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(1997) 07 AP CK 0006

Andhra Pradesh High Court

Case No: S.A.No. 166 of 1990

Yerra (Varre) Ramachandraiah (Died) and Others	APPELLANT
Vs	
Mamidala Rambai alias Rambayyamma	RESPONDENT

Date of Decision: July 22, 1997

Acts Referred:

- Registration Act, 1908 - Section 17

Citation: (1998) 4 ALD 107

Hon'ble Judges: Ramesh Madhav Bapat, J

Bench: Single Bench

Advocate: Mr. A. Anantha Reddy, for the Appellant; Mr. Tirumala Rao Mamidala, for the Respondent

Judgement

1. The appellants herein were the original defendants in O.S. No.622 of 1978 which was filed in the Court of the District Munsif, Nalgonda by the respondent herein. The plaintiff-respondent herein filed the suit for recovery of the land situated at Pangal village, Nalgonda Taluk, Nalgonda District and for mesne profits. The suit was heard by the trial Court on merits and the suit of the plaintiff came to be dismissed. Aggrieved by the aforesaid judgment and decree passed in O.S. No.622 of 1978, the plaintiff carried the matter in appeal by filing A.S. No. of 1987 in the Court of the Additional District Judge, Nalgonda. The learned Judge heard the appeal on merits and allowed the appeal decreeing the suit of the plaintiff Being aggrieved by the aforesaid judgment and decree, the defendants-appellants herein approached this Court in Second Appeal.

2. The averments made in the plaint can briefly be narrated as follows: The plaintiff filed a suit for recovery of suit land situated at Pangal village, Nalgonda Taluk and District and for mesne profits claiming to be the owner and pattedar of the said land bearing Sy.No.1624 dry land admeasuring Ac.16.09 guntas. The plaintiff claimed to

be the exclusive owner of the and upto April 1968 and she has been paying the land revenue and cultivating the same.

3. It was further averred by the plaintiff that the defendants 1 and 2 wrongfully dispossessed her and they are continuing in possession over the suit land illegally. The plaintiff made several demands to restore the possession of the suit land to her but the defendants failed. Therefore, the plaintiff got a notice issued on 16-1-1978 to the defendants calling upon them to restore the possession of the suit land to her and to pay mense profits for the last three years at the rate of Rs.600/-per year. The notice sent by the plaintiff was returned by the defendants.

4. It is further alleged by the plaintiff that the defendants have no right, title and interest in the suit schedule property in any manner. The plaintiff has got subsisting title in respect of the suit schedule land. She estimated mesne profits at the rate of Rs.600/-per year and claiming past mesne profits amounting to Rs. 1800/- and also the possession of the suit schedule land. It further appears from the record that the first defendant died during the pendency of the suit. His legal representatives were brought on record by filing I.A No. 192/82. Defendants 2 to 6 are the legal representatives of the first defendant. The 7th defendant is Yala Pitchi Reddy, who was impleaded in the suit as per the order in I.A.No.72/1985 dated 12-9-1985.

5. On filing of the suit, defendants 1 and 2 appeared and file their written statement with the following averments: That the plaintiff is not the owner of the suit land bearing Sy. No. 1624 admeasuring Ac.16.09 guntas of dry land. It was further stated by the defendants in their written statement that the plaintiff was never staying in the village of Pangal and cultivated the suit land. It was also denied that the plaintiff was in possession of the suit land at any point of time and was paying the land revenue. It was specifically averred that the defendants 1 and 2 were in possession of the suit land since more than 26 years. They have positively pleaded that they have purchased the suit land from the brother of the plaintiff along with one Yala Veeraiah.

It was alternatively pleaded that they have perfected their title by adverse possession. It is further contended that they are paying the land revenue and their names have been recorded "as person in possession" in the revenue records. They are not the tenants of the suit schedule property. With these averments, it was prayed by them that this suit of the plaintiff be dismissed with costs.

6. Defendants 3 to 6 filed their written statement and claiming the ownership over the suit schedule property. They further pleaded that the plaintiff never lived in Pangal village and was not in possession of the suit schedule property at any point of time. She never paid any land revenue. On the contrary, they purchased the suit schedule land from one B. Satyanarayana Rao i.e., brother of the plaintiff about 25 years back. The plaintiff was not having any title at that time. It was further pleaded that they have perfected their title by adverse possession and they are paying the

land revenue.

7. The 7th defendant filed his written statement with the following averments: That the plaintiff is not the owner of the schedule property and she was not in exclusive possession of the suit schedule property. She never paid any land revenue. It was also denied that the defendants dispossessed her from the schedule land which was occupied by her. It was positively pleaded by defendant No.7 that the suit land was purchased by the defendants 1 and 2 and by one Veerayya from the brother of the plaintiff named B. Satyanarayana Rao and from the date of purchase, the defendants have been cultivating the suit lands as owners. The plaintiff is not concerned with any part of the land. Her brother got recorded the name of the plaintiff in Khasra Pahani in 1954-55. The plaintiff has not produced any kind of documents as to how she obtained the suit schedule land form her brother. It was further stated by the 7th defendant that the plaintiff is taking advantage of wrong entries made in the revenue records. The 7th defendant is not liable to pay Rs.600/-towards mesne profits per year. With these averments, it was prayed by the 7th defendant that the suit of the plaintiff be dismissed with costs.

8. As stated earlier, the learned District Munsif, Nalgonda dismissed the suit of the plaintiff. The plaintiff carried the matter in appeal by filing A.S. No.8 of 1987. The appeal was allowed and the suit was decreed. Against the said judgment and decree, the present Second Appeal has been filed by the defendants.

9. The learned Counsel Mr. Anantha Reddy appearing on behalf of the defendants-appellants herein has raised few points before this Court. It was submitted by the leaded Counsel for the appellants that before the institution of the suit, the plaintiff-respondent herein issued a notice, which is marked as Ex. A1 Even in the notice she did not narrate as to how she acquired ownership over the suit schedule property and it was for the first time while giving evidence she has stated that the land in dispute was given to her by her mother and B. Satyanarayana Raot who happened to be her brother by way of ''Pasupu kumkuma''. The learned Counsel for the appellants herein further submitted at the Bar that there is no pleading even in the plaint as to how the plaintiff became the owner of the suit schedule land. As a matter of feet, she should not have been allowed to lead evidence to the effect that the disputed land was given to her in her marriage by way of ''Pasupu-kumkuma''. It was emphatically submitted by the learned Counsel for the appellants herein that when there is no pleading, the evidence cannot be "allowed to be lead on the point which is not pleaded.

10. This Court is in agreement with the principle that if there is no pleading, the party will not be allowed to lead evidence. But that is not so in the present case. The plaintiff stated in her notice as well as in the suit that she is the owner of the property. It may be true that she did not state in the notice or she did not plead in the plaint that she became the owner of the aforesaid land which was given to her by way of ''Pasupu-kumkuma''. She has not pleaded the manner in which she

acquired the ownership over the suit schedule property. But this Court is of the considered view that it is sufficient pleading when she has approached the Court with an averment that she is the owner of the land. Therefore, this Court holds that the trial Court rightly allowed the plaintiff to say in her evidence that the land in dispute was acquired by way of ''Pasupu-kumkuma''.

11. The learned Counsel Mr. Anantha Reddy further submitted at the Bar that the plaintiff though led her oral evidence, she did not produce any document to show that she has acquired land from her mother and brother by way of ''Pasupu-kumkuma'' at the time of her marriage. The learned Counsel further submitted that she has not led any evidence either oral or documentary to prove the factum of gift to her by way of ''Pasupu-kumkuma''. Only in her oral evidence she has stated that she got the land from her mother and brother by way of ''Pasupu-kumkuma'' and therefore it was contended by the learned Counsel for the appellants that the evidence of P.W. 1 has to be discarded in toto.

12. It is true that the plaintiff did not file any document to establish the fact that the land in dispute was given to her by way of ''Pasupu-kumkuma'', but the revenue records filed by her i.e., Exs. A1 to A5 would show that her brother gave a statement before the revenue officials and her name came to be recorded as a owner and pattedar in revenue records over the suit schedule property. It is well settled law that, if any, gift is given to a girl at the time of her marriage by her parents or brothers, though it may be immovable property, such gift does, not require to be made on a proper stamp paper and it also does not require registration. Section 17 of the Registration Act will not come in the way of donor or donee as far as the transaction of ''Pasupu-kumkuma'' is concerned. If the revenue record shows that the name of the donee in the present case the plaintiff is mutated to record of rights as a owner and pattedar, it will be the sufficient proof to hold that the plaintiff is the owner of the land in dispute.

13. The learned Counsel Mr. Anantha Reddy for the appellants herein further submitted that the defendants acquired the right over the suit schedule property as they had purchased the disputed land from the owner'' named B. Satyanarayana Rao by a written document about 25 years back and since then the defendants are cultivating the land in their own capacity as owners and therefore the suit of plaintiff must fail.

14. The evidence of the defendants shows that there is a discrepancy in the contentions raised in the written statements as well as in their evidence. The defendants examined themselves as D.Ws. 1 to 7 and filed certain documents. They were marked as Exs. B1 to B10. On this evidence, the learned District Munsif held that the plaintiff did not succeed in establishing the ownership over the suit schedule land, therefore, the suit of the plaintiff came to be dismissed.

15. The finding of the trial Court on this point is erroneous. Some of the defendants i.e., defendants 1 and 2 have pleaded mat the suit land was purchased about 26 years back. Defendants 3 to 6 say that they purchased the land about 25 years back. This discrepancy though it is minor, it cannot be ignored in toto. When the defendants approached the trial Court with a specific plea that they purchased the suit schedule property from the brother of the plaintiff named B. Satyanarayana Rao on a specific date under the document, there should not be any discrepancy. More-over, the defendants did not file any document of title into the Court when all of them were sure that the suit land was purchased by them from the brother of the plaintiff named B. Satyanarayana Rao. In not producing the documents in the possession of the defendants, an adverse inference has to be drawn against the defendants.

16. The learned Counsel Mr. Anantha Reddy further submitted at the Bar that according to the averments made by the plaintiff that the defendants trespassed into the land in the year 1968. This averment is totally false. The plaintiff has chosen the year of dispossession as 1968 so as to bring the suit within the period of limitation. The learned Counsel further submitted that the suit came to be filed in the year 1978, it means that the plaintiff has filed the suit after 10 years of her dispossession. Under these circumstances, the story put forward by the plaintiff that she was dispossessed has to be discarded in toto. This Court is not in agreement with the submission made by the learned Counsel for the defendants-appellants herein. All the revenue records produced in the trial Court especially Pahani Patrikas Exs.B2 to B7 for the years 1965 to 1971 would go to show that the name of the plaintiff was shown as owner and pattedar in Column No.1 whereas in Column No. 11, it is shown that the property was gifted to pattedar sister under "Aranamu" (Telugu version). Even the said entry appears right from 1955-56 onwards till 1968 the year in which she was dispossessed. In Column No. 16 also from the year 1955 onwards to 1968, the name of the plaintiff appears as a person cultivating the land and only from the year 1968 onwards the name of the plaintiff in Column No.16 is absent.

17. With these documentary evidence on record, the learned Counsel for the plaintiff-respondent herein submitted at the Bar that the contention raised by the learned Counsel for the appellants herein that the plaintiff chose the year 1968 as the year in which she was dispossessed is an after thought so as to bring the suit within the period of limitation cannot be believed. Only from 1968 onwards when the plaintiff was dispossessed illegally by the defendants and when they started cultivating the land, their names were mutated in column No.16. Therefore, it must be held that the defendants dispossessed the plaintiff only in the year 1968 and the suit was filed in the year 1978 and therefore the suit must be held to have been filed within the period of limitation.

18. The learned Counsel Mr. Anantha Reddy further submitted at the Bar that in Column No. 12 of Pahani Patrika, the word used ''Aranamu'' (Telugu version) is not equivalent to the word ''Pasupu-kumkuma'' and therefore it must be held that the property was not gifted to her by her brother. In order to know the meaning "Aranamu" (Telugu version), this Court had referred the Dictionary Telugu-English Dictionary by Charles Philip Brown, Second Edition page 78. In the said dictionary the meaning of ''Aranamu'' is given as a present given by a father-in-law to his son-in-law or by a father to his daughter at the nuptial. By looking to the dictionary meaning of ''Aranamu'' (Telugu version), this Court has no hesitation in holding that ''Aranamu'' (Telugu version) is equivalent to ''Pasupu-kumkuma'' and the gift by way of ''Pasupu-kumkuma'' does not require any registration.

19. Looking to the oral and mainly the documentary evidence produced on record, this Court has no hesitation in holding that the disputed property was given to the plaintiff by her brother B. Satyanarayana Rao by way of ''Pasupu-kumkuma'', She has been in possession as a owner till the year 1968. The defendants dispossessed her forcibly and illegally in the year 1968. The suit was filed in the year 1978. The suit is within the period of limitation. This Court further holds on the strength of the documentary evidence on record that the plaintiff is the owner of the land and she has been able to prove her title. The defendants, who specifically pleaded and gave evidence that they had purchased the suit schedule land from the brother of the plaintiff B. Satyanarayana Rao has to be rejected in toto as they totally failed to produce any document of title on record.

20. Taking the above facts into consideration this Court has no hesitation in holding that the first Appellate Court rightly appreciated the facts on record. The defendants-appellants herein have not been able to make out any substantial questions of law.

21. Under these circumstances, the appeal is dismissed with costs throughout.