

(2014) 08 AP CK 0137
In the Andhra Pradesh High Court
Case No : SA No. 659 of 2013

Annapureddy Randava Sambaiah

APPELLANT

Vs

Annapureddy Kotamma and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 11, 40(2) — Civil Procedure Code, 1908 (CPC) - Order 6 Rule 1, Order 7 Rule 7, 26 — Constitution of India, 1950 - Article 142 — Transfer of Property Act, 1882 - Section 106

Citation : (2015) 2 ALD 582

Hon'ble Judges : M. Seetharama Murthi, J.

Bench : Single Bench

Advocate : M. Pitchaiah, for the Appellant; J. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

M. Seetharama Murthi, J. The unsuccessful plaintiff preferred this second appeal assailing the decree and judgment dated 2.4.2013 of the learned District Judge, Guntur made in AS No. 231 of 2012 whereby the learned District Judge while dismissing the said appeal had confirmed the decree and judgment dated 6.6.2012 of the learned I Additional Senior Civil Judge, Guntur made in OS No. 593 of 2009 filed for eviction of the defendants from the plaint schedule property and for delivery of the vacant possession of the same to the plaintiff and for recovery of arrears of rents till the date of eviction.

(a). At the time of admission of this second appeal, this Court had taken note of the substantial questions of law raised in grounds A and B in the memorandum of grounds of appeal. The said substantial questions of law read as under :—"The view taken by lower appellate Court of landlord and tenant cannot be converted into a suit for title and recovery of possession since there is no factual foundation for such claim and apart from that plaintiff claimed arrears of rent is erroneous in law and in fact as the factual foundation was laid in Para III-A of the plaint and even otherwise appellant/plaintiff being the paternal grandson of late

Venkatamma, who is the original owner of the suit schedule property and in view of the fact that appellant's father Tirupathaih predeceased his mother, succeeded to the estate of late Venkatamma under the provisions of the Hindu Succession Act being Class-I heir and this factual position is admitted by all and as such the view of the learned District Judge is clearly perverse to the core. (B) The learned Judge below lost sight of the fact that any suit would be laid in a competent civil Court under Section 26 of CPC which is a "procedural law". Transfer of Property Act and Specific Relief Act are the substantive laws which create rights and duties, which may or may not have provided forum and the question of filing suit under T.P. Act and not filing the same under Specific Relief Act as observed by learned Judge below does not arise." [Reproduced verbatim]

(b). The sum and substance of the substantial questions of law may be stated, in brief, as follows : "Though the plaintiff/ appellant had failed to prove the relationship of landlord and tenant between the parties in the suit for eviction and arrears of rent, considering that the title of the plaintiff is proved in respect of the plaint schedule property, the Court below ought to have treated the suit of the plaintiff as one for recovery of possession based on title and ought to have decreed the suit of the plaintiff and ordered eviction of the defendants from the plaint schedule property and that the Court below had erred in holding that the suit filed by the plaintiff against the defendants for recovery of the possession and arrears of rent on the foundation that the defendants are tenants cannot be converted into a suit for recovery of possession and that the Court below had committed error in law and in facts in not pronouncing the judgment and decree in favour of the plaintiff for recovery of possession of the plaint schedule property from the defendants on the basis of title of the plaintiff in respect of the plaint schedule property."

2(a). To adjudicate the lis and answer the substantial questions of law, it is necessary to mention, in brief, the history of the case. The plaintiff had filed the suit against the defendants for eviction of the defendants and for recovery of possession of the plaint schedule property and for arrears of rents and also for grant of future mesne profits and other reliefs. In the suit, the plaintiff had inter alia urged as under : "One Annapureddy Venkatamma is the paternal grandmother of the plaintiff. She had purchased an extent of 212 4/9 square yards in 4th lane, Gunturivari Thota, Guntur under a registered sale deed dated 21.4.1966, a copy of which is exhibited as Exhibit A1. One Tirupathaiah is her son. She had died on 25.4.1969 and her said son died on 15.8.1965. The said Tirupathaiah had four sons namely Annapureddy Pedda Samabaiah, plaintiff, Annapureddy Moddava Sambaiah and Annapureddy Papaiah. As the son of the said Venkatamma predeceased her, the plaintiff and his brothers being the paternal grandsons of Venkatamma had succeeded to her estate on her demise as per the Hindu Law of Succession. A partition was affected between the plaintiff and his three brothers and the properties were orally partitioned amongst them. In the said partition, the plaint schedule property fell to the share of the plaintiff. The plaintiff and his brothers had executed a registered partition deed dated

22.12.2004 under Exhibit A8. The plaintiff and his brothers are in possession and enjoyment of their respective shares. The possession and ownership in respect of the share of the plaintiff also stands established from the judgment in OS No. 502 of 2001 on the file of the Court of the learned I Additional Junior Civil Judge, Guntur. The certified copies of the judgment and decree in the said suit are Exhibits A4 and A5. The 1st defendant and one Annapureddy Papa Rao are sister and brother. The 2nd and 3rd defendants are the daughter and son of Papa Rao. The defendants who are thus closely related inter se are also related to the plaintiff. The 1st defendant about 7 years prior to the suit had obtained the schedule property from the plaintiff on an oral lease having agreed to pay the rent at the rate of Rs. 500/- per month. The rent of every month is payable on the first day of the month. Thus the 1st defendant is a month to month tenant. Subsequently, the rent was enhanced to Rs. 700/- in the year 2000. Again the rent was enhanced to Rs. 850/- per month in the year 2001. Finally, the rent was enhanced to Rs. 1,100/- in the year 2003 by mutual consent. The 1st defendant is living in the plaint schedule property along with the 2nd and 3rd defendants. While so, the 1st defendant did not pay the rents since one year prior to the suit and had committed wilful defaults in payments of rents. Further the plaintiff was in need of the plaint schedule property for his personal occupation. In spite of repeated demands, the 1st defendant did not either pay the arrears of rents or vacate the property. Hence the plaintiff having got issued a registered legal notice dated 5.2.2005 had terminated the lease with effect from 1.3.2005 and requested the 1st defendant to vacate the property and handover vacant peaceful possession of the same and pay the arrears of rent. The office copy of the said notice is Exhibit A9. There was no reply from the defendants. Hence the plaintiff is constrained to file the suit."

2(b). The 1st defendant filed a written statement resisting the suit and the same was adopted by the other defendants. In the written statement, the 1st defendant had inter alia contended that the property was originally purchased under the sale deed dated 21.4.1966 by late Chinnodu, the father of Venkatamma, but the registered sale deed was obtained in the name of Venkatamma and that the said property was enjoyed jointly and that later the brother of Venkatamma by name Papaiah had predeceased her and that thereafter a total extent of 212 square yards was in her occupation and that Papaiah had died leaving behind him his two sons Subbaiah and Narsaiah and that Venkatamma had a son by name Tirupathaiah and the said Tirupathaiah had four sons including the plaintiff herein and that Venkatamma's son by name Tirupathaiah predeceased her and that during her lifetime, she had executed an unregistered Will dated 10.6.1975 and that as per her Will she had bequeathed 106 square yards out of 212 square yards in favour of sons of late Papaiah i.e., Subbaiah and Narasaiah and had bequeathed the remaining 106 square yards in favour of her grandsons including the plaintiff herein and that Venkatamma had died in the year 1976 and that the said Will is her last testament and there was no other Will executed by her and that the contention of the plaintiff that

Venkatamma had died on 25.4.1969 is false. Thus the defendants claimed title to a part of the property of Venkatamma and had denied the jural relationship as landlord and tenants between the plaintiff and the defendants.

2(c). Thus the plaintiff came to Court inter alia tracing his title to the plaint schedule property and claiming that the 1st defendant is a tenant under him and that the 1st defendant and defendants 2 and 3 who are the 1st defendant's brother's daughter and son are also living with her in the plaint schedule property and had sought the eviction of the defendants from the plaint schedule property and also recovery of the plaint schedule property from the defendants after issuing a quit notice terminating the tenancy of the 1st defendant as per the provision of Section 106 of the Transfer of Property Act. In the suit, the plaintiff had also sought the reliefs of recovery of arrears of rent and future mesne profits. The 1st defendant had denied the title of the plaintiff to the plaint schedule property and had made a claim to the plaint schedule property by virtue of a unregistered Will dated 10.6.1975 said to have been executed by Venkatamma, who according to the plaintiff is also the original owner of the plaint schedule property. After full fledged trial, both the Courts below had concurrently held that there is no landlord and tenant relationship between the plaintiff and the 1st defendant and therefore, dismissed the suit of the plaintiff.

3. Now before this Court, though in fact the suit of the plaintiff is one for recovery of possession based on the jural relationship of landlord and tenant between the parties and the said relationship could not be proved, the plaintiff wants his said suit to be decreed on the ground that the 1st defendant had failed to prove the Will pleaded in the defence and that the relationship of the parties and the title of the plaintiff to the plaint schedule property is admitted and established. Therefore, in a sense the plaintiff canvasses that the plaintiff is entitled to a decree for recovery of possession of the plaint schedule property from the defendants on the basis of title even though the relationship of the landlord and tenant as pleaded in the plaint is not established. The learned Counsel for the plaintiff forcefully contended that the suit that was filed by the plaintiff against the 1st defendant and her family members for recovery of possession on the foundation that the 1st defendant is a tenant in the plaint schedule property can be treated as a suit for recovery of possession in the absence of proof of the jural relationship of landlord and tenant and that the suit can be decreed treating the suit as one for recovery of possession since the title of the plaintiff as traced in the plaint is admitted and established and as the unregistered Will relied upon by the defendants in the defence of the defendants is held not proved. In other words, the plaintiff is requesting the Court to convert the suit filed against the tenant/1st defendant for eviction and recovery of possession into a suit for recovery of possession based on title/ paramount title and grant the relief of recovery of possession. Keeping in view the facts, the evidence on record and also the contentions and rival contentions and the legal position, this Court is of the well considered view that the plaintiff is not entitled to make a request to this Court to treat the instant suit of the plaintiff as one for

recovery of possession based on title and grant the relief for the following among other reasons.

4. Firstly, the suit is based on the principal contention that the 1st defendant is a tenant under an oral lease and that the tenancy of the 1st defendant was terminated by issuance of a quit notice in accordance with the provisions of the Transfer of Property Act and that therefore the plaintiff is entitled to a decree for eviction of the tenant/1st defendant and her family members from the plaint schedule property and for recovery of vacant possession of the plaint schedule property besides the reliefs of recovery of arrears of rent and future mesne profits etcetera. The said contention that the 1st defendant is a tenant under the plaintiff is held not proved. The said concurrent finding of fact which has become final is not under challenge in this second appeal. In the plaint, the plaintiff did not alternatively seek the relief of recovery of possession based on title. The law is well settled that there is a difference in exercise of jurisdiction in a suit for eviction of a person in possession based on the title of the plaintiff and a suit for recovery of possession from the tenant whose tenancy was determined pursuant to issuance of a quit notice under the provisions of the Transfer of Property Act. In a suit for eviction filed against a tenant after determination of his tenancy, it is well settled law that the question of title of the property is not germane for a decision. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited and in such a suit the question of title will not be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship, the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. The above well settled legal position was laid down in the decision in *Dr. Ranbir Singh Vs. Asharfi Lal*, .

5. Secondly, in *Life Insurance Corporation of India Vs. M/s. Indian Automobiles and Co. and others*, , the Hon"ble Supreme Court had an occasion to deal with similar controversy and in the said decision, it was observed as under:

"In a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties, it will have to pass a decree in accordance with law. All that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has a prima facie right to receive the rent of the property in question. In order to decide whether the denial of the landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the

circumstances of the case."

In the decision in *Dr. Ranbir Singh v. Asharfi Lal* (supra), the Hon''ble Supreme Court quoted the above proposition of law with approval and relied upon it.

6. Thirdly, before proceeding further, this Court shall take note of a few decisions of the Hon''ble Supreme Court dealing with the power of the Court to grant the request to convert the suit for eviction of the tenant based on the ground of the jural relationship of landlord and tenant into one for recovery of possession based on the title of the plaintiff.

"(i) In the decision in *Biswanath Agarwalla Vs. Sabitri Bera and Others*, , the facts and ratio are as follows : "A suit was brought against the defendant who was said to have entered into possession of the suit premises in furtherance of an agreement to sell entered into in the year 1970. The plaintiffs had inter alia pleaded that they had purchased the property under three registered sale deeds of the year 1980 and had sought eviction of the defendant claiming themselves to be the owners and landlords of the property. Prior to the institution of the suit, a notice under Section 106 of the Transfer of Property Act was issued. The defendant however denied the jural relationship. The trial Court had dismissed the suit having found that the plaintiffs proved that they are the purchasers from the admitted owner of the property and that the defendant had failed to prove independent title and that the plaintiffs who had failed to establish the relationship of landlords and tenant are not entitled to a decree for eviction. The Court of first appeal having also found that the relationship of landlords and tenant has not been established had held that the plaintiffs are entitled to a decree for possession on the basis of their general title. In the second appeal, the Court of second appeal had held that the defendant is a trespasser and as such upheld the decree of eviction passed against the defendant by the Court of first appeal. The review application was dismissed. The Hon''ble Supreme Court having referred to its earlier decisions and other relevant decisions, had allowed the appeal of the defendant while considering inter alia the aspects like-the absence of an issue as to whether the defendant was a trespasser or not, the non-valuation of the relief of recovery of possession based on title coupled with non-payment of advalorem Court-fee on such relief for obtaining a decree for eviction on the basis of general title, and the prejudice that may ensue to the defendant on account of lack of opportunity to take a plausible plea of acquisition of indefeasible title by adverse possession as he is said to be in possession of the premises for more than 12 years prior to the institution of the suit. Finally, the Hon''ble Supreme Court having regard to the peculiar facts and circumstances of that case held as follows:

"The plaintiffs have filed the suit as far back in the year 1990, the interest of justice should be sub-served if we in exercise of our jurisdiction under Article 142 of the Constitution of India issue the following directions with a view to do complete justice to the parties.

(i) The plaintiffs may file an application for grant of leave to amend their plaint so as to enable them to pray for a decree for eviction of the defendant on the ground that he is a trespasser.

(ii) For the aforementioned purpose, he shall pay the requisite Court-fee in terms of the provisions of the Court Fees Act, 1870.

(iii) Such an application for grant of leave to amend the plaint as also the requisite amount of Court-fees should be tendered within four weeks from date.

(iv) The appellant-defendant would in such an event, be entitled to file his additional written statement.

(v) The learned Trial Judge shall frame an appropriate issue and the parties would be entitled to adduce any other or further evidence on such issue.

(vi) All the evidences brought on record by the parties shall, however, be considered by the Court for the purposes of disposal of the suit.

(vii) The learned Trial Judge is directed to dispose of the suit as expeditiously as possible and preferably within three months from the date of filing of the application by the plaintiffs in terms of the aforementioned Direction (i)."

(ii) In the decision in *Tribhuvanshankar Vs. Amrutlal*, , the facts are as follows:--"The plaintiff brought a civil suit in the year 1986 for eviction of the defendant from the suit premises and mesne profits under the provisions of M.P. Accommodation Control Act. The plaintiff who had purchased the property in the year 1976 under regular registered sale deed had inter alia contended that the defendant was in possession of the property as a tenant under the earlier owner in terms of an oral tenancy and that despite assurance given by the tenant to pay the rents to him, the rents were not paid by him and that therefore, the tenancy was terminated. The defendant disputed the right, title and interest of the plaintiff and also the landlord and tenant relationship and had further pleaded in the defence that the premises were in a dilapidated condition and is a banjar land and that he is in uninterrupted and peaceful possession for about 19 years to the knowledge of the original owners and that he had constructed a gumti and fixed a gate and commenced furniture business and that the original owner sold the property without obtaining any sale consideration with the sole intention of obtaining possession by colluding with the plaintiff. The trial Court dismissed the suit holding inter alia that the sale deed by the original owner in favour of the plaintiff was without any consideration and that the relationship of landlord and tenant between the parties was not established and that the defendant had become the owner of the suit accommodation on the basis of adverse possession. However, the first appellate Court held that the relationship of landlord and tenant was not established and that the finding of the trial Court that the sale deed is not supported by consideration is neither justified nor correct and that there is no clinching evidence to establish that the defendant had perfected his title by adverse possession. In the second appeal, one of the

substantial questions of law formulated was - whether a decree could be passed in favour of the plaintiff though such plaintiff fails to establish relationship of landlord and tenant? While answering the said and other questions, a Single Judge of the High Court had dislodged the judgment and decree of the first appellate Court and had restored the decree and judgment of the trial Court having held that once the plaintiff had failed to establish the relationship of landlord and tenant which is a sine qua non in a suit for eviction, the plaintiff cannot be allowed to fall back on his title to seek eviction. The Hon''ble Supreme Court having referred to a catena of decisions held as follows:

"On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil Court deals with a lis relating to eviction brought before it under the provisions of the Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this Court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in Bhagwati Prasad Vs. Shri Chandramaul, and Biswanath Agarwalla's case (supra), are distinguishable, for in the said cases the suits were filed under the Transfer of Property Act where the equitable relief under Order 7 Rule 7 could be granted."

Placing reliance on the above stated findings, the learned Counsel for the plaintiff sought to contend that since the present suit is not one brought under the provisions of a special enactment but is one brought under the provisions of the Transfer of Property Act the relief of eviction can be granted by treating the suit of the plaintiff for eviction of the tenant as one for recovery of possession based on title. In this above cited case, the Hon''ble Supreme Court permitted the plaintiff to institute a fresh suit for title and recovery of possession and such other reliefs as the law permits. Be that as it may, the fact remains that in the above precedent, Ranbir Singh's case (supra) and LIC's case (supra), were relied upon and Rajendra Tiwary Vs. Basudeo Prasad and Another, , was followed. Further, the ratios in the decisions 1 and 2 supra are squarely applicable as the suits in the said decisions are filed for eviction of tenants after terminating the tenancy as per the provisions of the Transfer of Property Act."

7. Fourthly, coming to the facts of the case on hand, the defendants had no opportunity to raise a plea of acquisition of title by adverse possession and other pleas, if any, available to the defendants. Therefore, no other issues on the aspect of adverse possession, bar of limitation including the issue concerning plaintiff's entitlement to seek recovery of possession of the suit schedule property on the basis of general title were framed. Hence, if the instant suit for eviction of the tenant is to be treated as one for recovery of possession based on

general title and a relief is to be granted, prejudice would be caused to the defendants as they were denied of an opportunity to take all the pleas which they were entitled to take in a suit for recovery of possession based on general title and as questions of plaintiff's title or adverse possession thereof by the defendants are beyond the scope of trial in a suit for eviction filed pursuant to a quit notice issued as per the provisions of the Transfer of Property Act.

8. Fifthly, coming to the further facts and aspects of the instant case, the Court of first instance had framed the following issues and additional issue.

"1. Whether there exist landlord and tenant relationship between plaintiff and defendants?

2. Whether plaintiff is entitled to possession of the plaint schedule by ejecting the defendants?

3. Whether the plaintiff is entitled to future profits as prayed for?

4. To what relief?

Additional Issue:

"Whether the Will dated 10.6.1997 as pleaded by the defendants is true, valid and binding on the plaintiff?"

No specific issue was framed in regard to the title of the plaintiff. Based on evidence, the first issue was decided against the plaintiff holding that the landlord and tenant relationship does not exist between the parties. The second issue namely whether the plaintiff is entitled to possession of the plaint schedule by ejecting the defendants, is also decided against the plaintiff after recording a finding that the plaintiff could not place any iota of evidence to show that the defendants are in possession of the property as tenants. In view of the said findings on issues 1 and 2, Issue No. 3 in regard to the mesne profits was also answered against the plaintiff. It was inter alia observed in the answer to Issue No. 2 as follows:

"But however since the jural relationship was not established by the plaintiff and if really the defendants are found to be in possession it is for the plaintiff to take proper recourse to law as in the absence of any relationship as landlord and tenant it is highly difficult to evict the defendants from the schedule property." (reproduced verbatim).

On the additional issue concerning the Will dated 10.6.1975 relied upon in the defence of the 1st defendant, the trial Court had held that since Exhibit B1 is not probated the title of the defendants cannot be decided. Thus, the trial Court did not record a specific finding as to the validity and genuineness of exhibit B1 Will said to have been executed by Venkatamma. The learned District Judge formulated the following points while deciding the first appeal.

"1. Whether there exists any jural relationship of landlord and tenant between

plaintiff and defendants, if so, are they liable to be evicted from the schedule premises?

2. Whether plaintiff is entitled to recover Rs. 14,300/- towards arrears of rents?"

As already noted, the Court of first appeal had also held that there is no landlord and tenant relationship between the parties and that, therefore, both the points were answered against the plaintiff/ appellant. Thus, even the Court of first appeal did not frame a specific point on the aspect of title of the plaintiff. Therefore, the contention that the title of the plaintiff is held established and the Will set up by the 1st defendant in the defence is held not proved and that the relationship between the parties is admitted and that the title of the plaintiff is also admitted cannot be countenanced for the reason that the trial Court had not recorded a specific finding on the truth or genuineness of the Will and the Court of first appeal did not at all go into the truthful and genuine nature of the said Will by framing a specific point though it is inter alia held in the impugned judgment that undoubtedly the Will marked as Exhibit B1 is not proved. As rightly contended by the learned Counsel for the respondent/1st defendant, the Courts below are not required to examine any further question in a suit for eviction based on tenancy when once the Courts have come to conclusion that there is no landlord and tenant relationship between the parties; and the defendants are not required to prove the Will in a suit of such nature where the principal issue is only about the relationship of landlord and tenant between the parties. Therefore, on an overall consideration of the pleadings, evidence and the concurrent findings of facts recorded by the Courts below, this Court does not find itself in agreement with the contention that the title of the plaintiff to the plaint schedule property is either admitted by the defendants or it is sufficiently established as required in a suit for recovery of possession based on title.

9. Sixthly, under Section 40(2) of the A.P. Court Fee and Suits Valuation Act, the relief in a suit for recovery of possession of the property in the occupation of a tenant will have to be valued and the fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint. However, in a suit for recovery of possession based on general title where declaratory relief was sought or not sought, the Court-fee shall be computed on the 3/4th of the market value of the immovable property i.e., the plaint schedule property. In such a suit, the plaintiff will not be claiming arrears of rent but will only be entitled to claim past and future mesne profits for unauthorised use and occupation of the schedule property by the defendant Further, a suit for ejectment based on tenancy would be governed by the provisions of the Transfer of Property Act and if once the relationship is established and the validity of the quit notice is upheld, the plaintiff would automatically be entitled to the relief of eviction of the tenant from the schedule property. However, in a suit for recovery of possession governed by the provisions of the Specific Relief Act, the plaintiff would be required to prove his title and would be entitled to succeed on his own strength but not on the weakness of the defendant. The cause of action in a suit

for recovery of possession based on tenancy is different from the cause of action in a suit for recovery of possession based on title as in the latter, the plaintiff must file a suit having regard to the cause of action thereof by stating the necessary facts as to the nature of the possession of the defendant, the commencement of possession; and the plaintiff would be further required to plead and prove that such suit is within time in accordance with the provisions of law of limitation. Thus, in a suit for recovery of possession based on general title, the question of title of the property is germane for decision and therefore, in such a suit for recovery of possession the standard of proof would be altogether different and the decision in the said suit requires examination of issues like bar of limitation and adverse possession, if raised, apart from the question of title.

10. Seventhly, there is one more decisive aspect which precludes the plaintiff from seeking the relief of recovery of possession based on title in the instant suit. What is to be noted is that after the completion of trial and when the suit has reached the stage of judgment, the plaintiff had filed IA No. 481 of 2010 seeking amendment of the plaint to add the relief of declaration of title. The said application was resisted by the defendants. However, the learned Senior Civil Judge (trial Court) had allowed the application. Aggrieved of the said orders, the defendants had preferred a revision in CRP No. 2821 of 2011 before this Court. In fact the plaintiff had carried out the amendments to the plaint pursuant to the orders of the trial Court. However, this Court had allowed the revision by orders dated 23.1.2012. Therefore, an attempt made by the plaintiff to convert the instant suit based on the jural relationship of landlord and tenant to one for recovery of possession based on title was unsuccessful as the petition for amendment filed in that regard was dismissed and the said orders have become final. In fact this Court in its order in the revision observed as follows:

"The proposed amendment is not one pertaining to cosmetic or consequential aspect of the matter, but is one which goes to the root of the matter and totally changes the nature and character of the suit by introducing a new set of facts based on new cause of action. The proposed amendment would certainly cause prejudice to the defendants at this final stage of the suit."

Thus, this Court had already observed that the conversion of suit to one for declaration of title and recovery of possession would change the nature and character of the suit and causes prejudice to the defendants. When an amendment sought by the plaintiff was refused, acceding now to the submission of the plaintiff at the stage of the second appeal to treat the suit of the plaintiff as one for declaration of title and recovery of possession even without an amendment is impermissible under law. Even an order which is passed in an interlocutory proceeding and which has become final operates as *res judicata* and debars the party who had suffered an adverse order at an interlocutory stage from contending contrary to the said order, which has become final. This view of the Court finds support from the ratio in the decision in *Arjun Singh Vs. Mohindra Kumar and Others*, . In this cited case, the Hon'ble Supreme Court held thus:

"That the scope of the principle of res judicata is not confined to what is contained in Section 11 but is of more general application is also not in dispute. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were referred to what this Court said in Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, , where Das Gupta, J., speaking for the Court expressed himself thus : "The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or on a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again..... The principle of res judicata applies also as between the two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one may not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

11. Eighthly, the learned Counsel for the plaintiff having placed reliance on the decisions in Badugu Venkata Durga Rao and another Vs. Surneni Lakshmi, ; Kusam Satyanarayana Reddy and Others Vs. Kusam Sambrajamma (died) by LRs. and Others, and Shaik Munni Vs. Jagan Mohan Salt Industries and Others, and also the provisions of law under Order VII Rule 7 and Order VI Rule 1 of the Code of Civil Procedure canvassed forcefully that it is not necessary for the plaintiff to ask the alternate relief of recovery of possession based on general title and that for grant of relief of recovery of possession the absence of a specific prayer in the prayer portion of the plaint is immaterial and that when the landlord and tenant relationship is not established the Court can grant the general relief or other relief viz., recovery of possession based on general title when, in the facts and circumstances of the case, granting of such relief appears to be just, legitimate and proper even though such relief has not been specifically prayed for. He would further contend that the relief of recovery of possession is covered by the relief claimed in the plaint. This Court, on careful examination of facts and legal position, does not find itself in agreement with the said submissions as the relief of recovery of possession based on general or paramount title is a larger relief than the relief claimed in the instant suit and the relief claimed cannot be treated by any standards as a lesser relief. Hence, the ratios in the decisions do not advance the case of the plaintiff any further. In this regard, the contention of the learned Counsel for the defendants/respondents is that if the plaintiff is allowed to convert the suit into one for declaration of title and recovery of possession based on title even without seeking an amendment the same causes great prejudice to the defendant. He would place reliance on the fact that the plaintiff was unsuccessful in seeking amendment of the plaint to introduce the relief of recovery of possession based on general title or declaration

of title. The said submission that prejudice would be caused is based on the following further submissions. "In a suit for ejectment based on tenancy, the decision on the question of title, if necessary will be incidentally made to find out whether the denial of title by the tenant is bona fide or not and therefore, the decision incidentally made on the aspect of title is not final and is subject to challenge in a subsequent comprehensive suit before a competent civil Court. Therefore, the findings of the Courts below incidentally upholding the title of the plaintiff, if any, are not sufficient to hold that the plaintiff established title as required in a suit for declaration of title and for recovery of possession as the standard of proof in such a suit is much higher and the burden is heavy on the plaintiff in such a suit as the plaintiff is entitled to succeed in such a suit on his own strength but not on the weakness of the defendants. Since the plaintiff's suit is based on tenancy, the defendants are not required to prove their title and any findings in regard to the Will set up by the defendants in the instant suit are uncalled for being not necessary for effective adjudication of the principal issue in regard to the relationship of landlord and tenant between the parties. Even according to the plaintiff who filed the instant suit in the year 2005 the defendants are in possession of the suit schedule property since several years prior to the institution of the said suit and are continuing in possession of the plaint schedule property. In the suit for eviction based on tenancy, as there was no necessity, the defendants did not raise the plea of adverse possession, which they are entitled to raise in a suit for recovery of possession based on title. When the defendants had specifically denied the title of the plaintiff and placed reliance upon a Will in their defence and had admitted the relationship of the parties with Venkatamma, it cannot be held that the defendants had admitted the title of the plaintiff as being sought to be contended by the plaintiff. Had the Courts below framed a specific issue as regards the title of the plaintiff, the defendants would have been alerted and would have not only adduced best possible evidence in regard to the proof of Will but also would have taken the plea of adverse possession with requisite particulars and whatever title that they had acquired, and that since the suit is one based on tenancy and as no specific issue was framed by the Court of first instance on the aspect of title of the plaintiff, the defendants were denied an opportunity of raising all the pleas available to them including the plea of adverse possession. Therefore, the conversion of the instant suit of the plaintiff at the fag end stage of the matter and at the stage of the second appeal into one for declaration of title and recovery of possession would cause great prejudice to the defendants." There is acceptable merit in the before mentioned submissions of the learned Counsel for the defendants/respondents. As a sequel, it must be held that permitting the conversion of the instant suit based on landlord and tenant relationship into one for recovery of possession based on general title is impermissible as such conversion would cause hardship and prejudice to the defendants. To sum up this aspect, in the instant suit based on tenancy, the plaintiff's attempt to amend the plaint to introduce the relief of declaration of title was unsuccessful as the plaintiffs application for amendment of the plaint in that regard was dismissed and the said order has become final

and that, therefore, the plaintiff is precluded from now contending that the suit may be treated as one for declaration of title and recovery of possession.

12. Viewed thus, this Court finds that there is no merit in the contentions of the plaintiff and that, therefore, the substantial questions of law are devoid of merit.

13. Before parting with the case, it is necessary to mention that the learned Counsel for the plaintiff had relied upon the following decisions on various propositions of law.

"(1) Rameshwar Lal Sharma Vs. Sardar Amrik Singh, ;

(2) Smt. Chanda Devi and Another Vs. Dr. Tara Pad Sinha and Another, ;

(3) Mahadev Govind Gharge and Others Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, ;

(4) Parimal Vs. Veena @ Bharti, ;

(5) Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., ;

(6) C. Purushottama Sastry (died) by LRs v. Y. Nagaraja Boo, 2011 (3) ALD 599;

(7) Garlapati Venkateswarlu (Died) per LRs., Tokala Suryanarayana, Miriyala Sambrajjam and Miriyala Audilakshmi Vs. Divi Appalacharyulu, ;

(8) Gujarat Ginning and Manufacturing Co. Ltd. Ahmedabad v. Motilal Hirabhai Spinning and Manufacturing Co. Ltd., AIR 1936 PC 77 ."

14. I have gone through the copies of the rulings. Suffice if it is observed that the case on hand is decided purely on the facts peculiar to the case on hand and it is inter alia held that the plaintiff, whose attempt for amendment of the plaint to [convert the suit into one for recovery of possession was negatived, is not entitled to make a request at the stage of second appeal to treat the suit filed for recovery of possession based on landlord and tenant relationship as one filed for recovery of possession based on general title. Since the case on hand is decided purely on the facts of the case, the decisions relied upon and which lay down the legal propositions, which are undisputed, are of no assistance to the case of the plaintiff/appellant. Even the present case is not a case to consider the aspect of remitting the matter to the trial Court to give an opportunity to the plaintiff to amend the plaint to seek recovery of possession based on title by giving an opportunity to the defendants as well to raise all contentions available to them including the defence based on the plea of adverse possession, as the plaintiff's request for amendment of the plaint was already negatived by the trial Court and the order of the trial Court in that regard was confirmed by this Court. Judged from any angle, this is not a fit case to exercise the discretionary and equitable jurisdiction in favour of the plaintiff as any such exercise would cause prejudice and hardship to the defendants.

15. In the result, the second appeal is dismissed. No costs. It is needless to state

that the plaintiff is at liberty, if so desired, to institute a fresh suit for declaration of title and recovery of possession and such other reliefs as the law permits and in such an event the defendants are at liberty to raise all available pleas including the plea of acquisition of title by way of adverse possession, if the law permits and if so desired. Miscellaneous petitions pending, if any, in this second appeal shall also stand dismissed.