

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.C.C.A. No.75 of 2014

JUDGMENT:

The unsuccessful defendant Nos.1 and 2 in O.S.No.135 of 2006 filed this appeal suit, assailing the judgment and decree dated 28.04.2014 in O.S.No.135 of 2006 on the file of the learned I Additional Chief Judge, City Civil Court at Secunderabad.

2. The sole plaintiff has filed the original suit in O.S.No.135 of 2006 for declaration of title over the house No.11-1-402 to 408 situated at Mylargadda, Seethaphalmandi, Secunderabad (hereinafter referred to as "suit schedule house") and consequently, directing the defendants to vacate and deliver the vacant possession of the suit house to the plaintiff and for grant of perpetual injunction against the defendants. The plaintiff has also claimed future mesne profits at the rate of Rs.10,000/- per month from the date of suit till the date of delivery of possession.

3. The learned judge of the trial Court after full length trial on appreciation of the oral and documentary evidence available on record decreed the suit of the plaintiff with costs declaring the title of the plaintiff over the suit schedule property and directing the defendants to vacate the same within three months from the date of judgment and to deliver the vacant possession of the same to the plaintiff. The defendants were also restrained from alienating the suit schedule property and permanent injunction was also granted against them. However, the plaintiff was advised to file a separate petition to ascertain the mesne profits in respect of the suit schedule property payable by the defendants from the date of filing of the suit i.e., from 26.09.2006 till the date of delivery of suit schedule property. Feeling aggrieved by the said judgment and decree, defendant Nos.1 & 2 have filed this appeal suit.

4. For the sake of convenience, the parties are hereinafter referred to as plaintiff and defendants as arrayed in the original suit.

Pleadings in the plaint and written statements:

5. The main averments of the plaint are that originally, the suit house belonged to one Sri Munuswami, father of defendant Nos.2 & 3. Late Munuswami and his son-G. Sreeramulu, defendant No.3 have sold the suit house to Sri Thakur Balasingh, through a registered sale deed dated 06.03.1965, thereafter defendant No.3 alone has obtained a portion of the suit house on a monthly rent of Rs.130/- per month from the said T. Balasingh. As the defendant No.3 committed default in payment of rents, late T. Balasingh filed R.C.No.55 of 1971 on the file of the learned Rent Controller at Secunderabad for eviction of defendant No.3. After due trial, R.C.No.55 of 1971 was allowed, as per the order dated 28.12.1972 and defendant No.3 has filed R.A.No.63 of 1973 on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, and the same was dismissed on 31.12.1973 confirming the order in R.C.No.55 of 1971. In order to get over the eviction order, defendant No.3 has set up his brother G. Krishna, defendant No.2 to file a suit for partition alleging that he has got 1/3rd share in the suit schedule house and

challenged the sale deed executed by Sri Munuswami and defendant No.3 in favour of T. Balasingh. The said suit in O.S.No.567 of 1974 on the file of I Assistant Judge, City Civil Court, Hyderabad, filed by defendant No.3 was dismissed. Assailing the same, defendant No.2 has filed A.S.No.342 of 1978 on the file of the learned Additional Chief Judge, City Civil Court, Hyderabad and it was allowed. Against the said judgment in A.S.No.342 of 1978, late Balasingh has filed Second Appeal No.345 of 1980 before this Court. The second appeal was allowed by this Court as per the judgment dated 28.11.1983 confirming the judgment and decree of the trial Court in O.S.No.567 of 1974 and setting aside the judgment of the first appellate Court in A.S.No.342 of 1978. As such, the said judgment is binding on late Munuswami and defendant Nos.2 & 3 who are his sons. However, late Munuswami was not able to execute the eviction order because of pendency of the proceedings initiated by defendant No.2 herein and late T. Balasingh died on 08.05.1984. During his life time, late T. Balasingh has executed a Will on 23.04.1984 bequeathing his property in favour of Sri T. Rishi Kumar, who his

brother's son, as late Balasingh was a bachelor. Later, the plaintiff and his brothers have purchased the suit house from Sri T. Rishi Kumar and his brother Bhagatsingh under a registered sale deed dated 17.08.1988. By way of abundant caution, the brother of Rishi Kumar was also made a party to the said sale deed and it was attested by defendant No.2 herein. Subsequently, Sri S. Venkateswarlu expired on 22.12.2001. The legal representatives of plaintiff's brother, late S. Venkateswarlu and other joint owners have executed a registered gift deed dated 19.07.2006 in favour of the plaintiff settling the property exclusively in favour of the plaintiff, as such the plaintiff has become the absolute owner of the suit schedule house. While so, defendant Nos.2 & 3 have set up their claim for the suit house through their mother, Smt. G. Govindamma, who filed a suit in O.S.No.595 of 1987 on the file of the III Additional Judge, City Civil Court, Secunderabad on the basis of the will deed said to have executed in her favour by the husband, late Munuswami, but that suit was dismissed as abated in the year 1999 in view of her death. In any event as the property was already

sold by late Munuswami, he could not bequeath such property in favour of his wife-Smt. G. Govindamma. The suit property has been in occupation of various tenants including G. Sreeramulu, defendant No.3. Subsequent to the sale in favour of the plaintiff and his brothers, the tenants including defendant No.3 were attorned to them, but defendant No.3 failed to pay the rents and committed default, again the plaintiff and his brothers have filed R.C.No.279 of 1989 on the file of the learned Principal Rent Controller, Secunderabad. The plaintiff herein is able to settle the dispute in respect of other tenants and they have delivered possession in favour of the plaintiff and his brothers.

The plaintiff and his brothers have also evicted defendant Nos.2 & 3 from the suit house pursuant to the eviction order passed by the Rent Controller, Secunderabad in R.C.No.279 of 1989. However, during pendency of the suit filed by Smt. G. Govindamma in O.S.No.595 of 1987, she with the help of her sons broke up the locks put up by the plaintiff and his brothers and

occupied a portion of the suit house with the help of Court Bailiff, as such the plaintiff and his brothers have filed a petition for restoration of possession. That application was contested by Smt. Govindamma who was represented by defendant No.1 herein as her G.P.A. holder and as per the order dated 02.04.1991, it was ordered for restoration of possession of the plaintiff. Hence, the suit for declaration of title of the plaintiff in respect of the suit schedule house and for delivery of vacant possession in his favour by granting consequential relief of perpetual injunction restraining the defendants from alienating the suit schedule property or making construction and also future mesne profits.

6. The defendant Nos.1 & 2, who are the wife and husband, have filed separate written statements. Whereas, defendant Nos.3 to 5 failed to file their written statements, accordingly on 25.06.2007 they were set *ex parte*. During pendency of the suit, defendant No.3-G. Sreeramulu died, as such a memo was filed stating that defendant Nos.4 & 5 being the sons of defendant No.3 are brought on record.

However, his widow was also brought on record as defendant No.6.

7. The main averments of the written statement filed by defendant No.1 are that originally the suit house belongs to late Munuswami and that late Munuswami and his son-G. Sreeramulu, defendant No.3 sold the suit house to Thakur Balasingh, through a registered sale deed document dated 06.03.1965, but it was not correct to say that defendant No.3 alone has obtained portion of property on monthly rent of Rs.130/-. Regarding late T. Balasingh filing Rent Control Case and defendant No.3 filing Rent Appeal, they are not within the knowledge of defendant No.1. The suit in O.S.No.567 of 1974 and the appeal filed by defendant No.2 and the second appeal filed by Balasingh are also not within the knowledge of defendant No.1.

It is admitted that late Balasingh died on 08.05.1984 intestate stating that in O.S.No.595 of 1987, T. Rishi Kumar has filed I.A.No.257 of 1986 for his impleadment under Order 22 Rules 4 & 5 of the Civil Procedure Code,

1908 (for short 'CPC'), but that application was dismissed. Another application in IA No.465 of 1988 in O.S.No.595 of 1987 filed by Rishi Kumar was also dismissed on 16.09.1988. Thus, there is no legal representative of the deceased Balasingh. The defendants were not aware whether T. Rishi Kumar and his brother have executed the sale deed on 17.08.1988 in favour of the plaintiff and his brothers and this defendant is not aware as to the attestation of said sale deed by her husband/ defendant No.2 and also she is not aware of plaintiff's brothers executing gift deed in his favour on 19.07.2006. The suit schedule property is under the occupation of Smt. G. Govindamma, defendant Nos.1 & 2 only. The suit in O.S.No.595 of 1987 was dismissed mistakenly and that defendant No.3 was never in possession of suit schedule property as a tenant.

In fact, the tenants have filed the suit against Smt. G. Govindamma and she filed petitions under Rent Control Act, finally they were settled outside the Court, accordingly, the tenants have delivered vacant possession

in favour of Smt. G. Govindamma and filing of R.C.No.279 of 1989 is not within the knowledge of this defendant. Smt. G. Govindamma died on 03.12.1988, thereafter, defendant No.1 has filed L.R. Petition within time. All false allegations have made against the defendants, there is no cause of action for the plaintiff to file the suit. Whereas, defendant No.1 is in continuous possession of suit schedule property, the plaintiff is not entitled for mesne profits or for declaration of title, the suit is barred by limitation, prayed for dismissal of the suit with costs.

8. The main averments of the written statement filed by defendant No.2-G. Krishna, husband of defendant No.1 are that the suit house belonged to his father late Munuswami and that late Munuswamy along with defendant No.3 have sold the suit house, through registered sale deed dated 06.03.1965 in favour of Sri T. Balasingh. However, this defendant is not aware of late Balasingh, filing R.C.No.55 of 1971 against the tenants. Similarly, he is not aware of defendant No.3 filing of R.A.No.63 of 1973 against the orders in RC No.55 of 1971

and the dismissal of R.A.No.63 of 1973 etc. It is further stated that he has filed the suit for partition in O.S.No.567 of 1974 and that suit was dismissed. Thereafter, he has filed appeal in A.S.No.342 of 1978. It was allowed. But the judgment in appeal was reversed by this Court in second appeal No.345 of 1980, as per the judgment dated 23.11.1983, wherein it was held that by virtue of sale, T. Balasingh has acquired absolute title of suit house and it is binding on defendant Nos.2 & 3 and their father late Munuswami. It is further stated that his mother has filed a suit against T. Balasingh and others and the same is pending before the III Additional Judge, City Civil Court, Secunderabad and that he is not aware of R.C.No.279 of 1989. However, this defendant No.2 and his other family members along with the deceased Smt. G. Govindamma were residing in the suit house since 1961 and that they have acquired title by way of adverse possession, accordingly prayed for dismissal of the suit filed by the plaintiff.

Issues:

9. The above pleadings gave rise to the following issues:

1. Whether the plaintiff is entitled for declaration of title and delivery of vacant possession of the suit schedule property as prayed for?
2. Whether the plaintiff is entitled for permanent injunction against the defendants from alienating the suit schedule properties?
3. Whether the plaintiff is entitled for the future mesne profits @ Rs.10,000/- p.m. as prayed for?
4. Whether the plaintiff is liable to pay advolerem court fee on the relief of permanent injunction under Section 26 (c) of the Andhra Pradesh Court Fee and Suit Valuation Act?
5. To what relief?

Evidence and findings of the trial Court:

10. During trial, on behalf of the plaintiff, PWs.1 & 2 are examined. Exs.A.1 to A.9 documents were marked and after closure of plaintiff's evidence, on behalf of the defendants, both defendant Nos.1 & 2 were examined as

DWs.1 & 2 respectively and Exs.B.1 to B.21 documents were marked and defendants' evidence was reported closed.

11. The learned judge of the trial Court on careful appreciation of the entire material available on record, has decreed the suit of the plaintiff holding that the plaintiff is entitled for declaration and recovery of possession and directed the defendants to vacate the suit schedule property within three months from the date of judgment and to deliver the vacant possession of the same to the plaintiff and a permanent injunction was also granted restraining the defendants from alienating the suit schedule property. However, the plaintiff was advised to file separate petition to ascertain the mesne profits in respect of the suit schedule property from the date of filing of the suit till the date of delivery of possession. Feeling aggrieved by the said judgment and decree, the present appeal suit is filed.

12. Heard the learned counsel for the appellants/defendant Nos.1 & 2 and the respondent/plaintiff. The

detailed submissions made on either side have received due consideration of this Court.

13. In the light of the rival contentions raised and the material available on record, the following points would arise for consideration:

- i) Whether the suit filed by the plaintiff is within the limitation?;
- ii) Whether the defendants have perfected their title by way of adverse possession?;
- iii) Whether the judgment and decree impugned is sustainable?

Point Nos.(i) to (iii):

14. Since the point Nos.(i) to (iii) are inter-related, for the sake of convenience and brevity, all these points are answered together as under:

15. The admitted or undisputed facts of the case are that late Munuswami is the absolute owner of the suit house. He along with his first son-G. Sreeramulu (defendant No.3) has executed the sale deed dated

06.03.1965 in favour of Thakur Balasingh. However, late T. Balasingh is put him in constructive possession of the suit house. The defendant No.3 has obtained a portion of the suit house on lease from late T. Balasingh. It is also an undisputed fact that defendant No.2 has filed the suit for partition in O.S.No.567 of 1974 claiming 1/3rd share in the suit schedule property and that suit was dismissed by the trial Court. As against the same, defendant No.2 herein has filed A.S.No.342 of 1978 and it was allowed, but assailing the said judgment in A.S.No.342 of 1978, late Balasingh has filed S.A.No.345 of 1980 on the file of this Court and the same was allowed, as per judgment and decree dated 28.11.1983 holding that the sale in favour of T. Balasingh is valid and by virtue of the sale deed, late Balasingh has acquired absolute title to the suit house and such sale deed is binding on defendant Nos.2 & 3 and their father late Munuswami.

16. It is also an undisputed fact that the mother of defendant Nos.2 & 3 and widow of late Munuswami viz., Smt. G. Govindamma has filed another suit in O.S.No.595

of 1987 in respect of the suit schedule property alleging that her late husband-Munuswami bequeathed the suit house in her favour. However, the said suit was dismissed as abated in the year 1999 itself.

17. The specific case of the plaintiff is that late T. Balasingh has obtained registered sale deed dated 06.03.1965 in respect of the suit schedule property from late Munuswami and defendant No.3. However, after execution of the sale deed, defendant No.3 has obtained a rental agreement from Sri T. Balasingh in the year 1966 and he was in possession in a portion of the suit house, failed to pay the rents. Consequently, late Balasingh has filed R.C.No.55 of 1971, obtained eviction order against defendant No.3, who filed an appeal against the order dated 28.12.1972 in R.C.No.55 of 1971. However, the said R.A.No.63 of 1973 filed by defendant No.3 was dismissed. The contesting defendants have expressed their ignorance with reference to the proceedings in R.C.No.55 of 1971 and R.A.No.63 of 1973.

18. It is further case of the plaintiffs that late Thakur Balasingh died on 08.05.1984, before his death itself he has executed a will deed in favour of his brother's son viz., T. Rishi Kumar on 23.04.1984. As such, the plaintiff and his brothers have obtained a sale deed from Rishi Kumar and his brother T. Bhagat Singh on 17.08.1988. The said sale deed dated 17.08.1988 was also attested by defendant No.2. Thereafter, the plaintiff has obtained gift deed from the legal representatives of his brother, late S. Venkateswarlu on 19.07.2006, as such the plaintiff has become the absolute owner of suit schedule property. Hence, the suit is filed for declaration of title and recovery of possession.

19. It is also the case of the plaintiff that the defendants to harass the plaintiff and his predecessors-in-title have set up their claim through late Smt. G. Govindamma in respect of the suit schedule property and filed O.S.No.595 of 1987 on the file of the learned III Additional Judge, City Civil Court, Secunderabad, and that suit was dismissed as abated in the year 1999. However,

during pendency of these proceedings, defendant Nos.1 & 2 have forcibly occupied the suit schedule property. Hence, the suit for declaration of title, recovery of possession and mesne profits.

20. To substantiate their case on behalf of the plaintiff, he has filed his evidence affidavit in lieu of chief examination. In his evidence, Exs.A.1 to A.9 documents are marked. Ex.A.1 is the certified copy of sale deed dated 06.03.1965 executed in favour of T. Balasingh by late G. Munuswami and defendant No.3. This document is not in dispute. Ex.A.2 is the certified copy of will deed dated 23.04.1984 executed by late T. Balasingh in favour of Rishi Kumar. The original of Ex.A.2 was filed in R.C.No.279 of 1989. Ex.A.3 is the original sale deed dated 17.06.1998 executed by T. Rishi Kumar and his brother in favour of the plaintiff and his brothers in respect of suit schedule property. Ex.A.4 is the registered gift settlement dated 19.07.2006 executed by brothers of the plaintiff in his favour in respect of the suit schedule property. Ex.A.5 is the copy of judgment in S.A.No.345 of 1980, dated

28.11.1983. Ex.A.6 is the copy of judgment dated 09.10.1979 in AS No.342 of 1978. The Exs.A.5 and A.6 are not in dispute. Equally, Ex.A.7 is the copy of plaint in O.S.No.595 of 1987 filed by Smt. G. Govindamma against T. Rishi Kumar and others. Undisputedly, this suit is dismissed as abated. Ex.A.8 is the judgment dated 09.10.2007 in O.S.No.595 of 1987 wherein it is mentioned that the plaintiff and his brothers were added as defendant Nos.6 to 9 as per the order dated 16.08.1993 in I.A.No.37 of 1989 and that suit was dismissed with costs, as per the orders under Exs.A.8 and A.9 in O.S.No.595 of 1987, the suit filed by Smt. G. Govindamma for declaration of title in respect of suit schedule house on the basis of the Will in her favour by her husband is dismissed with costs.

21. Be it stated that during pendency of the said suit, Smt. G. Govindamma died and as per the orders in I.A.No.571 of 2002 dated 25.09.2006 defendant No.1 herein was impleaded as plaintiff No.2 and continued the proceedings. Thus, the claim set up by Govindamma over suit schedule property on the basis of a Will deed said to

have been executed in her favour by late Munuswami on 17.10.1963 was also negatived and no appeal is preferred.

22. PW.1 is cross-examined at length on behalf of the contesting defendants on commission. But nothing worth mentioning was elicited in support of defendants case except admitting that he is not aware whether till the year 1988 the suit schedule property was in the name of late Munuswami in municipal records or whether in the year 1965 itself it was mutated on the name of late Balasingh. Further, he has admitted that from 1991 onwards the suit house was mutated on the name of defendant No.2 and denied all other suggestions given to him.

23. PW.2 is the brother of plaintiff. He has filed his evidence affidavit in support of his plaintiff's claim on all material particulars. He was also cross-examined on commission. But nothing worth mentioning is elicited in the entire cross-examination in support of defendants claim as to their adverse possession or the will deed said to have been executed by late Munuswami in favour of his

wife-Govindamma. This witness has categorically stated that mutation was effected in the municipal records on the name of the plaintiff and that he is not aware whether the water connection was on the name of defendant No.1 and continued to be the same till date.

24. On behalf of contesting defendants, defendant No.1 has filed her evidence affidavit in lieu of chief examination. In her evidence, Exs.B.1 to B.21 documents are marked. Exs.B.1 and B.2 relates to the assessment proceedings for the years 1958 to 1961 and again 1967 to 1973 on the name of G. Munuswami. Exs.B.3 to B.5 are the property tax bills in favour of defendant No.1. Whereas, Exs.B.6 to B.13 are the electricity bills on the name of defendant No.1 and Exs.B.14 to B.21 are the water bills on the name of defendant No.1.

25. In the cross-examination, DW.1 has stated that in the year 1983 itself her mother-in-law told her that late Munuswami and defendant No.3 have sold the suit house in favour of T. Balasingh and that late Munuswami died in the year 1966 and prior to her marriage with defendant

No.2, she does not know whether defendant No.3 has obtained petition schedule property on monthly rentals of Rs.130/- per month and she does not know whether late Balasingh has filed eviction case against defendant No.3 and obtained eviction orders and defendant No.3 has challenged the same in appeal etc. She has further stated that she does not know about the tenancy and about R.C.No.279 of 1989 and plaintiff evicting defendant Nos.2 & 3 and other tenants from the suit property. She admitted that her mother-in-law without impleading the plaintiff and his brother filed eviction case against the tenants and with the help of Court Bailiff broke open the locks and put the possession of the suit schedule property. She also admitted that the plaintiff and his brother approached the Rent Controller, Secunderabad for delivery of suit property and the Court allowed the application.

26. The defendant No.2 himself got examined as DW.2 filed his evidence affidavit in lieu of chief examination. In the cross-examination, this witness has admitted that he has filed O.S.No.567 of 1974 and he gave

instructions to his counsel in drafting the plaint in the said suit. But he does not remember whether it is alleged in that suit that his brother-G.Sreeramulu, defendant No.3 has executed rental agreement dated 20.10.1966 in favour of late Balasingh and whether it is alleged by him that late Balasingh has filed R.C.No.55 of 1971. However, he clearly admitted that late Balasingh has obtained eviction order against defendant No.3 in the Rent Control Case. He has admitted the result of that suit in S.A.No.345 of 1980. He has also admitted that Rishi Kumar and Balasingh have sold the suit house in favour of the plaintiff and his brothers and admitted his signature found on Ex.A.3 which is marked as Ex.A.3 (a). Ex.A.3 is the sale deed executed by Rishi Kumar and his brothers in favour of the plaintiff and his brothers in respect of the suit schedule property. It was attested by defendant No.2 as one of the attesting witnesses. He has also admitted that his mother-Smt. G. Govindamma has filed O.P.No.403 of 1983 as indigent person and later that suit was numbered as O.S.No.595 of 1987 wherein she claimed that her husband Munuswami executed a will deed in her favour and in that

suit his wife, DW.1 got herself impleaded as co-plaintiff alleging that late Govindamma has executed a gift deed in her favour and that the said suit was dismissed.

27. The learned counsel for the appellants/defendant Nos.1 & 2 strenuously contends that though the defendant Nos.1 & 2 have taken a specific plea of adverse possession, the trial Court has failed to appreciate this plea of adverse possession, neither the plaintiff nor his predecessors-in-title were in possession of the suit schedule property at any point of time. Right from 1961 onwards till date either late G. Munuswami or his heirs including defendant Nos.1 & 2 are in exclusive possession and enjoyment of the suit house, late T. Balasingh was never in possession of the suit house and that the defendants have perfected their title by way of adverse possession and the suit filed by the plaintiff is beyond limitation. There is no specific plea as to on what date either the plaintiff or their predecessors-in-title were evicted forcibly and that the trial Court has failed to

appreciate all these aspects. The suit of the plaintiff is liable to be dismissed.

28. The learned counsel for the appellants/defendant Nos.1 & 2 relied on the principles laid in the following decisions.

- i) ***Girish Chandra Pal Vs. Baikuntha Nath Singha and others***¹;
- ii) ***Chairman, A.P. State Electricity Board, Hyderabad Vs. Mohd. Noruddin Asrani (died) by LRs and others***²;
- iii) ***Shyam Lal alias Kuldeep Vs. Sanjeev Kumar and others***³.

29. *Per contra*, the learned counsel for the respondent/plaintiff would submit that the trial Court has appreciated the oral and documentary evidence by applying the settled principles of law. There is no infirmity in the findings recorded by the trial Court. The suit of the plaintiff for declaration of title and recovery of possession is based on title and under Article 65 of the Limitation Act, the

¹ 1924 SCC OnLine Cal 283

² 2004 (4) ALD 413 (DB)

³ 2009 AIR SCW 5006 SC

plaintiff will succeed if he is able to prove his title and it could be no longer necessary for him to prove his earlier possession over the suit schedule property at any point of time.

30. The learned counsel for the respondent/plaintiff further contends that though the defendants have raised plea of adverse possession, the essentials for adverse possession are neither pleaded nor established in their evidence. The evidence of DWs.1 & 2 itself is sufficient to hold that they were aware of the earlier proceedings, suppressed the material facts and that the defendants' pleading adverse possession has no equities in their favour. They were not in adverse possession at any point of time hostile to the possession of the real owners. It is further contended by the learned counsel that late Balasingh has filed Rent Control Case wherein eviction was ordered. In the meanwhile to prevent the eviction, defendant No.2 has filed the suit for partition. Ultimately the suit was dismissed by this Court in the second appeal. In the meanwhile, late Smt. G. Govindamma, wife of late G.

Munuswami has filed the suit for declaration wherein the present plaintiff and his brothers were also impleaded and all the way the plaintiff or his predecessors-in-title were trying to take back the possession and they were successful in getting the possession, but late Smt. G. Govindamma having filed Rent Control Case against the tenants without making the real owners as parties has taken over possession, whereby the plaintiff's predecessors-in-title have filed implead petition and it was allowed.

31. In such facts and circumstances of the case, the onus of proof is on the defendants to plead adverse possession over a statutory period by wrongful dispossession of the real owners and defendant Nos.1 & 2 have failed to prove the same. Accordingly, he has relied on the principles laid in the following decisions:

- i) ***Mohd. Mohammad Ali Vs. Jagadish Kalita***⁴;
- ii) ***C. Natrajan Vs. Ashim Bai and another***⁵;

⁴ (2004) 1 SCC 271

⁵ (2007) 14 SCC 183

- iii) ***Karnataka Board of Wakf Vs. Government of India and others***⁶;
- iv) ***P.T. Munichikkanna Reddy and others Vs. Revamma and others***⁷;
- v) ***Ram Nagina Rai and another Vs. Deo Kumar Rai (dead) by LRs and another***⁸.

32. In ***Girish Chandra Pal***'s case (1st supra), the point that arose for consideration was whether the suit filed by the plaintiff for recovery of possession was well within the limitation from the date of second dispossession.

33. Whereas, in ***Chairman, A.P. State Electricity Board, Hyderabad***'s case (2nd supra), a Division Bench of Andhra Pradesh High Court dealt with the essentials of adverse possession. It was a case where the plaintiffs have filed the suit for declaration of title and recovery of possession mainly relying on the Muntakhab and as such the Division Bench held that the entries in the Kasara Pahani will not confer any title and it is only a piece of evidence and in that suit as on the date of filing of the suit

⁶ 2004 (4) ALD 124 (SC)/

⁷ (2007) 6 SCC 59

⁸ (2019) 13 SCC 324

itself, the defendants were enjoying the suit property adversely for more than 12 years, as such it was held that the defendants have perfected their title by adverse possession.

34. In ***Shyam Lal***'s case (3rd supra), the Apex Court while dealing with Article 58 of the Limitation Act in a suit for declaration that the mutation effected was illegal and void and that there was no pleading or evidence as to the date on which the plaintiff had derived knowledge about mutation, held in para-36, that considering the pleadings as a whole as set out in the plaint, the suit of the plaintiff as laid, on the face of it, was not within time.

35. In ***Mohd. Mohammad Ali***'s case (4th supra), in para-20 it was held as under:

“20. By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12

years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession."

36. In **C. Natrajan**'s case (5th supra), in para-16 the Hon'ble Apex Court was held as under:

"16. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession."

37. In **Karnataka Board of Wakf**'s case (6th supra), the Apex Court while dealing with the essentials of adverse possession held 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. 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.

38. In **P.T. Munichikkanna Reddy's** case (7th supra), characterizing adverse possession, the Hon'ble Supreme Court held in para-5 as under:

“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile (See *Dowing v. Bird* (100 So 2d 57 (Fla 1958), *Arkansas Commemorative Commission v. City of Little Rock* [227 NY 240 : 303 SW 2d 569 (1957)]; *Monnot v. Murphy* [100 NY 240 : 100 NE 742 (1913)]; *City of Rock Springs v. Sturm* [39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929)]”

39. In **Ram Nagina Rai's** case (8th supra), a Larger Bench of the Hon'ble Supreme Court has dealt with the

meaning and essential ingredients to determine the adverse possession in paras-7 & 8, which read as under:

“7. Since the contesting defendants have raised a plea of adverse possession, the burden is on them to prove affirmatively that the bar of limitation prescribed under [Article 65](#) of the Schedule of the Limitation Act, 1963, viz., 12 years, is applicable in the matter to file a suit for possession of immovable property based on title. The limitation of 12 years begins when the possession of the defendants would become adverse to that of the plaintiffs. Thus, it is incumbent on the plaintiffs to file a suit for possession within 12 years from when the possession of the defendants becomes adverse to the plaintiffs.

8. [Article 65](#) presupposes that the limitation starts only if the defendants prove the factum of adverse possession affirmatively from a particular time. Adverse possession means a hostile assertion, i.e. a possession which is expressly or impliedly in denial of the title of the true owner. The person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed. In deciding whether the acts alleged by the person constitute adverse possession, regard must be given

to the animus of the person doing such acts, which must be ascertained from the facts and circumstances of each case. It is needless to observe that where the possession can be referred to a lawful title, it would not be considered to be adverse, the reason being that the person whose possession can be drawn to a lawful title, will not be permitted to show that his possession was hostile to another's title. Simply put, one who holds possession on behalf of another, does not by mere denial of the other's title, make his possession adverse so as to give himself the benefit of the statute of limitation."

40. In the case on hand, though the defendants have set up a plea of adverse possession, there is no convincing evidence to that effect on record. Admittedly, late G. Munuswami and defendant No.3 have executed the sale deed under the original of Ex.A.1 in respect of the suit schedule property in favour of late T. Balasingh. It is the specific case of the plaintiff that immediately after execution of the sale deed, defendant No.3 has obtained a portion of the suit house on rent on a monthly rent of Rs.130/- from late T. Balasingh in the year 1966, but defendant No.3 has failed to vacate and failed to pay rents,

as such late Balasingh has filed R.C.No.55 of 1971 against defendant No.3 and others, eviction was ordered as per the order dated 28.12.1972. Aggrieved by the same, defendant No.3 has preferred R.A.No.63 of 1973 and it was dismissed on 31.12.1973 and it is only to get over the eviction order, defendant No.3 has got filed O.S.No.567 of 1974, a suit for partition through defendant No.2. During pendency of the suit, defendant No.3 died, he is represented by his sons-defendant Nos.4 & 5 and his widow is also brought on record as defendant No.6. Except expressing their ignorance, the contesting defendants have not denied the factum of late T. Balasingh filing R.C.No.55 of 1971 and filing eviction order and defendant No.3 filing R.A.No.63 of 1973, which was dismissed on 31.12.1973 confirming the orders in R.C.NO.55 OF 1971.

41. Further, in the cross-examination of defendant No.2 as DW.2, he has categorically admitted that the plaint in O.S.No.567 of 1974 was only drafted on his instructions, wherein there is a specific plea as to defendant No.3 taking a portion of suit house on monthly rent of Rs.130/- from

late T. Balasingh and late Balasingh filing a rent control case for eviction of defendant No.3. Thus, in the above circumstances, the claim of defendants that right from 1961 onwards either late G. Munuswami or his sons or his widow were in possession of the suit schedule property uninterruptedly, openly and against the interest of the plaintiff or his predecessors-in-title has no legs to stand.

42. That apart, the suit in O.S.No.567 of 1974 filed by defendant No.2 was dismissed by the trial Court and the first appellate Court in A.S.No.342 of 1978 has set aside the judgment and decree of the trial Court, but this Court in S.A.No.345 of 1980 as per the judgment dated 28.04.1983 set aside the judgment of the first appellate Court and restored the judgment and decree of the trial Court in O.S.No.567 of 1974 wherein a clear finding was recorded by this Court that by virtue of the sale deed in his favour, T. Balasingh has acquired the absolute title over the suit schedule property and it is binding on the defendant Nos.2 & 3 and their father-late G. Munuswami.

43. Ex.A.5 is the certified copy of said judgment in SA No.345 of 1980 wherein in para-7, it is clearly held that the plaintiff therein, defendant No.2 herein was born in 1950 and he was a minor on the date of sale on 06.03.1965 and the very same property was taken on lease by defendant No.2 on 20.10.1966 and the plaintiff is an attesting witness in the said lease deed. The eviction proceedings initiated by defendant No.1 were confirmed by the appellate Court on 31.12.1973 and three months time was granted for vacating the premises. On 26.06.1974 the plaintiff filed the suit. The plaintiff in his evidence admitted that he and his father and defendant No.2 went to defendant No.1 and offered to pay back the money for reconveyance of the property and admittedly he came to know about the sale deed in the year 1971 itself. It is further held by this Court that in the circumstances late Munuswami as the Manager and Kartha of the family has full powers to execute the sale deed for legal necessities and it has to be necessarily construed as a sale on behalf of the family. Further, it is evident that the plaintiff was minor, defendant No.2 also joined in the sale deed as a

major coparcener and when kartha of the family executed the sale deed, it is binding on all the coparceners either major or minor, accordingly held that the sale deed executed by the father of the plaintiff has to be necessarily inferred as execution in the capacity of kartha binding on all the members of the family and the Kartha was not prone to licentious habits and as such the question of impeaching the sale on the ground that it is not for legal necessity does not arise.

44. As per the judgment under Ex.A.5, the plaintiff was an attesting witness to Ex.P.2-lease deed executed by defendant No.3 in favour of late Balasingh in the year 1966 immediately after execution of the sale deed and the plaintiff has categorically admitted that he signed on Ex.P.2 and he was residing along with defendant No.2 in the suit house. Though the plaintiff in O.S.No.567 of 1974 was aware of the sale deed in the year 1971 he did not initiate any action till 1974 when the said suit was filed and the said suit was only filed to defeat the eviction

proceedings which were confirmed in the orders in R.A.No.63 of 1973 on 31.12.1973.

45. Thus, defendant No.2 was aware of defendant No.3 executing lease deed in favour of late Balasingh, he is also aware of rent control proceedings in R.C.No.55 of 1971 and R.A.No.63 of 1973 and that was the reason, he along with his brothers offered late T. Balasingh to pay back the money and requested for re-conveyance of the property and in view of the orders under Ex.A.5, defendant No.2 is not entitled either to deny the sale deed under Ex.A.1 or the lease deed dated 20.10.1966 executed by defendant No.3 were in favour of late T. Balasingh. The judgment and decree in S.A.No.345 of 1980 has attained finality. Immediately thereafter, the third round of litigation started.

46. Late Smt. G. Govindamma has filed O.S.No.595 of 1987 as indigent person in O.P.No.403 of 1983 and after due enquiry, it was numbered as O.S.No.595 of 1987 wherein she has claimed that her husband has executed a will deed in her favour bequeathing the suit house. However, during pendency of the said suit, she died and

defendant No.1 herein got herself impleaded as plaintiff No.2 in the said suit and also gave evidence as PW.1 in that suit. As per the judgment and decree under Ex.A.8 and A.9 the said suit in O.S.No.595 of 1987 was dismissed, no appeal is preferred, it has attained finality as per the judgment dated 09.10.2007.

47. The specific case of the plaintiff is that late Balasingh has executed a will deed dated 23.04.1984 as in Ex.A.2 in favour of Rishi Kumar, the plaintiff and his brothers have obtained the sale deed dated 17.06.1988 from the said Rishi Kumar and his brother for a valid consideration in respect of the suit schedule property. The sale deed is also attested by DW.2. In the cross-examination of defendant No.2 as DW.2, he has admitted his signature on Ex.A.3 as Ex.A.3 (a). Subsequently, the brothers of the plaintiff have executed a gift deed on 19.07.2006 in favour of the plaintiff under Ex.A.4, and accordingly the plaintiff has filed the original suit for declaration of title and recovery of possession.

48. Thus, either late Balasingh or the plaintiff herein have been agitating for eviction, recovery of possession, declaration of title from time to time after obtaining the sale deed under Ex.A.1 and in every legal battle, they were successful, there is no iota of evidence to show that the defendants possession in fact has become adverse to the interest of either late Balasingh or to that of the plaintiff at any point of time. There is no evidence on behalf of the defendants to show that their possession was hostile to the real owner and there is absolutely nothing on record to show that at any point of time there was a hostile assertion by the defendants. From the evidence available, I do not find that defendants 1 & 2 had hostile animus at any point of time. Though the defendants have denied the title of the plaintiff over the suit schedule property, it is evident from the findings recorded in Ex.A.5-second appeal that defendant No.2 herein along with his brother has approached late Balasingh way back in the year 1971 itself and requested him for re-conveyance on receipt of the sale consideration. Therefore, merely because the defendants have been filing the cases one after another and creating

hurdles to the plaintiff or his predecessors-in-title and continuing their possession that does not mean that they have perfected their title by way of adverse possession.

49. Be it stated that there is a lot of difference between simple possession and adverse possession. Every possession is not adverse possession and the defendants will not acquire adverse possession by simply remaining in permissive possession or in possession as tenants holding over however long it may be.

50. In the instant case, as per the findings recorded by this Court under Ex.A.5 in SA No.345 of 1980, defendant No.2 herein as plaintiff has admitted that he was an attesting witness to the lease deed dated 20.10.1966 executed by defendant No.3 in favour of late Balasingh and that he is also aware of the rent control proceedings wherein the appellate Court has confirmed the eviction orders as per the order dated 31.12.1973 and it is only to overcome the eviction orders, that suit in O.S.No.567 of 1974 was filed by defendant No.3 herein. Further, when the said suit was dismissed in second appeal as per the

order dated 28.11.1983, they have got filed the suit in O.S.No.595 of 1987 through their mother-Smt. G. Govindamma as indigent person in O.P.No.403 of 1983 and continued the proceedings till the disposal of the said suit in O.S.No.595 of 1987 under Ex.A.9 dated 09.10.2007.

51. All these days, right from late Balasingh till the present plaintiff, they were either agitating on their own or resisting the proceedings filed by the defendants herein before one forum or the other to protect their right, interest in respect of suit schedule property. In that view of the matter, viewed from angle, the defendants are not able to establish any of the essentials of adverse possession and the mere denial of title or continuing possession over the property cannot be deemed to be adverse possession. The present suit is filed based on title under Article 65 of the Limitation Act and the plaintiff will succeed if he is able to prove his title and it would be no longer necessary for him to prove his previous possession stating that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendants so as to

prove if they intend to defeat the plaintiff's claim to establish their adverse possession, but there is no such evidence on behalf of defendants.

52. Therefore, the plaintiff by filing Exs.A.1 to A.4 and with the oral evidence of PWs.1 & 2 is able to establish continuous flow of title right from late T. Balasingh under Ex.A.1 and execution of sale deed under Ex.A.3 by T. Rishi Kumar and others in favour of the plaintiff and his brothers, thereafter his brothers executing gift deed in his favour under Ex.A.4. That apart, as per judgment under Ex.A.5 in S.A.No.345 of 1980 sale deed under Ex.A.1 is binding on the defendant Nos.2 & 3 and their father late G. Munuswami, hence the defendant No.2 is estopped from denying the title of late Balasingh or the purchasers from late Balasingh. Further, under Exs.A.7 to A.9 the suit in O.S.No.595 of 1987 filed by Smt. G. Govindamma, widow of late G. Munuswami was dismissed and the claim made by her on the basis of a will deed is negatived and it has attained finality.

53. Whereas, none of the documents in Ex.B.1 to B.21 are the title deeds, mere payment of property tax, electricity bill or water bills by defendant No.1 or the assessment on the name of late G. Munuswami does not confer any valid right, title or interest in favour of any of the defendants subsequent to the execution of Ex.A.1 and subsequent to the judgment in S.A.No.345 of 1980 under Ex.A.5. Therefore, viewed from any angle, I do not find any merit in the contentions raised by the appellants/defendants in their plea of adverse possession or that the suit is barred by limitation.

54. The principles laid in the decisions relied by the appellants/defendants are not helpful to them in any way as they have failed to prove the essentials of adverse possession and that in a suit filed under Article 65 of the Limitation Act based on title, the plaintiff need not to prove his previous possession within 12 years preceding the filing of the suit. All the point Nos.(i) to (iii) s are accordingly answered against the appellants/ defendants and in favour of the respondent/plaintiff.

55. In the result, the appeal suit is dismissed with costs confirming the judgment and decree dated 28.04.2014 in O.S.No.135 of 2006 on the file of the learned I Additional Chief Judge, City Civil Court at Secunderabad in its entirety.

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

A. VENKATESHWARA REDDY, J.

Date: 04.01.2023
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