(1986) 07 KL CK 0049

High Court Of Kerala

Case No: S.A. No. 684 of 1980

K.P. Parameswaran Pillai and Others		APPELLANT
	Vs	
Parvathy Amma Gourikutty Amma and Another		RESPONDENT

Date of Decision: July 26, 1986

Citation: (1985) KLJ 54

Hon'ble Judges: P.C. Balakrishna Menon, J

Bench: Single Bench

Advocate: T.S. Venkiteswara Iyer and P.K. Balasubramonian, for the Appellant; K. Ravi Varma Thampan, P.K. Joseph and U.K. Gopalakrishna Pillai, for the Respondent

Final Decision: Dismissed

Judgement

P.C. Balakrishna Menon, J.

Even though notice was ordered on all the questions of law (A) to (G) formulated in the memorandum of second appeal filed by defendants 1 to 4, counsel for the appellants has pressed only three questions before me relating to (1) the identity of the suit property, (2) adverse possession and limitation, and (3) the plaintiff''s entitlement to the profits deposited in the trial court by the receiver appointed in a previous suit, and continued in the present suit. The suit is for recovery of possession of property 49 cents in extent Sy. No. 125/3A on the strength of the plaintiff''s title with mesne profits. The suit was resisted by defendants 1 to 4 who denied the plaintiff''s title and set up title in themselves as per a court auction sale in O. S. No. 219 of 1965 and purchase by them. There was an earlier suit O. S. No. 91 of 1964 by the plaintiff against the same defendants for an injunction restraining them from interfering with the plaintiff''s possession of the suit property. That suit was filed on 11-3-1964. A receiver was appointed in that suit to manage the suit property and deposit the profits in court. That receiver is even now in possession of the suit property and is the 5th defendant in the present suit. O. S. No. 91 of 1964 was

dismissed by the trial court as per its judgment Ext. B4 dated 12-12-1967 on the finding that the plaintiff has failed to prove her possession of the property on the date of that suit. The decision in Ext. B4 was confirmed in appeal by the lower appellate court and in second appeal by this court. Ext. B5 is the judgment of the lower appellate court and Ext. B6 is the judgment in second appeal. It was after the dismissal of the second-appeal that the plaintiff filed the present suit on 12-3-1971 for declaration of her title and for recovery of possession of the suit property. The plaintiff claims also a decree permitting him to withdraw the profits deposited by the 5th defendant -receiver in the earlier suit, and also during the pendency of the present suit. The 5th defendant-receiver appointed in the earlier suit was allowed to continue in possession of the property during the pendency of the present suit. He is in possession of the property and had been depositing the profits in the trial court. The profits from the property accrued ever since the institution of the prior suit are in deposit in the trial court. The 5th defendant-receiver continues to be in possession of the property until this day.

2. The trial court dismissed the suit to the finding that the plaintiff has failed to prove her title to the suit property, The lower appellate court has reversed the decision of the trial court and has decreed the suit for recovery of possession with profits deposited by the 5th defendant-receiver during the pendency of the injunction suit and the present suit. It is against this that defendants 1 to 4 have come up in second appeal.

3. The finding of the lower appellate court on the question of title is a finding on a question of fact. It is nevertheless, attacked on the ground that the lower appellate court has not followed the correct principle of law in the matter of identification of property. Counsel relies on the decision of a learned single Judge of this Court in Velu v. Padmavathy Amma reported, in 1983 KLN Case Notes p.38 Case No. 39. In the said decision the learned Judge states as follows:

Sometimes the various descriptions given in a document or decree may be in conflict with each other. In such a case, the court is called upon to adjudicate on the identity of the exact plot intended to be dealt with in the document or decree. No doubt, the court will at first try to reconcile the various descriptions. If that be not possible, one or more of the descriptions may have to be rejected and the other decision rested only on the other description or descriptions. When one of the descriptions is vague and uncertain and another description is definite and certain, the latter may be preferred. If none of the descriptions is vague or uncertain, that description which is more certain and stable and least likely to have been mistaken or inserted inadvertently must be preferred if it sufficiently identified the subject-matter of the transaction and the other descriptions must be rejected as erroneous or inaccurate. This is not a rule of law and therefore is not inflexible in character it is a mere rule of construction which appears to be safe and almost an infallible guide.

On the basis of these observations by the learned Judge counsel for the appellants submits that when the documents of title produced by the plaintiff show the side measurements of the property dealt with, the same should be taken as more precise for the purpose of identification of property rather than other factors such as description, survey number, boundaries etc. I am not able to accept this argument. I do not also see that the observations of the learned Judge quoted above are to the effect that in the matter of identification of property described by the name of the property, its area, survey number and boundaries and also the side measurements, identification should rest entirely on the side measurements ignoring the other relevant matters. Headnote (a) in the decision of the Privy Council in P. K. A. B. Co-op. Society v. Govt. of Palestine reported in AIR (35) 1948 P. C. 207 summarises the principle laid down in paragraph 7 of the judgment as follows:

In construing a grant of land a description by fixed boundaries is to be preferred to a conflicting description by area. The statement as to area is to be rejected as falsa demonstratio.

The same principle is laid down by this Court in the decision in Kumaran Krishnan v. Ulahannan Mathai reported in 1957 KLT 42. If the property dealt with in the documents of title produced by the plaintiff is identified with reference to its description, area, survey number and boundaries, it can be seen that the conclusion reached by the lower appellate court is unassailable. Ext. B8 (a) is the plan and Ext, B8 is the report submitted by the commissioner appointed in the previous suit 0. S. No. 91/1964. The commissioner is examined in the present suit as D. W. 5. Both the parties have sought to identify the property with reference to the plan Ext. B8 (a). The suit property, as earlier stated, is the 49 cents of land in Sy. No. 125/3 A. A plot on the immediate west bearing Sy. No. 125/1 admittedly belongs to the plaintiff. The eastern plot in Sy. No. 125/3B belongs to the defendant. The question that required consideration was as to whether the disputed plot of land is included in the plaintiff''s title deeds and whether the defendant has got title and possession of the same. Exts. A6 to A8, A 1 to A3 and A5 are the documents on the basis of which the plaintiff claims title and possession of the disputed property. All these documents take in Sy. No. 125/3A, 49 cents in extent. The name of the property is mentioned as Its eastern boundary is shown as The contesting defendants have not produced their title deeds; they have produced only Ext. B2 delivery report which would show that the properties mentioned therein were delivered to the defendant in execution of the decree in O. S. No. 219/1965. Item No. 1 in Ext. B2 is Sy. No. 125/3B 2 acres and 7 cents in extent. The name of the property is and its western boundary is shown as That Sy. No. 125/3B is cannot be disputed in view of Ext. B2 produced by the defendants themselves. Ext. B2 does not take in Sy. No. 125/3A. Sy. No. 125/3A is is clear from Exts. A1 to A3 and the other documents of title produced by the plaintiff. Therefore, by description, extent, name and boundaries the suit property 49 cents of land in Sy. No. 125/3A is clearly taken in the plaintiff''s documents of title, it is not included in Ext. B2, the only document produced by the defendants in

support of their claim of title. Ext.A5 dated 26-11-1963 under which the plaintiff gets title by assignment gives also the side measurements of the property besides the name, extent survey number, boundary etc, referred to above. Learned counsel for the appellants points out to me that the side measurements mentioned in Ext. A5 do not tally with the side measurements shown in the commissioner''s plan Ext. B8 (a). In the light of the principle discussed above, the discrepancy in the side measurements should be ignored as falsa demonstratio, and the property is correctly identified by the lower appellate court as included in the plaintiff''s documents of title.

4. It is next submitted that the plaintiff''s title is lost by adverse possession of the defendants. The court below has not accepted the oral evidence adduced on behalf of the defendants as reliable to prove the defendants'' possession of the suit property. The burden is on the defendants to establish adverse possession that would extinguish the plaintiffs'' title to the suit property. Except the oral evidence found to be unreliable by the lower appellate court there is nothing on record to show the defendants possession of the suit property. Counsel for the appellants points out that the prior suit O. S. No. 91 of 1964 was dismissed on the ground that the plaintiff has not been able to prove his possession of the property on the date of that suit. That does not, however, mean that the defendant was in possession on the date of the prior suit. The 5th defendant was appointed as Receiver in the prior suit and he had been continuing in possession from 1964 onwards. A Receiver is an officer of court and his possession of the property is on behalf of the court. When a Receiver takes possession, the property is in custodia legis. The nature of the Receiver''s possession is explained by the Supreme Court in decision in P. Lakshmi Reddy v. L. Lakshmi Reddy) AIR 1957 SC 314) at page 319:

(6) The learned Attorney-General urges that prior possession of the Receiver pending the suit must be treated as possession on behalf of Hantmi Reddy with the animus of claiming sole and exclusive title disclosed in his plaint. In support of this contention he relies on the well-known legal principle that when a Court takes possession of properties through its Receiver, such Receiver''s possession is that of all the parties to the action according to their titles. (See Kerr on Receivers (12th Edition) page 153). In Woodroffe on the law relating to Receivers (4th Edition) at page 63 the legal position is stated as follows:

The Receiver being the officer of the Court from which be derives his appointment, his possession is exclusively the possession of the Court, the property being regarded as in the custody of the law, in gremio legis, for the benefit of whoever may be ultimately determined to be entitled thereto.

But does this doctrine enable a person who was not previously in possession of the suit properties, to claim that the receiver must be deemed to have taken possession adversely to the true owner, on his behalf, merely because he ultimately succeeds in getting a decree for possession against the defendant therein who was previously in

possession without title? A Receiver is an officer of Court and is not a particular agent of any party to the suit, notwithstanding that in law his possession is ultimately treated as possession of the successful party on the termination of the suit. To treat such Receiver as plaintiff''s agent for the purpose of initiating adverse possession by the plaintiff would be to impute wrong-doing to the Court and its officers. The doctrine of Receiver''s possession being that of the successful party cannot, in our opinion, be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of Receiver''s possession to his subsequent adverse possession. The position may conceivably be different where the defendant in the suit was previously in adverse possession against the real owner and the Receiver has taken possession from him and restores it back to him on the successful termination of the suit in his favour. In such a case the question that would arise would be different, viz., whether the interim possession of the Receiver would be a discontinuance or abandonment of possession or interruption of the adverse possession. We are not concerned with it in this case and express no opinion on it.

Unless, therefore the defendants are able to show that they were in adverse possession of the property on the date of the prior suit O. S. No. 91/1964, they are not entitled to contend that the Receiver''s possession of the suit property was adverse to the plaintiff''s title. The Receiver''s possession being possession by Court is that of all the parties to the action according to their title. Now that the plaintiff is found to have title, the Receiver''s possession should be held to be on behalf of the plaintiff. For the aforesaid reasons overrule the contention that the plaintiff''s title is barred by adverse possession.

5. It is next submitted that the plaintiff is not entitled to profits of the property deposited by the Receiver during the pendency of the prior suit and that the plaintiff can at best claim profits for a period of 3 years prior to the institution of the present suit. I have already held that the Receiver''s possession is according to the title of the respective parties to the suit and whoever is found entitled to the property should also be held entitled to the profits deposited in court by the Receiver. In the decision of the Supreme Court in Hiralal Patni Vs. Loonkaram Sethiya and Others, it is stated thus at page 26:-

(11) The law may briefly be stated thus: (1) If a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment in the action (2) If a receiver is appointed in a suit, without his tenure being expressly defined, he will continue to be receiver till he is discharged. (3) But, after the final disposal of the suit as between the parties to the litigation, the receiver''s functions are terminated, he would still be answerable to the court as its officer till he is finally discharged. (4) The court has ample power to continue the receiver even after the final decree if the exigencies of the case so require.

There is, therefore, no substance in the contention that the Receiver''s possession in the prior suit should be deemed to be possession on behalf of the defendant for the reason that the plaintiff''s suit for injunction was dismissed on the ground that she had failed to prove her possession of the property on the date of the suit. The Receiver appointed in the previous suit continued as Receiver during the pendency of the present suit and his possession should be held as on behalf of the person found entitled to the property. In the decision of the Madras High Court in Natesa v. Govindasami reported in AIR 1930 Mad. 4 it is stated at page 8:-

.....In this connection the decision of Muthuswamy Iyer reported in Orr v. Muthia Chetti 1894 17 Mad 501, and of the appellate Court from his decision, reported in Muthiah Chetty v. Orr 1897 20 Mad 224 (F.B.), are specially helpful. It was there held that in cases in which a receiver appointed at the instance of the judgment-creditor misappropriates money collected by him the decree is not satisfied pro fanto; but the loss falls on the estate, or its owner, subject to the receiver''s liability. At p.503, Muthuswamy Iyer, J., remarked as follows:

The appellate Court considers that the receiver in the present case was the judgment-creditor''s agent, because it was on his application that the appointment was made. The appointment is the act of the Court and once made in the interests of justice or ex debito justitiae. He is an officer or representative of the Court and subject to its orders. His possession is the possession of the Court by its receiver. The moneys in his hands are in custodia legis for the person who can make a title to them.

It has been held in England in similar cases that a receiver appointed by the Court is appointed on behalf and for the benefit of all persons interested, as parties to the suit or proceeding. Moneys in the hands of the receiver belong to the Court which appointed him and are in custodia legis, and he cannot spend them except under the orders of the Court.

On the principle of the above decisions there cannot be any doubt that the profits deposited by the Receiver in the trial court belonged to the plaintiff whose title has been upheld and she is entitled to withdraw the same. Counsel for the appellants relies on the following observations in the judgment of a Division Bench of this Court in A. S. No. 135 of 1975:-

9. As regards the cross-appeal it has to be said that the conclusion of the lower court is not open to question. The income from the property which he collected and deposited in court is the income that should go to the person who succeeded in the case on the question of possession. That is what the lower court has decided. If he is entitled to recover possession his only remedy is to claim three years past mesne profits and it is that that has been decreed by the lower court. If the plaintiff is entitled to recover possession the decree regarding the profits of the property does not call for interference. But we have held that the plaintiff''s suit is barred by

adverse possession and limitation. So he is not entitled to any relief regarding the amount in deposit in O. S. 27 of 1959.

These observations are made in a suit dismissed for the reason that the plaintiff''s title has been lost by the defendants'' adverse possession. These observations are, therefore, obiter and do not also lay down any principle in opposition to the principle laid down in the decisions referred to above.

The result is, the Second Appeal fails and is dismissed. No costs.