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Court : Andhra Pradesh

Decided On : Sep-08-2010

Judge : Sri L. NaraSimha Reddy, J.

Appeal No. : S.A.No.471 of 2010

Appellant : Khuni Mosque Alias Babibia Mosque.

Respondent : Shaik Abdul (Died) and Others.

Advocate for Def. : Sri V.R.Reddy Kovvuri, Adv.

Advocate for Pet/Ap. : Sri M.N.Narasimha Reddy, Adv.

Judgement :

The appellant filed O.S.No.506 of 1996 in the Court of IV Additional Junior Civil Judge, Kadapa, against the deceased- 1st respondent (for short 'the respondent'), for the relief of perpetual injunction, in respect of the suit schedule property. During the pendency of the proceedings, the sole defendant - respondent died and his legal representatives were brought on record. It was pleaded that the suit schedule property, demarcated as KLMN, part of a large extent of land, marked as ABCD, in the plan, was owned by the appellant-mosque and the respondent was inducted as tenant therein, on 01-02-1962, on a meager rent. The manner, in which the title to the entire property accrued to the mosque, was also mentioned. It was alleged that though the respondent has no title to the property, he made an attempt to put terrace without the permission of the appellant, and in that view of the matter,

necessity has arisen to seek the relief of perpetual injunction, to restrain the respondent from making any construction.

The respondent, on the other hand, pleaded that the suit schedule property does not belong to the mosque at all and that he was not inducted into possession as a tenant by the appellant. According to him, he occupied the vacant Government land and constructed a thatched shed thereon around the year 1960, and thereafter, constructed a terraced house in the year 1965. He stated that he was never the tenant of the appellant, nor there existed any rental deed. He denied the allegation that he is trying to make any further construction.

After the respondent filed the written statement, the appellant amended the plaint, by incorporating the relief of declaration of title. The respondent, in turn, filed additional written statement. The trial Court decreed the suit, on 10.09.2004. Aggrieved thereby, the respondents filed A.S.No.117 of 2004 in the Court of Principal District Judge, Kadapa. The appeal was allowed through judgment, dated 12.01.2010. Hence, this Second Appeal.

Sri M.N.Narasimha Reddy, learned counsel for the appellant, submits that his client has proved the title to the property by filing link documents, spread over several decades, and established that the possession of the respondent upon the property is permissive in nature. He contends that the trial Court has examined the matter, in detail, with reference to the oral and documentary evidence and decreed the suit; and that the lower Appellate Court reversed the decree, without any basis. Learned counsel submits that several inconsistent observations are made by the lower Appellate Court, and even after holding that the respondents failed to prove adverse possession, reversed the decree passed by the trial Court.

Sri V.R.Reddy Kovvuri, learned counsel for the respondents, on the other hand, submits that the appellant was not clear as to whether it purchased the property or got it by way of gift and the very fact that the relief of declaration was prayed for without seeking recovery of possession discloses lack of certainty as to their claim.

The trial Court framed the following issues for its consideration: 1. "Whether the plaintiff is entitled to the permanent injunction as prayed for? 2. Whether the

plaintiff is entitled for declaration of title over suit property or not?"

On behalf of the appellant, PWs.1 to 7 were examined and Exs.A.1 to A.38 were filed. On behalf of the respondents, DWs.1 to 6 were examined and Exs.B.1 to B.15 were filed. A Commissioner was appointed and his report and other documents were taken on record as Exs.C.1 & C.2 and Exs.X.1 to X.6. The suit was decreed and in the appeal preferred by the respondents, the lower Appellate Court framed only one point for consideration, namely "whether the plaintiff is entitled to the declaration and perpetual injunction as sought for?". The appeal was allowed.

Initially, the suit was filed only for the relief of injunction. The possession of the respondent over the property was admitted and the prayer for injunction was in relation to the constructions said to have been proposed by the respondent. When the respondent asserted title to the property in himself, the relief of declaration was added through amendment. The appellant stated in the plaint that it has purchased the suit schedule property through a sale deed, dated 14.07.1956, marked as Ex.A.13. The document, however, turned out to be a gift deed. It failed to maintain distinction between a sale and gift. A specific plea was raised to the effect that the respondent was inducted into possession of the property as a tenant on 01.02.1962. The rent was said to be Rs.1.25 p. per month. It was not even alleged that the respondent stopped payment of rents or that any steps were taken to evict him. At least when the respondent asserted title in himself and denied the plea of the appellant that the premises were given on rent, the appellant ought to have claimed the relief of recovery of possession, along with the one, for declaration of title. For reasons best known to it, the appellant has not taken any such step.

There existed a basic flaw in very frame of the suit. Whenever the relief of declaration of title is prayed for, in respect of property, which is in the possession of the defendant in a suit, invariably the relief of recovery of possession was prayed for.

If the plaintiff does not have any objection for the defendants to remain in possession, without paying any rent and by asserting his own title, the prayer for declaration of title in favour of the plaintiff becomes redundant. The concept of

permissive possession would arise, if only the defendant admits the ownership of the property in the plaintiff. Therefore, the decree even if granted in favour of the appellant would be nugatory and the whole exercise would be futile. Another strong factor, which militates against the respondent, is that at least from the date of institution of the suit, the possession of the respondent over the suit schedule property has become adverse to the interests of the appellant and even after expiry of 14 years, he has not taken any steps for recovery of possession.

Notwithstanding the infirmities, referred to above, the appellant failed to prove that the property in possession of the respondent is the one, covered by Ex.A.13. Several admissions were extracted from PW.2, the surveyor and other witnesses to the effect that the suit schedule property is not Government proramboke.

Assuming that the appellant established title to the property, the plea raised by the respondent asserting his own right becomes relevant. The appellant admitted the possession of the respondent over the property at least from the year 1962. The suit was filed 34 years thereafter. The possession of the respondent would not have been treated as adverse to the appellant, if it was established that he was their tenant. No such effort was made, much less any material was placed. The contention advanced by the learned counsel for the appellant that the respondent could have taken the plea of adverse possession, if only he admitted the title of the appellant over the property cannot be accepted. The possession of an individual over an item of immovable property, who knows fully well that he has no title to it, would be adverse, to any one, who asserts title in it. The person in adverse possession of a property is not at all under an obligation to ascertain or verify as to who the owner of the property is? The very concept of adverse possession takes its origin, in an act of illegality. Such illegality in turn gets legal credibility solely on account of the lapse, indifference, or negligence on the part of the person, who was otherwise entitled to resist such illegal acts.

It is no doubt true that the lower Appellate Court, at more places than one observed that the possession of the respondent is not adverse to the appellant. However, the undisputed facts of the case namely that , a) the respondent is admittedly in possession of the property for several decades before the suit came

to be instituted; b) the appellant failed to prove their plea that the respondent is their tenant; and c) that the respondent asserted title in himself, on account of the long possession, are sufficient to constitute adverse possession.

Further, the plea of adverse possession would assume significance, only when plaintiff prays for recovery of possession of a property. The relief of declaration of title, does not in fact bother the defendant, who is in possession of the property. The reason is that the defendant very much knows that he does not hold title in the property and in some cases, he was even acknowledge such title. His effort would be only to resist recovery of possession on the strength of his adverse possession. Once the appellant has not chosen to pray for recovery of possession, the whole exercise was, in a way superfluous. No substantial question of law arises for consideration by this Court.

Hence, the Second Appeal is dismissed. There shall be no order as to costs.

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