



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD)No.153 of 2015

and C.M.P. (MD)No.1253 of 2018

WEB COPY

Chellammal (Died)

1. Ramakrishnan
2. Seetha
3. Paul Raj
4. Chandran
5. Lilly
6. Sutha
7. Vijeesh
8. Sujin

... Appellants/Appellants/Defendant
versus

M.Suseela ... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 25.07.2014, made in A.S.No.21 of 2011 on the file of the Sub Court, Kuzhithurai, confirming the Judgment and Decree dated 16.12.2012, made in O.S.No.409 of 2004 on the file of the II Additional District Munsif Court, Kuzhithurai.

For Appellants : Mr.V.M.Balamohan Thambi
For Respondent : Mr.K.Sreekumaran Nair

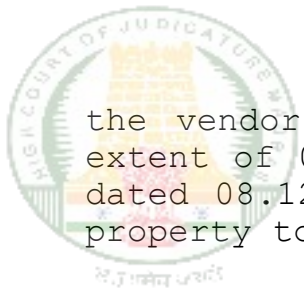
JUDGMENT

The defendants 2, 4 to 6 and legal heirs of the deceased 3rd defendant in O.S.No.409 of 2004 are the appellants. The suit was filed by the plaintiff seeking a decree for injunction restraining the defendants from interfering with her possession of the suit property.

2. According to the plaintiff, the suit property originally belonged to one Vellaiyan, who sold the same under Ex.A14 to the plaintiff's father on 08.08.1949. The plaintiff's father had put up a house in the suit property, which measured about 4 cents and was in possession and enjoyment of the same. It is also claimed that the plaintiff's father executed a Settlement Deed in favour of the plaintiff on 24.05.1979. Pursuant to the said settlement, the plaintiff continued in possession of the property. Claiming that the defendants, who are adjacent owners, are attempting to interfere with her possession, the plaintiff came up with the suit for injunction.

3. The defendants filed a written statement claiming that

<https://hcservices.ecourts.gov.in/hcservices/>



the vendor of the plaintiff's father, Vellaiyan purchased only an extent of 0.900 square links from one Bhoothathan under a sale deed dated 08.12.1094 M.E. and he could not convey larger extent of the property to the plaintiff's father.

4. Since the title itself was denied by the defendants, the plaintiff amended the plaint, claiming a declaration of title and consequential injunction. The plaintiff also introduced a paragraph claiming title to the larger extent by adverse possession.

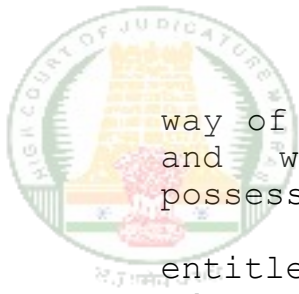
5. At trial, the plaintiff was examined as P.W.1 and one Thomas was examined as P.W.2. Exs.A1 to A18 were marked. One Paulraj, 5th defendant, was examined as D.W.1 and one Yanos was examined as D.W.2. Exs.B1 to B17 were marked. A Commissioner was appointed by the trial Court and the report of the Commissioner and the plan were marked as Exs.C1 and C2.

6. Upon consideration of the evidence on record, the Trial Court concluded that the plaintiff has established her continuous possession of the property right from the date of execution of the Settlement Deed in her favour and she has also proved that her father was in possession of the property, right from the date of purchase on 08.08.1949 under Ex.A14. The question of validity of Ex.A1-Settlement Deed on the ground that it was registered at Parasala in Kerala was also raised, but the same was not answered by the trial Court, since the trial Court held that *de hors* the said instrument, the plaintiff has made out title by adverse possession to the entire extent of the property. The learned trial Judge also took note of the fact that the suit property or any portion of it was not included in the suit for partition in O.S.No.49 of 1987 among the defendants. On the above conclusions, the learned trial Judge decreed the suit. Aggrieved, the defendants preferred an appeal in A.S.No.21 of 2011. The Appellate Judge, upon a reconsideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Hence, the defendants have come up with this second appeal.

7. The following questions of law were framed at the time of admission:

(i) Whether the Judgment of the Courts below upholding the validity of Exs.A1 and A2 settlement is sustainable in law having regard to the fact that it amounts to fraud on registration on the fact and in the circumstances under which the settlement deed happened to be executed and registered in the office of the Sub Registrar, Parasalai in the State of Kerala, while the property conveyed under document is situated in Kanyakumari District which is in Tamil Nadu?

(ii) Whether the Courts below were right in holding that the respondent/plaintiff entitled the suit property by



way of adverse possession is correct, without framing issues and without specific pleading regarding the adverse possession?

(iii) Whether the respondents/plaintiffs are entitled to claim right and title under document of title of adverse possession, which is essential for both pleas and mutually inconsistent pleas?

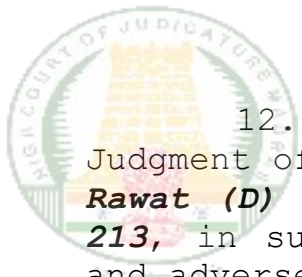
(iv) Whether the Courts below granted decree of declaration of title and possession based on the adverse possession in favour of respondents/plaintiffs is correct, especially plea of adverse possession is only defence plea in view of Judgment reported in 2014 SAR 33 SC?

8. I have heard Mr.Balamohan Thambi, learned counsel for the appellants and Mr.Sree Kumaran Nair, learned counsel for the respondent.

9. Elaborating on the questions of law, Mr.Balamohan Thambi would fairly concede that the question of validity of Exs.A1 and A2 on the ground of the registration at Parasala may not survive, in view of my Judgment in ***D.Vijayalakshmi vs. V.Hariselvan and others*** reported in **2020 (3) CTC 438**, wherein, I had examined the question of validity of document registered outside the State prior to the introduction of Section 28(b) of the Registration Act by the Tamil Nadu Registration (Amendment) Act 19 of 1997. I have held that unless it is shown that the property was not in existence or the vendor or the mortgagor, as the case may be, do not have title to the property so included in the sale deed, it cannot be said that the registration would amount to fraudulent registration, thereby, making the entire document invalid. I find no evidence to meet the twin requirements, namely, the non-availability of the property at Kerala and the ownership of the property at Kerala. Therefore, the validity of the instrument, namely Ex.A1 cannot be questioned at this stage. The first question of law has to be answered against the appellant.

10. Mr.Balamohan Thambi, learned counsel for the appellants would contend that the Courts below should not have decided the question of adverse possession without framing a proper issue. He would also contend that the plaintiff had claimed both title and adverse possession and therefore, the plaintiff cannot be heard to contend that she has perfected title by adverse possession as the very claim of the adverse possession requires the plaintiff to concede the title of the defendants.

11. The learned counsel also relied upon the Judgment of the Hon'ble Supreme Court, reported in **2014 SAR 33SC** in support of his plea that adverse possession cannot be taken as a basis for seeking declaration of title.



12. The learned counsel also invited my attention to the Judgment of the Supreme Court in **Shankar & Others vs. Surendra Singh Rawat (D) Thr. LRs. & Anr.** reported in **2019(1) Civil Court Cases 213**, in support of his submission that alternative pleas of title and adverse possession cannot go together.

WEB COPY

13. Contending contra, Mr.Srikumaran Nair, the learned counsel for the respondent would submit that it is open to the plaintiff to plead both title and adverse possession, but, the plaintiff should elect one of the pleas at the time of trial. If the plaintiff had elected one of the pleas and let in evidence based on that plea, then, there is no bar for the Court in deciding the question of adverse possession *de hors* the claim for title.

14. Mr.Sreekumaran Nair, learned counsel for the respondent, would further submit that the plaintiff had elected the plea of adverse possession at the time of trial and proof affidavit has been filed by the plaintiff based on the adverse possession and therefore, it cannot be said that the plaintiff had pleaded both title as well as adverse possession.

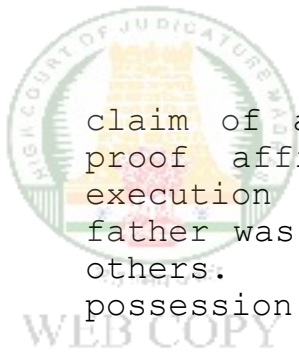
15. Answering the contention on maintainability of the suit for declaration of title based on adverse possession, Mr.Sreekumaran Nair would rely upon the Judgment of the Hon'ble Supreme Court in **Radhakrishna Reddy (D) Through LRs. vs. G.Ayyavoo and others**, reported in **2019 (8) SCC 729**, wherein, the Hon'ble Supreme Court had overruled the Judgment reported in **2014 SAR 33SC**.

16. As regard the requirements of adverse possession, Mr.Sreekumaran Nair would rely upon the Judgment of the Division Bench of this Court in **A.Rukumani and another vs. Gopalaswamy and another** reported in **1993 (2) MLJ 598**, wherein, the Division Bench had held that possession under void documents would be adverse to the true owner from the date of the document.

17. I have considered the submissions of the learned counsel on either side.

18. As far as the first contention of the learned counsel for the appellants that the plaintiff cannot plead both adverse possession as well as title, I must point out that the plaintiff came up with the suit for injunction claiming title under Ex.A1-Settlement Deed. Once the defendants took a plea that the plaintiff has no title to the entire extent of property, the plaint was amended including the claim of adverse possession. Therefore, it is for the plaintiff to elect as to the basis on which she is to seek the relief of declaration of title.

19. A perusal of the proof affidavit filed by the plaintiff as P.W.1 would demonstrate that the plaintiff has struck to the



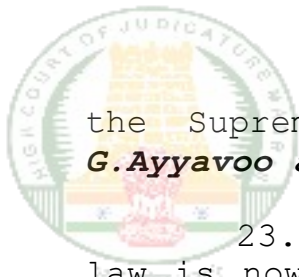
claim of adverse possession and she has not pleaded title. The proof affidavit very clearly mentions that from the date of execution of sale deed by Vellaiyan in favour of her father, her father was in possession of the property adverse to the interest of others. Therefore, she has perfected title to the adverse possession.

20. As rightly pointed out by Mr.Sreekumaran Nair, learned counsel appearing for the respondent, the possession under invalid document or void document would be adverse to the true owner from the date of the said document. The Division Bench in **Rukumani and another vs. Gopalaswamy and another**, reported in **1993 2 MLJ 598**, has held as follows:

"The classical requirement to establish adverse possession is that the possession should be *nec vi nec clam nec precario*. Here the possession on the part of the respondents is sufficiently overt and without an attempt at concealment, so that the person against whom time is running should if he exercises due vigilance, be aware of what is happening. Even if it is assumed that Ex.B-2 sale deed is void, in view of the evidence showing that the vendors are in open continuous and uninterrupted possession and enjoyment of the land since 1954, they have acquired title by adverse possession. In Venkatsubramania v. Sivagurunatha, A.I.R. 1938 Mad. 60, a Division Bench of this Court has held that adverse possession of an alienee dates from the moment the alienee is without lawful title. That time is, in the case of a void transfer, the date of the transfer. So, we find no reason to differ from the finding of the trial Court on this aspect."

21. If the principle laid down by the Division Bench of this Court is applied to the facts of the case on hand, it will be clear that the possession of the plaintiff's father became adverse right from the date of Ex.A14, namely 08.08.1949. Therefore, the Courts below cannot be faulted for having concluded that the plaintiff has established that she has perfected title by adverse possession. Even otherwise, the plaintiff's father has exercised the right over four cents of land and executed Ex.A14 in the year 1979. Now that, the validity of Ex.A14 is beyond doubt. The plaintiff's possession would be adverse to the real owner at least from the date of Ex.A14 that is 24.04.1979. In any event, the plaintiff satisfies the statutory requirements of being in actual physical possession for over the statutory period.

22. As regards the contention of the learned counsel for the appellants that the plaintiff cannot seek declaration of title based on adverse possession, relying upon the Judgment in **Gururdwara Sahib vs Gram Panchayat Village Sirthala and another** reported in **2014 (1) SCC 699**, the said Judgment has been overturned by larger bench of



the Supreme Court in **Radhakrishna Reddy (D) Through LRs. vs. G.Ayyavoo and others** reported in 2019 (8) SCC 729.

23. In view of the said Judgment of the Supreme Court, the law is now settled to the effect that the plea for declaration of title on the basis of adverse possession can be maintained by the plaintiff.

24. In view of the above settled position of law, the questions of law raised are answered against the appellants. The Second Appeal, therefore, fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Sub Court,
Kuzhithurai.

2. The II Additional District Munsif Court,
Kuzhithurai.

Copy to

The section Officer(2C)

V.R.Section,

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.K.SREE KUMARAN NAIR, Advocate (SR-6297[F] dated 19/02/2021)

S.A. (MD) No.153 of 2015

19.02.2021

SE (CO)

KB(16.03.2021) 6P 6C