



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 14.12.2020	DELIVERED ON 17.12.2020
------------------------	-------------------------

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1365 of 2010

AND

M.P.No.1 of 2010

O.Muralidharan ... Appellant/Appellant/Plaintiff

/versus/

Chevalier T.Thomas Educational Trust
Rep. By Managing Trustee L.Palamalai,
16, St.Mary's Road, Perambur,
Chennai-11.

... Respondent/Respondent/Defendant

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 03.08.2009 made in A.S.No.136 of 2008 on the file of the learned VII Additional City Civil Judge, Chennai, confirming the judgment and decree dated 14.08.2007 in O.S.No.2250 of 2003 on the file of the learned IV Assistant Judge, City Civil Court, Chennai.

For Appellant :Mr.P.Sidharthan

For Respondents: Mr.S.Vennimalai

J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is filed by the plaintiff against the concurrent findings of the Courts below in a suit for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property except by due process of law.

2. The appellant herein as plaintiff pleaded that he is in occupation of suit premises measuring a total extent of 700 sq.ft. South West portion of premises bearing No.117, Raghavan Street, Perambur, Chennai 11, since 1984. He cleaned up the



bushes/premises and put up construction thereon in the portion marked as "ABCDEF" in the rough sketch annexed to the plaint. In the front portion, he is running a Tailor shop and in the rear portion, he is residing continuously since 1984. He has perfected his title by adverse possession. The defendant is running a school in the adjacent premises to evict the plaintiff by force claiming that they have title over the property. The cause of action arose on 17.04.2003 when the defendant's men threatened the plaintiff to evict, when they have no right to interfere with the peaceful possession of the plaintiff.

3. The defendant filed the counter resisting the suit claiming that the suit property belongs to them and the plaintiff was a licensee under them carrying on canteen for the school in the suit property. The construction belongs to the Trust. As a permissive occupant, the plaintiff was allowed in the suit property and he cannot claim adverse possession. Since there is no cause of action disclosed in the plaint, the suit has to be rejected under Order 7 Rule 11 C.P.C.

4. The trial Court, after framing issues took up the trial. Two witnesses for the plaintiff and one witness on behalf of the defendant were examined. 13 Exhibits were marked in support of the plaintiff. 7 Exhibits were marked in support of the defendant.

5. The trial Court held that the suit property belongs to the defendant Trust. The property was purchased by the defendant under the Sale Deed dated 02.08.1978 marked as Ex.B4. The defendant is running a School in the said premises and paying the tax to the Corporation. When the defendant has caused eviction notice to the plaintiff, the plaintiff has sought time to find an alternative place and vacate the premises. There are evidence to show the plaintiff was enjoying the electricity from the service connection of the defendant school. Since the plaintiff has failed to vacate the premises as promised, subsequent notice was issued on 05.03.2003. Therefore, the plea of adverse possession is not sustainable. Further, the trial Court held that the plaintiff has trespassed into the suit property and being a trespasser, he is not entitled for the equitable relief of injunction.

6. On appeal, the First Appellate Court confirmed the trial Court judgment and decree and dismissed the appeal.

7. In the appeal filed against the concurrent findings of the Courts below, the learned counsel for the appellant submit that the appellant has clearly proved through evidence that he had been in occupation of premises for more than 12 years. 13 exhibits marked on behalf of the plaintiff in support of his



possession in the suit property not been properly considered by the Courts below. Having held that the plaintiff is in possession of the property, he cannot be evicted without due process of law. Against the settled principles of law, both the Courts have denied the relief.

8. The consent letter alleged to have been executed by the plaintiff was obtained by the defendant, when the plaintiff was in the police custody. The same fact has been admitted by D.W.1 in his evidence. While so, the Courts below erred in holding the plaintiff a trespasser. When the Law clearly specify that the occupant in possession of a property cannot be dispossessed without due process of law and the plaintiff had been in settled possession for more than 19 years from the date of instituting the suit, he cannot be evicted without due process of law.

9. Per contra, learned counsel for the defendant/Respondent submitted that in the plaint, the appellant had specifically denied the title of the defendant and sought for injunction on the basis of adverse possession. He had claimed himself a trespasser cleared the bush and put up construction at his cost. However, in his reply notice document Ex.B1 dated 15.02.2002, the plaintiff has admitted the ownership of the defendant and sought time to vacate the premises. Suppressing the true fact, suit filed on false averment. While so, the possession and protection sought on the basis of adverse possession, cannot be granted in view of the suppression of fact. When there is no substantial question of law involved in the second appeal, the appeal has to be dismissed.

10. Learned counsels appearing on either side had cited the following judgments to buttress their respective argument.

11. Learned counsel for the appellant referring the judgment of the Hon'ble Supreme Court reported in AIR 2004 SC 4609, Rame Gowda (D) by L.Rs. vs. M.Varadappa Naidu (D) by L.Rs., submitted that a person in peaceful possession is entitled to retain his possession and protect the same even against the true owner. On going through the judgment, this Court finds that after referring the earlier judgment, the Apex Court has settled the proposition of law as under:

"9.It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may



WEB COPY

refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. (Emphasis added) In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of



WEB COPY

possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

12. Learned counsel for the respondent relied upon 2020 SCC Online (SC) 676, Nazir Mohamed vs J.Kamala and others, wherein the Apex Court has held that to entertain an appeal under Section 100 of CPC, there must be a substantial question of law. When there is no substantial question of law to formulate, the High Court shall not entertain the second appeal.

13. On considering the rival submissions and the citations relied by them, this Court formulate the below substantial question of law for consideration:

"Whether the courts below right in holding that the appellant is a stray trespasser and not in settled possession of the suit property?"

14. The case as pleaded by the plaintiff is that he on his own occupy the said premises and cleared the bushes and had put up construction in the year 1984 and in occupation since then, without any interruption. Only in the year 2003, the defendant tried to evict him by use of force. Hence, sought for protection of an equitable relief of permanent injunction. In support of his case, he has filed 13 documents. His contention is that he has perfected title occupying the premises and enjoying the same openly and hostile to the real owner for more than 12 years. In contradiction to his claim, the defendant has relied upon Ex.B1 dated 15.02.2002, wherein the plaintiff has accepted the title of the defendant and agreed to vacate the premises, soon after he gets an alternative site. This one document singularly enough to show that the plaintiff was not in occupation of the premises adverse to his title holder. Recognising the ownership of the defendant, the plaintiff in the year 2002, had accepted to vacate the said premises. While so, the very foundation of the plaintiff case that he has perfected the title by adverse possession falls to ground.



15. The contention of the plaintiff that Ex.B1 was obtained under coercion in the police station. This theory not believed since, if it is true, the suit should have been filed soon after Ex.B1 and not after more than one year. In the light of the said fact, the contrary theory projected by the defendant gain significance that the plaintiff was permitted to occupy the premises by the previous Trustee who happen to be his relative. If the plaintiff had on his own occupy the premises, there is no necessity for him to promise to vacate the premises after he get a suitable accommodation. Further, from the evidence of P.W1 as well as P.W.2 in the cross-examination, they admitt that the defendant is the title holder of the suit property.

16. No doubt, the law is very clear and well settled that person in settled position is entitled for an injunction even against the true owner however, for such prayer, there must be a valid cause of action. However, long the possession, it will become an adverse possession, only if such possession is open, continuous and hostile to the owner. Ex.B1, letter of the plaintiff proves that the element of hostility against the true owner is not in the present case. The property belongs to the respondent trust and due to dispute among the trustees, the litigation has begun after the scheme decree by the High Court in O.S.A.No.49 of 1995 in April 2002. Taking advantage of the dispute among the trustees, the plaintiff, who had recognised the title of the trust in the year 2002, had turned around to claim adverse possession.

17. On an imaginary cause of action, suit for injunction restraining the defendant from evicting him without following due process of law has been filed. On facts, both the courts have held that the plaintiff is not entitled for the relief of injunction and dismissed the suit, since his possession does not fall within the meaning of settled possession. It does not mean that the defendant can take law in his own hand and throw away the plaintiff. Since the cause of action as projected in the plaint was not proved to grant the equitable relief, on facts, both the courts have dismissed the suit.

18. Relief cannot be granted for asking, unless the person who pleads prove the case. In this case, the plaintiff has pleaded settled possession and sought injunction. Neither the settled possession nor cause of action to grant injunction been proved by the plaintiff. Therefore, there is no error in the judgment of the courts below. From the evidence, it is clear that the plaintiff was not in settled possession of the property but casual act of trespass not recognised by the true owner. When the true owner has requested the trespasser to vacate, the plaintiff has promised to vacate through Ex.B1 and later filed



the suit in the year 2003, as if he had been in continuous uninterrupted possession for more than 19 years and the superstructure was put up by him. Neither his continuous possession nor allegation that he put up the construction were proved. Therefore, the substantial question of law framed is held against the plaintiff.

19. In the result, the Second Appeal is dismissed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri
To:

1.The VII Additional City Civil Judge,
Chennai.

2.The IV Assistant Judge, City Civil Court,
Chennai.

+lcc to Mr.P.Sidarthan, Advocate Sr.41513

S.A.No.1365 of 2010

pm[co]
srg 31/08/2021