

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.806 of 2004

1.Chandrasekaran
2.Sundaram

.. Appellants/Plaintiffs

-Vs-

1.N.T.Ramasamy Gounder
2.Anbalagan
3.Muniyan
4.Thangavel
5.Rajamanickam
6.Natarajan
7.Govindaraj
8.Natesan
9.Thangaraj

.. Respondents/Defendants.

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned District Judge, Perambalur dated 05.08.2003 made in A.S.No.260 of 2002 confirming the judgment and decree of the learned District Munsif, Perambalur dated 09.07.2002 made in O.S.No.136 of 1993.

For Appellants : Mr.S.S.Swaminathan
for Mr.P.Muthukrishnan

For Respondent : Mr.A.Arfaat Mohammed
for Mr.A.K.Kumarasamy

J U D G M E N T

The plaintiffs in the original suit are the appellants in the second appeal. They filed O.S.No.136/1993 on the file of the District Munsif Court, Perambalur for a declaration in respect of the suit property having an extent of 90 cents comprised in S.No.392 Part. According to the appellants/plaintiffs, a total extent of 3.04 Acres comprised in old survey No.890 new survey No.392 was owned by one Krishnasamy Reddiar and Santhiyagu. 2.00 Acres forming the southern part of the said land was purchased by the father of the appellants/plaintiffs from Santhiyagu under

a sale deed dated 21.04.1977 registered as document No.556/1977. So far as the remaining extent of 1.04 acres belonging to Krishnasamy Reddiar was concerned, the appellants/plaintiffs claim that they got it by virtue of an oral sale made in favour of their father by Krishnasamy Reddiar. In 15 cents of land out of 1.04 Acres, the appellants/plaintiffs put up a temple for the deity Mariamman and later on dedicated the same to the public. Hence omitting the said land occupied by the temple, the appellants/plaintiffs chose to file the suit in respect of the 90 cents praying for a declaration that they are the absolute owners of the same. Since the appellants/plaintiffs were very much aware of the fact that they could not sustain their contention that they have derived title by oral sale, as the value of the property exceeded Rs.100/-, they chose to take also a stand that they have perfected title by adverse possession in respect of the suit property, namely 90 cents of land.

2. The suit was resisted by the respondents/defendants, who claimed that the entire extent of 1.04 Acres owned by Krishnasamy Reddiar was settled in favour of the representatives of Arulmigu Mariamman temple for the benefit of the temple under a settlement deed dated 21.01.1993. The appellants/plaintiffs contended that the said settlement deed was not genuine and it was created solely for the purpose of defeating the claim of the appellants/plaintiffs.

3. Based on the rival pleas made by the parties, necessary issues were framed and the trial court conducted a trial in which, two witnesses were examined as PWs.1 and 2 and 30 documents were marked as Exs.A1 to A30 on the side of the appellants/plaintiffs. Two witnesses were examined as DWs.1 and 2 and three documents were marked Exs.B1 to B3 on the side of the respondents/defendants. An Advocate Commissioner was appointed by the trial court and his report and plan were produced as court documents and they were marked as Exs.C1 and C2.

4. The learned trial judge, on an appreciation of evidence, came to the conclusion that the appellants herein/plaintiffs miserably failed to substantiate either of their stands that they derived title by virtue of oral sale and that they perfected title by adverse possession in respect of the suit property. The learned trial judge further held that the appellants/plaintiffs also failed to prove their possession and accordingly dismissed the suit in respect of both the reliefs, namely declaration and injunction.

5. Aggrieved by and challenging the decree of the trial court dated 09.07.2002, the appellants herein/plaintiffs preferred an appeal in A.S.No.260/2002 on the file of the District Court, Perambalur. The learned lower appellate judge, after hearing and on re-appreciation of evidence, concurred with the findings of the trial court in all respects with the result that the appeal was dismissed confirming the decree passed by the trial court. It is as against the said decree of the lower appellate court dated 05.08.2003 made in A.S.No.260/2002 on the file of the District Court, Perambalur, the present second appeal has been filed.

6. The second appeal was admitted on 15.04.2004 identifying the following to be the substantial questions of law involved in the second appeal:

1. Whether the presumptive evidence can be accepted while rejecting the available documentary evidence which is not disproved?
2. Whether the effective and continuous adverse possession can be dislodged by a shady document fabricated after the filing of the suit?
3. Whether the suit property can be gifted when it is not under the possession of the donor and when he cannot deliver possession?

7. The arguments advanced by Mr.S.S.Swaminathan, learned counsel appearing for Mr.P.Muthukrishnan, counsel on record for the appellants and by Mr.A.Arfat Mohammed, learned counsel appearing for Mr.A.K.Kumarasamy, counsel on record for the respondents are heard. The judgments of the courts below and the other materials available on records summoned from the courts below are perused and taken into consideration.

8. The case of the appellants/plaintiffs is two fold: 1) They have become the owners of the suit property by virtue of an oral sale made by the erstwhile owner of the suit property, namely Krishnasamy Reddiar and 2) though effective title would not have been transferred by oral sale, since the value of the property was not less than Rs.100/-, the appellants/plaintiffs were in possession of the suit property right from the date of oral sale and their possession were adverse to the interest of the real owner, namely Krishnasamy Reddiar from whom the defendants, representing the deity of Mariamman temple, obtained a gift by virtue of the gift settlement deed dated 21.01.1993.

9. It is their further contention that only in order to grab the land, the defendants have chosen to create a settlement deed in respect of the suit property and the area occupied by Arulmigu Mariamman temple. The oral and documentary evidence adduced by the appellants/plaintiffs and by the respondents/defendants were evaluated by the trial court and on such evaluation, the trial court found the claim of the appellants/plaintiffs to be unsustainable. Though the appellants/plaintiffs have chosen to claim that the property lying on the south of the suit property measuring 2.00 acres was purchased by their father from Santhiyagu under a sale deed dated 21.04.1977, they have not chosen to produce either the original sale deed or a certified copy of the same. However a certified copy of the said document has been produced by the respondents/defendants and marked as Ex.B3. A perusal of the recitals found therein make it clear that the southern portion measuring 2.00 acres out of the total extent of 3.04 acres owned by Krishnasamy Reddiar and Santhiyagu came to be purchased by Elayaperumal, the father of the appellants/plaintiffs. There is no indication in the said document to the effect that the remaining portion therein forming the northern part of the said property was also handed over by Krishnasamy Reddiar to the purchaser under the said sale deed.

10. However, it is the contention of the appellants/plaintiffs that subsequently, in recognition of their possession, which they claimed to be an adverse possession conferring title on them, patta came to be issued in favour of Elayaperumal, father of the appellants/plaintiffs in respect of 1.04 acres forming the northern part also and after the death of Elayaperumal, patta came to be issued in their names. A certified copy of the chitta extract came to be produced as Ex.A2. It was signed by the Headquarters Deputy Tahsildar on 11.03.1993. From Ex.A2 it is obvious that the revenue entries had been made jointly in the names of Krishnasamy Reddiar and Santhiyagu. After the purchase of 2.00 acres under the original of Ex.B3 by Elayaperumal, some corrections have been made including the name of Elayaperumal replacing the name of Santhiyagu. When a subsequent change was made, the name of Krishnasamy Reddiar was also rounded and the names of the appellants/plaintiffs came to be included in the chitta. When such a change was made has not been established. There is no proof that the mutation came to be made on the basis of any transfer of title. Moreover, in the absence of any decree by a civil court, the revenue authorities cannot act on the claim of the person, even if he is in possession of the property, that he perfected title by adverse possession. Subsequently also under Ex.A4, separate patta was issued in the name of the first appellant alone will make it clear that the revenue officials were obliging the appellants whenever they approached them for necessary corrections in the record and mutation of names.

11. It is a settled proposition of law that either patta or the entries in the revenue records shall not be accepted to be valid title deeds for establishing title. Though the appellants/plaintiffs would have taken a plea that they purchased 1.04 acres belonging to Krishnasamy Reddiar orally, there is no plea as to the date on which such oral purchase took place. However in the plaint it was averred that in the year 1975, the father of the appellants/plaintiffs orally purchased the 1.04 acres belonging to Krishnasamy Reddiar. If at all such an oral sale (of course not a valid transfer of title) took place in the year 1975 and the plaintiffs' father was in possession of the northern portion extending 1.04 acres vested with Krishnasamy Reddiar, the same would have been shown as the northern boundary of the property purchased by Elayaperumal under the original of Ex.B3 on 21.04.1977. The boundary for the entire 3.04 acres alone have been provided therein in the description of property, out of which the southern part extending 2.00 acres was shown to be the subject matter of sale. There is no recital that the remaining 1.04 acres forming the northern part of 3.04 acres was already in possession and enjoyment of the purchaser under the said sale deed. Therefore, the contention of the appellants/plaintiffs that their father was in possession and enjoyment of the suit land and the land over which the temple situates was in possession of Elayaperumal from 1975 cannot be countenanced.

12. Though the appellants/plaintiffs were able to produce a number of documents obtained from the Revenue Department, namely Kist Receipts and Adangal extracts, except one document, namely Ex.A17, all other documents are dated 06.01.1987 and subsequent dates. Since 2.00 Acres out of 3.04 acres came to be purchased under the original of Ex.B3, there is no wonder in the appellants/plaintiffs paying kist for the patta issued in respect of the said property. Such kist receipts are sought to be projected as documents evidencing their possession and enjoyment of the northern part of S.No.392 having an extent of 1.04 acres also, regarding which they did not prove their derivative title by purchase.

13. So far as the claim of the appellants/plaintiffs for perfection of title by adverse possession is concerned, it is their case that till the filing of the suit they did not know anything about the gift settlement made by Krishnasamy Reddiar in favour of the persons cited as the representatives of the temple under Ex.B1. Even then, the appellants/plaintiffs have not chosen to make Krishnasamy Reddiar a party-defendant to the suit to substantiate their contention that their possession was

adverse to the right of Krishnasamy Reddiar and they have perfected title by adverse possession against him. The very fact that the appellants/plaintiffs chose to file the suit against the defendants alone will make it clear that they were very much aware of the transaction between the original owner Krishnasamy Reddiar and the defendants who were representing the temple.

14. The appellants/plaintiffs would make a meek attempt to contend that Ex.B1-Settlement Deed was not genuine. But the courts below have rendered a concurrent finding on appreciation of evidence and re-appreciation of evidence. The said finding being a finding on fact, cannot be interfered with by this court in the second appeal unless the same is shown to be perverse, in which event alone, a question of fact will be elevated to the position of a question of law. Upon perusing the evidence adduced on both sides, this court is not in a position to arrive at a conclusion that the finding rendered by the courts below regarding the genuineness of Ex.B1 can be stated to be perverse. Even otherwise the appellants/plaintiffs having approached the court for a declaration that they have perfected title by adverse possession, they are to stand or fall according to the strength of their case and they cannot rely on the weakness of the defence case of the respondents/defendants and try to get a decree in their favour.

15. In the case on hand, the appellants/plaintiffs have not proved their case that they were in possession and enjoyment of the suit property from 1975, as contended by them in their plaint. The said aspect has been adverted to in the earlier part of this judgment with reference to the recitals found in Ex.B3. When the appellants/plaintiffs miserably failed to substantiate the starting point of their adverse possession and in the absence of evidence to show that from a particular point of time subsequent to the date of purchase of the southern portion under the original of Ex.B3, their possession became adverse and by continuous uninterrupted possession to the knowledge of the real owner they have perfected title by adverse possession, they cannot succeed in their attempt to get the relief of declaration as sought for. Suppose the appellants/plaintiffs have chosen to file the suit for a bare injunction based on their possession alone, the court need not have gone into the question of title either derivative or by perfection by adverse possession. When the relief of injunction is sought for as a relief consequent to the relief of declaration, the appellants/plaintiffs cannot succeed in their attempt to get the relief of injunction also.

16. For all the reasons stated above, this court comes to the conclusion that the courts below have not committed any mistake or error in non-suiting the appellants/plaintiffs for

the reliefs sought for. The appellants/plaintiffs have miserably failed to prove their contention that the suit property was in their possession and Krishnasamy Reddiar was not in possession as on the date of Ex.B1 and that therefore he could not have handed over possession to complete the transaction of gift made under Ex.B1. As pointed out supra, the appellants/plaintiffs have also failed to prove that they have perfected title by adverse possession. The findings of the courts below that Ex.B1 was not proved to be fabricated also cannot be said to be perverse warranting any interference. Hence the contention of the appellants/plaintiffs that the courts below acted on presumptive evidence and were of the view that the continuous adverse possession could be dislodged by a shady document; that Ex.B1 was also fabricated and that the gift transaction was not completed by handing over possession, remain unsubstantiated. Accordingly, all the three questions formulated as substantial questions of law at the time of admission of the second appeal deserve to be answered against the appellants. In view of the answers provided for the substantial questions of law 1 to 3, the appeal deserves to be dismissed, as there is no merit in it.

In the result, the second appeal is dismissed with cost.

asr

-s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1. The District Judge,
Perambalur
2. The District Munsif,
Perambalur

+ 1 cc to M/s.P.Muthukrishnan, Advocate SR 42931

ug(co)
prk28/10

WEB COPY

S.A.No.806 of 2004