

A KATLA MUTHYAL NAIDU

V.

KOTHAPALLE VENKATAPPA NAIDU AND ORS.

Civil Appeal No. 2860 of 2009

B APRIL 27, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

C *Code of Civil Procedure, 1908: s.100 – Second appeal – High court dismissed second appeal holding there was no specific plea of adverse possession in the plaint – Bare reading of averments shows this to be factually incorrect – Matter remitted to High Court for consideration afresh.*

D **In the present appeal, the appellant is challenging the order of High Court whereby the second appeal was dismissed primarily on the ground that there was no place of adverse possession anywhere in the plaint.**

Allowing the appeal and remitting the matter to the High Court for consideration afresh, the Court

E **HELD: 1. A bare reading of the averments shows that the conclusions of the High Court that there are no specific pleas relating to adverse possession are factually incorrect. [Para 4] [87-H; 88-A]**

F **CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2860 of 2009**

From the Judgement and Order dated 18.02.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Second Appeal No. 1546 of 2004

G **P.S. Narasimha, A.V. Rao, Venkteswara Rao Anumolu, Prabhakar Parnam, with him for the Appellant(s).**

K. V. Vishwanathan, P.B. Suresh, Vipin Nair, Temple Law Firm, for the Respondent.

The Judgement of the Court was delivered by

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DR. ARIJIT PASAYAT, J.

Leave granted.

The controversy in the present appeal lies within a narrow compass. The plaintiff filed a second appeal in terms of the Section 100 of the Code of Civil Procedure, 1908, (in short the 'Code') questioning the reversal of the judgment and decree in O.S. No. 243/1997 passed by a learned Principal Junior Civil Judge, Puttur, by learned Senior Civil Judge, Puttur in AS No. 25/2002. The second appeal was dismissed primarily on the ground that there was no plea of adverse possession anywhere in the plaint. It was noted that on examination of the plaint the only allegation made in the plaint was that the defendants are trying to dispossess the plaintiff.

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Learned counsel for the appellant brought to our notice that the averments in the plaint at paras 2 and 4 which read as follows:

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"2: The plaintiff submits that over since the time of his father for more than 60 years, plaintiff and his family members have been in continuous, peaceful possession and enjoyment of the schedule property exercising absolute rights over the same. The plaintiff has been raising rain-fed crops in the schedule property. The plaintiff thus has perfected his title even by adverse possession also.

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4: The plaintiff further submits that he is a small farmer and as a matter of state policy the government is not collecting any kist for the schedule property. The plaintiff further submits that as stated supra to the knowledge of the defendants, the plaintiff and his family members have been in continuous, open, peaceful and uninterrupted possession and enjoyment of the plaint schedule property."

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A bare reading of the averments shows that the conclusion

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A of the High Court that there are no specific pleas relating to adverse possession are factually incorrect. Therefore, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration in accordance with law.

B An application for intervention has been filed by one Chekru Govinddaswamy (I.A No. 3) seeking impleadment on the ground that he has purchased property on 21st March, 2005. Learned counsel for the appellant opposed the petition stating that the applicant cannot be treated to be a pendente lite purchaser and the doctrine of lis pendense would not apply to such a case.

C We do not consider it necessary to express any opinion in that regard. If an application is filed before the High Court which has to hear of the second appeal, the application shall be considered it is proper perspective.

D The appeal is allowed to the aforesaid extent with no order as to costs.

D.G.

Appeal allowed.