
(2002) 09 MAD CK 0087
In the Madras High Court
Case No : S.A. No. 963 of 1990

Habeeba Ammal

APPELLANT

Vs

Sri Balaji Pandithar Chatram Adiramapattinam

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Evidence Act, 1872 — Section 114

Transfer of Property Act, 1882 — Section 11, 11(1), 13

Citation : (2002) 09 MAD CK 0087

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : A.J. Abdul Razak, for the Appellant; S. Vijayaraghavan, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—The only point that has to be decided in this second appeal is, whether the defendants/appellants have prescribed for title

by adverse possession the title having been found in favour of the respondent/plaintiff by both the Courts below. The substantial questions of law

framed for decision in the second appeal are as follows:

1. Whether the decision of the lower appellate Court reversing the finding of the trial Court on the question of adverse possession is valid in law?

2. Whether the title of the respondent to the land would survive when the title to the superstructure on the said land was found to be in favour of

the appellant by adverse possession?

2. The case of the plaintiff is as follows:

The suit property is an extent of 2 cents out of 18 cents in S.No.264/2 in the suit village. As per the provisions of Act 30/63, the plaintiff was

granted patta. While so, the first defendant committed trespass upon the suit property in January 1977. Though the trustee of the plaintiff/chatram

called upon the first defendant to vacate the property, the first defendant continued to occupy the same. The plaintiff caused a notice to be issued

to the second defendant on 18.1.1980, calling upon him to remove the superstructure put up in the suit property and also to pay Rs.1,800/-

towards damages for use and occupation. The reply denied the ownership of the plaintiff. In these circumstances, the suit came to be filed for

declaration and damages for use and occupation. While so, the fourth defendant claiming to have purchased the property on 21.3.1985 filed

I.A.No.693/1985 for getting impleaded as a party and she was accordingly impleaded. The defendants were liable to pay damages at the rate of

Rs.10/- from 1.8.1977 till 1.7.1980 for 35 months in all Rs.350/-.

3. The first defendant filed a written statement, as follows:

G.Ramarao, who purported to represent the plaintiff, was removed by Government Notification bearing No.1700, dt.18.4.1974 from hereditary

trusteeship. He could not represent the plaintiff and file the suit. There was an earlier suit filed by the plaintiff claiming title. That was dismissed. The

appeal therefrom filed before the Subordinate Court was also dismissed. There was no cause of action for the suit. The first defendant's wife

purchased the suit property in 1972 from one Ranjitham Ammal. Even before such purchase, for twenty years and more, buildings had been put up

in the suit property. Ranjitham Ammal's predecessors were in possession and enjoyment. The first defendant continued to be in enjoyment. He

had also been paying property tax. He had prescribed for title by adverse possession. The suit property was a minor inam and the person in

possession alone was the owner of the property. Even if the site belonged to the plaintiff, the superstructure belonged to the first defendant. There

was no trespass in 1977 as alleged.

4. The second defendant adopted the written statement of the first defendant.

5. The third defendant filed a written statement, as follows:

The superstructure in the suit property belonged to one Peter Emmanuel from whom Ranjitham Ammal purchased it on 21.9.1970. From her, the

second defendant purchased it on 25.2.1985. After the purchase, she had been in possession and enjoyment by letting it out on rent. On 4.8.1981

the third defendant had purchased it under a registered document for a valuable consideration. He let it out to one Syed Mohammed on

12.10.1981. This defendant's predecessors paid all taxes. In any event, the defendants had prescribed for title by adverse possession. The suit was barred by limitation.

6. The fourth defendant reiterated the contents of the third defendant's written statement.

7. On the above pleadings, the trial Court framed the necessary issues and on the oral and the documentary evidence found that the plaintiff had

been given patta for the suit property and it belonged to the plaintiff/chatram, that G.Ramarao was competent to maintain the suit on behalf of the

chatram, and there was a stay order in the High Court in respect of his removal from the suit property, that the site alone belonged to the

plaintiff/chatram, that the defendants had prescribed for title by adverse possession, and that they had every right to tack on the possession of their

predecessors. So holding by judgment and decree dt.4.8.1986, the trial Court dismissed the suit. However, on appeal by the plaintiff in

A.S.No.17/1989, the learned Subordinate Judge, Pattukkottai reversed the decision of the trial Court, allowed the appeal and decreed the suit by

judgment and decree, dt.15.3.1990. It is as against that, the present second appeal has been filed.

7. In para 14 of its judgment, the lower appellate Court has given the reasons for holding against the case of the defendants that they had

prescribed for title by adverse possession; the suit came to be filed in 1980; Ranjitham Ammal sold to the second defendant under Ex.B.1 on

25.8.1972 the middle portion out of 18 cents in S.No.264/2; it is shown therein that there is a hut bearing No.8-A; it is stated in Ex.B.1 that on

21.9.1970 Ranjitham Ammal had purchased it from one Peter Emmanuel, but that document has not been filed in the Court; as to from whom

Peter Emmanuel purchased the property and as to the manner in which the vendor was entitled to the property, no documents have been

produced; the second defendant mortgaged the property under Ex.B.2 on 17.9.1980; endorsement of discharge is Ex.B.3; from Ex.B.4 it is seen

that on 12.1.1981 the second defendant sold the property to the third defendant; in the sale deed, he has stated that three cents of land together

with the house bearing No.8 have been sold and the survey number is given as 264/2-C; no document is filed in support of the sub-division; no

patta has been granted to the defendants; in Ex.B.4 an extra one cent is included; on 21.3.1985, the third defendant sold the property to the fourth

defendant under Ex.B.5; the survey number is given as 264/2; no sub-division number is given; from Ex.B.6 it is seen that the second defendant

had been paying the tax for the period between 1971-1982; he had purchased it only in 1972; but there is no material to show that prior to his

purchase, the property was assessed in the name of Ranjitham Ammal; Ex.B.7 is a tax receipt pertaining to the year 1986 and it is in the name of

the fourth defendant; the suit came to be filed on 28.7.1980; for claiming adverse possession, the defendants should prove their continuous

possession from 1968; absolutely, no document is produced prior to 1972; one Veda Amirtham, who was the then Town Panchayat Junior

Assistant of Adhiramapattinam, was examined as D.W.2; he has spoken to the fact that summons was received by the panchayat for production of

the house tax demand register for the period 1960-1971, that the register was not available in their office, and that even the structure available is in

a damaged condition; thus, there is nothing to show that prior to 1972 the defendants' predecessors were in possession; if really the defendants'

were in possession prior to 1972, patta would have been issued in their names; Ex.A.1 patta is dated 13.7.1966; the defendants' predecessors

had not taken any steps whatsoever to claim patta as per the provisions of Act 30/1963; on the date patta was granted in 1976, there were no

buildings in the suit property and it was a vacant site; u/s 13 of Act 30/1963, in case there are buildings in a property, the owner of the building

alone will be given patta; and it has been so laid down in THE STATE OF TAMIL NADU v. DHANASEKARAN 1993 LW 207. In these

circumstances, the lower appellate Court has held that the case of the defendants that the patta had wrongly been issued, in respect of the suit

property, in the name of the plaintiff could not be accepted, and that the defendants had not established their continuous possession of the suit

property for over 12 years to prescribe for title by adverse possession.

8. Mr. A.J.Abdul Razak, learned counsel for the appellant, submitted as follows:

The plaintiff has averred in the plaint that the trespass was in 1977 and in the

cause of action para in the plaint it is also specifically mentioned so,

but the finding by the lower appellate Court is that the trespass was in 1971, and in these circumstances the plaintiff is not entitled to any relief.

Further, under Ex.A.1 the order granting patta under Act 30/63 cannot be a valid one in as much there is a fusion of Section 11(1) of the Act and

Section 13 of the Act. u/s 13, in respect of building the occupier of the building will be entitled to patta, and the plaintiff has been given Ryotwari

patta in the instant case which cannot be valid. The decision of the Supreme Court in THIRUGNANASAMBANDAM CHETTIAR v. THE

SETTLEMENT TAHSILDAR, COIMBATORE 1996 (1) LW 19 would also fortify the stand now taken, wherein it has been held that dual

estate is conceived of in the scheme of Section 13 that is to say the building may belong to one and the site to another that it is not necessary that

both the site and the building should belong to one and the same person so as to derive the benefit of Section 13 with effect from the appointed

day.

9. The learned counsel also wanted to rely on the orders passed by this Court in W.P.No.6580/1986 and 9925/1987, and in W.A.Nos.80/93 and

1314/94 which, according to him, would clearly prove that the question is left open and the effect would be to have a re-look with regard to

Ex.A.1 in the instant case. The learned counsel particularly submitted that the possession of the earlier vendors under the various documents should

be tacked on to the possession of the fourth defendant, who purchased the property in 1981, and if this was done, it would clearly establish

adverse possession, as claimed by the defendants.

10. Per contra, Mr. S.Vijayaraghavan, learned counsel for the respondent, submitted as follows:

The appellant has not proved her possession for full 12 years prior to the filing of the suit in 1980, that at the most the possession only from 1971

till 1980 has been established, and that would not entitle her to claim adverse possession. So far as, Ex.A.1 is concerned, there was public notice

as envisaged under the rules and if really anybody had been in possession of any superstructure at the time the proceedings under Act 30/63 were

initiated, the person concerned should have appeared at the enquiry and made good his/her case. When patta had been granted to the

plaintiff/chatram under Ex.A.1, it would not be open to the fourth defendant to re-agitate the question at this stage. Her claim was based on title and the title of her vendor was not established.

11. As regards the orders passed in the writ petitions and the writ appeals, the learned counsel submitted that the subject matter of the writ petitions and the writ appeals was only an extent of 21 cents as against 9.48 acres in S.No.318/2 (pro), in respect of which Ex.A.1 had been granted, and so far as the present suit property is concerned, that relates to S.No.264/2 - 18 cents and no reliance can be placed on the orders passed in writ petitions and writ appeals. The writ petitions and the writ appeals, in the submission of the counsel, should be confined only to 21 cents in S.No.318/2 (pro).

12. So far as adverse possession is concerned, as rightly found by the lower appellate Court, the 4th defendant has not proved possession either with herself or her predecessors prior to 1971. The suit came to be filed in 1980. The possession adverse to the interest of the plaintiff/chatram should have been proved from 1968. The fourth defendant has failed to establish that. The reasons given by the lower appellate Court are absolutely correct and no interference at all is called for.

13. As regards the fusion of Sec.11 and Sec.13 of Act 30/63, in my view, it is not open to the fourth defendant to raise the question at this stage.

Even otherwise, Ex.A.1 was preceded by public notice as enjoined by the rules. Section 114 of the Evidence Act says that judicial and officials

Acts must be presumed to have been regularly performed. We cannot, therefore, assume without any basis that there was no proper notice during

the proceedings under Act 30/63. So far as the reliance placed by the learned counsel for the appellant on the orders passed in the writ petitions

and writ appeals is concerned, as pointed out by the learned counsel for the contesting respondent the writ proceedings relate only to 21 cents in

318/2 (pro) out of 9.48 acres and they cannot invalidate or set at naught the effect of Ex.A.1 proceedings in respect of the suit property, which is in S.No.264/2.

14. In view of the discussion above, I hold that there are no merits in the second appeal. The substantial questions of law are answered against the appellant. The second appeal fails and the same is dismissed. No costs.