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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.07.2021	Pronounced on: 10.08.2021
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CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE Ms. JUSTICE R.N.MANJULA

O.S.A.No.257 of 2014

and

M.P.No. 1 of 2014

Sri Shuddhawaita Vaishnav,
Maha Sabha (Regd.),
Rep.by its Secretary,
No.30, Ekambareswarar Agraharam Road,
Chennai - 600 003.

...Appellant/Plaintiff

Versus

1. The Commissioner,
Corporation of Chennai
Ripon Buildings,
Poonamallee High Road,
Chennai - 600 003.
2. The Executive Engineer (Zone V),
Corporation of Chennai,
No.183, E.V.R. Salai,
Kilpauk, Chennai - 600 010.
3. The Assistant Engineer,
Tamil Nadu Electricity Board,
Mc.Nicols Road,
Chetpet, Chennai - 600 031.
4. The Inspector of Police,
K-6, T.P.Chatram Police Station,
Shenoy Nagar, Chennai - 600 010.
5. Y.J.Shamsuddin
6. Y.J.Bakir
7. Y.J.Abbas



8. Y.J.Shabbir

9. E.Venkatesan

10. Directorate of Vigilance & Anti-Corruption (DVAC),
NCB, 21-28, P.S.Kumarasamy Raja Salai,
Raja Annamalaipuram,
Chennai - 600 028.

11. The Commissioner of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai - 600 096.

...Respondents

[R11 - is Suo Motu impleaded, vide
Court order dated 11.01.2021 in MP.No.1 of 2014]

Prayer :- This Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules r/w Clause 15 of Letters Patent, praying to set aside the judgment and decree dated 25.07.2014 made in C.S.No.154 of 2008 and thereby allow the Original Side Appeal by granting the reliefs claimed therein.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.R.Gopinath for RR1 & 2

: Mr.Edwin Prabhakaran for R4

(Government Counsel)

: No appearance for RR3 & 5 to 11

JUDGEMENT

R.N.MANJULA, J.

This Original Side Appeal has been filed against the judgment and decree passed in C.S.No.154 of 2008, dated 25.07.2014.

2. The unsuccessful plaintiff is the appellant herein. The suit is filed for various reliefs including declaration with an alternate prayer for compensation and other consequential reliefs in respect of the suit 'B' schedule properties. After completion of the trial and after hearing both sides, the learned Single Judge has dismissed the suit. Aggrieved over that, the plaintiff has filed this appeal.

3. The brief facts which led to the suit by the plaintiff is that the plaintiff is a Society under the Tamil Nadu Society Registration Act, 1975 and its object is to promote education to all and to do other charitable services. The School by name Sri Shuddadwaita Vaishnav Higher Secondary School was run by the



Society for more than 60 years at No.30, Ekambareswarar Agraharam Street, Chennai and another School by name Balmandir Higher Secondary School was run at Samudra Mudali Street, Sowcarpet, Chennai. Since this School was situated in a busy area at Sowcarpet, it could not be expanded further. Hence the said School was also shifted to Ekambareshwarer Agraharam Street, temporarily.

3.1 In order to accommodate the schools permanently, the Society purchased an extent of 5 grounds 2050 Sq.ft., in T.S.Nos.18, 19, 20 and 21/1 on 01.07.2005; after verifying its title a sale price of Rs.1,00,87,548/- was paid; patta stood in the name of the vendors and they were paying the property tax; after the purchase, the plaintiff was also paying all tax and other revenue charges and continued to be in possession and enjoyment of the property; electricity connection was also obtained in the said property; as the plaintiff intended to construct a Primary School in T.S.No.21/1, the society applied for a planning permission; on receiving the same, the second defendant sent a letter on 27.11.2007 by stating that the lands in T.S.Nos.18, 19 and 20 belong to the Corporation of Chennai; thereafter the first respondent Corporation demanded the appellant to earmark the boundaries for T.S.No.21/1. The defendants started to interfere with the peaceful enjoyment of the appellant/plaintiff; the first respondent cancelled the assessment of property tax that stood in the name of the appellant; without minding the objections raised by the appellant/plaintiff, the respondents 1 to 4 had put up a compound wall for the property lying in T.S.Nos.18, 19 and 20 by dividing them from T.S.No. 21/1; hence the plaintiff has filed the suit for declaration that he is the absolute owner of the B-Schedule property and mandatory injunction and other consequential reliefs.

4. The averments made in the statement of the first respondent / first defendant is that lands in T.S.Nos.18, 19 & 20, in Block No.6 at Aminjikarai Village belongs to the Corporation of Chennai; the Town Survey Register extract also stands in the name of the Chennai Corporation; earlier a Patta has been wrongly issued by the Tahsildar in the names of private persons. After due enquiry, the District Collector, Chennai had cancelled those Patta and restored it to the name of the Corporation; the appellant also filed an application for planning permission to start a construction in T.S.Nos.18,19,20 and 21/1; On inspection, it was found that the appellant/plaintiff are entitled only to a small portion of the land in T.S.No.21/1 alone and hence the planning permission was rejected; the plaintiff had purchased the property from the vendors who did not have any title to that property.



4.1. The second defendant/ second respondent adopted the written statement filed by the first respondent. The defendants 4 & 10 / respondents 4 & 10 have filed a separate written statement by denying the title of the plaintiff with regard to suit B-Schedule property.

5. The points for consideration that would arise in this Appeal are:

(i) Whether the finding of the learned single Judge that the plaintiff is not entitled to get the decree for declaration and other consequential relief in respect of the properties in T.S.Nos.18, 19 & 20 ('B' schedule properties) is fair and proper ?

(ii) Whether the plaintiff is entitled to claim title to the 'B' schedule properties by prescription of title by adverse possession?

6. The submissions made by Mr.R.Thiagarajan, learned counsel for the appellant and Mr.R.Gopinath, learned counsel for the 1st and 2nd respondents and Mr. Edwin Prabhakaran, learned Government counsel for the 4th respondent were heard.

7. The learned counsel for the appellant submitted that the learned single Judge has not considered the fact that this appellant/ plaintiff is a bonafide purchaser of the suit B schedule property after verifying its title deeds by seeing Encumbrance Certificate; as the appellant and his predecessors have been in continuous long possession of the suit 'B' schedule property to the knowledge of the first respondent corporation, they have perfected title by adverse possession also.

8. The learned counsel for the appellant placed his reliance on the following judgements in support of his case:

Sl. No	Citations submitted by the appellant's counsel	Reported in
1	Anathula Sudhakar Vs. P.Buchi Reddy (Dead) BY LR's and others	(2008) 4 SCC 594
2	A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others	(2012) 6 SCC 430
3	Maria Margaridaf Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira (Dead) through LR's.	(2012)5 SCC 370



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Union of India and others Vs. Vasavi
cooperative Housing Society Limited and
others

(2014)2 SCC
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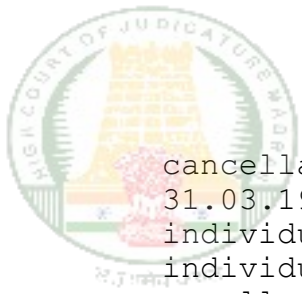
9. The learned counsel for the respondents submitted that the patta for 'B' schedule property has been wrongly issued in favour of individuals and it has been subsequently cancelled by the District Collector after due enquiry and the same was not challenged and hence the cancellation proceedings have attained finality; the Appellant claims title basing on his title deeds and he cannot raise the plea of adverse possession without admitting the title of the first respondent Corporation.

10. The defendants themselves have admitted the title of the plaintiff in respect of T.S.No.21/1. The appellant / plaintiff has claimed title towards the suit 'B' schedule properties by virtue of the Sale Deeds dated 01.07.2005. It is contended by the 1st respondent/ 1st defendant Corporation that the properties in T.S.Nos.18, 19 & 20 have been all along the properties of the Chennai Corporation. But the revenue authorities have mistakenly issued pattas in favour of the private individuals. After finding the mistake, the said pattas have been cancelled on 31.03.1993 by the District Collector by making due enquiry. The cancellation proceedings of the Collector dated 31.03.1993 order has been produced as Ex.D2.

11. It is submitted by the appellant that in those proceedings only the patta in respect of T.S.Nos.19 & 20, were cancelled and with regard to S.No.18 the decision of the Collector is still pending. But the Corporation continues to claim that the S.No. 18 also belongs to the Corporation and the lands in T.S.Nos.18, 19 & 20 remain as one block.

12. It is alleged by the appellant society that it came to know about the interest of the 1st respondent / 1st defendant in the 'B' Schedule properties only when the application for planning approval to construct a school in the demised premises was denied by the 1st respondent/1st defendant. The purchase of the appellant /plaintiff was in the year 2005. The claim of the 1st respondent/ 1st defendant over the demised properties have been asserted as early as in the year 1993 itself, on which date the proceedings to cancel the pattas in the name of the individuals was issued.

13. Since the said proceedings were issued after making due enquiry it would be within the knowledge of the vendors of the appellant who sold the properties in his favour. The patta



cancellation proceedings of the District Collector Chennai dated 31.03.1993 has not been challenged by any of the said private individual and therefore it has become final. If the private individuals have sold the properties to third parties like the appellant without disclosing the earlier cancellation proceedings, that can not bind the first respondent Corporation. In fact the learned single Judge before accepting the Ex.D2 patta cancellation proceedings had called for the connected records and asserted himself about its correctness.

14. The appellant /plaintiff has filed a writ petition in WP.No.24251/2006 challenging the rejection of the planning permission. A direction was issued in the said writ petition to this 1st respondent/1st defendant to conduct an enquiry and pass orders. The first respondent conducted the enquiry and found that the original Town Survey Register Records pertaining to T.S. Nos.18, 19 & 20 were standing in the name of 1st respondent only. But even thereafter the 1st defendant Corporation made a property tax assessment in the name of the plaintiff on 31.11.2007. This kind of callousness on the part of the first respondent alone contributes to the later confusions.

15. The first respondent Corporation issued a notice to the appellant on 27.11.2011 to demarcate the boundary for T.S.No.21/1. The appellant demarcated the boundary for T.S.No.21/1 and the same was also intimated to the first respondent on 29.11.2007. Only thereafter the 1st respondent authorities has raised the fence on the boundaries T.S.No.21/1, so as to segregate it from T.S. Nos.18, 19 and 20. So, there is no necessity to use force or violence while raising the said boundary between the above said Survey numbers.

16. So far as the T.S.Nos.19 & 20 are concerned the patta cancellation proceedings have become complete and it has also attained finality. Since the patta has been mistakenly mutated in the name of the individual persons by the Revenue Authorities without the knowledge of the 1st respondent that will not bind the 1st respondent Corporation. Despite the patta cancellation proceedings with respect to Survey No.18 is said to be still pending, it is always open to the appellant/ plaintiff to participate in the proceedings before the Collector.

17. It is further submitted by the learned counsel for the appellant/plaintiff that the possession of the suit 'B' schedule properties was always with the appellant and his predecessors



who have been making frequent conveyances in respect of the suit properties and it should be taken that they had perfected title by adverse possession. It is observed by the learned single Judge that the plea of adverse possession cannot be taken as a sword but a shield. The law of adverse possession as it was settled in Gurudwara Sahab Vs. Gram Panchayat Village Sirthala reported in (2014) 1 SCC 669, the plaintiff is not entitled to file a suit for the relief of declaration by claiming adverse possession. The learned Single Judge has relied on the above said decision and found that the appellant/plaintiff cannot take the plea of adverse possession to assert their title.

18. But however the legal position on adverse possession has changed subsequently. The judgment rendered in Ravinder Kaur Grewal and others Vs. Manjit Kaur and others reported in 2019 SCC ONLINE SC 975, the Hon'ble Full Bench of the Supreme Court revisited the law on adverse possession and overruled the law laid in Gurudwara Sahab Vs. Gram Panchayat Village Sirthala. To understand it better the relevant paragraphs of the judgment are extracted as below:

"59. 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



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

60. When we consider the law of adverse possession as has developed visàvis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

61. Resultantly, we hold that decisions of [Gurudwara Sahab v. Gram Panchayat Village Sirthala](#) (supra) and decision relying on it in [State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj](#) (supra) and [Dharampal \(dead\) through LRs v. Punjab Wakf Board](#) (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under [Article 65](#) of the [Limitation Act](#) and there is no bar under the [Limitation Act](#), 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff."

19. But even though the law on adverse possession is re-settled, no right will accrue on properties which are reserved for public utility. It is needless to state that the properties belonging to the 1st respondent Corporation is meant for public utility and dedicated for public use. So it is not open to the appellant/plaintiff to claim title by an adverse possession against the 1st respondent.

20. And further the appellant/plaintiff in this petition has claimed title only by virtue of his purchase and not by adverse possession. In order to claim a title by prescription due to adverse possession one has to accept the title of the original owner and prove that he has been in un-interrupted possession of the property adverse to the interest of the original owner and to his knowledge, but without his objection for more than the statutory period. But this appellant has not admitted the title of the 1st respondent Corporation. Further, he cannot claim any accrual of right by adverse possession against the properties which are dedicated for public cause.



21. The appellant has purchased the property from the persons who did not have title. A person holding an imperfect title can not pass a perfect title to his alienee. Even before filing of the suit, the appellant/plaintiff has received the notice issued by the 1st respondent/ 1st defendant to demarcate the property in T.S.No.21/1 and the appellant has also complied the same and reported to the Corporation. By such compliance also the appellant/plaintiff has impliedly accepted the claim of the 1st respondent / 1st defendant. Having done so, he is estopped from questioning the title of the 1st respondent/ 1st defendant by filing a suit. Hence, both the points 1 and 2 are answered against the appellant.

22. The learned single Judge has appreciated the evidence on record in a correct perspective and arrived at a conclusion that the appellant /plaintiff is not entitled to get a decree for declaration in respect of suit 'B' schedule properties and hence the judgment of the learned Single Judge does not warrant any interference.

In the result, this Original Side Appeal in O.S.A.No.257 of 2014 is dismissed and the order the learned single Judge dated 25.07.2014 in C.S.No.154 of 2008 is upheld. No costs. Consequently connected miscellaneous petition in M.P.No. 1 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Thiagarajan, Advocate, S.R.No.39559
+1cc to Mr.R.Gopinath , Advocate, S.R.No.35194
+1cc to the Special Government Pleader, S.R.No.39832

O.S.A.No.257 of 2014

SJ[co]
NSK 30/09/2021