
(2008) 12 AP CK 0020
In the Andhra Pradesh High Court
Case No : A.S. No. 2803 of 1996

Pithani Tirupatayya and Others	Vs	APPELLANT
Pithani Apparao and Others		RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Limitation Act, 1963 — Article 64, 65

Citation : (2008) 12 AP CK 0020

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Ramana Rao, for the Appellant; N. Siva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This appeal is filed by the unsuccessful defendants being aggrieved of the decree and judgment, dated 28.06.1996 passed in O.S. No. 46 of 1984 on the file of the I Additional Subordinate Judge, Kakinada. The said suit was filed praying for the reliefs of partition of the plaint schedule properties into four equal shares and for allotment of one such share to the first plaintiff, one share to plaintiffs 2 and 3 together and one share to the 4th plaintiff and the remaining shares to defendants 1 to 4 and also for future profits and for costs of the suit.

2. The learned I Additional Subordinate Judge, Kakinada in the light of the respective pleadings of the parties, having settled the issues, recorded the evidence of P.Ws1 to 3, D.Ws1 to 3 and marked Exs.A1 to A6 and Exs.B1 and B2, and ultimately, came to the conclusion that the plaintiffs are entitled to the reliefs prayed for and, accordingly, decreed the suit. Aggrieved by the same, this appeal had been preferred.

3. During the pendency of O.S. No. 46 of 1984, the second, third, fourth and fifth plaintiffs also died and the legal representatives were brought on record. Likewise, the second defendant died and defendants 5 and 6 were added as legal

representatives of the second defendant. Likewise, in the appeal, R.11 to R.16 were brought on record as the legal representatives of the deceased R.1 and R.2

4. Sri Ramana Rao, the learned Counsel, representing the appellants had taken this Court through the oral and documentary evidence available on record and would maintain that the trial Court totally erred in decreeing the suit since the father of the first plaintiff is not the son of Late Thirupatayya and the said Thirupatayya fostered Nookayya and hence, he cannot claim any rights whatsoever as the son of Thirupatayya and Thirupatayya had constructed a separate house for Nookayya and he used to live in that house. The learned Counsel also would maintain that plaintiffs 2 to 4 left Kakinada prior to bombing in Kakinada in the year 1942 and since then, defendants 2 to 4 alone have been living in the plaint schedule properties. The learned Counsel also would maintain that continuously, for sufficiently a long time, the defendants have been in possession of the plaint schedule properties and thus, they have perfected their rights by adverse possession as well and the suit is barred by limitation. The learned Counsel also pointed out to the evidence available on record and would maintain that this evidence is totally insufficient to establish the claim of the plaintiffs. The learned Counsel also made certain submissions relating to the burden of proof. The learned Counsel also pointed out to the evidence of D.W.1, D.W.2 and D.W.3 and further pointed out to Exs.B.1 and B.2 and would maintain that in the light of this oral and documentary evidence available on record, the trial Court instead of dismissing the suit totally erred in decreeing the suit. The learned Counsel also made certain submissions relating to the non-production of original of Ex.A.6 and would maintain that Ex.A.6 cannot be relied on. The learned Counsel also pointed out to certain of the findings relating to the criminal litigation between the defendants and Potharaju and would maintain that these findings are perverse findings. Ultimately, the learned Counsel would conclude that, in the facts and circumstances of the case, since the findings recorded by the trial Court are not being in accordance with law and inasmuch as the evidence available on record is highly insufficient so as to grant a decree in favour of the plaintiffs, the suit for partition to be dismissed and the appeal filed by the appellants be allowed.

5. On the contrary, Sri N. Siva Reddy, the learned Counsel representing the respondents, had taken this Court through the contents of Ex.A.6 and would maintain that in the light of the clear recitals of Ex.A.6, the relationship as such cannot be put into serious controversy. The learned Counsel also pointed out that even if the respective stands taken by the parties in their respective pleadings be accepted, the origin and the nature of the properties not being in serious controversy it may have to be safely taken that these are the ancestral joint family properties of the family and when once the relationship between the parties is not in serious controversy or to be taken as having been established by acceptable evidence and when the nature of the properties being ancestral joint family properties also not being in serious controversy, then the burden would be on the appellants/defendants to establish how respondents/plaintiffs are not

entitled to a decree for partition. While further elaborating the submissions, the learned Counsel also pointed out that in the light of the facts and circumstances, it cannot be said that the suit is barred by limitation, the plea of adverse possession also had not been established and inasmuch as the trial Court appreciated the oral and documentary evidence available on record in detail and recorded findings, such findings need not be disturbed in this appeal. The learned Counsel also placed reliance on several decisions to substantiate his submissions.

6. Heard the learned Counsel on record. Perused the oral and documentary evidence available on record and also the findings recorded by the trial Court.

7. Before taking the further discussion, it may be appropriate to refer to the respective pleadings of the parties, the issues settled, the evidence recorded by the trial Court and usually the findings of the trial Court in addition.

8. It was pleaded in the plaint as hereunder:

The plaintiffs and defendants are all cousin brothers (1) the father of defendants 1 to 4 i.e., Venkanna was the eldest son of late Pithani Tirupatayya. The father of 1st plaintiff Nookayya and the father of 2nd and 3rd plaintiffs Appanna and the father of the 4th plaintiff i.e., Subbanna are the 3 other sons of late Pithani Tirupatayya.

Originally late Pithani Tirupatayya and his above named 4 sons all belong to Ramanmayyapeta and they are living in the plaint schedule property having their thatched houses. All the members left the said area removing their houses there and went to different villages when military occupied said area prior to 1942, After the death of said late Tirupatayya his above 4 sons succeeded to his properties including plaint schedule property. All the 4 brothers i.e., sons of late Tirupatayya kept their properties joint and they have never divided any of their joint family properties including plaint schedule house site. Casuarina plants were being grown in plaint schedule land and sold once in 6 years by all the 4 brothers and enjoyed. The eldest brother shifted back to the plaint schedule site some years back and occupied about 1/4th and constructed his house and defendants 2 to 4 are living in the said house. The remaining 3/4ths of the site is kept vacant and three other brothers are enjoying the usufruct of casuarinas plantation. The 4 sons of late Tirupatayya died and plaintiffs and defendants have succeeded to the joint family properties. Plaintiffs and defendants sold the other joint family properties jointly and shared the price.

Now as plaintiffs are settled at different villages they wanted to sell away the 3/4th of plaint schedule land leaving the 1/4th in which defendants' house is there and have taken some intending buyers and defendants 2 and 3 who are there scared them all. Plaintiffs got a notice dt. 2-10-1983 issued to defendants asking them to divide the plaint schedule joint family property and to allot their respective shares etc., 1st defendant received notice and kept quiet without giving any reply. Defendants 2 to 4 refused the notices. The defendants 1 to 4 together have 1/4th share and all the plaintiffs together have got 3/4th share in

plaint schedule property. Plaintiffs are no longer willing to keep the said plaint schedule property jointly. Plaintiffs want their respective shares to be divided. Now in 3/4th of the plaint schedule property casuarina plantation is there which will be ripe for being sold in 1 year's time and the same belongs to the plaintiffs also. Plaintiffs have every right to pray the Court to partition the plaint schedule property into 4 equal shares and to allot one such share to the 1st plaintiff, one such share to plaintiffs 2 and 3 together and one such share to the 4th plaintiff and the remaining one such share to the defendants 1 to 4. The portion already occupied by defendants 1 to 4 in which they constructed a house may be allotted to their share if possible on grounds of equity.

9. It was pleaded in the written statement as hereunder:

The allegations made in para-IV of the plaint are not correct. The allegation in para-IV that the plaintiff and defendants are cousins is not correct. Pithani Tirupatayya had three sons and they were Pithani Venkatanna who is the father of defendants and 2nd son is Appanna who is the father of 2 and 3 plaintiffs and 3rd son Subbanna is father of 4th plaintiff. Pithani Nookayya was not the son of pithani Tirupatayya. Pithani Tirupathayya fostered Pithani Nokayya and his son is 1st plaintiff. The allegations made in para IV of the plaint contrary to the above-mentioned facts are not correct. Pithani Nookayya is not the son born to Pithani Tirupatayya and Nookayya has no right as a son of Pithani Tirupathayya. Pithani Tirupathayya got constructed a separate house for Nookayya and he used to live in the above said house. At the time of Second World War the residents of Ramanayyapeta were asked to vacate and after the war again the properties were restored to the respective persons who are entitled for the same.

The allegation in para-V that after the death of Tirupathayya that is four sons succeeded to his properties including plaint schedule property is absolutely false. After the death of Tirupathayya all the family properties are being enjoyed by his sons Venkanna, Appanna and Subbanna and Nookayya never succeeded any of his properties or joint family properties. The joint family consisting of Venkanna, Appanna and Subbanna was possessing Ac.3-00 cents of land at Ramanayyapeta village and also plaint schedule property. 2 to 4 plaintiffs left Kakinada prior to bombing in Kakinada in the year 1942. Since then 2 to 4 defendants are alone living exclusively in the plaint schedule property. At about 1969 there was heavy cyclone hit Kakinada. At the time of cyclone Palepu Pothanna and his sons tried to claim a portion in the plaint schedule property and also claim to have access and tried to construct a thatched dadi in the plaint schedule land. Thereupon, there was big dispute and also two criminal cases were launched, injuries were received. At that time, defendants 2 to 4 requested plaintiffs 2 to 4 and 1st defendant to finance the costs and to help to defend the rights in the property. Then 2 to 4 plaintiffs and 1st defendant represented that they are not going to claim any right in the plaint schedule property and they are not prepared to finance the expenses and defendants 2 to 4 shall incur expenses and that they are not going to claim any right in the property. At that time,

defendants 2 to 4 have incurred nearly Rs. 4000/- towards expenses and enjoying the property exclusively for themselves. The remaining joint family property belonging to 2 to 4 plaintiffs and defendants consisting of Ac.3-00 of land was later sold away and the proceeds were shared and in that sale the 1st plaintiff was also asked to join and out of love and affection the proceeds were also shared to him. The casuarina plants in the plaint schedule land are planted only 3 years back and previously no casuarina plants are planted.

At the time of War Venkanna, Subbanna and Appanna were living by having separate houses in the plaint schedule property. 1st plaintiff was living even by that time at P. Mallavaram in his childhood. He never lived in the plaint schedule property at any time. After the war defendants 2 to 4 constructed their houses and began to live therein.

The allegation made in para-5 contrary to the aforementioned facts are absolutely false. Plaintiffs and 1st defendant have neither title nor possession in the plaint schedule property since after 1969. The entire plaint schedule property is in the exclusive possession of 2 to 4 defendants. Now the prices have anormously enhanced as it is also became part of urban area. Plaintiffs may be having eye over the property and they should have filed the suit with false and untenable allegations. Plaintiffs have no right to offer for sale and 2 to 4 defendants never scared any one and the alleged object of plaintiffs is known to the defendants only through the plaint.

No notice is received by 2 to 4 defendants and 2 to 4 defendants are not aware whether 1st defendant received any notice. The allegation that the defendants are having 1/4th undivided share plaintiffs together are having 3/4th undivided share is absolutely false. 2 to 4 defendants alone paid always taxes and they are exclusively enjoying the plaint schedule property within absolute rights since 1969 when 2 to 4 plaintiffs and 1st defendant disclaimed any right therein.

10. The following issues are settled by the trial Court:

1. Whether the plaintiffs are entitled for partition of the suit property and for their share as pleaded in the plaint?
2. Whether the plaintiffs are entitled for future profits? And
3. To what relief?

11. Evidence recorded by the trial Court:

Oral evidence:

FOR PLAINTIFFS: FOR DEFENDANTS:

P.W.1/Reddy Satyavathi D.W.1/Pithani Veera Raghavulu (7th plaintiff) (4th defendant) P.W.2/Pampana Veeramma D.W.2/Guthula Veerraju Mallavaram Ramanayyapeta (V) P.W.3/Pithani Nookaraju D.W.3/Kada Suryanarayana Mallavaram Ramanayyapeta Documentary evidence:

FOR PLAINTIFFS:

Ex.A.1/2.10.1993 Office copy of the lawyer's notice got issued by the plaintiffs 1 to 3 and another to defendants 1 to 4

Ex.A.2/4.10.1983 Postal acknowledgement from 1st Defendant

Ex.A.3/ --- Returned registered cover addressed to 2nd defendant

Ex.A.4/ Returned registered cover addressed to Pithani Raghavulu S/o. Venkanna

Ex.A.5/ Returned registered cover addressed to 3rd defendant

Ex.A.6/11.11.1970 Registration extract of the sale deed executed by Pithani Thirupathirao and others in favour of Bolla Venkatalakshmi

FOR DEFENDANTS:

Ex.B.1/ Bunch of 12 demand notices

Ex.B.2/ Bunch of 11 tax receipts

12. Findings recorded by the trial Court:- The trial Court in the light of the respective pleadings of the parties and also the evidence available on record, PWs. 1 to 3 and Exs.A.1 to A.6 and also DWs 1 to 3 and Exs.B1 and B2, recorded reasons in detail and discussed the said evidence while answering issues 1 and 2, commencing from paras 6 to 14, and ultimately came to the conclusion that the plaintiffs are entitled to respective shares and also the future profits from DW.3 and accordingly, while answering issue No. 3, came to the conclusion that the plaintiffs are entitled for the relief of partition of plaint schedule property into four equal shares and allotment of one such share to plaintiffs 8 to 14 together, one such share to plaintiffs 6 and 7 together and one such share to defendants 1, 3, 4, 5 and 6 together and further held that the defendants shall pay the future profits to the plaintiffs from the date of the decree and the quantum of the same has to be ascertained on separate application to be filed by the plaintiffs. Aggrieved by the same, the present appeal had been preferred.

13. In the light of the respective contentions, which had been advanced by the counsel on record, the following points arise for consideration in this appeal

1. Whether the findings recorded by the trial Court on appreciation of evidence available on record granting the reliefs in favour of the plaintiffs to be confirmed or to be disturbed in the facts and circumstances of the case?

2. If so, to what relief the parties would be entitled to?

14. POINT No. 1:

The parties, hereinafter, for the purpose of convenience, would be referred to as plaintiffs and defendants as shown in O.S. No. 46 of 1984 on the file of the I Additional Subordinate Judge, Kakinada. As already specified supra, certain of the parties died during the pendency of the suit and certain of the parties died

during the pendency of the appeal and the legal representatives have been brought on record. The respective stands taken by the parties in their pleadings in the plaint and the written statement, the issues settled, the evidence available on record and the findings recorded by the trial Court, in brief, already had been referred to above. The stand taken by the plaintiffs is that the plaint schedule property, which is a house site ad-measuring Ac.0.30 cents in Section No. 87/3, Gram Kantham land of Ramayyapet village, originally belonged to late Pithani Thirupatayya and the said Tirupataiah had four sons viz Venkanna, Nookanna, Appanna and Subbanna and all these were residing in the plaint schedule property with their families and they all left the place along with the other residents of that area as the military occupied that area prior to 1942 and after the death of the common ancestor late Thirupatayya, his four sons succeeded to his properties and they had been raising casuarina plantations in the plaint schedule property and had been sharing the proceeds. Venkanna shifted back his residence to the plaint schedule property and defendants 2 to 4, who are his sons constructed houses and have been residing in an extent of 1/4 of the plaint schedule property keeping the remaining 3/4th site vacant and that on the death of the said Thirupatayya all his four sons succeeded to the said property and thus it is stated that the respective branches are entitled to 1/4th share each.

15. However, the stand taken by the contesting defendants are that the common ancestor Pithani Thirupatayya had only three sons viz., Venkanna, father of defendants 1 to 4, Appanna, father of plaintiffs 2 and 3, and Subbanna, father of the 4th plaintiff, that Nookayya is not the natural son of Thirupatayya and that Thirupatayya fostered Nookayya and hence Nookayya has no right in the property as the son of Thirupatayya. It is also their case that after the death of Thirupatayya, all the family properties were being enjoyed by his three sons Venkanna, Appana and Subbanna and that Nookayya never succeeded to any of his properties or joint family properties. It is also their case that the plaintiffs 2 to 4 left Kakinada prior to bombing in the year 1942 and since then defendants 2 to 4 alone have been living in the plaint schedule property and, in the year 1969, there was a cyclone and then one Palepu Pothanna and his sons tried to claim a portion in the plaint schedule property and made an attempt to construct a thatched "Dadi" in the plaint schedule property and then there was a dispute and criminal cases also had been there. Thus it is their case that they have been enjoying the schedule property continuously even as per the stand taken in the written statement. It is admitted that Venkanna, Appanna and Subbanna are the sons of Thirupatayya, and they have inherited the said properties. However, defendants also had put forth a contention that they had constructed the house in the plaint schedule property after the rest of the family members left the place during the year 1942 when the Military occupied the area and further it is the stand taken by them that there were disputes between them, their neighbours and these parties and there were also criminal cases in the year 1969 and when defendants 2 to 4 requested plaintiffs 2 to 4 and the first defendant to finance the criminal litigation, they were not interested in the property and thus they had

perfected their title to the plaint schedule property by way of adverse possession. Further stand had been taken that Nookayya is not the son of Thirupatayya and hence he has no share in the plaint schedule property. 7th plaintiff, who is the daughter of 4th plaintiff was examined as PW.1. PW.2, the sister of the 1st plaintiff also was examined. From the evidence of PWs. 1 and 2 it is clear that Nookayya was the son of Tirupatayya. In the cross-examination of DW.1 also, he deposed that he does not know whether Tirupatayya had four sons by name Venkanna, Nookayya, Appanna and Subbanna and that Venkanna is his father, but he does not know the names of the brothers of his father. DW1 in his cross examination further stated that plaintiffs 1 to 4 and sons of Venkanna including himself sold the property under the original of Ex.A.6 DW.1, who is a party to original of Ex.A.6, admitted the sale transaction, and the recitals of this document would go to show that Nookayya also was the natural son of Tirupatayya. The trial Court, on appreciation of the evidence available on record, the evidence of PWs 1 and 2 in particular, along with Ex.A.6, recorded findings with regard to the relationship.

16. PW.1, the 7th plaintiff, deposed that the 4th plaintiff is her father, 5th plaintiff is her mother, 6th plaintiff is her sister, plaintiffs 1 to 4 are her cousin brothers. This witness also deposed that the plaint schedule property originally belonged to Pithani Tirupatayya, her great grand father, and she also deposed about how the property of her great grand father has been inherited by his four sons and the relationship of the parties had been deposed in detail by this witness. This witness also deposed that her grand father and his brothers have been in possession of the plaint schedule property and she also deposed relating to the constructions made in certain portions and how certain sales have been also effected. This witness also deposed that in the property sold, the first plaintiff also got share in the sale proceeds. As plaintiffs 1 to 4 and their children are living separately, they wanted partition of the plaint schedule property along with D1 to D4, but D1 to D4 did not agree. So her father and his brother sent notices to D.1 to D.4. Ex.A.1 is the office copy of notice, Ex.A.2 is the acknowledgement of D.1. Exs.A.3 to A.5 are the returned covers addressed to D.2 to D.4. Property has to be partitioned. Defendants also are liable to pay future profits. This witness specifically deposed that it is not true to say that Pithani Nookayya is not the son of Pitani Tirupatayya and it is not true to say that Tirupatayya fostered Nookayya and it is not true to say that the first plaintiff had no rights in the plaint schedule property. In the cross examination, several facts have been elicited and several of the suggestions put to this witness have been specifically denied. This witness specifically deposed that it is not true to say that plaintiffs 1 to 4 never lived in Kakinada and no doubt this witness also deposed that there were criminal cases regarding suit land with the neighbours, but this witness deposed that it is not true to say that none of the plaintiffs were parties in those criminal cases. It is also pertinent to note that witness deposed that it is not true to suggest that all other persons excepting the defendants left the property prior to 1942 Bombing and it is not true to say that none of the plaintiffs have any

right in the plaint schedule property.

17. PW.2 deposed that she is a resident of Mallavaram and first plaintiff is her elder brother, Nookayya is her father and Tirupatayya is her paternal grand father and her father is the natural son of Tirupatayya. She, no doubt, deposed in her cross-examination that she has no documents to show that she is the sister of the first plaintiff and it is not true to say that she is not the sister of the first plaintiff and the other suggestions also had been denied.

18. PW.3 deposed that at present he is residing in Mallavaram and he was residing in Ramayyapeta till his 15th year and he is an agriculturist and the first plaintiff is his father and he is very old and completely deaf and his father and brother were owning Ac.3.04 cents of land in Ramayyapeta and they sold that property to Venkata Lakshmi under sale deed for Rs. 18,000/- and they shared the consideration. His father got Rs. 4,500/- to his share. Defendants and their children, this witness and his brothers and other plaintiffs are parties to the sale transaction. The property originally belonged to his great grand father Tirupatayya. They obtained certified copy of sale deed Ex.A.6 is the certified registration extract of the sale deed. In cross-examination, certain suggestions put to this witness had been specifically denied. This evidence of PWs. 1 to 3 is available on record.

19. The 4th defendant examined himself as DW.1. He had no doubt deposed the stand taken in the written statement and had taken specific stand that the plaintiffs never claimed any rights in the plaint schedule property after this witness attaining the age of discretion. As can be seen from the evidence of DW.1 relating to Nukaraju, certain admissions were made relating to his want of knowledge of the sons of Tirupatayya. Certain suggestions put to this witness no doubt had been denied. But there is an important admission in the evidence of DW 1 to the effect that plaintiffs 1 to 4 and sons of Venkanna including this witness sold property under the original of Ex.A.6. This is the crucial aspect statement discussed in elaboration even by the trial Court.

20. DW.2 simply deposed about D2 to D4 residing in the houses and being in possession of the houses and they have been in possession of these houses from the time he attained the age of discretion and he is aged about 70 years. This witness was cross examined.

21. DW.3 also deposed that from the time he attained the age of discretion, this witness has been seeing D2 to D4 are in possession of the plaint schedule property.

22. Exs.B1 and B.2 are the bunch of 12 demand notices and bunch of 11 tax receipts. Even as can be seen from the averments made in the plaint, the considerations made in a portion of the plaint schedule property are not in serious controversy. No doubt Sri Ramarao, learned Counsel representing appellants, made elaborate submissions that no vacant site is left over as on today and the total plaint schedule property is now occupied by the constructions.

23. On the contrary, Sri Siva Reddy, learned Counsel representing the respondents, would maintain that only in a portion of the property such constructions had been made and the remaining property as on today is also left vacant and that is the reason why specifically the plea of guilt also had been raised in the plaint. Further submissions had been made by the counsel on record relating to the plea of adverse possession. On a careful appreciation of the evidence available on record ie., the evidence of PWs 1 to 3, DWs 1 to 3 and also Exs.A.1 to A.6 and Exs.B.1 and B.2, certain of the essential aspects, which may be referred to on the analysis of the evidence available on record, are as hereunder:

24. Exs.B1 and B.2 would go to show that the defendants had constructed certain houses and have been in possession of the property and these are a bunch of 12 demand notices and a bunch of tax receipts.

25. The evidence of DWs 2 and 3 is also available on record, who no doubt deposed about the enjoyment of the properties by the contesting defendants to their knowledge from the age of their discretion. Hence, the long possession of the defendants also is not in controversy.

26. In the light of the clear evidence of PWs 1 and 2 coupled with certain admissions made by as well as relating to Ex.A.6, the relationship of the parties also cannot be put into serious controversy. No doubt, stand is taken that after 1942, the other branches never invested any interest in the plaint schedule property and there were some criminal cases with the neighbours and they never financed these litigations and thus the contesting defendants had perfected their title by adverse possession. The trial Court recorded findings in detail and came to the conclusion that inasmuch as the plea of ouster or the perfection of title by adverse possession or the question of bar of limitation, inasmuch as, had not been established by the defendants or in other words since the burden had not been discharged in the light of the other overwhelming evidence available on record, the plaintiffs are entitled to a decree for partition and also the other appropriate reliefs. Strong reliance was placed on the undernoted decisions:

1. Govindammal v. R. Perumal Chettiar 2007(2) ALT 91
2. M.L. Subbaraya Setty (Dead) by Lrs. and Others Vs. M.L. Nagappa Setty (Dead) by Lrs. and Others,
3. Modem Rajamouli Vs. Modem Roshaiiah and others,
4. Gajula Hanumanthappa Vs. Vadda Hanumanthappa @ Hanumappa and Another,
5. Binapani Paul Vs. Pratima Ghosh and Others,
6. Raghunath Pershad (died) by LR's. Vs. Janaki Bai and Others,
7. Gaddam China Dodamma Vs. Goka Pedda Dodamma and Another,

8. Shaik Gafur Vs. Rajanala Anjananandam,

27. The principles relating to the adverse possession and also the bar of limitation in the light of the Articles 64 and 65 of the Limitation Act, 1963, being well settled, the said principles need not be elaborately discussed. There cannot be any serious dispute or controversy relating to the principles laid down in the aforesaid decisions either in relation to the joint family properties and the burden of proof or in relation to the plea of ouster or the perfection of title by adverse possession and how to appreciate evidence especially in relation to the co-owners or the co-parceners as the case may be. The mere assertion on the part of the contesting defendants that the plaintiffs never evinced any interest and never had enjoyed these properties and had been away, these aspects by themselves may not be sufficient to establish the plea of adverse possession or perfection of title by adverse possession. Something more is necessary. It may be true that since the defendants continue to be at the spot, the contesting defendants might have raised superstructures and there is some controversy between the parties relating to the fact whether the total property is occupied by the structures or only in a portion of the property, such structures had been raised. It is no doubt true that if such structures if any had been already raised, the equities may have to be considered at the time of final decree proceedings. By that itself, it cannot be said that the other sharers are not entitled to the shares at all. Hence, viewed from any angle, the findings recorded by the trial Court being well considered findings, this Court is not inclined to disturb the said findings, and accordingly, the said findings are hereby confirmed.

28. POINT No. 2; In the result, the appeal, being devoid of merit, and the same shall stand dismissed. But, however, in the light of the facts and circumstances, the parties to bear their own costs. It is also made clear that the parties are at liberty to put forth their contentions relating to the working out the equities inasmuch as certain constructions are said to have been raised in the plaint schedule property, at the time of final decree proceedings.