

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-12-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.Nos.150 & 224 OF 2011

1.T.Govindarajulu
2.T.Sundararajulu
3.T.Kantharajulu

... Appellants in both appeals/Defendants

-vs-

1.Dr.N.Kuppusamy
2.N.Saraswathi

... Respondents in both appeals/Plaintiffs 3 & 4

S.A.No.150 of 2011 is filed against the judgment and decree, dated 14.12.2009, passed in A.S.No.5 of 2007 on the file of Principal Subordinate Court, Krishnagiri, against the judgment and decree, dated 31.10.2006, passed in O.S.No.428 of 1995, on the file of District Munsif, Krishnagiri.

S.A.No.224 of 2011 is filed against the judgment and decree, dated 14.12.2009, passed in A.S.No.6 of 2007 on the file of Principal Subordinate Court, Krishnagiri, against the judgment and decree, dated 31.10.2006, passed in O.S.No.318 of 1996, on the file of District Munsif, Krishnagiri.

For appellants : Mr.V.Nicholas

For respondents: Mr.J.Nandagopal

COMMON JUDGMENT

Aggrieved over the common judgment and decree passed in A.S.Nos.5 and 6 of 2007 on the file of Principal Subordinate Court, Krishnagiri, the defendants have filed these Second Appeals.

2. Originally, the suit properties belonged to one Neti Krishnappa Naidu. He had two daughters and one son. First plaintiff, Rajammal, is his first daughter. Father of the defendants, namely, Thirupathirajulu is the son and another

daughter, namely, Alamelu pre-deceased Neti Krishnappa Naidu. In the year 1959, the said Thirupathirajulu filed a suit against his father and sister in O.S.No.28 of 1959 for partition. The said suit was decreed, and, in I.A.No.932 of 1966, final decree came to be passed. The suit properties, which are the subject matter of the present suit, were allotted to the share of the plaintiff Rajammal. She filed an Execution Petition in R.E.P.No.127 of 1994, which was renumbered as REP.No.14 of 1977, and delivery was recorded on 01.08.1977. Since the defendants and their father trespassed into the property, a criminal case was filed against them and the same was pending in C.C.No.198 of 1980.

3. While the matter stood thus, the defendants alleged that a panchayat was convened and a Muchalika was signed, in which, the suit properties, which were originally allotted to the plaintiff, namely, Rajammal in the decree passed in O.S.No.28 of 1959, were all given to the shares of the defendants and, in lieu of the same, an extent of 15 acres in a village was given to the plaintiff and the criminal case, which was filed in C.C.No.198 of 1980, was also withdrawn.

4. The respondent/plaintiff, alleging that Muchalika was obtained by fraud and coercion and the appellants/defendants have forcibly trespassed into the properties, filed a suit for delivery of possession and for mesne profits. The plaintiff also filed another suit for partition of the house property and for delivery of possession in O.S.No.41 of 1983, renumbered as O.S.No.428 of 1995. The trial Court framed relevant issues and, ultimately, dismissed the suit, upholding Muchalika. On appeal, the finding of the trial Court was reversed and the suit was decreed, against which, the present Second Appeals are filed and admitted on the following substantial questions of law :

(i) When the first plaintiff Rajammal admitted that possession was not taken in the execution proceedings which is substantive evidence of the fact admitted and such admitted facts need not be proved and therefore it has been established that the defendants are in possession continuously, openly and adversely to the knowledge of the plaintiffs by perfecting title by adverse possession and consequently the plaintiffs have lost their rights in the suit properties, whether the lower appellate court is correct in granting the relief to the plaintiffs ?

(ii) When the plaintiffs admitted the execution of the panchayat muchalika but failed to prove that it was obtained by force and undue influence are bound by the terms and conditions of the said muchalika and as such they are estopped from claiming rights contrary to the

said muchalika, whether the lower appellate court is correct in upholding the claim of the plaintiffs ?

5. Heard both sides.

6. The first question of law is that whether the appellants have perfected their title by way of adverse possession, in view of the admission made by the respondent-plaintiff that delivery was not taken, and, whether the plaintiff proved that Muchalika was obtained by force and undue influence and, as such, the respondent/plaintiff was estopped from claiming rights contrary to the terms and conditions of Muchalika. The questions framed as such are not questions of law, rather, they are questions of fact, to be proved. Admittedly, the suit for partition was filed by the appellants' father and a preliminary decree came to be passed as early as 29.07.1959 and consequent on the final decree, delivery was ordered on 01.08.1977 in E.P.No.14 of 1977. Against the order of delivery, the appellants preferred a revision petition in C.R.P.No.1906 of 1977 and the same was dismissed on 10.08.1978. The delivery was effected on 29.07.1979 and intimation was given by Amin to the Court on 06.08.1979 and since then the plaintiff was in possession of the property. On 26.01.1981, the appellants/defendants dispossessed the plaintiff from the delivered properties and obtained signatures of the plaintiff forcibly, by threat and coercion, in Muchalika in a panchayat. When the defendants claim that the said Muchalika was not obtained by force, burden lies on them to prove that the plaintiffs have voluntarily subscribed to the same. They cannot be directed to prove the negative. It is to be seen as to whether Muchalika was proved by the appellants. In support of their case, the appellants have examined nine witnesses, of them, D.W.1 and D.W.2 are the defendants and interested parties. D.W.4 is a maid servant of the appellants. D.W.7 is the scribe. Curiously, none of the panchayatdars, who were directly involved in the settlement through Muchalika, were examined as a witness. Secondly, Muchalika would only state the suggestions of the panchayatdars as to the allotment of properties, in which case, can it be said to be a mutual agreement ? Further, Muchalika does not spell out any reasons for doing away with the properties, which were allotted by a decree of a competent civil Court in its entirety, and allotting an agricultural land in a remote village in lieu of a valuable property situated on the main road of the town. The market value of the property of the plaintiff is not comparable with the property allotted to them by Muchalika in a remote village. Hence, it cannot be said that a reasonable man would agree to give up his valuable property for a song without any logical reasoning for the same. The burden is on the appellants/defendants to prove the same. In the given circumstances, the Muchalika does not form a balanced one. But, on the other hand, it appears to be a unilateral one,

drafted to favour the appellants. One can presume, that in a panchayat, distribution of assets would be equal among the parties and, even if there is some discrepancy in the allotment, reasons are set forth for allotting a larger share in favour of one party. In the instant case, it is stated, that in lieu of the valuable property situated on the main road of the town, a paltry amount was given as compensation along with an encumbered property, that is to say, the agricultural land, which is said to have been leased out and in possession of a third party. Therefore, by no stretch of imagination, it can be construed that Muchalika was voluntarily signed by the plaintiffs that too after a long contested battle. Hence, it is not proved by the appellants that the respondent has voluntarily entered into the agreement. Conversely, the said Muchalika is only a unilateral document, obtained by force and coercion. In any event, the respondent has filed a suit immediately for delivery of possession, which would go to show that the said Rajammal was not inclined to give up a valid right conferred on her through a decree of a competent civil Court. Since the Muchalika is not proved, there cannot be any estoppel that the parties to the Muchalika are bound by the terms and conditions contained therein. Hence, this Court finds that Muchalika is not valid and enforceable. As such, the finding of the lower appellate Court on this aspect is confirmed.

7. In so far as the question of adverse possession is concerned, the party, who is placing the plea that he is in adverse possession of the property with the knowledge and against the interest of the other side, has to prove the same. In the instant case, the lower appellate Court has given its reasons for not accepting the Muchalika and thereby legal possession of the appellants. In that event, the case of the respondents/plaintiffs that the defendants trespassed into the property after delivery stands proved. Just because a statement has been made that actual delivery was not taken, can it be construed that the appellants/defendants are entitled to adverse possession. In the considered opinion of this Court, the answer is a firm "No". It is well settled, that the party, who makes a plea of adverse possession, shall prove the factor, by adducing oral and documentary evidence. In the instant case, the appellants want to take advantage of the statement made by the respondent-plaintiff that delivery of possession was not taken and the appellants trespassing into the properties will entitle them to the title by adverse possession cannot be accepted. The appellants/defendants have trespassed into the property and a criminal case was registered in C.C.No.198 of 1980. The suit for delivery of possession was filed in the year 1983. Only because execution petition was filed after a long time from the date of decree, it will not confer any right on the appellants to claim adverse possession and, at the same time, it will not disentitle the respondent/plaintiff from

getting possession. In fact, the Civil Revision Petition filed by the appellants-defendants was also dismissed by this Court on 10.08.1978 and when delivery was recorded following the due procedure in an execution proceeding on 29.07.1979, it shall be construed that the actual delivery was given in favour of the decree holder only in the year 1979. Any interference thereafter will not date back to the date of decree. Since the appellants failed to prove that they have perfected their title by adverse possession and the respondent-plaintiff has lost her rights over the suit properties, the finding of fact by the lower appellate Court stands confirmed. Thus, the question raised on the point of adverse possession is also answered in the negative and against the appellants.

8. The respondents are entitled to the property as decreed in O.S.No.28 of 1959 by the trial Court. Further, the sale deed, which was directed to be executed by the respondent-plaintiff within a period of three months pursuant to the alleged Muchalika, was also not marked. In the absence of any action consequent on Muchalika, it will render it one not acted upon. For this reason also, Muchalika and the terms and conditions contained therein are not sustainable in the eye of law.

9. Hence, no questions of law arise for consideration and, accordingly, these Second Appeals are dismissed. Considering the fact that the respondent-plaintiff was forced to undergo the mental agonies from the year 1966 onwards, this Court considers it fit to order compensation for the mental agony suffered. Accordingly, the appellants shall pay a sum of Rs.1.00 lakh each in both appeals to the respondent-plaintiff within a period of one month from the date of receipt of a copy of this order. Further, the appellants are directed to hand over the possession to the respondent within the abovesaid period. Consequently, the connected M.P.No.1 of 2011 is closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.Principal Subordinate Judge,
Krishnagiri.

2.The District Munsif,
Krishnagiri.

3. The Section Officer,
V.R. Section, High Court,
Madras.

+2cc to Mr.V.Nicholas, Advocate, S.R.No. 87361 & 87363
+1cc to Mr.J.Nandagopal, Advocate, S.R.No.87536

S.A.Nos.150 & 224 OF 2011

KGK (CO)
GN (26/10/2018)



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