

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.444/2016 & CMP.No.7568/2016

- 1.Dhanamani
- 2.Samsun
- 3.Milka Rani
- 4.Buela

Appellants / Appellants
Plaintiffs

Versus

- 1 Stella
- 2 Raja @ Soundarajan
- 3 James
- 4 Ratchal Mala
- 5 Joyce
- 6 Uma Maheswari
- 7 Minor Shalini
rep by her Mother for 6th respondent
- 8 Karlina Mari
- 9 Salomi

..Respondent/Respondents /Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Decree and Judgement in A.S.No.31 of 2015 dated 03.12.2015 on the file of Subordinate Court, Ranipet at Vellore confirming the Decree and Judgment passed in O.S.No.285/2004 dated 16.03.2015 on the file of District Munsif, court Ranipet, Vellore.

For Appellants : Mr.R.Margabandhu

For Respondents: Mr.P.Mani for R1, R3 to R5
Mr.K.Ramachandran, for R2

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JUDGMENT

The plaintiffs, who had lost before the Courts below, are the appellants herein.

2 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The appellants / plaintiffs filed a suit in OS.No.285 of 2004 on the file of the Court of the District Munsif at Ranipet, Vellore District, against the respondents/defendants, praying for a judgment and decree to declare the title of the plaintiffs as well as the defendants 8 and 9 to the suit schedule mentioned property and for permanent injunction, restraining the defendants 1 to 3 and defendants 5 to 7 and their men, agents and servants from interfering with their peaceful possession and enjoyment of the same and also for cost.

[b] The appellants/plaintiffs would aver among other things that the suit scheduled mentioned property originally belonged to Padavettan @ Paramanantham S/o.Periya Munusamy and it was his self-acquisition having purchased the same under a registered Sale deed dated 14.09.1950 (Ex.A1). The appellants/plaintiffs would further aver that the Padavettan @ Paramanantham died intestate in the year 1957 leaving behind his sons namely Selvam, Sigamani, Kristi (4th defendant), and Yesupatham (father of Plaintiffs 2 to 5) as his heirs and as such, they are entitled to succeed to the suit scheduled property by having $\frac{1}{4}$ th share each and that they are in joint possession and common enjoyment of the suit scheduled property as co-owners.

[c] It is further averred by the appellants/plaintiffs that in or about the year 1984, one of the co-owner Sigamani died unmarried and issue-less and in 1985, another co-owner namely Selvam died unmarried and issue-less and their undivided $\frac{1}{2}$ share in the suit scheduled property devolved upon the remaining two co-owners and as such, Kristi and Yesupatham became entitled to $\frac{1}{2}$ share each.

[d] The appellants / plaintiffs would further stated that the 4th defendant, one of the co-owners left for Salem, and settled there and never shown interest in the suit schedule property. In the light of the said fact, the plaintiffs are in Joint possession and enjoyment and that the 4th defendant did not evince any interest in the suit property, they perfected their title to the undivided $\frac{1}{2}$ share by ouster and also adverse possession and on that ground also, they are entitled to the entire suit scheduled property.

[e] The appellants/plaintiffs would further submit that the said Yesupatham died intestate on 25.02.1990 leaving behind his wife (the 1st Plaintiff) and two sons who are plaintiffs 2 and 3 and two daughters who are Plaintiffs 4 and 5, as his only legal heirs and the 1st plaintiff is entitled to $\frac{1}{3}$ rd share as his sons and daughters are equally as entitled to the remaining $\frac{2}{3}$ share in the suit scheduled property. The defendants 1 to 3 who have no right and title in the scheduled

property, attempted to interfere in the peaceful possession and enjoyment and on 20.04.1998, they trespassed into the suit property and cut the plants and removed the same and it was protested and objected and since, repeated attempts have been made by them, the plaintiffs came forward to file the above said suit.

[f] The defendants 8 and 9 remained ex-parte. The 10th defendant filed the written statement which was adopted by the defendants 11 and 12. The 10th defendant apart from refuting the averments made in the plaint, would state that originally the suit property belong to one Padavettan @ Paramanantham S/o.Periya Munusamy and he died in the year 1957 leaving behind his sons Selvam, Sigamani, Kristi (as father of defendants 11 and 12 and husband of 10th defendant), Yesupatham and they enjoyed the property jointly till their demise and denied the allegations that the co-owner namely Kristi never evinced interest in the suit property and in fact, he used to visit the place in which the suit properties are located very often and as such, the claim made by the appellants/plaintiffs as ouster and adverse possession is unsustainable.

[g] The 10th defendant would further aver that she is having equal half share in the suit property and they are ready to pay the Court fees for their share.

[h] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

- Whether the plaintiffs are entitled for a relief of declaration of right in respect of the suit property?
 - Whether the plaintiffs are entitled for relief of permanent injunction as against the defendants No.1,2,3 restraining from interfering with peaceful possession and enjoyment of suit property?
 - To what other reliefs the plaintiff is entitled to?
- and also framed the following three additional issues on 07.12.2012
- Whether the Plaintiff has right over the suit property?
 - Whether the Plaintiffs are entitled for relief of declaration of right in respect of suit property?

[i] During the course of trial, the 1st plaintiff examined himself as P.W.1 and also examined Papammal and one Theresa as Pws.2 and 3 and marked Exs.A1 to A5 and on behalf of the defendants, Sarala Manavalan was examined as DW1 and 10th and 12th defendants were examined as DW2 and DW3 and Exs.B1 to B16 were marked.

[j] The Trial Court, on a consideration of the pleadings and appreciation of the oral and documentary evidence,

dismissed the suit vide judgment and decree dated 16.03.2015 and aggrieved by the same, the plaintiffs filed an Appeal in AS.No.31 of 2015 on the file of the Court of the Subordinate Judge, Ranipet.

[k] The Lower Appellate Court, on consideration of the Memorandum of Grounds and materials placed before it, had formulated the following points for determination:-

- Whether the appellants/plaintiffs are entitled to the relief or declaration on the ground of adverse possession and ouster?
- Whether the Judgment and Decree dated 16.03.2015 in O.S.No.285/2004 (RSC OS No.104/98) on the file of District Munsif Court, Ranipet is liable to be set aside?

[l] The Lower Appellate Court, on a consideration of oral and documentary evidence and reasons assigned by the Trial Court, observed that since the appellants / plaintiffs came forward to file the suit, praying for declaration and for other consequential reliefs, it is for them to prove and sustain the reliefs. The Lower Appellate Court found that Padavettan @ Paramanantham under whom the plaintiffs claimed right, title and possession, had sold the suit property in favour of N.P.Rajan @ Soundararajan, under a registered Sale Deed (Ex.B1) dated 29.09.1950.

[m] The Lower Appellate Court has also taken into consideration Exs.A2 and A3- House Tax receipts, which are relied upon to show that they are in possession and also taken into consideration, Exs.A4 and A5 - the certified copy of Judgment and Decree in OS No.37/2009 and found that the suit property is entirely a different one and the plaintiffs failed to prove that the suit properties are subdivided as 62/6C1 subsequently and as such, the appellants/plaintiffs cannot seek any right and title and the said suit came to be dismissed for default.

[n] The Lower Appellate Court has also considered the admission of the 1st plaintiff/P.W.1, wherein she has admitted that though some portion of land acquired by Bharat Heavy Electricals Limited, through land acquisition proceedings, she was not aware of the payment of compensation in favour of Defendants 1 and 2. She was not paid with any compensation and the proceedings took place about 30 to 40 years prior to the institution of the suit. In the light of the same, the Lower Appellate Court found that in respect of Items 1 and 4, declaratory decree cannot be granted as sought for by the plaintiffs and also the prayer for permanent injunction.

[o] The Lower Appellate Court, taking into consideration the claim of the appellants / plaintiffs, as regards item No.3, found that the suit in O.S.No.517 of 1983 for mandatory injunction was filed and the same was decreed and based on the same, execution was levied in EP.No.16/88 and delivery was also effected in favour of the defendants (Ex.B9 and B10) and possession receipts were also marked. The defendants also obtained Patta, Kist receipts and Adangal marked as Ex.B4, B5, B6 & B7 respectively and held that the defendants alone are in possession and enjoyment for more than 30 years.

[p] The Lower Appellate Court also considered the plea on the adverse possession and ouster put forth by the appellants / plaintiffs and by taking into consideration the settled position of law, found that the plaintiffs have not proved the fact when their possession became adverse to defendants and mere pleadings of long possession is not enough to constitute adverse possession and it must be coupled with animus Possident and also relied upon the judgments rendered by this Court reported in 2006(5) CTC Page 378 at 382 Para 12 [T.Anjanappa and others Vs.Somalingappa and another] and 2008(1) CTC 329 at pg.336 para 22 [Annakilli Vs. Vedanayagam] and (2000) & 7 MLJ 275 [Veerasekaran and another Vs.Devarasu].

[q] The Lower Appellate Court also taken note of the submission made by the learned counsel appearing for appellant as regards the one of the co-owners namely Kristi had no interest in the suit property and as such, prescribe the right by ouster and found that his legal heirs were impleaded subsequently and also filed written statement supporting the case of the plaintiffs and seeks to decree the suit and found that the plaintiffs have failed to probablise the case and therefore, dismissed the appeal with cost vide impugned judgment and decree dated 03.12.2015 and challenging the legality of the same, the present second appeal is filed.

[O] In the Memorandum of Grounds in the Second Appeal, the following Substantial Questions of law are raised for consideration:-

- Whether Ex.B1 confers title to 1st and 2nd Defendant not purchased by their father?
- Without title Ex.B5 Patta Pass Book was issued in name of D1 and D2 is it valid without any title to the property?
- Whether 1st and 2nd Defendant acquired title to suit property by Decree in O.S.No.517/1983?

3 Mr.R.Margabandhu, learned Senior Counsel appearing for appellants / plaintiffs would vehemently contend

that the Courts below have not at all appreciated the pleadings, oral and documentary evidences in proper perspective and found that in the earlier legal proceedings a clear attempt has been made as to the possession of the plaintiffs and since no effective steps have been taken to get delivery of possession from them, the Plaintiffs have prescribed their title by adverse possession and even otherwise through overwhelming documentary evidence, the plaintiffs had sustained their case.

4 It is further submission of the learned counsel appearing for the appellants that the suit partition were also subject to statutory levies in the form of Ex.A2 dated 09.02.1987 and Ex.A3 dated 17.09.1990 and as such, the appellants/ plaintiffs are entitled to succeed on the plea on adverse possession and prays for interference.

5 Per contra Mr.P.Mani, learned counsel appearing for respondents 1, 3 to 5 and Mr.K.Ramachandran, learned counsel for 2nd respondent would contend that the Courts below had recorded concurrent findings as to the right, title and possession of the defendants through Ex.B1 dated 29.09.1950 and also in the light of the findings rendered in the earlier round of litigation marked as Exs.B2, B3, B9, B10, B11, B12 and B15 and since the findings rendered by the Courts below were based upon proper appreciation of oral and documentary evidences and also by applying the settled legal position and further that the findings rendered by the Courts below are concurrent in nature, this Court in exercise of its Jurisdiction under Section 100 of CPC may not interfere and prays for dismissal of the Second Appeal.

6 In the considered opinion of the court, there are no substantial questions of law arise for consideration and whatever raised in the Memorandum of Grounds of appeal, have been considered and answered by the Courts below.

7 The Plaintiffs claim right and title through Padavettan @ Paramanantham and his successors namely the legal heirs. The said person under Ex.B1, had conveyed the property in favour of Chinnamunusamy @ Peduru.

8 The 1st plaintiff was examined as PW1 wherein she had admitted that the patta in respect of the properties have not been given and some of the items were acquired by the Land Acquisition Act for the benefit of Bharat Heavy Electricals Limited and expressed ignorance as to the payment of the said compensation. The testimonies of Pws.2 and 3 did not corroborate the oral evidence of PW1. In respect of payment of compensation, a claim petition in LAOP No.147 of 2013 was filed under Ex.B15 and the 4th item of the suit property is one of the items shown in the said legal proceedings and said land was acquired during the year 1981 and as such, the plaintiffs cannot claim any right

in respect of the same and despite the said fact, the said item was also included as one of the suit scheduled properties. The primordial contention put forth by the appellants / plaintiffs as to the lack of interest shown by one of the co-owner namely Kristi and as such they pleaded ouster and adverse possession. The legal heirs of Kristi were examined as Dws.2 and 3 and Exs.B13 to B30 were marked and it is their specific case that Kristi used to visit the property also. The Legal heirs of the Kristi supported the case of the Plaintiffs.

9 It is the submission of the learned counsel for the appellants/plaintiffs that the contesting defendants lay their claim solely based on the revenue documents. However, it is to be pointed out at this juncture that under Ex.B1 - Sale Deed dated 29.09.1950, the property was conveyed in favour of Chinna Munusamy @ Peduru and one Soundarajan has also filed the suit in O.S.No.93 of 1994 and it was dismissed on 28.11.2006 by the Sub Court, Ranipet and thereby the claim for partition made by legal heirs of the one of the co-owners namely N.P.Rajan has been negatived and the said judgment has become final. The Patta pass book marked as Ex.B4, Kist receipt marked as Ex.B6 series and Chitta marked as Ex.B5 would establish the fact that the contesting defendants are in possession of the same. As per the Ex.B9 - decree dated 23.02.2013 in O.S.No.517 of 1983, Pramila James and Sarala Manavalan has filed the suit against Kristi for declaration and possession and it was decreed and 3rd item of the suit properties is the subject matter of the said suit and it has attained finality and thereafter the delivery of the property was taken through Court and Ex.B10 is the possession receipt which evidence the said fact. The effort made by the 3rd defendants to get the partition of the property in the form of her impleadment in I.A.No.387 of 1979 in O.S.No.192 of 1977 also came to be rejected in Ex.B11 dated 13.07.1999.

10 The learned counsel for the appellants also made an alternate submission as to the plea of ouster / adverse possession. It is a well settled position of law that a longer possession for a period of more than 12 years without anything more, do not ripen into a title and the plaintiffs who claims adverse possession must alleged and prove as to how and when the adverse possession commenced, nature of his possession, and whether the fact of adverse possession was known to the co-owner and in the considered opinion of the court, the pleadings in that regard are not sufficient and not tenable or acceptable evidence has been adduced to probablise the said fact.

11 In the considered opinion of the Court Ex.B1 coupled with other materials had establised the title and possession of the defendants 1 & 2 and possession was also taken in respect of one of the items under Ex.B10 dated 22.02.1988 through the legal process.

12 The Courts below after carefully advertng to the oral and documentary evidences, had rightly reached the conclusion to negative the claim of the appellants/plaintiffs and the said findings are concurrent in nature. This Court on an independent application of mind to the entire materials, is of the considered opinion that there is no infirmity or perversity attached to the findings rendered by the Courts below.

13 In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the learned Subordinate Judge, Ranipet, in AS.No.31 of 2015 dated 03.12.2015. However, there shall be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Ranipet.
2. The District Munsif
Ranipet.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+1 CC to M/s. R. Margabandhu, Advocate sr 23968

+1 CC to M/s. P. Mani, sr 23342

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