

**Laximibai Vs. Thoreppa**

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**SooperKanoon Citation :** [sooperkanoon.com/375898](http://sooperkanoon.com/375898)

**Court :** Karnataka

**Decided On :** Mar-08-1982

**Reported in :** AIR1982Kant248

**Judge :** G.N. Sabhahit, J.

**Acts :** [Limitation Act, 1963](#) - Schedule - Article 65; [Evidence Act, 1872](#) - Sections 114

**Appeal No. :** Second Appeal No. 891 of 1975

**Appellant :** Laximibai

**Respondent :** Thoreppa

**Advocate for Def. :** B.S. Raikote, Adv.

**Advocate for Pet/Ap. :** Murlidhar Rao, Adv.

**Judgement :**

1. This, appeal by the plaintiff is directed against the judgment and decree dated 16-4-1975 passed by the District Judge, Raichur, in Regular Appeal . No. 102 of 1970, on his file, allowing the appeal, on reversing the judgment and decree dated 29-1-1965 passed by the Munsiff, Deodurg, in Original Suit No, 11/1 of 1964, on his file, decreeing the suit of the plaintiff.

2. It is the case of the plaintiff that one Rukmajappa was tile owner of two houses bearing Municipal Nos, 619 and 620 situate in Deodurg Town. Rukmajappa left Deodurg in the year 1929-30 for Adoni and settled there. Before, leaving Deodurg for good, he leased out the houses in favour of the defendant on an yearly rent of Rs.25/- with a stipulation that the, defendant should pay the house taxes also and maintain the house in good repairs. The said Rukmajappa died on 16-04-1931 in Adoni leaving behind him his son Subbanna and four daughters. After the death of his father Subbanna became the owner of the two houses and the defendant paid rents to him. Subbanna died in or about the year 1945 and, thereafter, the plaintiff being his only daughter, succeeded to the estate and the defendant paid rents to, her till the year 1960, It is further averred in the plaint that on 17-2-1961 the defendant not only refused to pay the rent to the plaintiff but also denied the title of the plaintiff over the suit houses by claiming title in himself. That led to the institution, of the present suit for declaration of title and for possession and mense profits, by the plaintiff.

3. The defendant resisted the suit by filing his written statement. He contended that the suit was false and vexatious and non maintainable against him. It was barred by time, Proper and necessary parties were not on record. The plaintiff has no locus standi to file tile Suit. He denied the averments with regard to the payment of rent, as made in the plaint. He asserted that Rukmaianpa sold the houses to him for a sum of Rs. 200/- before he left the town Deodurg. He then handed over the registered sale deed to him with the endorsement of agreement of sale, He also claimed that he effected his title by adverse possession.

4. The trial Court raised the following issues as arising from, the pleadings:

(1) Whether the defendant proves, that the value of the suit exceeds the pecuniary jurisdiction of this Court?

(2) Whether the Plaintiff proves that he is the absolute owner of the suit properties?

(3) Whether the defendant is entitled to the benefit of Section 53-A of the Transfer of Property Act?

(4) Whether the defendant proves that he has perfected his title to the suit properties by adverse possession?

(5) Whether the plaintiff is entitled to recover possession of the suit properties from the defendant'?

(6) Whether the plaintiff is entitled to recover Past mesne profits of Rs.75 / - '?

(7) Whether the plaintiff is entitled to future mesne profits ?

(8) Whether the suit is maintainable?

(9) Whether the suit is barred by limitation

(10) Whether the suit has cause of action ?

(11) Whether the Court-fee paid is sufficient ?

(12) To what relief, if any is the plaintiff entitled ?

5. The trial Court, appreciating the evidence on record, held that the plaintiff was the owner of the suit house and was entitled for possession and mesne profits as prayed for at the rate of Rs. 25/- per year. It rejected the contention of the defendant that he had perfected his title by adverse possession. Aggrieved by the said judgment and decree, the defendant went up in Appeal before the District Judge, Raichur, in Regular Appeal No. 102 of 1970, of his file. The appeal was allowed and the case was remanded by the learned District Judge. The plaintiff, however, came up in, miscellaneous, appeal before the, Court, in Miscellaneous Second Appeal No. 84 of 1972 and this Court by its Judgment, dated 19-4-1970 allowed the appeal and set aside the order of remand by the, learned District Judge and directed that the learned District Judge should rehear the appeal and dispose it

of on merits. Thereafter, the appeal was heard afresh by the learned District Judge. The learned District Judge,

to, the course of his judgment raised the following points as arising for his consideration in the appeal.

(1) Is the finding of the lower Court correct that the respondent-plaintiff is the owner and the appellant/defendant is the tenant of the suit premises?

(2) Is the lower Court right in holding that the appellant /defendant is not entitled to the benefit of Section 53-A of the Transfer of Property Act?

(3) Is the observation of the lower Court justified that the plea of adverse possession is not available to the appellant/defendant ?

(4) Whether the suit is time barred?

(5) Whether the mesne profits awarded are correct?

(6) What order?

6. The learned Civil Judge, reassessing the -evidence on record, held that the trial Court was not justified in holding that the plaintiff proves his title to the suit properties. Under Point No. 2, the learned District Judge held that the defendant was in adverse possession. Under Point No. 3, he held that the plea of adverse possession was available. In that view, he held that the suit was barred by time and that the plaintiff was not entitled for declaration, possession or mesne profits. He allowed the appeal, set aside the judgment and decree of the trail Court and dismissed the suit of the plaintiff. Aggrieved by the same, the plaintiff has come up with the above second appeal before this Court.

7. The learned counsel appearing for the appellant strenuously urged before me that the court below was not justified in taking into consideration the endorsement on Exhibit D-13. According to him, there was absolutely no evidence that the plaintiff was put 'in possession as owner. He further submitted that the evidence on record revealed that the defendant was paying rent even to the plaintiff and, as such, the possession of the defendant was that of a tenant till he denied the title of the landlord. Hence, he submitted that the suit was not barred by time and the learned District Judge was not justified in holding that the defendant had perfected

his title by adverse possession. In that view, he submitted that the appeal was entitled to succeed.

8. As against that, the learned counsel appearing for the respondent/defendant argued supporting the judgment and decree of the learned District Judge.

9. The points, therefore, that arise for my consideration in this appeal are,

(1) Whether the learned District Judge was justified in holding that the defendant had perfected his title by adverse possession and

(2) Whether the learned District Judge was justified in holding that the suit was barred by time?

10. In Exhibit D-13, there is an endorsement that the suit houses were sold to the defendant for Rs. 200/-. It is no doubt true that the endorsement as rightly pointed out by the learned District Judge, amounts to a sale. It should have been registered. As such, it is not admissible in evidence. But possession under an inadmissible document becomes adverse to the true owner. That endorsement was made in the year 1937. Hence, adverse possession starts from that year.

11. It was, however, contended before me that in 1937 Rukmajappa was not alive. For that, Exhibit P-2 was relied upon. Exhibit P-2 is the extract of death entry from Adoni Municipality which shows that one Rukmajappa died on 16-4-1931. But the learned District Judge has rightly pointed out that there is no identity of Rukmajappa with whom we are concerned in the suit as the person mentioned as Rukmajappa in Exhibit P-2.

12. It is settled principle of law that the identity of the person mentioned in the entry should be established by evidence aliunde: (Vide: Paryanibai v. Baji Rao : AIR1963 Bom25 ).

13. It is clearly stated therein that it is wrong to assume that mere filing of a copy of an entry in the birth register or the 'Kotwari' books proves ipso facto that the entry relates to or proves the birth of the person concerned: evidence has to be introduced to connect that entry with the person whose date of birth has to be

established and that of the identity of the person under the entry must be established by other evidence (AIR 1949 Orissa 22 relied on).

14. In the instant case, as rightly pointed out by the learned District Judge, there is no evidence adduced to show the identity of Rukmajappa in Exhibit P-2 as the same Rukmajappa with whom we are concerned.

15. Besides, DW 2 has deposed that he wrote the 'Shara' in Exhibit D-13 and he has proved it. Rukmajappa has signed the 'Shara'. Therefore, it is obvious that Rukmajappa with whom we are concerned was alive on the date of the Shara viz., in 1937. That belies the entry in Exhibit P-2 as the entry relating to the death of Rukmajappa concerned in his case. Moreover, Exhibit P-2 does not show the name of the father of Rukmajappa or his grandfather. The columns are left blank. Hence, the learned District Judge has rightly held that the entry is not established as relating to Rukmajappa in the suit. I have no reason to differ.

16. That being so, I am satisfied that adverse possession started in the year 1937 against the true owner. There is

absolutely no evidence on record to show that thereafter the defendant ever paid rent either to the plaintiff or to the father of the plaintiff and the defendant has obviously perfected his title by adverse possession because the suit is instituted only in the year 1964 i.e., on 14-1-1964. The learned District Judge was, therefore, right in holding that the defendant has perfected his title by adverse possession and that the suit was barred under Article 65 of the Limitation Act.

17. That being so, the present appeal is obviously devoid of merits and is liable to be dismissed and I dismiss the same.

18. No costs in this appeal.

19. Appeal dismissed