

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2019
DATE OF VERDICT : 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1988 of 2004
and C.M.P.No.16605 of 2004

1. R.Segar(died
2. Girija
- 3.Senthil Kumar
- 4.Madhankumar

...Appellants/2nd Appellant/2nd Defendant

(Appellants 2 to 4 brought on record as LR's of the deceased sole appellant viz., R.Segar vide order of court dated 10.12.2019 made in CMP.No.21664 to 21666 of 2017 in SA.No.1988 of 2004(GKIJ)

Vs.

- 1.Thiagarajan
- 2.Vinayagam
- 3.Dhanalakshmi
- 4.Radhakrishnan
- 5.Balasubramanian
- 6.Murugaiyan
- 7.R.Pradhaban
- 8.Kasthuri

...Respondents 1 to 6/
Respondents 3 to 7/2nd Plaintiff/3rd Parties

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 19.08.2003, in A.S.No.55 of 1980 on the file of the Principal District Court, Pondicherry, confirming the decree and judgment dated 18.02.1980 in O.S.No.124 of 1976 on the file of the Additional District Munsif Court, Pondicherry.

For Appellants : M/s.A.Nilaphar
For M/s.R.Meenal
For Respondents
For R1, 3 to 6 : Notice served

For R2,7 & 8 : Not ready in notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 19.08.2003, in A.S.No.55 of 1980 on the file of the Principal District Court, Pondicherry, confirming the decree

and judgment dated 18.02.1980 in O.S.No.124 of 1976 on the file of the Additional District Munsif Court, Pondicherry.

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

3. The case of the plaintiffs in brief is that the plaintiffs are the owners of the suit schedule property and it was purchased on 22.06.1948 by the first plaintiff, who is the elder brother of the second plaintiff from one, Muthiahmudaliar. From the date of purchase, they were in possession and enjoyment of the property as absolute owners for more than five years. Thereafter their relative, namely maternal uncle was permitted to reside there for his avocation. The plaintiffs left the place and went to different places in Pondicherry as well as Tamil Nadu. After two years the maternal uncle also had left the suit property. At that juncture, utilising the absence of the plaintiffs, the defendant's father Ramanatha Mudaliar trespassed into the suit property and started putting up a thatched hut. At that time, the first plaintiff happened to be present at Pondicherry came to knowledge about the same and objected from putting further construction in the suit schedule property. Again, the first plaintiff went to Pondicherry for his avocation. The suit schedule property remained vacant land and taking advantage of the absence of the plaintiffs, the defendants are being the sons of the said Ramanatha Mudaliar have trespassed into the property as if it was purchased by them. Hence, the plaintiffs filed the suit for recovery of possession and injunction.

4. The defendants resisted the plaintiffs' case by stating that they are in possession and enjoyment of the property bearing cadastre No.2011-bis 6/26, which does not belong to the plaintiffs. They are in possession and enjoyment of the property for more than sixty years through their ancestors from their purchase of the suit schedule property from their vendors. Patta also issued in the name of one Vadivelu Mudaliar. After his demise, from the grand sons of the said Vadivelu Mudaliar, the suit property was purchased by the wife of the first defendant, and the second defendant. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 to P.W.7 were examined and ten documents were marked as Ex.A.1 to Ex.A.10. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.8 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial court allowed the suit and ordered recovery of possession and also permanent

injunction as against the defendants. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal suit in A.S.No.55 of 1980 before the Principal District Court, Pondicherry. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree dated 18.02.1980 passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

"a) Whether in law the Courts below are right in not recognising the adverse possession of the appellant when even on their own admission, respondents 1 to 6 could not produce any proof of their even intervening with his possession.

b) Whether in law the Courts below are right in granting a decree for recovery of possession when declaration of title was not sought even though the plaintiffs' title was disputed vide 1998 (1) CTC 501."

6.1 After hearing the learned counsel for the appellants, the following additional question of law is framed.

c) Whether the suit is barred by limitation for the prayer of recovery of possession?

7. Though the respondents were served notice, they have not appeared in person or through counsel. Duly instructed, the names of the respondents are printed in the cause list.

8. Elaborating on the questions of law, the learned counsel appearing for the appellants submitted that even according to the plaintiffs they purchased the suit schedule property by the sale deed 24.06.1948 and was marked as Ex.A.1 and since the date of purchase, they were in possession of the property for five years and thereafter they went to some other places in Pondicherry and Tamilnadu for their avocation. Thereafter their maternal uncle was in possession and enjoyment of the suit schedule property for a period two years and thereafter he also left the suit schedule property. Therefore from the year 1948, only for a period of seven years, they were in possession and enjoyment of the suit schedule property. Thereafter even according to the plaintiffs, the father of the defendants trespassed into the property and in possession and enjoyment of the suit property. Therefore, from the year 1955

onwards, the defendants as well as their father were in possession and enjoyment of the suit property. Though they purchased from their vendors subsequent to the sale deed of the plaintiffs dated 28.01.1976, vide registered sale deed marked as Ex.B.4 and Ex.B.5, they were put in possession and enjoyment of the suit property. Therefore, the plaintiffs were in absolute knowledge about the possession and enjoyment of the suit property by the defendants and their father even from the year 1955 onwards. Even then, the plaintiffs did not file any suit within a period 12 years for recovery of possession and permanent injunction as against the defendants. Therefore, the suit is barred by limitation.

8.1. Further, she submitted that in respect of the first substantial questions of law, the defendants are entitled for adverse possession since they were in possession and enjoyment of the suit property from the year 1955 onwards. Admittedly, the suit was filed in the year 1976 to prove their possession and enjoyment of the property. The defendants marked the Ex.B.1 to Ex.B.8. Admittedly the suit is filed for recovery of possession and as such the possession and enjoyment of the suit property by the defendants is clearly admitted by the plaintiffs after a period of seven years from the date of their sale namely 24.06.1948.

8.2. She further submitted that when the plaintiffs as well as the defendants purchased the suit schedule property by two different sale deeds on two different dates, the suit for recovery of possession alone is not maintainable without the prayer of declaration. According to the plaintiffs, they purchased the suit property by the sale deed dated 24.06.1948 from one, Muthiamudaliar. According to the defendants, originally the suit property owned by one, Vadivelu Mudaliar. After his demise his grand sons partitioned the property and executed sale deed in favour of the first defendant's wife, namely Kasthuri and the second defendant by the sale deed dated 28.01.1976, which was marked as Ex.B.4 and Ex.B.5. Though the sale deed were executed on 28.01.1976, their father was put in possession in the year 1955 and the father is in continuous possession. The defendants are being his sons are in possession and enjoyment of the property till today. Therefore, the suit itself is not maintainable without the prayer of declaration.

8.3. To support of her contention, the learned counsel appearing for the appellant relied upon the following judgments :-

(i) Govindammal (died) and 3 others
Vs. Arumugham reported in 1998 (1) CTC 501

(ii). Gothamchand Jain Vs. Arumugam
Alias Tamilarasan reported in (2013) 10 SCC
472.

9. Heard M/s.A.Nilaphar, learned counsel appearing for the appellants.

10. This Court considered the rival submission made by the learned counsel for the appellants.

11. In the light of the above discussion, it is found that it is the case of the plaintiffs that the suit property was purchased on 24.06.1948 from one, Muthiamudaliar by the first plaintiff. The second plaintiff is the elder brother of the first plaintiff. Since the date of purchase, the plaintiffs were in possession and enjoyment of the suit property as absolute owners for a period of five years and thereafter they left the suit property and had gone to some other places in Pondicherry and Tamil Nadu for their avocation. Thereafter their maternal uncle was in possession and enjoyment of the suit schedule property for a period of two years and again he also had left the suit property. Thereafter the father of the defendants trespassed into the property. According to the defendants, they purchased the suit schedule property from the grand sons of one, Vadivelu Mudaliar by the sale deed dated 28.01.1976. Even before their sale deed, their father was put in possession and enjoyment of the suit schedule property in the year 1955 itself. Thereafter he obtained permission to put up construction from the revenue authorities by the permission letter dated 22.03.1965. In fact, the plaintiffs themselves averred that after a period seven years, from the date of purchase of the suit schedule property, the father of the defendants trespassed into the suit schedule property. Therefore, the defendants and their father were in possession and enjoyment of the suit schedule property from the year 1955 onwards. By the permission granted by the revenue authorities dated 22.03.1965, they constructed house and assessed to house tax. The house tax is periodically paid by the defendants and it is proved by Ex.B.7. Ex.A.2 advocate's notice dated 27.02.1976 averred as follows:

"That they were in possession and enjoyment of the property as absolute owners thereon for more than five years and thereafter my clients relative was permitted to reside their. That my clients had left the place in search of their work as masons to undertake jobs at different places in Pondicherry and in Tamil Nadu. That after two years that the relative of my clients also left the suit property and that it remained vacant. That at this juncture,

taking advantage of the absence of my clients, your father Ramanatha Mudaliar trespassed into the property and started putting up thatched hut."

Therefore, it is clear that the defendant's father was in possession from the year 1955 onwards, namely after a period of seven years from the date of purchase of the suit schedule property by the plaintiffs.

11.1. The first plaintiff was examined as PW1, who categorically deposed that after purchase of the suit property, they were in possession and enjoyment for five years and thereafter their maternal uncle was in possession for a period of two years. Thereafter the father of the defendants trespassed into the suit property. Therefore, it is clear that the defendants and their father are in possession and enjoyment of the suit property from the year 1955 onwards.

11.2. Unfortunately, the trial court concluded that from the date of purchase from the year 1948 onwards, the plaintiffs were in possession and enjoyment for a period of five years and thereafter their material uncle was in possession for a period of two years. Thus, the plaintiffs proved their possession of the suit property. Their right has become time barred, namely within a period of thirty years. On the date of filing of the suit, they have proved their possession. In this regard, to find out whether the period of limitation is applicable under the French Code of Civil under Article 2262 of French Code Civil or under Article 54 of Limitation Act, 1963.

11.3. The learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court of India 2013 (10) SCC 472, wherein it is held as follows:

7. We may notice that de jure merger of the erstwhile French Territory of Pondicherry took place on 16.8.1962 following the Treaty of Cession concluded between France and India on 28.5.1956 establishing the cession of the French Establishments by France to India in full sovereignty. The Parliament enacted the Pondicherry (Administration) Act, 1962 (Act 49 of 1962) to provide for the administration of Pondicherry and for matters connected therewith. The said Act came into force on 15.12.1962. Section 4 of the Pondicherry (Administration) Act, 1962 deals with continuance of existing laws and their adaptation, which reads as under:

4.Continuance of existing laws and their adaptation.- (1) All laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent Legislature or other competent authority:

Provided that references in any such law to the President or Government of the French Republic shall be construed as references to the Central Government, references to the Governor of the French Establishments in India, to the Commissioner of the Republic for the French Establishments in India, to the Chief Commissioner for the French Establishments, to the Chief Commissioner of the State of Pondicherry or to the Chief Commissioner, Pondicherry shall be construed as references to the Administrator of Pondicherry and references to the State of Pondicherry shall be construed as references to Pondicherry.

(2) For the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may, within three years from the appointed day, by order, make such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made.?

8. By the Fourteenth Amendment to the Constitution, which came into force on 20.12.1962, in the First Schedule to the Constitution under the heading "II. The Union Territories?", after entry 8, the following entry was inserted, namely:

"9. Pondicherry : The territories which immediately before the sixteenth day of August, '96, were comprised in the French Establishments in India known as Pondicherry, Karaikal, Mahe and Yanam."

Later, by the Pondicherry (Alteration of Name) Act, 2006, instead of "Pondicherry", the word "Puducherry" was inserted with effect from 1.10.2006.

9. The Government of Union Territories Act, 1963 (Act 20 of 1963) was enacted to provide for Legislative Assemblies and Ministries for the Union Territories. It received the assent of the President on 10.5.1963. The Limitation Act, 1963 was passed by the Parliament on 5.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Clause 2 of Section 1 of the Limitation Act, 1963 says that it extends to the whole of India except the State of Jammu and Kashmir. Since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the then Pondicherry. The Limitation Act, 1963, consequently, came into force in the Union Territory of Pondicherry on 1.1.1964.

10. The question that we have to consider is whether, by virtue of the Limitation Act, 1963, the French Law of Limitation which had been in force till 1.1.1964, was in any manner repealed or modified by the Limitation Act, 1963. We can draw considerable sustenance from the ratio laid down by this Court in *Syndicate Bank* (supra), wherein, we have already indicated, this Court considered the interaction between the provisions of the Indian Limitation Act, 1963 vis-à-vis Article 535 of the Portuguese Civil Code. In that case, this Court held as follows:

"20. In any event, as noticed above, the Portuguese Civil Code, in our view, could not be read to be providing a distinct and separate period of limitation for a cause of action arising under the Indian Contract Act or under the Negotiable Instruments Act since the Civil Code ought to be read as one instrument and cause of action arising therefrom ought only to be governed thereunder and not otherwise. The entire Civil Code ought to be treated as a local law or special law including the provisions pertaining to the question of

limitation for enforcement of the right arising under that particular Civil Code and not de hors the same and in this respect the observations of the High Court in Cadar Constructions that the Portuguese Civil Code could not provide for a period of limitation for a cause of action which arose outside the provisions of that Code, stands approved. A contra approach to the issue will not only yield to an absurdity but render the law of the land wholly inappropriate. There would also be repugnancy insofar as application of the Limitation Act in various States of the country is concerned: Whereas in Goa, Daman and Diu, the period of limitation will be for a much larger period than the State of Maharashtra ? the situation even conceptually cannot be sustained having due regard to the rule of law and the jurisprudential aspect of the Limitation Act."

11.4. In the above judgment, the Hon'ble Supreme Court of India has held that the Pondicherry (Extension of Laws) Act, 1968 as amended, has adopted several such legislations in the Union Territory of Pondicherry, but the Act which governs limitation is the general law of the land that is the Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Limitation Act, 1963. In the above judgment, the suit was filed for specific performance and it squarely applies to the case on hand, since the Limitation Act came into existence from 01.01.1964, and the French Law of Limitation which had been in force till 01.01.1964. The Hon'ble Supreme Court of India considered this aspect from the ratio laid down in the case of Syndicate Bank Vs. Prabha D.Naik reported in (2001) 4 SCC 713, wherein it is held that the interaction between the provisions of the Limitation Act, 1963, specify vis-a-vis Article 535 of the Portuguese Civil Code . Accordingly, after the Limitation Act, 1963, the French Code Civil is not applicable to the Limitation.

11.5. Admittedly, the suit was filed in the year 1976. Even according to the plaintiffs, the defendants trespassed into their property in the year 1955 and as such the plaintiffs ought to have filed the suit within a period of twelve years from the date of alleged trespass. As contemplated under Article 65 of the Limitation Act, 1963, the limitation to file the suit for recovery of possession is within a period of twelve years, when

the possession of the defendants became adverse to the plaintiff on the sale deed. Thus, the suit filed by the plaintiffs is clearly barred by limitation and it is liable to be dismissed.

11.6. Admittedly, both the plaintiffs as well as the defendants have purchased the same suit schedule property by different sale deeds and both are claiming the title over the same. When it being so, the plaintiffs ought to have filed a suit for declaration and recovery of possession, whereas the plaintiffs filed suit for recovery of possession alone without the prayer of declaration and as such the suit for recovery of possession alone is not maintainable. In this regard, the learned counsel for the appellants cited the following judgment of this Court in the case of Govindammal (died) and 3 others Vs. Arumugham reported in 1998 (1) CTC 501, wherein it is held as follows:

"7. I have carefully considered the submissions of the learned counsel appearing on either side in the light of the judgments of the Courts below and the conclusion recorded by them. Having regard to the observation found in paragraph 7 of the judgment of the Trial Judge. I looked into the documents Exs.A1 and A2 as also Ex.B2 and the evidence of PW 1 to find out the veracity or correctness of the statements found made and noticed in the judgment of the learned Trial Judge on the basis of those documents. A careful, analysis would go to show that the suit for recovery of possession straightaway itself is a misconceived remedy in the facts and circumstances of the case and it was inappropriate also for the learned trial judge as also the first appellate judge, who have chosen to deal with the claim of the parties as though it is for declaration of title when it was only a bare suit for recovery of possession in which the question of prima facie title alone can be gone into incidentally. No final adjudication or declaration of title can be made."

11.7. Thus, the suit for recovery of possession alone cannot be sustained as against the defendants, when the defendants specifically averred that they are in possession and enjoyment of the property which is not the suit property and also which do not belong to the plaintiffs.

11.8. The courts below concluded that the suit property is covered under Ex.A1 and Ex.A.3 and not in Ex.B.4, Ex.B.5 and

Ex.B.8 and thus, the plaintiffs alone have title, interest and right over the suit property. Further, there is no plea in the written statement as to the date of commencement of adverse possession. But to claim title over the property by prescriptive right, one has to prove that he is in possession and enjoyment of the property continuously and uninterruptedly in a specified time. As decided above, the French Civil Code is not applicable to the case of the plaintiffs and as such the period of limitation is calculated under Article 65 of the Limitation Act, 1963. Accordingly, the defendants proved their possession from the year 1955 onwards. Whereas the suit was filed only in the year 1976 and thus, the defendants proved their possession and enjoyment over the suit schedule property for more than 12 years. Thus, defendants proved their continuous and uninterrupted and hostile to title of the true owner and thereby perfected the title to the suit property by adverse possession.

11.9. Unfortunately both the courts below having considered the evidence of PW1 and the Ex.A.2 decreed the suit in favour of the plaintiffs. The failure on the part of the courts below advert to the documentary evidence had lead to them, passing the decree which ought not to have been granted in favour of the plaintiffs. Be that as it may, the substantial questions of law and the additional substantial question of law are answered in favour of the appellants concluding that the suit filed by the plaintiffs is not maintainable as barred by limitation under Article 65 of the Limitation Act, 1963.

12. In fine, the second appeal is allowed, and the judgments of the courts below are set aside. Accordingly, the suit in O.S.No.124 of 1976 on the file of the Additional District Munsif Court, Pondicherry is dismissed. Since the respondents have not appeared before this Court, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
सहायमेव जयते

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Court,
Pondicherry

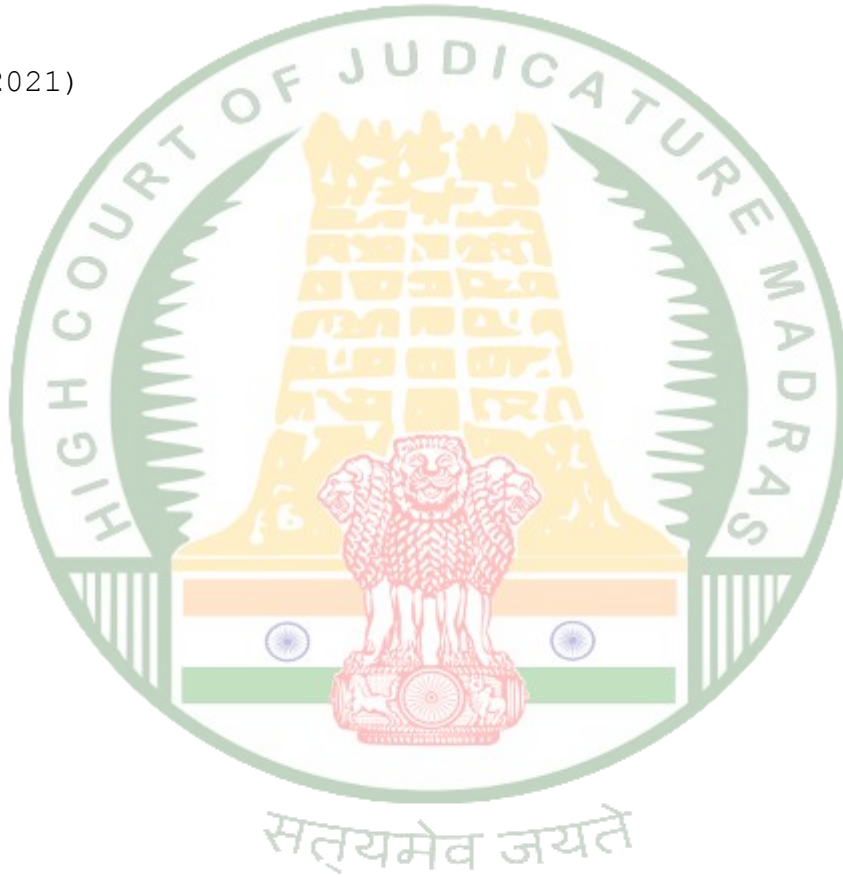
2. The Additional District Munsif Court,
Pondicherry.

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Madras High Court,
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+1 Cc to Mr.S. Venkatachalam, Advocate sr 1611.

S.A.No.1988 of 2004
and C.M.P.No.16605 of 2004

PPA (CO)
SP (23/04/2021)



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