

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.457 of 2017
and
C.M.P.No.11413 of 2017

R.Latha
... Appellant/Respondent/Plaintiff
Versus

1. R.Govindaraj
2. M.Srinivasan
3. Sarojammal
4. Rajagopal

Respondents 3 and 4 are represented
by their General Power of Attorney Holder
G.Dhinesh Kumar
... Respondents/Appellants 1
to 4/Defendants 1 to 4

Second Appeal filed under Section 100 C.P.C. against the
decree and judgement dated 19.01.2017 passed in A.S.No.12 of
2016 on the file of the Additional District Court, Krishnagiri
in modifying the judgment and decree dated 26.11.2015 passed in
O.S.No.121 of 2010 on the file of the Sub Court, Krishnagiri.

For Petitioner : Mr.P.Mani

For Respondents : Mr.C.Jagadish

J U D G M E N T

The plaintiff is the appellant, who had filed the suit for
declaration of the title to 'B' schedule suit property and for
permanent injunction restraining the defendants from interfering
with the peaceful possession and enjoyment of the same.

2. It is the case of the plaintiff is that one Balan, who
is the father of the plaintiff, owned the suit property. He had
encroached 'A' schedule property, which was classified as Natham
Poromboke about 30 years ago and put up a thatched hut.
Subsequently, he removed the thatched hut and constructed a
pucca mangalore tiled house and obtained electricity service

connection. As the plaintiff's father Balan had been in possession and enjoyment of 'A' schedule property in continuous and uninterrupted possession, Patta was also issued in favour of the said Balan. He had also been paying house tax, electricity charges for the house in respect of 'A' schedule property. The said Balan died on 07.01.2008 leaving being his wife Muniammal and daughters namely Chitra and the plaintiff and after his death, they are in joint possession and enjoyment of the suit property. It is stated that on 04.02.2008, there was a partition, in which, the plaintiff was allotted the central portion, measuring 1500 sq.ft., which is now described as 'B' schedule in the plaint. While so, the defendants 1 and 2 attempted to trespass into 'B' schedule property. Hence, the suit was filed.

3. The defendants 1 and 2 remained ex-parte and the defendants 3 and 4 had filed the written statement contending that there was no record to show that Balan was in possession of 'A' schedule property and the records were produced only for the year 1993. It is stated that 'A' schedule property is not a Poromboke land, but it is a patta land. The third defendant is the wife and the fourth defendant is the son of Late Chinnasamy. The third defendant is the sister of the plaintiff's father Balan. It is further contended by the defendants 3 and 4 that the said Balan was only in permissive occupation of the suit property. Therefore, the partition alleged by the plaintiff cannot be true and valid and hence, sought for dismissal of the suit.

4. Before the trial Court, the plaintiff examined herself as P.W.1, besides examining one Muniyamma as P.W.2 and one Vimala as P.W.3 and marked Exs.A1 to A32. On the side of defendants, five witnesses have been examined as DW.1 to DW.5 and eighteen documents were marked as Exs.B1 to B18.

5. Based on the above pleadings and evidence, the trial Court had decreed the suit and on appeal preferred by the defendants, the lower appellate Court dismissed the relief of declaration and granted the relief of injunction that the possession of the plaintiff should not be interfered with except by due process of law. Aggrieved by the same, the above Second Appeal has been preferred by the plaintiff.

6. A reading of the plaint averments in paragraphs 3 and 4 would indicate that the plaintiff has categorically claimed title only based on adverse possession. In paragraph 4, it is stated that the said Balan had been utilizing the vacant portion in 'A' schedule suit property for stocking charcoal and other materials and for running the laundry. The said Balan had been in exclusive, open, continuous and uninterrupted possession and enjoyment of 'A' schedule suit property asserting title for

himself and quite adverse to all others in the world right from 1979 till his death on 07.01.2008 for more than 29 years and therefore he had perfected title to 'A' schedule property by adverse possession.

7. Per contra, the defendants 3 and 4 have claimed that 'A' and 'B' schedule properties are regular patta land purchased by the husband of the third defendant late Chinnasamy, who was working in Malaysia. The third defendant is none else than the sister of plaintiff's father Balan and the fourth defendant is the son of the third defendant. The plaintiff had also not disclosed the fact that the defendants 1 and 2 are also the brothers of the deceased Balan. According to the defendants 3 and 4, the property originally belonged to one Angore Mohamed, measuring an extent of 3.57 acres. Thereafter, one Subbammal purchased the same from his wife on 02.11.1954. The said Subbammal sold an extent of 2.50 acres to one Subramani on 03.03.1965 and from the said Subramani, 'A' schedule property was sold to the husband of the third defendant-Chinnasamy, by sale deed dated 11.03.1965. The above documents were marked as Exs.B1 to B3 by the defendants. When the third defendant's husband was living in Malaysia, the property was given to the plaintiff's father Balan to take care of the same. The said Chinnasamy had permitted the plaintiff's father, who is his wife's brother, to live in the house. However, the plaintiff, taking advantage of the same claimed a right over the suit property as his own land. The plaintiff has claimed that the suit property is a patta land. Later, the plaintiff has stated that the Balan had perfected the title by way of adverse possession. Presuming that the plaintiff was granted patta, that may not confer title to him. If the plaintiff claims title by way of adverse possession, the said point is available only to the defendants as a defence and not for the plaintiff. Besides, when a person claims title under adverse possession, he has to admit the title of the other person. In this case, the plaintiff has not admitted the title of the defendants. Hence, in the absence of animus, he cannot claim adverse possession though he may be in occupation of the land for any length of time.

8. Learned counsel for the respondents placed reliance on the decision of Hon'ble Supreme Court reported in (2014) 1 SCC Page 668 in GURDWAWARA SAHIB -VS- GRAM PANCHAYAT VILLAGE SIRTHALA, wherein, in paragraph 8, it has been held as follows:-

"8. There cannot be any quarrel to this extent that the judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the

appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

9. Following the said judgment, this Court has held in [R.RIAZ AHMED AND OTHERS -VS- J.G.GLASS INDUSTRIES PVT.LTD] (2014) 3 CTC 146 , wherein, in paragraph 15, it has been held as follows:-

"15. It is settled position that the plea of adverse possession can be raised only as a defence. In other words, the plea of adverse possession can be used only as a shield and not as a sword.

10. Based on the said pleadings, the plaintiff had failed in her attempt to prove the title. So far as the question of injunction is concerned, the trial Court had decreed the suit and the lower appellate Court also granted permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and the possession of the plaintiff should not be disturbed unless by due process of law. As the plaintiff's possession is admitted by the defendants, the above said relief is granted. The defendants have not challenged the said finding by filing an appeal. Hence, this Court is of the view that the judgment and decree of the lower appellate Court has to be confirmed.

11. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the lower appellate Court. No costs. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

srn

To

1. The Additional District Court, Krishnagiri
2. The Sub Court, Krishnagiri
3. The Section Officer, V.R.Section, High Court, Madras

+1 CC to Mr.P.Mani, Advocate sr 22104.

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SP(16/04/2018)