

Equivalent citations: 2008 (3) KarLJ 91

Bench: V Jagannathan

Consolidated Coffee Limited vs M. Satish S/O. Late M.P. Mallegowda on 20/8/2007

JUDGMENT

V. Jagannathan, J.

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1. This second appeal is by the defendant before the trial court in O.S. No. 311/1989. The said suit was filed by the respondent herein praying for a declaration that the plaintiff is the owner of 'B' schedule suit property and for its possession after determining exact area of encroachment by the defendant. The trial court dismissed the suit of the plaintiff on the sole ground that the appellant herein had established his right over the suit property i.e., 1 acre 16 guntas of land in Sy.No. 19, Kasaba Hobli, Page 1934 Chikmagalur Taluk, on the basis of adverse procession and having accepted the plea of the appellant, based on the adverse possession, the trial court, thus dismissed the suit filed by the plaintiff giving rise to an appeal being filed by him before the lower appellate court in R.A. No. 87/94 Learned judge of the lower appellate court after appreciating the ease of the parties and in the light of the judgment rendered by the trial court, came to a conclusion that the defendant had failed to establish his title by adverse possession because the element of animus was found missing and therefore, as the said factor was one of the important ingredients of claiming title by adverse possession, the lower appellate court disagreed with the view taken by the trial court and allowed the appeal filed by the plaintiff and the appellant herein was directed to handover possession of the suit property to the plaintiff and also ordered an enquiry into the mesne profits. Aggrieved by the aforesaid decision of the lower appellate court, the defendant has preferred this second appeal.

2. I have heard the learned Counsel Sri. Chikkanagoudar for the respondent-plaintiff and though the court waited for sufficient length of time in the hope that the learned Counsel for the appellant would turn up and submit his arguments, it was of no use and none appeared for the appellant. Therefore, left with no other alternative, this Court heard the counsel for the respondent in full and thus the following judgment is being delivered under the said circumstances.

3. The brief facts of the case as could be seen from the pleadings of the parties before the court below is that the respondent-plaintiff claiming to be the owner of the suit 'A' and 'B' schedule properties having got the same under a family partition on 20.4.1981 filed the suit stating that the defendant who is the appellant herein being the owner of a coffee estate commonly known as Arabic Cool Estate was encroached upon a portion of the property of the plaintiff in Sy.No. 19 to an extent of 1 acre 16 guntas of land in Mavinahalli Village and despite requests by the respondent, the appellant refused to surrender the encroached area to the plaintiff and thus, the cause of action arose in June 1986 compelling the respondent to file the suit and he churned the relief as stated above. The said suit was contested by the appellant herein by taking a specific stand even in the written statement that the appellant has been in possession of the 'B' schedule property after having purchased the entire Arabidacool Coffee Estate under the sale deed dated 16.7.1967 and since then the appellant has been enjoying the suit 'B' schedule property as full owner and as such, the suit of the plaintiff does not merit any consideration and further more the appellant had planted number of coffee seedling and shade trees and some of the trees are more than 20 years old and on these grounds, the appellant sought for dismissal of the suit.

4. The trial court based on the pleadings of the parties framed as many as 8 issues and answered issue No. 1 concerning the plaintiff being lawful owner of the suit 'A' and 'B' schedule properties, in the affirmative and so also issue No. 3 by holding that the plaintiff is entitled to recover possession Page 1935 of 'B' schedule

property from the defendant. At the same time, the trial court answered the issue concerning the claim of the defendant by way of adverse possession in the affirmative, but strangely answered issue No. 6 concerning the suit barred by limitation in the negative. Consequent to the said findings, the trial court came to the conclusion that the appellant herein had established its title to the suit property by way of adverse possession and accordingly, dismissed the suit of the plaintiff giving rise to an appeal being preferred by the said plaintiff in R.S. No. 87/94. Learned judge of the lower appellate court after considering the material on record and the reasons given by the trial court held that the trial court was in error in not taking note of the essential requirements of adverse possession and noting that the appellant had failed to satisfy one of the important requirements i.e., animus possessidendi and that the appellant had failed to prove its title by way of adverse possession and therefore, allowed the appeal filed by the plaintiff and reversed the judgment of the trial court and directed the appellant to handover the possession of the suit property to the plaintiff. It is this decision of the lower appellate court which is called in question by the defendant in this appeal.

5. At the time of admission of this appeal, this Court had framed the following substantial questions of law for consideration:

- i) Whether the findings of the Commissioner's Report of CW-I and in the light of Botany Expert?
- ii) Whether the finding of the lower appellate court is justified in so far as adverse possession by the appellant is concerned?

6. I have heard the submissions made by the learned Counsel for the respondents and as already stated, the appellant's counsel was not present to submit his arguments.

7. The submissions of the learned Counsel for the respondent that a careful perusal of the pleadings of the parties would go to show that the appellant herein has taken up a specific stand in his written statement, that he is the owner of the suit 'B' schedule property claiming the same under a sale deed dated 16.7.1967. But before the court, in the course of his evidence, the appellant takes up a stand of adverse possession. But the appellant has not been able to establish that it was in possession of the suit 'B' schedule property adverse to the interest of the plaintiff and the element of animus was found lacking in the case. Therefore, inferring to the law laid down by the Apex Court and also this Court with regard to the requirement of establishing the adverse possession through proper ingredients, it was submitted by the learned Counsel that the necessary ingredients have not been established and therefore, the lower appellate court has lightly rejected the plea of adverse possession canvassed by the appellant before it. In support of his submission, learned Counsel placed reliance on the decision of ILR 2002 Karnataka 2923, AIR 1995 SC 73, AIR 1997 SC 381 and AIR 2000 SC 385 to submit that it is not permissible for a person who claims to be the owner of the property to take up the plea of adverse possession and that mere possession for a long time does not Page 1936 convert a permissive possession into adverse possession and there was no evidence in the instant case to show the element animus and possession adverse to the knowledge of the real owner. Therefore, it was submitted that the findings recorded by the lower appellate court is just and proper requiring no interference by this Court Under Section 100 of the CPC.

8. In the light of the submissions made as above and taking note of the material on record, I find that in so far as the possession of 1 acre 16 guntas of land in Sy.No. 19 by the appellant is concerned, it is not in dispute. The Court Commissioner has also given a report to the very same effect by stating that the appellant has been in possession of the suit 'B' schedule property. It is also not in dispute that the plaintiff is the owner of 'B' schedule property having got the same under registered partition deed and that 'B' schedule property form part and parcel of the 'A' schedule property. Since the case of the appellant is based on adverse possession, it is necessary to keep in view the legal position as has been laid down by the Apex Court and also by this Court. This Court in a decision retried in the case of Venkatachalaiah v. Nanjundaiah dealing with adverse possession and the necessary ingredients to the satisfied, has observed thus:

In order to perfect title by adverse possession, two inseparable ingredients are necessary. They are: (1) Corpus Possessions (Physical possession); and

(2) Animus Possidendi (Intention to exclude the adversary from possession). The possession must also be adequate in continuity and publicity.... An ostensible ownership is no ownership at all. It is not possible to perfect the title of the property by being in hostile possession, against a name lender or an ostensible owner.... Since the acceptance of the plea of adverse possession has serious consequence of the real owner losing his title over the property, a clear case will have to be made out and any half hearted attempted in this regard should be discouraged.... Mere possession over a statutory period is not sufficient to succeed in a plea of adverse possession unless it is accompanied by adverse animus

9. In another decision of this Court reported in ILR 2002 Karnataka 2923, it has been held that it is not permissible for a person who claims to be the owner of the property to take up the plea of adverse possession and adverse possession has to be, specifically pleaded and courts to record a finding as to whether the possession was hostile to the knowledge of the owner. In the course of the said decision, this Court has also referred to the observations made by the Apex Court in the case and the relevant portion of the

said decision reads as under:

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The doctrine of adverse possession would arise only when the party has set up his own adverse title disclaiming the title of the plaintiff and established that he remained exclusively in possession to the knowledge of the appellant's title hostile to their title and that the appellant had acquiesced to the same.

10. In another decision in the case of *Rup Singh v. Ram Singh* AIR 2000 SC 1185, the Apex Court, has held that mere possession for long time does not convert permissive possession into adverse possession and where there was no cogent and convincing evidence to show as to when the possession became adverse and hostile, the concurrent finding of facts by the lower court cannot be interfered with by the High Court in the second appeal.

11. In yet another decision of the Apex Court resiled in AIR 1985 SC 1973 it has been held that possession of the co-owner or a licensee or of her agent or permissive possession, to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for long time does not result in converting, the permissive possession into adverse possession.

12 Keeping the above parameters of law laid down by the Apex Court and this Court, concerning the requirement of establishing the necessary ingredients of adverse possession, if we examine the case on hand, there is a specific stand taken by the appellant in the written statement that the appellant is the owner of suit 'B' schedule property having acquired the same under registered sale deed dated 16.7.1967. Thus, when the appellant claims title to the suit property by way of ownership under the sale deed, the question of appellant also claiming right over the suit property by way of adverse possession will not arise. The trial court was totally in error in not properly leading the pleadings of the parties. Secondly, the lower appellate court has rightly observed that the element of animus has been found missing in the instant case, even if for a moment, if we accept the plea of adverse possession set up by the appellant. The learned judge of the lower appellate court has dealt with this aspect of the matter in paragraph No. 18 of the judgment and the said paragraph reads as under:

18. Now the only point for consideration in the present suit is whether the defendant has perfected his title by way of adverse possession to dismiss the suit of the plaintiff. In view of the contention raised in the written statement in order to perfect the title by adverse possession. 2 inseparable ingredients are necessary i.e., (1)

corpus possession is (physical possession) (2) Animus Possessidendi (intention to exclude adverse from the possession). The possession must also be adequate in continuity and publicity and the person who claims must establish that he has perfected his title by law of adverse possession. The main contention of the defendant in this case is in the year 1967 the defendants purchased the estate and the suit land in question was at that time was fallow and it was uncultivated, there was special size stones in it and defendants have clear it and planted coffee plants and all the three witnesses in support of the ease of the defendant Page 1938 admitted the ownership of the plaintiff over the property but when exactly they have started their cultivation has not been clearly stated before the court. To establish adverse possession one must hold the property as real owner to hold the property to the exclusion of the real owner and he must develop adverse animus against the owner. Mere taking of plea of adverse possession is not sufficient to hold that the person who has taken the contention has become the owner of the property by the way of adverse possession is concerned. The real owner will lose his title for the property until and otherwise there is a clear case it is not proper to holder that a person claiming adverse possession will not become he owner of the property by way of adverse possession. The half-hearted attempt in this regard should be discouraged and it cannot be believed. It is observed in N.S. Society v. Alexander) the said decision is as

under:

It cannot be disputed that a person in possession of land the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of statute of limitations applicable to the ease, his light is forever extinguished and the possessory owner acquires absolute title.

14. Therefore, the view taken by the lower appellate court cannot be erroneous in law nor it can be said that it is contrary to the pleadings and evidence on record. Having made the above observations, learned judge of the lower appellate court went on to observe in para 19 of its judgment that the most important ingredients of law of adverse possession being the element of animus and the same having not been proved in the instant case, the case of the appellant cannot be accepted that the appellant became the owner of the suit 'B' schedule property by adverse possession.

15. Under the above circumstances, I am of the view that the reasoning given by the lower appellate court cannot termed as contrary to the pleadings and evidence on record or contrary to the well established principles of law governing the adverse possession. I therefore, find no error committed by the lower appellate court even while considering the report of the Commissioner CW1. For the aforesaid reasons, the appeal lacks merit and is dismissed. No costs.