

CASE NO.:
Appeal (civil) 3594 of 2006

PETITIONER:
T. Anjanappa and Ors

RESPONDENT:
Somalingappa and Anr

DATE OF JUDGMENT: 22/08/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) Nos. 24307-24308 of 2004)

ARIJIT PASAYAT, J

Leave granted.

Challenge in these appeals is to the correctness of the judgment rendered by a learned Single Judge of the Karnataka High Court allowing in part two Second Appeals filed by the respondents in the present appeals.

Background facts in a nutshell are as under:

Two appeals were filed before the High Court against the judgment and decree passed by Civil Judge, Senior Division, Bellary in RA No.15/94 and RA No.16/94 arising out of O.S.No.168/85 and O.S.No.286/88 respectively on the file of Principal Munsiff, Bellary. O.S.No.168/85 was filed by the appellants. They filed a suit for declaration of title in respect of the suit schedule property described as a house site measuring 25' x 75' pictorially described in the rough sketch accompanying the plaint and which form part of CTS No.373/3A/1A/2/B in Block No.XXIV, Ward No.XXII, Devinagar, Bellary City. The plaintiffs claimed title to the property by virtue of entries in the Municipality records. The suit site was originally granted by Municipality to one Thippanna in the year 1962 from whom one Siddalinagana Gouda purchased in the year 1971 under registered sale deed. One Narasimhappa purchased the suit property from Siddalingana Gouda by a registered sale deed in the year 1978. The plaintiffs purchased the suit site from Narasimhappa under Ex.P.1 on 29.5.1985, two days after filing of the suit. It is said that the erstwhile owner Narasimhappa had mortgaged the property in favour of plaintiff. According to plaintiffs, the defendants had encroached upon a portion of the suit property to an extent of 15' x 25', put a hutment about three years prior to the suit, and therefore, on the strength of title the plaintiff sought for the relief of declaration of title and possession and also sought for injunction against the defendant not to repair or put up any permanent structure on the suit site. The defendants filed the written statement denying the title of the plaintiff contending that the defendants are in possession of the premises since the year 1969 by putting up hutment and

paying tax to the municipality. The defendants also contended that the property is a government land and they are in adverse possession of the property. A defence was also taken that the area has been declared as a slum area. Hence, they prayed for dismissal of the suit.

During the pendency of O.S. No.168/85, the defendant No.1 therein filed a suit in O.S. No.286/88. The plaint averments are reproduction of the written statement in O.S.No.168/85.

The trial Court dismissed the suit of T. Anjanappa, T. Sekharam and T. Govind (plaintiffs in O.S. NO.168/85) by rejecting claim of plaintiffs' title to the property. The suit filed by T. Somalingappa i.e. O.S.No.286/88 came to be allowed. Present appellants filed two appeals against the judgment and decree in O.S.No.168/85 and O.S.No.286/88 before the Civil Judge, Senior Division, Bellary. In appeal, the appellate court set aside the judgment and decree of the trial Court in O.S.No.168/85 and O.S.No.286/88, upheld the title of the plaintiffs and also granted relief of possession and thus allowed both the appeals filed by the plaintiffs. Second Appeals were filed challenging correctness thereof by T. Somalingappa and Dakshyanamma.

The following substantial questions of law were formulated at the time of admission :

1. Though the appellate Court has concurred with the findings of the Principal Munsiff regarding the appellant's possession and enjoyment of the property even before the purchase of the property by the respondent, whether the appellate court was justified in dismissing the suit of the appellants for injunction which was decreed by the Principal Munsiff.
2. The suit schedule property which was declared by the Government as a slum area, the action of the Municipality in granting allotment of the same in favour of the other persons. Whether the Municipality has got the power to allow the site, which was declared as a slum area by the government in favour of other persons.

The following additional substantial questions of law were framed at the time of hearing:

- (1) Whether the appellate Court was right in declaring title of the plaintiffs on the basis of Ex.P.1 which came to be executed after filing of the suit in O.S.No.168/85?
- (2) Whether the appellate court committed error in appreciating the oral and documentary evidence regarding the plea of adverse possession put forth by the defendants and the findings thereon are perverse and contrary to evidence on record?

According to the High Court, ticklish situation arose in the legal combat between the parties. When the suit O.S.No.168/85 was filed, obviously the plaintiffs had no title to the property, but they sought for declaration of title. In the absence of title, there was no basis for the plaintiffs to seek possession from the defendants. It was contended that the plaintiffs had taken the property as a security in a mortgage transaction from the erstwhile owner. High Court noted that the mortgage deed is not produced. It was observed that there is nothing on record to show that it was a possessory mortgage. Unless the plaintiffs had some kind of title or possessory interest they could not have sought for relief for possession.

According to the High Court though the defendants were in possession under the mistaken assumption of title with themselves or with the Government, same cannot be a ground to hold that the possession is not a hostile possession from the standpoint of the real owner. It was further held that the real owner when dispossessed under Article 64 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') has to seek possession within 12 years from the date of dispossession. It was therefore held that the findings of the court below i.e. first appellate Court that the defendants had failed to prove the plea of adverse possession is perverse and contrary to law and evidence on record. After holding so, it was further held that though the documents produced by the defendants do not fully establish the case of adverse possession to the full extent of 15' x 75', yet the stand of the defendants about actual physical possession read with the admission of the plaintiffs sufficiently establish that the defendants were in adverse possession of 15' x 75'. It was further held that even otherwise, the suit for possession to that extent was not filed within 12 years of dispossession and therefore grant of decree for declaration of the title and possession to that extent in favour of plaintiffs (appellants herein) is bad in law and liable to be set aside.

Learned counsel for the appellants submitted that the High Court's approach is clearly unsustainable in law. The concept of adverse possession has been clearly misunderstood by the High Court.

Learned counsel for the respondents on the other hand submitted that in view of the accepted position that the defendants were in possession for more than 12 years and that actual physical possession was with them the High Court cannot be faulted.

The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner. (See *Vidya Devi v. Prem Prakash and Ors.* (1995 (4) SCC 496).

Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

"Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. (See *Annasaheb v. B.B. Patil* (AIR 1995 SC 895 at 902).

Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See *Ward v. Carttar* (1866) LR 1 Eq.29). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only

entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See *Rains v. Buxion* (1880 (14) Ch D 537)).

Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is not held to be adverse if it can be referred to a lawful title.

According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.

In Halsbury's 1953 Edition, Volume-I it has been stated as follows:

"At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgement. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him"

It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties

interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable. Therefore, the appeal which relates to OS 168/85 is allowed by setting aside the impugned judgment of the High Court to that extent. Equally, the High Court has proceeded on the basis that the plaintiff in OS.286/88 had established his plea of possession. The factual position does not appear to have been analysed by the High Court in the proper perspective. When the High Court was upsetting the findings recorded by the court below i.e. first appellate Court it would have been proper for the High Court to analyse the factual position in detail which has not been done. No reason has been indicated to show as to why it was differing from the factual findings recorded by it. The first appellate Court had categorically found that the appellants in the present appeals had proved possession three years prior to filing of the suit. This finding has not been upset. Therefore, the High Court was not justified in setting aside the first appellate Court's order. The appeal before this Court relating to O.S. 286 of 1988 also deserves to be allowed. Therefore, both the appeals are allowed but without any order as to costs.

The appeals are disposed of accordingly.