

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.1395 of 2003

Judgment reserved on 23.06.2015	Judgment pronounced on 01.07.2015
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Neelakandan

.. Appellant/Defendant

Vs

1.Duraimuthu
2.Valmigan
3.Murugan
4.Kamalam Ammal

.. Respondents/Plaintiffs

Prayer: Second appeal filed under Section 100 of CPC against the judgment and decree dated 09.01.2003 made in A.S.No.82 of 1997 on the file of the Fast Track Court, (Additional District Court) Kancheepuram, confirming the judgment and decree dated 28.02.1997 made in O.S.No.1204 of 1993 on the file of the Additional District Munsif Court, Kancheepuram.

For Appellant : Mr.R.Rajendra Kumar
For Respondents : Mr.N.Ramanujam

JUDGMENT

The second appeal arises out of the judgment and decree dated 09.01.2003 made in A.S.No.82 of 1997 on the file of the Fast Track Court, (Additional District Court) Kancheepuram, confirming the judgment and decree dated 28.02.1997 made in O.S.No.1204 of 1993 on the file of the Additional District Munsif Court, Kancheepuram.

2.The averments made in the plaint are as follows:-

(i)Originally, the house property belonged to one Natesa Mudaliar, the father of the plaintiffs 1 to 3 and husband of the fourth plaintiff and he purchased the same under registered sale deed dated 05.10.1953 for a valuable consideration of Rs.500/- from one Arumuga Mudaliar. Ever since from the date of sale deed, Natesa

Mudaliar is in possession and enjoyment of the suit property, after his death, the plaintiffs herein are in possession and enjoyment of the same. The said Arumuga Mudaliar is none other than the father of the defendant herein.

(ii)The defendant seems to have transferred the adangal in his name in 1397 fasli without the knowledge of the plaintiffs by misrepresentation.

(iii)The vendor Arumuga Mudaliar was a close relative of the plaintiffs (i.e.) sister's husband of Natesa Mudaliar. He requested the deceased Natesa Mudaliar to let out the house to him and therefore, the house was let out to Arumuga Mudaliar for the rent of Rs.25/- per month about 10 years. Arumuga Mudaliar was paying the rent regularly, after his death, his son/defendant has been paying the same regularly. When the plaintiffs demanded the defendant to vacate the suit property, the defendant refused to do the same, therefore, the plaintiffs sent a legal notice to the defendant, for which, the defendant sent a reply stating that he denied the title of the plaintiffs to the suit property. Therefore, the plaintiffs constrained to file the suit for declaring the title of the plaintiffs to the suit property and direct the defendant to hand over the vacant possession of the suit property and to appoint an Advocate Commissioner to ascertain the profits from the suit house under Order 26 Rule 12 C.P.C. Thus, the plaintiffs prayed for decree.

3.The gist and essence of the written statement filed by the defendant are as follows:

(i) The father of the defendant had purchased the suit property from one Poongiliammal as per deed dated 26.01.1944 and he himself constructed in the said site and the property tax was also assessed in his name. After his death, the defendant has been paying the tax for the said house property and has been in possession and enjoyment. Patta was also transferred in the name of the defendant. Therefore, he prayed for dismissal of the suit.

4.The gist and essence of the additional written statement filed by the defendant are as follows:

(i)By virtue of long and uninterrupted, continuous, open and peaceful possession and enjoyment of the suit property beyond the statutory period, the defendant is entitled to the suit property by adverse possession and prescription. The suit is barred by limitation. The suit is bad for non-joinder of necessary parties namely, other legal heirs of deceased Arumuga Mudaliar. Therefore, he prayed for dismissal of the suit.

5.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and

documentary evidence viz., P.W.1, P.W.2, D.W.1, D.W.2 and Exs.A1 to A7 and Exs.B1 to B31, decreed the suit. Aggrieved against the judgment and decree passed by the trial court, the defendant preferred an appeal in A.S.No.82 of 1997 on the file of the Additional District Court, Fast Track Court, Kancheepuram.

6.The learned First Appellate Court has considered the arguments advanced on either side, framed necessary point for consideration, confirmed the Judgment and Decree passed by the Trial Court. Against the Decree and Judgment passed by the first Appellate Court, the present second appeal has been preferred by the defendant/appellant.

7.At the time of admission, the following substantial questions of law have been framed:

1.Whether the reasoning of the lower appellate Court that the appellant herein should admit title of the respondents herein and then alone can he claim adverse possession is correct in law in view of the decisions of this Hon'ble High Court in 2003 (3) MLJ page No.785?

2.Whether the lower appellate Court is correct in law in thinking that the knowledge and the admission of the real owners title is essential with respect to the plea of adverse possession?

3.Whether the Courts below are correct in holding that the appellant is a tenant in the absence of any evidence let in by the respondents herein?

8.Challenging the concurrent findings of both the Courts below, learned counsel for the defendant/appellant submits that the appellant's father has not executed any sale deed and there is no necessity to execute the sale deed in favour of Natesa Mudaliar. The defendant's father alone was in possession and enjoyment of the suit property and after his death, the defendant is in possession more than the statutory period without any interruption. He further submits that all the house tax receipts under Exs.B2 to B16 paid by the father of the defendant. Furthermore, rental agreement is not proved by the respondents and the same has not been considered by both the Courts below. Therefore, he prayed for setting aside the decree and judgment passed by both the Courts below. To substantiate his arguments, he relied upon the following decision:

- (i) 2000 (3) L.W. 848 (Thangamani v. Santhiagu);
- (ii) (2000) 3 MLJ 785 (Sadasiva Gounder and another v. Purushothaman);

9.Resisting the same, learned counsel for the respondents would submit that it is a oral rental agreement. The appellant has not proved his adverse possession and no evidence to show that from which date the defendant is in possession of the suit property adversely to the interest of real owner. So there is no animus possidendi. Both

the Courts below have correctly held that the appellant herein has not prescribed title by adverse possession. Therefore, he prayed for dismissal of the second appeal. To substantiate his arguments, he relied upon the following decision:

(i) 2014 AIR CC 550 (MAD) (Ceceli v. Arpudasamy);
(ii) 1996 (II) CTC 199 (Arulmigu Viswewaraswami and Veeraraghava Perumal Temples, Tiruppur, Coimbatore District v. R.V.E.Venkatachala Gounder and another);

10. Considered the rival submissions made on both sides and perused the materials available on record.

11. Originally the suit property belongs to the father of the appellant namely, Arumuga Mudaliar. One Natesa Mudaliar had purchased the same from Arumuga Mudaliar, who is none other than his sister's husband, under Ex.A1 sale deed dated 05.10.1953. The plaintiffs 1 to 3 are children of Natesa Mudaliar and fourth plaintiff is the wife of Natesa Mudaliar. Since Arumuga Mudaliar was leading waylaid life, to protect the property Ex.A1 sale deed has been executed. Even after execution of sale deed, Arumuga Mudaliar was residing in the suit property as his own property. After the death of Arumuga Mudaliar, the defendant/appellant is in possession and enjoyment of the suit property.

12. The case of the respondents/plaintiffs is that after purchasing the suit property, Natesa Mudaliar on considering the relation ship of Arumuga Mudaliar permitted him to reside in the suit property on the basis of rental agreement, the rent is fixed as Rs.25/- per month. When the plaintiffs demanded the defendant to vacate the suit property, he refused to do so. Therefore, the plaintiffs issued Ex.A4 notice to the defendant and after receiving the same, the defendant sent Ex.A6 reply. In pursuance of the sale deed under Ex.A1, mutation of revenue records has been made, which were evidenced by Exs.A2 and A3. Exs.A5 and B1 is the sale deed executed by one Poongiliammal in favour of Arumuga Mudaliar. Exs.B2 to B16 are the house tax receipts; Exs.B17 to B23 are payment of electricity receipts and water tax receipts stood in the name of the father of the defendant. Patta copy was marked as Ex.B24. Kisth Receipt was marked as Exs.B25 to B29.

13. Admittedly, after execution of the sale deed Ex.A1, appellant and his father were residing in the suit property. So the documents filed by the appellant will no way helpful to him. P.W.1/Valmigan/2nd plaintiff in his cross-examination deposed that there is no documentary evidence to prove that there was a rental agreement between his father Natesa Mudaliar and Arumuga Mudaliar. But both the Courts below held that as tenants, the defendant and his father are in possession of the suit property. But the appellant herein has claimed adverse possession.

Substantial questions of law 1 to 3:

14. In para-4 of the written statement and additional written statement, the appellant/defendant has claimed adverse possession. It is well settled principle of law that a person claiming adverse possession must prove that he is in possession of the suit property openly, continuously, uninterruptedly for more than the statutory period admitting the ownership of the third party with his knowledge adverse to the interest of the true owner.

15. It is pertinent to note that the appellant has not admitted the ownership of the respondents, but he is enjoying the suit property openly, continuously, uninterruptedly for more than the statutory period, hence, the defendant/appellant pleaded that he has prescribed title by adverse possession.

16. At this juncture, it is appropriate to consider the following decisions relied upon by the learned counsel for the defendant/appellant:

(i) In 2000 (3) L.W. 848 (Thangamani v. Santhiagu), in para-18, it was held as follows:

"18. ... In cases where the occupier and the predecessors in title have been in open and continuous occupation asserting positive title in themselves and against every one and the real owner does not take any step to assert his right and to interrupt the running of the period, there is no reason as to why the occupier cannot claim adverse possession. ... "

(ii) In (2000) 3 MLJ 785 (Sadasiva Gounder and another v. Purushothaman), in para-7, it is held as follows:

"7. ... The defendant has come forward with a case of title and having failed in his attempt to prove his title, the question is whether he can claim title by adverse possession. There is a school of thought that to claim adverse possession there must be an admission that the property belonged to the other party and the party claiming adverse possession has to have this 'animus' viz., that it is somebody else's property, that, that somebody alone had title and he did not have title. Animus in the legal parlance would mean mind, design, will, intention, disposition. To claim with regard to possession, the term is animus possidendi, which means the intention of possessing. The person claiming adverse possession must intend in his mind to possess a property as his own. It does not mean that he must be conscious that the property belongs to somebody else. All that is required by the term 'animus' in the context of adverse possession is that the person must have intention to possess the property as his own. Of

course, in a case where the person sets up title in himself and fails to substantiate the same the question may rise as to whether such a person can still claim adverse possession. "

17.Learned counsel for the respondents/plaintiffs has relied upon the following decisions:

(i) In 1996 (II) CTC 199 (Arulmigu Viswewaraswami and Veeraraghava Perumal Temples, Tiruppur, Coimbatore District v. R.V.E.Venkatachala Gounder and another), wherein it was held that title of the property cannot be proved by placing reliance on municipal extracts and tax receipts. In para-13, it is held as follows:

"13. It is the case of the plaintiff that the assessment to the suit property in the Municipal register stands in the name of the plaintiff. According to the plaintiff, originally the assessment in respect of the suit property stood in the municipal register in the name of three persons viz., K.N. Palaniswamy Gounder, R.V.Easwaramurthi Gounder and Narayanaswami Gounder. Easwaramurthy Gounder (deceased) is the father of the plaintiff. From 1946-47 till 1959 the property stood registered in the name of those three persons. However, after the death of Easwaramurthi Gounder, the father of the plaintiff, the name of the plaintiff came to be registered along with other two persons and subsequently, the names of K.N. Palaniswami Gounder and A.Narayanaswamy Gounder were deleted from the register and the plaintiff's name alone has stood registered in respect of the suit property. Ex.A.2 is the extract from the property tax demand register of Tiruppur Municipality from 1946 to 1973-74. Ex.A.3, dated 16-9-1971 is the receipt for payment of property tax in respect of the suit property standing in the name of the plaintiff. The abovesaid documents have been very much relied on by the plaintiff in order to prove his title. The perusal of the judgment of the courts below show that both the courts have accepted the case of the plaintiff. In this respect, the learned Senior Counsel viz., Mr.S.Gopalaratnam, appearing for the appellant brought to my notice a decision of Division Bench of our High Court reported in 55 MLJ (Short Notes) Page 23 and contended that

" an entry of property in a Municipal register in the name of a person is not any evidence of title of that person to the property"

The learned Senior Counsel has also contended that those entry in the Municipal register in respect of

payment of tax has very little value as evidence of title and the conclusion of the courts below relying upon those documents are untenable. Since the above referred Division Bench Judgment has been reported in the form of only Short Notes, I called for the full judgment rendered in A.S.No.263 of 1924 dated 12.9.1928 Devadoss and Walsh, JJ from the Registry. It is useful to extract the relevant portion from the Division Bench Judgment referred above.

"The municipal registry in respect of the house was in Mr.Ranga Rao's name from 1900. It does not appear how the house came to be registered in his name. There is no evidence that the house was in Tungamma's name and that it was afterwards transferred to the name of Mr.Ranga Rao. The mere fact that the municipal registry was in the name of Mr.Ranga Rao is no ground for the presumption that Mr.Ranga Rao was the owner of the house, for a municipal registry is no evidence of title. Under the District Municipalities Act taxes could be collected from the occupier or owner of a house. The registers of houses are maintained for the purpose of collecting municipal assessment and not as evidence of title. In Muhammed Sulaiman v. Sakina Bitra, I.L.R. 44 All 674 it was held that a person in whose name the municipal entry stands as regards a house could not be considered as the ostensible owner within the meaning of Section 41 of the Transfer of Property Act. The learned Judges observe at page 676 "The entry of the name of Badrullah in the house-tax register was only made for the purpose of assessment and collection of house- tax and was not intended for registering title". In Meuvanji Muncherji Cama v. Secretary of State for India, I.L.R. 39 Bom. 664 at page 681 Viscount Haldane in delivering the judgment of the Privy Council observed with reference to the Bombay City Land Revenue Act of 1876. "The Act does not purport to establish a system of registration of title, which is to supersede all other means of conveying or registering the title to land or to relieve purchasers or mortgagees from the ordinary obligation to see that they get what they have contracted to get. Nodoubt, the register is of considerable use even for conveyancing purposes. But neither the language of the statute nor the character of the officials, who have the duty of keeping it, is such as to indicate an invitation to the public to rely on statements in the records as to title which may have to be made incidentally, but which are not expressed and do not purport to be decisive of the rights of the Government or of those of the individual as to matters which go beyond liability to contribute

to land revenue." A revenue pattah is not necessarily evidence of title. It is only evidence of the agreement between the Government and the person in whose name the land is registered for purposes of revenue. It is a well-known fact that there are hundreds of cases where the person in whose name the pattah stands is not the owner of the land. In the case of municipal registers even the presumption which could be made in the case of revenue pattahs cannot be made. For, the municipal register is maintained only for the purpose of assessment and the notice of assessment is issued "to owner or occupier." A person in the occupation of a house can be made to pay the municipal assessment. That being so, the fact that the house was registered in the name of Mr. Ranga Rao would not make him the ostensible owner of the property. Further, there is no evidence that the registry in the name of Mr. Ranga Rao was made with the consent of the plaintiff express or implied."

In view of the law laid down by the Division Bench even as early as in the year 1928, much reliance of municipal extracts and tax receipt in order to prove title of the plaintiff cannot be accepted. Hence the first submission of the learned Senior Counsel is well-founded."

(ii) In 2014 AIR CC 550 (MAD) (Ceceli v. Arpudasamy), wherein it was held that a person claiming adverse possession has to prove three aspects for "Nec-nec vi, nec clam and nec precario". Accordingly, possession must be adequate in continuity for said period, possession must be open and public and extend at least to show as to when possession became adverse to party affected and possession must be for statutory period. Mere possession for 12 years or more would not confer title by adverse possession. In para-28 and 29, it was held as follows:

"28. In Balakrishnan vs. Satyaprakash & Ors., reported in (2001) INSC 32, the Hon'ble Supreme Court has held as follows:

"The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three nec - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in Mst. Bibi Sakina (1964) INSC 35 ; AIR 1964 SC 1254 speaking for this Court Hidayatullah, J. (as he then was) observed thus: Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found."

29. It has been made crystal clear by the Hon'ble Apex Court in the decision referred to above, that for seeking adverse possession, the person claiming adverse possession has to prove three aspects for nec-nec vi, nec clam and nec precario. Accordingly, (1) the possession must be adequate in continuity for the said period, (2) the possession must be open and public and extend at least to show as to when the possession became adverse to the party affected and (3) the possession must be for the statutory period. Mere possession for 12 years or more would not confer title by adverse possession, unless the person claiming adverse possession could prove his animus possidendi and hostile possession and enjoyment of the property against the person or persons, who owned the property, for the statutory period."

18. Considering the above decisions along with the facts and circumstances of the present case, Arumugal Mudaliar's sister's husband is Natesa Mudaliar, who purchased the suit property from him under Ex.A1. At request of Arumuga Mudaliar, Natesa Mudaliar rented out the property to him for the rent of Rs.25/- per month. So Arumuga Mudaliar is in possession and enjoyment of the suit property and paid house tax and water tax, which was evidenced by documents filed by the appellant. The defendant/appellant herein has pleaded adverse possession. But he must prove from which date onwards his possession is adversed to the real owner.

19. In para-3 of the written statement, it was specifically stated as follows:

"3. ... the property mentioned in the plaint schedule originally belonged to Natesa Mudaliar the father of plaintiffs 1 to 3 and the husband of the 4th plaintiff, that he purchased the same by a deed dated 05.10.1958 that the plaintiffs are the legal heirs of the said Natesa Mudaliar, that ever since the date of purchase the said Natesa Mudaliar was in possession and enjoyment of the suit property, till his death and that thereafter the plaintiffs are in possession. Such allegations are not true. ... "

The above para clearly shows that the possession of the appellant is not adversed to the interest of Natesa Mudaliar.

20. Even in para-4 of the written statement, the defendant has stated as follows:

"4. This defendant's father Subbaroya Mudaliar @ Arumuga Mudaliar never executed any deed of sale in favour of the plaintiffs' father and the averments regarding the said sale are false. "

The above para clearly shows that the defendant has not admitted his possession adversely to Natesa Mudaliar. However, the defendant in his written statement stated "in any event, the said Natesa Mudaliar was never in possession of the said property at all."

21. Whereas in para-3 and 4 of the additional written statement, he has stated as follows:

"3. by virtue of long and uninterrupted, continuous, open and peaceful possession and enjoyment of the suit property beyond the statutory period, this defendant is entitled to the suit property by adverse possession and prescription.

4. The suit is barred by limitation."

But the defendant/appellant neither in his evidence nor in his pleadings, has stated that he is admitting the title to Arumuga Mudaliar and he has been in possession and enjoyment of the suit property more than the statutory period openly, continuously and uninterruptedly. Whereas the defendant in his pleadings stated that he is enjoying the property as if he is the owner of the property.

22. Under the aforesaid circumstances, as per the dictum of the Apex Court reported in AIR 1964 SC 1254, mere possession of the suit property for more than 12 years would not confer any title by adverse possession, since the possession of the plaintiffs is not adversely to Arumuga Mudaliar and his children. So both the Courts below have rightly held that the appellant/defendant is not prescribed title by adverse possession.

23. Considering the relationship, since Natesa Mudaliar purchased the property from Arumuga Mudaliar, who is his sister's husband, Natesa Mudaliar rented out the property to him. Since appellant/defendant, who is the son of Arumuga Mudaliar denied the title, the plaintiffs/legal heirs of Natesa Mudaliar filed the suit for declaration of title and recovery of possession. So the respondents/plaintiffs are entitled to the decree as prayed for in the plaint. Both the Courts below rightly held that the appellant/defendant has not prescribed title by adverse possession. Thus, substantial questions of law 1 to 3 are answered against the appellant/defendant.

24. For the foregoing reasons, the decree and judgment passed by both the courts below does not suffer any irregularity or illegality

and it does not warrant any interference and the same are hereby confirmed. The second appeal is liable to be dismissed and it is hereby dismissed.

25.In fine,

- Second Appeal is dismissed with costs.
- The decree and judgment passed by both the Courts below are hereby confirmed.
- Two months time is granted to the appellant/defendant to hand over the possession of the suit property to the respondents/plaintiffs.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Fast Track Court (Additional District Court)
Kancheepuram.
 - 2.The Additional District Munsif Court, Kancheepuram.
 - 3.The Record Keeper, V.R.Section, High Court, Chennai.
- + 1 cc to Mr.N.Ramanujam, Advocate SR.32419

UG (CO)
Eu 20.08.15

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