as referred supra that too oral purchase set up in 1974 mentioned in the pahanies only from 1986-87 to 1988-89 as if purchaser and not so mentioned earlier for earlier pahanies. Thereby, no credence can be attached to those pahani entries, that too when those clearly and althrough show defendant No.1 is the pattedar and owner of the property. Whereas the question of claiming adverse possession indicate a person cannot maintain a suit for declaration of title by adverse possession, but for any plea of adverse possession if at all really in possession after satisfying with three requirements of open, peaceful and uninterrupted possession setting up hostile right against the true owner by recognizing through owner for more than the statutory period of 12 years, for which the burden always on the person claiming adverse possession and that is also lacking as also rightly concluded, though not in so many words by the lower appellate Court in allowing the appeal by dismissing the suit by reversing the trial Court's findings in decree and judgment by its reversal.

15. Even coming to the so-called oral purchase, what PW2 deposed of came to know and what PW3 deposed as if PW2 was also present at the time of the alleged transaction which

are apparently inconsistent versions and their evidence is contradictory to the very plea of adverse possession set up by the plaintiff, apart from same is no way probable to believe by any preponderance for interference otherwise for having purchased Ac.9.36 guntas for Rs.2,500/- under Ex.A15 in 1970 by a registered document, not believable of setting up oral sale three years later and same even set up for the first time in filing of the suit. The so-called oral sale without any scrap of paper for the so-called consideration of Rs.7,000/- for Ac.7.04 guntas and without even showing how he got that consideration and without pleading as to date of such oral sale in the plaint, much less as to in whose presence, including to set up PWs 2 and 3 and the trial Court went wrong in non-appreciation of these crucial aspects as rightly pointed out by the lower appellate Court. Leave it apart, Ex.B14-Pattedar Passbook issued in favour of the defendants for the suit land referring as Tandur Taluk, which is prior to the formation of mandals of 1983 to say the Pattedar Passbook issued was prior to 1983 under the Record of Rights Act, 1971, where Section 6 gives presumption of genuineness of the said entries of the defendants are the persons who got title and possession over the property and that also belies the so-called oral sale wayback to it if at all in 1973 in favour of the plaintiff. Further, Exhibits B10 to B14 land revenue receipts for the

years 1983-84 to 1993-94 and Pattedar Pass book clearly speak the defendants' names as Pattedars in payment of the tax for Ac.7.04 cents set up in Survey No.64, apart from another extent of Survey No.77/ A2 of Ac.6.04 cents, that also clearly speak the defendants are paying tax for the suit property.

16. The pahanies placed reliance by the defendants, particularly Ex.B3 for the year 1973-74 shows defendant No.1 is the possessor and enjoyer of Ac.6.24 cents known as Pulkichettu Chelka and the plaintiff is shown as possessor and enjoyer of Ac.9.36 cents as owner and one Bheemsetti Bheemaiah for Ac.10.32 cents as owner. In Ex.B1 Pahani for the year 1974-75 the total extent of Ac.27.32 guntas shown in different names that of the plaintiff, Bheemsetti Bheemaiah and defendant No.1 Lakshmayya, S/o. Papaiah and Ramappa, S/o. Papaiah respectively and so far as the suit property as per Fasli 1976-77 is concerned, defendant No.1 is the owner and Pattedar and in personal cultivation for Ac.7.04 guntas also known as Pulkichettu Chelka and this also belies the so-called oral purchase set up by the plaintiff from defendant No.1 in 1973, leave apart the adangals from the Fasli 1989-90 covered by the exhibits B4 to B6, which clearly speak the name of defendant No.1 as pattedar and possessor and once clear evidence is there and the two sets of adangals even taken not for Ex.A15 property, but if at all for suit property

for few Faslis mentioned the name of plaintiff as in possession, that no way shows the plaintiff is in continuous and uninterrupted possession even by the date of suit, that too when the presumption is in favour of the permanent revenue record covered by the Record of Rights Act, 1971 from the Pattedar Passbook-Ex.B14 issued in favour of defendant No.1 and his family members wayback in 1982 or so from Section 6 of the Record of Rights Act, 1971 and that presumption is not available for any contrary evidence from adangals covered by the exhibits of 'A' series, the lower appellate Court's reversal judgment is correct and the trial Court's decree and judgment is unjust and the Second Appeal is accordingly liable to be dismissed in holding that the plaintiff cannot claim adverse possession and the plaintiff is not even in continuous and uninterrupted possession including by the date of suit so far as the suit property is concerned, leave apart pending the appeal filed by the defendants, the trial Court's decree and judgment was even suspended in toto.

Accordingly and in the result, this Second Appeal is dismissed confirming the lower appellate Court's decree and judgment in A.S.No.97 of 1996 dated 16.12.1998, for nothing to interfere. No order as to costs.

Consequently, miscellaneous petitions pending, if any,
shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

12.06.2018
MVA

