

Marothi Vs. Satyanarayana

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Court : Andhra Pradesh

Decided On : Jul-12-2002

Reported in : 2002(6)ALD134

Judge : C.Y. Somayajulu, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; [Limitation Act, 1963](#) - Schedule - Article 65

Appeal No. : A No. 2540 of 1987

Appellant : Marothi

Respondent : Satyanarayana

Advocate for Def. : Umakant Naik, Adv.

Advocate for Pet/Ap. : R. Vijayanandan Reddy, Adv.

Disposition : Appeal dismissed

Judgement :

C.Y. Somayajulu, J.

1. Defendant in OS No. 22 of 1984 on the file of the Court of the Additional District Judge, Adilabad, (which was originally instituted as OS No. 58 of 1982 on the file of the Court of the District Munsif, Adilabad) is the appellant.

2. Respondent filed the suit for declaration of his title to plot bearing Municipal No. 3-2-29/8 measuring 81' x 60' at Chotathalab locality in Adilabad, within the boundaries mentioned in the schedule appended in the plaint, which hereinafter would be called 'the suit land' and for possession thereof after dismantling the huts therein and for profits, past and future, alleging that he purchased the suit land from the appellant for Rs. 3,000/- under a registered sale deed dated 7-3-1969 and was put in possession thereof on that date, subsequently appellant filed OS No. 20 of 1977 in the Court of the District Munsif, Adilabad, seeking reconveyance of the suit land in his favour on the basis that the sale deed dated 7-3-1969 executed in his favour in respect of the suit land is only a nominal one and obtained an ex parte temporary injunction restraining him from interfering with the alleged possession of the appellant over the suit land, and under the guise of the said temporary injunction, appellant, without obtaining permission from the Municipality, constructed a hut in the suit land. The said OS No. 20 of 1977 was dismissed after trial. The decree of dismissal was confirmed in appeal by the District Court in AS No. 15 of 1979, but even then appellant has been continuing in possession of the suit land. Hence, the suit. Appellant filed his written statement contending that the sale deed relied on by the respondent is nominal and that respondent was never put in possession of the suit land, and that he, in his capacity as the owner of the suit land, raised the hut therein but not under the guise of the order of injunction obtained by him and since he is always ready and willing to repay the amount of Rs. 3,000/- borrowed by him from the respondent, respondent is not entitled to any relief. On the basis of the pleadings the trial Court framed as many as 9 issues for trial. In support of his case, the respondent examined himself as PW1 and marked Exs.A1 to A22. On his behalf appellant examined himself and 2 witnesses as DWs. 1 to 3, but did not adduce any documentary evidence. The trial Court held that the sale deed dated 7-3-1969 executed by the appellant in favour of respondent in respect of the suit land (Ex.A1) is true and was intended to be acted upon, and that the respondent was put in possession of the suit land and that the hut in the suit was not in existence by the date of filing of the suit OS No. 20 of 1977, that the suit land is not the ancestral and joint family property of the appellant and his sons, and that the sons of the appellant are not necessary parties to the suit, that the findings in OS No. 20

of 1977 operate as res judicata, and passed a decree in favour of the respondent. Hence the appeal.

3. The point for consideration is whether the respondent is entitled to the declaration and consequential relief of possession sought?

4. The main contention of the learned Counsel for the appellant is that Ex.A1 is a sham and nominal transaction and was never intended to be acted upon and possession of the suit land was never delivered to the respondent and since the question as to who is in possession of the suit land by the date of filing of OS No. 20 of 1977 was not necessary for deciding the said suit filed for specific performance of an agreement to reconvey the findings in OS No. 20 of 1977 do not operate as res judicata in this case, and in any event since appellant has been in possession of the suit for a period of over 12 years prior to 1977 appellant perfected his title to the suit land by adverse possession and so in view of Section 27 and Articles 58 and 64 of the Limitation Act, respondent is not entitled to any relief.

5. The contention of the learned Counsel for the appellant that the findings in OS No. 20 of 1977 do not operate as res judicata in the case has no force. Ex.A14 is the copy of the judgment in OS No. 20 of 1977, the suit filed by the appellant against the respondent for a direction to reconvey the suit land in his favour. Basing on the pleadings in that case the Court framed issue No. 3 as to whether appellant remained in possession of the suit land even after executing Ex.A1. The Court on the basis of evidence adduced by the parties held on issue No. 3 that appellant failed to establish that there was an agreement to reconvey the suit land, or that Ex.A.1 is a sham and nominal document and that he (appellant) continued in possession of the suit land even after executing Ex.A1 sale deed in favour of the respondent and ultimately dismissed OS No. 20 of 1977. Appeal preferred by the appellant in AS No. 15 of 1979 against the dismissal of OS No. 20 of 1977 was dismissed, as seen from Ex.A16. In Ex.A16 judgment the appellate Court clearly held that the appellant made unauthorised constructions in the suit land without prior permission of the Municipality and that he has neither title to nor legal possession over the suit land and dismissed the appeal. Thus, two Courts

concurrently held, in the suit filed by the appellant in respect of the suit land on the basis of Ex.A1, that Ex.A1 is not a sham and nominal document. So, it is clear that the title to the suit land stood transferred to respondent by virtue of Ex.A1, and the Courts also found that possession of the suit land was delivered to the respondent in pursuance of Ex.A1. Those findings do operate as res Judicata in this suit and so appellant cannot reagitate the points that were decided against him in the earlier suit filed by him.

6. The contention that appellant perfected his title to the suit land by adverse possession also has no force. Section 27 and Articles 58 and 64 of Limitation Act have no application to the facts of this case. Section 27 of the Limitation Act is an exception to the general principle that the Limitation Act (in personal actions) bars only the remedy and does not extinguish the right itself, in respect of suits for possession of property, because it lays down that after expiry of the period of limitation prescribed for institution of a suit for recovery of possession of property the owner ceases to have alright in the property. So, .if the suit is for possession of property if the owner fails to file the suit within the prescribed period of limitation, he would not only lose the right to seek a remedy but would also lose his right in the property. Since, this is a suit for reconvey of possession of immovable property based on title. Article 65 of Limitation Act, would apply, but not Article 64. So, unless and until the appellant is able to establish that he perfected his right to the suit land by adverse possession the right of respondent in the suit land would not get extinguished. In case of Article 65 of Limitation Act, time of 12 years begins to run from the time when the possession of the defendant (appellant) becomes adverse to the plaintiff (respondent). It is for the appellant to establish from when his possession over the suit land became adverse to the respondent. Appellant filed OS No. 20 of 1977 against the respondent and obtained an injunction against the respondent. From the findings in the Exs.A14 and A16 judgments, it is clear appellant made constructions in the suit land after filing of the suit OS No. 20 of 1977. The appellant also was held to be not in legal possession of the suit land after Ex.A1. Since appellant after he executed Ex.A1 came into possession of the suit land in 1977, under the guise of the injunction obtained by him this suit filed in the year 1982, well within the period of 12 years from the date of appellant entering into the possession of the suit land, question of appellant perfecting his

title to the suit land by adverse possession does not arise.

7. Even otherwise, prior to the appellant raising constructions in the suit land, it was a vacant land. It is well known that in case of vacant land, the presumption is that possession follows title. Since respondent by virtue of Ex.A1 is the owner of the suit land, he should be deemed to be in possession of the suit land till the appellant raised structures thereon. As stated earlier, the structure in the suit land was raised after the filing of OS No. 20 of 1977. So appellant cannot perfect his right by adverse possession.

8. Article 58 is in Part III of Schedule I of Limitation Act which relates to suits relating to declaration, Article 56 relates to obtaining declaration that a document is forged. Article 57 relates to declaration relating to adoptions. Article 58 relates to declaration other than those mentioned in Articles 56 and 57. Part III of Schedule I of Limitation Act, applies to declarations relating to instruments. Since, this is a suit relating to immovable property with a consequential relief of possession, Article 64, but not Article 58 of Limitation Act applies. As stated earlier the suit is filed well within the period of limitation. Since, respondent is the owner of the suit land and since appellant failed to establish that he perfected his title to the suit land in adverse possession, respondent is entitled to the declaration and consequential relief of possession sought. Point is answered accordingly.

9. In view of my finding on the point for consideration, I find no grounds to interfere with decree passed by the trial Court. Hence, the appeal is dismissed. But, in the circumstances, without costs.

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