



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.186 of 2000

Ganapathy Maistry

...Appellant/Plaintiff

Vs

1. Ramalingam (Died)
2. Anjalai Ammal
3. Kasthuri
4. Selvam
5. Minor Arumugam
rep by mother and guardian
Anjalai Ammal

... Respondents/Defendant Lrs 2 to 5

(Respondents 2 to 5 are brought
on record as Lrs of the deceased
sole respondent vide order of
Court dated 20.12.2006 made in
CMP.No.623/2002)

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the decree and Judgment dated 01.09.1999 in A.S.No.1 of
1998 on the file of the learned Subordinate Judge,
Virudhachalam, reversing the decree and judgment dated
29.08.1997 in O.S.No.746 of 1986 on the file of the Principal
District Munsif, Virudhachalam.

For Appellant : Mr.D.Shivakumaran

For R1 : Died

For RR2 to RR5 : Mr.J.Antony Jesus



JUDGMENT

The plaintiff in O.S.No.746/1986 on the file of the Principal District Munsif, Virudhachalam who is the respondent in A.S.No.1 of 1998 on the file of the Sub-Court Virudhachalam is the appellant herein. The appellant filed a suit in O.S.No.746 of 1986 before the Principal District Munsif, Virudhachalam, for declaration of his title to the suit property situate in Survey No.191/2, of Naraiyur Village measuring 0.71.0 Ares. He has further prayed for a permanent injunction restraining the respondent/defendant from interfering with his peaceful possession and enjoyment of the suit property or in the alternative for recovery of possession from the respondent/defendant.

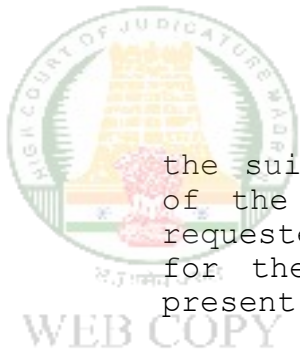
2.The brief facts of the case of the plaintiff is as follows:-

The suit property was originally owned by the defendant's mother Mrs.Periyanayakam @ Periyammal. She had purchased the suit property during the year 1960 from one Mr.Ramu Naidu and Mr.Pavun Naidu, who in turn orally sold the suit property in favour of the plaintiff's mother Pachaiyammal on 12.05.1966. Ever since the date of purchase the plaintiff's mother had been in peaceful enjoyment of the suit property. The plaintiff is the only legal heir of her mother Pachaiyammal, who died in the year 1980 and he was enjoying the suit property without any interruption. Since the sale deed was not executed patta was not changed in the name of the plaintiff.

3. Even otherwise, since the plaintiff, his mother and their predecessors in title were in possession and enjoyment of the suit property for more than 20 years, the plaintiff has prescribed title to the suit property by way of adverse possession and prescription.

4. In fact, the first defendant and his ancestors left the suit village 30 years back and were living in Bhopal. They did not claim any right over the suit property. Now the defendants are attempting to interfere with the plaintiff's possession and enjoyment over the suit property and hence, the suit.

5. The first defendant filed a written statement contending that the suit property belonged to his father. It is further contended by him that the suit property was never sold to Mr.Ramu Naidu and others as alleged by the plaintiff and that the alleged oral sale in favour of the plaintiff's mother is totally false. In fact, the first defendant and his mother left



the suit village after leasing out the suit property in favour of the plaintiff and his mother. Since the first defendant requested the plaintiff and his mother to give enhanced rents for the suit property, the plaintiff/appellant has filed the present suit with false allegations.

6. In the trial Court the following issues were framed:

"1. Whether it is true that the suit property belonged to Mrs.Periyanayakam @ Periyammal, the mother of the first defendant?

2. Whether Mrs.Periyanayakam @ Periyammal, had right to sell the aforesaid suit property to Ramu Naidu and whether the said sale is valid?

3. Whether it is true that Ramu Naidu sold the suit property in favour of Pachaiyammal on 12.05.1966? Whether the sale is legally valid?

4. Whether, as stated by the first defendant, it is true that the plaintiff was enjoying the suit property as a lessee and that he had been paying rents?

5. Whether it is true that, at present, the suit property is in possession and enjoyment of the first respondent?

6. Whether it is true that the plaintiff has prescribed title in respect of the suit property by adverse possession?

7. To what relief, the plaintiff is entitled?"

7. After full contest, the trial Court decreed the suit as against which the first respondent/first defendant, filed an appeal in A.S.No.1/98 before the Sub-Court, Virudhuchalam. The learned Sub-Judge, Virudhachalam allowed the appeal and set aside the decree and judgment passed by the learned District Munsif, virudhachalam, on the following grounds:

i) The plaintiff has not proved his title to the suit property.

ii) When the plaintiff claims title over the



suit property by an oral sale, he cannot claim title over the suit property by way of adverse possession and prescription.

8. Aggrieved over the said decree and judgment passed by the learned Subordinate Judge, Virudhachalam, the plaintiff has filed the present Second Appeal on the following substantial questions of law:-

"i) When the respondent/defendant asserts that the appellant/plaintiff is not the owner of the property, is not the burden on the respondent to prove that the appellant is not the owner of the suit property, in the light of Sec.110 of the Indian Evidence Act?

ii) Is the lower appellate Court correct in law, in reversing the decree of declaration of title granted by the trial Court, by adverse possession without rendering any clear finding as to the title to the suit property?

iii) In the absence of any definite evidence, on the side of the defendant/respondent that the possession of the suit property by the plaintiff/appellant is only as a lessee, is the lower appellate Court right in not invoking the presumption of adverse possession in favour of the plaintiff/appellant?

iv) Is not the judgment and decree of the lower appellate Court perverse?

v) Is not the plaintiff/appellant entitled for a decree of declaration of his title by adverse possession, which is supported by ample pleading and evidence?"

9. Heard, the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

10. At the outset, it may be observed that the appellant claims title to the suit property through an alleged oral sale made by Mr. Ramu Naidu and Pavun Naidu in favour of his mother on 12.05.1966. According to the plaintiff/appellant, he is the sole legal heir of his mother Pachaiyammal. The appellant/plaintiff admits that the suit property was originally owned by the first defendant's mother by name Periyamayagam @ Periyammal. It is



also contended that the first respondent/first defendant left the suit village several years back.

11. Mr.J. Antony Jesus, the learned counsel appearing for the respondents would contend that mere long possession will not amount to adverse possession and the person pleading adverse possession must prove that he was in possession of the property with required animus and he was enjoying the property to the knowledge of the true owner. Reliance was placed on the following decisions:-

i) Dhanabaghyam Ammal and Others Vs. Dhanavel and Others reported in 2011-1-L.W.1014.

ii) Chatti Konati Rao and others Vs. Palle Venkata Subba Rao reported in 2011-1-L.W.783.

iii) Saroop Singh Vs. Banto and others reported in 2006-3-L.W.6. In all the above decisions it has been held that mere long possession will not amount to adverse possession and the person pleading adverse possession must prove that he was in possession of the property with required animus.

12. As far as the present case is concerned the appellant/plaintiff claims title to the suit property by way of alleged oral sale in favour of his mother. Therefore, he cannot claim adverse possession in respect of the suit property. It is trite law that mere long possession will not amount to adverse possession and the person who pleads adverse possession must prove that he has not only been in possession of the property but also that he had required animus and he was enjoying the property to the knowledge of the true owner. In the instant case, the claim of the appellant is that his mother and her predecessors in title, were the owners of the property by way of sale.

13. When a person pleads ownership over the property, he cannot plead adverse possession and the decision in Dhanabaghyam Ammal and others Vs. Dhanavel and others reported in 2011-1-L.S.1014 squarely applies to the facts of the present case. The first appellate Court has dealt with in extenso with regard to the adverse possession and prescription and all the observations made by the first appellate Court are well founded.

14. Therefore, I do not find any reason to interfere with the findings of the first Appellate Court and therefore, the Second Appeal fails and is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vkr/dna



To

1.The Subordinate Judge, Virudhachalam.

2.The Principal District Munsif, Virudhachalam.

Copy to
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.67483

S.A.No.186 of 2000

CP(CO)
GSP(03/12/2018)