
(2004) 09 AP CK 0071
In the Andhra Pradesh High Court
Case No : AS No. 274 of 1997

District Collector and Another

APPELLANT

Vs

Gandaiah

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : (2004) 6 ALD 130 : (2004) 6 ALT 607

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : N. Subba Reddy, Government Pleader, for the Appellant; T.S. Anand, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Heard both the Counsel.

2. This appeal is filed challenging the judgment and decree dated 4.11.1996 passed by the Court of II Additional Subordinate Judge, Rangareddy District in O.S. No. 403 of 1989.

3. By the impugned judgment and decree, the Court below decreed the suit filed by the plaintiff for declaration of title in respect of land to an extent of Ac. 14.23 guntas situate at Sy.No.I of Himayathsagar Village, Rajendernagar Mandal, Rangareddy District and also granted. consequential injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the said land. The Court below further directed the 1st defendant - the District Collector, Rangareddy District to mutate the name of plaintiff as pattadar in respect of the suit land in revenue records. Aggrieved by the decreeing of the suit, the defendants in the suit filed this appeal. Hence, the defendants are the appellants.

4. For the sake of convenience, the parties shall be referred to as per their array in the original suit.

5. The facts in brief are that the suit land admittedly belong to the Government, since the same was classified as Sarkari Poronboke (Government waste land). The suit land along with other lands were handed- over by the Government - 1st defendant to the 2nd defendant - A. P. Police Academy through Proceedings No.D2/3613/87 dated 23.3.1987 under Ex.B-2 and the possession was also delivered on 15.5.1987 under the cover of panchanam, Ex.B-4. The suit was filed on 8.9.1989 on the ground that the defendants were interfering with the peaceful possession and enjoyment of the plaintiff in the suit land.

6. The entire claim of the plaintiff in the suit is that admittedly the land belongs to the Government and he has been in possession and enjoyment of the suit land since several years and that earlier, his forefathers started enjoying the property since fifty years prior to the filing of the suit and, therefore, he acquired the title over the suit property by adverse possession, since the possession and enjoyment of the suit land by his forefather and afterwards by plaintiff was open, continuous and peaceful. The further claim of the plaintiff is that since he is Harijan, he is entitled for patta to the suit land.

7. The defendants filed counter- affidavit denying the plaint allegations. They stated that the Government has been in continuous possession up to 15.5.1987 and later on, the defendant No. 2 has been in possession. It is stated that the 2nd defendant filed requisition for alienation of the land to establish Andhra Pradesh Police Academy and that at the time of process of alienation proposal and also at the time of preparation of survey division records, the suit land was vacant and also it was reported that land was free from encroachment. It is stated that the 1st defendant through proceedings dated 23.3.1987 handed-over the land to the 2nd defendant and the possession was delivered on 15.5.1987 under the cover of panchanama. Therefore, the defendants contended that the plaintiffs have never been in possession in the suit land.

8. Basing on the above pleadings, the Trial Court framed the following issues:

1. Whether the plaintiff is in possession of suit land since 50 years and perfected his title by adverse possession?

2. Whether the plaintiff is deemed to be pattadar of the suit land by virtue of Notification No. 14 of 1954?

3. Whether the plaintiff is entitled for declaration as a owner and possessor of suit schedule land?

4. Whether the plaintiff is entitled to insert his name in Revenue Records as pattadar of suit lands?

5. To what relief?

9. In support of the case of the plaintiff, the plaintiff got examined himself as P.W.I and examined P.W.2, a resident of Himayatsagar and got marked Exs.A-1 to A-15. On behalf of the defendants, the then Deputy Superintendent of Police, of

A.P. Police Academy was examined as D.W.I and the Mandal Revenue Officer of Rajendranagar was examined as D.W.2 and Exs.B-1 to B-7 were marked.

10. Considering the evidence available on record, both oral and documentary, except Issue No. 2, the Court below answered all the issues in favour of the plaintiff and decreed the suit filed by the plaintiff. Aggrieved by the same, the defendants filed this appeal.

11. The learned Counsel appearing for the appellants-defendants Sri N. Subbareddy assailing the impugned judgment, raised the following contentions (1) that mere possession is not adverse, unless there is animus to assert the title; (2) that the plaintiff did not establish his continuous possession over the entire extent of suit land for the statutory period of thirty years, since the land admittedly belongs to Government; (3) that possession over small extents of land in the entire extent does not entitle the plaintiff to claim the entire land on the ground of adverse possession; (4) that as there is no specific pleading in the plaint as to when exactly the adverse possession commenced, the plea of adverse possession can neither be entertained nor sustained; (5) that the animus of the plaintiff to acquire the title, is not prove; (6) feat the plaintiff in support of his plea, filed pahanis Exs.A-10 to A-15 i.e., for the period commencing from 1953 till 1979; (7) that when in Ex.A-15 the land was shown as fallow, there is no question of possession by the plaintiff; (8) that under Exs.A-8 and A-9 B memorandums were issued for the years 1984-1985 and 1985-1986 and Siviah Jamah (for short "SJ.") was levied and, therefore the possession of the plaintiff from 1984-1985 and 1985-1986 amounts to permissive possession.

12. Repelling the above contentions, the learned Counsel appearing for the respondent - plaintiff Sri T.S. Anand submitted that considering the evidence of P.W.2 and D.W.3 in right perspective the Court below decreed the suit. He stated that the evidence of P.W.2 and D.W.3 discloses the possession of the plaintiff over the suit land even prior to 1953. He stated that merely because pahanis for some periods were not filed, that does not negate the case of the plaintiff for adverse possession. He stated that the pahanis right from the year 1953 till 1986 were filed, showing the plaintiffs open, continuous and peaceful possession over the suit property, and, therefore, the Court below was right in holding that the plaintiff was entitled to the relief of declaration of title and for permanent injunction. He further contended that when once the plaintiff had been admittedly in unauthorized possession, that fact itself has to be treated as setting up hostile title over the defendants and no specific period need be pleaded. He nextly contended that as per the evidence on record even long before the booking of "B" memorandums and levying of S.J., the plaintiffs and his predecessors have been in possession and, therefore, even if "B" memorandums were books for the years 1984-1985 and 1985-1986, it shall not be treated that there is any break in adverse possession of the plaintiff. In other words, the contention of the learned Counsel for the plaintiff is that merely

because "B" memorandums were booked, that does not mean that the animus of the plaintiff over the title of the defendants had come to and end, inasmuch as the plaintiff has established his possession, which is open, continuous and peaceful for a period of thirty years, even prior to 1984-1985.

13. In view of the above rival contentions the only point that arises for consideration before this Court is "whether the plaintiff could successfully establish that he acquired the title by prescription"?

14. Before adverting to the respective contentions, it is pertinent to look into the documents filed by the plaintiff under Exs.A-1 to A-15. Ex.A-1 is the land revenue receipt dated 14.11.1988; Exs.A-2 to A-7 are the land revenue challans. Here it is to be noted that all these challans are paid subsequent to the date of filing of the suit in the year 1989. Ex.A-8 is the "B" memorandum for the year 1984-1985; Ex.A-9 is the "B" memorandum for the year 1985-1986; Exs.A-11 to A-15 are the pahanis from 1953-1954 till 1977-1979; Ex.A-10 is the certified copy of the pahani for the year 1978-1979 and 1980-1981.

15. Among the above documents, Exs.A-11 to A-15 are the relevant pahanis, which require close scrutiny. In all these pahanis, the land was classified as "Sarkari Poramboke" and the extent was consistently shown as Ac. 14.23 guntas. The significant factor that is to be noted is that the possession of the plaintiff under these documents was ranging from Ac. 1-00 to Acs.4-00 and in most of the years, it was varying between Ac. 1-00 to Acs.2-00, out of the total extent of Ac. 14.23 guntas. Therefore, from these documents, which have been filed by the plaintiff himself, it is clear that the extent of the land that was under the cultivation in different years from 1953 to 1979 was maximum Acs.4-00 and the minimum is about Ac. 1-00 out of the total extent of Acs. 14.23 guntas. The another significant factor that is to be noted is that the suit was for declaration and perpetual injunction for the entire extent of Acs. 14.23 guntas, though the possession of the plaintiff as per Exs.A-11 to A-15 ranged from Ac. 1-00 to Acs.4-00.

16. It is to be noted that for a person who claims title by prescription to a particular extent of land, should establish peaceful, open and uninterrupted possession over the entire extent of land and not possession over small extends out of the entire extent. From the documents referred to above, it is quite visible that the plaintiff was never in possession over the entire extent of Acs.14-23 guntas and it is further very difficult for anybody to come to any conclusion, over which part of the entire extent of plaint schedule, the plaintiff was in possession and enjoyment in each year. Furthermore in all these documents, the land was identified as "Sarkari Poramboke".

17. Coming to Ex.A-8, same are the details as referred to above. Added to that it could be seen from this document that the plaintiff was in possession doing dry cultivation to an extent of Ac.2-10 guntas out of Acs.14.23 guntas, and "B" memorandum was booked and an amount of Rs. 394/- was imposed as S.J.

Similar under Ex.A-9, the plaintiff was in possession only to an extent of Ac. 1-05 guntas out of total Acs.14.23 guntas and an amount of Rs. 197/- was imposed as S.J. the other details are same as that of in Ex.A-8. From these two documents it is quite clear that the plaintiff was in possession of Government land and S.J., which is akin to imposing tax or penalty with regard to agricultural land, was imposed, obviously treating the possession of the plaintiff as illegal or unauthorized and the plaintiff paid the said amount without any protest or challenge.

18. It could be seen from the cross- examination of P.W.I, that he admitted that he has been paying tax also. Obviously the said statement with regard to payment of tax is demonstrably, at least, from the year 1984-1985.

19. What is the effect of levying S.J. and booking "B" memorandums is the incidental question that has to be considered. This incidental question with regard to levying of penalty for illegal or unauthorized occupation of Government land was considered and answered by the Apex Court in Hari Krishna Patel and Another Vs. State of A.P. and Another, , wherein the Apex Court considering the entries in revenue records, where the Government was shown as the owner of the land and was asserting its title to the land by imposing penalty on appellants' father for unauthorized occupation and use of the land for brick kiln and which penalty was paid by the father of the appellants", held that possession of the appellants' father was permissive and payment of the penalty amounted to acceptance of the title of the Government.

20 In view of the above judgment of the Apex Court it is very clear that the imposition and paying of S.J. and booking "B" memorandums are clear indications that the plaintiff admitted the title of the Government and he has been in possession that too over the limited extent or extents from time to time in the entire extent of Acs. 14-23 guntas as a licensee, which possession otherwise can be called "permissive possession". Therefore, there cannot be any doubt for this Court to hold that the possession of the plaintiff as could be seen from Exs.A-8 and A-9 filed by plaintiff himself, that his possession was a speck in the ocean and even that possession can be termed as permissive, at least with effect from 1984.

21. The next question that falls for consideration is whether the plaintiff could establish his continuous, open and peaceful possession for over thirty years up to 1984. A simple mathematical calculation would suggest that the plaintiff must establish his title adverse to that of the defendants from the year 1954. As already pointed out, the plaintiff pressed into service Exs.A-10 to A-15. Ex.A-10 is the pahani, which pertains to the years 1978-1979 and 1980 - 1981 i.e., after the suit land along with other lands was allegedly handed-over to the 2nd defendant. Therefore, Ex.A-10 is of no use to the plaintiff to establish his continuous possession for thirty years. Again as already noted, the plaintiff shall demonstrate that he had been in continuous possession backwards from 1984 i.e., from 1954 to 1984. Further Exs.A-11 to A-15 pahanis show the possession

of the plaintiff from 1953-1954 to 1978-1979 i.e., for a period of 25 years. How far these pahanis under Exs.A-11 to A-15 would establish the claim of the plaintiff for adverse possession, is the next question. If these documents are browsed through, as noted above, it would only show that the plaintiff has been in possession over small extents of land in the entire extent of Acs. 14-23 guntas and admittedly the land was classified as "sarkari poramboke".

22. From the above documents, filed by the plaintiff himself, it is abundantly clear that the plaintiff was never in possession of the entire extent of Acs. 14.23 guntas as claimed by him in the plaint, as adverse possessor, and the documents were only from the year 1953 to 1979, during which period, no "B" memos were issued and also no SJ. was imposed. Obviously if this period is taken into consideration, it does not satisfy the statutory period of 30 years to claim adverse possession over Government.

23. As already held the possession of the plaintiff as "siviah jamadar", as he paid SJ. at least from the year 1984-1985 has to be eschewed from consideration for the purpose of computing statutory period of thirty years to establish adverse possession, since as per the judgment of the Apex Court referred to Hari Krishna Patel v. State of A.P. (supra), that possession, by way of paying tax to the Government amounts to accepting the title of the Government and also amounts to permissive possession only. Even if the period from 1953 and the possession thereof of the plaintiff is taken into consideration, it will not satisfy the requirement of thirty years for other reasons.

24. The other reasons firstly are that there are no pahanis showing the possession of the plaintiff of any extent for the years 1982-1983 and 1983-1984. Secondly in the Pahani of the year 1953 under Ex.A-15, the land was shown as fallow, means - not under cultivation. But interestingly in all these documents, the nature of the possession was recorded as "unauthorized". It was consistently recorded that small bits of land alone were cultivated out of Acs. 14.23 guntas. Further, as stated above the pahanis showing the possession of the plaintiff, of any nature, for the year 1982-1983 and 1983- 1984 were not filed.

25. Therefore, the pre-requisite of "continuous possession" effectively is not established, and therefore the claim of the plaintiff that he perfected the title over the suit property by adverse possession is not sustainable as per the decisions of the Apex Court in Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, and Karnataka Board of Wakf v. Government of India and Ors. 2004 (4) ALD 124 (SC).

26. As stated above, the plaintiff did not file pahanis for some period and he also did not prove his possession over the statutory period of thirty years. Therefore, it can be presumed that the plaintiff was not in possession for the periods for which he did not file pahanis. Further the Privy Council in the decision reported in Secretary of State v. Krishnamoni Gupta, ("02) 29 Cal. 518 : 29 LA. 104 : 6 CWN

617 : 8 Sar. 269 (PC), held that

" it would be contrary both to principle and authority to imply a constructive possession in favour of a wrong doer so as to enable him to obtain thereby a title by limitation. It is clear that the plaintiff could not acquire title except on proof of actual physical possession extending over 12 years."

27. However, the learned Counsel for the plaintiff relied on a decision reported in *Ambika Prasad v. Ram Ekbal Rai*, AIR 1966 SC 605, and contended that though some pahanis were not filed, in view of the other documents which show the continuity, presumption of continuity can be granted for the missing documents. From a perusal of the facts in the said judgment would disclose that the plaintiff therein filed the suit for recovery of possession and in order to establish title, he pressed into service some documents and they were not in continuity and for some period no documents were filed. In such circumstances, the Apex Court observed that presumption regarding possession can be drawn. But coming to the facts of the present case, it could be seen that the plaintiff is claiming title by adverse possession and not for recovery of possession by virtue of his title. Therefore, though the said judgment *Ambika Prasad v. Ram Ekbal Rai* (supra) is unexceptionable, does not apply to the facts of the present case.

28. Further claiming title may be by both ways i.e., by adverse possession or by grant or by any other source known to law. But it is to be born in mind that the onus of the plaintiff or the person claiming title by adverse possession is more onerous and such claim must be specifically pleaded and the time from which the adverse possession starts also must be categorically stated in the plaint averments.

29. A perusal of the plaint pleadings and the evidence show that except the blanket pleading of adverse possession, the year of commencement of adverse possession has not been indicated. It is only stated that since more than fifty years, the forefathers of the plaintiff and thereafter the plaintiff has been in possession and to substantiate this statement and deny the title of the defendants, as stated above, no sufficient documentary evidence was filed. When the burden is heavier on the person who takes up the plea of adverse possession, it is very essential for. such person to establish continuous possession with requisite animus, by necessary evidence. Any failure regarding establishment of possession at any point of time, would vitiate the very claim of adverse possession.

30. It is to be remembered that burden is much heavier on the person who pleads adverse possession. Otherwise the very purpose of the expression "continuous" in the concept of adverse possession would be defeated. The scope of inference regarding continuous possession cannot be made available for a person who claims adverse possession.

31. Further it is established principle of law that plea of adverse possession must be specifically pleaded and established. The Apex Court in the decision reported

in S.M. Karim Vs. Mst. Bibi Sakina, , considering the scope of adverse possession held at Paragraph No. 5 as under:

"....Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

32. In a recent judgment in Karnatka Board of Wakf v. Government of India and Ors. (supra), the Apex Court while summing up the conclusions with regard to claim of adverse possession, held as under:

"Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others, ."

33. In the light of the above legal position, it is necessary to look into the pleadings and the evidence available on record once again. In the plaint it is stated at Paragraph No. 2 that the suit land had been acquired by the forefathers of the plaintiff, since the time of their forefathers the lands is in continuous possession of the plaintiff. The plaintiff had been enjoying the possession of the suit lands as absolute owner for a period more than 50 years and has perfected his title over the suit lands ".

34. As already noted, except the above statement regarding the adverse possession, no other particulars have been furnished. Therefore, it is clear that the manner in which the plea of adverse possession was taken is not sufficient and on the contrary, the same is very vague.

35. As per the above decisions of the Apex Court, it is imperative for the plaintiff to specifically plead all the details like from what date the plaintiff had been in possession, adverse to the interest or title of the Government and to its knowledge. Furthermore the mere statement that the plaintiff and his forefathers have been in long possession of the property, without mentioning the details, as enunciated by the Apex Court in the decision Karnataka Board of Wakf v. Government of India and Ors. (supra), is not sufficient. The pleading and the evidence with regard to commencement of the possession of the plaintiff adverse to the true owner, shall be unimpeachable. When the plea is with regard to

adverse possession, as already noted above, any presumption or inference with regard to possession or nature of possession is impermissible.

36. However, as already discussed in the earlier paragraphs, the documentary evidence produced by the plaintiff in this regard i.e., Exs.A-8 to A-15 are absolutely of no use and on the contrary the documents Exs.A-8 and A-9 on the one hand and Exs.A-11 to A-15 on the other would cut- across the very case of adverse possession of the plaintiff.

37. Further as already pointed out, the plaintiff pleads adverse possession with regard to the entire extent of Acs. 14.23 guntas, A perusal of the above documents, which were filed by the plaintiff himself would clinchingly reveal that he was in possession of very meager or small extents in different years. The location of those extents is also not known, nor any details have been put-forth by the plaintiff in the oral evidence, let alone the documentary evidence.

38. The plaintiff who was examined as P.W.I in his cross-examination stated that he was cultivating Acs.10-00 to Acs.12-00, meaning thereby that the plaintiff himself was not sure about the extents of the land in his possession. Hence, in my view the plaint pleadings, oral evidence and the documentary evidence adduced on behalf of the plaintiff are totally incoherent with each other. In such circumstances, the conduct of the plaintiff in taking up the plea of adverse possession, particularly in the light of the evidence referred to above, cannot be appreciated and the very basis of the plaintiff to claim right by adverse possession regarding the entire extent of Acs. 14.23 guntas must be construed as totally false and perhaps motivated.

39. The other contention on behalf of the plaintiff is that when once the plaintiff was recognized as unauthorized possessor, that itself is an indication of the hostility. It is stated that under Exs.A-8 and A-9, the plaintiff was booked with "B" memorandums and SJ. was levied and, therefore, the possession of the plaintiff should be regarded as recognized possession coupled with hostility. In this connection it is to be remembered that the validity or otherwise of Exs.A-8 and A-9 in booking "B" memorandums and levying SJ. was never challenged by the plaintiff. When he yielded to such imposition of penalties and when the same were paid without any protest or challenge, the possession of the plaintiff cannot be treated adverse to that of Government and as already noted, the payment of penalty amounts to accepting the title of the Government and the possession amounts to permissive possession.

40. The Counsel for the plaintiff placed heavy reliance on the evidence of P.W.2, who is the neighbouring land owner of the plaintiff and who stated that since Police action in 1948 the plaintiff and his forefathers have been in possession. This statement itself cannot be treated as well- supporting evidence in favour of the plaintiff. In my view this statement is very vague and moreover, this statement was not proved by producing any documentary evidence in this regard. On the contrary, the documentary evidence and the oral evidence

produced by the plaintiff, falsify the very case of the plaintiff himself.

41. The Counsel for the plaintiff also relied on the evidence of DW.3 with regard to possession. In this context it is to be noted that D.W.3 was examined by the defendants only for the purpose of proving the delivery of the possession under the cover of Panchanama, Ex.B-4. D.W.3 while deposing stated that the possession was delivered and panchanama was drafted at the M.R.Os., office. Basing on this statement, the learned Counsel for the plaintiff contended that since the panchanama was drafted at M.R.Os office, it should be construed that there was no panchanama at all. This contention cannot be countenanced, for the sample reason that just because the panchanama was drafted at M.R.Os office, that fact by itself does not vitiate the fact of delivery of possession, when the execution of the document was spoken to by D.W.3 in categorical terms and when the same was corroborated by the evidence of D.Ws.1 and 2. The cumulative effect of the evidence of D.Ws.1 to 3, notwithstanding minuscule and irrelevant discrepancies, is to the effect that 1st defendant had delivered the land to the 2nd defendant - A.P. Police Academy under Ex.B-4 panchanama on 15.5.1987. This fact is supported by the documentary evidence and necessary entries have also been made in records like pahanies.

42. The total effect of the above circumstances is that the plaintiff could not establish his plea of adverse possession over the suit property for the statutory period of thirty years and he also utterly failed to fulfill the norms prescribed by the Apex Court in P. Lakshmi Reddy Vs. L. Lakshmi Reddy, , to prove his case of adverse possession. In this judgment, the Apex Court relying on the Mitra's Tagore Law Lectures on Limitation and Prescription (Edition) Vol. I, Lecture VI, at Page 159, quoting from Angell on Limitation, held at Paragraph No. 7 as under:

"Consonant with this principle the commencement of adverse possession, in favour of a person, implies that person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus."

43. As already recorded, the plaintiff did not establish his possession with requisite animus. Further the evidence on record establishes that the plaintiff was not in possession with effect from 15.5.1987, on which date the possession has been delivered by D-1 to D-2.

44. For, the above reasons, the issue framed is answered in favour of the appellants - defendants, negating the claim of the plaintiff with regard to adverse possession.

45. In view of the foregoing reasons, the impugned judgment and decree of the Trial Court is liable to be set aside and accordingly set aside and in the result appeal is allowed. No costs.