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S.A.No.449 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 449 of 2017
and C.M.P.No.11093 of 2017

- 1.Parasuraman (Died)
- 2.Sangumithra
- 3.Thirunavukarasu
- 4.Ashadeepam
- 5.Mailu
- 6.Devi
- 7.Vani
- 8.Mary

*(Appellants 2 to 8 brought on record as
Legal Representatives of the deceased
sole appellant viz., Parasuraman vide
order dated 26.09.2022 made in C.M.P.Nos.9480
to 9482 of 2022 in S.A.No.449 of 2017)*

...Appellants

Vs.

Annamalai

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.10 of 2013, dated 08.01.2016 on the file of I Additional District and Sessions Court, Vellore, Vellore District reversing the decree and judgment in O.S.No.41 of 2004, dated 30.09.2011 on the file of Sub-Court, Vellore, Vellore District.



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For Appellants : Mr.P.A.Sudesh Kumar

For Respondent : Mr.E.Prabu
for M/s.N.Jayabharathi

J U D G M E N T

The unsuccessful defendant in the suit for declaration of title, recovery of possession and mandatory injunction is the deceased 1st appellant. The plaintiff in the suit is the respondent. The suit filed by the respondent was dismissed by the Trial Court. The appeal filed by the respondent was allowed by the first Appellate Court. Aggrieved by the same, the 1st appellant has come before this Court by way of Second Appeal. The 1st Appellant died pending Second Appeal and his legal representatives were brought on record as Appellants 2 to 8.

2. According to the respondent/plaintiff, the suit property in S.No.274/A2 with an extent of 3 cents was settled by one Munian @ Ayyakannu in his favour under settlement deed dated 16.02.1962, marked as Ex.A1. Originally, the suit property was a vacant site and taking advantage of absence of the respondent in the suit village, the 1st appellant entered into the



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portion of the suit property, measuring an extent of 1/2 cent and put up construction. Therefore, the respondent was constrained to file the suit for declaration, recovery of possession and mandatory injunction to remove the super structure. The suit was decreed *ex-parte*. Subsequently, on an application filed by the 1st appellant, the *ex-parte* decree was set aside. In the meantime, the 1st appellant extended construction in the suit property, which is described as B Schedule. Therefore, the respondent was constrained to amend the plaint for inclusion of prayer for mandatory injunction to remove the extended construction.

3. The 1st appellant filed the written statement denying the title and possession of the respondent. It was the specific case of the 1st appellant that the settlement deed in favour of the respondent was not acted upon and the respondent was not in possession and enjoyment of the suit property for more than the statutory period. Thus, by claiming adverse possession against the respondent, the 1st appellant sought for dismissal of the suit.

4. Before the Trial Court, the respondent was examined as P.W.1 and on his behalf, 8 documents were marked as Ex.A1 to Ex.A8. The 1st appellant



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was examined as D.W.1 and yet another witness was examined as D.W.2. On behalf of the 1st appellant, 9 documents were marked as Ex.B1 to Ex.B9.

5. The Trial Court, on appreciation of the oral and documentary evidence available on record, came to the conclusion that the 1st appellant failed to prove the plea of adverse possession raised by him. However, the Trial Court dismissed the suit on the ground that the respondent failed to prove that the settlement deed in his favour was acted upon. Aggrieved by the said judgment, the respondent filed the appeal in A.S.No.10 of 2013 on the file of I Additional District and Sessions Judge, Vellore. The first Appellate Court reversed the findings of the Trial Court and decreed the suit by allowing the appeal. Aggrieved by the same, the 1st appellant is before this Court.

6. When the matter is taken up for hearing, the learned counsel for the respondent submitted that before passing of interim order by this Court, in favour of the 1st appellant on 07.09.2017, the decree was executed and the respondent had taken possession of the suit property on 20.07.2017. The learned counsel also produced the certified copy of delivery account before this Court. Notwithstanding the execution of decree, the appeal has to be



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disposed of on merits as in case of success, the 1st appellant is entitled to seek restitution.

7. The learned counsel appearing for the appellants submitted that though the respondent claims title to the suit property under the settlement deed executed by Munian @ Ayyakannu on 16.02.1962, absolutely there is no evidence available on record to show that the settlement deed was acted upon. Therefore, the right of the respondent over the suit property got extinguished under Section 27 of the Limitation Act. The learned counsel further submitted that the 1st appellant has proved adverse possession by producing documents to show that he had put up construction in the suit property. It is also submitted that the respondent failed to prove that he was in possession of the suit property within twelve(12) years immediately preceding the presentation of the plaint. Therefore, the respondent is not entitled to seek recovery of possession.

8. The respondent/plaintiff claims right over the suit property under the settlement deed dated 16.02.1962 executed by Munian @ Ayyakannu, by producing the original settlement deed and the same was marked as Ex.A1.



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Therefore, the respondent proved his title over the suit property by producing the registered settlement deed in his favour. The 1st appellant by producing Ex.B3, sale deed, executed by one Chinnarajammal, tried to claim right over the suit property. The said Chinnarajammal in the sale deed traced her title under a document executed by her father. The settlor of the respondent namely Munian @ Ayyakannu happens to be the father of the said Chinnarajammal. The settlement deed executed by Munian @ Ayyakannu in favour of Chinnarajammal was marked as Ex.A3 by the respondent. A perusal of the same would suggest that the property in S.No.274/A was not at all settled by said Munian @ Ayyakannu in favour of Chinnarajammal. Therefore, both the Courts below, on perusal of Ex.A1, Ex.A3 and Ex.B3, rightly came to the conclusion that the settlor of the 1st appellant, namely Chinnarajammal, had no title to convey the suit property.

9. The 1st appellant claimed adverse possession against the respondent. The revenue documents like Chitta, Survey Plan, Thoraya patta under Natham Delivery Thittam and communication for the construction of house by the Government etc., under Ex.B4, Ex.B5, Ex.B8 and Ex.B9 are relevant to the period from 1991 to 2009. The suit was presented by the respondent for



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declaration and recovery of possession on 14.07.1992. Therefore, the 1st appellant has not filed any document to show his possession much less hostile possession immediately preceding 12 years from the date of presentation of the suit.

10. A perusal of cross examination of P.W.1 by the 1st appellant would suggest that the construction was made by the 1st appellant in the suit property in the year 1988, just 4 years prior to filing of the suit. The relevant portion of cross examination reads as follows;

"தாவா இடத்தில் முதலில் கூரை வீடு இருந்ததா என்றால் இல்லை தட்டொடு வீடு தான் இருந்தது தட்டொடு 1988 ல் கட்டியது என்றால் எனக்கு தெரியாது, பரசுராமன் நிலம் என்று நினைத்து அரசு அவருக்கு வீடு கட்டிக்கொடுத்தது. அது தட்டொடு வீடு ஆகும். என்னுடைய இடத்தில் கட்ட வேண்டாம் என ஆட்சேபனை எதுவும் செய்யவில்லை. 1992 ல் ஜூலையில் நான் நிலத்தை அளந்தேன்."

11. Therefore, even as per the suggestion of the 1st appellant in the cross examination of P.W.1, the construction was made only in the year 1988.



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Even assuming the construction made by the appellant is the hostile act against the respondent, the hostile possession of the appellant can be reckoned only from 1988 and the suit was filed by the respondent in the year 1992 within 12 years. Therefore, both the Courts below rightly came to the conclusion that the 1st appellant failed to establish his adverse possession against the respondent.

12. As far as the contention made by the learned counsel for the appellants that the respondent to prove his possession of the suit property within 12 years immediately preceding the presentation of the plaint is concerned, the respondent filed the suit for recovery of possession based on his title under Article 65 of Limitation Act. The limitation for filing of suit for recovery of possession based on title starts from the moment possession of the defendant becomes adverse to the plaintiff. In the case on hand, as discussed earlier, the act of construction activity had taken place in the year 1988. In such circumstances, the suit filed by the respondent for recovery of possession based on title is very well within 12 years. It is settled law that in the suit for recovery of possession based on title, Article 65 of the Limitation Act is applicable and not Article 64 of the Limitation Act. Therefore, there is no



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necessity for the respondent to show that he was in possession of the suit property within 12 years immediately preceding the presentation of the suit. In a suit for recovery of possession based on title limitation starts only from the date on which possession of defendant becomes adverse to that of the owner/plaintiff. In this regard, reference may be had to the judgment of the Hon'ble Apex Court in ***Vasantiben Prahladi Nayak and Ors. Vs. Somnath Muljibhai Nayak and Ors.*** reported in ***AIR 2004 SC 1893 = MANU/SC/0216/2004.***

13. In view of the discussions made earlier, the findings of fact by the Courts below with regard to the plea of adverse possession raised by the 1st appellant need not be interfered with.

14. Accordingly, the second appeal stands dismissed

a) by confirming the judgment and decree dated 08.01.2016 made in A.S.No.10 of 2013 on the file of the I Additional District and Sessions Court, Vellore, reversing the decree and judgment in O.S.No.41 of 2004, dated 30.09.2011 on the file of Subordinate Court, Vellore; and



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S.SOUNTHAR, J.

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b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

17.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The I Additional District and Sessions Court,
Vellore, Vellore District.
2. The Subordinate Court, Vellore,
Vellore District.

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