



A.S.No.1123 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

A.S.No.1123 of 2015

B.Suseela

... Appellant

Vs.

A.P.Rangarao (Died)

A.Mukundiah (2nd plaintiff died)

(recorded as the LR of the deceased
2nd plaintiff as per order in memo
dated 26.11.2014)

S.Sathyavathi

R2 brought on record as Lrs of the
deceased sole respondent viz.,
(A.P.Rangarao) vide court order
dated 28.06.2022 made in
C.M.P.No.3926 of 022 in A.S.No.1123
of 2015)

... Respondent

Appeal Suit filed under Section 96 Order 41 Rule 1 of CPC to set aside the Judgment and decree dated 26.06.2015 passed in O.S.No.9556 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr. T.Srinivasaraghavan

For Respondent : Mr.R.Dasaratha Rao



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J U D G M E N T

The present Revision has been filed to set aside the Judgment and decree dated 26.06.2015 passed in O.S.No.9556 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

2. The brief facts of the case are as follows:-

The appellant is the defendant in O.S.No.9556 of 2010 and A.P.Rangarao and A.Mukundiah who were deceased had filed O.S.No.9556 of 2010 to direct the appellant / defendant to deliver possession of the suit property described in the schedule after removing the superstructure illegally put by the appellant / defendant and if she fails to do so, sought a direction to remove the superstructure at plaintiffs' cost and recover it from the defendant and to pay Rs.18,000/- towards damages and continue to pay at Rs.500/- p.m., till date of delivery of possession. The present respondent, viz., Sathyavathi, is the legal heir of A.P.Rangarao. The written statement was filed by the appellant / defendant. The court below upon considering the submissions, going through the proof affidavits, documents and framing the issues, had decreed the said suit with cost by directing the appellant / defendant to deliver possession of the suit property described in the schedule after removing the superstructure put up by the appellant /



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defendant within three months. Further the deceased plaintiff, A.P.Rangarao was directed to file separate proceedings under Order 22 Rule 12 of CPC with regard to the relief of damages. As against the same, the present appeal suit has been filed.

3. The contention of the learned counsel for the appellant /defendant are as follows:-

(i) The suit land was in possession of one Muthu and after his death, his legal heirs, viz., Pooranadevi, Bakthavathsalam and Suhamathi sold the land to one Sadullah Basha under unregistered Sale deed dated 24.04.1982. The said Sadullah Basha and their children sold the property to one K.Sethumadhavan by sale deed dated 09.11.1983 and the said Sethumadhavan sold 2419 sq.ft., to one Saraswathi and remaining 2944 Sq.ft., of land to the appellant / defendant under sale deed dated 06.09.1984. Thereafter, the appellant / defendant constructed the house as per the legal sanction and obtained patta on the basis of registered documents. However, without going through the documents of the title produced by the appellant, Saraswathi and others, the District Collector came to a wrong conclusion and ordered the cancellation of patta.

(ii) Further, the deceased plaintiffs admitted that when the land was sold, there were some trespassers and it was also recited in the sale deed



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that symbolic possession was given. Also, not only the appellant, but the adjacent owners, Saraswathi and others had constructed superstructures on the land and the said Muthu, Sadullah Basha and Sethumadhavan were in possession continuously. Neither the said Denduluri Vaidiyanatha Krishnamoorthy nor his heirs took any action for recovery of possession of land. That apart, steps for recovery of possession has not been taken within the statutory period of limitation. However, the court below had not considered any of the pleadings and hence seeks to set aside the Judgment passed by the court below and allow the present appeal suit.

4. The learned counsel for the petitioner in support of his contention, has relied on the following Judgments:-

(i) Judgment of the Hon'ble Supreme Court reported in AIR (38) 1951 Supreme Court 469 [Collector of Bombay Vs. Municipal Corporation of the City of Bombay and Others]

(ii) Judgment of the Hon'ble Supreme Court reported in AIR 1970 Supreme Court 1778 [State of West Bengal Vs. The Dalhousie Institute Society]

(iii) Judgment of the Hon'ble Supreme Court reported in 2005 – 1 – L.W.730 [Karnataka Board of Wakf Vs. Government of India & Others]

(iv) Judgment of Hon'ble Supreme Court reported in (2007) 6



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Supreme Court Cases 59 [P.T.Munichikkanna Reddy and Others Vs. Revamma and Others]

(v) Judgment of Hon'ble Supreme Court reported in 2006 (5) CTC 378 [T.Anjanappa and Others Vs.Somalingappa & Another]

(vi) Judgment of Hon'ble Supreme Court reported in (2007) 14 Supreme Court Cases 308 [Annakili Vs. A.Vedanayagam & Others]

(vii) Judgment of Hon'ble Supreme Court reported in (2017) 6 CTC Page 195 (SC) [Dagadabai (dead) by Lrs., Vs., Abbas]

(viii) Judgment of Hon'ble Supreme Court reported in (2004) 10 Supreme Court Cases 779 [Karnataka Board of Wakf Vs. Government of India and Others]

(ix) Judgment of Madurai Bench of this Court reported in (2011) 1 MLJ 515 [Chinnappa (died) and others Vs. Marudhan & Others]

(x) Judgment of this Court reported in 2010 – 3 – L.W. 892 [K.Saraswathy Vs. The State of Tamilnadu rep. By the Collector of Chennai, Chennai – 3]

(xi) Judgment of this Court reported in S.A.No.279 of 2010 [N.Thirugnanasambandam and Another Vs. R.Sundararaj and Another]

4. Per contra, the contention of learned counsel for the respondent / plaintiff are as follows:-



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(i) The vacant property described in schedule forms part of a largest extent of vacant side measuring about 6 ½ grounds situated in T.S.No.15, Block No.3, No.1, Jamunabai street, sembiam perambur, Chennai – 11, owned by late Denduluri Vaidyanatha Krishnamurthy by virtue of sale deed dated 05.04.1948. The said land was in possession of the said Denduluri Vaidyanatha Krishnamurthy till his death and thereafter, his legal heirs, wife, four sons and two daughters were in possession of the same by paying urban land tax. Since the said family shifted their residence to their native place at Andhrapradesh, they appointed the first plaintiff as their power agent to look after the suit property, since it was a vacant land.

(ii) When the deceased plaintiffs had inspected the suit property, it was found that the appellant / defendant has put up a superstructure illegally and that obtained bogus patta, thereafter, on the complaint made by the deceased 1st plaintiff and after enquiry, patta was cancelled on the ground that the land has no link with the original owners of the property holder vide proceedings no.J4/69381/93 dated 13.08.1996. Thereafter, the legal heirs of Denduluri Vaidyanatha Krishnamurthy executed a sale deed in favour of the deceased 1st plaintiff in respect of 4 ½ grounds and executed a sale deed in favour of the 2nd plaintiff in respect of 2 grounds and as such, the deceased plaintiffs are the owners of the entire suit schedule property measuring to an extent of 6 ½ grounds.



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(iii) In fact, when the property was sold to the deceased plaintiffs by the legal heirs of Denduluri Vaidyanatha Krishnamurthy, there were some trespassers and hence it was recited in the sale deed dated 14.02.1996 that symbolic possession was given in respect of the portion of land occupied by the trespassers. The appellant / defendant was fully aware of the same and any sale deed purported to have been obtained from K.Sethumadavan, who himself has no title to the property to convey the same to the appellant / defendant, will not convey any right to the appellant / defendant. The court below rightly decreed the suit and there is no flaw warranting interference, thereby pleaded to dismiss the suit.

5. The learned counsel for the respondent / plaintiff in support of his contention has relied on the Judgment of this Court in C.S.No.552 of 2011 [A.P.Rangarao & Another Vs. S.A.M.Naina Mohamed]

6. Heard the learned counsel on either side and perused the documents and the citations placed on record.

7. Upon considering the present case, it is relevant to note that the appellant / defendant claims title on the following grounds:

(a) One Muthu was in possession of the suit schedule property for a



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period of 40 years and one Sadhula Basha was tenant under the said Muthu for a period of 15 years.

(b) The legal heirs of Muthu, viz., Poornadevi, Bakthavatsalam and Sudhamathi sold the land to Sadhulla Basha vide unregistered sale deed dated 24.04.1982.

However, there is no supporting documents to establish the above said transactions.

(c) The said Sadhula Basha executed a settlement deed in favour of his children, registered as document no.2190 of 1983 dated 09.11.1983 in the office of the Sub-Registrar, Sembium (Ex.B.1).

(d) One K.Sethumadhavan purchased 5350 Sq.ft., from Sadhula Basha and his legal heirs and registered as Document No.5014 of 1983 dated 09.11.1983 in the office of the Sub-Register, Sembium.

(e) Thereafter, the appellant, viz., Suseela, purchased the property from Sethumadhavan measuring an extent of 2944 sq., ft., and registered as document no.3096 of 1984 dated 06.09.1984 in the office of the Sub-Registrar, Sembium (Ex.B.2).

8. On the contrary, it is pertinent to point out that the deceased-1st plaintiff claims title on the following grounds:-

(a) One V.S.Govinda Swamy Chetty purchased the huge extent of



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vacant lands by way of a court auction from the official assignee of this Court, vide sale deed dated 23.08.1940. [There is no supporting documents to establish the same].

(b) Thereafter, one Chandra Sekara Reddy purchased the same from the said V.S.Govinda Swamy Chetty vide sale deed dated 27.01.1945 registered as Doc.No.97 of 1945 (Ex.A.8).

(c) Subsequently, Denduluri Vaidyanatha Krishnamurthy purchased the suit mentioned property from Chandra sekara Reddy vide sale deed dated 05.04.1948 registered as Document no.659 of 1948 in the office of the Sub-Regitrar, Sembium (Ex.A.1) The said Denduluri Vaidyanatha Krishnamurthy died in the year 1975 leaving behind his wife, four sons and two daughters as his legal heirs. The said legal heirs obtained patta for the suit schedule property and has been paying tax.

(d) Since the legal heirs of Denduluri Vaidyanatha Krishnamurthy settled at Andhrapradesh, they have appointed the 1st plaintiff in the suit, viz., A.P.Rangarao as their agent to look after the property and on inspection, it was found that the appellant had put up superstructure illegally and obtained bogus patta and on verification, the said patta was cancelled by the District collector on the application of the 1st plaintiff vide proceedings no.J4/69381/93 dated 13.08.1996. Thereafter, the 1st plaintiff in the suit, viz., A.P.Rangarao and 2nd plaintiff in the suit, viz., A.Mukundiah have



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purchased 4 ½ grounds each from the legal heirs of Denduluri Vaidyanatha Krishnamurthy (wife, 4 sons and 2 daughters) vide sale deed dated 15.02.1996 registered as document nos.991 and 992 of 1996 in the office of the Sub-registrar, Sembiam (Exs.A.3 and A.4) respectively.

9. It is pertinent to note that the court below has framed as long as six issues for consideration, among those issues, 2, 3 and 5, [(2) Whether the defendant and her vendors had perfected their title by means of adverse possession (3) Whether the title of the vendors of the plaintiff got extinguished as stated by the defendant (5) Whether the suit is barred by limitation] were dealt with at first the instance and Issue nos.1,4 and 6 [(1) Whether the plaintiffs are entitled for recovery of possession of the suit property; (4) Whether the plaintiff is entitled for damages as prayed (6) To what other relief the plaintiff is entitled to] were dealt with thereafter. On considering the entire documents and proof affidavits, the court below decreed the suit.

10. Taking note of the present facts of the case and upon perusing the documents filed on record, the following issues arises for consideration before this Court, which are as follows:-

1. Whether the appellant has proved her adverse possession ?



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2. Whether the suit is barred by limitation?

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11. In order to deal with the issue no.1, it is necessary to extract the relevant portion of the judgment of **Hon'ble Apex Court in Karnataka Board of Wakf Vs. Government of India and ors., (16.04.2004 – SC) Manu/SC/0377/2004** wherein it is held that “it is for the defendant to clearly plead and establish all facts necessary to establish his adverse possession” and among other things, it is held as follows:-

“11. 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 a 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 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. Physical fact of exclusive possession and the animus posited 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



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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 favor. 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
MANU/SC/0231/1996 : AIR1996SC869:)*

12. Applying the above said Rule enunciated by the Hon'ble Apex Court referred supra to the present case on hand, it is clear that the appellant / defendant, claims adverse possession stating that the suit mentioned property was owned by her predecessor over a period 55 years prior to the year 1983, however, able to establish documents only from the year 1983 by relying upon a settlement deed executed by the said Sadhula Basha with respect to the suit property in favour of his children, registered as Document No.2190 of 1983 dated 20.05.1983 (Ex.B.1). Further, K.Sethumadhavan, purchased 5350 Sq.Ft., from the said Sadhula Basha and his heirs vide registered as Doc.No.5014 of 1983 dated 09.11.1983 and thereafter, on 06.09.1984, the appellant purchased the property measuring



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2944 Sq.Ft., from Sethumadhavan and registered as Doc.No.3096 of 1984.

Further, the factum of possession of appellant / defendant was known to the 1st plaintiff, which is evident from the sale deed dated 14.02.1996, Ex.A.3, wherein it is mentioned that ***“a) Advance paid on 01.02.1993, a sum of Rs.65,000/- by way of State Bank of India, Mint Terminus Branch, Madras 79, D.D.No.378625 dated 01.02.1993 b) The balance of Rs.10,000/- (Rupees ten thousand only) agreed to be received before the Registrar at the time of registration of this sale deed, the receipt of total sum of Rs.75,000/- (Rupees seventy five thousand only) being the entire sale consideration the vendors do hereby acknowledge admit and acquit the purchaser from any further payment”***. Hence it is clear that the appellant was in uninterrupted peaceful possession of the subject mentioned property.

13. As far as the Issue No.2, viz., 'whether the suit is barred by limitation' is concerned, it is necessary to take note of Article 65 of the Limitation Act, wherein it is mentioned that if one person has taken possession of another person's property, the aggrieved person can file the suit for recovery of possession of that immovable property within 12 years from the date of possession. That apart, Section 27 of the Limitation Act, 1963 provides that if the agreed party failed to institute the suit for



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possession of the immovable property within 12 years, after the expiry of 12 years, the aggrieved party will no longer be able to file the suit for possession of that property. His/her right to such property shall be disabled. It is pertinent to note that in the case of **Ram Nagina Rai and Ors. Vs. Deo Kumar Rai and Ors. (dated 21.08.2018 SC)** reported in **MANU/SC/1003/2018**, at Paragraph nos.8 and 9 among other things, it is held as follows:-

'8.... Until the Defendants' possession becomes adverse to that of the real owner, the Defendants continue in permissive possession of the property. Only if the Defendants' possession becomes adverse to the interest of the real owner and the real owner fails to file the suit for possession within 12 years, as prescribed Under Article 65 of the Limitation Act, from the point of time the possession by the Defendants becomes adverse to the Plaintiffs, the real owner loses his title over the property.

9. The Defendants are not only required to prove that they have been in possession of the suit property continuously and uninterruptedly, but also need to prove, by cogent and convincing evidence, that there is hostile animus and possession adverse to the knowledge of the real owner....'

14. Further, the Full Bench of the **Hon'ble Apex Court in Ravinder Kaur Grewal Vs. Manjit Kaur, reported in (2019) 8 SCC 729** has held that if a rightful owner of an immovable property fails to take action to get back possession within the limitation period, then, his / her rights are lost



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and person in possession acquires an absolute title. Besides the above, it is also held as follows:-

“53. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once the right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated”.

It is also not in dispute that according to Article 65 of the Schedule to the Limitation Act, 1963, the period of limitation for a suit for the relief of possession of an immovable property or any interest thereunder based on title is twelve years from the date when the possession of the defendant becomes adverse to the plaintiff. The important point to be noticed is the time from which the period begins to run is not from the date of his alleged possession of the plaintiff's property by the defendant, but, the time begins to run when the possession of the defendant becomes adverse to the plaintiff. Therefore, Article 65 of the Limitation Act presupposes that the limitation starts only if the defendants prove the factum of adverse possession affirmatively from a particular time.



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15. In the present case, the respondent / plaintiff entered into a sale

Agreement with legal heirs of Denduluri Vaidhiyanatha Krishana murthy in the year 1996 and there was a specific clause in the registered sale agreement [vide document nos.991 and 992 of 1996 in the office of the Sub Registrar, Sembiam, Madras Ex.A.3 and Ex.A.4] that there were some encroachers in the property. The period of limitation would run only when the plaintiff was aware of the possession of another party. The plaintiff who was examined as PW1, during his cross examination, has stated that he was aware of the encroachment 7 to 8 years before entering into the sale agreement and the relevant portion is extracted as follows:-

“ஆக்கிரமிப்பு ஆலர்களை அப்புரப்படுத்த செலவழிக்க வேண்டியுள்ளதால் குறைந்த விலைக்கு கிரையம்கொடுக்கப்பட்டதாக கிரைய ஆவணத்தில் கண்டுள்ளது. 7, 8 ஆண்டுகளாக ஆக்கிரமிப்புகள் இருந்தன. கிரைய ஆவணத்தில் ஆக்கிரமிப்பு செய்யப்பட்ட பகுதி குறிப்பிட்டு கூறப்படவில்லை.”

Admittedly, the sale deed dated 14.02.1993 was executed in the name of the plaintiff, Ex.A.3, wherein it is mentioned that 'a) Advance paid on 01.02.1993, a sum of Rs.65,000/- by way of State Bank of India, Mint Terminus Branch, Madras 79, D.D.No.378625 dated 01.02.1993' and as per the cross examination given by the plaintiff, if 7 or 8 years is calculated from the date of advance paid, viz., 01.02.1993, the same would lead us around the year 1988. If 12 years is calculated from that date/year [Since Article 65 of the Limitation Act states that the aggrieved person can file the suit for recovery of possession of that immovable property within 12 years



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from the date of possession], the limitation would end in the year 2000 or 2001, whereas, the suit was filed only in the year 2007, hence it is clear that the suit is barred by limitation.

16. Considering the facts and circumstances of the case, this Court is of the opinion that the appellant, viz., Suseela, had been in possession and enjoyment of the property, from the year 1984, which was registered as document no.3096 of 1984 dated 06.09.1984 and the evidence are not available to show that the original owners used to visit the suit property often so as to avoid encroachments therein and taking note of the cross examination of the plaintiff, which would reveal that the true owners had direct knowledge of the possession of the appellant even prior to 7, 8 years of the date of execution of sale deed, also the appellant, without

interruption, continuously had been in open possession for over 12 years and earlier to the year 1996 the original owners had not questioned the possession of the appellant during 1980 – 1996 and no suit has been filed for recovery of possession within the prescribed period of 12 years and filed only after the period of limitation was lapsed, it is construed that the appellant is in rightful occupation of the suit property. The points are answered accordingly.



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In view of the above, the present Appeal suit is allowed and the order passed in O.S.No.9556 of 2010 dated 26.06.2015 on the file of the learned VI Additional Judge, City Civil Court, Chennai is set aside. No costs.

08.06.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

V.BHAVANI SUBBAROYAN J.

ssd

To
<https://www.mhc.tn.gov.in/judis>



The VI Additional Judge,
City Civil Court, Chennai.

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