

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2017

PRONOUNCED ON:04.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1578 of 2002

Ayyappan

(Sole appellant declared Major
and his mother discharged from
her guardianship vide order of
Court dated 26.08.2011 made
in S.A.No.1578 of 2002) ... Appellant/Plaintiff

Vs.

1.Sathiyaseelan

2.Poobathi

3.Arumugam

... Respondents/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree in A.S.No.74 of 2001 on the file
of the II Additional Sub Court, Villupuram dated 26.06.2002 in
confirming the judgment and decree in O.S.No.507 of 1995 on the
file of the I Additional District Munsif cum Judicial
Magistrate No.I, Ulundurpet and dated 22.12.2000.

For Appellant : Mr.V.Raghavachari

For Respondents : No appearance - Exparte
vide order of this Court dated
15/12/2017

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J U D G M E N T

Challenge in this second appeal is made to the judgment and
decree dated 26.06.2002 passed in A.S.No.74 of 2001 on the file
of the II Additional Subordinate Court, Villupuram, confirming
the judgment and decree dated 22.12.2000 passed in O.S.No.507 of
1995 on the file of the I Additional District Munsif cum
Judicial Magistrate Court No.I, Ulundurpet.

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 the suit properties belong to the minor plaintiff and the minor plaintiff is under the custody of the mother Paripooranam and the guardian is enjoying the suit properties on behalf of the minor plaintiff and the suit properties were acquired by the minor plaintiff from one Srinivasalulu Naidu and Srinivasalu Naidu had purchased the suit properties in court auction in E.P.No.394 of 1969 in S.C.No.72 of 1958 on the file of the Thirukoilyilur District Munsif Court and accordingly the suit properties are entrusted to the possession of Srinivasalu Naidu and he had been enjoying the same and he took the suit properties on auction sale dated 30.10.1969 and alienated the suit properties in favour of the minor plaintiff by way of a registered sale deed dated 31.05.1992 for a valid consideration and there from it is only the plaintiff who has been in possession and enjoying the suit properties by obtaining patta, chitta, paying Kist etc., and the defendants have not any manner of right or interest in respect of the suit properties and never enjoyed the same at any point of time. While so, the defendants with a view to grab the suit properties attempted to interfere with the plaintiff's possession and enjoyment and thereby challenged the title of the plaintiff in respect of the suit properties and hence the suit for appropriate reliefs.

5. The case of the defendants 1 to 3 in common in brief is that it is false to state that the suit properties were purchased in Court action sale on 30.10.1969 by Srinivasalu Naidu in E.P.No.394 of 1969 and thence from he had been in possession and enjoyment of the suit properties and it is false to state that he has alienated the suit properties in favour of the plaintiff by way of a sale deed dated 31.05.1992 and since then the plaintiff has been in possession and enjoyment of the suit properties. The second item of the suit properties originally belong to one Ayyavu, S/o, Gopal and he had sold the said property in favour of Arumugam, S/o, Arunachalam, the third defendant, father of the second defendant and father-in-law of the first defendant and accordingly it is only Arumugam, who has been in possession and enjoyment of the second item of the suit properties by paying Kist etc., and the said property does not belong to Srinivasalu Naidu as claimed by the plaintiff and the auction sale pleaded in the plaint would not bind Arumugam and Srinivasalu Naidu or the plaintiff has never been in possession and enjoyment of the second item of the suit properties at any point of time. The defendants have also pleaded that the items 1 and 3 of the suit properties belonged to the first defendant's

mother Sowbakkiyam ammal and the paternal aunt Veeramma and they had been enjoying the said properties and despite the auction sale taken by Srinivasalu Naidu, it is only they, who had been in possession and enjoyment of the said properties and they had discharged the debt due to Srinivasalu Naidu and settled the account and accordingly Srinivasalu Naidu thereafter did not claim any right in the above said properties and never enjoyed the above said properties by retaining the same in possession and it is only Sowbakkiyam ammal and Veeramma, who had been in possession and enjoyment of the said properties and accordingly the first defendant with their consent has been in possession and enjoyment of the said properties by obtaining patta and paying Kist and thereby the first defendant and his predecessors in interest had been in possession and enjoyment of the said property for several years openly, continuously, and uninterruptedly with the hostile attitude of one and all beyond the statutory period and thereby prescribed title to the said properties by way of adverse possession and inasmuch as the plaintiff or his alleged predecessor in title namely Srinivasalu Naidu had never exercised ownership and enjoyment of the suit properties. Hence, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A12 were marked. On the side of the defendants', D.W.1 was examined and Exs.B1 to B10 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 reject the plaintiff's case and impugning the same, the present second appeal has been laid.

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

(1) Whether the lower appellate Court could overturn the findings of the trial court in the absence of cross objections by the defendants?

(2) When the trial court had rendered specific findings as regards issue 3 and 5 that the defendants have not prescribed their title by adverse possession and the plaintiff is in possession of the suit property, whether the lower appellate court is right in interfering with such findings?

(3) Whether the courts below are right in upholding the court auction sale but

denying the benefit of such sale even after possession of the purchaser of a court auction had been established under Exs.A3 to A12?

(4) Whether the Courts below are right in not invoking the principles of statutory presumption under Section 114 of Evidence Act to uphold title and possession of the property with the court auction purchaser particularly in the absence of contrary evidence?

9. The plaintiff claims title to the suit properties by way of a sale deed dated 31.05.1992 marked as Ex.A2 and according to the plaintiff he had purchased the suit properties by way of the above said sale deed from one Srinivasalu Naidu. The further case of the plaintiff is that Srinivasalu Naidu had acquired the suit properties by way of purchase of the same in a court auction sale conducted in the proceedings laid in E.P.No.394 of 1969 in S.C.No.72 of 1958 on the file of the District Munsif Court, Thirukovilur and it is stated that the suit properties had been purchased by Srinivasalu Naidu in 30.10.1969 and with respect to the above said case of the plaintiff, the certified copy of the Sub Registrar's Office, with reference to the court auction sale has come to be marked as Ex.A1. On a perusal of Ex.A1, it is seen that Srinivasalu Naidu, who is the plaintiff in the above said suit on the file of the District Munsif Court, Thirukovilur has been declared as such to have purchased all the suit properties sold in the court auction sale on 30.10.1969 in execution of the decree passed in favour of Srinivasalu Naidu and the sale had been confirmed by the Court on 02.12.1969. Thus, it is found that by way of Ex.A1, the certificate issued by the Sub Registrar Office, it is evident and established by the plaintiff that Srinivasalu Naidu had purchased the suit properties by way of the above mentioned court auction sale on 30.10.1969 itself and the sale in his favour had also been duly confirmed on 02.12.1969. As regards the above case of the plaintiff that Srinivasalu Naidu had purchased the suit properties in court auction sale, though the defendants would impugne the same, the first defendant examined as D.W.1 even during the course of chief examination has admitted that the items 1 and 3 of the suit properties had been purchased by Srinivasalu Naidu in court auction sale and further during the course of cross examination he has clearly admitted that inasmuch as Manickam who is the paternal grand father, has owed money to Srinivasalu Naidu and did not pay the amount, the suit properties were brought for sale in court auction and it is only Srinivasalu Naidu who had purchased the suit properties in the court auction sale during the year 1969 and he has also further admitted that the purchase of the suit properties by

Srinivasalu Naidu in court auction sale is binding on all the legal heirs of Manickam and also admitted that the plaintiff had purchased the suit properties from Srinivasalu Naidu during the year 1992 and does not know whether pursuant thereto the patta for the suit properties had been changed in the name of the plaintiff and also has admitted that from the year 1992 onwards they had not paid any Kist in respect of the suit properties and also admitted that he does not know in whose name the adangal extract in respect of the suit properties stood from the year 1992. From the above said evidence adduced by D.W.1, it is found that he has without any ambiguity accepted the court auction sale by which Srinivasalu Naidu had purchased the suit properties in the year 1969 and as above seen the said fact has been duly established by the plaintiff by marking the certificate Ex.A1 and from Ex.A1, it is found that Srinivasalu Naidu purchase of all the suit properties in the court auction sale had been duly confirmed on 02.12.1969. It is found that as rightly put forth by the plaintiff's counsel, Srinivasalu Naidu pursuant to the court auction sale confirmed in his favour, had taken possession of the suit properties and enjoying the same and thereafter by way of Ex.A2 had alienated the suit properties to the plaintiff and thence from it is only the plaintiff who has been in possession and enjoyment of the suit properties.

10.It is the case of the defendants both in the written statement and in the course of evidence that Srinivasalu Naidu had purchased the items 1 and 3 of the suit properties in the court auction sale. A perusal of Ex.A1 and the evidence of D.W.1 would go to show that inasmuch as the first defendant's grand father Manickam did not pay the amount borrowed from Srinivasalu Naidu. Srinivasalu Naidu have levied the suit against him and accordingly pursuant to the decree obtained in the said suit, instituted the execution proceedings against the legal heirs of Manickam and accordingly it is found that binding the legal heirs of Manickam who includes Sowbakiyam ammal and Veeramma, the mother and paternal aunt of first defendant respectively and also the other legal heirs of Manickam, it is found that Srinivasalu Naidu had purchased the suit properties in the court auction sale held on 30.10.1969 and the sale had been confirmed in his favour on 02.12.1969 unable to controvert the above said facts, however, to thwart the plaintiff's claim of the suit properties the defence had been projected by the defendants that even though the items 1 and 3 of the suit properties had been purchased by Srinivasalu Naidu in the court auction sale during 1969, according to them, Sowbakiyam ammal and Veeramma had discharged the debt due to Srinivasalu Naidu and thereby continue to enjoy the above said properties and thereby it is stated that Srinivasalu Naidu did not claim any ownership over the above said properties. However, as rightly contended by the plaintiff's counsel there is no proof

whatsoever placed on behalf of the defendants to show that subsequent to the decree obtained by Srinivasalu Naidu in the above said suit proceedings, the legal heirs of Manickam namely Sowbakiyam Ammal and Veeramma and others had discharged the debt due to Srinivasalu Naidu and reclaimed the suit properties from him. In such view of the matter, when there is no material at all to uphold the above claim of the defendants, the Courts below have also disbelieved the above version of the defendants, thus, it is seen that as far as the reclamation of the items 1 and 3 of the suit properties from Srinivasalu Naidu by the defendants on the plea that they had discharged the debt amount to Srinivasalu Naidu not having been established, it is seen that it is only Srinivasalu naidu who had continued to enjoy the suit properties purchased by him in the court auction sale as above referred to.

11.As regards the second item of the suit properties, it is the case of the defendants that the same had been purchased by the third defendant. In this connection, the sale deed dated 29.11.1968 has been marked as Ex.B1. However, when the plaintiff has thrown a challenge to Ex.B1 even then, to substantiate the truth and authenticity of Ex.B1, the third defendant has himself not cared to enter into the box and depose about the above said sale transaction. None of the persons associated with Ex.B1 has been examined. Further the defendants have not also established that the vendor of the third defendant had the legal competency to convey the second item of the suit properties in favour of the third defendant by way of Ex.B1. Further, no material has also been placed to hold that pursuant to Ex.B1, it is only the third defendant had been in possession and enjoyment of the second item of the suit properties by obtaining patta, chitta, paying Kist etc., Accordingly, the Courts below have also rightly disbelieved the above defence version and there is no material placed in this second appeal to warrant any interference with reference to the same. Resultantly, it is to be held that as admitted by D.W.1 above referred to and in the light of Ex.A1, it is seen that Srinivasalu Naidu had purchased the second item of the suit properties and also in the court auction sale during 1969, as reflected in Ex.A1 and accordingly the third defendant or as the case may be the defendants are unable to establish that the third defendant had legally purchased the said item of the suit properties and that the vendor namely Ayyavu had the legal competency to sell the same in favour of the third defendant under Ex.B1. Thus, it has to be held that it is only Srinivasalu Naidu and thereafter the plaintiff who had been exercising absolute ownership, possession and enjoyment of all the items of the suit properties from 1969 onwards.

12.Despite the above said factual matrix which is also

borne out by the admission of D.W.1, as above discussed and the reliable materials placed by the plaintiff, the Courts below did not find acceptance of the plaintiff's case on the footing that the plaintiff has not placed any material to hold that Srinivasalu Naidu had been in possession and enjoyment of the suit properties pursuant to the court auction sale. When the court auction sale pleaded by the plaintiff has been established by the plaintiff without any iota of doubt and the same has also been admitted by D.W.1 without any ambiguity and when the contra claims made by the defendants for sustaining the title of the suit properties in their favour, as put forth in the written statement, having not been completely established in any manner, which fact has also been concurrently held by the Courts below and which case despite having been rejected by the trial court, yet the defendants not throwing any challenge to the same either by way of separate appeal or by way of any cross objection, in the first appeal proceedings initiated by the plaintiff, it is seen that the Court below has erred in rejecting the plaintiff's case merely on the footing that there is no material to establish the possession and enjoyment of the suit properties by Srinivasalu Naidu.

13.The first appellate court had also proceeded to hold that the defendants have perfected the title of the suit properties by way of long and continuous possession openly, continuously and uninterruptedly beyond the statutory period. However, the determination of the above said point in favour of the defendants by the first appellate court, on an analysis of materials placed by the defendants, would go to show that the first appellate court has completely erred in accepting the above case of the defendants, when it is seen that the materials placed by the defendants do not advance the same. It is seen that the suit has been laid by the plaintiff on 06.01.1993, the revenue records placed by the defendant marked as Exs.B2 and B3 namely the chitta and adangal are dated 22.05.1992 and 28.09.1992 respectively. The same had come to be issued just less than four months prior to the institution of the suit. In such view of the matter, on the basis of the above said revenue records, to hold that thereby the defendants have perfected the title to the suit property by adverse possession, on account of their hostile enjoyment beyond the statutory period, cannot at all to be appreciated and upheld. When the first defendant has no independent title over the suit properties and all that he would claim is that he had been enjoying the suit properties on behalf of Sowbakiyam ammal, Veeramma and Arumugam, the third defendant and when the above said persons' title to the suit properties had not been established in any manner by the defendants as above discussed and when the Courts below have concurrently held the above points against the defendants to say that the first defendant has been enjoying the suit properties

on their behalf by paying Kist, such cannot at all to be accepted in any manner. In such view of the matter, the Kist receipts filed in the name of the first defendant marked as Ex.B4 and B10 would be of no use to sustain the case of the defendants for upholding their plea of adverse possession. Therefore, when it is found that none of the documents projected by the defendants are useful and buttresses their claim of adverse possession to the suit properties, it is found that the first appellate court has completely fallen into error in accepting the plea of adverse possession set out by the defendants. The determination of the above said point by the first appellate court in favour of the defendants in the absence of any acceptable and reliable materials and in the face of the admission of the defendants that it is only Srinivasalu Naidu and the plaintiff who had been in enjoyment of the suit properties by obtaining patta, paying Kist etc., is nothing but perverse and illogical and cannot be sustained in any manner.

14. To establish that it is only the plaintiff who had pursuant to the sale had been in possession and enjoyment of the suit properties by obtaining patta, chitta, paying Kist etc., the plaintiff has furnished the Kist receipts, Chitta extract, Adangal extract as Exs.A3 to A12 and though the above said documents had coming into existence after the institution of the suit, that by itself would not dilute the case of the plaintiff in any manner, as according to the plaintiff he and Srinivasalu Naidu had been in possession and enjoyment of the suit properties right from 1969 onwards and when the contra case projected by defendants with reference to the same has not at all been established and found to be false and when in particular the court auction sale under which Srinivasalu Naidu has been admitted to have purchased the suit properties was held during the year 1969 itself, it is found that possession following title, accordingly the presumption could be raised that it is only Srinivasalu Naidu who had been in possession and enjoyment of the suit properties right from 1969 onwards and accordingly by way of Ex.A2 had alienated the suit properties in favour of the plaintiff and thence from it is only the plaintiff who has been in possession and enjoyment of the suit properties.

15. In the light of the above discussions, it is found that the Courts below have completely failed to consider the materials placed on record in the right perspective and proceeded to reject the plaintiff's case on the only point of the failure of the plaintiff to establish that possession and enjoyment of Srinivasalu Naidu and when nothing has been placed on record, subsequent to the court auction sale, on behalf of the defendants that they had been exercising hostile possession and enjoyment of the suit properties as pleaded by them, as rightly argued by the plaintiff's counsel, the Courts below have not

applied their mind and thereby seem to have rendered the findings which are completely vitiated and thereby dismissed the suit laid by the plaintiff totally ignoring the factual material placed on record in the correct perceptive . The formulated substantial questions of law in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

16.In conclusion, the judgment and decree dated 26.06.2002 passed in A.S.No.74 of 2001 on the file of the II Additional Sub Court, Villupuram, confirming the judgment and decree dated 22.12.2000 passed in O.S.No.507 of 1995 on the file of the I Additional District Munsif cum Judicial Magistrate No.I, Ulundurpet are set aside and consequently the suit laid by the plaintiff is decreed as prayed for with costs.

17. Resultantly, the second appeal is allowed with costs. Connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

mfa

To

1.The II Additional Sub Court,
Villupuram.

2.The I Additional District Munsif
cum Judicial Magistrate No.I,
Ulundurpet.

Copy To

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.V.Raghavachari, Advocate SR.No.473

S.A. No.1578 of 2002

VD(CO)
GN(01/03/2018)