

(2006) 07 AP CK 0113
In the Andhra Pradesh High Court
Case No : SA No. 143 of 1994

K. Ramabrahmam

APPELLANT

Vs

G. Narsingh Rao

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 50B

Citation : (2006) 6 ALD 353

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.R.S. Srinivas, for the Appellant; Fazal Yousufuddin, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The appellant filed O.S. No. 3 of 1982 in the Court of District Munsif, Rammanapet, against the respondent, for the relief of declaration, that he is the owner of 15 acres of land in Sy.No. 282 of Aroor Village, and for recovery of possession of the same from the respondent. He also claimed past mesne profits, at the rate of Rs. 500/- per annum, for three years, prior to the date of filing of the suit.

2. The appellant pleaded that the mother of the respondent herein, by name, Radha Bai, borrowed certain amount from him, in connection with the marriage of her daughter in or about 1950, by mortgaging the suit land to him. He stated that since Radha Bai could not repay the amount, by the year 1954, she executed an unregistered sale deed dated 23-4-1954, in his favour, for the said land, for a consideration of Rs. 750/-. The possession is said to have been delivered on the same day. He, however, pleaded that the unregistered sale deed was misplaced, and lost by him.

3. According to the appellant, he cultivated the land ever since the date of the sale, and that his name was entered in various revenue records. It is also his

case that he mortgaged the land to the Large Size Co-operative Society, Aroor, in the year 1961 and obtained loan. According to him, the respondent was elected as President of the said Society in the year 1963 and he too had sanctioned loan on the mortgage of the suit land. In the year 1967, differences are said to have arisen between the respondent and his mother. It is alleged that the respondent dispossessed the appellant from the suit land in the 1967. He pleaded that he filed an application, u/s 50-B of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, before the Tahsildar, Ramannapet, for grant of validation certificate for the suit land, and that the same was pending as on the date of filing the suit. The appellant made extensive reference to various steps, that ensued between himself and the respondent for amicable settlement of the dispute.

4. The respondent filed written-statement, denying the allegation of the appellant. It was pleaded that after the death of his father, i.e. Sri Balvanth Rao, his mother Radha Bai was administering the properties, and since he was only a boy of very young age, his mother employed the appellant herein, as Gumasta, to look after the properties and to maintain the office of Patwari. He alleged that taking advantage of the access to the revenue records, the appellant made certain wrong entries, and being a President of the Society, for a term, he sanctioned loan to himself, on the alleged mortgage of the suit property. The respondent asserted that neither his mother nor himself borrowed any amount from the appellant, much less they have mortgaged, or sold the suit land.

5. Through its judgment dated 30-6-1987, the trial Court decreed the suit. The respondent filed A.S. No. 10 of 1987 in the Court of Subordinate Judge, at Bhongir. The appeal was allowed through judgment dated 3-4-1993. Hence, this second appeal.

6. Sri M.R.S. Srinivas, learned Counsel for the appellant submits that his client proved the purchase of the land by filing the receipt, marked as Ex.A-1 and several other documents, evidencing his possession over the suit land, till he was dispossessed in the year 1967. He further contends that PWs.1 to 10, examined by the appellant, spoke in one voice, about the transaction of purchase, and there was absolutely no basis for the Lower Appellate Court in reversing the findings recorded by the Trial Court. Learned Counsel points out that there is no contradiction in the reliefs of declaration of title and recovery of possession. He has placed reliance upon several precedents, in support of his contention.

7. Sri Fazal Yousufuddin, learned Counsel for the respondent, on the other hand, submits that there is a clear contradiction in terms, in the very pleadings and prayer in the suit. He contends that, when even according to the appellant, there did not exist any sale deed in his favour, the question of any relief of declaration of title, being granted to him, does not arise. He further submits that the plea of adverse possession, as the basis for declaration of title, does not co-exist with the recognition of the defendant in a suit, as the rightful owner. Learned Counsel further points out that, taking advantage of his employment with the family of

the respondent, and access to revenue records, the appellant made wrongful entries in his favour and tried to grab the property. He submits that at no point of time, the appellant was in possession of the suit property.

8. In view of the pleadings before it, the trial Court framed the following issues, at three different stages:

(1) Whether Radhabai @ Radhamma sold suit land bearing Sy.No. 282 to the extent of 15 acres on 23-4-1954 to the plaintiff and was in continuous possession of the suit land till November, 1967?

(2) Whether the plaintiff perfected the title to the suit land by adverse possession ?

(3) Whether the plaintiff is entitled for mesne profits ?

(4) Whether the defendant was a minor in the year 1954 ?

(5) Whether the suit land is a Seri Inam land and is not alienable without the permission of the Government ?

(6) Whether the suit receipt dated 23-4-1954 for Rs. 750/- in favour of the plaintiff has been passed by late Radhabai @ Radhamma, the mother of the defendant, towards sale consideration for the suit land and attested by the defendant as attesting witness?

9. On a close analysis, it becomes evident that all the above issues relate to the relief of declaration of title and recovery of mesne profits. No issue was framed as to the entitlement of the appellant, to recover possession, which was specifically pleaded. However, the trial Court had dealt with all the aspects, and the parties have also adduced evidence, touching on the same.

10. The appellant examined PWs.1 to 10 and filed Exs.A-1 to A-71. Out of them, Exs.A-1 is the receipt, dated 23-4-1954, said to have been issued by the mother of the respondent. Rest of the documents are, the certified copies of pahanies, or receipts of land revenue, or copies of sale deeds, executed by the respondent, in favour of various persons. On behalf of the respondent. DWs.1 to 3 were examined and no documentary evidence was adduced.

11. Almost all the issues, referred to above, were answered in favour of the appellant; except that Issue No. 2 was found to be superfluous, in view of the fact that Issue No. 1 was answered, in favour of the appellant.

12. On the suit being decreed, the respondent preferred appeal. The Lower Appellate Court formulated the following two points, viz.,

(1) Whether the plaintiff has proved his title to the suit land by producing sufficient evidence, in support of his contention, if so, whether he is entitled to be declared as owner of the suit land.

(2) Whether there is any defect in the judgment and decree of the Trial Court.

During the course of discussion, the Lower Appellate Court touched all the facets of the controversy and reversed the judgment and decree of the Trial Court.

13. In view of the submissions made by the learned Counsel, the following questions arise for consideration:

- (1) Whether a decree for declaration of title can be granted on the strength of a receipt of sale consideration.
- (2) Whether a plaintiff, who acquiesces in the title of the defendant, can claim the relief of declaration of title on the basis of adverse possession.
- (3) Whether the relief of declaration of title, on the strength of adverse possession, can be granted to a person, who is admittedly not in possession of the property, as on the date of filing of the suit, and
- (4) Whether the relief of recovery of possession can be granted, on the basis of adverse possession for a particular period, but disrupted by subsequent dispossession.

The appellant pleaded that the suit land was initially mortgaged to him, in or about 1950. No documentary evidence was adduced to substantiate it. At any rate, the existence or otherwise of the mortgage, in his favour, is of no consequence, so far as his claim in the suit is concerned.

14. It is the case of the appellant that Radha Bai executed an unregistered sale deed in his favour, conveying the suit property for a consideration of Rs. 750/-. Ex.A-1 is said to be the receipt for the same. The appellant himself pleaded that he lost the unregistered sale deed. Therefore, the only basis for his claim is, Ex.A-1. He places reliance upon the entries in the revenue records also. It is settled principle of law that the entries in revenue records, by themselves, do not either confer any title or take away the one, existing on any individual. They can only have a bearing upon the question of possession over the property. It was pleaded that the suit schedule property was mortgaged with a Co-operative Society. It is in November, 1967, that the appellant is said to have been dispossessed by the respondent.

15. An individual can acquire right, vis-a-vis immovable property, either through succession or any modes of transfer, recognized under the Transfer of Property Act (for short "the T.P. Act"). It is also possible to acquire title under a Will, validly executed by a person, having title to the property, or through assignments, by the Government. The appellant claimed title on the strength of a receipt, Ex.A-1. At the most, it can constitute the basis for claiming the relief of specific performance, if it is proved and the relief is claimed, within the framework of law. By no stretch of imagination, a receipt, for whole or part consideration, can constitute the basis for declaration of title. Therefore, the suit, insofar as the appellant claimed the relief of declaration of title on the strength of Ex.A-1; was untenable.

16. As regards the second question, it may be noted that once the appellant had based his claim on Ex.A-1, he can be said to have acquiesced in the title of the executant thereof, i.e. the mother of the respondent. Adverse possession is a concept, that emerges, when a person, not vested with the title, is in possession of the property, in derogation of the title of the rightful owner. If the possession is traceable to any permission or an act, emanating from the actual owner, it cannot be treated as adverse. To adopt the words of the Supreme Court in *Achal Reddi v. Ramakrishna Reddiar*. AIR 1990 SC 553,

Adverse possession implies that it commenced in wrong, and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to contract, it cannot be adverse.

17. Therefore, an individual who claims to have transacted with the rightful owner, in relation to a property and claims possession, vis-a-vis the property, on the basis of such a transaction, he cannot be permitted to plead adverse possession.

18. In the instant case, apart from basing his claim on Ex.A-1 and other documentary evidence, the appellant has taken the alternative plea of adverse possession, as the basis for declaration of his title. It is true that the adverse possession, which, till recently, used to be a mere defence for recovery of possession; was recognized as a basis for declaration of title. However, once the origin of the possession is traceable to an incomplete transaction, with the rightful owner, the resultant possession, even if true, cannot be treated as adverse, and in that view of the matter, the appellant cannot be granted the relief of declaration of title on the plea of adverse possession, assuming that he had been in possession, for a fairly long time.

19. In a way, it can be said that the discussion, in relation to the second question, would substantially answer the third question also. Still, an important facet, viz., whether the disruption in possession would in any way effect the claim, based on adverse possession, needs a special attention. It is not in dispute that the appellant lost possession over the property, even according to him, in November, 1967, and the suit was filed on 17-7-1974. It was re-numbered as O.S.No. 3 of 1982 on being transferred to the Court of Junior Civil Judge, at Ramannapet.

20. Judicial opinion is divided on the question, whether disruption in possession would efface the rights that have accrued to a person on the basis of his prior possession, which was adverse in nature and was sufficient to confer title. In *Mt. Dharichhna Kuari and Others Vs. Ramyad Kuari and Others*, , the Patna High Court took the view that adverse possession, up to the required length of time, has to be treated as the factor, to declare such person as the owner; and the disruption of possession thereafter, cannot be wipe away the rights, which have so accrued. To illustrate, if the possession of a person, over the land of another between the years 1955 to 1970 was found to be adverse and the same was

sufficient to give rise to ownership, if pleaded as a defence; the subsequent disruption of possession after such length of time cannot wipe away his right to be declared as the owner. Though the other High Courts have taken slightly a different view, the Judicial Authority appears to be in favour of the said proposition. There is no reason why it cannot apply to cases where the declaration of title is claimed on the basis of adverse possession. However, this principle is inapplicable to the facts of this case, since the alleged possession of the appellant was held to be not adverse to the respondent or his predecessor in title.

21. Now remains the last question. In a way, it can be said to be a different facet of the question No. 3. Whatever may be the permissibility of an adverse, but interrupted possession, being treated as the basis for declaration of title, it becomes difficult to grant the relief of recovery of possession, in such cases. It results in pitting of two conflicting phenomena, namely, plea of adverse possession, and recovery of possession of the property, against each other.

22. Adverse possession itself, is a recognized defence, on the strength of a continuous occupation and chalet possession, by the defendant, to thwart the efforts of a rightful owner, to recover the possession. It is impermissible in law, for a plaintiff to recover the possession from the rightful owner, on the strength of his so-called adverse possession. Whatever may be the efficacy of adverse possession, as a plea, to seek the declaration, as to title, it cannot be recognized as a basis for recovery of possession, by the one, who is not in possession of the property as on the date of filing the suit. It may appear somewhat incongruous that a given set of facts would enable the plaintiff to seek declaration of title but not the relief of recovery of possession. But however desirable it may be, title was never treated as a legal concomitant of possession and vice versa.

23. On facts also, this Court finds that there were no bona fides on the part of the appellant in filing the suit. The reason is that, appellant was admittedly a Gumasta/ employee of the family of the respondent, for more than a decade, and was in-charge of maintenance of records. He was conversant with the procedures, in the matter of execution of documents etc. He himself executed a mortgage deed on 6-3-1963, marked as Ex.A-29, as regards the suit land and other properties in favour of the Co-operative Society. Ex.A-31 is a registered sale deed dated 3-7-1968, executed by Radha Bai, in favour of Gottedi Yellaiah, in respect of three acres of land in Sy.No. 285 of Aroor Village. On the same day, she executed another sale deed in favour of one Mr. Ramaiah. Certified copy thereof, is filed by the appellant himself, and it is marked as Ex.A-32. Ex.A-45 is a certified copy of the sale deed executed by the same lady, on 16-3-1958. These documents clearly disclose that whenever Radha Bai wanted to sell any land, she did it through registered sale deeds, and the appellant was very much participating in the transactions, as her Clerk. Therefore, it is unimaginable that a large extent of 15 acres is sold to the appellant on the strength of a receipt.

24. Radha Bai died in 1971. The appellant was said to have been dispossessed in

November 1967. If there existed any agreement or executory contract, in his favour, the appellant was expected to file a suit for specific performance, during the lifetime of Radha Bai. It was three years after her death, that he filed the present suit. The cumulative effect of these factors is that, the claim of the appellant is nothing, but the one, based upon certain entries in the revenue records, which have taken place, during his tenure as Clerk in the office of Patwari, held by the family of the respondent.

25. The Lower Appellate Court discussed the matter with reference to the settled principle of law and the evidence on record. This Court does not find any basis to interfere with the same.

26. The second appeal is accordingly dismissed. There shall be no order as to costs.