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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2022

PRONOUNCED ON : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

A.S.No.24 of 2017

K.Logeshwaran ...Appellant/Defendant

Vs.

M.Chandrasekaran ...Respondent/Plaintiff

Prayer: First Appeal has been filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 04.08.2016 passed in O.S.No.62 of 2013 on the file of the Principal District Court, Kancheepuram District at Chengalpattu.

For Appellant : Mr.P.J.Sri Ganesh

For Respondent : Mr.K.V.Babu

JUDGMENT

(Judgment of the Court was delivered by V.SIVAGNANAM, J)

Aggrieved over the judgment and decree dated 04.08.2016 passed in O.S.No.62 of 2013 on the file of the Principal District Court, Kancheepuram District at Chengalpattu, the defendant has preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff filed the suit for the following prayer:

(i). For declaration of the plaintiff title to the suit property and for consequential relief of recovery of possession by directing the defendant to deliver the vacant possession of the suit property to the plaintiff.

(ii).To declare that the alleged sale deed alleged to have been executed by Maduraimuthu Naickar in favour of the



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defendant registered as document No.2393/97 dated 23.07.1997 S.R.O.Guduvancherry as null and void and not binding on the plaintiff.

(iii).Awarding cost of the suit and

(iv).To grant such other suitable reliefs.

4.The substance of the plaintiff's case is as follows:

The plaintiff has got the suit property from his father Maduraimuthu Naickar under a registered settlement deed dated 23.02.1985. In pursuance of the settlement deed, the possession has been handed over to him. He got patta to the property and patta number is 101. Thus, the plaintiff is the absolute owner of the suit property alleged in the plaint schedule. During the first week of November, 2006, the plaintiff found that the defendant was doing illegal act in the suit property, he questioned his activities, the defendant informed him that he had purchased the property from the plaintiff's father Maduraimuthu Naickar on 23.07.1997. The defendant is the grandson of Maduraimuthu Naickar and the plaintiff's brother Krishnan's son. The sale deed will not bind the plaintiff. He came to know that the defendant fraudulently transferred the patta to his name with connivance of the Revenue Officials. Hence, the plaintiff filed an appeal petition before the Revenue Divisional Officer, Chengalpattu on 13.02.2013 to cancel the patta. In this regard, enquiry was conducted, which is still pending. Again on 03.04.2013, the defendant had trespassed into the suit property and excavated the earth by using JCB in order to put up construction illegally in the suit property. Hence, the plaintiff filed the suit with the abovesaid prayer.

5.The defendant filed a written statement and contested the suit. The main contention is, he had no knowledge about the settlement deed dated 23.02.1985. Further, the boundaries and extent mentioned in the alleged settlement deed are quite different with that of the sale deed dated 23.07.1997. Thus, the settlement property is different property. Further contention is, he purchased the property from Maduraimuthu Naickar for a valuable consideration. From the date of purchase, he is in the possession and enjoyment of the property paying all taxes related to the property and he paid the fee for the removable of TNEB wires running over the property by paying requested fee and also in the year 2006, he dug a borewell and he got an electricity connection. Further, contended that the defendant is in the possession and enjoyment of the property from the year 1997 and he constructed a house in the suit property and prescribed title by adverse possession. The plaintiff has no cause of action to file the suit and the plaint has to be rejected.



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6.The trial Court framed the following four issues with an additional issue for its consideration:

(i).Whether the defendant perfected title to the suit property by adverse possession?

(ii).Whether the plaintiff is entitled for the relief of declaration that the sale deed dated 23.07.1997 as null and void and not binding on the plaintiff?

(iii).Whether the plaintiff is entitled for the relief of declaration that he is the owner of the suit property and for consequential relief of recovery of possession?

(iv).To what relief the plaintiff is entitled to?

Additional issue is

Whether the suit is barred by Limitation?

7.In the trial Court, plaintiff examined himself as PW1 and also examined one another witness viz.,Vijayakumar as PW2 and filed 10 documents as Exs.A1 to A10. The defendant examined himself as DW1 and his father Krishnan was examined as DW2 and one Dillibabu was examined as DW3 and filed 16 documents as Exs.B1 to B16.

8.On considering the oral and documentary evidence adduced by the respective parties, the trial Court decreed the suit as prayed for with costs and granted three months time for delivery of possession. Aggrieved by the judgment and decree of the trial Court, this appeal is preferred by the defendant.

9.The learned counsel for the defendant submitted that the judgment and decree of the lower Court is contrary to law, against the weight of evidence and probabilities of the case. Further contended that the trial Court failed to consider the fact that the suit is barred by limitation as the suit was filed after 16 years of the execution of the sale deed dated 23.07.1997 in favour of the defendant. Further, the plaintiff, during his cross examination, admitted the knowledge of the sale deed in favour of the defendant, but within a period of limitation, he had not filed any suit to declare the sale deed as invalid. Only after 16 years, this suit had been filed. The trial Court erred in finding that the settlement deed dated 23.02.1985 is a valid one. It never



acted upon. As per the settlement deed, the plaintiff had not taken possession. The plaintiff himself had filed the suit for partition against his father and brother. It shows the strained relationship of the plaintiff and his father. His father may not execute any settlement deed in favour of the plaintiff. The trial Court failed to appreciate this fact in this case declaring the sale deed as null and void and unsustainable. The settlement property and the sale deed property are different, not one and the same. Further, the defendant is in uninterrupted person for more than 12 years and thus, prescribed title by adverse possession. The patta stands in the name of the defendant. The trial Court failed to appreciate the documents filed by the defendant and reiterated other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the trial Court and to allow the appeal.

10. The learned counsel for the plaintiff supported the judgment and decree of the trial Court. Further, contended that the plaintiff got title over the suit property in view of the settlement deed dated 23.02.1985. After execution of the settlement deed, the plaintiff's father Maduraimuthu Naickar had no right, title over the property to execute a sale deed in favour of the defendant on 23.07.1997. The sale deed is invalid one and it would be void ab initio. Only in the year 2006, the plaintiff came to know about the illegal transfer of patta in favour of the defendant. Immediately, he initiated action for cancelling the patta granted in favour of the defendant. It is evidenced before the trial Court by enquiry notice to the plaintiff (Ex.A6) and no final order has been passed in this regard. The claim of adverse possession by the defendant is unsustainable. Plea of title and adverse possession are mutually inconsistent. The defendant's father was examined in this case as DW2. During his cross examination, he admitted the knowledge of the settlement deed in favour of the plaintiff, he being a witness to the settlement deed, the knowledge cannot be denied. After the settlement, immediately, patta was transferred in the name of the plaintiff. It was evidenced before the trial Court as Exs.A2 and A10. Only in the year 2004, patta has been illegally transferred in the name of the defendant. The change of patta came to knowledge only in the year 2006. From 2006, within a period of 12 years, the plaintiff filed the suit for recovery of possession. The defendant illegally changed the patta in his name in the year 2004 and illegally attempted to excavate in the suit land and attempted to make construction in the year 2006 again in the year 2013. Therefore, the suit is filed well within the time for recovery of possession.

11. To support his argument, the learned counsel for the plaintiff placed reliance upon the judgements in (i). Ram Nagina Rai and another Vs. Deo Kumar Rai (Deceased) By legal representatives and another reported in (2019) 13 supreme Court Cases 324, (ii). Sopanrao and another Vs. Syed Mehmood



and others reported in (2019) 7 Supreme Court Cases 76, (iii).Saroop Singh Vs. Banto and others reported in (2005) 8 Supreme Court Cases 330, (iv).State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) By Lrs. reported in (2000) 3 Supreme Court Cases 460, (v).Narasamma and others Vs. A.Krishnappa (Dead) Through Legal Representatives reported in (2020) 15 Supreme Court Cases 218 and (vi).Karnataka Board of Wakf Vs. Government of India and others reported in (2004) 10 Supreme Court Cases 779.

12.Heard the argument of the learned counsel on both sides and perused the records.

13.On the fact of the case, the plaintiff filed the suit for declaration of his title and recovery of possession of the plaint schedule property with a prayer to declare the sale deed dated 23.07.1997 is null and void. According to the plaintiff, he got the suit property from his father Maduraimuthu Naickar by way of a registered settlement deed dated 23.02.1985.

14.In this case, the main issues to be decided are,
(i) whether the suit is barred by limitation?

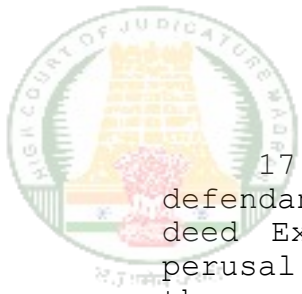
(ii) whether the plaintiff is entitled for declaration of his title and recovery of possession with regard to the plaint schedule property? and

(iii) whether the defendant has title over the property alternatively prescribed title by adverse possession.

15.We have gone through the evidence of the plaintiff PW1, in his evidence, he stated that his father Maduraimuthu Naickar gave the suit property by way of executing a registered settlement deed dated 23.02.1985, which is evidenced by Ex.A1. In pursuance of the settlement deed, he took possession and patta was transferred in his name, which is evidenced by Ex.A2.

16.Further, we have gone through the evidence of the defendant (DW1), the defendant claimed title by way of the sale deed executed by Maduraimuthu Naickar, who is the father of the plaintiff and the defendant is the grandson of Maduraimuthu Naickar through his first son Krishnan(DW2). The defendant in his evidence stated that Maduraimuthu Naickar executed the sale deed on 23.07.1997 with regard to the suit property, which is evidenced by Ex. B2. The patta originally stands in the name of Maduraimuthu Naickar, which is evidenced by Ex.B1. Subsequently, the patta was transferred in the year 2004 in the name of the defendant, which is evidenced by

Ex. B3.



17. First we have considered the contention of the defendant whether the property mentioned in the settlement deed Ex.A1 and the sale deed Ex.B2 are different. On a perusal of Exs.A1 and B2, it reveals that the survey number of the properties are identical one. Patta and encumbrance certificates Exs.B1, B10 & B11 are also pertaining to the same survey number of the settlement property. Therefore, the argument of the learned counsel for of the defendant that the settlement property and the sale deed property are different is unsustainable.

18. Next we have considered the defendant's further contention that the plaintiff's prayer for declaration of sale deed dated 23.07.1997 as invalid is barred by limitation. On a perusal of the evidence on record, it indicates that the settlement deed (Ex.A1) in favour of the plaintiff was executed on 23.02.1985 by Maduraimuthu Naickar, father of the plaintiff and the sale deed (Ex.B2) was executed by same Maduraimuthu Naickar in favour of the defendant on 23.07.1997 and admittedly, the plaintiff during his cross examination admitted the knowledge of the sale deed in the year 1997, but he did not challenge the sale deed immediately, for which, the reply by the counsel is that being an invalid document not required to challenge it immediately.

19. We have considered the legal position in this regard Article 58 of the Limitation Act, 1963 prescribes limitation of three years from the date when the right to sue first accrues. In this case, admittedly, the plaintiff, in his cross examination, accepted the knowledge of the sale deed Ex.B2 executed by his father in the year 1997.

20. On the fact, the vendor of the defendant Maduraimuthu Naickar before executing the sale deed in favour of the defendant in the year 1997 had executed the registered settlement deed in favour of the plaintiff on 23.02.1985. In pursuance of which, patta also transferred to the plaintiff, which is evidenced by the plaintiff. After executing the registered settlement deed in favour of the plaintiff, the defendant's vendor viz., Maduraimuthu Naickar had no legal right and title over the suit property again to execute the sale deed (Ex.B2) in favour of the defendant. Thus, the sale deed Ex.B2 was invalid one and void ab initio, which will not transfer a valid title to the defendant. Hence, the defendant takes nothing by the document i.e. sale deed dated 23.07.1997. Therefore, it is not necessary to seek a declaration about the invalidity of the sale deed Ex.B2. Hence, the fact of the plaintiff having sought such a declaration is of no consequence, it was a void document.

21. Therefore, we are of the view that the argument of the learned counsel for the defendant that the sale deed dated 23.07.1997 was not declared as null and void, within a period of three years from the knowledge of the plaintiff is of no



consequence for being a void document. Therefore, the argument of the leaned counsel for the defendant in this regard will not affect the plaintiff's main prayer for declaration of title and recovery of possession.

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22. Now, we have considered the issue, whether the suit is barred by limitation, for declaration of plaintiff's title and recovery of possession. The plaintiff filed the suit for declaration of title and recovery of possession based on the registered settlement deed Ex.A1. The period of limitation prescribed for filing the suit for recovery of immovable property based on title is 12 years under Article 65 of the Limitation Act 1963. Under Article 65 of the Limitation Act, for possession of immovable property or any interest therein based on title is 12 years well within the possession of the defendant become adverse to the plaintiff. Plaintiff as PW1 evidenced before this Court that he came to knowledge of trespass of the defendant only in the year 2006, after his objection, again he trespassed the property in the year 2013 and attempted to put up a construction. Further, we have considered the evidence adduced by the defendant with regard to the possession, the defendant before the trial Court evidenced the document Ex.B4 of the year 2006. It was a receipt for payment of Tamil Nadu Electricity Board but there is no indication, whether that receipt is connected with the plaint schedule property or not. There is no evidence to show that the electricity payment receipt is connected with the disputed property, therefore, to decide the possession reliance cannot be placed on Ex.B4 payment receipt.

23. Ex.B5 is a document to show the digging of borewell in the year 2008. According to the defendant, the defendant dug a borewell in the suit property in the year 2008. Assuming that the defendant openly denied the title of the plaintiff over the suit property from the year 2008. The suit is within a period of 12 years, which is in time. The document Exs.B6, B7 and B8 are also seem to be electricity receipts for the year 2013. All the documents from Exs.B4 to B9 are started from the year 2006 to 2013. Therefore, the contention that the suit is barred by limitation for recovery of possession is unsustainable.

24. We have considered the alternative plea advanced by the defendant counsel, that he prescribed title by adverse possession. Admittedly, the defendant initially claimed title by way of sale deed Ex.B2 and adverse possession simultaneously from the same year 1997. Therefore, the question is whether the claim of title from the year 1997 and the plea of adverse possession from the year 1997 can go simultaneously is to be considered.

25. The legal position in this regard is declared by the Apex Court in *Narasamma and other Vs. A.Krishnappa (dead)* through legal representatives reported in (2020) 15 SCC 218.



In this regard, the Apex Court subsequently framed the issue, whether simultaneously a plea can be taken of title and adverse possession i.e. whether it would amount to taking contradictory pleas and observed that the plea on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. The relevant paragraphs 32, 33 and 34 are extracted here:

"32. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned Counsel for the Respondent herein, which succinctly set forth the legal position.

33. In Karnataka Board of Wakf² case, it has been clearly set out that a Plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that "....the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced...."

34. The aforesaid judgment in turn relied upon the judgment in Mohan Lal (Deceased) Thr. LRs.², which observed in para 4 as under:

4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the Appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the



plea of adverse possession is not available to the Appellant."

26. Thus, the claim of title and adverse possession from the same date cannot simultaneously hold and adverse possession cannot be recognized from the very date, from which, independent title is claimed. Therefore, it is necessary to prove as to from which date, the defendant's possession amount to a hostile possession against the plaintiff. In this case, the defendant in the written statement did not clearly plead, from which date, his possession started adverse to the plaintiff. On the fact of the case, there is no pleadings and evidence.

27. The defendant's evidence Exs.B4 to B9 indicate that the defendant's activities in the suit property starts from 2006. Even though, he claimed that he had purchased the property in the year 1997 his evidence indicate that he initiated to transfer the patta in the year 2004, till the date, there is no evidence for disturbing the possession of the plaintiff. This is a finding of fact based on evidence, we have now considered the legal position when a person claims adverse possession, he should show: the following "(a) on what date he came into possession, (b), what was the nature of his possession, (c) Whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.

28.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 his adverse possession.

29. The apex Court in Karnataka Board of Wakf Vs. Government of India and others reported in (2004) 10 Supreme Court Cases 779 observed the said position. The observation of the Hon'ble Supreme Court is worth to be noted here, which runs as follows:

"In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to



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show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (1996) 8 SCC 128)."

30. In view of the abovesaid legal position and considering the fact of the present case, the defendant had not proved his title by adverse possession against the plaintiff as claimed. The evidence of the defendant is not enough to declare his prescribed title on adverse possession against the plaintiff. Thus, the defendant failed in this aspect. In view of the above discussion, we find no merit in the appeal and the same is dismissed and confirm the Judgment and decree of the trial Court. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sms



To

The Principal District Court,
Kancheepuram District at Chengalpattu.

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

+1cc to Mr.K.V.Babu, Advocate SR. No. 28861

A.S.No.24 of 2017

SSI (CO)
PR (17/05/2022)