

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.03.2018

JUDGMENT PRONOUNCED ON : 23.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.552 of 2011

1.A.P.Ranga Rao
2.A.Mukundiah (Deceased)

[1st plaintiff is recorded as the legal representative of the deceased 2nd plaintiff as per order dated 03.01.2018 on Memo in C.S.No.552 of 2011]

... Plaintiff

Vs.

1.S.A.M.Naina Mohamed

... Defendant

PRAYER : Complaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of Code of Civil Procedure, praying for the following judgment and decree:-

(a) directing the defendants to deliver possession of the suit site morefully described in the Schedule after removing the superstructure illegally put by the defendant and if he fails to do so, this

Hon'ble Court may be pleased to direct the officer of the Court to remove the superstructure at plaintiffs costs and recover it from the defendant;

(b) directing the defendant to pay Rs.36,000/- towards past damages for the period from 29.02.2005 to 29.01.2008 at the relief of Rs.1000/- p.m.;

(c) directing the defendants to pay future damages at the same rate from the date of plaint till delivery of possession and

(d) to pay the costs of the suit.

For Plaintiff : Mr.R.Dasaratha Rao
for Mr.B.T.Seshadri

For Defendant : Mr.R.Venkatesan

J U D G M E N T

Suit is for recovery of possession.

The case of the plaintiff is as follows:-

2. According to the plaintiff, an extent of 17 acres and 83 cents in Old Survey No.2 in T.S.No.15, Block No.3 belonged to one Govindasamy. He having purchased the same under the sale deed dated 28.08.1940 from the Official Assignee, Madras. On 27.01.1945, the said Govindasamy sold an extent of 6½ grounds out of the said extent of 17 acres and 83 cents to one Chandrasekara Reddy under the sale deed registered as Doc.No.97/1945.

The said Chandrasekara Reddy in turn sold the said 6½ grounds purchased by him in favour of Denduluri Vaidyanatha Krishnamurthy under a sale deed dated 05.04.1948. It is claimed that the said Denduluri Vaidyanatha Krishnamurthy died on 10.09.1975. On 14.02.1996, the legal representatives of the said Denduluri Vaidyanatha Krishnamurthy had sold the property to the plaintiffs under two registered sale deeds. In the mean time, it appears that certain pattas were granted to the encroachers and those pattas were canceled by the order of the District Collector dated 13.08.1996.

3. It is stated that the defendant is in illegal occupation of the about 4800 sq.ft of land which was originally trespassed into by one Damodaran and Nithyanandan who had obtained a patta by making a false representation. It is claimed that the defendant is now occupying the said 4800 sq.ft of land claiming that he has purchased the same from S.H.Syed Khader under a sale deed dated 26.09.1988. The said S.H.Syed Khader had purchased the same under a sale deed dated 17.04.1986 from Damodaran and Nithyanandan.

4. In the sale deed dated 17.04.1986 executed by Damodaran and Nithyanandan, it is claimed that the property belongs to one Viduthan grandfather of Damodaran and Nithyanandan and after the death of Viduthan the property had devolved on his sons V.T.Durairaj and

V.T.Narayanaswami. It is also claimed that V.T.Narayanaswami and his wife executed a release deed in favour of Damodaran and Nithyanandan. Terming all these documents as fraudulent and having been created by the persons who had no interest in the suit property, the plaintiff would seek recovery of possession of the property as well as damages for use and occupation.

5. The defendant filed a written statement contending that the plaint documents do not relate to the suit property. He also denied the claim of the plaintiff that the property viz., 6 ½ grounds situate in Old Surve No.2 in T.S.No.15, Block No.3, Sembium, Perambur was owned by Denduluri Vaidyanatha Krishnamurthy by way of registered sale deed dated 05.04.1948. The defendant denied the title of the said Denduluri Vaidyanatha Krishnamurthy specifically.

6. The defendant would also contend that the plaintiffs have not chosen to produce any documents prior to 1948 to show the antecedent title of the property. The patta that stands in the name of Denduluri Vaidyanatha Krishnamurthy having been issued only in 1985, according to the defendant, there is no evidence to prove the enjoyment of the said Denduluri Vaidyanatha Krishnamurthy between 1948 and 1985. The defendant would claim that he was not put on notice of the cancellation of

the alleged patta issued to his vendors.

7. The defendant would claim that he is a bonafide purchaser for the value of the property along with the superstructure under the sale deed dated 26.09.1988 from one Syed Khader. After verifying the records from the Sub-Registrar Office, Sembium Syed Khader had purchased the property from Damodaran and Nithyanandan under the sale deed dated 17.04.1986. Therefore, the vendor of the defendant has got absolute title to convey the suit property to the defendant. It is claimed that the defendant's vendor had prescribed title by adverse possession of the suit property for more than 12 years and the defendants were claiming the same right through him. It is also contended that the suit without the prayer for declaration is not maintainable. On the above pleadings the defendant sought for dismissal of the suit.

8. This Court had framed the following issues in the suit on 07.02.2013 :

1. Whether the plaintiffs are entitled to recover possession after removing the superstructure put up by the defendant in the suit property?

2. Whether the plaintiffs are entitled to claim a sum

of Rs.36,000/- (Rupees Thirty six thousand) towards past damages from the defendant for the periods from 29.02.2005 to 29.01.2008 at the rate of Rs.1000/- (Rupees one thousand) per month?

3. Whether the plaintiffs are entitled to claim future damages at the same rate from the date of plaint till the date of recovery of possession from the defendant?

4. Whether the suit will fail without the prayer for declaration of title over the suit property?

5. Whether the suit filed by the plaintiffs are barred by limitation?

6. Whether the defendant and his predecessors in title are entitled to claim adverse possession against the plaintiffs?

7. To what relief the plaintiffs are entitled to?

9. At trial, the 1st plaintiff was examined as PW1 and Exs.P1 to P18 were marked. The defendant was examined as DW1 and Exs.D1 to D5 were marked. One Poomalini, Additional Personal Assistant to the Collector of Chennai was examined as CW1 and she had produced the originals of Exs.P3, P4, P5 and P15.

Issue Nos.1 and 4:-

10. Mr.R.Dasaratha Rao, learned counsel appearing for the plaintiff

would contend that the plaintiff has established his title by producing the sale deeds from the year 1948. According to him, the Exs.P1 and P2 would show that Denduluri Vaidyanatha Krishnamurthy had acquired the 6½ grounds of land from Chandrasekara Reddy, who in turn has purchased the same from Govindasamy. He would also point out that Govindasamy had purchased the property under the sale Deed dated 28.08.1940 from the Official Assignee, Madras. Therefore, according to him, the title of the plaintiff is unimpeachable. He would also rely upon Exs.P5 and P6 to strengthen the title. The Ex.P14 is the certified copy of the proceedings of the District Collector, Madras, wherein, the patta granted to M/s.Damodaran and Nithyanandan, S.Suseela and K.Saraswathy were canceled by the Collector. CW1 had produced the original of this order and the same has been compared and found to be correct. Relying upon the above documents Mr.Dasaratha Rao, learned counsel would contend that the plaintiff has established his title and hence he is entitled to a decree for recovery of possession.

WEB COPY

11. Per contra Mr.R.Venkatesan, learned counsel appearing for the defendant would contend that the plaintiff has not proved that the vendors of the plaintiffs were in possession of the property at any point of time. Pointing out that Ex.P6, patta has been issued in the name of Denduluri

Vaidyanatha Krishnamurthy only on 14.05.1985, Mr.R.Venkatesan would contend that there is nothing to show that the said Denduluri Vaidyanatha Krishnamurthy was in possession of the property at any point of time prior to that.

12. It is also the contention of the learned counsel that the suit as framed is not maintainable and the plaintiffs should have sought for a declaration of title. In support of his contentions he would rely upon the judgment of the Hon'ble Supreme Court in **Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LR's and others** reported in **2008 (6) CTC 237**, wherein, the Hon'ble Supreme Court had observed that when there is a cloud created on the title of the plaintiff, the plaintiff will have to seek the relief of declaration of title before seeking to recover the property. No doubt true in **Anathula Sudhakar's case** the Hon'ble Supreme Court had while considering the scope of a suit for injunction observed that when a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession with or without injunction is the proper remedy.

13. It is also observed by the Hon'ble Supreme Court in the said judgment that when the plaintiff's title is not in dispute or under cloud and he is out of possession he has to sue for possession with a consequential

injunction. The other observation in *Anathula Sudhakar's* case made in paragraph 17 of the said judgment would show that the Hon'ble Supreme Court was essentially concerned with a suit for injunction simpliciter and the question as to whether the Court could go into the question of title in a suit for injunction simpliciter. Even then the Hon'ble Supreme Court had observed as follows:

“Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the Court will decide upon the issue regarding title, even in a suit for injunction.”

14. It is also observed that such cases were the exceptions to the normal rule where a question of title will not be decided in a suit for injunction. In the case on hand, the plaintiff has sought for the prayer for recovery of possession and the Court fee paid on the plaint is under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act on the full market value of the property and I find that the issue relating to title is not complicated but the same is simple and straight-forward.

15. The plaintiff claims title under the sale deeds dated 27.01.1945, 05.04.1948 and 14.02.1996, whereas, the defendant would set up title

contending that he purchased the property from one Syed Khader on 26.09.1988, who in turn had purchased the property from Damodaran and Nithyanandan under a sale deed dated 17.04.1986. It is also claimed that the said Damodaran and Nithyanandan had obtained the property under a release deed executed by V.T.Narayanaswamy and his wife in favour of Damodaran and Nithyanandan. But it is not shown as to how the said Viduthan, the grandfather of Damodaran and Nithyanandan became entitled to the property.

16. The defendant who pleads that the plaintiff has not filed any document of antecedent title to show the antecedent title prior to 1945 has not come forward to file any document to establish the title of Viduthan, who is claimed to be the ancestor of Damodaran and Nithyanandan. It is a common knowledge that a release deed cannot confer title unless it is shown that prior title vested in the releasors. The certified copy of the release deed dated 12th September 1984 has been produced as Ex.D1. The same recites that the property belonged to Viduthan who is the father of the 1st releasor and father-in-law of the 2nd releasor. It is not known as to how the said Viduthan became entitled to the property. There are no recitals in the said document showing the source of title of Viduthan over the suit property.

17. Basing their claim to title on the said release deed dated 12.09.1984, the said Damodaran and Nithyanandan have sold the property in favour of Syed Khader on 17.04.1986 under Ex.D2 and the said Syed Khader had in turn sold the property to the plaintiff under Ex.D3 dated 26.09.1988. Even in the year 1985 a patta has been issued to the predecessor in interest of the plaintiff viz., Denduluri Vaidyanatha Krishnamurthy and the same is evidenced by Ex.P6. Under Ex.P15, the collector of Chennai had canceled the patta issued in favour of the vendors of Syed Khader and the said order has not been challenged either by the defendant or by his vendors.

18. The defendant would claim that he had no knowledge of the order and he was not notified of the order canceling the patta issued to his vendors. But the proceedings of the Collector which has been marked as Ex.P15 would disclose that the vendors of the defendant had in fact appeared before the District Collector and have attempted to project a title in themselves.

19. I am therefore of the view that the question of title is not complicated so as to direct the plaintiff to file a suit seeking declaration of

his title. Even otherwise the suit being one for possession which is valued under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act, it is well open to this Court to go into the question of title and decide the same. Therefore, issue No.4 is answered against the defendant and in favour of the plaintiff holding that the suit is not bad for want of a prayer for declaration of the title to the suit property.

20. From the oral and documentary evidence that is available particularly the documents marked as Exs.P1, P2, P6, P12 and P13 viz., the sale deed executed by Govindasamy in favour of Chandrasekara Reddy (Ex.P1), the sale deed executed by Chandrasekara Reddy in favour of Denduluri Vaidyanatha Krishnamurthy (Ex.P2), the patta granted to Denduluri Vaidyanatha Krishnamurthy (Ex.P6), the sale deed in favour of the 1st plaintiff dated 14.02.1996 (Ex.P12), sale deed in favour of 2nd plaintiff dated 14.02.1996 (Ex.P13), I conclude that the plaintiff has established his title. The plaintiff has also produced Ex.P11 (series) which shows that the Urban Land Tax payable has been paid by Denduluri Vaidyanatha Krishnamurthy during the year 1995. This would undoubtedly show that the plaintiff and their predecessors in interest have been exercising their right of ownership over the suit property.

21. Though the defendant would contend that he has purchased the property in 1988 under the sale deed dated 26.09.1988 marked as Ex.D3, he has produced the property tax receipts, Ex.D5, to show that the property tax has been paid by him from 1998 to 2005-06. But the endorsement in Ex.D5 would show that the property tax for the period from 1998 to 2005-06 2nd half year was paid only on 27.02.2012 and the remaining property tax from first half year 2006-07 to 2nd half year 2011 to 2012 was also paid only on 27.02.2012, that is, after the institution of the suit. Therefore, the document viz., Ex.D5 is of no use to the defendant to establish his title. Hence issue No. 1 is also answered in favour of the plaintiff holding that the plaintiff is entitled to recover possession of the property.

22. Mr.R.Venkatesan, learned counsel appearing for the defendant would contend that the executant of the sale deed in favour of Denduluri Vaidyanatha Krishnamurthy viz., Ex.P2 has admitted execution with a reservation and such an endorsement of admission of the execution with reservation has not been made by the Registering officer as per Rule 150 of the Tamil Nadu Registration Rules. Therefore, the said sale deed will not convey any title to the vendor of the plaintiff viz., Denduluri Vaidyanatha Krishnamurthy.

23. This submission of the learned counsel is actually based on a misconception of the scope of the Registration Rules. The Rule 150 of the Registration Rules provide that when execution is admitted and an endorsement is signed by the party admitting the execution and when witnesses are examined merely with reference to the identification of the parties appearing the prescribed endorsement itself is a sufficient record. The record of the substance of the statements shall however be made in the following cases (c) when a person admits execution under a protest. This according to the learned counsel would include an admission of execution without receipt of consideration. I am unable to agree with the contention of the learned counsel. In Ex.P2 while reciting the consideration, it is stated that the purchaser has paid a sum of Rs.400/- as advance and Rs.1100/- has been paid before Sub-Registrar for the balance of Rs.2000/- a promissory note dated 05.04.1948 has been executed by the purchaser in favour of the vendor. This cannot amount to admission of execution with reservation. The sale deed is of the year 1948 and it is an ancient document in terms of Section 90 of the Evidence Act. The same has been produced from proper custody and the contents of it cannot be disputed by the defendant. The Rule 150 talks about recording of substance of statements shall be made by a person who admits execution under protest or without consideration. This cannot however be interpreted to mean that if the vendor receives

consideration or executes a sale deed in anticipation of the consideration, the said fact should be reflected in the endorsements. The rights of unpaid vendor are very well protected under the Transfer of Property Act. Therefore, I do not think, this contention of the counsel is also acceptable.

24. Mr.R.Venkatesan, learned counsel would further draw my attention to the judgment of the Full Bench of this Court in ***Latif Estate Line India Ltd., Vs. Hadeeja Ammal and others*** reported in **2011 (2) CTC 1** to contend that a sale deed without consideration or postponing consideration is not valid. In order to buttress his submission on this, Mr.R.Venkatesan, learned counsel would invite my attention to sub-paragraph (iii) of Paragraph 59 of the judgment of the Full Bench in ***Latif Estate Line India Ltd., Vs. Hadeeja Ammal and others*** reported in **2011 (2) CTC 1**. The said (iii) reads as follows:

“ (iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a Deed of Cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a Sale Deed, admittedly, the title remained with the transferor. “

25. Relying upon the above observations of the Full Bench, Mr.R.Venatesan, learned counsel would submit that since Denduluri Vaidyanatha Krishnamurthy, had only executed a promissory note for Rs.2000/-. The sale deed marked as Ex.P2 of year 1948 is not supported by consideration, therefore, there was no transfer of title.

26. I am unable to persuade myself to agree with the said novel submission of the learned counsel. It is the settled law that the documents of transfer of title can be executed for future consideration also. In such cases, the right of the vendor is only as that of an unpaid vendor under the doctrine of unpaid vendors lien. The fact that a person agrees to pay a part of the consideration on a later date and fails to pay it will not affect the title of the purchaser. The right available for the vendor is to sue for the balance of consideration and a statutory charge/lien is created over the property to the extent of the unpaid purchase money which is termed as unpaid vendors lien.

WEB COPY

27. The attempt of the learned counsel is to quote the judgment of the Full Bench out of context. The Full Bench was concerned with the question as to whether the documents transferring title once executed could be canceled by the act of parties. A reading of sub-paragraph (iii)

itself shows that it deals with a case where a transfer is effected by sale with condition that title will pass payment of consideration. There are 2 things, one is a transfer in future on payment of consideration and the other is a transfer with immediate effect expecting a future consideration. The observations of the Full Bench would apply only to the first category and not to the second category.

28. A perusal of the sale deed marked as Ex.P2 dated 05.04.1948 would show that it belongs to the second category that is a transfer of title in consideration of promissory note having been executed. Therefore, the observations of the Full Bench will not apply on the facts of the present case. An attempt is made by the counsel Mr.R.Venkatesan, to attack the validity of the very sale deed dated 05.04.1948 on the ground that there is no evidence to show that Denduluri Vaidyanatha Krishnamurthy discharged the debt due under the promissory note. The fact whether the promissory note debt was discharged or not does not affect the title of the purchaser. The said document is of the year 1948 and the promissory note was executed in 1948. If at all Denduluri Vaidyanatha Krishnamurthy had not paid the promissory note debt it is always open to the vendor viz., Chandrasekara Reddy to recover the same by a process known to law.

29. This attempt, I find, is again an attempt made by the learned counsel to wriggle out of the mess that the defendant has landed himself by purchasing the property from the person who had no title. Therefore, issue No.1 is answered in favour of the plaintiff holding that he is entitled to recovery of possession and issue No.4 is also answered in favour of the plaintiff holding that the suit is not bad for want of prayer for declaration.

Issue Nos.5 and 6:-

30. It is the contention of the defendant that the suit is barred by limitation and that he has perfected title by adverse possession. The law is well settled that in order to claim adverse possession the defendant must admit the title of the plaintiff. In the case on hand, the defendant had very clearly and categorically denied the title of the plaintiff. He had in fact questioned the validity of the sale deed in favour of the vendor of the plaintiff. It is also seen that the defendant had set up title in himself. Therefore, in the absence of admission of title of the plaintiff by the defendant, the defendant cannot claim to have perfected title by adverse possession.

31. The defendant would next contend that the suit is barred by limitation. As already stated, the suit is one for possession which falls under

Article 65 of the Limitation Act. The Article 65 provides with a period of 12 years for recovery of possession and starting point of limitation is when the possession of the defendant becomes adverse to the plaintiff. The possession of the defendant could be said to have become adverse to the plaintiff only when the defendant admits the title of the plaintiff and claims adverse possession.

32. Here, the defendant has not admitted the title of the plaintiff and claimed adverse possession. Even in his written statement, the defendant would deny the title of the plaintiff. Therefore, I am of the considered opinion that the suit cannot be said to be barred by limitation. Hence, issue No.5 is answered to the effect that the suit is not barred by limitation. Issue No.6 is answered to the effect that neither the defendant nor the predecessors in interest have perfected title by adverse possession to the suit property.

Issue Nos.2 and 3:-

33. These issues relate to the claim for damages made by the plaintiffs. The plaintiffs have claimed Rs.1,000/- per month as damages. Admittedly, the defendant is in possession of about 4800 sq.ft of vacant land with a shed measuring about 200 sq.ft and it is in evidence that he is

utilising the same for his business. Therefore, he has to compensate the plaintiff and he is liable to pay for damages for use and occupation. The plaintiff had valued the damages for use and occupation at Rs.1,000/- per month and had claimed a sum of Rs.36,000/- from 29.02.2005 to 29.01.2008 that is date of presentation of the plaint.

34. Considering the evidence on record and the purpose for which the defendant is utilising the suit property, I am of the considered opinion that damages for use and occupation at the rate of Rs.500/- per month would be just and reasonable. Therefore, the plaintiff would be entitled to Rs.18,000/- as past damages from 29.02.2005 to 29.01.2008 and also future damages at Rs.500/- from the date of plaint till the date of delivery of possession.

35. In fine, the suit is decreed directing the defendant to vacate and deliver vacant possession of the property to the plaintiff and also pay a sum of Rs.18,000/- towards past damages and a sum of Rs.500/- per month towards future damages from the date of suit till date of delivery of possession and the plaintiff will also be entitled to proportionate costs.

.03.2018

dsa
 Index : No
 Internet : Yes
 Speaking Order

List of the Witnesses examined on the side of the Plaintiff:

PW1 - Mr.A.P.Ranga Rao

List of Exhibits marked on the side of the Plaintiff:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	Certified copy of the sale deed.	27.01.1945
2	Ex.P2	Certified copy of the Registered Sale deed.	05.04.1948
3	Ex.P3	Certified copy of plan issued by RTI authority of Madras Collector.	--
4	Ex.P4	Certified copy of the Death Certificate issued by RTI authority of Madras Collector.	--
5	Ex.P5	Certified copy of the Legal heir certificate issued by RTI authority of Madras Collector.	07.09.1980
6	Ex.P6	Certified copy of the patta.	14.05.1985
7	Ex.P7	Certified copy of the sale deed.	12.09.1984
8	Ex.P8	Certified copy of the sale deed.	17.04.1986
9	Ex.P9	Certified copy of the sale deed.	26.09.1988
10	Ex.P10	The original encumbrance certificate.	12.02.1993
11	Ex.P11	The Urban land tax receipt.	13.09.1995
12	Ex.P12	Certified copy of the sale deed in favour of the 1 st plaintiff.	14.02.1996
13	Ex.P13	Certified copy of the sale deed in favour of the 2 nd plaintiff.	14.02.1996
14	Ex.P14	Certified copy of the order.	13.08.1996
15	Ex.P15	Copy of the letter.	28.08.1996
16	Ex.P16	The original urban tax receipts.	13.07.2012

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
17	Ex.P17	The copy of Town Survey Register.	18.03.2013

List of the Witnesses examined on the side of the Defendant:

DW1- Mr.S.A.M.Naina Mohamed

List of Exhibits marked on the side of the Defendant:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Certified copy of the release deed.	12.09.1984
2	Ex.D2	Certified copy of the registered sale deed.	17.04.1986
3	Ex.D3	Certified copy of the registered sale deed.	25.09.1988
4	Ex.D4	The Encumbrance certificate in favour of the defendant.	--
5	Ex.D5	New Assessment Notice, Property Tax Receipt and property Tax Card issued to the defendant.	--

List of CW's:

CW1 - Ms.K.Poomalini

WEB COPY 23.03.2018

dsa

R.SUBRAMANIAN,J.

dsa

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



Pre-Delivery Judgment
in
C.S.No.104 of 2007

WEB COPY

23.03.2018