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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :06.04.2022

PRONOUNCED ON :21.04.2022

CORAM:

THE HON'BLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2252 of 2015

and

M.P.No.1 of 2015

1.Prema

2.Indhu

3.Kuzhal

... Petitioners/Defendants 15 to 17

Versus

1.J.Nethaji Subash Chandra Bose

2.C.N.Selvaraj

3.K.Sumathi

4.K.Saraswathy

5.K.Santhi

6.K.Ravichandran

7.J.Padmavathy

8.C.N.Chandrasekaran @ Raghu

9.M.Lalitha

10.M.Geetha

11.M.Venkataraman

(2 to 11 respondents/Plaintiffs are represented by their Power of Attorney Agent 1st respondent/plaintiff J.Nethaji Subash Chandra Bose)

... Respondents/Plaintiffs



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 24.02.2015 passed in I.A.No.352 of 2011 in O.S.No.234 of 2010 on the file of the District Munsif, Chengalpattu.

For Petitioners : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mr.Y.Bhuvanesh Kumar

ORDER

Aggrieved by an order, dismissing the petition to reject the plaint, defendants 15 to 17 in the main suit have come up with this revision.

2. The respondents herein filed a suit in O.S.No.234 of 2010 on the file of the learned District Munsif, Chengalpattu, against the petitioners and 14 others (D1 to D14 under whom the petitioners claim title) seeking a declaration that the sale deed dated 22.02.2002 executed by defendants 1 to 14 infavour of late Bheema Rao (husband of first petitioner and father of petitioners 2 and 3) is null void and also for permanent injunction restraining



the petitioners (D15 to D17) from anyway encumbering the suit property.

The revision petitioners who were arrayed as D15 to D17 have filed a petition to reject the plaint in I.A.No.352 of 2011 and the same was dismissed by the trial Court. Aggrieved by the same, the present Civil Revision Petition is filed.

3. According to the plaintiffs, they are all legal representatives of one Nagarathina Mudaliar, who purchased the suit property under a registered sale deed dated 15.05.1965. Since his possession was interfered with one Kuppusamy, he was constrained to file a suit seeking declaration and recovery of possession in O.S.No.441 of 1965 on the file of the learned District Munsif, Chengalpattu and the same was decreed. The defendant therein/ Kuppusamy filed an appeal in A.S.No.37 of 1970 before the Principal Subordinate Court, Chengalpattu and the First Appellate Court allowed the appeal and remanded the matter to the trial Court for re-trial. The said order of remand was challenged by Nagarathina Mudaliar in A.A.O.No.619 of 1973 before the High Court of Madras and the same was allowed and the matter was remanded to the file of the First Appellate Court. After remand, the First



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Appellate Court, heard the matter afresh and allowed the appeal and dismissed the suit.

4. In the meantime, Nagarathina Mudaliar died and his legal heirs namely the plaintiffs in O.S.No.234 of 2010 filed second appeal before the High Court in S.A.No.2427 of 1977 and the same was allowed. The matter was again remanded back to the file of the lower Appellate Court for fresh disposal. Thus, A.S.No.37 of 1982 was taken up by First Appellate Court afresh and ultimately the first appeal was dismissed confirming the judgment and decree of the Trial Court. The first Appellate Court held that Nagarathina Mudaliar was the owner of the suit property and the plea of adverse possession of the defendant therein was negatived. Aggrieved by the said judgment, Kuppusamy filed second appeal with a petition for condonation of delay in CMP.No.9489 of 1983 and the same was allowed on 29.06.1984 on condition that the appellant (Kuppusamy) should pay a sum of Rs.100/- on or before 20.07.1984 and the said order was not complied and hence condonation of delay petition was dismissed and consequently second appeal was rejected at the S.R. stage. Thus, the decree granted by the trial



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Court declaring title of Nagarathina Mudaliar and for recovery of possession stood confirmed. The plaintiffs further pleaded in the plaint that the legal heirs of Kuppusamy namely the defendants 1 to 14 in O.S.No.234 of 2010 executed a sale deed dated 22.02.2002 in favour of one late Beema Rao (husband of 15th defendant and father of defendants 16 and 17) conveying the suit property to him. The plaintiffs after acquiring the knowledge of the said sale issued a notice dated 03.05.2010 to all the defendants. The notices were returned unserved and hence the plaintiffs were constrained to file the above suit seeking declaration that the sale deed executed by legal heirs of Kuppusamy is null and void and for injunction restraining them from alienating or encumbering the suit property further.

5. The legal heirs of alienees of the suit property namely D15 to D17 filed an application for rejection of plaint in I.A.No.352 of 2011. The main contention of the revision petitioners/D15 to D17 was that the legal heirs of Nagarathina Mudaliar failed to execute the decree for recovery of possession within 12 years and hence the decree for recovery of possession is barred by limitation. The natural corollary of the same is illegal possession



held by Kuppusamy had become lawful one by lapse of statutory period.

Hence, Kuppusamy acquired title to the suit property by adverse possession and therefore, his legal representatives are entitled to convey the title of sale deed dated 22.02.2002. It was averred by the revision petitioners in their affidavit filed in support of the rejection of the plaint that the plaintiffs have lost title of the suit property by lapse of time and hence they are not entitled to maintain a suit based on the judgment in A.S.No.37 of 1970. Thus, according to the defendants 15 to 17, there was no cause of action for the plaintiffs to maintain the present suit. Consequently, the plaint is liable to be rejected and order 7 Rule 11 of C.P.C.

6. The petition for rejection of the plaint was opposed by the respondents/plaintiffs in revision by filing a detailed counter, wherein they have stated that the above said Kuppusamy who suffered a decree for declaration for recovery of possession executed a document on 04.07.1984 in favour of Krishnan, s/o.Nagarathina Mudaliar (plaintiffs 3 to 6 are children of Krishnan) and handed over possession of the suit property to said Krishnan and others after receiving the payment of Rs.50,000/-.



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7. Thus, the legal representatives of Nagatathina Mudaliar got possession of the suit property lawfully from judgment debtor late Kuppusamy. Consequently, there was no need for executing the decree. According to the plaintiffs, the said document was filed along with the plaint as Plaint Document No.30. It was further submitted by the plaintiffs that in the sale deed impugned in the suit, the defendants 1 to 14 have not mentioned the correct date of judgment in A.S. No.37 of 1970. They suppressed the fact that A.S.No.37 of 1970 ended in favour of Nagarathina Mudaliar and against late Kuppusamy and therefore, the sale deed executed by legal representatives of Kuppusamy is not valid and binding on them. It was also stated in the counter that the defendants have not perfected a title by adverse possession.

8. The learned Subordinate Judge, Chengalpattu, by an order dated 24.02.2015, dismissed the petition to reject the plaint on the ground that whether the possession was taken by the plaintiffs or not cannot be decided at interlocutory stage and the same would be decided only at the stage of trial and hence dismissed the petition. Aggrieved by the same, the above revision is filed.



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9. Heard Mr.N.G.R.Prasad, learned counsel appearing for the petitioners and Mr.Y.Bhuvanesh Kumar, learned counsel appearing for the respondents.

10. The learned counsel appearing for the petitioners submitted that the decree for declaration and recovery of possession obtained by predecessor of the plaintiffs namely Nagarathina Mudaliar in O.S.No.441 of 1965 had become time barred as the plaintiffs failed to execute the same within 12 years from the date of the decree. Thus the plaintiffs have lost right to claim the suit property. The defendants by continuous enjoyment of the suit property had perfected title, after expiry of 12 years from the date on which, the petition to condone the delay in filing the second appeal was dismissed. As the defendants 1 to 14, the legal heirs of late Kuppusamy, perfected title by adverse possession, they were entitled to convey good title to defendants 15 to 17 under sale deed dated 22.02.2002. The document dated 04.07.1984 relied on by the plaintiffs in the counter to the petition to reject the plaint was not at all referred to in the pleadings in the plaint and hence the revision petitioners are not entitled to rely on the same. It was



submitted that the petition to reject the plaint has to be decided based on the averments as found in the plaint but not based on the new averments made in the counter to rejection of the plaint petition. It was further submitted that the very genesis of document dated 04.07.1984 is doubtful, because there was interpolation in the list of plaint documents. The Plaint Document No.30 was introduced by way of interpolation in the list of documents to plaint with a wrong date. Therefore, the filing of Plaint Document No.30 along with the plaint on the date of presentation is highly doubtful.

11. In support of his submission, the learned counsel for the petitioners *relied on the judgment in Mr.Tim Boyd, International President, C/o.The Theosophical Society, Adyar Vs. Mr.Kesiraju Krishna Phani and others reported in 2015-4-L.W.page 336*, for the proposition that the rejection of the plaint petition has to be decided based on the averments in the plaint and when it discloses no cause of action, the plaint is liable to be rejected.



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12. Countering the arguments of the learned counsel for the petitioners, learned counsel for the respondents submitted that while considering the petition for rejection of the plaint, the Court can look in the plaint averment and also the document filed along with the plaint. The document in question namely the Plaint Document No.30, dated 04.07.1984 was filed along with the plaint and the same can be gathered by seal of the Court found in the docket of the Document No.30. It was further submitted by him that the defendants claim right to suit property by way of adverse possession and the same was already negatived in the earlier round of litigation in O.S.No.441 of 1965 and it was submitted by him that the plea of adverse possession raised by the defendant cannot be gone into at this stage.

13. In support of his contentions, the learned counsel for the respondents relied on the following judgments:

(i) *Mr.Tim Boyd, International President, C/o.The Theosophical Society, Adyar Vs. Mr.Kesiraju Krishna Phani and others reported in 2015 (5) CTC 45;*



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(ii) *Chhotanben and another Vs. Kiritbhai Jalcrushnabhai Thakkar* reported in 2018 (6) SCC 422;

(iii) 2020 (1) CTC 275 reported in *Loom Tex Exports, Chennai* At No.3, 2nd floor, 107, Harigton Road, Chennai, Rep by its Power Agent, Bharat B. Mahendra K. Khatau; Asha Mahendra Khatau; Priya Mahendra Kishore Khatau, Shreya Mahendra Khatau, Mahish Mahendra Khatau; Rashi Mahendra; Bharat B. Mohindra..... Vs. Thanneer Panthal Dharma Chathiram, Punjai Kadambankurichi Village, Karur Taluk, rep by its Fit person, Executive Officer, Thanthonimalai Sri Kalyanavenkatramaswamy Koil, Karur, Murugesan; and submitted that while considering the petition to reject the plaint, the Court has to see only the averment in the plaint and it cannot rely on the defence raised by the defendants.

14. I have given anxious consideration to the rival submissions made by the counsel for both sides.

15. It is settled law that the petition for rejection of the plaint has to be decided only based on the averments found in the plaint and the



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documents filed along with the plaint. The plaintiffs sought for the declaration that the sale deed dated 22.02.2002 executed by the defendants 1 and 14, in favour of Beema Rao, in respect of the suit property was null and void and for a injunction restraining the defendants 15 to 17 (allienees from encumbering the suit property further).

16. The respondents have come up with the petition to reject the plaint by raising adverse possession. It is their main contention that the decree for declaration and recovery of possession obtained by the plaintiffs in O.S.No.441 of 1965 is barred by limitation and consequently the illegal possession of Kuppusamy blossomed into a perfect title by adverse possession by lapse of statutory period. For this point raised by the revision petitioners, the respondents have come up with an explanation in the counter that late Kuppusamy during his life time had handed over possession of the property to them by executing Plaint Document No.30.

17. It is settled law, the plea of adverse possession has to be specifically pleaded and meticulously proved by cogent evidence, such a



course would be possible only in a full fledged trial. Plea of adverse possession raised by the revision petitioners in support of their title cannot be considered in a petition for rejection of the plaint. The petition under Order 7 Rule 11 has to be decided only based on the averments found in the plaint and the Plaint Document. The plaint cannot be rejected, based on the defence raised by the defendants. In the case on hand, the defendants want rejection of the plaint by raising a plea of adverse possession. The Court cannot look into the defence of adverse possession at this stage and reject the plaint without relegating the parties to the full trial.

18. It was submitted by the learned counsel for the petitioners that the earlier decree in O.S.No.441 of 1965 for declaration and recovery of possession obtained by the plaintiffs was allowed to become a dead letter by lapse of time. Therefore, on the face of it, it is very clear that the defendants have acquired title by adverse possession by lapse of statutory period and therefore, there may not be any impediment for rejection of the plaint. Though the arguments made by the learned counsel for the petitioners is very attractive, it is again settled law that the Court should be very slow and cautious in accepting the plea of adverse possession. It is pertinent to



mention the following observations of Apex Court relating to law of adverse

possession in ***State of Haryana Vs. Mukesh Kumar reported in AIR 2012***

Sc 559, which reads as follows:

*“35 . A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission. This Court in Revamma (supra) observed that to understand the true nature of adverse possession, **Fairweather v. St Marylebone Property Co. (1962) 2 WLR 1020 ; (1962) 2 All ER 2 8 8** can be considered where House of Lords referring to **Taylor v. Twinberrow (1930) 2 K.B. 16** termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour*



of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property.

36. The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.

*37. The changing attitude of the English Courts is quite visible from the judgment of **Beaulane Properties Ltd. v. Palmer** (2005) 3 WLR 554. The Court here tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimension of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. With the expanding jurisprudence of the European Courts of Human Rights, the Court has taken an unkind view to the concept of adverse possession.”*



19. Hence, it is clear that the person who pleads adverse title as a defence has to specifically plead and meticulously prove the same by cogent evidence. Hence, I agree with the order passed by the Trial Court that parties should be relegated to the full fledged trial.

20. It was submitted by the learned counsel for the petitioners that the Complaint Document No.30, which had been relied on by the respondents for interrupting the long possession of the revision petitioners pleaded by them, was not filed along with the complaint and the same was evident from the interpolation made in the list of documents in the complaint. It was also submitted that the Complaint Document No.30 should have been included later.

21. I have perused the original records. The complaint was presented on 21.06.2010. The Complaint Document No.30, also bears the Court seal dated 21.06.2010. Therefore, there could be no doubt, the Complaint Document No.30 should have been filed along with the complaint on the date of presentation of the complaint.



22. The learned counsel for the petitioners also submitted the seal affixed in the plaint document itself is doubtful. However, such submission cannot be entertained in the absence of any specific averments in the affidavit filed in support of petition to reject the plaint or in their re-joinder affidavit doubting the seal of the Court. The seal of the Court found in the Plaint Document No.30, *prima facie* establishes at least for deciding this rejection of the plaint petition that the same was filed along with the plaint. If the document is taken into consideration along with the averments found in the plaint, the reliefs sought for in the plaint are not liable to be rejected even at threshold itself without a full fledged trial.

23. The submissions made by the learned counsel for the revision petitioners that the decree passed in O.S.No.441 of 1965, has become time barred cannot be accepted in *toto* because only the clause of the decree granting recovery of possession be treated as time barred and as far as the clause in the decree declaring title of Nagarathina Mudaliar, the predecessor in title of the plaintiffs, cannot be treated as time barred as it is an in-executable one.



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24. In the light of the declaration of Nagarathina Mudaliar's title to suit property in O.S.No.441 of 1965 by the Court of Competent jurisdiction, I am not inclined to entertain the petition to reject the plaint filed by the revision petitioners. Whether, the title declared by the Court of competent jurisdiction has got extinguished or destroyed by adverse possession is to be tested in the full dressed trial. Therefore, the order dismissing the petition to reject the plaint is confirmed and the Civil Revision Petition stands dismissed. However, it is made clear that the learned District Munsif, Chengalpattu, shall dispose of the suit without being influenced by any of the observations made by this Court in this revision, in respect of the various pleadings raised by the parties. There is no order as to costs. Consequently connected Miscellaneous Petition is Closed.

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To
The District Munsif, Chengalpattu.



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S.SOUNTHAR, J.

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