
(1958) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : Second Appeal No. 165/1 of 1955

Maidi Bhikashmiah and Another

APPELLANT

Vs

Venugopalrao and Others

RESPONDENT

Date of Decision : 19-09-1958

Acts Referred:

Limitation Act, 1908 — Section 14, 142, 144

Citation : AIR 1959 AP 146

Hon'ble Judges : Mohammad Ahmed Ansari, J

Bench : Single Bench

Advocate : K. Madhava Reddy, for the Appellant; B.V. Subbarayudu, B.V. Narasimham, K. Anantha Kishen Rao and Channor Kishtiah Goundda Thirpathiah, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Ahmed Ansari, J.—The two appellants are the plaintiffs, whose suit to recover possession of lands bearing S. Nos. 1035 and 1063 in Dharmapur village has been dismissed by both the Courts. The claim was filed against three persons; but the second and third defendants were mere servants of the first defendant, who is the real contestant in the case. The plaint was originally one for declaration and for injunction; but the possession of the properties was given to the 1st defendant under an order of the Revenue Minister which is dated 8-11-1952 and thereafter the plaintiffs have added the relief for the properties being delivered to them. In order to appreciate the several arguments urged in the appeal, it is necessary to state first certain admitted and proved facts in the case.

2. The mother of the 1st appellant had sold the lands to one Viswanathani in 1330 Fasli (1920-21); when the 1st appellant was a minor. She had then executed a document transferring the lands in consideration of Rs. 95 which amount was mentioned as being due to the purchaser. Ex. 9 is the certified copy of the sale deed whose original is alleged to have been lost on Khurdad 11, 1346

Fasli (April 15, 1937) the 1st appellant filed a petition before the Collector asking for the possession of the lands on the ground that Viswanatham was originally cultivating them as tenant, after the death of the pattadar he illegally got the possession and had not been since paying any money.

The Tahsildar of Miriyalguda to whom the petition was sent for necessary enquiries on Dai 2], 1347 Fasli (25-11-1937) found in favour of the petitioner and directed possession of the two lands to be given to the applicant. The certified copy of the Tahsildar's order is Ex. 2. The Collector however took a different view: and came to the conclusion that as Viswanatham's possession was for a long time, Section 74 of the Hyderabad Revenue Act did not justify any order to restore possession.

In this connection it may be mentioned that the proceedings to restore under the aforesaid Section could be ordered only where wrongful possession be of one year's duration. The 1st appellant filed a revision petition before the Subedar, who on Isfandar 14, 1350 Fasli (16-1-1941) allowed it and upheld the order by the Tahsildar. The judgment is Ex. 1. The dispute was continued in the Revenue Department, where the view taken by the Collector was found correct. A copy of the final order" is Ex. A-21 and is dated Farwardi 15, 1351 Fash (16-2-1942).

3. It appears that while the aforesaid dispute was being continued in the Revenue Department Viswanatham had alienated the lands to two persons. On Shehrewar 24, 1344 Fasli (31-7-1935) he had sold them to one Cheruku Subbiah and the certified copy of this sale deed is Ex. 6. Again he conveyed the lands to the 1st defendant in this case on Azur 8, 1350 Fasli (13-10-1940) for Rs. 1,000/-. The relevant document is Ex. A-20.

4. Before dealing with the arguments in this appeal I would mention some details of another litigation between the parties. This appears to have been started in 1352 Fasli (1942-43) and was u/s 11 of the newly enacted Hyderabad Agricultural Land Alienation Act. It began with an application by the 1st appellant alleging that the lands had been mortgaged with Viswanatham, who had reconveyed the properties on getting payment of Rs. 200; but the 1st defendant has got their possession by force.

The defence taken was that Viswanatham was in possession of the properties for more than twelve years and he has sold them through a registered deed in favour of the contesting party. The Collector on Thir 27, 1356 Fasli (1-6-1947) had allowed the appeal and directed applicant's possession to be maintained. A copy of the Collector's judgment is Ex. 8. The aforesaid order was reversed by the higher revenue authorities and possession was directed to be given to the respondent, to which order a reference had been already made earlier in this judgment.

5. Mr. Deshmukh on behalf of the appellants has urged the following three grounds for allowing the appeal:

1. The suit for possession is not barred by 12 years limitation, because Viswanatham and the purchaser from him, have not been in possession for the necessary period of 12 years;

2. Viswanatham having sold the property to another could not confer valid title on the 1st defendant, who could not resist the claim by the appellants for possession of the properties; and

3. there was no issue in the Courts below concerning Viswanatham having acquired the properties by 12 years adverse possession and therefore the appellants have not had any opportunity to contest the ground on which the lower appellate Court has dismissed their appeal.

6. By far the important issue in the case is whether Viswanatham had by 12 years adverse possession acquired indefeasible right to the properties. The learned counsel has tried to show his not having done so, because of the several reasons. The first is that Viswanatham has admitted having cultivated the lands as lessee and the appellants' advocate has urged that there was his clear evidence of his having got into possession by permission. He argues that no adverse possession would begin unless some adverse title is subsequently put forward and that would be in proceedings which were Started in 1346 Fasli (1936-37); but then the appellants had admittedly got possession of the properties in 1357 Fasli (1947-48) which is within 12 years of the proceeding.

On these facts the argument is that Viswanatham's title has not matured by full twelve years possession, I do not think the argument can be accepted, for it appears from the record that Viswanatham has put forward his adverse title much earlier. He had as far back as Ardibehist 13, 1336 Fasli (18-3-1927) asked for the mutation of pattas of the lands in his name, wherein he had claimed to have purchased the properties. This is borne out by the certified copy of his application which is Ex. 4-in the case. There is therefore a clear assertion of title by Viswanatham in 1336 Fasli (1926-27) and if the several decisions of the revenue Courts be not taken as constituting interruption of his adverse possession, by 1350 Fasli (1940-41) Viswanatham's possession would confer on him full title.

7. The counsel of the appellants has thereafter argued that because of the Tahsildar's and the Subedar's judgments the appellants' right to recover possession of the properties was in suspended animation and that when counting 12 years the periods during which these orders were operative, should be deducted u/s 14 of the Limitation Act. There are authorities binding on me that mere decree of possession by civil Courts do not interrupt running of adverse possession. In Puthia Valappif Avisia v. Lakshmana Prabhit 1911 1 Mad 207, it has been held that a decree in favour of a party with regard to the property does not by itself stop the running of limitation when the property continues to be in the possession of the defendant.

Again it has been held in Ramachandram Pillai Vs. Neelambal Achi, that the

judgment of a Court declaring that one of the parties has not title to the properties in suit cannot have the effect of causing his possession to cease to be adverse to the opposite party from the moment of its pronouncement so long as possession remains undisturbed. The learned counsel of the appellants tries to distinguish these on the ground that the position is such where there is only a declaratory decree.

He urges that where a suit is for the declaration coupled with a claim to recover possession and it is decreed in the presence of the person in wrongful occupation, the decree arrests the running of time against the true owner. In support of this argument, he relied on *Achhiman Bibi Vs. Abdur Rahim Naskar and Others*, . With respect to the learned Judges I beg to differ. The reason for holding a declaratory decree as not interrupting adverse possession is that to constitute such an interruption the corpus of the property should be taken from the person in possession. The position would not be different where the decree for possession remains unexecuted.

In other words, if passing a declaratory decree does not constitute a change of animus of the person in possession, giving a decree for possession should not be interpreted otherwise. I would therefore not modify the broad rule that a decree without actual interference in the possession does not interrupt the possession. It follows that unless possession be found to have been delivered to the appellants in pursuance of the orders relied by the appellants, the adverse possession against them would continue. There is no evidence of such possession and the result is that Viswanatham had become an absolute owner of the properties by remaining in possession for more than twelve years.

8. It was then urged on behalf of the appellants that they are entitled to certain deductions u/s 14 of the Limitation Act. I am afraid Section 14 would not be helpful because the proceedings in this case are not for obtaining the same relief that the appellants had asked the revenue authorities. It cannot be argued after *Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari*, that because the consequence of the two proceedings be the same, the benefit of the Section can be claimed. That decision insists on the relief being the same and I am afraid that cannot be held in this case. Therefore this argument also fails.

9. It was then urged that no issue on limitation has been framed by the trial Court, but then the documents concerning the earlier revenue proceedings, u/s 74 of the Hyderabad Revenue Act were filed by the appellants and this means that they were fully aware of the adverse title which the 1st defendant was claiming in the case. It follows that the absence of the issue has caused no prejudice to the appellants.

10. The 1st ground for vacating the decree of the two lower Courts is that Viswanatham having earlier alienated the properties had no title to confer on the respondent and therefore the latter could not resist the claim of appellants. I am afraid the argument overlooks the fact of the appellants being the plaintiffs in an

ejectment suit. They have lost their rights by lapse of twelve years and in their claim we are not to determine the rights of the defendants. Consequently the last ground for allowing the appeal fails.

11. I therefore dismiss the appeal with costs throughout. Leave granted.