



A.No.2788 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	01.02.2023
Order pronounced on	23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.2788 of 2022

in

C.S.No.80 of 2021

The Director General of Police,
Government Railway Police,
No.8, Varadharajulu Street,
Chennai – 600 008.

... Applicant / 6th Defendant

Vs.

1.R.Pushpa

2.R.Yamunavathi

3.P.K.Govindaraj
4.The District Collector,
Collector of Chennai,
Rajaji Salai,
Singaravelar Maligai,
Chennai – 600 001.

... Respondents / Plaintiffs 1 to 3



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5.The Commissioner,
Greater Corporation of Chennai,
Rippon Building, Park Town,
Chennai – 600 003.

6.Union of India,
Owning Souther Railway,
Rep. by its General Manager,
Park Town, Chennai – 600 003.

7.The Estate Officer,
Additional Divisional Railway Manager,
Chennai Division, Park Town,
Chennai – 600 003.

8.The Tahsildar,
Perambur – Purasawalkam Taluk Office,
Perambur, Chennai – 600 011.

... Respondents / Defendants

PRAYER : This application has been filed to reject the plaint in C.S.No.80 of 2021 filed by the respondents 1 to 3.

For Applicant : Mr.Ramanlaal
Additional Advocate General
Assisted by Mr.A.Edwin Prabakar
Special Government Pleader
For Respondents : Mr.M.Balasubramaniam



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C.S.No.80 of 2021:

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1.R.Pushpa

2.R.Yamunavathi

3.P.K.Govindaraj

... Plaintiffs 1 to 3

Vs.

1.The District Collector,
Collector of Chennai,
Rajaji Salai,
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6. The Director General of Police,
Government Railway Police,
No.8, Varadharajulu Street,
Chennai – 600 008.

... Defendants

PRAYER : This plaint has been filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of C.P.C., praying for a judgment and decree against the defendants herein as follows:-

(i) for a declaration, declaring that the plaintiffs prescribed title to the suit schedule property by way of adverse possession viz., Survey No.353/1, Perambur Village, Perambur Purasawalkam Taluk of an extent of 4200 sq.ft. with land and building bearing old door no.57-A and New door no.72, Perambur High Road, Chennai – 600 011;

(ii) for a consequential injunction restraining the defendants their men, agent and servants from in any way interfering with the plaintiffs peaceful possession of the plaint schedule property;

(iii) for cost of the suit; and

(iv) for such other order or orders as this Court may deem fit and proper in the circumstances of the case.

For Plaintiffs : Mr.M.Balasubramanian

For Respondents : Mr.A.Edwin Prabhakar
Special Government Pleader
for R1, R3 to R6
Mr.R.Gopinath,
Standing Counsel (Corporation) for R2



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ORDER

The suit was filed for a declaration that the plaintiffs have acquired prescriptive title to the suit schedule property by way of adverse possession and for a consequential permanent injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession of the said suit schedule property.

2. The first, second and third plaintiffs are the widow, daughter and brother, respectively, of the late P.K.Rajendran.

3. The sixth defendant, the Director General of Police, has presented this application to reject the plaint. The application for rejection of plaint is on the grounds that the plaint does not disclose a cause of action and that the suit is barred by law.

4. Oral arguments on behalf of the applicants / sixth defendant were advanced by Mr.Ramanlal, learned Additional Advocate General



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(AAG); and on behalf of the plaintiffs by Mr.M.Balasubramaniam, learned counsel.

5. The first submission of learned AAG was that the plaintiffs are encroachers and that proceedings were initiated against the predecessor-in-interest of the plaintiffs under the applicable provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (the TN Public Premises Act). The next contention of learned AAG was that the suit constitutes an abuse of process because the present suit was filed to preempt further action pursuant to the order dated 04.02.2020 in W.P.No.21651 of 2019. He also pointed out that criminal proceedings were initiated against the third respondent and that the said proceedings are pending before the learned Special Metropolitan Magistrate / Special Court of Exclusive Trial for Land Grabbing Cases, Chennai, in C.C.No.1398 of 2013. He also submitted that a portion of the encroached land ad measuring about 2600 sq.ft. was recovered in such proceedings. All these material facts were suppressed by the plaintiffs and, therefore, learned AAG submitted that the plaint is liable to be rejected.



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6. With regard to the claim for a declaration of title by way of adverse possession, learned AAG submitted that the plaint is vague and lacks particulars as to when the plaintiffs' possession became adverse to the real owner of the property. By drawing reference to the plaint, learned AAG pointed that the plaintiffs referred to partition deed bearing Document No.1580/1915 but did not file the said document. He further submitted that the partition deed of 1915 expressly excludes lands described as 'Police Line Lands'. He also pointed out that the plaintiffs, thereafter, rely on partition deed bearing Document No.3205/2009. Since the plaint is founded on the partition deeds of 1915 and 2009, i.e. alleged lawful title, learned AAG contended that the plaint does not disclose a cause of action to seek relief on the basis of adverse possession.

7. The next contention of learned AAG was that the suit is barred under Section 15 of the TN Public Premises Act. By referring to the judgments of the Hon'ble Supreme Court in *Ravinder Kaur Grewal and others v. Manjit Kaur and others* (***Ravinder Kaur Grewal***), (2019) 8 SCC



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729, particularly paragraph 63 thereof, he contended that title cannot be claimed by way of adverse possession in respect of land reserved for public causes.

8. Learned AAG further submitted that the plaintiffs initiated legal proceedings to thwart legitimate coercive action against them every time they received notices from authorities such as the Corporation of Chennai. In such regard, he referred to the notice dated 01.03.1999 and the judgment and decree in O.S.No.1092 of 2004. He also submitted that the plaintiffs' request for a patta was rejected by the Tahsildar on the ground that the lands are classified as 'PWD lands' and, therefore, patta cannot be issued in respect thereof. He referred to the interim order in O.S.No.5439 of 2012 restraining interference with the peaceful possession of the predecessor-in-interest of plaintiffs 1 and 2. He also referred to the final order passed in W.P.No.1720 of 2011 on 20.07.2012. He pointed out that this Court directed the petitioners therein to submit relevant documents to the Estate Officer within fifteen days from the date of receipt of a copy of the order to substantiate their case and also left it open to the petitioners to approach the



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appropriate civil court to assert title, but that the said direction was not complied with. He concluded his submissions by drawing extensive reference to the order of the Division Bench of this Court in W.P.No.21651 of 2019.

9. In support of these contentions, learned AAG referred to and relied upon the following judgments:-

(i) *Vidya Devi v. Prem Prakash and others (Vidya Devi)*, (1995) 4 SCC 496, particularly paragraphs 22 to 24 thereof;

(ii) *Karnataka Board of Wakf v. Government of India and others (Karnataka Board of Wakf)*, (2004) 10 SCC 779, particularly paragraphs 11 and 12 thereof;

(iii) *Ramaraju v. The State of Tamil Nadu*, 2005 (2) CTC 741 (FB), particularly paragraph 38 thereof;

(iv) *P.T.Munichikkanna Reddy and others v. Revamma and others (Munichikkanna Reddy)*, (2007) 6 SCC 59, particularly paragraphs 2, 5, 16, 22, 29 and 30 thereof;

(v) *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and*



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others, (2009) 16 SCC 517, particularly paragraphs 18, 21 to 23 and 32 thereof;

(vi) *Ravinder Kaur Grewal and others v. Manjit Kaur and others*, (2019) 8 SCC 729, particularly paragraph 63 thereof;

(vii) *Dahiben v. Arvindhbhai Kalyanji Bhanusali (Gajra)(D) through Legal Representatives and others*, 2020 (5) CTC 471, particularly paragraph 12.7 thereof;

(viii) *Rajendra Bajoria and others v. Hemant Kumar Jalan and others*, 2002 (2) MWN (Civil) 342 , particularly paragraphs 16 and 17, 19 to 21 thereof; and

(ix) *M.Devaprakash v. P.P.Devraj*, 2022 (2) MWN (Civil) 275, particularly paragraphs 15 and 17 thereof.

10. In response to these submissions, learned counsel for the plaintiffs submitted that the plaintiffs trace title to the suit schedule property from a family partition of the year 1915 under partition deed bearing Document No.1580 of 1915 dated 30.09.1915. By drawing reference to paragraphs 3 to 5 of the plaint, learned counsel submitted that the plaintiffs



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asserted that their forefathers resided in the suit schedule property from the year 1915 and that the present plaintiffs are residing there since the year 1982. In this connection, he referred to the urban land tax receipts, property tax receipts and water tax receipts as proof of the plaintiffs being in possession of the suit schedule property. Learned counsel submitted that the plaintiffs have submitted 119 documents along with the plaint and that the plaint is not liable to be rejected either on the ground of non-disclosure of cause of action or as being barred by law.

11. With reference to the notices received under the TN Public Premises Act, learned counsel submitted that the first notice was sent to the predecessor-in-interest of plaintiffs 1 and 2 on 15.02.1994. The said notice was replied to by producing relevant documents. Therefore, the proceedings were dropped. A second notice was issued under the aforesaid enactment on 10.11.1997. Once again, this notice was replied to by producing relevant documents. Upon receipt thereof, the proceedings were dropped. A third notice was issued on 03.06.2011. This notice was challenged by filing W.P.No.17202 of 2011. Interim orders were granted in the said writ petition,



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which was eventually disposed of by order dated 20.07.2012.

12. Learned counsel for the plaintiffs, therefore, concluded his submissions by contending that the documents filed by the plaintiffs *prima facie* evidence that the plaintiffs have been in continuous possession at least from the year 1982. Therefore, he submitted that the plaint is not liable to be rejected on any of the grounds urged by the applicant/6th defendant.

13. Learned Standing Counsel for the Corporation of Chennai (the Corporation) submitted that property tax is claimed by the Corporation in respect of every building and that title cannot be claimed because a demand notice for property tax was received.

14. Upon consideration of the above contentions, the question that arises for determination is whether the plaint is liable to be rejected either because it does not disclose a cause of action or because the suit is barred by law. While testing whether a plaint is liable to be rejected, the focus should be on statements made in the plaint and documents referred to therein. At



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the outset, it is relevant to set out the relief claimed in the suit, which is as under:-

“27. Therefore, the plaintiffs pray for a judgment and Decree against the defendants herein as follows:-

i. for a declaration, declaring that the plaintiffs prescribed title to the suit schedule property by way of adverse possession viz; Survey No.353/1, Perambur Village, Perambur Purasawalkam Taluk of an extent of 4200 sq.ft with land and building bearing old Door No.57-A and New Door No.72, Perambur High Road, Chennai - 600 011;

ii. for a consequential injunction restraining the defendants their men, agent and servants from in any way interfering with the plaintiffs peaceful possession of the plaint schedule property;

iii. for cost of the suit; and

iv. for such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”



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Thus, it is evident that the plaintiffs seek a declaration of prescriptive title by way of adverse possession. As a consequence of the judgment of the Hon'ble Supreme Court in ***Ravinder Kaur Grewal***, a suit for declaration of title by way of adverse possession is maintainable.

15. Learned AAG had contended that the suit is barred under the TN Public Premises Act. Therefore, this aspect merits consideration. Section 15 of the TN Public Premises Act prohibits the exercise of jurisdiction by a civil court in respect of the eviction of an unauthorized occupant of public premises. Here, the relief claimed by the plaintiffs is a declaration of title over the relevant property and the consequential non-interference with the plaintiffs' peaceful possession. Although the consequential relief could have an impact on proceedings under the TN Public Premises Act, it should be recognised that such relief is claimed by asserting lawful title and by expressly denying that they are in unlawful occupation. Without doubt, the subject of the suit is not the eviction proceedings initiated by the applicant under the TN Public Premises Act. By taking into account the fact that an application to reject the plaint should be considered and determined on the



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basis of statements in the plaint and, indeed, by assuming that such statements are true, in my view, Section 15 does not stand in the way of the institution or prosecution of the suit. Therefore, I conclude that the suit is not barred under Section 15 of the TN Public Premises Act.

16. The next aspect to be considered is whether the averments in the plaint disclose a cause of action to claim the above mentioned relief. Paragraphs 3 and 8 of the plaint indicate the basis of the plaintiffs' alleged rights over the property. In relevant part, the said paragraphs are as under:-

“3. The Plaintiffs submit that originally a larger extent of land including the suit schedule mentioned property belonging to one Ramasamy Mudaliar. There was a family Partition in the year 1915 among the original owners. The said Partition Deed was registered as Document No.1580/1915 dated 30.9.1915. The Partition was effected during the British Regime. The Railway Police encroached upon a portion of the property....”

“8. The Plaintiffs submit that during the lifetime of the husband of the 1st Plaintiff the family members entered



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into a Partition deed and the same was registered on 8.9.2009.

The said Partition deed was registered as document No.3205/2009, on the file of the Sub Registrar, Purasawalkam.

If the property is a Railway Poramboke land, the Sub Registrar could have refused to register the Partition Deed. Admittedly, the suit property belongs to forefathers of the Plaintiffs viz., Ramasamy Mudaliar....”

The above extracts clearly disclose that the plaintiffs assert title on the basis of two partition deeds: the first being the Partition Deed dated 30.09.1915 bearing Document No.1580/1915; and the second being the Partition Deed dated 08.09.2009 bearing Document No.3205/2009.

17. Thereafter, in paragraphs 15 and 17, the plaintiffs refer to the proceedings initiated under the TN Public Premises Act. The said paragraphs are set out below:-

“15. The Plaintiffs submit that he brought to the notice of the Estate Officer that he has already invoked the provisions on 15.02.1994, and issued notice under Section 4 (1) and clause D(3) of the sub Section (2) of Section 4 of the Public



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Premises Eviction of Unauthorized Occupants Act, 1971. The husband of the 1st plaintiff immediately after receipt of the said notice, on 15.2.1994, furnished all the details to the Estate Officer, Railway Department, and stated that the suit property will not coming within the purview of the Railway land and therefore the Estate Officer, Railway Department, not inclined to proceed further under Section 5 of the Public Premises Eviction of Unauthorized Occupants Act, 1971.

17. The plaintiffs submit that the 4th defendant Estate Officer, Railway Department for the 2nd time wrongly invoked the provisions on 10.11.1997, vide proceedings No.M/w. 234/Eviction/EVR dated 10.11.1997. The husband of the 1st plaintiff produced all the documents relating to the suit property from the year 1960 onwards. The Estate Officer, after perusing the documents and after satisfied with the details furnished by the husband of the 1st plaintiff he did not proceed further under Section 5 of the Public Premises Eviction of Unauthorized Occupants Act, 1971. As stated earlier for the 3rd time on 3.6.2011, the Estate Railway Manager, invoked the



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same provisions of Section 4 (1) of the Public Premises Eviction of Unauthorized Occupants Act, 1971 against the plaintiff on 3.6.2011, only to harass the family members of the plaintiff. The estate Officer Railway Department without any right or authority time and again invoked the provisions of Public Premises Eviction of Unauthorized Occupants Act, 1971. The husband of the 1st plaintiff approached this Hon'ble Court in W.P.No.17202 of 2011 with a prayer for issue of a Writ of Certiorari to call for the records relating to the impugned proceedings in No.M/w.234/Eviction/Perland/II, dated 2.6.2011 and to quash the same as null and void. The Plaintiff also obtained interim stay order dated 22.7.2011 of the impugned proceedings dated 3.6.2011. The order was extended periodically.”

18. Eventually, in paragraph 22, the plaintiffs assert title by adverse possession. Paragraph 22 is set out below:-

“22. The Plaintiffs submit that admittedly, the plaintiffs and the family members are in continuous and



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uninterrupted possession of the suit property right from the year 1960, by paying urban land tax, property tax water tax, electricity charges Corporation trade licence charges etc., to prove the legitimate possession and enjoyment of the property well over the statutory period, the Plaintiff filed the available documents and undertake to file the remaining documents as and when the same is traced out. The continuous possession and enjoyment of the plaintiff in the suit property is provide by the aforesaid documents from the year 1982 to 2020. Though the forefather of the plaintiffs were in possession and enjoyment of the suit property right form the year 1915 onwards, the plaintiff prescribed the title to the suit property by way of adverse possession. The railway is also not pressed the ownership. Admittedly the Railway Department was of the portion of the property in 1915 as encroachers and after independence in the year 1947, they left the portion of the land which was in their occupation. An encroachers cannot claim right over the property against the Plaintiffs whose forefathers owned the property right from the year 1915.”



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19. From the above averments, it appears that the plaintiffs assert title under two partition deeds and allege that the Railways had previously encroached on a portion of the property, whereas the sixth defendant has treated the plaintiffs as encroachers or unauthorized occupants. The issue to be examined is whether the statements extracted above disclose a cause of action to sue for title by adverse possession. In order to determine this issue, it is necessary to turn to and survey the law on adverse possession. In paragraph 24 of **Vidya Devi**, the Hon'ble Supreme Court held that if possession is referred to a lawful title, it cannot be treated as adverse possession. Paragraph 24 is set out below:-

“24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co- owners. (See: Maharajadhiraj of Burdhan, Udaychand Mahatab Chand v. Subodh Gopal Bose and others, AIR 1971 SC 376; P.



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*Lakshmi Reddy v. L.Lakshmi Reddy, AIR 1957 SC 314;
Mohammad Baqar and others v. Naim-un-Nisa Bibi &
Others)*”

Likewise, in **Karnataka Board of Wakf**, the Hon'ble Supreme Court held as under in paragraph 12:-

“A plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: S M Karim v. Bibi Sakina, AIR 1964 SC 1254). In P.Periasami v. P Periathambi (1995) 6 SCC 523, this Court ruled that:

"Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with Mohan Lal v. Mirza Abdul Gaffar, (1996) 1 SCC 639, that is similar to the case in hand, this Court held:



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"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 there under 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., up to completing the period 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 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."

In paragraph 5 of ***Munichikkanna Reddy***, the Hon'ble Supreme Court held as below:-



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“Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor 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. (See Downing v. Bird, 100 So. 2d 57 (Fla. 1958), Arkansas Commemorative Commission v. City of Little Rock, 227 Ark. 1085 : 303 S.W.2d 569 (1957); Monnot v. Murphy, 207 N.Y. 240 : 100 N.E. 742 (1913); City of Rock Springs v. Sturm, 39 Wyo. 494 : 273 P. 908 : 97 A.L.R. 1 (1929) ”

20. The above precedents make it abundantly clear that the assertion of lawful title is incompatible with the assertion of title by adverse possession. As discussed earlier, it appears from paragraphs 3 to 8 that the plaintiffs are claiming lawful title under the partition deeds and not by way of adverse possession. Paragraph 22 refers to evidence of possession and contains an assertion of adverse possession before reiterating that the



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Railways had encroached on a portion of the property owned by the plaintiffs' forefathers from the year 1915. Therefore, I conclude that the plaint does not disclose a cause of action to sue for a declaration of title by adverse possession.

21. In view of the conclusion that the plaint does not disclose a cause of action to sue for declaration of title by adverse possession, the plaint is liable to be rejected because the injunctive relief is, in substance and not merely by label, consequential to the declaratory relief.

22. In the result, Application No.2788 of 2022 is allowed by rejecting the plaint albeit by clarifying that the merits of the plaintiffs' assertion of title under the partition deeds have not been examined or determined.

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NCC :Yes/No
Internet :Yes/No
Index :Yes/No
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