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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.07.2021
Pronounced On	06.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.282 of 2012
and
M.P.No.1 of 2012
(Through Video Conferencing)

Parasuraman ... Appellant/Appellant/Plaintiff

Vs.

1.Thangaraj
2.Vinayagam ... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 30.08.2011 passed in A.S.No.130 of 2005 on the file of the Sub Court, Gingee confirming the Judgment and Decree dated 28.06.2005 passed in O.S.No.471 of 2000 on the file of the Principal District Munsif Court, Gingee.

For Appellant : M/s.Paul and Paul

For Respondents: Mr.T.Dhanasekaran

J U D G M E N T

I have heard the learned counsel for the appellant and the learned counsel for the respondents. I have perused the impugned Judgment and Decree dated 30.08.2011 passed by the Sub Court, Gingee (hereinafter referred to as First Appellate Court) in A.S.No.130 of 2005, the Judgment and Decree dated 28.06.2005 passed by the Principal District Munsif Court, Gingee (hereinafter referred to as Trial Court) in O.S.No.471 of 2000 and documents which were filed along with this Second Appeal.

2. This appeal was listed for admission on 26.03.2012. However, on the said date, only notice of admission was ordered on the respondents. The respondents are thus represented by the learned counsel Mr.T.Dhanasekaran.

3. The appellant was plaintiff and is aggrieved by the impugned Judgment and Decree dated 30.08.2011 passed by the First Appellate Court in A.S.No.130 of 2005.



4. By the impugned Judgment and Decree dated 30.08.2011, the First Appellate Court dismissed the aforesaid appeal filed by the appellant against the Judgment and Decree dated 28.06.2005 of the Trial Court in O.S.No.471 of 2000.

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5. The appellant had filed the above suit for a declaration and for a permanent injunction to restrain the respondents from interfering with his peaceful possession of the suit schedule properties stating that the appellant was the owner of the 71 Palm Trees, 5 Morinda Tinctoria Trees (Nona Trees) and 8 Neem Trees in 0.15.0 Ares of land in S.No.311/3B, covered by Patta No.1472, Kist 0.48.

6. The respondents resisted the suit by filing a written statement stating that the Trees in question which form part of the suit schedule property were under the possession and the control of the respondents from the time of his predecessors and therefore the suit was not maintainable.

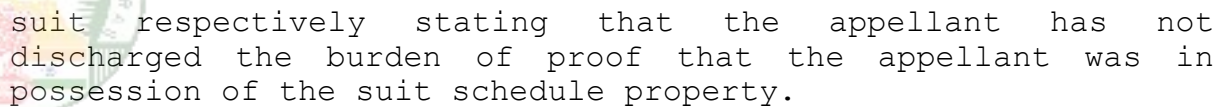
7. The Trial Court had framed the following issues for consideration :-

- i. Whether the palm trees are not stand in the suit property?
- ii. Whether the palm trees are in the plaintiff's possession?
- iii. Whether the palm trees are not handed over to the plaintiff?
- iv. Whether the plaintiff is entitled for declaration and permanent injunction as prayed for?
- v. To what other reliefs?

8. The learned counsel for the appellant further submits that the Trial Court committed an error in dismissing the suit for a permanent injunction even though the respondent admitted that the land in question where the Trees were situated belonged to the appellant.

9. The learned counsel for the appellant submits that an Advocate Commissioner was appointed by the Trial Court and a report dated 10.09.2001 was filed along with a sketch which was however not marked as a document before the Trial Court while passing the its Judgment and Decree dated 28.06.2005. The learned counsel for the appellant further submits that after the report was filed, the respondents had also filed an additional written statement, wherein, the respondents admitted that the area where the Trees were situated was indeed that of the appellant. However, the land to an extent of 0.15.0 Ares (37.1 Cents) in S.No.311/3B, Patta No.1472, Kist 0.48 along with trees were under the possession of the respondents right from the time of his ancestors/predecessors.

10. It is submitted that both the First Appellate Court and Trial Court committed error in dismissing the appeal and



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15. Even before the Trial court, during the cross examination, the D.W.1 has admitted that the trees were situated on the edge of the appellant's/plaintiff's land. On further perusing the impugned Judgment and Decree, it is noticed that the report of the Advocate Commissioner confirms that the 71 palm tress and 4 Morinda Tinctoria Trees (Nona Trees) and 8 Neem Trees were situated in the land belonging to the appellant/plaintiff. The respondents/defendants have also not effectively contradicted the stand of the appellant/plaintiff that the land in question belonged to the appellant/plaintiff. In fact, the first respondent/ first defendant has also averred in his additional written statement that the land where the above trees were located belongs to the appellant/plaintiff, but, the respondents/defendants were having adverse possession.



16. However, in absence of direct pleading by the appellant/plaintiff to that effect, the Trial Court has declined to grant relief as prayed for by the appellant/plaintiff.

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17. The Hon'ble Supreme Court in Ravinder Kaur Grewal and others Vs. Manjit Kaur and others, (2019) 8 SCC 729, held as follows:-

52. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

53. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once the right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

54. In India, the law respects possession, persons are not permitted to take law in their hands and dispossess a person in possession by force as observed in Lallu Yeshwant Singh [Lallu Yeshwant Singh v. Rao Jagdish Singh, AIR 1968 SC 620] by this Court. The suit can be filed only based on the possessory title for appropriate relief under the Specific Relief Act by a person in possession. Articles 64 and 65 both are attracted in such cases as held by this Court in Des Raj v. Bhagat Ram [Des Raj v. Bhagat Ram, (2007) 9 SCC 641]. In Nair Service Society [Nair Service Society Ltd. v. K.C. Alexander, AIR 1968 SC 1165] it was held that if rightful owner does not commence an action to take possession within the period of limitation, his rights are lost and person in possession acquires an absolute title.



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55. In *Sarangadeva Periya Matam v. Ramaswami Goundar* [Sarangadeva Periya Matam v. Ramaswami Goundar, AIR 1966 SC 1603], the plaintiff's suit for recovery of possession was decreed against the Math based on the perfection of the title by way of adverse possession, he could not have been dispossessed by the Math. The Court held that under Article 144 read with Section 28 of the Limitation Act, 1908, the title of Math extinguished in 1927 and the plaintiff acquired title in 1927. In 1950, he delivered possession, but such delivery of possession did not transfer any title to the Math. The suit filed in 1954 was held to be within time and decreed.

56. There is the acquisition of title in favour of the plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on "title" as envisaged in the opening part under Article 65 of the Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonymous with adverse possession.

57. In Article 65 in the opening part a suit "for possession of immovable property or any interest therein based on title" has been used. Expression "title" would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession, has been held in a catena of decisions.

58. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of the Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment



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of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in praesenti to obtain it, not in futuro. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property.

59. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e. actual, "de jure possession", constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and



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makes the land cultivable. The legislature in various States confers rights based on possession.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfilment of certain conditions, tacking may be by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his



rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

18. The Hon'ble Supreme Court in the above case has held that the defendant can also file a suit for declaring title over the property in respect of which the defendant claims adverse possession. However, the respondents/ defendants have merely stated that the property in question was in their possession from the time of their predecessors. However, no evidence has been filed by the respondents/defendants to substantiate the same. It was incumbent on the part of the respondents/defendants to either establish adverse possession or in the alternative defend himself before the Trial Court effectively.

19. In the light of the above, this Court is of the view that both the Trial Court and First Appellate Court have committed error in dismissing the suit and the impugned Judgment and Decree of the First Appellate Court and the Judgment and Decree of the Trial Court are set aside.

20. Under these circumstances, this Second Appeal is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge,
The Sub Court, Gingee.

2.The Principal District Munsif,
The Principal District Munsif Court,
Gingee.

3.The Section Officer,
V.R.Section, Madras High Court.

+1cc to Mr.Paul & Paul, Advocate, S.R.No.39188

S.A.No.282 of 2012
and M.P.No.1 of 2012

BR(CO)
GN(19/11/2021)