

M.Varthamma and Others Vs. Kannappa and Others

M.Varthamma and Others Vs. Kannappa and Others

SooperKanoon Citation : sooperkanoon.com/1030454

Court : Andhra Pradesh

Decided On : Mar-05-2013

Judge : Hon'Ble Sri Justice C.V.Nagarjuna Reddy

Appellant : M.Varthamma and Others

Respondent : Kannappa and Others

Advocate for Def. : Sri. K.G.Krishna Murthy Counsel, Sri. S.S.Bhatt

Judgement :

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY Second Appeal No.47 o

05. 03.2013 M.Varthamma and others Kannappa and others Counsel for appellants: Sri K.G.Krishna Murthy Counsel for Respondents: Sri S.S.Bhatt HEAD NOTE: ?Cases referred

JUDGMENT

: The plaintiffs in O.S.No.17 of 1985 on the file of the Principal District Munsif, Chittoor, are the appellants.

The suit was filed for the relief of declaration of title, in respect of suit schedule property of an extent of Ac.1.78 cents of land in survey No.122/2B of Madireddipalle Revenue Village, erstwhile Bangarupalem Mandal, Chittoor District.

The case of the appellants was that the land is held by themselves and their ancestors for a long period of about 100 years and that the respondents, who have Ac.1.04 cents in the immediate neighbourhood, are trying to interfere with their possession without any basis.

It was also pleaded that the land in survey No.122/2 comprising of Acs.2.82 cents was sub-divided into survey No.122/2A with Ac.1.04 cents and survey No.122/2B with Ac.1.78 cents, the suit schedule property.

The respondents opposed the suit by filing a written statement.

According to them, the land was part of estate and after abolition of the estates, ryotwari settlement was made in their favour.

It is also stated that in all the revenue records, their names were entered, so much so the pattadar pass book and title deeds were also issued to them.

The further plea of the respondents was that Jayavelu-the 5th appellant, one of the sons of the deceased-1st plaintiff, is working in the Revenue Department, and taking advantage of the same, he manipulated certain entries, but the fact remains that at no point of time, the appellants were the owners, much less possessors of the land.

The trial Court dismissed the suit, through judgment dated 01.09.1993.

The appellants filed A.S.No.108 of 1993 in the Court of I Additional District Judge, Chittoor.

The appeal was dismissed on 31.10.2007.

Hence, this second appeal.

Sri K.G.Krishna Murthy, learned Additional Advocate General, appearing for the appellants, submits that the trial Court and the lower Appellate Court erred in dismissing the suit and appeal, only on the basis of certain entries in the revenue records.

He contends that the entries by themselves do not confer any title and since the appellants have established their possession over the property, relief of declaration and injunction ought to have been granted.

He submits that the so-called patta said to have been granted in favour of the respondents under the Andhra Pradesh (Andhra Area) Estates Abolition Conversion into Ryotwari Act (for short 'the Act'), is untenable, and the respondents failed to prove the title or possession over the land.

He further submits that in the course of survey of the land, in the context of sub-division, the respondents have clearly admitted the possession of the appellants over the suit schedule land.

Sri S.S.Bhatt, learned counsel for the respondents, on the other hand, submits that the land was part of estate and patta under Section 11(a) of the Act, was granted in their favour.

He contends that the pattadar pass book, marked as Ex.B.2, issued in the recent past, demonstrates the title and possession of the respondents over the land.

Learned counsel further submits that there was absolutely no basis for the appellants to claim the relief of declaration of title in respect of the suit land, when they have neither purchased it, nor have got it by succession.

He contends that the plea, as to admission of the respondents, as regards possession of the appellants, over the suit schedule property, in the context of sub-division of the survey, is untenable, and that the evidence of PW.3, an Official of Revenue Department, would clarify the same.

The appellants sought the relief of declaration of title on the basis of alleged continues possession, spread over several decades.

The relief of perpetual injunction was also prayed for.

The trial Court framed only two issues viz., i) "Whether the plaintiff is entitled for declaration of title in respect of the suit land? ii) Whether the plaintiff is entitled for grant of permanent injunction?" On behalf of the appellants, PWs.1 to 3 were

examined and Exs.A.1 to A.6 were filed.

On behalf of the respondents, DWs.1 to 3 were examined and Exs.B.1 to B.18 were filed.

In addition to that, Exs.X.1 to X.9 were also taken on record.

The suit was dismissed by the trial Court.

In the appeal preferred by the appellants herein, the lower Appellate Court repeated the issues while framing points, and added one more point, namely, "Whether the learned trial Judge is correct in dismissing the suit?" All the points were answered against the appellants.

As observed earlier, the appellants rested their claim for declaration of title upon continuous possession said to be for about 100 years.

They did not derive title to the land either through the act of parties, viz., sale, or other transfer, or by operation of law, meaning thereby, succession and the like.

Once the appellants did not have title, which is recognized by law, possession if established, would be adverse to that of the true owner.

Till recently, the plea of adverse possession was recognized as a valid defence, to resist the attempt of a true owner, in case the possession of the defendants was spread over the stipulated length of period, and was open, and adverse in nature.

In the recent past, the Supreme Court held that apart from serving as a valid defence to resist the attempt by original owner, to recover possession, adverse possession can constitute the basis for seeking the relief of declaration of title also.

Obviously, based upon that pronouncement, the appellants wanted the relief of declaration of title, on the strength of adverse possession.

In the suit of this nature, a plaintiff would be successful, if only he is able to plead and prove all the ingredients of adverse possession.

In other words, there should not be any doubt as regards the possession spread over a period exceeding 12 years, which must be continuous, open and adverse in nature.

However, as in the case of the defence of truth taken by a defendant in a suit for defamation, the plaintiff in a suit for declaration of title on strength of adverse possession would expose himself to an element of risk.

The reason is that the very fact that he is claiming adverse possession against the defendant in the suit basically establishes that he is acknowledging the title of the defendant.

If he fails to establish the ingredients of the plea as to adverse possession, he will bring about a situation where the title of the defendant stands established, without any limitations, as to exercise thereof.

It is a matter of record that the respondents were issued ryotwari patta under Section 11(a) of the Act in respect of Acs.2.82 cents of land.

This was followed by the issuance of pattadar pass book and title deeds in the recent past.

In contrast, the appellants did not make any effort to get any patta, issued under the Act, much less to obtain the pattadar pass books and title deeds.

The appellants wanted to strengthen the plea by making reference to certain proceedings relating to sub-division of the survey number that too at their instance.

It was urged that the deceased-1st respondent signed upon the panchanama prepared by Tahasildar marked as Ex.X.2, acknowledging the possession of the appellants over the land.

However, this aspect was clearly explained by PW.3, the Deputy Tahasildar, who was associated with the matter.

He stated that when a panchanama was prepared after the survey, in the context of sub-division, the deceased- 1st respondent refused to sign the proceedings and

at a subsequent stage, the respondents protested the entire process of subdivisions.

A suggestion was made to PW.3 that effort to get sub-divided made at the instance of Jayavelu-5th appellant.

PW.2 is a Ex-Karanam, who deposed in favour of the appellants.

However, in the course of cross-examination, it was elicited from him that the land was subject- matter of proceedings under the Act, and that on the strength of a fair adangal marked as Ex.P.1, pattadar pass book and title deeds were issued, in favour of the respondents in respect of the entire extent of Acs.2.82 cents in survey No.122/2 under patta No.445.

Once the appellants noticed that pattadar pass book and title deeds were issued for the whole of survey No.122/2 in favour of the respondents, they are expected to avail the remedy of appeal or revision under the A.P.

Rights in Land and Pattadar Pass Book Act, 1971, if at all they felt that they had right over any land.

A pattadar pass book and title deeds issued under that enactment carry with them, a presumption as to existence of title.

It is only when such documents are set aside, either in any appeal or revision, or by a Court of law that they can be ignored.

At any rate, the appellants did not place any material, which discloses that they have any right, superior to the one that can be discerned from Ex.B.2.

The trial Court and the lower Appellate Court have examined the matter, in detail, with reference to the evidence on record and provisions of law and have arrived at just and proper conclusions.

The appellants are not able to point out any error of law, or fact in the judgments rendered in the suit and the appeal.

No substantial question of law arises for consideration in this second appeal.

Hence, the second appeal is dismissed.

It is needless to mention that if the respondents are not in possession of any part of land in survey No.122/2B of Madireddipalle Revenue Village, Chittoor District, they have to work out their remedies in accordance with law.

There shall be no order as to costs.

The miscellaneous petition filed in this second appeal shall also stand disposed of.

_____ L.NARASIMHA REDDY, J.

Dated:05.03.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com