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C.A.No. 1366 OF 1999
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1366 OF 1999

MARRIKOMADINNE RAJANNA

APPELLANT

VERSUS

PERNAPATI V. SUBBACHARI & ANR.

RESPONDENTS

O R D E R

The plaintiff filed suit for declaration of his title over the plaint schedule property and grant of permanent injunction. After trial, the suit was dismissed. The plaintiff filed first appeal against the judgment and decree passed by the trial court dismissing the suit. The First Appellate Court allowed the appeal recording a finding that the plaintiff perfected his title over the suit property by adverse possession. Aggrieved by the judgment of the First Appellate Court, the defendant filed second appeal in the High Court. The High

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Court allowed the appeal and set aside the judgment and decree passed by the First Appellate Court. In the result, the suit, as dismissed by the trial court, stood affirmed. Hence this appeal by the plaintiff.

The learned counsel for the appellant contended that the High Court was not right and justified in interfering with the finding of fact recorded by the First Appellate Court. According to the learned counsel, no substantial question of law arose for consideration between the parties. He also made submissions supporting the finding recorded by the First Appellate Court as to perfection title by adverse possession.

Per contra, the learned counsel for the respondents, in his arguments, supported the impugned judgment. According to the learned counsel, when the finding recorded by the First Appellate Court was plainly unsustainable as the the plaintiff had failed to satisfy the requirements of perfecting title by adverse possession; even on the admitted facts and the facts found, no case was made out by the plaintiff to state that

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he perfected title by adverse possession; when the High Court corrected the error committed by the First Appellate Court, this Court may not interfere with the impugned judgment.

The only substantial question of law that was considered by the High Court was as to whether the plaintiff perfected title over the suit property by adverse possession. As can be seen from the discussion made in the impugned judgment, although the possession of the plaintiff over the suit property was established, but, the evidence fell short of establishing adverse possession so as to say that title was perfected. There was no material to show that the plaintiff asserted his hostility against the defendant as to the title. It was also found that the plaintiff took inconsistent pleas. He pleaded the case of benami transaction and also that he perfected title by adverse possession. These pleas were inconsistent and untenable. In order to contend that one has perfected title by adverse possession, essentially he has to accept that somebody else is owner and he should assert that he openly enjoyed and was in possession of the

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property to the knowledge of the real owner. Such thing is not established apart from there being an inconsistent plea. This being the position, the First Appellate Court was wrong. The High Court has rightly set aside the judgment passed by the First Appellate Court, considering that such a substantial question of law did arise.

This being the position, we do not find any good ground or valid reason to interfere with the impugned judgment. Hence, finding no merit in the appeal, it is dismissed, but, with no costs

(SHIVARAJ V. PATIL)

.....J.

New Delhi, (DR. AR. LAKSHMANAN)
February 11, 2004.

.....J.

ITEM No.101(PH)

Court No. 9

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.1366/1999

MARRIKOMADINNE RAJANNA

APPELLANT(S)

VERSUS

PERNAPATI V. SUBBACHARI & ANR.
(With office report)

RESPONDENT(S)

Date : 11/02/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. S. Muralidhar, Adv.
Mr. G. Seshagiri Rao, Adv.

For Respondent (s)Mr. Vijay Bhaskar, Adv.
for Mr. D. Mahesh Babu, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties for a few minutes.
The appeal is dismissed with no costs in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)