Agnes Vs. RawlIn Thomas

Agnes Vs. RawlIn Thomas

SooperKanoon Citation : sooperkanoon.com/922669

Court : Chennai

Decided On : Nov-16-2011

Judge : G.Rajasuria, J.

Appeal No. : S.A.(MD)No.1077 of 2011 and M.P.(MD) No.1 of 2011

Appellant : Agnes

Respondent : RawlIn Thomas

Judgement :

1. This Second Appeal is focussed by the original defendants animadverting upon the judgment and decree dated 30.06.2008, passed in A.S.No.3 of 2006 by the learned Principal Subordinate Judge, Thanjavur in confirming the judgment and decree dated 14.07.2005, passed in O.S.No.417 of 2004 by the learned District Munsif, Thanjavur.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. Shorn and bereft of unnecessary details, the germane facts absolutely necessary for the disposal of the Second Appeal would run thus: The plaintiffs filed the suit for declaration of their title over the suit property and for recovery of possession of the same as against the defendants, who are the mother and son, mainly on the ground that the defendants were tenants under the plaintiffs and based on that earlier rent control proceedings were initiated, but it ended in a

fiasco, thereafter, the plaintiffs did choose to file this regular suit for declaration of their title to it and for recovery of possession of the same.

4. The defendants resisted the suit by filing written statement to the effect that there was no landlord - tenant relationship between the plaintiffs and the defendants and such a false plea taken by the plaintiffs before the Rent Control Fora was negatived and thereafter, suppressing the material facts, the plaintiffs did choose to file the present suit. According to the defendants, the first defendant's daughter paid to the plaintiffs sarees worth Rs.20,000/- (Rupees Twenty Thousand only) as sale consideration for purchasing the suit property to Katherine Thomas, the deceased mother of D1 to D4 while she was in Malaysia; however, she subsequently died before executing the sale deed. The defendants also pleaded adverse possession over the suit property.

5. Whereupon, the relevant issues were framed by the trial Court.

6. During trial, the plaintiffs 1 and 2 examined themselves as P.W.1 and P.W.2 and marked Exs.A.1 to A.7 on their side. The first defendant examined himself as D.W.1 and marked Exs.B.1 to B.14 on their side.

7. Ultimately, the suit was decreed by the trial Court, as against which the appeal was filed by the defendants, for nothing but to be dismissed.

8. Being aggrieved by and dissatisfied with the same, the defendants preferred this Second Appeal on various grounds, suggesting the following substantial questions of law:

(a) Was the respondents precluded under law in filing suit seeking possession of suit property from the appellants when it was contended by them originally that there was relationship of landlord and tenant between the parties?

(b) When the plaintiffs admitted in evidence that no permission was given for the appellants to occupy the suit property and when the appellants have been admittedly in possession of the suit property was the finding that the appellants have not prescribed title to the suit property by adverse possession tenable?

(c) Whether the courts below have erred in holding that the appellants did not prescribe the suit property by adverse possession? (Extracted as such)

9. I would like to fumigate my mind with the principles as found enunciated and enshrined in the following decisions of the Honourable Apex Court:

(i) Hero Vinoth (Minor) v. Seshammal reported in (2006) 5 Supreme Court Cases 545.

(ii) Kashmir Singh v. Harnam Singh and another reported in 2008 (4) SCALE 300.

(iii) State Bank of India and others v. S.N.Goya reported in 2009-1-L.W.1.

10. The aforesaid precedents would indicate and exemplify that unless any substantial question of law is involved, the question of entertaining a Second Appeal would not arise. Having that in mind, I heard both sides.

11. By inviting the attention of this Court to the typed set of papers and the grounds of appeal, the learned counsel for the defendants piloted his argument, which could be tersely and briefly set out thus: (a) Both the Courts below fell into error in not appreciating the fact that the deceased Catherine mother of the defendants 1 to 4 received the entire sale consideration from D1's daughter in the form of sarees worth Rs.20,000/- and agreed to execute the sale deed in favour of D1, during the year 1982. Subsequently, the said Catherine died and the plaintiffs, who are the legal heirs of Catherine turned turtle by having a volte face and failed to honour the commitment made the said Catherine.

(b) D1 - Agnes is none, but the sister of the deceased Catherine and D2 - Joseph is the son of D1. In such circumstances, out of utmost good faith some oral arrangement emerged, but the plaintiffs have failed to honour the same. All these facts were not considered by the Courts below. (c) The defendants have been in possession and enjoyment of the suit property for more than 12 years, but that fact was not considered by the Courts below.

(d) Having pleaded that there was landlord - tenant relationship between the plaintiffs and defendants before the Rent Control Fora, the plaintiffs had no locus-

standi to pursue suit, but both the Courts below failed to consider the same.

12. In a bid to mince meat and shoot down, torpedo and pulverise the arguments as put forth and set forth on the side of the defendants, the learned Counsel for the plaintiffs would advance his argument, which could be pithily and precisely set out thus:

(a) Both the Courts below rendered well reasoned concurrent findings, which warrants no interference in the Second Appeal. (b) The plea of adverse possession is a misconceived one. The R.C.O.P. was filed in the year 1991, whereas the alleged oral arrangement as pleaded by the defendants was entered into in the year 1982, if that be so, 12 years had not lapsed between 1982 and 1991.

(c) Simply because in the earlier R.C.O.P. proceedings, the plaintiffs claimed landlord - tenant relationship between the plaintiffs and the defendants, which ended in failure, that it does not mean that the plaintiffs are precluded from contending that they are the owners of the suit property and that they should be given with possession.

13. I would like to recollect the maxim, 'Ubi jus, ibi remedium' [Where there is a right, there is a remedy].

14. No doubt, earlier the plaintiffs pleaded that there was landlord - tenant relationship existed between the plaintiffs and the defendants and that they approached the Rent Control Fora. However, the Rent Controller held that there was no such relationship. It appears appeal was filed but it bore no fruit. There is no estoppel as against the plaintiffs, by way of preventing them from claiming recovery of possession, based on their title because of the finding rendered by the Rent Control Fora. Both the Courts below correctly and convincingly, appropriately and appositely appreciated those facts and held that the title is with the plaintiffs and they are entitled to recovery of possession of the suit property from the defendants, and that the defendants have not acquired adverse possession. The plea of adverse possession would imply that the defendants admitted the plaintiffs' title. As such the onus probandi is on the defendants to prove their plea of adverse

possession.

15. My mind is reminiscent and redolent of the decision of the Honourable Apex Court inP.T.Munichikkanna Reddy and others v. Revamma and others reported in (2007) 6 SCC 59. Certain excerpts from it, would run thus: 10. In that context it is relevant to refer to JA Pye (Oxford) Ltd. v. United Kingdom0 wherein the European Court of Human Rights while referring to the Court of Appeal judgment JA Pye (Oxford) Ltd. v. Graham made the following reference:

Lord Justice Keene took as his starting point that limitation periods were in principle not incompatible with the Convention and that the process whereby a person would be barred from enforcing rights by the passage of time was clearly acknowledged by the Convention (Convention for the Protection of Human Rights and Fundamental Freedoms). This position obtained, in his view, even though limitation periods both limited the right of access to the courts and in some circumstances had the effect of depriving persons of property rights, whether real or personal, or of damages: there was thus nothing inherently incompatible as between the 1980 Act and Article 1 of the Protocol.

11. This brings us to the issue of mental element in adverse possession cases-intention. * * * * *

14. Importantly, intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. The factum of possession in the instant case only goes on to objectively indicate intention to possess the land. As also has been noted by the High Court, if the appellant has purchased the land without the knowledge of earlier sale, then in that case the intention element is not of the variety and degree which is required for adverse possession to materialise. * * * * *

18. On intention, Powell v. McFarlane14 is quite illustrative and categorical, holding in the following terms:

If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the

requisite intention to possess ('animus possidendi'). * * *

If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner. * * *

In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner. * * *

What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

(emphasis supplied)

19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and the plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (wilful) or omission (negligent or otherwise) of the right to defend or care for the integrity of property on the part of the paper-owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

20. While dealing with the aspect of intention in the adverse possession law, it is important to understand its nuances from varied angles. * * * * *

22. A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by this Court in Karnataka Board of Wakf v. Govt. of India in the following terms: (SCC p. 785, para 11) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

23. It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper-owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper-owner. * * * * *

31. Inquiry into the starting point of adverse possession i.e. dates as to when the paper-owner got dispossessed is an important aspect to be considered. In the instant case the starting point of adverse possession and other facts such as the manner in which the possession operationalised, nature of possession: whether open, continuous, uninterrupted or hostile possession, have not been disclosed. An observation has been made in this regard in S.M. Karim v. Bibi Sakina: (AIR p. 1256, para 5)

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere

suggestion in the relief clause that there was an uninterrupted possession for 'several 12 years' or that the plaintiff had acquired 'an absolute title' was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. (emphasis supplied)

32. Also mention as to the real owner of the property must be specifically made in an adverse possession claim.

33. In Karnataka Wakf Board it is stated: (SCC pp. 785-86, para 12) 12. A plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. In P. Periasami v. P. Periathambi this Court ruled that: (SCC p. 527, para 5) 'Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property.' The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with Mohan Lal v. Mirza Abdul Gaffar that is similar to the case in hand, this Court held: (SCC pp. 640-41, para 4)

'4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.' (emphasis supplied)

16. It is therefore clear that there is embargo as against the defendants, to plead adverse possession. As per the written statement as well as their evidence, the defendants candidly and categorically admitted the title of the plaintiffs, that D1's daughter paid the alleged sale consideration etc., to Catherine, the deceased mother of D1 to D4 and the rent control proceedings were initiated in the year

1991 itself. As such there was no gap of 12 years period between 1982 and 1991; wherefore, the plea of adverse possession pleaded on the side of the defendants is a misconceived one. Both the Courts below dealt with the matter au fait with law and au curante with facts and held that the plaintiffs are the owners of the suit property and that they are entitled to possession of it.

17. In such a case, I do not see any question of law, much less any substantial question of law is involved in this matter and the Second Appeal deserves to be dismissed.

18. In the result, the Second Appeal is dismissed. No costs. Consequently, connected M.P.(MD) No.1 of 2011 is dismissed.