

# SUPREME COURT OF INDIA

Krishnamurthy S.Setlur

Vs.

O.V.Narasimha Setty

C.A.No.6111 of 2009

(Deepak Gupta and Aniruddha Bose,JJ.,)

26.09.2019

## JUDGMENT

**Deepak Gupta,J.,**

1. By this judgment we hope to bring quietus to a dispute which has its genesis to facts prior to the independence of the country. The parties through their predecessors have been litigating for more than 70 years.

2. Krishnamurthy S. Setlur (hereinafter referred to as 'KS'), was the predecessor-in-interest of the appellants. He was obviously a very rich landlord. H.R. Narayana Iyengar was the predecessor-in-interest of the contesting respondents. It appears that HR used to manage the properties of KS. KS had executed a general power of attorney in favour of HR to manage the properties and he used to manage and sell properties on behalf of KS.

3. In 1942 KS, through his general power of attorney HR, purchased the suit properties from the then land owner. On 22.10.1946, KS revoked the power of attorney. In 1947, HR filed a suit for recovery of certain amounts which he alleged that he had incurred to recover the property of KS. In 1948, KS filed a suit against HR seeking return of some documents. These two suits had no direct bearing on the present case, but have been referred to bring out the history of the dispute. In 1949, KS along with his brother, filed a suit against HR seeking a declaration that the suit property belonged to the plaintiff. It was urged that though the property had been purchased by KS with his own money, the sale deed was effected in favour of HR, who was nothing more than a benamidar of KS. This suit which was originally the Suit No.101/1948-1949 was later numbered as O.S. 94 of 1956.

4. About the same time, HR filed a suit being O.S. No.79 of 1949 seeking injunction against KS and the tenant K. Achyuthananatha Raju (hereinafter referred to as 'AR'). The stand of HR was that earlier he was in possession of the suit land as a lessee and later vide sale deed executed in 1942, he had taken possession of the suit land and he sought an injunction restraining KS and AR from interfering in the suit land. KS took the plea that he was the true owner of the property and AR was the tenant. The trial court dismissed the

suit filed by HR holding that HR was not in possession of the suit property. The trial court held that AR was a tenant under KS. However, the trial court also observed that HR could file a suit for possession. This judgment was delivered on 28.02.1951. The trial court specifically held that it could not go into the issue of title in the said suit. HR filed an appeal against the said judgment. In the first round, the appeal was allowed by the first appellate court but on an appeal filed by KS in the High Court (being RSA No.338 of 1953), the High Court vide judgment dated 07.08.1959, remanded the matter to the first appellate court for re-hearing. During the pendency of the appeal after remand, HR died and his legal representatives were brought on record. After remand, the appeal filed by HR was again dismissed by the first appellate court confirming the judgment and decree of the trial court and AR was held to be tenant in possession of the suit land. Admittedly, no appeal against the said judgment has been filed and the same had become final.

5. According to KS and the appellants before us, since the trial court had held that KS was in constructive possession of the property through his tenant AR, confirmation of this decree meant that the Appellate Court had affirmed this finding. According to them, this finding is binding on all the parties.

6. During the pendency of the case filed by HR, as pointed out above, KS had also filed a suit which was later renumbered O.S. 94 of 1956. This suit was dismissed on 10.11.1961. It was held that KS had failed to prove that HR had purchased the properties as benamidar of KS. His claim for ownership to the properties was rejected. Appeal was filed by KS against this judgment which was dismissed in default on 27.07.1966 and the same attained finality.

7. According to KS, on 16.04.1962, he entered into a settlement with his tenant AR with regard to the tenancy rights in respect of the suit land. Accordingly, a registered sale-cum-release deed was jointly executed by KS and AR. In terms of the settlement, AR retained an area of 6 acres 25 guntas in Survey No. 85 (Part) and the balance land was released in favour of KS. An application for approval of the settlement was filed before the Tehsildar, Bangalore (Exhibit P-10) and the Tehsildar passed an order (Exhibit P-11) accepting the application and the surrender of tenancy rights by AR in favour of KS. He permitted KS to take possession of the suit property from AR. According to KS, he had been in possession of the suit property and he also applied to the revenue authorities for entering his name in the revenue record and in February, 1963 his name was entered in the revenue record. Further, according to KS, despite the settlement, AR again tried to interfere in the possession of KS and AR illegally sold some portion of the land which he had surrendered, to some other persons compelling KS to file Suit No.O.S. 89 of 1963 against AR. In this suit HR or his legal heirs were not made parties. This suit was dismissed on 20.07.1967 by the trial court. Appeal filed by KS was dismissed by the first appellate court on 31.07.1970. RSA No.545 of 1973 was filed by KS. This appeal was allowed and vide judgment (Exhibit P-14) dated 14.08.1981, KS was held to be the owner in possession of the property and a decree for injunction was granted against AR and the other defendants.

8. Thereafter, KS leased out some portion of the suit property to a builder for carrying out

quarrying operations. At this stage, the legal heirs of HR lodged a complaint that they were the true owners of the property. Thereafter, KS was compelled to file O.S. No. 3656 of 1981 out of which the present proceedings arise. In this suit KS claimed that legal heirs of HR were illegally trying to dispossess the plaintiff-appellant and he sought a decree for permanent injunction. In this suit while, on the one hand, KS claimed ownership on the ground that HR was a benamidar, but in the alternative, he claimed that having been in possession of the land and having claimed ownership thereof in a manner hostile to the true owner, his possession had fructified into title by way of adverse possession. Subsequently, the suit was amended and it was pleaded that KS had been forcibly dispossessed from the land. This suit was decreed by the trial court on 11.10.1996. The trial court held that the plaintiff- appellant was in uninterrupted and peaceful possession of the property for over 12 years and had perfected his titled by adverse possession and it was further held that he was wrongly dispossessed by the defendants during the pendency of the suit and, hence, decreed the suit in favour of KS. Appeal was filed by legal heirs of HR in the High Court of Karnataka at Bangalore, which was allowed on 22.03.1999. Thereafter, KS filed a special leave petition in this Court. After leave was granted, this was registered as Civil Appeal No.5079 of 2000. In the said appeal, judgment of the High Court was set aside and the matter was remanded to the High Court for fresh consideration in accordance with law. After remand, the High Court again allowed the appeal vide the impugned judgment dated 28.09.2007, leading to this appeal.

9. Some ancillary facts also need to be noted. Sometime, in the year 1982 AR filed an application before the land tribunal claiming occupancy rights in the suit land. KS was not impleaded as a party in the suit even though his name was recorded in the revenue record. The names of HR and his successors were mentioned as owners. Surprisingly, in this petition, AR made a statement before the tribunal that he had never been a tenant in the suit property and had no document to prove his tenancy. KS filed an application for impleadment before the tribunal, which was rejected. It appears that the tribunal held that the land had not vested in the Government and is not tenanted land and rejected the application filed by KS. It appears that after this the name of KS which had been shown in revenue record from 1963 to 1981, was struck off without any notice to him. Thereafter, KS filed an application for recording his name as owner in the revenue record and the Deputy Tehsildar vide order dated 27.05.1993 directed that the name of KS be entered in the revenue record. The legal heirs of HR were parties to these proceedings and they filed an appeal before the Assistant Commissioner, which appeal was dismissed on 31.12.1998.

10. From a perusal of the above facts, it is apparent that the claim of KS that he was the true owner of the land had been negated at all stages. Therefore, HR was, no doubt, the owner of the land. The issues are - whether KS was in possession of the land, was his possession hostile to the true owner and has this adverse possession matured into ownership?

11. In O. S. No. 79 of 1949 filed by HR, the trial court held that AR was a tenant under KS. This judgment was upheld in appeal. It is true that the Appellate Court did not clearly uphold the findings of the trial court that AR was a tenant under KS, the fact of the matter

is that HR was not held to be a tenant of KS. On the other hand, the suit filed by KS claiming that he was the true owner, which was originally numbered as O.S. No.101 of 1948-1949 and later numbered as O. S. No.94 of 1956, was dismissed and this has attained finality.

12. AR and KS entered into an agreement wherein AR retained some portion of the land and released the balance land in favour of KS. The surrender of tenancy rights was approved by the competent authority and KS was permitted to take possession of the suit property. The property was duly entered to be in his possession in February, 1963. Therefore, though KS may not be the true owner of the property, he obtained possession from AR by claiming himself to be the owner and came into possession of the property. Thereafter, in a litigation filed by KS against AR, KS was held to be the owner in possession of the property. It is, however, pertinent to note that neither HR nor the legal heirs of HR were parties in the proceedings before the revenue authorities or in Suit No. O.S.89 of 1963.

13. The next important date is 1981 when KS filed O.S. No.3656 of 1981 out of which the present proceedings arise. Therefore, the claim of KS had been that he was in possession of the land from 1963 to 1981 claiming ownership as against HR and that his possession had matured into title. The Trial Court held in favour of KS. The High Court has set aside these findings mainly on the ground that KS was not the true owner of the property.

14. In our considered view, the High Court has not given any cogent reasons for coming to the conclusion that KS was not in possession of the property. His name figured in the revenue record from 1963 to 1981 as the owner in possession. Presumption of truth is attached to revenue record which has not been rebutted. The High Court has held, and rightly so, that in the proceedings decided in favour of KS, HR or his legal representatives were not made parties. However, the High Court lost sight of the fact that in the proceedings filed by AR, KS was not impleaded as a party though his name was shown in the revenue record. It is obvious that both sides had tried to obtain orders behind each other's back. Reliance cannot be placed on either of the documents in which all the parties were not duly represented. The net result is that KS is not the owner of the property, but it is equally true that from 1963, he had been shown to be in possession pursuant to the application (Exhibit P-10) and the order (Exhibit P-11) of the Tehsildar. This possession was adverse to the true owner. It was openly hostile to the claim of HR and his legal representatives and they never filed a suit for possession of the property. Once it is held that KS was in possession of the suit property, the consequence will be that he is in adverse possession. The legal representatives of HR have failed to show- how they obtained possession from HR. Even, according to the case of HR, it was AR who was in possession as a tenant. AR surrendered part of the land to KS and not to HR. No doubt, in later proceedings in which KS was not a party, AR made a statement that he was never a tenant in the suit, but such statement flies in the face of the pleadings of AR in O.S. No.79 of 1949 filed by HR and the decisions in those proceedings. Furthermore, AR had executed a registered sale- cum-release deed jointly with KS and this was ratified by the Tehsildar.

15. In view of the aforesaid facts, it is apparent that the legal heirs of HR miserably failed to prove how they came into possession of the suit property. Therefore, we are clearly of the view that the High Court gravely erred in coming to the conclusion that KS was not in possession of the suit property when the suit was filed. He may have been dispossessed after filing of the suit but that has no effect on the case.

16. In a reference made to a larger Bench of this Court in this case as well as in other connected matters in the case of *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.*, the larger Bench had held that the plea of adverse possession can be used both as an offence and as a defence i.e. both as sword and as a shield. Relevant portion of the judgment reads as follows:-

“59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

61. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.”

17. Thus, there can be no manner of dispute that a plaintiff can claim title to the property based on adverse possession.

18. In view of the above discussion, the appeal is allowed, judgment and decree of the High Court is set aside and that of the trial court is restored. Pending application(s), if any, stands disposed of.