

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2018
PRONOUNCED ON : 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1904 of 2003

N.S.Jayaraman ...Appellant/Plaintiff

Vs.

N.S.Belli ...Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 27.06.2003 made in A.S.No.7 of 2003 on the file of the District Judge, Nilgiris at Uthagamandalam confirming the judgment and decree dated 18.12.2002 made in OS No.393 of 95 on the file of the District Munsif Court, Kotagiri.

For Appellant : Mr.D.Krishna Pradeep
Mr.N.Damodaran

For Respondent : Mr.R.Saseetharan

JUDGMENT

This second appeal is directed against the judgment and decree dated 27.06.2003, passed in A.S.No.7 of 2003, on the file of the District Judge, Nilgiris at Uthagamandalam, confirming the judgment and decree dated 18.12.2002, passed in O.S. No.393 of 95, on the file of the District Munsif Court, Kotagiri.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that he had encroached a piece of land belonging to the defendant, who is the owner of the suit property measuring ten cents in R.S.No.744/10C of Naduhattty village within the specific boundaries in the year 1977 along with the other lands belonging to the Government of Tamil Nadu and since then, the plaintiff is in continuous and uninterrupted possession and enjoyment of the said lands and the adjoining revenue lands without any claim of objection from any person and thus, the plaintiff had perfected his title by adverse possession to the suit property and planted

tea in the schedule property and considering the possession and enjoyment of the suit property, the Zonal Deputy Tahsildar issued a certificate on 27.08.1994 to the plaintiff, confirming his possession of the suit property for the past over 12 years and the plaintiff is a co-petitioner in R.S.No. 744/10C Naduhatty village and paid the land tax etc., to the Government and whileso, the defendant issued a legal notice dated 19.12.94, alleging that he had purchased an extent of 0.30 acres and an extent of 0.10 acres, by way of two sale deeds dated 05.09.91 and 26.09.94 and in possession and enjoyment of the said lands and the plaintiff sent a reply making it clear that the defendant is not in possession and enjoyment of the suit property at any point of time and that he is not entitled to claim any title to the suit property and despite the same, inasmuch as the defendant had attempted to interfere with the possession and enjoyment of the suit property by committing trespass, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is false to state that the plaintiff has been in possession and enjoyment of the suit property along with the other revenue lands since 1977 and thereby perfected the title by way of adverse possession and on the other hand, the plaintiff has never been in possession of the suit property at any point of time and the defendant has purchased an extent of 0.30 acres and an extent of 0.10 acres by way of two sale deeds dated 05.09.91 and 26.09.94 from one N.M.Kullan and accordingly been in possession and enjoyment of the same. Inasmuch as the Zonal Deputy Tahsildar passed an erroneous order in favour of the plaintiff in respect of the suit property, the defendant preferred an appeal before the Sub Collector, Kunoor and the Sub Collector revoked the order of the Zonal Deputy Tahsildar, after considering all the aspects and hence, the claim of the plaintiff that his possession has been confirmed by the revenue authority is false and the adverse possession set up by the plaintiff is untenable and it is only the defendant and his predecessors in interest, who has been in possession and enjoyment of the suit property for several years continuously and thereby perfected title to the suit property by way of adverse possession and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 3 were examined, Exs.A1 to A27 were marked. On the side of the defendant DWs 1 and 2 were examined, Exs.B1 to B7 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 dismiss the suit laid by the plaintiff. Aggrieved over 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 Courts below has erred in not interpreting the principles of 'Animus Possidendi' as its application to the present facts and circumstances of the case, wherein the appellant has clearly proved his intention of possession of the property as his own?

2. Whether the Courts below are right in rejecting the mutation records standing in the name of the appellant on the sole ground that in an appeal filed by the respondent against such mutation, the appeal has been allowed cancelling the mutation of the appellant's name in the records more particularly when the vital fact remains that the said appeal has been filed by the respondent during the filing of the present suit in issue, that apart from the factum that the appeal has been allowed merely on the ground that Zonal Tahsildar has no power to issue such certificate and that the appeal has not been allowed on merits?

9. The plaintiff has laid the suit claiming the reliefs of declaration and permanent injunction. Even as per the averments contained in the plaint, the plaintiff seeks title to the suit property only by way of adverse possession. According to the plaintiff, he has encroached into the property belonging to the defendant i.e., the suit property and also enjoying the suit property along with the adjacent revenue lands situated nearby and thus, it is stated that on account of the plaintiff's continuous long possession and enjoyment of the suit property openly to the knowledge of every one, it is his case that he has perfected his title to the suit property by way of adverse possession. On the plea of adverse possession only, the plaintiff seeks the declaratory relief. However, the suit laid by the plaintiff for seeking the relief of declaration on the plea of adverse possession is found to be not maintainable in the light of the decision reported in (2014) 1 SCC 669 (Gurdwara Sahib Vs. Gram panchayat village sirthala and another).

10. Be that as it may, as rightly determined by the Courts below, the plaintiff having taken the plea of adverse possession for claiming title to the suit property, it is found that impliedly thereby he has admitted the title of the defendant in respect of the suit property. Hence, the plaintiff has to establish the plea of adverse possession putforth by him, particularly, when the same is controverted by the defendant tooth and nail. As rightly determined by the Courts below, no

valid and acceptable material is placed by the plaintiff to sustain his plea. Mainly, the plaintiff relies upon the certificate issued by the Zonal Deputy Tahsildar, as if, he is also the owner of the property comprised in the suit survey number and thus, it is the case of the plaintiff that his possession has been confirmed by the certificate issued by the Zonal Deputy Tahsildar. However, materials placed on record would go to show that in the appeal preferred by the defendant with reference to the same, the certificate issued by the Zonal Deputy Tahsildar has been ordered to be cancelled by the Sub Collector, Kunoor and it is thus found that the alleged confirmation of the possession of the plaintiff, in respect of the suit property, has been reversed on appeal, by the appellate authority concerned. It is thus found that the main plea projected by the plaintiff for upholding the possession and enjoyment is not available as on the institution of the suit.

11. As rightly determined by the Courts below, for taking up the plea of adverse possession, the plaintiff should clearly spell out from which date onwards he seeks to enjoy the suit property adversely to the knowledge of the defendant, in particular, for claiming the relief based on the adverse possession as against the defendant. However, it is found that there is no specific plea mentioned in the plaint as to from which date onwards the possession of the plaintiff has become adverse to the defendant as regards the suit property. That apart, as rightly determined by the Courts below, the materials placed on record, by the plaintiff do not lend support to his plea of adverse possession and on the other hand, it is found that the suit property, in particular, is established only to be in the possession and enjoyment of the defendant, as such and thus being the position, the Courts below had rightly found the plaintiff's case not established on the basis of the materials placed by the plaintiff.

12. In the light of the above reasons, it is found that the Courts below has properly appreciated the materials placed on record, both factually as well as legally and found that the plaintiff has miserably failed to establish his claim of adverse title to the suit property as against the defendant and the Courts below has also found that the certificate issued by the Zonal Deputy Tahsildar has been set-aside on appeal preferred by the defendant and that apart, when the revenue records as such cannot be the basis for upholding one's valid title, possession and enjoyment of the suit property, it is found that no infirmity is noted in the determination of the Courts below for negating the plaintiff's claim of title to the suit property and thereby dismissing his suit. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff.

13. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge,
Nilgiris at Uthagamandalam

2. The District Munsif,
Kotagiri.

3. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.N.Damodharan, Advocate SR.No.21711

PA(CO)

sm:26.4.2018

Judgment in
S. A.No.1904 of 2003

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