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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.03.2020

CORAM: The Hon'ble Mr. Justice N. Seshasayee

S.A.No.663 of 2001

Pachiammal (died) ..Appellant/Respondent/Plaintiff
2.Selvaraj
3.Dhanalakshmi
4.Thavamani
5.Chandra
6.Minor Mahalingam,
Minors Rep by its Natural
Guardian and Mother Chandra,
[Appellants 2 to 6 brought on record
as LRS of the deceased sole Appellant
Vide order of Court dated 18/12/2019
made in CMP.No.5016 to 5018/2019
inSA.No.663/2001) ...2 to 6 Appellants/LRs of the Sole Appellant

Vs.

1.Nachimuthu (died) ..1st Respondent/Appellant/Defendant
2.T.Ganesan ..2nd Respondent/3rd Party
3.Velathal
4.Smt.Kamakathal
5.Smt.Ponmani
6.N.Velusamy
7.Smt.Mylathal
8.N.Guruvayaruppan
9.N.Karuppusamy
10.N.Balasubramanian
11.Lakshmi
12.Gnanadevi

...3 to 12 Respondents/LRs of the 1st Respondent
[R2 impleaded Vide order of Court
dated 23.01.2009 made in
CMP.No.2132/08 in SA.663/01]
[RR3 to 12 brought on record as
LRS of the deceased R1 viz., Nachimuthu
Vide order of Court dated 18/12/2019
made in CMP.No.5019 to 5021/2019 in
SA.No.663/2001)



Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 27.11.2000 made in A.S.No.1 of 2000, on the file of the 4th Additional (Subordinate Judge Trainee) District Judge, Coimbatore, reversing the judgment and decree dated 24.11.1998 made in O.S.No.1741 of 1996, on the file of the II Additional District Munsif Court, Coimbatore.

For Appellants : Mr.Parthasarathy,
Senior Counsel
for M/s. Sarvabhuman Associates

For Respondents : R1-died & steps taken
Mr.S.Gunalan for R2

R3-refused
R4, R5 & R7-no such addressee

Mr.C.R.Prasanan
for R6, R8 to R10
R11 and R12 - out of station

JUDGMENT

The plaintiff who laid a suit for declaration of her title and for consequential injunction, having tasted success before the trial Court, but, suffered a reversal in the first Appellate Court, has come forward with this appeal. The parties would be referred to by their ranks before the trial court.

2.The suit property is described as a block of 6.21 acres of land comprised in S.F.No.107/1B. According to the plaintiff, this property belonged to a certain Kaliappa Gounder, that out of 6.21 acres of land, he had purchased 5.0 acres of land under Ext.A.1, sale deed, dated 22.11.1978 from the said Kaliappa Gounder. As to the remaining extent of 1.21 acres, the plaintiff claims title by adverse possession. When the plaintiff faced resistance from the defendant, the suit came to be laid.

3.The contention of the defendant is that:

- Sy.No.107/1 had a total extent of 22.37 acres, and this belong to Kaliappa Gounder, the vendor of the plaintiff and his brother Velusamy Gounder. They partitioned this block of 22.37 acres under Ext.B.1, Partition deed dated 21.02.1973, in which Velusamy Gounder was allotted 12.97 acres and Kaliappa Gounder was allotted 9.40 acres.



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- On the very date of the said partition deed, under Ext.B.2, sale deed a certain Krishnasamy Gounder, the father-in-law of the defendant, had purchased 6.0 acres from Velusamy Gounder. Later, this block of 6 acres (covered under Ext.B.2) devolved on the defendant under a Will executed by Krishnasamy Gounder dated 11.09.1974.
- Subsequently, under Ext.B.5, sale deed, dated 04.12.1975, defendant purchased the remaining 6.97 acres left with Velusamy Gounder. With this sale, Velusamy Gounder's holding over 12.97 acres pursuant to Ext.B.1, partition deed was exhausted.
- Further, the defendant purchased 4.50 acres from Kaliappa Gounder under Ext.B.4, sale deed, dated 11.09.1974. With this sale, the balance area left with Kaliappa Gounder is 4.90 acres. The defendant has been in continuous possession and enjoyment of the entire property which Kaliappa Gounder and Velusamy Gounder owned except the 4.90 acres left with Kaliappa Gounder.

4.1 The dispute went to trial and before the trial Court plaintiff's husband was examined as P.W.1. She also examined her vendor Kaliappa Gounder as P.W.2 and also certain Palanisamy as an independent witness. For the defendant, he himself stepped into the witness box to examine himself as D.W.1. He also examined an independent witness as D.W.2. Both sides produced their title deeds which have already been referred to. And, to show their possession, they have produced adangal.

4.2. On appreciating the evidence, the trial Court decreed the suit on the twin pleadings of the plaintiff: 5.0 acres based on her title as per Ext.A.1 and 1.21 acres based on prescriptive title by adverse possession. When the matter reached the first Appellate Court at the instance of the defendant, the decree of the trial Court came to be reversed in entirety. Its line of reasoning is;

- a) that the plaintiff cannot prescribe title by adverse possession in terms of evidence since it has come out in evidence that the defendant has opposed title of the plaintiff even in 1990, which is six years prior to the institution of the suit in 1996.
- b) Secondly, the plea of adverse possession itself was taken belatedly, post trial, with inadequate material facts to constitute a valid plea of adverse possession. Aggrieved by the same, the plaintiff had moved this Court.

5.The appeal is admitted to consider the following substantial questions of law;



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1. Whether the lower appellate Court is correct in law in holding that the respondent has a right to the suit property in the face of the admission of the respondent that despite his request to the appellant to hand over possession immediately after her purchase she refused and more than 12 years had elapsed from that date?

2. Whether the lower appellate Court is correct in law in holding that adverse possession cannot be a basis to claim title which is against the provisions contained in Section 27 of the Limitation Act?

3. When the disputed portion is outside the property covered under the sale deed Ex.A1 under which the plaintiff claims and this portion is admittedly in the possession of the plaintiff from the date of her purchase to the knowledge of the respondent, whether the right of the respondent is not lost on account of adverse possession?

6. Mr. Parthasarathy, the learned senior counsel appearing for the appellants/plaintiff argued that even in terms of defendant's case Kaliappa Gounder was left with 4.90 acres and therefore, the plaintiff's title to this block of 4.90 acres cannot be denied. This apart, when the defendant preferred first appeal, he primarily focused on 1.21 acres, to which the plaintiff has claimed title through adverse possession, and it is not agitated that 10 cents is in excess of 4.90 acres in terms of the total extent covered by Ext.A.1. This would imply that the defendant has no dispute over the extent covered by Ext.A.1 and hence, the plaintiff cannot be denied title to the property covered under Ext.A.1. Turning to the second point, which relates to the plaintiff's claim of title over 1.21 acres, P.W.2, Kaliappa Gounder himself has deposed that he purported to convey 6.21 acres under Ext.A.1, and this 1.21 acres has all along been in his continuous possession and enjoyment. This aspect of the matter has not been adequately considered by the first Appellate Court, argued the learned counsel.

7. Mr. S. Gunalan, the counsel for the second respondent, the purchaser pendente lite from the appellants/plaintiff submitted that inasmuch as he is the purchaser pendente lite, and since his own purchaser is prosecuting this appeal and defending the title he has conveyed to the second respondent, he cannot add anything new to what is already on record and adopted the arguments of the learned counsel for the appellants.



8.1 Responding to the above arguments, the learned counsel for the respondents 6 & 8 to 10/defendant would argue that the defendant does not oppose plaintiff's title to whatever that was left to be conveyed by Kaliappa Gounder to the plaintiff. The entire dispute however pertains to 1.21 acres, which the plaintiff claims through adverse possession. On this score, plaintiff is a doubtful starter as she was not certain about her own title. In the plaint, as it originally stood, notwithstanding the fact that Ext.A.1 deals only with 5.0 acres, the plaintiff has pleaded that the property conveyed to her thereunder was 6.21 acres, and that the reference to 5.0 acres in the document could well be an error. However, after the conclusion of trial, the plaintiff amended the pleadings and altered her original stance and introduced a case of adverse possession. The trial Court however felt satisfied with the pleadings of adverse possession post the conclusion of trial as sufficient enough proof of what is pleaded. The first Appellate Court took a different view on this matter.

8.2. He added that, animus to hold the property against the interest of the original title holder, is only the primary criterion to decide adverse possession. Here is a plaintiff who has approached the Court but quite uncertain about her source of title, as she oscillates between the title derived under Ext.A-1 sale deed and adverse possession. This oscillation of the plaintiff as between the two options, both of which cannot co-exist in law, but still exercised, itself serves as adequate proof that the plaintiff was not sure about her own animus to hold the property adverse to the interest of the defendant.

9.1 On weighing the rival contentions, this Court has little difficulty in leaning in favour of the submission made on behalf of the respondents 6 & 8 to 10/defendant. If 22.37 acres as the total extent is kept a constant, and when both parties, more particularly, the plaintiff also traces her title to the same vendor as sourced by Ext.B.1, then, that which Ext.B.1 stipulates limits the plaintiff's scope to expand the extent that she has purchased under Ext.A.1. In effect, by defendant not objecting to the 10 cents covered in excess of Kaliappa Gounder holding in Ext.A.1, the plaintiff has given 10 cents, which Kaliappa Gounder did not hold. Substantial question No.3 is decided in favour of the appellant/plaintiff.

9.2 The only plea that is available for the plaintiff is adverse possession and as was very rightly contended by the counsel for the respondent, the plaintiff is seen oscillating as between the



two options. If a person claims title by prescription, then he should prove his actual physical possession coupled with requisite animus to hold it adverse to the interest of the true owner. There then ought to be certainty about one's mental state viz-a-viz the right claimed, and not vacillation. This vacillation is seen till the amendment was brought in the plaint pleading adverse possession. Substantial question Nos.1 and 2 necessarily fail.

10. To sum up, it has to be held that plaintiff's title to 5.0 acres which she has purchased under Ext.A.1 cannot be denied to her. In conclusion, this appeal is partly allowed. The plaintiff's right to 5.0 acres in terms of Ext.A.1 is hereby declared which right now enures to the advantage of her pendente lite purchaser, the second respondent. As to the rest, the Judgement of the first Appellate Court is confirmed.

11. In conclusion, the appeal is partially allowed and the decree of the first appellate court in A.S.No.1 of 2000, on the file of the 4th Additional District Judge, Sub Court, Coimbatore, reversing the judgment and decree dated 24.11.1998 made in O.S.No.1741 of 1996, on the file of the District Munsif Court, Coimbatore is modified to the extent indicated. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

tsg

To:

1.The IV Additional Sub Court, Coimbatore.

2.The District Munsif Court, Coimbatore.

3.The Section Officer

VR Section, High Court, Madras.



+1 CC to Mr.S.Gunalan, Advocate sr 21629
+1 CC to M/s. Sarvabhuma Associates sr 22373
+1 CC to Mr.C.R.Prasanan, Advocate sr 21856.

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SP (02/03/2022)