

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2016

PRONOUNCED ON : 02.12.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.245 of 1996

1. Kandasamy Padayachi ...1st Appellant/ 1st Appellant/
1st Defendant

2. Manjamuthu

3. Thangavel

4. Murugesan

(Appellants 2 to 4 brought on record
as Lrs of the deceased first appellant
vide order dated 07.10.2009 and made
in MP(MD) No. 3 of 2009 in
SA(MD) No.245 of 1996 by GMAJ) ...Appellants 2 to 4

Vs

1. Thangarasu Padyachi

2. Govindasamy

3. Devaki

4. Saraswathi

...Respondents 1 to 4/ Respondents
2 to 5/ Plaintiff 2 to 5

5. G.Mukka Padyachi

6. Govindasamy Padyachi

7. Pitchipillai Padyachi

... Respondents 5 to 7/
Appellants 2 to 4/ Defendants 2 to 4

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 28.02.1994 made in A.S.No.125 of 1992 on the file of the Principal District Court, Tiruchirapalli confirming the judgment and decree made in O.S.No.488 of 1982 dated 21.09.1990 on the file of the District Munsif, Perambalur.

For Appellants

: Mr.S.Mukunth for
M/s.Sarvabhauman Associates

For Defendants

1,2,3 and 5

: No Appearance

For Defendants

4,6,7

: Dismissed on 13.02.2009

JUDGMENT

The first defendant in the suit is the appellant before this Court. The suit filed for declaration and permanent injunction by the plaintiffs was allowed by the trial Court and also confirmed by the First Appellate Court. Aggrieved by the concurrent finding, the appellant/first defendant has preferred this appeal on the ground that the Court below have declared the title in favour of the plaintiff without any documentary evidence and relied upon the documents, which are unrelated to the suit schedule properties.

2. At the time of admission of this Second Appeal, this Court has formulated the following substantial question of law:-

"Whether the Courts below are correct in law in not drawing an adverse inference from the non-production of the registered settlement deed dated 18.09.1950 by the plaintiffs under which they claim title?"

3. Learned counsel for the appellants submitted that the plaintiffs have filed the suit based on adverse possession by prescription, which is only a shield and not a sword against the lawful owner. Plaintiffs cannot take a plea of adverse possession as held by this Court in P.M.PALANISAMY (DIED) VS. KRISHNAN [2015(2) MWN (Civil) 409.

4. It is useful to extract the relevant paragraph 17, which is as follows:-

"17. At this juncture, it is appropriate to consider the decision of the Apex Court relied upon by the learned counsel for the first respondent reported in Gurudwara Sahib v.Gram Panchayat Village Sirthala and another, 2014 (1) SCC 669, wherein it was held that claim of adverse possession can be used as a shield not as a sword and no person can file a suit for declaration of title on the basis of the adverse possession. Paras 7 and 8 are extracted hereunder:

"7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a Suit is not maintainable.

8. There cannot be any quarrel to this extent that the Judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield defence."

5. Learned counsel for the appellants further submitted that the First Appellate Court, after holding that, Ex.A-12, resettlement document, mentions only the name of "Palanisamy" and had not mentioned when the resettlement was made, ought not to have declared the title in favour of the plaintiffs.

6. On a reading of the plaint and evidence let in by the parties, it does not appear to be a case of adverse possession pitted against the original owner. In the plaint, it is stated that the suit property originally owned by the plaintiffs' grandfather Venkatachala Padaychi. After his death, it devolved upon his son Ponnusamy Padaychi and on the death of Ponnusamy Padaychi, his sole legal heir i.e the first plaintiff got the property and enjoying it by way of inheritance. It is further seen that to irrigate this property, there is a common land to an extent of 11 cents and a Well in Survey No.209/3. The water is drawn from the common well to the suit land and the right of using that piece of land was perfected by adverse possession.

7. To the said extent, the plaintiffs were able to prove the continuous possession and enjoyment through revenue records. The only defence taken by the defendants is that those records are forged and tampered. No doubt, the second plaintiff in course of his deposition has referred to the settlement deed dated 18.09.1950 executed by Ponnusamy Padaychi in favour of the plaintiffs, but the so called registered settlement deed has not been produced by the plaintiffs. However, Ex-A12-Resettlement deed register, the name of Ponnusamy is found, which proves their possession. The defendants, who claim possession over the property were not able to establish their possession. Contrarily Ex.A12, which is the better evidence available out of the other exhibits, namely, A1 to A10, B1 to B10, to prove possession is in favour of the plaintiffs.

8. The First Appellate Court has confirmed the trial Court's finding relying upon the decision in 84 Law Weekly page 253, which reads as follows:-

"It is well settled that if one the Courts come to the conclusion that the plaintiffs are in possession of the suit properties, the declaration prayed for and the injunction prayed for must automatically follow"

9. Based on the evidence and decision, and Exhibit A-12, the Courts below had allowed the suit de hors non production of the so-called settlement deed executed in the year 1950. This Court finds no substantial question of law involved in this case. On facts, the plaintiffs were able to convince both the Courts below regarding their continuous peaceful possession over

the property and title through Ex.A.12. As pointed out earlier, when no evidence to show title in favour of the defendants, based on Ex.A.12, the plaintiffs are bound to succeed. Ex.A.12 is the evidence to show that the title to the property belongs to the plaintiffs. It was inherited from Ponnusamy Padaychi by the first plaintiffs father.

10. In the result, the second appeal fails and accordingly, the same is dismissed. The judgments of the Courts below shall stand confirmed. There shall be no order as to cost.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

srn

To

1.The Principal District Court, Tiruchirapallai

2.The District Munsif, Perambalur

1 cc to M/s. Sarvabhuman Associates, Sr. 71557

Second Appeal No.245 of 1996

RSK (CO)
kk 27/12

सत्यमेव जयते

WEB COPY