



S.A.(MD)No.131 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.07.2024

PRONOUNCED ON: 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.131 of 2018

and

C.M.P.(MD)No.3438 of 2018

1.Jelastin
2.Jerold
3.Latha
4.Anthony
5.Selvi

: Appellants/Respondents/Defendants

Vs.

S.V.Bernadet

: Respondent/Appellant/Plaintiff

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.9 of 2015, dated 12.12.2017, on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree passed in O.S.No.73 of 2009, dated 10.12.2012, on the file of the Principal Subordinate Judge, Tirunelveli.



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For Appellants : Mr.K.Esakki

For Respondent :Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.M.Senguvijay

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.9 of 2015, dated 12.12.2017 on the file of the Principal District Court, Tirunelveli reversing the judgment and decree made in O.S.No.73 of 2009, dated 10.12.2012, on the file of the Principal Subordinate, Tirunelveli.

2. The respondent/plaintiff has filed the above suit claiming declaration that the suit property belongs to her and for consequential permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.



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4. The case of the plaintiff is that the suit property and the adjoining properties were originally purchased by one Antony Guruz vide sale deed dated 04.09.1915, that Antony Guruz had a son by name Michel Visvasam and two daughters namely Asirvathammal and Anthonyammal, that he died intestate in the year 1945 and after his death, his son and daughters have been in possession and enjoyment of the suit property, that Antony Guruz's son Michel Visvasam had relinquished his share in the property and settled at Tuticorin in the year 1945 itself and thereafter, Antony Guruz's two daughters have been in possession and enjoyment of the suit property left by him, that Antony Guruz's daughter Asirvathammal had a daughter by name S.V.Bernadet – plaintiff herein and two sons namely Irudayaraj and Anthony Pitchai, that Antony Guruz's second daughter Anthonyammal remained unmarried and she sold her 1/3 share in the suit property left by his father to the plaintiff's brother – Anthonypitchai, that the said Anthonypitchai, in the property purchased by him and also the share inherited through his mother, had constructed a house property in the vacant land situated on the north of the house property wherein Asirvathammal was in possession and enjoyment of the same, that the plaintiff's mother



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Asirvathammal died intestate on 27.01.1967 and thereafter, the plaintiff and his two brothers had inherited the property, that the plaintiff had along with his family had been in possession and enjoyment of the suit property after the death of his mother, that the plaintiff by demolishing the house already existing, had constructed a new house in the year 1969 and since then by paying the property tax and by paying electricity consumption charges had been in possession and enjoyment of the property, that Michel Visvasam, without having any connection with her sister's family, died in the year 1969, that he had four daughters, namely Chellammal, Pitchammal, Reeta and Porus and five sons namely Kulanthaisamy, Irudayam, Jeshiah, Joseph and Prales, that the first defendant is the wife and the defendants 2 to 5 are the son and daughters of Jeshiah, S/o Michel Visvasam, that they had settled at Mumbai and they have not claimed any share in the suit property at any point of time, that the defendants were fully aware that the plaintiff was in exclusive possession and enjoyment of the suit property and they have not raised any objection at any point of time, that the defendants are Jeshiya's brothers and sisters, who were never in possession and enjoyment of the property and even assuming that they are having some rights, they have lost it by adverse possession, that the defendants with an intention to



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extract money from the plaintiff, has attempted to interfere with the plaintiff's possession from 20.04.2009 onwards and that therefore, the plaintiff was constrained to file the present suit.

5. The defence of the defendants is that the suit property and other properties were originally owned by Anthony Guruz, that the suit property came to be owned by his son and two daughters, that Michel Visvasam has never relinquished his share in the suit property and till his life time was also in possession and enjoyment of the property, that the legal heirs of Michel Visvasam used to visit the native place and at that time, they used to stay in the suit property, that the alleged sale by Anthonyammal in favour of the plaintiff's brother is not admitted and the plaintiff has to prove the same, that the plaint averments are all false and the plaintiff alone is duty bound to prove the same, that since the suit property was owned by predecessor in title, the plaintiff should have filed the suit for partition and the present suit for declaration and permanent injunction is legally not maintainable and that since the other legal heirs of Anthony Guruz are also in joint possession and enjoyment of the property, they are the necessary parties to the above suit and hence, the suit is liable to be dismissed.



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6. The learned trial Judge, upon perusing the pleadings of both parties, has framed the following issues:

(1) Whether the plaintiff is entitled for the relief of declaration that the suit property is exclusively belongs to the plaintiff?

(2) Whether the plaintiff is entitled for the relief of permanent injunction restraining the defendants not to interfere in the peaceful possession and enjoyment of the plaintiff in the suit property?

(3) Whether the suit is not maintainable?

(4) What the other relief, the plaintiff is entitled to?

7. During trial, the plaintiff has examined himself as P.W.1 and two other witnesses Tmt.Mary and Thiru.Inico as P.W.2 and P.W.3 respectively and exhibited 13 documents as Exs.A.1 to A.13. The defendants have examined the first defendant as D.W.1 and one Thiru.Henri as D.W.2 and exhibited 7 documents as Ex.B.1 to B.7. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, has passed a judgment and decree dated 10.12.2012 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff has preferred an



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appeal in A.S.No.9 of 2015 and the learned Principal District Judge, Tirunelveli, considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree, dated 12.12.2017, allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court and granted the reliefs of declaration and permanent injunction as sought for. Challenging the reversal judgment of the appellate Court, the defendants have preferred the present Second Appeal.

8. At the time of admission, the following Substantial Question of Law came to be framed:

“ When the plaintiff has not even pleaded ouster; is not the lower appellate Court right in decreeing the suit in favour of the plaintiff by saying that the plaintiff has prescribed title by adverse possession, especially when the defendants are admittedly the co-owners?”

9. The learned Counsel for the appellants/defendants would submit that the first appellate Court on knowing the facts that that the alleged sale deed executed by Anthonyammal selling her 1/3rd share in favour of the plaintiff's brother Anthony Pitchai by fixing the boundaries, ought to



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have come to a conclusion that there was no oral partition between the plaintiff's mother family, that the first appellate Court had taken the evidence of D.W.1 in isolation manner and came to the conclusion that D.W.1 admitted that Anthonyammal had sold her 1/3 share in favour of Anthony Pitchai, that there was no oral partition held between the legal heirs of Anthony Guruz, that the plaintiff has nowhere stated about the death of wife of Anthony Guruz and her name, that the plaintiff has miserably failed to prove that Micheal Visvasam was residing at Tuticorin due to his avocation and he used to visit the suit property now and then, that the plaintiff in her evidence would admit that there was no partition between her mother and maternal aunt in respect of the suit property, that the plaintiff has also failed to show as to on what basis tax assessment and electricity connection came to be changed in the name of the plaintiff and that the plaintiff has not pleaded anything about other coheirs namely Irudhayaraj..

10. The learned Counsel would mainly contend that the plaintiff has not raised necessary pleadings for ouster and the date on which, she was in actual, open and uninterrupted exclusive and continuous



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possession of the suit property and the plaintiff has also not produced any document to show that she is in possession of the property from 1986, that the first appellate Court, without considering the other evidence available on record, has given much importance to the evidence of D.W.1 and came to a conclusion that the plaintiff has proved that she had perfected her title by adverse possession.

11. The learned Senior Counsel appearing for the plaintiff would submit that Antony Guruz had died in the year 1945 and hence, immediately his son Micheal Visvasam had inherited the property even in the year 1945, but the defendants have not produced any documents to show that Micheal Visvasam either claimed any share in the property or he had been in possession and enjoyment of the said property, that Micheal Visvasam had relinquished his share in the year 1945 itself and had gone to Tuticorin for eking his livelihood and that Micheal Visvasam had died in the year 1969 and from the date of death of Antony Guruz in 1945 till the date of demise of Micheal Visvasam in the year 1969, there is absolutely no document to prove the possession and enjoyment by Micheal Visvasam or his immediate legal heirs for 24 years. The defendants have also not produced any iota of evidence to prove their



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possession and enjoyment even after the death of Micheal Visvasam in 1969 till the date of filing of the suit in 2009.

12. The learned Senior Counsel would further contend that the plaintiff had produced Exs.A.4 to A.13 to prove her long possession and enjoyment of the suit property, that the plaintiff after changing the property tax assessment in his name and after obtaining the electricity connection, had been paying the property tax and electricity consumption charges, that the legal heirs of Irudayam have sold the share belonging to Irudayam in favour of the plaintiff by Exs.A.2 and A.3, that the plaintiff had proved her continuous uninterrupted possession and enjoyment over the suit property for more than 60 years right from the date of death of Antony Guruz, that the defendant – D.W.1 had made many admissions in favour of the plaintiff, that D.W.1 had admitted that the plaintiff was in possession and enjoyment of the suit property, that they were never in possession of the property and that the appellate Court, upon considering the oral and documentary evidence, adduced by the plaintiff and on the basis of admission of D.W.1 and other witnesses, had come to the decision that the plaintiff is entitled to get the relief of declaration and permanent injunction.



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13. Admittedly, the suit property and adjoining property came to be owned by Antony Guruz, vide sale deed dated 04.09.1915. It is not in dispute that Antony Guruz had died intestate in the year 1945 leaving behind his son Micheal Visvasam and two daughters Asirvathammal and Anthonyammal. It is also not in dispute that Asirvathammal had a daughter namely S.V.Bernadet – plaintiff herein and two sons namely Irudayaraj and Anthony Pitchai and that the said Anthonyammal died on 27.01.1967 as unmarried.

14. It is also not in dispute that Micheal Visvasam had four daughters and five sons and the defendants are the legal heirs of Jeshiah, son of Micheal Visvasam. It is not in dispute that Antony Guruz had purchased a house plot having 7 ¼ cubic feet on the West East, 25 cubic feet on the North South and a thatched shed having Door No.15 therein. As rightly observed by the learned appellate Judge, the said Antony Guruz had purchased 704 sqft of land along with tiled house therein.

15. The case of the plaintiff is that Anthoniammal, daughter of Antony Guruz, who remained unmarried, has sold her 1/3 share in the



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property left by Antony Guruz to the plaintiff's brother Anthony Pitchai and that the said Anthony Pitchai in the property purchased by him from Anthonyammal and his share of land inherited through his mother Asirvathammal, had constructed a house in the year 1978, which was situated on the North of the old house left by Antony Guruz. No doubt, the defendants have disputed the sale deed in favour of Anthony Pitchai and according to them, there was no partition between the legal heirs of Antony Guruz and as such, Anthony Pitchai cannot claim ownership over any specific portion of the property and that in the absence of the production of the sale deed in his favour and proving of the same, the same does not bind the defendants. But as rightly pointed out by the learned Senior Counsel, the first defendant in her evidence would admit specifically that Anthonyammal has sold her 1/3 share in favour of her sister Asirvathammal's son Anthony Pitchai and that she had seen that document, when the same was shown to her by him and that therefore, the defendants were fully aware of the sale deed executed by Anthonyammal in favour of Anthony Pitchai and the subsequent construction of the house property by him. D.W.1 would admit “அந்தாணி மச்சை தனது பங்கினை பிரித்து வீடு கட்டிக் கொண்டார். அந்தாணி மச்சை அவராகவ 1/3 பங்கினை பிரித்து / அளந்து பிரித்து கொண்டார். அந்தாணி



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மீச்சை எந்த ஆண்டு அவ்வாறு மரித்து வீடு கட்டினார் என்று தெரியாது. என்
WEB COPY திருமணத்திற்கு மின்தான் அவ்வாறு வீடு கட்டினார்.”

16. It is not the case of the defendants that after coming to know about the sale allegedly made by Anthonyammal and the alleged partition made by Anthony Pitchai and the construction of the house property, Micheal Visvasam or his sons and daughters or the defendants have raised any objections.

17. According to the plaintiff, after death of Antony Guruz and after the relinquishment of 1/3 share by Micheal Visvasam and the consequent settlement at Tuticorin, Asirvathammal and Anthonyammal had been in possession and enjoyment of the suit property and after the sale by Anthonyammal and the construction of a house property therein by Anthony Pitchai, the plaintiff along with her family had been in possession and enjoyment of the property. It is the further case of the plaintiff that she had demolished the house already available in the property and constructed a new house in the year 1969 and since then, she had been in possession and enjoyment of the property. According to the plaintiff, her another brother Irudhayaraj had relinquished her share



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in the suit property in favour of the plaintiff by executing two deeds dated 12.06.2006 and 26.05.2006.

18. Considering the above, it is very much clear that the defendants have claimed shares in the suit property on the basis that the original owner Antony Guruz had died intestate and after his death, his son Micheal Visvasam and other two daughters had inherited the property, whereas the plaintiff's ownership over the entire property as she had inherited the share through her mother and the relinquishment of share by his brother and the remaining property by adverse possession as against the legal heirs of Micheal Visvasam.

19. The defendants have canvassed a new case at the trial that the first defendant has sold the suit property in favour of her son fourth defendant vide sale deed dated 18.03.2009 on the basis of the power of attorney taken under Exs.B.2 and B.3 from some of the heirs of Micheal Visvasam. As rightly observed by the learned appellate Judge, in Ex.B.1 sale deed, it has been stated that the property sold under the said document was belonging to the vendors who had inherited the same from Antony Guruz. It is pertinent to note that the first defendant has sold the



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entire suit property in favour of the fourth defendant, but the defendants have not shown the basis on which the said document came to be executed. Even according to the defendants, in the written statement, they are having a share as the property was owned by Antony Guruz, but at the trial, had given evidence that the first defendant had sold the property as if they are the absolute owners of the suit property. More importantly Ex.B.1 sale came to be executed on 18.03.2009 whereas the present suit came to be filed on 29.04.2009. The plaintiff as P.W.1 in her evidence would say that she had removed the thatched shed available in the property and constructed a tiled house, that she obtained electricity connection and water connection and also changed the name of the tax assessment from her grandfather to her name and that she had also constructed a toilet in the property. The plaintiff has produced tax receipts, electricity consumption card, electricity receipts, water charges receipts, tax assessment pass book under Exs.A.4 to A.13 and whereunder it is evident that the plaintiff had been paying the property tax, electricity consumption charges and water consumption charges.

20. It is the specific case of the plaintiff that she had been in possession and enjoyment of the property from 1985 onwards. The first



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defendant as D.W.1 in her cross-examination would specifically admit that the plaintiff had been in possession of the suit property. The relevant portion of D.W.1 evidence is extracted hereunder for better appreciation:

“ தாவா சொத்தில் வீடு உள்ளது. அந்த வீட்டில் வாதி அதிக பணம் செலவழித்து அபிவிருத்தி செய்து ரூக்கிறார். வாதி குடியிருந்ததால் அவ்வாறு செய்திருக்கிறார். வாதி குடியிருந்ததால் தாவா சொத்தில் உள்ள வீட்டிற்கு வாதி பெயரில் மின் லைன் கட்டி கொடுக்கப்பட்டுள்ளது. முன்பு ஓலை கூரையாக நேந்ததை ஒட்டு கூரையாக மாற்றியிருக்கிறார். குடிநீர் லைனையும் வாதியால் பெறப்பட்டுள்ளது என்றால் சரிதான். அந்தாணி குரு! பெயரிலிருந்து வரி விதிப்பினை வாதியாகவ தன் பெயருக்கு மாற்றி கொண்டார். 40 வருடங்களாக வாதி அவ்வாறு தீர்வை செலுத்தி வருகிறார் என்றால் எனக்கு தெரியாது. தாவா சொத்து ஓர சொத்தாக கற்று கவருக்குள் உள்ளதென்றால் சரிதான்.”

21. D.W.1, during subsequent cross-examination made on 24.09.2012 would again reiterate

“எ.சா.ஆ.1ல் குறிப்பிட்டுள்ள சொத்தில் வீடு உள்ளது. அந்த வீட்டில் வாதி தற்போது குடியிருக்கிறார் என்றால் சரிதான். எ.சா.ஆ.1 – ல் வடக்கு எல்லையாக குறிப்பிடப்பட்டிருக்கும் பொதுசுவர் என்பது எதைக்குறிக்கும் என்று எனக்குத்



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தேரியாது. தாவா வீட்டிற்கான வரிவிதிப்பு வாதிபெயரில் உள்ளது என்றால் சரிதான். எனக்கு தேரியாமல் வாதி அவரது பெயரில் மாற்றிக்கொண்டார். வாதி குடியிருக்கும் வீட்டில் அவரது தாயார் குடியிருந்தார் அவர் றேந்தபின்னர் வாதி தொடர்ந்து குடியிருந்து வருகிறார். நாட்கள் வெளியூரில் றேந்ததால் வாதி குடியிருக்கிறார். என் திருமணத்தின் பொழுத வாதி அந்த வீட்டில்தான் குடியிருக்கிறார் என்றால் சரிதான்.”

22. Though the defendants have alleged that they used to visit the native place and at that time, they used to stay in the suit property, the plaintiff's contention that Micheal Visvasam had settled at Tuticoin in the year 1945 itself, was not at all disputed by the defendants specifically. D.W.1 would admit that his husband's father Micheal Visvasam was working as a Teacher in Tuticorin and he died in 1969 at Tuticorin. D.W.1 would further admit that when Micheal Visvasam was in Tuticorin, Asirvathammal was residing in the suit property at that point of time. She would admit that she was in Chennai for 14 years and prior to that they were in Mumbai for 7 years and prior to Mumbai, they were in Palayamkottai for 8 years and at that time, she was residing in the house situated just opposite to the suit property. She would say that the said house where she was residing was owned by her mother and



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subsequently, her mother had sold that property 30 years back. She would also admit that they have not paid any tax for the suit property at any point of time. Most importantly D.W.1 would admit that they have no documents to show that they were in possession of the suit property and the relevant portion is extracted hereunder:

“வாதிமீடம் சொத்தை பிரித்துகொடுக்கும்படி 12 வருடங்களாக
கூட்டும் வாதி பிரித்து கொடுக்காததால் என் மாமனார் சொத்து என்ற
உரிமையில் நானாக பார்த்து ஆவணம் எழுதிக்கொண்டேன்.
என் மாமனார் சொத்தில் எங்களுக்கு பங்கு கிடைக்கும் என்பதால்
பிரிவினை கூகாரி நடவடிக்கை எடுக்கவில்லை.”

23. During subsequent cross examination, she would say

“என் திருமணத்திற்கு பின்னர் நானா என் கணவரோடாவது சொத்தை அனுபவம்
செய்ததில்லை என்றால் என்றைக்காவது சொத்து கிடைக்கும் என்ற தைரியத்தில்
நேந்துவிட்டோம். எனக்கு தெரிந்து தாவா சொத்திற்கு தீர்வை மின் கட்டணம்
குடிநீர் கட்டணம் ஆகியவைகளை வாதிய செலுத்தி வருகிறார் என்றால் வாடகை
கொடுக்கவில்லை என்பதால் அவ்வாறு செலுத்தி வருகிறார். நான் வாதிமீடம்
வாடகை எதுவும் கூட்டவில்லை. ஆனால் பாகம் பிரித்து கொடுக்கும்படி
கூட்டப்போது மூல ஆவணம் தொலைந்து விட்டதாக தெரிவித்தார். ஆனால் வாதி
கட்டிடம் கட்டுவதற்கு வரைபடம் பெற்றிருக்கிறார். தாவா சொத்து சம்பந்தமாக



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தேவநாடு யாரும் பாகபிரிவினை ஁காரி வழக்கு தாக்கல் செய்யவில்லை என்றால் சரிதான். நான் பாளையங்காட்டையை ஁சர்ந்தவர் என்பதால் மற்ற பக்குதாராகள் வாய்மொழியாக சொத்தை என்னை எடுத்துக்கொள்ளும்படி சொல்லிவிட்டனர். அந்த வாய்மொழியின் அடிப்படையில் எ.சா.ஆ.2 இ3 அடிப்படையிலும் எ.சா.ஆ.1 எழுதினன்.”

24. Admittedly, the defendants have not raised any pleadings with regard to Exs.B.1 to B.3 in the written statement and they have also not pleaded anything about the alleged oral relinquishment of other co-sharer of Micheal Visvasam in favour of the first defendant. As already pointed out, even according to the defendants, though the first defendant had claimed partition from the plaintiff 12 years back and since she has not come forward, they were constrained to take the property by themselves and on that basis, Ex.B.1 came to be executed.

25. Now coming to the main contention of the defendants that the plaintiff has not raised necessary pleadings with regard to ouster, ouster is nothing but claiming adverse possession against co-owner / co-sharer. In the present case, as already pointed out, the plaintiff has been claiming adverse possession against the legal heirs of Micheal Visvasam,



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including the defendants herein. The plaintiff, in the plaint has specifically pleaded that Micheal Visvasam had relinquished his share in the suit property and settled at Tuticorin in 1945 itself, that subsequently neither Micheal Visvasam nor his legal heirs had claimed any right in the suit property and that the plaintiff alone had been in possession and enjoyment of the property in 1969 onwards and the relevant portions are extracted hereunder.

“ 13. மிகுக் விசுவாசம் உயிருடன் நேந்த வரை தன் நே சுகாதரிகளான ஆசீர்வாதம்மாள் மற்றும் அந்தாணி அம்மாள் ஆகிய நேவர் பெயரில் தபசில் சொத்தில் அவருக்குரிய உரிமையை வாய்மொழியாக விட்டுக்கொடுத்தார். : மிகுக் விசுவாசம் அவர்கள் 1969ல் நேந்த பின்பும் அவருடைய வாரிசுகள் தபசில் சொத்தில் எந்தவித உரிமையும் ுகாரவில்லை. நேத வாதியின் தாயாரான ஆசீர்வாதம்மாள் மற்றும் அவரது சுகாதரி அந்தாணியம்மாள் அனுபவித்து வந்து பின் ஹைட அந்தாணியம்மாள் அவருக்குரிய பாகத்தை தனித்து பிரித்து கிரையம் கொடுத்த பின்பு நேத வாதியின் தாயார் தனித்த உரிமையாளர் என்ற நிலைமையில் அடைந்து அனுபவித்து வந்துபாதிலும் மிகுக் விசுவாசம் வாரிசுகள் எந்தவித உரிமையும்



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காரவில்லை. வாதியின் தாயார் 27.1.1967ல் காலங் சென்ற பின்பு நீத வாதி தபசில் சொத்தில் நேந்த ஓலைக்குடிசையை மாற்றி ஒட்டுக்கூரை வீடாக அமைத்தார். தபசில் சொத்திற்கு நீத வாதி அவரது பெயரில் 1985ம் வருடம் மின் லைண்பும் பெற்று அனுபவித்து வருகிறார். தபசில் சொத்திற்குரிய மின் கட்டண அட்டை மற்றும் ரசீதுகள் தேதுடன் தாக்கல் செய்யப்பட்டிருக்கிறது. தபசில் சொத்திற்கு அப்பாதைய நகராட்சியிலிருந்து வாதியின் பெயருக்கு குடிநீர் லைண்பும் வாதி பெற்றுள்ளார். மலும் தபசில் சொத்தை வாதி அவ்வப்பொழுது பராமரித்தும் வந்துள்ளார். தபசில் சொத்தில் வசதி புதியதாக கழிப்பறையும் கட்டியுள்ளார். வேவாறு தபசில் சொத்தில் அபிவிருத்தி வகைக்கும் பராமரிப்பு வகைக்கும் அவ்வப்பொழுது வாதிய தனிப்பட்ட முறையில் செலவழித்து வந்துள்ளார். நீத வாதி தபசில் சொத்தை தனித்த நிலைமையில் 1969ம் வருடம் முதல் யாவருக்கும் தெரிய எதிரிடையாக தனித்து அனுபவித்து வருகிறார். வாதியின் அனுபவம் நீத பிரதிவாதிகளுக்கு நன்கு தெரியும். நேந்த மாதிலும் பிரதிவாதிகள் வாதியின் அனுபவத்தை எந்தக்காலத்திலும் ஆட்சபனை செய்தது கிடையாது.

14. பிராது தபசில் சொத்தை பொறுத்து நீத பிரதிவாதிகளுக்கு எந்தவொரு அனுபவமும் கிடையாது. நீத பிரதிவாதிகளுக்கு தபசில் சொத்தில் ஏதனும் உரிமையிருந்தாலும் அது அற்றுப்பாய்விட்டதாக கருதப்படும். நீத பிரதிவாதிகள் தபசில் சொத்தை பொறுத்து னை உரிமைகார சட்டப்படி அருகதை



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கிடையாது. தபசில் சொத்தில் பிரதிவாதிகளுக்கு உள்ள உரிமையானது கால வரம்பு சட்டப்படி அற்றுப்பாய்விட்டது. நீத வாதி தபசில் சொத்தை அனுபவித்து வருவதை பிரதிவாதிகள் எந்தவொரு ஆட்சுபனையும் செய்தது கிடையாது. தபசில் சொத்தானது வாதிக்கு நீண்டகால எதிரிடை அனுபவம் மூலமும் பாத்தியப்பட்டது ஆகும்.”.

Considering the above, the present contention of the defendants that the plaint is lacking with regard to the pleadings of ouster, has no legs to stand.

26. The learned Counsel for the defendants would submit that the intention to possess cannot be substituted for intention to dispossess, which is essential to prove adverse possession and relied on the decision of the Hon'ble Supreme Court in ***P.T.Munichikkanna Reddy and others Vs. Revamma and others*** reported in (2007) 6 SCC 59 and the relevant passages are extracted hereunder:

“ 14. Importantly, intention to possess can not be substituted for intention to dispossess which is essential to prove adverse possession. The factum of possession in the instant case only



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goes on to objectively indicate intention to possess the land. As also has been noted by the High Court, if the appellant has purchased the land without the knowledge of earlier sale, then in that case the intention element is not of the variety and degree which is required for adverse possession to materialize.

17. The present case is one of the few ones where even an unusually long undisturbed possession does not go on to prove the intention of the adverse possessor. This is a rare circumstance, which Clarke LJ in Lambeth London Borough Council v Blackburn (2001) 82 P & CR 494, 504 refers to:

"I would not for my part think it appropriate to strain to hold that a trespasser who had established factual possession of the property for the necessary 12 years did not have the animus possidendi identified in the cases. I express that view for two reasons. The first is that the requirement that there be a sufficient manifestation of the intention provides protection for landowners and the second is that once it is held that the trespasser has factual possession it will very often be the case that he can establish the manifested intention. Indeed it is difficult to find a case in which there has been a clear finding of factual possession in which the claim to adverse possession has failed for lack of intention."

19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After



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all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.”

27. The learned Counsel would also rely on the decision of the Hon'ble Supreme Court in ***Nanjegowda @ Gowda (D) by LRs and another Vs. Ramegowda*** reported in ***2018 SAR (Civil) 205***, wherein the Hon'ble Supreme Court has reiterated the settled legal position that there can be no adverse possession among the members of one family for want of any animus among them over the land belonging to their family and the relevant paragraphs are extracted hereunder:

“17) It is not in dispute that the defendants (appellants) admitted the relationship between the parties. It is also not in dispute, as was admitted by the defendants (appellants), that the parties through their ancestors had effected oral partition as far back in 1935 and that the defendants’ ancestors were



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also parties to such partition and the same was implemented in letter and spirit by allotting to each of the members of the family their respective share and also by getting the names of owners in Revenue Records.

18) Once the defendants admitted these two material facts pleaded by the plaintiff then it was for the defendants to prove by leading cogent evidence as to how and on what basis they could claim to be the owner of the suit land. They failed to prove their ownership with the aid of any evidence.

19) In our opinion, the stand taken by the defendants was wholly inconsistent. They first set up a plea of adverse possession but it was rightly held not proved. The defendants, however, did not challenge this finding in the second appeal, which became final. Even otherwise, the plea of adverse possession was wholly misconceived and untenable. It is a settled law that there can be no adverse possession among the members of one family for want of any animus among them over the land belonging to their family.”

28. In the above decision case, the defendants therein have specifically admitted that the parties through their ancestors had effected oral partition in 1935 and the same was implemented by allotting to each



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of the members of the family their respective shares. Moreover, the defendants' plea of adverse possession was held to be not proved and even then they did not challenge the said findings in the Second Appeal which became final. Hence, the above decisions cannot be made applicable to the case on hand.

29. The learned Senior Counsel for the plaintiff would rely on the judgment of the Hon'ble Supreme Court in ***Karnataka Board of Wakf Vs. Government of India*** reported in (2004)10 SCC 779, which is also referred in ***P.T.Munichikkanna Reddy's case***, above referred and the relevant passage is extracted hereunder:

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession,



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(b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession"

30. In the case on hand, as rightly observed by the first appellate Judge, the plaintiff has produced ample evidence to show that she had exclusive possession of the suit property since 1985 onwards by constructing a house therein and by paying property tax, electricity and water consumption charges. Even according to the defendants, they were never in possession and enjoyment of the suit property at any point of time. As already pointed out, the first defendant would admit in categorical terms, though they claimed partition 12 years back, but their demand was not accepted. It is not their case that they have immediately filed a suit for partition and according to them, nobody has filed a suit for partition.



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31. Considering the entire evidence available on record, the first appellate Judge has rightly come to the conclusion that the plaintiff has proved that she has perfected her title by adverse possession and consequently she is entitled to get the relief of declaration and permanent injunction. This Court is in complete agreement with the findings recorded by the learned appellate Judge for arriving at the said conclusion and there is nothing to interfere with the reasoned judgment and decree of the first appellate Court. Hence, the Substantial Question of Law is answered in favour of the plaintiff and against the defendants. Consequently, this Court concludes that the Second Appeal is liable to be dismissed. Considering the other facts and circumstances and relationship between the parties, this Court is of the view that the parties are to be directed to bear their own costs.

32. In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the first appellate Court in A.S.No.9 of 2015, dated 12.12.2017, on the file of the Principal District Court, Tirunelveli. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.



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28.10.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

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To

1. The Principal District Court, Tirunelveli.
2. The Principal Subordinate Court, Tirunelveli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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