

(1950) 12 KL CK 0001

In the High Court Of Kerala

Case No : Second Appeal No. 193 of 1123

Janaki Amma Parukutty Amma

APPELLANT

Vs

Chacki Kunjipennu and Others

RESPONDENT

Date of Decision : 21-12-1950

Acts Referred:

Citation : AIR 1950 Ker 246

Hon'ble Judges : V.S. Subramanya Iyer, J

Bench : Single Bench

Advocate : S. Boothalingom Iyer, for S. Sankara Iyer, for the Appellant;

Final Decision : Allowed

Judgement

Subramonia Iyer, J.—This second appeal is by Defendant 1. Respondent 1 in A. S. 51 of 1119 on the file of the District Judge of Alleppey who, by his judgment and decree dated 29th Edavom 1121, reversed the judgment and decree of the District Munsiff, Haripad dated 21st Kumbhom 1118 in O. S. 676 of 1111. The suit related to 20 cents of paramba in Survey No. 3512/B Muthukulam Pakuthy (the name given to a revenue division in the Travancore area). Schedule A to the plaint comprises the entire extent. The relief claimed in respect of this property is relief A in the plaint which is for a declaration that Defendant 1 who obtained mutation of registry in his name by order 1768 of 1110 would not operate to create any right in his favour and for further declaration of title of the Plaintiffs and Defendant 2 who is a member of the Plaintiff's family, to the property, There is another schedule (Schedule B) to the plaint which comprises 5 cents from out of the 20 cents included in Sch. A lying at the southern end of it. Regarding this the plaint alleges trespass by Defendant 1 with the help of the second, in Kumbhom 1111. The relief claimed in respect of this is relief B in the plaint which is for record very of possession with past and future means profits from Defendant 1. Reliefs C and D in the plaint relate to costs and consequent reliefs. The Plaintiffs trace their title to the property from one Kuttiyl tarwad. Defendant 1 denied the plain tiff's title to the property and the trespass alleged in respect

of a part of it and claimed title to and possession of the entire property in his own right, tracing his title to one Pattani. Issue No.1 framed in the case is as follows:

(1). To whom did plaintiff item belong to the Kuttiyil tarwad as alleged in the plaint or to the Pattani as contended in para. 10 of the written statement of Defendant 1?

The learned Munsiff, on the basis of the Settlement Register, Ex. G and on the basis of the principle that in the case of puduval lands (that is, lands not covered by previous registry in the Revenue records and therefore at the disposal of the State), patta may be taken as proof of title, recorded a finding thus: "I find that the plaintiff property belonged to the Kuttiyil people." The learned Munsiff proceeded to consider the other issues in the case in paragraphs 7 and 8 of the judgment and after a careful and detailed consideration of the oral and documentary evidence in the case came to the conclusion that the case set up by Defendant 1 as regards title to and possession of the property is true. As regards the documents or title relied upon by the Plaintiffs, viz., EXS. A to D, the learned Munsiff came to the conclusion that though they contain mention of the Survey Number 3512/B, the property really dealt with therein is not the property represented by that survey number but is one that lies to the south of it and that the northern boundary Chankilathu Vaka purayidom mentioned in those documents is the disputed property, that is, survey No. 3512/B which belongs to Defendant 1 who is a member of the Chankilathu family. The learned Munsiff concluded the discussion thus: "On an anxious consideration of the evidence and circumstances in the case I find that the Kuttiyil people and the Plaintiffs were never in actual possession and enjoyment of the plaintiff property and that their title to the plaintiff property has been lost by the adverse possession of Defendant 1 and her predecessors in title." On this finding the learned Munsiff dismissed the suit.

2. The Plaintiffs appealed to the District Court of Alleppey and the learned District Judge who disposed of the appeal quoted paras. 1 to 4 of the Munsiff's judgment and posed the question for consideration in para. 3 of the judgment as follows:

3. The only question that arises for determination in this appeal is whether as contended by Defendant 1 he has been in possession of the plaintiff properties from 1072. Exhibits A. to D are the Plaintiffs' sale deeds. Defendant 2 and Plaintiffs 2 to 6 are the children of Plaintiff 1, The patta to the property issued in Plaintiffs' favour is Ex. G, the patta No. being 763. The learned Munsiff has on the strength of Exs. A to D and G, found title with the Plaintiffs. This finding has not been impeached by the Respondent-Defendant 1. He had contended, on the strength of a court sale, Ex. IV in his favour that the plaintiff property had been in possession so that he must be deemed to have been in possession of the plaintiff items adversely to the Plaintiffs. This contention found favour with the learned Munsiff who consequently dismissed the suit. Possession generally follows title. It becomes therefore imperative to consider whether Defendant 1 has clearly

established her possession from 1072.

3. We are constrained to remark that the mode of approach to the question followed by the learned District Judge is improper. The learned Judge is wrong in stating that the learned Munsiff has, on the strength of Exs. A to D and G, found title with the Plaintiffs and that that finding has not been impeached by the Respondent-Defendant 1. There is no such finding at all by the learned Munsiff in order that any such finding may be impeached. What the learned Munsiff found was merely that the title "belonging" to the Kuttiyil people and that finding was based upon and merely upon the registry in the Settlement Register, Ex. G. The learned Munsiff further found, as already observed, that Defendant 1 and her predecessor-in-title were in possession uninterruptedly from at least the year 1070, with the result that whatever title the Kuttiyil people, once had, became lost to them on account of adverse possession. The learned Judge does not proceed to consider the question of title of the Kuttiyil people independently, but rests content with thus confirming the conclusion which he imagined the learned Munsiff had come to. Starting from this view of title of the Kuttiyil people, the learned Judge propounds the proposition of law "possession generally follows title" and starts the enquiry with his observation "it becomes therefore imperative to consider whether Defendant 1 has clearly established her possession from 1072". The maxim "possession follows title" is limited in its application to property which, of its very nature, has not been subjected to or would not admit of actual and exclusive occupation as in the case of unenclosed open spaces accessible to all alike, jungles, forest tracts, or lands under water. In the case of property which admits of, and according to the case of parties has been the subject of, actual exclusive occupation; the principle may also come up for application, but only in cases where it has been proved that the person having the title was once in actual possession and the application of the principle is based on the presumption of the continuance of that possession (See *Hardut Bay Chamaria & Co. v. Ujir Shaikh* AIR 1923 Cal. 765). In this case the finding recorded by the learned Munsiff to the effect that the Kuttiyil people were never in actual possession of the property is amply justified by the evidence in the case and the learned District Judge has not considered the question at all. Relevant evidence, both oral and documentary was placed before us and we are in agreement with the conclusion come to by the learned Munsiff who examined P. Ws(SIC) 3 and 4 and all the Defendants witnesses and with the advantage of seeing them in the box recorded her acceptance of the evidence adduced on behalf of Defendant 1 in preference to that adduced on behalf of the Plaintiffs. (After discussing the facts and evidence in the case, the judgment proceeded:) It is not necessary for us to refer in more detail to the facts and evidence in the case. We consider that the judgment and decree of the learned District Judge in A. S. 51 of 1119 cannot be supported which is therefore reversed and the decree passed by the learned Munsiff restored. We allow the second appeal with costs throughout.