

(2004) 04 AP CK 0118

In the Andhra Pradesh High Court

Case No : Second Appeal No. 989 of 1997

Vadlamannati Venkata Satya Suryanarayana Murthy	APPELLANT
Vs	
The Commissioner, Narsapur Municipal Council and Others	RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Citation : (2004) 5 ALD 149 : (2004) 5 ALT 428

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Y. Chandra Sekhar, for the Appellant; E. Sambasiva Pratap, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—The unsuccessful plaintiff before the lower appellate Court is the appellant and the respondents are the defendants.

2. For the sake of convenience, the parties will be referred to as arrayed in the suit.

3. The plaintiff filed the suit for declaration of title to the plaint schedule property, for permanent injunction, for grant of a decree to evict the defendants from the plaint schedule property and for delivery of the same and for damages. For the purpose of resolving the controversy, the second defendant is not a necessary party inasmuch as the first defendant-Municipality is the contesting party and disputing the title of the plaintiff and also claiming title over the suit schedule property.

4. The Trial Court decreed the suit in favour of the plaintiff, which was appealed against the same and the lower appellate Court reversed the findings of the trial Court after re-appreciating the entire material on record. Eventually, the suit was dismissed. Hence, the present Second Appeal.

5. The plaint averments, in brief, are that the plaintiff purchased the plaint

schedule property under a registered sale deed on 21-7-1981 (Ex.A-1) from one Smt. Poosarapu Nooka Ratnam. The predecessor-in-title of the said Smt. Nookaratnam was one Venkata Ramanamma. Originally, one Smt. Poosarapu Venkata Ramanamma, w/o. Viswanatham, purchased the suit schedule property from one Palanki Jaya Rama Rao, under a registered sale deed dated 26-12-1963 (Ex.A-2). It is the further case of the plaintiff that on 09-07-1965 there was a family partition among the Poosarapu people and under a registered partition deed, the suit schedule property had fallen to the share of one Poosarapu Someswara Rao, who is no other than the husband of the said Smt. Nookaratnam. The said Jayarama Rao had been in possession and enjoyment of the suit schedule property for over a period of 40 years prior to 1963. The said disputed property was sold to discharge the suit debt in E.P. No. 199 of 1960 in S.C. No. 86 of 1948 on the file of Principal District Munsif Court, Narsapur. In that transaction, the said Poosarapu family purchased the property of Palanki Jaya Rama Rao and from then the Poosarapu family came into possession of the property as owners. Insofar as the suit property is concerned, the mutation was also effected by the Municipality in the name of Jaya Rama Rao. It is the further plaint averment that Smt. P. Venkata Ramanama executed a registered lease deed (Ex.A-29), dated 26-12-1963, in favour of one A. Narasimha Swamy, who executed a lease deed in favour of Smt. P. Venkata Ramanamma and when the said tenant failed to vacate the suit schedule property, O.S. No. 369 of 1966 came to be filed and the same was decreed and the decree was also executed in E.P. No. 642 of 1967 and delivery was also obtained by Venkata Ramanamma through Court. Later, the second defendant was inducted as a tenant. Since the second defendant died, the third defendant was brought on record as his legal representative, who accepted to vacate the property by admitting the title of the plaintiff. It appears that a memo has also been filed before the trial Court to that effect.

6. It is further averred by the plaintiff that P. Jaya Rama Rao, who was the original title holder of the suit schedule property, made an application to the municipality seeking permission to raise a structure over the disputed property to start a Fuel Depot. The application and the plan of the structure were marked as Exs.A-4 and A-5. In response to the said application, the first defendant-municipality granted approval, subject to three conditions, through Ex.A-6, dated 6-9-1961. First condition is adequate arrangements shall be made to prevent fire accidents. Second condition is, copy of the plan shall be annexed. Third one is, duration of the license is for a period of three months, within which the construction should be completed. The said Jaya Rama Rao could not fulfill the conditions prescribed under Ex.A-6. Accordingly, a notice had been given by the first defendant through proceedings, dated 06-09-1961, indicating thereby that the "license" had lapsed because of non-compliance of the conditions, and directed the said Jaya Rama Rao not to proceed with the construction unless and until his application for approval of the plan was renewed and reconsidered on payment of Rs.2-50 paise. After the plaintiff purchased the property from the

said Nookaratnam through registered sale deed Ex.A-1, the concerned Sub Registrar furnished the information about the said sale proceedings informing the first defendant to effect mutation. An objection had been taken by the first defendant on the ground that the property cannot be purchased by the plaintiff since the same vests with the municipality after the erstwhile Panchayat had transformed into a Municipality in R.S. No. 54. The first defendant also disputed the title of Jaya Rama Rao. Hence, the present suit came to be filed seeking declaration of title and for permanent injunction.

7. The specific contentions of the defendant in brief are that the suit property vests with the municipality after the erstwhile Panchayat had transformed into a Municipality in R.S. No. 54. Hence, with this main pleading, the first defendant indirectly disputed the title of the plaintiff.

8. The Trial Court formulated the following issues:

1. Whether the plaintiff is entitled for a decree declaring his title in the plaint schedule property as prayed for?

2. Whether the plaintiff is entitled for a permanent injunction as prayed for?

3. Whether the plaintiff is entitled for a decree for eviction of 2nd defendant from the possession of the plaint schedule property and for delivery of vacant possession of the thatched house and the plaint schedule property to the plaintiff as prayed for?

4. Whether the plaintiff is entitled for a decree for Rs.360/- against the 2nd defendant at the rate of Rs.30/- per annum either towards rent or damages for use and occupation by the 2nd defendant of the plaint schedule property and empowering the plaintiff to recover the same from the 2nd defendant and from out of her properties as prayed for.

5. Whether this suit is not maintainable against the 1st defendant for the reasons urged by the 1st defendant in paragraph 3 of its written statement?

6. Whether this suit is bad for mis-joinder of parties and non-joinder of cause of action?

7. Whether the valuation given by the plaintiff is not correct and whether the court fee paid is also not correct?

8. To what relief.

9. The plaintiff examined himself as P.W.1 and got marked Exs.A-1 to A-34. On behalf of the defendants, DWs.1 and 2 were examined and Exs.B-1 to B-9 were marked.

10. The trial Court, having considered the entire evidence, both oral and documentary, arrived at a conclusion that the plaintiff had a valid title and the first defendant failed to disprove the claim of the plaintiff and eventually decreed the suit in favour of the plaintiff and also an order for eviction had been passed

against the third defendant, who is the legal representative of deceased second defendant.

11. On an appeal filed by the first defendant, the lower appellate Court dismissed the suit after setting aside the judgment and decree, passed by the trial Court in favour of the plaintiff, mainly on the ground that Exs.A-6 and A-7 are to be considered as license granted by the first defendant only for a period of three months in favour of Jaya Rama Rao, who was the original title holder. In other words, it is the categorical view of the lower appellate Court that Jaya Rama Rao was in possession of the disputed property for a period of three months as per Exs.A-6 and A-7 only as a licensee. It appears that the lower appellate Court took a view that the said license does not create any right of title. Hence, it was found that the possession of Jaya Rama Rao was only in the nature of permissive possession for three months. On this ground alone, the lower appellate Court rejected the case of the plaintiff.

12. Now, the points that fall for consideration before this Court are:

- (1). Whether the plaintiff could successfully prove his title?
- (2). Whether the lower appellate Court properly appreciated the evidence on record, both oral and documentary?

13. It is the contention of the learned counsel for the plaintiff that the plaintiff successfully proved not only his title but also the title of his vendor. His immediate vendor obviously was Smt. Nookaratnam. The said Smt. Nookaratnam was the wife of one late Someswara rao. Someswara Rao who got the property in a family partition, which culminated into a registered partition deed, dated 9-7-1965, and after the death of the said Someswara Rao, his wife Smt. Nookaratnam got the said property. The plaint schedule property was purchased by one Smt. Venkata Ramanamma, wife of Viswanatham and her two sons from one Jaya Rama Rao through a registered sale deed (Ex.A-2), dated 26-12-1963. Subsequently, the above said partition was effected. From the above history, it could be seen that the plaintiff has successfully established his title and also his vendor Jaya Rama Rao not only through oral evidence but also through the documentary evidence under Exs.A-1 and A-3. The suit proceedings in S.C. No. 86 of 1948 and the consequential proceedings in E.P. No. 119 of 1960 in the said suit also disclose the fact that the suit schedule property was under attachment by the Court. The plaintiff could also prove that Jaya Rama Rao sold the suit property to discharge his debts, which is also not in dispute, nor was controverted by the first defendant.

14. In this context, it is significant to note that the first defendant never took the plea in its written statement to the effect that the plaintiff's predecessor-in-title i.e., Jaya Rama Rao, was only a licensee and his possession to the suit schedule property was only a permissive possession without conferring any title. It is to be seen from the averments made in the written statement that the only ground taken was that after the conversion of Panchayat into that of Municipality, the

suit land was vested with the municipality and hence the plaintiff cannot claim any title over the suit schedule property. This is all the case in nut-shell of the defendant.

15. Another aspect to be noted is though a specific reference was made in the plaint averments to Exs.A-4, A-5, A-6 and A-7, nothing was stated about Exs.A-6 and A-7 in the written statement, nor it was denied by the first defendant in the written statement. In other words, at the earliest point of time i.e., at the time of filing of the written statement, it was never the case of the first defendant that the plaintiff was only a permissive possessor and hence he is not entitled to claim the suit schedule property as an owner.

16. All the records, which were marked, particularly, Exs.A-1, A-2, A-3 and Exs.A-8 to A-11, which are the demand notices issued by the Panchayat asking Jaya Rama Rao to pay the property tax, and Exs.A-12 to A-15, which are the property tax receipts issued by the first defendant acknowledging the receipt of property tax for the assessment Nos.1403 and 604 respectively, would only show that the said Jaya Rama Rao was the owner. All the above facts on record would only reveal that it is not only the title of the plaintiff but also the title of his vendor and his vendor's vendor was also successfully established. It is further found on record that Exs.A-16 to 28 are the property tax receipts issued by the first defendant in favour of Poosarapu people from whom the plaintiff purchased the property.

17. It is also not in dispute that both the names of Jaya Rama Rao and also Poosarapu people, as and when the property changed hands, were mutated in the municipal records. Therefore, it is too late for the first defendant to challenge the title of the plaintiff indirectly challenging the title of Jaya Rama Rao, who is the vendor's vendor of the plaintiff.

18. In my considered view, there is overwhelming documentary evidence in support of the oral evidence of the plaintiff. The trial Court had discussed elaborately all the aspects with cogent reasons, including the evidence on record, and decreed the suit in favour of the plaintiff.

19. Coming to the lower appellate Court judgment, it could be seen that only two documents i.e., Exs.A-6 and A-7 were used and interpreted in favour of the first defendant and against the plaintiff. Exs.A-4 and A-5 are the plans for the structure seeking approval of the municipality. The same were approved through Ex.A-6 with certain conditions. The said conditions were already referred to in the above paragraph. The only language employed in that Ex.A-6 was that the expression "license", which was used against the plaintiff. The lower appellate Court had interpreted the said expression for the purpose of showing that the plaintiff's vendor's vendor i.e., Jaya Rama Rao was only in a permissive possession for three months.

20. It is to be seen that Exs.A-4 and A-5 are the plans furnished by the said Jaya Rama Rao to the municipality for approval of the construction. The plans of the

building under Exs.A-4 and A-5 and the approval of the municipality under Ex.A-6 would reveal that Jaya Rama Rao was shown as owner.

21. Now, the present case of the first defendant is that the title of Jaya Rama Rao was not established. That was not, in fact, the case of the first defendant at all. The lower appellate Court gave a new dimension and interpretation to Ex.A-6 for the first time, particularly basing on the expression "license" in Ex.A-6.

22. In this context, it is to be noted that Jaya Rama Rao furnished Exs.A-4 and A-5 plans for the purpose of raising structure to run a Fuel Depot. Precisely that was the reason for the municipality to accord permission with a condition precedent that steps must be taken to prevent any fire accident.

23. To put it in a different way, it should be understood that the license was for starting a business of Fuel Depot. That does not mean and cannot be meant that Jaya Rama Rao was permitted to continue in possession for three months. The reasoning of the lower appellate Court is improbabilised by the other documentary evidence, which had already been referred to i.e., Exs.A-8 to A-11, A-12 to A-15 and A-16 to A-28, which are the demand notices and property tax receipts issued by the first defendant. All these documents were issued by the first defendant- municipality to the said Jaya Rama Rao and also his successors-in-title. This is more than sufficient documentary evidence for any plaintiff to prove his title.

24. The lower appellate Court had unnecessarily interpreted the expression "license" and gave totally a new dimension to the case and held in favour of the first defendant, particularly when it was not the case of the first defendant at all in the suit.

25. The other aspect that has to be seen is that the first defendant had been indirectly challenging the title of, not only the plaintiff but also the said Jaya Rama Rao, who is the vendor's vendor of plaintiff.

26. Another significant factor to be noted in this case is that the first defendant never challenged the right of the said Jaya Rama Rao at least from 1961 or the title of his successors-in-title till the title passed on to the present plaintiff. No proceedings have ever been initiated by the first defendant against either against the said Jaya Rama Rao or to the members of the Poosarapu family who held title and possession over the suit schedule property at any point of time. As already noticed, after every transaction, the successor's name had been mutated in the municipal records. The first and best and the earliest opportunity for the first defendant to challenge the title of the predecessors-in-title of the plaintiff or the successors-in- title of the said Jaya Rama Rao would only be at the relevant times of the transactions or when they were sought to be mutated. At any point of time, no steps have been taken by the municipality. The only contention of the defendant is that after the transformation of Panchayat into Municipality, the suit schedule property had fallen into the peripheries of the Municipality. But, the lower appellate Court had added a new flavour and colour to Ex.A-6, which is

totally uncalled for and erroneously arrived at a conclusion that the plaintiff's vendor's vendor was only a permissive possessor and held against the plaintiff saying that the plaintiff had no title.

27. Further, it is to be seen that when it is the case of the first defendant that the suit schedule property is located in T.S. No. 54, which is the road and road margin, and the Commissioner also issued a memo purportedly under Ex.B-3, the same has to be established by the defendants.

28. In this regard, it is to be seen that D.W.1 who is the officer of the Municipality had deposed that "it is not noticed in Ex.B-1, which is Field No-54 of Street Survey Record, the place which was leased out to P. Jaya Ram. I cannot say where it is exactly located in T.S. No. 54."

29. He again states as under:

"The total extent of either road or road margins is not mentioned in Ex.B-1 and it was poramboke when panchayat was there.

30. He further deposed as under:

"I do not know whether town survey was done after the roads were vested with Narsapur municipality or not. Town survey has to be made after the formation of Municipality. No town survey was done during my period."

31. From the above oral evidence on behalf of the first defendant-municipality, it is clear that Ex.B-1, which is only a Photostat copy of Field No-4 of Street Survey Record was not supported/explained by the oral evidence of D.W.1. Except marking the Photostat copy of Ex.B-1, there is nothing substantial on record to rebut the oral evidence and the enormous documentary evidence relied upon by the plaintiffs. Ex.B-2 is an office note put up by D.W.1 as regards the encroachments made by the second defendant and others. Ex.B-3 is the notice issued by the then Commissioner of first defendant-municipality to the second defendant asking her to remove the encroachments in S. No. 54. Exs.B-4 is the plan relating to house numbering of locality No. 5 of Narsapur municipality. Again Exs.B-5 to B-9 are only Photostat copies of Field Nos.120, 121, 125 and 126. It is not conceivable as to how the said documents, including Ex.B-1, are relevant for the purpose of the present suit to repudiate the oral and documentary evidence adduced on behalf of the plaintiff, particularly since they are only photostat copies. There is nothing on record to show that the originals of the said documents have been marked. Therefore, even if anything is said by the witnesses examined on behalf of the defendants, it was only with reference to those photostat copies but not the originals. That apart, the reliability or admissibility of the said documents is yet another question of debate. When D.W.1 himself is not clear about the contents of such Field No. 54 of Street survey Record, I am at lost to understand as to how the lower appellate Court had recorded a finding in favour of the first defendant. The findings recorded against the plaintiff and the reasoning thereof have no real basis. In fact, the oral

and documentary evidence adduced on behalf of the first defendant are not capable of demolishing the oral and documentary evidence adduced on behalf of the plaintiff. Further, the reasoning given by the lower appellate Court is, obviously, based on surmises, which are impermissible.

32. No doubt, various sale transactions relied upon by the plaintiff do not bind the first defendant but all those transactions were recognized by way of mutation in the municipal records.

33. Hence, in my considered view, the appreciation of the evidence on record and the reasoning of the lower appellate Court is perverse, baseless and wholly contrary to the evidence on record. Any interpretation to a document should be made only with reference to the surrounding circumstances, which are borne out of evidence. As already pointed out, the documentary evidence in favour of the plaintiff is profuse and relying on a weak and bleak thread of the expression "license", without going into the other circumstances, and holding against the plaintiff is totally unjustifiable on the part of the lower appellate Court. This is something reading between the lines.

34. Further more, the interpretation given to Ex.A-6 by the lower appellate Court, which was not at all the stand of the first defendant, is without any reasons much less cogent reasons to reject the other voluminous documentary evidence relied upon by the plaintiff. In such a case, this Court has no other option except to hold that the finding of the lower appellate Court is only perverse and contrary to the voluminous evidence on record.

35. In the result, the impugned judgment and the decree passed by the lower appellate Court are liable to be set aside and accordingly they are set aside.

36. Accordingly, the Second Appeal is allowed confirming the decree and the judgment passed by the trial Court in O.S. No. 509 of 1982. However, there shall be no order as to costs.