

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2016

PRONOUNCED ON : 02.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.539 of 2011

and

M.P.No.1 of 2011

1.M.Philip @ Kannusamy
2.M.Prabu
3.M.Jesudass
4.M.John Samuvel
5.M.Saraswathi @ Saroja
6.Janaki @ Johnsibai
7.Jeevan

..

Appellants

Vs.

1.J.Gunalan
2.J.Ravichandran
3.J.Sathyaseelan
4.The Thasildar,
Erode & District.
5.The District Collector,
Erode District.

..

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.12.2010 passed in A.S.No.75 of 2010 on the file of the Principal Subordinate Court, Erode & District reversing the decree and judgment dated 18.06.2010 passed in O.S.No.786 of 2005 by the Second Additional District Munsif Court, Erode & District.

For Appellants : Mr.I.C.Vasudevan

For Respondent : Mr.M.Guruprasad

JUDGMENT

The defendants 1 to 6 and 8 in this second appeal have challenged the judgment and decree dated 23.12.2010 passed in A.S.No.75/2010 on the file of the Principal Subordinate Court, Erode, reversing the judgment and decree dated 18.06.2010 passed in O.S.No.786 of 2005 on the file of the Second Additional District Munsif Court, Erode.

2. The suit has been laid by the plaintiffs for the reliefs of declaration and possession.

3. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal.

" Whether the judgment and decree of the first Appellate Court are based upon perverse findings and against the evidence on record."

4. Manuel and Jones are brothers. The plaintiffs are the sons of Jones. The defendants 1 to 6 are the sons and daughters and the 7th defendant is the wife of Manuel. As regards the above relationship between the parties, there is no dispute.

5. The 8th defendant is the purchaser of the portion of the suit property from Manuel and the defendants 1 to 6. The suit property is stated to be originally situated in Oor Natham and the plaintiffs claim title to the suit property on the basis of the patta issued in favour of Jones vide HSD No. 685/81. The above said patta has been marked as Ex.A1. A perusal of Ex.A1 would show that, as found by the courts below, correctly, the patta for the entire suit property has been issued in favour of Jones even as early as on 06.03.1972.

6. However, according to the plaintiffs, the father of the defendants 1 to 6 and the husband of the 7th defendant Manuel, who is their paternal uncle, after retirement from his work at Nilgiris, came down to the suit village and he being the elder brother of their father, according to the plaintiffs, out of love and affection, permitted Manuel to reside in a portion of the suit property and also collected a minimum of maintenance charge for the same and further, according

to the plaintiffs case, in evidence of the above said transaction, Manuel had executed a Panchayat Muchalika, on 17.08.1983, accepting his permissive possession in respect of the portion of the suit property and also admitting the plaintiffs' ownership to the suit property. The defendants have disputed the above plea of the plaintiffs as regards the execution of the Panchayat Muchalika by Manuel in faovur of the plaintiffs on 17.08.1983. The Muchalika executed by Manuel in favour of the plaintiffs on 17.08.1983 has been marked as Ex.A22. The plaintiffs have also examined the witness associated with the Panchayat Muchalika and they have tendered evidence that the same had been executed by Manuel in favour of the plaintiffs. Therefore, it could be seen that based upon the deposition of the independent witnesses, who have testified about the above said Muchalika, Manuel had taken only permissive possession of the suit property under the plaintiffs and accordingly, had been residing there. However, the trial Court, it appears did not agree with the case of the plaintiffs as regards Ex.A22 on the footing that the survey number of the suit property and HSD.No.685/81 had been inserted in the document Ex.A2 and with reference to the same, there is no proper explanation on the part of the plaintiffs. However, as rightly found by the first appellate court, it is not the case of the defendants that

Manuel had executed Ex.A22 Muchalika in respect of a different survey number other than the suit survey number. Therefore, it could be seen that a perusal of the evidence adduced by the plaintiffs, as regards Ex.A22, cumulatively, would go to show that Manuel had taken permissive possession of the portion of the suit property under the plaintiffs and accordingly, executed the Muchalika marked as Ex.A22. Therefore, from Ex.A22, as rightly found by the first appellate court Manuel has occupied a portion of the suit property under the permission granted by the plaintiffs.

7. Now, according to the plaintiffs, taking advantage of the permissive possession in respect of the suit property granted by the plaintiffs and also taking advantage of the absense of the plaintiffs from the suit village for a long period, according to the plaintiffs, Manuel had stealthily obtained patta from the Government in respect of the portion occupied by him in the suit property and on coming to know of the same, it is the case of the plaintiffs that they had preferred objections to the Revenue authorities. With reference to the above case of the plaintiffs that objection had been put forth by the plaintiffs to the Revenue Authorities, the same could be seen from the documents marked as Ex.A3 and 4.

8. As per the case of the defendants, they have been granted patta by the Government considering the long possession of the portion of the suit property by Manuel and it is stated that the patta granted to the defendants is with reference to the patta No.486/14 and further, according to the defendants, the plaintiffs have been granted separate patta, the same being patta No.486/15. Therefore, even as per the case of the defendants, only during the year 1990, they had been issued patta in respect of the portion of the suit property in their occupation. Prior to the same, it is not the case of the defendants that they had been conferred any patta by the revenue authorities in respect of the portion of the suit property under their occupation.

9. On the other hand, as adverted to earlier, even as early as 06.03.1972 Jones had been granted patta for the entire suit property and in such view of the matter, it has not been explained by the defendants as to how come the revenue authorities could have legally granted patta subsequently to a portion of the suit property in favour of Manuel. It is not the case of the defendants that after due notice to the parties concerned, particularly, to Jones or the plaintiffs, Manuel

had been granted patta during the year 1990. With reference to the above case of the defendants, the defendants have not cared to examine the Revenue Authorities to establish that patta had been granted to Manuel only after due notice to all concerned, particularly, after giving notice to either Jones or the plaintiffs. Therefore, it could be seen that the patta alleged to have been granted in favour of Manuel in violation of the patta already granted in favour of Jones for the entire suit property would not be in accordance with law. It is not the case of the defendants that the patta granted in favour of Jones for the entire suit property had been cancelled by the Government and thereafter, considering the long possession of the portion of the suit property by Manuel, he had been granted patta during 1990. Therefore, the plea of the defendants that inasmuch as the patta had been granted to them in respect of the portion of the property now in their occupation, the plaintiffs cannot claim title to the same, as such, cannot be accepted.

10. As found earlier, inasmuch as Manuel had been permitted by the plaintiffs to stay in the suit property, it could be seen that he had executed a Panchayat Muchalika in favour of the plaintiffs marked as Ex.A22. As regards Ex.A22, as seen earlier, the plaintiffs have

examined independent witnesses for proving its authenticity. The defendants have taken inconsistent pleas as regards the above said Muchalika. At one stage, the defendants denied the execution of Muchalika by Manuel. Per contra, they have also taken a plea that even if the said muchalika is held to be a true document, according to the defendants, the property in their possession being their ancestral property, it is contended that Manuel cannot execute muchalika on his own ignoring his children. On that ground also, the defendants have challenged the case of the plaintiffs that Manuel had been in possession of a portion of the suit property under their permission and accordingly, he had executed Muchalika Ex.A22. However, as rightly found by the first appellate court, not a scrap of paper has been produced by the defendants to hold that prior to Ex.A22 or prior to 1990, the defendants and the prior to them, Manuel had been enjoying the portion of the property in their occupation as their ancestral property. Therefore it could be seen that the defendants, without any basis or foundation, have put up a defence that the property in their possession is their ancestral property.

11. It appears that the defendants on the footing that Manuel has also based upon the patta granted during the year 1990, had

applied for permission from the panchayat concerned for construction of a superstructure in a portion of the suit property in his occupation and based upon the same, and also paying certain house tax receipts, claim title to the property in their occupation. However, when it has not been established by the defendants that patta granted to Manuel is as per rules and in accordance with law and when it is also found that already patta had been granted in favour of Jones for the entire suit property under Ex.A1, it could be seen that the action of Manuel in getting the permission from the panchayat concerned for putting up structure in the portion of the suit property, to which he had been granted patta as such would not in any manner undermine or defeat the plaintiffs' case.

12. The plaintiffs have also filed house tax receipts and tax receipts to show that the suit property had been in their possession and enjoyment and accordingly, they had granted permission to Manuel to occupy a portion of the suit property under Ex.A22. In so far as this case is concerned, both parties claim title to the suit property only on the basis of the patta granted in their favour by the Government. When much earlier to the patta granted in favour of Manuel, the government had granted patta for the entire suit property

in faovur of Jones, it could be seen that as rightly found by the first appellate court, no safe reliance could be attached to the patta alleged to have been granted in favour of Manual for conferring title to the portion of the suit property in the occupation of the defendants.

13. The counsel for the defendants contended that the plaintiffs have not come forward with the suit within the time permitted by law and inasmuch as the defendants have clamed to be in possession and enjoyment of the portion of the suit property based upon the patta proceedings and despite the plaintiffs having knowledge about the same, inasmuch as they have not instituted the suit in time, it is contended that the suit laid by the plaintiffs is hit by the law of limitation. In other words, according to the counsel, inasmuch as the defendants by their occupation of the portion of the suit property in their own right to the knowledge of the plaintiffs and also exhibiting hostile attitude disputing the plaintiffs title to the same for more than the statutory period, the defendants have prescribed title to the portion of the suit property in their occupation. According to the counsel, as the plaintiffs having not filed the suit within the time allowed by law, the suit is barred by time. However, a perusal of the written statement would go to show that the defendants have not

taken a specific plea that they have perfected their title to the portion of the suit property in their occupation by adverse possession. When it is the specific case of the plaintiffs that Manuel had been in possession of the portion of the suit property under their permission and when that case of the plaintiffs has also been established positively, in such view of the matter, it is for the defendants to establish from what point of time they had been exercising hostile possession in respect of the portion of the suit property in their occupation to the knowledge of the plaintiff. Only from that time, it could be seen that the time limit would start against the plaintiffs for instituting the present suit. On the other hand, when it is the specific case of the plaintiffs that the defendants possession of the portion of the suit property is under their permission and when the defendants have not specifically taken a plea of adverse possession and also not established as to when from their possession had become adverse to the plaintiffs and when the plea of adverse possession, now taken during the course of arguments, has also not been established by the defendants by adducing acceptable and reliable evidence to the satisfaction of the court, it could be seen that the plea put forth by the defendants' counsel that the plaintiffs action is hit by the law of limitation as such cannot be accepted.

14. In this connection, the defendants' counsel seems to base his argument under Article 65 of the Limitation Act, 1963. A perusal of the same would go to show that the time prescribed under Article 65 for instituting the suit for possession of the immovable property or any interest therein based on title is 12 years and the said time would begin to run only when the possession of the defendants become adverse to the plaintiffs. In so far as the case is concerned, when the defendants have not established as to when from their possession had become adverse to the plaintiffs and on the other hand, when it is found that the defendants are in the permissive possession of the portion of the suit property under the plaintiffs as per Ex.A22 and further, when Ex.A22 has also not been till date independently challenged by the defendants and further, when Ex.A22 has been amply established by the plaintiffs, it could be seen that the plea of limitation projected by the defendants for rejecting the plaintiffs' case cannot be countenanced.

15. As regards the sale obtained by the 8th defendant from Manuel and the other defendants in respect of the portion of the suit property, as rightly found by the first appellate court, when Manuel and the defendants 1 to 6 by themselves have no legal title to the suit

property, the plea of the defendants that the 8th defendant had purchased the suit property from them and as such, the 8th defendant has title to the same cannot be accepted in any manner. Therefore, as rightly found by the first appellate court, the alienation made in favour of the 8th defendant by Manuel and the defendants 1 to 6 being found to be not a legal transaction, it could be seen that the 8th defendant would not be entitled to claim any title in respect of the property alleged to have been purchased by him from them. Accordingly, it could be seen that the plaintiffs are entitled to seek the reliefs as against the sale deed dated 06.11.1995 executed in favour of the 8th defendant as claimed in the plaint.

16. In the light of the above discussions, it could be seen that the first appellate court, on the basis of the evidence adduced by the respective parties, on the proper and right appreciation of the same both factually as well as legally, had rejected the defence put forth by the defendants and accordingly, granted the reliefs sought for by the plaintiffs. No exception could be taken to the same and in such view of the matter, the substantial question of law is formulated in this second appeal is answered in favour of the plaintiffs and against the defendants.

In conclusion, the second appeal fails and the same is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

02.01.2017

Index : Yes/No
Internet: Yes/No
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To

1. The Principal Subordinate Court,
Erode & District.
2. The Second Additional District Munsif Court,
Erode & District.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No.539 of 2011
and
M.P.No.1 of 2011

02.01.2017

