



S.A.No. 363 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.363 of 2012

N.S.Mahidhara

... Appellant

Vs.

N.R.Gopal (Died)

1.G.Aravindkumar

2.Gopal Soundarajan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 17.12.2011 made in AS.No.1 of 2009 on the file of the Principal Sub-Court, Coimbatore confirming the judgment and decree dated 15.11.2008 made in OS.No.1707 of 2001 on the file of the Principal District Munsif, Coimbatore.

For Appellant : Mr.D.Ravichander



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S.A.No. 363 of 2012



For Respondents : Mr.G.Prabhakar for R1

JUDGMENT

The unsuccessful plaintiff is before this Court in the second appeal.

This Second Appeal has been filed as against the judgment and decree dated 17.12.2011 in A.S.No.1 of 2009 on the file of the Principal Sub Court, Coimbatore, confirming the judgment and decree dated 15.11.2008 in OS.No.1707 of 2011 on the file of the District Munsif Court, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial court.

The brief facts, which give rise to the present Second Appeal, are as follows:

3. According to the plaintiff, he has been in occupation, possession and the enjoyment of the suit property for a period of 26 years continuously, notoriously, openly and in adverse to the interest of the



defendant. As such, the plaintiff claims that he perfected the title to the suit property by adverse possession, based on the possession held by him adverse to the defendant. According to the plaintiff, he has been in possession of the property for more than a period of 12 years and hence he has perfected the title to the suit property by adverse possession. Further, since he had been in possession from the year 1975, the statutory period of 12 years is over in 1987, and from 1.1.1988, the plaintiff is the absolute owner of the suit property.

4. The plaintiff also averred that he never paid any rent to the defendant or his agent. He also stated that the defendant was well aware of the possession of the suit property by the plaintiff from 1975, as such, the possession is open, continuous, adverse and hostile to the interest of the defendant. The defendant did not take any steps as against the plaintiff, for which, the plaintiff has come with the suit for declaration that he is the absolute owner based on adverse possession and also for permanent injunction.



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5. The defendant resisted the suit by filing written statement denying the claim of the plaintiff that he had been in possession of the suit property from the year 1975. According to the defendant, the suit property originally belonged to one Damotharasamy Naidu, who had purchased through the registered sale deed dated 15.09.1959 in document no.234/1959 in Ex.B.3 and he is none other than brother of the defendant and he was in possession and enjoyment of the suit property. Thereafter on 13.09.1987, the defendant purchased the suit property in Ex.B.1 and from the date of purchase, he had been in possession and enjoyment of the suit property by paying the property tax and also filing the tax receipts in Ex.B.2.

6. It is the case of the defendant that the plaintiff occupied the premises as a tenant, and he has shifted his residence at frequent intervals due to his employment. Further, according to the defendant, the plaintiff never lived continuously for more than three years. The plaintiff had



vacated the property and now the defendant is in possession and enjoyment of the suit property.

Evidence and Documents:

7. During trial, the plaintiff examined himself as PW.1 and examined one Giri as PW.2 and marked Exs.A1 to Ex.A.5. On the side of the defendant, the defendant himself examined as DW.1 and examined one K.Subramaniam as DW.2 and marked Exs.B.1 to B.5.

Findings of the Trial Court:

8. After appraising the evidence and documents, the Trial Court dismissed the suit. The Trial Court found that the plaintiff has not proved his possession for the continuous period and hostile to the interest of the defendant, by filing any documents and thereby he has not proved his claim. The Trial Court also found that from the earlier proceedings in OS.No.1853/1985, the plaintiff was only a tenant in the premises.

9. Aggrieved by the judgment and decree, the plaintiff filed the



appeal in AS.No.1 of 2009 on the file of the Principal Sub Court, Coimbatore. The Lower Appellate Court after reappraising the evidence dismissed the appeal. The Lower Appellate Court also found that the plaintiff had not filed any documents within a period of 12 years which claims to be in continuous possession adverse to the interest of the defendant. Aggrieved by the concurrent finding of the facts, the plaintiff is before this Court in the second appeal.

10. This Court by order dated 20.03.2012, notice of motion was ordered to the respondents.

Submission made by the learned counsel on both sides:

11. The learned counsel for the appellant suggested the following to be the substantial question of law that arises in this Second Appeal.

a. Are the Courts below right in non-suiting the plaintiff, holding that the plaintiff had not established his continuous possession over the suit property, inspite of the fatal admission by the defendant that the



WEB COPY

S.A.No. 363 of 2012



plaintiff is in possession of the property?

b. Are the Courts below right in non-suiting the plaintiff by placing reliance upon a judgment in OS.No.1853 of 85, when the same was neither pleaded nor evidence was let in both parties, on the said judgment?

c. Can the Courts rely upon a document, without any pleadings or without notice to either of the parties to the suit, on the ground of in the interest of justice, or atleast the court should not opine what is the extra ordinary circumstances, which the court has to invoke such a power, that too when both parties to suit waive their right under the document?

12. The learned counsel for the appellant submitted that the plaintiff had been in possession of the suit property for a period of 26 years, from the year 1975 to 1988 continuously, adverse to the interest of the defendant. Since the defendant was having the knowledge, his possession was open and the plaintiff has perfected the title by adverse possession, in view of the possession of the suit property for over the statutory period.



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13. The learned counsel further contended that the plaintiff has filed documents in Exs.A.1 to A.5 which are the voter identity card, the postal savings book, the bank passbook and the ration card, all of which establish the fact that the plaintiff has been in possession and enjoyment of the suit property.

14. The learned counsel for the appellant further contended that whereas the defendant has not filed any documents even at least the receipts showing the payment of property taxes to establish that the defendant is in possession. Further, the learned counsel argued that even in the evidence of DW.1, he has admitted that at the time of purchase of the suit property, the possession was not handed over to him.

15. Further, the learned counsel for the appellant contended that the trial court and the appellate court erroneously took note of the decision arrived in OS.No.1853/1985, the judgment and decree which had not been



marked as a document in the suit by either side and thereby the finding arrived by the courts below are erroneous, and he sought for allowing this second appeal.

16. Per contra, the learned counsel for the respondents argued that when the plaintiff has filed the suit for declaration of title based on adverse possession, it is for the plaintiff to establish that he was in possession of the suit property and that the possession should be open, continuous and hostile to the interest of the defendant.

17. The learned counsel for the respondents further submitted that the plaintiff must establish the *animus possidendi* to claim the relief of adverse possession. Whereas in the present case, the plaintiff has miserably failed to file any document to show that he had been in possession and enjoyment of the property continuously for a period of 12 years from 1975 to 1988, as claimed by him, and that possession was open and hostile to the defendant.



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18. The learned counsel for the respondents further contended that in fact, the plaintiff was only a tenant in the suit property. As per his own evidence, he had not stayed there continuously and he had often vacated and again became the tenant. But however, later he vacated the property and the defendants are in possession of the suit property.

19. The learned counsel for the respondents further contended that taking note of the factual and legal position, both the courts below have correctly arrived at the finding that the plaintiff has not established his claim of adverse possession by filing any documentary evidence. Further, the learned counsel contended that there is no substantial question of law arises for this Court to interfere in the judgment and decree passed by the courts below.

Analysis:

20. The plaintiff has come forward with the suit claiming title over

the suit property based on adverse possession. According to the plaintiff,



he had been in possession and enjoyment of the suit property continuously, openly and adverse to the interest of the defendant for a period of 26 years, from 1975 to 1988. The plaintiff's claim is that he had been in possession of the suit property for the statutory period of 12 years with the knowledge of the defendant, adverse to his interest, and the defendant has not taken any steps against the possession of the plaintiff. As such from 01.01.1988, the plaintiff has become the owner of the suit property.

21. It is the settled proposition of law that the party who claims relief by adverse possession is bound to establish that he had been in possession, openly, continuously and adverse to the interest of the owner, with knowledge for the statutory period. In fact, even mere long possession of the suit property will not entitle the plaintiff to claim the relief, but the plaintiff must establish *animus possidendi* the intention to possession or in other words the intention to disposes the rightful owner to entitle him to get the relief based on adverse possession.



22. At this juncture, it is useful to refer the decision of the Hon'ble Supreme Court in **Government of Kerala and another vs. Joseph and others** reported in **2023 (5) CTC 664**. Relevant portion is usefully extracted hereunder:

“21. Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgements rendered by this Court, the following principles can be observed:

21.1. Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist- nec vi, i.e., adequate in continuity; nec clam, i.e., adequate in publicity; and nec precario, i.e., adverse to a competitor, in denial of title and knowledge;

*(a) In **Radhamoni Debi v. Collector of Khulna**, the Privy Council held that -*

“The possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor.”



WEB COPY

S.A.No. 363 of 2012



(b) Further, the Council **Maharaja Sri Chandra Nandi v. Baijnath Jugal Kishore**, observed

“It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening.”

(c) A Bench of three judges of this Court in **Parsinni v. Sukhi** held that

“Party claiming adverse possession must prove that his possession must be 'nec vi, nec clam, nec precario' i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner.”

(d) In **Karnataka Board of Wakf v. Govt. of India** (two-Judge Bench) it was held:

“It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open



WEB COPY

S.A.No. 363 of 2012



and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”

*This case was relied on in the case of **M. Venkatesh v. Bangalore Development Authority** (three-Judge Bench), **Ravinder Kaur Grewal v. Manjit Kaur** (three-Judge Bench).*

*(e) This Court in a recent case of **M. Siddiq (D) through L.Rs. v. Mahant Suresh Das and Ors.** (five-Judge Bench) reiterated this principle as under -*

“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



WEB COPY

S.A.No. 363 of 2012



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.”

21.2 *The person claiming adverse possession must show clear and cogent evidence substantiate such claim; This Court in **Thakur Kishan Singh v. Arvind Kumar** (two-Judge Bench) held that -*

“5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession...”

*Reference may also be made to **M. Siddiq** (supra).*



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21.3 *Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;*

*(a) In **Gaya Prasad Dikshit v. Dr. Nirmal Chander and Anr.** (two-Judge Bench), this Court observed*

“1... It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough.”



*Reference may also be made to **Arvind Kumar** (supra); **Mallikarjunaiah v. Nanjaiah** (two-Judge Bench); **Uttam Chand** (supra).*

*21.4 Such clear and continuous possession must be accompanied by animus possidendi - the intention to possess or in other words, the intention to dispossess the rightful owner; in **Karnataka Board of Wakf** (supra) it was observed-*

“...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...”

*(a) The case of **Annakili v. A. Vedanayagam** (two-Judge Bench) also shed light on this principle as under -*

“24. Claim by adverse possession has two elements: (1) the possession of the Defendant should become adverse to the Plaintiff; and (2) the Defendant must



WEB COPY

S.A.No. 363 of 2012



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...

(b) In Des Raj and Ors. v. Bhagat Ram
(two Judge Bench) this Court observed -

“21. In a case of this nature, where long and continuous possession of the Plaintiff-Respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the Plaintiff had been in possession of the properties in hostile declaration of his title



WEB COPY

S.A.No. 363 of 2012



*vis-à-vis his coowners and they were in know
thereof.”*

*(c) This Court in **L.N. Aswathama v. P. Prakash**
(two- Judge Bench) had observed that permissive
possession or possession in the absence of Animus
possidendi would not constitute the claim of adverse
possession.*



WEB COPY

S.A.No. 363 of 2012



(d) *It was also held in the case of **Chatti Konati Rao v. Palle Venkata Subba Rao** (two-Judge Bench) -*

“15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed...” (Emphasis supplied)

*Referring to the above judgement **Subha Rao** (supra) this Court has reiterated the cardinality of the presence of Animus possidendi in a case concerning adverse possession in **Brijesh Kumar and Anr. v. Shardabai (dead) by LRs.** (two- Judge Bench).*



21.5 Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;

*The prior position of law as set out in **Gurudwara Sahab v. Gram Panchayat Village Sirthala** (two-Judge Bench) was that the plea of adverse possession can be used only as a shield by the Defendant and not as a sword by the Plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of **Ravinder Kaur** (supra) had held that - "...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...*

*The position in **Ravinder Kaur** (supra) was followed in **Narasamma and Ors. v. A. Krishnappa (Dead) Through L.Rs.** (three-Judge Bench).*

21.6. Mere passing of an ejectment order does not cause brake in possession neither causes his dispossession;



WEB COPY

S.A.No. 363 of 2012



*In **Balkrishna v. Satyaprakash** (two-Judge Bench) this Court held:*

“...Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession.”

*21.7 When the land subject of proceedings wherein adverse possession has been claimed, belongs to the Government, the Court is duty-bound to act with greater seriousness, effectiveness, care and circumspection as it may lead to Destruction of a right/title of the State to immovable property. In State of **Rajasthan v. Harphool Singh** (two-Judge Bench) it was held:*



“12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none.”

*Further, in **Mandal Revenue Officer v. Goundla Venkaiah** (two-Judge Bench) it was stated:*

“...It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers,



WEB COPY

S.A.No. 363 of 2012



unauthorised occupants or land grabbers.”

21.8 *A plea of adverse possession must be pleaded with proper particulars, such as, when the possession became adverse. The court is not to travel beyond pleading to give any relief, in other words, the plea must stand on its own two feet. This Court has held this in the case of **V. Rajeshwari v. T.C. Saravanabava** (two-Judge Bench):*

“...A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal...”

*It has also been held in the case of **State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj** (two-Judge Bench):*

“ ...The courts below also should have seen that courts can grant only that relief which is claimed by the Plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot



travel beyond the pleadings for granting any relief...”

***Mandir Sri Laxman Sidh Maharaj** (supra) was relied on in **Dharampal (Dead) v. Punjab Wakf Board** (two-Judge Bench) on the same principle.*

***21.9 Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant** (two-Judge Bench) elaborated this principle as:*

“15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into



possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.”

*This principle was upheld in the case of **Mohan Lal v. Mirza Abdul Gaffar** (two-Judge Bench) -*

“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 thereunder 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 of 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 the 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.”

*The Court in **Uttam Chand** (supra) has reiterated this principle of adverse possession.*

21.10 *Burden of proof rests on the person claiming adverse possession.*

*This Court, in **P.T. Munichikkanna Reddy v. Revamma** (two-Judge Bench), it held that initially the burden lied on the landowner to prove his title and title. Thereafter it shifts on the other party to prove title by adverse possession. It was observed:*

“34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the Plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the



WEB COPY

S.A.No. 363 of 2012



onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession....“



WEB COPY

S.A.No. 363 of 2012



*The Court reiterated this principle in the case of
Janata Dal Party v. Indian National Congress (two-
Judge Bench):*

*“...the entire burden of proving that the
possession is adverse to that of the Plaintiffs, is
on the Defendant...”*

22. From the above decision of the Hon'ble Supreme Court, it is clear that the plaintiff, in order to claim adverse possession has to plead and prove that the possession had been open, continuous and hostile to the owner. All three requirements must coexist – nec vi, i.e, adequate in continuity, nec clam, i.e., adequate in publicity and nec precario, i.e., adverse to a competitor, in denial of title and knowledge.

23. Keeping the above principles in mind, the facts in the present case shows that the plaintiff has filed five documents in Exs.A.1 to A.5 to prove his case. As rightly held by both the Courts below, all the five documents filed by the plaintiff only relate to the period after 1997. In fact



the plaintiff has not filed any document corresponding to the period between 1975 to 1988 to show that even he had been in possession of the suit property at any point of time within that statutory period. In fact, even when he claims title from 01.01.1988, the plaintiff was only able to file a document for the period after 1997. Further, the plaintiff examined his friend as PW.2. The evidence of PW.2 does not support the case of the plaintiff in any way. In fact, PW.2 has admitted that he resides at least 4 km away from the property and is a friend of the plaintiff. Further, the plaintiff himself admitted in his evidence that he was not able to file any documents for the period from 1975 to 1988 to show that he had been in possession of the suit property. From the documents filed, it is evident that the plaintiff failed to establish the possession of the suit property.

24. It is also pertinent to note that according to the plaintiff, he had been in possession of the suit property from 1975 to 1988, and he has also become the owner of the suit property as on 01.01.1988., but however, the plaintiff in his evidence, admitted that he do not even know who is the



owner of the suit property during this period. Further, when the defendant purchased the suit property through Ex.B.1 only on 30.09.1987, it shows that the plaintiff makes the claim that he perfected the title over the suit property even prior to the purchase by the defendant. While so, the claim of the plaintiff is that he had been in possession and enjoyment of the property hostile to the interest of the defendant's vendor. However, there is no such pleading made by the plaintiff in the plaint, and further, the plaintiff has not made the defendant's vendor as party to the suit. The relief claimed by the plaintiff relates to the period prior to the purchase by the defendant. The plaintiff further admits that he is not aware of the owner for the period during which he claims he had perfected the title and also for subsequent period. The claim of the plaintiff that he had been in possession continuously, openly and hostile to the owner has not been established. The plaintiff has not pleaded and proved the requirements for claiming adverse possession. The courts below have rightly arrived at the finding of fact that the plaintiff is not entitled for the relief.



25. Even though, the appellants counsel argued that the reliance of the decision in OS.No.1853/1985 by the courts below are not correct when the same was not marked as a document by either parties, it may not be much reliance in the present facts and circumstance of the case. In fact, it was only found by the courts below that the suit was between the defendant and the plaintiff is also one of the party where it is evident that the plaintiff had been in possession of the property only as a tenant. The present suit is not for bare injunction based on possession, but the plaintiff has filed the suit claiming relief of declaration based on adverse possession. However, the plaintiff has not established his claim based on any documentary or oral evidence. The courts below have rightly arrived at the finding of fact which are based on the materials available on record and there is no illegality or perversity.

26. In view of the same, this Court does not find any question of law, much less substantial question of law, that arise for consideration in



S.A.No. 363 of 2012

the above second appeal. In the result, the second appeal is dismissed.

However, there is no order as to costs.

20.02.2024

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1.The Principal Sub-Court, Coimbatore

2.The District Munsif Court, Coimbatore.



WEB COPY

S.A.No. 363 of 2012



G.ARUL MURUGAN.,J.

drl

S.A.No.363 of 2012



WEB COPY

S.A.No. 363 of 2012



20.02.2024