

Modem Rajamouli Vs. Modem Roshaiiah and Others

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Court : Andhra Pradesh

Decided On : Apr-25-2000

Reported in : 2000(3)ALD677; 2000(3)ALT687

Judge : C.V.N. Sastri, J.

Acts : Andhra Pradesh (TA) Tenancy and Agricultural Lands Act, 1950 - Sections 47 and 50-B; [Transfer of Property Act, 1882](#) - Sections 53-A; [Limitation Act, 1963](#) - Sections 6 and 65; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100 - Order 41, Rules 22 and 27; Hyderabad Land Revenue Act - Sections 134 and 138; Andhra Pradesh (Scheduled Areas) Land Transfer Regulation Act, 1959

Appeal No. : SA No. 587 of 1993

Appellant : Modem Rajamouli

Respondent : Modem Roshaiiah and Others

Advocate for Def. : Mr. N.V. Ranganadham for;Mr. P. Mehra Srinivasa Rao and;Mr. K. Pratap Reddy;for Mr. S. Laxma Reddy, Adv.

Advocate for Pet/Ap. : Mr. Y. Lakshmikanta Rao for;Mr. T. Veerabhadrayya, Adv.

Judgement :

1. The sole plaintiff in the suit is the appellant in this second appeal. The appellant filed the suit for partition and separate possession of a 1/9th share in the suit

properties and for permanent injunction against defendants 6 to 9, who are the contesting defendants. Subsequently, the plaint was got amended so as to claim the relief of possession also as against defendants 6 to 9.

2. It is the case of the plaintiff that the suit property consisting of two items with a total extent of Ac.9-15 guntas is the ancestral joint family property belonging to plaintiff and defendants 1 to 5. There are altogether three branches, which are entitled to the property. Plaintiff and the 2nd defendant are the sons of the first defendant. They belong to one branch. The 3rd defendant belongs to the 2nd branch. Defendants 4 and 5 belonged to the 3rd branch. Each branch is entitled to a 1/3rd share in the suit property. Out of the 1/3rd share held by the first defendant's branch, the plaintiff is entitled to 1/3rd i.e., he is entitled to a 1/9th share in the suit property. As the 5th defendant died during the pendency of the suit, his legal representatives were brought on record as defendants 10 to 12.

3. Defendants 1 to 5 supported the case of the plaintiff. The defendants 6 to 9 only contested the suit contending that the entire suit property was sold by the heads of the three branches in favour of one Singireddi Jogi Reddy under an agreement of sale dated 15-7-1956 (Ex.B25), that the entire sale consideration of Rs.4,000/- was paid by the vendee at the time of the agreement and possession of the property was also delivered to him. The said Singireddi Jogi Reddy purchased the property for the benefit of a mission which was subsequently got registered as 'Diecesion Society'. Subsequently a registered sale deed dated 10-11-1966 (Ex.B17) was duly executed by the vendors in favour of defendants 8 and 9 behalf of the Diecesion Society. Thus, according to the contesting defendants, the suit property has been in continuous possession and enjoyment of the Diecesion Society and its representatives right from 15-7-1956 onwards and defendants 6 to 9 have, therefore, perfected title to the suit property by adverse possession also.

4. The plaintiff impeached the sale on the ground that it is not justified either by legal necessity or benefit to the Estate. Though there was no specific plea to that effect in the plaint, the plaintiff also contended that the alleged sale was null and void and hit by Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 as it was made without obtaining the prior permission of the

Competent Authority.

5. After framing a number of issues and after a protracted trial, the trial Court dismissed the suit with costs holding that Exs.B25 and B17 are true, valid and binding on the plaintiff. On appeal, the Appellate Court held that Exs.B25 and B17 are void being in contravention of Section 47 of the said Act. The Appellate Court, however, came to the conclusion that defendants 6 to 9 have perfected title to the suit property by adverse possession and the suit is barred by limitation. On the said findings, the Appellate Court dismissed the appeal and confirmed the decree of the trial Court.

6. The following substantial questions of law have been formulated in the memorandum of grounds, on the basis of which the second appeal has been admitted:

(a) Whether the finding given by the trial Court that the suit is not barred by time, that defendants 6 to 9 have not perfected their title by adverse possession and that the suit filed by the plaintiff is maintainable can be challenged by respondents without filing objections under Order 41, Rule 22 CPC?

(b) Whether the plaintiff who was a minor at the time of Ex.B17 sale deed is not entitled to file the suit merely because he was not conceived by the date of Ex.B25?

(c) Whether by execution of the agreement Ex.B25 the rights were transferred and whether the period of limitation starts from 1956?

(d) Whether the sale deed Ex.B17 which is held to be null and void creates any rights in favour of defendants 6 to 9 and whether the suit filed in December, 1977 i.e., within 12 years from the date of Ex.A17 is barred by limitation?

(e) Whether the defendants 6 to 9 tag on possession of T. Papayya and others prior to the sale deed Ex.A17 and perfect their title by adverse possession?

7. At the time of hearing of the second appeal, Sri Y. Lakshmikantha Rao, learned Counsel appearing for the appellant has contended that the lower Appellate Court

having rightly held that Exs.B25 and B17 are null and void, committed grave errors of law in holding that defendants 6 to 9 perfected title to the suit property by adverse possession and that the suit is barred by limitation. He submitted that possession under Exs.B25 and B17, which are held to be unlawful and void, for any length of time, cannot constitute adverse possession. He also submitted that since the defendants claimed title on the basis of Exs.B25 and B17, in the same breath they cannot put forward the plea of adverse possession and the two inconsistent pleas cannot co-exist. The learned Counsel for the appellant further submitted that while Ex.825 is in favour of one Singireddi Jogireddi, Ex.B17 is in favour of defendants 8 and 9 whereas in the pahanis, the name of one T. Papaiah who is altogether a different individual is shown as the person in possession of the suit land and as such there cannot be any tacking of possession of different individuals for the purpose of claiming title by adverse possession. The learned Counsel also submitted that no question of limitation arises since Ex.B25 which is a mere agreement of sale cannot confer title and the suit is filed in 1977 less than 12 years from the date of the registered sale deed Ex.B17. The learned Counsel for the appellant finally submitted that even though the plaintiff has taken a specific plea that the alienation of the suit property was without any legal necessity or benefit to the Estate, both the Courts below failed to frame an issue or to give any finding on the said aspect. In this context, the learned Counsel for the appellant has stated that the plaintiff filed an application in the trial Court for framing a specific issue on this question. A counter was filed on behalf of the contesting defendants conceding that it is not their case that the sale was for legal necessity or benefit to the Estate and the trial Court did not, therefore, consider it necessary to frame an issue on the said question. This fact, however, could not be verified, as the counter said to have been filed on behalf of the respondents is not available in the lower Court records which were transmitted to this Court in the second appeal. However, in the Written Statement filed on behalf of defendants 6 to 9, there is a general denial of the said plea taken by the plaintiff.

8. Sri N. V. Ranganatham, the learned senior Counsel appearing for defendants 3, 5 and 10 to 13 who have supported the plaintiff, sought to contend that the property covered by Ex.B25 is not the same as the property covered by Ex.B17 and he tried to demonstrate the same by pointing out certain inconsistencies in the

recitals made in the two documents and also certain other suspicious features like some corrections and interpolations made in Ex.B25. I do not, however, think that it is permissible to do so for the first time in the second appeal not having taken any such plea in the two Courts below. The learned senior Counsel Sri Ranganatham further contended that the finding of the Appellate Court with regard to adverse possession is without any basis since the evidence on record like the pahanis viz., Exs.B19, B20 and B21 clearly show that the suit land was uncultivatedvacant land. Sri N.V. Ranganatham finally submitted that the mutation of the land in favour of the Diecesion Society in whose favour there is no sale deed or agreement of sale whatsoever and that too after the lapse of 10 years after the execution of the sale deed Ex.B17 without conducting any enquiry and without following the procedure prescribed in A.P. Record of Rights in Land and Pattadar Passbooks, 1971 and the Rules framed thereunder is illegal, fraudulent and stage managed after; the disputes arose. To prove that the mutation was got effected without any enquiry whatsoever, the said respondents have filed by way of additional evidence in the second appeal, the certified copy of the faisal patti along with CMP No.3346 of 2000.

9. Apart from the debatable question whether any additional evidence can be received in a second appeal on which were appears to be difference of opinion, I do not find any valid grounds to receive the said document as additional evidence at this belated stage as the petitioners have not satisfied the conditions laid-down in Order 41, Rule 27 CPC.

10. On the other hand, Sri K. Pratapa Reddy, learned senior Counsel appearing for the contesting respondents/defendants 6 to 9 has submitted that the judgments and Decrees of both the Courts below are perfectly valid, just and unexceptionable and that no case is made out for interference under Section 100 CPC. He also submitted that by the date of the agreement of sale Ex.B25, the plaintiff was not in existence and he was not even conceived. He has, therefore, no right to question the same. He also submitted that as Section 47 of the Act has been removed from the statute book in the year 1969 by Act 12 of 1969, the question of Exs.B25 and B17 being hit by the said section does not arise. He further contended that in any case even assuming the said documents are voidbeing hit by the said section,

continuous possession and enjoyment of the suit land under the said documents constitutes adverse possession, as rightly held by the Appellate Court. So far as the question of legal necessity for alienation or benefit to the Estate is concerned, Sri Pratapa Reddy, the learned senior Counsel contended that the averments in Paragraphs 6 and 7 of the plaint themselves prove the legal necessity for the sale and no further proof is required.

11. In support of their respective contentions, learned Counsel for both parties have relied on several decisions, which will be referred to presently.

12. On these rival contentions, in my view, the following substantial questions of law arise for consideration in this second appeal.

(1) Whether the alienation of the suit land is justified by legal necessity or benefit to the Estate?

(2) Whether Exs.B25 and B17 are hit by Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and they are null and void?

(3) Whether defendants 6 to 9 have perfected title to the suit property by adverse possession?

(4) Whether the suit is barred by limitation?

13. I shall deal with the said questions of law in that order.

Point No. 1:

As already stated above, unfortunately no specific issue has been framed touching this question and both the parties do not seem to have focussed their attention properly on the said issue in the two Courts below. At best this is a mixed question of fact and law. For adjudicating such issue, examination of facts also will be necessary. I do not, therefore, think it appropriate to go into this question for the first time in the second appeal, more so having regard to the fact that no specific issue was framed on this question in the Courts below. This point is answered accordingly.

Point No.2:.

Sub-section (1) of Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 provided that notwithstanding anything contained in any other law for the time being in force or in any decree or order of a Court, no permanent alienation or no other transfer of agricultural lands shall be valid unless it has been made with the previous sanction of the Tahsildar. This section was removed from the statute book in the year 1969 by Act 12 of 1969. Section 50-B of the Act made a provision for validation of certain alienations and other transfers of agricultural lands. Admittedly, in the instant case, no proceedings were taken under the said section for validation of Exs.B25 or B17. In K. Parvathamma v. Commissioner of Excise, 1970 (2) ALT 186, a Full Bench of this Court after considering the effect of Section 47 of the Act in the light of the earlier decisions, summed-up the legal position as follows:

'The provisions of Section 47 of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950 requiring prior sanction of the Tahsildar for effecting an alienation or a transfer are equally applicable to transfers by operation of law when properties are sold in auction by a civil Court as well as by the Revenue Officials under the provisions of the Madras Revenue Recovery Act. In the case of private alienations, the rule is well settled that prior sanction should be obtained before the registration of the document takes place. We accordingly hold that prior sanction under Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act is not necessary before the Collector sanctions the auction sale under Section 134 of the Hyderabad Land Revenue Act. The result of our decision is that prior sanction under Section 47 is required only before the sale is confirmed under Section 138 of the Land Revenue Act'.

14. In K. Raji Reddy v. K. Suseelabai, 1986 (1) APLJ 27 (NRC), it was held that in the absence of permission under Section 47 and in the absence of validation certificate under Section 50-B, the infirmity of an invalid transaction subsists and continues. In view of deletion of Section 50-B, from 1972 there is no possibility of getting over the invalidity and hence the gift deed is void and unenforceable.

15. In *Ushanna v. Sambu Goud*, 1985 (3) APLJ 32, it was held that the need to obtain previous sanction under Section 47 from the Tahsildar for permanent alienation is mandatory and any permanent alienation or other transfer in contravention thereof, unless it is duly validated by operation of Section 50-B of the Act, is null and void. It is also held that this position of law is no longer *res Integra*. Referring to the earlier decision of this Court in *Syed Jalal v. Targopal*, wherein it was held that there is no prohibition under law to enter into an agreement but before a sale deed is executed it is mandatory to obtain the sanction of the Tahsildar as required under Section 47 of the Act, it is observed that the transfer without the permission of the Tahsildar is invalid and possession delivered there under would be deemed to be unauthorised or wrongful.

16. In *M. Pocham v. Agent to State Government*, : AIR 1978 AP242 , a Division Bench of this Court exhaustively considered the legislative history, the object of the amendment and the consequential legal effect of non-validation of permanent alienation or other alienation made without obtaining the prior permission of the Tahsildar. In the said judgment, the Division Bench also considered the question whether possession obtained under such invalid transfers can be protected under Section 53A of the Transfer of Property Act. The Division Bench further held that though Section 47 was deleted, the several transfers which were taken place from 1950 to 1969 could be validated with the aid of proceedings under Section 50-B and thereby the invalidity could be cured. Section 50-B was introduced with a definite purpose to save the invalid transactions that have taken place between June 10, 1950 to March 18, 1969 and the time was extended finally upto March 31, 1972. If the transferee or alienee did not avail himself of this opportunity of getting his alienation and possession validated under Section 50-B, he should suffer the consequences, since the transfer and delivery of possession remained invalid and unlawful after March 31, 1972. There is no possibility of validating all the invalid transactions that took place preceding that date. The contract of sale and the unauthorised and illegal possession of the land are null and void and the protection of Section 53A of the T.P. Act is not available. In *Vaddi Veeraiah v. Agent to Government*, 1998 (2) An.WR 606, another Division Bench of this Court also held that a person in possession in contravention of the provisions of the A.P. (Scheduled Areas) Land Transfer Regulation Act, 1959 is not entitled to claim the

benefit of Section 53-A of the Transfer of Property Act.

17. In view of these authoritative pronouncements, it has to be held that the finding of the lower Appellate Court that Exs.B25 and B17 are void and inoperative is correct and sound.

18. The lower Appellate Court having given a categorical finding in Para 15 of its judgment that as no permission is taken under Section 47 and the sale deed is not validated under Section 50-B, the sale transactions under Ex.B17 as well as Ex.B25 are invalid and void, made an inconsistent observation in Para 16 of the judgment that the agreement Ex.B25 is not hit by Section 47. This observation is not only contrary to its own earlier finding, but is also plainly contrary to the numerous decisions referred to above. It, therefore, follows from the above discussion that Ex.B25 as well as Ex.B17 are illegal, void and inoperative and they are hit by Section 47 of the Act. Point No.2 is answered accordingly.

Point No3:

The lower Appellate Court on a consideration of the evidence on record came to the conclusion that the plaintiff or his predecessors in title are not in possession of the suit lands since 1956 and that the pahanis-Exs.A1 to A14 and Exs.B 18 to B23 show that defendants 6 to 9 are in possession of the suit land from 1956 and they have been in possession on behalf of the Diecesion Society. The Appellate Court further held that even though legally Ex.B17 is a void document, the possession of the defendants from 1956 till the date of filing of the suit is uninterrupted and it is open and to the knowledge of the owner and as such the defendants have perfected their title by adverse possession. Normally, having regard to the limitations of a second appeal, it would not be open to this Court to interfere with a finding of fact arrived at by the lower Appellate Court, which is the final Court of fact, on the question of possession. But the question of adverse possession is a mixed question of fact and law. I am satisfied that the Appellate Court committed a grave error of law in holding that defendants 6 to 9 have perfected their title to the suit property by adverse possession for the following reasons. In view of the change brought about by Article 65 of the [Limitation Act, 1963](#), when once the plaintiff makes out title to the suit property, it is for the defendants to prove that the

title of the plaintiff has been extinguished by the adverse possession of the defendants for over the statutory period. The burden is thus clearly on the defendants to prove when their possession has become adverse and that such possession continued for more than the statutory period of 12 years, Admittedly, in the instant case, the agreement of sale Ex.B25 is in favour of one Singireddi Jogireddy, whereas the sale deed Ex.B 17 is in favour of defendants 8 and 9. In the pahanis, the name of T. Papaiah is shown as the person in occupation. It is no doubt the case of the contesting defendants that all the said persons are representatives of Diecesion Society and the purchase was actually made for and on behalf of the society. Even accepting the same to be true, the question still remains to be considered whether the possession of the land under Exs.B25 and B17 constitutes adverse possession. In *Achal Reddy v. Ramakrishna Reddiar*, 1991 (1) ALT (SC) 17 (NRC), it was held that in the case of executory contract of sale where the transferee is put in possession of the property in pursuance of the agreement of sale and where the parties contemplate the execution of a regular registered sale deed, the purchaser's possession is of a derivative character and in clear recognition of and in acknowledgement of the possession of the vendor. As such, the possession of the purchaser in such a case is permissive in character and it does not amount to adverse possession. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse, it was also held that in the case of an executory contract, the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed on behalf of the owner himself. In the same judgment, it is pointed out that the position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right or title to the property. In such a case, the possession of the transferee will be adverse to the real owner. In view of such authoritative pronouncement of the Apex Court, it must be held that the possession of the defendants from the date of Ex.B25 till the date of Ex.B17 is only permissive possession, but not adverse possession. If at all, it became adverse possession

only from the date of Ex.B17 i.e., 10-11-1966. As the suit was filed in November/December, 1977 itself, well within the period of 12 years, the defendants perfecting the title by adverse possession does not arise at all. Point No.3 is answered accordingly.

Point No.4:

In view of the finding on point No.3 above, it follows that the suit is within time and the question of limitation also does not arise. That apart, admittedly, the plaintiff was a minor by the date of Ex.B17 and the suit has been filed within three years from the date of attaining majority as per Section 6 of the Limitation Act. In this view of the matter also, the suit must be held to be within time.

19. For all the foregoing reasons, the second appeal is allowed, the judgment and decree under appeal are set aside and the suit is decreed as prayed for. However, there will be no order as to costs.

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