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**(2010) 12 AP CK 0082**

**In the Andhra Pradesh High Court**

**Case No : Second Appeal No. 543 of 2010**

Smt. Alur Vanaja Kumari Murthy

APPELLANT

Vs

The State of AP and The Kurnool District Cooperative Central  
Bank Limited

RESPONDENT

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**Date of Decision : 16-12-2010**

**Acts Referred:**

Transfer of Property Act, 1882 — Section 54

**Citation : (2010) 12 AP CK 0082**

**Hon'ble Judges : L. Narasimha Reddy, J**

**Bench : Single Bench**

**Advocate : J. Janakirami Reddy, for the Appellant; GP for Arbitration for  
Respondent Nos. 1 and 2 and K. Sesharajyam, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

L. Narasimha Reddy, J.—The Appellant filed O.S. No. 47 of 1992 in the Court of the Senior Civil Judge, Adoni against the Respondents for the relief of declaration of title and recovery of possession of a plot of 194 square yards. The facts pleaded by her were that she purchased a plot of 964 square yards from Sri Krishna Devaraya Cooperative Building Society way back in the year 1958 and constructed a house thereon. The neighbouring plot of 194 square yards on the western side is said to have been purchased by her in the subsequent year on payment of Rs. 2007- covered by Ex.A4. It is stated that in the year 1965, her property in the plot of 964 square yards was brought to sale in the course of execution of a decree and that Respondent No. 3 purchased it. Her grievance was that though Respondent No. 3 purchased only the original plot of 964 square yards, it has highhandedly encroached the neighbouring plot of 194 squads without any basis.

2. The suit was mainly contested by Respondent No. 3. It was pleaded that the entire property held by the Appellant was put to auction and the suit schedule property was also part of it. In the alternative, it was pleaded that the Appellant

has no right vis-?-vis the suit schedule property and that they have perfected their title by adverse possession.

3. The trial Court dismissed the suit through judgment, dated 24.07.2000. Aggrieved thereby, the Appellant filed A.S. No. 7 of 2005 in the Court of the II Additional District Judge, Kurnool at Adoni. The appeal was dismissed on 23.01.2009. Hence, this second appeal.

4. Sri J. Janaki Rami Reddy, learned Counsel for the Appellant, submits that the plot purchased by the Appellant in 1958 was alone brought to sale in 1965 and there was absolutely no basis for Respondent No. 3 to occupy the neighbouring plot of 194 square yards. He contends that Ex.A4 has evidenced the payment of consideration for the suit schedule property and the trial Court and the lower appellate Court ought to have decreed the suit as prayed for. He further submits that the Respondents do not have any semblance of right over the suit schedule property and the plea of adverse possession is totally untenable.

5. In the suit filed by the Appellant for the relief of declaration of title and perpetual injunction, the trial Court framed the following issues:

(i) Whether the Plaintiff is entitled for a declaration to the plaint "B" schedule property and also for possession of the same from the Defendants and in default to deliver possession of the same through Court?

(ii) Whether the Plaintiff is entitled to mesne profits from February, 1987 to February 1989 at Rs. 100/- per month and also for future mesne profits till the delivery of possession?

(iii) Whether Defendant Nos. 1 and 2 are neither necessary nor proper parties to the suit?

(iv) Whether the suit is not maintainable for not issuing notice under A.P. Cooperative Societies Act?

(v) Whether Defendant No. 3 perfected its title to the suit property by virtue of adverse possession?

(vi) Whether there is no cause of action to file this suit?

The Appellant alone deposed as P.W.1 and she filed Exs.A1 to A6. On behalf of the Respondents, D. Ws.1 and 2 were examined and Exs.B1 and B2 were filed. The suit was dismissed and the appeal was filed. The lower appellate Court framed the following points for its consideration:

(i) Whether the Appellant had proved her right and possession to the "B" schedule property and that Respondent No. 3 had illegally obtained or took possession of the said site? Consequently whether the Appellant is entitled for a declaration of her right and title and for delivery of the same from the Respondent No. 3 and for mesne profits?

(ii) Whether Respondent Nos. 2 and 3 had perfected title by adverse possession

over the "B" schedule property?

(iii) Whether the judgment and decree as passed by the trial Court against the Appellant is sustainable?

The same result ensued in the appeal also.

6. In a suit for declaration of title, heavy burden lies upon the Plaintiff to prove the title. The consequential reliefs would depend upon the establishment of title. A title to the property can accrue to a person either by operation of law such as that of succession or by act of parties, namely conveyance through sale, gift, exchange etc. The source of title pleaded by the Appellant was a conveyance through Ex.A4. Ex.A4 is a receipt for a sum of Rs. 2007-. Section 54 of the Transfer of Property Act mandates that a property can be conveyed through sale only by execution of a sale deed, which in turn must be registered. Admittedly, Ex.A4 is not a sale deed as defined u/s 54 of the Transfer of Property Act. Even where reliance is placed upon a sale deed, it becomes essential to examine the transferor. As mentioned earlier, except that the Appellant deposed as P.W.1, no one connected with the alleged transaction was examined. A receipt for Rs. 2007- cannot constitute the basis for title in favour of the Appellant.

7. Even where a Plaintiff in a suit for declaration establishes the title, he can recover possession if only there does not exist any hurdle, such as the plea of adverse possession by the Defendant. The Appellant lost possession in the year 1965 and the suit was filed only in the year 1992. Viewed from any angle, there does not exist any substantial question of law. This Court is not inclined to interfere with the concurred findings of fact recorded by the trial Court and the lower appellate Court.

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