

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.03.2017

Judgment pronounced on : 17.03.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.Nos.455 to 462 of 2007
and
CMP.Nos.4732 and 4733 of 2016 and
4114 to 4116/16

S.A.No.455 of 2007,461/07

1)Mrs.F.Nasurin

2)S.Faruk

3)C.Bose

4)Mrs.Usha Bose .. Appellants/Respondents/Plaintiffs

(Appellants 1 and 2 are represented by their
Power of Attorney Agent C.Bose 3rd Appellant)

Versus

1)S.T.Subbaiah

2)M.Nethaji Subashchandra Bose @ Bose

3)R.Kanthalakshmi

4)T.M.Ayyasamy

5)L.Nagaihswamy

6)P.R.Dharmalingam ... Respondents in SA.455 and 461/07
/Appellants/Defendants

1.C.Bose

2.Usha Bose

3.S.Faruk

4.F.Nasurin

.. Appellants in SA.456,457,458,459,460/17
/Respondents/Defendants

Appellants 3 to 4 are

Rep.by their power of attorney agent

C.Bose 1st appellant

1.C.Bose

2.Usha Bose

3.F.Nasurin

4.S.Faruk

.. Appellants in SA.462/07/
Respondents/Defendants

(Appellant 3 & 4 rep.by

their power of attorney agent

C.Bose.1st appellant)

T.M.Ayyaswamy .. Respondent in SA.456/07
Appellant/Plaintiff

S.T.Subbaiah .. Respondent in SA.457/07

P.R.Dharmalingam .. Respondent in SA.458/07

R.Kanthalakshmi .. Respondent in SA.459/07

L.Nagaihswamy .. Respondent in SA.460/07

1.P.R.Dharmalingam
2.L.Nagaihswamy
3.T.M.Ayyasamy
4.S.T.Subbaiah
5.R.Kanthalakshmi
6.M.Nethaji SubashChandra Bose@ Bose
.. Respondent in SA.462/07
.. Respondents/Appellants/Plaintiffs

Prayer : Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.Nos.77,78,79,80,81,82,83 & 84/04 dated 25.07.2006 on the file of Principal District Court, Chengalpattu, reversing the judgement and decree passed in O.S.No.344/02, 323/01, 325/01, 327/01, 329/01, 331/01, 352/02 & 354/02 on the file of Additional Sub Court, Chengalpattu, dated 29.01.2004 respectively.

For Appellants : Mr.G.Masilamani, Senior Counsel for
Ms.P.T.Ramadevi

For Respondents: Mr.Ravi Kumar Paul(SC) for
M/s.Paul and Paul
for R1, R3 to R6 in S.A.455/07 and
S.A.461/07, R1 to R5 in S.A.462/07 and
sole respondent in SA.456 to 460/07

COMMON JUDGMENT

These batch of 8 second appeals arise out of the common judgement rendered by the trial court and the first appellate court. The suits were filed at different point of time before different courts, but later transferred to Additional Subordinate Court, Chengalpattu, renumbered and taken up for joint trial. Common evidence was recorded in O.S 344/2002 filed

by the purchaser of the property being a comprehensive suit filed for declaration and possession.

2. In view of multiple suits, for easy understanding, the plaintiffs in O.S. 344/2002 Mrs.F.Nasurin, Mr.S.Faruk, Mr.C.Bose and Mrs.Usha Bose are to be referred as purchasers or appellants and the defendants S.P.Subbaiah, Nethaji Subash Chandra Bose @ M.Bose, Smt. Kanthalakshmi, P.M.Ayyasamy, L.Nagaiahamsy and P.R. Dharmalingam as occupiers or respondents.

3. The dispute is with regard to a piece of land purchased by the appellants herein in the year 1991, claimed to be in enjoyment of the respondents herein for more than 20 years prior to commencement of the litigation. The claim of the occupants is that they have ousted the true owner. They being in possession continuously and uninterruptedly for more than the statutory period, they have prescribed the title as against the true owner joined together filed suit for injunction and also later filed suits for declaration individually. Whereas, the contention of the purchaser of the property is that the occupants trespassed into the property pending suit and they have put up construction. Their possession was never peaceful and uninterrupted. Claiming title based on the sale deeds dated 23.10.91 they filed suit for injunction and subsequently suit for declaration of title and possession.

4. The earliest suit is the bare injunction suit filed by the occupiers on 23.09.1993, re-numbered O.S.354 / 2002 followed by the bare injunction suit filed by the purchasers on 13.10.1993 re-numbered O.S.352/2002. The comprehensive suit for declaration and possession was filed by the purchasers of the suit property on 10.01.1996 in renumbered O.S.344/2002, followed by the suits for declaration filed by the occupiers on 24.11.1998 in renumbered O.S.323,325,327,329 and 331 of 2001.

5. Based on the relief sought and the parties to the proceedings, the eight appeals can be split up into 3 categories.

1) SA 461/2007 and S.A. 462/2007 are against the decree passed in of the bare injunction suit filed by the decree holder in O.S. 352/2002 and dismissal of O.S. 354/2002 filed by the occupier.

2) S.A. 455/2007 is against the decree passed in the comprehensive suit for declaration and possession filed by the title holder in O.S. 344/2002.

3) S.A. 456/2007 to 460/2007 are against the decree passed in the declaration suits filed by the occupiers to declare their title based on prescription in O.S.323, 325, 327, 329 and 331

of 2002.

6.The core facts pleaded and evidence let in support of the said pleadings are common to all the suits. Therefore, it is suffice to extract the gist of the respective side to decide the appeals.

The purchasers:-

The suit property initially belonged to one Venkatarama Iyer. He executed a gift deed in favour of Mrs.Saraswathy and Mrs.Jayalakshmi ammal on 30.03.1959.(Ex A-1). The donees got patta transferred in their name in the year 1982(Ex A-3). On 23.10.1991, they sold a portion of the suit property to one Mrs.Nasurin, Mr.S.Faruk, Mr.C.Bose and Mrs.Usha Bose(hereinafter to be referred as 'purchasers' in short). Vide 4 sale deeds through Ex A-2, Ex A-5, Ex A-7 and Ex A-9. Patta was issued in their respective names on 11.01.1993 vide Ex A-4, Ex A-6, Ex A-8 and Ex A-10. While so, S.P.Subbaiah, Nethathi Subash Chandra Bose @ M.Bose, Smt. Kanthalakshmi, P.M.Ayyasamy, L.Nagaiahamsy and P.R. Dharmalingam (hereinafter to be referred as 'occupiers' in short) attempted to trespass into the suit property on 10.09.1993. Hence, a suit for injunction was filed in O.S.1789/1993 on the file of the District Munsif, Poonamallee, later transferred to Additional Sub-Court, Chengalpattu and re-numbered as O.S. 352/2002. Subsequently, suit for declaration and delivery of possession and damages for use and occupation against the occupiers alleging that they forcibly trespassed into the suit property on 30.09.1993.

7.The occupiers:

The suit property measuring 23 cents in S.No.19/11 Hastinapuram Village, Saidapet Taluk, was vacant and unclaimed. It is Government land subject matter of Land ceiling Act. So they encroached upon it around 1972 and 1973. They formed a layout for themselves consisting of 6 plots with 10 feet wide road in the middle and occupied each plot. They have individually put up superstructure over it and enjoying the property in the respective portion peacefully. They have electricity service connection (Ex B-5,6,14,15,25 to 27, 37, 45 to 47), Water connection (Ex B-6, B-34, B-43, B-44) and paying tax (Ex B-2 to B-4, B-8 to B-14, B-16 to B-22 and Ex B-48) for the said premises. Soon after they entered into the suit property, one Suseela ammal and her relatives claiming themselves as owner of the property, attempted to dispossess the plaintiffs but did not produce document to prove their ownership, so they were prevented from taking possession of the property. Periodically, they were ousted and the plaintiffs have prescribed their title by continuous possession of the suit property against the interest of the true owners beyond the statutory period. While so, the defendants tried to interfere in the peaceful possession of the suit property on 15.09.1993,

which was prevented with great difficulties. Hence, a suit for injunction in O.S 1654/1993 on the file of District Munsif Court, Poonamallee and later transferred and re-numbered as O.S. 354/2002 on the file of the Sub-Court, Chengalpattu against the purchasers. Subsequently O.S. 323/2001, O.S.325/2001, O.S.327/2001, O.S 329/2001 and 331/2001 by the occupiers namely, Mr.Ayasamy, Mr.Subbaiah, Mr. Dharmalingam, Mrs.Kanthalakshmi and Mr.Nagaisamy respectively for the relief of declaration to title since they have prescribed the title by continuous and uninterrupted possession for more than the statutory period.

8.Findings of the courts below:

Before the trial court, PW-1 to PW-3 and DW-1 to DW-5 were examined. Ex A-1 to A-14, Ex B-1 to B-48 were marked. After appreciating the oral and documentary evidences, the trial court accepted the case of the purchaser of the property and decreed their suit by granting decree of declaration and possession in O.S.344/02 and bare injunction in O.S. 352/2002, dismissed the suits for declaration in O.S. 323,325,327,329 and 331 of 2002 and bare injunction in O.S.354/2002 filed by the occupiers.

9.On appeal in A.S.77 to 84 of 2004 instituted by the occupiers, the appellate court in its common judgment, allowed the appeals, reversed the judgement of the trial court, dismissed the suits of the purchasers and decreed the declaration suits and injunction suit filed by the occupiers.

10.Aggrieved by the judgment of the first appellate court, the purchasers are before this court by way of second appeal. At the time of admitting the appeals, this court has framed the following substantial question of law for consideration:-

- '1)Has not the lower appellate court below committed an error of law in allowing the appeal notwithstanding the fact that the respondents have not proved the factum of adverse possession from 1972 as alleged by them, through documentary evidence.
- 2)Has not the lower appellate court below committed an error of law in not holding that in the absence of specific date from which the respondents assert their title claim of adverse possession is not maintainable in law.
- 3)Has not the lower appellate court below committed an error of law in not holding that in view of the statements made by the respondents in O.S.No.1654 of 1993 denying the title of the original owner, the plea of adverse possession cannot be maintained.
- 4)Has not the lower appellate court below committed an error of law in not holding that the burden of proof has not been discharged by the respondents to establish the adverse possession and mere possession will not given any

right to their favour.'

Submissions of respective counsels:-

11.The learned counsel for the appellants submitted that the lower appellate court failed to appreciate that the respondents never had proved their animus to possess open and adverse to the true owners. Having specifically denied the title of the appellants in the written statement filed in O.S 352/2002, the respondents are not entitled to plead adverse possession. It is a plea which can be raised only if the title of the plaintiff is admitted. Further, adverse possession is a shield in defence and not a sword against lawful owner. The respondents have not proved their alleged continuous and uninterrupted possession since 1973 as pleaded. The electrical consumption bills, tax receipts and water connection charges are of recent origin is earliest from 1983. The suit for injunction filed by the respondent on 13.09.1993. Even according to the respondent, pleadings in their plaint filed in O.S.323/2002 etc., there was interruption by the erstwhile owner frequently and they were ousted frequently. While so, the candid admission of the respondents disentitle them to claim title on prescription.

12.Further, the learned counsel for the appellant submitted that, any person who claims adverse possession should come with the specific plea of date on which he came into possession. He should admit the title of the true owner and establish how he claims interest adverse to the true owner by establishing his open, continuous and uninterrupted possession. In this case, the respondent has not proved any of the above requirement. While so, the lower appellate court has miserably erred in allowing the appeals contrary to law.

13.The sale deeds Ex A-2,4,6 and 8, the transfer of patta in favour of the appellants prima facie proves the title in favour of the appellants. The documents relied by the respondents indicates one dwelling unit with door number 52C was available for tax assessment in the suit property during the year 1983. Whereas, admittedly the litigation started openly by filing the suit against each other in the year 1993 well within 12 years. Therefore, declaration of title based on possession is erroneous.

14.Per contra, the learned counsel for the respondents submitted that the the vendors of the appellants were ousted long back. By the time the appellants alleged purchase of the suit property in the year 1991, the respondents have perfected their title by adverse possession of the suit property for more than 20 years. When the vendors of the appellants themselves have lost their enforceable right as against them, no title pass to the purchasers from the erstwhile owners. The electrical service connection, tax receipts and water charges bills for the

suit properties stand in the name of the respondents and this clearly establishes that even before the alleged purchase of the suit property by the respondents, the respondents were in open and continuous possession. The earliest tax demand notice document Ex.B-1 is dated 15.02.1983. This demand is for the II half of the year 1982-1983. Therefore, it is evident that the respondents were in possession of the suit property even prior to September 1982. Therefore, the allegation that the respondents illegally trespassed into the suit property only during September 1993 is a blatant lie. Since the appellants have approached the court with unclean hands with false representation, for that singular reason itself, their appeals are liable to be dismissed.

15.Further, the learned counsel for the respondents submitted that, it is falsely alleged by the appellants that only on 30.09.1993, the respondents trespassed into the suit property. Whereas, the documentary evidences filed in B series proves that the respondents were in possession even before 1982. Therefore, the suit for recovery of possession filed on 11.01.1996 is barred by limitation. Also, the non-examination of their vendor is fatal to the appellant since they are the competent witnesses to say whether they delivered possession of the suit property to the appellants at the time of sale and whether it was vacant or already occupied by the respondent.

Reasoning and decision of this Court:

16.It is the specific case of the occupiers in O.S.No.1654/93 renumbered as 354/2007 is that they trespassed into the suit land in the year thereabout 1973 and put up construction, enjoying it peacefully and uninterruptedly. The contra plea of the purchasers is that they purchased the property on 23.10.1991 from the lawful owner. The occupiers illegally trespassed into the land during the month of September 1993 and had put up filmsy structure. The evidence let in by the parties goes to show that the occupiers who were examined as DW 1 to DW5 were not certain about the date or year of these entry into the suit property. From the plaint filed for injunction in the year 1993, they all uniformly say that about 20 years ago they encroached the land. Whereas, in their subsequent suits filed for declaration in the year 1998, again, they say about 20 years prior to the suit they occupied the land and enjoying peacefully. Apart from contradiction in the pleadings, the ocular evidence also are self-contradictory and uncertain about the date or year of their entry into the suit land. On the scrutiny of the documents relied by them, this Court finds that Ex.B1 Tax demand notice is dated 15.02.1983 for the second half of 1982-83 that too only for Door No.52-C, in the name of 6th respondent Dharmalingam, and not for others.

17.The admitted case of the occupiers in their suit O.S.No.1654/93 that on 15.09.1993, the purchasers tried to disturb them. Based on that allegation, interim injunction was granted and also exparte decree was passed. As per the evidence and the admission of the occupiers, their possession is from September 1982. They all admit that during the year 1983, they put up hut in the suit property, later constructed permanent structure in or about 1986-87. The electricity service and water connection which stands in their name are of the year 1988-90 and thereafter but not before that. It is also admitted both in pleadings as well as in their deposition that they were asked to vacate one Suseela ammal claiming the property as her property. Therefore, it is crystal clear from their own admission that they were made known by the owners that it is not Government land or surplus land under the Land Ceiling Act and were asked to vacate. Therefore, their plea that they were in possession of the property uninterruptedly is false and contrary to their own evidence.

18.The lower appellate court on surmises has held in favour of the occupiers that though tax demand Ex.B1 is dated 15.08.1983, it pre-suppose that they were in occupation of the suit prior to that date and it does not mean that the defendants were in possession only from the demand period. Unless otherwise, there are houses which are found in occupation of the persons, no assessment notice will be served on them for levying property tax. Further, the learned appellate Judge adds that the electricity connection and water connection relate to the year 1987-90 and thereafter. So their possession is open hence adverse to the true owner.

19.While concluding as above, the lower appellate Court has miserably failed to note that Ex.B1 is a tax assessment notice issued to one Dharmalingam calling for his objection on the proposed tax assessment of Rs.60/- per half year. The assessment notice further indicates the annual value of the property proposed to be assessed is Rs.665/-. While DW1 to DW5 invariably admit in their depositions that they put up only hut in the suit land during the year 1983 and thereafter, the pre-supposition of existence of the building prior to 1982 contrary to the material evidence. Therefore, the said finding is baseless. Further, the electricity connection and water connection in the name of the occupiers from 1987 may be an indication of open enjoyment, but it does not satisfy the test of continuous enjoyment for more than 12 years.

20.At this juncture, it is relevant to cite the judgment of the Supreme Court in L.S.Aswathama and another vs. P.Prakash, reported in 2009 (13) SCC 229, wherein, at paragraph 8, the Apex

Court held as follows:-

"The first appellate court can re-appreciate evidence and record findings different from those recorded by the trial court. It is well settled that if the appraisal of evidence by the trial court suffers from material irregularity, as for example when its decision is based on mere conjectures and surmises, or when its decision relies upon inadmissible evidence or ignores material evidence or when it draws inferences and conclusions which do not naturally or logically flow from the proved facts, the appellate court is bound to interfere with the findings of the trial court. It is equally well settled that where the trial court has considered the entire evidence and recorded several material findings, the first appellate court would not reverse them on the basis of conjectures and surmises or without analysing the relevant evidence in entirety. As a final court of facts, if the first appellate court is reversing the judgment of the trial court, it is bound to independently consider the entire evidence."

In this case, the finding of the lower appellate court squarely falls under the mischief pointed out by the Supreme Court.

21. As far as law on adverse possession is concerned, the March of law can be traced from the observation of the Supreme Court made in the following judgments:-

(a) In *S.M. Karim vs. MST. Bibi Sakina*, reported in AIR 1964 SC 1254, the Supreme Court observed as follows:-

"... 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. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

(b) In *Konda Lakshmana Bapuji vs. Government of Andhra Pradesh and others*, reported in 2002 (3) SCC 258, it is observed as follows:-

"The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has 'animus possidendi' to hold the land adverse to the title of the true owner. It is true

that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect title by adverse possession as against the Government is 30 years.'

(c) In P.T. Munichikkanna Reddy and others vs. Revamma and others, reported in 2007 (6) SCC 59, it has been held as follows:-

'Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.'

'Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "willful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.
2. Specific Positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.'

22. On taking the guidance of the above judgments, one can clearly understand that the person who claims adverse possession should first prove his possession, adverse to the true owners. His animus possidendi against the true owners has to be pleaded. Mere long possession without specific pleading and proof when the possession became adverse to the true owner will not enure any right to the person in possession.

23. In this case, the respondents have not come out with clear evidence about the date on which they came into possession of the property. They have pleaded that they trespassed into the land presuming that it is Government land. Therefore, there is no animus possidendi against the true owner. In fact, they

have even questioned the title of the appellants on the ground that their predecessors in title were ousted. So the title passed on to them through Exs.A2, A5, A7. Evidence reveal that their possession was not uninterrupted but been disturbed all along and not open or continuous for a period more than 12 years to hold that the appellants or their predecessors in title have extinguished their title by operation of Section 27 of Limitation Act. Therefore, though one of the respondents being a squatter, able to show semblance of possession through Ex.B1 dated 15.02.1983, by obtaining injunction in O.S.No.1654/93 on 23.09.1993 against the appellants alleging attempt to dispossess, the limitation to invoke extinguishment of right falls short of 12 years. Therefore, they are bound to deliver the vacant land to the appellants/title holder.

CMP.Nos.4732 and 4733 of 2016:

24.These two petitions are filed to implead one Anand Roy as 7th respondent in S.A.No.455/07 and 462/07 on the ground that pending appeal, the 2nd defendant/Bose @ M.Nethaji Subash Chandra Bose has executed a sale deed in favour of one Anand Roy in respect of the portion of the suit property. Hence, he is a just and necessary party.

25.In the counter affidavit filed by the proposed respondent, he has contended that he along with one P.John Joseph purchased vacant land Plot No.52-C in Survey No.19/11 measuring 200 sq.ft from one Janab P.M.Ahmed, by paying huge consideration on 10.05.1994 and the said Janab P.M.Ahmed purchased the property in 1993.

26.Counter reveals that when the proposed respondent purchased the portion of the suit property on 10.05.1994, it was a vacant land and his vendor is Janab P.M.Ahmed. The counter does not reveal how and when Janab P.M.Ahmed derived title over the property.

27.When the said Janab P.M.Ahmed is not a party to the proceedings and even assuming that Janab P.M.Ahmed had purchased the property from M.Bose as contended by the appellants, then the subsequent purchaser pending litigation is not a necessary party, since their vendor is already a party to the proceedings. The said M.Bose is the 6th plaintiff in O.S.354/02 and 2nd defendant in O.S.352/02. If the proposed party had purchased the property from a person who did not have title or right to alienate, then he has to work out his remedy only against his vendor and not in this proceedings. Therefore, in either way, the proposed respondent is not a necessary party and hence, CMP.Nos.4732 and 4733 of 2016 are dismissed.

CMP.Nos.4114 to 4116 of 2016:

28.These petitions are taken out by the appellants to implead one P.John Joseph as 8th respondent in S.A.Nos.455, 461 and 462 of 2007, on the ground that the 6th respondent/P.R.Dharmalingam died pending appeal and on enquiry, they have come to know that the said P.R.Dharmalingam sold the property to one Anand Roy. Therefore, CMP.Nos.4732 and 4733 of 2016 were filed to implead Anand Roy as 7th respondent as stated above.

29.In the counter filed by Anand Roy, he has disclosed that he has purchased the property along with one P.John Joseph. Therefore, the said P.John Joseph has to be impleaded as 8th respondent.

30.As pointed out earlier, P.R.Dharmalingam has contested the suit and lost the case. The proposed parties are purchasers pendente lite. They have no independent cause to agitate the case beyond what pleaded by the said P.R.Dharmalingam. Therefore, there is no necessity to entertain these three applications. Accordingly, CMP.Nos.4114 to 4116 of 2016 are dismissed.

Conclusion:-

31.For the abovesaid reasons, the common judgment in A.S.Nos.77 to 84 of 2004 dated 25.07.2006 on the file of Principal District Court, Chengalpattu, is set aside and the common judgment in O.S.No.344/2002, 323, 325, 327, 329 and 331 of 2001 and 352 & 354 of 2002 on the file of Additional Sub Court, Chengalpattu, dated 29.01.2004 is upheld and confirmed. The Second Appeals are allowed accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nbi

WEB COPY

To

1)The Principal District Judge,
Chengalpattu.

2)The Additional Sub Judge, Chengalpattu.

+1cc to Mr.S.Vijayaraghavan, Advocate SR.No.17304

+1cc to M/s.Paul & Paul, Advocate SR.No.17187

+8cc to P.T.Ramadevi, Advocate SR.No.17505

S.A.Nos.455 to 462 of 2007

SSI (CO)
GN(21/04/2017)



WEB COPY