

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**THURSDAY, THE THIRTY FIRST DAY OF MARCH  
TWO THOUSAND AND TWENTY TWO**

**PRESENT  
THE HONOURABLE SRI JUSTICE M.LAXMAN**

**APPEAL SUIT NO: 744 OF 2011**

Appeal under Section 96 of CPC against the Judgment and decree dated 27/06/2011 in OS No.244 of 2006 on the file of the Court of the Senior Civil Judge, at Vikarabad, Ranga Reddy District.

**Between:**

Patti Manemma, W/o, Late Narasaiah Agriculture R/o. Mirzaguda Village, Chevella Mandal, Ranga Reddy District-A.P.

**AND**

**...APPELLANT**

1. K. Balamani, W/o. Late K. Chandra Shekar Household
  2. K. Manohar Babu, S/o. Late K. Chandra Shekar Advocate
  3. K. Uday Kumar, S/o. Late K. Chandra Shekar Business
- All are R/o. H.No. 19-1-775, Outside Dood Bowli, Maharaj Gunj, Hyderabad - AP

**...RESPONDENTS**

**ASMP. NO: 2406 OF 2011**

Petition filed under Order 41 Rule 2 of CPC R/w. Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the execution of judgment and decree dated 27.06.2011 in OS.No.244/2006 on the file of the Senior Civil Judge, Vikarabad.

**IA NO: 1 OF 2021**

Petition filed under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation by effect of the judgment and decree passed in OS.No.244 of 2006 passed by the Senior Civil Judge, Vikarabad, dt. 27/06/2011, pending disposal of the appeal

**For the Appellant : SRI VENKATA RAGHU RAMULU, Advocate**

**For the Respondent Nos.1 to 3 : SRI DAMODAR MUNDRA, Advocate**

**The Court delivered the following: JUDGMENT**

THE HONOURABLE SRI JUSTICE M.LAXMAN

APPEAL SUIT No.744 of 2011

JUDGMENT:

This appeal assails judgment and decree dated 27.06.2011 in O.S.No.244 of 2006 on the file of Senior Civil Judge at Vikarabad, Ranga Reddy District, whereunder and whereby the suit filed by the respondent herein for recovery of possession of the suit schedule property was allowed.

2. The appellant herein is the defendant and the respondents herein are the plaintiffs in the said suit. For the sake of convenience, the parties hereinafter are referred to as they are arrayed in the suit.

3. The sum and substance of the case of the plaintiffs is that originally Gandla Shivamma was the owner and possessor of lands admeasuring Ac.3-15 guntas in Sy.No.24/AA and Ac.8-37 guntas in Sy.No.27/A/2, total admeasuring Ac.12-12 guntas, situated at Mirzaguda Village, Chevella Mandal, Ranga Reddy District (hereinafter, they are referred to as 'suit schedule properties'), having acquired the title and possession under a sale certificate (Ex.A-1) dated 29.08.1938 (29<sup>th</sup> Abaan 1348 Fasli), issued by the District Judge, Basheerabad. The said sale


certificate was granted in a mortgage suit and she was the successful bidder in the open auction conducted by the District Judge, Basheerabad for recovery of mortgage amount. One late K.Chandra Shekar was the only son of Gandla Shivamma and the plaintiffs are the wife and children of K.Chandra Shekar.

4. The pleadings of the plaintiffs further show that originally, one Patti Baliga, S/o. Nagaiah, R/o. Mirzaguda Village, was the owner of the suit schedule properties and he mortgaged the suit schedule properties to Teli Chandraiah. In realization of the mortgage amount, the suit schedule properties were put to auction and Gandla Shivamma stood as successful bidder and she was granted the sale certificate. The same was implemented in the revenue records by the judgment of Tahsildar dated 05.04.1944 (5<sup>th</sup> Teer 1354 Fasli) as well as in the Jamabandi vide Tahsildar dated 16.09.1939 (16<sup>th</sup> Azar 1349). Said Patti Baliga also made a statement before the Tahsildar admitting the possession of Gandla Shivamma. After the death of Gandla Shivamma, the suit schedule properties were devolved upon the plaintiffs, who are her surviving legal heirs since her son K.Chandra Shekar pre-deceased her i.e., Gandla Shivamma died

on 21.06.2004 and K.Chandra Shekar died on 10.02.2004. By virtue of succession, the plaintiffs became the absolute owners and possessors of the suit schedule properties.

5. The pleadings of the plaintiffs further show that the defendant, without any right or interest over the suit schedule properties, claiming to be the granddaughter of Patti Malliga, managed the revenue authorities and fraudulently got mutated her name in the revenue records as pattedar and possessor in respect of the suit schedule properties. Therefore, such entries do not confer any title to the defendant. Taking advantage of such fraudulent entries, the defendant forcibly dispossessed the plaintiffs from the suit schedule properties in the month of July, 2005 and attempted to alienate the suit schedule properties. In those circumstances, the plaintiffs issued legal notice dated 10.04.2006, for which, the defendant got issued a reply notice dated 12.06.2006. Subsequently, the plaintiffs filed the present suit.

6. The defendant filed a written statement wherein she has admitted about the ownership and possession of Patti Baliga over



the suit schedule properties, but denied the mortgage of the suit schedule properties by Patti Baliga in favour of K.Chandra Shekar. She has further denied the averments that the suit schedule properties were put to auction for recovery of mortgage amount; that Gandla Shivamma stood as successful bidder; and that she was granted sale certificate. According to the defendant, the sale certificate and other related documents were fabricated in collusion with revenue officials and such documents were created to support a stray entry fund in the revenue records. She has also denied the ownership and possession of Gandla Shivamma as well as the plaintiffs.

7. The pleadings of the defendant further show that Patti Nagaiah had two sons viz., Balaiah and Mallaiah and the defendant is the descendant of late Balaiah, who died leaving behind one son Narsaiah and four daughters. After the death of Narsaiah, the defendant succeeded the suit schedule properties. The defendant denied the averment that she obtained the mutations in the revenue records with collusion of revenue officials. She claimed that after the death of Balaiah, mutation was effected in the name of his son, being the successor-in-

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interest. Right from 1954 till today, the revenue records show the names of the defendant and her ancestors. Till today, the plaintiffs have not taken any steps to rectify such entries, if really the entries are wrongly made.

8. The defendant further denied about forceful dispossession of the plaintiffs from the suit schedule properties in the month of July, 2005. She has further stated that in the legal notice issued by the plaintiffs, there is no claim of forceful dispossession, and hence, the cause of action shown in the suit is invented only to extract the money from the defendant. It is also claimed that in the year 1999, the mutations were granted in favour of the defendant after the death of her father Narsaiah. Subsequently, she was issued passbooks and has been in continuous possession and enjoyment of the suit schedule properties by paying the land revenue, and she prayed to dismiss the suit.

9. The trial Court, on the basis of the above pleadings, has framed the following issues:

1. Whether the plaintiffs are the absolute owners of the suit land and entitled to recover the possession of the suit land?
2. Whether the suit is filed within limitation?

3. To what relief, the plaintiffs entitled to?"

10. The plaintiffs, to support their case, examined P.Ws.1 and 2 and relied upon Exs.A.1 to A.9. The defendant, to support her case, examined D.Ws.1 to 3 and relied upon Exs.B.1 to B.21.

11. The trial Court, after appreciating the evidence on record, found that the plaintiffs have established the title over the suit schedule properties and also their dispossession by the defendant and decreed the suit granting relief of recovery of possession of the suit schedule properties. Challenging the said judgment and decree, the defendant filed the present appeal.

12. In the light of the contentions raised by the learned counsel for both sides, the following points emerge for consideration.

\*1. Whether the plaintiffs established their title over the suit schedule properties?

2. Whether the plaintiffs are entitled for recovery of possession of the suit schedule properties?

3. To what relief?"

**Point No.1:**

13. The plaintiffs rest upon the sale certificate under Ex.A-1 to establish their title over the suit schedule properties. The



defendant's case is that Exs.A-1 to A-5 i.e., the sale certificate, Jamabandi proceedings, Faisal Patti, judgment of Tahsildar and alleged statement of Patti Baliga are fabricated to suit the stray entry found in the revenue records. The plaintiffs' evidence show that Patti Baliga was the original owner of the suit schedule properties and the same is not disputed by the defendant. The plaintiffs claimed that the suit schedule properties were mortgaged in favour of Teli Chandraiah, the father of Gandla Shivamma, who is the paternal grandmother of plaintiff Nos.2 and 3 and mother-in-law of plaintiff No.1, and in realization of the mortgage amount, the suit schedule properties were put to auction and the sale certificate was issued in auction conducted by the Court for recovery of mortgage amount. Admittedly, the plaintiffs have not produced the mortgage deed and the mortgage judgment and decree, except the sale certificate.

14. Learned counsel for the appellant/defendant has brought out certain anomalies in the sale certificate vis-à-vis the pleadings of the plaintiffs. According to him, the said anomalies were completely ignored by the trial Court. The plaintiffs placed



reliance on Ex.A-7, khasra pahani for the year 1954-55, to corroborate Ex.A-1, sale certificate.

15. A close scrutiny of Ex.A-7 shows that the name of Gandla Shivamma is recorded as pattedar of the land and the name of Patti Baliga was recorded as record-holder as well as the actual cultivator and the possession is shown as 'Najayaz Khabja'. The cross examination of P.W.1 shows that he admits that he has not produced any revenue record to show either Gandla Shivamma or her father were in possession of the suit schedule properties since 1954 till the date of alleged dispossession.

16. A close scrutiny of Ex.A-1, sale certificate, shows that it was issued in the name of Sivamma and there is no reference of surname 'Gandla' and she was shown as decree-holder and Palgotta Balaiah was shown as judgment-debtor. The surname of the plaintiffs shown in the plaint is 'Kamanla'. The same is the case of P.W.2, who is no other than a close relative of late Gandla Shivamma, however, the surname of Shivamma was shown as 'Gandla'. It is an admitted case of the plaintiffs that they have not produced any record to show that Shivamma's surname is

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also Gandla. The evidence of interested witness i.e., P.W.2 shows that for the last 50 to 60 years, he has been staying in Hyderabad only.

17. The other anomaly pointed out is that the sale certificate was issued in respect of Sy.Nos.23 and 27, but the suit schedule properties are mentioned in the plaint showing Sy.Nos.24 and 27. This has not been clarified. Apart from that, the sale certificate shows the name of judgment-debtor as 'Palgotta Balaiah' and the defendant's surname is 'Patti'. The another anomaly is that the sale certificate does not disclose the extent of land which was auctioned out and confirmed sale certificate in favour of Gandla Shivamma. Shivamma's father name is also not referred in the decree, however, her husband's name is referred as Mallappa. There are no pleadings to show that Mallappa is the husband of Shivamma. The oral evidence of the plaintiffs also does not support that 'Gandla Shivamma' is the wife of 'Mallappa'. Further, the name of the father of Gandla Shivamma is referred as 'Teli Chandraiah' i.e., his surname is shown as 'Teli', whereas the surname of Shivamma is referred as 'Gandla'. This discrepancy was also not cleared out by the plaintiffs. The

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oral evidence of P.Ws.1 and 2 is not clear whether their surname is 'Kamanla' or 'Gandla'. They did not file any document to show that their surname is also 'Gandla' and it is not referred in the pleadings filed by them.

18. The evidence of P.W.1 shows that Gandla Shivamma stayed upto 2002 in Aloor Village. Ex.A-1, sale certificate, shows that Shivamma is the resident of Umda Bazar, Balda, but not Aloor. This discrepancy is also not explained. In addition to that, the plaintiffs failed to produce any mortgage decree and also the proceedings whereunder the possession of the suit schedule properties was delivered. This was also admitted by the plaintiffs' witnesses. The oral evidence of P.W.1 and the contents of legal notice issued by the plaintiffs under Ex.A-8 show that after the death of Gandla Shivamma, they found the documents under Exs.A-1 to A-7 in a box and thereafter, they came to know about the existence of the suit schedule properties. However, their oral evidence shows that the suit schedule properties were being cultivated by Gandla Shivamma and P.W.1 used to visit the lands when the suit schedule properties were cultivated by Gandla Shivamma. Further, during the life time of Gandla

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Shivamma, she has not made any grievance against the claim of the defendant or her ancestors over the suit schedule properties. All the revenue records are not supporting the claim of title and possession of the plaintiffs, except the khasra under Ex.A-7.

19. The contention of the learned counsel for the appellant/defendant is that on account of stray entry found in the khasra, the plaintiffs are asserting right over the suit schedule properties to coerce the defendant. The long silence on the part of the plaintiffs and their ancestors to claim the suit schedule properties, absence of mortgage decree and delivery of possession and the anomalies made out in the sale certificate are all go to show that the plaintiffs have not established their source of title, more particularly they are related to Shivamma and failed to prove that judgment debtor as Patti Balliga. Added to that, the sale certificate contains Sy.No.23, whereas the suit is filed in respect of land in Sy.No.24. It is not explained how Sy.No.23 became Sy.No.24. The plaintiffs have not filed any record to show that Sy.No.23 is re-designated as Sy.No.24.

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20. All the above circumstances go to show that the plaintiffs failed to establish their title to the suit schedule properties. The trial Court, without properly appreciating the entries in the revenue records and the oral evidence of the plaintiffs, wrongly came to the conclusion that the plaintiffs established the title to the suit schedule properties. Such finding of the trial Court requires to be set aside. The point is accordingly answered in favour of the defendant.

**Point No.2:**

21. The legal notice issued by the plaintiffs under Ex.A-8 is a crucial document to show what was the original case of the plaintiffs. The relevant portion reads as under:

"2. That, after the death of Gandla Shivamma recently on 1-03-2006, my clients found the documents like khasara pahanies, Sale Certificate and other documents and immediately my client No.2 went to the office of the Mandal Revenue Office and verified the records and found that your name was recorded in the pattedar and possessor column of the land in Sy.No.24/AA admeasuring 3 acres 15 guntas and Sy.No.27/A/2 admeasuring 8 acres 37 guntas situated at Mirzaguda Village, Chevella Mandal, Ranga Reddy District and prior to that, the name of your husband was recorded and same entries found and declared your husband as illegal trespasser and encroacher.

3. It is settled law and in view of provision of Specific Relief Act, a trespasser and illegal encroacher will remain and always a trespasser in respect of the status of the land as

against the claim and interest, title of my client and even though the long standing possession in Revenue Records in possession column in respect of the illegal encroacher, the status remains as on only but under the guise of stray entries in the Revenue Records, there will not be any claim for obtaining the pattadar passbook and title deeds."

22. The above contents of the legal notice show that the plaintiffs admit the long standing possession of the defendant and her ancestors based on the revenue records. However, they claimed that the defendant is in possession as a trespasser and encroacher. These recitals were admitted by P.W.1 in his cross examination. In the said legal notice, there is no reference of forceful dispossession of the plaintiffs in the month of July, 2005, which is the cause of action set up by the plaintiffs to seek recovery of possession of the suit schedule properties.

23. Exs.B-3 to B-21 clearly show that the defendant and her father Narsaiah were recorded as patta holders and possessors in the pahanis for the relevant years. It is also the case of the defendant that from 1954 onwards, the revenue records show that the defendant or her ancestors were recorded as actual cultivators of the suit schedule properties. But, this aspect is not seriously in dispute. P.W.1 clearly admitted that he has not filed any record to show that the plaintiffs were in possession of the

suit schedule properties even as on the date of alleged dispossession i.e., July, 2005.

24. Admittedly, the plaintiffs came to know about the existence of the suit schedule properties only after the death of Gandla Shivamma i.e., after 2004 only. That means, till such time, they were not aware of the actual pattedars and possessors of the suit schedule properties. Therefore, any amount of evidence about possession from P.W.1 has a little relevance.

25. P.W.2 is admittedly a native of Hyderabad and he was staying in Hyderabad for the last 50 to 60 years. He has also failed to give the description of boundaries of the suit schedule properties. He is also not the native of Mirzaguda, where the suit schedule properties are located.

26. The evidence of D.Ws.2 and 3, who are the neighbouring land holders, shows that the defendant is in possession of the suit schedule properties. Prior to him, Narsaiah was in possession, and for some time, Ramulu or Ramaiah, who is no other than the son of Narsaiah, and who died issueless, was in possession.

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27. The defendants filed additional documents such as pahanis (except the pahanis exhibited under Exs.B-3 to B-21) from 1955-58 onwards till 2019-2020, title deeds and passbooks. These documents were filed without any application to receive the said documents. Even though all those documents reflect the patta and possession of Narsajah and the defendant, they cannot be received without there being a proper application. In fact, such documents are not necessary for the reason that it is the admitted case of the plaintiffs that no revenue records show that they are in possession of the suit schedule properties. Even as per the record under Ex.A-7, khasra pahani, the defendant's ancestor i.e., Patti Narsajah was in possession and not Gandla Shivamma.

28. Learned counsel for the respondents/plaintiffs strongly placed reliance on Exs.A-2 to A-6 i.e., Jamabandi proceedings, faisal patti, judgment of Tahsildar, statement of Patti Baliga and pouthibai, to contend that Gandla Shivamma was put into possession of the property and that Patti Baliga had admitted the possession.

29. The basic document of delivery of possession by the Court which granted sale certificate has not been produced by the defendants. Normally the procedure for delivery of possession is to file an application for delivery of possession upon grant of certificate by the Court, and upon such application, the Court is required to issue notice to the person in possession, and by appropriate proceedings, the possession would be delivered to the purchaser. These important proceedings are not placed on record as evidence. Apart from the same, even the mortgage decree of the Court has not been filed except the sale certificate which also has lot of ambiguity and it does not refer to Gandla Shivamma, but it refers Sivamma. Further, it does not refer to Patti Baliga, who is the ancestor of the defendant, but it reflects as Palgotta Balaiah.

30. The evidence of the defendant clearly shows that there is no person in the name of Palgotta Balaiah. The plaintiffs, to support such a claim, examined P.W.2 to show that there are persons with surname 'Palgotta' in Mirzaguda Village. This evidence requires scrupulous scrutiny for the two reasons. The first is that P.W.2 is a very close relative to the plaintiffs, as such, he is

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an interested witness and the second is that he is not native of Mirzaguda Village and he has been staying in the Hyderabad for the last 50 to 60 years. His evidence is less convincing than the evidence of D.Ws.2 and 3, who are no other than neighbouring land holders of same village. D.W.3 has initially stated that there are people with Palgotta surname, but he has later clarified that there is no person with such surname. The trial Court has not correctly appreciated the admissions and the recitals of the legal notice (Ex.A-8) which clearly show that the plaintiffs failed to establish their possession till July, 2005.

31. It is to be noted that a person seeking decree for possession is required to establish his entitlement of possession and his claim is not barred by law of limitation. He must establish his possession before the alleged trespasser got into possession. In this regard, it is apt to refer to Section 3 of the Limitation Act, which reads as under:

**"3. Bar of limitation:-** (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act:-

(a) a suit is instituted-

- (i) in an ordinary case, when the plaint is presented to the proper officer;
- (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and
- (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

- (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;
- (ii) in the case of a counter claim, on the date on which the counter claim is made in court;
- (iii)

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

32. A reading of the above provision shows that requirement of Section 3 is absolute and mandatory. The Court has no choice except to see the compliance of the requirement. It is the duty of the Court to dismiss the suit which on the face of it is barred by limitation even though a specific issue was not raised. In this regard, it is necessary to refer to the latest judgment of the Apex Court in **Nazir Mohamed v. J.Kamala**<sup>1</sup>, which reads as under:

"51. A person claiming a decree of possession has to establish his entitlement to get such possession and also establish that

<sup>1</sup> 2020 SCC OnLine SC 676

his claim is not barred by the laws of limitation. He must show that he had possession before the alleged trespasser got possession.

52. The maxim "possession follows title" is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else. In this case it is admitted that the Appellant-Defendant is in possession and not the Respondent Plaintiff.

53. A suit for recovery of possession of immovable property is governed by the Limitation Act, 1963. Section 3 of the Limitation Act bars the institution of any suit after expiry of the period of limitation prescribed in the said Act. The Court is obliged to dismiss a suit filed after expiry of the period of limitation, even though the plea of limitation may not have been taken in defence.

54. The period of limitation for suits for recovery of immovable property is prescribed in Part V of the Schedule to the Limitation Act, 1963, and in particular Articles 64 and 65 thereof set out hereinbelow for convenience:

**'PART V— Suits Relating to Immovable Property:**

Description of suit	Period of limitation	Time from which period begins to run
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of	Twelve years	The date of dispossession

the property has been  
dispossessed

65. For possession of  
immovable property or  
any interest therein based  
on title

Twelve years

When the possession  
of the defendant  
becomes adverse to  
the plaintiff.

*Explanation: For the purposes of this article:-*

(a) where the suit is by a remainderman, a reversioner [other than a landlord] or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.'

55. In the absence of any whisper in the plaint as to the date on which the Appellant-Defendant and/or his Predecessor-in-interest took possession of the suit property and in the absence of any whisper to show that the relief of decree for possession was within limitation, the High Court could not have reversed the finding of the First Appellate Court, and allowed the Respondent-Plaintiff the relief of recovery of possession, more so when the Appellant-Defendant had pleaded that he had been in complete possession of the suit premises, as owner, with absolute rights, ever since 1966, when his father had executed a Deed of Release in his favour and/or in other words for over 28 years as on the date of institution of the suit.

56. As held by the Privy Council in *Peri v. Chrishold* reported in (1907) PC 73, it cannot be disputed that a person in possession of land in 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 right of possession by law, within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever distinguished, and the possessory owner acquires an absolute title."

32. A reading of the above judgment would show that the Court is under obligation to dismiss the suit which was filed after the expiry of period of limitation, even though the plea of limitation has not been taken in defence.

33. The period of limitation for recovery of possession of title is twelve years. In the present case, the defendant has not taken specific plea of suit barred by limitation. The evidence of the plaintiffs and recitals of legal notice show that the defendant and her ancestors are having long standing possession based on the entries in the revenue records as trespassers or encroachers. The own document relied upon by the plaintiffs under Ex.A-7, Khasra pahani, shows that the ancestor of the plaintiffs was not




in possession from 1954-55 onwards and thereafter also. From the evidence on record, the defendant and her ancestors have been in possession of the suit schedule properties more than 60 years. Except the oral claim of forceful dispossession in the month of July, 2005, no documentary evidence like revenue records were filed to show the possession of the plaintiffs prior to the alleged dispossession.

34. The oral evidence of D.Ws.2 and 3 clearly show that the defendant and her ancestors were in continuous possession over the suit schedule properties. This oral evidence gets corroborated from the very recitals of the legal notice issued by the plaintiffs prior to institution of the suit and revenue records. In fact, in the legal notice, there is no claim of forceful dispossession which is claimed in the plaint. If really there was dispossession in the month of July, 2005, the legal notice which was issued subsequently must reflect the same. In fact, the plaintiffs are not aware of existence of the suit schedule properties till 2004. It is not known how they came into possession from 2004 to July, 2005. Absence of such claim in the legal notice and the recitals of the legal notice clearly show

that the plaintiffs have failed to establish their possession within twelve years from the date of institution of the suit, and even they failed to establish that prior to the alleged date of dispossession i.e., July, 2005, they were in possession of the property.

35. The trial Court, instead of appreciating the evidence of the plaintiffs, went on weakness of the defendant stating that she has not produced any evidence to show that she is in long standing possession over the suit schedule properties. This is contrary to the evidentiary burden and the plaintiffs are duty bound to establish that they are entitled to get possession and their claim is not barred by limitation which they failed to establish in the present case. This aspect was not rightly appreciated by the trial Court.

36. The contention of the learned counsel for the defendant is that when there is a cloud over the title of the plaintiffs by virtue of various revenue records, they ought to have sought the relief of declaration and consequential recovery of possession. According to the learned counsel for the plaintiffs, the suit for recovery of



possession is maintainable without seeking declaration as per Article 65 of the Limitation Act and as per the various decisions of the Apex Court.

37. In this regard, it is apt to refer to the decision of the Apex Court in **Muddasani Venkata Narsaiah (D) Th. Lrs. v. Muddasani Sarojana**<sup>2</sup>, wherein it has been held as under:

\*13. We are fortified in our aforesaid conclusion by a decision in Kurella Naga Druva Yudaya Bhaskara Rao v. Galla Jani Kamma (2008) 15 SCC 150, wherein this Court has examined the question of maintainability of suit for possession without prayer for declaration of title. This Court has referred to its earlier decision in Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594, wherein the plaintiff had purchased the suit land under registered sale deed dated 10.4.1957 and the defendant did not claim the title with reference to any document but claimed to have perfected title by adverse possession. It was held by this Court that the said plea did not prima facie put any cloud over the plaintiff's title calling him to file suit for declaration of title. Unless there is serious cloud over the title of the plaintiff there is no need to file suit for declaration of title. The suit for possession was maintainable. This Court laid down as follows:

16. The plaintiff had purchased the suit land under registered sale deed dated 10.4.1957. Defendant did not claim title with reference to any document but claimed to have perfected title

<sup>2</sup> Civil Appeal No.4816/2016, dated 05.05.2016

by adverse possession. A mere claim by the defendant that he had perfected his title by adverse possession, does not mean that a cloud is raised over plaintiff's title and that the plaintiff who is the owner, should file a suit for declaration of title. Unless the defendant raises a serious cloud over the title of the plaintiff, there is no need to file a suit for declaration. The plaintiff had title and she only wanted possession and therefore a suit for possession was maintainable. We are fortified in this view by the following observations of this Court in *Anathula Sudhakar v. P. Buchi Reddy* [2008] 4 SCC 594:

"14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration. ...."

38. A reading of the above judgment would show that when there is a serious cloud over the title of the plaintiff, there is a need to file suit for declaration of title. If there is no serious cloud, the suit for possession is maintainable.

39. The dispute between the parties may relate to either to a person's legal character or right or interest in the property, a cloud on the title is something which is apparently valid, but it is in fact invalid. A cloud is said to arise over person's title when there is some apparent defect in his title to the property or when

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some *prima facie* right of third party over it is made out or shown. In the present case, the revenue entries show that there is *prima facie* right of the defendant over the suit schedule properties, and in fact, such a right or claim set up by the defendant creates a serious cloud over the title of the plaintiffs. The plaintiffs conveniently avoided to seek declaration apparently for the reason that their claim is barred by limitation of three years. The revenue records clearly show that for the last 60 years, the defendant and her ancestors were in possession of the suit schedule properties and they do not support the plaintiffs' claim of ownership and possession. They create a serious cloud over the alleged title of the plaintiffs. Therefore, the plaintiffs must have sought declaration of title in addition to recovery of possession. Further, when relief of possession is asked for based on the title, the Court is also required to adjudicate the title of the plaintiffs incidentally. In fact, in this case, the title of the plaintiffs had been adjudicated and found that the plaintiffs have not made out title to the suit schedule properties, except stray entries under Ex.A-7 which does not confer any title as held by the Apex Court since it is the revenue record, the primary

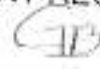
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purpose of which is collection of revenue. Seeing from any angle, the suit itself is barred by limitation and the plaintiffs are not entitled for recovery of possession. These aspects were not rightly appreciated by the trial Court. Accordingly, this issue is answered.

**Issue No.3:**

40. In the result, the appeal is allowed setting aside the judgment and decree dated 27.06.2011 in O.S.No.244 of 2006 on the file of Senior Civil Judge at Vikarabad, Ranga Reddy District. Consequently, O.S.No.244 of 2006 is dismissed with exemplary costs. Miscellaneous petitions, if any, pending, shall stand closed.

//TRUE COPY//

Sd/-B.S.CHIRANJEEVI  
JOINT REGISTRAR  
  
SECTION OFFICER

To

1. The Senior Civil Judge, Vikarabad. (with records)
2. One CC to Sri Venkata Raghu Ramulu, Advocate (OPUC)
3. One CC to Sri Damodar Mundra, Advocate (OPUC)
4. Two CD Copies
5. One Spare Copy

Kj.



HIGH COURT

DATED:31/03/2022

JUDGMENT

AS.No.744 of 2011



Allowing the appeal

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HMS  
18/6/2022