
(2002) 07 AP CK 0064
In the Andhra Pradesh High Court
Case No : AS No. 1427 of 1995

Ambam Pedda Sailu and Others

APPELLANT

Vs

Viswanatha Tulla and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 19(2), 32
Limitation Act, 1963 — Article 65

Citation : (2002) 5 ALD 125 : (2003) 3 ALT 669

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : B. Subhash Reddy, for the Appellant; Vilas V. Afzul Purkar, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This appeal suit preferred by the defendants is directed against the judgment and decree dated 4.8.1995 made in OS No.22 of 1991 by the learned Additional District and Sessions Judge, Nizamabad. OS No.22 of 1991 was originally filed by the 1st respondent herein, viz., Viswanatha Tulla s/o Rajanna for recovery of possession of the plaint schedule properties and for mesne profits, past and future. During the pendency of the suit, he died and respondents 2 to 5 herein were brought on record as plaintiffs 2 to 5 as the legal representatives of the deceased plaintiff.

2. The case of the plaintiff is as follows: He is the absolute owner of the plaint schedule properties and he has raised mango, tamarind, gova and amla trees therein. He has also dug a borewell and fixed an oil engine. As there are fruit bearing trees and the plaintiff lived at a different place, he engaged the services of one Ambam Yellappa to take care of the plaint schedule properties and the fruit bearing trees existing thereon under a noukarnama executed on 1-4-1967 for a period of two years and that noukarnama was renewed on 11-2-1969. The

plaintiff himself has been cultivating the plaint schedule properties using the services of Ambam Yellappa under the noukarnama kharar. The 1st defendant is the wife of the deceased Ambam Yellappa and defendants 2 to 4 are his children. As the value of the plaint schedule properties increased, Ambam Yellappa, on 17.5.1974, filed an application for rectification of the Pahanis from 1964-65 to 1975-76 and secured a favourable ex-parte order without notice to the plaintiff. Later on Ambam Yellappa filed another application before the Tahsildar for grant of injunction alleging that the plaintiff tried to interfere with the possession and enjoyment of the plaint schedule properties. The Tahsildar passed an order in File No. A. 10/12527/78 granting injunction in favour of Ambam Yellappa, and the plaintiff being aggrieved by the said order preferred appeal to the Collector and obtained stay. On 17.9.1976 the said appeal was closed by the Collector on the ground that the subject-matter of the dispute is of civil nature. In the year 1976, the plaintiff had raised sugar cane and paddy crops in the plaint schedule property. On 26.12.1976, Ambam Yellappa, defendants 2 to 4 along with anti-social elements came to the plaint schedule property, damaged the crops and took possession of the plaint schedule property forcibly. On a complaint made by the plaintiff, the Tahsildar conducted an enquiry and rejected the claim of Ambam Yellappa that he is a tenant, by his order dated 12-6-1981. Against the said order, the defendants as legal representatives of deceased Ambam Yellappa, preferred appeal before the Joint Collector and the Joint Collector on 22-8-1985 allowed the appeal in favour of the defendants. Aggrieved by the said order, the plaintiff filed C.R.P. No. 1066 of 1986 in this Court and this Court allowed the C.R.P. holding that the defendants are not tenants and the order made by this Court is also confirmed by the Supreme Court by dismissing the SLP filed by the defendants.

3. The defendants contested the suit by filing written statement. However, in the written statement the defendants admitted that the plaintiff is the owner of the plaint schedule property, that the plaintiff was not in possession of the plaint schedule property and that the defendants have been in actual possession as tenants and the plaint schedule property was developed by late Ambam Yellappa by spending huge amounts. They claim that they have dug a bore well and planted an oil engine in plaint schedule property. The execution of the noukarnamas is denied as fabricated ones. They claim that late Ambam Yellappa cultivated the plaint schedule property as a tenant for the last 50 years and he was in actual possession till his death, and after his death defendants 2 to 4 have been in possession and enjoyment of the same. They claim that the plaintiff is absentee landlord and a permanent resident of Bombay.

4. The learned trial Judge, having regard to the pleadings of the parties, framed the following issues for trial:-

1. Whether Ambam Yellappa is employed by the plaintiff as a servant to watch the fruit bearing trees and land?
2. Whether the plaintiff is illegally dispossessed from suit lands in 1976?

3. Whether the Court has jurisdiction to try the suit?
4. Whether the suit is barred by limitation?
5. To what relief the parties are entitled to?

Addl. issues framed on 12-2-1993:

1. Whether defendants and late Ambam Yellappa have been in possession of suit land since 1954 and if so whether their possession is adverse to the plaintiff by implication?
2. Whether the defendants are estopped from claiming adverse possession when their claim is as tenants of suit land?

Addl. issue framed on 22.2.1995.

Whether the suit is abated as contended by the defendants?

Issues framed at the time of judgment:

1. Whether the plaintiff is entitled to past mesne profits and if so at what rate?
2. Whether the plaintiff is entitled to future mesne profits?
5. On behalf of the plaintiffs, PWs.1 to 4 are examined and Exs.A1 to A30 are marked. On behalf of the defendants, DWs.1 to 3 are examined and Exs.B1 to B35 are marked. The learned trial Judge, on appreciation of oral and documentary evidence and answering the issues in favour of the plaintiffs and against the defendants, decreed the suit with costs directing the defendants to deliver possession of the plaint schedule properties to the plaintiffs and in case of failure further directing that plaintiffs are entitled to past profits at Rs,5000/- per annum with interest at 6% per annum from the date of suit till date of realisation, by judgment and decree dated 4-8-1995. Hence this appeal by the defendants.
6. We have heard Sri R.Subhash Reddy, learned Counsel for the appellants and Sri Vilas v. Afzul Purkar, learned Counsel for the respondents. Sri R. Subhash Reddy did not advance any arguments before us assailing the findings recorded by the learned trial Judge on the issues framed by the trial Court, except issue No.(iv). Issue No.(iv) reads as follows :

"Whether the suit is barred by limitation?"

Sri R. Subhash Reddy contended that the finding recorded by the learned trial Judge that the suit is not barred by limitation is totally erroneous and contrary to Article 65 of the Schedule to the Limitation Act, 1963 (for short, "the Act"). Elaborating the contention, learned Counsel contended that in the written statement filed by the defendants it was specifically contended that late Ambam Yellappa cultivated the plaint schedule properties as a tenant for the last 50 years and he was in actual possession and enjoyment of the same till his death

and after his death, defendants 2 to 4 are in possession and enjoyment of the same, and even according to the plaintiffs they were dispossessed from the plaint schedule properties on 26-12-1976. Therefore, the learned trial judge ought to have applied the limitation of 12 years prescribed under Article 65 of the Schedule to the Act for the suit for possession of immovable property or any interest thereon based on title. According to the learned Counsel, the possession of the defendants became adverse to the plaintiffs at least from 26-12-1976 when admittedly the plaintiffs lost their possession.

7. Sri Vilas v. AfzuI Purkar, learned Counsel for the respondents, on the other hand, contended that the limitation prescribed under Article 65 is not attracted to the facts of this case, because, the limitation prescribed in the said Article never began to run. The learned Counsel, drawing our attention to the averments in paras 2(b), 3(a), 4, 6, 8 and 15 of the written statement filed by the defendants, pointed out that even according to the defendants, they have been in possession of the plaint schedule properties as tenants and if that is so, a tenant's possession can never be regarded as possession adverse to the plaintiffs.

8. We find force in the contention of the learned Counsel for the respondents. It is well-settled that if possession pleaded is permissive, it will never become adverse. The defendants 1 to 4, in their written statement, have stated in para 2(b) that "the plaintiff was not in possession of the suit lands, but the suit lands were in possession of these defendants as tenants."; in para 3(a) that "in respect of the lands acquired bearing S.No. 2351 by the Government, these defendants claimed compensation as tenants of the said lands for being deprived of their rights."; in para 4 that "but the suit lands Were fallow lands which were developed by the husband of defendant No. 1 and father of defendants 2 to 4 by name Ambam Yettappa taking on lease and invested huge amounts and labour and made the lands cultivable."; in para 6 that "in fact, Ambam Yettappa was cultivating the suit lands as tenant from last (50) years,"; in para 8 that "the real facts are that late Ambam Yellappa, the husband of defendant No. 1 and father of defendants 2 to 4 has been in possession of the suit lands as tenant by cultivating them and paying rent to the plaintiff,"; in para 15 that "that these defendants being Tenants of suit lands, the provisions of A.P. Telangana tenancy in Lands Act apply and the jurisdiction of the civil Court is barred for grant of reliefs."

9. It needs to be noticed that a permissive possession would never become an adverse possession regardless of any length of time. The question whether possession is permissive or not depends upon the circumstances of the particular case. Whether possession is proved to be in its origin permissive, it will be presumed that it will continue to be of the same character until and unless something occurred to make it adverse. A permissive possession is not one in denial of the title of the true owner and consequently not adverse to the true owner and, therefore, it will not enable the possessor to obtain title by adverse possession. The necessary animus to possess the property adverse to the real

owner would be non-existent if the possession is permissive. Permissive possession and hostile animus to possess are conceptually different fields. Permissive possession does not become adverse by a mere change in the mental attitude of the person in possession.

10. It is for the person setting up hostile title to prove from which day the permissive possession became hostile. The possession required must be *net vi nei clam nei preposia*. Heavy burden lies upon the person in permissive possession to establish that it became adverse. In the instant case, it is the admitted case of the defendants that Ambam Yellappa and after his death defendants 1 to 5 have been in possession as tenants. That is their consistent case as reflected in their written statement. It is well-settled by the judgment of the Privy Council in AIR 1935 59 (Privy Council) and large number of decisions of almost all High Courts that a tenant's possession is not adverse to his landlord. The reason is that a tenant cannot dispute his landlord's title so long as he remains in possession under an agreement which he made with him, though such agreement is subsequently found to be irregular or illegal. Tenant's possession could not be treated as *prima facie* adverse to the landlord when the documents do not establish that tenant's possession was in exercise of the adverse animus. If a tenant admits permissive possession and there is nothing to show that at any subsequent point of time the character of possession was changed, his possession will not be adverse to the owner of the land. Since in the instant case, the defendants as tenants admitted permissive possession, it is not permissible for them now to contend that their possession became adverse to the landlord. In the instant case, admittedly, the defendants/ appellants came into possession of the plaint schedule properties as tenants and, therefore, their subsequent illegal possession with effect from 26.12.1976 does not necessarily mean hostile or adverse possession. "Adverse possession", in law, means express or implied denial of the title of the true owner. The defendants/ appellants never denied the title of the plaintiffs. In that view of the matter, we do not find any merit in the contention of the learned Counsel for the appellants. No other points are urged before us in support of the appeal.

11. In the result, the appeal is dismissed with costs.