

SUPREME COURT OF INDIA

Narne Rama Murthy

Vs.

Ravula Somasundaram

S.L.P.(Civil) 20182-20184 of 2003

(S.N.Variava and Tarun Chatterjee JJ.)

17.08.2005

JUDGMENT

S.N.Variava, J.

1. Heard parties at great length.
2. These Special Leave Petitions are against the Judgments of the Andhra Pradesh High Court dated 21st December, 2001 dismissing the Appeal filed by the Petitioners and the Judgment dated 4th October, 2002 dismissing the Review Petition.
3. We see no substance in the contention that there has been non- appreciation or misinterpretation of evidence. In our view, the Courts below have correctly analyzed the evidence on record and correctly concluded, on the basis of material on record, that the Petitioner had entered into the Agreement to Sell not just on his own behalf but also on behalf of the other parties. The Courts below also have correctly recorded that the possession had been taken on behalf of all.
4. The case sought to be made out that after notice dated 11th September, 1976, calling upon the Respondents 1 to 8 to pay their shares, the Petitioner had cut off the other Respondents as they had not paid their share is not even pleaded. In any case it is not believable in view of the various documents wherein the Petitioner himself has been stating that the purchase had been made on behalf of all.
5. We also see no substance in the contention that the Suit was barred by limitation and that the Courts below should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the Suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the

Agreement to Sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the Suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The Suit filed almost immediately thereafter.

6. We also see no substance in the contention that no consideration has flowed from the other Respondents. The Petitioner in his own evidence-in-chief admits that some amounts were paid jointly. This is clear from the fact that in respect of some payments he uses the word "I paid" but in respect of others he deposes "we paid". Even otherwise, the contention that no consideration has flowed is contrary to the terms of the Agreement. Also the evidence of D.W. 3 shows that in 1967, when the Agreement to Sell was entered into, the Petitioner had no income and no monies. This also belies his claim that he alone had paid.

7. We also see no substance in the submission of Mr. Ramachandran that there is no finding on Issue No. 1. In our view, once the finding was reached on Issue No. 5 the answer to Issue No. 1 followed. Even otherwise, both these Issues have been dealt with together and the reasoning given by the trial Court for answering these two Issues in favour of the Respondents applies to both these Issues.

8. In view of the above, we see no infirmity in the impugned Judgments. We see no reason to interfere. The Special Leave Petitions stand dismissed with no order as to costs.