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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

SA.NO.750 OF 2004

AND

CMP.NO.5901 OF 2004

1. Sarasvathi
2. Markandan
3. Selvaraj
4. Sellammal
5. Selvi

... Appellants/Defendants

versus

Maragatham

... Respondent/Plaintiffs

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S. No.32 of 2002 by the Additional District Judge cum Fast Track Court No.5, Coimbatore at Tiruppur, dated 06.11.2002 confirming the judgment and decree passed in O.S. No.46 of 1999 by the District Munsif Cum Judicial Magistrate Court, Avinashi dated 28.06.2001.

For Appellants : Mr.R.Govindaraj

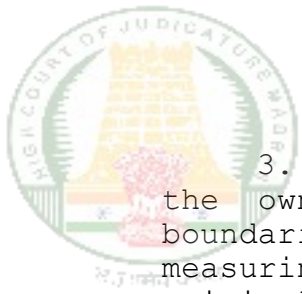
For Respondent : Mr.C.R.Prasannan

JUDGMENT

(Heard Video Conference)

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2. The appellants are the defendants in the suit O.S. No.46 of 1999 on the file of the District Munsif cum Judicial Magistrate Court, Avinashi. The suit was filed by the respondent /plaintiff against the appellants/defendants seeking for recovery of possession of the suit schedule property measuring 19 cents, which is situated on the western side of the respondent/plaintiff's property which according to her, the appellants/defendants have encroached.



3. It is the case of the respondent / plaintiff that she is the owner of the land measuring 2.07 acres with specific boundaries in SF No.76/1, out of the total extent of land measuring 4.14 acres. According to the respondent / plaintiff originally, Palani Gounder sold 2.07 acres in SF No.76/1 of Pachapalayam Village, Avinashi Taluk to the respondent / plaintiff's mother Devariammal under a sale deed dated 21.11.1945. The mother of the respondent / plaintiff, Devariammal, executed a registered Will dated 03.07.1962 in favour of the respondent / plaintiff and bequeathed the land measuring 2.07 acres. After her death, the respondent / plaintiff became the absolute owner of the land measuring 2.07 acres, out of 4.14 acres in SF No.76/1. The appellants / defendants 1 to 5 are neighbours of the respondent / plaintiff. It is the case of the respondent / plaintiff that they own adjacent lands measuring 2.07 acres in SF No.76/1 situated on the western side of the property, as per their sale deed dated 29.03.1961. It is the case of the respondent / plaintiff that a false claim has been made by the appellants / defendants that they are entitled to 2.26 acres, whereas according to the respondent / plaintiff, they are entitled only to 2.07 acres in SF No.76/1. It is the case of the respondent / plaintiff that the appellants / defendants have encroached 19 cents, which is the suit schedule property, which belongs to the respondent / plaintiff. The suit has been filed by the respondent / plaintiff on the ground that the appellants / defendants have encroached 19 cents out of her property and therefore, she sought for recovery of possession.

4. A written statement has been filed by the appellants / defendants before the Trial Court, wherein, they have pleaded that Patta No.86 in SF No.76/1 measuring an extent of 2.26 acres has been issued in the name of their predecessors in title, who were in possession of the said extent of the land. According to them, they and their predecessors in title are in possession of the entire extent of 2.26 acres, ever since 1912. They would also plead that the suit is barred by the law of limitation, since, the suit has been filed beyond the period of 12 years.

5. Issues were framed by the Trial Court and thereafter the suit filed by the respondent / plaintiff was decreed in her favour by the Trial Court by its judgment and decree dated 28.06.2001 in O.S. No.46 of 1999 and the relief of possession as sought for in the plaint was granted in favour of the respondent / plaintiff.

6. The Trial Court while decreeing the suit in favour of the respondent / plaintiff has given the following findings:



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A) The respondent / plaintiff has proved his title for 2 acres and 7 cents in SF No.76/1 based on the documents viz., a) sale deed, dated 20.06.1939 marked as Ex.A1; b) sale deed, dated 21.11.1945, marked as Ex.A2, c) Will, dated 03.07.1962 marked as Ex.A3 and d) Kist receipts marked as Ex.A4.

B) The Trial Court has also taken note of the fact based on the oral evidence of DW1 that the surveyor appointed by the respondent / plaintiff to measure the suit schedule property was prevented from taking measurement by the 1st defendant in the suit schedule property three years prior to the filing of the suit which has been acknowledged by DW1 in his deposition.

C) The Trial Court has also taken note of the fact that the appellants / defendants have not denied in their written statement or in their deposition, the respondent /plaintiff's title as seen from Exs.A1 to A3.

D) The Trial Court has also observed that the appellants / defendants have also not challenged the Sale deed standing in the name of the respondent /plaintiff in respect of the land measuring 2.07 acres in the same survey number.

E) The Trial Court has also taken note of the fact that before granting patta for the entire extent of 2.26 acres, which is in excess of the land which was actually purchased by the appellants / defendants predecessors in title, no notice was given to the respondent / plaintiff and therefore, the Trial Court has given a finding that Patta standing in the name of the appellants / defendants cannot be used as a document of title.

f) The Trial Court has also observed that appellants / defendants have also not raised the plea of adverse possession in their written statement and since no documents have also been marked as Exhibits on their side to prove that they are in possession of the suit property right from the year 1912, the plea of adverse possession over the suit schedule property measuring 19 cents was also rejected.



7. Aggrieved by the judgment and decree dated 28.06.2001 passed by the Trial Court in O.S. No.46 of 1999, the appellants / defendants in the suit preferred a regular appeal before the Lower Appellate Court in A.S. No.32 of 2001.

8. The Lower Appellate Court in its judgment and decree dated 06.11.2002 confirmed the findings of the Trial Court and dismissed the appeal filed by the appellants / defendants.

9. Aggrieved by the same, the appellants / defendants in the suit have now preferred this Second Appeal before this Court.

10. This Court admitted the Second Appeal on 17.04.2004 by formulating the following substantial question of law :

i) Whether the Courts below are right in decreeing the suit over looking the material evidence of D.W.2?

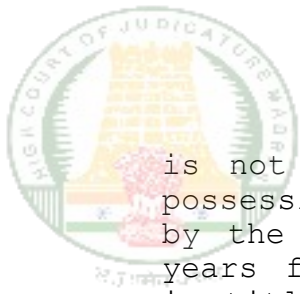
ii) Whether the Courts below have committed error in receiving the evidence of the plaintiff without any pleadings for decreeing the suit?

iii) Whether the Courts below have committed illegality to come to the conclusion that the defendants failed to prove their adverse possession by documentary evidence rejecting Exs.B-2 and B3?

11. Heard Mr.R.Govindaraj, learned counsel for the appellants/defendants and Mr.C.R.Prasannan, learned counsel for the respondent / plaintiff.

Submissions of the learned counsels

12. The learned counsel for the appellants would at the outset submit that the suit filed by the respondent / plaintiff is barred by law of limitation. He would submit that the predecessors in title of the appellants/defendants are in possession of the suit schedule property, ever since 1912. He would also submit that the Patta, Ex.B2 standing in the name of the predecessors in title of the appellants/defendants measuring 2.26 acres which includes the suit schedule property was issued on 18.03.1987. He would submit that the said Patta proves that the appellants/defendants are in possession of the suit schedule property. He would also submit that the said patta for an extent of 2.26 acres has not been cancelled till date. Therefore, he would submit that, the suit filed by the respondent / plaintiff



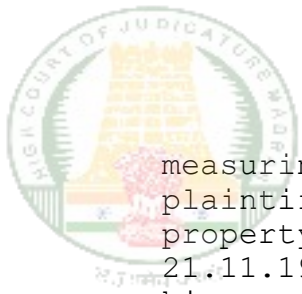
is not maintainable as the appellants/defendants are in legal possession of the property and further, the suit is also barred by the law of limitation as the suit was not filed within 12 years from the date when the appellants/defendants predecessor in title were put in possession of the property. According to him, the Trial Court as well as the Lower Appellate Court have concurrently committed a wrong by not giving due consideration to the oral and documentary evidence produced by the appellants / defendants which will clearly prove that they and their predecessors in title are in possession of the suit schedule property, ever since 2012. According to him, the Courts below have given a perverse finding ignoring the oral and documentary evidence produced by the appellants / defendants.

13. Per contra, Mr.C.R.Prasannan, learned counsel for the respondent / plaintiff drew the attention of this Court to Article 65 of the Limitation Act, 1963 and would submit that unless and until the plea of adverse possession was taken by the appellants / defendants in the written statement, the limitation period of 12 years for filing of the suit for recovery of possession will not get attracted. He then drew the attention of this Court to the written statement filed by the appellants / defendants in the suit and would point out that no such plea was taken by them in their written statement.

14. He also drew the attention of this Court to the oral evidence of DW1, who is the second defendant in the suit, wherein, he has admitted that the appellants/defendants predecessor in title had purchased only 2.07 acres and not 2.26 acres. He would also draw the attention of this Court to the admission made by DW1 in his deposition that no title document has been filed by the appellants / defendants to prove that they are the owners of the suit schedule property measuring 19 cents. He further, drew the attention of this Court to the statement made by DW1 during the course of his cross examination that he does not know directly as to whether his father was enjoying possession of the suit schedule property measuring 19 cents.

15. The learned counsel also drew the attention of this Court to the statement made by DW1 in his deposition that three years prior to the filing of the suit, the 1st appellant / 1st defendant had prevented the Surveyor appointed by the respondent / plaintiff to measure the suit schedule property.

16. The learned counsel for the respondent / plaintiff would therefore submit that the suit filed by the plaintiff is well within the period of limitation as no plea of adverse possession was taken by the appellants/defendants in the suit and no document of title was also produced by the appellants / defendants to prove their title over the suit schedule property



measuring 19 cents. He would submit that the respondent / plaintiff has established their title over the suit schedule property by virtue of the sale deeds, dated 20.06.1939 and 21.11.1945, which were marked as Exs.A1 & A2. In support of his submissions, the learned counsel for the respondent/plaintiff would rely upon the following authorities :

a) Saroop Singh versus Banto and others reported in (2005) 8 SCC 330;

b) Natesan versus Chinnachi Kandar & four others reported in 1996 (1) CTC 699;

c) Sethuraman and another versus Arulsamy and others reported in 2020 (5) CTC 719;

d) Subramanian and 2 others versus Karuppayee Ammal and 15 others reported in 1998 (I) CTC 79;

e) Dagadabai (Dead) by Legal Representatives versus Abbas Alias Gulab Rustum Pinjari reported in (2017) 13 SCC 705 and

f) A. Manickam versus Jayakumari and others reported in 2019 (3) CTC 558.

Discussion :

17. Admittedly, in the written statement filed by the appellants/defendants in O.S. No.46/1999, no plea of adverse possession was taken by them against the respondent /plaintiff. The appellants / defendants in their deposition through DW1 has also admitted the fact that no document of title stands in their name for the land measuring 19 cents in SF No.76/1, which is the suit schedule property. They claim legal possession only through the Patta for the land measuring 2.26 acres in SF No.76/1 which includes the land measuring 2.07 acres which their predecessors in title had purchased by a Sale deed, which has been marked as an Exhibit before the Trial Court. The Trial Court as well as Lower Appellate Court has concurrently held based on the evidence available on record that the appellants/defendants are the owners of 2.07 acres in SF No.76/1 and not the larger extent of 2.26 acres as claimed by them. The Trial Court as well as Lower Appellate Court has held that though there is a patta standing in the name of the appellants / defendants predecessors in title for the land measuring 2.26 acres, the said document cannot be relied upon in view of the fact that the said patta has been issued without notice to the respondent / plaintiff. The plea of limitation raised by the appellants / defendants has also been rejected by the Courts below on the ground that even prior to three years before filing



of the suit, the appellants / defendants have prevented the respondent/plaintiff from measuring the suit schedule property through the assistance of a surveyor. Hence, the Trial Court as well as the Lower Appellate Court have given a concurrent finding that the suit filed by the respondent / plaintiff is well within the period of limitation.

18. Article 64 and 65 of the Limitation Act, 1963 prescribes the period of limitation for filing a suit for recovery of possession.

Article 64 and 65 of the Limitation Act reads as follows :-

Description of suit	Period of limitation	Time from which period begins to run
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession
65. For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

19. Insofar as Article 64 of the Limitation Act, 1963 is concerned, the same is not applicable to the facts of the instant case. In the instant case, the respondent / plaintiff has established his title over the suit schedule property through Sale deed, Ex.A2. The relief sought for in the plaint is also based on Ex.A2. Both the Courts below have concurrently held based on the evidence available on record that the respondent / plaintiff has established her title over the suit schedule property by virtue of Ex.A2, Sale deed. Article 64 of the Limitation Act, gets attracted only in cases where the plaintiff is seeking recovery of possession not based on title and when the plaintiff has been dispossessed. Hence, this Court is of the considered view that Article 64 of the Limitation Act is not attracted for the facts of the instant case.

20. It is also clear from Article 65 of the Limitation Act that 12 years period is applicable only when the possession of the defendants becomes adverse to the plaintiff.



21. In the case on hand, no plea of adverse possession was ever taken by the appellants/ defendants in the suit as seen from their written statement or from their deposition. The only contention raised by them was that by virtue of patta issued for the extent of 2.26 acres which includes the suit schedule property also they are the owners of the property and that their possession cannot be disturbed.

22. When the respondent / plaintiff has established his title over the suit schedule property by virtue of the sale deeds, dated 20.06.1939 & 21.11.1945 (Exs.A1 and A2) and when the plea of adverse possession was never taken by the appellants / defendants, the suit filed by the respondent / plaintiff is well within the period of limitation .

23. In the case of Saroop Singh versus Banto and others reported in (2005) 8 SCC 330, the Hon'ble Supreme Court in paragraph 28 of the said judgment has held as follows :-

28. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff - respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

24. The aforesaid decision squarely supports the case of the respondent / plaintiff as in this case also, the respondent / plaintiff has been able to prove his title by virtue of Exs.A1 and A2 but the appellants / defendants have not taken the plea of adverse possession against the respondent / plaintiff nor have they been able to establish by documentary evidence that they are in adverse possession.

25. A single bench judgment of the Madras High Court in the case of Sethuraman and another versus Arulsamy and others reported in 2020 (5) CTC 719 also supports the case of the respondent / plaintiff as in that decision, also a learned Single Judge of this Court has held that revenue records by



themselves are not documents of title and there must be an assertion of title, which has to be proved through other documents of title and only then it will fortify the claim of title. In the case on hand excepting for filing the Patta, which admittedly was issued in favour of the appellants/defendants predecessors in title without notice to the respondent / plaintiff, no other document of title pertaining to the suit schedule property measuring 19 cents were produced by the appellants / defendants in the suit.

26. In another decision of the Madras High Court in the case of Natesan versus Chinnachi Kandar & four others reported in 1996 (1) CTC 699, a learned single Judge of this Court has also held that kist receipts and documents are not sufficient to accept the plea of adverse possession. In the said decision, a learned single Judge has held that since in the written statement a specific plea has not been taken about the adverse possession and therefore, production of patta and kist receipts are not sufficient to prove adverse possession. As seen from the aforesaid decision also, there must be a specific pleading of adverse possession and only then the Court can adjudicate as to whether the said plea can be accepted or not. In the case on hand, no such specific plea was taken by the appellants / defendants.

27. In another decision of the Madras High Court in the case of Subramanian and 2 others versus Karuppayee Ammal and 15 others reported in 1998 (I) CTC 79, a learned Single Judge of this Court held that patta is not a document of title and does not conclusively prove the title of the property.

28. The learned counsel for the respondent /plaintiff had also submitted that there is no substantial question of law involved in the Second Appeal since the factual issues raised by the respective parties have been adequately and correctly considered by the Courts below. In support of the said submission he has relied upon the decision of the Hon'ble Supreme court in the case of Dagadabai (Dead) by Legal Representatives versus Abbas Alias Gulab Rustum Pinjari reported in (2017) 13 SCC 705. In paragraph 15 of the aforesaid decision, the Hon'ble Supreme Court has held as follows :-

15. Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper pleadings and evidence. The burden to prove such plea was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the



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burden that lay on him in accordance with law. When both the courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent findings of fact were unimpeachable and binding on the High Court.

29. By applying the ratio laid down in the aforesaid decision, it is clear that there is no substantial question of law involved in this Second Appeal as both the Courts below have rightly held based on the materials and evidence available on record that the appellants/defendants have failed to discharge their burden of proving adverse possession as against the respondent / plaintiff over the suit schedule property.

30. For the foregoing reasons, this Court does not find any error in the findings of the Courts below and does not find any perversity in the said findings. There are also no debatable issues of law involved in this Second Appeal. Hence, there is no merit and accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(I)

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Sub Assistant Registrar

vsi2

To

1. The Additional District Judge
Fast Track Court No.5,
Coimbatore at Tiruppur,
2. The District Munsif Cum
Judicial Magistrate, Avinashi.
3. The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.C.R.Prasannan, Advocate, S.R.No.36129
+1cc to Mr.R.Govindaraj, Advocate, S.R.No.36187

SA.No.750 of 2004

SR(CO)
CS/05/10/2021