



WEB COPY



S.A.No.1100 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1100 of 2003

1. Ronikam
2. Lalitha Mary
3. Stella Mary
4. Vimala Mary
5. Claimond Raj
6. Roby

.. Appellants

Vs.

1. Gnanadas
2. Krishthudas
3. Logidas
4. Aruldas
5. Leelabai
6. Rose Mary
7. Vasanthi
8. Vimala Rose

.. Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 18.03.2003 made in A.S.No.57 of 1996 on the file of the Subordinate Court, Padmanabhapuram, reversing the judgment and decree dated 10.04.1996 made in O.S.No.47 of 1992 on the file of the Principal District Munsif, Padmanabhapuram.

Page No.1/17



WEB COPY



S.A.No.1100 of 2003

For appellants : Mr.P.Thiagarajan for Mr.T.R.Rajaraman

For respondents: Notice served. No appearance

JUDGMENT

The respondents 1 and 2 herein, along with one Muthian Nadar, have filed a suit in O.S.No.47 of 1992 before the District Munsif Court, Padmanabhapuram, for declaration of title, possession and injunction. The said suit was dismissed on 10.04.1996, against which, the plaintiffs (Muthian Nadar and the respondents 1 and 2 herein) filed First Appeal in A.S.No.57 of 1996, which was allowed, against which, the defendants are before this Court by way of this Second Appeal.

2. For the purpose of convenience, the parties are herein referred to as plaintiffs and defendants as ranked in the trial Court.

3. The suit property originally belonged to the plaintiffs' ancestors. By virtue of oral partition, the plaintiffs claimed that they are entitled to the suit property, as they are in possession of the property.

4. The claim of the defendants is that the suit property originally belonged



S.A.No.1100 of 2003

to one Nair Tarwad. In a partition suit in O.S.No.486 of 1119 (m.e), the property was allotted to the defendants' predecessor-in-interest, from whom the defendants purchased the suit property.

5. The trial Court, after carefully considering all the evidence on record, held that the judgment rendered in the said previous suit, is valid and binding on the plaintiffs and the defendants have perfected their title by virtue of the sale deed. This was challenged before the first appellate Court, which held that the partition suit earlier filed, is not valid and not binding on the plaintiffs, thereby, the suit filed by the plaintiffs, was decreed holding that the plaintiffs have perfected title by adverse possession, against which the defendants are before this Court by way of Second Appeal.

6. During the course of trial, on the side of the plaintiffs, P.Ws.1 and 2 were examined and Exs.P-1 to P.45 were marked. On the side of defendants, D.W.1 was examined and Exs.D-1 to D.7 were marked. Exs.C-1 and C-2 being the Advocate Commissioner's report and sketch/plan were marked as Court documents.

7. The trial Court, considering the oral and documentary evidence,



S.A.No.1100 of 2003

dismissed the suit, against which, the plaintiffs have preferred First Appeal, which was allowed, against which, the defendants have preferred this Second Appeal.

8. This Second Appeal was admitted by this Court on 11.07.2003 on the following substantial questions of law:

(a) Whether the failure to ask for the relief of declaration of title in the earlier suit filed for injunction, when admittedly, the cause of action for claiming such a relief, was available on that day, would come in the way of the present plaintiffs to have their title declared in the present suit on the principle of the bar created under Order 2 Rule 2 of the Code of Civil Procedure ? and,

(b) Whether the finding of the Courts below that the plaintiffs have perfected their title by adverse possession, in the absence of pleadings and proof of the exact date from which adverse possession started running, can be legally sustained ?

9.. In spite of the notice having been served on the respondents herein, there was no appearance for them either in person or through a counsel.

10. Learned counsel for the defendants (appellants herein) submitted as



S.A.No.1100 of 2003

follows:

WEB COPY

(i) The suit property belongs only to the appellants and not to the respondents.

(ii) The tax receipts produced had not proved that the respondents' grand-father enjoyed the property specified in the sale deed.

(iii) The respondents herein having enjoyed only "Oodukoor" possession in S.No.3680 and S.No.2094, did not enjoy the possession of any specified defined portion of the suit property, as stated in the sale deed.

(iv) Exs.P-17 and P-18 sale deeds, go to prove that the respondents herein did not purchase any specified portion of the property and enjoy it, but enjoyed it only on the basis of "Oodukoor" possession.

(v) The documents produced by the respondents herein, do not prove that they have been in possession of a separate portion of the property and enjoying it exclusively and that they did not give any explanation for not applying for subdivision of the property for so many years.

(vi) The suit property (house) was constructed according to the respondents in the year 1972 and they filed the tax receipts only in 1983 after 11 years and that they did not give any explanation for the lapse.

(vii) Since the Patta for the property is in the name of the respondents herein, the property belongs to them and Ex.A.44 clearly proves that the Patta

Page No.5/17



S.A.No.1100 of 2003

was not granted to the respondents herein alone, but for many others in respect of the same property.

(viii) The respondents herein neither examined themselves, nor examined any independent witness to prove their title and hence, adverse possession should have been drawn against them.

(ix) Inspite of admitting the fact that the suit property was allotted to the predecessor-in-title of the appellants herein in the earlier suit in O.S.No.486 of 1119, the claim of the appellants was disallowed by the first appellate Court.

(x) When the title to the suit property was allotted to the appellants' predecessor, merely because they had not taken the possession, they could not relinquish their title.

(xi) The first appellate Court did not consider the fact that the previous suit in O.S.No.552 of 1985 filed by the respondents herein, was only for bare injunction without seeking declaration of title and that the said previous suit and the present suit had same cause of action relating to the very same property in the present suit.

(xii) The first appellate Court had not considered about the "Oodukoor" aspects in testing the veracity of the present suit.

11. The case of the plaintiffs is that the suit property belonged to the



S.A.No.1100 of 2003

ancestors of the plaintiffs and by virtue of an oral partition, the plaintiffs claim the suit property on the ground that the plaintiffs are in possession of the property.

12. It is the case of the defendants that the suit property originally belonged to one Nair Tarwad and in a suit for partition, in O.S.No.486 of 1119, the property was allotted to the predecessor-in-title of the defendants and from them, the defendants had purchased the suit property.

13. At the outset, it is useful to quote Order 2 Rule 2 CPC:

"Order 2 Rule 2 CPC reads as follows:

Order 2: Frame of suit:

Rule 2 : Suit to include the whole claim: (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim: Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs: A



WEB COPY



S.A.No.1100 of 2003

person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

14. Admittedly, the plaintiffs purchased the property and the respondents have also proved the same by producing the documents in Exs.A-1 to A-6. Further, it is also admitted that the appellants had purchased the property until some of the predecessors-in-title of the respondents had right over the same. In the present suit, in paragraph 5, in the written statement, it is stated by the first defendant as follows:

"5. Paragraph 5 of the plaint is false and hence denied. There was no old house as alleged. No new house was constructed in 1972. The allegation that it cost his Rupees one lakh is false. The house was put up in the year 1977 and not in 1972 as alleged."



S.A.No.1100 of 2003

WEB COPY

15. The defendants admitted that new house was constructed, but however, they denied that new house was not constructed in 1972, but they have admitted that they had constructed the house in the year 1977 and not 1972. The earlier suit was filed only in the year 1985 in O.S.No.552 of 1985 for bare injunction. The said suit was subsequently dismissed as not pressed. The predecessor-in-title had not filed any written statement denying the title, however, even prior to the alleged purchase of the suit property by the appellants/defendants, they constructed the house in a portion of the suit property. Exs.A-25 to A-32 which are all the house tax receipts and the taxes had been paid by the respondents in their name. Exs.A-33 to A-43 are also the communication from the authority to the respondents. Ex.A-44 is the Patta Passbook. Ex.A-45 is the execution petition filed in the earlier suit in O.S.No.446 of 1119 (M.E), E.P.No.149 of 1985 in O.S.No.446 of 1119 (M.E). There are no materials to show that as per the Execution Petition, the respondents' predecessor-in-title took the possession. So, the respondents also claimed title by adverse possession and even as admitted by the first defendant in the written statement, the respondents were in possession atleast from 1977. Further, in the absence of predecessors-in-title of the appellants, specific portion had been taken from the property within the boundaries and the respondents have not

Page No.9/17

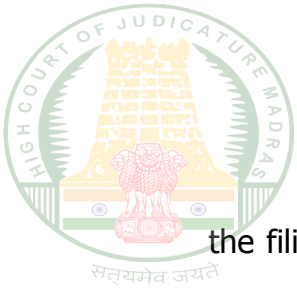


S.A.No.1100 of 2003

established their right and title. Admittedly, the respondents have proved that their predecessors-in-title purchased the property subsequently by oral partition and the respondents derived title and were in possession and enjoyment of the constructed house in the portion of the property and paid tax and even for the landed portion, they have paid the kist also. The respondents also stated that the earlier old house was there and in order to prove the same, Exs.A-7 to A-14 were filed to prove that there was a house and it is old house. Though in paragraph 5 of the written statement, the first defendant denied that there was no old house and new house was not constructed in the year 1972 and they have admitted that they have constructed the house in 1977, they have purchased the property allegedly in the year 1976 under Ex.A-2. Though the appellants have stated that they were hospitalised and at that time, the respondents constructed the building and when the appellants questioned the same, the respondents promised to remove the same. Even assuming that the building was not constructed in the year 1972 and it was constructed only in the year 1977 when the respondents have not removed it till 1985, the appellants have not filed any suit at that time for recovery of possession.

16. Therefore, the respondents were in continuous possession. According to the respondents, they have constructed the building in the year 1972 and till

Page No.10/17



S.A.No.1100 of 2003

the filing of the present suit, they were in possession. Though the predecessor-in-title of the appellants had not denied title, since they have tried to disturb their possession, they have filed a suit in O.S.No.552 of 1985 and subsequently, the same was dismissed as not pressed. But admittedly, the appellants have not filed any suit either for recovery of possession or for any other relief. Therefore, in the earlier suit, the appellants have not filed any written statement and had not denied the title. Therefore, in the above facts and circumstances, this suit is not hit by Order 2 Rule 2 CPC. The respondents have not proved that at the time of filing of the earlier suit in O.S.No.552 of 1985, there was denial of title and the respondents had an occasion to file the suit for declaration and therefore, on a reading of the provisions of Order 2 Rule 2 CPC, it is seen that in the absence of the same at the time of filing the earlier suit, all the causes of action arose and the respondents omitted to seek the necessary relief and subsequently, they have filed the present suit with the other relief and hence, the present suit is hit by Order 2 Rule 2 CPC.

17. Admittedly, in this case, there are no materials to show that there was cause of action for filing the present suit for declaration. Further, the first appellant had admitted in the written statement that from the date of filing of the suit, the construction had taken place. The respondents have proved that



S.A.No.1100 of 2003

there was no construction and after removing the new construction and from 1972, they are in possession. Till 1985, they were in possession over and above the statutory period of 12 years. Hence, the respondents have also proved their adverse possession.

18. Until the earlier suit filed in the year 1985, they were in possession and even admitting that they have been in possession from 1972, when the documents of the respondents clearly show that the respondents were in continuous possession, and though the appellants had filed written statement and counter claim for mandatory injunction, the first defendant has already stated in paragraph 5 of the written statement, admitting that the respondents have constructed the house in 1977 itself only. But they have promised to dismantle and hand over the possession, but they have not done so. Admittedly, the respondents have not filed any suit either for removing the superstructure and handing over the possession or for recovery of possession. Earlier, a suit was filed by the respondents only in the year 1985 and therefore, the relief of injunction is available only for 7 year period and one year as per the limitation. Admittedly, even the respondents have not stated that the appellants have constructed the house and till 1985, filing of the counter claim in the written statement, the appellants have not taken effective steps to get back the



S.A.No.1100 of 2003

possession and therefore, the appellants are not entitled for the relief stated in the written statement. Therefore, this Court finds that the present suit is not hit by the provisions of Order 2 Rule 2 CPC.

19. Further, the respondents have filed the suit for declaration and injunction and they have also clearly stated that though the respondents have pleaded that from Exs.A1 to A-6, they have title over the property, but however, the respondents also have pleaded that in paragraph 9 of the plaint that even if the appellants and their predecessor-in-title got any remote title to the portion of the suit schedule property at any time, it has lost to them from claiming continued hostile and upon adverse possession of the plaintiffs and their predecessors-in-title from the date of sale from 02.12.1943 being the date of the first sale deed, they have pleaded in Exs.A-1 to A-6 which show that they have purchased the property. According to the first sale deed executed on 02.12.1943 and considering the oral and documentary evidence produced by the respondents that to show that they were in continuous possession, though the earlier suit was filed in O.S.No.486 of 1119 (M.E), admittedly, there are no records to show that the appellants have been in possession. Therefore, the respondents were in continuous possession and subsequently, there was old construction which is evident from the sale deeds and subsequently, they have

Page No.13/17



S.A.No.1100 of 2003

also paid the tax for the suit property and subsequently, they have removed it and made new construction and also paid the tax and receipts and for the old construction, and thereafter, a new construction was made and the land tax has also been paid for the annexed portion of the property. Therefore, though the trial Court failed to appreciate the evidence and dismissed the suit, the first appellate Court has given a clear finding by re-appreciating the evidence and the judgment and decree passed by the trial Court was set aside and the First Appeal filed by the respondents was allowed by the First Appellate Court.

20. Therefore, on a reading of the oral and documentary evidence, this Court finds that the respondents have established their title and continuous possession and therefore, the appellants have not proved their possession based on the earlier decree obtained by their predecessor-in-title or as alleged in the sale deed obtained by the appellants.

21. The theory of adverse possession is a mixed question of law and facts, but no doubt, the person who plead has to prove his/her case, whereas, in this case, the respondents have proved their continuous possession from 1943 till the date of filing of the earlier suit in the year 1985. But the appellants have not proved the dis-possession of the respondents at any stage and the appellants or



S.A.No.1100 of 2003

their predecessor-in-title were not in possession of the property or the respondents objected their possession of the property.

22. It is seen that neither the appellants, nor their predecessor-in-title filed any suit or objection, but however, they have not taken any steps to recover the possession and have not filed any suit. Only after filing of the present suit by the respondents herein, the appellants have filed written statement for injunction and till then, the party had to prove showing that either the appellants or the predecessors-in-interest objected or taken any steps to recover the possession.

23. Therefore, in the above facts and circumstances, this Court finds that the respondents have proved their case. The first appellate Court, as a final Court of fact finding, had re-appreciated the evidence and granted decree in the present suit.

24. Accordingly, the substantial questions of law are answered in the above terms. The Second Appeal is dismissed, confirming the judgment and decree of the first appellate Court. There shall be no order as to costs.

17.03.2025

Page No.15/17



S.A.No.1100 of 2003

CS

WEB COPY

To

1. The Subordinate Judge, Padmanabhapuram.
2. The Principal District Munsif, Padmanabhapuram.
3. The Section Officer, V.R. Section, High Court, Madras.

Page No.16/17



WEB COPY



S.A.No.1100 of 2003

P.VELMURUGAN, J

CS

Pre-delivery Judgment in

S.A.No.1100 of 2003

Judgement Delivered on 17.03.2025

Page No.17/17