

(1950) 03 MAD CK 0012

In the Madras High Court

Case No : Second Appeal No. 877 of 1947

Goteti Ramachandra Rao and Another

APPELLANT

Vs

Kasa Ammiraju and Others

RESPONDENT

Date of Decision : 24-03-1950

Acts Referred:

Limitation Act, 1908 — Article 142

Citation : AIR 1951 Mad 356 : (1950) 63 LW 975 : (1942) 55 LW 975 : (1950) 2 MLJ 551

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : V. Suryanarayana, for the Appellant; V. Parthasarathy, for the Respondent

Final Decision : Dismissed

Judgement

Raghava Rao, J

1. An interesting question of law has been argued in this case before me by the learned counsel for the appellants. The suit out of which the second

appeal arises was instituted by the appellants for recovery of possession of the suit house and site and for recovery of rent. The plaintiffs alleged

that the property in question having been originally purchased by their father was allotted to them at a partition between themselves and their

brothers. They also alleged that defendant 1 was in possession as a lessee under EX. P. 1. The title of the plaintiffs was found by both the Courts

below ; but on the question of the genuineness of Ex. p. 1 they have differed, the trial Court holding that it is genuine, but the appellate Court

holding contra. The Courts below have also differed on the question whether the plaintiffs have proved possession within 12 years prior to suit the

trial Court holding that; they have, but the appellate Court holding that they have not. The suit was decreed by the trial Court, but has been dismissed on appeal

2. It is common ground that when the plaintiff's mother died in 1940 in another house the plaintiffs lived for some time in the suit house. That was

of course with the permission of defendant 1 in whose favour at that time according to the plaintiffs' case EX. p. 1 was in force. The learned

District Munsif and the learned Subordinate Judge on appeal have both held that the possession with the plaintiffs had at the time was with the

permission of defendant 1, although the learned District Munsif has said what the appellate Judge has not accepted that it was as a matter of friendly

or neighbourly obligation that they did so On, the basis of such possession, Mr. Suryanarayana for the appellants contends that the plaintiffs have

proved possession within 12 years prior to suit as required by Article 142, Limitation Act. "Possession", according to learned counsel, must be

taken at its ex facie meaning and ought not to be needlessly limited or qualified. He says that possession howsoever obtained within the statutory

period is sufficient compliance with the requirement of Article 142, no matter whether the obtaining was by force or otherwise. That is true, and

there is ample authority to that effect, of which it is sufficient to mention *Narasayya v. Subbayya*, I. L. R. (1943) Mad. 122 : A. I. R. 1942 Mad.

728. That was a case in which the true owner obtained forcible possession of the property from a trespasser and the Court held that that

possession was quite sufficient to fulfil the requirement of Article 142. No question, however, arose in that case whether where the possession was

obtained with the permission of the trespasser it could be regarded as sufficient compliance with the statute. The passage from Lord Selborne's

judgment in *Lows v. Telford*, (1876) 1. A. C. 414 : 45 L. J. EX. 613 which is quoted at p. 126 of *Narasayya v. Sub-bayya*, I. L. R (1943) Mad,

122 : A. I. R. 1942 Mad. 728 is as follows:

In the case also cited at the Bar of *Jones v. Chapman* (1847) 154 B. R 717: 18 L. J. Ex. 456 it is accurately stated by Maule J. that as soon as a

person is entitled to possession and enters in the assertion of that possession, or, which is exactly the same thing, any other person enters by

command of that lawful owner so entitled to possession, the law immediately

vests the annual possession in the person who has so entered , . . .

And in *Harvey v. Brydges*, (1845) 153 E. R. 546 : 14 M. & W. 437, it is pointed out that so far as relates to the fact of possession and its legal

consequences it makes no difference whether it has been taken by the legal owner forcibly or not.

The words underlined (here italicized) to be found at the end of the passage are emphasised by Mr. Suryanarayana before me in support of his

argument; but this argument unfortunately ignores the words underlined (here italicised) at the beginning of the passage which, in my opinion,

indicate that possession, howsoever, obtained in order to save the bar of the statute must be possession obtained in the assertion of a right to

possession, not as learned counsel would have it with the permission of the wrongful possessor. Mr. Suryanarayana contends that the case of

possession obtained with the permission of the trespasser is for the purpose of the application of the rule relied upon by him, if anything a fortiori to

the case of possession obtained forcibly. It seems to me that on principle this contention is unsound.

3. It is true that in *U.N. Mitra's Limitation and Prescription* vol. 2, Edn. 6 at p. 1686 there is a passage relied upon by learned counsel to the effect

that

the true owner's possession, however, obtained would be possession within the meaning of Article 142, that the law immediately vests actual

possession in that person, and that it makes no difference whether it has been taken by the legal owners forcibly or not.

But then as pointed out at pp. 1683, 1684 and 1687 of the same work :

There is perhaps no legal conception more open to a variety of meanings than possession. Possession is a flexible term not necessarily meaning

occupation. . . . Possession must be accompanied by an intention to possession, since possession involves an *animus possidendi*, i.e., occupation

with the intention of excluding the owner as well as other people. Possession is the occupation of anything with the intention of exercising the right

of ownership in respect of it.

If this legal signification of the word "possession" is borne in mind it in my opinion, follows that the mere fact of physical possession held by the true

owner within the statutory period is not sufficient if it is traceable not to an

animus on his part to exercise it in assertion of his own right but to the sufferance of the person in wrongful possession.

4. In U.N. Mitra's Limitation and Prescription, Edn. 6, vol. I, Tagore Law Lectures, the same point of view is brought out at p. 140 in footnote 4.

It is there stated ;

Possession by the plaintiffs (who set up a title by adverse possession to a strip of land belonging to the defendants) involves an animus possidendi

i.e., occupation with the intention of excluding the owner as well as other people .Per Lindley, M. R. in Littledale, v. Liverpool College, (1900) 1

Ch. 19 : 69 L. J. Ch. 87.

Then, citing Hunter's Roman Law, p. 209, it is further stated that "possession is the occupation of anything with the intention of exercising the right

of ownership in respect of it.

5. Then again at p. 151 in enunciating the proposition that dispossession within the statute ought to be by means of unequivocal acts the author

points out :

It was held in the Privy Council in Van Dlemen's Land Co. v. Table Cape Marine Board, (1906) A. C. 92 : 75 L. J. p. C. 28 that the

construction of a jetty over a part of the disputed land and giving a lease of the jetty to a third person was, in the absence of any evidence of such

severance of interest as might in law lead to such acts being regarded as evidence only of an easement, clearly evidence of seisin in the locus guo.

Erecting gates and locking them, or doing other equivocal acts on a strip of land over which one has a right of way, with the intention of protecting

such right from invasion by the public, does not amount to a dispossession of the servant owner. To dispossess such owner the land must be

occupied with the intention of excluding him as well as other people."" Reference is then made to Little dale v. Livarpool College, (1900) 1 Ch. 19 :

69 L. J. Ch. 87 and it is further observed, noting Muniappan v. Muppil, 21 Mad. 169 that

possession will not generate a prescriptive right to property unless it is a possession to hold exclusively and as owner.

6. In the light of the foregoing--a part of which, it may be, has reference to adverse possession which is not strictly material to the case on hand but

only affords assistance by way of analogy,--I have arrived at the unhesitating conclusion that the learned Subordinate Judge on appeal was right in

holding that the kind of possession had by the plaintiffs in the present case within 12 years before suit is not such as satisfies the statute.

7. The second appeal is accordingly dismissed with costs. No leave.