



WEB COPY



S.A.No.31 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Second Appeal No.31 of 2011
and
Miscellaneous Petition No.1 of 2011

1. Chellaperumal
2. Alamelu
3. Kalavathi

... Appellants

Vs.

1. Pandian
2. Thandavarayan
3. Dhavendran
4. Arumugam
5. Mani
6. Kaliyaperumal
- Ranganathan [Died]
7. Padmavathy
8. Palanivel
9. Rajadurai
10. Thangarathnam
11. Veeramuthu
12. Selvakumar

... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and the decree dated 26.02.2010 passed in A.S.No.98 of 2006, on the file of the Principal Subordinate Court,



S.A.No.31 of 2011

Vriddhachalam, reversing the Judgment and Decree dated 29.08.2005 passed in O.S.No.183 of 1989 on the file of the Principal District Munsif's Court, Vriddhachalam.

For Appellants : Mr. V. Ayyadurai, Senior Advocate
For Mr. G. Gokul
For R1 : M/s. Sarvabhauman Associates
For R2 to R12 : Given up

JUDGMENT

The appellants herein are the plaintiffs in the suit in O.S.No.183 of 1989 on the file of the Principal District Munsif's Court, Vriddhachalam, challenging the Judgment and Decree, dated 26.02.2010, passed by the Lower Appellate Court in A.S.No.98 of 2006, reversing the Judgment and Decree, dated 29.08.2005, passed by the Trial Court, consequently dismissed the suit.

2. For the sake of convenience, the parties are referred as per their ranking in the Trial Court.

3. Originally, the first plaintiff along with his two brothers, namely,



S.A.No.31 of 2011

WEB COPY

Narayana Konar and Ramasamy Konar have purchased 10 cents of land including the suit property, as per Sale deed dated 27.05.1946 in S.F.No.155/14, in Ko-Mavidanthal Village, Vridhachalam Taluk. Subsequently, the first plaintiff had purchased 2/3rd share of his brothers vide Sale deeds dated 12.02.1963 and 28.09.1968, respectively. Thereby, the first plaintiff has become absolute owner of the entire 10 cents of land. The first plaintiff along with other plaintiffs were in possession and enjoyment of the land, after mutating revenue records. Subsequently, in the year 1984, during resurvey settlement, the first defendant's father viz., Rayan had obtained Patta to an extent of 1.01 acres in S.F.No.155/14 and renumbered as S.F.No.155/14A. Even though, he had purchased only 0.95 acres. Similarly, Patta was issued to the first plaintiff only to the extent of 0.07 acres. Immediately, the plaintiff No.1 approached the Revenue Authorities to rectify the Patta issued in his favour. However, the Revenue Authorities have refused to rectify the same and thereby, the plaintiffs were constrained to approach the trial Court seeking declaration that the plaintiffs are entitled for 0.03 acres of land, which is on the Northern side of 0.07 acres of land. The plaintiffs averred that they were in possession of 0.03 acres of land. Though,



S.A.No.31 of 2011

they are in possession, to clear the cloud over title, they filed the suit for declaration and possession.

4. The first defendant has filed written statement and contended that he purchased the lands in Northern side of S.F.No.155/14 to the extent of 96 cents as per Sale deed dated 25.07.1975 and he is in possession and enjoyment of the same. Some more lands belongs to the plaintiffs, are in his possession and enjoyment. By way of adverse possession, it belongs to them. The first defendant thus sought to for dismissal of the suit before the trial Court.

5. The Trial Court, based on the pleadings had appointed an Advocate Commissioner to note down the physical features and extent of lands and received the Report. After receiving the Report, the Trial Court has framed the following issues:

“1. Whether the description of the suit property is incorrect?

2. Is it true that the plaintiffs never in possession beyond 0.07 acres?



3. Whether the plaintiffs right has been lost over the suit property is true as it is claimed by the defendants?

4. Is it true to allege that the defendants are entitled to 96 cents in the Northern side of the suit property?

5. Whether the plaintiffs are entitled for declaration of title and recovery of possession and mesne profits?

6. To what other relief that the plaintiffs are entitled for?"

6. After recording the evidence of parties including the Advocate Commissioner, the trial Court found that there is an encroachment made by the defendants and decreed the suit to the extent of land described in the Advocate Commissioner's Report-Ex.C2.

7. Aggrieved over the same, the defendants 2 to 7 filed an appeal in A.S.No.98 of 2006 on the file of the Principal Subordinate Court, Vriddhachalam. After hearing both sides, the Appellate Court has held that the evidence of Advocate Commissioner with regard to the possession could not be acceptable and the plaintiffs have also failed to prove that they have



S.A.No.31 of 2011

raised objection for issuance of Patta during UDR survey and there is no cause of action for the suit property, thus, allowed the Appeal and set aside the Judgment and Decree passed by the trial Court.

8. Aggrieved over the Judgment and Decree passed by the Lower Appellate Court, this Second Appeal is filed by the Plaintiffs.

9. The Second Appeal is admitted on the following Substantial Questions of Law:

- 1. Whether the Judgment and Decree of the Lower Appellate Court is vitiated by erroneous approach to the facts and law in the light of the reasoning, findings and the conclusions on the point of maintainability of the suit, factum of possession and the cause of action for the suit are beyond the scope of pleadings, evidences available on record and the case as projected by the rival parties to the suit?*
- 2. Whether the Judgment and Decree under challenge is liable to be interfered on the ground that the findings constitute error of law as being beyond the scope of the suit especially in disbelieving the case of the*



WEB COPY



S.A.No.31 of 2011

plaintiffs for want of sending for records and non-joinder of revenue authorities?

3. *Whether the conclusion of the Lower Appellate Court that the defendants have perfected title by adverse possession even though their possession has no animus in the absence of any evidences or materials on record besides being not urged by the defendants in the suit is sustainable in law?"*

10. As per Order dated 27.01.2015, by consent of both parties, this Court has appointed an Advocate Commissioner to verify whether the respondents are in possession of 96 cents covered under the Sale deed or in possession of more extent. Similarly, the lands in possession of the plaintiffs was also directed to be measured. Accordingly, the Advocate Commissioner has visited the land and filed a Report. The Report of the Advocate Commissioner states that the original Survey No.155/14 in Ko-Mavidanthal Village, Vriddhachalam Taluk is measuring about 106 cents has been subsequently sub divided into Survey Nos.155/14A, 155/14B, 155/14C, 155/14D, 155/14E and 155/14F. The defendants are in possession of Survey No.155/14A to the extent of 96 cents, but he claims more than 96 cents of



S.A.No.31 of 2011

land in Survey No.155/14A. In the survey, it is noted that, the first defendant is also having portion of land in Survey No.155/14E. He noted that there is a land to the extent of 18.2 metres on the East, West, 5 metres on the North, South marked as blue colour in the Advocate Commissioner's plan, was available between the plaintiffs and defendants land, which is part of land in Survey No.155/14A. If this land is added with the first defendant, then their possession would be more than 96 cents, whereas, if the same is added with the plaintiffs, it will come around 10 cents of land in favour of the plaintiffs. The said survey shows that the first defendant is in possession of excess land than 96 cents claimed by him. So, for the defendants have not chosen to file any objection to the report of the Commissioner.

11. Before the trial Court, the plaintiffs have marked their Title Deeds as Ex.A1 to Ex.A3. Ex.B1 is the Title Deed executed by one Manicka Padayachi, who was the original owner of 1.56 acres of land in Survey No.155/14A sold of 96 cents in favour of the defendants. Ex.A1 to Ex.A3, the Title Deeds show that the first plaintiff along with his brothers have purchased 10 cents of land, subsequently, he purchased the share of his



S.A.No.31 of 2011

brothers and thereby, the first plaintiff alone is entitled to 10 cents of land purchased from Manicka Padayachi. Ex.A4-Petition given by the first plaintiff to the District Collector, to show that the plaintiffs have submitted Requisition Letter to the Special Tahsildar for alteration of Patta.

12. After admitting the plaintiffs case that the defendants have purchased the land in Survey No.155/14 to the extent of 96 cents as per Sale deed dated 25.07.1975, they have claimed that they are in possession of some more lands for nearly 12 years and thereby, they perfected the title for remaining lands in their possession, by way of adverse possession.

13. Article 65 of the Schedule to the Limitation Act, 1963, prescribes that for seeking possession of immovable property of any interest therein based on title, 12 years period begins to run when the possession of the defendants becomes adverse to the plaintiffs. To prove the adverse possession, the burden undoubtedly lies on the person claims it, by way of pleadings and proving the fact that they remained it possession of immovable property in their own right adverse to the real owner. Law

9/28



regarding the acquisition of title by adverse possession are well settled.

WEB COPY

14. The Hon'ble Apex Court in ***Annakili vs. A. Vedanayagam and Others [AIR 2008 SC 346]***, explained the ingredients for the claim of adverse possession, meaning of word “***Animus Possidendi***” and the burden of proof in following words in Paragraph Nos.23 to 27 as follows:

23. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the [Limitation Act](#). Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.

24. In ***Saroop Singh v. Banto & Ors. [(2005) 8 SCC 330]***, in which one of us was a member, this Court held:



29. In terms of [Article 65](#) the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See [Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak](#)).

30. *Animus possidendi* is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd. Mohd. Ali v. Jagadish Kalita Para 21.*)

25. The said statement of law was reiterated in [T. Anjanappa & Ors. v. Somalingappa & Anr.](#) [2006] (8) SCALE 624 = (2006) 7 SCC 570], stating :

It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owners title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of



WEB COPY



S.A.No.31 of 2011

being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the formers hostile action.

26. Yet recently, in *P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.* [(2007) 6 SCC 59], this Court noticed the recent development of law in other jurisdiction in the context of property as a human right to opine :

Therefore, it will have to be kept in mind the courts around the world are taking an unkind view towards statutes of limitation overriding property rights.

27. We may also notice that this Court in *M. Durai v. Muthu & Ors.* [(2007) 3 SCC 114], noticed the changes brought about by *Limitation Act, 1963*, vis-`-vis, old *Limitation Act*, holding :

The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-a-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession.”



15. In ***Ravinder Kaur Grewal vs Manjit Kaur [2019 (8) SCC 729]***,

the Apex Court while approving the right of plaintiffs to claim title, based on adverse possession, observed as follows:

“14. Given the aforesaid, a question to ponder is when a person having no title, merely on the strength of possessory title can obtain an injunction and can maintain a suit for ejectment of a trespasser. Why a person who has perfected his title by way of adverse possession cannot file a suit for obtaining an injunction protecting possession and for recovery of possession in case his dispossession is by a third person or by an owner after the extinguishment of his title. In case a person in adverse possession has perfected his title by adverse possession and after the extinguishment of the title of the true owner, he cannot be successfully dispossessed by a true owner as the owner has lost his right, title and interest.”

.....

53. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on 'title' as envisaged in the opening part under [Article 65](#) of Act. Under [Article 65](#), the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is



WEB COPY



S.A.No.31 of 2011

absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession.

54. In [Article 65](#) in the opening part a suit “for possession of immovable property or any interest therein based on title” has been used. Expression “title” would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions.

55. We are not inclined to accept the submission that there is no conferral of right by adverse possession. [Section 27](#) of Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in presenti to obtain it, not in futuro. Any property in [Section 27](#) would include corporeal or incorporeal property. [Article 65](#) deals with immovable property.

56. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against



WEB COPY



S.A.No.31 of 2011

is limited to the rights of the holder. Possession confers enforceable right under [Section 6](#) of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, 'de jure possession', constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/coowner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

57. The adverse possession requires all the three classic requirements to coexist at the same time, namely, necvi i.e. adequate in continuity, necclam i.e., adequate in publicity and necprecario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is equired. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.



WEB COPY



S.A.No.31 of 2011

58. *Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in [Article 65](#) itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.*

59. *We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of [Article 65](#) of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under [Article 64](#), even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's*



WEB COPY



S.A.No.31 of 2011

title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession”.

16. The Constitutional Bench decision in the matter of ***M. Siddiq (D)***

Thr Lrs vs. Mahant Suresh Das & Ors [2020 (1) SCC 1]: [2019 INSC



1231] the Apex Court has held thus:

WEB COPY

“747. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognisant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being 'nec vi nec claim and nec precario?'. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate



pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading paragraph 11(a), it becomes evident that beyond stating that the Muslims have been in long exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.”

17. In ***Uttam Chand (D) through L.Rs. Vs. Nathu Ram (D) through L.Rs. and Ors. [2020 (11) SCC 363]***, the Apex Court has reiterated the principle and ingredients to claim any right on the basis of adverse possession in paragraph Nos.11, 12 and 13 as follows:

*“11. In **T. Anjanappa**, this Court has set aside the finding of the High Court that the Defendants claiming adverse possession do not have to prove who is the true owner. If the Defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. The Court held as under:*

12. The concept of adverse possession contemplates a hostile possession i.e. A possession which is expressly or impliedly in denial of the title of



the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

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 Vidya Devi v. Prem Prakash [MANU/SC/0345/1995 : (1995) 4 SCC 496], SCC p. 504, para 24.)"

18. In this case, the defendants have examined witnesses in their



S.A.No.31 of 2011

favour and the trial Court, after elaborately considering the issue of possession of the defendants found that no where, the defendants have admitted the ownership of the plaintiffs, no evidence was adduced that their possession was known to the plaintiffs and his family members, to attract their claim that their possession was adverse to the ownership of the plaintiffs. The defendants have not adduced any evidence to show that they have perfected the title by way of adverse possession to the extent of nearly 6 cents that is more than 95 cents purchased by them as per the Sale deed dated 25.07.1975. The pleadings of defendants also shows that, they made casual attempt by stating that, the defendants have not only in possession of 95 cents of land purchased by them and during survey, it is found that they were in possession of more than 96 cents and accordingly, Patta was issued to the extent of 1.01 acres of land. The plaintiffs were not in possession of 0.03 acres. Since, the plaintiffs were not in possession of 3 cents, no Patta was given to them.

19. Having claimed that the defendants have perfected title over 3 cents of land belongs to them, the burden of proof lies on them to prove their



case that their possession of the land is adequate in continuity, in publicity and openly and to the knowledge of the plaintiffs. However, either in the evidence or in the pleadings, the defendants failed to state from what date, they are in possession of the lands of the plaintiffs for the purpose of satisfying terms of Section 65 of the Limitation Act. As held by the Hon'ble Apex Court in the Judgment cited supra and referred in ***Saroop Singh vs. Banto and Others [AIR 2005 SC 4407]***, the starting point of limitation does not commence from the date, when the rights of ownership arises to the defendants herein, but commences from the date of their possession becomes adverse. Since the defendants have failed to plead and prove the date from which, they are in possession, they cannot claim that they are in adverse possession to the plaintiffs knowledge.

20. It is also well recognised preposition of law that mere possession long does not necessarily mean adversely the true owner. In this case, admittedly, Patta to the extent of 1.01 acres in favour of the defendants by including 3 cents of land of the plaintiffs was issued in favour of the



S.A.No.31 of 2011

defendants only in the year 1987 during UDR Survey. Immediately, the plaintiffs have filed the suit for declaration and for recovery of possession since, there is encroachment in the property and pleadings and evidence of the defendants has not been considered by the Lower Appellate Court and the claim of the plaintiffs was dismissed only on technical ground as if, there is no cause of action which is also based on misreading of the pleadings and evidence of the plaintiffs.

21. I am of the view that, the trial Court has appreciated the evidence in proper perspective more particularly the evidence relating to the adverse possession and has come to the conclusion that the defendants have encroached the land of the plaintiffs and by taking advantage of the same, they have obtained Patta to the extent of 1.01 acres, for which, they are not legally entitled.

22. The trial Court has also noted that, there is no evidence or pleading to show from what date or from when the defendants were enjoying the property of plaintiffs. The defendants have failed to prove the major



S.A.No.31 of 2011

ingredient that, they were in possession of this 3 cents with the knowledge of the plaintiffs and they are in possession continuously for the period prescribed under Article 65 of the Limitation Act.

23. Further, based on the physical features recorded by the Advocate Commissioner, trial Court has found that the defendants are in possession of excess land and the plaintiffs are in possession of only 0.07 cents. Thereby, accepted the case of the plaintiffs and decreed the suit for declaration and also ordered for possession.

24. The Lower Appellate Court has gone to the question of cause of action and has held that the plaintiffs have failed to prove the fact that they have raised objection for the issuance of Patta to the extent of 1.01 acres in favour of the defendants and they have not adduced any evidence. It also observed that the Advocate Commission cannot be issued for the purpose of deciding the possession of lands. The Advocate Commissioner was appointed by the trial Court and the said Commissioner was also examined as P.W.3 and he has stated that there is anomaly with regard to the

24/28



S.A.No.31 of 2011

possession of lands by the parties. He has also confirmed that he has inspected the lands and noted down the physical features and filed the Report. According to him, there was some more lands available on the Northern side of the lands in possession of the plaintiffs land and the same is disputed land. The trial Court, after considering the evidence of the Advocate Commissioner has rightly found that the defendants are in possession of the excess land.

25. The Lower Appellate Court has failed to appreciate the above aspect and on technical ground, dismissed the suit. Even though, the Advocate Commissioner could not be issued for finding out the possession of the property, it is always open to the Courts to issue Advocate Commissioner to note down the physical features of the property. The trial Court has properly appreciated the fact that the first plaintiff and his brothers have purchased 10 cents of land from Manicka Padayachi, who was originally holding 1.35 acres of land in Survey No.155/14 and 96 cents of land alone is to be available with the defendants. The defendants cannot seek for issuance of Patta for more extent of lands in the absence of Title Deeds based on the

25/28



S.A.No.31 of 2011

ground of adverse possession, since they failed to establish their case.

WEB COPY

26. During the course of arguments before this Court, the defendants have also submitted that their possession of lands to the extent of 96 cents need not be disturbed. On consent, the Advocate Commissioner was appointed by this Court to measure the property and it is found that the portion of land available between the plaintiffs and the defendants as described in Ex.C1-Certified copy of Advocate Commissioner's Plan and Ex.C2-Advocate Commissioner's Report. Based on the Report also this Court is of the view that the Decree passed by the trial Court is liable to be restored. Accordingly, the substantial questions of law is answered in favour of the plaintiffs herein that the Lower Appellate Court has approached the Judgment of the trial Court on technical grounds by misreading of the pleadings and evidence of the plaintiffs and without considering the admitted case of the defendants.

27. With the above observation, the Second Appeal is allowed. The judgment passed by the First Appellate Court is set aside. The judgment and



S.A.No.31 of 2011

decree of the Trial Court is restored. No order as to costs. Consequently, the connected miscellaneous petition stands closed.

26.09.2024

ssi

Index : Yes / No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The Principal Subordinate Judge, Vriddhachalam.
2. The Principal District Munsif's Judge, Vriddhachalam.
3. The Section Officer,
VR Section, High Court of Madras

K.RAJASEKAR,J.,

ssi



WEB COPY



S.A.No.31 of 2011

S.A.No.31 of 2011

26.09.2024