
(2014) 01 AP CK 0122
In the Andhra Pradesh High Court
Case No : L.P.A. No. 19 of 2001

Thota Kameswara Rao

APPELLANT

Vs

Thota Ramgopal

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 3 ALD 160 : (2015) 2 ALT 317

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : T.S. Anand, for the Appellant; P.R. Prasad, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—The defendant in O.S. No. 78 of 1979 on the file of the Subordinate Judge, Machilipatnam, filed this Letters Patent Appeal. The sole respondent herein was the only plaintiff in the suit. The suit was filed for the relief of declaration of title, recovery of possession in respect of two items of suit schedule property and for mesne profits. The trial Court decreed the suit, as prayed for, through its judgment and decree dated 15-04-1987. Aggrieved by that, the appellant herein filed A.S. No. 317 of 1988 before this Court. A learned single Judge of this Court dismissed the appeal through judgment dated 17-08-2000. Hence, this Letters Patent Appeal. The plea of the respondent herein in his suit was that Smt. Thota Venkata Bharatamma owned both the bits in item "1" and her husband, Venkata Subbayya owned item 2, of the suit schedule properties. It was stated that Venkata Subbayya executed a Will, dated 18-01-1963 (Ex. A-28) in favour of his wife Bharatamma in respect of item 2, and on his death, Bharatamma became the absolute owner of that item also. Bharatamma is said to have executed a Will, in favour of her brother, Sri N. Satyanarayana, and after the death of Bharatamma, on 14-05-1967, Satyanarayana became the absolute owner of that property. It was also pleaded that item 1 of the suit schedule property, agricultural lands, were under lease to Sri K. Kumara Swamy and the tenancy was attorned to the legatee,

Satyanarayana. According to the respondent, he purchased items 1 and 2 of the suit schedule properties from the legal heirs of Satyanarayana.

2. It was pleaded that the appellant is the adopted son of Venkata Subbayya and Bharatamma and taking advantage of that relation, the natural father of the respondent, had started interfering with the possession of the suit schedule properties. Initially the suit was filed, for the relief of declaration and injunction, and thereafter alternative relief i.e. recovery of possession was added.

3. The appellant opposed the suit. He did not dispute the manner in which, the suit schedule properties were owned and enjoyed by his adoptive parents, and the factum of execution of a Will, by Bharatamma in favour of her brother, Satyanarayana.

4. He, however, stated that soon after the death of Bharatamma, he assumed possession of the suit properties and continued to remain in possession and enjoyment, even by the date of filing of the suit. After narrating the manner in which he was said to be enjoying of the property, he raised the plea of adverse possession.

5. The suit was decreed, granting the relief of declaration of title and recovery of possession, but the one for mesne profits was rejected. A.S. No. 317 of 1988 filed by the appellant herein was dismissed.

6. Sri T.S. Anand learned counsel for the appellant submits that his client is in uninterrupted possession and enjoyment of the suit schedule properties, ever since his adoptive mother Bharatamma died on 14-05-1967. He contends that though Bharatamma executed a Will in favour of his brother, Satyanarayana, no steps were taken by the legatee to assume possession of the properties, and in that view of the matter, the appellant has perfected his title through adverse possession. He submits that the lands in item 1 of plaint schedule were under lease with the tenants, by the time Bharatamma died, and the appellant assumed constructive possession through the same tenants by receiving rents and exercising other rights of ownership. As regards item 2, he submits that it is directly under possession and enjoyment of the appellant through out. Learned counsel further submits that the trial Court and the lower Appellate Court did not deal with the issue pertaining to adverse possession from the correct perspective.

7. Sri P.R. Prasad, learned counsel for the respondent, on the other hand, submits that once the absolute ownership of Bharatamma over both the items of the suit schedule is not denied, and the Will executed by her is not disputed, there is no way, that the appellant can claim ownership over the suit property. He submits that soon after the death of Bharatamma, her legatee Satyanarayana filed A.T.P. No. 51 of 1967 for eviction of the tenants from item 1 of plaint schedule properties and an order of eviction was passed on 27-11-1979. He submits that when the order of eviction was obtained by the legatee, the question of the appellant being in possession of the property does not arise.

8. Another contention of the learned counsel is that the natural father of the appellant filed O.S. No. 34 of 1967 against Bharatamma, in relation to the business affairs of Uma Gold Covering Works and on the death of Bharatamma, her legatee Satyanarayana was brought on record. He further submits that the nature of rights exercised by Satyanarayana over the suit schedule properties is evident from the fact that both of them were offered as security in O.S. No. 34 of 1967 in the context of withdrawal of certain amounts. He submits that the trial Court and the learned single Judge of this Court applied the correct principles of law and that the concurrent findings do not warrant any interference. The scope of the suit has been explained in the preceding paragraphs. The trial Court has framed the following issues for its consideration:

1. Whether the Will dated 16-1-1963 executed by Thota Venkata Subbayya in favour of Thota Bharatamma is true, valid and binding on the defendant?
2. Whether the Will dated 22-10-1966 executed by late Bharatamma in respect of the suit properties and other properties in favour of her brothers including her brother Naraharasetti Satyanarayana is true, valid and binding on the defendant?
3. Whether late Naraharasetti Satyanarayana and after his death, his legal representatives i.e., the Vendors of the plaint schedule properties to the plaintiff were in possession of the plaint schedule properties till 20-3-1979?
4. Whether the plaintiff has been in possession of the plaint schedule lands from 20-3-1979 having been inducted into the physical possession of the plaint schedule lands by his Vendors?
5. Whether the Plaintiff is entitled to the declaration of his title and permanent injunction as prayed?
6. Whether the plaintiff is entitled to recover the possession of the suit land, if it is found that he was out of possession of the suit land?

9. Additional Issues:

1. Whether the defendant is estopped from questioning the compromise decree in O.S. No. 48/64 on the file of this Court?
 2. Whether the adoption of the defendant by Thota Venkata Subbayya and his wife is true and valid?
 3. Whether the defendant acquired title by adverse possession?
10. On behalf of the respondents, PWs 1 to 7 were examined and Exs. A-1 to A-34 were filed. The appellant, on the other hand, examined DWs 1 to 7 and filed Exs. B-1 to B-84. The suit was decreed for the relief of declaration of title and recovery of possession, but the prayer for mesne profits was rejected.
11. Though the respondent filed an appeal against rejection of that relief, he did not pursue it beyond a point. In A.S. No. 317 of 1988, filed by the appellant herein, a learned single Judge of this Court framed only one point for

consideration, viz., whether the appellant had perfected his title to the suit schedule properties through adverse possession, and answered it in the negative. We are of the view that the same point, viz., whether the appellant has perfected his title to the suit schedule property, arises for consideration in this L.P.A.

12. The appellant was the adopted son of Thota Venkata Subbayya and Bharatamma. However, the relationships within the family was not cordial, particularly between the appellant and his adoptive mother, Bharatamma. A reputed gold covering shop was established by the adoptive family of the appellant. Of late, it went into trouble. The father of the appellant seems to have instituted certain proceedings against the adoptive parents of the appellant.

13. It is not in dispute that Bharatamma became the absolute owner of both the items of the suit schedule properties. The first item was owned by her from the beginning. The second item accrued to her under a Will, executed by her husband Subbayya. The appellant did not dispute the fact that Bharatamma executed a Will, Ex. A-1 on 22-10-1966 in favour of her brother, Satyanarayana. 13 years thereafter, Satyanarayana sold the properties covered by Ex. A-1, in favour of the respondent through sale deed dated 24-05-1979 (Ex. A-7). Though initially, the respondent prayed for the relief of declaration of title and perpetual injunction, at a subsequent stage, the prayer for recovery of possession was incorporated. In other words, the respondent is also reconciled to the fact that the appellant is in possession of the property.

14. Once the appellant has recognized the ownership of the respondent over the suit schedule property, on the basis of the Will, Ex. A-1, followed by the sale deed, Ex. A-7, there should not be any difficulty for granting the relief of declaration of title. In the context of the prayer for recovery of possession, the plea of adverse possession raised by the appellant becomes relevant.

15. The principles that govern the plea of adverse possession are fairly well settled. Before 1963, the Limitation Act came to be enacted, the plaintiff in a suit for recovery of possession based upon title was under obligation to explain as to when he lost the possession. There is a phenomenal change in this behalf under the Limitation Act, 1963. If a plaintiff is successful in establishing his title, he is entitled for the relief of recovery of possession and the burden to prove that a defendant has perfected his title through adverse possession squarely rests upon him. As is well-known, a person taking the plea of adverse possession must not only prove the factum of continuous possession, spread over a period, exceeding 12 years, but also the other ingredients, viz., that such possession was open, and adverse to the actual owner. The only defence taken by the appellant herein was based on adverse possession. Therefore, it needs to be seen as to whether he has proved that plea in respect of the suit schedule properties.

16. In his written-statement, the appellant pleaded that soon after the death of Bharatamma, he assumed the possession of all the properties. At that time, he was a minor. The so-called assumption of possession is by his natural father.

Item 1 of the suit schedule comprises of two bits of an agricultural land. During the life time of Bharatamma, it was under lease with one, Kumaraswamy. The lease deed is filed as Ex. A-23. It is not even the case of the appellant that the tenancy was attorned to him, or that he recovered possession of the land from the tenant.

17. The respondent specifically pleaded that shortly after the death of Bharatamma, the legatee, Satyanarayana, filed A.T.P. No. 51 of 1967 before the Tahsildar, Bander, and obtained an order of eviction. The same was filed as Ex. A-21. It is as a result of the orders passed by the concerned authorities/Courts, under the Tenancy Act, that the tenant was evicted. It is not in dispute that such eviction was at the instance of the legatee, Satyanarayana.

18. There are other documents to disclose that when the father of the appellant herein instituted proceedings against the estate of Bharatamma, at one stage, item 1 of the suit schedule was offered as security by Satyanarayana, the legatee. No objection was raised at that time. In case the appellant, through his father, was in possession of that land, they would have objected to such security.

19. Therefore, the appellant or his father cannot be said to have assumed possession of item 1 of the suit schedule, after the death of Bharatamma. To that extent, the finding of the trial Court and the learned single Judge of this Court cannot be found fault with, and the appellant cannot be said to have perfected his title by adverse possession, vis-?-vis item 1.

20. Item 2, however, stands on a different footing. It is a house property, and was not under the occupation of any tenant. The plea of the appellant was that after the death of Bharatamma, he assumed possession of the house and continued to live therein. Since he happens to be the adopted son, there would be nothing unnatural in his assuming possession of the house. Though the legatee of Bharatamma was very much entitled to claim possession of that house under the Will, he did not make any efforts in that behalf. The trial Court has also recorded a specific finding to the effect that neither Sayanarayana nor his purchaser i.e. the respondent herein is in possession of any property. The initiation of proceedings for eviction of the tenant under the Tenancy Act by Satyanarayana has the effect of destroying the plea of adverse possession, vis-?-vis item 1. No such exercise was undertaken, in respect of item 2. The inescapable conclusion is that the appellant was in possession of item 2 of the property, ever since the death of Bharatamma, till the filing of the suit. There was no secrecy about it, and the possession was open. The appellant did make his intention clear, viz., that he wants to exercise the rights of ownership vis-?-vis the house. Such possession was for a period, exceeding 12 years. To be precise, it was spread over between 1967, the year on which Bharatamma died, and 1979 the year which the suit was filed. There is no quarrel about the duration of possession.

21. We therefore, partly allow the appeal, setting aside the decree and judgment

passed by the trial Court, in O.S. No. 78 of 1979, in so far as it relates to item 2 of the suit schedule property.

22. As regards item 1 of the suit schedule, the decree passed by the trial Court shall remain.

23. The miscellaneous petition filed in the appeal shall also stand disposed of. There shall be no order as to costs.