

N. Sitadevi and Others Vs. A. Berata and Others

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SooperKanoon Citation : sooperkanoon.com/432792

Court : Andhra Pradesh

Decided On : Feb-08-2001

Reported in : 2001(2)ALD620; 2001(2)ALT491

Judge : Vaman Rao, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 114

Appeal No. : RCMP No. 18072 of 2000

Appellant : N. Sitadevi and Others

Respondent : A. Berata and Others

Advocate for Def. : Mr. K. Pratap Reddy, Adv.

Advocate for Pet/Ap. : Mr. Subba Rao, Korrapatic, Adv.

Judgement :

ORDER

1. Heard the learned Counsel for the petitioners-appellants. No representation for the respondents.
2. The review petitioners seek review of the judgment and decree dated 3-3-2000 in SA No.520 of 1989 passed by this Court. The brief facts leading to the filing of this petition may be stated as follows:

The petitioners herein are the plaintiffs in the suit. They filed the suit OS No. 160 of 1979 on the file of learned Subordinate Judge, Warangal for the reliefs of declaration of title in respect of the suit property and for consequential perpetual injunction. The trial Court recorded a finding that the plaintiffs have made out a case of their title and also held that the plaintiffs were in possession of the suit property and on this ground, the reliefs of declaration of title and consequential perpetual injunction restraining the defendants from interfering with the possession of the suit property were granted. The defendants challenged the judgment and decree of the trial Court in the first appeal in AS No.41 of 1986 on the file of learned Additional District Judge, Warangal. Learned Additional District Judge allowed the appeal and set aside the judgment and decree of the trial Court on the findings recorded by him that the defendants have succeeded in making out a case of their acquisition of title to the suit property by adverse possession. Obviously, on this ground, the suit of the plaintiffs was dismissed.

3. In the second appeal before this Court, the judgment and decree of the first appellate Court have been challenged on various grounds. The substantial question of law, on which the second appeal was admitted, was that the first appellate Court has erred in recording a finding as to the acquisition of title by the defendants by adverse possession in the absence of any pleading in that behalf and in the absence of framing of any issue on that question.

4. It is, therefore obvious that the question before this Court was as to the correctness or otherwise of the finding recorded by the first appellate Court that the defendants had made out a case of acquisition of title by adverse possession. Learned Judge, who heard the second appeal, held that part of the findings of the first appellate Court that the defendants have been in possession of the suit property as on the date of the suit was justified on the basis of the evidence before the Court. But the learned Judge refused to go into the question whether the possession was adverse to the plaintiffs; and whether it was sufficient to record finding of acquisition of title by defendants on the basis of adverse possession. This refusal to go into the question was apparently on the assumption that the suit was essentially a suit for injunction and that the question whether the defendants acquired title by adverse possession and thereby the title of the plaintiffs had

extinguished was not considered necessary to be decided. On this basis, the learned Judge also observed that these questions viz., the fact of the defendants having acquired title by adverse possession; and the question whether the plaintiffs title was thereby extinguished were left open to be agitated in a separate proceedings by the plaintiffs, if so advised. It is pertinent to mention here that the suit cannot be said to be essentially for the relief of injunction only. The suit was for declaration of title also as it is clear from the prayer in the plaint. The plaintiffs having filed a comprehensive suit for declaration of title and perpetual injunction, they ought not to have been driven to file a separate suit for declaration of title. This assumption of the learned Judge that the suit was essentially for the relief of perpetual injunction and not for declaration of title must be deemed to be an error apparent on the face of the record, inasmuch as such an assumption is contrary to the pleadings. In view of this, this must be deemed as a sufficient ground for allowing the review petition.

5. In view of what has been stated above, this petition is allowed. The second appeal shall be restored to file and posted for hearing before the Court hearing second appeals.