

SUPREME COURT OF INDIA

Chatti Konati Rao

Vs.

Palle Venkata Subba Rao

C.A.No.6039 of 2003

(Harjit Singh Bedi and Chandramauli Kr. Prasad JJ.)

07.12.2010

JUDGMENT

Chandramauli Kr.Prasad, J.

1. Plaintiff No. 1 is the son of plaintiff No. 2, whereas original defendant Nos. 1 and 2 were brother and sister of the second plaintiff. Both the defendants died during the pendency of the suit. The heirs and legal representatives of the first defendant were substituted in his place and they had contested the suit.

2. Plaintiff filed the suit for recovery of possession in respect of several properties mentioned in schedule of the plaint and in the present appeal we are concerned with Schedule - I property i.e. four acres of land pertaining to R.S. No. 44/3 situate at village Vijjeswaram, hereinafter referred to as the land in dispute.

3. According to the plaintiffs their predecessor-in-interest viz., one Venkata Ramana Rao, who happened to be the father of plaintiff No. 1 and husband of plaintiff No. 2, was the owner of land in dispute. Venkata Ramana Rao was a Government employee and in his absence defendant No. 1 i.e. elder brother of second plaintiff used to look after his property. Said Venkata Ramana Rao died in the year 1948 and thereafter the plaintiffs came back to the village and started looking after the agricultural land including the land in dispute. Plaintiff's case further is that again in the year 1954 they shifted their residence to Kakinada for education of the first plaintiff and defendant No. 1 was asked to look after the land in dispute. In the year 1974 when the defendant declined to deliver possession of the land in dispute, lawyer's notice dated 6th April, 1974 was issued calling upon the defendants to hand over the property. Defendant No. 1 responded to the notice by his letter dated 27th May, 1974 denying the title of the plaintiffs and claiming himself to be the owner of the property. Plaintiffs thereafter filed the suit bearing O.S. No. 20 of 1974 in the Court of the Subordinate Judge, West Godavari District, Kovvur for recovery of possession in respect of land in dispute and for mesne profit.

4. In the written statement filed by defendant No. 1 his plea was that he purchased the land in dispute under a stamped agreement from Venkata Ramana Rao for a value of Rs.1600/-. According to him he paid Rs.1,000/- to Venkata Ramana Rao and a sum of Rs.225/- to one Bombothu Chitteyya who was the tenant and in possession of the land in dispute during 1943 and said tenant vide letter dated 16th June, 1943 relinquished his possession and delivered the land to defendant No. 1. It is further case of defendant No. 1 that balance amount of Rs.400/- was sent by Money Order. After the death of Venkata Ramana Rao, defendant No. 1, the second plaintiff claimed more money towards the sale of the land in dispute and plaintiff No. 2 being the sister of defendant No. 1, a further sum of Rs.500/- was paid to her vide receipt dated 14th January, 1952 (Exh.B-4).

5. Plea of defendant No. 1 further is that on 6th November, 1960 he filed an application before the Assistant Settlement Officer for correction of rough patta issued in favour of second plaintiff in 1959 and to substitute his name along with his brother's name in place of second plaintiff. In the application defendant No. 1 categorically stated that on 18th February, 1954 the Settlement Officer directed issuance of patta of the land in dispute along with other lands in their favour and he was all through waiting for the issuance of patta. However, according to defendant No. 1, in August, 1959 he came to know that a rough patta was issued to second plaintiff contrary to the decision of the Settlement Officer and thereafter he filed an application on 7th November, 1959 before the Rough Patta Correction Officer informing him about variance between grant and the order and prayed that the name of the second plaintiff be deleted from the patta and in her place his name and that of his brother's name be substituted. According to defendant No. 1 he filed reminder on 6th November, 1960 but it was returned by the Assistant Settlement Officer on 22nd November, 1960 with certain objections. Thereafter the first defendant did not present the petition for substituting his name in the patta by deleting the name of the second plaintiff. Further plea of the first defendant was that he had perfected his title by adverse possession.

6. On the basis of the pleadings of the parties the trial court framed various issues; including the following issues:

“1. Whether the father of the 1st plaintiff late Venkata Ramana Rao died possessed of the plaint schedule properties?

2. Whether any of the suit properties were entrusted to any of the defendants in or about the year 1952?

3. Whether sale of item I of the schedule property to 1st defendant in 1943 is true?”

7. It is relevant here to state that no issue of adverse possession was framed but on the basis of the materials on record the trial court came to the conclusion that title to the plaintiffs even if proved, gets extinguished by adverse possession. It further held that defendant No. 1 is in possession of the suit property and when considered along with other documents, the same proves his title. The trial court also observed that the plaintiff having not adduced any oral

evidence or filed any document to show that the property was entrusted to defendant No. 1 for management, it is evident that defendant No. 1 has title over the land in dispute. The trial court further held that defendant No. 1 had purchased the land in dispute and on these findings the trial court dismissed the suit.

8. Plaintiffs, aggrieved by the judgment and decree of the trial court, preferred appeal before the High Court and the learned Single Judge by his judgment and decree dated 16.09.1987 dismissed the appeal. Plaintiffs thereafter preferred Letters Patent Appeal No. 438 of 1988 and the Division Bench of the High Court by its judgment and decree dated 19.12.2001 allowed the appeal; set aside the judgment and decree of the trial court as well as of the appellate court and decreed the suit. While doing so the High Court observed as follows:

“From the documentary evidence available on record, it cannot be said that the first defendant has perfected his title to the property by adverse possession. On the other hand, he tried to change his version from time to time to suit his convenience i.e., firstly, in the written statement he contended that he had purchased the property from late Venkata Ramana Rao and produced two letters said to have been written by Venkata Ramana Rao, whose writing is not at all tallying, and we have no manner of doubt that these letters were brought into existence by the first defendant in support of his case. Secondly, the first defendant filed an application in year 1964 before the Settlement Officer contending that himself and his brothers are Aghraharamdars and are entitled to patta under section 15 of the Estates Abolition Act, but he never disclosed that he had purchased the land from his brother-in-law. Though he obtained an order from Assistant Settlement Officer in the year 1964, no patta was issued to DI till the trial of the suit on the other hand even as per his version rough patta was issued in the name of 2nd plaintiff, but he has not taken any steps to get it cancelled. Now, he started contending that he perfected title by adverse possession. As he himself admitted that initially his possession is permissive one as he was not paying any rents and enjoying the property to himself to exclusion of the land owners, he cannot contend that he perfected title by adverse possession; more so in the light of Exs. B-5 and B-9 wherein both the parties are fighting for patta after abolition of the estate. In order to establish that the first defendant had perfected his title to the property by adverse possession, it requires more cogent proof, which is not forthcoming in this case. On the other hand, if we analyse the documentary evidence available on record, the only conclusion we can arrive at is that taking advantage of the near relationship between him and the plaintiffs and their absence from the village, the first defendant tried to create documents to knock away the property. We have not discussed the oral evidence for the simple reason that the documentary evidence itself speaks of the falsehood of the claim of defendants.”

9. Heirs and legal representatives of defendant No. 1, aggrieved by the same, have preferred this appeal with leave of the Court.

10. Mr. Ananga Bhattacharya, learned counsel appearing on behalf of the appellants submits that the concurrent findings of facts of the trial court and the appellate court ought not to have been upset by the Division Bench in Letters Patent appeal. We do not find any substance in the submission of Mr. Bhattacharya. In fact, while setting aside the judgment and decree of the trial court and the appellate court the Division Bench referred to the decision of this Court in the case of *Asha Devi v. Dukhi Sao*¹, and came to the conclusion that the "power of the Division Bench hearing a Letters Patent appeal under Clause (10) from the judgment of a single Judge in first appeal is not limited only to a question of law under Section 100 of the Code of Civil Procedure, but it has the same power which the Single Judge has as a first Appellate Court in respect of both questions of fact and of law." We are of the opinion that the High Court was absolutely right in making the aforesaid observation and accordingly we reject this submission of Mr. Bhattacharya.

11. Mr. Bhattacharya, then submits that the appellants had perfected their title by adverse possession and the findings so recorded by the trial court and the appellate court ought not to have been interfered in appeal. Mr. Abid Ali Beeran, learned counsel appearing on behalf of the respondent, however, submits that the finding recorded by the trial court and the appellate court being absolutely illegal, nothing prevented the Division Bench of the High Court to set aside that finding.

12. We have bestowed our thoughtful consideration to the submission advanced and we do not find any substance in the submission of Mr. Bhattacharya. What is adverse possession, on whom the burden of proof lie, the approach of the court towards such plea etc. have been the subject matter of decision in a large number of cases. In the case of *T. Anjanappa v. Somalingappa*², it has been held that mere possession however long does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owner's title. Relevant passage of the aforesaid judgment reads as follows:

“20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.”

13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of *Karnataka Board of Wakf vs. Government of India and Ors.*³. It has also been observed that a person pleading adverse possession has no equities in his favour

and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

“11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See *S.M. Karim v. Bibi Sakina*⁴, *Parsinni v. Sukhi*⁵ and *D.N. Venkatarayappa v. State of Karnataka*⁶ Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma*⁷]”

14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession

was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

15. Bearing in mind the principles aforesaid when we proceed to consider the facts of this case, we find that appellants have miserably failed to prove that they have perfected their title by adverse possession. It is worth mentioning here that initial plea of the appellant was that they had purchased the property from the original owner, alternatively by virtue of agreement to sale they came in possession of the property. Both these pleas have not been substantiated. Neither the purported sale deed nor agreement to sale have been placed on record. As regards the plea of adverse possession, appellants' case is that out of the consideration money of Rs.1,600/-, Rs.1,000/- was paid to the real owner and on payment of Rs. 225/- to the tenant in possession namely Bombothu Chitteyya, he relinquished his possession. This relinquishment of possession by the tenant shall not enure to the benefit of the appellants against the true owner so as to accept their claim for adverse possession. Appellants are required to prove that their possession was adverse to the true owner. The plea of the appellants on the basis of the purported order dated 18th February, 1954 of the Settlement Officer directing for issuance of Patta in their favour also does not advance their case. It is not the appellant's case that plaintiffs were party before the Settlement Officer. Further, it is not in dispute that no Patta was issued in favour of the appellants and in fact rough Patta was issued in favour of the second plaintiff. Thus, the appellants have not proved the necessary ingredients to establish their title by adverse possession. In our opinion, the Division Bench is absolutely right in rejecting the appellants' plea of adverse possession and decreeing the plaintiff's suit, after setting aside the judgment and decree of the trial and the appellate Court.

16. In the result, we do not find any merit in the appeal and it is dismissed with cost throughout to be paid by the appellants to the respondent. Lawyers fee quantified at Rs.25,000/-.

¹[AIR 1974 SC 2048: (1974) 2 SCC 492]

²(2006) 7 SCC 570

³(2004) 10 SCC 779

⁴AIR 1964 SC 1254

⁵(1993) 4 SCC 375

⁶(1997) 7 SCC 567

⁷(1996) 8 SCC 128