



2023INSC877

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4471 OF 2010

SRI. K.M. KRISHNA REDDY **...APPELLANT(S)**

VERSUS

SRI. VINOD REDDY & ANR. **...RESPONDENT(S)**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The original plaintiff has preferred this appeal for challenging the judgment of the High Court in a second appeal by which the High Court has interfered and has set aside the decree passed by the first Appellate Court.

PLAINT

2. The appellant filed a suit for a perpetual injunction in respect of the immovable property more particularly described

in the schedule to the plaint (for short, 'the suit property'). According to the appellant, he and his brothers succeeded to the suit property after the demise of his father. He claimed that the suit property was allotted to his share under a family settlement dated 25th April 1993, executed by and between him and his brothers. The appellant claims to be in exclusive possession of the suit property. The suit is founded on the cause of action that on 18th June 1994, the respondents tried to interfere with his possession of the suit property. Therefore, a suit simpliciter for injunction was filed by him.

WRITTEN STATEMENT CUM COUNTER-CLAIM

3. The respondents-defendants filed a written statement cum counter-claim accepting that the suit property was originally owned by Sri. Muniswamappa, the late father of the appellant. The respondents' contention in the written statement was that they, along with their family members, were continuously in possession of the suit property from 1978 and were storing firewood, bricks, and manure. According to their case, they have been uninterruptedly using the suit property since 1978, and they have done so with the knowledge of the appellant, his father and their other family members, including his brother M. Jayarama Reddy (for short, 'Jayarama'). Therefore, the respondents claimed that they had perfected the title to the suit property by adverse possession.

4. Another contention raised by the respondents was that in the partition which took place after the death of the appellant's

father, the suit property was allotted to the share of Jayarama. In October 1983, the said Jayarama approached their mother and stated that if consideration was paid to him, the respondents could absolutely enjoy the suit property. According to the respondents, their mother paid a sum of Rs.5,500/- as a consideration to Jayarama who executed an agreement for sale in favour of their mother. It was also contended that in part performance for the agreement for sale, the respondents' mother was put in possession of the suit property. It was contended in the written statement that the appellant had filed a suit in collusion with his brother Jayarama.

5. A counter-claim was made by the respondents claiming a declaration that they have perfected their title to the suit property by way of adverse possession. They also claimed that the family settlement dated 25th April 1993, relied upon by the appellant was void and non-est.

AMENDMENT OF PLAINT

6. The appellant applied on 11th November 1997, to amend the plaint for incorporating paragraph 4(a) and a prayer for declaration of ownership and possession. The Trial Court allowed the amendment by the order dated 04th June 1998. After the amendment was allowed, the respondents filed an additional written statement, contending that the appellant could not improve his case by amendment.

FINDINGS OF THE COURTS

7. The Trial Court dismissed the suit and decreed the counter-claim. In an appeal preferred by the appellant, the District Court interfered and decreed the suit filed by the appellant. In a second appeal preferred by the first respondent, the High Court interfered by holding that the amendment incorporating the prayer for declaration was barred by limitation and that the same would not relate back to the date of institution of the suit. Hence, the High Court dismissed the suit. The High Court did not consider any other issue.

SUBMISSIONS

8. The submission of the learned counsel for the appellant was that all the material particulars regarding the appellant's title were already incorporated in the plaint as originally filed, and only by way of abundant caution was the amendment made to include a prayer for declaration of title. His submission is that the prayer was already implicit in the plaint as originally filed. He submitted that though the respondents admitted the appellant's title, without examining whether the respondents had established their plea of adverse possession, the High Court had erroneously interfered with the decree of the first appellate Court by dismissing the suit.

9. The learned counsel appearing for the respondents urged that the cause of action pleaded in the plaint as filed initially arose on 18th June 1994. He urged that as there was a serious dispute about the appellant's title, the suit was not

maintainable without seeking a declaration of title. He pointed out that the application for amendment was moved on 11th November 1997, after the expiry of the period of limitation provided under Article 58 of the Limitation Act, 1963 (for short, 'Limitation Act'). He submitted that the suit must fail once the amendment is held as time barred.

CONSIDERATION OF SUBMISSIONS

10. We have considered the submissions. As can be seen from the original plaint and the averments made in paragraph 3, the suit was founded on the title, as the appellant has set out on what basis he was claiming absolute ownership. There is an allegation that respondents have no title and no right to interfere with the appellant's possession.

11. In paragraph 9 of the written statement cum counter-claim filed by the respondents, it was specifically admitted that the appellant's father owned the suit property. It was urged that the respondents' father and, thereafter, the respondents were in open and peaceful possession of the suit property from 1978 and have perfected their title by adverse possession. An inconsistent plea was taken that the appellant's brother Jayarama had got the suit property in partition and that there was an agreement for sale executed by the said Jayarama in favour of their mother. In fact, they claimed that their mother was put in possession of the suit property in part performance of the agreement.

12. Thus, the respondents admitted the title of the appellant's father to the suit property. What was disputed by the respondents was the claim of the appellant that the suit property was allotted to his share under the family settlement dated 25th April 1993. Thus, even if the document of family settlement is ignored, the appellant was one of the co-owners of the suit property after the demise of his father. Though the respondents claimed that the appellant's brother Jayarama was the allottee of the suit property in partition, the respondents did not prove the partition. They could not establish that the suit property came to the share of the said Jayarama. At the highest, the respondents proved that under an agreement for sale executed by Jayarama, their mother paid consideration to the said Jayarama. However, in the written statement cum counter-claim, there is a specific pleading that is as under:

“Despite the fact that the defendants have perfected their right by way of adverse possession, on the advice of some of the well wishers their mother has paid a sum of Rs. 5,500/- towards full consideration to the property and M.Jayarama Reddy entered into an Agreement of Sale and consented for continuing the possession and possession was accepted in the said agreement. It is also made clear that as a part performance of the agreement to sell, the defendant's mother has been put in possession of the same.”

(underlines supplied)

13. Thus, the stand is that their mother was put in possession of the suit property by Jayarama in part

performance of the agreement for sale. This contention completely militates against the plea of adverse possession as this contention completely defeats the plea of adverse possession. The reason is that this contention shows that the respondents are not claiming hostile possession, which is an essential ingredient of a plea of adverse possession. In fact, at the trial stage, the respondents ought to have elected one of the two alternative pleas. However, issues framed by the Trial Court indicate that the respondents relied upon their plea of adverse possession as well as their plea based on the agreement for sale executed by the said Jayarama. Thus, going by the stand taken in the written statement of the respondents, they admitted that the appellant's father was the owner of the suit property. After the demise of his father, the appellant became one of the co-owners along with his brothers. The deed of partition pleaded by the respondents, based on which, according to them, Jayarama became the owner, has admittedly not been proved. In fact, in the written statement, the bare particulars of the partition on the basis of which Jayarama became the owner were not even pleaded by the respondents. The relevant part of the pleadings is as follows:

“The defendants submit that pursuant to the death of Muniswamappa, the plaintiff and his brothers have partitioned their properties and the property in question was allotted to M.Jayaram Reddy though he was not in possession.”

14. Hence, the respondents admitted the ownership of the appellant's father through whom the appellant claims title. Even going by the respondents' case, the appellant was the co-owner of the property, and the respondents admittedly had no title in respect of the suit property. Therefore, there was no dispute about the appellant's title as pleaded in the suit. The issue was whether the plea of adverse possession defeated that title. The burden of proving the plea of adverse possession was on the respondents. The burden on the appellant was to prove his possession on the date of the suit.

15. The question is whether it was necessary for the appellant to claim a declaration of title. On this aspect, a decision of this Court in the case of **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by Lrs. And Others**¹ is relevant. Para 13 and 14 of the said decision read thus:

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

¹ (2008) 4 SCC 594

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a

serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”
(underlines supplied)

16. It is obvious that there was no issue involved about the title of the plaintiff and his father. It is not as if the respondents had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant, which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the case at hand, it was not necessary for the appellant to claim a declaration of ownership. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable.

17. Only two questions were required to be dealt with. The first was whether the appellant had established that he was in possession of the suit property on the date of the institution of the suit. If the appellant fails to prove this issue, the suit will be liable to be dismissed. The burden was on the respondents to prove their plea of adverse possession, as there was a counter-claim seeking a declaration of ownership based on adverse possession. The counter-claim is in the nature of a cross-suit.

18. The High Court has decided only one issue: whether the amendment was barred by limitation. Therefore, in view of the above conclusion, the High Court will have to decide the other issues.

19. There were two substantial questions of law framed by the High Court, which read thus:-

- “1. Whether the appellate court was justified in reversing the judgment and decree passed by the trial court without considering the aspect of limitation?
2. Whether in the facts and circumstances of the case of appellate court was justified in reversing the judgment and decree passed by the trial court based on Exbhit P-1?”

We agree with the High Court that the amendment was barred by limitation, considering the date of the cause of action pleaded and the date of applying for amendment. It was not the case of the respondents that the suit as originally filed was

barred by limitation. Therefore, the first question does not survive. The second question, as framed, is not a substantial question of law.

20. As the High Court has not considered the merits of the suit and counter-claim, we propose to remand the regular second appeal to the High Court.

21. Hence, appeal is partly allowed. The impugned judgment dated 10th February 2010, is set aside, and Regular Second Appeal No. 1361 of 2007 is restored to the file of the High Court. Since the appeal is of 2007, which was admitted for final hearing, we direct the High Court to frame additional substantial questions of law by exercising power under the proviso of sub-Section (5) of Section 100 of the Code of Civil Procedure, 1908. The High Court shall proceed to decide the Regular Second Appeal in accordance with the law. Except for the issue of amendment of the plaint being barred by the limitation, all other issues are left open to be decided by the High Court.

22. Normally, this Court should never fix a time-bound schedule for disposal of a case pending before High Courts, which are Constitutional Courts. But, in this case, the Regular Second Appeal is of 2007. Therefore, the High Court shall give necessary out-of-turn priority to the disposal of the Regular Second Appeal. We direct the parties to this appeal to appear before the concerned roster Bench of the Karnataka High Court

on 30th October 2023, at 10.30 a.m., for fixing a date for hearing

23. No order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
October 06, 2023**