

HARI KRISHNA PATEL AND ANR.

A

v.

STATE OF A.P. AND ANR.

NOVEMBER 28, 1995

[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

B

Suit for declaration of Title—No documentary evidence in support of claim—Revenue record showing Government asserted its title—Plaintiffs' predecessor acknowledging Government title—Penalty imposed on plaintiffs' predecessor for unauthorised occupancy—Suit filed within 13 years—Held plaintiffs' title was not perfected by prescription.

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A suit filed by the appellants for declaration of title in respect of suit property and for perpetual injunction restraining the respondents from interfering with appellants possession was decreed by the Trial Court. The appellants' claim that the property was purchased from one K was not supported by any documentary evidence. The High Court relied upon the entries in the Revenue Records and found that (i) Government had asserted its title to the land and plaintiffs' predecessor acknowledged the same; and (ii) penalty was collected from K and plaintiffs' predecessor being an unauthorised occupier. Accordingly, the High Court reversed the decree of the Trial Court.

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In appeal to this Court on the question whether the appellants have perfected their title by prescription;

Dismissing the appeal, this Court

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HELD : The findings of the High Court do not warrant interference. Imposition of penalty and payment by appellants' father and K amount to accepting 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 appellants' predecessor. Therefore, a presumption arises that the same state of things continued from 1932 to 1963. Same state of things having continued from 1932 to 1963, the Government asserted its title and the appellants' predecessor acknowledged the same. The suit having been filed within 13 years, the appellants had not perfected their title by prescription as against the Government. [763-D-F]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 206 of 1986.

From the Judgment and Order dated 16.7.85 of the A.P. High Court in C.C.C.A. Nos. 142 and 152 of 1978.

B A. Subba Rao for the Appellants.

Altaf Ahmed, ASG, A. Raghuvir, G. Prabhakar and B. Parthasarthy for the Respondents.

The following Order of the Court was delivered :

C 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.C.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. ad-measuring 12.958 sq. mtrs. and for perpetual injunction restraining the respondents from interfering with the appellants' 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.

E 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 Kulsum Bi to the father to the appellants.

G 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 negated 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-Kandi Bala Kistaiah and Lax-

minarayana". 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 has 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 occupier 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 interference.

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

T.N.A.

Appeal dismissed.