



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

S.A.Nos.21 and 22 of 2017

1. Duraisamy

2. Kaliannan

3. Perumayee

4. Pappathi

5. Rajammal

... Appellants both S.As/Appellant/
2 to 6 Plaintiffs

Vs.

1. Palaniammal

2. Dhanalakshmi

... Respondents/Respondents/Defendants 2 & 8

P.Varudhayee (died)

3. Saravanan

... Respondent/4th Respondent/4th Defendants

4. Palaniyandi

... Respondent/5th Respondent/5th Defendant

Chellammal (died)

Anggayee (died)

5. P.Sundaraj

... Respondent/8th Respondent

6. Paramasivam

7. Devan

8. Meena

... Respondents in S.A.No.21 of 2017

Sengodan (died)

1. Dhanalakshmi

... Respondent/2nd Respondent/2nd Defendant

P.Varudhayee (died)

2. Saravanan

... Respondent/4th Respondent/4th Defendant

3. Palaniyandi

... Respondent/5th Respondent/5th Defendant

Chellammal (died)

Anggayee (died)

4. Palaniammal

... Respondent/8th Respondent/8th Defendant

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5. P.Sundaraj

... Respondent/9th Respondent

6. Paramasivam

7. Devan

8. Meena

... Respondents in S.A.No.22 of 2017

Prayer: The Second Appeals filed under Section 100 of the Code of Civil Procedure, praying to set aside the impugned Judgment and Decree, dated 05.06.2015 passed in A.S.Nos.12 and 13 of 2009 respectively, on the file of the Sub-Judge, Namakkal, confirming the Judgment and Decree, dated 19.09.2006 passed in O.S.No.542 of 2005 and O.S.No.484 of 2001 respectively and on the file of the Additional District Munsif, Namakkal with cost.

For Appellants : Mr.N.Subramaniyan
in both S.A.

For Respondents : Mr.T.L.Thirumalaisamy
in both S.A.

COMMON JUDGMENT

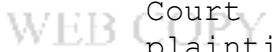
These two second appeals arise out of two suits namely O.S.No.542 of 2005 and O.S.No.484 of 2001.

2.The brief facts of the case are that originally the plaintiff's mother Ramayee filed a suit in O.S.No.484 of 2001 for declaration, declaring that the defendants have no right to be in possession and enjoyment over the suit property and consequently seeking permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment over the suit property by the plaintiff. The plaintiff vested her claim on the basis of oral sale made in her favour and her continuous possession for over three decades.

3.The defendants filed counter affidavit, claiming partition of the suit property into three equal shares by metes and bounds and to allot one share each to the defendants. It appears that the suit was dismissed for default and therefore the defendants in O.S.No.484 of 2001 filed a suit in O.S.No.542 of 2005 for partition and separate possession. Subsequently, it appears that the suit in O.S.No.484 of 2001 was restored and thereafter both the suits were taken up for joint trial.

4.The trial Court framed the following two main issues:

- i. Whether the plaintiffs are entitled to the relief of declaration and permanent injunction?



5. On consideration of the evidence on record, the trial court decided the suit against the plaintiffs. Aggrieved, the plaintiffs preferred appeals in A.S.Nos.12 and 13 of 2009. Upon review by the lower appellate Court on a reconsideration of the evidence on record, confirmed the findings of the trial Court. Aggrieved over the same, the appellants have preferred the above appeals.

S.A.No.21 of 2017:

- i. When the admitted overall facts and circumstances of the case and the overall evidences patently disclose that the title and rights of the defendants over the suit property had been extinguished by the operation of law of limitation, viz., doctrine of adverse possession, ouster and acquiescence, whether it is permissible for the lower Courts to ignore such patent inference and allow the suit?
- ii. Whether D.W.3 filed by the respondents/plaintiffs patently establishes that the suit is barred by law of limitation?
- iii. Whether even after coming to the conclusion by the lower appellate Court that the respondents/plaintiffs failed to prove their possession and enjoyment within 12 years before filing of suit thereby got their title extinguished by operation of law of limitation, it is permissible for the lower Courts to decree the suit for partition?

i. When the admitted overall facts and circumstances of the case and the overall evidences patently disclose that the title and rights of the defendants over the suit property had been extinguished by operation of law of limitation, viz., doctrine of adverse possession, ouster and acquiescence, whether it is permissible for the lower Courts to ignore such patent inference and allow the suit?

ii. Whether the lower appellate Court is right



in rejecting the oral release claimed by the appellants / plaintiffs observing that it is necessary to have any release by co-owners should be in writing and got it registered in the office of the Sub Registrar to prove such release?

iii. Whether D.W.3 if taken for consideration extinguishes the rights of the respondents / dependents over the suit property?

7.The learned counsel for the appellants would vehemently contend that the right of the respondents / defendants has been extinguished due to their long absence. Admittedly, the defendants were not in possession from 1951 and therefore they cannot claim possession or title after a period of 30 years. It is also contended that on 09.04.1988, the defendants approached Revenue Divisional Officer for issuance of joint patta and the same was returned with the direction to approach Civil Court to have appropriate relief. After such rejection in the year 1988, they filed a suit in O.S.No.542 of 2005 only in the year 2005. Therefore, the suit is barred by limitation.

8.As per Article 65 of the Limitation Act, any issue with respect to possession of immovable property or any interest therein based on title should be filed within a period of 12 years. When the possession of the defendants is adverse to the plaintiffs, they should have filed the suit earlier. Admittedly, the very claim for possession was denied on 09.04.1988 and the suit was filed in the year 2005. It is hopelessly barred by limitation and the Courts below have failed to take into the account the said fact. In support of the contention, the learned counsel for the appellants relied upon the following Judgments:

(i) Judgment of the Patna High Court in GOVIND YADAV AND OTHERS VS. DEOKI DEVI AND OTHERS [AIR 1980 PAT 113]

(ii) Judgment of the Punjab and Haryana High Court in GANDA SINGH VS. RAM NARAIN SINGH [AIR 1959 PH 147]

(iii) Judgment of the Hon'ble Supreme Court in KRISHNAMURTHY S. SETLUR VS. O.V.NARASIMHA SETTY [2007 (3) SCC 569]

(iv) Judgment of this Court in DEIVANAI



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AMMAL VS. PERIASAMY SAMBA GOUNDER [S.A.(MD)
Nos.1551 & 1552 of 1997 decided on 14.10.20 09]

(v) Judgment of the Hon'ble Supreme Court
in P.LAKSHMI REDDY VS. LAKSHMI REDDY [AIR 1957
SC 314]

(vi) Judgment of this Court in MUTHAIAH
PILLAI AND OTHERS VS. VEDAMBAL AND OTHERS [AIR
1986 MAD 106]

(vii) Judgment of the Hon'ble Supreme
Court in NAGABUSANAMMAL VS. C.CHANDIKESWARA
LINGAM [2016 (4) SCC 434]

(viii) Judgment of this Court in
SHANMUGAM VS. LUMALAI GOUNDER [S.A.NO.722 OF
2003 DECIDED ON 05.02.2010]

9. In reply, the learned counsel for the respondents/defendants would contend that the Revenue Divisional Officer rejected the claim only in respect of inclusion of the name of the defendants in the patta and to that extent only, the Revenue Divisional Officer directed them to approach the Civil Court to get appropriate relief which will not amount to adverse possession and it is not the case of the plaintiffs that they perfected title by adverse possession and acquiescence. Absolutely, there is no pleading or evidence with regard to the above aspects. On the other hand, the case of the plaintiffs is that the defendants' mothers said to have sold the property for a sum of Rs.75/- and thereby the plaintiffs have derived title. The Courts below have given a categorical finding based on the oral and documentary evidence that the plaintiff has not proved their case and therefore rejected the claim sought for by the plaintiffs and granted partition. Therefore, the Judgments of both the Courts below is based on reasons and evidence, which does not require interference.

10. I have considered the rival submissions.

11. It is peculiar to note that the appellants / plaintiffs have filed the above Suit not for declaration of their title but to declare that the respondents are not entitled to title on the grounds of adverse possession, ouster and acquiescence. The questions of law on which the above Second Appeal was also founded on the same and thereby the Suit is barred by law of limitation.



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12. At the outset, it is noted that the appellants had filed a Suit for the above said negative relief and in which a counter claim for partition was filed by the respondents. The above Suit was originally dismissed for default. Even though the Trial Court could have proceeded with the counter claim independently, the same was also closed. The respondents have preferred a Suit for partition in O.S.No.542 of 2005, which after restoration of the Suit filed by the plaintiffs were jointly tried.

13. To decide the Suit filed by the respondents was barred by limitation, it is axiomatic to decide as to whether the Suit filed by the plaintiffs is maintainable and that they have pleaded and proved that the respondents / defendants were ousted from claiming partition on account of adverse possession of the property with the knowledge of the defendants. At the outset, the very pleading is that the plaintiff Ramayee derived absolute title to the Suit property by virtue of the oral purchase made by her from her sisters for a sale consideration of Rs.75/- on the eve of their going to Sri Lanka. The oral and documentary evidence admittedly does not prove the factum as concurrently found by the Courts below.

14. The cause of action for filing the Suit said to have arisen on 20.09.2001, the date on which the respondents / defendants said to have interfered with the possession of the appellants / plaintiffs. Till such time, there is absolutely no evidence to prove the exclusive possession of the plaintiffs, much less explicit adverse possession against the interest of the defendants in order to oust them from their claim. In such circumstances, it has to be construed that the parties are in joint possession. For claiming partition from joint possession to separate possession, there is no limitation period prescribed.

15. The contention that the order dated 09.04.1988 passed by the Tahsildar on the petition filed by the respondents for inclusion of their name in the patta, shall be construed as date of commencement of adverse possession cannot be sustained, for the reason that it is not the pleading of the plaintiff in the Suit and that non inclusion of name in the patta will not negative the right of title of a party. It is only the competent Civil Court, which can decide the title and not a revenue Court. If at all the appellants are entitled to the adverse possession and ouster, it should have been specifically pleaded and proved by framing an issue in this regard. But, no such issue was framed in the Suit and no opportunity was given to the other side to encounter the same. At the same time, it shall be borne



in mind that the Suit is not one for declaration of the plaintiff, on the other hand, it is for a relief not to declare title in favour of the defendants after having admitted that the Suit property was purchased jointly.

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16. In the written statement in the Suit filed by the respondents for partition also, the appellants have contended that the defendants are not entitled to partition on the ground of oral sale, but no plea regarding adverse possession or ouster was taken by them. The long absence of the respondents will not automatically deprive them their right to title to the Suit property or the deemed joint possession. It is well settled principle that the party claiming adverse possession shall specifically plead animus possidendi adverse to the interest and prove the same. But, on the contrary, the statement that the plaintiff has received them well, accommodated as family member and shared the agricultural produce has not been denied or disproved. On the other hand, evidence of P.W.3 would go to the effect that all the three sisters are entitled to 1/3 share and the trial Court decided the issue on the basis of the evidence of P.W.3 as to admission of title and right of the defendants.

17. Since the Courts below have concurrently found that the defendants are in joint possession and that the oral sale and thereby the derivation of title on the appellants is not proved on the basis of available evidence, this Court is not inclined to interfere with the factual finding in the absence of contra evidence. The cause of action to file the Suit itself is 20.09.2001 the day on which their possession was disturbed, it cannot date back to order of Tahsildhar without any pleading or proof on the non-issue. Hence, the Suit for partition is within limitation and Article 65 of Limitation Act has application in the present case. Equally, the judgments relied on by the learned counsel for the appellants on the settled principles of law also do not come to the aid of the appellants. In such circumstances, the question of law that relief shall be denied to the respondents on the grounds of adverse possession, ouster and acquiescence and bar of limitation are all answered against the appellants and both the Second Appeals are dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vum/tk



To

1. The Sub-Judge, Namakkal.
2. The Additional District Munsif,
Namakkal.

Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.N.Subramaniyan, Advocate SR.No.48717

S.A.Nos.21 and 22 of 2017

AJB (CO)
GN(03/03/2022)