

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.02.2018

PRONOUNCED ON:01.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1215 of 2003

1.Ramanujam

2.Ramaswamy ... Appellants

Vs.

Kuppuswamy Padayachi ... Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.7 of 2000 on the file of the Subordinate Court, Cuddalore, dated 27.12.2002 confirming the judgment and decree in O.S.No.272 of 1997 on the file of the District Munsif Court, Cuddalore dated 27.10.1999.

For Appellants : Mr.R.Muralidharan

For Respondent : Mr.R.Gururaj

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 27.12.2002 passed in A.S.No.7 of 2000 on the file of the Subordinate Court, Cuddalore confirming the judgment and decree dated 27.10.1999 passed in O.S.No.272 of 1997 on the file of the District Munsif Court, Cuddalore.

2. The parties are referred to as per the rankings in the trial court.

3.Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that he had purchased the suit property and other items from Rathinambal and her minor son Venu Gopala Krishnan, by way of a registered sale

deed dated 03.08.1960 and later Venu Gopala Krishnan on attaining majority, executed the release deed dated 24.12.1968, in favour of the plaintiff confirming the earlier sale and since then, it is only the plaintiff, who is in possession and enjoyment of the suit property as the absolute owner thereof, by obtaining patta, paying Kists etc., and on account of open, hostile and continuous possession of the suit property for more than the statutory period, the plaintiff has also prescribed title to the same, by way of adverse possession, while so, the defendants, who are strangers and who own properties nearby, required the plaintiff to sell the suit property to them and as the plaintiff refused to the same, the defendants with a view to grab the suit property, attempted to interfere with the possession and enjoyment of the plaintiff in respect 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 defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendants are brothers and it is false to state that Rathinambal and her son Venu Gopala Krishnan had right, title or interest in the suit property and they had sold the same to the plaintiff by way of a registered sale deed dated 30.08.1960 and subsequently, by way of the release deed dated 24.12.1968 as put forth in the plaint. They had never been in possession and enjoyment of the suit property and therefore the plaintiff cannot derive any valid title, possession and enjoyment of the suit property from them and it is false to state that the plaintiff has been in valid possession and enjoyment of the suit property, since the date of the above said sale transactions by obtaining patta, paying Kists, etc., and it is false to state that the plaintiff has prescribed title to the suit property by way of adverse possession, on account of open, continuous and hostile enjoyment. The new survey number of the suit property is 293/2 and the suit property is the ancestral property of the defendants and been in possession and enjoyment of the great grand father of the defendants namely Govindasamy @ Kuppusamy, their grandfather Chellaperumal and their father Govindasamy and accordingly, on account of the same, the suit property was divided by way of partition into two equal halves and the southern 0.35 cents was allotted to the first defendant's share and the northern 0.35 cents was allotted to the second defendant's share and accordingly, the defendants are in possession and enjoyment of their respective shares in the suit property and further the defendants on account of their open, continuous and uninterrupted possession and enjoyment of the suit property for more than the statutory period have also prescribed title by way of adverse possession and the second defendant had dealt with his share in the suit property, by way of executing the settlement deed dated

08.02.1989 and therefore the claim of the plaintiff that the defendants are interfering with this possession and enjoyment of the suit property is false and on the other hand, it is only the defendants who are in exclusive possession and enjoyment of the suit property and there is no cause of action for the suit and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to 23 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B12 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and thereby granted the decree in favour of the plaintiff as prayed for. Aggrieved over the same, the present second appeal has been preferred by the defendants.

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

(i) Whether the finding of the Courts below in assuming validity of the title in favour of Rathinambal and her son under Ex.A1 and Ex.A2 in the absence of documents of title in respect of the suit item in the name of the vendors under Ex.A1 and Ex.A2 are legally sustainable?

(ii) Whether in view of the admission of P.W.1 that the suit property is the ancestral property and in possession of Rathinambal's father, the finding that she is alone as owner of the suit item is sustainable in law?

(iii) Whether in view of the admission of P.W.1 that Rathinambal had three brothers and her father was in possession of the suit item, the finding that she has proved her title under Ex.A1 is sustainable in law?

9. The plaintiff claims title to the suit property on the footing that the same had been alienated in his favour by Rathinambal and her minor son Venu Gopala Krishnan, by way of a registered sale deed dated 03.08.1960 marked as Ex.A1 and further according to the plaintiff, Venu Gopala Krishnan on attaining majority, executed the release deed in favour of the

plaintiff on 24.12.1968 marked as Ex.A2 in respect of the suit property thereby, confirming the earlier sale transaction dated 03.08.1960 and thus according to the plaintiff, it is only he who has acquired a valid title to the suit property and enjoying the same by obtaining patta, paying Kist etc., and inasmuch as, the defendants interfered with his possession and enjoyment, according to the plaintiff, he has been constrained to institute the suit for appropriate reliefs. The plaintiff has also claimed that he has prescribed title to the suit property, by way of adverse possession. The defendants have stoutly repudiated the plaintiff's claim of title as well as the claim of title, possession and enjoyment of the plaintiff's predecessors in interest as claimed in the plaint and according to them, neither the plaintiff nor his predecessors in interest had been in valid possession and enjoyment of the suit property at any point of time and also disputed the plea of the plaintiff that he has prescribed title to the suit property by way of adverse possession and according to the defendants, the suit property is their ancestral property and been in their enjoyment right from the days of their great grandfather Govindasamy @ Kuppusamy, grand father Chellaperumal, father Govdindasamy and further according to the defendants, the suit property had been divided amongst themselves equally, by way of a partition in the year 1976 and accordingly, the defendants are in possession and enjoyment of their respective shares in the suit property and further the defendants have also claimed title to the suit property, by way of adverse possession and hence prayed for the dismissal of the suit. As the defendants denied the claim of title to the suit property of the plaintiff's vendors, it is seen that the plaintiff at the foremost should establish that his vendors had a valid title to the suit property to convey the same to him under Ex.A1 and subsequently, confirmed the same, by way of of Ex.A2. However, the plaintiff in his plaint has not stated how his vendors ie., Rathinambal and her minor son Venu Gopala Krishnan had acquired title to the suit property. He has not even whispered in the plaint that the suit property is the ancestral property of Rathinambal and her minor son and further not whispered as to how the suit property is their ancestral property. It is thus found that the plaint is very very silent as to the source of title of the plaintiff's vendors in respect of the suit property. Further more, the title deeds projected by the plaintiff are marked as Exs.A1 and A2 and on a perusal of Ex.A1, it is seen that in the said document nothing has been mentioned as to how Rathinambal and her minor son had acquired title to the properties i.e., the suit property conveyed thereunder. It is not stated in the said document as to the suit property being the ancestral property of Rathinambal and her minor son and on that basis, they had acquired title to the same and accordingly, conveyed the same to the plaintiff, by way of the said document. It is thus found that nothing has

been mentioned about the source of title of the vendors of Ex.A1 in the said document and further, nothing is also mentioned that the suit property in particular had been in possession and enjoyment of the vendors prior to the said sale transaction. According to the plaintiff, the minor Venu Gopala Krishnan on attaining majority, confirming Ex.A1 sale transaction, executed the release deed in his favour in respect of the suit property, which document has come to be marked as Ex.A2. If according to the plaintiff, by way of Ex.A1 itself, Rathinambal and Venu Gopala Krishnan, the minor represented by his mother Rathinambal had validly conveyed the suit property in his favour, it has not been explained as to why there is any further need on the part of the plaintiff to obtain a release deed from Venu Gopala Krishnan on the attainment of his majority. This itself creates a doubt in the earlier transaction marked as Ex.A1. Be that as it may, even in the Ex.A2, there is no whisper as to how Venu Gopala Krishnan traces his title to the suit property released therein. It is not been mentioned in the said document that the suit property is the ancestral property of Venu Gopala Krishnan and that he and his mother had been in possession and enjoyment of the suit property prior to Ex.A1 sale transaction by acquiring title, through inheritance from their ancestors. It is thus found that no averment as to the source of title or the nature of title has been disclosed in Ex.A2 document as noted with reference to Ex.A1 document. It is thus found that Exs.A1 and A2 do not indicate anything as to how the executants thereof had acquired title to the suit property, whether ancestrally or by acquisition through any conveyance or by any other mode, apart from stating that they are conveying the suit property to the plaintiff. It is found that as rightly put forth by the defendants' counsel, merely from Exs.A1 and A2, we cannot infer or safely conclude that the suit property belonged to Rathinambal and her minor son ancestrally or otherwise.

10.The Courts below seem to have placed reliance upon Exs.A1 and A2, on the footing that the same being 30 years old document, their truthfulness could be straightaway accepted as per the provisions contained in section 90 of the Indian Evidence Act . However, it is found that the above approach of the Courts below in accepting the genuineness of the contents of the said documents is erroneous. As rightly contended by the defendants' counsel, the presumption that could raised u/s.90 of the Indian Evidence Act as regards the 30 years old document would be only in respect of the execution thereof and not in respect of the validity of the contents of the said document. In this connection, the defendants' counsel, placed reliance upon the decisions reported in A.I.R 1939 Bombay 59 [Chandulal Asharam Travadi and others Vs. Bai Kashi] and A.I.R 2016 Bombay 63 [Shivram Mahadev Shinde Vs. Maharashtra Housing & Area Development Authority and another] and from the decisions above

stated, it could be seen that the presumption of 30 years old document u/s.90 of the Indian Evidence Act is a rebuttable presumption and though execution and attestation could be presumed in respect of such documents, the truthfulness of the contents therein is a matter of challenge and proof and accordingly, when the presumption that could be raised does not involve about the truth of the contents of the document as such, it is found that the Courts below have erroneously accepted the genuineness of Exs.A1 and A2 and the contents there of in toto by raising the presumption u/s.90 of the Indian Evidence Act. Particularly, when the defendants have thrown a stiff challenge that the plaintiff's vendors had no title, possession and enjoyment of the suit property in any manner, it is for the plaintiff to establish the same by adducing acceptable and reliable evidence. Other than marking Ex.A1 and A2, no material worth of acceptance has been placed by the plaintiff to evidence that his vendors had a valid title to the suit property enabling them to legally and validly convey the same to the plaintiff by way of Exs.A1 and A2. Therefore, it is found that merely on the basis of Exs.A1 and A2 ipso facto, the plaintiff cannot claim to have acquired a valid title to the suit property as put forth by him.

11.In this connection, the plaintiff examined as P.W.1 in the course of his evidence during chief examination would state that the suit property was enjoyed by Rathinambal's father prior to his purchase, thereby meaning that his suit property had been enjoyed by Rathinambal's father and through him, Rathinambal and her son had acquired title to the suit property. During the course of cross examination, P.W.1 without any ambiguity has admitted that Rathinambal had three brothers. It is found that when according to P.W.1 as disclosed by way of his testimony that the suit property belonged to Rathinambal's father and when from his evidence, it is noted that Rathinmbal's father had three sons other than his daughter Rathinambal and when there is no indication as to how the Rathinambal exclusively derived the title to the suit property from her father and when with reference to the same, no material as such has been placed by the plaintiff, it is highly doubtful whether the claim of the plaintiff that Rathinambal and her minor son had a valid title to the suit property by way of inheritance and accordingly, legally convey the same to him by Exs.A1 and A2. In this connection, the plaintiff during the course of his evidence, during cross examination would admit that he has not filed any record to show that the suit property had been in the possession and enjoyment of the ancestors of Rathinambal's father and also not produced any parent title deeds and admitted that he does not know anything about the suit property prior to his purchase from Rathinambal and further admitted that he has not perused any revenue record or

encumbrance certificate prior to his purchase and also not produced any document to show that Rathinambal and her father had been in possession and enjoyment of the suit property at any point of time prior to Ex.A1 sale transaction and further when he has clearly admitted that there is no document to show that his vendors had title, possession and enjoyment of the suit property, it is found that absolutely there is no proof whatsoever to hold that Rathinambal and her minor son or Rathinambal's father had a valid title to the suit property either ancestrally or otherwise. Accordingly, it is found that the plaintiff has cleverly not chosen to trace the source of title of his vendors in the plaint and accordingly, the same is also not disclosed in Exs.A1 and A2 and accordingly, it is found that the plaintiff is unable to substantiate the same with acceptable and reliable materials. It is thus found that on a consideration of the above aspects, the determination of the Courts below assuming the validity of the title in favour of Rathinambal and her son Venu Gopala Krishnan solely on the basis of Exs.A1 and A2 in the absence of any other documents of title to point out that they had a valid title to the suit property and further when there is no pleading or proof as to the source of their title in any manner. It is found that the Courts below had completely erred in accepting the genuineness of Exs.A1 and A2 by erroneously raising the presumption u/s.90 of the Indian Evidence Act, particularly when a serious challenge is thrown to the said transactions by the defendants in toto.

12.The plaintiff claims to be in possession and enjoyment of the suit property pursuant to Exs.A1 and A2. It is further seen that according to the plaintiff, he has acquired title to the suit property only by way of Exs.A1 and A2. The patta for the suit property has been marked as Ex.A3. On a perusal of Ex.A3, it is seen that the source of title for the properties mentioned therein is shown as by way of succession [tHpKiw]. This aspect also goes to belie the case of the plaintiff that he has acquired title to the suit property under Exs.A1 and A2. When the plaintiff has failed to establish that he has acquired a valid title to the suit property by way of Exs.A1 and A2 and when the patta marked as Ex.A3 do not refer to the same in any aspect and on the other hand, Ex.A3 point out that the property had been acquired by the plaintiff by way of succession, the claim of the plaintiff that he has been in possession and enjoyment of the suit property thence from by paying Kists as such cannot be accepted. No doubt, the plaintiff has filed the Kists receipts marked as Exs.A4 to A23. Merely from the Kists receipts produced by the plaintiff, we cannot conclude that the plaintiff has a valid title to the suit property, valid possession and enjoyment of the suit property as put forth by him. To evidence that the plaintiff has been in possession and enjoyment of the suit property right from Exs.A1 and A2 the

plaintiff had not chosen to place the adangal extracts, chitta extracts in respect of the suit property from the faslis commencing therefrom. In such view of the matter, on the basis of the Kists receipts alone, we cannot come to the conclusion that he has been in physical possession and enjoyment of the suit property as pleaded by him.

13. The evidence of P.Ws.2 and 3 examined on behalf of the plaintiff do not in any manner lend support to his case. P.W.2 has admitted that he is not a nearby resident to the suit property and according to him he is a resident of village situated $\frac{3}{4}$ Km away from the suit village and when he is unable to explain about the title, extent survey number, boundaries of his own property and when he is not the resident of the suit village and when he has admitted that he had worked for the plaintiff at one point of time, it is found that on the basis of his evidence we cannot firmly conclude that the suit property is in the possession and enjoyment of the plaintiff. Similarly, P.W.3 has also admitted that he used to do jobs to the plaintiff as and when required. When he is unable to give any particulars about the suit property and not a resident of the suit village and thus it is found that no safe reliance could be attached to his evidence to uphold the claim of possession and enjoyment of the suit property by the plaintiff. It is thus found that no valid and acceptable material as such has been placed by the plaintiff to hold that he has been in possession and enjoyment of the suit property as claimed.

14. In the light of the above position, the further plea of the plaintiff that he has prescribed title to the suit property by way of adverse possession cannot at all to be accepted. If the above plea is pressed by the plaintiff, it is found that by way of the same, he is admitting the title of the defendants in respect of the suit property. In that event, it is for the plaintiff to establish that he has been in possession and enjoyment of the suit property to the knowledge of the defendants openly, continuously and uninterruptedly beyond the statutory period exhibiting hostile animus to the defendants knowledge and when from the Kists receipts alone, we cannot conclude that the plaintiff has satisfied the above aspects of the proof of the adverse possession and when the Kists receipts filed also are found to be not continuous and only intermittent and that apart as noted earlier, when the plaintiff has not filed adangal extracts, chitta extracts etc., to prove his possession and enjoyment and when it is found that suit has been laid in the year 1997, merely from the Kists receipts projected, we cannot safely conclude that the plaintiff has been in possession and enjoyment of the suit property openly, continuously and uninterruptedly for more than the statutory period to the knowledge of the defendants by exercising hostile

ownership for claiming the title to the suit property by way of adverse possession. Furthermore, the plea of adverse possession cannot be taken by the plaintiff, as the suitor, as the above plea could only be taken a shield not as a sword and so, it is found that the claim of title to the suit property by adverse possession as raised by the plaintiff is legally not sustainable. In any event, it is found that the plaintiff has miserably failed to establish that he has perfected the title to the suit property by hostile enjoyment as prescribed under law by placing acceptable and reliable proof.

15. The defendants' claim title to the suit property ancestrally. Accordingly to the defendants, they had been in possession and enjoyment of the suit property right from the days of their great grand father Govindasamy @ Kuppusamy, grandfather Chella perumal and father Govindasamy.

16. Accordingly, it is found that the defendants have filed the chitta extracts to show that the suit property stands in the name of Chella perumal S/o, Govindasamy as Ex.B1 and also filed the settlement register extract copy as Ex.B2, therein, the owner is shown to be Chella Perumal as regards the suit property and the patta number for suit property is mentioned as 331 in Ex.B2 and further more the defendants have also produced the adangal extracts as Exs.B3 to B5 ranging from fasli 1375 and from the said document, it is found that it is only the defendants and their predecessors in interest, who had been in possession and enjoyment of the suit property and further more the defendants have also paid Kists in respect of the suit property which could be evidenced from the Kists receipts marked as Exs.B7 to B12. It is found that on the basis of the above said documents, it is only the defendants, who are in possession and enjoyment of the suit property as claimed by them and it is further seen that according to the defendants, they had partitioned the suit property into two equal halves and enjoying the respective shares and accordingly it is seen that the second defendant settled his share in favour of his wife and minor son by way of Ex.B6 settlement deed and thus, it is seen that the defendants had been exercising ownership, possession and enjoyment of the suit property as claimed by them and accordingly, it is found that the plaintiff is also unable to repudiate the same and knowing fully well that he has no valid title to the suit property by way Exs.A1 and A2, chosen to take the plea of adverse possession in respect of the suit property as against the defendants. As above seen, by way of the said plea, the plaintiff has indirectly admitted the claim of the title of the defendants in respect of the suit property. However, when it is found that the plaintiff has failed to establish his plea of adverse possession, naturally, it is seen that it is only the defendants, who are in possession and

enjoyment of the suit property as claimed by them and accordingly have produced the necessary documents in support of the same. The reasonings of the Courts below that the defendants have failed to correlate the patta number 331 of the suit property as such cannot be accepted when it is found that the said patta number has been disclosed in the settlement register extract marked as Ex.B2. Therefore, it is found that it is only the defendants who are in possession and enjoyment of the suit property and not the plaintiff.

17.No doubt, the defendants have also taken the plea of adverse possession, but the defendants being entitled to take inconsistent pleas, by way of the same, it cannot be inferred that they had admitted the title of the plaintiff to the suit property. In any event from the documents produced by the defendants, it is found that it is only the defendants who had been in possession and enjoyment of the suit property for a long period of time on their own openly and continuously beyond the statutory period.

18.In the light of the above discussions, it is found that the plaintiff's title, possession and enjoyment of the suit property under Exs.A1 and A2 cannot be legally sustained and considering the admission of the plaintiff that Rathinambal's father had three sons and when the plaintiff has not properly explained as to how Rathinambal had acquired the sole title to the suit property from her father and further when the source of title, possession and enjoyment of Rathinambal, her father and their ancestors had not been pleaded and established by the plaintiff, it is found that neither the plaintiff's title nor his vendors' title could be legally accepted and countenanced based on Exs.A1 and A2 and the other revenue documents projected by the plaintiff. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

19.The other decisions relied upon by the defendants' counsel reported in 2011 (1) Law weekly 525 [[Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and Others] and A.I.R 1990 Supreme Court 717 [Bhavnagar Municipality Vs Union of India and another] are taken into consideration and the principles of law outlined in the above said decisions are followed as applicable to the facts and circumstances of the case at hand.

20.At the end, the judgment and decree dated 27.12.2002 passed in A.S.No.7 of 2000 on the file of the Subordinate Court, Cuddalore confirming the judgment and decree dated 27.10.1999 passed in O.S.No.272 of 1997 on the file of the District Munsif Court, Cuddalore are set aside and resultantly the suit laid by

the plaintiff in O.S.No.272 of 1997 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Sub Judge, Subordinate Court,
Cuddalore.

2.The District Munsif,
Cuddalore .

3.The Section Officer,
VR Section,
High Court.(2 copies)

+2cc to Mr.R.MURALIDHARAN, Advocate, S.R.No.15825

+1cc to Mr.R.GURURAJ, Advocate, S.R.No. 16672

Pre-delivery judgment made in
S.A.No.1215 of 2003

KS(CO)
TR(05/04/2018)

सत्यमेव जयते
WEB COPY