



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.01.2020

PRONOUNCED ON : 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)No.945 of 2006

WEB COPY

1.Iqbal Ahmed (died) ... 1st Appellant / 2nd Respondent /
3rd Defendant

2.Sayeedunisa
3.Shamiyen Sahib
4.Abdul Wahab
5.Mohammed Ismil

... Appellants 2 to 5

(A-2 to A-5 are brought on record as LRS., of the deceased A-1 vide order dated 10.11.2008 made in M.P.(MD)No.1 of 2007 in S.A.(MD) No.945 of 2006)

Vs.

1.Saroja
2.R.S.Manohar
3.R.S.Thamizhselvan
4.R.S.Rajakumaran
5.Rahmathullah Ansari

... Respondents 1 to 4 / Appellants /
Lrs. As per order in I.A.No.313 of 2003
... 5th Respondent / 1st Respondent /
2nd Defendant

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 06.02.2004 passed by the learned Subordinate Judge, Trichirappalli in A.S.No.21 of 2003 which was filed against the judgment and decree of Principal District Munsif, Trichirappalli, dated 25.07.2002 in O.S.No.216 of 1990.

For Appellants	: Mr.V.Raghavachari
For R1	: Expired
For R2 to R4	: Mrs.A.L.Ganthimathi, for Mr.A.Saravanan
For R5	: No Appearance

JUDGMENT

Aggrieved over the judgment of the First Appellate Court, reversing the judgment of the trial Court, dismissing the suit, the present Second Appeal is filed.

2.The parties are referred to as per their rank before the trial Court.



3.The brief fact, leading to file this Second Appeal, reads as follows:-

The first plaintiff and one Pattaye Ammal have purchased the suit property from one Muthuramalinga Thevar on 29.03.1979. Thereafter, in a oral partition between the said Pattaye Ammal and the first plaintiff, the suit property was allotted to the first plaintiff. The first plaintiff has changed the revenue records in her name and she is also running a Rice and Flour Mill in the suit property. Besides, the first plaintiff's ancestors are also in possession of the suit property and perfected the title by adverse possession. It is stated by the first plaintiff that originally, the suit property belonged to one Palaniyappa Thevar and he has executed a settlement deed dated 24.03.1960 in favour of his son, namely, Muthuramalinga Thevar and the said Muthuramalinga Thevar was in enjoyment of the suit property and was running Rice and Flour Mill in the suit property and in the year 1953, after obtaining permission from the authorities, they put up a construction in the suit property. The defendants are stranger to the suit property. The south side of the suit property belonged to Durga. When the first plaintiff was trying to put up a new construction, the defendants have prevented the first plaintiff. Again, the defendants were trying to encroach upon the suit property. In a reply statement, it is stated by the first plaintiff that the vendor has right to sell the property and the first plaintiff and their ancestors are in possession of the property more than the statutory period. The alleged compromise decree entered between the said Muthuramalinga Thevar and the defendants also denied and the patta was also issued in the name of the said Muthuramalinga Thevar. Hence, the suit has been filed for bare injunction.

4.It is the case of the defendants that the alleged sale in favour of the first plaintiff is denied. It is the contention that the said Muthuramalinga Thevar had no title whatsoever to sell the property. Originally, the suit property belonged to the defendants' ancestors. The said Muthuramalinga Thevar was inducted as tenant. Since one Sivasubramaniya Thevar and Palaniyappa Thevar had put up a construction without permission, a suit has been filed by one Mohideen Ansari in O.S.No.785 of 1953. The above suit was decreed as per the compromise entered between the parties, wherein the said Muthuramalinga Thevar had agreed to vacate the suit property, within a period of 12 years and to pay monthly rent of Rs.7/- and he had also agreed that the value of the superstructure to be paid by the landlord. In the event of failure to pay that amount after 12 years, the said Muthuramalinga Thevar shall continue as tenant in the suit property. Therefore, it is the contention that either on the land or superstructure, the said Muthuramalinga Thevar did not have any title. The first plaintiff has put up a construction only after obtaining interim injunction in the suit. The alleged trespass is also denied. Hence, they prayed for dismissal of the



5. On the basis of above pleadings, the trial Court has framed relevant issues. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A.1 to A.17 were marked. On the side of the defendants, D.W.1 was examined and Exs.D.1 to D.4 were marked. The trial Court, after analyzing the evidences, has found that the said Muthuramalinga Thevar, vendor of the first plaintiff was only tenant in the suit property, therefore, he had no right whatsoever to execute the sale deed in favour of the first plaintiff. Further, the alleged Will executed by the first plaintiff in favour of the second plaintiff is also not proved in the manner known to law and one of the attesting witnesses has also not been examined. Similarly, the alleged adverse possession has also not been proved. The trial Court has also found that once a person inducted as a tenant, the question of possession become adverse does not arise at all, hence, dismissed the suit. Whereas, the First Appellate Court has held that since the possession has not been taken as per the compromise decree, the plaintiffs' predecessor has become owner of the property. Therefore, the first plaintiff has acquired title by virtue of sale deed and the Will has also been proved. Since they are in possession of the property, the First Appellate Court had allowed the appeal and granted permanent injunction.

6. While admitting the Second Appeal, the following substantial questions of law have been framed:-

"1. Whether the First Appellate Court was correct in not framing appropriate points for adjudication as per Order XLI Rule 31 of C.P.C.?"

2. Is not the Lower Appellate Court in error in ignoring to apply the doctrine of estoppel embodied in Section 116 of the Evidence Act?; and

3. Whether the plaintiffs are not estopped from claiming adverse possession against defendants when their vendor having admitted their tenancy with the defendants predecessor i.e., whether a tenant can claim adverse possession against his landlord or his successor?."

7. The learned counsel appearing for the appellants vehemently contended that the First Appellate Court has erred in granting permanent injunction as against the owner. Exs.B.1 and B.2 clearly show that the said Muthuramalinga Thevar was only inducted as tenant in the suit property. He has agreed to vacate the suit property, within a period of 12 years from the date of decree passed in previous suit in O.S.No.785 of 1953. It is specifically agreed between the parties that in the event of the plaintiffs in previous suits failed to pay the value of the superstructure put up by the tenant, namely, Muthuramalinga Thevar, he shall continue only as a tenant till the amount is paid. Therefore, he himself admitted as tenant in the suit property, his possession will not become adverse

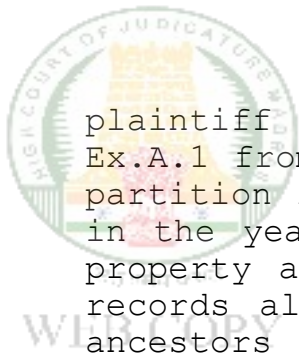


and he was estopped from claiming that he has acquired title by adverse possession. Admittedly, the present plaintiffs are claiming right on the basis of the alleged sale deed executed by the said Muthuramalinga Thevar on 29.03.1979. The said sale deed did not convey any title to the suit property. It is the case of the plaintiffs that in a oral partition, the property came to the first plaintiff and from the date onwards, she is in possession of the suit property. Therefore, it is the contention of the appellants that the first plaintiff did not get any title on the basis of the sale deed, since the vendor himself did not have any title to convey the property. Hence, it is the contention that the finding of the First Appellate Court that the vendor has perfected the title to the adverse possession, is against the fundamental principles of law. It is also submitted that the compromise deed clearly indicates that the said Muthuramalinga Thevar shall continue as tenant only. Such being the position, the question of acquiring adverse possession by the tenant agreed to be remained as tenant does not arise at all. Further, the question that the first plaintiff claimed to have purchased the property in the year 1979 and perfected the title by adverse possession, also does not arise at all. The suit is of the year 1990, hence, it is the contention that the trial Court has correctly analyzed the facts and dismissed the suit, whereas, the First Appellate Court has reversed the finding, which is against the settled position of law, hence, prayed for allowing the appeal. The First Appellate Court has also held that the Will executed by the first plaintiff in favour of the second plaintiff is proved, which is also perverse without any evidence. Hence, he prayed for allowing the appeal.

8.The learned counsel appearing for the respondents submitted that the documents filed on the side of the plaintiffs clearly shows that the first plaintiff is continuously in possession of the suit property and the settled position has been clearly established and his contention that the vendor of the plaintiff has also perfected the title by adverse possession. Though under Ex.B.1 vendor has recognized as tenant and has to vacate the property within a period of 12 years from the date of judgment, no action whatsoever taken to recover the possession from the tenant. The evidence of P.W.1 also clearly shows that no rent whatsoever collected from him. Such being the position, when he was in possession more than the statutory period, he has acquired title by adverse possession. Therefore, the sale deed in favour of the first plaintiff is valid in the eye of law. Hence, he prayed for dismissal of the appeal.

9.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the entire plaint, pleadings and evidences.

10.The plaint has been filed for permanent injunction, claiming independent right on the basis of Ex.A.1 sale deed dated 29.03.1979. It is the case of the plaintiffs that the first



plaintiff and one Pattaye Ammal have purchased the property under Ex.A.1 from one Muthuramlinga Thevar. Thereafter, there was a oral partition in between the said Pattaye Ammal and the first plaintiff in the year 1984 and the first plaintiff was allotted to the suit property and she is in enjoyment of the suit property and revenue records also mutated. It is also pleaded in the plaint that her ancestors are living in the suit property more than 100 years. Therefore, she has perfected the title by adverse possession. On entire perusal of the plaint, it is seen that in Paragraph No.5 though it is pleaded that their ancestors in title have been continuous possession for more than 100 years, the fact what way the first plaintiff is connected to such ancestors has not been pleaded. It is the case of the defendants that the suit property belonged to their ancestors. The said Muthuramalinga Thevar was inducted only as tenant. Since one Sivasubramaniya Thevar and Palaniyappa Thevar had put up constructions without permission, a suit has been filed in O.S.No.785 of 1953 by the father of the second defendant and their predecessors in title against one Sivasubramaniya Thevar, Muthuramalinga Thevar and Palaniyappa Thevar for recovery of possession. The above suit was decreed as per the compromise entered between the parties, wherein, the said Muthuramalinga Thevar was shown as the second defendant, recognizing himself as tenant in the suit property with right to sub lease the property for a period of 12 years from the date of decree. It is also agreed that the said Muthuramalinga Thevar shall surrender the possession of the property at the end of 12 years to the plaintiffs in the previous suit and the plaintiffs in the previous suit have to pay the prevailing market value towards superstructure. He also agreed that if the plaintiffs in that suit does not the value of the superstructure at the end of 12 years, the second defendant in that suit shall remain as tenant, till such payment is given and therefore, the suit was decreed. Therefore, their contention is that once the said Muthuramalinga Thevar was inducted the suit property as lessee, he is estopped from claiming title of the owners.

11.This Court has also perused the document Ex.B.1. The second defendant in the previous suit is one Muthuramalinga Thevar and he has recognized himself as tenant under the plaintiffs' ancestors and agreed to pay rent, besides agreed to vacate the premises within a period of 12 years, on receiving the value of the superstructure. It is also agreed that in the event of failure to pay the value of the superstructure, he shall continue as tenant only. Ex.B.1 and B.2 clearly proved the above facts. Therefore, when the said Muthuramalinga Thevar was inducted as tenant and allowed to continue as tenant, till receives the value of superstructure put up by him, he certainly estopped from denying right of the landlord and setting up adverse possession against the real owners. In this regard, it is relevant to refer Section 116 of the Indian Evidence Act.



"116.Estoppel of tenant; and of licensee of person in possession.-

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

12.A careful reading of the above Section makes it very clear that once a person was inducted as tenant or a person claiming through such tenant during the continuance of the tenancy shall not be permitted to deny title of the landlord.

13.Exs.B.1 and B.2 make it very clear that the first plaintiff himself recognized only as tenant in the suit property. Merely because the rents have not been paid, that cannot be a ground to hold that he has perfected the title. Ex.B.1 makes it very clear that till the value of the superstructure is paid by the plaintiff in earlier suit, the said Muthuramalinga Thevar shall continue as tenant.

14.Such being the position, his status always continued as tenant, even assuming that no rent has been collected, the value of the superstructure has not been paid by the defendants' predecessor in title. Therefore, the question of acquiring title by adverse possession did not arise at all. The possession of the said Muthuramalinga Thevar was permissive one and there is no evidence as to when his possession became adverse to real owner. The first plaintiff claims to be the subsequent purchaser and set up an independent title under Ex.A.1. In the absence of any evidence to show that the said Muthuramalinga Thevar had perfected the title adverse to the real owners, the sale deed did not convey the title to the first plaintiff. The first plaintiff did not derive any such right under Ex.A.1. It is the case of the plaintiffs that only in the year 1979, they purchased the property, thereafter, the first plaintiff was allotted to entire suit property in oral partition and she has mutated the revenue records and she is in possession of the property. It is to be noted that even assuming that she is in possession from the year 1979, the period of 12 years is not over and the suit is of the year 1990. Therefore, merely on the basis of the invalid document, when the first plaintiff is in possession, she can claim title by adverse possession. To prove such adverse possession, there must be a specific overt act as against the real owner. Admittedly, she has purchased the property from the tenant, she did not derive title to the suit property on the basis of Ex.A.1. Even assuming that her possession was continuous and open, the plaint allegation itself clear that the defendants are stranger to her. Therefore, her possession at any event cannot be construed



as open and hostile and adverse to the knowledge of the true owners. To constitute adverse possession, the plaintiffs must establish that their possession was open, continuous, hostile and uninterrupted, such hostile title is with the knowledge of the real owner. Therefore, the plea of adverse possession cannot be sustained in law.

15. Similarly, it is the case of the plaintiffs that the first plaintiff has executed a Will in favour of the second plaintiff under Ex.A.6. The trial Court has clearly found that though one of the attesting witness died and other witness is in America, the same has not been proved and no efforts whatsoever taken to examine and further, she has not established whether she is really in America at the relevant point of time. Therefore, the trial Court has rightly held that the Will has not been proved in the manner known to law. Whereas, the First Appellate Court without considering the above aspect, has simply believed the Will and held that the said Muthuramalinga Thevar has perfected the title to the property. Therefore, the first plaintiff has derived title. Such finding of the First Appellate Court is without any basis. As already discussed, once the said Muthuramalinga Thevar became tenant and continued as tenant as per the decree and judgment passed in the earlier suit filed Exs.B.1 and B.2, his possession never become adverse.

16. The decree further makes it clear that as long as value of superstructure is not paid by the owners, he shall continue only as tenant and pay the agreed rent. Such being the position, it cannot be said that he has perfected the title by adverse possession. Therefore, the finding of the First Appellate Court is certainly required to be interfered and accordingly, the substantial questions of law are answered in favour of the appellants. Admittedly, the defendants are the legal heirs of the plaintiffs, who have filed the earlier suit and they are the true owners. Such being the position, there cannot be any permanent injunction against true owners. At the same time, though the plaintiffs are in possession based on the invalid document and other receipts also filed to prove their possession, the plaintiffs cannot be thrown out without due process of law. It is for the defendants to take recourse of law to evict them.

17. With the above observations, this Second Appeal is allowed and the judgment of the First Appellate Court is set aside and the decree of the trial Court is restored. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1.The Subordinate Judge,
Trichirappalli.

2.The Principal District Munsif,
Trichirappalli.

3.The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.A.SARAVANAN, Advocate (SR-2433[F] dated 22/01/2020)

+1 CC to Mr.V.RAGAVACHARI, Advocate (SR-3122[F] dated 27/01/2020)

+2 CC to Mr.A.SARAVANAN, Advocate (SR-3240[F] dated 27/01/2020)

**Judgment made in
S.A. (MD) No. 945 of 2006
27.01.2020**

VB(18.02.2020) 8P 10C