

**Bakthavatsalam. Vs. Ramalingam.**

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**SooperKanoon Citation :** [sooperkanoon.com/905451](http://sooperkanoon.com/905451)

**Court :** Chennai

**Decided On :** Jun-29-2010

**Judge :** Aruna Jagadeesan, J.

**Appeal No. :** SA.No.207 and 208/2001

**Appellant :** Bakthavatsalam.

**Respondent :** Ramalingam.

**Advocate for Def. :** Mr.R.Sunilkumar, Adv.

**Advocate for Pet/Ap. :** Mr.R.Gururaj, Adv.

**Judgement :**

1. These Second Appeal have been entertained on the following substantial questions of law:

(a)Whether the Plaintiff in OS.No.340/94 has proved his vendor's title?

(b)Whether the Defendant in OS.NO.340/94 and the Plaintiff in OS.NO.349/94 has not proved his vendors' title?

(c)Whether the Defendant in OS.No.340/94 has prescribed title by adverse possession?

2. The Appellant had filed the suit in OS.No.349/94 for permanent injunction restraining the Respondent from interfering with his peaceful possession and

enjoyment of the suit property. He had purchased the suit property under a registered sale deed dated 21.3.94 Ex.B1, constructed a hut, put up thorn fence on the north, south and west and on the east, the fence already put up by the eastern owner is in existence. According to the Appellant, his predecessor in title and after purchase under Ex.B1 sale deed, the Appellant is in possession and they have prescribed title by adverse possession.

3. According to the Respondent, the suit property, a grama natham originally belonged to one Rajagopal Padayachi having purchased the larger extent of land from Vellaiya Padayachi under a registered sale deed dated 2.12.1938 under Ex.A1. After his death, the suit property was in enjoyment of the sons of Rajagopal Padayachi and one Radhambu Ammal, daughter-in-law of Vellaiya Padayachi and a close relative of Rajagopal Padayachi. The Respondent purchased the suit property under a registered sale deed dated 24.3.94 under Ex.A3. The Respondent was in possession and enjoyment of the property and since the Appellant attempted to trespass into the property, he filed the suit in OS.NO.340/94. But, subsequently, the Appellant trespassed into the suit property and hence, the relief for injunction was amended into one for recovery of possession. The vendors of the Appellant has no right to convey any extent in the suit property, as they have no title or interest in the suit property. The Appellant/Plaintiff has created a document with wrong boundaries and false measurements which causes confusion.

4. Both the suits in OS.No.340/94 filed by the Respondent for declaration and recovery of possession and the suit filed by the Appellant in OS.NO.349/94 for permanent injunction were tried jointly by the Trial Court and the Trial Court came to the conclusion that the sale deed dated 24.3.94 is not a genuine and valid document and the suit property is not in possession of the Respondent and accordingly, decreed the suit in OS.No.349/94 and dismissed the suit in OS.NO.340/94 by a common judgement dated 5.3.99, giving rise to the appeals in AS.Nos.78 and 77 of 1999 before the lower Appellate Court. The learned judge of the first appellate court reversed the findings of the Trial Court and came to the conclusion that Ex.A3 sale deed executed in favour of the Respondent on 24.3.94 is a genuine and valid document and the sale deed Ex.B1 executed in favour of

the Appellant dated 21.3.94 is not genuine and therefore, possession of the suit property by the Appellant is unlawful and accordingly dismissed the suit in OS.NO.349/94 and decreed the suit in OS.No.340/94 by a common judgement dated 31.8.2000. Aggrieved by the aforesaid decisions of the first appellate court, the present second appeals have been filed.

5. I have heard Mr.R.Gururaj, the learned counsel for the Appellant and Mr.R.Sunilkumar, the learned counsel for the Respondent and also perused the materials on record.

6. The Respondent/Plaintiff traces his title by virtue of a sale deed dated 24.3.94 and prior to the sale, he had entered into an agreement of sale dated 5.10.93 marked as Ex.A2. According to the Appellant/Defendant Ex.A2 is fabricated. It is not in dispute that the Respondent/Plaintiff had already purchased the property on the western side of the suit property from one Radhambu Ammal through Ex.B2. Though the Appellant claims that the boundary recitals made therein are not correct, but it is admitted by DW.1 that the property purchased by the Respondent/Plaintiff under Ex.B1 from Radhambu Ammal is on the west of the suit property. The Respondent's sister was in possession of the said property and presently the Respondent/Plaintiff is in possession and enjoyment by running a tea stall.

7. The brief facts as could be seen from the pleadings of the parties before the courts below are that Vadivel Padayachi, the predecessor in title of the Appellant/Defendant and Vellaiya Padayachi, the vendor of Rajagopal Padayachi are brothers. Jayaraman and Kasinathan are the sons of Vellaiya Padayachi and one Kasambu Ammal is his wife. Rajagopal Padayachi is the brother of Kasambu Ammal. Jayaraman died unmarried and Radhambu Ammal is the wife of one of the sons of Vellaiya Padayachi namely Kasinathan and Rajasekar @ Sekar is their son. Similarly Vadivelu Padayachi had two sons namely Ramalingam @ Ramu and Thevar. Dhandapani is the son of Ramalingam.

8. The Respondent/Plaintiff had entered into a sale agreement dated 5.10.93 Ex.A2 followed by the sale deed dated 24.3.94 Ex.A3. Both under Ex.A2 and Ex.A3 the property sold is with specified boundaries namely bounded on the east

by site belonging to Dharanidharan, on the west by Plaintiff's property, on the north by site belonging to one Chinnayal and the Plaintiff and on the south by street measuring east west 40 1/2 ft. and north south 39 ft. of an total extent of 1579 1/2 ft. The Plaintiff has purchased the property from Rajagopal Padayachi who in turn traces his title to a sale deed dated 2.12.38 executed by Vellaiya Padayachi and his minor son Jayaraman. It relates to two items of property and the 2nd item is the property purchased by the Plaintiff from Rajagopal Padayachi. The four boundaries described in the ancient sale deed Ex.A1 for the 2nd item is on the north bounded by the land of Muthia Padayachi, on the south by Street (Veedhi), on the east by Gopal Padayachi and on the west by Veedhi, of an extent of 40 = ft. east west, 39 ft. north south.

9. The extent of the property purchased by the Plaintiff under Ex.A3 and the extent of the 2nd item in Ex.A1 are found to be the same. There is no dispute that Chinnayal was the successor of Muthiya Padayachi. In fact, DW.1 in his cross admitted as found below:- @tlf;F gf;fk; Kj;ijah gilahr;rp ,lk;/ Kj;ijia gilahr;rp ,lk;jhd; jw;ngHJ rpd;dhahs; ,lk;@

10. The eastern site is owned by Dharanidharan who is the son of Gopal Padayachi. Even in the sale deed Ex.B1, the eastern boundary is shown as site belonging to Dharanidharan. There is also no dispute that the Bhoodampadi Road is on the south of the suit property. As far as the western boundary is concerned, in Ex.A1, it is shown as Veedhi, but in Ex.A3 sale deed the site purchased under Ex.B2 by the Plaintiff is shown as the western boundary. At this juncture, it is relevant to point out to the evidence of DW.1 wherein he has stated that the road running east west on the south of the suit property turns towards north. If the boundaries described in Ex.A1 is looked into, it corresponds with the boundaries mentioned in Ex.A3 sale deed.

11. It is the case of the Respondent/Plaintiff that Rajagopal Padayachi and his sons were living away from the property purchased by them under Ex.A1 and only Radhambu Ammal who is closely related to them was in possession and enjoyment of the entire extent. That is why, though Radhambhu Ammal had no interest in the suit property, as she was in possession of the property, she had

been joined in the execution of the sale deed. PW.2 Ramalingam, son of Rajagopal Padayachi had spoken to the said fact which is also affirmed by PW.3 Radhambu Ammal. Her evidence indicates that she was in possession of the property at the will of the vendor Rajagopala Padayachi. PW.2, PW.3 and PW.4 had spoken to the effect that Ex.A2 the sale agreement and Ex.A3 sale deed was executed on the dates mentioned thereon in the said documents. The sale deed Ex.B2 executed by Radhambu in favour of the Plaintiff had come into existence sufficiently long prior to the sale in favour of the Appellant/Defendant and the genuineness of the said document had not been disputed by the Appellant. In the said document, the northern boundary is shown as site belonging to one Pattappu Padayachi, Bhoodambadi Road on the west and south, the site belonging to the vendor Radhambu Ammal on the east. Pattappu Padayachi is the father of Katpadi Subramani. So it is evident from Ex.A1 to A3 and Ex.B2 the property purchased by the Plaintiff under Ex.A3 is on the east of Ex.B2 property and to the west of Dharanidharan's land. The east west Boodampadi Road runs on the south of the suit property and on the north of the suit property is the land belonging to Chinnayal.

12. Now coming to Ex.B1 sale deed under which the Appellant/Defendant claims title, it is the categoric case of the Respondent/Plaintiff that the vendor of the Defendant has no title or interest in the suit property. Even according to the Appellant, his predecessor in title were in possession for the past 60 years and admitted while he was examined as DW.1 that he has no prior title deed to evidence the title of his vendors. The relevant portion from his evidence is extracted below:-

13. The sale deed Ex.B1 has been executed by Dhandapani, son of Ramalinga Padayachi and one Thevar, son of Vadivel Padayachi and his minor son. Even in the said document, the vendor traces their title only as ancestrally in possession "The evidence of DW.1 indicated that one of the vendors namely Dhandapani never resided in the suit village and he is living in Neyveli for the past 25 to 30 years, as he is employed in Neyveli. The other vendor namely Thevar though said to have resided at Varadharaja Pettai, but there is absolutely no evidence to show their possession and enjoyment of the suit property. Neither there is evidence to

show that the predecessor in title were in possession of the suit property for more than 60 years. The only documents produced by the Defendant Ex.B3 and B4 dated 2.12.95 and 29.1.98 house tax receipts are in the name of the Defendant.

14. When the Defendant approaches the court for permanent injunction claiming to be the owner of the property in question, it is his duty to prove that he was the owner of the property which remained in his possession and the Respondent had no right, title or interest therein. In so far as Ex.B1 sale deed is concerned, it was executed on 21.3.94 just 3 days prior to Ex.A3, but only after the Respondent/Plaintiff entered into an agreement of sale with their vendors. There is no evidence to show that Dhandapani and Thevar had title to the suit property. The Defendant has not let in any oral or documentary evidence to show that the suit property was owned by them and they were in possession for more than 60 years. Therefore, as rightly found by the first appellate court, no title would flow from Ex.B1 in favour of the Defendant.

15. A careful perusal of the pleadings of the parties especially the Appellant/Defendant in both the suits would go to show that the Appellant herein has taken up a specific stand that he is the owner of the suit property claiming the same under Ex.B1 sale deed and also taken up a stand of adverse possession. But, the Appellant has not been able to establish that his predecessors were in possession of the property adverse to the interest of the Respondent/Plaintiff's predecessor in title and the element of animus is also lacking. Therefore, inferring to the law laid down by the Honourable Supreme Court and also this court with regard to the requirement of establishing the adverse possession through proper ingredients, it is apparent in the instant case that the ingredients have not been established and therefore, the first appellate court has rightly rejected the plea of adverse possession. At this juncture, it is relevant to point out to the settled preposition of law laid down by the Honourable Supreme Court in the case of Roop Singh (D) by LRs v. Ram Singh (D) by LRs [AIR-2000-SC-1485] that it is not permissible for a person who claims to be the owner of the property to take up the plea of adverse possession.

16. In yet another case reported in the case of Madhavkrishna and another v. Chandra Bhaga and others [JT-1996-9-SC-632], the Honourable Supreme Court observed as follows:-

"The doctrine of adverse possession would arise only when the party has set up his own adverse title disclaiming the title of the Plaintiff and establishes that he remained exclusively in possession to the knowledge of the Appellant's title hostile to their title that Appellant had acquiesced to the same."

17. Keeping the above parameters of law laid down by the Honourable Supreme Court concerning the requirements of establishing the necessary ingredients of adverse possession, if we examine the case on hand, there is a specific stand taken by the Appellant in the Written Statement in OS.No.349/94 and the plaint filed in OS.No.340/94 that the Appellant is the owner of the suit property having purchased under the registered sale deed 21.3.94. Thus, when the Appellant claims title to the suit property by way of ownership under the sale deed, the question of Appellant claiming right to the suit property by way of adverse Section will not arise. The Trial Court was totally in error in not properly reading the pleadings of the parties. The first appellate court dealt with this aspect of the matter and found against the Appellant. The contention of the Appellant/Defendant that the predecessor in title were in possession is not supported by any evidence. In fact, he has admitted in his evidence that in the house in the suit property legal heirs of Vellaiyan were residing. The exact portion is extracted below:- @jhth brhj;jpy; cs;s tPl;oy; bts;isad; thhpRfs; FoapUe;jhh;fs; vd;W brhy;ypa[s;SJ rhpjhd;/@

18. Though he stated that there are house tax receipts to show that Dandapani and Thevar resided in the said house, but he has not filed any such tax receipts standing in the name of Dhandapani or Thevar.

19. The learned counsel for the Respondent contended that the possession of the Appellant/Defendant would only amount to that of a trespasser and the Respondent/Plaintiff being the owner of the suit property, no injunction can be ordered against the true owner. The first appellate court on applying the principle laid down in the case of Premji Ratnasey Shah and others v. Union of India and

others [1994-2-LW-735] by the Honourable Supreme Court has come to the conclusion that the Plaintiff being the true owner and the possession of the Appellant/Defendant being that of a trespasser, no injunction could be issued or ordered against the true owners. The relevant passage in the decision cited aforesaid reads as follows:- "5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the Petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identify of the land should not be an excuse to claim injunction against the true owner."

20. It cannot be disputed that a person in possession of land of assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world and if the rightful owner asserts his title by the process of law within the period prescribed by the provisions of statute of limitation applicable to the case, the rights of possessory owner is lost.

21. Therefore, in the light of the discussions made above, the findings of the first appellate court cannot be said to be erroneous in law nor it can be said that it is contrary to the pleadings and evidence on record or contrary to the well established principle of law governing the adverse possession. I, therefore, find no error committed by the first appellate court warranting interference by this court in these second appeals. Accordingly, the substantial questions of law are answered against the Appellant.

22. In the result, these Second Appeals lack merits and are dismissed. However, in the circumstances of the case, there will be no order as to costs.

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