



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.07.2019	Delivered on 17.07.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.3820 of 2019
and OA No.205 of 2019
in CS No.159 of 2019

K.Soundaram

... Applicant in A.No.3820/19 &
Respondent in OA No.205/19

Vs

R.Srinivasan

... Respondent in A.No.3820/19 &
Applicant in OA No.205/19

Prayer in Appl.No.3820/19: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order 7 Rule 11 (a) and Section 151 of the Code of Civil Procedure, praying to allow the above application and reject the plaint in C.S.No.159 of 2019 as not maintainable and barred by law.

Prayer in OA.No.205/19: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rule 1 & 2 of CPC of the Code of Civil Procedure, praying to grant an order of ad-interim injunction restraining the defendant her men, agents, servants or any person or persons acting on their behalf or under them in any manner



whatsoever from interfering with my peaceful possession and enjoyment of the property or any part of it pending disposal of the above suit.

For Applicant in A.No.3820/19 : Mr.Adinarayana Rao
& Respondent in OA No.205/19

For Respondent in A.No.3820/19 : Mr. V.Balasubramani
Applicant in OA No.205/19

C O M M O N O R D E R

This application has been filed seeking rejection of the plaint in CS No.159 of 2019 as not maintainable and barred by law.

2. The Suit in CS No.159 of 2019 has been filed by the respondent seeking a declaration that he has perfected title by adverse possession and for relief of permanent injunction restraining the defendant, her men, agents, servants or any other person or persons acting on her behalf from interfering with the peaceful possession and enjoyment of the plaintiff of the schedule mentioned property and for the cost of the suit.

3. According to the applicant, the suit property which is a portion of New No.12, Old Door No.15, Nana Street, T.Nagar, Chennai 600 017, belonged to her Late father



Kandasamy Mudaliar, he having purchased the same, under the Registered Sale Deed, bearing Document No.300 of 1932. It is also claimed that said Kandasamy Mudaliar executed a registered deed of settlement, in favour of his wife Mrs.Kamalambal, on 09.07.1962. The original owner Kandasamy Mudaliar died on 16.05.1973. Pursuant to the settlement deed, the Revenue records were mutated in the name of the mother of the petitioner Kamalambal. It is also stated that the mother of the applicant Kamalambal had executed a Will bequeathing her properties in favour of the applicant and her sister. The property subject matter of the suit was bequeathed in equal share to the applicant and her sister Rajeshwari. This court has also granted Probate to the said Will, in OP No.567 of 2000 by an order dated 01.02.2002. It is the further claim of the applicant that an area of 500 sq.ft. in the Suit property was in occupation of the respondent's father. The respondent attempted to trespass over the remaining portion of the property as well when the said attempt was prevented, the respondent had filed a suit in OS No.3571 of 2015 on the file of the 6th Assistant City Civil Court, seeking a permanent injunction claiming to be in possession of the entire property.

4. It is stated that in the said plaint, the respondent had claimed that he has perfected title by adverse



possession. An application for interim injunction was also filed in IA No.8969 of 2015, which came to be dismissed by order dated 05.08.2015. During the year 2005, the respondent attempted to convert the portion in his occupation into commercial use and a suit was filed by the applicant in OS No.3202 of 2005, restraining such user. The said suit came to be decreed. Since the respondent and his father failed to pay the rents payable by them, the applicant had launched the Rent control proceedings in RCOP No.207 of 2008, seeking an order of eviction. The said Rent Control Original Petition was allowed directing the eviction by order dated 10.01.2017 and the Appeal filed by the respondent against the order in RCOP No.207 of 2008, is said to be pending in RCA No.319 of 2017 on the file of the Appellate Authority.

5. According to the applicant, the present suit is an abuse of process of law. It is also claimed that the suit for a declaration that the plaintiff had perfected title by adverse possession will not lie. In the above factual backdrop, the applicant has come forward with this application seeking rejection of plaint in CS No.159 of 2019.

6. This application has been resisted by the respondent contending that the respondent's father Ramanujadoss, was



put in possession of the property by the father of the applicant Kandasamy Mudaliar, who is the original owner of the property in question. According to him, his father has been in possession of the property in his own right ever since he was put in possession in the year 1952 and after the death of his father Ramanujadoss, the respondent has been continuing in possession and he has perfected title by adverse possession. He has also claimed that the order in RCOP was obtained by producing a forged receipt. It is further claimed that the respondent and his family have been exclusive possession of the property and developed the property to the knowledge of the applicant. Therefore, according to the respondent, the suit with a prayer for a declaration that he has perfected title by adverse possession is maintainable and the plaint cannot be rejected.

7. I have heard Mr.Adinarayana Rao, learned counsel appearing for the applicant and Mr.V.Balakrishnan, learned counsel appearing for the respondent.

8. Mr.Adinarayana Rao, learned counsel appearing for the applicant would vehemently contend that the suit in CS No.159 of 2019 is an abuse of process of Court and the same has been filed only to avoid eviction in execution of the order of the eviction passed by the Rent Controller in RCOP



No.207 of 2008. It is also the contention of the learned counsel appearing for the applicant that the cause of action alleged in the present suit and the cause of action for the suit in OS No. 3571 of 2015, is one and the same. Therefore, according to him, the suit is barred under Order II Rule 2 of the Code of Civil Procedure.

9. Contending contra, Mr.V.Balakrishnan, learned counsel appearing for the respondent/plaintiff would submit that the plaintiff and his family having been in possession of property, since 1952 in their own right have perfected title by adverse possession. Therefore, according to him, the suit is maintainable and the plaint cannot be rejected.

10. I have considered the rival submissions.

11. Mr.Adinarayana Rao, learned counsel appearing for the applicant would invite my attention to the judgment of the Hon'ble Supreme Court in **Gurdwara Sahib v. Gram Panchayat Village Sirthala and another**, reported in **2014 (1) SCC 669**, in support of his contention that a suit seeking a declaration that the plaintiff had perfected title by adverse possession is not maintainable. He would draw my attention to paragraph 8 of the said judgment, which reads



as follows:

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"8. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

12. Mr. Adinarayana Rao, learned counsel appearing for the applicant would invite my attention to the judgment of the learned Single Judge of this Court in ***State of Tamil Nadu, Rep. by its District Collector, Erode v. Muthuswamy Gounder & Others***, reported in ***2019 (2) LW 456***, wherein this Court had gone into the question, as to whether, a suit seeking a declaration that the plaintiff had perfected title by adverse possession would be maintainable. After considering the decision of the Hon'ble Supreme Court in



Gurdwara Sahib v. Gram Panchayat Village Sirthala and

another, cited supra, this Court had concluded that a suit seeking a declaration of title based on adverse possession is not maintainable. While doing so, this Court had observed as follows:

"16. Furthermore, as pointed out supra, the decision of the Apex Court reported in 2014 (1) SCC 669 (Gurdwara Sahib v. Gram Panchayat Village Sirthala and another) has been subsequently followed by the Apex Court in the decision reported in Dharampal (dead) through L.Rs.v. 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."

13. My attention also drawn to another judgment of this Court in **R.Riyaz Ahmed & Others v. J.G.Glass Industries Pvt Ltd., reported in 2014 (2) LW 455**, wherein the plaint was rejected for non obtaining of leave under Order II Rule 2 of the Code of Civil Procedure as well as on the ground of the



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15. In ***Dharampal v. Punjab Wakf Board and others***, reported in 2018 (11) SCC 449, the Hon'ble Supreme Court has again reiterated the position of law that the suit for declaration of title on the basis of adverse possession is not maintainable, for the said purpose, the Hon'ble Supreme Court had relied upon the judgment in ***Gurdwara Sahib v. Gram Panchayat Village Sirthala and another***, reported in 2014 (1) SCC 669. The following observation of the Hon'ble Supreme Court in ***Dharampal v. Punjab Wakf Board and others***, squarely supports the contention of the learned counsel for the applicant that a suit seeking a prayer for declaration of title on the basis of adverse possession cannot be maintained.

"28. In the first place, we find that this Court in *Gurdwara Sahib v. Gram Panchayat Village Sirthala and Anr.*, 2014 (1) SCC 669, has held in para 8 that a plea of adverse possession cannot be set up by the plaintiff to claim ownership over the suit property but such plea can be raised by the defendant by way of defence in his written statement in



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answer to the plaintiff's claim. We are bound by this view.

29. In the light of law laid down in Gurdwara Sahib (supra), in our view, the plea raised by the original appellant (defendant No.1) in his counterclaim filed against the plaintiff wherein he sought a declaration of his ownership over the suit land only on the plea of "adverse possession" was not permissible. It is for the reason that a counterclaim is treated as a plaint under Order 8 Rule 6A(4) of the Code. In other words, in counterclaim, the status of the defendant is that of the plaintiff because he seeks a relief for passing decree in his favour relating to the suit land and against the plaintiff, who is sued in counterclaim as the defendant as provided in Rule 6-A (4) of Order 8 of the Code."

16. From the facts narrated supra, it could be seen



that the plaintiff has specifically pleaded in the plaint that his father was put in possession in the year 1952 by the father of the defendant. Then the possession of the plaintiff/respondent could at best be termed as permissive possession. There is no averment in the plaint to show, as to when, the said permissive possession became hostile possession and as to when, the plaintiff started asserting a hostile title to that of the defendant to the knowledge of the defendant. The entire plaint is silent on the said aspect. It is settled law that a person who claims adverse possession should plead and prove the date on which his possession became adverse to the original owner. Such a pleading is totally absent in this case on hand.

17. The plaintiff had suffered an order of eviction in RCOP No.207 of 2008 and an Appeal against the said order is pending. A Rent Controller functioning under the Tamil Nadu Buildings (Lease and Rent Control) Act, is a special Court constituted under a special enactment, vested with powers to decide certain questions. One of the main questions that is to be decided by the Rent Controller is the presence or absence of a relationship of landlord and tenant. Once the Rent Control assumes jurisdiction and decides the said question, the same question cannot be reagitated before a Civil Court that too when an Appeal against the order of the



Rent Controller is pending, before the Appellate Authority constituted under the said enactment. The finding of the Rent Controller that there is a relationship of landlord and tenant, between the parties stares at the face of the plaintiff and hence he cannot declaration that he has perfected title by adverse possession.

18. The law declared by the Hon'ble Supreme Court in ***Gurdwara Sahib v. Gram Panchayat Village Sirthala and another***, is clear that the suit claiming title on the basis of adverse possession is not maintainable. Apart from the above, on the facts of this Case, I am convinced that the suit itself is an abuse of process of Court having been filed only to veer around the orders of the Rent Controller granting eviction. I, therefore, constrained to conclude that the suit itself is liable to be rejected and hence the application in Application No.3820 of 2019 is allowed and the plaint in CS No.159 of 2019 will stand rejected.

19. In view of the rejection of the plaint, the application in OA No.205 of 2019 is also dismissed. However in the circumstances, there will be no order as to costs.

sd/-R.S.M.J
17.07.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/05.09.2019
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

COURT OFFICER