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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1509 of 2007

and

C.M.P. Nos.5633 & 5634 of 2016

1. Ramathal
2. Kalaivani
3. Krishnaveni
4. Minor Pavithra Devi
5. Minor Sanaji Devi
6. Pechimuthu @ Mani
7. Ramalingam
8. Parathal ...Appellants/Plaintiff

Appellants 4 & 5 declared as major and her mother,
the third appellant discharged from guardianship
vide order of court dated 15.06.2015 made in M.P.
No.1 of 2015.

Vs.

1. Sivasamy (deceased)
2. Shanthalingam
3. Sivakami
4. S. Jayachandran ... Respondents/Defendants

RR3 and 4 brought on record as the LR's of the
deceased R1 vide order of court dated
07.08.2014.
made in M.P. Nos 2 to 4/2014.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against
the decree and judgment dated 29.09.2005 passed in A.S. No.82
of 2005 on the file of the Principal Subordinate Judge,
Coimbatore, upholding the decree and judgment dated 03.01.2005
passed in O.S. No.1512 of 1997, on the file of the First
Additional District Munsif Court, Coimbatore.



For Appellants 1 to 5 & 8 : Mr. S. Subbiah, Senior Counsel
for Mr. P.Raja

For Appellant 6 & 7 : Mr. T.S. Baskaran

For Respondents : Mr. S. Parthasarathy, Senior Counsel
for Mr. K. Venkatasubban
for M/s. Sarvabhauman Associates.

JUDGMENT

The appellants are the plaintiffs in O.S.No.1512/1997 on the file of the I Additional District Munsif, Coimbatore.

2. During the pendency of the suit the first plaintiff Deivanaiammal died and her legal heirs were impleaded. The second plaintiff Ramathaal is the wife of Muthukumarasamy Gounder (since deceased and one of the sons of Deivanaiammal).

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4.The plaintiffs initially filed the suit for a permanent injunction against the respondents/defendants restraining them from interfering with their peaceful possession and enjoyment of the suit properties.

5.The case of the plaintiffs is that the suit properties originally belonged to Muthusamy Gounder and his brother Samy Gounder. They partitioned the suit properties and other properties through a partition deed dated 14.02.1932 (Ex.A1) and the suit properties were allotted to the share of Muthusamy Gounder. Muthusamy Gounder died in the year 1974, leaving behind the plaintiffs as his legal heirs. The plaintiffs have been in possession and enjoyment of the suit properties and patta and other revenue records (Ex.A2 to Ex.A31, Ex.A34 to Ex.A36) stand in the name of Muthusamy Gounder. While so, the defendants who are the neighbouring land owners are attempting to interfere with the peaceful possession and enjoyment of the suit properties by the plaintiffs.

6. The defendants filed a written statement contending that their father Chinnasamy Gounder purchased the suit properties in a Court auction sale and took possession of the suit properties in E.P.No.223/1936 in O.S.No.1149/1935 (Ex.B4). Their further contention was that subsequent to the death of



Chinnasamy Gounder, his first wife Pechiammal filed a suit in O.S. No.33/1958 against Palanathal the second wife of Chinnasamy Gounder and her two sons (the defendants herein) for partition of the suit properties before the District Munsif, Coimbatore. The suit ended in a compromise and as per the terms of the compromise decree, the suit properties were allotted to the share of the defendants and their mother Palanathal. It is further contended by them that the present suit has been filed by the plaintiffs only to harass the defendants.

7. The plaintiffs thereafter amended the suit and included the prayer for declaration of their title to the suit properties. It was also contended by them that they are not admitting the sale of the suit properties in the Court auction on 02.11.1936, as alleged by the defendants and that in any event they have perfected their title by adverse possession and prescription.

8. The defendants filed additional written statement denying all the allegations of the plaintiffs and contended that when the plaintiffs do not admit the defendants' title over the suit properties, they cannot claim adverse possession and prescription over the suit properties. It was also contended by them that their father Chinnasamy Gounder, in fact, took possession of the suit properties and this was admitted by the first plaintiff and her three sons namely Krishnaswamy, Muthukumarasamy Gounder and Arimuthu in O.S.No.193/1943 (Ex.B6) on the file of the Subordinate Court, Coimbatore. The said suit was filed by Deivanaiammal on behalf of her three minor sons against her husband Muthusamay Gounder and others including the father of the defendants to set aside the Court auction sale in E.P.No.223/1936 in O.S.No.1149/1935 and also for redelivering the possession of the suit properties to them. The said suit was dismissed. No appeal was filed against the said decree and judgment and has become final. They have therefore, prayed for the dismissal of the suit.

9. Both the Courts below in the instant case after analysing the oral and documentary evidence adduced on both sides, dismissed the suit filed by the plaintiffs on the following grounds :

- 1) The suit in O.S.No.193/1943(Ex.B6) was filed by the first plaintiff on behalf of her minor sons in which Deivanaiammal (since deceased) admitted that Chinnasamy Gounder (father of the defendants) was in possession of the suit properties pursuant to the court auction sale. In fact the said suit was filed for setting aside the Court



auction sale in E.P.No.223/1936 in O.S.No.1149/1935 and for recovery of possession from Chinnasamy Gounder. The decree and judgment passed in O.S.No.193/1943 (Ex.B6) shows that the suit was dismissed on merits.

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- 2) Though Muthusamy Gounder died in the year 1974, patta and other records stand in his name even subsequent to his death and therefore, based on the revenue records alone it cannot be held that the plaintiffs are in possession and enjoyment of the suit properties.
- 3) Since the plaintiffs are not admitting the title of the defendants, they cannot claim adverse possession and prescription over the suit properties.

10. Now the present second appeal is filed by the plaintiffs. At the time of admission the following substantial questions of law were framed:

- 1) Whether the Courts below have erred in not considering the effect of Article 180 of the Limitation Act (Central Act IX of 1908) r/w Article 138 and Section 28 of the Limitation Act, in that the predecessor in interest of the respondents/defendants not having taken delivery of possession of the suit properties through Court within three years from the date of Court Auction purchase or filed the suit within 12 years for delivery of possession, his rights over the suit properties got extinguished and his remedy of claiming possession also been lost?
- 2) Whether the Courts below are right in rejecting the case of the appellants/plaintiffs that they have perfected their title by adverse possession?
- 3) Whether the Courts below are correct in ignoring the revenue records produced by the appellants/plaintiffs to prove their possession beyond the statutory period adverse to that of the respondents' and holding that appellants'/plaintiff have not established their title by adverse possession?

11. Though the second appeal was filed in the year 2007, the plaintiffs, after a lapse of eight years filed two civil miscellaneous petitions in C.M.P.Nos.5633 & 5634/2016 for amending the plaint and to receive additional documents. In the affidavit filed in support of these applications, it was contended by Ramathal, wife of Muthukumarasamy, that Palanathal, the mother of the defendants, filed a suit in O.S.No.390/1965 before the District Musnif, Coimbatore, against Muthukrishnan and Marappan contending that she had been dispossessed of the suit properties by them and according to her (Ramathal), the



said Muthukrishnan and Marappan are actually her husband Muthukumarasamy and brother-in-law Aruchamy respectively as they were also called as Muthukrishnan and Marappan. It is further contended that the Suit Registrar extract in O.S.No.390/1965 is the proper and necessary document and the plaint also should be amended in this regard.

12. Mr.S. Subbiah, learned Senior Counsel, assisted by Mr.P.Raja learned counsel for the appellants contended that both the Courts below had committed an error in dismissing the suit filed by the plaintiffs especially when the defendants have not proved that they took possession of the suit properties in the Court auction sale. According to him, the revenue records filed by the plaintiffs clearly would go to show that the plaintiffs are in actual possession of the suit properties and thus they have perfected their title by way of adverse possession and prescription. It is also his contention that the suit in O.S.No.390/1965 would go to show that the mother of the defendants sought for delivery of vacant possession of the suit properties from Muthukumarasamy and Aruchamy and thus, it is clear that the plaintiffs continued to be in possession and enjoyment of the suit properties.

13. Pertinent, it is, to point out that no documentary evidence was filed by the appellants to show that Muthukumarasamy was called as Muthukrishnan and Aruchamy was called as Marappan. When this was pointed out by this Court to the learned senior counsel for the appellants, strangely he contended that the trial Court may be directed to conduct an enquiry in this regard and file a report. It is also important to point out that the suit in O.S.No.390/1965 should have been within the knowledge of the plaintiffs if really the defendants in O.S. No.390/1965 are Muthukumarasamy and Aruchamy. The plaintiffs have not explained as to why this document was not filed at the earliest point of time. In such circumstances the contention that the plaintiffs came to know about the suit very recently cannot be accepted.

14. Mr.S.Parthasarathy, learned senior counsel assisted by Mr.Venkatasubban, counsel for the respondents, contended that the prayer for amendment of the plaint at this stage cannot be allowed since Ramathal, for the first time says that her husband Muthukumarasamy was called as Muthukrishnan and her brother-in-law Aruchamy was called as Marappan. It is also his contention that no documentary evidence was adduced by the plaintiffs to substantiate the same. It is his further contention that when Deivanaiammal admitted the possession of the suit properties by



the father of the defendants (in O.S. No.193/1943) and in fact sought for recovery of possession from him also, the plaintiffs cannot now contend that they are in continuous possession of the suit properties. The said suit was also dismissed after full contest and the plaintiffs in paragraph VII(b) of their plaint had specifically stated that they do not admit that the defendants took possession of the suit properties in the Court auction sale. In such circumstances, they cannot claim adverse possession and prescription over the suit properties. He therefore, prayed for the dismissal of the present second appeal.

15. The plaintiffs did not state in their original plaint that the suit properties were brought for court auction sale in O.S.No.1149/1935 and that the sale was confirmed in E.P.No.223/1936 (Ex.B4). In fact, a sale certificate was also issued in favour of the father of the defendants. Subsequently, the first plaintiff Deivanaiammal filed a suit in O.S.No.193/1943 before the Additional Sub Court, Coimbatore, to set aside the Court auction sale in O.S.No.1149/1935 and for recovery of possession of the suit properties. The suit in O.S.No.193/1943 filed by the first plaintiff was dismissed as is seen from a copy of the judgment dated 16.10.1945 (Ex.B6).

16. A perusal of Ex.B6 also shows that Deivanaiammal admitted in that suit that the father of the defendants was in possession of the suit properties. In the circumstances, the contention of the plaintiffs that they are in continuous possession of the suit properties even after the Court auction sale cannot be accepted. In fact, this aspect has been dealt with by both the Courts below in extenso and I need not repeat the same observations made by both the Courts below again in the present second appeal.

17. Another contention of the plaintiffs is that they have perfected their title by way of adverse possession and prescription. There cannot be any adverse possession if a person claiming the same does not know that he is enjoying another's land. In the instant case, the plaintiffs in Para No.VII(b) of their plaint had stated thus:

"VII. (b) The plaintiffs do not admit that the suit property was sold in Court auction on 02.11.1936 and that Chinnaswamy Gounder, the father of the defendants became the Court Auction Purchaser".

By stating so, the plaintiffs do not admit the title of the defendants over the suit properties and therefore, their possession cannot be said to be adverse to the true owner. Adverse possession in one sense is based on the theory or



presumption that the owner has abandoned the property to the adverse possessor or on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. Where possession of the property could be referred to a lawful title, it will not be considered to be adverse. The reasons being that a person whose possession can be referred to a lawful title, will not be permitted to show that his possession was hostile to another's title.

18. Having failed in all their contentions, now the plaintiffs are attempting to put forth a new case by stating that during the year 1965 Palanathal, the mother of the defendants filed a suit against Muthukumarasamy and his brother Aruchamy in O.S.No.390/1965 stating that the possession of the suit properties was with them. Since this was not pleaded in the plaint, the plaintiffs want to amend the plaint and also to receive the Suit Register Extract in O.S.No.390/1965 as an additional document.

19. A perusal of the Suit Register Extract in O.S.No.390/1965 shows that the suit was filed by Palanathal and the present defendants against one Muthukrishnan and Marappan. Now the plaintiffs contend that Muthukumarasamy was called as Muthukrishnan and Aruchamy was called as Marappan. In this regard, no document was filed on the side of the plaintiffs. In the affidavits filed in support of the petitions in C.M.P.Nos.5633 & 5634/2016, Ramathaal had contended for the first time that her husband was called as Muthukrishnan and her brother-in-law was called as Marappan. This plea is made after a lapse of 19 years. Moreover, the contention of the appellants that they came to know about this suit only recently cannot be accepted for the simple reason that in the suit in O.S.NO.390/1965, an ex parte decree was passed initially and thereafter, it was set aside at the instance of the defendants in that suit. Subsequently, the mother of the defendants withdrew the suit with liberty to file a fresh suit on the same cause of action. When it is contended that Muthukumarasamy and his brother were actually the defendants in the suit in O.S.No.390/1965, they might have known about the suit. Moreover, Muthusamy Gounder, the original owner of the suit property died only in the year 1974. It is also not explained as to why the defendants filed the suit only against the husband of Ramathaal and his brother-in-law leaving the original owner of the suit property, namely Muthusamy Gounder and that too for recovery of possession of the suit properties.



20. In the circumstances, the amendment sought for by the plaintiffs at this stage cannot be allowed. The defendants in the suit in O.S.No.390/1965 were not also shown to be Muthukumarasamy Gounder and Aruchamy as claimed by the plaintiffs by way of any documentary evidence. Therefore, both the C.M.Ps are liable to be dismissed.

21. Since, I have already held that Deivanaiammal and her three sons had filed the suit in O.S.No.193/1943 against her own husband as well as Chinnasamy Gounder and others and in that suit she has admitted that Chinnasamy Gounder (father of the defendants) was in possession of the suit properties, the plaintiffs cannot now contend that the father of the defendants did not take possession of the suit properties sold to him in the Court auction sale in O.S.No.1149/1935. The plaintiffs have not also proved their continuous possession over the suit properties and also that they have perfected their title to the suit properties. Hence, the substantial questions of law 1 to 3 are answered against the appellants.

22. In the result,
- i. the second appeal is dismissed. No costs. Consequently connected Civil Miscellaneous Petitions are dismissed.
 - ii. The decree and judgment dated 29.09.2005 passed in A.S. No.82 of 2005 on the file of the Principal Subordinate Judge, Coimbatore, and the decree and judgment dated 03.01.2005 passed in O.S. No.1512 of 1997, on the file of the First Additional District Munsif Court, Coimbatore, are upheld.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge,
Coimbatore.
2. The First Additional District Munsif Court,
Coimbatore.



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

+1cc to Ms.Elizabeth Ravi, Advocate SR.No.30806
+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.29940
+1cc to Mr.T.S.Baskaran, Advocate SR.No.29798

S.A.No.1509 of 2007
and
C.M.P. Nos.5633 & 5634 of 2016

GPL(CO)
GN(08/06/2022)