



WEB COPY



A.S.No.507 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.06.2023

Judgment Delivered on : **11.07.2023**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.507 of 2015

M.Sekaran (Died)

2. S. Geetha
3. S. Sivaranjani
4. S. Mahalakshmi
5. M. S. Karthik

... Appellants

[A2 to A5 are brought on record as LR's of the deceased, viz., M.Sekaran, vide order of Court, dated 17.03.2023 made in C.M.P.Nos.3245, 3246, 3255 & 3256 of 2023]

Versus

- 1.Palaniammal
- 2.Poongulali
- 3.Dr. D. Jansi Rani

... Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 20.10.2014 made in O.S.No.80 of 2011, on the file of the II-Additional District Court, Salem District.



WEB COPY



A.S.No.507 of 2015

For Appellants : Mr. Shivakumaran
For Respondents : Mr. T. R. Rajagopalan, Senior Counsel
Assisted by Mr. P. Veena Suresh

JUDGMENT

A. The Appeal :

This Appeal Suit is directed against the judgment and decree dated 20.10.2014 in O.S.No. 80 of 2011 on the file of the II- Additional District Judge, Salem, in and by which the suit filed by the plaintiffs to declare the title of the plaintiffs in respect of 'B' Scheduled property, for delivery of vacant possession, for a permanent injunction restraining the defendants from in any manner continuing the construction of a building was decreed by the Trial Court. The original defendant has filed this Appeal Suit and since pending the Appeal Suit he had passed away, his legal heirs are brought on record as appellants 2 to 5.

1.1 Hereinafter in this judgment, the parties would be referred to as per their array in the original suit.

B. The Case of the Plaintiffs:

2. The case of the plaintiffs is that they are the owners of the suit Schedule 'A' property, they having purchased the same from one



R.V.Krishna Prakash, for himself and as a power of attorney, agent for the other co-owners of the property, namely, *S.Nirmala Rani*, *S. Sasikala Rani*, and *Obu Kanchana Rani*, by a registered sale deed dated 10.12.1995. ‘B’ schedule property, which is a part of the ‘A’ schedule property ad-measuring about 1200 sq.ft, is suddenly trespassed, and unlawfully occupied by the defendant and he started putting up a pucca construction. Therefore, a legal notice was issued on 25.01.2011 to quit and deliver for which there was no positive response, however, the defendant is persisting and is attempting to continue his construction, hence the suit was filed.

C. The Case of the Defendants :

3.The suit was resisted by the defendants by filing a written statement. The defendant admits the title of the plaintiffs predecessors in title, namely, *Nagappa Chettiar* and his wife, *Palaniammal* and *Manonmani*. The said *Nagappa Chettiar* and others have permitted and allotted 1200 square feet to the defendants’ father, *Marimuthu* to construct a tiled shed, water tank and to run this avocation, namely, a chicken center in the name and style “*Karuppusamy Kozhi Kadai*”. Thereafter, in the year



A.S.No.507 of 2015

1973 the defendant's father also started selling firewood by starting a firewood depot on the said land. Later on, the defendant also joined his father in the business. In the year 2002, they constructed a ferro concrete house and none objected when the construction was made and the defendants, along with their family members, are living in the property and running the said *Karuppusamy Kozhi Kadai* and firewood depot till date. They are not aware about the title deeds of the plaintiffs. The plaintiffs have not categorically stated as to when the defendants trespassed into the property.

3.1 The defendant is in permissive position and occupation of the property. After constructing a pucca permanent structure, they cannot be asked to vacate the property as per law. On receipt of the legal notice, the defendants personally approached the plaintiffs and appraised them of the above facts and the plaintiff sought some more time to look into the matter. Therefore, the defendant did not issue a reply notice. The plaintiffs have filed the suit without any cause of action.



D. The Issues:

4. On the above pleadings, the following issues were framed by the Trial Court:

“1) Whether the plaintiffs are entitled to the declaration of title to the suit 'B' schedule property?

2) Whether the defendant is liable to deliver the vacant possession of the suit property to the plaintiffs within the time specified by this court?

3) Whether the plaintiffs are entitled to recover the possession of suit 'B' schedule property by due process of law?

4) Whether the plaintiff is entitled to the relief of permanent injunction by restraining the defendant from continuing the construction of building in the suit 'B' schedule property?

5) To what relief, the plaintiffs are entitled? ”

E. The Trial :

5. On the said issues, the Power of Attorney of the plaintiffs', namely, *Chandrasekaran* was examined as **P.W.1** and **Exs.A-1 to A-12** were marked. On behalf of the defendants, the defendant examined himself as **D.W.1** and One *Thiru. Kathirvelu* was examined as **D.W.2** and **Exs.B-1 and B-2** were marked.



A.S.No.507 of 2015

5.1 Thereafter, the Trial Court considered the case of the parties and found that the plaintiffs are the lawful title holders in respect of the suit property. The Trial Court noted that the contention of the defendants is that they were given a license to occupy the suit property and carry on their avocation and when once such a licence is given and they have put up a permanent construction, then as per Section 60 of the Indian Easements Act, 1882, such licence cannot be revoked. In order to succeed in the said contention, the defendant had not in any manner let in any evidence relating to their permissive possession. Except for marking photographs and the CD containing the photographs of the structure which is being currently put up by them, no evidence whatsoever was let in and therefore rejected their case of permissive possession. Once the defendants pleads that they are in permissive possession, then his alternate plea of adverse possession cannot stand, as the defendant has to establish the trinity of *Nec vi, nec clam, nec precario* as permissive possession and adverse possession cannot go together and dismissed the suit. Hence, the present Appeal Suit filed before this Court.

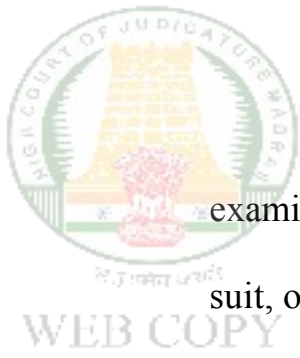


F. The Submissions:

WEB COPY

6. Heard, *Mr. Sivakumaran*, learned Counsel appearing on behalf of the appellant and *Mr. T.R. Rajagopalan*, learned Senior Counsel appearing on behalf of the respondents.

6.1 *Mr. Sivakumaran*, the learned Counsel appearing on behalf of the appellant, by pointing out Section 52 and Section 60 of the Indian Easements Act, would contend that the permission granted by the original owners of the suit property would amount to a licence. Such licence can be revoked only before the licensee executes work of any permanent character, and in this case, when the licensee has put in pucca construction in the year 2002 and had incurred expenses in the execution of such construction. As per Section 60(b) of the Act, no revocation of such license is permissible and therefore, the plaintiff suit cannot succeed. The learned Counsel would further contend that once the plea as to the permissive possession is rejected by the Trial Court and once it holds that no such permission has been granted, then the natural corollary is that the defendants' possession was a hostile possession. The *animus possidendi* having been proved by the defendant by marking the photographs of the permanent structure and by



examining himself as **D.W.1**, then the Trial Court ought to have decreed the suit, on the plea of adverse possession.

6.2 Per *contra* Mr. T.R.Rajagopalan, learned Senior Counsel appearing for the respondents would submit that firstly, it is defendants plea and defence that there was license granted to the defendant's father, and thereafter to him. Such a case was not all proved. As a matter of fact, the suit was filed in the year 2011, stating that he was attempting to put up the construction, and the defendant could not even prove his statement that he had started to put up the construction in the year 2002. There is absolutely no other material or any communication whatsoever on record to prove the permissive possession alleged to have given long back to the defendant's father. Therefore, when the plaintiff has proved that taking advantage of the transactions and the transfer of ownership the defendants have tried to trespass into the property and the construction being incomplete in nature, especially, when it is in record, the defendants wife was *Councillor* in the municipality and taking advantage of the same, even without any permission whatsoever, they have started putting up construction, the case of the permissive possession remains totally disproved.



A.S.No.507 of 2015

6.3 As far as the plea of adverse possession is concerned, the Trial

Court itself has relied upon all the relevant rulings on the subject and found that such a plea cannot be made by the defendant, and therefore, the suit is without any merit.

G. Points for Consideration:

7. I have considered the rival submissions made on either side and perused the material records of the case. Upon consideration, the following points arise for consideration in this appeal suit:

“(i) Whether or not the defendant was a permissive occupier having been granted a license to occupy the property and having put up a permanent construction is entitled to protection in law?”

“(ii) Whether or not the defendant has perfected his title by way of adverse possession?”

H. On Point No.(i):

8. In order to appreciate the contention of the learned Counsel for the appellant, it is useful to extract Section 52 and 60 of the Indian Easements Act, 1882, hereunder:

“52 "License" defined. -Where one person



grants to another; or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

60. License when revocable. - A license may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.”

8.1 It is the contention of the learned Counsel for the appellant that the permission granted by the owners of the property to occupy the property and continue their avocation, which would be otherwise unlawful, and such use not amounting to an easement, and not granting any interest in the property, would amount to a licence as per Section 52 of the Act. Then pursuant to such a licence, when even as per the plaintiff, they have put up a permanent construction and incurred expenses, then as per Section 60(b), the licence cannot be now revoked.



A.S.No.507 of 2015

8.2 At the outset, the case of the plaintiff is that the defendant is a trespasser who tried to take advantage of his situation and entered into the suit property and put up a construction illegally. It is the case of the defendant that the defendant's father, and thereafter the defendant, were given a license by permitting them to occupy the suit property and on the strength of the said permission, they have put up a permanent structure in the year 2002. In this regard, except to examine D.W.2, absolutely no evidence whatsoever is let in by the defendant to prove the said fact. Even if there was no written instrument of granting permission to him, the least that could have been done by the defendant is to prove at least the construction that was made in the year 2002. The only documents which have been marked are the photographs taken in respect of their stage of construction and the CD containing such photographs. The defendant had failed to prove that there was any permission or license which was granted in their favour. The defendant failed to prove even their possession for such a long period as alleged by them. In the absence thereof, there is no question of considering as to such permission amounted to license within the meaning of Section 52 of the said Act and that, whether they were entitled to protection under



Section 60 of the Act. Therefore, I answer the point that the defendant had failed to prove that he is in permissive possession of the property.

I. On Point No.(ii):

9. Regarding the adverse possession, the law on the subject has been categorically laid down by the Constitution Bench of the Hon'ble Supreme Court of India, in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*¹, and it is relevant to extract the said paragraphs Nos.1148 and 1149, which reads as follows:

“1148. In P. Lakshmi Reddy v. L. Lakshmi Reddy [P. Lakshmi Reddy v. L. Lakshmi Reddy, 1957 SCR 195 : AIR 1957 SC 314] , Jagannadhadas, J. speaking for a three-Judge Bench of this Court dwelt on the “classical requirement” of adverse possession : (AIR pp. 317-18, para 4)

“4. Now, the ordinary classical requirement of the adverse possession is that it should be nec vi nec clam nec precario. (See Secy. of State for India in Council v. Debendra Lal Khan [Secy. of State for India in Council v. Debendra Lal Khan, 1933 SCC OnLine PC 65 : (1933-34) 61 IA 78] , IA at p. 82.) The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.”

¹ (2020) 1 SCC 1 : 2019 SCC OnLine SC 1440 705



A.S.No.507 of 2015

The Court cited the following extract from U.N. Mitra's Tagore Law Lectures on the Law of Limitation and Prescription : (AIR p. 319, para 7)

“7. ... ‘An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and circumstances attending the appropriation), to hold the land against him (sic) who was in possession. (Angell, Sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession.’ ” [U.N. Mitra, Tagore Law Lectures on the Law of Limitation and Prescription, 6th Edn., Vol. I, Lecture VI at p. 159.]

This Court held : (AIR p. 319, para 7)

“7. ... Consonant with this principle the commencement of adverse possession, in favour of a person implies that the person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus.”

1149. *In Karnataka Board of Wakf v. Union of India [Karnataka Board of Wakf v. Union of India, (2004) 10 SCC 779] , S. Rajendra Babu, J. speaking for a two-Judge Bench held that : (SCC p.*



785, para 11)

“11. ... 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.” (emphasis supplied)

The ingredients must be set up in the pleadings and proved in evidence. There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.”

9.1 Therefore, in order to get the benefit of adverse possession, firstly, there must be a pleading. Secondly, the pleading must contain the necessary elements namely, admitting the title of the plaintiff, claiming an open and hostile possession to that of the title holder and thirdly, an intention to possess to the detriment of the title holder. In this case, firstly, there is no pleading; on the other hand, the pleading was that of permissive possession. Secondly, absolutely no proof whatsoever by way of any document was let in, even though it is claimed that the defendants are in



A.S.No.507 of 2015

possession for more than 50 years. Except the photograph of the current construction, no other document is marked. Therefore, the continuous possession for more than statutory period is not proved. Thirdly, the possession should be open and hostile and once the defendants pleads as to the permissive possession, then they cannot plead that their possession was open and hostile. Therefore, the Trial Court has rightly rejected the claim on the basis of adverse possession also, and accordingly, this point is answered.

J. The Result:

10. In the result,

- (i) The Appeal Suit in A.S.No.507 of 2015 is dismissed;
- (ii) However, there will be no orders as to costs.

11.07.2023

Index : Yes
Speaking order
Neutral citation : Yes

klt

To

- 1.The II-Additional District Court, Salem District.
- 2.The Section Officer, V.R. Section, High Court of Madras.



WEB COPY



A.S.No.507 of 2015

D.BHARATHA CHAKRAVARHY, J.

klt

Pre- Delivery Judgment in

A.S.No.507 of 2015

11.07.2023