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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON:08.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1508 of 2008
and
M.P.Nos.1 & 2 of 2008

Abdul Latheef Maricar,
S/o, Mohammed Salih Maricar,
No.5, Vannara Street,
T.R.Pattinam,
Karaikal.

... Appellant/Plaintiff

Vs.

1. Aisa Beevi,
W/o, Shahul Hameed,
No.345, Gandhi road,
T.R.Pattinam,
Karaikal.

2. Sait @ Abdul Kafoor,
S/o, Not Known,
No.345, Gandhi road,
T.R.Pattinam,
(Set Exparte)

... Respondents/Defendants 1 & 2

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.37 of 1992 dated 29.06.2007 on the file of the Additional District Judge, Pondicherry at Karaikal, in reversing the judgment and decree passed in O.S.No.255 of 1990 dated 12.12.1991 on the file of the Principal District Munsif, Karaikal.

For Appellant : Mr.R.Natarajan

For R1 : Mr.P.K.Sabapathi

For R2 : No appearance
Set exparte vide order dated 25.02.2021



J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 29.06.2007 passed in A.S.No.37 of 1992 on the file of the Additional District Court, Pondicherry at Karaikal, reversing the judgment and decree dated 12.12.1991 passed in O.S.No.255 of 1990 on the file of the Principal District Munsif Court, Karaikal.

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

3. The plaintiff in O.S.No.255 of 1990 is the appellant in this second appeal.

4. Suit for declaration, possession, damages and future damages.

5. The case of the plaintiff in brief is that he is the owner of the suit property by virtue of the sale deed dated 04.02.1976 executed in his favour by his parents, who are the predecessors in title and were in the possession and enjoyment of the suit property till the date of the abovesaid sale and pursuant to the abovesaid sale, the plaintiff took the possession of the suit property and enjoying the same and a room in the front portion of the property was leased out to the second defendant, who is running a tea stall therein and the second defendant is regularly paying the rent to the plaintiff and the remaining portion of the suit property is in the occupation of the first defendant and she is residing therein with her family. On 07.07.1985 and on 14.10.1986, the plaintiff sent notices to the first defendant, calling upon her to vacate and hand over the vacant possession of the suit property as she was in chronic wilful default in the payment of rent, and despite the receipt of the notices, the first defendant neither replied to the same nor complied with the demand made therein. The plaintiff filed the eviction petition against the first defendant under section 10(2) of the Pondicherry Buildings [Lease and Rent Control] Act 1969 in HRCOP No.14/87 and the first defendant contested the said petition and disputed the title of the plaintiff qua the suit property and also putforth the contention that no landlord-tenant relationship existed between the plaintiff and the first defendant. The Rent Controller dismissed the abovesaid HRCOP on 16.06.1988 on the ground that the landlord-tenant relationship between the plaintiff and the first defendant was not established. However, the Rent Controller has directed the plaintiff to move the Civil Court and get his title declared and seek appropriate reliefs. The order the Rent Controller as abovestated became final. Since there is no landlord-tenant relationship between the plaintiff and the first defendant qua the suit property, the first defendant's occupation of the suit property is illegal and



she has become the trespasser. The first defendant has no title, right or interest over the suit property. The first defendant endeavored to enter her name in the assessment register of the Panchayath relating to the suit property and also tried to receive the rent from the second defendant. On 26.08.1988, the plaintiff sent a notice to the first defendant calling upon her to vacate and hand over the vacant possession of the suit property under her occupation and also the copy of the same has been marked to the Panchayath concerned and the second defendant. The first defendant sent a reply containing false allegations and put forth the case that the superstructure in which she is residing was constructed at her own costs and residing therein since 1968 and contended that the notice sent by the plaintiff was not in accordance with law. The abovesaid contentions of the first defendant are totally false and unsustainable. The first defendant has not pleaded adverse possession. The revenue records qua the suit property stood in the name of the plaintiff's father prior to the sale deed dated 04.02.1976 and thereafter in the name of the plaintiff. The suit property if let out to rent, would fetch a sum of Rs.100/- per month and the first defendant is liable to pay the damages as well as the future damages and hence the suit for appropriate reliefs.

6. The first defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts and disputed the claim of the plaintiff that he is the owner of the suit property and according to her, the plaintiff is not the owner of the suit property and never been in the possession and enjoyment of the suit property and the alleged sale deed dated 04.02.1976 is a created document and no arrangement had been entered into between the plaintiff and the first defendant in respect of the suit property in her occupation. The order of the Rent Controller passed in HRCOP.No.14 of 1987 would not in any manner help the plaintiff to establish his title before the Civil Court. The house bearing door No.345 was constructed only by the defendant at her own costs and the same has also been decided by the Rent Controller. Therefore the plaintiff is estopped to contend that the suit house belongs to him. The site over which the house is situated is classified as Natham Poramboke, but it was a vacant site when the first defendant came there and she constructed the suit house and renovated subsequently on many occasions. The first defendant came to the place about 18 years ago and she is continuously living there considering the property to be her own openly. The plaintiff having failed to establish the landlord-tenant relationship, has filed the present suit falsely claiming title. The plaintiff has not filed his vendor's title deed to the suit property, hence the plaintiff is not entitled to seek any of the reliefs as claimed



in the plaint and the legal notice sent by the plaintiff has been suitably replied by the first defendant. Hence the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A18 were marked. On the side of the first defendant, D.Ws.1 and 2 were examined. No document has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions putforth by them, the trial court was pleased to grant the reliefs of declaration and possession prayed for by the plaintiff and dismissed the suit qua the claim for damages. Aggrieved over the judgment and decree of the trial court, the first defendant preferred the first appeal and the first appellate court, on an appreciation of the materials placed on record and the submissions putforth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the first defendant, dismissed the plaintiff's suit in entirety. Impugning the judgment and decree of the first appellate court, the second appeal has been preferred by the plaintiff.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(a) Whether the Lower Appellate Court is correct in framing the question of limitation de hors the pleadings made in the plaint and in the written statement with reference to the principle of adverse possession which being mixed with question of fact and law?

(b) Whether the Lower Appellate Court is right in basing its findings on the principle of adverse possession against the appellant at the instance of the first respondent/first defendant in the absence of the specific date from which the first defendant/first respondent being in possession of the suit property and in the absence of the name of the true owner against whom the first defendant/first respondent sets up her plea of adverse possession with knowledge of the true owner thereof?

© Whether the Lower Appellate Court is correct in rejecting the suit filed by the appellant/plaintiff for declaration, possession on the basis of the unilateral, reasoning that the relief of possession is barred without valid and cogent evidence on record justifying adverse possession and without reference to the relief of declaration though the Lower Appellate Court found



as a fact that the ownership of the suit property rest with the plaintiff/appellant?

(d) Whether the plea of the adverse possession is available to trespassers and that the plea of adverse possession will rest in res nullius?

10. The suit has been laid by the plaintiff for the reliefs of declaration, possession and damages. The plaintiff claims title to the suit property based on the sale deed dated 04.02.1976 marked as Ex.A1. The suit property has been described as follows:

Schedule of Property

Pondicherry Registration District, Neravy Sub Registry, T.R.Pattinam Town, Nagore Main Road (Mahatma Gandhi Road), the tiled house bearing Municipal Door No.345 situated west of the said Mahatma Gandhi Road, east of the punja land of Muslim Valibar Sangam, north of the narasam of the said sangam and south of the kollai and the building of the said sangam with its electrical fittings, R.S.No.113/138, Patta No.750.

11. From the pleas putforth by the plaintiff, it is seen that the plaintiff is claiming that the suit property belongs to him and the first defendant is a tenant of the portion of the suit property. According to the plaintiff, he has instituted the Rent Control Proceedings against the first defendant for her eviction in HRCOP No.14 of 1987 on the file of the Rent Controller, Karaikal. The certified copy of the order passed in the abovesaid HRCOP has been marked as Ex.A11. It is seen that the abovesaid HRCOP has been dismissed on the footing that the plaintiff has failed to establish the landlord-tenant relationship between him and the first defendant and further it is seen that though the plaintiff had marked various documents to claim his title to the suit property in the abovesaid proceedings, as the Rent Controller would not be competent to decide the question of title and as the plaintiff had failed to establish the landlord-tenant relationship between him and the first defendant, resultantly, the HRCOP came to be dismissed. Therefore, the defendant is found to have from the inception, been disputing the plaintiff's claim of title to the suit property. Accordingly, it is found that the plaintiff having been unable to establish that he is the landlord of the suit property and that the first defendant is his tenant, as above pointed out, the HRCOP laid by the plaintiff ended in dismissal. Following the same, the plaintiff has come forward with the present suit on the footing that he has title to the suit property and the defendant, not being the tenant, is only a trespasser in the occupation of the suit property, on that



footing, the plaintiff has sought for the reliefs of declaration, possession and damages.

12. The defendant in his written statement in toto disputed the case of the plaintiff that he has the title to the suit property based on Ex.A1 sale deed. According to the defendant, the sale deed dated 04.02.1976 is a fabricated document and further would putforth the case that the plaintiff has miserably failed to establish his alleged vendor's claim of title to the suit property and contended that neither the plaintiff nor his predecessors had any title to the suit property and none had enjoyed the suit property at any point of time. Further according to the defendant, the suit property is a natham poramboke and it was a vacant site when he came there and on his own, constructed the house put up in the suit property and living there since 1968 onwards and accordingly continuously occupying the suit property openly. In the light of the abovesaid defence version putforth by the defendant, the plaintiff having laid the suit based on title, it is for the plaintiff to establish his claim of title to the suit property.

13. With reference to his claim of title to the suit property, the plaintiff in the plaint would state that he became the owner of the suit property by virtue of the sale deed dated 04.02.1976 and according to the plaintiff, the abovesaid sale deed had been executed in his favour by his parents who were in the possession and enjoyment of the suit property till the date of Ex.A1 and thereafter, it is only the plaintiff who has been in the possession and enjoyment of the suit property. The abovesaid case of the plaintiff having been in toto challenged by the first defendant, it is for the plaintiff to establish that his vendors namely his parents had a valid title to the suit property as putforth by him. The plaintiff has not come out in the plaint clearly as to how his parents had acquired title to the suit property, equally the plaintiff has also not filed his parent's title deed to establish that they had acquired the title to the suit property lawfully. The plaintiff examined as P.W.1, during the course of cross examination has admitted that Ex.A1 recites that the property had been inherited by his father from his grand father and he does not know whether such recitals are available in the said document, as he does not know to read and further added that he does not know how his father acquired title to the suit property. Further he would testify that he has the custody of the parent title deed and not produced the same in the Court and his father was aged about 65 years during 1976 and does not know the scribe of Ex.A1 sale deed and does not know where Ex.A1 sale deed was executed and further admitted that in Ex.A1, there is no mention of any dilapidated house superstructure in the suit property and further admitted that he does not know when the superstructure got dilapidated and



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clearly admitted that it is only the first defendant, who is in the possession and enjoyment of the superstructure right from 1968 onwards. The above being the evidence of P.W.1, it is thus noted that other than marking of Ex.A1 sale deed, the plaintiff has not established as to how his parents had acquired a valid title to the suit property. When according to the plaintiff, he has the parent title deed with him, nothing prevented the plaintiff from causing the production of the same to establish his valid claim of title to the suit property from his parents as averred in the plaint. No reason has been assigned by the plaintiff for not producing the parent title deed. When according to the plaintiff, it is only the defendant who had been occupying the superstructure available in the suit property right from 1968 onwards and when the plaintiff is unable to come out with the clear case as to whether the superstructure available in the suit property had been put up by his parents and when there is no document worth acceptance on the part of the plaintiff that his parents had at any point of time occupied the suit property and enjoyed the same as the owners there of, prior to Ex.A1 sale deed and when the plaintiff pleads total ignorance as to when the superstructure was put up in the suit property and when it got dilapidated etc., in such view of the matter, the case of the plaintiff that he has acquired a valid title to the suit property by virtue of Ex.A1 sale deed cannot at all be believed and accepted in any manner. Therefore, the plaintiff having failed to establish his claim of title to the suit property in accordance with law, on that basis alone, in my considered opinion, the plaintiff has to be non-suited.

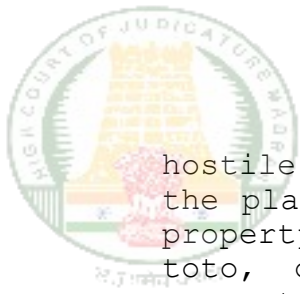
14. The plaintiff would claim that he had been enjoying the suit property by paying tax receipts etc., to the Panchayath. The tax receipts projected by the plaintiff have been marked as Ex.A2 series. Considering the evidence of P.W.1, the plaintiff during the course of cross examination, when he has clearly admitted that most of the tax receipts in Ex.A2 series do not contain the door number and does not point out that the same relate to the suit property and when he is unable to explain for what purpose the tax mentioned in Ex.2 series had been collected, all put together, as rightly contended by the defendant's counsel, no safe reliance could be based/placed on Ex.A2 tax receipts, to conclude that the plaintiff is having a valid title to the suit property and been in the possession and enjoyment of the same as claimed by him. The plaintiff has marked the encumbrance certificates as Ex.A5, A12 and A13. When the plaintiff has clearly admitted that the abovesaid encumbrance certificates show nothing to indicate as to how his father had acquired the suit property, hence the abovesaid encumbrance certificates would not be of any use to sustain that the plaintiff's father had a valid title to the suit property and that the sale deed marked as Ex.A1 is a valid instrument conveying title to the suit property as claimed by the



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plaintiff. Similar is the case of the notice marked as Ex.A4 sent by the settlement office, Pondichery and the valuation certificates marked as Exs.A6 and A18. When the plaintiff has miserably failed to establish his claim of title to the suit property, the abovesaid notice and the valuation certificates by themselves would not be useful to sustain or uphold the plaintiff's title to the suit property. Other than the abovesaid documents, the other documents projected by the plaintiff are only the advocate notice, acknowledgement cards and the reply notice sent by the defendant. When the defendant is found to have been disputing the plaintiff's claim of title to the suit property right from the inception as above pointed out from the RCOP proceedings as well as in the reply notice sent by him marked as Ex.A17 and also in the written statement by contending that the plaintiff has no title, possession and enjoyment of the suit property at any point of time as well as his parents had also not enjoyed the suit property at any point of time and furthermore, when the defendant would putforth the case that the suit property is the natham poramboke and it is he who is in the occupation of the same right from 1968 onwards and when the defendant's possession and enjoyment of the suit property from 1968 onwards has been admitted by the plaintiff as above pointed out, in the course of evidence, all put together, the plaintiff having miserably failed to establish his vendors' title to the suit property and the competency of his vendors to execute the sale deed Ex.A1 conferring title to him qua the suit property and when the plaintiff has also failed to establish his vendors and his claim of possession and enjoyment of the suit property at any point of time and when the tax receipts furnished by him as above pointed out, do not advance his case as well as the unreliability of the encumbrance certificates and the valuation certificate putforth by the plaintiff, in all, it has to be held that the plaintiff has miserably failed to establish his title to the suit property and consequently, it has to be held that the plaintiff is not entitled to seek the reliefs sought for by him in the plaint as against the defendant.

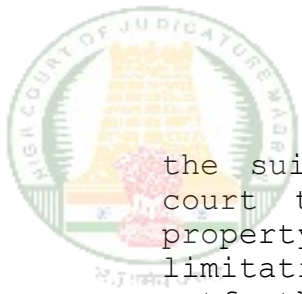
15. The substantial questions of law formulated in the second appeal are purely based on the defence version raised in the written statement. On a reading of the averments contained in the written statement, as rightly contended by the plaintiff's counsel, the defendant has not come forward with the specific pleas as to how he bases his claim of title to the suit property based on adverse possession. When with reference to the claim of title putforth by the party on the strength of adverse possession, the necessary pleas should be incorporated by the said party either in the plaint or in the written statement and when the defendant has not come forward as to from which date onwards he claims to be in the exclusive, continuous and undisturbed possession of the suit property and also not come forward as to against whom actually he is exercising the



hostile possession and enjoyment, whether to the knowledge of the plaintiff or to the knowledge of the true owner of the suit property and when as above pointed out, the defendant has in toto, disputed the plaintiff's claim of title to the suit property and would contend that the suit property is a natham poramboke and though his possession of the suit property has been acknowledged from 1968 onwards, merely the very long possession, how so ever long it may be, that factor alone by itself would not be sufficient to consider and hold that the defendant has properly pleaded the case of adverse possession in the written statement and therefore from the stay words / sentences which are used by the defendant in the written statement that he has been enjoying the suit property continuously and openly that by themselves would not be sufficient to constitute proper pleas for upholding the plea of adverse possession. Therefore, in toto, it is seen that no proper foundation has been made by the defendant in the written statement that he is claiming title to the suit property by way of adverse possession.

16. In addition to that, the defendant is also not having a single document to establish that she has been exercising hostile possession of the suit property continuously as the real owner of the same against the true owner and the abovesaid pleas necessary for constituting the plea of adverse possession, the same being totally absent in the written statement, by no stretch of imagination, it could be held that the defendant has taken the plea of adverse possession for claiming title to the suit property and has established the said plea. As above pointed out, though the defendant's possession of the suit property from 1968 onwards is admitted by the plaintiff, however the fact remains that not a scrap of paper has been produced by the defendant to sustain that he has been exercising hostile title over the suit property to the knowledge of the real owner. Though the defendant would claim that the suit property is a natham poramboke, even to buttress the said case, there is no acceptable material putforth by the defendant.

17. The position being above, the first appellate court on an erroneous appreciation of the pleas putforth in the written statement, proceeded to hold that the defendant has taken the plea of adverse possession and merely on the footing that the defendant's possession of the suit property having been acknowledged by the plaintiff from 1968 onwards, on that premise, proceeded to hold that the defendant has prescribed title to the suit property and the plaintiff having failed to come forward with the suit within the time allowed by law, proceeded to hold that the suit laid by the plaintiff is barred by limitation and consequently reversed the judgment and decree of the trial court, upholding the plaintiff's claim of title to



the suit property. The determination of the first appellate court that the defendant has prescribed title to the suit property and on that basis, the plaintiff's suit is barred by limitation is found to be totally not based on any pleas put forth by the defendant as well as not on any acceptable and reliable evidence put forth by the defendant and therefore, the abovesaid determination of the first appellate court is liable to be set aside.

18. Be that as it may, the plaintiff having come forward with the suit seeking for the reliefs of declaration and possession based on the title and when the plaintiff has miserably failed to establish his claim of title to the suit property and consequently, it is found that the plaintiff would be dis-entitled to secure the reliefs prayed for in the suit. The trial court without appreciating the abovesaid facets of the case of the plaintiff and when P.Ws.2 and 3 have not spoken anything about the claim of the plaintiff's title to the suit property from his parents and as above pointed out, the plaintiff having miserably failed to establish his parents title to the suit property and their competency to execute Ex.A1 sale deed qua the suit property and on a perusal of the evidence of P.Ws.2 and 3, when it is seen that their evidence would not be of use, in any manner to sustain the claim of the plaintiff's title to the suit property, as their evidence is pertaining only to the possession and as above discussed, when the plaintiff has not established his claim of possession and enjoyment of the suit property also pursuant to Ex.A1 and his vendors possession and enjoyment of the suit property prior to Ex.A1, all put together, the reasonings and conclusions of the trial court for upholding the plaintiff's claim of title to the suit property are found to be totally based on the erroneous and improper appreciation of the materials placed on record, both oral and documentary, on factual matrix as well as on the point of law. Hence, they could only be termed as perverse, illogical and irrational and liable to be set aside.

19. The plaintiff's counsel in support of his contentions, placed reliance upon the decisions reported in

- i. 2008 (17) Supreme Court Cases 491 [Bachhaj Nahar Vs. Nilima Mandal and another]
- ii. 2007 (3) Supreme Court Cases 569 [Krishnamurthy S.Setlur (dead) By LRs Vs. O.V.Narasimha Setty and Others]
- iii. 2006 (7) Supreme Court Cases 570 [T.Anjanappa and others Vs. Somalingappa and another]
- iv. 2010 Supreme Court Cases 717 [Laxman Tatyaba Kankate and Another Vs. Taramati Harishchandra Dhattrak]

Per contra, the defendant's counsel in support of his



contentions, placed reliance upon the decisions reported in

i. 2018 (5) CTC 883 [K.Thirunavukkarasu and Thirupuram Vs. Loganathan (deceased) by Lrs]

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ii. 2019 (4) CTC 72 [Nandagopal Vs. P.Ramalingam]

iii. 2020 (6) CTC 320 [Nazir Mohamed Vs. J.Kamala and others]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

20. Considering the abovesaid discussions, when it is seen that the determination of the first appellate court upholding the defendant's claim of title to the suit property based on adverse possession and consequently the plaintiff's suit being barred by limitation is untenable particularly when the abovesaid determination of the first appellate court is not founded on proper pleas and materials projected by the defendant in any manner, particularly for claiming the relief of adverse possession as above discussed, in such view of the matter, the abovesaid determination of the first appellate court are liable to be set aside and accordingly the substantial questions of law touching upon the plea of adverse possession are answered.

21. Inasmuch as, the suit has been laid by the plaintiff based on the title and as above pointed out, the plaintiff having failed to establish his claim of title to the suit property in any manner and when admittedly, the first defendant is in the occupation of the suit property and when the plaintiff has not established that he has a better claim of title to the suit property for securing the reliefs prayed for in the plaint, in all, the suit laid by the plaintiff is liable to be dismissed.

22. In the light of the abovesaid discussions, the judgment and decree dated 29.06.2007 passed in A.S.No.37 of 1992 on the file of the Additional District Court, Pondicherry at Karaikal, dismissing the plaintiff's suit by reversing the judgment and decree passed in O.S.No.255 of 1990 dated 12.12.1991 on the file of the Principal District Munsif, Karaikal are confirmed, though not for the reasons assigned by the appellate court, but for the reasons referred to supra and resultantly the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar



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To

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1. The Additional District Judge,
Additional District Court,
Pondicherry at Karaikal.
2. The Principal District Munsif,
Principal District Munsif Court,
Karaikal.

Copy to
The Section Officer,
VR Section,
High Court, Chennai.

+1cc to Mr.P.K.Sabapathi, Advocate SR.No.14496

S.A.No.1508 of 2008
and
M.P.Nos.1 & 2 of 2008

RSI (CO)
GMY (06/09/2021)