

PETITIONER:
HARI KRISHNA PATEL & ANR.

Vs.

RESPONDENT:
STATE OF A.P. & ANR.

DATE OF JUDGMENT 28/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (1) 706 JT 1995 (9) 561
1995 SCALE (7) 248

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The appeal by special leave arises from the judgment and decree dated July 16, 1985 made by the High Court of A.P. in C.A.C.A. Nos.142 and 152 of 1978. The appellants laid the suit for declaration of the title in respect of Survey No.6 of Musheerabad village, Hyderabad, A.P. admeasuring 12.958 sq. mtrs. and for perpetual injunction restraining the respondents from interfering with the appellant's possession over the suit land and for costs of the suit. The trial court though decreed the suit on June 14, 1976, on appeal the High Court reversed the decree and dismissed the suit. Thus this appeal by special leave.

The only question raised in this case is whether the appellants had perfected title by prescription. Though the appellants had sought declaration of title, as rightly pointed out by the High Court, the appellants had not produced any documentary evidence except Ex. A-1 sale deed dated August 21, 1968 executed by his father and that, therefore, it did not conclude the matter. The claim was that the property was purchased from one Kulsum Bi. No documentary evidence was produced in proof thereof. Under these circumstances, there is no proof of title having been passed from Kulsuni Bi to the father to the appellants.

The only question is whether the appellants have perfected title by prescription. The High Court has decided the period of prescription prior to 1932 to 1963 and from 1963 to 1970 and thereafter. The evidence in support thereof was negatived by the High Court relying upon entries in the revenue record. Ex. A-13 is relevant for the period from 1928 to 1932. In column 10, the account-holder is described as 'Government' and in column 12 the name of the possessor is described as "Kulsum Bi, w/o Ahmed, possessor Mizar Mehdi Khan-Khandi Bala Kistaiah and Laxminarayana". In column 25 it was stated that "In No. 13, old number 5 on account of unauthorisedly making bricks, the land is being rendered

uncultivable during the previous year on account of the land being dry penalty was imposed". In column 26, it was stated that "In No.12 and 13, as per the 8 monthly statements, there are brick-kilns and bricks are being made. The Land pertaining to No.13 is included in the boundaries of Commerce and Industries Department but the same has not been delivered so far". In column 27 it was stated that "On account of setting up brick kiln in the boundaries of No.13, unauthorisedly, breaches are caused in land remaining land follow". Column 30 clearly mentioned that the Government was the owner of the land and it was laying penalty upon Kulsum Bi and the penalty was being collected. In Ex.A-1, similarly mentioned is the name of the appellant's father, viz., Laxminarayan being the unauthorised occupatier and making bricks kiln, penalty was imposed on him. It would clearly conclude that Government has been asserting its title to the land. Imposition of penalty and payment by Laxminarayan, appellant's father and Kulsum Bi amounts to accepting the title of the Government. Their possession is permissive possession. Thereby the appellants had acknowledged the title of the Government. From the year 1932 to 1963, there was no evidence as to the nature of the possession and enjoyment by the appellant's predecessor. Therefore, a presumption arises and it is a settled law that the same state of things continued from 1932 and would continue to be of the same state of affairs till 1963. The presumption could, therefore, be drawn both backward and forward of the continuance of the same state of affairs. Once such a presumption has been drawn, same state of things having continued from 1932 to 1963, the Government asserted its title and the appellant's predecessors have acknowledged the title of the lands from 1932 till 1963. Admittedly, the suit having been filed in 1975, i.e., within 13 years, the appellants had not perfected the title by prescription as against the Government. The findings of the High Court, therefore, do not warrant our inteference.

The appeal is accordingly dismissed. There shall be no order as to costs.