
(2007) 07 AP CK 0098

In the Andhra Pradesh High Court

Case No : First Appeal No. 1982 of 1993

Chiriki Ranga Rao and Others

APPELLANT

Vs

Kavelamudi Rekha

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Citation : (2008) 6 ALT 657

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyalu, for the Appellant; P. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Facts in nut-shell: The unsuccessful defendants being aggrieved of the Decree and Judgment made in O.S. No. 384/83 dated 27-7-1992, on the file of Subordinate Judge, Vijayawada, had preferred this Appeal. The respondent/plaintiff in the said suit instituted the suit O.S. No. 384/83 aforesaid praying for the relief of recovery of possession of the plaint schedule property after removal of the thatched house, for mesne profits and other ancillary reliefs. The 1st defendant died during the pendency of the suit and defendants 3 to 5 were added as the legal representatives of the deceased 1st defendant as per orders in I.A. No. 34/87 dated 23-3-1989. The learned Subordinate Judge, Vijayawada, in the light of the respective pleadings of the parties, having settled the Issues and additional Issues, recorded the evidence of P.W. to P.W.6, D.W.1 to D.W.4, marked Exs.A-1 to A-44, Exs.B-1 to B-20 and after recording findings in detail, arrived at a conclusion that the respondent herein/ plaintiff in the said suit is entitled to recovery of possession of the plaint schedule property and also granted mesne profits at the rate of Rs. 75/- per month from the date of suit till the date of realization. Aggrieved by the same, the present Appeal was preferred.

2. Respective pleadings of the parties: For the purpose of convenience, the

parties hereinafter would be referred to as "plaintiff" and "defendants" as shown in O.S. No. 384/83. The said suit was instituted by Kovelamudi Rekha, represented by her Power of Attorney Agent V.V. Bhoopal.

3. Averments made in the plaint: The plaintiff pleaded in the plaint as hereunder. It was pleaded that the plaintiff is the absolute owner of the house site with a thatched house therein in Punnammathota of Vijayawada City. The said property was settled on her by her father Sri K. Gopalakrishnaiah in July 1975 by a registered document towards her "pasupu kumkuma" and thus it is her "stridhana". It was also pleaded that the father of the plaintiff in turn purchased the same from his brother Venkata Rama Rao in 1965 and earlier in 1964 the plaintiff's father and her five paternal uncles i.e., sons of Chandrasekhar Rao, partitioned the total extent of house site bequeathed to them by their paternal grandmother late Kancherla Kotamma, w/o. K.V. Ramaiah, by a registered Will before her death in April 1958. Subsequent to the partition of the said house site that fell to their respective shares. It was also further pleaded that one Ch. Bangaraiah, a trusted person of the household of this Kancherla family of Kotamma, was allowed to reside in the block of land by late K. Kotamma before her death. After the bequest and subsequent partition of the site by the six brothers, the said Bangaraiah's son Seethaiah purchased one of the plots (marked as G-1) at the extreme Southern end in the plan prepared by brothers at the time of partition. Bangaraiah's daughter and her husband Appa Rao purchased another adjacent plot (marked as "G") in the said plan from one of the brothers Madhavarao. Thus the 1st defendant lived with her grand-father and her parents in the said premises till the early seventies. It was also further pleaded that the 1st defendant as the grand daughter of the said Bangariah and daughter of Apparao, was a member of the joint family originally. The plaintiff's father Gopalakrishnaiah used to work as a Professor in U.S.A. till 1972.

4. After his return to India, he worked at Hyderabad in Administrative Staff College. Some time after return of the plaintiff with her parents, the 1st defendant sought for and was allowed to live with her husband in 1972 in the old thatched house in the suit schedule site because of the old acquaintance and attachment of defendants' family with that of the elders of the plaintiff's family and ever since she was being allowed to occupy the said house, just out of the considerations for the old acquaintance and also because of the fact that plaintiff's family was living at Hyderabad, not needing the schedule property for purposes of constructing a pucca building. The uncles of the plaintiff and other close relations living in Vijayawada had been looking after the plaintiff's interest in the schedule property. It was further pleaded that in 1975 when the father of the plaintiff wanted to settle the schedule property on her, he informed the defendants about the transfer and asked them to vacate the site, but the defendants implore him for indulgence promising to comply with such a demand to vacate whenever necessary.

5. In 1979, the plaintiff applied for and got her name entered in the municipal

records as "owner" of the property in the place of late Kotamma, after necessary enquiries. The property tax demands were being given to plaintiff's men and they as her agents and her predecessors-in-title had been paying all such taxes etc. It was also further pleaded that all these years since 1965 when the property was purchased by the plaintiff's father, taxes are being paid by him only for his men.

6. It was also further pleaded that in April 1981 the plaintiff and her husband believing the oral representations of the defendants got a building plan approved and also secured permission of the Municipal authorities. At that time also the defendants pleaded for further accommodation. Thus the plaint schedule property always stood and continues in the names of either the plaintiff or her father and the predecessors-in-title.

7. The defendants never gave cause for any suspicion about their intentions and the plaintiff or her father never thought it necessary to resort to any legal remedies, but in the last about one year or so, the defendants took wrong Counsel and are harbouring evil and selfish ideas of grabbing the valuable property and had been avoiding the plaintiff and her men and gaining time somehow or other. As time was passing, the plaintiff authorized her relation Sri V.V. Bhoopal to deal with her property and the defendants occupying the thatched shed and when oral requests proved to be of no use, the said authorized person Sri Bhoopal got a notice issued to defendants through his counsel on 29-1-1983. To the said notice, the defendants kept quiet for long but got a belated reply sent through their Advocate setting up false and absolutely untenable contentions stating inter alia that they purchased the property and resided in the house for the last 25 years without any let or licence and became absolute owners by adverse possession etc. Though it was not so necessary to refute such absurd contentions, the plaintiff's agent got a rejoinder notice sent with facts and particulars on 11-4-1983. It was also further pleaded that the plaintiff made it clear that the additions or alterations made by the defendants recently to the temporary thatched house were only made to complicate the matter for the plaintiff and that the defendants were at liberty to take all and if any belongings of the defendants when they vacate.

8. It was further pleaded that there had been no response favourably even after the said notices to quit. The permission given to the defendants was expressly revoked and the stipulated time also had elapsed, but the defendants did not choose to vacate the schedule property and hence the plaintiff is obliged to file the suit for ejectment of the defendants from the suit property and for getting vacant possession of the same from the defendants.

9. Averments made in the written statement: In the written statement filed by the original defendants, the defendants 1 and 2, it was pleaded as hereunder. The allegations that the plaintiff is the absolute owner of the house site with a thatched house and that the said property was settled on her by her father in July 1975 by a registered document towards her "pasupu kumkuma" and that

the property became her "stridhana" had been denied as not true and correct.

10. The further allegations that the father of the plaintiff in turn purchased the same from his brother Venkatrama Rao in 1965 and that earlier in 1964 the plaintiff's father and her five paternal uncles, sons of Chandrasekhara Rao, partitioned the total extent of house site bequeathed to them by their paternal grandmother later Kancherla Kotamma w/o. K.V. Ramaiah, by registered Will before her death in April 1958 and that subsequent to the partition of the said house site some of the divided brothers alienated their plots of house site that fell to their respective shares also had been denied as false and concocted for the purpose of the present suit. It was also denied that the 1st defendant lived with her grandfather and her parents in the said premises till the early seventies as false. It was further pleaded that the allegations that the 1st defendant as the grand daughter of the said Bangaraiah and daughter of Apparao was a member of the joint family originally and that the plaintiff's father Gopalakrishnaiah used to work as a Professor in U.S.A. till 1972 and that after his return to India he worked at Hyderabad in the Administrative Staff College and that some time after return of the plaintiff with her parents the 1st defendant sought for and was allowed to live with husband in 1972 in the old thatched house in the suit schedule site because of the old acquaintance and attachment of the defendants family with that of the elders of plaintiff's family and that ever since she was allowed to occupy the said house just out of considerations for the old acquaintance as stated supra and also because of the fact that the plaintiff's family was living at Hyderabad not in the schedule property for purposes of constructing a pucca building and that unless the plaintiff and other close relations living in Vijayawada had been looking after the plaintiff's interest in the schedule property had been denied as issues of falsehood invented only for the purpose of the suit. It was also further pleaded that the allegations that in 1975 when the father of the plaintiff wanted to settle the schedule property on her, he informed the defendants about the transfer and asked them to vacate the site but the defendants implored him for indulgence promising to comply with such a demand to vacate whenever necessary also had been denied as false. The allegation that the plaintiff got her name entered in the Municipal records as owner of the property in the place of late Kotamma after necessary enquiries in 1979 also had been denied as false.

11. Further, it was pleaded that the allegation that the property tax demands were being given to the plaintiff's men and they as her agent and her predecessors-in-title had been paying all such taxes etc. is false. The allegation that all these years since 1965 when the property was purchased by the plaintiffs father taxes were being paid by him only or his men also is false. The allegation that in April 1981 the plaintiff and her husband believing the oral representations of the defendants got a building plan approved and secured permission from the Municipal authorities is false. It was further specifically pleaded that the defendants never were demanded to vacate at any time and the allegation that the defendants pleaded for further accommodation is a lie.

12. The allegations that the plaint schedule property always stood and continues in the names of either the plaintiff or her father and the predecessors-in-title and that the defendants never gave cause for any suspicion about their intentions and the plaintiff or her father never thought it necessary to resort to any legal remedies had been denied as absolutely false. It was further pleaded that the allegations made in para 7 of the plaint are all false excepting the exchange of notice. The allegation that in the last about one year or so the defendants stood wrong counsel and are harbouring evil and selfish ideas of grabbing the valuable property and had been avoiding the plaintiff and her men and gaining time somehow or other also had been denied as false. The allegation that the oral requests proved to be of no use and the plaintiff's authorized person got a notice issued to the defendants also had been denied as false. It was further pleaded that it is false to allege that the defendants made some additions or alterations to the thatched hut to complicate the matter.

13. It was further specifically pleaded by the defendants that one Kancherla Kotamma was the owner of a total extent of site of about 3000 sq. yards in N.T.S. No. 386, situate at Punnammathota, Vijayawada which includes the plaint schedule site and she has two sons namely Kancherla Chandrasekhara Rao and Kancherla Kesavarao. The said Kotamma had no female issues and she was fond of female children. The 1st defendant was residing with her father in the site premises of Kancherla Kotamma since about 1950. The said Kotamma used to develop intimacy with the 1st defendant who was then a child and the 1st defendant used to spend most of the time with the said Kancherla Kotamma. As she had no female children in her house, Kotamma had all the affection and love towards the 1st defendant. The marriage between the defendants was celebrated in the year 1957 and the said Kotamma had taken active part in performing the marriage. Subsequently the marriage between the defendants was consummated and both the defendants came to Vijayawada and were residing in the 1st defendant's father's house for some time. At that time the 2nd defendant was seeking a job for his livelihood at Vijayawada and subsequently he was employed in Vishalandra news paper.

14. It was also further pleaded that at that time the said Kotamma advised both the defendants to construct a small house of their own in the plaint schedule site and commence their married life therein. She also offered a site of 545 sq., yards to the defendants as gift as she had affection and love towards the 1st defendant and her own daughter and she had plenty of other vacant site in the premises. But the defendants requested her to sell the said site to them as they felt constructing a house in a site belonging to others may create problems in future. It was specifically pleaded that the defendants then offered to pay a sum of Rs. 2,300/- as value for the plaint schedule vacant site from out of the cash gifts they received during their marriage in 1957 and Kotamma had accepted the offer and received the sum of Rs. 2,300/- offered by the defendants as consideration for the plaint schedule vacant site in February 1958 and delivered vacant possession of the plaint schedule vacant site and promised to execute a

registered sale deed of the same as and when required by the defendants. The defendants then constructed a thatched house therein for the purpose of their residence and had been residing therein till now. But unfortunately, within a couple of months after the purchase of the plaint schedule site in February 1958 the said Kancherla Kotamma died and she could not execute the registered sale deed in favour of the defendants. The defendants could not expect the sudden demise of the Kotamma and out of confidence, affection and love towards the said Kotamma, they could not get the sale deed executed. Thus, it was pleaded that the defendants are the absolute owners of the plaint schedule property in possession and enjoyment since 1958 having purchased the same from late Kancherla Kotamma.

15. As such, the plaintiff has no manner of right whatsoever over the plaint schedule property. It was further pleaded that apart from the purchase of the plaint schedule property concluded in February 1958 by the defendants with the said Kotamma, the defendants had been in possession and enjoyment of the plaint schedule property since 1958 as lawful owners continuously without any obstruction or objection from anybody since 25 years and neither the plaintiff nor her father or anybody ever objected and interfered with the peaceful possession of the defendants in the plaint schedule property. The defendants never knew about the partition of 1964 referred in the plaint between the plaintiff's father and her paternal uncles, the sale deed of 1965 referred in the plaint between the plaintiff's father and Venkatarama Rao and about the gift deed in 1975 referred in the plaint between Gopalakrishnaiah and the plaintiff. These documents were conducted with a view to cause wrongful loss to the defendants. The plaintiff's father and her paternal uncles have the knowledge of the concluded sale of the plaint schedule property between the said Kotamma and the defendants.

16. It was further specifically pleaded that there was no occasion for the defendants to have knowledge of the partition, the sale deed of 1965 and the gift deed of 1975 as neither the plaintiff nor her father or her paternal uncles or her alleged agents ever at any time informed about the said documents to the defendants. The said documents were concocted behind the back of the defendants and as such the documents referred in para 3 of the plaint do not bind the defendants. It was also further pleaded that the defendants had been in uninterrupted and peaceful possession of the plaint schedule property since 1958. There was no dispute of any kind between the plaintiff or her father with the defendants regarding the plaint schedule property. The plaintiff nor her father or her agents ever demanded the defendants at any time to vacate the plaint schedule premises and it is false to allege that the defendants are only licencees. For the first time, the plaintiff got a legal notice dated 29-1-1983 issued to the defendants demanding them to vacate the plaint schedule premises. It was further pleaded that it is not true that the plaintiff had been paying the Municipal tax. The plaintiff got the gift deed of 1975 registered in her name and got her name entered in the Municipal records in the place of K. Kotamma in the year 1979 behind the back of the defendants with a view to make some claim over

the plaint schedule property. The defendants never knew about the plaintiff's efforts to get her name entered in the Municipal records. The defendants also were not aware of the plaintiff's application for the alleged approval of a building plan.

17. It was also further pleaded that the very fact that the name of K. Kotamma as the owner of the plaint schedule property stands in the Municipal records till 1979 in spite of the alleged partition in 1964 and the alleged sale deed in 1965 and the alleged gift deed in the year 1975, clinchingly establishes that the plaintiff with the assistance of her father created documents in the Municipal records so as to make it appear that they have some sort of control over the plaint schedule property. As such the documents created by the plaintiff in the Municipal records do not bind these defendants.

18. The defendants further pleaded that they had been in uninterrupted possession and enjoyment of the plaint schedule property and neither the plaintiff nor her father or her agents did not know what type of construction the plaint schedule property was at any time between 1958 till date. It was also further pleaded that the defendants had been paying all the taxes due for revenue and because of the fact that nobody demanded them the Municipal tax, they did not pay. Even the plaintiff also paid the Municipal tax for 1979 to create a document for claiming the ownership of the property. The defendants further pleaded that an evil design was made by the plaintiff through her agents to grab the property lawfully vested in the defendants. The plaintiff has no manner of right over the plaint schedule property and the defendants are the rightful owners in possession and enjoyment of the plaint schedule property over a continuous period of 25 years and their title was also perfected by the doctrine of adverse possession and the plaintiff cannot claim the alleged rights over the property by the said doctrine. It was also further pleaded that the plaintiff out of avarice and after seeing the value of the property started the proceedings with a view to cause wrongful loss to the defendants by gaining wrongful profit to herself.

19. For the first time the plaintiff got a legal notice dated 29-1-1983 issued through her advocate to the defendants with vague allegations of ownership over the property. It was further pleaded that the plaintiff alleged in the notice that she permitted the defendants to live in the plaint schedule property as licencees, but in fact, she knew that the defendants had been residing therein since 25 years. After serving the notice, taking advantage of the fact that the defendants did not possess any title deed, demanded the defendants to pay a lump sum amount of Rs. 1,00,000/- through her agents when they approached, but the defendants pleading all the facts stated their inability to pay the huge amount in view of the conclusion of sale by them with late Kancharla Kotamma.

20. But, the agents of the plaintiff did not care not the defendants and they forcibly took some photographs of the plaint schedule property. Under the said circumstances, the defendants got their reply dated 8-3-1983 issued to the

plaintiff's advocate with all true facts. After receiving the reply, the plaintiff got a rejoinder dated 11-4-1983 with all false allegations with a view to force the defendants to concede for their illegal demand. As the defendants could not accept the illegal demand of the plaintiff, the plaintiff got the suit dated 15-6-1983 filed. The defendants further pleaded that to the plaintiff's notice dated 29-1-1983, the reply of the defendants dated 8-3-1983 and the rejoinder dated 11-4-1983 may be read as part and parcel their written statement.

21. It was further pleaded by the defendants that assuming for a moment that the gift deed of 1975 is true and valid, the plaintiff at least never cared to inform the defendants about the alleged gift deed and for the first time after concocting all the documents in Municipal records, she served the notice dated 29-1-1983 with ulterior motives. The very conduct of the plaintiff clearly establishes that she had filed the present suit only to harass the defendants to make unlawful gain. The suit of the plaintiff also is liable to be dismissed by the doctrine of laches on the part of the plaintiff. The cause of action stated in the plaint had been denied as not correct and it was further pleaded that the plaintiff has no cause of action to file the suit. Further, it is not correct to allege that the plaintiff's father permitted the defendants to live in the thatched house in the plaint schedule house in 1972. The defendants submit that they had been residing in the plaint schedule property since 1958 as stated by them and as such the cause of action is incorrect and the plaintiff has no cause of action for filing the suit by the doctrine of adverse possession.

22. Issues and Additional Issues settled by the trial Court:

On the strength of the respective pleadings of the parties, the following Issues and additional Issues had been settled for trial:

Issues:

1. Whether the plaintiff is entitled to possession of the plaint schedule property and eject the defendants?
2. Whether the plaintiff is entitled to mesne profits and if so at what rate?
3. To what relief?

Additional Issues:

1. Whether the defendants have purchased the suit site from Kancherla Kotamma in 1958 as contended?
2. Whether the defendants had perfected title to the plaint schedule site by adverse possession?

23. Oral Evidence available on record:

24. Documentary Evidence available on record:

25. Findings recorded by the learned Subordinate Judge, Vijayawada in brief:

The learned Judge appreciated the oral and documentary evidence in detail, answered Issue No. 1 and Additional Issue Nos. 1 and 2, commencing from paras 6 to 15 and recorded a positive finding that in the case of executory contract, the possession of the transferee on the date of registration of the conveyance would be permissive and thus came to the conclusion that the said Issues are to be answered in favour of the plaintiff and against the defendants. The learned Judge further proceeded to discuss the evidence available on record while answering Issue No. 2, commencing at para 16 and recorded a finding that a sum of Rs.75/- per month would meet the ends of justice as mesne profits from the date of suit and the plaintiff to pay the Court fee while executing the said decree and accordingly the suit was decreed. Hence the present Appeal.

26. Submissions of Sri V.S.R. Anjaneyulu: The learned Counsel representing the appellants had taken this Court through the oral and documentary evidence available on record and would maintain that in a suit for ejection, the burden would be on the plaintiff to establish title irrespective of the weakness of defence and this principle was not properly appreciated by the trial Court. The learned Counsel also pointed out to the clear oral evidence of D.W.2 and D.W.3 which would establish the sale transaction between Kotamma and the 1st defendant. The Counsel also pointed out that the crucial documents Exs.A-1 and A-18 were not proved in accordance with law.

27. The counsel pointed out that Ex.A-1 is only a Photostat copy of the registered settlement deed and Ex.A-18 also is the registration extract of the Will executed by Kotamma dated 5-1-1958. None concerned with Ex.A-18 was examined and hence the same was not duly proved. When the plaintiff was unable to prove the title deed and also the anterior title in pursuance of which it is stated that P.W.1 got the property, irrespective of the defence of the defendants, the plaintiff could have been nonsuited. The reasons for non-production of the original gift deed Ex.A-1 are not forthcoming. The counsel also pointed out the other findings recorded by the trial Court and would comment that such findings had been recorded on improper appreciation of evidence. The Counsel also pointed out to the evidence of P.W.1 to P.W.5 in particular and certain discrepancies and also the evidence of D.W.1 to D.W.3 apart from the evidence of D.W.4 and further in detail explained Ex.B series documents. The counsel would conclude that in the light of the absence of evidence in proof of title, the Appeal to be allowed and the suit to be dismissed.

28. Submissions of Sri P. Venu Gopal: Sri Venu Gopal, the learned Counsel representing the respondent/plaintiff would maintain that the respective stands taken by the parties to be taken into consideration while appreciating the evidence available on record. Originally the property belonged to Kotamma is not in dispute at all even in the light of the defence which had been put forth by the defendants and also in the light of the deposition of D.W.1 in this regard. When that being so, in the light of the clear evidence available on record, the evidence of P.W.1 to P.W.6, the documents Exs.A-18 and Ex.A-1, cannot be disbelieved in

any manner whatsoever.

29. The learned Counsel also explained how clear oral evidence had been let in by P.W.2 to P.W.6, apart from the evidence of P.W.1 tracing the title and how ultimately that the title passed on to P.W.1. The counsel also explained Ex.A-2 apart from Ex.A-1 and Ex.A-18 and also further explained several documents which had been marked as Ex.A series which would clearly support the stand taken by the plaintiff. Even otherwise, in the light of the oral sale set up by the defendants, the plea of adverse possession also would not be available and hence viewed from any angle, even if the evidence of D.W.1 to D.W.4 to be taken into consideration, in the light of the clear evidence of P.W.2 to P.W.6, well supported by the stand taken by P.W.1, the findings recorded by the learned Judge on the question of title and on the aspect of plea of adverse possession, on the plea of oral sale, would not suffer from any legal infirmity whatsoever and hence the said findings are liable to be confirmed and the Appeal to be dismissed.

30. Points which arise for consideration in this Appeal: The following points arise for consideration in this Appeal:

1. Whether the findings recorded by the trial Court granting the relief of recovery of possession and also the mesne profits to be confirmed or are liable to be disturbed in the light of the oral and documentary evidence available on record?

2. If so, to what relief the parties would be entitled to?

31. Point No. 1: The respective pleadings of the parties, the evidence available on record, the findings recorded by the trial Court in brief in the light of the oral and documentary evidence available on record while answering Issues already had been referred to supra. The evidence of P.W.1 is that she filed the suit through her Power of Attorney, her maternal uncle Sri V.V. Bhoopal and she got the plaint schedule property from her father under settlement deed towards pasupu-kumkuma and her father purchased the plaint schedule property from his younger brother and Ex.A-1 is the Xerox copy of the registered settlement deed dated 28-7-1975 under which the property was given to her as pasupu-kumkuma. P.W.1 also deposed that his father was second of the six brothers and all the six brothers got properties near the suit property.

32. Originally, the land was bit extensive and all the brothers are having shares and her father purchased one share from one of the brothers and that the share purchased by her father is the plaint schedule property under Ex.A-1. P.W.1 also deposed that her father's share was given to her younger sister as pasupu-kumkuma at the time of her marriage. Originally the entire land belonged to her great great grand mother Kotamma. Ex.A-2 is a Xerox copy of the partition deed dated 9-10-1964 between her father and his brothers. Ex.A-3 is the registration extract of the sale deed dated 19-2-1965 executed by her uncle in favour of her father in respect of the plaint schedule property. This witness also deposed about her studying M.A. and completing Post Graduation and doing M. Phil and about her marriage and the other aspects. P.W.1 also deposed that in 1975 she was at

Hyderabad doing Graduation and her paternal uncles were either at Vijayawada or Kolavennu and she had no idea whether her maternal uncles sold their properties. P.W.1 no doubt deposed that she does not know how the defendant came into possession of the suit property and she does not know the details. P.W.1 further deposed that Kanchala Kesavarao was the brother of her paternal grand father Chandrasekhar Rao and her parents-in-law belong to Vijayawada and her husband is a Chemical Engineer at Ohio. P.W.1 also deposed that on her behalf her maternal grand mother and her paternal uncles were looking after the suit property during her absence.

33. It was also further deposed that in the year 1979, she applied for mutation of property in Municipal records. Ex.A-4 is the endorsement of the Municipality changing the name in Municipal records in her name. P.W.1 further deposed that in 1981 she applied to the Municipality for construction of a building and Ex.A-5 is the permission. Ex.A-6 is the sanctioned plan. Ex.A-7 is the demand notice of the property tax for the suit land issued in the name of her grand mother and then the mutation was done. Ex.A-8 is the demand notice issued in her name. Ex.A-9 is the demand notice for payment of tax. Ex.A-10 is the tax receipt for half year ending 31-3-1980. P.W.1 also deposed that she executed a notarized Power of Attorney in favour of her uncle Sri V.V. Bhoopal from U.S.A. and Ex.A-11 is the Power of Attorney. Thus, as per the settlement she is the absolute owner of the suit property paying taxes to the property. 2. On re-call again, P.W.1 deposed about the settlement deed Ex.A-12 and partition deed Ex.A-13. Ex.A-14 is the registered plan under which the property was partitioned under Ex.A-13. Here itself it may be stated that Ex.A-12 is equivalent to Ex.A-1 and Ex.A-13 is equivalent to Ex.A-2. P.W.1 was cross-examined at length. She deposed that they repeatedly asked the defendants to vacate the property. Ex.A-15 is the office copy of notice and the defendants sent reply to the above notice Ex.A-16 and her Advocate sent reply to Ex.A-16 and she knows the contents of these notices and she knows the contents of the gift deed also. P.W.1 also deposed in cross-examination that she was not present at the time of the partition deed and the sale deed and she came to know about these aspects through her father.

33. This witness also deposed that in 1972-73 when she visited the suit property she had seen a hut there and some people in 1975 after the suit property was transferred in her name. The defendants were introduced to her by her father and only since then she knows them. She could not communicate with them in Telugu as she does not know Telugu very well and her father and uncles used to talk to them because she was studying in Hyderabad. She was also cross-examined in relation to 1977 cyclone and the other aspects. It is true that to certain of the facts, this witness pleaded ignorance and deposed that her father and the uncles may be knowing those details. This is the evidence of P.W.1.

34. P.W.2, the father of P.W.1 deposed that previously he was as senior member of faculty in Administrative Staff College of India at Hyderabad and later he set up his own industry at Hyderabad and still he is an Examiner of paper sheets for

J.N.T.U. This witness deposed about his working at U.S.A. and returning from U.S.A. and about all his family affairs and also deposed that his elder brother Narayana Rao who was his G.P.A. was looking after the affairs and in 1964 the land was partitioned and he was represented by his G.P.A. Narayana Rao during the partition. Ex.A-2 is a Xerox copy of the partition deed. In the partition "E" plot was allotted to his share and C plot was given to his younger brother Rambabu as can be seen from Ex.A-9 plan. A copy of Ex.A-14 was sent to him at U.S.A. P.W.2 further deposed that he had given his plot to his second daughter Nalini. His brother Narayana purchased for his benefit C plot from Rambabu under Ex.A-3 sale deed. It was also further deposed that Kotamma died in April 1958 and after her death his elder brother Narayana Rao was looking after his property of which the suit property is a part. This witness virtually deposed all the factual details which had been averred in the plaint and also clearly traced the title and further explained under what circumstances the legal action was initiated. This witness deposed in detail certain aspects in relation to Ex.A-12 and also deposed about the undertaking of the defendants to vacate which was oral and how they had not kept up the promise and certain suggestions were denied by this witness. P.W.3 also deposed on similar lines as that of P.W.2 well supporting the version of P.W.1. P.W.4 also virtually supported the version of P.W.1 in all material particulars and had given the details relating to the family. P.W.5 deposed that P.W.1 is his brother's daughter and he had traced the title by deposing about the execution of original of Ex.A-18 bequeathing his sites to the brothers and his grand mother dying after four months after execution of Ex.A-18 and also deposed that he was managing all the sites on behalf of the brothers and in 1964 they had divided the sites by virtue of a partition deed, Ex.A-13, and the plan Ex.A-14. P.W.5 also deposed that P.W.1's father was at U.S.A. at that time and therefore he acted as Power of Attorney holder.

35. He also further deposed about Ex.A-19 to A-23 and filing appeal petitions to the Municipality challenging the assessment of tax evidenced by endorsement of the Municipality, Ex.A-24. P.W.5 also deposed about Exs.A-25, A-26, A-27, A-28, A-29, A-30, A-31 and A-32 to A-35. P.W.5 also deposed about the challans Ex.A-36 and Ex.A-37 for construction of compound walls. He was also cross-examined at length and the suggestions put to this witness were denied. P.W.6 also was examined who had clearly supported the stand taken by P.W.1.

36. As against this evidence, the evidence of D.W.1, D.W.2, D.W.3 and D.W.4 is available on record and the documents relied upon are as hereunder. Ex.B-1-Wedding card of Ranga Rao; Ex.B-2-registered notice dated 29-1-1983; Ex.B-3-Voters list; Ex.B-3 (1) & Ex.B-3 (2) - relevant names, had been marked. Likewise, Ex.B-4 is the voters' list. Exs.B-4 (1), B-4 (2) and B-4 (3) are the relevant entries. Ex.B-5 is another voters' list; Ex.B-5 (1) is the name of the 5th defendant at the relevant page; Ex.B-6 is the office copy of the application of the 2nd defendant to Tahsildar, Vijayawada, Ex.B-7 is the postal acknowledgment for Ex.B-6 dated 18-1-1978; Ex.B-8-L.I.C. policy of Anasuya, the 1st defendant; Ex.B-9-Rejoinder notice; Ex.B-10-Special notice issued for property tax to

Kotamma by Vijayawada Municipality; Ex.B-11-Attachment order for recovery of land revenue; Ex.B-12 to B-17-Tax receipts; Ex.B-18-Attachment notice; Ex.B-19-Property tax receipt; Ex.B-20 is yet another property tax receipt. The 2nd defendant examined himself as D.W.1 and further examined D.W.2, D.W.3 and D.W.4.

37. The specific stand taken by the defendants is that the suit schedule property was agreed to be sold by Kotamma for Rs. 2,300/- in February 1958 and the entire consideration was paid and thus the defendants had been in continuous possession and enjoyment of the plaint schedule property and further stand taken is that Kotamma had no female issues and she developed affection towards the 1st defendant and out of love and affection and with a view to provide residence, the suit property was agreed to be sold. Incidentally, the plea of adverse possession also had been put forth. Exs.B-4 and B-5 are the voters' lists. It is needless to say that Ex.B-1 does not specify anything in relation to the plaint schedule property. Ex.B-2 is the registered notice. Exs.B-4 and B-5 are the voters lists of the subsequent years after the institution of the suit. Ex.B-6 is an application said to have made by the 2nd defendant to Tahsildar, Vijayawada for sanction of relief for damage of the hut. Ex.B-8 is the L.I.C. policy, this witness relied upon to show that even in the year 1970 the defendants had been in possession of the property. Ex.B-10 is the special notice for enhancement of tax. Ex.B-11 is the attachment notice. Exs.B-12 to B-14 are the cist receipts which are of the year 1983. Exs.A-15 to A-17 are the tax receipts. These are all of the years 1987-88.

38. It is needless to say that these are after the institution of the suit. Exs.B-18 to B-20 are also subsequent to the filing of the suit. Strong reliance was placed on the evidence of P.W.1 to P.W.6 and also Ex.A-18, Ex.A-13 and Ex.A-12.

While appreciating a matter of this nature, it is true that the burden is on the plaintiff but the defence of the defendants also cannot be totally ignored. As can be seen from the nature of evidence of P.W.1 and P.W.2, P.W.2 had been away at U.S.A. for sufficiently a long time and this fact is well evidenced by P.W.3, P.W.4 no doubt P.W.5 as well and the further details had been well narrated by other witnesses in support of P.W.2. It is true that P.W.1 has no knowledge about certain facts, but it is pertinent to note that her specific stand is that her father had given this property by way of "pasupu-kumkuma" by executing a settlement deed, the original of which also had been subsequently marked. Lengthy submissions were made relating to Ex.A-18, not being proved in accordance with law. There are a series of events subsequent to Ex.A-18 and evidently Ex.A-18 was just marked to show the origin of the property and subsequent thereto the property was partitioned among the brothers and how the property allotted to one brother was purchased by P.W.2 and how P.W.2 in turn executed the settlement deed in favour of P.W.1 towards pasupu-kumkuma.

39. Having taken a plea of oral sale by Kotamma, a surprising stand is being taken that the said document was not duly proved. In the light of the voluminous

oral and documentary evidence available on record, especially in the light of the several subsequent events which would clearly establish the title of P.W.1, the said contention needs no serious consideration. Apart from the evidence of D.W.1, the evidence of D.W.2 and D.W.3 also had been relied upon who deposed about the sale transaction. D.W.1 no doubt deposed about all the facts and the documents Ex.B series also. D.W.2 was not present at the time of sale transaction but deposed that the such information was given to D.W.2 by the 1st defendant. This witness does not speak of passing of consideration to Kotamma in his presence.

40. This witness was discarded by the trial Court on the ground that he is an interested witness. The evidence of D.W.2 is to the effect that the 2nd defendant borrowed Rs. 2,000/- from him and executed a promissory note in February 1957 and discharged the debt in 1958 by paying Rs. 2,000/-. No doubt according to this witness the said amount was borrowed for the purpose of purchasing the site. The specific case of the defendants is that the oral sale had taken place in the year 1958, may be in the month of February. The evidence of D.W.3 is that the borrowing was made even in the year 1957 for purchasing of the site and the same was discharged in 1958. Except the oral testimony of D.W.2 and D.W.3, absolutely there is no documentary evidence.

41. The evidence of D.W.1 also would go to show that he was making repeated requests and due to his misfortune Kotamma died and subsequent thereto also he was making demands but the document was not executed. Even if the evidence of D.W.1 to be accepted, it appears for sufficiently a long time he was making demand with Kotamma to execute the sale deed during her lifetime and subsequently he was making demand for execution of the sale deed from her heirs. Several transactions which had taken place between the heirs of Kotamma already had been specified supra. The evidence of D.W.1 is clear and categorical that he was making repeated demands for executing a sale deed and evidently no sale deed was executed at any point of time. The trial Court in fact had taken pains to record several of the improbabilities in the stand taken by the defendants and further specific finding had been recorded that in the light of the plea taken by the defendants, it is to be taken that possession continues to be permissive and hence the suit is perfectly within limitation and the plea of adverse possession is not available.

42. Apart from the evidence of D.W.1, D.W.2 and D.W.3, the evidence of D.W.4 also had been taken into consideration. The voters' list produced also had been discussed at length. The controversy relating to the continuous possession from the year 1958 in the context of the plea of adverse possession also had been discussed at length and in the light of the clear evidence of P.W.2 to P.W.5, the trial Court came to the conclusion that the defendants came into possession of the property in 1972 with permission and hence the plea of prescription of title by adverse possession also cannot be sustained and even otherwise at the best the possession can be taken only as permissive possession.

43. On over-all appreciation of the facts and circumstances, this Court is thoroughly satisfied that in the light of the clear evidence available on record, the evidence of P.W.1, well supported by P.W.2 to P.W.6 and also the documentary evidence placed on record, Exs.A-12, A-13, A-3 and also the other documents Exs.A-4 to A-10, Ex.A-14, Ex.A-19 to Ex.A-44, this Court is thoroughly satisfied that the findings recorded by the trial Court cannot be found fault and accordingly the said findings are hereby confirmed.

44. Point No. 2: In the light of the findings recorded supra, the Appeal being devoid of merit, the same shall stand dismissed, with costs.