

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.02.2020
Pronounced On	01.06.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2636 and 2637 of 2011
and
M.P.Nos.1 and 1 of 2011

C.M.A.No.2636 of 2011

N.Kandayya Gounder ... Appellant/2nd respondent/
3rd defendant

Vs.

1.T.Ramaswamy .. 1st Respondent/1st Appellant/2nd Plaintiff
2.Annadurai .. 2nd Respondent/2nd Appellant/3rd Plaintiff
3.Smt.Sembayee Ammal .. 3rd Respondent/1st Respondent/1st Defendant
4.Smt.Angammal .. 4th Respondent/3rd Respondent/4th Defendant
5.Smt.Ettammal .. 5th Respondent/4th Respondent/5th Defendant
6.Smt.Lakshmi .. 6th Respondent/5th Respondent/6th Defendant
7.Smt.Saraswathi .. 7th Respondent/6th Respondent/7th Defendant
8.Suresh Kumar .. 8th Respondent/7th Respondent/8th Defendant
9.Savitha .. 9th Respondent/8th Respondent/9th Defendant
... Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of C.P.C., against the Order and Decree of the Sub Judge, Namakkal passed in A.S.No.1 of 2009 dated 25.02.2011 by reversing the judgment and decree in O.S.No.1624/81, dated 22.09.2008 on the file of District Munsif, Namakkal (in clause) by way of remand and set aside the same. सत्यमेव जयते

C.M.A.No.2737 of 2011

N.Kandayya Gounder ... Appellant/Respondent/Plaintiff

Vs.

1.Vasanth
2.Chitra
3.Mahalakshmi
4.Saravanan ... Respondents/Appellants 1 to 4/
Defendants 2 to 5/

Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of C.P.C., against the Order and Decree of the Sub Judge, Namakkal passed in A.S.No.2 of 2009 dated 25.02.2011 by reversing the Judgement and Decree in O.S.No.1624 of 1981, dated 22.09.2008 on the file of Additional District Munsif, Namakkal by way of remand and setaside the same.

In both Appeals

For Appellants : Mr.P.Gopalan

For Respondents : Mr.C.Jagadish, for R1 and R2
in CMA 2636/2011 No Appearance for RR3 to 9

in CMA 2637/2011 : Mr.C.Jagadish, for RR1 to 4

COMMON JUDGMENT

The appellant is the plaintiff in O.S.No.1624 of 1981. O.S.No.1624 of 1981 was originally filed against the defendants therein who are respondents in C.M.A.No.2637 of 2011. The appellant claims to have purchased the Suit Schedule Property under a sale deed dated 27.08.1981 marked as Exhibit A1 and thus claims right over the Suit Schedule Property.

2. The suit was contested by the respondents/defendants on the ground that they were using property from time in memorial and during the interregnum as per the grant in G.O.Ms.No.5086 dated 21.8.1973.

3. Respondents, in C.M.A.No.2636 of 2011 filed O.S.No.1664 of 1981 in a representative capacity on behalf of a Association of City Laundry Workers (Washermen). The vendor of the appellant one Sembayee Ammal, was the first defendant in O.S.No.1664 of 1981. The appellant herein was the third defendant in the said suit.

4. The claim and defence of the respondents in the respective suit was that the Suit Schedule Property in question in respect of which the plaintiff claimed declaratory relief and injunction was used as a place earmarked for washing and drying clothes for the benefit of members of the (Laundry worker) washerman Community. In the said second mentioned suit, the plaintiff therein i.e respondents in C.M.A.No. 2636 of 2011 had claimed adverse possession, over the property and therefore, claimed a declarative relief with consequential relief.

5. The trigger for filing O.S.No.1624 of 1981 was on account of the alleged threat by one of the defendants therein (respondents in C.M.A.No.2637 of 2011) to put up huts on the

Suit Schedule Property. Both the suits were tried together. The Trial Court framed the following issues in both the suits.

O.S.No.1624 of 1981

1. Where the plaintiff was in possession of the Suit Schedule Property?
2. Whether the plaintiff and the plaintiff's predecessor had absolute ownership over the Suit Schedule Property?, If so whether it was valid ?
3. Whether the suit was maintainable?
4. Whether the cause of action was true?
5. To what other relief:

Additional Issues:

- a) Whether the plaintiff had correctly valued the Suit Schedule Property and paid the correct court fee and whether the objection of the 1st defendant was correct or not?
- b) Did the Court have a pecuniary jurisdiction to hear the case?
- c) Whether the plaintiff was entitled for any other alternative relief i.e. for possession?

O.S.No.1664 of 1981

1. Whether the plaintiff's have been issued with patta and whether it was valid or not?
2. Whether the plaintiffs were in possession of the Suit Schedule Property?
3. Whether the 3rd defendant* had any right over the Suit Schedule Property as per antecedent title deeds & documents?
4. Whether the plaintiffs were entitled to any other relief?

Additional Issue

Whether the 3rd defendant* was correct in stating that the Court had no pecuniary Jurisdiction to try the suit?

(*the Appellant herein)

6. The trial Court by a common Judgment and decree dated 22.09.2008, decreed the suit filed by the appellant/Plaintiff in O.S.No.1624 of 1981 and dismissed O.S.No.1664 of 1981 filed in a representative capacity by the respondent in C.M.A.No.2636 of 2011. The Respondents in C.M.A.No.2636 of 2011 were directed to hand back the possession of the Suit Schedule Property to the Appellant.

7. Aggrieved by the common Judgment and decree passed by the trial Court in the two suits, the defendants in O.S.No.1624 of 1981 and 2nd and 3rd plaintiff in O.S.No.1664 of 1981 had filed A.S.Nos.2 & 1 of 2009 respectively before the Sub Court, Namakkal. By a common Judgment and separate decrees both dated 25.02.2011, the said Court disposed both the appeals which are impugned in these two appeals (hereinafter referred as the Appellate Court).

8. The Appellate Court framed the following point for determination:

Whether the Judgment and decree of the Trial Court are liable to be set-aside and remitted back to the Trial Court?

9. I have considered the arguments advanced by the learned counsel for the appellant and the respondents.

10. The Suit Schedule Property in question was part of Namakkal Zamin which was sold by Namakkal Zamin Tharani Meenabu Ammal to one Venkatrama Iyer and another person in the year 1934 vide exhibit P3 dated 20.10.1934.

11. In 1948, the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 was enacted and the property in the said Namakkal Zamin was taken over by the Government of Tamil Nadu on 12.01.1951. Property in Survey No.359/47 was carved out from Survey No.359/1 and therefore stood registered as a Karadu Poramboke as per the Zamin Estates Account and was later sub-divided as Survey No. 359/72.

12. Though the land was taken over by the Government of Tamil Nadu, the said Venkatrama Iyer sold the Suit Schedule Property measuring to an extent of 0.12 acres vide Ex.A2 Sale deed dated 2.11.1961 to the appellant's predecessor in title namely Sambayee Ammal. सत्यमेव जयते

13. Since the land was situated in non-ryoti area, the settlement authorities had assigned the land in favour of the said Sambayee Ammal vide Exhibit A-4 dated 21.01.1969.

14. During the interregnum vide Exhibit B5 G.O.M.S.No.5086 dated 21.8.1973, patta over the suit schedule properties was granted in favour of the Namakkal Dhobbies Association of which the respondents are members and thereby cancelled the patta granted to the said Sambayee Ammal Vide Exhibit A4 dated 21.01.1969. It is during subsistence of G.O.M.S.No.5086 dated 21.08.1973, the appellant purchased the Suit Schedule Property vide Exhibit A1 dated 27.08.1981 from the said Sambayee Ammal

without even examining whether the said Sambayee Ammal was in possession of the property.

15. Though the said Sambayee Ammal had already sold the property to the appellant, she filed W.P.No.5425 of 1982 before this court which culminated in an order of this Court in Exhibit A10 dated 26.07.1982. The said Sambayee Ammal thereafter filed SLP No.14320 of 1989.

16. The Honorable Supreme Court vide Exhibit A 14 dated 06.04.1995 allowed the appeal and thus restored the decision of the Board of Revenue dated 21.01.1969 in Exhibit A4 conferring patta to the appellant's vendor namely Sambayee Ammal.

17. Thus, it is evident that the entire litigation both before this court in the writ proceeding and the Honourable Supreme Court was spearheaded by the appellant and not by the said Sambayee Ammal though she had lost her right over the Suit Schedule Property after she sold the land to the appellant vide Exhibit A1 dated 27.08.1981.

18. It appears that neither the said Sambayee Ammal nor the appellant were in possession of the Suit Schedule Property and that the property was used by the members of the dhobi community from time in memorial for washing and drying clothes. The respondents purportedly belong the said community.

19. Though the suit was originally filed by the appellant for declaration that the appellant was entitled to rights over the suit schedule properties in terms of Section 19A of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and for a consequential injunction to restrain the defendants in O.S.No.1624 of 1981 (the respondents in C.M.A.2637 of 2011/appellants in A.S.No.2 of 2009) from putting up construction.

20. During the pendency of the two suits, the appellant also filed I.A.No.1095 of 2000 to amend the plaint in O.S.No.1624 of 1981 for an alternate relief for recovery of possession of the Suit Schedule Property from the respondents in the event it was held that the appellant was not in possession of the Suit Schedule Property. The application was allowed by the trial court.

21. Before the Trial Court a plea was taken by the respondents in C.M.A.No.2636 of 2011 who were the plaintiff in O.S.No.1664 of 1981 (the 2nd Suit) herein that they were in adverse possession of the Suit Schedule Property for over 60 years and therefore even if the appellant had obtained a sale deed from the said Sambayee Ammal, the rights of the respondents

which was being enjoyed by them along with the members of the community from time in memorial would come in the way of grant relief to the appellant.

22. During the course of the proceedings before the trial court an Advocate Commissioner was also appointed who submitted reports vide Exhibit CW1 and 2 dated 10.08.1982. As per the report of the Advocate Commissioner, there was no house whatsoever over the Suit Schedule Property and that during his 2nd visit he found a dilapidated house facing the north strewn with coconut leaves and sugarcane leaves meant for being used as roof over the dilapidated house.

23. Exhibit A1 dated 27.08.1981 is the sale deed under which the appellant purchased the Suit Schedule Property from the said Sambayee Ammal.

24. The respondents have claimed adverse possession over the property from time immemorial and that pursuant to exhibit B5 G.O.Ms.No.5086 dated 21.08.1973 the members of the City Laundry Workers (Washermen) community were given rights over the property.

25. The fact that W.P.No.5425 of 1982 was filed challenging the Exhibit B5, G.O.Ms.No.5086 dated 21.08.1973 in the year 1982 shows that it was filed after Exhibit A1 dated 27.08.1981 was executed in favour of the appellant. Though the writ was filed by the appellant's predecessor Sembayee Ammall, the litigation was sponsored and steered by the appellant.

26. Merely because Exhibit B5 G.O.Ms.No.5086 dated 21.08.1973 was eventually set aside by the Honourable Supreme Court as a result of Exhibit A4 dated 21.01.1969 was restored by itself would not ipso facto mean that the respondents could not plead adverse possession particularly in the light of the fact that rights were conferred and recognised by the Government.

27. Further, Exhibit P1 dated 27.08.1981 sale which has given rise to the two suits were filed only on 26.11.1981 and 2.12.1981 respectively, which were immediately after the execution of Exhibit P1 dated 27.08.1981. Therefore, 1st Appellate court has come to a correct conclusion to remand the case back to the Trial court for proper determination of fact as to whether the respondents had adverse possession or not over the disputed property.

28. As per the decision of the Honourable Supreme Court in Anathula Sudhakar Vs. P.Buchhi Reddy, 2008 (6) CTC 237, where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. However where there is a mere interference with the plaintiff lawful possession or threat of his possession, it is sufficient to sue for an injunction simplicitor. Whether the respondents encroached into the property after the filing of the suit or just before filing of the suit or whether they were using from time in memorial ought to have been examined by the Trial Court. Neither the appellant nor the respondents have produced any evidence as to who was in possession of the Suit Schedule Property. It appears that Suit Schedule Property was a vacant land which was used for drying clothes by member of City Laundry Workers (Washermen).

29. In this case, admittedly the Government issued G.O.Ms.No.5086 dated 21.08.1973 vide Exhibit B5 and it is during the subsistence of the said government order, the appellant has purchased the property in the year 1981 vide Exhibit A1 dated 27.08.1981.

30. Thus, there is a doubt as to whether the sale deed executed in favour of the appellant was valid or not at that point of time. Perhaps it is for this reason only the appellant had filed a suit for a declaration that the appellant had a valid title over the Suit Schedule Property in terms of Section 19A of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. In Ravinder Kaur Grewal and Others vs. Manjit Kaur and Others, (2019) 8 SCC 729, the Hon'ble Supreme Court after considering the law on the subject, has held as follows:

10 " It is apparent from the aforesaid decision that a person is entitled to bring a suit of possessory title to obtain possession even though the title may vest in a third person. A person in the possessory title can get injunction also, restraining the defendant from interfering with his possession."

20. There is an acquisition of title by adverse possession as such, such a person in the capacity of a plaintiff can always use the plea in case any of his rights are infringed including in case of dispossession.

46. The conclusion reached by the High Court is based on an inferential process because of

the language used in the IIIrd Column of Article 65. The expression is used, the limitation of 12 years runs from the date when the possession of the defendant becomes adverse to the plaintiff. Column 3 of Schedule of the Act nowhere suggests that suit cannot be filed by the plaintiff for possession of immovable property or any interest therein based on title acquired by way of adverse possession. There is absolutely no bar for the perfection of title by way of adverse possession whether a person is suing as the plaintiff or being sued as a defendant. The inferential process of interpretation employed by the High Court is not at all permissible. It does not follow from the language used in the statute. The large number of decisions of this Court and various other decisions of the Privy Council, High Courts and of English courts which have been discussed by us and observations made in Halsbury's Laws based on various decisions indicate that suit can be filed by the plaintiff on the basis of title acquired by way of adverse possession or on the basis of possession under Articles 64 and 65. There is no bar under Article 65 or any of the provisions of the Limitation Act, 1963 as against a plaintiff who has perfected his title by virtue of adverse possession to sue to evict a person or to protect his possession and plethora of decisions are to the effect that by virtue of extinguishment of title of the owner, the person in possession acquires absolute title and if actual owner dispossesses another person after extinguishment of his title, he can be evicted by such a person by filing of suit under Article 65 of the Act. Thus, the decision of Gurdwara Sahib v. Gram Panchayat Village Sirthala [Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630] and of the Punjab and Haryana High Court cannot be said to be laying down the correct law. More so because of various decisions of this Court to the contrary.

31. The Hon'ble Supreme Court further observed as under:-

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 the right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry 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.

59. 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.

32. Since the sale deed itself came to be executed just before the filing of the suit, the trial court ought to have examined whether the respondents were entitled to take a defence of adverse possession. Therefore, I do not find any merit in the

present Civil Miscellaneous Appeal. The appellant has delayed the trial though the 1st Appellate Court has come to the correct conclusion on facts and circumstances of the case that the issue would require a fresh examination by the trial court after examining the following two issues:-

1. Whether the defendants in O.S.No.1624 of 1981 and the plaintiff in O.S.No.1664 of 1981 are entitled to relief of adverse possession?
2. Whether the O.S.No.1624 of 1981 was barred by limitation in respect of adverse possession of the Suit Schedule Property?

33. In the light of the above discussions, I am of the view that both the appeals are liable to be dismissed. Under the circumstances, the trial court is requested to take up the case expeditiously in terms of the order and decree dated 25.02.2011 of the Appellate Court, namely Subordinate Court at Namakkal passed in Appeal Nos.1 and 2 of 2009.

34. The appellant and the respondents shall co-operate with the trial court so as to facilitate the trial court to come to a fair conclusion on facts and law within a period of fifteen months from the date of receipt of a copy of this order.

35. Both the appeals stand dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul/Jen

To

1. The Sub Judge, Namakkal
2. The Additional District Munsif, Namakkal.
3. The Record Keeper,
V.R.Section, Madras High Court, Chennai.

C.M.A.Nos.2636 and 2637 of 2011

VBA (CO)
CS/04/11/2020