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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.01.2020

Date of Verdict : 05.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.No.678 of 1993

1. Nataraja Padayachi (Died)
2. Pidari Padyachi (Died)
3. Jagathambal
4. Palsamy
5. Rajathi
6. Rajavel

(Appellants 3 to 6 are brought on record as legal heirs of the deceased first appellant vide order of the Court dated 10.01.2018 made in C.M.P.Nos. 427 to 429 of 2008 in S.A.No.678 of 1993)

...Appellants/Defendants

Vs.

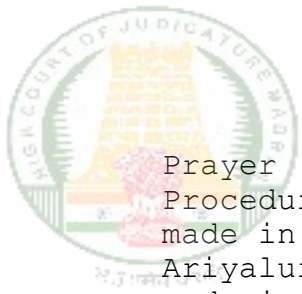
1. Thangaprakasam (Died)
2. Chinnapillai
3. Alamelu
4. Jansirani
5. Manikandan

(Respondents 2 to 5 are brought on record as legal heirs of the deceased sole respondent vide order of the Court dated 28.02.2018 made in C.M.P.Nos. 3098 to 3100 of 2018 in S.A.No.678 of 1993)

6. Mageswaran
7. Priya

(Respondents 6 & 7 are brought on record as legal heirs of the deceased second appellant vide order of the Court dated 03.06.2019 made in C.M.P.Nos. 21595, 21599 and 21603 of 2018 in S.A.No.678 of 1993)

...Respondents/Plaintiff



Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 10.11.1992 made in A.S.No.142 of 1989 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 26.08.1989 made in O.S.No.139 of 1983 on the file of the District Munsif, Jayamkondan.

For Appellants : Mr.S.Parthasarathy

For Respondents

R1 : Died
For R2 to R5 : Mr.P.Dinesh Kumar
For R6 & R7 : No appearance

JUDGMENT

This second appeal is directed as against the judgment and decree dated 10.11.1992 made in A.S.No.142 of 1989 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 26.08.1989 made in O.S.No.139 of 1983 on the file of the District Munsif, Jayamkondan.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and injunction. The suit property belonged to plaintiff and he is in possession and enjoyment of the same. The plaintiff's grandmother one Kuppammal was being the guardian, she was in possession of the property, since at that time the plaintiff was a minor. After attaining the majority, the suit property was handed over to the plaintiff. Thereafter, the plaintiff paid all revenue dues and obtained patta in his favour. He mortgaged the suit property and also availed loan of Kodungur co-operative agricultural loan society. Thereafter, he fell in sick and therefore he was executed power of attorney on 09.03.1981 in favour of his brother-in-law. As such, the defendants have no title or interest over the suit property. While being so, the defendants disturbed the possession and enjoyment of the suit property by false document. Hence the suit.

4. Resisting the same the defendants filed written statement stating that the suit property never belonged to the plaintiff or his father at any point of time. They were never in possession and enjoyment of the suit property. The plaintiff never obtained any loan as against the suit property and in fact, the village Karnam was living in plaintiff's house. After



making corrections in the revenue documents with the support of the Karnam, he filed the present suit with false patta, chitta and Adangal extract and they are not genuine one issued in respect of the suit property.

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4.1. Originally, the suit property ad measuring 3.34 acres belonged to Saminatha Padayatchi, grandfather father of the second defendant. Thereafter, the suit property derived to his sons Athimoolam, Natesan and Narayanasamy and they partitioned the property, in which on northern side 1.10 acres allotted to Narayarasamy and middle portion ad measuring 1.12 acres allotted to Nataraja Padayatchi and southern portion ad measuring 1.12 acres allotted to one Athimoolam. For the said Narayanasamy the second defendant is the only son. The said Narayanasamy executed Will in respect of his allotment of property 1.10 acres comprised in S.No.43/3 along with other properties. Thereafter, the suit property is in possession and enjoyment of the second defendant and he is paying all revenue dues. Therefore he prayed for dismissal of the suit.

5. On the side of the plaintiff, he examined P.W.1 to P.W.4 and were marked Ex.A.1 to Ex.A.38. On the side of the defendants, they examined D.W.1 to D.W.6 and were marked Ex.B.1 to Ex.B.13. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No. 142 of 1989 and the first appellate Court allowed the appeal and decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendants preferred this present second appeal.

6. At the time of admission of this second appeal on 01.06.1993, the following substantial questions of law were formulated for consideration:-

"1. Whether the Court below has not erred in law in ignoring Ex.B.2 which would clearly prove the partition between the predecessor of the plaintiff and the defendant and which has been relied upon by the trial Court to hold that the 2nd defendant was entitled to the suit properties?

2. Whether the Court below hand not erred in law in relying upon Ex.A.5 to A.25 and Ex.A.27 to A.32 when they do not relate to the suit properties and whether it ought not to have been that the suit properties were included in patta No.353 and not 354



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and that therefore the documents mentioned above would not prove the possession of the plaintiff with respect to the suit properties?

3. Whether the Court below has not erred in law in holding that the respondent has prescribed title by adverse possession especially when the plaintiff has not produced documents relating to the suit property to prove his possession for over the statutory period?

4. Whether the judgment and decree of the Courts below in not even considering the cross objections in its property perspective and in failing to note that the respondent herein has played fraud by filing unconnected documents and concocted ones and its decree is even otherwise illegal, irregular and liable to be set aside on such other substantial questions of law that this Hon'ble Court deem fit to frame and decide?"

7. Heard Mr.S.Parthasarathy, learned counsel appearing for the appellants/defendants and Mr.P.Dinesh kumar, learned counsel appearing for the respondents/plaintiffs

8. The plaintiff filed the suit for declaration and injunction on the strength of adverse possession. When the suit is filed by the plaintiff for declaration and injunction, he has to prove his title, possession and enjoyment of the suit property. The patta issued in favour of the father of the plaintiff, which was marked as Ex.A.1, in patta No.354, in which the land mentioned as comprised in survey No. 43/4. After the death of his father, the patta was issued in favour of one Kuppayee, grandmother of the plaintiff and the same is marked as Ex.A.3. Ex.A.1 issued in favour of the plaintiff's father for the pasali year 1365. Ex.A.1 to Ex.A.4 patta issued in favour of the plaintiff's father and his grandmother. There is no document filed to show that the property derived by his father from their ancestors by partition or by self acquired property and other details. In fact, these documents are helpful only to mutate the revenue records and not for proving the possession and enjoyment of the property.

9. Whereas the second defendant claimed title of the suit property through his father. To prove the defendants' case they marked Ex.B.2, which was issued by the Tashildar, Jeyankondan, extract from the settlement register. It was issued for the old survey number 121, sanctioned in the name of Narayana Padayatchi for which, patta was issued in patta No.353 for the land ad



measuring 1.10 acres. Further another patta in Patta No.345, for the land comprised in survey No.43/4 ad measuring 1.12 acres was issued in favour of the Nataraja Padayatchi. Further patta in patta No.352 was issued in favour one Aboorvathamal, for the land ad measuring 1.12 acre comprised in New survey No.43/5. Therefore, Ex.B.2 extract from the settlement register revealed that even in the year 1924, there was a partition and accordingly, the land ad measuring 1.10 acres sanction in the name of Narayana Padayatchi in patta No.353. It is the suit property.

10. According to the said partition, the father of the plaintiff was allotted the land ad measuring 1.12 acre comprised in new survey No.43/5. Subsequently, the said land was sold out in favour of one Kulanthaivel Padayatchi, which was marked as Ex.B.4. The boundaries of the said sale deed also revealed that the said land situated east and south to the land belongs to the Masilamani Padayatchi. The land comprised in survey No.43/4, which was mentioned in the Ex.B.4 is situated on the southern side of the land belonged to the Masilamani Padayatchi.

11. Further, the plaintiff already filed suit in O.S.No.219 of 1975 on the file of the District Munsif Court, Ariyalur, for declaration and injunction in respect of the property comprised in survey No.43/5 and in which the present suit property and the property comprised in Survey Nos.43/3 and 43/4, were mentioned. Though the said suit was filed against the said Aboorvathamal, Thangarasu and Valliammal, the result of the said suit is nothing indicated in this suit.

12. Further the plaintiff also claimed title by adverse possession. The plaintiff also marked Ex.A.5 to Ex.A.24, the tax receipts paid for the land in patta No.354 for the pasali year 1368 to 1392. The adangal extract for the patta No.354, were marked as Ex.A.27 - Ex.A.32 for the pasali year 1390 to 1395. In fact D.W.1 deposed that the father of the plaintiff had 11 acres. He also purchased one acre from the father of the second defendant. Further, he deposed that the suit property along with other 2 acres belonged to the plaintiff and fenced in all four sides. Therefore it is clear that the plaintiff is in possession and enjoyment of the entire extent of 3.34 acre land comprised in old survey No.121.

13. Further the plaintiff is in possession and enjoyment of the suit property for the past several years, as such he is also entitled for claiming adverse possession of the suit property even otherwise. In this regard the learned counsel appearing for the appellants/defendants cited the judgment of this Court reported in 2014(3) CTC 146 in the case of R.Riyaz Ahmed and ors Vs. J.G.Glass Industries Pvt. Ltd. and ors., which reads as follows:-



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"15. It is settled position that the plea of adverse possession can be raised only as a defence. In other words, the plea of adverse possession can be used only as a shield and not as a sword. In the judgment reported in (2014) 1 Supreme Court Cases 669 [Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another], the Hon'ble Supreme Court held as follows:

"5. Insofar as Issue 4 pertaining to relief of injunction is concerned, the learned Civil Judge held that as long as uninterrupted possession of the appellant was established, the appellant was entitled to the decree of injunction and the respondents were restrained from dispossessing the appellant forcibly and illegally from the suit land and also restrained from damaging the building of Gurdwara Sahib. Issue 5 was decided against the respondent on the ground that no evidence was led to show how the suit was not maintainable in the present form. While granting relief, the learned Civil Judge partly decreed the suit holding as under:

It is held that the plaintiff is in adverse possession over the suit property since 13-4-1952 and the defendants are restrained from dispossessing the plaintiff forcibly and illegally from the suit property and further restrained from damaging the building of Gurdwara Sahib except according to due process of law. As discussed above, the remaining relief as sought by the plaintiff is dismissed. Decree-sheet be prepared. File be consigned to the record room.

6. It is pertinent to note that the respondents accepted the judgment and decree pertaining to prohibiting injunction. It is the appellant who filed the first appeal. Obviously, the confines of the said appeals related to the issue pertaining to declaration of ownership of adverse possession. The first appellate court while dismissing the appeal observed as under:



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The respondents have not challenged the judgment and decree dated 6-1-2009 passed by the learned Civil Judge (Junior Division), Khanna, which means that they have accepted that the appellant was in adverse possession of the suit land since 13-4-1952. The issue whether adverse possession of the appellant-plaintiff had matured into his ownership is purely a question of law and it is a settled position that no declaration of title can be sought on the basis of adverse possession. The learned trial court has rightly relied upon the case titled *Gurdwara Sahib Sannauli v. State of Punjab* [(2009) 154 PLR 756] wherein it is held that no declaration can be sought by the plaintiff with regard to adverse possession because such a plea is available only to the defendant. Since the appellant was not the lawful owner of the property in dispute, therefore, Respondent 1 was within its rights to auction a part of the same on 19-12-2003 in favour of Respondent 2. Respondent 1 has proved that land measuring 13B-12B was auctioned on 19-12-2003 in the presence of BDPO, Doraha and Ranjit Singh was declared as the last bidder and the auction was struck in his name for a consideration of Rs 1,11,000 and the land measuring 6B on which the building of Gurdwara Sahib had been constructed, was not auctioned.

In view of my above discussion, I find no material illegality or irregularity in the judgment and decree dated 6-11-2009 passed by learned trial court and therefore the appeal is dismissed and the findings of the learned trial court are affirmed. Decree-sheet be prepared. File of the lower court be returned forthwith. File be consigned to the record room.

7. In the second appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable.

8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if



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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 are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

From the judgment of the Apex Court, it is clear that the issue whether adverse possession of the plaintiff had matured into his ownership is purely a question of law and it is a settled position that no declaration can be sought on the basis of adverse possession. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession had matured into ownership. Only if proceedings are filed against the plaintiff and the plaintiff is arrayed as defendant that it can use the adverse possession as a shield/defence.

The Supreme Court of India held in the judgment reported in 2014 (1) SCC 669 in the case of Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and anr that, whether the adverse possession of the plaintiff had matured into his ownership is purely a question of law and it is a settled position that no declaration can be sought on the basis of the adverse possession. Only if proceedings are filed against the plaintiff and the plaintiff is arrayed as defendant that can be used for the adverse possession as a shield/defence.

14. Per contra the learned counsel appearing for the respondent/plaintiff cited the judgment reported in (2019) 8 SCC 729 in the case of Ravinder Karu Grewal and others Vs. Manjit Karu and others., in which, the above said proposition of the law now overruled by the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India held as follows :-

"61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute



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continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

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64. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (supra) and Dharampal (dead) through LRs v. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff."

The Hon'ble Supreme Court of India held that the decision on Gurudwara Sahab v. Gram Panchayat Village Sirthala cannot be said to be laying down the law correctly, thus they are hereby overruled. Further held that plea of acquisition of title by adverse possession can be taken by the plaintiff under Section 65 of the Limitation Act.

15. In the case on hand, the plaintiff claimed title also by adverse possession by possession of plaintiff as well as their predecessors for very long period. Though the defendants vehemently contented that the plaintiff cannot claimed title by adverse possession, on the basis of decision held in Gurudwara Sahab v. Gram Panchayat Village Sirthala case, now it is overruled by the Hon'ble Supreme Court of India. Therefore, the plaintiff is entitled for declaration by adverse possession.

16. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the first appellate Court. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the plaintiff and as against the defendants.

17. In fine, the second appeal stands dismissed by confirming the judgment and decree made by the first appellate Court. There is no order as to costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Subordinate Court,
Ariyalur.

2. The District Munsif,
Jayamkondan.

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

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.9336

+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.8988

S.A.No.678 of 1993

KJ(CO)
HS(12/08/2021)