

**State of Orissa Vs. Narasingha Gouda**

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**Court :** Orissa

**Decided On :** Mar-09-1973

**Reported in :** AIR1974Ori82; 39(1973)CLT689

**Judge :** S.K. Ray, J.

**Acts :** Limitation Act, 1908 - Articles 142 and 144

**Appeal No. :** Second Appeal No. 441 of 1969

**Appellant :** State of Orissa

**Respondent :** Narasingha Gouda

**Advocate for Def. :** B.B. Rath, Adv.

**Advocate for Pet/Ap. :** Standing Counsel

**Disposition :** Appeal allowed

**Judgement :**

**S.K. Ray, J.**

1. This is a defendant's second appeal from the confirming decision of the lower appellate court. This appeal relates to a suit filed by the plaintiff for declaration of title confirmation of possession and permanent injunction restraining the defendant from interfering with his possession. The suit land is A.O. 60 decimals comprised

in Survey No. 41/1 an village Pitatala in Chikiti Taluk. This land was a part of Paromboke, appertaining to estate of Chikiti. The plaintiff's case is that this land was in possession and enjoyment of one Sadi Appalswami who, after possessing the same for 35 years, sold it to the plaintiff's father under a registered sale deed, dated 21-7-48 for a consideration of Rs. 200/-. Since after his purchase, his father possessed the land and after his father, the plaintiff possessed the same till the date of the suit on 1-6-53, Chikiti estate vested in the State under the provisions of the Orissa Estates Abolition Act. Thereafter, in November, 1967, action was taken under Section 8 of Orissa Prevention of Land Encroachment Act, which is said to be the cause of action for the present suit, which was filed on 3-4-68.

2. The plaintiff based his case on two planes, one was acquisition of title by purchase under the registered sale deed, dated 21-7-48 and the other was, in the alternative, acquisition of title by adverse possession. The defendant claimed the suit land to be Government land and denied the plaintiff's acquisition of title by both modes.

3. Both the courts below have negated the title of the plaintiff on the basis of the sale deed. Ext. 1. The only question that arises for consideration is whether the plaintiff acquired title by adverse possession. In this case, since adverse possession is alleged to have commenced long prior to the commencement of Limitation Act 36 of 1963, the title of the State would not be extinguished before 1971 (see Sections 27 and 30 of the new Limitation Act) and that assuming the concurrent finding of the Courts below that the plaintiff's vendor was in possession for 35 years before he sold the suit property to the plaintiff is correct, tacking that 35 years of possession of Appalswamy to the plaintiff's possession, the total period of adverse possession by 3-4-68 when the suit was filed did not exceed 55 years. The Courts below have declared acquisition of title by adverse possession despite the fact that the total period of adverse possession did not exceed 55 years and that the State's title had not been extinguished by the date of institution of the suit, on the basis of the doctrine of presumption enunciated by the Madras High Court in case of Venkatarama Iyer v. Secy. of State for India in Council, (1910) ILR 33 Mad 362. Mr. B. B. Rath for the respondent also relies on that principle for dismissal of this appeal.

4. The Standing Counsel for the State contends that the doctrine of presumption as laid down in the Madras case, referred to above is no longer good law and that the plaintiff must prove adverse possession for 60 years before institution of the suit before he can acquire any title since the suit was instituted in 1968, 3 years prior to the reduced period of limitation, permitted under the new Limitation Act, expired in 1971. If this contention is upheld, the plaintiff must be non-suited.

The rule of presumption has been stated in the Madras case in the following words:

'When they (acts of ownership) are proved to have been done for 30 or 40 years, the presumption will be that they have been done for more than the statutory period, and the burden will be on the Crown to explain such acts and prove possession within the statutory period.'

5. This proposition of law has not been accepted in the subsequent Judicial decision as good and acceptable. In the case of Jayarama Naidu v. Secy. of State reported in AIR 1929 Mad 441, their Lordships said:

'A person who has occupied such land (Poromboke land) must prove in order to support his title either that he has received the land by grant, or that he has enjoyed adverse possession for 60 years so as to defeat the title of Government.'

Justice Reilly in a separate judgment in that case has stated as follows:

'But when a plaintiff comes to Court for a declaration of his title against the Crown a title which can have arisen at any time within at least the last two centuries only by grant of prescription, he can call to his aid no presumption that his possession has extended a day longer than he can prove. He must prove that this possession has extended to 60 years adversely to the Crown and can succeed only by the strength of his own case, not by casting the burden of proving the contrary on the Crown, That elementary doctrine was applied by their Lordships of the Privy Council in Secretary of State v. Chellikani Rama Rao, 43 Ind App 192 -- (AIR 1916 PC 21) and is beyond discussion.'

In the case of Secretary of State v. Debendra Lal Khan AIR 1934 PC 23 their Lordships of the Judicial Committee said that:

'If the plaintiff can establish that he and those from or through whom he derives right have for 60 years been in possession adverse to the Crown of the fishery, any right of the Crown thereto is extinguished and the plaintiff is entitled to succeed in his claim.'

In the case of State of Andhra Pradesh v. Kettubadi Fakrubi, AIR 1962 Andh Pra 518 their Lordships said that:

'A party, who sets up a title by adverse possession has to affirmatively prove his or her possession for over the statutory period and presumptions and probabilities cannot be substituted for evidence. Adverse possession has to satisfy necessarily the tests of adequacy, continuity, exclusiveness and publicity. The party, who asserts this, has necessarily to bear out his case with reference to these necessary elements. To say that when enjoyment for over 50 years was accepted, it would be tantamount to an enjoyment for over 60 years is wrong. The law cannot be interpreted that way.'

Thus, in absence of proof of adverse possession for 60 years or more before 3-4-68, when the suit was instituted, the case of acquisition of title by adverse possession must fail. The doctrine of presumption as laid down in the (1910) ILR 33 Mad 362 must be held to be no longer good law.

6. Mr. G.B. Patnaik, Standing Counsel has raised another point. If Appalswamy acquired any title by adverse possession, it was the intermediary's interest and the estate having vested in 1953 and the plaintiff who was the successor in interest of such intermediary's interest having failed to file his claim case under Section 8-A of Orissa Estate Abolition Act--and it is undisputed that plaintiff has not filed any such claim case --his right to settlement of the land with him became extinguished and his right to possession lapsed. There does not appear to be any flaw in this argument and the plaintiff must also be nonsuited on this ground.

7. For the aforesaid reasons, this appeal must succeed. Accordingly, the judgment and decree of both the Courts are set aside and the suit is dismissed, and the appeal is allowed, but, in the circumstances of the case, without costs.

Appeal allowed without costs.

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