

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2018
PRONOUNCED ON : 27.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.Nos.1682 & 1683 of 2003

1. Bujingan @ Gandhi
...1st Appellant/Appellant/Plaintiff in S.A. 1682/2003.
...1st Appellant/Appellant/Plaintiff in S.A. 1683/2003.
2. Sivagami
3. C.Thangaraj
... 2 & 3 Appellants/2 & 3 Defendants in S.A.No.1682 of 2003

Vs.

Padma @ Padrammal
... Respondent/Respondent/Plaintiff/Defendants in both appeals

Common Prayer: Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal District Judge of Coimbatore dated 06.02.2002 in A.S.Nos.211 & 212 of 2001 confirming the judgment and decree of the third Additional District Munsif of Coimbatore dated 10.04.2001 in O.S. Nos.1267 & 1026 of 1996.

For Appellants : Mr. J.Hariharan
for M/s. V.Nicholas

For Respondent : Mr.V.Sivakumar

COMMON JUDGMENT

Second appeal Nos. 1682 & 1683 of 2003 are directed against the judgment and decree of the Principal District Court, Coimbatore, dated 06.02.2002, passed in A.S.Nos.211 & 212 of 2001, confirming the judgment and decree of the third Additional District Munsif Court, Coimbatore, dated 10.04.2001, passed in O.S. Nos.1267 & 1026 of 1996.

2. The suit has been laid by the appellant in O.S. No.1026 of 1996 for declaration and permanent injunction. The suit in O.S. No.1267 of 1996 has been laid by the respondent for the

relief of permanent injunction.

3. Second appeals have been admitted on the following substantial questions of law:

Second appeal No. 1682 of 2003:

In the absence of pleading and proof that the plaintiff had perfected her title by adverse possession, could any court grant a decree for bare injunction on the basis that the plaintiff's title stand perfected by adverse possession?

Second appeal No. 1683 of 2003:

When the defendant's vendor is shown to have executed a sale over and above the extent of property to which he is entitled to, is not the plaintiff entitled to recovery of possession of that excess extent?

4. In support of the appellant's case, PWs 1 and 2 were examined, Exs.A1 to A7 were marked. In support of the respondent's case DWs 1 and 2 were examined, Exs.B1 to B17 were marked. Exs.C1 to C3 were also marked. During the course of the first appeals proceedings, in support of the respondent's case, Exs.B18 to B21 were marked.

5. On a consideration of the materials placed on record, both oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court though had granted the reliefs of declaration and permanent injunction in favour of the appellant as prayed for, dismissed the relief of possession sought for by the appellant as regards the B schedule property i.e., the disputed 37 cents and decreed the suit as prayed for by the respondent in O.S. No.1267 of 1996. The first appellate Court has upheld the judgment and decree of the trial Court as determined in favour of the respondent in O.S. No.1267 of 1996 and accordingly, dismissed the A.S.No.211 of 2001 and modified the judgment and decree of the trial Court passed in O.S.No.1026 of 1996 granting the reliefs of declaration and permanent injunction in favour of the appellant in respect of the suit property excluding the B schedule property and thereby disposed of the appeal in A.S.No.212 of 2001. Aggrieved over the same, the present second appeals have been laid.

6. Considering the scope of the controversies involved in the matter lying in a narrow compass, it is unnecessary to dwell on the facts involved in detail. Suffice to state that the extent of 5.06 acres of land in S.F.No.461 of Bilichi village, originally belonged to the deceased Rangappa Gounder, who had two sons, namely, Kullappa Gounder and Sivanappa Gounder. Marudhappa Gounder is the son of Kullappa Gounder and

Venkataramana Gounder is the adopted son of Sivanappa Gounder and it is the plaintiff, who is the son of Marudhappa Gounder and one Easwaran is the son of Venkataramana Gounder. It is found that, accordingly, the above said property consisting of an extent of 5.06 acres had been divided into two equal half shares and it is thus found that, according to the appellant, the eastern half measuring 2.53 acres has come to be owned by him and the western half measuring 2.53 acres has been allotted to the other branch, namely, Easwaran and it is thus found that the respondent has purchased the said property from Easwaran. Thus, it is found that the appellant claims title to an extent of 2.53 acres in the suit survey number. Per contra, the respondent claims to have purchased an extent of 2.90 acres from Easwaran, by way of registered sale deed, dated 12.06.1967 and accordingly, it is found that the dispute between the parties lies only in respect of 0.37 cents. It is further seen that, according to the respondent, she has alienated an extent of 0.05 cents purchased from Easwaran by way of sale deed dated 26.08.1992.

7. Thus, it is found that when the parties are vying with each other for an extent of 0.37 cents, it has to be seen whether the appellant is entitled to the said disputed land or the respondent is entitled to the same. As seen from the pleadings put forth by the respondent, either by way of the written statement in O.S.No.1026 of 1996 or by way of the plaint in O.S.No. 1267 of 1996, it is noted that though she would claim that she had acquired the total extent of 2.90 acres in the suit survey number, pursuant to the sale deed dated 12.06.1967, when it is found that the total extent available in the suit survey number is 5.06 acres and when it is further noted that the appellant represents one branch and the respondent's vendor represents the other branch and when there is no material placed on record by the respondent to show that in the division effected among the two branches, a larger extent had been allotted to Easwaran and only a lesser extent had been allotted to the plaintiff, it is evident that in the absence of any material with reference to the same, it has to be concluded that the two branches would have divided the total extent of 5.06 acres clearly into two equal half shares and it is thus found that, accordingly, the respondent is unable to place any material to show that prior to the sale deed dated 12.06.1967, her vendor Easwaran had been in possession of the extent of 2.90 acres in the suit survey number. Accordingly, it is found that the respondent has taken a plea for claiming title to the disputed 0.37 cents only by way of adverse possession. Now, according to the respondent, as seen from her pleadings, she has only stated that as she has been in possession and enjoyment of the disputed extent of 0.37cents, right from the date of the sale deed dated 12.06.1967, thus, prescribed title to the same by way of adverse possession. The above case of the respondent

had been upheld by the Courts below. The other requisites for sustaining the relief of adverse possession have not been specifically put forth in her pleadings. There are no pleadings set out by her that she had been in open, continuous, uninterrupted possession and enjoyment of the disputed land to the knowledge of one and all, particularly, the appellant, by exhibiting animus attitude and by asserting title on herself beyond the statutory period.

8. It has to be therefore seen that whether the Courts below were justified in upholding the plea of adverse possession projected by the respondent as regards the disputed extent of 0.37 cents in the suit survey number. The documents projected by the respondent by way of kist receipts, patta are found to have emanated only from 1985 onwards and similarly, adangal extract and chitta extract projected by the respondent marked as Exs.B16 to B21 are found to be of recent origin. Most of the documents produced are found to have been secured after the institution of the suit. It is thus found that from and out of the said documents, we cannot safely conclude that the respondent has been in open, continuous and uninterrupted possession and enjoyment of the disputed extent of 0.37cents in the suit survey number to the knowledge of one and all, particularly, the defendant, by exhibiting animus attitude, so as to seek the relief of adverse possession. On the other hand, it is found that the Courts below seem to have proceeded on the premise that inasmuch as the respondent had claimed to have purchased an extent of 2.90 acres by way of sale deed dated 12.06.1967 marked as Ex.B1, she would have been in possession and enjoyment of the disputed extent of 0.37 cents also continuously, since, the said date, adversely to the knowledge of the appellant and thereby upheld her plea of adverse possession. However, as rightly contended by the appellant's counsel, the Courts below had failed to appreciate the principles of law in the right perspective governing the essential ingredients for establishing the plea of adverse possession. As per the decisions relied upon by the appellant's counsel reported in (2007) 6 SCC 59 (P.T.Munichikkanna Reddy and others Vs. Revamma and others) and 2011-1-LW.1014 (Dhanabaghyam ammal (died) and others Vs. Dhanavel and others) for determining the concept of adverse possession put forth by the parties, the possession must be open, continuous and hostile and there must be a positive animus and intention to dispossess the owner and in such view of the matter, the person claiming the title by way of adverse possession should plead and establish as to the starting point of adverse possession i.e., the date of dispossession of the owner and in the absence of the same, mere long possession by itself would not amount to adverse possession and the person pleading the adverse possession must plead that he or she had been in possession of the property in dispute with

the required animus to the knowledge of the real owner.

9. The requirements of law governing the proof of adverse possession are elucidated in the decision reported in (2007) 6 SCC 59 (P.T.Munichikkanna reddy and others Vs. Revamma and others) as follows:

A. Adverse possession - concept - ingredients - Tests to determine - possession must be open, continuous and hostile to constitute adverse possession - openness and hostility - Meaning - There must be positive intention to dispossess the owner - Intention to dispossess distinguished from intention to possess - Date of dispossession of the owner i.e., starting point of adverse possession is also important - On facts held, ingredients of adverse possession not established - Even an unduly long undisturbed possession did not prove the intention of the adverse possessor - Limitation Act, 1963, Arts.64 and 65.

B. Adverse possession - Burden of proof - Initial burden lies on a landowner to prove his title and possession - Onus then shifts on the other party to prove title by adverse possession-Limitation Act, 1963, Arts. 64 and 65 - Limitation Act, 1908, Arts.142 & 144.

C. Adverse Possession- Human rights - Right to property is a human right - Adverse possession should be considered in that context - Fact that Courts around the world are taking an unkind view to the concept of adverse possession should be kept in mind - constitution of India- Pt.III- Human Rights.

In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act,1963, the legal position has underwent complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession.

S.M.Karim Vs. Bibi Sakina, AIR 1964 SC 1254; Saroop Singh V.Banto, (2005)8SCC 330; M.Durai Vs.Muthu, (2007) 3 SCC 114: (2007) 2 Scale

309; Mohammadbhai Kasambhai Sheikh V. Abdulla Kasambhai Sheikh, (2004) 13 SCC 385; T. Anjanappa V. Somalingappa, (2006) 7 SCC 570; Des Raj V. Bhagat Ram, (2007) 9 SCC 641; (2007) 3 Scale 371; Govindammal v. R. Perumal Chettiar, (2006) 11 SCC 600, relied on Vasantiben Prahladi Nayak V. Somnath Muljibhai Nayak, (2004) 3 SCC 376; Mohd. Mohd. Ali V. Jagadish Kalita, (2004) 1 SCC 271; Mahomedally Tyebally V. Safiabai (1939-40) 67 IA 406: AIR 1940 PC 215, cited

Inquiry into the starting point of adverse possession i.e. dates as to when the paper-owner got dispossessed is an important aspect to be considered. In the instant case the starting point of adverse possession and other facts such as the manner in which the possession operationalised, nature of possession: whether open, continuous, uninterrupted or hostile possession, have not been disclosed.

S.M. Karim V. Bibi Sakina, AIR 1964 SC 1254; Karnataka Board of Wakf V. Govt of India, (2004) 10 SCC 779, relied on Parsinni V. Sukhi, (1993) 4 SCC 375; D.N. Venkatarayappa V. State of Karnataka, (1997) 7 SCC 567; P. Periasami V. P. Periathambi, (1995) 6 SCC 523; Mohan Lal V. Mirza Abdul Gaffar, (1996) 1 SCC 639, cited.

The intention of dispossession needs to be open and hostile enough to bring the same to the knowledge and the plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (wilful) or omission (negligent or otherwise) of the right to defend or care for the integrity of property on the part of the owner of the property on paper. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence intention implies knowledge on the part of adverse possessor. The issue is that intention of the adverse user gets communicated to the owner of the property and paper. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession.

It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the owner of the property on paper.

Narne Rama murthy V. Ravula Somasundaram, (2005) 6 SCC 614; R.v.Oxfordshire Country Council, (2000) 1 AC 335: (1999) 3 WLR 160: (1999) 3 ALL ER 385 (HL); Beresford, R (on the application of) v. City of Sunderland, (2003) 3 WLR 1306: (2004) 1 ALL ER 160, relied on Bright V.Walker, (1834) 1 CM & R 211: 149 ER 1057 ; Dalton V.Henry Angus & Co., (1881) 6 App Cas 740: (1881 - 85) ALL ER Rep 1 (HL), cited.

Intention to dispossess vis-a-vis intention to possess can be marked very distinctively in the present circumstances. Intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. The factum of possession in the instant case only goes on to objectively indicate intention to possess the land. As also has been noted by the High Court, if the appellant has purchased the land without the knowledge of earlier sale, then in that case the intention element is not of the variety and degree which is required for adverse possession to materialise. The High Court observed, having regard to pleadings and evidence that the plaintiff came to know about the right of the defendants, only when disturbances were sought to be made to his possession. Thakur Kishan Singh V.Arvind Kumar, (1994) 6 SCC 591, relied on

The present case is one of the few ones where even an unusually long undisturbed possession does not go on to prove the intention of the adverse possessor.

Lambeth London Borough Council V.Blackburn, (2001) 82 P & CR 494: 2001 EWCA Civ 912, referred to,

Accordingly, it is found that when there is no material placed on record by the respondent that her vendor Easwaran had been in possession and enjoyment of the disputed property with the animus intention and attitude, excluding the appellant, openly, continuously and uninterruptedly and when clearly the respondent has also failed to plead and establish that she has

been in possession and enjoyment of the disputed extent openly, continuously and uninterruptedly with the necessary animus intention to the knowledge of the appellant for more than the statutory period, it is found that the mere enjoyment of the disputed extent over a long period of time sans the exhibition of animus attitude, by itself would not lead to the conclusion that the respondent had perfected her title by way of adverse possession. In such view of the matter, the essential ingredient, namely, adverse intention being completely absent in respect of the claim of the respondent and when it is found that the respondent has not pleaded in specific nor established as to from which particular date, her possession had become adverse to the plaintiff in respect of the disputed property, the determination of the Courts below upholding the claim of the respondent in respect of the disputed land by way of adverse possession, as such, cannot be accepted.

10. When it has not been established by the respondent that her vendor had been granted a larger extent or had acquired a larger extent in the suit survey number either by way of partition or otherwise and when the respondent had failed to disclose as to when from her possession had become adverse to the plaintiff in respect of the disputed extent and when the documents placed by the defendant are found to be of recent origin and by themselves would not constitute the necessary proof for upholding her plea of adverse possession, it is found that the Courts below had erred in negating the plea of possession sought for by the appellant as regards the disputed extent of 0.37 cents.

11. No doubt, the materials placed on record go to disclose that the land belonging to the appellant is at a lower level than the respondent. On that premise alone, we cannot conclude that the respondent had prescribed title to the disputed extent by way of adverse possession, as projected by her and it is thus found that though the appellant has not established as such, that the defendant has encroached into the disputed portion, considering the facts and circumstances of the case involved in the matter, when it is found that the two branches could have derived only equal share in the total extent and when the respondent has failed to establish that her vendor had been allotted larger extent in the suit survey number, it is found that particularly when the respondent has laid claim to the disputed extent only by way of adverse possession, thereby impliedly admitting the title of the appellant as regards the disputed land and when the said plea of adverse possession has not been proved as above discussed, it is found that the Courts below had erred in upholding the claim of the respondent as regards the disputed extent by way of adverse possession.

12. As rightly argued by the appellant's counsel, when the appellant has thrown a challenge to the entitlement of the respondent to the disputed extent on the plea of adverse possession, despite the same, the respondent has not chosen to seek the declaratory relief with reference to the disputed portion and sought only the relief of permanent injunction. In this connection, the appellant's counsel placed reliance upon the decision reported in AIR 2008 SCC 2033 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by L.Rs and Ors.) 2014 (2) CTC 421 (Ratna Kounder Vs. Annamalai and others) wherefrom, it could be seen that, when the appellant has categorically disputed the title of the respondent as regards the disputed portion and despite the same, the respondent having not cared to amend her plaint and include the relief of declaration as regards the disputed portion and continue to prosecute the suit only for bare injunction, it is found that the suit laid by the respondent for bare injunction simpliciter is not maintainable, in the light of the principles enunciated in the above said decisions.

13. In the light of the above discussions, the respondent having failed to plea as to the starting period of her adverse title to the disputed portion as against the appellant and also having failed to establish the plea of adverse possession projected by her and despite the stout denial of the appellant that the respondent has no valid title to the disputed portion and still, the respondent having failed to seek the declaratory relief to the disputed portion, it is found that the Courts below were not justified in law to grant the relief of permanent injunction in favour of the respondent as regards the disputed portion, particularly, when she has failed to establish that she has valid a claim of title to the same as put forth by her. The substantial questions of law formulated in this second appeal are accordingly answered.

14. In conclusion, (a) the judgment and decree dated 06.02.2002 passed in A.S.No.211 of 2001, on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 10.04.2001 passed in O.S. Nos.1267 of 1996 on the file of the third Additional District Munsif Court, Coimbatore are set-aside and resultantly, the suit laid by the respondent in O.S.No.1267 of 1996 is dismissed with costs. Accordingly, the second appeal No.1682 of 2003 is allowed with costs. (b) the judgment and decree dated 06.02.2002 passed in A.S.No.212 of 2001, on the file of the Principal District Court, Coimbatore, modifying the judgment and decree dated 10.04.2001 passed in O.S. Nos.1026 of 1996, on the file of the third Additional District Munsif Court, Coimbatore are reversed only as regards the dismissal of the appellant's suit in O.S. No.1026 of 1996 as regards the relief of possession of plaint 'B'

schedule property and instead the appellant is also granted the decree for the possession of the plaint 'B' schedule property as prayed for in addition to the reliefs already granted to the appellant by the Courts below. Accordingly, the second appeal No.1683 of 2003 is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Court,
Coimbatore.
 2. The Third Additional District Munsif Court,
Coimbatore.
 3. The Section Officer,
V.R.Section,
High Court, Madras.
- +2 Ccs to Mr.V. Nicholas, Advocate sr 23443, 23444.
+4 Ccs to Mr.V. Sivakumar, Advocate sr 23100, 23101

S.A.Nos.1682 & 1683 of 2003

SSI(CO)
SP(23/05/2018)

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