

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.11.2016

Date of Verdict : 02.12.2016

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 1336 of 2008
and M.P.No.1 of 2008

1. Vairakannu @ Thandavarayan
2. Dhanalatchumy (Deceased)
3. Carpagame
4. Amuthavalli
5. Datcharani

(1st appellant declared as LRs of the Deceased 2nd Appellant vide order of this Court dated 01.09.2016 made in CMP.13456 of 2016 in S.A.No.1336 of 2008)

(Appellants 3 to 5 brought on record as LRs of the deceased 2nd Appellant vide order of this Court dated 01.09.2016 in CMP.13457 of 2016 in SA.1336 of 2008)

...Appellants/Respondents/Plaintiff

Vs.

1. Annakodi
2. Kumar

...Respondents/Appellants/Defendants

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.06.2008 made in A.S.No.200 of 2006 on the file of Principal District Judge, Puducherry, by reversing the judgment and decree dated 03.07.1998 made in OS.No.563 of 1996, on the file of the Additional Sub Judge, Puducherry.

For Appellants : Ms.G.Sumitra

For Respondents: Mr.T.P.Manoharan,
Senior Counsel for
Mr.T.M.Naveen.

JUDGMENT

The plaintiffs are the appellant before this Court. The suit was filed for declaring that the plaintiffs are the absolute owner of the suit property; for recovery of vacant possession; and for mesne profit. The case of the plaintiff is that the suit property originally belongs to one Duraisamy and after his death, by virtue of inheritance the plaintiff was in possession and enjoyment of the property till 13.03.1994. Whereas, the defendants, claiming himself as purchaser of the property from one Rukmani ammal, has trespassed by into the property with the help of his henchmen on 13.03.1994 leading to police complaint and the present suit for recovery of possession.

2. The defendants contended that the property was original owned by the father of Duraisamy @ Thanappa Gounder and Vadivel Gounder. In the year 1938, Duraisamy @ Thanappa Gounder and Vadivel Gounder effected partition in the presence of Panchayathars. The northern portion of the land was allotted to Duraisamy @ Thanappa Gounder and southern portion was allotted to Vadivel Gounder. The southern portion allotted to Vadivel Gounder devolved upon his son Veerappan, who sold the property to Rukmani ammal on 09.12.1958. From the said Rukmani ammal, the first defendant purchased the suit property on 13.11.1982. It was further contended by the defendants that Rukmani ammal initiated suit for declaration against the plaintiff in OS.No. 565 of 1974 and title of the suit property was held in her favour but due to some confusion, she was not unable to take possession of the property, in spite of filling of E.P.517 of 1984. However, after purchasing the property from Rukmani ammal a compromise was struck and the plaintiff had handed over the vacant portion to the defendants but later filed this petition with false allegation.

3. The Trial Court, taking note of the earlier suit filed by Rukmani ammal for declaration of title and possession in O.S.565 of 1974 and the fact that decree has been granted in favour of Rukmani ammal declaring her title and possession of the land bearing Cad.No.335/Bis/2/3/15 held that the plaintiff will not be entitled for declaration of title. The Trial Court also held that there are enough evidence to show that the plaintiffs were forcibly dis-dispossessed by the defendants on 13.03.1994 and granted the relief of possession. The Trial Court, further held that the identification of the suit property is clear and that there was partition between the father of the first plaintiff Duraisamy @ Thanappa Gounder and Vadivel Gounder. While the southern portion was allotted to Vadivel Gounder and northern portion was allotted to Duraisamy @ Thanappa Gounder.

4. Against these findings the defendants preferred an appeal and succeeded on the ground that the suit for re-possession was barred by limitation since it was not filed within a period of six months from the date of dis-possession. Since the title over the property has been already held in favour of the defendant, suit for possession without declaration could be claimed only under Section 6 of the Specific Relief Act, 1963. Since the plaintiffs had not filed an appeal against the judgment of the Trial Court rejecting their title over the suit property, the relief of possession cannot be granted and consequently, they are not entitled to mesne profit.

5. The learned counsel for the appellants submitted that, while the Trial Court has clearly upheld that the plaintiff was forcibly thrown away from the suit property, the appellate Court ought to have interfered with that findings. On the ground of limitation, it was contended by the counsel for the appellant that the description of the property is vague and unidentifiable. Therefore the decree passed in the earlier suit filed by Rukmani ammal could not be executed. By taking advantage of the sale deed executed by Rukmani ammal vide Ex.B.5, the defendants have forcibly thrown out the plaintiffs unlawfully and the said illegal act had not been properly taken note of by the first appellate Court.

6. Per contra, the learned counsel appearing for the respondent submitted that in so far as the title over the suit property is concerned both the Courts below have clearly identified the property. It is held by the Courts below that as per the partition between Duraisamy @ Thanappa Gounder and Vadivel Gounder, the northern portion has been allotted to Duraisamy @ Thanappa Gounder and southern portion was allotted to Vadivel Gounder. The portion allotted to Vadivel Gounder had been assigned Cad.No.335/Bis/2/3/15, whereas the northern portion given to Duraisamy @ Thanappa Gounder was assigned Cad.No.335/Bis/2/3/16 and which is a vacant site. On the northern portion of the property there is a superstructure which was not put up by the plaintiff, but he was only a permissive occupant.

7. While so, in some way or other Rukmani ammal was prevented from executing a decree passed in OS.No. 565 of 1974. Later, the property was sold by Rukmani ammal to the defendants. After the compromise entered between the plaintiffs and defendants, the southern portion bearing Cad.No.335/Bis/2/3/15 measuring 2 ares was taken possession by the defendants. The present suit for declaration and possession was partly allowed by the Trial Court rejecting the plea of declaration of title. The plaintiffs have not preferred any appeal against the

disallowed portion. Therefore, the appellate Court has rightly held that the person cannot seek possession against the lawful title holder, unless he could establish possessory title over the property or dis-possessed within a period of six months.

8. The counsel for the respondent would rely upon the judgment reported in 1999 (5) SCC 607 (Hope Plantation Ltd Vs. Taluk Land Board, Peermade) which reads as follows:

"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgement and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation."

9. Admittedly, the plaintiffs have not preferred any appeal against the disallowed portion of the suit in respect of declaration of title. In law, they cannot pursue it in view of the earlier judgement rendered in O.S.No. 565 of 1974, which has reached its finality. Rukmani ammal, who is the vendor of first defendant, has already been declared as the title owner of the suit property. Sub Section 4 of Section 6 of the Specific Relief Act gives the answer to the core issue in this case. Section 6 Clause 4 of the Specific Relief Act reads as follows :

"6. Suit by person dispossessed of immovable property (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this

section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this Section shall bar any person from suing to establish his title to such property and to recover possession thereof."

10. If any person is dispossessed illegally without following due process of law, he is entitled to file a summary suit for repossession within a period of six months from the date of dispossession or otherwise also he can maintain a suit under Section 5 of Specific Relief Act in the manner provided by the CPC. Nothing under Section 6 of the Specific Relief Act prevents any person from seeking re-possession of a immovable property if filed within six months from dispossession. Under Section 6 of Specific Relief Act even if a person does not have a title over the property, but can only establish the possession, can seek for repossession if he was dispossessed, without following the due process of law. The only precondition is that the said suit should be filed within a period of six months. If he fails to seek recourse to the judicial remedy within six months, the option for him is to seek the general remedy of possession under sub section 4 of Section 6 of Specific Relief Act. For that purpose additionally, he has to establish his title to said property and seek for recovery of possession. This proposition of law is well settled by the Hon'ble Supreme Court in the decision rendered in Nair Service Society Ltd. Vs. K.C.Alexander reported in AIR 1968 SC 1165. Following that judgment the Hon'ble Supreme Court held in 1998(3) SCC 331 Tirumala Tirupati Devasthanams Vs. K.M.Krishnaiah has held as under :

"16. We have already stated that after the plaintiff filed the first appeal the temporary injunction expired on 28.08.1969 and the TTD dispossessed the plaintiff on 30.08.1969. The plaintiff did not claim any relief within six months under Section 6 of the Specific Relief Act, 1963 but applied on 25.07.1970, beyond 6 months from the date of dispossession, for amendment of plaint converting the suit into one for possession. The point is, if the title of the TTD to the suit property, as held by us on point 2, was never extinguished but continued to be absolutely subsisting, whether the plaintiff, claiming to be a person dispossessed by the TTD on 30.08.1969, could recover possession? In our opinion, the judgment of this Court in Nair Service Society Ltd. Vs. KC Alexander (reported in AIR 1968 SC 1165) answers this point squarely. The facts of

the case before us and in that case are quite close but for a small distinction, to which we shall refer at the appropriate stage.

17. In that case the respondent was the plaintiff and he was dispossessed. He sued for possession but the suit was filed more than one year after dispossession. Under the Specific Relief Act, 1877 Section 9 permitted a dispossessed plaintiff to sue for possession within one year and if he so sued, question of title of the defendant was immaterial. Now under Section 6 of the new Specific Relief Act, 1963 the said period of one year has been reduced to six months. Question arose whether the suit by the dispossessed plaintiff, after expiry of the 1 year period, was maintainable. It was held by this Court that even if the time for filing a summary suit under Section 9 of the Specific Relief Act, 1877 expired, the dispossessed person could still file a suit for possession on the basis of prior possession. Such a suit is described as one based on "possessory title". But in such a suit filed by the dispossessed plaintiff beyond the period specified in Section 9 of the Specific Relief Act, 1877 (or Section 6 of the 1963 Act) the defendant who dispossessed the plaintiff could defend himself by proving title and if he proved title, he could remain in possession. After an exhaustive examination of law on this aspect, Hidayatullah, J. (as he then was) observed as follows (AIR at p.1173) :

"when, however, the period of 6 months has passed, question of title can be raised by the defendant and if he does so, the plaintiff must establish a better title or fail."

11. In this case the plaintiff tried to re-open the issue of title, but lost before the Trial Court and chosen not to question it before the Appellant Court. Further, the question of title has already been heard and decided finally in the previous proceedings in O.S.No.565 of 1974. Hence the plaintiffs are estopped from raising the issue of title again. The plaintiffs have also lost the possession admittedly on 13.03.1994. The said suit was presented only on 14.02.1995, well beyond the 6 months period prescribed under Section 6 of the Specific Relief Act. Unless the plaintiffs had proved better title than the defendants, they are not entitled for recovery of possession as held by the Hon'ble Supreme Court in the judgment cited supra.

12. In the result, the appeal is dismissed and the order passed by first appellate Court is confirmed. No orders as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal District Judge,
Puducherry.
2. The Additional Subordinate Judge,
Puducherry.

+1cc to M/S.G.Sumitra, Advocate Sr.71398

+1cc to M/S.K.P.Jotheeswaran, Advocate SR.71941

S.A.No. 1336 of 2008
and M.P.No.1 of 2008

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srg 24/01/2017

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