
(1997) 08 AP CK 0101

In the Andhra Pradesh High Court

Case No : Second Appeal No. 120 of 1989

Karasani Kulanda Reddy (died) and Others

APPELLANT

Vs

Kathi China Venkata Reddy

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Limitation Act, 1963 — Section 27, 8

Citation : (1997) 5 ALT 672 : (1998) 1 CivCC 149 : (1998) 1 RCR(Civil) 197

Hon'ble Judges : B.V. Ranga Raju, J

Bench : Single Bench

Advocate : C. Trivikrama Rao, for the Appellant; V.L.G.K. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Ranga Raju, J.—This second Appeal is preferred by the legal representatives of the deceased first plaintiff against the judgment in Appeal Suit No. 183 of 1978 on the file of II Additional District Judge, Guntur.

2. The suit in O.S. No. 100 of 1971 was filed for recovery of possession of plaint schedule property and for past profits. O.S. No. 12 of 1973 was also filed by him for rendition of accounts along with the above suit and both the suits were tried together. The trial Court decreed the suit in O.S. No. 100 of 1971 and dismissed the suit in O.S. No. 12 of 1973. The matter was carried in appeal and cross-appeals were also preferred therein. The appellate Court dismissed the appeal but modified the grant of future profits from the date of suit till the date of possession. However, no appeal was preferred against the decree and judgment in O.S. No. 12 of 1973. The matter was then carried in Second Appeal and this Court in Second Appeal No. 417 of 1981 remanded the matter to the lower appellate Court for giving a finding about the plea of adverse possession raised by the appellant (defendant) before it. Thus, the matter was heard again by the lower appellate Court.

3. The deceased first plaintiff is the son of one Chinna Koti Reddy. It was averred in the plaint that after the death of Pedda Koti Reddy, the elder brother of the said Chinna Koti Reddy, disputes arose till the end of 1959 and that as Pedda Koti Reddy, his wife and daughter passed away the entire property devolved on the plaintiff and that Chinna Koti Reddy having become insane could not manage the properties and that the defendant who is the nephew of the said Chinna Koti Reddy happened to look after the plaintiff and manage the affairs and that he got impleaded as guardian and next friend of the plaintiff in the litigation till the culmination of the proceedings in the Second Appeal No. 762 of 1954 on the file of High Court by the end of 1959. It was further averred that till about two years prior to the filing of this suit, the defendant has been looking after the plaintiff and his properties, that the plaint schedule property is part of plot of about Ac.5-00 in D. No. 79/A situated in Koritipadu, Guntur, that although the plaintiff became major prior to the filing of the suit, the defendant continued to be in the management till the summer of 1959 when the defendant chose to deliver possession of the rest of the properties except plaint schedule property to the plaintiff, that on enquiry the plaintiff came to know that the defendant played fraud on him and his father and that he managed to bring into existence a nominal and fraudulent gift deed to the plaint schedule properties and that the said gift deed is void.

4. The defendant in his written statement has contended that he was never in possession and management of any of the properties of the plaintiff's family, that the father of the plaintiff was contracting debts and attending to the litigation, that he was being treated as member of the family, that taking into consideration the services rendered by the defendant, the father of the plaintiff executed a gift deed dated 7-5-1954 conveying the plaint schedule property to the defendant and that ever since the defendant has been in possession and enjoyment of it.

5. The trial Court, on appreciation of the evidence before it, came to the conclusion that the plaintiff is entitled to possession of the plaint schedule property and decreed the suit. The said judgment and decree was confirmed in appeal. However, it is seen from the judgment in Second Appeal No. 417 of 1981 that this Court has come to the conclusion that the limitation begins to run against the plaintiff, who was a minor at the time of the gift deed, from the date when his father put the plaintiff (respondent in the said appeal) in possession of the plaint schedule property under gift deed dated 7-5-1954 under Ex.B-6. So far as the plea regarding adverse possession is concerned, it has pointed out that unless a finding is recorded that the appellant has perfected his title by adverse possession, the question of starting point of the limitation cannot also be concluded. It was also pointed out that the question whether the appellant was in possession of the plaint schedule property in assertion of his own right or his managing the property as found by the appellate Court, are all matters to be considered by the said Court and as such the matter was remanded to the lower appellate Court after reversing the findings on issues 1 and 2. While doing so, it

has also observed that the suit on the basis of title would be barred provided the appellant (defendant) establishes that he perfected his title by adverse possession and by operation of the Section 27 of the Limitation Act.

6. The lower appellate Court framed the following points for consideration:-

(1) Whether the suit is barred by limitation?

(2) Whether the appellant has perfected his title to the property by adverse possession?

7. While dealing with the evidence, the lower appellate Court has come to the conclusion that the same would clearly show that from 1954 the defendant was in possession of the property as owner of it and by paying taxes in his name and that the same is known to the father of the respondent (Chinna Koti Reddy) as well as the respondent. It was also found by it that the appellant therein was not in possession of the family property of the respondent except the plaint schedule property and that the logical conclusion would be that the appellant was in possession of the suit property not as a manager of the family of the respondent. It was further observed that by 1959 the plaintiff became major. The lower appellate Court, therefore, came to the conclusion that the suit was barred as the same was not filed within three years from the time when the plaintiff attained majority in 1959 or in 1960. It, therefore, allowed the appeal and dismissed the suit.

8. The point that arises for determination in this second appeal would, therefore, be whether adverse possession would commence during the minority of the deceased first plaintiff or whether the period of limitation of 12 years would commence only from the date of attainment of majority of the deceased plaintiff in 1959 or 1960?

9. The respondent being the donee under a gift deed, Ex.B-6, dated 7-5-1954, has asserted that he has been in possession of the same in his own right. It may be so that he was for some time managing the properties of his maternal uncle (father of the deceased first plaintiff). On that score, one cannot now go into the question as to what made the father of the deceased first plaintiff to gift away the property under Ex.B-6.

10. While remanding the Second Appeal No. 417 of 1981, this Court has specifically observed that the suit on the basis of title would be barred provided the appellant establishes that he has perfected his title by adverse possession and by operation of Section 27 of the Limitation Act, the title of the respondent is extinguished and the possession of the appellant has ripened. The lower appellate Court has taken into consideration the fact of payment of tax under Exs.B-10 to B-21 by the defendant and has pointed out that the same would show the possession of the appellant before it over the suit property right from 1969 to 1977. Another circumstance pointed out by the lower appellate Court is that the respondent herein was living separately from the family of his maternal

uncle. Reliance was also placed on the entries in Voter's list, Exs.B-24 to B-27. Thus, if the defendant has been living separately and enjoying the suit property in his right ever since the gift in his favour, it must necessarily be established by the plaintiffs that in the first instance the gift deed was after all executed for some other purpose and that the defendant has not been living separately from their family. If the taxes were paid by the defendant in his own name and if he has been living separately from the family of his maternal uncle, nothing more would be necessary to establish that he has been enjoying the same in his own right. Since the lower appellate Court was directed to go into the question of the plea of adverse possession, it has taken all the above material into consideration and as the suit was filed in June, 1971, the defendant who was enjoying the property in his own right as a owner ever since 1954 and has been living away from the family of his maternal uncle, the deceased first plaintiff was not in possession of the suit property within 12 years of the suit, it held that the defendant has perfected his title to the property by adverse possession.

11. It was contended by the learned Counsel for the appellants that in spite of the said finding, as the deceased first plaintiff was a minor, the limitation would start only after the legal disability to file the suit would cease and the suit can as well be laid within 3 years after the cessation of the said legal disability. An objection was taken by the learned Counsel for the respondent that the same cannot now be gone into, for while remanding the Second Appeal No. 417 of 1981, this Court has taken all the aspects into consideration but however felt that there was no clear finding about the plea of adverse possession. He has drawn my attention to the specific finding in the last para of the judgment of this Court in the above Second Appeal, where under it was mentioned that the suit for title would be barred provided the appellant before it (defendant/respondent herein) establishes that he has perfected his title by adverse possession by operation of Section 27 of the Limitation Act. Since the entire matter is before me in this Second Appeal and as an interesting question of law has been raised, I am of the opinion that the question relating to the starting point of limitation, cessation of disability and the period within which the suit can be laid in a case of this type has to be dealt with and I propose to do so.

12. Section 6 of the Limitation Act enables a person who was under disability to institute a suit to do so within the same period after the disability has ceased as would otherwise have been allowed from, the time specified there for in the third column of the schedule. However, Section 8 contemplates that nothing in Section 6 or 7 of the Act applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of person affected thereby, the period of limitation for any suit or application. The earliest decision in this regard was rendered in Kalidindi Seetamaraju Vs. Vegesana Subbaraju and Others, , wherein it was clearly held that lunacy would not by itself prevent limitation from running against a lunatic and that where a person has entered into possession of a lunatic's property was in no fiduciary relation to the lunatic but entered into possession for his own

benefit, and in assertion of a title hostile to the lunatic, the limitation would begin to run from the date when he so took possession though the lunatic would be entitled to sue for recovery of the property within 3 years from the date when his disability ceases. Their Lordships have also referred to the provisions that once time has begun to run no subsequent disability or inability to sue stops it and also the provisions of Article 144 of the old Limitation Act into consideration. I have already pointed out that inasmuch as the defendant has been enjoying the property in his own right and has been separately living from the family of his maternal uncle at least some time after the execution of gift deed, Ex.B-6, in 1954, the question of any fiduciary relationship between him and his maternal uncle much less the deceased first plaintiff would not arise.

13. A Division Bench of this Court in *Nand Lal v. Raju Lal*, 1978 (1) ALT 266, while dealing with the decision in the case cited 1 supra, has stated that the question regarding adverse possession has in each case to be decided with reference to the anterior relationship between the person taking possession and the minor or lunatic and to whether any circumstances exist which would entitle the Court to hold that the person who entered into possession did so under circumstances which would in law make him only an agent or bailiff of the minor or lunatic. In the said case, there was sufficient oral and documentary evidence regarding the possession of the defendants from 1950 to 1968 and as such they have perfected their title to the suit property by adverse possession. Their Lordships therefore came to the conclusion that having considered the scope of Section 6 of the Limitation Act and in view of the finding of the adverse possession in the said case, limitation begins to run against the plaintiffs even during their minority and as they failed to file a suit within 3 years after attaining majority, the defendants in the said case have perfected their title by adverse possession.

14. In *Bibhuti Bhusan Modak and Another Vs. Girish Chandra Pal and Others*, , the decision of the Madras High Court in the case cited 1 supra, was also taken into consideration. It was specifically pointed out therein that where the period of 12 years expires after 3 years from the date on which the minor attained the age of majority, the minor is not entitled to any extension of time under the combined effect of Sections 6 and 8 of Madras Limitation Act.

15. In *Govinda v. Narain*, AIR 1956 Hyd 107 the anterior relationship between the person taking possession and the minor or lunatic and to whether existence of any circumstances to hold that the person who entered into possession did so under circumstances in law make him only an agent or bailiff of the minor or lunatic has to be taken into account. It was also pointed out that it would be a question of fact whether an obligation or duty exists or not, by the evidence and the material on record. However, it was pointed out that the minor would no doubt be entitled to the benefit of Sections 6 and 8 of the Act if the period of 12 years from the date of dispossession expires before 3 years after attainment of majority.

16. A similar observation was made by the Nagpur High Court in *Malti Bai v. Wamanrao*, AIR 1948 Nagpur 253.

17. In *Naminbhai Ichharam v. Narbada Prasad*, AIR 1941 Nag 357, it was pointed out by the Nagpur High Court that minority does not prevent ouster and does not stop commencing of running of adverse possession and that the only privilege which a minor gets is another 3 years after attaining the majority if the time expires before 3 years.

18. To the same effect is the decision reported in *Chinnaiah Kownder Vs. Kattayya Kownder*, wherein the decision in the case cited 1 supra, was considered in the above case and it was pointed out by the Madras High Court that though the prima facie under Article 65 read with Section 6 (1) of the Limitation Act, a suit for recovery of possession by the minor within 12 years from the date when he attained the age of majority in case where the transaction was void, by reason of Section 8 of the Act, such a suit will have to be filed within 3 years of attaining the age of majority and the minor could not claim the extended period of 12 years.

19. However, the learned Counsel for the appellants has referred to a decision reported in *Moro Sadashiv v. Visaji Raghunath*, ILR 1892 Bom 536, wherein the Bombay High Court has observed that the general principle is that the time does not run against a minor. In my opinion, no reference was made to the provisions of old Limitation Act and as such I am of the opinion that a passing observation therein cannot be taken into consideration as laying down a principle of law.

20. Learned Counsel for the appellants has also relied upon a decision reported in *Anwarali Bepari and Others Vs. Jamini Lal Roy Choudhury and Others*, wherein the Calcutta High Court has observed that passing of consideration with the possession of the contesting plaintiffs could not be adverse to the minor, one Jogendran, until he attained the majority.

21. While dealing with the question of adverse possession in AIR 1927 104 (Nagpur), it was pointed out by the Nagpur High Court that no adverse possession would run against a person until he becomes entitled to possession of the property.

22. Thus, from the above decisions, it is very much clear that adverse possession can be pleaded against a person during the period of his disability and that the only concession that is given to such a person under disability is one that is given u/s 8 of the Act. In a case where adverse possession is raised, it is needless to state that the period of limitation would run and would not stop, nor there is any settled proposition of law that a plea of adverse possession cannot be taken against a person who is under legal disability. I have already referred to the oral and documentary evidence regarding the stand taken by the defendant that he was after all enjoying the property in his own right and has been living away from the family of the deceased first plaintiff and his father from more than 17 years and even before the date of filing of the suit. That being so, I do not

find any force in the contention advanced by the learned Counsel for the appellants.

23. It is then to be pointed out that in view of the provisions of Section 7 of the Act, time will run against all the persons who would be entitled to institute a suit even in the case where one of such persons was under any disability and a discharge can be given to such persons concurrently of such persons.

24. It was pointed out by the Supreme Court in *Sarda Prasad and Others Vs. Lala Jumna Prasad and Others*, , that the provisions of Section 7 of the Limitation Act are not limited to suits or decrees on monetary claims only.

25. In *Abdulla Kunjipokkarukutty and Another Vs. Ayyappan Ravunny and Others*, , it was pointed out by the Kerala High Court that if one or several persons jointly entitled to institute a suit is under any disability and if there is any other member who can give a valid discharge without the concurrence of the person under disability, the time will begin to run from the date when that member competent to give a discharge can institute a suit.

26. In *Ponnamma Pillai Indira Pillai and Another Vs. Padmanabhan Channar Kesavan Channar Kesavabhavanam and Others*, , it was pointed out by the Kerala High Court that Section 6 of the Limitation Act does not prevent running of limitation but merely extends time of limitation and so far as the discharge referred to u/s 7 of the Limitation Act, it was pointed out that it applies to cases of persons whose substantive right is joint.

27. In *Meethiyan Sidhiqu Vs. Muhammed Kunju Pareeth Kutty and others*, , it was pointed out by the Supreme Court that unless there is a specific plea and proof that the appellant has disclaimed his right and asserted hostile title and possession to the knowledge of the respondent within the statutory period and the latter acquiesced to it, he cannot succeed to have it established that he perfected his title by prescription.

28. It was clearly averred in the Written Statement that the defendant has also perfected his title by adverse possession. That being so, and in view of the oral and documentary evidence on behalf of the respondent/defendant that he has been in enjoyment and possession of the property that was gifted in 1954 and has nothing to do with the family of his maternal uncle (father of the deceased first plaintiff), it can safely be assumed that the defendant has been enjoying the property in his own right and that the same was adverse to the father of the deceased first plaintiff and equally to the deceased first plaintiff. The deceased first plaintiff could have therefore challenged the gift deed only within three years after attaining the age of majority. It was specifically found that he has become a major either in 1959 or 1960 and as the suit was filed in 1971, the same is barred by limitation.

29. So far as the merits of the case are concerned, I do not see any ground to disturb the findings of the lower appellate Court after remand. It may also be

pointed out that O.S. No. 12 of 1973 which is filed against the defendant/respondent herein for rendition of accounts and as these suits were tried together and that there was no appeal against the judgment in O.S. No. 12 of 1973 and as such the decision therein would become final. This would also establish that the respondent/defendant had nothing to do with the family of the plaintiffs after the gift deed in his favour and he was not bound to render any accounts as the person that is said to have maintained the properties. Positively, there is no convincing evidence to come to the conclusion that there was any fiduciary relationship between the respondent/defendant and the family of the plaintiffs/appellants to hold that the defendant/respondent herein cannot be permitted to raise the plea of adverse possession.

30. It may be so that a minor cannot be mulcted with any knowledge or setting up of plea of adverse possession by any person who come into possession of any property to which the minor may be entitled otherwise. The provisions of the Limitation Act in this regard are absolute and the decisions referred to by me would also point out that adverse possession runs even during the period of minority. Even on merits, it cannot be the case of the deceased first plaintiff that having come to know the execution of the gift deed dated 7-5-1954, soon-after attaining the majority, he can file the suit within 3 years after the expiry of the period of 12 years from the date of filing of the suit.

31. Under these circumstances, I am of the opinion that the defendant/respondant herein who obtained the property under a gift deed dated 7-5-1954 has been enjoying the same in his own right ever since and that as the deceased first plaintiff who became major in 1959 or 1960 has not challenged the same within 3 years thereafter, the defendant/respondent herein has perfected his title by adverse possession. I, therefore, find no justifiable grounds for interference in the Second Appeal.

32. The Second Appeal is, accordingly, dismissed, but, in the circumstances, without costs.