

(1933) 09 MAD CK 0020
In the Madras High Court

Palaniappa Chetty and Others

APPELLANT

Vs

M.P.N.Rm. Raman Chetty and Others

RESPONDENT

Date of Decision : 21-09-1933

Acts Referred:

Citation : AIR 1934 Mad 183 : (1934) 39 LW 161

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The suit relates to a plot of land known as the Thattan Punja. There were two brothers, Sevuga and Muthuvadugu. The plaintiffs' predecessors, in-interest purchased Muthuvadugu's interest in the plot, under a sale-deed executed by him, namely Ex. A, dated 7th September 1903. The plaintiffs' case is that the land in question belonged to the joint family consisting of Sevuga and Muthuvadugu and what passed to their predecessors in-interest is the half share of the younger brother Muthuvadugu. On that footing they claim a partition of that plot. The defendants had purchased previously from Sevuga in 1894 what purported to be the whole property. In support of their case that they acquired by the sale the entire land, they put forward two contentions. First, there was a partition before the date of their purchase between the brothers and the suit land fell to the share of Sevuga. They seem to have put forward an alternative case at the trial, that in any event Sevuga became the full owner by reason of a release deed, Ex. 11 of the year 1889, under which Muthuvadugu gave up his interest in favour of Sevuga. The District Munsif found against the partition as well as the genuineness of Ex. 11, the alleged release deed ; but on the ground that the sale under which the plaintiffs claim was a sham transaction, he dismissed the plaintiffs' suit. He also held that in any event the defendants acquired title by adverse possession.

2. In appeal the learned Subordinate Judge has found, disagreeing with the District Munsif, that the sale deed, Ex. A, in favour of the plaintiffs' predecessors in-interest, represents a genuine transaction. His finding on this

point is a question of fact and there is no ground shown for my interfering with it. As regards the partition alleged by the defendants, the learned Subordinate Judge has not dealt with the point; but in the memorandum of appeal no ground is taken in regard to this and I therefore cannot deal with it. As regards the release deed, the learned Judge has also failed to deal with that question-But having myself gone through the evidence u/s 103, Civil P.C., I have come to the conclusion that the District Munsif's opinion is right.

3. Then remains the question Of adverse possession. The lower appellate Court holds that it has been a piece of waste land and it has not been proved that defendants have been in adverse possession. The defendants paid Rs. 100 for this plot of land in 1894 and the amount paid in 1903 by the plaintiffs' predecessors for the half-share is Rs. 50. There can be no doubt that the plaintiffs or their predecessors did not exercise any acts of ownership in regard to this plot, which, as I have shown, was a piece of waste land of trifling value. But the land seems to have recently risen much in value, and that accounts for the dispute in regard to the plot in the present action. The Subordinate Judge observes thus:

I am clearly of opinion that the theory of possession set up by the respondents is false, in a case of property like the plaintiff property overgrown with aloes and Kall plants, possession" would follow title.

4. Apart from this, it is a settled doctrine that in order to establish adverse possession as between co-sharers, there must be evidence of an open assertion of a hostile title by one of them to the knowledge of the other ; in other words, his possession must amount to what is described in law as an ouster of the other co-sharers. But Mr. T.M. Krishnaswami Iyer, the learned Counsel for the appellants, contends that that doctrine has no application where the property has by alienation passed to a stranger. True, but the alienee must show that he took possession of the property. If possession is delivered to the purchaser, his possession is no doubt adverse to the other co-sharers from the moment of his entry. *Bhavrao v. Rakhmin* (1899) 23 Bom 137, and *Muniswami Reddi v. Govindaswami Naicken* AIR 1922 Mad 369. That very element is wanting in the present case. There is no evidence to show that the-defendants took open and public possession of the property. I must therefore hold, agreeing with the lower appellate Court, that the defendants have not made out their case of adverse possession. In the result the second appeal fails and is dismissed with costs.

5. There is one matter however which it is necessary to clear up. The appellants point out that the decree of the lower appellate Court, on account of its wording, is likely to give rise to trouble. The plaintiffs in their plaint claimed an extent of 2i kurukkams, but later on confined their claim to 1-7/16 kurukkams. This is pointed out by the District Munsif in para. 9 of his judgment. In the closing lines of that very para, graph he indicates clearly what the property is in respect of which he has passed the decree. The respondents concede that the description given there is correct. I am adding this remark in my judgment in order to

prevent any future disputes.