
(2007) 3 CTC 32 : (2007) 3 MLJ 483

Madras High Court

Case No: Second Appeal No. 121 of 1991

Balagurusami Pillai
(deceased) and Others

APPELLANT

Vs

Lakshmi Ammal (died)
and Others

RESPONDENT

Date of Decision: April 9, 2007

Acts Referred:

- Hindu Minority and Guardianship Act, 1956 - Section 6
- Hindu Succession Act, 1956 - Section 14(1)
- Limitation Act, 1908 - Article 141

Citation: (2007) 3 CTC 32 : (2007) 3 MLJ 483

Hon'ble Judges: Prabha Sridevan, J

Bench: Single Bench

Advocate: V. Raghavachari, for the Appellant; S. Parthasarathy for M.S. Krishnan, for the Respondent

Final Decision: Dismissed

Judgement

Prabha Sridevan, J.

The suit properties belonged to one Varadammal, the second wife of one Kaveri Marudha Pillai. Kaveri Marudha Pillai was the grand son of the said Marudha Pillai through his first wife. Kaveri Ramasamy Pillai was the grand son of Marudha Pillai through his second wife. K.Ramasamy Pillai's son is the plaintiff. K.Marudha Pillai's daughter through his first wife and Varadammal's daughter are defendants 1 and 2. The suit was filed for recovery of possession. The trial court dismissed the suit on the ground that Varadammal's estate enlarged into a full estate in accordance with Section 14(1) of the Hindu Succession Act and therefore, on and from the date of coming into force of the Act, she could deal with the property as a full owner to her alienees, who are defendants 3 and 4. On these and other grounds, the trial Court dismissed the suit. On appeal, the Appellate Court dismissed the appeal only on the ground of limitation holding that the suit has been filed

beyond time.

2. As against this, the present second appeal has been filed and has been admitted on the following substantial questions of law:

1. Whether the lower appellate Court was right in taking into account the recitals in Ex.A.3 for the alleged assertion of hostile title, when it had been found that, that document is invalid?

2. Whether the lower appellate court was right in the view it took that the third respondent had perfected title by adverse possession?

3. Whether the lower appellate court was right in holding that the right to recover the property was inherent with the ownership of the appellant even from the date of Ex.A3 and not from the date of death of Varadammal?

The appellant died pending Second Appeal and his legal representatives have been brought on record. Defendants 1 and 2, the daughters of K.Marudha Pillai, also died pending appeal and their legal representatives have also been brought on record. However, for the sake of convenience, the parties shall be referred to as per their ranking in the suit.

3. To appreciate the rival submissions, the following factual details will help.

The suit properties, among other properties, belonged to one Marudha Pillai, who had three sons. The case turns on the role played by his second wife Varadammal in dealing with the properties. According to the plaintiff, Varadammal's husband Marudha Pillai expressed his desire that if he dies without a male issue, his obsequies should be performed by the plaintiff. Varadammal executed a settlement deed on 9.5.1932 in favour of the plaintiff who was a minor then specifically stating thereunder that the said settlement deed is being executed so that he would take care of her and also do the funeral rites. Certain debts were also mentioned in the settlement deed Ex.A.2, which had to be discharged by the said deed. There was a specific recital in Ex.A.2 that it was irrevocable. According to Ex.A2 the settlement was accepted by Varadammal herself as the plaintiff's guardian. Two years thereafter, Varadammal executed a revocation deed. This is Ex.A.3 where she had stated that she had no faith that the plaintiff would discharge the obligations and therefore, she was revoking the settlement deed. On 2.2.1940, Varadammal sold 46 cents in Item No. 1 of the suit properties to the father of the plaintiff. He sold it to another person on 19.6.1943. It was again sold to another person on 28.11.1944 and yet another person on 30.8.1945. The purchaser under the sale deed dated 30.8.1945 is the father of the third defendant. Varadammal died on 28.1.1976. The remaining 48 cents of Item No. 1 of the suit properties were sold by defendants 1 and 2 to the third defendant on 4.7.1976 and Item No. 2 was leased out to fourth defendant. According to the plaintiff, the petitioner had no right of revocation; there was no necessity for sale of the properties; the plaintiff is not bound by any of the

transactions subsequent to 1934 as he was not a party to the same and he was also not bound to seek any relief to set aside the said alienations. In the written statement filed by the third defendant, it was contended that the estate of Varadammal was what is known as widow's estate and defendants 1 and 2 are the reversionary heirs. According to the third defendant, she had no right of alienation and the gift deed, Ex.A.2 was void and in any event, it is only a Will and the fact that it was called a settlement deed will not decide the character of the transaction. The plaintiff, who claims right under Ex.A.2, did not discharge any of the debts mentioned thereunder and finally, the third defendant and his predecessors in- title have been in possession of the suit property from 2.2.1940 in their own right, absolutely, exclusively and continuously to the knowledge of the plaintiff and therefore, their title had been perfected by adverse possession. To this, a reply was given by the plaintiff, wherein it was stated that on the date of Ex.A1, the title passed on to the plaintiff; Varadammal's possession was only that of a Manager and the right of possession was also transferred, but physical possession was not transferred, in view of the tender age of the plaintiff and she had reserved the right to manage the said properties. Since Varadammal was in possession on behalf of the plaintiff as a Manager, the plaintiff will be entitled to the possession only on and after 28.1.1976. To this, a additional written statement was filed by the third defendant, rejecting the claim of adverse possession.

4. Learned Counsel for the appellant/plaintiff submitted that Article 65(b) of the Limitation Act would provide the answer for the question whether the suit is barred by limitation. Learned Counsel for the appellant submitted that on all other issues, the Appellate Court had held in his favour and it was only on the question of limitation that the Appellate Court had held against him. Learned Counsel submitted that the Appellate Court had rightly held that Section 14(1) of the Hindu Succession Act would not apply since Varadammal was not in possession of the property in 1956 and therefore, there was no scope for enlargement or blossoming of the right in her favour. Learned Counsel for the appellant also submitted that the Appellate Court had also rightly held that Ex.A.2 is a settlement deed and not a Will. Learned Counsel submitted that what the Appellate Court failed to see was that even if Varadammal had acted adverse to the interest of the minor settlee, viz., the plaintiff, it will not amount to her holding the property or being in possession of the property, adverse to the title of the plaintiff. According to the learned Counsel for the appellant, on and from 1932, when Ex.A2 was executed, Varadammal was in possession only as a Manager on behalf of the plaintiff and the nature of her possession could have never changed. Learned Counsel submitted that if this position is clear, then there are decisions of the Supreme Court and other Courts wherein it has been uniformly held that the person entitled to possession on the death of a Hindu female would be entitled to file a suit for recovery of possession within 12 years from the date of the said death and that limitation would start to run only when the said Hindu female died. Learned Counsel for the appellant submitted that though Ex.A2 came into effect, immediately and title was transferred, possession was never given to the plaintiff and the right to possession was postponed during the life time of Varadammal. Learned Counsel submitted that the

plaintiff claiming right under Ex.A2 cannot impeach the said document and so long as Varadammal was alive, the plaintiff cannot sue for possession. Learned Counsel submitted that Ex.A-3 is void and has no legal effect and the subsequent alienation in favour of defendants 2 and 3 will not affect his right. Learned Counsel also submitted that the Hindu Widow was entitled to alienate the property for necessities, maintenance and for spiritual necessity. The following decisions were relied on by the learned Counsel for the appellant:

- (i) [Smt. Bitola Kuer Vs. Sri Ram Charan and Others,](#)
- (ii) [Chaturbhuj Pradhan and Others Vs. Sarbeshwar Pradhan and Another,](#) ,
- (iii) AIR 1932 Bombay 434 (Bai Manchha v. Tribhovan Lallubhai Patel)
- (iv) AIR 1978 Punjab 285 (Shiv Dass v. Derki)
- (v) [Ram Kristo Mandal and Another Vs. Dhankisto Mandal,](#)
- (vi) [Jagat Ram Vs. Varinder Prakash,](#)
- (vii) [K. Balakrishnan Vs. K. Kamalam and Others,](#)

In all these judgments, the common theme is that the limitation for a suit by a reversioner to recover possession would start from the date of death of the widow. In [Smt. Bitola Kuer Vs. Sri Ram Charan and Others,](#) , it was held that the reversioners not tracing "their title through or from the widow" would suffer injustice if they are to lose their right " simply because the widow has suffered the property to be destroyed by adverse possession of a stranger". In [Chaturbhuj Pradhan and Others Vs. Sarbeshwar Pradhan and Another,](#) , it was held that the defendant, who was in continuous possession since the date of transfer, cannot resist the reversionary title if the suit was instituted within the time prescribed calculated from the date of death of the limited owner. In [Bai Manchha Vs. Tribhovan Lallubhai Patel,](#) , it was held that the right to the property of a reversioner "would not be barred till 12 years have elapsed since the death of the widow". In AIR 1978 Punjab 285 (Shiv Dass v. Derki), the decision was on the same lines. The following paragraph in [Ram Kristo Mandal and Another Vs. Dhankisto Mandal,](#) , is relied on in almost all the judgments.

11. The High Court also was not correct in disallowing the said contention on the ground that the respondent could have shown that he had completed his title to Schedule B properties by adverse possession if the said exchange was invalid u/s 27. Such a plea was in fact raised by the respondent and was rightly rejected by the District Court on the ground that Article 141 of the Limitation Act, 1908 applied and that the suit having been filed only two years after the death of Nilmoni Dasi, their claim to a declaration and possession was not barred. A person who has been in adverse possession for twelve years or more of property inherited by a widow from her husband by any act or omission

on her part is not entitled on that ground to hold it adversely as against the next reversioners on the death of such a widow. The next reversioner is entitled to recover possession of the property, if it is immovable, within twelve years from the widow's death under Article 141. This rule does not rest entirely on Article 141 but is in accord with the principles of Hindu Law and the general principle that as the right of a reversioner is in the nature of spes successionis and he does not trace that title through or from the widow, it would be manifestly unjust if he is to lose his right by the negligence or sufferance of the widow: [Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others](#), and Mulla's Hindu Law, 13th Ed. 233). The High Court was thus in error in disallowing the said contention on either of the two grounds suggested by it.

5. In [Jagat Ram Vs. Varinder Prakash](#), the owner of the property left behind a widow and two daughters. He executed during his life time a gift deed in favour of one of his daughters. The suit was filed by the widow. There was a compromise to the effect that the widow would enjoy the suit property as long as she was alive and after that, the property would go to the donee, the daughter. The widow executed an adoption deed in favour of her grand son through another daughter. The suit was filed by the donee/ daughter for a declaration that the adoption was illegal. In the meantime, the widow died. The daughter filed a suit for recovery of possession, which was dismissed as barred by limitation. This was affirmed by the High Court. The Supreme Court, while dismissing the appeal filed against the judgment of the High court, rejected the contention that the suit had to be filed within 12 years from the date on which the possession of the defendant became adverse and therefore, it was immaterial as to when the Hindu female died. The Supreme Court held that there is no scope for the argument that limitation does not run from the date on which the Hindu female died and that it would start running from some other date. This decision was heavily relied on by the learned Counsel for the appellant to contend that limitation would start running from 28.1.1976, the date on which Varadammal died.

6. [K. Balakrishnan Vs. K. Kamalam and Others](#), was with regard to the illegality of revocation of a settlement deed and the following extracts are relevant:

24. Reverting back to the facts of this case, the mother who is one of the guardians of the donee, was herself the donor and the minor was in her custody living with her in the same house. The minor's father, who is the natural guardian u/s 6 of the Hindu Minority and Guardianship Act, was also present and living with the minor in the same house jointly with other members of the family. The parties belong to an educated Kerala family. As is apparent from the record, the donee was 16 years of age at the time of making of gift and as stated in the witness box, he understood and had knowledge that his mother had gifted the property to him and his younger sister. According to him, after the execution of the gift deed, the document written in Malayalam was brought to the house which was read by the donee and he handed it over to his father. The document has been produced in the court from the custody of the daughter with whom the father lived at the time of filing of the suit by the minor. A question was put to the father as to whether he had accepted the gift on behalf of his minor son. His reply was that the minor son did not

know about execution of the document and the son came to know about it only when his sister, on the basis of the deed of revocation, filed a suit against him for injunction in the year 1985. The father has, however, not stated that he himself had no knowledge of the execution of the gift deed although he denies the version of the donee that the scribe brought the gift deed and gave it to his wife and the wife gave it to him for safe custody. The father's reply was that the gift deed remained with the wife. Since the father lived with the daughter and had supported her case, he naturally denied the version of the minor of his having derived knowledge of the gift deed, its reading by him and handing over to the father.

25. Where a gift is made in favour of a child of the donor, who is the guardian of the child, the acceptance of gift can be presumed to have been made by him or on his behalf without any overt act signifying acceptance by the minor. In the instant case, the mother who is the natural guardian gifted the property to her minor son in the year 1945. The donee was an educated lad of 16 years of age, capable of understanding and living jointly with the donor. Knowledge of the execution of the gift would have been derived in normal circumstances, by the minor, being beneficiary, sooner or later after its execution. Knowledge of gift deed to both the parents as natural guardians and the donee is sufficient to indicate acceptance of gift by the minor himself or on his behalf by the parents. The gift deed was revoked by the mother much after its execution as late as in the year 1970. By that time, the donee had become a major and he never repudiated the gift. We have examined the terms of the gift deed. Non-delivery of possession of the gifted property, non-exercise of any rights of ownership over it, and failure by the donee, on attaining majority, in getting his name mutated in official records are not circumstances negating the presumption of acceptance by the minor during his minority or on his attaining majority. The donor had reserved to herself, under the terms of the gift deed, the right to manage, possess and enjoy the property during her lifetime. Since the possession and enjoyment of the property including management of the school were retained by the donor during her lifetime, the acceptance of the ownership of the property gifted could be by silent acceptance. Such acceptance is confirmed by its non-repudiation by his parents and by him on attaining majority. As is the evidence on record, the mother, the donor, was herself the natural guardian of the minor donee. The father was also a guardian and had knowledge of the gift. He also did not repudiate the gift on behalf of the donee. The donee himself was 16 years of age and could understand the nature of beneficial interest conferred on him. He also had knowledge of the gift deed and on attaining majority did not repudiate it. These are all circumstances which reasonably give rise to an inference, if not of express but implied acceptance of the gift. Where a gift is made by the parent to a child, there is a presumption of acceptance of the gift by the donee. This presumption of acceptance is founded on human nature. "A man may be fairly presumed to assent to that to which he in all probability would assent if the opportunity of doing so were given to him.

7. Learned Counsel also relied on AIR 1939 Privy Council 63 (I.L.M. Cadija Umma and Anr. v. S. Don Manis Appu) where the Privy Council has held that "ouster apart, a man's possession by his agent is not dispossession by his agent, to show that the possession of Varadammal was only in the capacity of the Manager of the plaintiff and therefore, the character of her possession can never become adverse to the title of the plaintiff.

8. Mr. S.Parthasarathy, learned Senior counsel appearing on behalf of the respondents would submit that it is not correct to state that the possession was not handed over to the plaintiff on the date of execution of Ex.A2. The recitals of Ex.A2 are clear and it is only the right of management that was retained by Varadammal. Learned senior counsel pointed out the recitals in the document to support his case. Learned senior counsel submitted that since the plaintiff was entitled to possession on the date of Ex.A2, the suit for recovery of possession should have been filed within three years from the date of attainment of majority of the settlee or assuming the worst scenario, within 12 years from the date of his attaining majority, whereas when the suit was filed , the plaintiff was 58 years old. Therefore, the Appellate Court had rightly held that the suit was hopelessly barred by limitation. Learned senior counsel also submitted that even in the reply statement, the plaintiff has clearly admitted that possession was handed over to him. Learned senior counsel also submitted that even with regard to the construction of the document, it was possible for the appellant to support his case since it was only a Will and not a settlement.

9. Both the counsel have in effect advanced their arguments only on the question of limitation. The crucial recitals in Ex.A2 are as follows:

The recitals in Ex.A3 revocation deed is stated as follows:

Certain extracts from the reply statement are also relevant.

2. ... Therefore, the settlement deed dated 9.5.32 is legal, valid and binding on Varadammal and everyone who claims through her. The moment the document was executed title passed to the plaintiff and in fact Varadammal's possession was only that of a Manager as clearly stated in the document....

3. All the rights which Varadammal had in the suit properties have been alienated in favour of the plaintiff and there was no reservation of the right of enjoyment. On the other hand the right to possession also was transferred but actual possession was not transferred in view of the tender age of the plaintiff at that time and also she had reserved the right of management, not as the settlor but as the guardian of the settlee....

7. Varadammal's possession of the properties was only on behalf of the plaintiff as manager which under the terms of the document come to an end only on her death. Therefore, the plaintiff is entitled to possession only on and after 28.1.76.

The recitals in Ex.A2 are very clear. There is a contemporaneous transfer of title and possession of the property, as seen from the words The plaintiff was entitled to enjoy the income from the property and he was directed to use either the income or raise a loan by mortgaging the property, to discharge the liabilities mentioned in Ex.A2 viz, the loan of Rs. 1000/- obtained from Nella Pillai, a loan of Rs. 1000/- obtained from Thangam alias Muthammal; the marriage expenses of first defendant and the marriage expenses of the second defendant. Therefore, though she has stated that she would be in management of the property, the plaintiff could mortgage the property to raise a loan and discharge the debts as well as incur the expenses for the marriage of defendants 1 and 2. It is alleged that the right to alienate have been postponed for her life time. But there are no recital restraining the right of alienation. The recitals merely indicate that after her life time, he could enjoy it and has all powers to alienate it. Below the schedule of the property, the recitals show that patta would continue to remain in her name because she was the plaintiff's guardian, but after the plaintiff became a major the patta would be transferred to him. On and from the date of Ex.A2, not only title, but possession was also given to the plaintiff. In fact, it is doubtful even whether there was a restraint on alienation because she has definitely given him the power to mortgage the property to discharge the debts mentioned in the said document. Therefore, if the entire document is read as a whole, it shows both the title and possession was transferred to the plaintiff and the settlor was only a manager on behalf of the plaintiff. Two years later, the revocation deed was executed and 6 years later, Varadammal has executed the sale deed Ex.A4. Varadammal, therefore, was in possession of the property from 1934, the date of revocation, not on behalf of the plaintiff, but in her own right. As rightly held by the Appellate Court, even if Ex.A3 was void, we cannot ignore the legal effect of Varadammal's animus to hold the property as her own in denial of any right that may have passed on to the plaintiff under Ex.A2. The Appellate Court, therefore, held:

... At the moment she set up hostile title denying to the title of the appellant her capacity as guardian in management began to cease. When the guardian set up adverse animus in denial of the title the appellant he should have as stated above instituted suit within the period of limitation mentioned above to recover the properties. Not having done so the right to recover the properties on the basis of title is lost and as such the suit is barred by limitation....

10. The decisions relied on by the learned Counsel for the appellant will not come to his aid. In all those cases, the question was, when the reversioner should file the suit for recovery of possession of property held by a Hindu female who is a limited owner and the uniform conclusion is that reversioner should not suffer by any act of negligence or sufferance by the widow and that limitation will start to run only from the date of death of the widow. In this case, Varadammal had by her clear and overt act, denied the title of the plaintiff which had been transferred by the settlement deed dated 9.5.1932. The plaintiff knew that the possession was transferred to him, as seen from his reply statement. The fact that she claimed to continue to be the Manager on behalf of him is neither here nor

there.

11. Article 65(b) of the Limitation Act reads as follows:

Whether the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies.

It will apply where the Hindu or Muslim, as the case may be, would be entitled to the possession of immovable property on the death of Hindu or Muslim female (Emphasis supplied), as the case may be. Therefore, it would apply only to cases where the right of possession itself commenced only on the death of the Hindu female. In this case, the plaintiff was entitled to possession, as per Ex.A2, as admitted by him in his reply statement and on from the date of Ex.A2 and therefore, there cannot be any fresh commencement of limitation from the date on which Varadammal died. The judgment of the Privy Council does not help the plaintiff because there, the observation is that ouster apart, a man's possession by his agent is not dispossession by his agent. Here, clearly, Varadammal, by her revocation deed, which was held to be void, had declared her intention to hold the property against the right of the plaintiff. The plaintiff knew about it.

12. In fact, it is seen from the recitals in the plaint that the purchaser under Ex.A4 is none other than the father of the plaintiff. One cannot comprehend how, when the father was alive, Ex.A2 was accepted by Varadammal on behalf of the minor. So [K. Balakrishnan Vs. K. Kamalam and Others](#), cannot apply to this case. Neither the father nor the mother who are the guardians of the minor had accepted the settlement on behalf of the minor. Acceptance by the donor himself who is only a grand aunt is no acceptance. The purchase by the father of the minor, after the date of revocation also indicates that Ex.A2 had not been accepted. In any event, this question has not been adverted to, but the fact remains that the father, who is the natural guardian of the minor Settlee under Ex.A2, had purchased the property in 1940 from Varadammal after the date of Ex.A3, from which date Varadammal had decided to act adverse to the interest of the settlee. Therefore, the suit filed in 1985, 45 years after Ex.A4, the sale by Varadammal is hopelessly barred by limitation and there is no justification to interfere with the same.

13. For the following reasons viz.,

a) Possession vested with the plaintiff on Ex.A.2 as seen from the recitals admitted in reply statement.

b) Varadammal's possession became adverse from the date of Ex.A.3, when she revoked the settlement.

c) Article 65 will not apply since the entitlement to possession was contemporaneous with Ex.A2 and not postponed till Varadammal's life time;

the questions of law answered against the appellants and the Second Appeal is dismissed with costs.