

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2017

PRONOUNCED ON : 05.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.716 of 2001

1. Rajagopal Padayachi (dead)	
2. R.Ravichandran	
3. R.Vijayakumar	...
(Appellants 2 & 3 are brought on record as Lrs of the deceased sole appellant vide order of Court dated 15.06.2004 made in CMP.Nos.18705 & 18706 of 2003 in S.A.NO.716 of 2001)	Appellants
Vs.	
1.Thangaraju Pulavar (died)	
2.Kandavalli	...
(2 nd respondent is brought on record as Lr of the deceased sold respondent vide order dated 18.08.2003 made in CMP. No.14889 of 2002)	Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 21.12.2000 made in A.S.No.43 of 1998 on the file of the Principal Subordinate Court, Virudhachalam, reversing the judgment and decree dated 21.10.1998 made in O.S.No.679/1988 on the file of the Principal District Munsif Court, Virudhachalam.

For Appellants : Ms.P.Mahalakshmi

For Respondent : No appearance
No.2

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.12.2000 made in A.S.No.43 of 1998 on the file of the Principal Subordinate Court, Virudhachalam, reversing the judgment and decree dated 21.10.1998 made in O.S.No.679/1988 on the file of the Principal District Munsif Court, Virudhachalam.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration, Permanent injunction or in the alternative for possession.

4. The case of the plaintiff, in brief, is that the suit property was acquired by the plaintiff from Thangavel Padayachi by way of a registered sale deed dated 19.12.1963 and from the date of the sale, the plaintiff has been in possession and enjoyment of the suit property by paying kist etc., and also obtaining patta and thus, according to the plaintiff, he is the absolute owner of the suit property and also prescribed his title to the suit property by way of adverse possession on account of the continuous enjoyment. The defendant has lands to the North and East of the suit property and on account of the same, the defendant had been requesting the plaintiff to sell the suit property

and the plaintiff, however, did not accede to the request of the defendant and due to the same, the defendant, without any legal authority, started interfering with the plaintiff's possession and enjoyment of the suit property and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. The allegation that the defendant, on the refusal of the plaintiff to sell the suit property, started interfering with his possession and enjoyment of the suit property illegally is false and it is also false to state that the plaintiff has title to the suit property and that, he is in possession and enjoyment of the same as absolute owner. The plaintiff is not in possession and enjoyment of the suit property as claimed in the plaint and the defendant owns lands to the North and East of the suit property and the plaintiff received a sum of Rs.400/- from the defendant on 02.01.1968 and on the same date, handed over the possession of the suit property to the defendant and from that date onwards, it is only the defendant, who is in possession and enjoyment of the suit property by paying kist, erecting bore and oil engine and enjoying the suit property by raising a thatched shed and obtaining patta, etc., and the same could also be seen from the report and plan of the advocate commissioner and the defendant, by also on account

of his long and continuous possession and enjoyment of the suit property, had perfected his title to the suit property by way of adverse possession and hence, the plaintiff has laid the suit without any cause of action and the suit, therefore, is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 14 were marked. On the side of the defendant's DW1 was examined and Exs.B1 to B34 were marked. Exs.C1 to C3 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal by the plaintiff, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and by allowing the appeal preferred by the plaintiff, decreed the suit as prayed for in favour of the plaintiff. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the lower Appellate Court erred in law in reversing the well considered judgment and decree of the

trial Court without appreciating the evidence of the appellant in a proper and perspective manner, more specially, with regard to the question of adverse possession?

(ii) Whether the lower Appellate Court erred in not holding that the defendant/appellant has perfected title through adverse possession in view of the overwhelming evidence marked under Ex.B1 to B34 commencing from 7.4.1969 to 12.4.1988 and thereafter, which prove the possession and enjoyment of the suit property by the defendant?

(iii) Whether the lower Appellate Court erred in decreeing the suit when admittedly the defendant is in possession of the suit property and such possession was not permissive by the plaintiff and as such whether the possession of the defendant is not adverse to the plaintiff, who has not taken any steps to dispossess the defendant within the statutory period?"

9. According to the plaintiff, he is the owner of the suit property and that, he has purchased the suit property from one Thangavel

Padayachi on 16.12.1963 and thence from, he has been in possession and enjoyment of the suit property by paying kist, obtaining patta etc., and as the request of the defendant to sell the suit property to him, was not accede to by the plaintiff, according to the plaintiff, the defendant, without any legal authority, attempted to interfere with his possession and enjoyment of the suit property and hence, the suit for appropriate reliefs. Per contra, it is the case of the defendant that as his lands are situated to the North and East of the suit property, the plaintiff had entrusted the suit property in his possession by receiving a sum of Rs.400/- on 02.01.1968 and from then onwards, it is only the defendant, who has been in possession and enjoyment of the suit property by paying kist, obtaining patta, putting bore and oil engine and constructing thatched house and hence, the plaintiff, without any legal title, has instituted the suit and therefore, the suit is liable to be dismissed. The defendant has also pleaded that he has perfected title to the suit property by adverse possession.

10. Even as per the defence version, it could be seen that the defendant has admitted the original title of the plaintiff in respect of the suit property. The defendant has only pleaded an oral sale of the suit property from the plaintiff on 02.01.1968. On the otherhand, according to the plaintiff, he has purchased the suit property from Thangavel Padayachi on 16.12.1963 and the said sale deed has been

marked as Ex.A2 and the sale deed, under which Thangavel Padayachi, had acquired the suit property dated 15.05.1959 has been marked as Ex.A1. Therefore, from the documents marked as Exs.A1 and 2, it is evident that the plaintiff has acquired the suit property from the previous lawful owner and hence, prima facie it has been made out that the plaintiff is the owner of the suit property.

11. The defendant has pleaded the oral sale of the suit property from the plaintiff. However, it is found that even as per the case of the defendant, he has orally purchased the suit property for a sum of Rs.400/- from the plaintiff. The said transaction is not buttressed by any written instrument, particularly, a registered instrument required as per law. In such view of the matter, it is found that the oral sale transaction put forth by the defendant does not have any legal sanctity and that apart, if really, the defendant had acquired the suit property by way of oral sale as put forth by him, as rightly determined by the first appellate Court, the defendant would have obtained the parent title deeds of the suit property from the plaintiff. However, it is found that the parent title deeds are only in the custody of the plaintiff and the same have been marked by the plaintiff in support of his case as Exs.A1 and A2. That apart, it has not been established by the defendant that following the alleged oral sale, he has been entrusted with the possession of the suit property and thence from, he is in

lawful possession and enjoyment of the suit property by obtaining patta, paying kist, erecting thatched house, paying house tax etc. On the other hand, it is found that both the plaintiff and the defendant seem to have filed the patta obtained under the UDR scheme on 15.06.1984, which have come to be marked as Exs.A3 and B31 respectively. Therefore, it is found that patta not being a document of title as such, the above said documents can not be safely relied upon to uphold the title of the subject matter in favour of either parties. If really, as put forth by the defendant, he has validly purchased the suit property from the plaintiff in the year 1968 itself, definitely he would have taken adequate steps to obtain the patta for the suit property immediately thereafter. However, it is found that no such step has been taken by the defendant to secure any patta for the suit property from the revenue authorities immediately after the alleged oral sale.

12. That part, no adangal extract has been marked on the side of the defendant to evidence that it is he, who is in possession and enjoyment of the suit property as claimed by him. It is admitted on the part of the defendant that his lands are situated to the North and East of the suit property. It is also admitted by the defendant that his own lands are situated in the same patta number, which is also the patta number for the suit property. In such view of the matter, it is found that when the kist receipts marked on the side of the defendant

do not clearly point out that the same had been paid only in respect of the suit property covered under the said patta and when under the same patta, the defendant owns his other lands, as rightly determined by the first appellate Court, the kist receipts marked on the side of the defendant could not be relied upon safely to conclude that he has been paying the kist only in respect of the suit property as the lawful owner. Similarly, the house tax receipts marked as Exs.A22 to 29 on the part of the defendant pertaining from the period 1980 onwards would also not be useful to hold that it pertains only to the thatched structure put up on the suit property. That apart, the above said documents by themselves would not be useful to sustain the plea of adverse possession projected by the defendant, as within 12 years from the said date, the present suit has come to be laid by the plaintiff i.e in 1988 itself. The receipt marked as Ex.B33, for the purchase of motor, would not be useful to hold that the said motor has been acquired only for erecting the same in the suit property. It is thus found that the documents placed by the defendant by themselves cannot be accepted as reliable documents for upholding either the title of the defendant to the suit property as a lawful owner or to establish his claim of title to the suit property by way of adverse possession.

13. Now coming to the plea of adverse possession set out by the defendant, it is seen that the defendant in his written statement has

not clearly stated as to when from his alleged possession of the suit property has become adverse to the plaintiff. As above pointed out, the documents produced by the defendant do not point out that they relate to the suit property, particularly, the kist receipts, when it is seen that the defendant owns his other lands under the same patta number, therefore, the kist receipts would not in any manner be helpful to sustain the plea of adverse possession set out by the defendant. Similarly, the house tax receipts placed by the defendant are also found to be only from the year 1988 onwards and in such view of the matter, when the same does not point out that it relates to thatched house said to have been put up by the defendant in the suit property, when it is seen that the plaintiff has laid the suit in the year 1988, the above said house tax receipts also would not be helpful to uphold the plea of adverse possession set out by the defendant. Further, it has not been established that the defendant has put up the thatched house in the suit property immediately, after the alleged oral sale pleaded by him. Therefore, when the house tax receipts produced only pertains to the period commencing from 1988 onwards, without any material as such it cannot be held that the alleged thatched house was put up in the suit property immediately after the alleged oral sale. Therefore, the house tax receipts also would not be useful to sustain the plea of adverse possession. The other document marked as Ex.B33 would not be helpful to hold that the motor mentioned therein

had been purchased only for fixing the same in the suit property. Therefore, it is found that none of the documents placed by the defendant are helpful to sustain the plea of adverse possession. Such being the position and when in particular the defendant has not pleaded and also established that since when from his possession had become adverse to the title of the plaintiff, it is found that the first appellate Court has rightly held that the defendant has miserably failed to establish the plea of adverse possession set out by him. There is nothing placed on record to interfere with the above said well considered findings of the first appellate Court.

14. In the light of the above discussions, it is seen that the first appellate Court, on a proper appreciation of the material placed on record in the correct manner, has rightly negated the plea of adverse possession set out by the defendant and accordingly, rightly set aside the judgment and decree of the trial Court, whose finding upholding the plea of adverse possession projected by the defendant being found to be perverse and erroneous, as the determination of the same by the trial Court is not based on the proper and correct appreciation of the materials on record. In such view of the matter, the substantial questions of law formulated in this second appeal are answered against the defendant and in favour of the plaintiff.

15. In conclusion, the second appeal fails and is, accordingly,

dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

05.12.2017

Index : Yes/No

Internet : Yes/No

sms

To

1. The Principal Subordinate Court, Virudhachalam.
2. The Principal District Munsif Court, Virudhachalam.



WEB COPY

T.RAVINDRAN,J.

sms



**Pre-delivery Judgment made
in S. A.No.716 of 2001**

05.12.2017

WEB COPY