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(1935) 05 MAD CK 0015

In the Madras High Court

Chenganakattil Moideen and Others — APPELLANT

Vs

Pottengal Kunhalikutti and Others — RESPONDENT

Date of Decision : 02-05-1935

Acts Referred:

Citation : AIR 1935 Mad 1059 : 159 Ind. Cas. 1021 : (1935) 42 LW 798

Hon'ble Judges : Pandrang Row, J;Pandrang Rao, J

Bench : Division Bench

Judgement

Pandrang Rao, J.—This is an appeal from the order of the District Judge of South Malabar dated 22nd December 1932 in appeal from the decree of the District Munsif of Tirur dated 29bh September 1931, remanding the suit for fresh disposal according to few. The suit was one brought for partition and separate possession of 15 out of 16 shares in the plaint properties with arrears of mesne profits, etc. The properties belonged originally in Jenm to one Kunhayathru, the father of defendants 1 to 3, and the husband of defendant 4. After the death of this man, and when defendants 1 to 3 were minors, the properties were sold by defendant 4 in her own capacity and as guardian of defendants 1 to 3. This assignment by her took place in 1911 when the eldest of defendants 1 to 3 was only 6 years old. In March 1929 the plaintiff got an assignment (Ex. A) from defendants 1 and 2 of the rights of defendants 1 to 3 in respect of the plaint properties and it is on this assignment the suit is based, the contention of the plaintiff being that the sale by defendant 4 of the properties to defendant 5''s predecessor-in-title, Kunhi Koya was not valid so far as the shares of defendants 1 to 3 in the properties are concerned. The suit was resisted by defendant 5 and his mortgagee, defendant 6, and a large number of issues were framed and the District Munsif dismissed the suit with costs. The grounds on which the suit was dismissed by the District Munsif were that the suit was barred by adverse possession and limitation and that defendants 1 to 3 were estopped from impugning the validity of the sale deed executed by their mother, defendant 4, in favour of defendant 5''s predecessor-in-title in 1911. In appeal by the plaintiff to the District Judge two points were raised, namely that the sale in favour of

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defendant 5''s predecessor in-title was nominal and was not intended to take effect and that the suit was not barred by limitation. On the first point the decision of the District Judge was against the plaintiff and on the second point his decision was in favour of the plaintiff. He came to the conclusion that the suit was not barred by limitation as defendants 1 and 2 were not shown to have had knowledge of the sale and that there had been no ouster so far as they were concerned for more than 12 years prior to the suit. As regards defendant 3''s share it was conceded before him by the plaintiff''s advocate that he had no case as defendant 3 was a major when his share was transferred to the plaintiff in 1929 by defendant 2 purporting to act as his guardian, and the appeal was abandoned in respect of that share.

2. The present appeal, which is by defendants 5 and 6, raises two points, namely (1) whether the suit is barred by limitation, in other words, whether defendant 5 has acquired title to the plaint properties by adverse possession for over 12 years before the suit was instituted; and (2) whether there is any estoppel against defendants 1 and 2, The latter point can be dealt with very briefly. There is nothing to support the estoppel which is pleaded in this case. Apparently the estoppel is based on the contention that because some other properties were purchased with the money that was obtained by the sale of the plaint properties to defendant 5''s predecessor-in-title in 1911, defendants 1 and 2 are estopped from impugning the sale in favour of defendant 5''s predecessor. It must be remembered that at the time of the sale as well as of the purchase of other property, these defendants were minors, aged 6 years and leas and it is not shown how the purchase of property with the sale proceeds of the plaint properties prevents them from denying the validity of the sale in favour of defendant 5''s predecessor. There can be no possible basis for a plea of estoppel and I have no doubt that this point was not pressed in the appeal simply because there was nothing in it. I find there is no estoppel operating against defendants 1 and 2.

3. The other point has been argued at some length and it has been contended that because the purchaser under the deed of 1911 executed by defendant 4 took possession of the entire properties, that is to say, of all the shares, it must be deemed that his possession was adverse from the date of the sale even is the absence of any knowledge of the sale on the part of co-sharers other than the actual executant of the deed. There can be no doubt that in view of the Privy Council decision in Imambandi v. Mutstaddi 1918 P.C. 11 the sale by defendant 4, who was not the legal guardian of defendants I to 3 at the time, purporting to convey their shares also in the property, is void and cannot be binding on the minors; the sale can be valid only as regards defendant 4''s own share in the property. The position therefore is that the purchaser came into possession as the rightful owner of a share in the property, and as regards the rest of the shares which belonged to defendants 1 to 3 he got no title. But it does not follow that his possession of these shares was adverse possession as that possession can be traced to his valid title as the transferee from one of the sharers, namely,

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defendant 4.

4. It is a well established principle of law that possession can never be deemed and is never deemed to be adverse if it can be traced to a lawful title. The principle is so well understood that it is unnecessary to quote authority in support of it; it has been affirmed and acted upon in several cases by their Lordships of the Judicial Committee and it is really not disputed. It is however contended that it does make a difference if the purchaser was not originally, that is, before the purchase, a co-sharer; in other words, though if one co sharer purports to acquire under an invalid sale the shares of the other co-sharers from persons who have no right to convey them, his possession would not be adverse to the other co-sharers from the date of the sale-deed, nevertheless, if, as in this case, the purchaser came into possession only under the purchase and was not a co-sharer before the purchase, his possession of the-other shares to which he got no valid title must be deemed to be adverse to the true owners even in the absence of any notice of the sale to them or in the absence of any proof that they knew of that sale. I am unable to accept this contention. There is no good reason for making this difference between one who is already a co-sharer and one who becomes a co-sharer at the time he gets possession of the other shares. The general principle is that where a man has got a lawful title to possession, his possession must be traced to that title and he cannot be permitted to plead his own wrong, so to speak, and contend that, when he got possession without title as a co-sharer under the, deed, he had not the right in law of being in possession of the entire'' property.

5. The interest which was purchased from defendant 4 to the extent it was valid was the interest of defendant 4, that is to say, her interest as a co-owner and the transferee from such co-owner cannot get higher rights than the transferor, nor can he escape the liabilities to which a co-owner is subject. In other words, the person who takes a transfer from a co-owner steps into the shoes of} his transferor and is clothed with all the rights and becomes subject to all the liabilities of his transferor. So far as the rights in regard to the other shares in the properties are concerned, they are left unchanged by reason of the transfer and it would therefore follow that the possession of the purchaser in 1911 cannot be deemed to be adverse to the true owners, namely defendants 1 to 3, unless it is shown that a hostile title was asserted by the purchaser to their knowledge. Proof of such knowledge or ouster is lacking in this case, and it is obvious that no such evidence on a point like this can be expected in view of the fact that defendants 1 and 2 were children of tender age at the time of the sale and could not possibly be expected to have known or to have appreciated the nature of the transaction even if they were told of it at that age. Defendant 1 was 6 years old at the time and defendant 2 was younger by two years. Even in 1917, that is to say, 12 years before the filing of the suit, they were only 12 and 10 years of age respectively; it is impossible to believe that boys of that age would have known that their shares were being held under a title hostile to them. There is no reason to suppose that they knew anything then about it. On this point I see no reason

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whatever to differ from the finding of the learned District Judge who observes that the dates of birth are only to be remembered in order to demonstrate how absurd the contention is that defendants 1 and 2 had knowledge.

6. On the whole I see no reason to differ from the finding of the learned District Judge to the effect that adverse possession for over 12 years has not been established by the contesting defendants 5 and 6. It follows therefore that the order of the District Judge remanding the suit to the trial Court is right and that this appeal must fail. The appeal is accordingly dismissed with costs.

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