

Karmega Kone Vs. Udayar Kone and ors.

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SooperKanoon Citation : sooperkanoon.com/815401

Court : Chennai

Decided On : Dec-01-1978

Reported in : (1979)1MLJ419

Appellant : Karmega Kone

Respondent : Udayar Kone and ors.

Judgement :

T. Ramaprasada Rao, C.J.

1. The first defendant in O.S. No. 67 of 1970 on the file of the Court of the District Munsif of Ramanathapuram is the appellant herein. The plaintiffs came to Court for a declaration of their title to the suit property and for a permanent injunction restraining the first defendant, who is the grandson of the second defendant, and also the second defendant, from interfering with the plaintiffs' possession of the suit property, or, in the alternative, for recovery of possession. Both the Courts found that the plaintiffs-respondents were entitled to the suit property. The trial Court was, however, of view that, notwithstanding such vesting of title in the plaintiffs they had lost it, because the defendants were adversely in possession of the suit property for the prescribed time as against the true owners and that therefore the plaintiff were not entitled to either possession or declaration as prayed for. On appeal, however, the appellate Court noticed that there was no plea as to adverse possession as required in law and therefore held that, in the absence of such a pleading, the appellant-defendant could not succeed on a bare

story of entitlement on the basis of adverse possession trotted out in the course of the trial. In that view, the appellate Court allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit as prayed for. The first defendant has filed the present appeal as against the said judgment.

2. The only question which arises for consideration is whether a litigant, without expressly setting up a plea of adverse possession, can succeed on such a circumventory title, even though the litigant is unable to prove his basic and real title to the property under litigation. Following the judgment of the Supreme Court in *Karim v. Bibi Sakina* : [1964]6SCR780 , wherein the Supreme Court had observed that not only should there be proof of continuity, publicity and extent while setting up a plea of adverse possession, but such a plea should also be expressly pleaded to show as to when possession became adverse as against the real owner, so that the starting point of limitation against the party affected, could be found, and the rights of parties adjudicated upon, the appellate Court reversed the judgment of the trial Court.

3. The plea of adverse possession is essentially a question based upon provable facts and cannot rest upon mere surmises and stories earved out in the course of the trial and in the witness box. The plea of adverse possession stands on the same footing as the plea of estoppel. It has been the consistent view of Courts that a plea of estoppel has to be plead ed and not only pleaded but also proved. So also a plea of adverse possession, which again rests upon proof of positive and essential facts, has to be pleaded, so that the adversary might be able to meet the specific case of the party, who unjustly wishes to wrest the property belonging to another and claim title it. himself on the plea of adverse possession. A plea of adverse possession essentially implies that the person claiming title to a property on that basis does not own it. He wishes to snatch it from the real owner on the ban ground that he was continuously, publicly and openly in possession of the property of the adversary to the knowledge of the adversary and without any objection or intervention on the part of the real owner. These are essential facts which form the rocky foundation of the plea of adverse possession. The law requires an express pleading on that question for the simple reason that the real owner, who is said to have been lethargic, might set up a case (might be true in

some cases) that such possession of the claimant was only permissive and was never intended to be adverse so far as his real title was concerned and that, even if it could be projected as such an adverse claim, the time from which it should be deemed to have commenced should also be made specific and public, so that the real owner might be given a fair and just opportunity to plead otherwise and set up a case that such adverse possession as claimed by the other person did not begin on the date claimed by him. It is because of such necessity of proof of such essential elements like those enumerated above that the law requires a specific plea in the pleading regarding adverse possession. These things being absent in this case, and the plea having been set up only in the course of the trial, the learned appellate Judge was right in having negatived the claim of the appellant based solely upon the theory of adverse possession, which was not pleaded, though sought to be proved in the course of trial.

4. The judgment of the appellate Court is right. The second appeal does not pose any other question of law. The second appeal is accordingly dismissed. There will be no order as to costs.