

(2006) 10 AP CK 0049
In the Andhra Pradesh High Court
Case No : SA No. 416 of 2006

Shaik Avula Mastan @ Shaik Mastan (died) by LRs. and
Others

APPELLANT

Vs

Shaik Abid and Others

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Citation : (2007) 1 ALD 793 : (2007) 4 ALT 666

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Prabhakar Rao, for the Appellant; P. Rajasekhar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The legal representatives of the sole defendant in O.S. No. 82 of 1993 on the file of the Senior Civil Judge, Nuzvid, filed this second appeal. The relevant facts may, briefly, be stated as under. For the sake of convenience, the parties shall be referred to, as arrayed in the suit.

2. One Mr. Shaik Moula Saheb had two sons by name, Shaik Jaffer and Shaik Mahaboob, and a daughter by name Shaik Bhanubi Plaintiffs who are the children of Shaik Jaffer, filed the suit alleging that their grandfather Moula Saheb acquired about 2 acres of agricultural land at Nuzvid (suit schedule land), and was living with his son, at Vijayawada, for most part of his life. The land was said to have been leased to his son-in-law Shaik Masthan, the sole defendant, (on whose death, his LRs were brought on record), on payment of annual maktha. It was alleged that Moula Saheb executed a registered gift deed dated 13-11-1979, donating the suit schedule property to the respondents, out of love and affection.

3. The plaintiffs filed A.T.C. No. 35 of 1981 in the Court of II Additional District Munsif, Vijayawada, seeking eviction of the defendant from the land. The defendant, filed a counter-affidavit, stating that no relationship of landlord and

tenant exists, between himself and the plaintiffs. It was his case that Shaik Moulana Saheb made an oral gift in his favour on 15-8-1967 and ever since then, he is enjoying the rights of ownership, over the land. It was in this background, that the plaintiffs filed the suit, seeking eviction of the defendant.

4. In his written statement, the defendant reiterated the stand taken By him in ATC No. 35 of 1981. In addition, he took the plea of adverse possession. The trial Court framed the necessary issues and through its judgment dated 20-8-2001 decreed the suit. The legal representatives of the defendant filed A.S. No. 10 of 2002, in the Court of VII Additional District Judge (Fast Track Court), Krishna, at Vijayawada. The appeal was dismissed on 23-12-2005. Hence this second appeal.

5. Sri P. Prabhakara Rao, learned Counsel for the defendant submits that the suit was clearly barred by limitation, inasmuch as it was filed several years after the defendant asserted his title, on the basis of an oral gift, and through adverse possession. He further contends that the oral gift in favour of his client was much anterior in point of time, and the subsequent registered gift, in favour of the plaintiffs cannot be accorded any precedence.

6. Sri P. Rajasekhar, learned Counsel for the plaintiffs, on the other hand, submits that the plea of oral gift urged by the defendant was found to be without any basis and the question of his being accorded any precedence over the registered gift deed does not arise. As to the plea of adverse possession, learned Counsel submits that it cannot co-exist with the title, pleaded on the basis of oral gift and that at any rate, the suit was filed within the limitation.

7. The trial Court framed the following issues, on the basis of the pleadings of the parties:

- (1) Whether the plaintiffs are entitled to declaration of title over the schedule properties?
- (2) Whether the plaintiffs are entitled to possession of the schedule properties?
- (3) Whether the defendant acquired title by adverse possession?
- (4) Whether the suit is bad, as it is hit by doctrine of res judicata?
- (5) Whether the plaintiffs are entitled to mesne profits?

8. On behalf of the plaintiffs, PWs. 1 to 9 were examined and Exs.A-2 to A-25 were marked. Ex.A-1 is the registered gift deed dated 13-11-1979. PW-7 is the scribe and PW-9 is the attester thereof. The other documents are mostly in the form of cist receipts. On behalf of the defendants DWs 1 to 4 were examined and Exs.B-1 to B-11 were marked. The trial Court decreed the suit. The lower appellate Court framed the following points.

- (1) Whether the respondents established their right an title over the schedule property?
- (2) Whether the appellants established the alleged oral gift and also the adverse

possession in their favour.

(3) Whether the judgment and decree of the trial Court is erroneous?

and on a consideration of the same, dismissed the appeal.

9. Two principal contentions, viz., the validity of the alleged oral gift, in favour of the defendant, and the one, as to adverse possession, arise for consideration in the second appeal.

10. The original owner of the property was the father-in-law of the defendant and paternal-grandfather of the plaintiffs. The plaintiffs based their claim to the property on Ex.A-1, dated 13-11-1979, a gift deed, whereas the defendant pleaded that an oral gift was made by Shaik Moulana Saheb on 15-8-1967. Since the donar was a Muslim, it was competent for him to have donated the property through oral gift (hiba). The oral gifts made by Muslims are, as legal and enforceable, as the gifts through registered documents. Therefore, if the oral gift pleaded by the defendant is true, it would have precedence over the gift, through Ex.A-1, made in favour of the plaintiffs.

11. Except pleading that there was an oral gift in his favour, the defendant did not place any supporting material before the trial Court. The suit schedule property is an agricultural land. If really the oral gift was made, in the year 1967, necessary entries would have been made in favour of the defendant in the revenue records. The documentary evidence adduced on his behalf, comprised of the pleadings and order in ATC No. 35 of 1981, filed against him (Exs.B-1 to B-3), and cist receipts for the fasli years 1394-95 to 1407-08, marked as Exs.B-4 to B-11. None of these documents reflect any rights of ownership of the defendant over the suit schedule property. On the other hand, the plaintiffs were issued ryot passbooks and their names were entered in 10(1) Account, from the fasli years 1377 Fasli onwards (Ex.A-4); 1380-85 (Ex.A-11); 1392-95 (Ex.A-6) and 1396-1400 (Ex.A-7). They have filed number of cist receipts, in proof of exercise of right of ownership.

12. So far gift deed, Ex.A-1, is concerned, the plaintiffs have not only filed document, but also have examined the scribe, PW-7, and an attesting witness, PW-9. The defendant was not able to elicit anything from the said witnesses, to discredit their version. Therefore, it is clear that the defendant failed to prove the oral gift in his favour; whereas the plaintiffs have proved the execution and enforceability of Ex.A-1.

13. The defendant took an alternative plea of adverse possession. The consistent plea of plaintiffs was that the defendant is the tenant of the land, much prior to the gift in their favour and accordingly sought his eviction by filing ATC No. 35 of 1981. This was preceded by a notice, marked as Ex.A-12, wherein extensive reference was made to the registered gift etc. Since there was no reply from the defendant, the plaintiffs sought eviction of the defendant by filing ATC, by treating him as their tenant. For the first time, the defendant took the plea of

oral gift in his favour by filing a counter-affidavit in the ATC.

14. The contention advanced on behalf of the defendant is that he denied the title of the plaintiffs for the first time in the year 1982, whereas the suit was filed on 14-7-1993, much after 12 years from the date of such assertion, and thereby the suit was barred by limitation. It is no doubt true that the defendant denied the title of the plaintiffs in the counter filed by him in ATC, on 30-3-1982. The fact however remains is that the ATC was pending till 25-3-1987 and the suit was filed about six years thereafter. The period during which, the ATC was pending, cannot be counted, while computing the limitation.

15. Even otherwise, the plea of adverse possession is not available to the defendant. The reason is that the defendant himself admitted that he is the tenant of Moula Saheb. In ATC No. 35 of 1981, the defendant herein deposed as DW-4. The certified copy of the deposition of the defendant in the said ATC were marked as Ex.A-25. The relevant portions, wherein he stated that he is the tenant of Moula Saheb, his father-in-law were marked as Exs.A-18 and A-19. Once the defendant himself admitted that he is the tenant in respect of the suit schedule property, he has to overcome the operation of two principles of law, before he can successfully assert the plea of adverse possession: The first is that possession of tenant can never be adverse to the landlord or anyone claiming through him. The defendant had unequivocally recognized Shaik Moula Saheb, as his landlord, and the same relationship continues, vis-a-vis the successors, legatees, or donees, of his landlord. He is not entitled to raise the plea of adverse possession, against the plaintiffs, just as he was not capable of pleading it, vis-a-vis the Moula Saheb.

16. The second is that a presumption forward operates in respect of an admitted set of facts or relationship, till the otherwise is proved. The relationship of landlord and tenant which is admitted by the defendant vis-a-vis the original landowner, would continue to operate, till he pleads and establishes that such relationship ceased to exist. Having admitted the existence of relationship of landlord and tenant, the defendant did not plead, much less prove as to how it ceased and how, he became the owner of the land.

17. Further, there is a serious internal contradiction in the plea of the defendant. If the oral gift of, 15th August, 1967 in his favour was true, the question of his being tenant of the same land, as late as in the year 1979, does not arise.

18. The trial Court and the lower appellate Court have examined and appreciated the matter from the proper perspective, and this Court does not find any basis to interfere with the same.

19. The second appeal is accordingly dismissed. There shall be no order as to costs.