

***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ AS.No.453 of 1997

% 02-08-2018

Pusapati Laxmi Narasayamma

... Appellant/

Vs.

\$ Alamanda Narayana and others

... Respondents

! Counsel for the appellants: Sri M.Adinarayana Raju

! Counsel for the Respondents: Sri S.Ashok Kumar

< Gist:

> Head Note:

? Cases referred:

- ¹ 2018 (1) ALT 98
- ² 2018 (2) ALD 84
- ³ (2009) 5 SCC 713
- ⁴ (2014) 14 SCC 619
- ⁵ 2018 (1) ALT 160
- ⁶ 2018 (4) ALT 301
- ⁷ 2018 (11) SCC 119
- ⁸ (2012) 6 SCC 430
- ⁹ (2012) 5 SCC 370
- ¹⁰ (2004) 10 SCC 779
- ¹¹ 2015 (6) ALT 55
- ¹² (2009) 13 SCC 229
- ¹³ (2007) 6 SCC 59
- ¹⁴ (2010) 14 SCC 316
- ¹⁵ (2007) 3 SCC 114
- ¹⁶ 1986 (2) ALT 196
- ¹⁷ AIR 1966 P 136
- ¹⁸ AIR 1959 AP 96
- ¹⁹ AIR 1963(SC) 884
- ²⁰ AIR 1966 SC 735
- ²¹ 2005 (6) SCC 614
- ²² 2018 (4) ALT 343

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

A.S.No.453 of 1997

JUDGMENT:

This appeal is filed against judgment and decree dated 31.12.1996 in OS.No.11 of 1996 on the file of the District Judge, Vizianagaram.

For the sake of convenience as this is a first appeal, the parties are referred to as plaintiff and defendants as in the lower Court only.

The suit was filed by the plaintiff against defendant Nos.1 to 5 initially. Later defendant Nos.6 to 11 were added as legal representatives of the deceased defendant No.5.

The plaint is filed by one P.Lakshmi Narasayamma claiming a relief of declaration and a consequential relief of delivery of possession after evicting the plaintiff from the plaint schedule land and for other reliefs. The case of the plaintiff is that she purchased the property under a sale deed of August, 1965 from one Korea Bai. According to the plaintiff, the first defendant is the watchman/caretaker of the property. Defendant Nos.2 and 3 are sons while defendant No.4 is the brother of defendant No.1. Defendant No.5 is a purchaser of the suit schedule property from the defendants. His legal representatives were added as defendant Nos.6 to 11. The plaintiff filed the suit on the

basis of the sale deed and she claimed for possession and recovery. Defendant No.1 set up an independent title and enjoyment of the property on his own. In his written statement, he took the plea that the plaint schedule property was initially enjoyed by one Pentaiah, who had a daughter by name Narasamma. The said Pentaiah bought Durgayya the father of defendant Nos.1 and 4 as an illatom son-in-law and therefore, after the death of Pentaiah, the father of defendant Nos.1 and 4 inherited the property. He also described various acts showing his title to the property, and he also raised a plea that the defendant had perfected his title to the plaint schedule land by adverse possession or by inheritance also. He also stated that the defendant mortgaged the property in favour of a Bank as a guarantor for a loan obtained by S.Narasinga Rao. Thus, in all, he set up a plea of title and ownership for himself.

Based on the said pleadings, the lower Court framed the following issues:

- (1) Whether the plaintiff is entitled to the declaration of title and possession as prayed for?
- (2) To what relief?

However, during the course of the judgment, the learned trial judge after reproducing the pleadings and evidence framed as many as four points in para 19 of the

judgment and ultimately came to a conclusion that the plaintiff could not prove her title and enjoyment of the suit schedule property. It is this judgment that is now impugned in the appeal.

This Court has heard Sri M.Adinarayana Raju, learned counsel for the appellant and Sri S.Ashok Kumar, learned counsel for the respondents, both of whom argued the case with a great deal of preparation.

The facts which are not in dispute are that both the parties to the suit traced their title to one Korea Bai. Plaintiff has a sale deed and claimed possession and enjoyment on the basis of the sale deed while the defendants set up a claim of long possession of the very same property. The lower Court held that the possession of the defendants is clearly proved and that there is no explanation given why the original of Ex.A.1 sale deed is not filed. Therefore, in para 19, after a discussion, the Court below answered the case against the plaintiff.

The learned counsel for the appellant/plaintiff pointed out that the plaintiff has filed Exs.A.1 to A.14 to prove her case. Ex.A.1 is the certified copy of the sale deed dated 24.08.1965 and the other documents Exs.A.2 to A.14 are tax receipts, title deed book, fair adangal, passbook etc., to prove the possession and enjoyment of the plaintiff. For the plaintiff, PWs.1 to 4 were examined. For the defendants,

DWs.1 to 8 were examined and Exs.B.1 to B.11 and EX.X.1 marked.

Learned counsel for the plaintiff/appellant pointed out that once a sale deed is filed along with other documents showing the proof of possession including pattadar passbook and title book, the burden shifts on to the defendants to disprove the sale deed and or the possession of the plaintiff. The plaintiff's counsel also pointed out that the written statement of the defendants is absolutely bereft of details. In para 5, the theory of illatom-son-in-law was introduced to plead that Pentaiah enjoyed the property and latter he gave it to his son-in-law. The manner in which the title in the land devolved is not clearly explained as per the learned counsel. The further devolvement of the land from the illatom-son-in-law to defendant Nos.1 and 4 is also not explained according to the learned counsel for the appellant. In addition, he points out that the defendants have pleaded the case of adverse possession, which clearly means that in one way they recognize the title of the plaintiff and her predecessor because adverse possession can only be claimed against a true owner.

In reply to this, the learned counsel for the respondents pointed out that Ex.A.1 sale deed is not validly proved; that the possession and enjoyment is not clear from the documents filed; that the suit is barred by limitation and

that the defendants' long possession and enjoyment of the property clearly goes against the plaintiff's title.

In view of the long and detailed arguments that are advanced, this Court is looking into the oral evidence briefly. PW.1 is the husband of the plaintiff. He was examined to prove the case of the plaintiff. Ex.A.1 is the certified copy of the sale deed marked through him. In addition, he also filed the 10(1) account, the fair adangal, cisth receipt etc., which are marked as Exs.A.2 to A.9. Ex.A.10 is the certified copy of the sale deed executed by the defendants. PW.2 was examined to show that defendant No.4 was working as a gardener in the plaint schedule property and that the plaintiff was enjoying the property. PW.3 was examined to show that Ex.A.1 is a validly executed document. He is an attester to Ex.A.1. PW.4 filed the further documents in support of the plaintiff's case, namely Exs.A.11 to A.14.

In reply to this, the defendants examined DWs.1 to 8. DW.1 is the defendant No.1 in the suit. He agrees that his grandfather K.Pentaiah was working with Korea Bai in the land. He denies the title and enjoyment of the plaintiff. DW.2 is the defendant No.7. He talks about the enjoyment of the property by the defendants and their family. DW.3 is the brother of defendant No.1. He also speaks about the illatom-son-in-law and the enjoyment of the property. He also agrees that his brother was working as a servant under

Korea Bai. Defendant Nos.4 and 5 are examined to show the possession and enjoyment of the defendants. Defendant No.6 was examined to prove the mortgage supposedly created by the defendants. DWs.7 and 8 are Government Officials, who are summoned to produce certain documents.

This Court, after verifying the oral and documentary evidence, notices that both the parties agree that the original title holder of the property is Korea Bai. Ex.A.1 is the sale deed executed by Korea Bai in favour of the plaintiff. The defendants set up a case of independent title. They do not clearly explain how they actually acquired the rights in the property from Korea Bai. They assert their long possession and enjoyment of the property and also assert the rights of ownership that are exercised like the mortgage of the property etc. Therefore, this Court will have now to decide in whom does the title vest in.

Ex.A.1 is the certified copy of the sale deed that is marked by the plaintiff. The learned counsel for the appellant pointed out that a registered document has a certain presumption under law in its favour and that once the plaintiff proves that she has title to the property, it is for the respondents to prove that the title to the property did not pass under the sale deed. The learned counsel for the appellant pointed out that the lower Court rejected Ex.A.1 on the ground that certified copy is filed and that no

explanation is given why the certified copy is filed. He points out that the certified copy of Ex.A.1 was marked without any objection from the defendants. The witness clearly deposed that the original of the sale deed was misplaced and is not traced and hence the certified copy of the sale deed is filed as Ex.A.1. The counsel pointed out that there is no objection to the marking of this document at all. He also argued that Clause (c) of Section 65 of the Evidence Act, is fulfilled and that secondary evidence is admissible.

Learned counsel for the respondents argued that the plaintiff was not examined and that an adverse inference should be drawn against her for not appearing in the witness box. He also relied upon various judgements including the judgement of this Court in ***Mallamma v. N.Gangamma***¹. His agreement is that Ex.A.1 is not proved.

In reply to this, learned counsel for the appellant pointed out that under section 120 of the Indian Evidence Act, 1872 (for short 'the Act') the husband is a competent witness for the wife. He also pointed out that the judgement in ***Ankam Laxminarayana v. Ankam Bixapathy***², relied upon by the respondents themselves shows that husband is a competent witness on behalf of his wife. He, therefore, argued that the objection to the admissibility and the mode of proof of Ex.A.1 is not tenable. This Court also agrees with

¹ 2018 (1) ALT 98

² 2018 (2) ALD 84

the contentions of the learned counsel for the appellant on these points. No objection was raised when the certified copy of Ex.A.1 was tendered in evidence along with an explanation stating that the original is lost and is not traced. Once the document is received in evidence, without any objection about its admissibility, no further argument can be advanced on the admissibility. PW.1 is the husband of the plaintiff. Therefore, he is competent to depose about the same.

The second point that was very vehemently contested by the learned counsel for the respondents is about the 'sham' or nominal nature of this document. Learned counsel for the respondents argued that the payment of sale consideration under the document is not correctly proved. He points out that in Ex.A.1 the balance sale consideration is mentioned as having been paid by cheque, but he points out that the evidence of PW.3 shows that amount was paid in cash. Therefore, he argues that the document is not a valid document and that it should be ignored.

In reply to this, the learned counsel for the appellant argued that the registered sale deed carries certain presumption that the transaction was a genuine one. Once the execution of the sale deed is proved, the onus moves on to the defendants to prove that it was a 'sham' transaction. Learned counsel relies upon **Vimalchand Ghevarchand**

Jain v. Ramakant Eknath Jadoo³ and points out that in

Para 37, the Hon'ble Supreme Court held as follows:

37." A heavy burden of proof lay upon the defendant to show that the transaction was a sham one. It was not a case where the parties did not intend to enter into any transaction at all. Admittedly, a transaction had taken place. Only the nature of transaction was in issue. A distinction must be borne in mind in regard to the nominal nature of a transaction which is no transaction in the eye of law at all and the nature and character of a transaction as reflected in a deed of conveyance. The construction of the deed clearly shows that it was a deed of sale. The stipulation with regard to payment of compensation in the event appellants are dispossessed was by way of an indemnity and did not affect the real nature of transaction."

In para 22 of the very same judgement, the Hon'ble Supreme Court of India clearly held as follows:

"22. The deed of sale being a registered one and apparently containing stipulations of transfer of right, title and interest by the vendor in favour of the vendee, the onus of proof was upon the defendant to show that the said deed was, in fact, not executed or otherwise does not reflect the true nature of transaction.

³ (2009) 5 SCC 713

Evidently, with a view to avoid confrontation in regard to his signature as an attesting witness as also that of his father as vendor in the said sale deed, he did not examine himself. An adverse inference, thus, should have been drawn against him by the learned Trial Court.”

Further under section 92 of the Evidence Act, oral evidence contrary to the terms of a document is not permissible. However, the proviso provides that oral evidence can be introduced under certain circumstances. Proviso (1) to Section 92 of the Act says, the fact which is invalidate any document such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, failure of consideration or mistake in fact or law can be proved.

In the case on hand, the due execution of the document is not in doubt. As a certified copy/registration extract is filed, the only point urged was that the oral evidence is contrary to the contents of Ex.A.1. While the document said that the balance sale consideration was paid by cheque, the witness talked of cash. Other than this, no other vitiating factor has been pointed out. The mere fact that after more than three decades of the execution of the document, the witness made a mistake in speaking about the manner of payment of the balance sale consideration

cannot lead to a conclusion that the entire sale deed is false. Human memory is what it is and with the passage of time mistakes due occur. Men are not machines and the sale deed cannot be set aside only on the ground that the witness made a small mistake. As was pointed out by the Hon'ble Supreme Court of India in ***Pargan Singh V. State of Punjab***⁴, human memory does not work like a video recorder. An initial memory is not cast in stone. Hence, some amount of forgetfulness will occur especially when the witness is deponing after such a long time. The sanctity attached to a registered document and the presumption attached to the registered document as recognised by the Hon'ble Supreme Court is in favour of Ex.A.1. The certified copy was filed and an attester was also examined to prove the execution. The dicta laid down in ***Mrs. M.Pratima Reddy v. NICCO UCO Alliance Credit Ltd.***⁵ is also met. The defendants did not discharge the heavy burden that is cast upon them, as was noticed by the Hon'ble Supreme Court of India in the case of ***Vimalchand*** (3 supra). Therefore, this Court holds that Ex.A.1 document is validly proved and both the objections taken are not sustainable. The so called 'error' in the evidence is not fatal for the plaintiff's case.

⁴ (2014) 14 SCC 619

⁵ 2018 (1) ALT 160

In contradistinction to this assertion of title by the plaintiff, the defendants have also set up their own title. They do not plead the manner in which they have acquired their right to the property. There is no certainty in their pleading. The written statement merely states that they have got the property. The witnesses examined for the defendants admit that Pentaiah was working in the garden and was employed by Korea Bai. The so-called transfer of title from Korea Bai to Pentaiah was not explained. Further, they state that Pentaiah brought the father of defendant Nos.1 and 4 by name Durgayya as an illatom-son-in-law and that after the death of Pentaiah, Durgayya inherited the property. An illatom-son-in-law or the practice of bringing an illatom-son-in-law is a custom that is prevalent in few communities in Andhra Pradesh. It is a custom by which a son-in-law is brought into the family because of the lack of a male successor. As this is a custom, this has to be pleaded and proved with certainty. In a recent judgment of this Court, reported in **Marripudi Narasimha Rao v. Marripudi Chenchaiiah**⁶ this Court has analysed the case law on the subject including the latest judgement of the Hon'ble Supreme Court of India reported in **Ratanlal @ Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka**⁷, in which it was held that the practice of bringing

⁶2018 (4) ALT 301

⁷2018 (11) SCC 119

an illatom-son-in-law is confined to a couple of communities only. Both the existence of the custom and the agreement between the father-in-law and son-in-law so as to enable the son-in-law to claim property will have to be pleaded and proved. In this case, there is absolutely no pleading or proof of the existence of the custom or the inheritance of the property. Therefore, this Court has no hesitation to hold that the plea of the illatom-son-in-law is not proved.

The evidence of the witnesses examined for the defendants is clear. DW.1, who is defendant No.1, in his chief-examination itself stated that the maternal grandfather Pentaiah was working with Korea Bai. He was attending to cultivation operations of the land of Korea Bai. In his cross-examination also, he agrees that he was paying the sum of Rs.70/- to Rs.100/- per year to Korea Bai as batta. In addition to DW.1, DW.3-A.Gangulu, who is defendant No.4 in the suit also, clearly states that his brother was working as a servant under Korea Bai for about 30 years. Therefore, it is clear from the evidence of the defendants that their predecessors were workers under Korea Bai.

Counsel for the appellant relied upon the judgement of the Hon'ble Supreme Court of India reported in ***A.Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam***⁸. This

⁸ (2012) 6 SCC 430

judgement of the Hon'ble Supreme Court of India followed the earlier judgment in ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria***⁹.

These two judgments of the Hon'ble Supreme Court of India make it very clear that a watchman, caretaker, agent, servant etc., who are persons in gratuitous possession/ permissive possession, cannot have any rights in the property irrespective of his long stay or occupation. The Hon'ble Supreme Court clearly held that the mere production of documents like ration cards, tax receipts, etc., would not establish a claim of adverse possession. In these two leading judgments and particularly in ***Shanmugam's*** case (8 supra), Hon'ble Supreme Court of India held that a watchman, caretaker, or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The Supreme Court further held as follows:

“43.6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

⁹ (2012) 5 SCC 370

43.7. The watchman, caretaker or agent holds the property of the principal only on behalf the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.”

This Court, on an examination of the evidence, finds that the witnesses for the defendants categorically admitted that their ancestor was working as a servant. Later, defendant No.1 continued to work for Korea Bai. Therefore, the question of either Pentaiah or his illatom-son-in-law or the children of the illatom-son-in-law acquiring any right to the property does not arise. In fact, by following the judgment of the Hon'ble Supreme Court of India in ***Shanmugam's*** case, and by reading of the entire pleadings in order to discern the truth leads to the conclusion, they could not plead their claim with certainty in the written statement. In the entire written statement, there is no clear averment of the manner in which the title was acquired by the employees of Korea Bai, namely Pentaiah or his son-in-law or defendant No.1. This Court, therefore, has no hesitation to hold that the defendants could not plead or established their title to the property.

Adverse Possession: The next point for consideration on the question of title is the plea of adverse possession. In fact, in the written statement itself, they have pleaded both the title and also adverse possession. The plea of adverse possession is mutually destructive of the plea of title.

Unless the defendants abandon one, they cannot rely on the other. In the case on hand, the defendants/respondents continued to urge on both.

As far as the plea of adverse possession is concerned, as noticed by the Hon'ble Supreme Court of India in a large number of decisions, including the judgment relied upon by the counsel for the appellant in ***Karnataka Board of Wakf v. Government of Indian and others***¹⁰ in which the Court held as follows:

“11. Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. ***(Dr. Mahesh Chand***

¹⁰ (2004) 10 SCC 779

Sharma v. Raj Kumari Sharma AIR 1996 SC 869).

12. Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: **S M Karim v. Bibi Sakina**). In **P Periasami v. P Periathambi** ((1995) 6 SCC 523) this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."

Against this backdrop of the law laid down by the Hon'ble Supreme Court, this Court is examining the case laws cited. The learned counsel for the respondents relied upon number of cases to prove adverse possession. In fact, the judgement cited by the learned counsel in ***Girajala Subbarao v. Kamireddi Satyanarayana***¹¹, it is clearly stated that mere long possession of the property without the required animus, cannot ripen into title.

The learned counsel for the appellant also relied upon a number of judgments of the Supreme Court of India including ***L.N.Aswathama v. P.Prakash***¹²,

¹¹ 2015 (6) ALT 55

¹² (2009) 13 SCC 229

P.T.Munichikkanna Reddy v. Revamma¹³, and **Chatti Konati Rao v. Palle Venkata Subba Rao**¹⁴ and argued that the necessary pleading and proof as observed by the Hon'ble Supreme Court of India are not made out in this case.

In para 14 of **Chatti Konati Rao**' (14 supra) case, the Hon'ble Supreme Court of India clearly held that the burden is squarely upon the defendant, who claims adverse possession to show that his possession has been adverse/hostile and to the knowledge of the plaintiff. Learned counsel also relied upon **M.Durai v. Muthu**¹⁵ and pointed out that Hon'ble Supreme Court in this case held that once the plaintiff proves his title, burden shifts on the defendants to prove his adverse possession.

In the case on hand, this Court notices that neither the pleading nor the proof is adequate for coming to a conclusion that the defendants have perfected their title by adverse possession. In view of the judgement of the Hon'ble Supreme Court of India in the case of **Shanmugam** (8 supra) following **Maria Margarida Sequeria Fernandez**, (9 supra), the possession of the defendants in this case is only the possession of a caretaker or a watchman of the property. There are no equities in their favour both in view of these judgments of the Supreme Court and in view of the

¹³ (2007) 6 SCC 59

¹⁴ (2010) 14 SCC 316

¹⁵ (2007) 3 SCC 114

fact that they pleaded adverse possession. Therefore, this Court has no hesitation to hold that the defendants have not proved their title to the property. The fact that the defendants mortgaged the property to a Bank etc., will not clothe them with any title as there is no evidence to show what documents were relied upon by the Bank for creating a mortgage. The plaintiff is also not a party to the same.

The other question that survives for consideration on this issue is about the so-called interpolations and corrections in the revenue records. Counsel for the respondents argued that the revenue records, which are filed, contain a number of interpolations and corrections. What is interesting to note is that the documents filed by the defendants themselves show the name of the plaintiff as the person in possession. Ex.B.5, B.10 and B.11 clearly show the name of the plaintiff as the pattadar of the property. Learned counsel argued that there are a number of interpolations and corrections in these documents. These documents are relied upon and filed by the defendants. If the defendants felt these documents cannot be relied upon, they should not have been produced. Every correction in a document is not a result of fraud or a deliberate deception. Sometimes, genuine errors occur and these can be corrected. An inadvertent error can be corrected. Similarly a wrong entry made on the basis of certain facts can be corrected when the full details are available. The mere fact

that a document contains corrections, does not lead to inescapable conclusion that the correction was made with a malafide intent or to cheat the opposite party of his right. The documents, the explanation for the corrections etc., must be seen in their totality to come to any conclusion. In the case on hand, the documents filed by the defendants do contain certain corrections. The witnesses, who marked these documents, did not comment about the corrections. None of the defendants' witnesses said that these corrections made deliberately to defeat their interest.

On the other hand, DW.7, who is a Senior Assistant in the Mandal Revenue Office, was summoned to produce the accounts etc. In his chief-examination, no documents were marked. In the cross-examination, interestingly the certified copies of Exs.B.10 and B.11 were shown to him and he agrees that the Director of Survey Settlement and Land Records signed on the register. The corrections are made with an initial by the authorities whenever they are made. In the cross-examination, he was confronted with Exs.A.6, A.3 and A.2, which were marked by the plaintiff and he admits that these three documents were issued to the plaintiff. In addition, another witness was summoned as DW.8. He marked Ex.X.1. He stated that Ex.X.1 is the survey land record. Therefore, the available evidence in this case even though it contains corrections, particularly the 'B' series exhibits support the case of the plaintiff. The defendants

failed to examine any witness or elicit any answers from the available witnesses about the so-called corrections. Whether these are genuine corrections or interpolations made with a motive is not spelt out clearly. Therefore, this Court is of the opinion that the so-called corrections in the documents do not really affect the case of the plaintiff or further the case of the defendants.

Limitation: The learned counsel for the defendants also argued that the suit is barred by limitation. It is his contention that the plea of limitation can be raised at any time under Section 3 of the Limitation Act. The learned counsel relied upon ***The Senior Regional Manager, Food Corporation of India, Hyderabad v. the Hyderabad Roller Flour Mills Company Limited***¹⁶, ***Syed Jalaluddin Hasan Quadri v. M/s. Tarapharmacy rep., by its Managing Partner***¹⁷, ***Pyda Subbaramayya Chetty v. The Premier Bank of India Ltd.***¹⁸ and argued that even if there is no pleading under Section 3 of the Limitation Act, a plea of limitation can be urged at any time. He also relied upon ***Nedunuri Kameswaramma v. Sampati Subba Rao***¹⁹ and ***Bhagwati Prasad v. Shri Chandramaul***²⁰ and argued that even if no specific issue is framed, if both the parties are aware of the of the point in dispute, and they lead evidence

¹⁶ 1986 (2) ALT 196

¹⁷ AIR 1966 P 136

¹⁸ AIR 1959 AP 96

¹⁹ AIR 1963(SC) 884

²⁰ AIR 1966 SC 735

on that issue/point, the Court can take notice of the fact and pronounce judgment even if there is no specific plea.

This Court is of the opinion that Section 3 of the Limitation Act can be applied in cases where the pleading is very clear and an ex-facie reading of a pleading would disclose that the case is barred by time. Limitation in most cases is a mixed question of fact and law. Hence it is desirable that there should be adequate pleading and the applicable article should also be set up. The Hon'ble Supreme Court of India in ***Narne Rama Murthy v. Ravula Somasundaram and Others***²¹ held as follows:

“5. We also see no substance in the contention that the Suit was barred by limitation and that the Courts below should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved.”

²¹ 2005 (6) SCC 614

This Court in **G.Shyamlal v. G.Ishwarji**²² emphasised the need for adequate and proper pleadings on limitation.

In the case on hand, the cause of action para of the plaint clearly shows that the cause of action in the suit arose on 25.03.1987 when the defendants proposed to prepare sale deed in favour of defendant No.5 in June, 1987; when they entered upon the land and tried to assert the rights. This is the specific cause of action that is pleaded in this suit. The defendants in their written statement did not deny this cause of action. They did not urge that the cause of action stated is not correct. They merely pleaded that the plaintiff can not maintain the suit as it is time barred. The cause of action in this suit arose in the year 1987 as per the pleadings and the suit is filed within three years there from. Therefore, apart from a lack of pleading of limitation, this Court holds that the suit is filed within time.

The defendants, who are now urging that the suit is barred by time, urge this Court to take up the issue of limitation without adequate pleading in line with **Nedunuri Kameswaramma** (19 supra) **and Bhagwati Prasad** (20 supra). Having failed to introduce any evidence on limitation which is also in the notice of the plaintiff they cannot ask the Court to dismiss the suit on the ground of limitation. In fact, though they plead adverse possession they do not

²² 2018 (4) ALT 343

mention the dates from which their possession has become adverse with that of the plaintiff. Neither the date nor the period is spelt out with clarity. Therefore, this Court is of the opinion that the plea of limitation is not available at all to the plaintiff. The plea was not spoken of in the evidence also with any certainty.

Counsel for the respondents also argued on the land being part of an erstwhile “estate” and cited a number of judgments on the question of ryotwari pattas, Melavaram and Kudivaram rights etc. This Court is of the opinion that these issues do not arise for consideration in this case. Neither the Estate Abolition Act nor the grant of pattas etc., are pleaded or proved. Therefore, this Court is not considering the arguments on this subject as they are not based on any pleading or proof.

In view of this discussion, this Court is of the opinion that the plaintiff has proved her title to the property. Her title and possession are made out by the available documents on record. Therefore, this Court holds that issue No.1 should be decided in favour of the plaintiff and against the defendants. Plaintiff is declared as the owner of the property. The defendants are directed to forthwith vacate and deliver possession of the property within sixty (60) days from the date of this judgement. If the defendants do not voluntarily deliver the property, plaintiff is at liberty to

proceed through Court for eviction of the defendants. The plaintiff is at a liberty to file an application for mesne profits also in line with paras 34 to 39 of ***Shanmugam's*** case (8 supra).

In the result, the appeal is allowed and the judgment and decree of the lower Court are set aside. In the circumstances, no costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date:02.08.2018

KLP

