

(2017) 12 MAD CK 0004
In the Madras High Court
Case No : 409 of 2002

Suryamurthy (Died) & Ors

APPELLANT

Vs

D.Mohamed Yasi Maraicoir (Deceased) & Ors

RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Citation : (2017) 12 MAD CK 0004

Hon'ble Judges : M.Duraiswamy

Bench : SINGLE BENCH

Advocate : M.Duraiswamy

Final Decision : Disposed Off

Judgement

1. The above appeal arises against the judgment and decree passed in O.S.No.25 of 1999 on the file of the Additional District Court, Karaikal.
2. The 1st defendant is the 1st appellant, who died during the pendency of the appeal and his legal representatives were brought on record as the appellants 2 & 3. The respondents 1 to 12 are the plaintiffs 1 to 12. The 13th respondent is the 2nd defendant in the suit. The 7th respondent had died during the pendency of the appeal and his legal representatives were brought on record as respondents 14 to 16. The 1st respondent/1st plaintiff also died during the pendency of the appeal and his legal representatives were brought on record as the respondents 17 to 22.
3. The plaintiffs filed the suit in O.S.No.25 of 1999 for declaration, for recovery of possession and for mesne profits.
4. The brief case of the plaintiffs is as follows:
 - (i)According to the plaintiffs, the suit property, which is a small part of a large extent of an Estate known as Pana.Ena.Pannai in

Keezhakasakudi Village. This Estate was inherited by two brothers P.E.Thaha Maricar and P.E.Mohamed Maricar, until the death of

the elder of the two P.E.Thaha Maricar and the property was not divided between them. The property was possessed and managed

by the owners jointly and through Pannai Kariasthar.

(ii) On 31.12.1973, under a registered Deed of Partition, the legal representatives of P.E.Thaha Maricar and P.E.Mohamed Maricar

partitioned the property and took separate possession of the properties allotted to them in the said Partition Deed. Subsequently, the

Nanja lands that fell to the share of P.E.Thaha Maricar were partitioned amongst the daughters and sons. By a Deed of Release

dated 13.09.1991, three daughters of P.E.Thaha Maricar released their rights in the property in favour of their brothers, through their

mother Zoharan. The suit property was enjoyed by the owners by permitting the Kariasthar and those who work under them to

occupy the portions. The licensees were occupying the properties at the pleasure of the owners and rendering some kind of service to

the owners.

(iii) The entire extent of suit property is 36 kuzhis, out of which, 11 kuzhis on the Northern side is being occupied by one Ganesa

Asari under the lease and license from the plaintiffs. The remaining extent of 25 kuzhis, which is the suit property, was allowed to be

used by one Devadass Pillai about 50 years ago. The said Devadass Pillai was working with the Pannai for a large time. The 1st

defendant is the relative of Devadass Pillai. After the death of Devadass Pillai, the 1st defendant is occupying the property. The 2nd

defendant is related to the 1st defendant. Both the defendants are in occupation of the property for a long period and they had always

recognised the title and ownership of the plaintiffs over the suit property. The patta stands in the name of the plaintiffs.

(iv) The 1st defendant filed a suit in O.S.No.327 of 1995 on the file of the Principal District Munsif Court, Karaikal for recovery of

possession against the 2nd defendant. The suit was decreed on 20.12.1996 and the appeal was also dismissed in favour of the 1st

defendant. The defendants are not legitimate owners of the property. By notice

dated 11.10.1997, the plaintiffs terminated the license

and called upon the defendants to vacate the suit property. The 1st defendant sent a reply on 03.11.1998. Devadass Pillai never did

any act adverse to the interest of the plaintiffs. In these circumstances, the plaintiffs filed the suit.

5. The brief case of the 1st defendant is as follows:

(i)According to the 1st defendant, he is in long and continuous possession of the suit property and prescribed title by adverse

possession. According to the 1st defendant, Devadass Pillai is his father's brother. The mere fact that the said Devadass Pillai was

working in the Pannai cannot establish ownership with the plaintiffs. The said Devadass Pillai enjoyed the suit property without any

protest by the alleged owners. After the death of Devadass Pillai in the year 1972, the defendant continues to enjoy the suit property

in his own right living in the house with his family. The defendant by himself became the owner of the suit property by long and

continuous possession for over 28 years subsequent to the death of Devadass Pillai.

(ii)The 1st defendant filed a suit in O.S.No.327 of 1995 against the 2nd defendant for evicting him from a portion of the suit property.

The plaintiffs and their predecessors have slept over the right for over 58 years and thus, they have lost their right. There is no licence

at all, hence, there cannot be any revocation of the license. The findings given in O.S.No.327 of 1995 is binding on the plaintiffs. In

these circumstances, the 1st defendant prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiffs, 3 witnesses were examined and 5 documents, Exs.A1 to A5 were marked. On the side of the

1st defendant, he was examined as D.W.1 and 13 documents, Exs.B1 to B13 were marked. The trial Court, after taking into consideration the

oral and documentary evidences let in by both the sides, decreed the suit. Aggrieved over the judgment and decree of the trial Court, the 1st

defendant has filed the above appeal.

7. Heard Mr.M.S.Velusamy, learned counsel appearing for the appellants and Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the

respondents 2 to 6, 8 to 12, 14 to 22.

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen

that there is no dispute with regard to the title of the plaintiffs' predecessors. According to the plaintiffs, one Devadass Pillai, who was their

Kariasthar was allowed to occupy the suit property as a permissive occupant and in turn, he allowed the 1st defendant to occupy the suit property

as a permissive occupant. The 2nd defendant was put in possession of a portion of the suit property by the 1st defendant and subsequently, by

virtue of the decree passed in O.S.No.327 of 1995, he took back the possession from the 2nd defendant.

9. The contention of the plaintiffs is that the 1st defendant is occupying the premises as a licensee and therefore, they are entitled to get back the

possession from him. The 1st defendant contended that he is in continuous possession and enjoyment of the suit property since 1972 and

therefore, prescribed title by adverse possession. Therefore, the issue that has to be decided is whether the 1st defendant is a licensee or he had

prescribed title by adverse possession?

10. So far as the suit filed by the 1st defendant in O.S.No.327 of 1995 against the 2nd defendant is concerned, it was filed by the 1st defendant

for recovery of possession. The suit was decreed and the appeal preferred by the 2nd defendant was also dismissed. Admittedly, the plaintiffs are

not parties to the said suit. That being the case, the findings given in the said proceedings are not binding on the plaintiffs in any manner whatsoever.

11. On a perusal of the evidence of D.W.1, it could be seen that the 1st defendant had deposed that in the year 1941, Devadass Pillai was

inducted as a Kariasthar in the Pannai and that he is a close relative of the said Devadass Pillai. Further, D.W.1 has stated that when he was six

years old, in the year 1949, he came to Devadass Pillai's house and he is residing in the said place since then. Further, he has specifically stated

that he stayed in the suit property with Devadass Pillai for his education and he continues to be in possession of the suit property in the same

capacity. D.W.1 has also stated that he was not aware of the Release Deed executed by the plaintiffs' sisters. He has also stated that he is not in

possession of the property, adverse to the rights of the owners of the suit property.

12. On a reading of the evidence of D.W.1, it is clear that he has deposed that his possession is not adverse to the rights of the real owners and he

was inducted into possession of the suit property by Devadass Pillai in the year 1949. He has also stated that he continues to be in possession of

the property in the same capacity as he was put in possession of the property in the year 1949.

13. From the evidence of D.W.1, it is also clear that the owners of the suit property have permitted Devadass Pillai to occupy the suit property

since he was doing Kariasthar job in the Pannai. Devadass Pillai's brother's son is the 1st defendant. For the purpose of education, the 1st

defendant stayed with Devadass Pillai, since Devadass Pillai had no issues. Therefore, the possession of 1st defendant should also be construed as

a permissive occupation and he himself admitted that he continues to be in possession of the suit property in the same capacity.

14. Unless the possession of a party is adverse to the rights of the real owners, the plea of adverse possession should not be accepted.

15. In the present case, D.W.1 has stated that his possession is not adverse to the real owners and that he is also not thinking so. The plea of

adverse possession should be pleaded and proved by the 1st defendant by adducing oral and documentary evidences. Though the 1st defendant is

in possession of the property for a long time, his possession is not adverse to the plaintiffs. In the absence of any evidence with regard to the plea

of adverse possession, the trial Court has rightly decreed the suit. The plaintiffs, by examining P.W.1 to P.W.3 and producing Exs.A1 to A5

proved their title and that they are entitled for possession of the property. The trial Court has rightly decreed the suit.

16. In these circumstances, I do not find any ground to interfere with the judgment and decree of the trial Court. The appeal is liable to be

dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.