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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2021

PRONOUNCED ON : 14.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.494 of 2010

& M.P.No.1 of 2010

1. Nicolas
2. Lourdusamy
3. Claude
4. Jackline ... Appellants/Defendants

Vs.

1. Xavier Robert ... Respondent/Plaintiff
2. Charles Adiberth ... Respondent/Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 07.12.2009 made in A.S.No.263 of 2006 on the file of the learned Principal District Judge, Puducherry, confirming the judgment and decree dated 29.04.2004 made in O.S.No.356 of 1999 on the file of the learned I Additional Subordinate Judge, Puducherry.

For Appellants : Mr.A.Gouthaman
for Mr.T.R.Rajaraman

For Respondents: Mr.S.Saravanan (for R1)
No appearance for R2

J U D G M E N T

This second appeal is focused as against the judgment and decree dated 07.12.2009, passed in A.S.No.263 of 2006 by the learned Principal District Judge, Puducherry in confirming the judgment and decree dated 29.04.2004, passed in O.S.No.356 of 1999 by the learned I Additional Subordinate Judge, Puducherry.



2. The parties, for convenience sake, are referred to hereunder, according to their litigative status before the trial Court.

3. Bereft and niggard of details, the facts which are absolutely necessary and germane for the disposal of this second appeal would run thus.

(i) The suit property originally belonged to one Joseph Malaiappa, by virtue of a sale deed dated 17.11.1971 registered under document No.2809 in the District Registrar office, Pondicherry, and after his demise, his legal heirs namely Maeleapa Liliane, Maleapa Pulette, Maleapa Gilberte, Maleapa Michele and Maliapa Nicole Josephine Maria Claude who are the absolute owners of the schedule of property have jointly executed a sale deed dated 17.03.1999 in favour of the plaintiff for a valid consideration which was registered as document No.1168/99 in the office of the District Registrar, Pondicherry and thus the right or interest over the suit property was transferred to the plaintiff as on 17.03.1999.

(ii) The defendants who were the licencees under the plaintiff's vendors' father on oral lease, after death of the said deceased Joseph maleapa have not paid any rent to his legal heirs, and without their consent and knowledge, the defendants raised two huts in the suit property and the plaintiff orally informed the defendants about the purchase of the suit property and requested them to vacate the property after removing the super structures raised thereon. Since the plaintiff is the absolute owner of the property, the defendants refused to comply with the demands of the plaintiff and hence, the plaintiff issued a lawyer's notice to the defendants on 23.04.1999 to vacate and hand over the suit property to him after removing the superstructure.

(iii) The notice sent to the defendants 1, 2 and 5 were returned as not claimed by them, while the defendants No.3 and 4 did not send any reply to him even after receipt of the notice, and as such, the defendants are liable to be ejected from the suit property in as much as the leave granted to them ended on revocation by the plaintiff as on 23.04.1999.

(iv) On 10.07.99 the defendants with an ulterior motive tried to raise permanent structure in the property, but the same was stopped by the sister of the plaintiff, and on 04.09.1999 they accumulated bricks, cement and sand in the suit property and without any right over the suit property, the defendants tried to make permanent structure thereon in order to get



illegal gain over the same, and the plaintiff will be put into irreparable loss and hardships. Hence, the plaintiff prays for declaration of title, recovery of possession and permanent injunction.

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4. The case of the defendants are as follows:

(i) The defendants deny all the averments of the plaintiff in the plaint. The said Joseph Malaiappan is the distant relative to the defendants and they did not know the existence of sale deed dated 17.9.1971 and another sale deed dated 17.03.1999 and their possession in the suit property was known to the said Joseph Malaiappan who never claimed any right or interest over the possession of the defendants' in the suit property which was known to the legal heirs of the deceased Joseph Malaiappan.

(ii) At any point of time, the defendants were not at all licencees under the plaintiff's vendors' father on oral lease, and the plaintiff himself confused that whether the defendants were licensee or tenant. Because the defendants have been in exclusive possession of the suit property in continuous and open without interruption, the plaintiff has to prove the license of the defendants in the suit property and since their possession in the suit property is actual, physical and exclusive and continuous without interruption, they filed 20 receipts for payment of electricity consumption charges for the period from 1980 to 1995, and the electricity connection for the suit property stands in the name of the father of the defendants, namely, Antoine Audiberth and all these receipts came in the defendants' name and further the voters register cards of the defendants family are filed and the Pondicherry Municipality had issued Form-C dated 09.05.1984 to the defendants' father with regard to the assessment of house tax for the suit property, and therefore, by virtue of the above documents right from 09.12.1980 till date of filing of the suit the defendants' father and the defendants have been in actual, physical and continuous possession of the property, and hence, the title of the defendants have been perfected and their possession of the property could not be disturbed by the plaintiff or anybody.

(iii) The allegation of the plaintiff regarding the lease and licence has been invented for the purpose of this case so as to snatch the property from the defendants, and therefore, there is no question of rent on the part of the defendants in the property. Since the defendants are illiterate and poor, they did not know the procedure for the notice issued by the plaintiff. The defendants being coolie workers never kept an



idea of raising permanent structure in the property since they have right in the suit property because their father's right cannot be questioned by others.

WEB COPY (iv) Since the 2nd defendant on 27.11.1985 had entered into a written matrimonial agreement with his wife prior to his marriage which is a registered one, it is well evident for the peaceful possession of the property by the defendants for long years, more than the statutory period, and hence, the suit is barred by limitation, and the original owner of the property remained recalcitrant and simply kept quiet and thereby asserted the adverse possession of the property in the hands of the defendants, and hence, their title have been perfected by possession of right, and therefore, the plaintiff has no right to evict them from the suit property. Hence, the defendants pray for the dismissal of the suit with costs.

5. Considering the pleadings of both sides, the trial Court framed necessary issues and tried the suit. On the side of the plaintiff, PW1 and PW2 were examined and thirteen documents were marked as Ex.A1 to Ex.A13. On the side of the defendants, DW1 to DW5 were examined and eighty-seven documents were marked as Ex.B1 to Ex.B87.

6. Having considering the materials placed before her, the learned I Additional Subordinate Judge, Puducherry, came to the conclusion that the plaintiff has proved his case and ultimately, decreed a suit as prayed for without costs and granted three months time to the defendants to vacate the suit property after removing the super structure.

7. Aggrieved over the said judgment and decree, the defendants have preferred an appeal before the learned Principal District Judge, Puducherry in A.S.No.263 of 2006. After elaborate enquiry, the learned Principal District Judge, Puducherry, confirmed the findings arrived at by the trial Court and consequently, dismissed the appeal.

8. Feeling aggrieved over the same, the defendants 2 to 4 are before this Court with the present Second Appeal. When the second appeal is taken up for admission, the following substantial questions of law were framed.

(a) When the defendants have clearly stated in the written statement from when they were in exclusive possession of the suit property with the knowledge of the real owner for over the period prescribed for claiming title by adverse possession, are the Courts



below right in ignoring the statement and corroborative evidence, especially when the plaintiff miserably failed to prove possession of the defendants as licensees?

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(b) When the defendants have proved the requirement for establishing adverse possession, are the Courts below right in negating the plea by non-consideration of documentary evidence produced by the defendants?

(c) Are the Courts below right in not drawing adverse inference against the plaintiff for non-examination of his vendor, especially his plea being that the possession of the defendants is only permissive in nature?

9. Heard Mr.A.Gouthaman, learned counsel appearing for the appellants/defendants 2 to 4 and Mr.S.Saravanan, learned counsel appearing for the 1st respondent/plaintiff and perused the materials on record.

10. It is the case of the plaintiff that he has purchased the suit schedule property from the legal heirs of the deceased Joseph Maleapa, who is the absolute owner in respect to the suit schedule property. In order to prove the same, on the side of the plaintiff the sale deed dated 17.09.1971 stands in the name of the Joseph Maleapa, was produced as Ex.A1. Further, the sale deed dated 17.03.1999 executed by the legal heirs of the Joseph Maleapa in favour of the plaintiff was produced as Ex.A2 and the Chitta Adangal relates to the suit property stand in the name of the plaintiff has been produced as Ex.A3. Encumbrance Certificate relates to the suit property for the period from 01.01.1969 to 01.07.2001 has been produced as Ex.A4. More than that the pre-suit notice issued to the defendants has been produced as Ex.A5.

11. From the perusal of the above said documents, it is noticed that the said Joseph Maleapa has purchased the plot from one Ramasamy and thereafter, the plaintiff has purchased the constructed house from the legal heirs of the said Joseph Maleapa for Rs.2,30,000/- under Ex.A2, Sale deed and therefore, after the completion of sale in respect to the same, the revenue records have also been changed in the name of the plaintiff. In respect to the said documents, the defendants did not claim as the same is not a genuine one.



12. The defendants have come with a simple case that they have not claimed the title to the suit property by way of any title deed and they have not traced their title to the suit property by way of transfer of property between the parties.

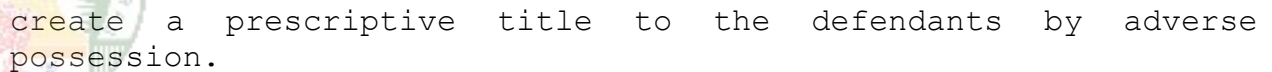
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13. The learned counsel for the defendants would contend that at any point of time, the defendants were not at all licencees under the plaintiff's vendors' father on oral lease. Because of the reason that the defendants have been in exclusive possession of the suit property in continuous and open without interruption, they perfected title by way of adverse possession.

14. Now on considering the same with relevant records, in order to prove their possession, on the side of the defendants, 87 documents were exhibited as Ex.B1 to Ex.B87. Among them, most of the documents are the Bills and Receipts for the Electricity Consumption Charges. Further, those documents are all related to the year of 1980 and of subsequent periods.

15. In respect to the validity of the said documents, the lower appellate Court has held that in the documents exhibited on the side of the defendants, some of the documents are having different door number and therefore, all the documents exhibited on the side of the defendants cannot be taken into account for accepting the possession of the defendants in the suit property.

16. Here it is a case, the suit property is situated in Colas Nagar, Uppalam, Pondicherry and its Plot Number is 100. DW5-Nagarajan working in the Electricity Department, Pondicherry, has given evidence as door number of the suit property is 54 and the street name is Veeramamunivar Street. DW4-Samuel Felix, working in the Pondicherry Municipality has also given evidence as the door number of the suit property is 54. On the other hand, in Ex.B2 and Ex.B32, Voter's lists, the door number and street name have been given as 1, Deivasagayam Veethi, Colas Nagar. Further, in the marriage certificate and income certificate i.e., Ex.B61 and Ex.B62, no door number and street name have been mentioned. The other documents viz., Electricity consumption charges and house tax assessment under Form-'C' issued by the Pondicherry Municipality, are concerned, they all relate to the suit property and may be relevant for accepting the possession of the defendants in the suit schedule property. Accordingly, some of the documents exhibited on the side of the defendants show that the defendants are in the possession of the suit schedule property. In the said circumstances, this Court have to decide whether those documents



18. In this occasion, the learned counsel for the 1st respondent/plaintiff submits that mere possession having by the defendants do not create any right to them. In otherwise, for proving the adverse possession, it is necessary for the defendants to show some important elements, which are necessary for adverse possession. In this regard, he referred to the following judgments of our Hon'ble Apex Court.

"It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and 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."

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"36. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out [M.Siddiq (Dead) Through Lrs (ram Janmabhumi Temple Case) Vs. Mahand Suresh Das & Ors.]

(iii) In Karnataka Board of Wakf Vs. Government of India and Others, reported in (2004) 10 SCC 779, wherein our Hon'ble Apex Court has held as follows:

"In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See :S.M.Karim v. Bibi Sakina [AIR 1964 SC 1254], Parsinni Vs. Sukhi [(1993) 4 SCC 375] and D.N.Venkatarayappa Vs. State of Karnataka [(1997) 7 SCC 567]). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary



to establish his adverse possession. (Dr.Mahesh Chand Sharma (Dr.) Vs. Raj Kumari Sharma [(1996) 8 SCC 128]"

19. Now, by applying the principles set out in the above referred judgments to the case on hand, here it is a case, the defendants have not stated about the date on which they entered into the property. It is for the defendants to state as to when and under what manner their possession becomes adverse to the real owner. The first appellate Court has correctly held that the defendants have not pleaded the particulars as when they took possession hostile to the real owner.

20. In the present case, the defendants have taken a simple plea that they have been in possession of the suit property openly for a long and continuous period. The said plea is not enough to entitle them to claim prescriptive title by adverse possession. Accordingly, the defendants though proved their possession of the suit schedule property for more than the statutory period, the said possession cannot be taken adverse to the real owners and hence, it could not be said that they acquired prescriptive title to the suit property.

21. In view of the above discussions, this Court do not find any merits in the appeal filed by the appellants/defendants 2 to 4. Accordingly, the Second Appeal is dismissed and the Judgment and decree dated 07.12.2009 made in A.S.No.263 of 2006 on the file of the learned Principal District Judge, Puducherry, is confirmed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Principal District Judge,
Puducherry.

2.The I Additional Subordinate Judge,
Puducherry.

+1cc to M/s.S.Saravanan, Advocate Sr.67025

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