



S.A.No.1025 of 2003

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1025 of 2003

Muthalif (died)

2.Fathima

3.Sheik Dawood

4.S.Ussain Mohammad

5.Suvar Ali

6.Mohammad Ali

... Appellants

(Appellants 2 to 6 are brought on record
as L.Rs.of the deceased sole appellant)

-vs-

Subramaniam

... Respondent

PRAYER: Appeal against the judgment and decree, dated 19.11.2002, passed in A.S.No.150 of 2001 on the file of Principal Subordinate Judge, Madurai, reversing the judgment and decree, dated 28.02.2001, passed in O.S.No.183 of 1997 on the file of District Munsif, Melur.



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For Appellants : Mrs.P.Jessi Jeeva Priya

For Respondent : Mr.P.T.S.Narendra Vasam

JUDGMENT

The plaintiff in the suit is the appellant. The Suit was filed for recovery of possession. The Suit, filed by the plaintiff, was dismissed by the trial Court and the findings of the trial Court were confirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiff has come forward by way of this Second Appeal.

2. According to the plaintiff, he purchased northern 5 acres 9 cents out of total extent of 10 acres 17 cents in Survey No.261/1, which is shown as item No.1, from one Aruljothi Asirama Samarasa Sammarka Sangam by a sale deed, dated 16.06.1980. Under the very same document, the plaintiff purchased northern 2 acres 13 cents in Survey No.262/1 and the same is shown as item 2. The defendant purchased southern portion of 5 acres 8 cents out of total extent of 10 acres 17 cents in Survey No.261/1. Likewise, in item No.2 of the suit property, the defendant purchased 2 acres 14 cents in Survey



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WEB NO.262/1. The plaintiff further averred that taking advantage of the absence of any demarcation of ground, the defendant encroached a portion of the property purchased by the plaintiff, namely 33 cents in Survey No.261/1 and 11 cents in Survey No.262/1 and had put up an avarai fence three years ago and, therefore, the plaintiff was constrained to file a suit for recovery of possession.

3. The defendant filed a written statement claiming that the total extent of land available in first item of the suit property situate in Survey No. 261/1 is 10 acres 17 cents and the total extent of land available in Survey No. 262/1 is 4 acres 27 cents. It was claimed by the defendant that the vendor of the plaintiff had sold the northern stull in both survey numbers in favour of the plaintiff and the southern stull in favour of the defendant. It was the case of the defendant that sub-division of the suit survey numbers had taken place in the year 1983 and the property of the plaintiff was given Survey No.261/1A and 262/1A. The property of the defendant was given Survey No.261/1B and 262/1B. The plaintiff was given patta in respect of Survey No.261/1A to an extent of 1.92.5 hectares (4 acres 76 cents). Likewise, the plaintiff was given patta in respect of Survey No.262/1A to an extent of 0.82.0 hectares (2 acres 2 cents). The defendant was given patta in Survey No.261/1B to an extent of



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2.19.0 hectates (5 acres 41 cents) and in Survey No.262/1B to an extent of 0.90.5 hectare (2 acres 25 cents). Thus, the defendant has been in possession and enjoyment of larger extent of land than the one purchased by him, including the suit property openly and continuously for more than the statutory period and hence perfected his title by adverse possession. It is the case of the defendant that the plaintiff's right to maintain the suit was extinguished by perfection of defendant's title by adverse possession.

4. Before the trial Court, the plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the plaintiff, 3 documents were marked as Exs.A-1 to A-3. The defendant was examined as D.W.1 and two other witnesses were examined as D.Ws.2 and 3. 22 documents were marked on the side of the defendant as Exs.D-1 to D-22. The Advocate Commissioner's and the Surveyor's report and plan were marked as Exs.C-1 to C-6.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the defendant had proved the plea of adverse possession and hence dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal and the first appellate Court confirmed the findings of the trial Court. Hence, the plaintiff is before this Court.



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6. At the time of admission, this Court formulated the following two substantial questions of law, by an order, dated 17.07.2003 :

(1) When a larger extent is given in the U.D.R. Patta than in the title deed, can the Court on the basis of such patta uphold the title ?

(2) When there was a joint patta in favour of the plaintiff and the defendant and when the U.D.R. Patta is granted without notice to the plaintiff, can the Court draw inference of adverse possession on the basis of U.D.R. Patta ?

7. The learned counsel, appearing for the appellants, submitted that the defendant, in his written statement, clearly admitted the title of the plaintiff and hence he is not entitled to raise the plea of adverse possession. It is the submission of the learned counsel that unless the defendant admits his title and pleads adverse possession, he is not entitled to succeed in his plea. The learned counsel further submits that U.D.R. Patta, issued in the name of the defendant, for a larger extent without notice to the plaintiff, will not advance the case of the defendant and the same would not affect the title of the plaintiff. In support of her contention, the learned counsel relied on the following judgments ;



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(1) Yogeshwar Prasad vs. National Institute of Educational Planning and Administration, reported in 2010 (14) SCC 323.

(2) Narasamma & Others vs. A.Krishnappa (dead) through L.Rs., reported in AIR 2020 SC 4178.

8. The learned counsel for the respondent, by taking this Court to the evidence of P.W.1, submitted that the plaintiff had knowledge about the grant of U.D.R. Patta in the name of the defendant for a larger extent, including the suit property, in the year 1983 itself and hence the open and continuous possession of the defendant for more than the statutory period is very well established and the Courts below, rightly appreciating the evidence on record, came to the conclusion that the defendant has proved his plea of adverse possession.

9. As per the admitted case of the parties, both the plaintiff and the defendant purchased their respective properties from the same vendor. The plaintiff purchased the property on the northern side and the defendant purchased the property on the southern side. According to the plaintiff, he purchased 5 acres 9 cents out of total extent of 10 acres 17 cents available in Survey No.261/1 and 2 acres 13 cents out of total extent of 4 acres 27 cents



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available in Survey No.262/1. It is the case of the defendant that though the plaintiff purchased 5 acres 9 cents in Survey No.261/1, he has been in possession of only 4 acres 76 cents on the northern side. Likewise, it is the case of the defendant that though the plaintiff purchased 2 acres 13 cents in Survey No.262/1, he has been in possession of only 2 acres 2 cents in the said survey number from the beginning. It is further pleaded by the defendant that recognising the respective possession of the parties, U.D.R. Patta was granted in the year 1983 as per the actual enjoyment. Thus, the defendant's enjoyment of larger extent, including the suit property, was very well known to the plaintiff even in the year 1983 and he failed to make any objection regarding the U.D.R. Proceedings.

10. In the plaint, it was stated by the plaintiff that the defendant moved his northern fence into the property of the plaintiff three years prior to the filing of the suit. However, when he was examined as P.W.1, he deposed as follows :

□சர்வே எண்.261/1, 262/1ல் நான் வாங்கிய பகுதிக்கும், பிரதிவாதி வாங்கிய பகுதிக்கும் ஊடே வரப்பு 3 வருடங்களுக்கு முன்பு போடப்பட்டது.



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அதற்கு முன்பு ஒரே பூமியாக இருந்தது. வரப்பு போட்டபோது அளக்கப்படவில்லை. சமமாக பிரித்து போடப்பட்டது. 3 வருடங்களுக்கு முன்பு போடப்பட்ட வரப்பை பிரதிவாதி என்னுடைய இடத்தில் தள்ளி வைத்து விட்டார். சர்வே எண்.262/1ல் 3 வருடங்களுக்கு முன்பு போடப்பட்ட வரப்பையும், பிரதிவாதி என்னுடைய இடத்தில் தள்ளி வைத்து விட்டார். அவ்வாறு பிரதிவாதி வரப்பை தள்ளிவைத்தது 3 வருடத்திற்குள் தள்ளிவைத்தார். பிரதிவாதி எப்பொழுது வரப்பை நகர்த்தி வைத்தார் என்று தெரியாது.□

Therefore, it is clear that the plaintiff was not aware of the time during which the defendant moved his fence towards north. Regarding issuance of U.D.R. Patta, the plaintiff deposed as follows :

□நான் கிரையம் வாங்கிய சர்வே எண்.261/1, சர்வே எண்.262/1 உட்பிரிவு செய்யப்பட்டுள்ளது. சர்வே எண்.261/1, 1ஏ என்று உட்பிரிவு செய்யப்பட்டுள்ளது. நான் கிரையம் வாங்கிய சர்வே எண்.262/1, சர்வே எண். 262/1ஏ என்று உட்பிரிவு செய்யப்பட்டுள்ளது. நான் கிரையம் வாங்கிய சர்வே எண். 261/1ஏ, சர்வே எண்.262/1ஏ, சர்வே எண்.246/2, சர்வே எண்.248/1 ஆகிய நிலங்களுக்கு 1022ம் நம்பர் பட்டா என் பெயரில் கொடுக்கப்பட்டுள்ளது. அந்த



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பட்டாவில் தான் தொடர்ந்து கிஸ்தி செலுத்தி வருகிறேன்.□

A reading of the above deposition of P.W.1 would suggest that the lands purchased by the plaintiff in Survey Nos.261/1 and 262/1 were sub-divided and new sub-division survey numbers were given as 261/1A and 262/1A. The plaintiff also admitted that he was given with Patta No.1022 and he has been paying kist as per the patta issued to him. He further admitted that he has not made any application for issuance of fresh patta as per the title document. Therefore, it is clear that issuance of U.D.R. Patta for a lesser extent to the plaintiff and for a larger extent to the defendant was very well known to the plaintiff and, accepting the patta issued to him for a lesser extent, he has been paying kist. The said admission of P.W.1 probabilises the case of the defendant that recognising the actual possession of the properties on ground, U.D.R. Patta was granted to the defendant for larger extent and lesser extent to the plaintiff in the year 1983 itself. Therefore, the hostile possession of the defendant over the suit property was made known to the plaintiff in the year 1983 during patta proceedings. However, he failed to raise his little finger immediately. The suit was filed by him only in the year 1997. If the date of issuance of U.D.R. Patta in the year 1983 is taken as the starting



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point of hostile possession, the suit is filed well beyond the period of 12 years.

Therefore, the defendant established his hostile possession for more than the statutory period. The Courts below, by taking into consideration the admissions of P.W.1 and the documentary evidence let in by the parties, correctly came to the conclusion that the defendant succeeded in proving his plea of adverse possession for more than the statutory period and upheld the plea of adverse title, set up by him in the written statement.

11. The learned counsel for the appellant submitted that issuance of U.D.R. Patta for larger extent in favour of the defendant will not confer any title to the defendant. This Court has no quarrel with the said proposition. I do not say that issuance of U.D.R. Patta for a larger extent would automatically confer any title to the defendant. But, issuance of U.D.R Patta for lesser extent to the plaintiff would establish the starting point of hostile possession by the defendant. The evidence of P.W.1, extracted above, would establish that the issuance of U.D.R Patta was known to him and he has been paying kist to the Government as per the U.D.R Patta issued to him. In view of the same, the defendant established his hostile possession, not mere possession, for more than the statutory period. Hence, the law, laid down in 2010 (14) SCC 323, relied on by the learned counsel for the appellants, is not



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helpful to her. Though the defendant raised inconsistent pleas in his written statement, during trial, he elected his plea of adverse possession and led evidence in support of his hostile possession for more than the statutory period. Hence, the decision in AIR 2020 SC 4178, relied on by the learned counsel for the appellants, will not advance her case.

12. In such circumstances, both the questions of law, framed at the time of admission, are answered against the appellants and in favour of the respondent. The Second Appeal is, accordingly, dismissed, by confirming the findings of the Courts below. No costs.

18.06.2024

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

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To:

- 1.Principal Subordinate Judge,
Madurai.
- 2.District Munsif,
Melur.



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3. Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.

S.SOUNTHAR, J.

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