
(2011) 06 AP CK 0037

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 713 of 1993

M. Gopal and Jalgani Yellaiah

APPELLANT

Vs

K. Jangareddy (died) per L.Rs. and Others

RESPONDENT

Date of Decision : 08-06-2011

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : (2011) 4 CivCC 257

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Yadaiah, for the Appellant; K. Raghuveer Reddy, for the Respondent

Judgement

R. Kantha Rao, J.—This appeal is filed against the judgment and decree dated 24.08.1992 passed by the Subordinate Judge at Sanga Reddy in O.S. No. 49 of 1986.

2. I have heard the learned Counsel appearing for the Appellants and the Respondents.

3. For the convenient sake, I would like to refer the parties as "the Plaintiff and the Defendants" i.e. as they were arrayed in the suit.

4. Defendants 3 and 4, being unsuccessful, preferred the present appeal. The first Respondent/Plaintiff filed the suit seeking the relief of declaration of title and possession and permanent injunction in respect of three items of the landed property, which is more fully described in the schedule and the suit was decreed.

5. The short facts necessary for considering the questions involved in the present appeal may be stated as follows:

6. The original owner of the schedule mentioned lands is the first Defendant. With a view to sell away the lands, he had put them to private auction in which the second Defendant became the highest bidder and purchased the schedule lands from the Plaintiff under a private (unregistered) sale deed on 07.04.1957

for an amount of Rs. 1720/-. It so happened on the same day, the Plaintiff, who was present there, offered to purchase the suit land for the same price, for which the second Defendant and the first Defendant consented and whereupon the first Defendant executed a private sale deed, which transaction was endorsed on the reverse of the private sale deed dated 07.04.1957 executed by the first Defendant in favour of the second Defendant. The Plaintiff's version is that he has been in continuous possession of the schedule lands having been put in possession of the same under the private sale deed dated 07.04.1957 and has been raising seasonal crops. Thus, he asserts that after his purchase, he has been in possession of the schedule lands and the said fact is known to each and every body in and around the village, including the Defendants. He also pleaded that by continuously remaining in possession and upon asserting his title to the knowledge of the Defendants he perfected the title to the schedule property by adverse possession. He further submitted that Defendants 3 and 4 with a mala fide intention to grab away the schedule property from him, brought into existence two registered sale deeds dated 17.09.1985 and 19.09.1985 in respect of the schedule mentioned lands in collusion with the first Defendant. According to the Plaintiff, these sale deeds are brought up documents executed by the first Defendant in favour of Defendants 3 and 4 and, in fact, no consideration was paid under the said sale deeds. He alleged that the sale deeds are sham and bogus documents. According to him, he is the absolute owner of the property and the Defendants without any manner of right or interest in the schedule mentioned property have been trying to occupy the same by force which situation led him to file the suit seeking the relief's of declaration of title and permanent injunction.

7. The first Defendant remained ex parte after filing the written statement before the trial Court and the suit against the second Defendant was abated. The suit was resisted by the Defendants on the following grounds viz., the first Defendant denied in the written statement about the open auction held on 07.04.1957 and his selling away the property to the Plaintiff by means of private sale deed on 07.04.1957. The schedule property according to the Defendants is a coparcenary property of the 1st Defendant and his brother Sathaiah and, therefore, their contention is that the first Defendant alone had no right to sell the entire property without concurrence or consent of his brother Sathaiah. The Defendants' specific plea is that the private sale deed dated 07.04.1957 under which the Plaintiff said to have purchased is not genuine and it is a brought up document. According to them, the Plaintiff has never been in possession and enjoyment of the schedule lands. The specific contention urged by Defendants 3 and 4 is that they purchased the suit lands from the first Defendant under registered sale deeds dated 17.09.1985 and 19.09.1985 and since then they have been in continuous possession and enjoyment of the suit lands. According to them, the private sale deeds in favour of the Plaintiff are brought up documents and even if they are considered to be true, they do not convey any title to the Plaintiff, because they are inadmissible in evidence. Advancing the

above stated contentions, the Defendants sought to dismiss the suit.

8. Basing on the rival contentions, the learned trial Court framed the following issues:

1. Whether the Plaintiff is entitled for declaration as prayed for?
2. Whether the Plaintiff is entitled for perpetual injunction as prayed for?
3. To what relief?

9. Before the learned trial Court, P Ws.1 to 3 were examined on behalf of the Plaintiff and Exs.A.1 to A.40 were marked and D Ws.1 to 5 were examined on behalf of the Defendants and Exs.B.1 to B.13 were marked.

10. One of the important pieces of evidence adduced by the Plaintiff is that the first Defendant before selling the land to the Plaintiff filed a petition supported by an affidavit before the Revenue Divisional Officer, Sanga Reddy seeking permission to sell the suit lands in favour of the Plaintiff. Ex.A.23 is the certified copy of the said affidavit of the first Defendant. Thus, Ex.A.23 falsifies the contention of the first Defendant that he never sold the suit lands to the Plaintiff. Another important piece of evidence adduced by the Plaintiff in support of his case is that he filed the land ceiling declaration before the Land Reforms Officer declaring that he is the owner of the suit lands and has been in possession and enjoyment of the same. After duly verifying the declaration submitted by the Plaintiff, the Land Reforms Tribunal accepted the declaration and included the suit lands in the holding of the Plaintiff. Ex.A.39 is the certified copy of the order passed by the Land Reforms Tribunal in CC. No. 555/ S-75. The said document clearly indicates that the declaration submitted by the Plaintiff was accepted and the scheduled lands were included in the holding of the Plaintiff by the authorities under the Land Reforms Act. The Plaintiff also filed unregistered sale deed dated 07.04.1957. The said document is marked as Ex.A.1 and A.1 (a). Ex.A.1 is the private sale deed executed by the first Defendant in favour of the second Defendant, whereas Ex.A.1 (a) is the private sale deed executed by the first Defendant in favour of the Plaintiff in respect of the schedule mentioned lands.

11. This apart, the Plaintiff filed certified copies of pahanies from the years 1955 to 1972, 1980 to 1984. They are marked as Exs.A.2 to A.16 and Exs.A.18 to A.21. The Plaintiff also filed the land revenue receipts to show that he has been paying the land revenue for the schedule mentioned lands and the land revenue receipts are marked as Exs.A.24 to 37.

12. In the pahanies, the Plaintiff's name is shown as purchaser as well as possessor of the suit lands. Ex.B.11 is the certified copy of order sanctioning mutation for the year 1985 in favour of Defendants 3 and 4 in respect of the suit lands. Much reliance has been placed by Defendants 3 and 4 on the said document. With regard to this particular document, the contention of the Plaintiff is that by showing Exs.B.1 and B.2 sale deeds allegedly executed by the first Defendant in their favour, Defendants 3 and 4 somehow prevailed over the

revenue authorities without disclosing the true facts and obtained the said order. It is the version of the Plaintiff that subsequently against the order under Ex.B.11 dated 07.11.1985 the Plaintiff filed an appeal before the Revenue Divisional Officer and the order passed under Ex.B.11 was set aside on 08.08.1988. Thereafter, the revision filed by Defendants 3 and 4 against the said order was also dismissed on 28.10.1994. Therefore, the contention of the Plaintiff is that it is no longer open for Defendants 3 and 4 to canvass that the mutation has been effected in their names in respect of the suit schedule lands.

13. Coming to the other documentary evidence adduced by the Defendants, the sale deeds allegedly executed by the first Defendant in favour of Defendants 3 and 4 dated 17.09.1985 and 19.09.1985 respectively were marked as Exs.B.1 and B.2, they also filed certified copies of pahanies for the years 1972-73, 1975-76, 1976-77, 1977-78, 1970-80, 1984-85 and 1985-86 and they are marked as Exs.B.3 to B.10. Ex.B.12 is the faisal patti for the year 1984-85. Ex.B.13 is the land revenue receipt for the year 1985-86.

14. Coming to the oral evidence adduced by the parties the Plaintiff examined one Chandramouli as PW.2, resident of Patancheru. He deposed before the trial Court that he was the scribe of Ex.A.1 and Ex.A.1(a) and his version is that the first Defendant sold the suit lands to the second Defendant for a total consideration of Rs. 1720/- on 07.04.1957 and the second Defendant paid earnest money of Rs. 500/-. That as the second Defendant was not ready to pay the remaining sale price, the Plaintiff offered to purchase the suit lands, paid the sale price to the first Defendant and thereupon the first Defendant executed an un-registered sale deed in favour of the Plaintiff. He had categorically spoken to the fact of scribing the two sale deeds on the same paper. His evidence is also to the effect that under Ex.A.1 (a) sale deed, Defendants 1 and 2 and others delivered possession of the suit land to the Plaintiff. He further deposed that one Hanuma Reddy, Shaik Mahaboob, K. Laxmaiah and Narsaiah attested the sale deed-Ex.A.1 and Ex.A.1 (a). He identified the signatures of the first Defendant and the second Defendant on Exs.A.1 and A.1 (a). He also stated that the second Defendant had put his thumb impression on the said document in his presence and that of other attestors. PW.2 also endorsed against thumb impression of the second Defendant to the effect that it is the thumb impression of the second Defendant.

15. PW.3-Sri Kishan Rao, another witness is also resident of Patancheru. His evidence discloses that he owns lands by the side of schedule lands. He had categorically deposed that the Plaintiff has been in possession and enjoyment of the suit lands for the last 30 to 34 years.

16. On behalf of the Defendants, the third Defendant was examined as DW1 and he stated about the execution of Exs.B.1 and B.2 sale deeds dated 17.09.1985 and 19.09.1985 respectively by the first Defendant and his brother Sathaiah in his favour and that of the fourth Defendant. DW.2 is the first Defendant, who is the original owner of the suit lands. His evidence is that he sold the suit lands to

Defendants 3 and 4 under Exs.B.1 and B.2 sale deeds respectively and since the date of purchase, Defendants 3 and 4 have been in possession and enjoyment of the suit lands. Curiously, he stated in his evidence that he does not know the Plaintiff, he never sold the suit land at any time to the Plaintiff and also that the Plaintiff is not in possession of the suit lands at any time. DW.3-Satiah is no other than the younger brother of the first Defendant. The evidence of DW.3 is to the effect that he and the first Defendant sold the suit lands to Defendants 3 and 4 about seven years prior to his giving evidence before the Court. DW.4 is one of the attestors of Exs.B.1 and B.2. He spoke about the execution of the sale deeds by the first Defendant in favour of Defendants 3 and 4. His evidence is also to the effect that under Exs.B.1 and B.2 sale deeds possession was delivered to Defendants 3 and 4 and they have been in possession and enjoyment of the said lands. DW.5 is the resident of Patancheru and he stated that he owns lands by the side of the suit lands and the fourth Defendant has been cultivating the suit lands.

17. The learned trial Court, upon considering the above evidence, decreed the suit filed by the Plaintiff, upholding the title of the Plaintiff and also upholding his alternative plea that he perfected his title to the suit lands by adverse possession.

18. In this appeal, the following points would arise for consideration:

1. Whether the Plaintiff acquired title to the schedule lands by adverse possession?
2. Whether the Plaintiff is entitled to protect his possession under law and whether he can claim positive relief of perpetual injunction in his favour in a suit filed by him?

POINTS 1 AND 2:

19. The Plaintiff filed Exs.A.1 and A.1 (a) private sale deed dated 07.04.1957 and examined scribe of the said sale deed as PW.2, who had categorically spoken to the factum of the first Defendant executing the un-registered sale deed in favour of the Plaintiff and receiving the entire consideration under the said sale deed. He had also spoken to the fact of Plaintiff being put in possession of the schedule lands under the said sale deed and continuing in possession of the said lands. PW.2, the neighbouring land owner, also stated that the Plaintiff has been in possession and enjoyment of the suit land for over a period of 30 to 34 years from the date of his giving evidence before the Court. The Plaintiff also filed certified copies of pahanies which are referred to above. At relevant columns in the pahanies, the name of the Plaintiff is shown as purchaser as well as possessor. The declaration submitted by the Plaintiff before the authorities under the Land Reforms Act and its confirmation reveals that after due enquiry the authorities included the suit lands in the holding of the Plaintiff. This was done long prior to filing of the suit by the Plaintiff when no litigation was contemplated between the parties. The mutation effected in the name of Defendants 3 and 4, basing on Exs.B.1 and B.2 sale deeds for the year 1985, was cancelled by the

Revenue Divisional Officer and also subsequently it became final in the revision filed by Defendants 3 and 4 when it was dismissed. All these facts clearly prove that the contention of the first Defendant that he never sold the suit land to the Plaintiff is absolutely false. All the documents filed by the Defendants are mostly related to the period subsequent to 1985 i.e., after Exs.B.1 and B.2 sale deeds obtained by them. All the parties to the litigation belong to one village Patancheru and it is highly difficult to accept that Defendants 3 and 4 had no knowledge about the private sale deed executed by the first Defendant in favour of the Plaintiff. Therefore, by no stretch of imagination can it be said that Defendants 3 and 4 are bona fide purchasers for value without notice of Exs.A.1 and A.1(a) sale deed in favour of the Plaintiff. If we closely examine the entire evidence, it is obvious that Exs.B.1 and B.2 sale deeds were brought into existence by the first Defendant and Defendants 3 and 4 in collusion so as to defeat the rights of the Plaintiff and to have unfair advantage.

20. It has been contended by the learned Counsel appearing for the Appellants/ Defendants that the trial Court decreed the suit filed by the Plaintiff on the basis of adverse possession in respect of which no issue has been framed, and that the trial Court in the absence of any such issue ought not to have declared the title of the Plaintiff by holding that he perfected his title to the schedule lands by adverse possession. It has been further contended that the law of adverse possession is not applicable since the Plaintiff claimed his right of ownership and possession under an executory covenant i.e. Exs.A.1 and Ex. A. 1(a). According to the learned Counsel, the plea of adverse possession is available only to such a person who does not acquiesce to the title of the true owner and the present case being one where the Plaintiff does not dispute the title of the true owner, the judgment rendered by the trial Court, it was argued, being contrary to law, and is liable to be set aside.

21. Reliance has been placed by the learned Counsel appearing for the Appellants in Donthireddy Sambhi Reddy Vs. Commissioner, Endowments Department and Others, the case in which the Plaintiff had neither set up adverse possession at any stage nor any pleading to that effect, nor issues framed. The Supreme Court held that the suit cannot be decreed on the ground of adverse possession. In Achal Reddy v. Ramakrishna Reddiar and Ors. AIR 1990 SC 553 wherein the Supreme Court held that purchaser put in possession in pursuance of the executory contract of sale, his possession cannot be said to be adverse to that of the true owner. The Supreme Court rendered the decision on the proposition that 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 a contract, it cannot be adverse.

22. On the other hand, it has been contended by the learned Counsel appearing for the Respondent/Plaintiff that the Defendants are very well knew about the purchase of the suit lands by the Plaintiff under Exs.A.1 and A.1(a) private sale deed and thereafter the Plaintiff dealing with the suit lands as that of his own

property in his own right and it is a case wherein the Plaintiff openly asserted his title to the property as its owner and he being remained in possession of the property for more than the statutory period even before the Defendants 3 and 4 obtained Exs. B-1 and B.2 registered sale deeds from the first Defendant, the finding of the trial Court that the Plaintiff perfected title by adverse possession is in accordance with law and the said finding cannot be interfered with in this appeal.

23. Reliance has been placed by the learned Counsel appearing for the Plaintiff/ Respondent in *Rajeswararao v. Narsingarao and Anr.* AIR 1952 Hyd 75 wherein it has been laid down that "adverse possession to have that character need not commence with some violent act or incident. The commencement of adverse possession has nothing to do with an illegal act independent of the possession itself. If a man enters or remains in possession unlawfully without a title only under a fictitious claim or a corrupt title, with the assumption of ownership ostensible and notorious, character of possession is adverse."

24. The learned Counsel also relied on *Ganshamdoss Narayandoss and Others Vs. Saraswathi Bai and Others*, for the proposition that unopposed possession for 12 years under an invalid will creates title. The Madras High Court held that "where a person has been in possession of a property for over 12 years as legatee with an absolute estate under a Will by a testator who had no disposing power over the property and no objection has been made by the persons entitled to the property, the person in possession acquires an absolute title to the property."

25. The learned Counsel appearing for the Respondent/ Plaintiff further relied on *Bondar Singh and Others Vs. Nihal Singh and Others*, This is also a case where the Plaintiff having obtained possession of the land under a unstamped and unregistered sale deed executed by the predecessor in interest of Defendants in 1931, thereafter when the Defendants disputed their title they filed the suit for declaration of title and permanent injunction. The defence set up by the Defendants was that the document is unstamped and unregistered and, therefore, it cannot convey any title to the land in favour of the Plaintiff.

26. The Supreme Court held as follows:

However legal position is clear that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the Plaintiff's over the suit land. The sale deed in question at least shows that initial possession of the Plaintiff's over the suit land was not illegal or not unauthorized. The Plaintiff's were in continuous possession till 1956 when the Defendants by issuing a notice calling upon the Plaintiff's as trespassers to handover possession of the land to them. The Plaintiff's having set up hostile title against the Defendants, who started asserting their title only from 1956, the plea of adverse possession of the Plaintiff's is established.

27. Having considered thoroughly the several cases cited which are referred to in the foregoing paras, I do not think that any conflicting views have been expressed, by the Apex Court on the core issue. The decisions have been rendered with reference to the facts and circumstances of each case. There is no conflict on the basic issue as to whether a person can perfect his title to the property by adverse possession while taking property under an executory contract of sale and remaining in possession of the property for more than the requisite statutory period for acquisition of title, and whether can be allowed to plead that he perfected his title by adverse possession against his transferor even though there is no valid transfer of property in accordance with law. I do not want to lay much emphasis on the point that an issue has not been framed regarding the adverse possession because such plea was in fact taken by the Plaintiff, evidence has been let in by both parties and in consideration thereof a decision has been rendered on the said point by the Courts below. It is therefore not a case where a decision was rendered surprisingly without contemplation by the parties. Since the trial court allowed the parties to let in evidence in respect of the issue relating to adverse possession and the parties having actively participated in the trial on the said issue and invited a decision cannot now turn round and say that in the absence of an issue specifically framed, the finding of the courts below is not binding on them. Therefore, the point that there was no issue framed on the adverse possession though there is such plea taken by the Plaintiff is of no consequence.

28. The crucial point therefore requires for consideration is the Plaintiff who took possession of the schedule property under unregistered sale deed having paid the consideration in full not bringing the suit for specific performance of contract within the period allowed by law, whether can contend that since he remained in possession of the property for more than the period of 12 years from the date on which his rights in the property were disputed by his transferors and the purchasers from the said transferors can he ask the court to declare his title on the ground that he perfected his title by adverse possession.

29. It is established from the evidence available on record that the Plaintiff purchased the property under a contract which is in writing, he paid the entire sale consideration and was put in possession of the property under Ex.A-1 and Ex.A-1(a) simple sale deed (unregistered sale deed dated 07.04.1977). The evidence on record also indicates obviously that he has been in possession and enjoyment of the schedule property from the date of the said simple sale deed. Since the property being immovable and worth more than rupees one hundred, the transfer must be effected by a registered document, otherwise the title in the property would never be conveyed from Defendants 1 and 2 to the Plaintiff. Although the possession of the Plaintiff as could be seen from the evidence available on record indicates that he took possession of the property after purchasing the same under a simple sale deed by paying the entire sale price, and for that limited purpose which is co-lateral Exs.A-1, A-1(a) can be taken into consideration, but without there being a transfer by the registered instrument or

obtaining a decree of specific performance of contract by a competent civil Court, the title will never pass on to the Plaintiff.

30. Although in the instant case the Plaintiff is able to show that all the essential requirements of Section 53A of the Transfer of Property Act are satisfied whether he can ask the Court to declare him as owner of the suit property on the ground that he having obtained possession of the property under unregistered sale deed remained in possession of the same for more than the statutory period with hostile animus and open assertion of his title to the knowledge of his transferor and the subsequent purchasers and thus perfected his title by adverse possession.

31. In *Achal Reddi v. Ramakrishna Reddiar and Ors.* AIR 1990 SC 553 the Supreme Court has laid down in vivid terms that when the possession of the purchaser is under executory contract of sale, his possession cannot be said to be adverse. The Apex Court clarified that 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 a contract, it cannot be adverse. The Constitution Bench of the Apex Court in *Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad*, held categorically that "when a suit has been filed to establish the right of the Appellant as owner of the property, the Appellant cannot take the benefit of Section 53A of the Transfer of Property Act. Section 53A of the Transfer of Property Act would come to the aid of the Appellant in defence."

32. From the above two judgments of the Apex Court it is thus obvious that a person who obtained the possession of the property under executory terms of contract of sale, cannot ask for declaration of his title even on the ground that he remained in possession of the property for more than 12 years period and contending that his possession is adverse to the real owner. The Apex Court said in the above two judgments that possession of such person cannot be adverse and he cannot set up the plea of adverse possession. Therefore, in my view the trial court has fallen into error in declaring the title of the Plaintiff holding that he perfected his title to the schedule mentioned property by adverse possession against the Defendants 1 and 2 who are the real owners and Defendants 3 and 4 who are the subsequent purchasers.

33. However, by virtue of the doctrine of part performance embodied in Section 53A of the Transfer of Property Act, the Plaintiff can protect his possession from Defendants 1 and 2 who sold the property to him under the simple sale deed, so also he can protect his possession from Defendants 3 and 4 who have knowledge of the earlier sale transaction in his favour under Exs.A-1 and A-1(a) sale deed. It is argued before me by the learned Counsel appearing for the Defendants that the Plaintiff having recourse to the doctrine of part performance can only protect his possession but he cannot file a suit for simple injunction by his positive act seeking a decree in his favour. It is true that Section 53A only operates as a bar against the Defendants in the present case from enforcing any rights against the

Plaintiff other than those which were provided under Exs.A-1 and A-1(a) simple sale deed. Although the section does not confer title on the person who took possession of the property in part performance of the contract, the law is now well settled that when all conditions of the section are satisfied as in the present case, the possession of the person must be protected by the court whether he comes as a Plaintiff or Defendant. The only embargo is that Section 53A cannot be taken in aid by the transferee to establish his right as owner of the property. But the transferee can protect his possession having recourse to Section 53A either by instituting a suit for injunction as a Plaintiff or by defending the suit filed by the transferor or subsequent purchasers as a Defendant. It is also well settled that the transferee can very well file a suit for injunction to protect his possession even though his remedy to file a suit for specific performance of contract is barred by limitation.

34. For the foregoing reasons, the decree and judgment dated 24.08.1992 passed by the trial Court in favour of the Plaintiff declaring his title to the schedule mentioned property on the ground that he perfected his title to the property by adverse possession is set aside. The decree and judgment dated 24.08.1992 passed by the trial Court granting relief of perpetual injunction in favour of the Plaintiff and against the Defendants is confirmed. The appeal is partly allowed. There shall be no order as to costs.