



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

S.A.(MD).No.161 of 2015
and C.M.P.(MD).No.3685 of 2016

1. The Tahsildar,
Kulathur Taluk, Keeranur,
Pudukkottai District.

2. State of Tamilnadu represented by
The District Collector, Collector Office,
Pudukkottai.

... Appellants/Respondents/Defendants

Vs.

1.M.Sundaragopalan
2.Senthilkumar

... Respondents/Appellants/Plaintiffs

(2nd respondent impleaded vide Court order dated 28.03.2016 made in
M.P.(MD).No.1 of 2015.)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 22.08.2011, passed in A.S.No.17 of 2011 on the file of the Principal District Court, Pudukkottai reversing the decree and Judgment, dated 29.04.2011 made in O.S.No.32 of 2011 on the file of the Sub Court, Pudukkottai.

For Appellants : Mr.J.Gunaseela Muthiah
Additional Government Pleader

For Respondents : No appearance
Mr.P.Ganapathi Subramanian for R2

JUDGMENT

This Second appeal is filed by the defendants in the suit in O.S.No.32 of 2011 on the file of the Sub Court, Pudukkottai.

2.The Tahsildar of Kulathur Taluk, Keeranur, Pudukkottai District, is the first appellant and the state represented by the District Collector is the second appellant. During the pendency of this second appeal, the second respondent is impleaded as a party and he is, sailing with the appellant. The learned counsel appearing for the second respondent would submit that the appeal itself was filed at the request of the second respondent and the

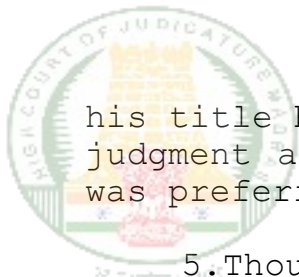


second respondent has moved a Public Interest Litigation before this Court to redeem the suit property from the first respondent. The first respondent in this appeal filed a suit in O.S.No.32 of 2011 on the file of Sub Court, Pudukkottai, for a declaration that the plaintiff is entitled to the suit property by adverse possession.

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3.The case of the plaintiff is that the suit property having an extent of 2 acre 65 cents in S.No.300 in Vellanur Village, Kulathur Taluk in Pudukkottai District, originally belonged to one Vellaichamy son of Kuppusamy. It is stated that he was in occupation of the said property for a long time. It is further stated that the said Vellaichamy obtained a decree for injunction against appellants in O.S.No.141 of 2005. The plaintiff claimed to have purchased from one Kannan who is the son of Vellaichamy by a sale, dated 24.01.2011. In the plaint itself, it is stated that the plaintiff and his predecessor in interest are in settled possession. The first respondent himself admitted that steps were taken by the appellants in 2005 for removing the encroachment made by the respondent from the suit property. Stating that decree for injunction was granted in the earlier suit filed by the predecessor in interest, the present suit is filed on the basis of unregistered sale deed alleged to have been executed by the plaintiff's predecessor in interest in favour of plaintiff on 24.01.2009. From the entire pleadings, it can be seen that the respondent has pleaded title by adverse possession by stating that the plaintiff and his predecessor were in enjoyment for more than the statutory period.

4.Sum and substance, the case of the plaintiff only indicate that the first respondent has no independent title, but claimed that he has prescribed title by adverse possession. It is not in dispute that no patta was issued in the name of plaintiff at any point of time. However, an adangal extract was produced to show that the suit property is in the enjoyment of the plaintiff's predecessor in interest. Immediately, after the sale executed by one Kannan in favour of the plaintiff, it appears that the plaintiff applied for patta. The first defendant namely the Tahsildar refused to grant patta. The plaintiff states that he was compelled to file the suit. It is also contended by the plaintiff that the plaintiff had executed an Inam settlement deed in favour of his son on 30.11.2012. Before the trial court, the appellants were set exparte as no one appeared. However, after considering the entire pleadings and evidence, the trial Court dismissed the suit holding that the plaintiff has neither proved title nor possession for more than the statutory period. Though the first respondent relied upon a few precedents to support his case that the plaintiff has prescribed title by adverse possession, the trial Court considered all the issues and held that the plaintiff has not proved possession against Government for more than the statutory period. However, the plaintiff preferred an appeal in A.S.No.17 of 2011 on the file of Principal District Court, Pudukkottai. The lower Appellate Court



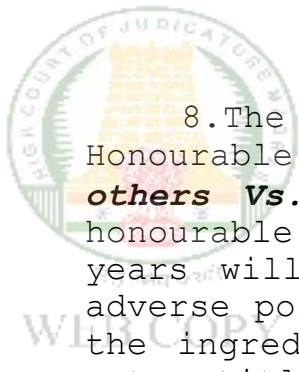
his title by adverse possession. Questioning the correctness of the judgment and decree of the lower appellate Court, the above appeal was preferred by the defendants in the suit.

5.Though notice was issued to the first respondent and the first respondent engaged an advocate, there was no representation by the counsel for the first respondent on many occasions. This Court granted several adjournments for the convenience of the counsel for the first respondent. After giving adequate opportunity, this Court has taken up this appeal for final hearing.

6.While admitting the second appeal, this Court framed the following substantial questions of law.

- 1.Whether the first appellate Court is correct in decreeing the suit for declaration based on adverse possession when the plaintiff has failed to prove his long and undisturbed possession over the suit property before the trial Court?
- 2.Whether the 1st appellate Court erred in law in adjudicating the point of transfer of possessory title when the plaintiff failed to establish that his vendor was in the continuous possession of the suit property over 30 years?
- 3.Whether the first appellate Court is right in holding that the plaintiff has acquired the right over the suit property through adverse possession?
- 4.Whether the first appellate Court is right in appreciating an unregistered document under exhibit in Ex.A5, by which the plaintiff is claiming adverse possession?
- 5.When the specific admission as to the suit for permanent injunction in the year 2005, whether suit for adverse possession in the year 2011 is maintainable?

7.Going by the admitted case in the pleadings, it is seen that the two documents filed by the plaintiff namely the unregistered sale deed and the adangal extract would only show that the plaintiff has no title. Even patta does not stand in the name of plaintiff or his predecessor in interest. It is admitted before the lower appellate Court that the Tahsildar refused to grant patta when the plaintiff filed a petition. It is in the background, this court has to see whether the plaintiff has proved title by adverse possession. Learned counsel appearing for the second respondent relied upon a judgment of this court in the case of **Marayammal Vs. Chinnammal & Others** reported in **2019 (2) CCC 272 (Madras)** for the proposition that the plaintiff cannot seek declaration of ownership on the basis of adverse possession and that title by adverse possession can be pleaded only in defence by the defendant.



8.The learned counsel further relied upon the judgment of Honourable Supreme Court in the case of **P.T.Munichikkanna Reddy and others Vs. Revamma and others** reported in (2007) 6 SCC 59. The honourable Supreme Court held that mere enjoyment for any number of years will not clothe the person in enjoyment with the title by adverse possession. Unless, the plaintiff produce records to prove the ingredients for pleading adverse possession, the plaintiff is not entitled to get title by adverse possession. The Honourable Supreme Court, in the above case held that in terms of Article 65, of Limitation Act, the starting point of limitation commences not from the date when the right of ownership arises to the plaintiff but commences, from the date when the defendant's possession becomes adverse.

9.In the case of **Karnataka Board of Wakf Vs. Government of India and others** reported in (2004) 10 SCC 779, the Honourable Supreme Court has held that a person pleading adverse possession should prove *animus possidendi* and that then should be specific pleading and proof.

10.The learned counsel appearing for the second respondent also relied upon the judgment of the Honourable Supreme Court in the case of **Hemajo Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others** reported in (2009) 16 SCC 517, wherein Honourable Supreme Court held that a person who claim adverse possession must prove by clear and unequivocal evidence that he has hostile title to the real owner and that he was in possession in confirmity, in publicity and hostile to the true owner.

11.The Honourable Supreme Court in the above judgment has further observed that law should not place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back possession within limitation. Having regard to the law settled by Honourable Supreme Court, and the factual background, this Court is of the view that the lower appellate court miserably failed to follow the catena of judgments on the point. The lower appellate court presumed that the first respondent is in possession. As far as the plaintiff/first respondent is concerned no document is filed to prove his continuous possession and enjoyment of the land by the first respondent. The plaintiff claim title on the basis of an unregistered sale deed which is in admissible for want of registration and stamp duty.

12.The judgment of the lower appellant court cannot be sustained in view of the position that the lower appellate court was wrong in relying upon few precedents which are not applicable to this case. The only document that was relied upon by the plaintiff/first respondent is the unregistered sale deed which was executed in 2011 by the respondent's predecessor in interest. As



pointed out earlier the said document is inadmissible even for a collateral purpose. No other document is produced to show that the plaintiff was in continuous possession of the property for more than 30 years. Plaintiff's predecessor in interest earlier filed a suit for bare injunction. It is not in dispute that the suit property is classified as a poramboke land and it has been recorded in all revenue records as 'maichal tharai'. It indicates that it does not belong to an individual. Hence, none of the documents filed by the plaintiff/first respondent could be relied upon to confer or presume title in favour of first respondent.

13.As a result, this second appeal is allowed and the judgment and decree, dated 22.08.2011, passed in A.S.No.17 of 2011 on the file of the Principal District Court, Pudukkottai, reversing the decree and Judgment, dated 29.04.2011, made in O.S.No.32 of 2011 on the file of the Sub Court, Pudukkottai is set aside. The suit in O.S.No.32 of 2011 on the file of the Sub Court, Pudukkottai stands dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal District Judge, Pudukkottai.

2.The Sub Judge, Pudukkottai.

Copy to:

The Section Officer,
V.R.Section,(2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.M. KARUNANITHI, Advocate (SR-82489[F] dated 20/08/2019)

+1 CC to SPL GP (SR-82474[F] dated 20/08/2019)

+1 CC to MR.P. GANAPATHI SUPRAMANIAN, Advocate (SR-82580[F] dated 20/08/2019)

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