



A.S.No.373 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on:
26.03.2024**

**Pronounced on:
06.06.2024**

Coram

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

A.S.No.373 of 2015

Mohamed Ali @ Ali Allah Babu

...Appellant

VS

1. N.Venkatesh
2. V.Nagalingam
3. N.Gajalakshmi
4. N.Vijayalakshmi
5. N.Dhanalakshmi
6. N.Govindaraju
7. N.Santhakumar
8. N.Kamalakannan

...Respondents

PRAYER: First Appeal filed under Section 96 CPC against the decree and judgment dated 09.07.2014 made in O.S.No.6771/2011 on the file of XIX Additional City Civil Court, Chennai.

For Appellant	: Mr.A.S.Alaguraja
For Respondent	: Mr.S.Parthasarathy, Senior Counsel for Mr.P.Dinesh Kumar [R1]

R2 to R8 [*Ex-parte*]



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JUDGMENT

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Having satisfied with the relief grant of permanent injunction and having not satisfied with the rejection of the relief of declaration of title, the plaintiff has preferred this appeal suit.

2. For the sake of convenience and clarity, the parties are referred to as per their litigative status before the trial Court.

3. The appellant/plaintiff filed O.S.No.6771 of 2011 (C.S.No.302 of 2006). Initially the suit was filed before the Original side of the High Court in C.S.No.302 of 2006, subsequent to the amendment Act 19 of 2010, the case was transferred to XIX Additional City Civil Court, Chennai and renumbered as O.S.No.6771 of 2011 . The parties have entered appearance.

4. The suit was filed for declaration of title and for consequential injunction with regard to house property, wherein the plaintiff alleged to have been residing more than a statutory period. The suit was partly



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decreed. In the sense, the relief of injunction was granted and the plea of declaration was negatived. Hence, this appeal.

5. The first defendant is a purchaser of the property and the other defendants remained *ex-parte*. The first defendant, who is the contesting defendant has not filed any independent appeal or cross appeal challenging the decree of injunction.

6. The admitted factual matrix of the case are as under:

(i) 'A' schedule property is the absolute property belonging to one Baby Ammal, who died intestate on 27.10.1978 and her husband Venkatram Chettiar pre-deceased her and died on 13.08.1960.

(ii) The plaintiff proceeds on the basis that the plaintiff and his family members are in possession of part of the 'A' schedule property, where the schedule property is measuring to 2640 sq.ft, in which the plaintiff family is in possession of 1190 sq.ft viz., 'B' schedule property, which is part of 'A' schedule property. The plaintiff further claimed that under Ex.A23, he sold 330 sq.ft to one Veeraiah on 02.03.2000.



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WEB COPY (iii) He is in possession for more than a statutory period claims declaration of title by adverse possession.

(iv) The first defendant filed written statement, where *inter alia* he contended that the property originally belonged to Baby Ammal wife of Venkatarama Chettiar and after the death of Baby Ammal on 27.10.1978, the suit property was succeeded by her legal heirs viz., Munusamy Chettiar, Ganesa Chettiar and Sundara Babu Chettiar who are the brothers of Venkatarama Chettiar. Ganesa Chettiar died on 24.09.1979 leaving his wife Jayalakshmi Ammal as his legal heir. The first defendant purchased the suit property from Munusamy Chettiar, Sundara Babu Chettiar and Jayalakshmi Ammal by registered sale deed dated 15.12.1981 for valuable consideration. The first defendant filed O.S.No.134 of 1982 on the file of XVIII Assistant City Civil Court, Chennai for declaration of title and for other reliefs. Munusamy Nadar and Devaki Ammal who are in occupation of the property as tenants were added as defendants 4 and 5 in O.S.No.134 of 1982. The above said suit was decreed on 09.07.1984 and the tenants were directed to



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pay the rent to the first defendant. A.S.No.132 of 1990 was preferred by the legal representatives of the rival claimants and the same was dismissed on 22.04.1991. Now the matter is pending in Second Appeal stage i.e., in S.A. No.151 of 1999 on the file of this Court. Plaintiff is a sub-tenant under Devaki Ammal. Since the occupation of the plaintiff is duly lis pendens, the alleged occupation will not create any title by way of adverse possession. Plaintiff has no right to execute the sale deed in favour of Veeraiah. Plaintiff has no right or title to convey any portion of 'A' schedule property to anybody. It is denied that the father of the plaintiff has improved the property. Plaintiff was in occupation of the property under Devaki Ammal as sub-tenant. The first defendant filed eviction petition against Devaki Ammal and the plaintiff has also been impleaded as sub-tenant. The eviction petition is pending. Plaintiff is not entitled for title to the 'B' schedule property.

7. The trial Court after considering the pleadings on both sides, framed the following issues:-

- 1. Whether the plaintiff proved that he has prescriptive title to the 'B' schedule property?*



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2. *Whether the 1st defendant proves that the occupation of the plaintiff to the 'B' schedule property is during lispendence?*
3. *Whether the plaintiff is entitled for declaration that plaintiff is having prescribed title to the 'B' schedule property?*
4. *Whether the plaintiff is entitled for permanent injunction as prayed for?*
5. *To what relief the plaintiff is entitled?*

8. The plaintiff has examined himself as P.W.1 and one Sriram was examied as P.W.2 and marked exhibits A1 to A49. On the side of the first defendant, first defendant examined himself as D.W.1 and marked exhibits B.1 to B.28.

9. The case of the plaintiff was that the plaintiff's father occupied the part of 'A' schedule property measuring 1190 sq.ft in the year 1950 and had improved the same and the plaintiff residing in the 'B' schedule property



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measuring an extent of 836 sq.ft and the plaintiff alleged that he is in possession and enjoyment of the suit property for more than a statutory period and hence, seeks the relief on the ground of declarative title.

10. Ex.A1 to Ex.A10 are produced to prove that plaintiff is in possession of the suit schedule property and had obtained electricity connection in his name. Ex.A11 and Ex.A14 are the voter ID cards issued to plaintiff's father. Ex.A12, Ex.A13, Ex.A16, Ex.A18 to Ex.A20 are the electricity meter cards standing in the name of plaintiff and other documents are relating to various documents issued by the Revenue Department. Ex.A38 is the certificate issued by the Headmistress of OLCOTT Memorial High School for the plaintiff.

11. The case of the first defendant both in his pleadings and in his written statement is that the said Devaki Ammal sub-leased the 'B' schedule property to the plaintiff and the plaintiff is in possession of the 'B' schedule property as sub tenant of Devaki Ammal and hence, RCOP proceedings has been initiated and the suit filed by the first defendant is now pending at the



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Second Appeal stage. He placed his reliance on Ex.B23 and Ex.B24 judgment and decree in O.S.No.134 of 1982 and also placed reliance on Ex.B25 and Ex.B26 judgment and decree in A.S.No.132 of 1990 Ex.B28 is the certified copy of petition filed by plaintiff in M.P.No.555 of 2005 in RCOP.No.1456 of 2005.

12. The plaintiff has come forward with the specific case that from 1950 onwards, the plaintiff's father is residing in the suit schedule property had improved the 'B' schedule property.

13 (a). *Per contra*, the first defendant examined himself as D.W.1 and stated that Venkatarama Chettiar died in the year 1960 leaving behind his wife Baby Ammal and his wife Baby Ammal died in the year 1978. The certified copy of death certificate of Venkatarama Chettiar is marked as Ex.B2 and the certified xerox copy of legal heir certificate dated 07.11.1979 issued by Tahsildar, Mylapore is marked as Ex.B3. Ex.B3 reveals that Munusamy Chettiar, Sundara Babu Chettiar and Jayalakshmi Ammal are the legal heirs of Venkatarama Chettiar and Baby Ammal. Ex.B4 is the Court



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certified xerox copy of extract from the Town Survey Land Register.

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13.(b) D.W.1 further deposed that he has purchased 'A' schedule property from the legal heirs of Venkatrama Chettiar and Baby Ammal. The court certified xerox copy of sale deed dated 16.12.1981 executed by Munusamy Chettiar, Sundara Babu and Jayalakshmi Ammal in favour of the plaintiff is marked as Ex.B.12. In Ex.B.12 it is stated that the vendors have delivered vacant possession to the purchaser with tenants and arrears of rent with a right to clear the arrears and vacated and got possession from the tenants by filing rent control petitions. In Ex.B.13, it is stated that the first defendant instructed the plaintiff to pay the arrears of property tax and keep good relationship with him and enter into fresh tenancy agreement with the first defendant. Ex.B.20 is the Court certified xerox copy of counter filed by Devakiammal in I.A.No.411 of 1982 in O.S.No.134 of 1982. Ex.B.22 is the court certified xerox copy of deposition of Sundara Babu in O.S.No.134 of 1982.

14. After perusing the pleadings and the submissions made by the rival parties, the following point arises for consideration:

1. Whether the plaintiff is in possession of the suit



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property 'B' schedule property on his own strength?

2. *Whether the plaintiff is entitled for the relief of declaration on the plea of adverse possession?*
3. *Whether the plaintiff is in possession of suit property for more than a statutory period as contemplated under Sections 64 and 65 of Limitation Act, 1963?*
4. *Whether the plaintiff has proved his case that his possession is adverse to tile of the original owner viz., the first defendant?*
5. *Whether the order of the Trial Court is sustainable in law?*

15. Based upon the entire materials, the Trial Court has rendered a categorical finding that all the documents produced by the plaintiff are lis pendens documents, and the first defendant has already instituted the suit in respect of larger extent of the property viz., 'A' schedule property in the year 1982 and the plaintiff is the sub-tenant of Devaki Ammal and hence, the plaintiff is not entitled to get the decree of declaration of title on the ground



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of adverse possession.

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16. Learned counsel for the plaintiff contended that the plaintiff is having electricity connection and tax receipts and hence, his possession is to be recognized as adverse possession.

17. It is settled law that mere payment of municipal taxes or electricity bills by the parties would not prove their title by adverse possession. Reliance on patta cannot be made to prove title as patta which mutates entries cannot convey or extinguish right over property. Mere length of possession will not entitle the parties to claim adverse possession, plaintiff who is claiming adverse possession must prove that his possession being hostile to the knowledge or true owner is more relevant, no plea in the plaint that plaintiff is adversely enjoying the property to the knowledge of first defendant.

18. As the plaintiff has come forward with his specific plea of adverse possession, the law on the point is that the main ingredients for the plea of



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adverse possession is that the plaintiff/respondents herein must prove Animus Possidendi. Mere possession is not sufficient for the plaintiffs/respondents herein to claim prescriptive title by adverse possession. While perusing the entire evidence of the plaintiffs/appellant herein, there is no evidence to show that they are in possession and enjoyment of the suit properties with the knowledge his successors in title adverse to the interest of the true owner openly, continuously, uninterruptedly for more than statutory period.

19. The evidence of the plaintiff, who has come to the Court seeking declarative relief on the plea of adverse possession, the Law on the point has been discussed in the case of ***Karnataka Board of Wakf Vs. Government of India and Ors.*** reported in ***(2004) 10 SCC 779.***

20 (a). On coming to the point of evidence, the first defendant has not acknowledged the plaintiff title that he was alleged to be the sub-tenant of Devaki Ammal and thus, I find in the plaint as well as in the chief examination of P.W.1, the plaintiff has not admitted that first defendant is



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the owner of the property and he is enjoying the 'B' schedule property open hostile with the knowledge of the first defendant. In the plaint, it is stated that the 'B' schedule suit property originally belonged to Venkatarama Chettiar and Baby Ammal. After Baby Ammal who become the owner of the 'B' schedule property has not been acknowledged by the plaintiff. Hence, the arguments of the counsel for the first defendant that the tile of the first defendant has not been acknowledged by the plaintiff holds good.

20 (b). Further, the original owner Venkatarama Chettiar died in the year 1960 and his wife Baby Ammal died in the year 1978. Nowhere in the plaint, it is stated that neither the father of the plaintiff or the plaintiff are in possession of 'B' schedule property with the knowledge of Venkatarama Chettiar and Baby Ammal. Even though, plaintiff contended that he is having adverse possession in the suit schedule property and he has produced humpty number of documents to prove his possession, all the documents are after the suit filed by the first defendant in O.S.No.134 of 1982. It is also not pleaded by the plaintiff that he is in possession of the suit property with the knowledge of the first defendant continuously and he is in uninterrupted



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possession. First defendant has filed Rent Control Petition against the plaintiff also in the year 2005 itself. Hence, possession of plaintiff cannot be deemed to be adverse possession and he is in possession of the suit property as sub-tenant, of principal tenant, Devi Ammal, that to, during his pendency.

21. The Hon'ble Supreme Court in the case of Ravinder Kaur Grewal and others Vs Manjit Kaur and others, reported in 2019 (8) SCC 729, has held as follows:-

“...Whether a person claiming the title by virtue of adverse possession can maintain a suit Under Article 65 Limitation Act, 1963 (for short, “the Act”) for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the Defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a Defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person?” “Plea of acquisition of title by adverse possession can be taken by Plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in the case of infringement of any rights of



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a Plaintiff.”

9(b). Following the above decision of the Hon'ble Apex Court in Civil Appeal Nos.1701-1702 of 2022, dated 28.02.2022, it is held that the suit is maintainable.

10. Accordingly, I find that as a plaintiff, she can raise a plea of adverse possession in a suit, seeking declaration of title and for permanent injunction and hence in view of the decisions of the Honourable Apex Court, I have no hesitation to hold so. Hence, I have no hesitation to hold that the age-old axiomatic of law that the plaintiff cannot raise a plea of adverse possession and the plea of adverse possession can only be a defence of the defendant in a suit for declaration of title and for recovery of possession and it cannot be a plea of the plaintiff to sue as a suit for declaration of title on the plea of adverse possession is no longer holds the field and as a plaintiff, she can raise the plea of adverse possession by raising the plea of acquisition of title by adverse possession can be taken by the plaintiff subject to Article 65 of the Limitation Act and there is no bar to sue on the above said basis in the case of infringement of any right of the plaintiff and hence the plaintiff can also raise the plea of adverse possession subject to prove and let in any evidence of the above scope.”



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22. I followed the said in the case of *Periammal Vs. Kamalam and Ors.* reported in *Manu/TN/2786/2022* and hence, it is held that the plaintiff suit is maintainable and the plaintiff is entitled to raise the plea of adverse possession and however, he has to prove the same.

23. On perusal of Ex.B25 and Ex.B26 coupled with eviction petition i.e., Ex.B.27 and Ex.B.28 and the specific evidence of D.W.1, this Court finds that in the year 1982, the first defendant has filed O.S.No.134 of 1982 after the purchase of the suit property in the year 1981. The documents produced by the first defendant proves that the plaintiff is in occupation of the 'B' schedule property only during lis pendens and issue No.2 is thus answered in favour of the first defendant.

24. The Trial Court has taken note of the fact that since the plaintiff is in possession of the property, he is entitled for injunction, however refused to grant the order of title on the ground of adverse possession appears to be just and fair.



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25. Civil Miscellaneous Petition to receive additional documents with contention to issue supina to Olcott Memorial schools of the year 1976 was closed. In the sense that since the alleged document comes under the category that could be destroyed within 10 years, by this distance of time that document could not be produced. However, it is open to the plaintiff to agitate the matter by treating the existing document as a secondary evidence under Section 63 of the Indian Evidence Act, 1872.

26. On perusal of Ex.A38, I find that the plaintiff said to have been studied in the said school and the residential address is shown as the schedule property, however, a mere declaration of residential address in the school certificate cannot create a right to the alleged possession. Hence, this Court finds that Ex.A38 will not support the case of the plaintiff on the plea of adverse possession. All other documents are revenue documents, already the suit for eviction as against the prime tenant is pending before this court as Second Appeal and hence, the present plaintiff is in possession as sub-tenant of Devaki Ammal and not on the individual strength.



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27. Further, the Hon'ble Supreme Court in the case of **Karnataka Board of Wakf's case** [cited supra] had held that, to prove the plea of adverse possession, the following conditions are to be satisfied:

(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;

(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiff must also plead and establish when he came into possession; and

(d) The plaintiff must establish that his possession was open and undisturbed.

It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

28. In this case, the plaintiff has miserably failed to satisfy all the



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conditions stated by the Hon'ble Supreme Court in the above said case and hence, the finding rendered by the Trial Court is hereby confirmed and I find no merits in this Appeal Suit. Accordingly, this Appeal suit is dismissed. No costs.

06.06.2024

Index:yes/no
Speaking Judgment/Non-Speaking Judgment
Neutral Citation:Yes/No

mp

To

1. XIX Additional District Judge, City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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RMT.TEEKAA RAMAN, J.

mp

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