

(2007) 12 KL CK 0036

In the High Court Of Kerala

Case No : Regular Second Appeal No. 666 of 2005

Devassy

APPELLANT

Vs

Koratty Grama Panchayath

RESPONDENT

Date of Decision : 18-12-2007

Acts Referred:

Kerala Land Conservancy Act, 1957 — Section 11(1), 4(1), 5, 7, 8
Limitation Act, 1963 — Article 112

Citation : (2007) 12 KL CK 0036

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : T.N. Manoj, for the Appellant; Renjith Thampan and P.A. Anitha, for the Respondent

Judgement

K.T. Sankaran, J.—The dispute relates to 40 cents of land, which is a puramboke land. As per the Government order dated 30-3-1979, the land was ordered to be transferred to Koratty Grama Panchayath. The property is situated on the southern side of a school compound. The land for establishment of the school was provided by the Government. It was found that a portion of that land was in the possession of encroachers. To facilitate rehabilitation of those encroachers, the land in question was transferred to the Panchayath. Possession of the property was given to the Panchayat on 9-12-1986. On 30-10-1986, the Panchayath had paid a sum of Rs. 8656-50 to the Government as the value of the puramboke land.

2. The Appellant instituted the suit, O.S. No. 19 of 1990 on the file of the Court of the Munsiff, Irinjalakkuda, against Koratty Grama Panchayath praying for a permanent prohibitory injunction restraining the Defendant from trespassing upon the plaint schedule property or from cutting and removing the trees or from cutting open a pathway through the property. There are two items in the plaint schedule. viz., A and B schedule. Plaint A schedule property, having an extent of 2 acres 16 cents belongs to the Plaintiff as per the allotment made to him under

Ext. A-1 partition deed of the year 1960. There is no dispute regarding the title and possession of the Plaintiff over the plaint A schedule property. The plaint B schedule property is the disputed property, having an extent of 40 cents, lying on the northern side of the plaint A schedule property and on the southern side of the school compound. According to the Plaintiff, for the last 46 years as on the date of the institution of the suit, he and his predecessor in interest were in continuous, uninterrupted and peaceful possession of the plaint B schedule property and thus he has perfected title by adverse possession. On the basis of such adverse possession, the Plaintiff claims that he is entitled to get an injunction restraining the Panchayath from entering into the property or from committing any of the acts complained of.

3. The contentign of adverse possession is met by the Defendant Panchayath by taking recourse to the Government Order by which the puramboke land was allotted to the Panchayath and the proceedings by which the Panchayath paid the consideration on 30-10-1986 and the act of handing over of possession of the property to the Panchayath on 9-12-1986. The Panchayath contended that the necessary ingredients to constitute a plea of adverse possession are lacking in the case.

4. The trial Court held that the Plaintiff failed to prove adverse possession. It was also held that the Plaintiff is not entitled to get any relief, he having failed to prove the possession. The appellate Court confirmed the decision of the trial Court.

5. The Appellant relied on Ext. C-1 report submitted by the commissioner, which would indicate that there are several coconut trees and other fruit bearing trees aged more than 20 to 25 years in the plaint B Schedule property. According to the learned Counsel for the Appellant, the Commissioner's report and the evidence of P.Ws. 2 and 3 would establish the plea of adverse possession. The lie of the property is such that there is no demarcating boundary between the disputed property and the property of the Plaintiff on the southern side. The evidence of Plaintiff's own witness would indicate that there is no demarcating boundary between the school compound and the disputed property lying on the southern side of the school compound. Therefore nothing turns on the non-existence of any boundary separating the plaint A and B Schedule properties.

6. Admittedly, the property is a Government puramboke land, if so, the required period for prescribing title by adverse possession would be 30 years, as the Government could institute a suit within 30 years as provided under Article 112 of the Limitation Act. Ext. A-1 partition deed was executed in the year 1960. At that time, the northern boundary of C Schedule item (which is the present plaint A Schedule) is shown as "tarisu". The boundary shown in Ext. A-1 would clearly show that at the time of execution of the partition deed, adverse possession in respect of the property in question had not commenced. The said boundary does not indicate that the plaint B Schedule property, which is described as "tarisu" in the partition deed, was in the possession of the Plaintiff. In 1979, the

Government issued an order to allot the property to the Panchayath and in 1986, the Panchayath paid the necessary sum to the Government. The Panchayat got possession in 1986. The present suit was filed in 1990. In the light of these facts, the Plaintiff has to establish that he had perfected title by adverse possession against the Government or against the Government as well as the Panchayat.

7. The Plaintiff relied on Ext. A-3 receipt dated 16-12-1976 issued in his favour which would indicate that he had paid the prohibitory assessment. This document was relied on by the Plaintiff to show that he is in possession of the property continuously and adversely. Ext. A-3, to my mind, would be inconsistent with the case of adverse possession put forward by the Plaintiff. Prohibitory assessment is payable u/s 8(2) of the Kerala Land Conservancy Act (for short KLC Act). Section 4(1) of the KLC Act defines "occupant" thus: "Occupant" shall mean a person actually in possession or occupation of a land which is the property of Government. "Section 5 of the KLC Act states that it shall not be lawful for any person to occupy a land which is the property of Government, whether a poramboke or not, without permission from the Government as may be empowered in that behalf. Section 7 of the KLC Act provides for punishment for unauthorisedly occupying land which is the property of the Government. Section 8(2) states that any person unauthorisedly occupying a poramboke and liable to pay a fine under Section 7 shall, in addition, be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Collector. Section 11(1) of the KLC Act reads as follows:

11. (1) Liability of unauthorised occupant to summary eviction, forfeiture of crops etc.-Any person unauthorisedly occupying any land for which he is liable to pay a fine u/s 7 and an assessment or prohibitory assessment u/s 8 may be summarily evicted by the Collector, and any crop or other product raised on the land shall be liable to forfeiture, and any building or structure erected or anything deposited thereon shall also if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeiture under this section be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct.

8. To prove adverse possession, one of the necessary ingredients to be established is animus possidendi on the part of the person who claims adverse possession. The required animus must be clear and specific and there should be no attempt at concealment of the animus of the possessor. The Plaintiff having paid the prohibitory assessment, it could not be said that he was having the required animus to possess adversely the Government. Payment of prohibitory assessment is a clear proof of the admission of the title of the Government. Prohibitory assessment itself by the Government is an act of asserting title by the Government. Payment of the prohibitory assessment by the unauthorised occupant amounts to submitting to the right and title of the Government. It cannot be said that the person concerned retains his animus possidendi even after paying the prohibitory assessment. Had the Plaintiff perfected his title by

adverse possession at the time of issuing Ext. A-3, there was no necessity for him to have paid the prohibitory assessment. The plea of adverse possession on the one hand and the plea of permissive possession or any other nature of possession on the basis of any license or permission, on the other, would not go together. Once it is established that possession of the person concerned is attributable to a permission or a license or any other sort of grant or assent, the character of such possession would not turn to be adverse possession, unless the person concerned establishes that he had shed his character under which he was holding the land and started possessing the property adversely with all the necessary ingredients of adverse possession.

9. In Thakur Kishan Singh (dead) Vs. Arvind Kumar, , it was held by the Supreme Court thus:

As regards adverse possession, it was not disputed even by the trial Court that the Appellant entered into possession over the land in dispute under a licence from the Respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the Appellant to establish that it became adverse. 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 the real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession.

In Gaya Parshad Dikshit Vs. Dr. Nirmal Chander and Another, the Supreme Court held:

We find ourselves wholly in agreement with the view taken by the High Court that mere termination of the licence of a licensee does not enable the licensee to claim adverse possession unless and until he sets up a title hostile to that of the licensor after termination of his licence. 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.

In P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, it was held thus:

Inquiry into the starting point of adverse possession i.e. dates as to when the paper-owner got disposed is an important aspect to be considered.

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As has already been mentioned, adverse possession is a right which comes into

play not just because someone loses his right to reclaim the property out of continuous and willful neglect but also on account of possessor's positive intent to dispossess. Therefore it is important to take into account before stripping somebody of his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the paper-owner of the property.

10. It has come out in evidence that the Government as well as the Panchayath were asserting their rights over the property in question. The property was measured, demarcated and identified before handing over possession to the Panchayat. The Panchayath had asserted its possession by positive acts. The Plaintiff never made any attempt to resist such acts of possession. There is nothing to indicate that, at any point of time, the Plaintiff asserted his hostile intention to possess. The required continuity, exclusive possession and animus possidendi are conspicuously lacking in the present case. The Courts below were right in holding that the Plaintiff has not established the plea of adverse possession and that he is not entitled to the discretionary relief of injunction. No other contention is raised by the Appellant. For the aforesaid reasons, I am of the view that the Second Appeal lacks merit and it is liable to be dismissed.

11. At the time of admitting the Second Appeal, an order was passed by me, by which it was observed that in case the Second Appeal happens to be dismissed, the Appellant would be liable to pay profits to the Defendant for the period during which the Second Appeal was pending. In the facts and circumstances of the case, I do not think that the said interim order dated 21-7-2005 should be enforced against the Appellant. The interim order dated 21-7-2005 is vacated. The bond if any, executed by the Appellant in compliance with the order dated 21-7-2005 shall stand cancelled.

The Second Appeal is dismissed. No order as to costs.