

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM :

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A.No.1495 of 1998

1.Ramani (deceased)

2.Renuka

3.Kannan

4.Sukumar

5.P.Narayana Moorthy

6.S.Kumuthalakshmi

7.Magalakshmi

8.N.Sankar Sai Ram

(Appellants 5 to 8 are brought on record as legal heirs of the deceased first appellant vide order of this court dated 4.2.2015)

...Appellants/
Plaintiffs 3 to 6

Vs.

1. State of Tamil Nadu
represented by District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2. Tahsildar,
Tiruvannamalai

3. Divisional Engineer, Highways Department,
Tiruvannamalai.

4. Vijayalakshmi (deceased)

(Appellants 2 to 8 are recorded as the
legal heirs of the deceased fourth
respondent vide order dated 4.2.2015
made in CMP No. 106 to 108 of 2015)

...Respondents/
Defendants/Appellants

Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 04.09.1998 made in A.S.No.81 of 1997 on the file of the Sub Court, Tiruvannamalai,

Tiruvannamalai District reversing the judgment and decree dated 04.08.1997 made in O.S.No.1286 of 1979 on the file of the I Additional District Munsif Court, Tiruvannamalai.

For Appellants : Mr.K.V.Subramanian, SC
for M/s.K.V.Subramanian Associates

For Respondents : M/s.Saraswati Shivaraman Iyer, GA(CS)
- R1 & R2
No representation - R3
R4- died

J U D G M E N T

The plaintiffs 3 to 6 are the appellants herein. The suit was originally filed by the deceased plaintiff by name Raju Chettiar against the official respondents for declaring the title of the plaintiff to the suit property and for granting permanent injunction restraining the defendants from in any manner interfering with the plaintiff's possession and enjoyment of the suit property. The suit property is admittedly Government poramboke and the deceased plaintiff claimed the suit relief on the strength of Ex.A1 sale deed dated 27.12.1940 and release deed executed in his favour by one Padmanabha Chettiar in O.S.No.59/1953 and his prescriptive title by way of adverse possession.

2.The suit relief was resisted by the official respondents by denying the right of the predecessor-in-title to convey any right in favour of the deceased plaintiff and another by name Padmanabha Chettiar. According to the official respondents, the plaintiff's predecessor-in-title and thereafter plaintiff are the encroachers and the encroachment was booked in B memo and penalised under the Land Encroachment Act and penalty was also collected from the plaintiff. The respondents have also denied the plaintiff's claim for prescriptive title by adverse possession. It is also their case that the suit property is likely to be acquired by the Highways and Rural Works Department for storing materials and for other departmental use. The respondents have also denied the right of the plaintiff on the strength of release deed made in his favour by Padmanabha Chettiar in the earlier suit OS.59/1953 as they are not party to the proceedings.

3.During the pendency of the suit, the plaintiff died and his legal heirs were brought on record as the plaintiffs 2 to 6.

The trial court on the basis of oral and documentary evidence, upheld the title of the deceased plaintiff's predecessor-in-title and validity of the sale deed executed in his favour. The trial court also held that the deceased plaintiff had been in possession and enjoyment of the suit property from the date of sale deed by paying kist etc. and such possession has also been recognised by the defendants officials and accordingly decreed the suit by granting the reliefs of declaration and injunction in favour of the plaintiffs. Aggrieved against the same, the official defendants preferred AS.81/1997. The Lower Appellate Court reversed the findings of the trial court on the ground that the property is Government poramboke belonging to the Government and the plaintiff's predecessor-in-title has no right to convey any right to the plaintiff and has no right to effect sale transaction of the Government property, as such, the sale deed effected in favour of the original plaintiff is not binding on the defendants and the original plaintiff cannot claim any title by adverse possession and the original plaintiff and his legal heirs have also not proved adverse possession for more than the statutory period and the plaintiffs are hence disentitled to claim the suit relief. The Lower Appellate Court based on such findings, allowed the appeal, thereby dismissing the suit. Hence, this second appeal by the plaintiffs before this court.

4.The Second Appeal is admitted on the following substantial questions of law:

"1.When the plaintiffs have established their possession for over a statutory period for producing documents, is the learned Subordinate Judge right in holding that the plaintiffs have not prescribed title by adverse possession?

2.Whether the plaintiffs have established their possession over a statutory period in accordance with the Limitation Act by producing registered sale deeds as well as tax receipts for enjoyment of the suit property, still is the learned Sub Judge right in refusing the relief of declaration and injunction?"

5.Heard the rival submissions made on both sides and perused the records.

6.The claim for declaration of title and possession made by the deceased plaintiff is based on the sale deed executed in favour of the deceased plaintiff in respect of the property which is admittedly Government Poramboke land. Though the trial

court upheld the claim of the plaintiff on the basis of the sale deed as if the predecessor-in-title by reason of their adverse possession acquired title and right to convey the same to third party, the finding so rendered by the trial court was rightly reversed by the Lower Appellate Court. When the suit property is admittedly Government Poramboke land, the individual having possession of the property in question, acquired no right over the same, so as to validly convey the same to third party. That being the legal and factual position, the finding of the lower appellate court that neither the plaintiff's predecessor-in-title nor the plaintiff acquired any right over the same and rejection of the declaratory relief sought for by the plaintiff warrants no interference by this Court.

7. Insofar as the claim for prescriptive title by adverse possession is concerned, the plaint is lacking in pleadings. Though the deceased plaintiff has stated that the plaintiff and his predecessor-in-title had been in possession of the property for more than the statutory period and acquired absolute title by adverse possession, such possession is, in the plaint, not averred as adverse to the owner/Government. The evidence adduced on the side of the plaintiffs are sufficient enough to prove their possession, but are not sufficient enough to prove that it was from the particular point of time, adverse to the knowledge of the owner and such adverse possession for more than the statutory period culminated into prescriptive title upon the plaintiffs. In the absence of one such case being pleaded and proved, such claim deserves no acceptance.

8. Regarding possession, the claim that the predecessor-in-title and the deceased plaintiff and thereafter other plaintiffs have been continuously in possession and enjoyment of the property in question is evident from the voluminous documents produced on the side of the plaintiffs as Exs. A9 to A85 property tax demand notice, property tax receipt, receipt for payment of electricity consumption and notice issued for revision of property tax etc. which are relating to the years from 1949 onwards. Though the learned standing counsel for the official respondents submitted that the deceased plaintiff was booked under B memo and imposed penalty and he also paid the same, no document is adduced on the defendants' side in this regard.

9. However, the learned counsel for the appellants/plaintiffs by relying on the judgments cited below, contended that even the unlawful possession, not supported by any valid title cannot be interfered with, without having

recourse to court of law. It is further contended before this court that the possession of the deceased plaintiff for more than the statutory period in the nature of 'settled possession' cannot be interfered with except under due process of law. The contention so raised on the plaintiffs' side is well fortified by the decisions of the Hon'ble Supreme Court and the Division Bench of this court in the following judgments: (i)AIR 1968 SC 620 (Lallu Yeshwant Singh v. Rao Jagdish Singh and others) (ii) 1992 Supp (2) SCC 29 (East India Hotels Ltd. v. Syndicate Bank) (iii)(1997) 3 SCC 169 (Anamallai Club v. Government of Tamil Nadu) (iv)AIR 1989 SC 997 (State of Uttar Pradesh v. Maharani Rajlaxmi Kumari Devi and others) and (v)2013 (4) CTC 586 (The Chairman & Managing Trustee, Krishnaswamy Educational Trust, Chennai v. C.V.Rajeswari Ammal (deceased) and others. In all the cases cited above, the long and continuous possession of the plaintiff even after expiry of the licence or its termination, for over the statutory period was treated as in the nature of 'settled possession' entitling him to remain in possession and make use of the premises for the purpose for which it was demised until rejected in due course of law.

10.The Hon'ble Supreme Court in para 31 of the decision reported in AIR 1989 SC 997 (State of Uttar Pradesh and others v. Maharani Rajlaxmi Kumari Devi and others), held that possession can be resumed by Government only in a manner known to or recognised by law and it cannot resume possession otherwise than in accordance with law and the Government is, accordingly, prohibited from taking possession otherwise than in due course of law. In (1997) 3 SCC 169 (Mallai Club v. Government of Tamil Nadu and others), the Apex Court has in para 8 made a distinction between the persons in juridical possession and rank trespassers, as per law. It is observed therein that law respects possession even if there is no valid title to support it and law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a court and the object thereby is to encourage compliance of the rule of law and to deprive the person who wanted a person in lawful possession removed from possession according to proper form and to prevent him from going with a high hand and eject such person. The Supreme Court held so, after referring to its earlier judgment reported in AIR 1968 SC 620 (Lallu Yeshwant Singh v. Rao Jagdish Singh), wherein it is observed that the Government cannot take possession of the land except in accordance with the procedure prescribed under the Act and in that case, other case referred to was the decision reported in 1992 Supp (2) SCC 29 (East India Hotels Ltd

v. Syndicate Bank), wherein, the Apex Court dealt with 'what is meant by due course of law?' and observed that due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure established by law under such safeguards for the protection of individual rights. It is also stated therein that due course of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise and to have the right determination of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him and this is the meaning of due course of law in a comprehensive sense. The Apex Court in its decision reported in 2004 (10) SCC 779 (Karnataka Board of Wakf v. Government of India), laid down the following principles as regards the plea of adverse possession that "the plea of adverse possession is not a pure question of law, but a blended one of fact and law. A person whose claim adverse possession should show (i) on what date he came into possession (ii) what was the nature of his possession (iii) whether his possession was known to the Opposite Party (iv) how long his possession continued and (v) his possession was open and undisturbed."

11. In view of the well settled legal position laid down by the Supreme Court as followed by the Division Bench in the decisions cited supra, this Court is of the view that the possession of the plaintiffs which is longer and continuous enough to treat as 'settled possession' is to be necessarily protected and the plaintiffs cannot be dispossessed except by due process of law. As such, the restricted relief of injunction as granted by the trial court ought to have been confirmed in favour of the plaintiffs. However, the lower appellate court failed to approach the issue relating to injunction relief in proper perspective in the light of the legal principles and decided the relief of injunction against the plaintiffs and the same has resulted in miscarriage of justice and the same warrants interference by this court.

12. Thus, for the discussions held above, this Court, while confirming the findings relating to declaratory relief based on title, is inclined to restore the decree insofar as it relates to permanent injunction is concerned, with liberty given to the defendants to approach appropriate forum for appropriate relief, with further liberty to the plaintiffs to agitate all the plea

available to them including that of adverse possession and the substantial questions of law are accordingly answered.

13. In the result, the second appeal is partly dismissed by confirming the judgment and decree of the lower appellate court, insofar as declaratory relief based on title is concerned and is partly allowed by setting aside the judgment and decree of the lower appellate court insofar as the relief of permanent injunction is concerned. The suit is accordingly decreed by granting the relief of permanent injunction restraining the respondents/defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiff, except under due process of law. The respondents 1 to 3 herein are at liberty to approach appropriate civil forum for appropriate relief for recovery of possession without prejudice to the right of the plaintiffs to contest the same on merits by raising all the pleas including that of adverse possession. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge,
Tiruvannamalai,
Tiruvannamalai District.

2. The I Additional District Munsif,
Tiruvannamalai.

1 CC to M/s.T.R. Rajaraman Advocate SR.No. 16387

1 CC to M/s.K.V.Subramanian, Advocate SR.No. 16541

1 CC to the Government Pleader, SR.No. 16159

S.A.No.1495 of 1998

UG (CO)
PSI (03.11.2015)