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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2019

PRONOUNCED ON : 22.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1451 of 2005

Kalyanasundaram ...Appellant/Appellant/Plaintiff

.Vs.

1.Jayaraman

2.Rajasekaran @ Durai

3.Karunakaran ...Respondents/Respondents/Defendant

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 23.04.2004 passed in A.S.No.46 of 2003 on the file of the Subordinate Court, Chidambaram, confirming the judgement and decree dated 13.11.2003 passed in O.S.No.402 of 1996 on the file of the District Munsif cum Judicial Magistrate, Parangipet.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr.M.Munir Sheriff  
No.1 & 2

Respondent No.3: Dismissed vide order  
dated 19.10.2012

#### JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 23.04.2004 passed in A.S.No.46 of 2003 on the file of the Subordinate Court, Chidambaram, confirming the judgement and decree dated 13.11.2003 passed in O.S.No.402 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Parangipet.

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



" Whether the possession has to be directed against any specific person in order for it to be adverse?"

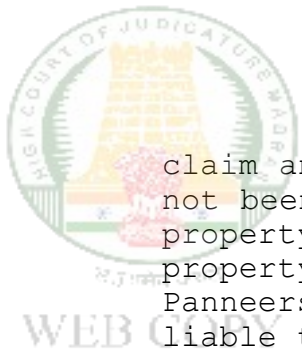
3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5. The suit has been laid by the plaintiff for declaration and permanent injunction.

6. In brief, according to the plaintiff, the suit property belongs to him ancestrally and after the demise of his ancestors, it is only the plaintiff, who has been in the possession and enjoyment of the suit property by obtaining patta, paying kist etc., accordingly, the plaintiff, on account of his long and continuous possession and enjoyment of the suit property, had also prescribed title to the same by way of adverse possession and it is stated that the first defendant is the paternal uncle of the plaintiff and the defendants 2 & 3 are the sons of the first defendant and the defendants have no manner of right, title or interest in the suit property, however, claiming that they have acquired title to the suit property by way of purchase and also, as the defendants own property to the West of the suit property lying in survey No.104/2, it is alleged that the defendants are attempting to interfere with the plaintiff's possession and enjoyment of the suit property and hence, the plaintiff has been necessitated to institute the suit for appropriate reliefs against the defendants.

7. The defendants resisted the plaintiff's suit contending that the suit property is not the ancestral property of the plaintiff and it is stated that the suit property is also not in the possession and enjoyment of the plaintiff as put forth in the plaint and according to them, the total extent in survey No.104/2 is 30 cents and the first defendant's father had purchased 15 cents lying on the western side in the abovesaid survey number by way of the sale deed dated 24.11.1925 and the 15 cents lying on the eastern side of the abovesaid survey number by the first defendant by way of the sale deed dated 07.05.1951 and since then, the total extent available in survey No.104/2 is in the possession and enjoyment of the first defendant and his father and the plaintiff has not been enjoying the suit property as described in the plaint and however, it is found that the plaintiff has obtained patta stealthily without notice to the defendants and on that score, the plaintiff cannot



claim any title to the suit property and even the boundaries had not been properly described by the plaintiff as regards the suit property and the property lying to the south of the suit property has been acquired by the first defendant's son Panneerselvam and therefore, it is stated that the suit is liable to be dismissed.

8. In support of the plaintiff's case, Pws 1 to 3 were examined and Exs.A1 to A22 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B6 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. In the appellate Court, it is found that an additional document has come to be marked on the side of the defendants as Ex.B7. The first appellate Court also, on a consideration of the materials placed on record, was pleased to confirm the judgement and decree of the trial Court and thereby, dismissed the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

10. On two counts the plaintiff claims title to the suit property. Firstly, it is stated by the plaintiff that the suit property is his ancestral property and been enjoyed by his ancestors and thereafter, it is he, who has been enjoying the suit property by obtaining patta, kist etc., and secondly, the plaintiff would also claim title to the suit property on the footing that inasmuch as the suit property has been in his continuous possession and enjoyment from the days of his ancestors for more than the statutory period, it is claimed that he has prescribed title to the suit property by way of adverse possession.

11. The abovesaid case projected by the plaintiff has been totally challenged by the defendants and in such view of the matter, it is for the plaintiff to establish that he has title to the suit property through his ancestors and further, he has also prescribed title to the suit property by way of adverse possession.

12. As rightly found by the Courts below, inasmuch as the plaintiff himself is not sure about the lie of the suit property, it is seen that the plaintiff, after the institution of the suit, has also preferred amendment applications to amend the boundaries to the suit property and accordingly, it is found that inasmuch as the suit property has not been enjoyed by the plaintiff at any point of time, the lie of the suit property itself is not known to the plaintiff, as such, at the time of the institution of the suit, accordingly the plaintiff has come



forward with the case without even properly describing the suit property and only thereafter, had endeavoured to give the boundaries of the suit property by taking appropriate amendment applications. The above aspect also lends suspicion in the plaintiff's case.

13.As abovenoted, at the first instance, the plaintiff would trace title to the suit property through his ancestors, however, the plaintiff has not placed any document whatsoever to establish that his ancestors had enjoyed the suit property and only through them, the plaintiff had acquired title to the suit property. As found by the Courts below, even though, the document of title may not be available with the plaintiff for establishing the title of his ancestors, however, at least some records pointing to the assertion of title by his ancestors in respect of the suit property should have been produced by the plaintiff for sustaining his case that he had derived title to the suit property through his ancestors. On the other hand, all the documents projected by the plaintiff only stand in his name and no document whatsoever has been placed for consideration evidencing that his ancestors, particularly, his father, at least, had enjoyed the suit property by obtaining patta, paying kist etc., and therefore, the claim of the plaintiff, that his father had been in the possession and enjoyment of the suit property for several years cannot at all be accepted without there being any material to buttress the same. In such view of the matter, the claim of the plaintiff that his ancestors owned the suit property and through them, he had acquired the suit property, as such, cannot be believed, accepted and rightly discountenanced by the Courts below.

14.Therefore, the only source of title for the plaintiff to maintain the suit is adverse possession. Once, the plaintiff has taken the plea of adverse possession impliedly, thereby, it is found that he has admitted the title of the opponents i.e. the defendants. For establishing that he is in the possession and enjoyment of the suit property, certain kist receipts have been projected by the plaintiff and most of them are found to be after the institution of the suit property. Certain kist receipts projected on his part and marked as Exs.A1, 4 to 6 bear the patta No.363, the chitta extract corresponding to patta No.363 has been marked as Ex.A5 and on a perusal of the same, it is found that under the same patta, not only the suit property but also the other survey numbers are comprised. That apart, Ex.A8 chitta extract stands not only in the name of the plaintiff, but also stands in the name of his brother Rajkumar. Therefore, as rightly found by the Courts below, particularly, the first appellate Court when several fields form part of patta No.363, the kist receipts projected by the plaintiff as abovenoted cannot be inferred and held that it is only



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pertaining to the suit property as described in the plaint and therefore, the Courts below are justified in not relying upon the abovesaid kist receipts for sustaining the claim of possession and enjoyment of the suit property on the part of the plaintiff.

15.As could be seen from the materials placed on record, the patta had been transferred in the name of the plaintiff only during the year 1992 as well as the chitta extract marked as Ex.A11 and the same has been spoken to by the Village Administrative Officer examined as Ex.PW2. Though the plaintiff has not pleaded that the suit property came to his share on partition with his brother Rajkumar, however, the evidence has been adduced on the part of the plaintiff as if both he and his brother Rajkumar had owned the suit property and on division, the same came to be allotted to him. In this connection, the deed of partition which had been effected between the plaintiff and his brother had come to be marked as Ex.B7 on the part of the defendants in the first appellate Court. On a perusal of Ex.B7, it is seen that there is no reference about the suit property in the abovesaid document. If really, the suit property is the ancestral property of the plaintiff, in the partition effected under Ex.B7, the suit property would have also been the subject matter and on the other hand, when it is seen that the suit property is not referred to in Ex.B7, the obvious conclusion would only be that the suit property has never been the ancestral property of the plaintiff and never been enjoyed by him as put forth by him in the plaint. As abovenoted, only during 1992, the patta had come to be challenged exclusively in the name of the plaintiff. However, when prior to the same, the patta is found to be standing in the name of both the plaintiff and his brother Rajkumar and even with reference to the same, the plaintiff has not established as to how come the patta had been issued both in his name and in his brother's name Rajkumar, particularly, when the plaintiff has not established his claim of title to the suit property as projected in the plaint, in such view of the matter, as rightly found by the first appellate Court, particularly, considering the evidence of VAO examined as PW2, the said VAO is found to have shown some special interest in the plaintiff and created certain revenue records in favour of the plaintiff one way or the other for enabling the plaintiff to claim title to the suit property without any basis.

16.In the light of the abovesaid discussions, as pointed out by the Courts below, when the plaintiff has come forward with the case that he had acquired title to the suit property through his ancestors and the plaintiff having failed to establish the said case and when the plaintiff, during the course of his evidence, has projected a case that the suit property had come



to be allotted to his share on partition with his brother Rajkumar and when with reference to the same, the partition deed marked as Ex.B7 does not even refer to the suit property in any manner, in all, it is seen that inasmuch as the plaintiff has no title to the suit property whatsoever, he is not able to trace his title to the suit property stoutly and taking prevaricating stands one after the other inconsistent to each other, thereby, unable to place any acceptable and reliable material to sustain the case.

17. When the suit property is claimed to be comprised in Patta No.363, however, when several fields form part of Patta No.363 and when the plaintiff has failed to establish his trace of title to the suit property as put forth in the plaint and furthermore, when Ex.A1 kist receipt is found to be pertaining to for more than 10 faslies, it is seen that with a view to create records one way or the other, the plaintiff has obtained the revenue records with the assistance of PW2 VAO and had come forward with the case laying a false claim of title, possession and enjoyment of the suit property.

18. As abovenoted, only the revenue records have been projected by the plaintiff for sustaining his case and the suit has been laid by the plaintiff on 13.10.1995. On a perusal of the documents projected by the plaintiff, most of the revenue records are found to be after the institution of the suit. In such view of the matter, the abovesaid documents cannot at all be relied upon for sustaining the claim of adverse possession put forth by the plaintiff in respect of the suit property. When the other documents are taken into consideration and they are found to be within a period of 12 years preceding the institution of the suit without any continuity and would not be helpful to sustain the plea of adverse possession projected by the plaintiff and furthermore, when the plaintiff has failed to establish his claim of adverse possession to the suit property by establishing his long, continuous and uninterrupted possession and enjoyment of the same, to the knowledge of one and all including the defendants by exhibiting animus hostile attitude, in all, as determined by the Courts below, particularly, the first appellate Court, the plaintiff's claim of adverse possession to the suit property, cannot at all be accepted based on the materials projected by him and the same had been rightly negated by the Courts below.

19. Certain documents had been projected by the defendants to hold that they had acquired title to the property comprised in survey No.104/2 and in this connection, the defendants have laid reliance upon the sale deeds marked as Exs.B1 & B2 and the patta marked as Ex.B5. The abovesaid documents have been considered by the first appellate Court in particular and held that even



the defendants have failed to establish the title of their vendors one way or the other for sustaining the genuineness of the sale transactions projected by them. The patta projected by them marked as Ex.B5 described the trace of title to the property comprised therein as by way of inheritance and the same stands in the name of Etthiraj and to show that the Etthiraj had title the property comprised therein, there is no evidence on the part of the defendants. Quite inconsistent to the recitals contained in Ex.B5, the defendants have also projected the sale deeds for claiming title to the suit property. In such view of the matter, as rightly pointed out and held by the first appellate Court, no safe reliance could be made on the documents projected by the defendants for determining that they have a valid claim of title to the suit property as projected by them. In any event, the weakness of the defence version cannot be the basis for upholding the plaintiff's case. In such view of the matter, the failure of the defendants in establishing their claim of title to the suit properties one way or the other as above discussed and analysed by the courts below could not lead to the conclusion that it is only the plaintiff who her title to the suit property. As abovepointed out, the plaintiff himself rests his claim of title to the suit property by way of adverse possession by accepting the title of the defendants impliedly and as pointed out, when the plaintiff has miserably failed to establish his claim of title to the suit property by way of adverse possession and furthermore, when the plaintiff, as per law, cannot also maintain the suit for seeking the declaration of title to the suit property based on the adverse possession, as such, in all, it is found that the Courts below are justified in rejecting the plaintiff's suit. No interference is called for in the judgment and decree of the Courts below.

20.For the reasons aforestated, the substantial question of law formulated for consideration in this second appeal is, accordingly, answered in favour of the defendants against the plaintiff.

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

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Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To

1.The Subordinate Court, Chidambaram.

2.The District Munsif cum Judicial Magistrate, Parangipet.

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

+lcc to Mr.M.Muniruddin Sheriff, Advocate, SR.No.39003

S.A.No.1451 of 2005

Kak(04/09/2019)