
(2005) 07 AP CK 0096
In the Andhra Pradesh High Court
Case No : Second Appeal No. 22 of 2001

Kotta Laxminarsaiah and Others

APPELLANT

Vs

Tadasina Ramanarsamma

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 100
Transfer of Property Act, 1882 — Section 54

Citation : (2005) 5 ALD 522 : (2005) 6 ALT 181

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Mahender Reddy, for the Appellant; P. Sreeram Murthy, for the Respondent

Judgement

L. Narasimha Reddy, J.—The defendants in O.S.No. 284 of 1989 in the Court of the Principal District Munsif at Bhongir are the appellants. They challenge the judgment and decree passed by the trial Court, which was affirmed by the Court of Senior Civil Judge at Bhongir in A.S.No. 6 of 1996.

2. The sole respondent filed the suit, initially for the relief of declaration of title and perpetual injunction. She pleaded that she purchased an extent of Ac.3-16 guntas of land in Sy.Nos. 122 and 123 of Mailargudem, H/o Saidapur Village, Yadagirigutta Mandal, Nalgonda District, from the 1st appellant through an unregistered sale deed, dated 13.04.1977, marked as Ex.A-1.

3. It was her case that the entire consideration of Rs. 3,655/- under the said deed was paid and that the possession was delivered to her. According to her, she was in peaceful possession and enjoyment of the property ever since the purchase under Ex.A-1. She complained that appellants 1 and 2 interfered with her possession on 30.03.1989.

4. Initially, the trial Court granted temporary injunction in I.A.No. 284 of 1989, but, it was vacated on 13.09.1990. Alleging that she was forcibly dispossessed

from the suit schedule land after dismissal of the I.A., the respondent got amended the plaint suitably, and sought for recovery of possession of the suit land.

5. The suit was contested by appellants 1 and 2. Appellants 3 to 8 are the legal representatives of the deceased-appellant No. 2. It was pleaded that appellant No. 1 is the original owner and pattadar of the suit land, as well as other items of land and that he never sold the suit schedule property in favour of the respondent. Reference was made to the alleged strained relation between the respondent and her husband, and to the entries in various revenue records. The suit land is said to have been purchased by appellant No. 2 under sale deed, dated 15.03.1989, marked as Ex.B-1 for a consideration of Rs. 9,400/-. It was urged that the respondent never held any title to the land and that the possession thereof cannot be restored to her. The trial Court decreed the suit through its judgment, dated 11.12.1995.

6. Aggrieved thereby, the appellants filed A.S.No. 6 of 1996 in the Court of the Senior Civil Judge at Bhongir. The appeal was dismissed on 04.08.2000. Hence, the Second Appeal.

7. Sri B.Mahender Reddy, learned counsel for the appellants, contends that there was no basis for the Courts below to grant the relief of declaration of title, since Ex.A-1 is not a registered document and that the respondent failed to prove any entitlement on the strength of adverse possession as required under law. He submits that the evidence on record discloses that the respondent failed to prove her possession for the required length of time, assuming that, grant of declaration as to title on the strength of adverse possession is permissible. He also points out that the suit is not maintainable, because the so-called General Power of Attorney executed by the respondent in favour of her father does not conform to the requirements of Order-III C.P.C. He has relied upon certain precedents in support of his contentions.

8. Sri P.Sreeram Murthy, learned counsel for the sole respondent, on the other hand, submits that the Courts below have recorded concurrent findings of fact touching on possession and thereby, to the title, and it is impermissible to interfere with the same under Section-100 C.P.C. He contends that though there was some discrepancy as to the entries in the revenue records in relation to the possession, the oral evidence adduced on behalf of the respondent is consistent, cogent and clinching and that the Courts below discussed the same, in the proper perspective, while recording the finding thereon. He submits that the respondent never disputed the authentication made by her in favour of her father to pursue the litigation.

9. The suit was initially filed for the relief of declaration of title and perpetual injunction. Subsequently, it was amended, claiming the relief of recovery of possession, alleging that the appellants gained the possession, during the pendency of the suit, after the I.A. filed under Order-39 Rule-1 C.P.C. was

dismissed.

10. In view of the conflicting claims made by the parties before it, the trial Court framed the following issues: -

"1. Whether the plaintiff is entitled for the relief of declaration as prayed for?

2. Whether the plaintiff is entitled for the relief of perpetual injunction as prayed for?

3. Whether the Court fee paid insufficient?

4. Whether the suit is barred by limitation?

5. To what relief?"

11. On behalf of the respondent, P.Ws.1 to 5 were examined and Exs.A-1 to A-17 were marked. On behalf of the appellants, D.Ws.1 to 4 were examined and Exs.B-1 to B-23 were marked. The trial Court answered all the issues in favour of the respondent.

12. In A.S.No. 6 of 1996, preferred by the appellants, the lower appellate Court framed two points namely (1) Whether the plaintiff had established the factum of purchase of the suit land under the sale deed dated 13.04.1977, and (2) Whether the plaintiff is entitled to recovery of possession of the suit land from D-1 and D-2, and answered them in favour of the respondent.

13. The respondent claimed the relief of declaration of title on the strength of Ex.A-1, followed by the continuous possession till the date of filing the suit.

14. To prove Ex.A-1, the respondent examined two attesting witnesses namely P.Ws.2 and 5. The scribe of the document was said to be no more. His son-P.W-4 was examined to identify the signature and writing of his father. Their evidence was consistent and cogent and nothing was elicited through them to discredit their evidence. Though appellant No. 1, who was examined as D.W-1, denied his signature on Ex.A-1, he did not take any steps to substantiate his contention. Once the attestors and the person acquainted with the writing and signature of the scribe were examined, the onus shifted to the first appellant to disprove the same. Except the bare denial, he did not take any steps in that direction. Nothing was elicited through P.Ws.2, 4 and 5 to discredit their version. Therefore, the finding of the Courts below that the respondent proved Ex.A-1 does not call for any interference.

15. Admittedly, Ex.A-1 is not a registered document. Under Section-54 of Transfer of Property Act, a sale of an immovable property of value exceeding Rs. 100/- can be effected only through a registered document. It was in this context, that the trial Court rightly held that Ex.A-1, cannot, by itself confer any title upon the respondent. However, Ex.A-1 can certainly be relied upon to prove commencement of possession as a collateral purpose. If it is followed by continuous possession till the date of filing the suit, it would give rise to its own

consequences in law. In *The Estates Development Ltd. (in Liquidation) through its Official Liquidator Vs. The Union of India (UOI) and Others*, , the Supreme Court held that even where the basis for initial possession of an immovable property is legally invalid, the possession derived thereunder becomes adverse to the original titleholder. To the same effect is the judgment of this Court in *Mungamuru Lakshmiddevamma Vs. Land Acquisition Officer and Revenue Division Officer, Kavali and Others*, . Till recently there used to be un! certainty as to whether the plea of adverse possession if proved can give raise to an independent title or its utility is confined to a valid defence alone. Recently, the Supreme Court held that a person in possession of property, adverse to the interests of titleholder, can institute the suit for declaration of title. The same was followed by this Court in several cases. Therefore, it needs to be seen as to whether the respondent proved her possession over the suit land from the date of Ex.A-1 till the date of filing the suit.

16. P.W-1, the General Power of Attorney holder and father of the respondent, pleaded that ever since the date of purchase, she was in possession and enjoyment of the property. Ex.A-1 is an important document. It is an entry in the record of rights. In Form-I for the year 1979-80, the name of the respondent is shown. It is true that in the pahanis, which were maintained from year to year between 1977-78 to 1987-88, there are discrepancies and in some of them, the appellant No. 1 was shown to be in possession of the property. The respondent, in fact, complained about such discrepancies. Therefore, the Courts below had to concentrate mostly on oral evidence.

17. P.W-3 is an important witness, in this regard. He stated that he owns land adjoining the suit schedule property and that he is aware of the purchase of the suit property by the respondent. He also stated that the respondent used to raise crops such as green gram, jawar, etc., in it. The only material suggestion made to him was that he does not own any land in the neighbourhood of the suit schedule property and that he is deposing falsehood.

18. D.W-1 stated that he held various items of landed property in and around the suit schedule land and out of it, he sold land in three survey numbers to other persons namely Yellaiah, Bandi Mallaiah and his brother-Balaiah i.e., P.W- 3. Once D.W-1 admitted that he sold the land in the immediate neighbourhood of suit schedule land to P.W-3, the very suggestion made to the latter was, on the face of it, untruthful. D.W-1, in fact, admitted that he does not hold any property at that place after he sold the same in favour of various persons. Therefore, the version of P.W-3, the immediate neighbour of the plaint schedule property, becomes very material in this regard. The type of suggestion made to him not only falsifies the plea of the appellants but also touches upon their credibility on other aspects.

19. It is a matter of record that the trial Court granted an order of temporary injunction in favour of the respondent in I.A.No. 284 of 1989. It vacated the same, on 13.09.1990. She filed an application for amending the suit, pleading

that she was dispossessed from the property on 14.09.1990, soon after I.A.No. 284 of 1989 was dismissed. The plaint was amended accordingly. However, the appellants did not choose to file any additional written statement. In that view of the matter, there did not exist any occasion for the trial Court to frame any issue as to whether the respondent was in possession of the property till the date of filing of the suit or till 14.09.1990. In fact, the additional issue, which was framed consequent to the amendment of the plaint, reads as under: -

"Whether the plaintiff is entitled to the relief of recovery of possession of suit lands a prayed for?"

20. It is based mostly on the prayer in the amended plaint than on the denial of the corresponding pleading by the appellants. It undertook extensive discussion on this issue and held that the respondent proved her adverse possession over the suit schedule property for a period of 12 years prior to the date of filing the suit and granted the relief. In recording this finding, the trial Court took into account, the nature of evidence adduced by the appellants. It was observed that they failed to prove that they were in possession of the suit schedule property as on the date of filing the suit. Therefore, it cannot be said that the trial Court or the lower appellate Court committed, error in recording the findings of fact.

21. The objection raised on behalf of the appellants as to the form of General Power of Attorney would have assumed significance, if only the executant thereto denied, or the Court suspected it. Further, the General Power of Attorney is none other than the father of the respondent. In that view of the matter, this Court does not find any basis to interfere with the concurrent findings of fact recorded by the Courts below and the Second Appeal is accordingly dismissed. There shall be no order as to costs.