

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2020

Date of Verdict : 29.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.2037 & 2038 of 2002
C.M.P.Nos. 177694 & 17770 of 2002

1. S.Kumarasamy
2. V.S.Ramasamy (Died)
3. Saraswathi
4. Subramanian
5. Ganthimathi
6. Palanisamy

(Appellants 3 to 6
brought on record as
legal heirs of the deceased
second appellant vide order
of the Court dated 27.07.2018
made in C.M.P.Nos. 13093
to 13098 of 2018 in S.A.Nos.
2037 & 2038 of 2002 by PRMJ)

...Appellants/Appellants/
Plaintiffs in
both cases

Vs.

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

2. The Executive Engineer,
L.P.P. Canal Division,
Erode Karur Road,
Kovaivoyakkal,
Erode.

3. The Junior Engineer,
L.P.P.Canal Division,
Kalingarayanpalayam,
Bhavani.

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4. The Assistant Executive Engineer,
Public Works Department, WRO,
Hydrolic Sub-Division,
Erode.

...Respondents/Respondents/Defendants
in both cases.

Prayer in both cases :- These Second Appeals have been filed under Section 100 of Civil Procedure Code against the judgments and decrees dated 08.08.2001 made in A.S.Nos.81 of 2001 & 63 of 2001 on the file of the II Additional District Court, Erode, confirming the judgments and decrees dated 17.11.2000 made in O.S.Nos.483 of 1998 & 487 of 1998, respectively, on the file of the Principal District Munsif Court, Erode.

For Appellants

in both cases : Mr.T.Murugamanikam,
Senior Counsel
For Mrs.P.T.Ramadevi

For Respondents

For R1 to R4

in both cases : Mr.S.Jaganathan
Government Advocate (CS)

COMMON JUDGMENT

S.A.No.2037 of 2002 :-

This appeal has been filed as against the judgment and decree dated 08.08.2001 made in A.S.No.81 of 2001 on the file of the learned II Additional District Judge, Erode confirming the the judgment and decree dated 17.11.2000 made in O.S.No.483 of 1997, on the file of the learned Principal District Munsif, Erode.

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 permanent injunction, mandatory injunction and also claiming damages. The plaintiffs and their predecessor are the absolute owner of the northern portion of the land in Survey No.54 in Kumilanparappu Village, Erode Taluk, as such the suit property is their ancestral property. The middle portion in the land in Survey No.54 has been acquired for the L.B.P canal and the acquired portion is numbered as land Survey No. 54/2. On the northern side portion belonged to the plaintiffs as Survey No. 51/1. In the acquired portion, the government had dug out L.B.P branch at channel and a jeep road was formed on north of that channel. On the immediate north of that jeep road, the plaintiffs and their predecessors in title

and have been in continuous possession and enjoyment of nearly 23 cents on the northern portion in Old S.R.No.54/2, R.S.F.No.68, by using it as a cattle yard and cattle shed, manur pits, buildings, for shops bath room etc., and as an agricultural lands along with their adjoining patta land old S.F.No.54/4, R.S.F.No.65/8-A, 9-A in Kumilanparappu Village from the year 1956 onwards without any disturbance.

3.2. While being so, the third respondent and their men attempted to disturb the plaintiffs' peaceful possession and enjoyment of the said portion by putting acquisition stone on the northern side of the jeep road. Since the plaintiffs are in possession and enjoyment of the property for more than 40 years, they are perfected their title by way of adverse possession against the defendants, since the plaintiffs and their predecessor in title are in continues and uninterrupted possession of the suit property. The B memo proceedings have no value and usual notice has been given with false allegations. After filing this suit and after the Advocate Commissioner had visited the suit property, the respondents destroyed the crops belonging to the plaintiffs worth about Rs.2,000/- and also stolen away the trees and caused damages to the plaintiffs' property more than Rs.8,000/-. They also constructed a new building in the suit property and a basement for compound wall. The defendants have no right to construct any building in the suit property which belonging to the plaintiffs by way of adverse possession. The plaintiffs have entitled to claim compensation for the stolen property and damages caused by the defendants. Therefore, the suit filed for permanent injunction, mandatory injunction and also claimed damages.

4. Resisting the same, the third defendant filed written statement and adopted by other defendants by stating that the suit property belonged to the Public Works Department (PWD) and classified as Porambokku land. It is false to state that the plaintiffs and their predecessors are in possession and enjoyment of the suit property. There is no existence of fencing in between the jeep road and the land in possession of the plaintiffs. The trees situated in the suit property are belonging to the third defendant and as such in accordance with law, the third respondent cut down the trees. Therefore, the plaintiffs have no right or title over the suit property as such they are not entitled for any compensation as claimed by them.

4.1. Further sated that in fact the plaintiffs accepted their encroachment in the suit property by a letter dated 14.04.1997 and they agreed to remove the encroachment in the suit schedule property. The plaintiffs are not in possession and enjoyment of the suit property except the western side of the north-west main road from the suit property and build the shops

and toilet. Further stated that the land is fit for construction of Hydrology sub division and it is for the purpose to note down weather report, climatic condition, rainfall, sun shine, wind velocity, flood evaporation loss, temperature, humidity, etc., for the purpose of cultivation. It is very useful for the agriculturalist. Further the plaintiffs never cultivated the said property and there was no crops as alleged by them. Even according to the Advocate Commissioner's report, there is a stone laid down by the PWD in the suit property. Further according to the Land Encroachment Act 1905, the Civil Court has no jurisdiction to try the suit. Therefore, prayed for dismissal of the suit.

S.A.No.2038 of 2002:-

5. This appeal has been filed as against the judgment and decree dated 08.08.2001 made in A.S.No.6 of 2001 on the file of the II Additional District Judge, Erode confirming the the judgment and decree dated 17.11.2000 made in O.S.No.487 of 1998, on the file of the learned Principal District Munsif, Erode.

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

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

7.1 The suit is filed for permanent injunction. The plaintiffs and their predecessors are the absolute owner of the northern portion of the land in old S.F.No.54 in Kumilanparappu Village, Erode Taluk and the same was sub divided as old S.F.No.54/1. The southern portion of old S.F.No.54 was sub divided as old S.F.No.54/3, which was belonged to Rangaswami Gounder. After acquisition of old S.F.No.54/2, the Government formed L.B.P. channel and jeep road. Apart from these L.B.P. channel and jeep road, there is porambokku land on the northern side of that jeep road. In the re-survey the acquired portion of old S.F.No.54/1 is numbered as R.S.No.65/8-A and 9A. The portion of the land in S.F.No.54/1 numbered as R.S.65/8A and 9A ad measuring 0.26.5 hectare, are patta land belonging to the plaintiffs. In between the said patta land and jeep road there is a portion of land which is in possession and enjoyment of the plaintiffs for the past more than 42 years. In the said portion, the defendants tried to construct new buildings and new super structure. Therefore, the plaintiffs filed suit for declaration and injunction on the ground of adverse possession in O.S.No.483 of 1997, since the plaintiffs perfected their title by way of adverse possession over the suit property. Thereafter, the defendants started construction in the said property and as such the plaintiffs filed amendment petition in I.A.No.1880 of 1997 for mandatory injunction to remove the newly constructed building. Though it was allowed, the respondents started to remove the crops and caused damages to the existing old

buildings and structures, shops etc., put up by the plaintiffs in the suit property. Therefore, the plaintiffs filed another petition for injunction restraining the defendants from causing damages in the old super structure.

7.2. In the meanwhile, the defendants tried to construct new super structure in the suit property and also in the plaintiffs' patta land in survey No. 65/8A and 9A, by encroaching the plaintiffs' land. Therefore, the plaintiffs filed application for appointment of a commissioner to fix the survey boundary line between the plaintiffs' patta land and L.B.P. Poramboke land. While pending the said application, the defendants started to construct new super structure in the plaintiffs' land more particularly prescribed in the suit schedule A property. In fact they also started construction in the suit schedule property in O.S.No.483/1997 which is mentioned in B schedule property in respect of the suit for declaration and injunction is pending. Therefore, the defendants are not entitled to construct any building or super structure in the plaintiffs' patta land. Therefore, the suit filed for permanent injunction against the defendants.

8. Restraining the same, the fourth defendant filed written statement by stating that though the plaintiffs are residing in Kumilanparappu Village, the Hydrology Sub-division has constructed a fully climatic station in the land owned by the PWD, L.B.P. Canal Division, Erode 2. The said land was acquired for L.B.P. Canal from whom so ever, the parties has no right to claim the ownership on any circumstances after the acquisition of the land. The said land was surveyed by the Survey Department and fixed boundary between the PWD land and patta land. Only after determining the boundary the Hydrology Sub-division has constructed a building only in the land belonging to the PWD and also acquired for L.B.P. Canal. Further stated that on any circumstances, they did not cause any damage or disturbances to the plaintiffs on their patta land. The plaintiffs only encroached the PWD land and creating nuisances and disturbances to the defendants.

8.1. The Hydrology Sub-division in the field to note weather report, climatic condition, rainfall, sun shine, wind velocity, flood evaporation loss, temperature, humidity, etc. It is maintaining the data collection and had not constructed any new super structure as alleged by the plaintiffs. In fact, the plaintiffs have to be evicted from the land belonging to the PWD as encroachers. In fact already, the surveyor surveyed the suit property in R.S.No.68 on 11.04.1997 and the boundary line between the PWD lands and the private patta land were fixed. The building construction work is already over, as such prayer in this suit has become infructuous. Further the present suit is

also barred by the principles of *res judicata*, since the same subject matter in the suit have already been raised by the same plaintiffs in O.S.No.483 of 1997 before the same Court. Therefore, he prayed for dismissal of the suit.

9. Both the suit were clubbed together by the trial Court. On the side of the plaintiffs, they examined P.W.1 to P.W.3 and were marked Ex.A.1 to Ex.A.37. On the side of the defendants no one was examined and no documents were marked. The Advocate Commissioner's report and rough sketch were marked as Ex.C.1 to Ex.C.6. 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 both the suits filed by the plaintiffs. Aggrieved by the same, the plaintiffs filed appeal suits in A.S.Nos.81 of 2001 & 63 of 2001 before the II Additional District Judge, Erode. The first appellate Court also dismissed both the appeals by confirming the judgment and decree passed by the trial Court. Aggrieved over the same, the plaintiffs preferred these present second appeals.

10. At the time of admission of second appeal in S.A.No.2037 of 2002 on 31.12.2003, the following substantial question of law were formulated for consideration:-

"1. Have not both the Courts below committed an error of law in holding that the boundary line is fixed in the suit property?

2. Have not both the Courts below committed an error of law in holding that the land in dispute was not encroached by the respondents?"

11. In the second appeal in S.A.No.2038 of 2002, at the time of admission on 31.12.2003, the following substantial question of law were formulated for consideration:-

"1. Have not both the Courts below erred in holding as to the appellants/plaintiffs have not prescribed their title over the land by adverse possession?

2. Are not the judgment of both the Courts below vitiated by absence of any finding as to the judgment and decree in O.S.No.120/82 which was a reasoned one in respect of the adjacent land and the same is binding on the respondents?

3. Have not both the Courts below committed an error of law in holding that the appellants are encroachers and

trespassers and they could be removed only by due processes of law?"

12. The learned Senior Counsel appearing for the appellants/plaintiffs submitted that the plaintiffs are in possession and enjoyment of the suit property from the year 1956 viz., after acquisition, till filing of the suit without any disturbances or hindrances. Therefore, they are perpetuated with title by adverse possession. In fact, the defendants encroached the patta land belonging to the plaintiffs and had constructed super structure. The Courts below completely relied upon the Advocate Commissioner's report and concluded that already boundary line was fixed between R.S.No.4/8A/94 and R.S.No.68. The learned Senior Counsel, to substantiate his submission, relied upon the following reported judgment of the Hon'ble Division Bench of this Court :-

1. 1998 (2) LW 571 - Charles Hereward Simpson and ors Vs. The Government of Tamil and ors.

2. 2019 (4) CTC 936 - Ravinder Kaur Grewal & ors Vs. Manjit Kaur & ors.

13. Per contra, the learned Government Advocate appearing for the respondents/defendants submitted that the suit property was also acquired for the purpose of laying L.B.P branch canal and the father of the plaintiffs had already received the compensation. Thereafter, again they encroached the portion of the land which was acquired by the defendants. In fact, the entire land already was surveyed by the survey department and fixed the boundaries between the PWD land and patta land. Only after determining the boundary, the Hydrology Sub-division had constructed super structure for the purpose of weather report, climatic condition, rainfall, sun shine, wind velocity, flood evaporation loss, temperature, humidity, etc. He further submitted that already the plaintiffs filed suit in O.S.No.483 of 1997 for permanent injunction and mandatory injunction along with compensation and as such the principles of resjudicata applies and the second suit for injunction is not at all maintainable in the eye of law. Further both the Courts have already held as against the plaintiffs and concluded that they are not entitled for any relief as sought for. Therefore, he prayed for dismissal of bot the suits.

14. Heard Mr.T.Murugamanikam, learned Senior Counsel appearing for the appellants/plaintiffs and Mr.S.Jaganathan, learned Government Advocate (CS) appearing for the respondents/defendants.

15. The plaintiffs deposed that the plaintiffs and their predecessor are the absolute owner of the northern portion of the land in Survey No.54 in Kumilanparappu Village, Erode Taluk,

and the middle portion of that land has been acquired for the L.B.P canal and the acquired portion is numbered as land Survey No. 54/2. In the acquired portion, the government had dug out L.B.P branch at channel and a jeep road was formed on north of that channel. On the immediate north of that jeep road, the plaintiffs and their predecessors in title and have been in continuous possession and enjoyment of nearly 23 cents on the northern portion in Old S.R.No.54/2, R.S.F.No.68, by using it as a cattle yard and cattle shed, manur pits, buildings, for shops bath room etc., and as an agricultural lands along with their adjoining patta land old S.F.No.54/4, R.S.F.No.65/8-A, 9-A in Kumilanparappu Village from 1956 onwards without any disturbance.

16. While being so, the third respondent and their men attempted to disturb the plaintiffs' peaceful possession and enjoyment of the said portion by putting acquisition stone on the northern side of the jeep road. Since the plaintiffs are in possession and enjoyment of the property for more than 40 years, they are perfected their title by way of adverse possession against the defendants. The B memo proceedings have no value and usual notice has been given with false allegations. After filing this suit and after the Advocate Commissioner had visited the suit property, the respondents destroyed the crops belonging to the plaintiffs worth about Rs.2,000/- and also stolen away the trees and caused damages to the plaintiffs' property more than Rs.8,000/-. They also constructed a new building in the suit property and a basement for compound wall. The defendants have no right to construct any building in the suit property which belonging to the plaintiffs by way of adverse possession. The plaintiffs have entitled to claim compensation for the stolen property and damages caused by the defendants. Therefore, the suit filed for permanent injunction, mandatory injunction and also claimed damages.

17. Admittedly in the year 1954, the suit property and the L.B.P. canal land were acquired by the defendants and the compensation was received by the father of the plaintiffs. Even in the year 1954 itself, the acquired property was surveyed and fixed the boundary line by laying stones. Further no revenue documents were produced for the suit property, which were allegedly possessed by the plaintiffs. In fact, adjacent on the either side of the canal was let out as vacant to maintain canal. In the said place, the defendants constructed Hydrology climatic sub-division to note weather report, climatic condition, rainfall, sun shine, wind velocity, flood evaporation loss, temperature, humidity, etc.

18. In fact, P.W.2 agriculturalist deposed that no houses are situated nearer to the suit property and it is classified as

porambokku and it is not belonged to the plaintiffs or the PWD. Though P.W.3 deposed that there are shops constructed by the plaintiffs and enjoyed by the plaintiffs, the plaintiffs did not mark any revenue documents to show that the shops and the land belonging to them. Therefore it is clear that the plaintiffs encroached the suit property belonging to the government and in fact, the land which was acquired by the government was duly compensated to the father of the plaintiffs, and thereafter the construction was put up by the defendants in the land belonging to the PWD. It is also proved from the report submitted by the Advocate Commissioner. Further the construction put up by the Hydrology climatic sub-division would not cause any disturbances or hindrances to the plaintiffs or to the general public. It was constructed only after obtaining necessary permission and approval from the concerned department.

19. The learned Senior Counsel appearing for the appellants/ plaintiffs contended that the plaintiffs are perfected with title by way of adverse possession and cited the judgement of the Hon'ble Division Bench of this Court reported in 1998 (2) LW 571 in the case of Charles Hereward Simpson and ors Vs. The Government of Tamil and ors., which reads as follows :-

"25. In Sivasubramanya v. The Secretary of State for India in Council (1886) I.L.R. 9 Mad. 285, a Bench of this Court countenanced that where a tract of land with a defined boundary has been throughout claimed by a person as owner and acts of ownership have been done on various portions of it, such acts may be accepted as evidence of possession of the whole tract. We feel obliged to make extracts of the following passages:

Physical possession is a pure matter of fact, and there is nothing peculiar about it, but in order that it may generate ownership, it is necessary that the possessor should hold the thing exclusively, and for himself as owner.

The exclusive holding is a physical fact, and when it is united with the intention to hold for himself as owner, it becomes such as will generate a title by prescription. When we speak of actual possession, we refer to the fact as in union with the intention to hold as owner. On the other hand, when a particular act is done

upon a thing with the belief that another is its owner and not with the intention to hold as owner, and when the particular act has been continuously done for the period fixed by the law of prescription, the person doing the act acquires a legal right to do that act though the thing upon which it is done is in other respects under another's dominion. It should also be observed that when there is an intention to hold a thing as owner, it is not necessary that it should be enjoyed in any particular way, but it is sufficient that some overt act is done upon the thing in the execution of such intention. In *Clark v. Elphinstone* 9 I.L.R. 6 A.C. 164 it was observed by the Privy Council that it was not necessary that some act should always be done upon the spot in dispute itself, but that it was enough if some overt acts of ownership were done in relation to that spot, as, for instance, enclosing it.

.....

35. The Judicial Committee in *Secretary of State v. Debendra Dal Khan* A.I.R. 1934 P.C. 23, dealing with a case of prescription of title by adverse possession against the Crown in a portion of a river, observed as follows:

The classical requirement is that the possession should be *nec vi nec clam nec precario*. Mr. Dunne for the Crown appeared to desiderate that the adverse possession should be shown to have been brought to the knowledge of the Crown, but in their Lordships' opinion there is no authority for this requirement. It is sufficient that the possession be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. If the rights of the Crown have been openly usurped it cannot be heard to plead that the facts were not brought to its notice. The Limitation Act is indulgent to the Crown in one respect only, namely, in requiring a much longer period of adverse

possession than in the case of a subject; otherwise there is no discrimination in the statute between the Crown and the subject as regards the requisites of adverse possession. It may be added that it is not necessary in order to establish adverse possession that the proof of acts of possession should cover every moment of the requisite period. Though the possession, be not proven to have continued every quarter, month or year, yet ordinary possession will be sufficient ad victeem causi, albeit it be proposed in the terms of a continual possession quia probats extremres prasesumuntur media, if the distance be not great. Stair's Institutions of the Law of Scotland, 4, 40, 20."

20. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India reported in 2019 (4) CTC 936 in the case of Ravinder Kaur Grewal & ors Vs. Manjit Kaur & ors., which reads as follows :-

"50. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by reentry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

.....सत्यमेव जयते.....
60. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties

dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

61. 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 law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person, who is filing the suit. It only restricts a right of the owner to recovery of possession before the period of limitation.

21. Whereas in the case on hand, the suit property was also acquired by the defendants and thereafter some portion of the land encroached by the plaintiffs by putting up cattle shed, manur pits, buildings, for shops bath room etc. Further time to time, the defendants also issued B memo. Therefore, it cannot be construed that the plaintiffs are in continuous possession without disturbances by the defendants. Further the plaintiffs also did not produce any piece of evidence to prove their continuous possession and enjoyment more than 30 years. Therefore, the above judgments are not helpful to the case of the plaintiffs.

22. Hence, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the

considered opinion that no substantial question of law involved in these appeals. Be that as it may, all the substantial questions of law formulated by this Court in both the Second Appeals, are answered in favour of the defendants and as against the plaintiffs.

23. In fine, both the second appeals are dismissed by confirming the judgment and decree of the Courts below. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts
To

1. The II Additional District Judge,
Erode.
2. The Principal District Munsif,
Erode.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to M/s.P.T.Ramadevi, Advocate Sr.7093
+1cc to the Government Pleader Sr.6858

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