
(1950) 12 AP CK 0008
In the Andhra Pradesh High Court
Case No : Appeal No. 414/4 of 1950

Rajeswararao

APPELLANT

Vs

Narsingarao and another

RESPONDENT

Date of Decision : 05-12-1950

Acts Referred:

Hyderabad Limitation Act, 1322 — Section 28

Citation : AIR 1950 AP 39

Hon'ble Judges : Khaliluzzaman Siddiqi, J

Bench : Single Bench

Advocate : Devi Pershad, for the Appellant;

Judgement

Khaliluzzaman Siddiqi, J.—Second appeal from the decree and judgment of the Court of the District Judge, Karimnagar, dated 23rd Azar, 1359 F. in appeal No. 57 of 1358 F., on the file of that Court.

2. This is a suit for possession of three pieces of land Survey Nos. 76, 340 and 342 on the ground that the plaintiff has acquired ownership on account of continuous possession under a claim of his own right. In defence the plaintiff's right and possession was denied. There is only one important issue in the suit and that related to the completion of the plaintiff's title as owner on account of the possession of more than twelve years. The plaintiff has come in the witness-box and sworn to the fact that he has been in possession of these lands for more than twelve years. He has also produced Panipathrak from 1340 Fasli to 1356 Fasli, a period of about 15 years. These papers have been proved by the evidence of witnesses who have sworn of the signatures. There are revenue receipts for similar period. The plaintiff has produced six witnesses in addition to his evidence and the defence consists of two witnesses who have come to sworn that the defendants were in possession of the suit property. After going through the evidence I am unable to maintain the judgment of the Lower Courts. The trial Court took a critical view of the plaintiff's evidence and perhaps laboured under a misapprehension because that Court states that the commencement of the

plaintiff's possession was not as a result of some violent act or incident. Presumably that Court was obsessed with the idea that a possession of this nature to have that character must commence on some violent act. However, 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, as such a character of possession is adverse, on undisturbed possession for over twelve years, he would have the benefit of Section 28 of the Hyderabad Limitation Act. Those who have to deal with such cases know that only the evidence produced in the Districts usually consists of oral evidence or Panipathrak entries and of revenue receipts. There is a considerable evidence of this description in the case. The adverse remarks of the Trial Court as to the period of possession stated differently by the various witnesses are unjustified. The exact period of time cannot be repeated by different persons similarly unless they are tutored to do so. A truthful witness will express the period approximately end in his own terms unless he had a reason to record the various dates. There is no discrepancy in the evidence. In this High Court the "Panipathrak" entries have always been looked upon with considerable reliance in view of the fact that these entries are made in discharge of official duties to keep up the Revenue record of the cultivators. If the defendants or any one of them or somebody on their behalf cultivated these lands, it was not difficult for them to produce these entries if any, to discharge the onus which was not on them initially but at least, for the purposes of rebuttal. As regards revenue receipts if there were any in possession of the defendants, if the defendants had book entries, they might have produced them. The absence of this kind of evidence for the rebuttal of the plaintiff's evidence can only lead to one conclusion that in this village the "Panipathrak" entries that exist are the only ones produced by the plaintiff and that the only receipts that were given from the Revenue Department are those produced by the plaintiff.

3. When all the evidence of the parties comes in a case, the question of onus ceases to have any importance and one has to conclude on the higher probabilities after weighing all the evidence that has come in. It is no use saying that a particular kind of receipt should have been produced in a particular manner, when the receipts actually were not received in that particular manner. The defendants had not come in the witness box and offer themselves the plausible explanation and only two witnesses that they produced did not even hold an effective rebuttal inasmuch as they did not state the survey numbers of the land they cultivated. They claimed to have held the same lands on lease and no lease is forthcoming with the convenient story that it was on an oral contract.

4. However, I am not satisfied as to survey No. 340. The witnesses have said the period of five or six years in respect of the possession of this land and even the "Panipathrak" entries in respect of this land are insufficient. As regards the revenue receipts being together I do not see anything objectionable in that inasmuch as accumulated receipts may be assigned to a person when the

revenue in a number of lands is payable by one person. I, therefore, allow the appeal and decree the plaintiffs suit for possession in respect of Survey Nos. 76 and 342 in the village of Bommanapet with costs throughout and dismiss the plaintiff's claim to the extent of Survey No. 340 in that village.

5. I regret I had no assistance from the other side on account of their absence and no one appeared for them and I had, therefore to examine the whole file in their absence.