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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2021

DELIVERED ON : 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.Nos.974 & 975 of 2007

Palanisamy

... Appellant in both S.As/
Respondent/Plaintiff

vs.

1.Chinnathayee
2.Amirtham
3.Arumugam
4.Palanisamy
5.Mohan
6.Sekar (Died)
7.Banu
8.E.Lakshmi
9.Babu

...Respondents in both S.As/Appellants/
Defendants

(R7 to R9 brought on record
as LR's of the deceased R6
vide order of Court dated
16.09.2019 made in
CMP.No.7077 of 2016)

Prayer in S.A.No.974 of 2007: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree passed in A.S.No.58 of 2006 dated 26.07.2006 on the file of the Sub Court, Salem, whereby setting aside the decree and judgment in respect of permanent injunction passed in O.S.No.470/1999, dated 07.12.2005 on the file of the Principal District Munsif, Salem.

Prayer in S.A.No.975 of 2007: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree passed in A.S.No.72 of 2006 dated 26.07.2006 on the file of the Sub Court, Salem, whereby reversing the decree and judgment in respect of permanent injunction passed in O.S.No.857/2001, dated 07.12.2005 on the file of the Principal District Munsif, Salem.



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For Appellant : Ms.G.Sumithra.

For Respondents: Ms.Hema Sampath, Senior Counsel,
for R.Meenal

COMMON JUDGEMENT

These second appeals have been filed challenging the Judgment and Decree dated 26.07.2006 passed in A.S.Nos.58 & 72 of 2006 on the file of the Additional Sub Court, Salem reversing the Judgment and decree dated 07.12.2005 passed in O.S.No.470 of 1999 and O.S.No.857 of 2001 on the file of the Principal District Munsif Court, Salem.

2. The Appellant is the plaintiff in the suits O.S.Nos.470 of 1999 and 857 of 2001 on the file of the Principal District Munsif Court, Salem. O.S.No.470 of 1999 was filed for a declaration that the Appellant/plaintiff is the absolute owner of one acre of Nanjai land in S.No.188/2 in Jariveeranam Village, Salem and for injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property. The suit was partly decreed granting permanent injunction against the defendants till the plaintiff obtained a sale deed and possession of the property in S.No.197/3 based on the decree in O.S.No.857 of 2001. However, the Trial Court rejected the prayer for declaration of title. The respondents/defendants preferred an appeal aggrieved by the Judgment and Decree dated 07.12.2005 passed in O.S.No.470 of 1999 before the Additional Sub Court, Salem in A.S.No.58 of 2006. The learned Additional Sub Court, Salem by its Judgment and decree dated 26.07.2006 passed in A.S.No.58 of 2006 allowed the appeal by setting aside the grant of permanent injunction by the Trial Court. Aggrieved by Judgment and Decree dated 26.07.2006 passed in A.S.No.58 of 2006, S.A.No.974 of 2007 has been filed by the Appellant/plaintiff.

3. O.S.No.857 of 2001 was filed by the Appellant/plaintiff before the Principal District Munsif Court, Salem seeking for direction to the respondents/defendants to execute a sale deed for Rs.14,250/- in his favour with respect to 1 acre of agricultural land in S.No.197/3 and also to direct the respondents/defendants to deliver possession and also sought for an order of permanent injunction restraining the respondents/defendants from alienating or creating any encumbrances over the suit property or in the alternative pass a decree for return of Rs.14,250/- with interest at 12% by way of

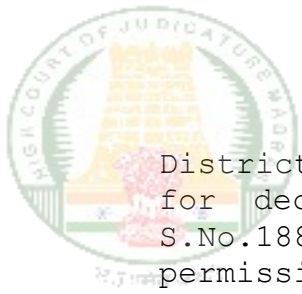


damages. The suit was decreed as prayed for by directing the respondents / defendants to execute the sale deed on receiving the balance sale consideration of Rs.250/-. Aggrieved by the Judgment and decree dated 07.12.2005 passed in O.S.No.857 of 2001, the respondents/defendants preferred an appeal before the Additional Sub Court, Salem in A.S.No.72 of 2006. The Appeal filed by the respondents/defendants was allowed by the learned Additional Sub Court, Salem in A.S.No.72 of 2006 by its judgment and decree dated 26.07.2005. Aggrieved by the judgment and decree dated 26.07.2006 passed in A.S.No.72 of 2006, the Appellant/plaintiff has preferred S.A.No.975 of 2007 before this Court.

4. Since the issues involved in both the Second Appeals are inter-connected, this Court is disposing of both the Second Appeals by a common Judgment.

5. For the sake of convenience, the parties are henceforth described in accordance with their litigative status in the respective suits.

6. The case of the plaintiff is that one Mari Gounder executed a registered agreement (Ex.A1) dated 12.02.1982 in his favour agreeing to sell one acre in S.No.197/3. It is also his case that the said Mari Gounder also executed an unregistered agreement of sale (Ex.A2) dated 12.02.1982 in his favour to sell one acre in S.No.188/2. According to the plaintiff, in this agreement (Ex.A2), there is a specific recital that the said Mari Gounder was permitted to enjoy this property till the litigation over the property in S.No.197/3 was concluded. According to the plaintiff, the entire sale consideration had been paid by him to Mari Gounder long time back. It is the case of the plaintiff that he has been allowed to be in enjoyment of the property for about 35 years prior to the date of the agreement. It is his case that he has become the absolute owner of the property by adverse possession. He has also stated in the plaint that his name has been mutated in the revenue records. According to the plaintiff, Mari Gounder died on 24.02.1999, but the defendants who are the legal heirs of the said Mari Gounder failed to execute the sale deed in his favour. It is also his case that the defendants were attempting to trespass into his property. The plaintiff further states that on 12.03.1999, before a local panchayat, a Muchalika was executed as the defendants were continuously disturbing the possession of the plaintiff. According to the plaintiff, he has also given a police complaint on 28.05.1999 against the defendants for their attempt to trespass into his property. The plaintiff filed O.S.No.470 of 1999 before the learned Principal



District Munsif Court, Salem against the respondents/defendants for declaration of the plaintiff's title to one acre in S.No.188/2 as according to him, he had prescribed his rights by permissive and adverse possession and for injunction restraining the defendants from interfering with his possession. According to the plaintiff, he came to know that a compromise decree dated 15.02.1996 had been passed in O.S.No.1689 of 1980, before the Principal District Munsif, Salem which the defendants had deliberately failed to inform him. According to the plaintiff, he applied for certified copy of the Judgment and decree in O.S.No.1689 of 1980 and got it on 15.11.2001.

7. The very same plaintiff also filed O.S.No.857 of 2001 before the Principal District Munsif Court, Salem against the defendants for specific performance directing the defendants to execute a sale deed for Rs.14,250/- as per the registered sale agreement (Ex.A1) dated 12.02.1982 on receiving the balance sale consideration of Rs.250, or in the alternative for a decree for Rs.14,250/- with interest at 12% per annum from the date of the plaint by way of damages.

8. According to the plaintiff, the defendants failed to execute the sale deed for S.No.197/3 in accordance with agreement (Ex.A1) dated 12.02.1982. It is the case of the plaintiff that he was ready and willing to get the sale deed executed and get registered in his name, but Mari Gounder, the seller was postponing the execution and registration on the ground that a litigation is pending. According to the plaintiff, under the agreement dated 12.02.1982, time was not the essence of the contract.

9. However, as seen from the written statement filed by the defendants in both the suits, they have taken the following defences:

(a) They are disputing the agreement of sale entered into with the plaintiff by Mari Gounder.

(b) There was no necessity for the plaintiff to enter into an agreement for a litigated property. It is also not known as to which agreement, the plaintiff had paid the entire sale consideration.

(c) The plaintiff was not in possession of the property at any point of time.

(d) It was denied that the plaintiff's name had been mutated in the revenue records.

(e) The plaintiff never demanded from the defendants the execution of a sale deed in his favour,

(f) There was no panchayat. The plaintiff had set up a



false case giving the names of persons belonging to the same party.

(g) There was no trespass committed by them. According to them, the police threatened them and made them sign in some papers which may have been misused by the plaintiff.

(h) As the Plaintiff had admitted the title of Mari Gounder and had also admitted the permissive possession, their claim for declaration of title by adverse possession cannot be sustained. There was no pleading or proof as to when the permissive possession turned adverse.

(i) On filing of O.S.No.1689 of 1980, the joint family was disrupted and Mari Gounder ceased to be the karta of the family. There was no necessity to inform the Plaintiff about the pendency of O.S.No.1689 of 1980.

(j) The suit agreement and the receipt of Rs.14,250/- are denied by the defendants. The agreement did not mention any pending litigation. The unregistered agreement is also a fabricated and fraudulent one. The signature is not that of Mari Gounder. The plaintiff was not put in possession of the suit property. No amount was paid by the plaintiff. Even otherwise, the claim or return of the amount is barred by limitation.

Submissions of the learned counsels:

9. Ms.G.Sumithra, learned counsel for the Appellant/plaintiff drew the attention of this court to the agreement dated 12.02.1982 which was marked as Ex.A2 and would submit that under the said agreement, Mari Gounder, the seller agreed to clear all the encumbrances and litigations pending over the property in S.No.197/3 prior to the execution and registration of the sale deed.

10. She also drew the attention of this court to Ex.A3 which is a copy of the amended plaint in O.S.No.1689 of 1980 where the same property which was agreed to be sold to the plaintiff was under a dispute. She then drew the attention of this Court to the compromise decree dated 15.02.1996 in O.S.No.1689 of 1980 which was marked as Ex.A7 and would submit that only on 15.02.1996 by a collusive action, Mari Gounder, the plaintiff's seller has compromised under a compromise decree relinquishing his rights under the suit schedule property. She would further submit that the plaintiff did not have any knowledge about the compromise decree dated 15.02.1996 and was brought to his knowledge only when the defendants during their cross examination in the suit OS.No.470 of 1999 disclosed that a compromise decree pertaining to the suit schedule property was passed on 15.02.1996 in O.S.No.1689 of 1980.



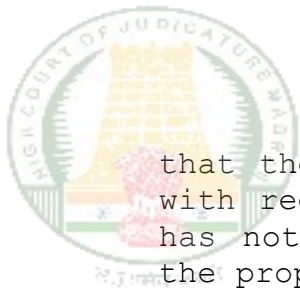
11. The learned counsel for the Appellant/plaintiff would further submit that the suit filed by the plaintiff in O.S.No.857 of 2001 immediately after coming to know about the compromise under Ex.A7 is well within the time of limitation. According to her, the lower Appellate Court by total non-application of mind has reversed the findings of the Trial Court holding that the suit filed by the plaintiff in O.S.No.857 of 2001 is barred by limitation.

12. Learned counsel for the Appellant/plaintiff also drew the attention of this Court to Ex.A2, unregistered sale agreement and would submit that since no time limit has been fixed for the performance of the contract, the suit filed by the plaintiff in O.S.No.857 of 2001 is maintainable as he came to know about the compromise only in the year 2001.

13. Learned counsel also drew the attention of this Court to Ex.A2 which is an unregistered sale agreement entered into by the plaintiff with the very same Mari Gounder, by which Mari Gounder has put the plaintiff in possession of the property comprised in S.No.188/2 till the other property comprised in S.No.197/3 which is the subject matter of Ex.A1 sale agreement is cleared from all encumbrances and litigations. She would also submit that the lower appellate court has erroneously reversed the findings of the Trial Court in O.S.No.470 of 1999 also by total non-application of mind as the plaintiff has been in possession of the property comprised in S.No.188/2 even prior to 35 years from the date of the institution of the suit in O.S.No.470 of 1999. Hence, according to her, by total non application of mind to the settled law as to when the time is the essence of the contract, the lower appellate court has reversed the findings of the trial court by allowing the appeal filed by the defendants.

14. Ms.G.Sumithra, learned counsel for the Appellant/claimant would further contend that Section 52 of the Transfer of Property Act also gets attracted as the suit O.S.No.1689 of 1980 is subject to the agreement of sale dated 12.02.1982 viz., Ex.A1 & Ex.A2

15. Per contra, Ms.Hema Sampath learned Senior counsel representing Ms.R,Meenal learned counsel for the respondents/defendants would submit that the lower appellate court has rightly allowed the appeal A.S.No.72 of 2006 by holding that the time was not the essence of the contract under Ex.A2 sale agreement dated 12.02.1982 and the suit O.S.No.857 of 2001 is hopelessly barred by law of limitation. She would also submit



that the lower appellate court has also given a correct finding with regard to O.S.No.470 of 1999 by holding that the plaintiff has not established his right to claim adverse possession over the property comprised in S.No.188/2.

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16. Ms.Hema Sampath, learned Senior Counsel also drew the attention of this Court to the written statement and the findings of the Trial Court as well as the lower appellate court and would submit that the lower appellate court has rightly reversed the findings of the trial court in favour of the defendants by holding that both the suits are not maintainable. In view of the fact that the unregistered sale agreement (Ex.A2) is dated 12.02.1982 whereas the suit O.S.No.857 of 2001 seeking for specific performance of the agreement was filed only in the year 2001 and therefore, the suit is hopelessly barred by law of limitation. She would also submit that the lower appellate court has rightly held that based on Ex.A2 and other surrounding factors that the time is the essence of the contract. She drew the attention of this court to Ex.A2 sale agreement and would submit that there is a recital in the said sale agreement which says that the litigations over the property will have to be cleared within two years. Since the litigations were not cleared before the period of two years from the date of the agreement for sale and no suit was filed within three years thereafter, the suit filed by the plaintiff in O.S.No.857 of 2001 is barred by law of limitation.

17. Further she would submit that Mari gounder, the alleged vendor of the plaintiff died in the year 1999 and the suit O.S.No.857 of 2001 was filed in the year 2001. Further she would submit that the defendants in their written statement have categorically pleaded that no such agreement was entered into by Mari Gounder with the plaintiff. Further she would submit that the said Mari Gounder was not vested with the ownership of the property comprised in S.No.188/2, even on the date of execution of sale agreement dated 12.02.1982 (Ex.A2) as in the year 1961 itself, the property was sold to one Siddaiya Chettiar. She would submit that when there is no agreement for sale, there is no question of specific performance under the agreement of sale dated 12.02.1982.

18. Ms.Hema Sampath further contend that the plaintiff has not stated as to when he was given the right of permissive occupation of the property in S.No.188/2 and the date from which he is claiming adverse possession. She would further submit that the reliefs sought for in the suit O.S.No.470 of 1999 namely permissive occupation and adverse possession contradicts each



other. She would submit that the plaintiff has not stated in his plaint as to when he was given permissive possession and the date on which the permissive possession turned adverse to that of the defendants. Hence she would submit that both the appeals does not deserve any merit and both the second appeals will have to be dismissed.

Findings of the Trial Court are as follows:

19. (a) The Plaintiff had pleaded in the plaint in O.S.No.470 of 1999 that he was allowed to enjoy the property and that, he had prescribed the title by adverse and permissive possession.

(b) Both the claims are contradictory to each other and that, title could not be claimed on permissive possession.

(c) There is no clear averment in the written statement that the sale agreement was a fabricated and forged one.

(d) The plaintiff filed O.S.No.470 of 1999 for declaration and injunction because he did not know that the litigation concerning the suit property had already reached a conclusion. Immediately on coming to know of it, he filed O.S.No.857 of 2001 for specific performance. Hence the suit for specific performance is not barred by limitation.

(e) Both the agreements in favour of the plaintiff were true and valid.

(f) The plaintiff was in possession of the property in S.No.188/2. Hence, he was entitled to a decree for injunction till sale deed was executed for the land in S.No.197/3 pursuant to the decree in O.S.No.857 of 2001.

(g) Time is not the essence of the contract.

20. The Trial Court partly decreed the suit O.S.No.470 of 1999 in favour of the plaintiff by granting the relief of injunction restraining the defendants from disturbing the plaintiff's possession of the property in S.No.188/2 till the plaintiff obtained the sale deed and possession of the property in S.No.197/3. But however refused the relief of declaration of title.

21. The suit for specific performance in O.S.No.857 of 2001 was decreed in favour of the plaintiff by directing him to pay the balance sale consideration of Rs.250/-.

22. Aggrieved by the judgment and decree dated 07.12.2005 in O.S.No.470 of 1999, the defendants preferred an appeal before the Additional Sub Court, Salem in A.S.No.58 of 2006. Aggrieved by the Judgment and decree dated 07.12.2005 in O.S.No.857 of 2001, the defendants preferred an appeal before the Additional



Sub Court, Salem in A.S.No.72 of 2006.

23. Findings of the Lower Appellate Court:

(a) As per the registered agreement for conveyance of S.No.197/3, time had to be extended if the litigation did not come to an end within the extended period of two years. The Plaintiff did not take any steps to get the time extended. When there was a specific recital about extension of time, the Court could not presume that time was extended automatically till the disposal of the prior litigation.

(b) The plaintiff in his oral evidence had admitted that he had not ascertained about the progress of the prior litigation. He was not diligent enough to find out as to what happened to the case even though he had entered into the sale agreement knowing fully well about the suit pending with respect to the agreement property.

(c) The plaintiff was not ready and willing to perform his part as he did not show any interest to find out about the case. He was not vigilant about the stage of the prior litigation.

(d) The plaintiff was a neighbour of the defendants. In the village generally everybody knows about litigations. It is unbelievable that the plaintiff was unaware of the disposal of the case till the respondents produced a copy of the compromise decree when trial was going on.

(e) The sale agreement is hit by lis pendens as it was executed pending the suit O.S.No.1689 of 1980. Moreover, Mari Gounder did not have lien over the agreement property on the date of agreement as the suit property had been sold to one Siddaia Chettiar in 1961 itself by Mari Gounder and his father. After the compromise, only the sons of Mari Gounder were allotted the property which is the subject matter of the agreement.

(f) The plaintiff did not take any steps to challenge the compromise decree in the prior suit as collusive and fraudulent.

(g) The sale agreement was not entered into by Mari Gounder as the manager of the joint family.

(h) The pleadings and oral evidence about the payment of consideration by the plaintiff to Mari Gounder are contradictory. In his pleadings as well as oral evidence, the plaintiff stated that he had paid the advance on the date of agreement. The attessor PW2 deposed that consideration was not passed on the date of agreement but was paid much earlier. Even with respect to handing over of possession, the plaintiff in his oral evidence stated that possession was not given to him.

(i) Since the court decided that the suit was barred by limitation, it thought it fit not to consider the question of lis



pendens.

24. Both A.S.Nos.58 & 72 of 2006 were allowed by the learned Additional Sub Court, Salem by its judgment and decree both dated 26.07.2006. Aggrieved by the same, plaintiff in the respective suits has preferred these second appeals.

Discussion

25. The points for consideration in both the appeals are as follows:

(a) whether the time is the essence of the contract under Ex.A1 and A2 sale agreement dated 12.02.1982.

(b) Whether the suit O.S.No.857 of 2001 is barred by the law of limitation.

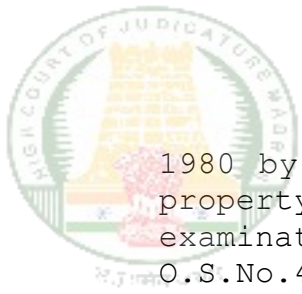
(c) Whether the plaintiff can claim adverse possession when he has pleaded that he was permitted to occupy the property comprised in S.No.188/2 and has been in permissive occupation for several years.

26. The agreement Ex.A2 stipulates that Mari Gounder will have to clear all the litigations over the property comprised in S.No.197/3 within a period of two years and in case of delay i.e., if the litigation did not come to an end within a period of two years, the time ought to be extended. The relevant clause in the agreement found under Ex.A2 reads as follows:

“இரண்டு வருடங்களுக்கு பிறகும் வில்லங்கம் முடியாமல் இருந்தால் ஒப்பந்தம் நீட்டிக்கொள்ள வேண்டியது”

Therefore, the agreement clearly stipulates that there must be a mutual agreement for extension of period for performance, after the stipulated period of two years fixed under Ex.A2. Admittedly, the plaintiff has not sought for any extension for the performance of agreement (Ex.A2), after the stipulated period of two years from the date of the agreement which was entered into on 12.02.1982.

27. The Agreement (Ex.A2) was entered into between the plaintiff and Mari Gounder on 12.02.1982. But however, the suit seeking for specific performance of the said agreement was filed only in the year 2001. As seen from the evidence available on record, the plaintiff has not produced any evidence whatsoever to show that as to what steps he had taken between 1982, when the agreement was entered into and the date of filing of the suit in the year 2001 in O.S.No.857 of 2001 seeking for specific performance. Eventhough he may plead that he came to know about the compromise decree dated 15.02.1996 (Ex.A7) in O.S.No.1689 of



1980 by which Mari Gounder had relinquished his rights over the property only in the year 2001 during the time of cross examination of the defendants witnesses in the connected suit O.S.No.470 of 1999, the said statement is totally unbelievable. A prudent and interested buyer of any property will always be vigilant in getting the sale deed executed in his favour.

28. However, in the case on hand, when the agreement (Ex.A2) clearly stipulates that the litigation will have to be cleared within a period of two years and in case of any delay, extension will have to be obtained, the plaintiff has miserably failed to produce any evidence as to whether extension for the performance of the agreement was mutually agreed upon and no reason whatsoever has been given for not corresponding with his alleged vendor Mari Gounder between 1982 till his death in the year 1999 requesting him to execute a sale deed in his favour. The lower appellate court in A.S.No.72 of 2006 has rightly held that the suit O.S.No.857 of 2001 is hopelessly barred by law of limitation. Though there is no specific stipulation under the agreement of sale dated 12.02.1982 (Ex.A2) and that the time is the essence of the contract, it cannot be interpreted to mean that the plaintiff can be allowed to file a suit for specific performance at his whims and fancies and to his convenience without any time limit.

29. Section 46 of the Indian Contract Act, 1872 reads as follows:

" 46. Time for performance of promise, where no application is to be made and no time is specified.—Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. —Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time."

Explanation.—The question "what is a reasonable time" is, in each particular case is a question of fact."

As seen from section 46 of the Indian Contract Act, it is clear that whenever any time for specific performance of the contract is not specified, the agreement must be performed within a reasonable time. The explanation to Section 46 of the Indian Contract Act also makes it clear that the question what is the reasonable time in a particular case is a question of fact.



30. In the case on hand, admittedly, specific performance has been sought for in respect of an agreement made in the year 1982, whereas the suit has been filed only in the year 2001 after a lapse of almost 19 years. There is also no iota of evidence available on record to show that Mari Gounder, the alleged seller has granted extension of time for the performance of the agreement to the plaintiff.

31. The decision relied upon by Ms.Hema Sampath, learned Senior Counsel for the respondents/defendants in the case of T.L.Muddukrishna and another vs. Lalitha Ramachandra Rao, reported in (1997) 2 SCC 611, wherein it has been held by the Hon'ble Supreme Court that time stipulates to run from the date, the parties had stipulated for performance of the contract. Since the plaintiff was not able to discharge their pending litigations within the stipulate period of two years from the date of the agreement (Ex.A2) and extension of the agreement was not mutually agreed upon between the parties and the suit for specific performance not having been filed within three years, the decision referred to by the learned counsel for the respondents/defendants referred to supra is squarely applicable to the facts of the instant case. Therefore, the lower appellate court has rightly allowed the appeal by holding that the suit O.S.No.857 of 2001 is barred by law of limitation.

32. As seen from the deposition of the plaintiff before the trial court, he himself has admitted that he had not ascertained about the progress of litigation in O.S.No.1689 of 1980. The lower appellate court has rightly appreciated the evidence available on record and has rightly held that the plaintiff is not entitled for specific performance decree as prayed for in O.S.No.857 of 2001. This Court is of the considered view that the lower appellate court has rightly reversed the findings of the trial court by dismissing the suit O.S.No.857 of 2001.

33. Even according to the plaintiff, he has entered into an agreement for sale under Ex.A1 & Ex.A2 knowing fully well that there was a litigation over the property which Mari Gounder, the alleged seller had agreed to clear the same. The pending litigation in O.S.No.1689 of 1980 got terminated by passing of the compromise decree dated 15.02.1996 under which Mari Gounder relinquished his rights over the property in S.No.197/3 which is the subject matter of Ex.A1 agreement for sale. The learned counsel for the Appellant/plaintiff had referred to Section 52 of Transfer of property Act which deals with "lis pendens" It has no



relevance for the facts of the instant case as admittedly, there were also a litigation namely O.S.No.1689 of 1980 pending over the very same property. Having knowingly entered into agreement of sale with Mari Gounder, despite the pendency of the dispute over the very same property and the pendency of the litigation, the plaintiff is estopped from taking the plea of "lis pendens" If at all the said plea can be taken only by the persons who have been allotted the property comprised in S.No.197/3 which is the subject matter of O.S.No.1689 of 1980 which resulted in a compromise decree by which Mari Gounder had relinquished his rights. Therefore, the plea taken by the plaintiff as seen from the submissions made by the learned counsel for the Appellant that Section 52 of the Transfer of property Act (lis pendens) gets attracted is unsustainable.

34. Insofar as O.S.No.470 of 1999 which is the subject matter of A.S.No.58 of 2006 is concerned, this Court is of the considered view that the lower appellate court has also rightly allowed the said appeal on the ground that the claim for permissive possession and adverse possession is contrary to each other. In the plaint filed in O.S.No.470 of 1999, the plaintiff has not pleaded as to when he was put in permissive possession of the property comprised in S.No.188/2 and as to when the permissive possession was converted into adverse possession.

35. The plaintiff will have to satisfy the following legal requirements for establishing their adverse possession over the property comprised in S.No.188/2 which is the subject matter of O.S.No.470 of 1999:

(a) The possession and occupancy of the property shall be continuous, uninterrupted and unbroken for the entire statutory duration of 12 years.

(b) Possession must be aggressive, often referred to as adverse, if the title is to mature from adverse possession. The occupier must be in possession of land, despite knowing that he / she does not hold any legal title to occupy or possess the property.

(c) An adverse possession must be actual possession such as the construction of a house, the erection of a shed or some structure, the fencing of a property, the grazing of cattle on the land, the farming and harvesting of crops on the land, the planting and cutting of trees etc., for the whole statutory limitation period of 12 years.

(d) During the statutory limitation period, the person claiming adverse possession must be in sole physical possession of the property against the legitimate right, assertion and title



of the rightful owner.

36. In the case on hand, the plaintiff has not satisfied any of the aforementioned legal requirements for the purpose of claiming adverse possession. No evidence whatsoever has been produced by him before the courts below to prove that he has been in continuous and uninterrupted possession for more than 12 years.

37. Further the relief of permissive and adverse possession sought for in O.S.No.470 of 1999 contradicts each other. It is a self destructive plea as the concept of permissive and adverse possession are opposite to each other. The plaintiff has also not specified as to when the permissive possession had turned adverse to that of the defendants.

38. The Hon'ble Supreme Court in the case of The State Bank of Travancore vs. Aravindan Kunju Panicker and others reported in (1972) 4 SCC 274, set out the criteria for adverse possession in paragraph 9 of the said Judgment which reads as follows:

"A permissive possession cannot be converted into an adverse possession unless it is proved that the person, in possession asserted an adverse title to the property to the knowledge of the true owners for a period of twelve years or more. There is no evidence to show that Krishnan or velu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before the present suit."

39. The plaintiff having miserably failed to satisfy any of the aforementioned requirements as prescribed in the decision referred to supra is not entitled for a decree in his favour in O.S.No.470 of 1999. The lower appellate court has rightly reversed the findings of the trial court in O.S.No.470 of 1999 by dismissing the said suit.

40. For the foregoing reasons, the substantial questions of law formulated by this Court at the time of admission i.e., on 09.10.2007 in both the second appeals are answered against the Appellant/plaintiff as the lower appellate court has rightly held based on facts and evidence available on record that the plaintiff is not entitled for the relief sought for in O.S.Nos.857 of 2001 and 470 of 1999. The Trial Court has misdirected itself by granting the relief of injunction for S.No.188/2 till the sale deed was executed in favour of the



plaintiff for the land in S.No.197/3 by holding that both the agreements Ex.A1 and Ex.A2 are true and valid. The said findings and the reasons stated by the trial court have been given by total non application of mind to the oral and documentary evidence available on record.

41. In the result, there is absolutely no merit in both the second appeals. Accordingly, both the second appeals are dismissed with costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

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To

1.The Sub Judge, Salem,

2.The Principal District Munsif, Salem.

Copy to: The Section Officer,
Vernacular Records,
High Court, Madras-104.(2 copies)

+2cc to Ms.G.Sumitra, Advocate SR.No.31498, 31499

+2cc to Mrs.R.Meenal, Advocate SR.No.31518, 31519

S.A.Nos.974 & 975 of 2007

NR(CO)
CB(16/12/2021)