

(2007) 07 AP CK 0037

In the Andhra Pradesh High Court

Case No : C.M.A. MP No. 1062 of 2007 and C.M.A. No. 68 of 2005

Rasumalla Yellaiah and Others

APPELLANT

Vs

Chief Commissioner, Land and Administration and Others

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 7
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 80
Limitation Act, 1963 — Article 113, 58, 65

Citation : (2007) 5 ALD 474 : (2007) 5 ALT 215

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

Bench : Single Bench

Advocate : Suresh Shiv Sagar, for the Appellant; G.P. for Arbitration, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.

CMA MP No. 1062 of 2007

1. The application is filed to expedite the hearing of CMA No. 68 of 2005. The application is ordered and the matter is taken up for hearing.

CMA No. 68 of 2005

2. Heard Sri Suresh Shiv Sagar, learned Counsel representing the appellants and the learned Assistant Government Pleader for Arbitration, representing the respondents.

3. The Civil Miscellaneous Appeal is filed as against an order dated 8.9.2004 made in OS (SR) No. 7153 of 2004 on the file of the Principal Senior Civil Judge, Ranga Reddy District at L.B. Nagar.

4. The appellants as plaintiffs instituted the said suit for declaration that they are the absolute owners and title holders of the plaint schedule property by virtue of

adverse possession. The plaint was rejected under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, hereinafter in short referred to as "Code" for the purpose of convenience", on the ground that the plaint does not disclose any cause of action for declaration of title and also on the ground that the plaint averments themselves show that the relief claimed is barred by limitation. Aggrieved by the same, the present Civil Miscellaneous Appeal had been preferred.

5. The copy of the plaint was placed before this Court. Several facts had been narrated in paragraphs 1 to 5 of the plaint. In the cause of action it was specified as hereunder:

The cause of action for the suit arose on 16.3.2004 when the defendant No. 2 rejected the claim of the plaintiffs and also on 31.3.2004 when the legal notice u/s 80 of the CPC was issued to the defendants and on 2.4.2004 when the said legal notice was received by the defendants and also on 16.6.2004 when the staff of the defendants came on the suit schedule property and the cause of action is still continuing as such the plaintiffs are entitled to sue and the defendants are liable to be sued.

6. It is no doubt true that at paragraph 3 of the plaint it was pleaded as hereunder:

The plaintiffs submit that in the year 1978 notice for eviction u/s 7 of A.P. Land Encroachment Act was issued from the office of Tahsildar, Hyderabad, West Taluk which was suitably replied by plaintiffs stating that they are in long standing possession and paying the taxes to the Government regularly and further requested to issue pattas in the names, as the Government already granted a patta and converted patta land to the adjacent lands of plaintiffs by changing Kharig Khatha into patta land which is a part and parcel of Jagir land. In spite of the said fact there was no proper response from the concerned authority and also from the government and they kept silent for all these years and plaintiffs are in continuously enjoying the possession and cultivating the said land without any interruption from any quarter.

Several other factual details further had been narrated in paragraphs 4 and 5 as well and certain revenue proceedings and also the notice u/s 80 of the Code on 31.3.2004 also had been pleaded at paragraph 4 of the plaint. The learned Judge, in the light of the averment made in the plaint relating to the issuance of notice u/s 7 of A.P. Land Encroachment Act, came to the conclusion that it may have to be taken that the defendants had denied the title of the plaintiffs even in the year 1978 and the suit for declaration to be filed within three years from the date of receipt of the said notice, but the suit was filed in the year 2004 long after the expiry of three years and hence the suit is barred by time. Further, it was observed in paragraph 3 that the suit does not sustain for want of cause of action and also on limitation and accordingly the plaint was rejected.

7. On the aspect when the right to sue accrues in the context of Articles 113 and

58 of the Limitation Act, 1963, strong reliance was placed on the decision reported in K.M. Somaiah Vs. The Secretary, Government of Karnataka, Revenue Department, Bangalore and Others, . In Ragam Yellaiah and Others Vs. Chintha Shankaraiah, , it was observed at paragraph 11 as hereunder:

The next aspect to be decided is whether the impugned order of rejection of plaint under Order 7 Rule 11(d) of the Code is sustainable in the facts and circumstances of the case. A copy of the plaint is produced before this Court and I had gone through paras 4 to 12 of the said plaint. No doubt at para 6 of the plaint it was pleaded that the defendant, who obtained the registered sale deed on 28.12.1994 fraudulently and on misrepresentation, used the same to get his name mutated in the revenue records and got entries made in pahanies and also obtained pattadar pass book. No doubt several other factual allegations were made in detail in the plaint, which may not be essential to be dealt with for the purpose of deciding the matter. I had carefully scrutinized the impugned order and virtually the learned Judge decided the suit itself while rejecting the plaint. It may be appropriate to have a look at Order 7 Rule 11(d) of the Code, which reads as hereunder:

Where the suit appears from the statement in the plaint to be barred by any law.

On an over all reading of the allegations in the plaint, on the face of the allegations it cannot be said that it is barred by any law. No doubt elaborate contentions had been advanced by the counsel representing the respondent defendant that it is a question of limitation, which is a pure question of law and it is Article 58 of the Limitation Act, 1963, which is applicable, and since the appellants-plaintiffs had not sought for cancellation within three years from the date of receiving the plaint in OS No. 93 of 1996, i.e., on 23.9.1996, by filing the suit on or before 23.9.1999, the suit is clearly barred by limitation. This is the reason on which the plaint was rejected as can be seen from para 12 of the impugned order. The reasoning is that the appellant-plaintiff got knowledge that registered instrument dated 23.12.1994 is a sale deed when they received plaint copy in OS No. 93 of 1996 on 23.9.1996 and they filed written statement on 2.3.1998 and since the suit was instituted beyond the period of three years, the suit is barred by limitation. It was also stated that the said instrument at the best is voidable and not void and hence on the question of limitation the plaint is liable to be rejected and accordingly the same was rejected.

It was also further observed at paragraph 12 as hereunder:

At the outset I may state that the question of limitation necessarily always is not a pure question of law, but it is a mixed question of fact and law. May be that there may be certain circumstances where on the face of the allegations in the plaint a suit may be clearly barred by limitation. Here the dispute appears to be whether Article 58 of the Limitation Act or Article 65 of the Limitation Act, 1963 is applicable to the facts and circumstances of the case. Reliance also was placed on State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) by Lrs., . No

doubt on facts this decision is distinguishable because it was a case where the documents in question were treated to be a nullity. But in the present case no doubt a ground that the document is voidable had been raised. Be that as it may, all the factual disputes which may have to be gone into on both parties letting in evidence cannot be decided at the threshold unless on the allegations made in the plaint itself, the Court can arrive at a conclusion that the suit is clearly barred by any law, be that a question of limitation or any other question. When several other factual aspects are also to be gone into while deciding a question of law involved incidentally, the rejection of the plaint at the threshold cannot be sustained. In the light of the allegations made in the plaint, I am of the considered opinion that these are all aspects which are to be gone into at the time of regular trial after both parties adducing evidence....

8. In the light of the decision specified supra, this Court is of the considered opinion that the rejection of plaint, in the facts and circumstances, especially in the light of the averments made in the plaint and the documents relied upon filed along with the plaint, cannot be sustained and accordingly the impugned order is hereby set aside.

9. In the result, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

10. It is needless to say that O.S. (SR) No. 7153 of 2004 to be registered and the learned Principal Senior Civil Judge, Ranga Reddy District at L.B. Nagar, to further proceed with the matter in accordance with law.