K.V. Swamynathan And Ors vs E.V. Padmanabhan And Ors on 21 December, 1990

Equivalent citations: 1990 SCR, SUPL. (3) 709 JT 1991 (1) 83

Author: K.N. Saikia

Bench: K.N. Saikia, M. Fathima Beevi

PETITIONER:
K.V. SWAMYNATHAN AND ORS.

Vs.

RESPONDENT:
E.V. PADMANABHAN AND ORS.

DATE OF JUDGMENT21/12/1990

BENCH:
SAIKIA, K.N. (J)
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SAIKIA, K.N. (J)
FATHIMA BEEVI, M. (J)

CITATION:
1990 SCR Supl. (3) 709 JT 1991 (1) 83
1990 SCALE (2)1326

ACT:
Constitution of India, 1950--Article 136--Concurrent findings of trial Court and High Court--Interpretation of document of title and finding of existence of adverse possession--Whether questions of law.
Code of Civil Procedure, 1908--Order 7, rule I--Suit for possession--Delivery pursuant to Court's decree--Effect of--Question of adverse possession--When arises.
Transfer of Property Act, 1882 Sections 54 55(f)--Sale--Delivery when takes place--Duty of seller indicated.

HEADNOTE:
The appellants-plaintiffs instituted a suit (O.S. No. 298/76) against the respondents-defendants, for title and exclusive ownership of the suit-properties in T.S. No. 666/2 and for recovery of possession and for damages for wrongful use and occupation of the properties by the defendants.

The appellants-plaintiffs' case was that originally the suit-properties were joint-family properties of one Annayyar, who adopted one Vakil Ramaswamy as his son. After the adoption he had three aurasa sons-Ellayar, Sankaranarayana Iyar and Meenakshisundaram Iyer.

On 21.8.1896, a partition was entered into between the Annayyar and his sons and the properties including the suit-properties were allotted to the aurasa sons.

On 31.5.1926 over the properties, the aurasa sons executed a mortgage deed in favour of one Yaghasami Iyer, who obtained a decree filing a suit (O.S. No. 147/1932).

On 4.7.1934 when the hypotheca was brought to sale by the mortgagee in execution of the decree in O.S. No. 147/1932, the aurasa sons executed a subsequent mortgage deed in favour of one Salem Bank.

On 9.12.1942, the Bank mortgaged the properties to the father of

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the appellants. While so, he also purchased vide a sale deed an undivided 1/3rd share of the equity of redemption in the properties from Sankaranarayana Iyar, one of the aurasa sons of Annayyar.

On 12.12.1942. Ellayyar, another aurasa son, entered into an agreement with the father of the appellants for the sale of his 1/3rd share.

Defendants 13 and 14, meanwhile, in collusion with Ellayyar brought into existence a sale deed in their favour by antedating an agreement for sale of his share. This forced the father of the appellants to file a suit (O.S. No. 202 of 1942) against Ellayyar and his sons and the defendants 13 and 14, for specific performance of the agreement for sale. The suit was decreed in favour of the father of the appellants, against which appeal preferred, was also dismissed.

On 7.2.1945, in pursuance to the decree, the Court executed a sale deed in favour of the father of the appellants, and symbolic possession of the properties was taken by him.

The appellants contended that their father had mortgage rights over the suit-properties in T.S. No. 666/2 and he had become the owner of the equity of redemption in respect of 2/3rd of the properties in T.S. No. 665 and T.S. No. 666. The balance share of 1/3rd was purchased by the defendants 13 and 14 from Meenakshisundaram, the youngest aurasa son of Annayyar, on 29.12.1942.

The father Of the appellants filed a suit for partition and separate possession of the 2/3rd share (O.S. No. 54 of 1950) against the defendants 13 and 14.

On 28.3.1950, a preliminary decree for partition and separate possession was passed by consent Of the parties. When the final decree proceedings were pending a compromise was entered into by the parties, according to which, final decree was passed on 6.10.1950.

As per the final decree the properties were demarcated and allotted between the parties and on 19.1.1953 the father of the appellants was issued possession receipt, who could take only the symbolic possession of the properties, because tenants were there in the properties. Since then the father of the appellants and the appellants were in possession of the suit-properties.

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Further the appellants-plaintiffs averred in the instant suit-plaint that a portion of the land was acquired by the Municipality and in C.C. No. 3 of 1957 the Municipality was ordered to pay the appellants compensation for the land acquired by it.

It is stated that the names of the appellants were recorded in Revenue Records and in the Town Survey Field Register and the House Tax Demand Register of the Municipality.

The appellants were paying the Municipal Property tax of the house Door Nos. 268, 269, 270, 271, 271-A and 272 in T.S. No. 666/2 from 1.4.1964 to 30.9.1969, when respondents-defendants 1 to 3 made objections and the Municipality registered the Door Nos. 272 in the name of the defendant No. 1, whereas Door Nos. 269, 270, 271 and 271-A were registered in the names of the defendants Nos. 2 and 3 and Door No. 268 in one Kalyana Sundaram's name.

The appellants filed a writ petition against such alternations made by the Municipality, which was dismissed by the High Court, as remedy was available by suit.

When their appeal was dismissed, by the Division Bench of the High Court, the appellants-plaintiffs fried the instant suit (O.S. 298/ 1976).

Defendant No. 1's case was that the portion of the suit properties, consisting of Door Nos. 269 to 272 became her father-in-law's properties under a family arrangement, as he being the adopted son of Ammyyar. On his death, his son, the husband of the defendant No. 1, became entitled to the properties in T.S. No. 666/2 and he was in possession and enjoyment thereof directly and through tenants.

On 1.5.1945 defendant No. 1's husband leased out a vacant site in T.S. No. 666/2 to the father of the defendants 2 to 4 for a period of 10 years, whereon the lessee put up Door Nos. 269, 270, 271 and 271-A.

On the death of her husband, the defendant No. 1 granted fresh lease to the defendants 2 to 4, who sublet the buildings to defendants 5 to 8.

The defendant No. 1 stated that her predecessors and she was in continuous and uninterrupted possession of the suit-properties in T.S. No. 666/2 for more than 60 years and had perfected title to the suit-

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properties by adverse possession and the appellants-plaintiffs did not have any right, title or interest over the suit-properties. She also denied all other contentions of

the plaintiffs.

The second defendant corroborated the facts stated by the first defendant and adopted the written statement of the defendant No. 1.

The sixth defendant stated that he took Door No. 270 on lease from the father of the defendants 2 to 4 to do business and the father-in-law of the defendant No. 6, the defendant No. 7, took the Door No. 271 lease from the father of the defendant Nos. 2 to 4 and later on the defendant No. 6, the son-in-law of defendant no. 7 took possession of Door No. 271 from defendant No. 7 and the business run by him therein. The defendant No. 6 adopted the written statement of his lessors-defendants 2 to 4.

In the joint-written statement, the defendants 9 and 10 claimed to be in possession of Door No. 272, which was belonging to the Mahaganapathi Dhandayathapani Swamy temple of the Sambanda Swamy Matam. According to the defendants 9 and 10, their father had been in occupation of the Door No. 272, as he was doing the services in the temple and on his death, the defendants 9 and 10, being his sons, were in possession and enjoyment thereof. They also averred that the proceedings in O.A. No. 28 of 1970 were pending before the Deputy Commissioner, Hindu Religions and Charitable Endowment with respect to Door No. 272. They had perfected title to the property, which was in their possession for more than 50 years.

The contentions of the defendant No. 11 were that he was running petty shop in Door No. 272 for more than 25 years and the H.R.& C.E. Board had issued notices to all occupiers like him to surrender possession to the Sambanda Swamy Matam, as the suit-properties belonged to the Matam.

The 12th defendant stated that Door No. 268, where he was residing originally belonged to Ellayyar's family. On 14.11.1896, under a feed executed by the members of Ellayyar's family, the paternal grand father of the defendant 12 was permitted to live in Door No. 268, and to perform puja in their family temple. The defendant had been performing pooja after the deaths of his grand father and father. The defendant no. 12 stated that ever since 14.11.1896 he and his pre-decessors-in-interest had been in possession and enjoyment of Door No. 268.

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Defendants 13 and 14 stated that in O.S. No. 54/1950 the properties were divided between them and the father of the appellants plaintiffs' and same was allotted and delivered to them. They took delivery of possession of the same, wherein they had put up superstructures and subsequently affected partition between them.

All the respondents-defendants claimed that the appellantsplaintiffs had no right, title or interest on the suit-properties in T.S. No. 666/2; that the suit was barred by limitation; that plaintiff-appellants could not claim any relief from them; and that all of them have perfected title,

as they were in uninterrupted and peaceful possession and enjoyment of the suit properties in T.S. No. 666/2 since a long time.

During the pendency of the suit, the defendant No. 15 was impleaded, being the legal representative of the defendant No. 1, on her death.

Dismissing the suit, the trial Court held that the appellantsplaintiffs' had no title to the suit properties, that the husband of the defendant No. 1 and his heirs had been in possession and enjoyment of Door Nos. 269 to 272 through their tenants for over the prescriptive period, that Door No. 272 and T.S. No. 666 were not temple properties as contended by defendants 9 and 10, that the 12th defendant was entitled to be in occupation of a portion of Door No. 268 in lieu of his services to the temple.

In their appeal to the High Court, the appellants-plaintiffs contended that the trial Court erred in coming to the conclusion that the plaintiffs had no title to the suit properties; and that when once the title of the plaintiffs to the suit properties was found in their favour, it was for the defendants to establish that they had prescribed title to the suit properties by adverse possession and limitation.

The respondents-defendants contended that the title having been found in their favour, the suit was rightly dismissed.

Dismissing the appeal of the appellants, the High Court held that as the appellants-plaintiffs had not proved their title over the suitproperties, they were not entitled to a decree for recovery of possession of the suit-properties. The High Court also declined the leave to appeal.

In this Court, the respondents raised a preliminary point contending that this appeal against the concurrent findings of the Courts below
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to be dismissed. The appellants contended that the questions formulated by the High Court were questions of law.

It was the contentions of the appellants that their father had derived title to suit properties-the 2/3rd shares of the aurasa sons as Annayyar, on the basis of sale deeds dated 19.12.1942 and 7.2.1945 executed in his favour about 38 years prior to the filing of the instant suit, which were executed by the Court in pursuance of the decree for specific performance; that the defendants 13 and 14 purchased 1/3rd share of the 3rd aurasa son by the sale deed dated 29.12.1942; that all the three sale deeds expressly referred to the suit-properties in T.S. No. 666/2, even though there was no reference as to the boundaries and the High Court erred in not mentioning in its judgment the vital fact that the sale deeds-the documents of title-expressly included the suitproperties; that other documents like the mortgage deed dated 4.7.1934, the deed of assignment of mortgage right dated 9.12.1942, the deed of mortgage dated 31.5.1921, the sketch and the revenue map etc. expressly referred to the

suit-properties; that though the instant suitproperties were not the subject matter in the partition suit in O.S. No. 54 of 1950, between the father of the appellants-plaintiffs and defendants 13 and 14, it would not affect their title to the instant suitproperties; that by a process of argumentative inference title was to be found in the certified copy of the original plaint; that the defendant No. 1 only claimed title or possession related to Door Nos. 269 to 272 and defendant No. 12 (respondent No. 7) claimed the Door No. 268 on the basis of permissive possession vide document dated 14.11.1896, that on the questions of adverse possession of Door Nos. 269 to 272 by defendant No. 1 was not justified, as per the witness evidence it was stated that the father-in-law of defendant No. 1 was in possession only over Door No. 272 and it had commenced by way of permissive possession only at the time of partition between the father-in-law of defendant No. 1 and other members of the family and permissive possession could not be converted into adverse possession because the defendant No. 1 did not set up any evidence to prove that there was such hostile title to the knowledge of the true owner; that the defendant 1(respondent No. 8) made sales of the suit properties to respondents 9 to 12.

The respondents-defendants, on the other hand, contended that the concurrent findings of the Court's below were based on the Exts. and the conduct of the appellants-plaintiffs and their father through-out the litigation. Further they contended that if really T.S. No. 666/2 belonged to the aurasa sons under the partition deed, the plaintiffs' father would be entitled only to 2/3rd share in the suit properties under the sale deeds

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in Ext. A. 5 and A.8, and defendants 13 and 14 would be entitled to the remaining 113rd share and the instant plaint could have proceeded on the basis that the appellants-plaintiffs were entitled to only 2/3rd share and defendants 13 and 14 were entitled to the remaining 1/3rd share, which was not the basis on which the present plaint had been filed.

Dismissing the appeal of the appellants-plaintiffs, this Court,

HELD: 1.01. Concurrent findings of fact will not be disturbed unless it is shown that there has been a miscarriage of justice or the violation of some procedure or principle or that they have been arrived at by reason of any error or method or mistake through neglect of any aspect of the evidence, or important aspects of the case escaped notice or failed to receive due emphasis, or that the forms of legal:process were disregarded or principles of natural justice were violated or substantial and grave injustice resulted or that it cannot be supported by the evidence or it is perverse, or that the rule of prudence that the evidence of an unreliable witness should not as accepted without corroboration has been departed from. It is also true

that they will not be disturbed on the ground that inadmissiable evidence was received, when the findings cannot on any reasonable view be regarded as based or dependent upon such evidence. [731B-D]

1.02. In an appeal by special leave there has to be a substantial question of law. [731D]

1.03. Interpretation of a document of title is a question of law. [731H]

1.04. Construction of a document of title which was the foundation of the rights of parties necessarily raises a question of law. [732B]

1.05. The question as to whether the possession of a person can be regarded in law as adverse possession is partly a question of fact and partly a question of law. [732D]

Mithilesh Kumari v. Prem Benahi Khare, [1989] 2 SCC 95: J.T. 1989 (1) SC 275, Distinguished.

Kaolapati v. Amar, AIR 1939 PC 249:44 CWN'66; Chunilal V. Mehta & Sons, Ltd v. The Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314: [1962] 3 Supp. SCR 549; Jadu Gopal. Panna Lal, AIR 1978 SC 1329: [1978] 3 SCR 855 and Meenakshi Mills, Madurai v. The Commissioner of Income-tax, Madras, AIR 1956 SC 49: [1956] SCR 691, followed.

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State Bank of Travancore v. A.K. Panikkar, AIR 1971 SC 996; Kesar Singh v. Balwant Singh, AIR 1957 SC 487: [1962] Supp. (1) SCR 325; Sabapathi v. Huntlay, AIR 1938 P.C. 91:173 IC 19; Sitalakshmi v. Venkata, 34 CWN 593, 597; Khoo Sit v. Lim Thean. [1912] AC 323, 325; Sarju v. Jwaleshwari, AIR 1951 SC 120: [1950] SCR 781; Radha Prasad v. Gajadhar, AIR 1960 SC 115: [1960] 1 SCR 663; Karbada v. Chhaganlal, AIR 1969 SC 395; Robin v. National Trust Ltd., 101 IC 903: AIR 1927 PC 66; Watt v. Thomas, [1947] AC 484, 486; Sara Veeraswami v. Talluri, AIR 1949 PC 32:1949 Mad. 487:75 IA 252; Benmak v. Austin Motor Co. Ltd. [1955] 1 All. E.R. 326, H.L. Bodhral v. Sitaram, 40 CWN 257:160 IC 45; AIR 1936 PC 60 and Virappa v. Periakaruppan, 49 CWN 2 11: AIR 1945 PC 35, referred to.

The path of the Law (1897) in collected Legal Papers Page 173; Best 11th Ed. S. 12-Referred to.

2.01. In the instant case, while interpreting the Exts. A. 5 and A. 8, and the decree one has to take into consideration what the Parties themselves intended. Quia non refert out quis intionem suam declarat, verbis out rebus ipsis velfactis. It is immaterial whether the intention be collected from the words used or the acts done. Intention was manifested in the acts performed by the parties concerned pursuant thereto. It was immaterial that T.S. No. 666 was there in the deeds. Intentio mea imponit nomen operi meo. My intent gives name to my act. Facta sunt potentiora verbis. Facts are more powerful than words. Factum cuique suum adversarie nocere debet. A party's own act should prejudice himself, not his adversary. Traditio loqui facit certain.

Delivery makes a deed speak. Delivery gives effect to the words of a deed. What was delivered pursuant to the decree on interpretation of the sale deeds has to be accepted as the parties themselves after night-long deliberation fixed and accepted. [745B-D]

2.02 The right to T.S. No. 666/2 having not been acquired at all, no question of adverse possession against the plaintiffs would arise at all. The plaintiffs case has to fail for want of proof of title to T.S. No. 666/2. [745E]

2.03. Adverse possession by nature implies the ownership of another. Where one person is in possession of property under any title, and another person claims to be the rightful owner of the property under a different title, the possession of the former is said to be adverse possession with reference to the latter. Adverse possession is a statutory method of acquiring title to land by limitation. It depends on animus or

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intent of occupant to claim and hold real property in opposition to all the world; and also embodies the idea that the owner of the property has knowledge of the assertion of ownership of the occupant. [745F]

3.01. Under Section 54 of the Transfer of Property.Act, delivery of tangible property takes place When the seller places the buyer, or such person as he directs, in possession of the property. Under section 55(1) of that Act the seller is to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature permits. [746C]

3.02. In the instant case the father of the appellants was never proved to have acquired ownership of T.S. No. 666/2. there is no evidence of T.S. No. 666/2 ever having been delivered to him. On the other hand the Commissioner's plan and the partition decree did not include T.S. No. 666/2. It cannot, therefore, be said that the father of the appellants acquired any title to it. Obviously the appellants also could not inherit the same. [746B, D]

Austin on Jurisprudence P. 177, referred to.

JUDGMENT: