

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2019

PRONOUNCED ON : 08.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1821 of 2004

1.State of Tamil Nadu
rep.by its District Collector,
Erode.

2.The Tahsildar,
Bhavani.

...Appellants/Respondents/Defendants

Vs.

1.Muthuswamy Gounder
2.Pattayee
3.Ramalingam

...Respondents/Appellants/Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 17.04.2002 passed in A.S.No.12 of 2002 on the file of the Fast Track Court No.IV, Erode at Bhavani reversing the judgment and decree dated 12.03.2001 made in O.S.No.151 of 1999 on the file of the I Additional District Munsif, Bhavani.

For Appellants : Mr.Sricharan Rangarajan
Spl. Government Pleader (CS)

For Respondents : M/s.J.Prithivi
for Mr.Kaithamalai Kumaran

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JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 17.04.2002 passed in A.S.No.12 of 2002 on the file of the Fast Track Court No.IV, Erode at Bhavani reversing the judgment and decree dated 12.03.2001 passed in O.S.No.151 of 1999 on the file of the I Additional District Munsif Court, Bhavani.

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

3.The second appeal has been admitted on the following substantial question of law:

"In the absence of pleading and proof that for 20 cents of land, in respect of which declaratory relief asked for stands rejected by the trial Court and reversed by the appellate Court, such possession was hostile, open, uninterrupted and to the knowledge of the true owner namely, the Government have not the lower appellate Court committed an error of law in reversing the judgment of the trial Court in respect of 20 cents of land, which the plaintiff admits belongs to the Government?"

4.Considering the scope of the issues involved in the second appeal between the parties as regards the property in dispute lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

5.The suit has been laid by the plaintiffs for the relief of declaration of title to the suit properties and the consequential relief of permanent injunction.

6.As per the averments contained in the plaint as well as the description of the suit properties, it is found that the suit properties are stated to be lying in Survey Nos.503/2 and 503/3 of Kavindapady Village, Bhavani Taluk. The plaintiffs claim title to an extent of 1.08 cents in survey No.503/02 on the basis of the sale deeds dated 16.02.1983 and 22.02.1988, which documents have come to be marked as Exs.A1 & A2. As regards the claim of title sought for by the plaintiffs to an extent of 1.08 cents in survey No.503/2 relying upon the abovesaid sale deeds, the defendants have not raised any dispute as such. As abovenoted, according to the case of the plaintiffs, they seek the relief of declaration of title to the suit properties comprising not only in survey No.503/2, but also to an extent of 20 cents of land comprised in survey No.503/3. Even as per the case of the plaintiffs, as averred in the plaint, the extent of 20 cents of land in survey No.503/3 is a Cart Track Promboke land belonging to the Government and according to the plaintiffs, they and their predecessors in interest have been in peaceful possession and enjoyment of the

suit properties inclusive of the Cart Track Promboke land of an extent of 20 cents land in survey No.503/3 along with the other lands for more than 100 years and accordingly, by fencing the entire extent of the suit properties as such, it is their case that they had perfected their title to the suit properties by way of adverse possession and contended that inasmuch as the defendants admitted to disposes them from the suit properties unlawfully without any right whatsoever, it is stated that they had been necessitated to levy the suit for appropriate relief.

7.The defendants resisted the plaintiff's suit contending that the case of the plaintiffs that they and their predecessors in interest have been in possession of an extent of 20 cents of land in survey No.503/3, the Cart Track Promboke land, along with their other lands by fencing them is false and also vehemently challenged the case of the plaintiffs that they had perfected their title to the suit properties, particularly, the extent of 20 cents of land in survey No.503/3 by way of adverse possession. Further, according to the defendants, one Murugan is found to be owning 84 cents of land in survey No.503/2, thereby putting forth the case that though the total extent in survey No.503/2 is found to be 1 acre 92 cents, however, according to them, as per the village records, the total extent available in survey No.503/2 is only 1 acre 44 cents. Accordingly, contending that the extent of 20 cents of land in survey No.503/3 is a Cart Track Promboke land belonging to the defendants and the plaintiffs are not in possession of the same, accordingly, prayed for the dismissal of the plaintiffs' suit.

8.Based on the materials placed on record by the respective parties, the trial Court was pleased to decree the suit as prayed for by the plaintiffs barring the extent of 20 cents of land in survey No.503/3. Aggrieved over the judgement and decree of the trial Court, the plaintiffs preferred the first appeal and the first appellate Court, on a consideration of the materials available on record and the submissions made, was pleased to set aside the judgement and decree of the trial Court and thereby, granted the decree in favour of the plaintiffs as prayed for inclusive of the extent of 20 cents of land in survey No.503/3. Challenging the same, the defendants have preferred the second appeal.

9.As abovenoted, in respect of the claim of title of the plaintiffs to the extent of 1.08 cents in survey No.503/2 based on Exs.A1 & A2 title deeds, the defendants have not raised any issue as such. The only dispute between the parties is, as regards the extent of 20 cents of land in survey No.503/3. Admittedly, as abovenoted, the said extent of 20 cents of land is a Cart Track Promboke land belonging to the Government and the same has been clearly averred in the plaint itself.

However, the plaintiffs putforth the case that they and their predecessors in interest have been in possession and enjoyment of the abovesaid extent of 20 cents of land also along with their other lands purchased under Exs.A1 & A2 for more than 100 years by fencing them and accordingly, it is pleaded by them that they have perfected their title to the suit properties by way of adverse possession. The abovesaid claim of title to the extent of 20 cents of land in survey No.503/3 put forth by the plaintiffs on the basis of adverse possession is being seriously challenged by the defendants. In the light of the abovesaid position, it is for the plaintiffs to establish that they have perfected their title to the disputed extent of 20 cents of land in survey No.503/3 by way of adverse possession as putforth by them.

10.Considering the claim of the relief of declaration of title to the disputed extent of 20 cents of land in survey No.505/3 by the plaintiffs only based upon the plea of adverse possession, it is found that on that score alone, the plaintiffs' suit is legally unsustainable in the light of the decision of the Apex Court in Gurdwara Sahib vs. Gram Panchayat Village Sirthala and another, reported in (2014) 1 SCC 669. In the said decision, the Apex Court has held that the declaration of ownership of land, on the basis of the adverse possession, cannot be sought by the plaintiff, but, the claim of ownership by adverse possession can be made by way of defence when arrayed as defendant in the proceedings against him and on that determination, upheld the declinment of the decree to the plaintiffs by way of adverse possession in the said case by the Trial Court and thus, it is found that when the plaintiffs have come forward with the present suit claiming the relief of declaration to the property in dispute only on the basis of adverse possession and when on that basis, the plaintiffs are not entitled to maintain the suit for the relief of declaration as outlined by the Apex Court in the abovesaid decision, it is seen that on the abovesaid factor alone, the plaintiffs' suit is liable to be dismissed. सत्यमेव जयते

11.Furthermore, the abovesaid decision of the Apex Court has been subsequently, followed by the Apex Court in the decision in Dharampal (Dead) through L.Rs. vs. Punjab Wakf Board and others, reported in (2018) 11 SCC 449 and in the abovesaid decision also, the Apex Court has held that the declaration of ownership to the suit properties sought by the plaintiffs on the basis of the plea of adverse possession is not permissible and for coming to the said conclusion, the Apex Court has relied upon its decision in Gurdwara Sahib's case (cited supra). The above position of law has also been followed by me in the decision in S.K.Komarasamy Gounder vs. Soundari and others, reported in (2018) 2 MLJ 580, by holding that the plea of

declaration of title to the suit properties on the basis of the adverse possession, cannot be taken by the plaintiffs as the abovesaid plea could be only used as a shield and not as a sword and accordingly, in the light of the abovesaid principles of law outlined by the Apex Court and in the other decisions, it is found that the suit laid by the plaintiffs in the present case seeking the relief of declaration to the property in dispute only on the basis of adverse possession is found to be not maintainable and on that score alone, the plaintiffs' suit has to fail.

12.This court in the decision reported in 2014 (3) CTC 146 (R.Riyaz Ahmed and others Vs. J.G.Glass Industries Pvt. Ltd., and others) has also held that the plea of adverse possession can be raised only as a defence and the same can only be used as a shield and not as a sword and no declaration of title can be sought on the basis of adverse possession and for coming to the abovesaid determination, is found to have relied upon the decision of the Apex Court reported in 2014 (1) SCC 669 (Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another).

13.However, the plaintiffs' counsel relied upon the decision of the Kerala High Court reported in 2016 (4) KLT 637 (Thomas Vs.Lonappan) and contended that in the abovesaid decision, the Kerala High Court has upheld the maintainability of the suit for declaration of title to the property in dispute on the plea of adverse possession and with reference to the same relied upon the decision of the Apex Court reported in 1967 (1) MLJ 154 (Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives) equivalent to AIR 1966 SC 1603.

14.No doubt, on a perusal of the decision of the Kerala High Court relied upon by the Plaintiffs' counsel, it is found that in the abovesaid decision, the Hon'ble Judge has held that a suit for declaration of title on the plea of adverse possession can be maintained and in this connection, he had relied upon the judgment of the Apex Court reported in 1967 (1) MLJ 154 (Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives) equivalent to AIR 1966 SC 1603 by holding that the abovesaid decision of the Apex Court had been rendered by a Bench consisting of three learned judges and on that basis upheld the suit for declaration of title to the suit property solely on the plea of adverse possession and further, held that the decision of the Supreme Court rendered in 2014 (1) SCC 669 (Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another) cannot be applied to all the cases.

15.In this connection, I had an occasion to consider the

abovesaid position of law in the decision rendered by me in the second appeal Nos.1650 & 1651 of 2003 dated 14.03.2018 in the following manner:

" 15.However, it is contended by the plaintiffs' counsel that this Court in the decision reported in 2017 (4) MLJ 230 [Arulmighu Sadayappasamy Temple rep by its Hereditary Trustte Sadayappa Gounder (deceased), Thandampalayam Kollankkoil village, Erode Taluk and others Vs. State of Tamilnadu rep by the District Collector, Erode District] has expressed an opinion that the above said decision of the apex court reported in 2014 (1) SCC 669[Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another] has been rendered only by a two Judges Bench of the Supreme Court and the three Judges Bench of the Supreme Court in decision reported in 1967 (1) MLJ 154 [Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives] has taken a different drift qua adverse possession pleaded by the plaintiff. Accordingly, further opined that the above said decision of the Supreme Court rendered in 1967 (1) MLJ 154 [Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives] was not brought to the notice of the Supreme Court, while disposing of the case concerned in the decision reported in 2014 (1) SCC 669 [Gurdwara Sahib Vs. Gram Panchat Village Sirthala and another]. Based on the above said opinion of the learned judge in the above said decision and relying upon the decision of the apex court reported in 1967 (1) MLJ P.No.154 [Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives], she contended that in the decision, the apex court had upheld the relief of declaration of title sought for by the plaintiff, based on the plea of adverse possession and thereby contended that the decision rendered by the three Judges Bench of the Supreme Court should prevail.

16.On a perusal of the authority

relied upon by the plaintiffs' counsel reported in 1967 (1) MLJ 154 [Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives] it is found that the maintainability of the declarative suit at the instance of the plaintiff therein on the plea of adverse possession was not raised in specific and accordingly the Supreme Court had no occasion to consider the maintainability of the suit in the said decision and in the said decision, the Supreme Court, on affirming the decision of High Court, Madras confirming the judgment and decree of the trial court, upheld the relief of declaration and possession sought for by the plaintiff. No doubt, in the said case, the plaintiffs had raised the plea of adverse possession for seeking the reliefs claimed. However, in specific, as the maintainability of such a suit has not been raised, it is found that the Supreme Court was not necessitated to go into the question of the maintainability of the suit on that footing and accordingly, in my humble opinion, it is found that the said decision cannot be held as the authority for holding that the plaintiff could maintain the suit for declaration of title to a property on the sole plea of adverse possession. As rightly argued, it is found that there are some judgments of the Supreme Court wherein it has affirmed the declaratory relief granted to the plaintiff/squatter by the Courts below or not doubted the maintainability of a declarative suit by a squatter as plaintiff as in the decision reported in 1967 (1) MLJ 154 [Sarangadeva Periya Matam and another Vs Ramaswami Gounder (dead) by legal representatives] and in such view of the matter, it cannot be said that by way of the above said decision, the Supreme Court had upheld the position of law that the suit laid by a squatter for declaration of title on the plea of adverse possession is maintainable. Per contra, in the decision reported in 2014 (1) SCC 669 [Gurdwara Sahib Vs. Gram

Panchayat Village Sirthala and another], the specific question was put in issue in the said case as to the maintainability of the suit for declaration on the basis of adverse possession and accordingly in the said decision, the apex court had held that such suits based on the plea of adverse possession is not maintainable as the plea of adverse possession could only to be raised as a shield/defence and not as a sword. In such view of the matter, it is found that in the light of the decision of the Apex court reported in 2014 (1) SCC 669 [Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another], the present suit laid by the plaintiffs seeking declaration of title in respect of the suit pathway solely based on the adverse possession is found to be not legally sustainable."

16. Furthermore, as pointed out supra, the decision of the Apex Court reported in 2014 (1) SCC 669 (Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another) has been subsequently followed by the Apex Court in the decision reported in Dharampal (Dead) through L.Rs. vs. Punjab Wakf Board and others, reported in (2018) 11 SCC 449, wherein also, the Apex Court has affirmed that the declaration of ownership to the suit property on the basis of the plea of adverse possession is not permissible.

17. In the light of the abovesaid position, I am unable to subscribe to the abovesaid view of the Kerala High Court reported in 2016 (4) KLT 637 (Thomas Vs. Lonappan).

18. Furthermore, inasmuch as the plaintiffs have based their relief of declaration to the extent of 20 cents of land in survey No.503/3 only on the plea of adverse possession and when the said claim of the plaintiffs is being repudiated by the defendants in toto, it is for the plaintiffs to establish their case with reference to the same by placing acceptable and reliable materials. However, it is found that the plaintiffs have miserably failed to establish the claim of title to the disputed 20 cents of land in survey No.503/3 based on the plea of adverse possession. As abovenoted, the title deeds marked as Exs.A1 and A2 pertain to the undisputed extent of 1.08 cents of land in survey No.503/2 and the Kist receipts marked as Exs.A3 & A4 also pertain to the abovesaid extent of land. Therefore, the abovesaid documents would not serve any purpose to uphold the plea of adverse possession put forth by the plaintiffs qua the extent of 20 cents of land in survey No.503/3. However, the plaintiffs would also rely upon title deed dated 02.06.1961,

which is marked as Ex.A6. However, on the basis of the abovesaid title deed, it cannot be construed straight away that the plaintiffs' ancestors had been exercising hostile ownership over the disputed extent of 20 cents of land in survey No.503/3 to the knowledge of the defendants by exhibiting "animus possidendi". No doubt, the documents projected by the defendants are found to be of recent origin and after the institution of the suit. On that basis alone, it cannot be held that the plaintiffs have perfected their title to the disputed extent of 20 cents of land in survey No.503/3 on the basis of adverse possession. The documents projected by the defendants would only indicate that the defendants have been asserting their title and ownership over the disputed extent of 20 cents of land in survey No.503/3 by issuing B memos and also issuing Section 7 notice to the encroachers of the same one way or the other and the said documents cannot be easily ignored as such. Be that as it may, when the plaintiffs have come forward with the suit claiming title to the disputed extent only on the plea of adverse possession, it is for the plaintiffs to establish the same by placing reliable materials. As above pointed out, when there is no reliable materials, as such, projected by the plaintiffs to hold safely that they have been in possession and enjoyment of the disputed extent beyond the statutory period, particularly, to the knowledge of the defendants by exercising hostile ownership openly, continuously with "animus possidendi", the trial Court is found to have rightly rejected the plaintiffs' case as regards the disputed extent of 20 cents of land in survey No.503/3. The plaintiffs' counsel contended that the defendants have not placed any document to hold that they had been exercising ownership over the disputed extent of land in survey No.503/3 prior to the institution of the suit and on that footing, the plaintiffs' case should be upheld. However, as above noted, the plaintiffs having miserably failed to establish that they are in possession and enjoyment of the disputed extent of land for more than the statutory period to the knowledge of the defendants so as to entitle them to claim title to the same by way of adverse possession, even assuming for the sake of arguments that the plaintiffs are in possession and enjoyment of the disputed extent of 20 cents of land in survey No.503/3 as rightly putforth by the Special Government Pleader (CS) appearing for the defendants, mere possession howsoever long, it would not necessarily mean that it is adverse to the true owner and as rightly putforth by him, the requirement of acquisition of title by adverse possession is that such possession should be in denial of the true owner's title. In so far as this case is concerned, the plaintiffs have not pleaded in specific as to from which date onwards their possession has become adverse to the defendants and when the adverse possession has become complete and ripened into full ownership in their favour. Further more, with reference to

their enjoyment of the disputed extent by exercising absolute ownership over the same to the knowledge of the defendants in an hostile manner by exhibiting "animus Possidendi", sans any material pointing to the same, it is found that the plaintiffs claim of title to the disputed extent by way of adverse possession cannot be acceded to even on merits and in this connection, it is useful to refer to the principles set out as regards the proof of the plea of adverse possession, laid down by the Apex Court in the decision reported in (2010) 14 SCC 316 (Chatti Konati Rao & Ors. Vs. Palle Venkata Subba Rao, which are extracted below:

"14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said is that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the properties. The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter".

19. Applying the aforementioned principles of law to the facts of the case at hand, it is found that the plaintiffs have miserably failed to plead and establish their claim of hostile title to the disputed extent of 20 cents of land in survey No.503/3 beyond the statutory period and in such view of the matter, it is evident and clear that the first appellate Court has erred in upholding the plea of the plaintiffs to the disputed extent by way of adverse possession sans any material projected by the plaintiffs pointing to the same. In such view of the matter, the judgement and decree of the first appellate Court to the abovesaid extent is liable to be set aside and the judgment and decree of the trial Court is to be confirmed.

20.The counsel for the defendants, in support of his contentions, placed reliance upon the decision reported in Manu/SC/1003/2018 (Ram Nagina Rai and Ors. Vs. Deo Kumar Rai and Ors) and MANU/SC/7325/2007 (P.T.Munichikkanna Reddy and Ors Vs. Revamma and Ors.). Similarly, the counsel for the plaintiffs, in support of her contentions, placed reliance upon the decision reported in (2011) 10 Supreme Court Cases 404 (State of Haryana Vs. Mukesh Kumar and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts of the case at hand.

21.In view of the foregoing reasons, the substantial question of law formulated in the second appeal is answered in favour of the defendants and against the plaintiffs.

In conclusion, the Judgement and Decree dated 17.04.2002 passed in A.S.No.12 of 2002 on the file of the Fast Track Court No.IV, Erode at Bhavani are set aside qua the extent of 20 cents of land in survey No.505/3 alone and the judgment and decree dated 12.03.2001 passed in O.S.No.151 of 1999 on the file of the I Additional District Munsif, Bhavani are restored. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

sms
To

1.The Fast Track Court No.IV,
Erode at Bhavani.

2.The I Additional District Munsif,
Bhavani.

+1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 11270.
+1 CC to The Govt. Pleader sr 12093

S.A.No.1821 of 2004

SSV(CO)
SP(16/07/2019)