

(2013) 07 MAD CK 0340

Madras High Court

Case No: A.S. No. 255 of 1999 and C.M.P. No. 7604 of 1999

Radhakrishna Reddy (Died) and
R. Adilakshmi and 8 Others

APPELLANT

Vs

G. Ayyavoo and 23 Others

RESPONDENT

Date of Decision: July 17, 2013

Citation: (2013) 6 CTC 314 : (2013) 8 MLJ 420

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: P.B. Balaji, for the Appellant; M. Balasubramaniam, Advocate for Respondent No. 1 and M. Senthamizh Selvan, Advocate for Respondent Nos. 4, 8, 9, 12, 13 to 15, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Ramanathan, J.

The Plaintiff in O.S. No. 463 of 1994, on the file of Sub-Court Poonamallee is the Appellant. He filed the suit for declaration that he had prescribed title to the Suit property by adverse possession and consequential injunction to declare that he is entitled to the Suit property by prescription and for recovery of vacant possession and for permanent injunction restraining the Defendants, their men, servants and agents from putting up further constructions on the Suit property. The 7th Defendant has filed I.A. No. 142 of 1995 under Order 7, Rule 11, C.P.C. to reject the Plaintiff on the ground of abuse of process of law, the Suit has not been properly valued and the Court has no jurisdiction to entertain the Suit and the same is barred by limitation and there is no cause of action in the Plaintiff to institute the Suit.

2. The learned Trial Judge accepted the contents of the 7th Defendant and allowed his Application and rejected the Plaintiff and aggrieved by the same, this Appeal is filed by the Plaintiff.

3. The learned Counsel for the Appellants submitted that the Court below, without properly appreciating the provisions of Order 7, Rules 10, 10A & 11, C.P.C. and erred in rejecting the Plaintiff. He further submitted that the Court below allowed the Defendants to file 89 Documents, while entertaining the Application under Order 7, Rule 11, C.P.C. and on the basis of the documents filed by the Defendants, rejected the Plaintiff and the same is not permissible in law. The learned Counsel for the Appellants further submitted (that the limitation being mixed question of fact and law, ought not to have been gone into by the Trial Court at the stage of rejection of Plaintiff and in the absence of any evidence adduced by the parties, the Court below ought not to have held that the Suit is barred by limitation or the Plaintiff has no cause of action. He would further submit that even though the Suit was not properly valued, that cannot be a ground for rejecting the Plaintiff, inasmuch as under Order 7, Rule 11, C.P.C., if the relief claimed is undervalued and the Plaintiff on being required by the Court to correct the valuation within the time to be fixed by the Court below, and if he failed to do so, thereafter, the Plaintiff can be rejected. He therefore, submitted that without giving opportunity to the Plaintiffs regarding valuation to be corrected, a Plaintiff cannot be rejected on that ground. He would also submit that while deciding the Application under Order 7, Rule 11, C.P.C., the Court below should take into consideration only the allegation in the Plaintiff as well as the documents filed by the Plaintiff along with the Plaintiff to find out whether the Plaintiff can maintain the Suit or not and at that stage, the Written Statement or the documents filed by the Defendants cannot be looked into and in this case, the Trial Court considered the documents filed by the 7th Defendant, which were filed along with the Written Statement, and that approach is not permissible under law. He therefore, submitted that the Order of the Court below is liable to be set aside and the Plaintiff may be restored.

4. Per contra, Mr. M. Balasubramaniam, learned Counsel for the 7th Defendant/1st Respondent submitted that the Court below has rightly rejected the Plaintiff on the ground of abuse of process of law and want of cause of action. He further submitted that admittedly the Suit property was purchased by the Plaintiff under a Sale Deed dated 23.6.1965. He would further submitted that even according to the Plaintiff, the properties were purchased by him from the Defendants and their agent under a registered Sale Deed dated 23.6.1965 and O.S. No. 25 of 1968 was filed by the Defendants 1 to 5 for setting aside the above said Sale Deed dated 23.6.1965, in favour of the Plaintiff and also for injunction and the Suit in O.S. No. 25 of 1968, was partly decreed on 2.5.1972 and the Sale Deed dated 23.6.1965, in favour of the Plaintiff was set aside. The relief of injunction was dismissed holding that the Plaintiff herein was in possession of the property and the Appeal filed by the Defendants 1 to 5 herein in A.S. No. 65 of 1973 was also dismissed in the year 1977. He would further contend that the Suit was originally filed before the District Munsif Court, Poonamallee in O.S. No. 1478 of 1987 and therefore, the Plaintiff could not have prescribed title by adverse possession at the time of filing of the Suit, as the

decree passed in O.S. No. 25 of 1968, was confirmed in the Appeal in the year 1977. He, therefore, submitted that even though question of limitation being mixed question of law and fact, when the Defendant is able to demonstrate that the suit is barred by limitation or the Plaintiff is not entitled to claim the relief of adverse possession on the above admitted facts, on considering the same, the Court below had rightly rejected the Plaintiff and therefore, there is no irregularity in rejecting the Plaintiff. He would further submit that admittedly, the Suit was filed in the year 1987 before the District Munsif Court, Poonamallee and the same was returned on the ground for presentation before proper Court and before presentation, the Plaintiff/Appellant made some corrections and newly added illegal prayers in the Plaintiff by including Paras 11b, 14bb & 14bbb and that amount to tampering with the records of the Court and when the Court permitted the Plaintiff to represent the Plaintiff before proper forum, the Plaintiff cannot add or delete any paras without permission of the Court and having added some paras without permission of the Court, the Plaintiff tampered the records of the Court and therefore, the Court below has rightly rejected the Plaintiff.

5. Mr. P.B. Balaji, learned Counsel for the Appellants submitted that the Plaintiff admitted the addition of paras viz., 11b, 14bb & 14bbb and on that ground, the Plaintiff cannot be rejected and relied on a Judgment of Supreme Court reported in [Hanamanthappa and another Vs. Chandrashekharappa and others, .](#)

6. On the basis of the above submissions, the following points for consideration arise in this Appeal:

1. Whether the Court below was right in rejecting the Plaintiff on the ground that the Plaintiff has abused of process of Court by adding Paras 11b, 14bb & 14bbb after the Suit was returned for proper presentation to the proper Court?
2. Whether the Court below was right in dismissing by rejecting the Suit on the ground of limitation?

7. Admittedly, this Suit was filed before the District Munsif Court in O.S. No. 1478 of 1987, and Paragraphs 11b, 14bb & 14bbb were not included. Originally, the Plaintiff prayed for declaration that he prescribed title to the Suit property by adverse possession and for consequential injunction. Subsequently, he added Para 11b and also added the relief for recovery of possession and for declaration by pleading that pending the Suit, he was ousted from the Suit properties. It is seen from the Judgment of the Hon'ble Supreme Court reported in [Hanamanthappa and another Vs. Chandrashekharappa and others, ,](#) held in similar circumstances, that a Plaintiff represented with amended averments must be treated to be a fresh Plaintiff subject to limitation, pecuniary jurisdiction and a Plaintiff cannot be dismissed on the ground that the Plaintiff made amendments which did not find place in the original Plaintiff presented before the Court of District Munsif. It is also made clear that it is not always necessary for the Plaintiff to seek amendment of the Plaintiff under Order 6,

Rule 17, C.P.C. and at best it can be treated to be a fresh Plaintiff and the matter can be proceeded with according to law. Therefore, by amending the pleadings while representing the Plaintiff, the Court can only treat the Plaintiff as a fresh and on that ground the Plaintiff cannot be rejected holding that the Plaintiff has tampered with the Court records and it amounts to abuse of process of law. Therefore, the 1st point for consideration is answered in favour of the Appellant and the Court below ought not to have rejected the Plaintiff on the ground of abuse of process of law.

8. As regards the Plea of Adverse Possession, in my opinion, the Court below has rightly rejected the Plaintiff on the ground that the Plaintiff is not entitled to claim adverse possession. Though the question of limitation is a mixed question of fact and law, considering the admitted facts, if the Court can come to the conclusion that the Suit is barred by limitation, the same can be considered even in the Application under Order 7, Rule 11, C.P.C.

9. It is seen from Order 7, Rule 11(d), C.P.C., where the Suit appears from the statement made in the Plaintiff to be barred by any law, the Suit can be rejected. Therefore, on the basis of the allegation made in the Plaintiff, if the Court comes to the conclusion that the Plaintiff cannot plead adverse possession then the Court can reject the Plaintiff. Admittedly, O.S. No. 25 of 1968 was filed by the Defendants 1 to 5 before the Sub-Court, Chengalpattu for setting aside the Sale Deed dated 23.6.1965, in favour of the Plaintiff executed by them. They have also prayed for injunction and the Suit was partly decreed on 2.5.1972 and the Sale Deed, in favour of the Plaintiff was set aside and injunction prayer was negatived and the same was confirmed in the Appeal in A.S. No. 65 of 1973, in the year 1977.

10. It is the contention of the learned Counsel for the Appellants that the limitation regarding adverse possession starts from 2.5.1972, the date on which, the decree in O.S. No. 25 of 1968 was decreed and if so, calculated the Plaintiff's prescribed title by adverse possession in the year 1984 and the Suit was filed in the year 1987 and therefore, on the date of filing the Suit, the Plaintiff prescribed title by adverse possession and on that ground, the Suit ought not to have rejected.

11. When a person claims adverse possession, he has to state that the date or period from which he claims the property adverse to the knowledge of the true owner. Further, when a person claims that he is the owner to the Suit property and enjoying the property as owner, he cannot later on claim that he is holding the property adverse to the knowledge of the Defendants. Further, for proving adverse possession, the conduct of the party is also important and the Plaintiff has to state specifically from which period he has been holding the property adverse to the knowledge of the Defendants.

12. In this case, in Paragraph 8, it has been stated that the limitation for Defendants 1 to 5 to institute a Suit for recovery of possession of the Suit property ended on 23.6.1977 and the right of the Defendants to the Suit property was extinguished and

after 23.6.1977, the Plaintiff had acquired title to the Suit property by prescription. Therefore, the Plaintiff claims that he prescribed title by adverse possession from 23.6.1977 and if so calculated, the Plaintiff filed in the year 1987 for the relief that he has perfected title by adverse possession is not maintainable, as the Plaintiff has not completed 12 years prescribed for adverse possession. Further, even according to the Plaintiff, he was dispossessed and therefore, he added the relief of recovery of possession. When a person claims right by prescribing title by adverse possession and before that right was declared by the Court, if he is dispossessed, either he has to file the Suit u/s 6 of the Specific Relief Act or file the Suit for recovery of possession by proving his title to the Suit property. Admittedly, his title has been negatived in O.S. No. 25 of 1968 and on that ground also, the Court below has rightly rejected the Plaintiff. Further, as per Judgment reported in [Hanamanthappa and another Vs. Chandrashekharappa and others](#), the Plaintiff represented the Plaintiff, after making addition in the Plaintiff and it can be treated to be a fresh Plaintiff and admitted the Plaintiff was represented in the year 1994 before the Sub-Court, Poonamallee and in the absence of any Appeal on the date of dispossession as mentioned in the Plaintiff, the Plaintiff cannot ask for declaration that he has perfected to an adverse possession and therefore, the relief prayed for declaration by prescription of title by adverse possession is also barred and the relief of declaration is also not maintainable, as the Plaintiff has no title and the same was negatived in O.S. No. 25 of 1968. The points for consideration are answered against the Appellant as indicated above.

13. For the foregoing discussions held above, the Court below has rightly rejected the Plaintiff and I also do not find any infirmity in the Judgment and Decree passed by the Lower Court and the Appeal is dismissed accordingly without costs. In the result, the Appeal is dismissed without costs. Consequently, connected Civil Miscellaneous Petition is closed.