

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

A.S.No.1878 of 2001

JUDGMENT:

This appeal is filed by the unsuccessful plaintiffs against the judgment and decree dated 12.08.1996 passed in O.S.No.9 of 1996 by the Subordinate Judge, Hindupur, Anantapur District.

The suit O.S.No.9 of 1996 was filed by Uppara Anjinappa and Uppara Aswartha Narayanappa against T. Khasim Sab and Uppara Venkamma. After the first plaintiff died, his legal representatives were added as plaintiffs 3 to 5. The suit was filed for a declaration that the plaintiffs and the 2nd defendant are the owners of Ac.2.92 cents of land in Survey No.391/3 and Ac.1.67 cents of land in Survey No.393/4 of Kotnuru Revenue Village, Hindupur Mandal, Anantapur District. The case of the plaintiffs case is that Ac.2.92 cents + Ac.1.67 cents = Ac.4.59 cents is one single bit of land. The plaintiffs claim ownership of the suit schedule property both by inheritance from a common ancestor and also by adverse possession. They relied upon the sale deeds of 1890 and 1911, apart from survey and settlement to prove their title. Their case is that they are in possession and enjoyment of the land and that they are paying the cist every year.

The first defendant, on the other hand, filed a written statement admitting the family genealogy, but denying the

title of the plaintiffs. The defendants also raised issues about the existence of the land with specific boundaries and also the correlation between the sale deeds of 1890/1911 with the present suit schedule property. The first defendant's case is that he is the absolute owner of the suit schedule property having purchased the same along with T. Narayanacharyulu on 11.08.1993 and subsequently the said Narayanacharyulu also executed a deed in his favour giving up his share in the property in October 1987. The defendants claim title and ownership independently. They deny that the plaintiff can claim title by inheritance and also adverse possession.

Basing on the pleadings, the lower Court framed the following issues:

- i) Whether the plaintiffs have got title over the suit schedule property?
- ii) Whether the plaintiffs perfected their title to the suit schedule property by adverse possession?
- iii) Whether the plaintiffs were in possession of the suit schedule property of the date of the institution of the suit?
- iv) Whether the plaintiffs are entitled for permanent injunction as prayed for?
- v) To what relief?

The parties thereafter went to trial. For the plaintiffs, PWs.1 to 3 were examined and Exs.A.1 to A.12 were marked. For the defendants, DWs.1 & 2 were examined and Exs.B.1 to B.22 were marked. After the trial and hearing, the lower Court dismissed the suit. It is this judgment that is now challenged in this appeal.

This Court has heard Sri O. Manohar Reddy, learned counsel for the appellants/plaintiffs and Sri P. Narahari Babu, learned counsel for the respondents/defendants.

At the very outset, this Court is of the clear opinion that since the suit is one for a declaration of title and for possession, the burden is squarely on the plaintiffs to prove their title and also their possession and enjoyment of the suit schedule property. The learned counsel for the respondents/defendants cited a judgment which reiterated the position of law that is well-settled viz., ***Union of India v. Vasavi Co-op. Housing Society Ltd.***¹ in which the Hon'ble Supreme Court has held in paras-12, 14 &15 as under:

"12. It is trite law that, in a suit for declaration of title, burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.

14. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in *Maran Mar Basselios Catholicos v. Thukalan Paulo Avira* reported in MANU/SC/0181/1958 : AIR 1959 SC 31 observed that "in a suit for declaration if the Plaintiffs are to succeed, they must do so on the strength of their own title." In *Nagar Palika, Jind v. Jagat Singh, Advocate* MANU/SC/0260/1995 : AIR 1995 SC 426, this Court held as under:

the onus to prove title to the property in question was on the Plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the Plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.

15. The legal position, therefore, is clear that the Plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done

¹ AIR 2014 SC 937

only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. We are of the view that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff's own title, Plaintiff must be non-suited."

Against this backdrop, the pleadings and evidence in this case have to be established. The plaintiffs have filed Exs.A.1 & A.2 sale deeds, which are of the years 1890 and 1911 respectively. Ex.A.1-sale deed deals with land measuring Ac.4.00 cents in Survey No.26 and Ex.A.2 deals with the land measuring Ac.1.28 cents in Survey No.556/3.

The plaint contains a description about the manner and method in which the title devolved upon the plaintiffs. They stress on initial sale deed of 1890 by which Shyamanna, s/o. Aswartha Narayanappa purchased the property. They trace the derivation of their title in paras-4, 5 and 10. They also plead about the survey and settlement of the years 1890 and 1929 by virtue of which, according to the plaintiffs, plaint properties were carved out of older survey numbers and there was some reallocation of new survey numbers. Ultimately, they state that the plaint schedule property was carved out of old survey No.556-C measuring Ac.5.11 (para-8 of the plaint deals with the same). After setting out the flow of title, the plaintiffs denied that the defendants' vendor-Achamma, the wife of Ugrappa had any title to the property.

The defendants denied the correlation of the survey numbers. They also denied that the link between the suit properties and Exs.A.1 & A.2. They also stated emphatically

that the old survey numbers supposedly shifted and the resurvey conducted are all not correct. They also asserted and stated that in the revenue records, their vendor was shown as owner of the property and the plaintiffs do not have any title to the property. In para-8 in reply to the case of the adverse possession set up by the plaintiffs, they have also asserted that the plaintiffs cannot set up a mutually destructive case of independent title and also adverse possession.

Against this backdrop, the issue that is to be decided first is the plea of adverse possession set up by the plaintiffs (issue No.2).

As has been held repeatedly in catena of decisions, the plea of adverse possession is a double edged sword. Any plea of adverse possession contains an admission that the opposite party is the owner of the property, but the said title of the opposite party has been extinguished because of the open hostile possession with animus by the claimant for the statutory period. Therefore, by pleading adverse possession a party admits the initial title of the opposite party which however is said to be extinguished. The law is also well-settled and the case of **Karnataka Board of Wakf v. Government of India**² is relevant for this case. Paras-11 & 12 of the said judgment is reproduced here.

² (2004) 10 SCC 779

“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

(See: **S M Karim v. Bibi Sakinal** MANU/SC/0236/1964 : [1964] 6 SCR 780, **Parsinni v. Sukhi** MANU/SC/0575/1993 : (1993) 4 SCC 375 and **D N Venkatarayappa v. State of Karnataka** MANU/SC/0766/1997 : AIR 1997 SC 2930).

Physical fact of exclusive possession and the *animus* posited 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 Sharma v. Raj Kumari Sharma MANU/SC/0231/1996 : 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 Sakinal** MANU/SC/0236/1964 : [1964]6SCR780). In **P Periasami v. P Periathambi** MANU/SC/0821/1995 : (1995)6SCC523 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. Dealing with **Mohan Lal v. Mirza Abdul Gaffar** MANU/SC/1039/1996 : (1996)1SCC639 that is similar to the case in hand, this Court held:

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal

possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53A, it goes without saying that he admits by implication that he came into possession of 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."

Therefore, by pleading adverse possession very specifically in their plaint, the plaintiffs admitted that the defendants had title to the suit schedule property. But, as per them the title was extinguished by the plaintiff hostile possession of the property. The plaintiffs have therefore admitted in the pleading filed that the defendants had title over the plaint schedule property. The question is – whether the suit title is extinguished? The evidence on record is not enough to prove the open hostile possession of the plaintiffs over the suit schedule property for the statutory period or the extinction of the same. Neither the intention to hold the property with hostile animus nor the period of possession is proved by evidence. The plaintiffs have failed to prove that the title that is there in the defendants has been extinguished. None of the essential facts which are discussed in paras-11 & 12 of the **Karnataka Board of Wakf** case reproduced earlier (2 supra) have been pleaded and clearly proved. Equity is also not in the plaintiffs favour. Issue No.2 is therefore held against the plaintiffs and in favour of the defendants.

Even apart from this, as per the case law that has been reproduced earlier and relied upon by the learned counsel for

the respondents/ defendants, the burden is squarely upon the plaintiffs to prove that they have title over the suit schedule property and also possession on the date of the suit. These are issues 1 and 3 of the suit. If the plaintiffs proved their possession, they will be entitled to injunction as per issue No.4.

An examination of the oral and documentary evidence filed in this case shows that the documents filed by the plaintiffs do not show the existence of the suit schedule property with the definite boundaries in any of their documents. Neither the sale deeds nor the other documents filed show that the plaintiffs are in possession and enjoyment of the property measuring Ac.2.92 cents or Ac.1.67 cents in Survey No.391/3 or 393/4. The boundaries are also not established by any documentary evidence. As was pointed out by the learned counsel for the respondents/defendants in this case, Exs.A.1 & A.2 are not in any way correlated to the suit schedule property. The learned counsel argued the same vehemently and also submitted his written submissions. The lack of correlation between Ex.A.1 & Ex.A.2 and the suit schedule property is clear. The learned counsel also points out rightly that no official from the Revenue Department was examined nor there any record summoned to show that the property covered by Exs.A.1 & A.2 is now the suit schedule property pursuant to the reorganization/resurvey and the allocation of fresh survey numbers. This Court agrees with

the submission that the mere fact that Exs.A.1 & A.2 are old documents does not lead to a conclusion that they pertain to the present suit schedule property. Apart from this, the Court notices basing on the submissions by the learned counsel for the appellants that the cist receipts that are filed by the plaintiffs do not establish their title or possession. The relief claimed is of declaration of title. Therefore, the burden was heavily upon the plaintiffs to establish that the documents filed by them relate to the suit schedule property and that the taxes paid as evidenced by the few tax receipts filed relate to the suit schedule property only. The plaintiffs failed to correlate the same.

On the other hand, Ex.A.6 is the proceeding of the Mandal Revenue Officer, Hindupur Mandal under which the MRO traced the title of the present defendants. The MRO noted that the lands which are the subject matter of the suit are registered in the name of Karnam Narayanappagari Ugrappa, the minor represented by his guardian Venkappa. The MRO traced the title in 1929. In fact, this document is an order passed by the MRO after Ex.B.1 reply. An objection was raised by the plaintiffs in the suit for the mutation in the defendants favour. After considering all the aspects, the name of the first defendant and the co-owner was incorporated in the revenue records while holding that their vendor-Achamma had title to the property. Even Ex.A.8 shows that Ac.2.92 cents and Ac.1.67 cents are in the name of Achamma, the

wife of Ugrappa. Ex.A.8 is the 10 (1) account showing the mutation of their names. Similarly, Ex.A.10 also shows the possession and enjoyment of the land by the defendants in their favour. The defendants have also filed Ex.B.1-relevant entry in the diglot resettlement register. Page-52 of the Diglot/A-register shows the new survey No.391 as three items of which item 556 (1) measuring Ac.2.92 cents is in the name of Ugrappa, minor represented by his guardian-Venkappa. Similarly, Survey No.393 item No.4 is old survey No.556 (c) measuring Ac.1.67 cents in the name of Ugrappa, minor represented by his guardian. This register is of the year 1929 showing the entire resettlement exercise that was carried out in 1929. The defendants have also filed the list showing the names of the joint pattadars in the village of Kotnuru. Ex.B.8 shows that the survey No.396 is in the name of Anjinappa, the guardian of Ugrappa. The mutation of the name of the first defendant is proved by Ex.B.5, which is issued on 20.06.1988. Similarly, the copy of adangal of the village Kotnuru, which is marked as Ex.B.6 shows that the name of Khasim Sab was included after correction of the name of the original pattadar-Ugrappa. The first defendant has also filed the cist receipts showing the payment of tax by him. These documents are marked as Exs.B.15 to B.19. To assert that these documents cannot be the basis for 'title', the learned counsel for the appellants relied on

- i) ***Union of India v. Vasavi Cooperative Housing Society Limited***³
- ii) ***State of Andhra Pradesh v. Hyderabad Potteries Private Limited***⁴
- iii) ***Penumarthy Veera Panasa Ramanna v. Penumarthy Sambamoorthy***⁵
- iv) ***Hyderabad Potteries Private Limited v. Collector, Hyderabad District***⁶.

On the basis of first three judgments, the learned counsel for the appellants argued that the entries in the revenue records are not evidence of title. It is his contention that the entries in the revenue records by themselves cannot be relied upon to prove the title. In reply thereto, the learned counsel for the respondents/defendants relied upon ***Varthamma v. Kanappa (Died) and others***⁷ and ***G. Satyanarayana v. Government of Andhra Pradesh***⁸.

It is a fact that the revenue records by themselves cannot be treated as documents of title. However, the fact remains that both under Section 35 of the Indian Evidence Act and because of the fact that they are the result of a 'physical exercise' done on the land, they do have a certain evidentiary value, particularly the 1929 Resettlement Register. Even the judgments relied upon by the learned counsel for the appellants clearly show that the documents/entries in the revenue records and registers have

³ (2014) 2 SCC 269

⁴ (2010) 5 SCC 382

⁵ AIR 1961 AP 361

⁶ 2001 (3) ALD 600

⁷ 2013 (5) ALT 241

⁸ 2014 (3) ALT 473

to be considered along with other documents that are filed before they are accepted as proof of title. In the two cases relied upon by the learned counsel for the respondents, particularly **G. Satyanarayana's** case (8 supra), a learned single judge of this Court has carried out a very extensive and a detailed study of the revenue administration pertaining to the State of Andhra Pradesh and Telangana. At page 496, para-60 clause (1) the Settlement Register also known as the diglot or A-register was held to be the basis/foundation upon which the entire revenue administration rests. In para-119, while discussing the evidentiary value of entries in the revenue records, the learned single Judge held that the diglot or A-register could be held to be the core revenue record (Ex.A.9). The learned single Judge also discussed the case law including Section 35 of the Indian Evidence Act and came to the conclusion at para-137 that the A-register is the mother of all registers. Similarly, in the conclusions, the learned single Judge also held that when there are two rival claims relying upon the entries in the revenue records, the person whose name is recorded in the basic record, such as the A-register and their successors-in-interest will be considered to be the rightful owner.

The next judgment relied upon by the learned counsel for the respondents is of another single Judge who held that once pattadar passbook and title deed were issued in favour of the opposite parties, the other party should have filed an

appeal or gone to a court of law to get the entry set aside. The learned counsel for the respondents points out that Ex.A.6 is the order passed by the MRO for mutation of the name of the first defendant. The objection raised by the plaintiffs to the proposed mutation was overruled. The history of the property was traced and the revenue officials came to a conclusion that the first defendant and his vendor had the title to the property. The learned counsel for the respondents submitted that Ex.A.6 dated 15.10.1987 shows that it was marked to the counsel for the plaintiffs at Hindupur. Therefore, he submitted that the plaintiffs had the benefit of legal advice at the time they filed the objections and at the time the order under Ex.A.6 was passed. The findings of the revenue officials were not challenged by the plaintiffs. The plaintiffs did not even choose to examine any of the revenue officials or summon any records to prove the contents of Ex.A.6 were wrong. The learned counsel also argued that subsequent mutation of the name in favour of the first defendant was also not challenged anywhere by the plaintiffs. The order in Ex.A.6 is also corroborated in material aspects by the other records filed by the defendants.

This Court on an examination of all the facts and figures including the evidence introduced by both sides shows that 1929 onwards the name of Ugrappa was recorded in the relevant record - diglot or A-register. The exact land that is the subject matter of the transfer by Ugrappa's wife under

Ex.A.2 sale deed is referred to in the settlement register from 1929 onwards. Ugrappa's wife executed a registered sale deed in favour of first defendant and another. The tax receipts that are filed show the possession and enjoyment of the property by the first defendant. The documents filed by the plaintiffs do not show the enjoyment of the plaint schedule properties by the plaintiffs. The records from 1929 read with other documentary evidence in this case clearly prove the title and enjoyment of the property by the defendants and their predecessors-in-title.

The learned counsel for the appellants/plaintiffs also argued that there is no effective cross-examination on many of the aspects that are raised by his clients and that therefore, the contents of the chief examination by way of affidavit should be treated as admitted. He relies upon ***Muddasani Venkata Narasaiah (dead) through LRs v. Muddasani Sarojana***⁹ and ***A.E.G. Carapiet v. A.Y. Derderian***¹⁰. This Court while agreeing with the submission that failure to cross-examine can amount to an admission also notices the fact that the defendants expressly denied the correlation of Exs.A.1 & A.2 sale deeds with the present suit schedule property. The defendants denied the flow of title and also the survey and settlement. The learned counsel argued that the chief examination with regard to the survey and settlement, which is deposed in by PW.1, is not touched upon in the

⁹ (2016) 12 SCC 288

¹⁰ AIR 1961 Calcutta 359

cross-examination and that therefore the plaintiffs cannot raise any issue about the sub-division or the extents.

However, a perusal of the cross-examination clearly reveals that PW.1 admits that 'at the time of 'resettlement in 1926 to 1929, they did not file any objection for change of the patta. I do not know what happened at the time of resettlement. I do not know whether my father approached the revenue authorities for change of the pattadars name in the diglog'. The witness also admits that 'the name of Ugrappa, minor represented by guardian might be there as pattadar in the diglot of 1929'. It is also settled law that the Court has to see the entire evidence on record to come to a conclusion about the truth or otherwise of the same.

A reading of the entire evidence shows that the defendants had cross examined the witness on the material aspects in this case. The cross-examination reveals that PW.1 obviously did not have any knowledge of the resettlement, that he is not aware whether his father approached the revenue authorities for change of pattadars name. He admits that the name of Ugrappa is shown in the diglog. He admits that after the Ex.A.6-order, he did not file any application or petition to change the orders of MRO and that he was represented by the plaintiffs before the MRO. A suggestion was also put to him that the receipts filed under Ex.A.3 to A.5 do not pertain to the suit lands and that they were created for filing of the suit. Therefore, this Court on a

reading of the entire evidence comes to a conclusion that the learned counsel for the respondents/defendants did not fail to put his case to the witness. Even otherwise, as per the case law cited by the appellants themselves, the defendants weakness will not entitle the plaintiffs to get a declaration of title. The plaintiffs must establish their case themselves.

The last issue raised by the learned counsel for the appellants/plaintiffs that there is no clear denial in the written statement about the flow of title and particularly the learned counsel relied upon the fact that paras-3 & 4 of the plaint were not correctly denied in the written statement. The learned counsel relied upon **Jahuri Sah v. Dwarika Prasad Jhunjhunwala**¹¹ and **Muddasani Venkata Narasaiah's** case (9 supra) and argued that the denial should be very specific otherwise it amounts to an admission. This Court finds that the failure to deny Exs.A.4 & A.5 of the plaint is not very fatal to the case of the defendants. A reading of the entire written statement that is filed shows that the plaintiffs have denied the so-called readjustments of the survey numbers and also the correlations. Paras-4 to 7 of the written statement read with para-9 of the written statement makes it clear that the first defendant was denying the survey and settlement, the title and the possession of the plaintiff and asserting their own independent title. Therefore, on a reading of the written statement in its entirety, this Court is of the opinion that the

¹¹ AIR 1967 SC 109

objections raised by the learned counsel for the appellants/plaintiffs are not sustainable in the facts and circumstances of the present case. A reading of the entire written statement leads to a conclusion that the title and possession of the plaintiffs has been expressly denied. Therefore, this Court is of the opinion that the case law cited by the learned counsel for the appellants is not really applicable to the facts and circumstances of the present case. In any view of the matter, by pleading adverse possession the plaintiffs have themselves admitted the title of the defendant. A plea of adverse possession implies an admission of title which is supposedly extinguished.

Therefore, this Court comes to a conclusion that the appellants/plaintiffs have not proved the title to the property and that the defendants on the contrary have established their right and title to the property. This evidence coupled with the fact that the plaintiffs pleaded adverse possession leads this Court to come to a conclusion that the judgment and decree of the lower Court is correct and valid and that there are no infirmities in the same. This Court concurs with the finding of the lower Court on all the issues and holds that there are no merits in the appeal. The passage from para-15 of **Vasavi Co-op. Housing Society Ltd.**'s case (1 supra) relied on by both sides is very apt and is reproduced once again:

“15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge

the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

In the result, the appeal is dismissed and the judgment and decree of the lower Court dated 12.08.1996 passed in O.S.No.9 of 1996 by the Subordinate Judge, Hindupur, Anantapur District is confirmed. In the circumstances of the case, there shall be no order as to costs.

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

Date: 12.06.2018
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D.V.S.S. SOMAYAJULU, J

