

(2006) 10 AP CK 0006
Andhra Pradesh High Court
Case No: SA No. 320 of 1995

Penuboyina Raghavulu (died) by
LRs.

APPELLANT

Vs

Konakalla Mukteswararao and
Others

RESPONDENT

Date of Decision: Oct. 24, 2006

Acts Referred:

- Limitation Act, 1963 - Article 65
- Transfer of Property Act, 1882 - Section 53A

Citation: (2007) 1 ALD 455 : (2007) 4 ALT 698

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: M.V. Durga Prasad, for the Appellant; C. Chandrasekhara Sastry, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

The sole defendant in O.S. No. 243 of 1982 in the Court of District Munsif, Chintalapudi, filed the second appeal. He died during the pendency of the second appeal and his legal representatives were brought on record.

2. Respondents 1 to 3 are the sons and respondent No. 4 (since died) is the wife of late Konakalla Narayana. They filed the suit against the appellant for the relief of recovery of possession and mesne profits. They pleaded that they are the absolute owners of the land in R.S. No. 101/ 1A of Venkatapuram Village in West Godavari District, admeasuring Ac. 12-24 cents. The appellant is said to be the owner of Ac. 1-00 of land in R.S. No. 101/IB on the East of their land. They allege that Narayana died in the year 1979 and when they were in bereavement, the appellant encroached into Ac.2-00 of land, which is separated from the rest of their land by a

Donka (Cart Track). On 7-10-1982, they got issued a notice calling upon the appellant to vacate Ac.2-00 of land shown in the suit schedule. The appellant replied on 26-10-1982, stating that late Konakalla Narayana executed an agreement of sale dated 26-11-1973 in respect of the suit schedule property and had received substantial consideration. The respondents pleaded that late Narayana never executed any agreement of sale and ultimately filed the suit for the relief referred to above.

3. The appellant filed a written statement repeating his stand taken in the reply dated 26-10-1982. He furnished the particulars of the payments, said to have made by him, towards consideration for the property. At a subsequent stage, the appellant filed LA. No. 505 of 1984 seeking amendment of the written statement to incorporate the plea of adverse possession. The I.A. was allowed and the respondents, in turn, filed a rejoinder, disputing the plea of adverse possession.

4. Through its judgment dated 22-8-1988, the trial Court held that the agreement of sale, pleaded by the appellant, is not genuine, but dismissed the suit, on the ground that he perfected the title vis-a-vis the suit schedule property through adverse possession.

5. Respondents filed A.S. No. 81 of 1988 in the Court of Additional District Judge, West Godavari, Eluru. The appeal was allowed on 9-2-1995. Hence the present second appeal.

6. Sri M.V. Durga Prasad, learned Counsel for the appellant, submits that his client had pleaded and proved that he was in adverse possession of the suit schedule property ever since 1957, far exceeding 12 years prior to the filing of the suit, and even if the agreement of sale was not believed, the nature of possession of the appellant did not undergo any change. He contends that the lower appellate Court reversed the finding of the trial Court without any basis. He further points out that the evidence on record was sufficient to support the plea of adverse possession.

7. Sri C. Chandrasekhara Sastry, learned Counsel for the respondents, on the other hand, submits that the appellant does not have any regard for the truth and he played all possible tricks to perpetuate his, otherwise, illegal possession over the suit schedule property. He contends that the appellant raised the plea of adverse possession only after the Expert recorded a specific finding to the effect that the agreement of sale pleaded by the appellant was forged. He further contends that the trial Court did not record any finding as to when the so-called adverse possession commenced and upto what time it continued, so as to give rise to prescriptive title.

8. The trial Court initially framed the following issues, which relate, mostly to the agreement of sale dated 26-11-1973 pleaded by the appellant.

1. Whether the suit schedule property is the self acquired property of late Konakalla Narayana?
2. Whether the agreement of sale dated 26-11-1983 set up by the defendant is true and valid?
3. Whether the suit schedule property is the joint family property of late Konakalla Narayana and plaintiffs 1 to 3?
4. Whether the defendant is entitled to the protection of Section 53-A of the Transfer of Property Act and if so, whether the suit is maintainable and whether the plaintiff is entitled for eviction?
5. To what relief?
9. In view of the amendment to the written statement, the following two additional issues were framed, touching upon the plea of adverse possession.
10. On their behalf, the respondents examined PWs. 1 to 5 and filed Exs.A. 1 to A. 12. PW.4 is the Handwriting Expert and Exs.A.8 to A. 12 are the documents, that are part of the report submitted by him. The appellant examined DWs. 1 to 3 and filed Exs.B. 1 to B. 18. Out of these documents, Ex.B. 1 is the agreement of sale dated 26-11-1973, Ex.B.2 is the sale deed dated 25-9-1957 through which he purchased Ac. 1-00 of land adjoining the suit schedule property. Ex.B.8 is the Pattadar Pass Book and the rest of the documents are in the form of demand notices for payment of house tax and receipts therefor.
11. The basic opposition of the appellant, for the suit filed by the respondents was on the strength of Ex.B. 1 and he sought protection u/s 53-A of the Transfer of Property Act. At the instance of the respondents, Ex.B. 1 was sent for the opinion of an Expert, who was examined as PW.4. The undisputed signatures of Konakalla Narayana were collected from certain documents with the consent of the parties. PW.4 gave a clear finding to the effect that the signature on Ex.B. 1, dated 26-11-1973, is not that of the land owner, Konakalla Narayana. The trial Court accepted the report and recorded its finding on Issue No. 2. This was not assailed by the appellant herein at subsequent stages. For all practical purposes, he proceeded as though Ex.B. 1 was a forged one.
12. The appellant has raised the plea of adverse possession by way of amendment to the written statement. The trial Court and the lower appellate Court have concentrated on this aspect and all other controversies, were relegated to secondary importance.
13. Whenever the defendant in a suit raises the plea of adverse possession, the burden squarely rests upon him, to plead and prove as to when his possession over the property concerned became adverse to the plaintiff and by what time it had ripened into a prescriptive title. The basic approach of the trial Court, in this regard,

was erroneous, inasmuch as, it observed that the respondents herein failed to prove that they were in possession of the suit schedule property 12 years prior to the filing of the suit. Such an approach is contrary to the very requirement under Article 65 of Schedule to the Limitation Act, 1963. Even if this erroneous approach is ignored for a while, it has to be seen as to whether the appellant has discharged his burden.

14. Hardly any evidence was placed before the Court to throw light upon the commencement of the possession. The tax receipts related to a house. No evidence was adduced to demonstrate that the house was on the suit schedule land. This aspect assumes significance, in view of the fact that the appellant owns Ac. 1-00 of land by the side of the suit schedule property. The only document on which heavy reliance placed by the appellant was Ex.B8-Pattadar Pass Book. Along with Ac. 1-00 of his patta land, the land of Ac.2-00 was also shown in it. The entry is not relatable to any particular date. It was clearly indicated in the column relating to the nature of possession that it is under an agreement of sale, which in turn is Ex.B. 1. Once Ex.B. 1 was held to be a forged one, the veracity and the evidentiary value of Ex.B.8 suffers to the same extent.

15. Whatever be the permissibility of the conflicting pleas being taken by a defendant in suits of various other kinds of disputes, totally different connotations emerge, when it comes to the plea of adverse possession, on the one hand, and the one u/s 53-A of the Transfer of Property Act, on the other hand. One cuts at the root of the other.

16. The agreement of sale, pleaded by the defendant, in the context of a plea as to the adverse possession, would give rise to several consequences. Viewed in isolation, an agreement of sale would connote that the person claiming benefit under it, had acknowledged the title of the vendor. Therefore, question of the former having any claim, adverse to the interest of the latter, does not arise. Even where an agreement of sale is to be ignored or held not proved, it would leave its own traces, which, sometimes are very deleterious, in their effect.

17. The adverse possession is bound to commence at a particular point of time and must continue till it metamorphosises into title. If it suffers any break before it had ripened into a title, whole of its effect stands neutralized. If the same person, who pleads adverse possession in respect of an item of property, enters into an agreement of sale with the owner, the character of the possession ceases to be adverse. Here the principle of "presumption forward and presumption backward" operates. The acquiescence of title through agreement of sale would have its impact, both anterior and posterior to its date. This is so despite the fact that it was found to be forged. The reason is that irrespective of its enforceability, it signifies the stand and intention of the appellant.

18. With the execution of an agreement of sale, the appellant herein had virtually buried the plea of adverse possession. If he intends to get the benefit of adverse

possession, he must independently prove it, by nullifying the intention conveyed through the agreement of the sale. Unless the appellant was able to prove that his adverse possession commenced from a particular date and continued upto another date, which is sufficient to give raise to prescriptive title, the presumption as to his acceptance of title of the rightful owner from the date of agreement would operate backwards till the very commencement of possession. That is what had exactly happened in the instant case.

19. In *Achal Reddi v. Ramakrishna Reddiar* AIR 1990 SC 553, the Hon"ble Supreme Court held that an agreement of sale pleaded by a defendant would be an acknowledgment of the recognition of the title of the vendor and it would exclude the adverse possession, if any, on the part of the defendant.

20. The lower appellate Court had applied the correct principles of law and corrected the blatant mistake committed by the trial Court. This Court does not find any basis to interfere with the judgment and decree under appeal.

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