

THE HONOURABLE SRI JUSTICE M.LAXMAN

SECOND APPEAL No.1050 OF 1999

JUDGMENT:

1. The present appeal has been directed against judgment and decree dated 07.07.1999 in A.S.No.84 of 1993 on the file of the Court of the III Additional District Judge at Warangal (for short, 'first appellate Court'), whereby the judgment and decree dated 08.09.1993 in O.S.No.151 of 1989 on the file of the Court of the II Additional Munsiff Magistrate at Warangal (for short, 'trial Court'), was reversed. The said suit, filed by the appellant herein for recovery of possession of the suit property, was decreed. The present appeal is at the instance of the plaintiff.

2. The sum and substance of the case of the plaintiff is that she is the owner and possessor of land admeasuring Ac.0-20 guntas in Sy.No.332/A, situated at Bairanpally Village, H/o. Siddapuram Village, Hasanparthy Mandal, Warangal District (hereinafter, it is referred to as 'suit property'), having purchased the same from Veera Raghava Reddy under an agreement of sale dated 01.06.1979. By virtue of such agreement, the plaintiff was put into possession of the suit property and she had been enjoying the same ever since. The plaintiff also dug some trenches.

While so, the defendant, without any manner of right, tried to interfere with the plaintiff's peaceful possession over the suit property. In the said circumstances, the present suit has been filed.

3. The case of the defendant is that he denied the ownership and possession of the plaintiff over the suit property. He claimed that the suit property was allotted to his share in the partition effected among him and his brothers i.e., Pedda Gattaiah, Malla Reddy and Mukund Reddy. In the year 1976, the defendant raised a hut in some portion of the suit property. The defendant also constructed a compound wall in half of the portion of the suit property after obtaining permission from the Gram Panchayat. He has made an application for construction of permanent house in some portion of the suit property and the Gram Panchayat has also accorded permission. The remaining portion of land is under his cultivation. He has installed water siphon system and constructed a water storage tank in the year 1982. As per the defendant, ever since partition of the properties, he has been in exclusive possession and enjoyment over the suit property. The revenue records also demonstrate his title and possession over the suit property.

The defendant denied digging of trenches and cultivation by the plaintiff over the suit property. On the basis of above pleadings, the defendant prayed to dismiss the suit.

4. Basing on the above pleadings, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to get possession of suit schedule property as prayed for?
2. To what relief?”

5. The plaintiff, in order to prove her case, examined PWs.1 to 3 and relied upon Exs.A-1 to A-3. On behalf of the defendant, DWs.1 and 2 were examined and relied upon Exs.B-1 to B-10.

6. The trial Court, on appreciation of evidence on record, found that the plaintiff has made out case for recovery of possession of the suit property. Consequently, the trial Court decreed the suit. Challenging the same, the defendant filed A.S.No.84 of 1993 before the first appellate Court. The first appellate Court reversed the judgment and decree of the trial Court and consequently the suit was dismissed. Challenging the same, the present Second Appeal is filed at the instance of the plaintiff.

7. This Court, by order dated 15.12.1999, admitted the appeal by referring to clauses (c) and (d) of ground No.10 of memorandum of grounds of appeal. The above procedure is not in tune with the requirement of Section 100 of CPC and also against various judgments of the Apex Court. Thus, this Court has reframed the following substantial question of law, covering the above substantial questions of law earlier framed by this Court.

“Whether the findings of the first appellate Court in reversing the findings of the trial Court without addressing the possessory title of the plaintiff on the strength of Exs.A-2 and A-3 revenue records even though the plaintiff failed to establish title, suffer from any perversity?”

10. Heard the arguments of learned counsel for both sides. Since the re-framed substantial question of law covers the substantial questions of law earlier framed by this Court, no further hearing on the re-framed substantial question of law is required. Therefore, this Court is proceeded to dispose of the appeal.

11. The pleadings and evidence of the plaintiff show that she purchased the suit property from Veera Raghava Reddy under an agreement of sale, and since then, she has been in possession of the suit property being the absolute owner. In support of her case, she examined P.W.2, her vendor. It is

also her case that the suit property was allocated to her vendor's father viz., Pedda Gattaiah.

12. In order to prove the prior partition among P.W.2 and his brothers, the plaintiff examined P.W.3, eldest brother of P.W.2 and the defendant. Apart from the oral evidence, the plaintiff relied upon Ex.A-1 – agreement of sale, Exs.A-2 and A-3 – pahanis for the years 1979-80 and 1984-85 respectively. The said pahanis show that Gattaiah was recorded as titleholder and the plaintiff was recorded as possessor and the land admeasuring Ac.0-20 guntas was recorded in the name of Veera Raghava Reddy.

13. The case of the defendant is that originally, the suit property and other properties were the joint family properties belonging to him and his other three elder brothers, and in the oral partition, he got the suit property. In support of his case, the defendant relied upon revenue cist receipts relating to the years 1983-84 under Exs.B-2 and B-3, pahani for the year 1987-88 under Ex.B-1 and receipts and permissions issued by the Gram Panchayat under Exs.B-4 to B-10. Ex.B-1 shows that the defendant is in possession of the suit property.

14. On perusing the evidence of both the parties, it is clear that the defendant has three elder brothers viz., Pedda Gattaiah, Malla Reddy and Mukund Reddy. First brother Malla Reddy went in adoption and he was examined as P.W.3. Mohan Reddy, who is the husband of the plaintiff, is the natural son of Pedda Gattaiah and he was brought up by Mukund Reddy, who was issueless. Veera Raghava Reddy is another natural son of Pedda Gattaiah.

15. The revenue records under Exs.A-2 and A-3 show that Pedda Gattaiah is the recorded titleholder of the suit property. They also show that the plaintiff was in possession of land admeasuring Ac.0-20 guntas, and P.W.2, who is the vendor of the plaintiff, is having possession over the said land. Subsequent revenue records under Ex.B-1 show that the defendant is in possession of the suit property.

16. It is the admitted position of both the parties from their evidence that P.W.3 was the direct witness for oral partition. The oral partition took place much prior to the disputes arose between the parties. The claim of the defendant is that in terms of oral partition, the revenue records were not updated, whereas the claim of the plaintiff

is that as per oral partition, the revenue records were updated and land in Sy.No.332/A consisting of Ac.1-00 gunta including the suit property fell to the share of Pedda Gattaiah. The evidence also shows that P.W.1 in her cross examination admitted that the defendant has raised a hut in the suit property which is much prior to institution of the suit. Ex.A-1 shows that part of the consideration of Rs.100/- was unpaid. However, P.W.2, who is the vendor, has accepted that the balance consideration was also paid by the plaintiff. This claim of the plaintiff that total sale consideration was paid was not accepted by the first appellate Court holding that the plaintiff has not pleaded that she paid entire consideration. The first appellate Court unnecessarily entered into that issue, when there is clear evidence from P.W.2 that the total sale consideration was paid.

17. The plaintiff tried to establish that the suit property was fell to the share of Gattaiah in the oral partition among him and his brothers, whereas the defendant tried to establish the case that the suit property fell to his share. The defendant has claimed that entire land admeasuring Ac.1-00 gunta was fell to his share, but the witness

examined by him i.e., D.W.2 stated that only an extent of land admeasuring Ac.0-20 guntas was fell to the share of the defendant. His evidence also shows that D.W.3 was present when the oral partition took place.

18. The evidence of P.W.2 clearly demonstrates that entire land admeasuring Ac.1-00 gunta was fallen to the share of Gattaiah. This evidence is corroborative with the revenue records placed under Exs.A-2 and A-3. Ex.B-1 demonstrates only the possession.

19. The first appellate Court discarded Exs.A-2 and A-3 on the sole ground that the agreement of sale is an unregistered one and no title was passed under the said document. Therefore, without mutations, the entries under Exs.A-2 and A-3 cannot be relied upon. This assumption of the first appellate Court is erroneous for the reason that change of Records of Right would arise only when there is passing of title from the recorded holder to other party.

20. In the present case, adangals only show the possession of the actual cultivator and patta column would not change unless Records of Rights are changed recording the registered patta holder. Unless and until the transfer of title is there, the question of mutation of revenue entries does

not arise. However, the possession column reflects the possession of the actual cultivator. Exs.A-2 and A-3 demonstrate that the plaintiff was in possession of land admeasuring Ac.0-20 guntas.

21. Now the question is whether this property fell to the share of Gattaiah or to the share of the defendant.

22. The claim of the defendant that the entire property fell to his share in the oral partition is not supported by his own witness, who is his own brother viz., Malla Reddy, who was the direct witness to the oral partition.

23. The admitted case of both the parties is that there is an oral partition. However, the dispute is that the suit schedule property was fallen either to the plaintiff's vendor's father or the defendant. The evidence of P.W.3, if scrutinized in the context of Exs.A-2 and A-3, it clearly demonstrates that the suit property fell to the share of Gattaiah. On the contrary, the evidence of D.W.1 shows that he is also in possession immediately prior to the institution of the suit. He also filed records to show that he is in possession of the suit property on the strength of Gram Panchayat receipts and also other revenue records i.e., Pahanies for the year 1987-88.

24. Admittedly, in the present case, there is no title to the plaintiff. The agreement does not confer any right or title to her. The question now is whether in the context of above facts and circumstances, the relief of recovery of possession can be granted to the plaintiff, in the light of above evidence, when she failed to establish her title so as to recover her property.

25. Article 64 of the Limitation Act deals with recovery of possession of immovable property based on prior possession, whether it is within six months or above six months. The person in possession prior to dispossession can maintain the suit basing on the possessory title, if the person dispossessed him has no better title than him. Whereas, Article 65 of the Limitation Act deals with recovery of possession based on title.

26. The contention of the learned counsel for the plaintiff is that the first appellate Court has not considered the entitlement of the plaintiff for recovery of the suit property basing on his prior possession against the defendant, who has no better title than the plaintiff. In support of his contention, he relied upon the judgments of the Hon'ble Supreme Court in ***Nair Service Society Ltd. Vs. Rev. Father K.C.Alexander & Ors¹, Somnath***

¹1968 AIR 1165

***Barman Vs. Dr. S.P.Raju & Another*², *Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner*³ and *Poona Ram Vs. Moti Ram (D) Th. Lrs.*⁴.**

27. A reading of the above judgments would clearly demonstrate that a person, who is in prior possession was illegally dispossessed, can maintain a suit against the person who dispossessed him, even after six months without proving any title and such claim can be laid basing on the possessory title. Such a suit should be within limitation i.e., 12 years from the date of dispossession. The defendant, in such a suit, must show that he has a valid and legal title or possession prior to the plaintiff's possession. This means, the defendant can resist the suit if he can able to show that either he or his predecessor-in-title holds the title and his possession is based on such title. In case both the parties could be able to establish that title is in favour of some third party, then the party who is in prior possession has a right to recover the possession from the subsequent possessor, who dispossessed the prior possessor.

28. In the present case, the defendant relied upon only revenue records to prove the title of the third parties. Admittedly, no title document is filed by both the parties in the suit. Plaintiff's prior

² 1970 AIR 846

³ AIR 2004 SC 1801

⁴ AIR 2019 SC 813

possession is established from Exs.A-2 and A-3, but whereas Ex.B-1 establishes his subsequent possession. The admission of P.W.1 also demonstrates that there is prior possession and her pleadings are also silent with regard to actual date of her dispossession. Initially, the suit was filed for injunction, but injunction was rejected. Thereafter, prayer was amended for recovery of possession. However, in the entire pleadings, there was no amendment of the pleadings mentioning the date of dispossession.

29. The plaintiff's own case shows that hut of the defendant was existing prior to filing of the suit for injunction. When there is no date of dispossession, it is highly difficult to hold that the suit is within limitation and who is in prior possession. The oral evidence of P.W.1 is contrary to Exs.A-2 and A-3. The plaintiff also claimed that she dug trenches whereas, the defendants claim is that he dug trenches on the strength of permission and such trenches exist even prior to institution of suit for injunction. The claim of the plaintiff that she dug the trenches was rebutted by the defendant by producing the evidence to the effect that he obtained construction permission from the Grampanchayat. They all demonstrate that the defendant is in possession prior to the plaintiff's possession. The plaintiff tried

to establish her possession on the basis of the revenue records and oral evidence. The findings rendered by the trial Court and the first appellate Court touching the possession are possible in the light of the evidence adduced by both the parties. When two views are possible, the view adopted by the first appellate Court cannot be disturbed in the second appeal. Therefore, the Second Appeal is liable to be dismissed.

30. In the result, the appeal is dismissed, confirming the judgment and decree dated 07.07.1999 in A.S.No.84 of 1993 on the file of the III Additional District Judge at Warangal. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 06.12.2022
TJMR