

SUPREME COURT OF INDIA

L. N. Aswathama

Vs.

P. Prakash

C.A.No.4125 of 2009

(R. V. Raveendran and Harjit Singh Bedi JJ.)

21.04.2009

ORDER

R. V. Raveendran, J.

1. Leave granted.

2. The appellants are the plaintiffs in a suit (OS No.2667/1987 on the file of the City Civil Court, Bangalore) filed against the respondent, for declaration of title, possession, permanent injunction and mesne profits in regard to site bearing no.19 (old site no.8), situated at 2nd Cross, Subedarpalya, Vyalikaval, Bangalore, measuring 30' x 35'.

3. In brief, the case of the appellants - plaintiffs is as follows: The suit property was purchased by one Hanumakka, from the state government in the year 1940. She sold the said site to one Bellary Muniswamy Pillai under a sale deed dated 23.9.1940, who in turn

sold it to appellants' father Narayanaswamappa under sale deed dated 21.4.1950. The said Narayanaswamappa was registered as the owner of the said plot in the village records and was paying the taxes therefor. Narayanaswamappa suffered a stroke and after a prolonged illness died in December 1966 leaving all his properties to his sons (plaintiffs) under his will dated 15.7.1956. The plaintiffs were unaware that their father owned the said plot, as before and at the time of his death, they were prosecuting their studies and were not conversant with their father's affairs. Their father had taken some loan from Canara Bank and as security therefor had mortgaged the said site and other properties. The Bank obtained a decree for sale of the mortgaged properties. The plaintiffs became aware of the suit property only after they cleared the loan due to the Bank and got back the various title deeds deposited with the Bank on 9.1.1984. Thereafter, they took steps to trace the suit property and collect the necessary papers and found that the defendant who had no right or title was in possession of the said property by putting some temporary unauthorized structure for tethering cattle. The appellants, therefore, filed the said suit.

4. The defendant-respondent resisted the suit by denying the title of plaintiffs and claiming title to the suit property in himself. According to him, the said property belonged to one Channabasavanna; that after his death, the said property devolved upon his wife Gowramma; that ever since 1962, he was tethering his cows in the suit property with the consent of Channabasavanna and after the death of Channabasavanna continued as Gowramma's tenant; and that ultimately the said Gowramma sold the schedule property (measuring 25'x 40') to him under a registered sale deed dated 18.11.1985. The defendant also contended that as he was in continuous undisturbed possession of the suit property for more than 30 years, he had perfected his title by adverse possession. To support his claim for possession, he relied on the decree for permanent injunction obtained by him on 18.9.1979 in OS No.578/1978, against the Bangalore City Corporation, when it tried to disturb his possession in 1978. He contended that the suit filed by the appellants was barred by limitation, as he had perfected his title by adverse possession.

5. The trial court framed appropriate issues, relating to title of plaintiffs, possession, adverse possession, limitation and the reliefs sought. After appreciating the oral and documentary evidence, the trial court, by a detailed judgment, decreed the suit on 2.1.2004. It found that the plaintiffs had established their title to the suit property and that the defendant neither established his title, nor established adverse possession for more than 12 years before the suit. Consequently, the trial court declared that plaintiffs had title to the suit property and directed the defendant to deliver up possession after removing his materials. It also directed the defendant not to cause any interference to plaintiffs' possession, after delivering possession to plaintiffs.

6. The said judgment and decree passed by the trial court was challenged by the defendant. A learned Single Judge of the Karnataka High Court by judgment dated 12.9.2006, reversed the trial court's judgment and dismissed the suit. The High Court, without much discussion, held that plaintiffs had failed to prove that they had better title than the defendant and had also failed to prove

that the suit property in the possession of defendant was the property to which they claimed title as having been purchased by their father under Ex.P2 dated 21.4.1950. The plaintiffs sought special leave of this Court, to file an appeal against the said judgment. This court found the judgment of the High Court was sketchy and cryptic, and therefore issued limited notice to the respondent on 15.5.2007 to show cause why the matter should not be remanded to the High Court for "writing a proper judgment after considering the evidence on record." However, subsequently, both the parties submitted that the remand will delay the ultimate decision and requested this Court itself to consider the appeal on merits. Accepting the said request, on 10.12.2007, this Court noted that it will go into the merits of the matter also and for that purpose called for the records. We have heard the learned counsel.

7. We find that the High Court did not formulate any points for consideration, nor examine the relevant issues or evidence. It reversed the well considered judgment of the trial court mainly on the ground that katha number of the suit property, given in two of the documents relied by the plaintiffs did not tally. It overlooked the fact that the trial court had recorded its findings based on other evidence, by excluding the said two documents from consideration. The High Court also ignored the explanation for the discrepancy, offered by the plaintiffs.

8. The first appellate court can re-appreciate evidence and record findings different from those recorded by the trial court. It is well settled that if the appraisal of evidence by the trial court suffers from material irregularity, as for example when its decision is based on mere conjectures and surmises, or when its decision relies upon inadmissible evidence or ignores material evidence or when it draws inferences and conclusions which do not naturally or logically flow from the proved facts, the appellate court is bound to interfere with the findings of the trial court. It is equally well settled that where the trial court has considered the entire evidence and recorded several material findings, the first appellate court would not reverse them on the basis of conjectures and surmises or without analyzing the relevant evidence in entirety. As the final court of facts, if the first appellate court is reversing the judgment of the trial court, it is bound to independently consider the entire evidence. The High Court has ignored these well settled principles. In these peculiar circumstances, we have to examine the correctness of the findings recorded by the High Court.

9. On the contentions urged, the following questions arise for consideration: (i) whether plaintiffs have established their title to the schedule property and entitlement to possession; (ii) whether defendant has proved his title to the schedule property; (iii) whether defendant has perfected his title by adverse possession and therefore the suit is barred by limitation.

Re : Question (i)

10. Plaintiff no.1, examined as PW1, stated that the suit plot was allotted to Hanumakka,

that she sold it to Bellary Muniswamy Pillai, who in turn, sold it to his father. The relevant title documents were exhibited. Though the title/grant certificate issued by the government in favour of Hanumakka was not produced, the plaintiffs produced the payment challan dated 13.3.1940 issued by Bangalore Taluk Treasury (marked as Ex.P3) showing that Hanumakka had remitted Rs.16/6/6 towards the cost of a residential site purchased by her at Subedarpalya, Vyalikaval, Bangalore, in the Treasury on 13.3.1940. Ex.P2 is the sale deed dated 5.9.1940 executed by Hanumakka in favour of Bellary Muniswamy Pillai in regard to the schedule plot wherein she recites that she had purchased the said site no.8 measuring 30' x 35' in the sites laid out by the government in Subedarpalya. Ex.P1 is the sale deed dated 21.4.1950 executed by Bellary Muniswamy Pillai conveying the said plot to Narayanswammappa. Ex.P4 is the endorsement issued by the Village Panchyat showing that Narayanaswamappa was the Kathedar of the suit property (though it mentions only the khata number and not the site number). Ex.P18 is the mortgage decree dated 3.2.1965 passed by the Principal Civil Judge, Bangalore city in O.S. No. 8/1965 filed by Canara Bank against Narayanaswamappa which shows the schedule property as one of the mortgaged properties. Ex.P14 is the will under which Narayanaswamappa bequeathed his properties to his two sons (plaintiffs). These documents clearly make out the title of the plaintiffs to the schedule property and also establish that plaintiffs' father had exercised rights of ownership thereon by mortgaging the said property in favour of Canara Bank.

11.The next question is whether plaintiffs have established that site no.8 in regard to which they produced the documents of title and established the title, is the suit property in the occupation of defendant. The case of the plaintiffs is that the schedule property is situated in a small layout in Subedarpalya formed by the government, shown in the sketch Ex.P15. The defendant has admitted that the property adjoining the suit property to the East, belonged to one Perumal. The plaintiffs have exhibited the sale deed dated 26.9.1955 under which said Perumal purchased the adjoining site no.9 as also the sale deed dated 6.11.1978 under which Perumal sold it to K. Muddukrishna, as Exs.P11 and P12. These documents (Ex.P11 and P12) show that plot no.9 in the layout formed by the government was purchased by one R. Sanniyappa Naidu in an auction conducted by the government and he sold it to Perumal under sale deed dated 26.9.1955 who in turn sold it to K. Muddukrishna under deed dated 6.11.1978. The measurements of the said site no.9 are shown as 30 ft. x 35 ft. These documents also show that site No.8 (suit property) belonging to Narayanaswamappa is situated to the west of the said site no.9. The boundaries and measurements in Ex.P11 and P12 are in consonance with the boundaries of suit property in the title deeds of plaintiffs (Ex.P1 and P2) and the boundaries and measurements in the plan produced by the plaintiff as per Ex.P15. The plaintiffs have thus established the identity of the suit property with reference to the sketch (Ex.P15) and the sale deeds (Ex.P11 dated 26.9.1955 and Ex.P12 dated 6.11.1978) relating to the plot no. 9 adjacent to the suit property, situated to the east of the suit property. We find that the trial court has also by detailed reference to the documents and boundaries identified the property purchased by Narayanaswammppa under Ex.P1 dated 21.4.1950 as the suit property in the wrongful possession of the defendant.

12.The High Court has neither discussed the evidence relating to identity of the suit property nor held that the trial court's finding that plaintiffs have established their title and

identity of the suit property was erroneous. The High Court has rejected the entire case of the plaintiffs merely on the ground that in the mortgage suit of the Bank, the Katha number of the property is wrongly given. The plaintiffs have offered a simple and acceptable explanation by pointing out that in Ex.P17 and P18 (preliminary and final decree in the mortgage suit of the Bank), the katha numbers of items (3) and (4) of the schedule had been interchanged. Item (4) is site no.8 and the katha number has been mentioned as 95 instead of 53. For item (3), Katha number is mentioned as 53 instead of 95. The correct katha number is 53 as is evident from Ex.P4 and P5 issued by the village punchayat.

13. In law, possession follows title. The plaintiffs having established title to the suit property, will be entitled to decree for possession, unless their right to the suit property was extinguished, by reason of defendant being in adverse possession for a period of twelve years prior to the suit.
Re: Question (ii)

14. The defendant has claimed title to the suit property. He, however, contends that the suit property in his occupation bears the site no.18A and measures 25' x 40' and that the said plot was sold to him by Gowramma on 18.11.1985. The defendant contends that the suit property earlier belonged to Gowramma's husband Channabasavanna and on his death, Gowramma became the owner thereof; and that he had taken the said property on rent from in or about the year 1962 and paying rents to Gowramma, till he purchased it from her on 18.11.1985. Defendant has not produced any document to show the title of Gowramma or her husband, though the sale deed dated 18.11.1985 refers to the earlier title deeds. The defendant merely stated that the sale deed dated 18.11.1985 recited about the previous title. The sale deed dated 18.11.1985 (a certified copy which is produced as Ex.D1) said to have been executed by Gowramma, no doubt purports to convey site No.18A measuring 25' x 40' to the defendant. The said sale deed recites that the vendor Gowramma was appointed as guardian of her husband Channabasavanna who was a lunatic; that he had purchased the property, of which what was being sold by her to defendant, was a part, under registered sale deed dated 28.8.1959 (registered as Document No.4725, Book I, Vol.1821, pages 200-204, in the office of the Sub-Registrar, Bangalore North Taluk), and that by virtue of an order (certified copy of which was dated 20.10.1964) made in Misc.C. No.444/1964 by the II Addl. District Judge, Bangalore, she became the owner of the suit property. The defendant, as noticed above, significantly did not produce the previous title deed dated 28.8.1959 or the said order of the District court in Misc. C.No.444/1964.

15. The plaintiffs have produced and marked as Ex. P21 and Ex.P22, certified copies of the petition and order in Misc. C.No.444/1964, filed by Gowramma praying for grant of letters of administration. They show that Gowramma sought letters of administration in regard to two properties left by her husband and that by order dated 19.10.1964 the court granted such relief. The two properties were (i) premises no.9, Fifth cross, Malleswaram, Bangalore (earlier site no.8, in Sy. No.9 of Kayamgutta Ranganathapura, Kasaba Hobli, Bangalore North Taluk) and (ii) Premises no.17, Subedarpalya Vyalikaval, Bangalore North Taluk measuring 30' x 35' bounded on the East by site no.16, belonging to Nanjappa Reddy; West by site no.18, belonging to Raghunath

Singh, North and South by Government road. Admittedly neither of them is the suit property. The first is in Malleswaram. The second is of course in Subedarpalya. What Gowramma inherited from her husband and situated in Subedarpalya was thus site no.17, measuring 30' x 35' which was situated three sites away on the south of site no.8 as is evident from Ex.P15. Defendant did not produce the previous sale deed dated 28.8.1959, as it would apparently show that Gowramma was not the owner of suit property (site No.8), but some other property in the same area, that is plot no.17. Thus Gowramma did not inherit site no.8 (corresponding to municipal no.19 and subsequently referred to as no.18/1) of Subedarpalya, Vyalikaval which is the suit property from her husband, nor did she secure letters of administration in regard to the said site. If Gowramma purported to sell a portion of what was acquired by her under deed dated 28.8.1959 and the order in Misc.C.444/1964, than it would mean that what was sold to defendant was a portion of site No.17 measuring 25' x 40' and not the suit property. Thus Ex.D1 dated 18.11.1985 produced by the defendant does not relate to suit property (site no.8). Merely by changing the site number as 18/A, and securing a sale deed from Gowramma, defendant cannot claim title to suit property, as Gowramma never owned the suit property. It is also of some interest to note that the sale deed dated 18.11.1985 recites that Gowramma had already sold portions of the plot (acquired under deed dated 28.8.1959 and order in Misc.C No.444/1964) to others. If so, it is doubtful anything remained in site no.17 for sale. But it is unnecessary to examine that aspect as we are not concerned with site no.17 at all in this case. The sale deed dated 18.11.1985 alleged to have been executed by Gowramma (Ex.D1 is a certified copy) was clearly a fabricated document in regard to an non-existing site obviously with the intention of laying claim over the suit property. The said deed did not convey any right, title or interest to the defendant in respect of the suit property.

Re : Question (iii)

16. The plaintiffs contended that the plea of adverse possession put forth by the defendant should fail in view of the inconsistent stands taken by the defendant. It is pointed out that the defendant had specifically contended that he was the tenant of the schedule property from 1962 until he purchased the property on 18.11.1985. According to plaintiffs, this was a case of permissive possession and not adverse possession. It is submitted that the defendant having put forth a case of permissive possession, cannot put forth a plea of adverse possession. It was submitted that even assuming that there was a long and continuous possession for more than years, that by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. According to them, the two pleas being mutually inconsistent, the latter plea could not even begin to operate until the former was renounced. Reliance was placed to the following observations of this Court in Mohan Lal (Dead through LRs) vs. Mirza Abdul Gaffar - 1996 (1) SCC 639, made while considering a case where the defendant raised the pleas of permissive possession and adverse possession :

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the (sale) agreement, he must disclaim his right thereunder 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 (not by violence, not by stealth, not by permission). Since the appellant's claim is founded on section 53A (of Transfer of Property Act, 1882), 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."

[emphasis supplied]

17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and

hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide : Periasami vs. P. Periatambi - 1995 (6) SCC 523, Md. Mohammad Ali (dead) by LRs. vs. Jagdish Kalita - 2004 (1) SCC 271 and P.T. Munichikkanna Reddy vs. Revamma ♦ 2007 (6) SCC 59).

18. We are however of the view that the decision in Mohan Lal (supra) relied on by the plaintiffs is inapplicable, as the defendant therein had pleaded that he was in possession, having obtained possession in part performance of a sale agreement. As the defendant therein admitted that he came into possession lawfully under an agreement of sale and continued to remain in such possession, there was no adverse possession. This case is different, as the defendant did not contend that he entered possession under or through the plaintiffs. His case was that he was in possession as a tenant under Gowramma from 1962 and he became the owner by purchasing the plot from Gowramma in 1985. He alternatively contended that if Gowramma did not have title and consequently his claim based on title was rejected, then having regard to the fact that he had been in possession by setting up title in Gowramma and later in himself, his possession was hostile to the true owner; and if he was able to make out such hostile possession continued for more than 12 years, he could claim to have perfected his title by adverse possession. There is considerable force in the contention of defendant provided he is able to establish adverse possession for more than 12 years. When a person is in possession asserting to be the owner, even if he fails to establish his title, his possession would still be adverse to the true owner. Therefore, the two pleas put forth by the defendant in this case are not inconsistent pleas but alternative pleas available on the same facts. Therefore, the contention of the plaintiffs that the plea of adverse possession is not available to defendant is rejected.

19. But then the question is if the defendant did not make out his title, whether adverse possession of defendant for a period of more than 12 years prior to the suit has been established? The specific case of defendant was that he was the tenant of Gowramma in regard to the schedule property (vacant site) from the year 1962, initially on a monthly rent of Rs.30 which was later increased to Rs.40/- and again to Rs. 60/- and that he continued as such tenant till 18.11.1985 when he purchased the suit property from Gowramma. We have already held that Gowramma did not own the suit property, but apparently owned a property three or four sites away from suit property. We have also held that no title was conveyed to defendant under the deed dated 18.11.1985. The only material produced by defendant to show that he was in possession from 1962, is the recital in the sale deed dated 18.11.1985. As the sale deed dated 18.11.1985 is established to be a bogus and false document, the claim of defendant that he was in occupation of the suit site as a tenant from 1962, is liable to be rejected.

20. The only other evidence produced by defendant to prove his possession is the judgment dated 18.9.1979 in the suit filed by him against the Corporation of City of Bangalore in the year 1978, when it proposed to take action against him for unauthorized construction in the schedule site. Here again, the defendant did not produce either the plaint or the judgment. The plaintiffs produced and marked the judgment as Ex.P13. The said judgment shows that the defendant did not claim that the property belonged to Gowramma or that he was the tenant of Gowramma in the said site. On the other hand, he merely alleged that he was in possession of plot No. 18A. The Bangalore City Corporation denied his ownership and possession and contended that he had no right, title, or interest in the suit property and pointed out that he had carefully avoided any reference to the source of his title or payment of property taxes in regard to suit property and that there was no allegation that the katha stood in his name. It also specifically contended that defendant was living in the adjoining premises as tenant and that he had recently constructed a cowshed unauthorisedly in the suit property with bamboos, zinc sheets and thatched leaves. The court by its judgment dated 18.9.1979 held that defendant herein was not the owner of the property. It also held that he had not perfected his title by adverse possession. But as defendant herein was found to be in possession of the plot, the court granted an injunction against the Bangalore City Corporation, on the ground that even a trespasser was entitled to protect his possession. The description given by defendant in regard to suit property is of some interest and is extracted below : "Property adjoining site No.18 (numbered as 18/A for the sake of convenience) situated in First Street, Subedarpalya, Yeshwanthpur, Bangalore 22, measuring 35 feet by 25 feet bounded on the East by first street, west by House of Victor Julius, North by House of Hanumappa, and south by House Venkatappa."

21. Plaintiffs examined Victor Julius, (who is described by defendant as the western neighbour in the said injunction suit) as PW2. He stated that he is the husband of Suvarna who owns site no.14 situated to the South of site no.8 divided by a conservancy lane. He stated that the defendant was a tenant under one Muddukrishna in a portion of one of the three houses situated in the adjoining site no.9 known as Perumal's compound. He has further stated that about 10 years prior to the date of his evidence (19.9.2002), the defendant put a house in the back portion of site no.8. This clearly shows that the defendant mixed up the description of two properties to create an

imaginary property. The description in the injunction suit shows that there was no site bearing the number '18A' and that number was given by defendant only for convenience. It also describes the plot as plot next to plot 18. Plot next to plot No.18, would refer to plot 17 belonging to Gowramma and not plot No.8 which is the suit property. It is also evident from the evidence of Victor Julius that plot No.8 (suit property) was to the North of his property with a conservancy road separating the two properties. The schedule in the injunction suit filed by defendant against Corporation of City of Bangalore does not fit the suit property at all.

22. Plaintiffs also examined one Muniappa as PW3 who states that he has been staying in the house opposite to site no.8 (on the Northern side) since 1950 and that one Perumal was the owner of the adjoining site no.9 wherein he had constructed three small houses; that Perumal had sold the property no.9 to Muddukrishna; and that defendant was staying in one of the houses no.9 as a tenant of Muddukrishna. He also stated that the defendant put up a small shed in a part of site no.8 which was lying vacant, to tether his cows and subsequently, in the year 1992 (during the pendency of the suit) constructed a house in site no.8. He has also stated that Gowramma was earlier living in the same locality four houses away.

23. The judgment in O.S. No.578/1978 (Ex.P13) relied upon by defendant and the evidence of PW2 and PW3 would clearly establish that the defendant was residing in the property of Muddukrishna (site No.9) adjoining the suit property as a tenant, and that he had unauthorizedly put up a temporary cattle shed in the suit property in or about the year 1978. This may at best prove adverse possession of suit property by defendant from 1978.

24. The defendant has not produced any evidence to show that he was in possession of the suit property for a period of 12 years prior to the filing of the suit by plaintiff on 24.6.1987. Neither the correspondence between defendant and City Survey Department subsequent to the suit nor the katha, sanction of plan and tax receipts of the years 1991, 1992, and 2002 (all subsequent to the suit), are of any relevance. The defendant did not examine either Gowramma or any other neighbour to show that he was in continuous possession of the suit property for more than 12 years. Except his vague and interested statement which is proved to be false, there is no evidence to show that he was in possession for a period of 12 years prior to the suit of plaintiffs.

25. When defendant claimed title and that was proved to be false or fabricated, then the burden is heavy upon him to prove actual, exclusive, open, uninterrupted possession for 12 years. In this case we have already held that he did not make out such possession for 12 years prior to the suit. While the plaintiffs have made out a clear and absolute title of the property, the defendant has not been able to make out title or adverse possession for more than 12 years. The High Court did not examine any of these aspects and by a cursory judgment, reversed the well considered judgment of the trial court. Therefore the decision of High

Court cannot be sustained.

26. We therefore allow this appeal with costs, set aside the judgment and decree of the High Court and restore the judgment and decree passed by the trial court.