

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Appeal Suit No.1404 of 1998

ORDER:

Aggrieved by the dismissal of plaintiffs' suit for declaration of title and recovery of possession in O.S.No.305 of 1995 by the Senior Civil Judge, Avanigadda in his judgment dated 16.01.1998, the instant appeal is preferred.

2) The parties in the appeal are referred as they stood before the trial Court.

3) The factual matrix of the case is thus:

a) The suit is in respect of Ac.0.31 cts. and two thatched sheds therein comprising in Sy.No.396/1 of Ramanagaram village, Challapalli Mandal of Krishna District. Plaintiffs are son and daughter of late Bobba Sriramulu. Their case is that originally the property belonged to Zamindar of Devarakota and their father purchased the said property on 16.12.1957 for a valuable consideration and joint patta was standing in the names of Sriramulu, Zamindar and another vendee—Tadepalli Gopala Rao. On the death of Sriramulu, plaintiffs succeeded as Class-I heirs to the said property. During the life time of Sriramulu, Seshagiri Rao—the husband of 1st defendant obtained his permission to live in one of the houses and to cultivate the adjoining land on a monthly rent of Rs.30/- and to pay half of crop value and pay the land revenue and tax to the hut on behalf of Sriramulu in 1973. Later, Seshagiri Rao inducted defendants 2 to 4 into possession of the suit site unauthorizedly. The plaintiffs were paying the property tax after the death of

their father. When Seshagiri Rao tried to include his name in the assessment register, the plaintiffs issued notice to the Gram Panchayat in August, 1987. In spite of it, the Panchayat proceeded to collect tax from Seshagiri Rao. Therefore, the plaintiffs filed O.S.No.251 of 1989 against Gram Panchayat seeking injunction but the said suit was abated due to death of Seshagiri Rao. They also filed R.C.C.No.1 of 1988 against Seshagiri Rao and the same was dismissed for default in 1993. The plaintiffs issued notice to Seshagiri Rao, Panchayat and the Government when they came to know that the Government is trying to grant patta in respect of the suit land to Seshagiri Rao and others. Since it was contended that 1st defendant had purchased the suit property from Sriramulu under an oral sale in 1973, the plaintiffs filed the suit for declaration and for recovery of possession of suit property against defendants 1 to 4.

b) Defendants filed common written statement and denied the title of Sriramulu in the suit property. They contended that Sriramulu was in possession of the suit property and 1st defendant purchased it for a valuable consideration of Rs.7,750/- in the year 1973, but no document was obtained and since then she has been in possession of the property in her own right and property tax was paid by her husband—Seshagiri Rao. She further contended that she sold 0.7½ cts. each lying on the western side of 0.31 cts. to the father of 4th defendant by name Ram Das and 2nd defendant—Venkateswara Rao. 3rd defendant is the son of 2nd defendant. The grand mother of 4th defendant—Kotamma used to live in the site of Ramdas and 4th defendant was living in the house of his father. Defendants 2 and 3 raised a house and poultry shed in

the site purchased by them. It is further contended that the Government have proposed to take possession of the land in their possession on the ground that said land was the excess holding of estate holder and so, they requested the officials to grant patta to defendants 1, 2 and 4 and some others Ac.0.05 cts. each. The defendants further contended deceased—Sriramulu had no title to the land in Sy.No.396/1 and though they purchased from Sriramulu not under a registered sale deed, still by virtue of continuous possession over the statutory period they got possessory title and thereby plaintiffs' right, if any, to recover possession was extinguished by Section 27 of Limitation Act, 1963.

c) Basing on the above pleadings, the following issues were framed.

- 1) *Whether the relief is hit by the provisions of A.P Occupants of Homesteads (Conferment of Ownership) Act 1976?*
- 2) *Whether the suit is bad for non-joinder of necessary parties?*
- 3) *Whether the defendants acquired title to suit property by adverse possession?*
- 4) *Whether the plaintiffs let out the land to 1st defendant's husband?*

4a) A perusal of judgment of the trial Court would show that issues 3, 4 and 5 were answered together. The trial Court observed that it was plaintiffs' case that Sriramulu purchased suit property from the estate holder on 16.12.1957 but in evidence the said plea was given a go-bye. Ex.A1—joint patta is concerned, it was said to be standing in the name of Sriramulu, Zamindar of Challapalli and Tadepalli Gopal Rao. It was only a rough patta granted under the provisions of Estates Abolition Act, 1948 and the entries

were mentioned in pencil. Most importantly, survey number was referred in Ex.A1 as 396/3 whereas the suit survey number is 396/1. There was no corresponding adangal or fair copy register to substantiate Ex.A1 and rough patta does not confer title but it would serve the purpose as a notice of enquiry in order to give a ryotwari patta. Hence, Ex.A1 was a doubtful one.

b) The trial Court further observed as per the contention of defendants, Seshagiri Rao was never a lessee under Sriramulu or the plaintiffs but they set up title in the property by virtue of oral sale obtained by 1st defendant from Sriramulu 1973. However, the plaintiffs have not taken a plea that 1st defendant was only a tenant and when she and her husband failed to pay rents they were dispossessed. PW1 for the first time in her evidence invented the story that since Seshagiri Rao refused to vacate the property and pay rents in 1975, they got the house demolished and took possession of the entire suit house in 1976 but again 1st defendant and her husband approached the 1st plaintiff and with his permission re-erected the house in the site. PW1 admitted that houses existing in the suit land are erected by the defendants. Thus regarding eviction of 1st defendant and Seshagiri Rao from the suit premises, trial Court did not believe the evidence of PWs.4 and 5, who are Panchayat staff, on the ground that Panchayat had no power to evict the encroacher from the private land. The trial Court thus observed that at no point of time particularly after 1977 the defenders were ever dispossessed from the suit land.

c) Regarding the nature of the possession of 1st defendant in respect of suit property, the trial Court discarded 1st defendant's plea of purchasing the

same under an invalid sale deed in 1973. However, it observed that in a suit for declaration and possession, the plaintiff has to establish his case without depending on the weakness in the defendant's case. In that process, the trial Court having verified Ex.A5—photo copy of application of PW1 to District Collector wherein PW1 referred Seshagiri Rao not as a tenant but as an encroacher. The trial Court noted that by virtue of Ex.A5 the earlier plea of plaintiffs that in 1973 Sriramulu let out the property to Seshagiri Rao was proved false. It further observed that it is only in the lawyer notices the plaintiffs set up the plea of tenancy probably on the legal advice. The trial Court also observed that defendants 1 and 2 and father of 4th defendant were granted pattas under Exs.B42, B43 and three others under Exs.B44 to B46 by the Government Ac.0.05 cts. each and those pattas relate to suit land covered by Sy.No.396/1. The trial Court observed that the possession of Seshagiri Rao in the suit land commenced in the year 1971 and since there was no action till 1995, the possession of Seshagiri Rao and after him the 1st defendant became adverse to the plaintiffs because there was no discontinuation of possession in between. Thus, the trial Court observed that 12 years period as laid down under Article 65 of Limitation Act commenced from 1971 and ended by 1983 and therefore, the suit was barred by limitation. Even RCC No.1 of 1988 was filed beyond the period of limitation. Hence, by virtue of Section 27 of Limitation Act plaintiffs' title, if any, was extinguished.

d) Sofaras issue No.1 is concerned, the defendants admitted that A.P Occupants of Homesteads (Conferment of Ownership) Act 1976 had no application and so issue No.1 was withdrawn.

e) Issue No.2 is concerned, the trial Court observed that Government was a necessary party and the suit was bad for its non-joinder. The trial Court ultimately dismissed the suit on the above observations.

Hence, the appeal.

5) Pending appeal, R1 died. Hence, R5 was brought on record as her LR vide Court order dated 06.03.2012 in ASMP No.447 of 2012.

6) Heard arguments of Sri K.V.Satyanarayana, learned counsel for appellants and Sri V.V.Prabhakara Rao, learned counsel for R2 to R5.

6) Fulminating the judgment of the trial Court, learned counsel for appellants would vehemently argue that the trial Court erred in holding that the plaintiff could not establish their title to the suit property as the said question does not arise in view of the plea of 1st defendant that Sriramulu occupied the pliant schedule property and from him she purchased the suit property in 1973 for Rs.7,750/-. Since the defendants admitted the title of late Sriramulu—the father of plaintiffs, the said admitted fact need not be re-established by the plaintiffs however weak the title may be. Learned counsel would further argue that what comes next for determination is whether the 1st defendant could establish her title by virtue or oral sale deed. He would argue that since oral sale deed exceeding the value of Rs.100/- is invalid for want of documentation and registration the 1st defendant cannot

claim to have obtained the valid title by virtue of said alleged oral sale deed. Then, the next question for consideration would be whether the husband of 1st defendant was a tenant under Sriramulu and whether plaintiffs could establish the said fact. He would submit that even assuming that plaintiffs failed to establish the lease, but Seshagiri Rao and defendants 1 to 4 were found to be in possession, their possession cannot be treated as adverse to the plaintiff because they entered the suit property having admitted the title of Sriramulu. Therefore, the plea of adverse possession is not available to them. He relied upon the decision of the Apex Court in *Mohan Lal (deceased) through his LRs. Kachru and others vs. Mirza Abdul Gaffar and others*¹. He would thus argue that when the plea of adverse possession is discarded, the plaintiffs will be entitled to decree as prayed for but the trial Court has not properly appreciated the facts and evidence.

7) Per contra, learned counsel for respondents would argue that the plaintiffs miserably failed to prove their title to suit property inasmuch as, in the plaint they claimed the suit property of Ac.0.31 cts. covered by Sy.No.391/1 but they filed rough patta in respect of Sy.No.391/3. Considering many infirmities in Ex.A1 the trial Court rightly rejected the said patta and held the plaintiffs could not establish the title. Learned counsel further argued trial Court also considered the aspect 1st defendant purchasing suit property from Sriramulu having admitted his title and held that since purchase was under invalid sale deed, she would not get title to the suit property. However, the trial Court having found that Seshagiri Rao, the

¹ AIR 1996 SC 910

husband of 1st defendant and subsequently 1st defendant were in continuous possession in the suit property from 1973 till filing of the suit without any dispossession and in Ex.A5 plaintiffs themselves referred the defendants as trespassers, held that the defendants obtained title by prescription since plaintiffs failed to file suit within the stipulated period of limitation and ultimately dismissed the suit.

8) In the light of above rival arguments, the points for determination in this appeal are:

- 1) *Whether 1st defendant admitted title of Sriramulu in suit property and if so, whether plaintiffs are required to establish their title to suit property?*
- 2) *Whether 1st defendant derives any title under oral sale deed set up by her?*
- 3) *If point No.2 is held in negative, whether possession of Sriramulu and 1st defendant was only as lessees or trespassers and whether suit is barred by limitation?*
- 4) *To what relief?*

9) **POINT No.1:** It is the case of the plaintiffs that Sriramulu was the owner of suit property and he purchased the same for a valuable consideration from estate holder Challapalli Zamindar under joint patta No.45 dated 16.12.1957 and joint patta stands in the name of Sriramulu, Zamindar of Challapalli and Tadepalli Gopal Rao. The plea of 1st defendant in her statement is that at the first instance she denied the title of Sriramulu as purchaser of the plaint schedule property from the erstwhile Estate Holder of Challapalli. She also denied the joint patta issued in favour of three persons. However, she averred

that Sriramulu occupied the pliant property which belong to Raja of Challapalli and raised two sheds. Her further plea is that Sriramulu sold the right of occupancy to the 1st defendant in the Summer of 1973 for Rs.7,750/- i.e. at the rate of 250/- per cent. She paid the entire sale consideration in the presence of one Korukonda Narayana Rao—DW7 and Thota Balaramayya—DW8 and took possession of thatched house thereon. However, she could not obtain registered sale deed as she had no sufficient funds at that time and also due to confidence in Sriramulu. She then asserted that since Summer, 1973 1st defendant and her men has been in exclusive possession and enjoyment of the plaint schedule property in their own right and the defendants thus acquired right in the plaint schedule property by adverse possession.

a) When the above pleadings are analysed, though at the first instance 1st defendant did not admit the title of Sriramulu however, her version of purchasing the so-called occupancy rights from him, in my considered view, would tantamount to otherwise admitting the title of late Sriramulu.

Point No.1 is answered accordingly.

10) **POINT No.2:** As discussed supra, it is the claim of 1st defendant that she purchased the suit property from Sriramulu under an oral sale deed for Rs.7,750/-. Whatever be the reason for not obtaining regular registered sale deed, the fact remains it was only an oral sale. Under Section 54 of Transfer of Property Act, 1882 in case of tangible immovable property of a value less than Rs.100/-, transfer may be made either by registered instrument or by delivery of property. It goes without saying that if the tangible immovable

property is of the value more than R.100/- such transfer shall be effected by a registered instrument only. There is corresponding provision in the Indian Registration Act, 1908. Section 17(b) of the said Act would show that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property shall be registered. In the instant case, the alleged sale of the suit property was Rs.7,750/-. Therefore, registration was must. Therefore, the alleged oral sale is hit by the aforesaid provisions of the law. For this reason, 1st defendant cannot derive any title under the aforesaid alleged oral sale deed.

Point No.2 is answered accordingly.

11) **POINT No.3:** In view of finding in point No.2, it has now to be seen whether the possession of couple i.e. Seshagiri Rao and 1st defendant was only as lessees as pleaded by the plaintiffs or as trespassers and if latter one is true, whether they perfected their possessory title by prescription. The plea of lease as propounded by plaintiffs is concerned, it must be said they failed to establish the same. In the plaint it is pleaded that in or about 1971 Seshagiri Rao approached Sriramulu and on his request Sriramulu permitted him to live in one of the houses on a monthly rent of Rs.30/- and also on the condition of his paying the half or its value for the remaining land in case Seshagiri Rao raised crop therein and also on the condition of his paying taxes and land revenue. Admittedly, there is no written lease deed for the aforesaid transaction. On the other hand, as rightly observed by the trial Court, in

Ex.A5 it was alleged that Seshagiri Rao encroached upon the suit site and erected huts and defendants 2 to 4 erected poultry sheds etc. So, the plea of tenancy in 1973 is nullified by the averments in Ex.A5 application submitted by the plaintiffs to the District Collector. Such a plea of tenancy was set up only through lawyer notices under Ex.A9. Hence, the same cannot be accepted to be true as the said plea was obviously by a legal advice. When the lease is discarded, what remains for consideration is plea of adverse possession. Admittedly, Seshagiri Rao and 1st defendant were in possession since 1971 and there is no cogent record to show till filing of the suit they were dispossessed of the suit property. No doubt, the plaintiffs have examined PW4—Sanitary Mastry and PW5—Junior Assistant of Laxmipuram Gram Panchayat to show that Seshagiri Rao was evicted from the suit property on the complaint given by the plaintiffs to the Gram Panchayat. As rightly noticed by the trial Court, in respect of encroachment into the private properties by the private person on some disputes, hardly Gram Panchayat has anything to do with except advising the parties to settle the disputes in a Court of law. Contrary to it, strangely these witnesses would depose as if on the complaint of plaintiffs, Seshagiri Rao and 1st defendant and others were evicted from the suit property. No record is produced to that effect to lend credence to their evidence. Hence, the said evidence will not help the plaintiffs. Therefore, as already observed supra, since 1971 Seshagiri Rao and 1st defendant and subsequently the other defendants have been in possession of the suit property. First defendant claims the title ofcourse under an invalid sale deed. Even then, their possession can operate as adverse to the vendor. DWs.7 and 8 were the witnesses in whose presence 1st defendant

paid the amount to Sriramulu. Except giving denial suggestion, nothing could be extracted from them to show that oral sale transaction was false. Therefore, even if the sale transaction is invalid, still the possession of 1st defendant operates as adverse from the date of oral sale.

12) My view is fortified by the decision of the Division Bench of this Court rendered in ***Mohd. Kareemuddin Khan (died) and others vs. Syed Azam***². The Division Bench relied upon the decision of Apex Court in ***Achal Reddy v. Ramakrishna Reddiar (AIR 1990 SC 553)*** wherein the Apex Court held thus:

"The position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is clear manifestation of the intention of the owner to divest himself of the right over the property."

Basing on the above ruling the Division Bench held thus:

"The position of law being thus, we proceed on the footing that even if the sales in favour of the respondent-defendant were void for any reason, yet if he was in possession of the properties in pursuance of the invalid sale deeds his possession would be ipso facto adverse to the appellants."

² 1997 (4)ALD 816 = 1997 (2) ALT 625

13) Thus, in the instant case, the possession of the defendants is adverse to Sriramulu and also to plaintiffs because, from 1971 till filing of the suit Seshagiri Rao and defendants have been in possession of the suit property and raised huts and poultry sheds and there was no cogent evidence to show that they were ever dispossessed from the suit property. Moreover, in Ex.A5 it was admitted that Seshagiri Rao trespassed into the suit property. For all these reasons, it can be held that the plaintiffs' right was extinguished under Section 27 of the Limitation Act. Consequently suit is barred by limitation.

14) In this regard, the decision in *Mirza Abdul Gaffar's* case (1 supra) cited by the appellants can be distinguished on facts. In that case, it was observed that since the appellant's claim was founded on Section 53-A of Transfer of Property Act, it goes without saying that he admitted by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant. Needless to emphasise, in the instant case, 1st defendant and Seshagiri Rao have not come into possession of the suit property by virtue of lease or under an agreement of sale in terms of Section 53-A of T.P.Act so that, their possession for any length of time can be held to be an admission of the title of Sriramulu. In the instant case, 1st defendant claimed to have purchased suit property from Sriramulu under an oral sale. Though oral sale is an invalid transaction, still the factum of oral sale was cogently established through DWs.7 and 8. Hence, from the date of oral sale the possession of 1st defendant would be in

her own right and against the title of Sriramulu. Her admission of his prior title would have no relevance.

This point is answered accordingly.

15) **POINT No.4:** In the result, this appeal is dismissed by confirming the judgment of the trial Court in O.S.No.305 of 1995. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 05.06.2018
Murthy

U. DURGA PRASAD RAO, J

