

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021

PRONOUNCED ON : 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.85 & 86 of 2009

L.A.T.Selvaraj ...Appellant/2nd Respondent/
2nd Defendant in
S.A.No.85 of 2009
...Appellant/Respondent/Plaintiff
in S.A.No.86 of 2009

Vs.

1.Rajalakshmi
2.Meenakshi ... Respondents 1 & 2/
Plaintiffs/Appellants in
S.A.No.85 of 2009

3.Sambandam ... Respondent No.3 in
S.A.No.85 of 2009

3.Sankar ... Respondent No.3 in
S.A.No.86 of 2009

Prayer :- Second Appeals have been filed under Section 100 of CPC against the common Judgement and Decree dated 26.11.2007 passed in A.S.Nos.98 of 2006 & 34 of 2006 on the file of the Subordinate Court, Chidambaram, reversing the Judgment and Decree dated 20.10.2005 passed in O.S.Nos.69 of 2002 & 581 of 2000 on the file of the District Munsif Court, Kattumannarkovil.

For Appellant in both: Mr.V.Ramamoorthy
second appeals for M/s. S.Thirumavalan

For Respondent : Mr.S.Mukunth
Nos.1 & 2 in both for M/s.Sarvabhauman Associates,
second appeals

Respondent No.3 in : No appearance
both second appeals set exparte vide order
dated 08.03.2021

COMMON JUDGMENT

The second appeal Nos.85 & 86 of 2009 are directed against the common judgment and decree passed in A.S.Nos.98 of 2006 & 34 of 2006 on the file of the Subordinate Court, Chidambaram, reversing the Judgment and Decree dated 20.10.2005 passed in O.S.Nos.69 of 2002 & 581 of 2000 on the file of the District Munsif Court, Kattumannarkovil.

2.Second appeal No.85 of 2009 has been admitted on the following substantial questions of law:

"1.Whether the lower appellate Court's judgment is not vitiated as one based on no evidence and for presuming title of respondents 1 & 2 to the suit property in the absence of any legally acceptable documentary evidence and merely based on the plea of oral purchase contrary to the provision of the Transfer of Property Act?

2.Is not the judgment of the lower appellate Court vitiated for perverse appreciation of the evidence?

3.Is not the suit of the respondents 1 & 2 liable to be dismissed as bad for non joinder of necessary and proper parties?

4.Whether the judgment and decree of the lower appellate Court are not liable to be set aside for its finding that the respondents 1 and 2 had perfected title by adverse possession in the absence of proper pleadings as required by law and evidence there for?

5.Is not the judgment of the lower appellant Court incorrect and contrary to law is so far it upheld the challenge of respondents 1 and 2 who are strangers and third parties even through the co-sharers likely to be affected had not challenged the sale deed executed by 3rd respondent alone?"

3.Second appeal No.86 of 2009 has been admitted on the following substantial questions of law:

"1.Whether the lower appellate Court is right in presuming title in the respondents 1 and 2 to reverse the decree of the trial Court?

2.Is not the judgment of the lower appellate Court vitiated for perverse appreciation of the evidence and application of incorrect legal positions?"

4.O.S.No.69 of 2002 has been laid by the respondents 1 & 2 against the appellant and the third respondent in S.A.No.85 of 2009 for the relief of declaration and permanent injunction.

5.O.S.No.581 of 2000 has been laid by the appellant against the respondents in S.A.No.86 of 2009 for the relief of permanent injunction.

6.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

7.Suffice to state that the respondents 1 & 2 in the second appeals claim title to the suit property on two grounds. It is not in dispute that the suit property originally belonged to the deceased Pethusamy Naidu. It is also not in dispute that Vaithilinga Naidu, the father of the respondent Sambandam, is the brother of the deceased Pethusamy Naidu. It is also not in dispute that Pethusamy Naidu and his wife the deceased Adilakshmi Ammal had died intestate and they have no issues. It is thus noted that Vaithilinga Naidu, the brother of Pethusamy Naidu, is the second class heir of the deceased Pethusamy Naidu, the original owner of the suit property. Thus, according to the respondent Sambandam he being the son of Vaithilinga Naidu, is entitled to succeeded to the suit property. That the respondent Sambandam is the son of Vaithilinga Naidu is not in dispute.

8.The respondents 1 & 2 claim title to the suit property firstly on the footing that their predecessor in interest viz., one Muthupathar purchased the suit property for a sum of Rs.2,000/- from Pethusamy Naidu.On the pleas put forth by the respondents, it is evident that the abovesaid sale put forth by them is only an oral sale and no sale deed had been executed by Pethusamy Naidu in favour of Muthupathar. As rightly concluded by the Courts below, no explanation has been offered by the respondents as to why Muthupather had not endeavoured to obtain a regular sale deed from Pethusamy Naidu qua the suit property, which, according to them, had been sold to Muthupathar by Pethusamy Naidu. The case of the respondents that before obtaining the sale deed, Pethusamy Naidu had passed away, however the abovesaid case of the respondents is totally unacceptable. Even assuming for the sake of arguments, the abovesaid oral sale put forth by them is true, nothing prevented the respondents i.e. Muthupathar

from securing the sale deed qua the suit property from Pethusamy Naidu or his wife Adilakshmi ammal in the manner known to law. However, they had not endeavoured to secure any sale deed from either of them qua the suit property. Therefore, the Courts below are found to be wholly justified in rejecting the contention of the respondents that they had acquired a valid title to the suit property by way of the oral sale. The oral sale, according to the respondents, being effected for Rs.2,000/-, as rightly concluded by the Courts below, such a sale transaction should be effected only by way of an instrument, which is properly registered and stamped as per law. In view of the above position, the plea of oral sale projected by the respondents qua the suit property has been rightly rejected by the trial Court and the same do not warrant any interference. Even the first appellate Court has not upheld the plea of oral sale projected by the respondents.

9.The respondents have also projected the case that Muthupathar and the respondents have been in the possession and enjoyment of the suit property openly, continuously and uninterruptedly beyond the statutory period to the knowledge of one and all by paying tax, current charges, water charges, etc., and thus, would contend that Muthupathar had prescribed title to the suit property by way of adverse possession. It is thus noted that the respondents have mainly projected the claim of title to the suit property only by way of adverse possession.

10.Per contra, according to the appellant and the respondent Sambandam, the plea of oral sale and adverse possession projected by the respondents for claiming title to the suit property is totally unsustainable in the eyes of law and according to them, Muthupathar was a tenant in respect of the suit property under Pethusamy Naidu and Muthupathar had been paying the rent to Pethusamy Naidu and after his demise, to his wife Adilakshmi ammal and after the demise of Adilakshmi ammal, Muthupathar had been paying the rent to the respondent Sambandam, the son of Vaithilinga Naidu and therefore, contended that the respondents are not entitled to claim title to the suit property by way of oral sale and adverse possession as projected by them.

11.In the light of the abovesaid defence version projected by the appellant, it is for the respondents to establish that they have perfected the title to the suit property by way of adverse possession as put forth by them.

12.Considering the documents projected by the respondents in O.S.No.69 of 2002 marked as Exs.A1 to A38, as rightly concluded by the trial Court, Exs.A1 to A17 and Exs.A32 and A38, all stand in the name of Pethusamy Naidu. Therefore, it is found that the abovesaid receipts have been entered or recorded only in the name of the original owner Pethusamy Naidu and in such view of the matter, the abovesaid documents

standing in the name of original owner Pethusamy Naidu, would not ennure to the benefit of the respondents to claim title to the suit property by way of adverse possession. No doubt, the electricity bill receipts marked as Exs.A19 to A31 stand in the name of the first respondent. However, as rightly concluded by the trial Court, when the respondents have failed to establish the plea of oral sale projected by them lawfully and when the respondents have also not established their claim of title to the suit property by way of adverse possession, as rightly determined by the trial Court, it does not stand to reason as to how come the electricity receipts had been obtained in the name of the first respondent qua the suit property. In view of the abovesaid position, it is for the respondents to establish that the service connection had been effected in the name of the first respondent by the electricity board, after accepting the claim of title of the first respondent qua the suit property by relying upon the alleged convincing materials put forth by the first respondent. In that connection, the respondents have not summoned the records from the electricity board to establish as to on what basis the service connection had been effected in the name of the first respondent qua the suit property. Now, according to the appellant, the respondents had obtained the signature of the respondent Sambandam stealthily by misrepresentating that they would look after the works pertaining to the electricity as the son-in-law of the first respondent and the husband of the second respondent one Sankar is acquainted with the men of the electricity board and therefore, it is put forth that taking advantage of the same, the service connection had been obtained in the name of the first respondent fraudulently and on that ground, ipso facto the respondents are not entitled to claim title to the suit property by way of adverse possession. When as above pointed out, the suit property has been registered in the revenue records only in the name of the deceased Pethusamy Naidu and the house tax receipts projected by the respondents are also found to be issued only in the name of Pethusamy Naidu and the water tax receipts projected by the respondents also stand in the name of Pethusamy Naidu, as above noted, to say that the electricity connection only has been effected in the name of the first respondent by the electricity board and thereby the respondents had been enjoying the suit property by denying the title of the original owner Pethusamy Naidu and his legal representatives openly, continuously and uninterruptedly beyond the statutory period, as such, cannot at all be countenanced in any manner. The electricity receipts projected by the respondents marked as Exs.A18 to A31 pertained only to the years 1991-1993. Therefore, from the abovesaid receipts pertaining to three years period, it cannot be safely concluded that the respondents had been enjoying the suit property openly, continuously and uninterruptedly with animus attitude against the real owner of the suit property beyond the statutory period and thus, it is found that when the respondents have not placed acceptable materials by

summoning the records of the electricity board as to how come the service connection or the electricity bill receipts had been effected in the name of the first respondent qua the suit property and in such view of the matter, the electricity receipts projected by the respondents by themselves would not be sufficient and adequate to confer the title on the respondents qua the suit property by way of adverse possession.

13. When the respondents are endeavouring to claim title to the suit property by way of adverse possession in O.S.No.69 of 2002 only against the appellant and the respondent Sambandam as rightly contended by the appellant's counsel, impliedly thereby the respondents have admitted the title of the appellant and the respondent Sambandam qua the suit property. It is not the case of the respondents that other than the appellant and the respondent Sambandam, other persons are also entitled to the suit property. If that be so, the respondents having taken the plea of adverse title to the suit property for sustaining their said claim of adverse possession, should have impleaded all the persons, who, according to them, have right, title or interest in respect of the suit property.

14. On a reading of a plaint averments contained in O.S.No.69 of 2002, it is noted that the respondents have very vaguely pleaded their claim of title to the suit property by way of adverse possession. As rightly contended by the appellant's counsel, mere possession of the respondents qua the suit property, however long, it may be, does not mean that their possession is adverse to the true owner. The respondents must plead and prove the date on and from which they claim the suit property to be in their possession exclusively, continuously and uninterruptedly and also should further plead that such possession was actual and to the knowledge of the real owner and further, plead and prove that such a hostile title had been communicated to the real owner. It is not the case of the respondents that the service connection had been effected in the name of the first respondent qua the suit property to the knowledge of the true owners and if that be so, nothing prevented the respondents from projecting acceptable and reliable materials pointing to the same as per law., Other than marking certain electricity receipts standing in the name of the first respondent as above pointed out, when the house tax and water tax receipts stand in the name of the original owner Pethusamy Naidu, the electricity receipts projected by the respondents by themselves would not be sufficient to hold that the respondents have prescribed title to the suit property by way of adverse possession.

15. As regards the pleas and proof to be put forth for proving the case of adverse possession, the apex Court in the decision reported in (2006) 7 Supreme Court Cases 570

(T.Anjanappa and others Vs. Somalingappa and another) has held that the possession must be hostile, in denial, either express or implied, of title of the real owner and for that the possessor must clearly know the actual owner of the property and only then can be situation of being in hostile possession and question of denying title of true owner would arise. The abovesaid principles of law had been outlined in the abovesaid decision as follows:

"Adverse possession - concept - Possession must be hostile, in denial, either express or implied, of title of the real owner - For that it is essential that possessor must clearly know the actual owner of the property - Only then can be situation of being in hostile possession and question of denying title of true owner would arise - Possession must be peaceful, continuous and open, capable of being known by parties interested.

The concept of adverse possession contemplates a hostile possession i.e.. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tend to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess

it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.

Vidya Devi V. Prem Prakash, (1995) 4 SCC 496; War v. Carttar, (1865) LR 1 Eq 29 : 35 Beav 171: 55 ER 860; Rains v. Buxton, (1880) 14 Ch D 537: 43 LT 88, relied on Annasaheb Bapusaheb Patil v. Balwant, (1995) 2 SCC 543: AIR 1995 SC 895, cited Halsbury's Laws of England 1953 Edn., Vol. I, relied on

In order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

16. Similarly in the decision reported in (2007) 3 Supreme Court Cases 569 (Krishnamurthy S. Setlur (Dead) By Lrs. Vs. O.V. Narasimha Setty and others), it has been held by the apex Court that the person claiming title to the property by way of adverse possession must plead and prove the date on and from which he claims to be in the exclusive, continuous and undisturbed possession and also that such possession was actual and to the knowledge of the real owner and further to show hostile title had been communicated to the real owner and the position of law on that aspects has been outlined by the apex Court in the abovesaid decision as follows:

<https://hcservices.ecourts.gov.in/hcservices/> "Limitation Act, 1963 - S.27 and

Arts. 64 & 65 - Adverse possession - Duty of the plaintiff making claim for - Nature of the question as to whether the possession is adverse or not - Duty of first appellate court to examine the conclusion reached by trial Court in that regard - Held, the plaintiff must plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession and also that such possession was actual and to the knowledge of the real owner - He has also to show hostile title and communicate it to the real owner - The question whether the possession is adverse or not though often a simple question of fact, may sometimes be a question of law or a mixed question of law and fact - The conclusion drawn from the facts as to ouster or adverse possession, held, is a question of law and must be considered by the first appellate Court - In the present case, questions of law arising therein such as whether the tenant's possession could be treated as the owner's possession for the purpose of computing of limitation period not answered by the first appellate Court - Moreover, its decision suffering from many other serious errors - Such a decision, held, called for interference under Art. 136 of the Constitution.

The right extinguished by Section 27 of the Limitation Act, 1963 is the right which the lawful owner has and against whom a claim for adverse possession is made. Therefore, the plaintiff who makes a claim for adverse possession has to plead and prove the date on and from which he claims to be in exclusive continuous and undisturbed possession. The question whether possession is adverse or not is often one of simple fact but it may also be a question of law or a mixed question of law and fact. The facts found must be accepted, but the conclusion drawn from them, namely, ouster or adverse possession is a question of law and has to be considered by the Court.

The impugned judgment is a bundle of confusion. It quoted depositions of witnesses as findings. It quoted findings of the Courts below which had been set aside by the High Court in the earlier round. It criticised the findings given by the coordinate Bench of the High Court in the earlier round of litigation. It did not answer the question of law which arose for determination in the present case. For example, one of the main questions which arose for determination in the present case was whether the tenant's possession could be treated as possession of the owner in computation of the period of twelve years under Article 64 of the Limitation Act 1963. In the matter of adverse possession, the courts have to find out the plea taken by the plaintiff in the plaint. In the plaint, the plaintiff who claims to be owner by adverse possession has to plead actual possession. He has to plead the period and the date from which he claims to be in possession. The plaintiff has to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge of the real owner of the land. He has to show a hostile title. He has to communicate his hostility to the real owner. None of those aspects were considered by the High Court in its impugned judgment. the impugned judgment was under Section 96 CPC, it was not a judgment under Section 100 CPC.

17. Considering the principles of law outlined by the apex Court as to how a person claiming title to the property in dispute by way of adverse possession should plead and establish the said facts and when the respondents having not come forward with any specific pleas as to from which date they are claiming title to the suit property by way of adverse possession to the knowledge of the real owners and whether their such alleged hostile possession had been brought to the knowledge of the real owner and whether their such hostile possession had been open, continuous and uninterrupted beyond the statutory period and that they had been exercising hostile ownership to the knowledge of the real owner with animus possidendi as enunciated by the apex Court in the abovesaid decisions and when the case of the respondents with reference to the same lacks necessary pleas and proof, as above discussed, the first appellate Court had erred in upholding

the case of the respondents that they had acquired title by way of adverse possession. In view of the abovesaid factors, the reasonings and conclusions of the first appellate Court for upholding the respondents' claim of title to the suit property by way of adverse possession being founded on an erroneous appreciation of the materials placed on record, both on factual matrix as well as on the point of law and accordingly, when they are found to be wholly perverse, illogical and irrational, they are liable to be set aside.

18.The suit in O.S.No.581 of 2000 has been laid by the appellant for the relief of permanent injunction seeking to restrain the respondents in second appeal No.86/2009 from altering the superstructure or putting up a new superstructure in the suit property on the footing that the respondents have not acquired a valid title to the suit property. According to the appellant, he had purchased the suit property from his father Sambandam by way of the sale deed dated 24.02.1993 and thus, he is the owner of the suit property and the respondents have not acquired title to the suit property and the respondents are in the occupation of the suit property only as the tenants and also put forth that the respondents had committed wilful default in the payment of rents and refused to vacate the suit property despite the order of the Rent Controller passed against them in R.C.O.P.No.4 of 1993 on the file of the Rent Controller, Kattumannarkovil and on the other hand, endeavouring to alter the superstructure and also put up a new superstructure thereby denying the true owners title to the suit property unlawfully and hence, the need for the relief of permanent injunction.

19.As above pointed out, the respondents have claimed title to the suit property only by way of oral sale and on the plea of adverse possession as above discussed it has been held that the respondents have failed to establish their case of oral sale in accordance with the law and equally the respondents have failed to establish their claim of title to the suit property by way of adverse possession as above pointed out. In such view of the matter, when the respondents have no valid title to the suit property, if they are allowed to alter the superstructure and put up a new superstructure in the suit property, as rightly concluded by the trial Court, definitely the real owner of the suit property would be affected, when at the foremost, the respondents have not put forth a valid cause as to how they are entitled to put up a new superstructure in the suit property as well as alter the existing superstructure.

20.However, the case of the appellant had been negatived by the first appellate Court on the premise that inasmuch as Vaithilinga Naidu the brother of the original owner of the suit property the deceased Pethusamy Naidu, had died leaving behind not only his son Sambandam, but also two daughters as reflected in the LR certificate marked as Ex.B6, according to

the first appellate Court, the claim of title to the suit property by the appellant by way of purchase only from his father Sambandam would not confer on him a valid title to the suit property. As rightly contended by the appellant's counsel, when the respondents have not established their claim of title to the suit property in any manner and when admittedly Sambandam is the son of Vaithilinga Naidu and even assuming that Vaithilinga Naidu died leaving behind Sambandam and his daughters, it is only the daughters, who are entitled to challenge the claim of title to the suit property put forth that the appellant based on the sale deed dated 24.02.1993 marked as Ex.B1. Admittedly, Sambandam is having 1/3 share in the suit property as the LR of Vaithilinga Naidu, thereby by virtue of Ex.B1, the appellant had acquired 1/3 share in the suit property. Assuming the reason of the first appellate Court that the appellant would not be entitled to claim absolute title to the suit property on the strength of Ex.B1 is correct for the reason that Ex.B1 had not been executed by the daughters of Vaithilinga Naidu, when it is found that by virtue of Ex.B1, the appellant had acquired title to 1/3 share in the suit property as per law., he could be termed as the one of the co-owners of the suit property as per law. If at all his title to the suit property is to be disputed, the same could be agitated or raised only by the daughters of Vaithilinga Naidu and the respondents, who are the third parties to the suit property and not having any valid claim of title to the suit property as above pointed out, it is not open to the respondents to impeach the sale transaction marked as Ex.B1. When by virtue of Ex.B1, the appellant has become the co-owner of the suit property, as the co-owner, he is entitled to maintain the suit against the respondents to safeguard the suit property on behalf of the other co-owners. Accordingly, when the appellant has only laid the suit in O.S.No.62 of 1996 to restrain the respondents from altering the existing superstructure and put up a new superstructure in the property, particularly, the respondents having no entitlement to do so, when as above discussed the respondents have failed to establish their claim of title to the suit property in any manner, as the co-owner, it has to be held that the appellant is entitled to maintain the suit against the respondents for the relief of permanent injunction as claimed in O.S.No.581 of 2000.

21. When it is not in dispute that the respondents have suffered an order of eviction from the Rent Controller, Kattumannarkovil, in R.C.O.P.No.4 of 1993 laid by the appellant, all put together, it is evident that as rightly contended by the appellant's counsel, the appellant is entitled to maintain the suit for the relief of permanent injunction as the co-owner of the suit property for restraining the respondents from altering the existing superstructure and raising a new superstructure in the suit property as prayed for and the abovesaid factors had not been properly considered by the first appellate Court and

therefore, the reasonings and conclusions of the first appellate Court on the abovesaid aspects being based on an erroneous appreciation of the materials placed on record, both on factual matrix and on the point of law and resultantly, they being totally perverse, illogical and irrational, they are liable to be set aside.

22.In the light of the abvoesaid discussions, the substantial questions of law formulated in the second appeal Nos.85 & 86 of 2009 are, for the reasons aforestated, accordingly answered in favour of the appellant and the respondent Sambandam and against the respondents.

23.In conclusion, the common Judgement and Decree dated 26.11.2007 passed in A.S.Nos.98 of 2006 & 34 of 2006 on the file of the Subordinate Court, Chidambaram, are set aside and resultantly, the Judgment and Decree dated 20.10.2005 passed in O.S.Nos.69 of 2002 & 581 of 2000 on the file of the District Munsif Court, Kattumannarkovil, are confirmed. Accordingly, both the second appeals are allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

sms

To:

- 1.The Subordinate Court, Chidambaram.
- 2.The District Munsif Court, Kattumannarkovil.
- 3.The Section Officer, V.R.Section, High Court, Madrs.

+4ccs to M/s. S.Thirumavalan, Advocate SR.No.18230,18231

+2cc to M/s.Sarvabhauman Associates, Advocate SR.No.17705, 17706

S.A.Nos.85 & 86 of 2009

RLD (CO)

GMV (06/05/2021)