



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2022

Pronounced on : 13.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 130 of 1993

1. Jeeva @ Ramachandran
2. Shanmuga Gramani
3. Dhanammal
4. Inbasekaran
5. Gowri
6. Ramani Ammal
7. Meerabai
8. Sridharan
9. Vivekanandan
10. Devika
11. Vasantha
12. Baskaran
13. Kumar
14. P.G.Thirugnana Gramani
15. Sugunasekaran
16. Sundarsanam
17. Thimulanandan



18. Jaisankar
19. Santhakumar
20. Parameswari
21. Shyamala
22. Malini Ammal
23. Teekeswari
24. Prema
25. Gopalakrishnan
26. Ramanidevi
27. M.Venkatesan
28. Rajeswari
29. Loganayaki

... Appellants/Plaintiffs

[Appellants 25 & 26 brought on record as LR's of the deceased 22nd appellant viz., Nalini Ammal vide Court order dated 03.08.2021 made in C.M.P.No. 12100, 12102 & 12103 of 2021 in S.A.No. 130 of 1993]

[Appellants 27 to 28 brought on record as LR's of the deceased 21st appellant vide order of Court dated 07.06.2022 made in C.M.P.No. 15319, 15321 & 15322/21 in S.A.No. 130 of 1993]

Vs.

1. P.K.Subramania Gramani (died)
2. P.G.Devaraja Gramani
3. Saradhammal
4. S.Venugopal
5. S.Nandagopal



6. S.Madanagopal
7. Anusuya Ammal

... Respondents

[respondents 3 to 7 are brought on record as LR's of the deceased 1st respondent vide order dated 10.07.89 in CMP 15847/86]

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 22.12.1983 on the file of the II Additional Subordinate Judge, Chengalpattu and made in A.S.No. 113 of 1983 reversing that of the District Munsif Court, Poonamallee dated 07.02.1983 and made in O.S.No. 205 of 1981.

For Appellants : Mr. D.Rajagopal
For RR 1, 2,4 & 7 : died
For 3rd Respondent : No appearance
For RR 5 & 6 : Mr.M.V.Venkateseshan

JUDGMENT

The plaintiffs/legal representatives of the plaintiffs in O.S. No. 205 of 1981 on the file of the Principal District Munsif Court, Poonamallee are the appellants herein.



2. O.S. No. 205 of 1981 had been filed for recovery of possession of vacant land measuring about 7 acres and 44 cents in S. Nos. 12/5, 102/1A, 102/2, 102/4, 112/1 and 15/1 (totally 6 items) included in patta No.34 at Paleripattur, Sriperumbur, Chengalpattu District. The suit was decreed by judgment dated 07/02.1983. Questioning that judgment, the defendant had filed A.S. No. 113 of 1983 before the II Additional Subordinate Court, Chengalpattu. By judgment dated 22.12.1983, the appeal suit was allowed, and the judgment in O.S. No. 205 of 1981 was set aside and the suit was dismissed. This necessitated the plaintiffs/legal representatives to file this second appeal. The second appeal had been admitted on the following two substantial questions of law :

“1. Whether the defendant can perfect title over the suit lands by adverse possession when as per finding in O.S. No. 587 of 1966, D.M.C. Poonamallee, he entered possession as a licensee under the plaintiffs ?

2. Whether the defendant can claim adverse possession during the period when he obtained injunction in O.S. No. 587 of 1966 D.M.C. Poonamallee against the present plaintiffs which



prevented them from conducting the proceedings against him for recovery of possession ?”

O.S. No. 205 of 1981 (Principal District Munsif Court Poonamallee) :

3. The suit was filed by the plaintiffs for recovery of possession of vacant land measuring about 7 acres and 44 cents in S. Nos. 12/5, 102/1A, 102/2, 102/4, 112/1 and 15/1 (totally 6 items) included in patta No.34 at Paleripattur, Sriperumbur, Chengalpattu District. The plaintiffs claimed that the lands are their joint family property, and that the defendant, who was the husband of the step sister of the 1st plaintiff was permitted to be in occupation, since he was a resident of that village. They claimed that he filed O.S. No. 587 of 1966 before the District Munsif Court, Poonamallee for declaration of title and for permanent injunction to protect protection. That suit was dismissed and the resultant appeal in A.S. No. 35 of 1970 was also dismissed by the Sub Court, Chengalpattu. The plaintiff alleged that the defendant indulged in committing waste to the suit land, and therefore issued notice terminating permission and then filed the suit for recovery of possession.



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4. In the written statement, the defendant claimed that his father was the original owner of the lands, but that the lands were brought in auction owing to debts suffered, and that his father had provided the funds for the purchase of the lands by the father of the 1st plaintiff. He claimed to be a cultivating tenant and sought consequent protection. He urged that the suit should be dismissed.

5. The trial Court framed the following issues for trial ;

“1. Whether the defendant is in permissive possession of the suit property or whether the defendant is in possession as lessee ?

2. Whether the license to be in permissive possession has been recently revoked ?

3. Whether the plaintiffs are entitled to recover possession of the suit property from the defendant ?

4. To what relief ?”

6. During trial, the 1st plaintiff examined himself as P.W.1 and the defendant examined himself as D.W. 1. The plaintiffs marked Exs. A1 to A6. Exs A1 and A6 dated 20.01.1972 were the decree and judgment



copies of A.S. No. 35 of 1970, Ex. A2 dated 21.03 1970 was the judgment copy of O.S. No. 687 of 1966 and Exs. A3 and A4 were the notices exchanged between the parties. The defendant marked Ex. B1, a marriage invitation card.

7. The District Munsif, Poonamallee, on analysis of the pleadings and the oral and documentary evidence held that the judgment in the earlier suit instituted by the defendant in O.S. No. 587 of 1966 wherein the claim of the defendant to title was negatived and the confirmation of the said finding in A.S. No. 30 of 1975 acted as res judicata and therefore further held that the possession of the defendant was unlawful, and the permission to occupy having been terminated, decreed the suit and directed recovery of possession.

A.S. No. 113 of 1983 (Sub Court Chengalpattu) :

8. The First Appellate Court framed one point for consideration :

“1. Whether the appellant-defendant has perfected title over the suit lands by adverse possession ?”



9. It must be mentioned that adverse possession had not been pleaded by the defendant in his written statement. He only claimed protection as a cultivating tenant, which would indicate that he acknowledged possession by permission, or by an agreement, and certainly not hostile to the plaintiffs.

10. Before the appellate First Appellate Court, the appellant/defendant marked further documents as Exs. B2 to B11. Ex. B2 was again the copy of the judgment in O.S. No. 587 of 1966, which had already been marked during trial. The other documents were kist receipts.

11. On appreciation of the evidence, the First Appellate Court came to the conclusion that the appellant/defendant had pleaded adverse possession in the earlier suit in O.S. No. 587 of 1966 and had also proved the same and had thus perfected title. The appeal suit was allowed and the judgment of the trial court was set aside.

S.A. No. 130 of 1993 :

12. The plaintiffs then filed the aforementioned second appeal before this Court. As stated the second appeal had been admitted on the following two substantial questions of law :



“1. Whether the defendant can perfect title over the suit lands by adverse possession when as per finding in O.S. No. 587 of 1966, D.M.C. Poonamallee, he entered possession as a licensee under the plaintiffs ?

2. Whether the defendant can claim adverse possession during the period when he obtained injunction in O.S. No. 587 of 1966 D.M.C. Poonamallee against the present plaintiffs which prevented them from conducting the proceedings against him for recovery of possession ?”

13. Heard arguments advanced by Mr. D. Rajgopal, learned Counsel for the appellants/plaintiffs and by Mr. M.V. Venkateshan, learned Counsel for the respondents 5 & 6/Defendants 5 & 6.

14. Let me refer to the parties as plaintiffs and defendants.

1st substantial question of law :

15. The plaintiffs were the sons/legal representatives of the pre-deceased son of Govinda Gramani. The suit lands stood in the name of Govinda Gramani, he having purchased the same in auction. The defendant was the husband of the step sister of the 1st plaintiff. It is



claimed that he was in permissive possession of the lands, since he was residing in the village where the lands were situated. He earlier filed O.S. No. 687 of 1966 seeking declaration of title. That suit was dismissed by the District Munsif, Poonamallee by judgment dated 21.03.1970. He then filed A.S. No. 35 of 1970. That appeal suit was also dismissed by the Sub Judge, Chengalpattu by judgment dated 20.01.1972. Both the Courts had rejected the contention of the defendant herein that his father had sourced the sale consideration for purchase of the lands by Govinda Gramani. His plea for declaration of title was rejected.

16. That definite finding of a fact, acts as res judicata and the defendant cannot claim title over the property even through adverse possession. The First Appellate Court has misdirected itself in examining the issue of adverse possession. Judgments should be based on pleadings and evidence and not on surmises or assumptions. There is no finding in the judgment of the First Appellate Court as to how the defendant had perfected his title. If adverse possession is pleaded, then the defendant will have to necessarily admit the title of the plaintiffs.



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17. During the First Appeal, the defendant had produced Exs. B3 to B11, kist tax receipts. Those documents cannot be the basis to claim adverse possession.

18. In ***Kurella Naga Druva Vudaya Bhaskara Rao v. Galla Jani Kamma, (2008) 15 SCC 150***, it was held that payment of tax and mere possession for some years were insufficient to claim adverse possession. It was held:

“19. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the



true owner. The courts have pointed out that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and the High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.

“20. We find that both the courts have considered these two issues of fact in detail with reference to the evidence and recorded concurrent findings against the defendant. This Court will not convert itself into a third court of facts and re-examine the facts or disturb concurrent findings of facts. Neither any perversity nor omission to consider evidence nor any error of law has been pointed out with reference to consideration and appreciation of evidence by the trial court and the High Court. We do not therefore find any reason to re-examine the facts.”



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19. Even in the instant case, in O.S. No. 587 of 1966 and in A.S. No. 35 of 1970, a conclusive finding was given that the defendant was only in permissive occupation. That finding is binding and cannot be reopened. Even the defendant had not sought to agitate that finding by filing a second appeal. He had taken a conscious decision to abide by that finding. The issue of adverse possession was never raised by him. I hold that the First Appellate Court had therefore rendered a perverse finding in holding that the defendant had perfected his title by adverse possession.

20. The 1st substantial question of law is thus answered that the defendant can never claim that he had perfected title by adverse possession, in the teeth of the finding of O.S. No. 587 of 1966, District Munsif Court, Poonamallee, which finding had been confirmed in appeal by the Sub Court, Poonamallee in A.S. No. 35 of 1970.



2nd substantial question of law :

21. Rule of law prescribes that every party to a litigation should respect the sanctity of an order of the Court. When the defendant had obtained an order of injunction protecting possession, then till that order subsists, his possession stands protected from interference. When the suit and the appeal in which such order had been passed had been both dismissed returning an adverse finding, and thereby vacating the injunction, then the cause of action commences for instituting a suit for recovery of possession. The plaintiffs issued a pre-suit notice by Ex. A3, dated 27.07.1980, well within the period of limitation terminating permission granted to be in possession. The defence taken was not alleged prescription of title by adverse possession but protection as cultivating tenant. The First Appellate Court had travelled on an uncalled tangential path to hold that the defendant had perfected title by adverse possession, when that was not the case of the defendant in his pleadings.



22. The 2nd substantial question of law is thus answered that the defendant can never claim adverse possession during the period when he had the benefit of an injunction restraining interference with possession.

Conclusion :

23. In the result, I hold that the Judgment of the First Appellate Court is not just perverse, but based on no pleadings and no evidence. It has to be set aside and is accordingly set aside. The well considered judgment of the trial court is restored and confirmed.

24. In the result :

1. The second appeal is allowed with costs right throughout.
2. The judgment and decree dated 22.12.1983 in A.S. No. 113 of 1983, Sub Court, Chengalpattu is set aside.
3. The judgment and decree dated 07.02.1983 in O.S. No. 205 of 1981, District Munsif Court, Poonamallee is restored and confirmed.

13.07.2022

Index :Yes/No
Internet:Yes/No
vsg



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C.V.KARTHIKEYAN, J.

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To

1. District Munsif Court, Poonamallee.
2. II Additional Subordinate Court, Chengalpattu.

**Pre-Delivery Judgment made in
S.A.No. 130 of 1993**

13.07.2022