Navaneethammal vs Arjuna Chetty on 6 September, 1996

Equivalent citations: AIR 1996 SUPREME COURT 3521, 1998 (9) SCC 558, 1996 AIR SCW 3635, (1996) 4 CURCC 5, (1997) 1 CIVLJ 161, 1997 SCFBRC 371, (1997) 1 CTC 172 (SC), 1996 HRR 568, (1996) 2 RENTLR 336, (1996) 3 SCJ 375, 1996 (6) SCC 166, 1997 ALL CJ 1 183, (1996) 7 JT 698 (SC), (1997) 2 ALL RENTCAS 411, (1997) 31 ALL LR 222.1, (1998) 8 JT 529.2 (SC), (1998) 8 JT 529 (SC), 1998 ALL CJ 2 1079.1

Bench: N.P. Singh, K. Venkataswami

PETITIONER:
NAVANEETHAMMAL

Vs.

RESPONDENT:
ARJUNA CHETTY

DATE OF JUDGMENT: 06/09/1996

BENCH:
N.P. SINGH, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T The plaintiff Who filed a suit on 13.6.1962 for declaration of her title to the suit property and for recovery of possession is the appellant herein. The suit property is an extent of 1.13 acre out of 3.39 acres in Survey No. 330/2 in Ulli Village, Gudiyatham Taluk. North Arcot District, Tamil Nadu. It was purchased by the plaintiff under registered sale deed dated 21.3.1957 from one Mohd. Ghouse. The respondent herein who was the defendent in the suit admittedly was let in to possession of the suit property along with the balance of above-mentioned Survey 330/2 as a tenant under a registered Lease deed dated 1.4.1935 The vendor of the plaintiff after the sale issued a notice to the defendant on 16.4.1957 intimating the fact of sale to the plaiantiff. The defendant in his reply dated 27.4.1957 denied his status as lessee and his liability to pay rent. He set up title in himself to the suit property. The plaintiff on his part issued a notice on 10.5.1957 intimating the defendant

about her purchase and calling upon him to pay rent in future as a lessee. As defendant set up title in himself, the plaintiff was obliged to file the suit as stated above.

The suit was resisted on the ground resisted on the ground that after the expiry of the registered lease, he surrendered possession of the suit property to the then landlord and thereafter, since it was under nobody's occupation, he entered possession in his own right and not as a lessee and he has not even paid rent to anybody after the after the expiration of lease. Further it was alleged that he has plaintiff's suit for recovery of possession was barred by limitation. The Trial Court framed as many as six issues and after examining three witnesses on the side of the plaintiff and five witnesses on the side of the defendant and after perusing 13 documents filed on the side of the plaintiff and 21 documents filed on the side of the defendant, it found that the plea of surrender was not established and defendant did not prescribe title by adverse possession. Accepting the case of the plaintiff, the trial court decreed the suit declaring that the plaintiff was entitled to the suit property and directed the defendant to surrender possession without any let or hindrance.

The defendant aggrieved by the decree against him preferred an appeal to the learned Subordinate Judge, Tirupattur. Unfortunately, on account of certain lapses, The High Court was compelled to remand the matter to the Appellate Court on three occasions Finally the First Appellate court by it s detailed judgment on 9.9.1976 confirmed the decree of the Trial Court and dismissed the appeal preferred by the defendant.

Still aggrieved, the defendant preferred second appeal No. 1801/76 in the Madras High Court. The learned Single Judge of the Madras High Court found that the Court below failed to come to correct conclusion on the basis of the evidence both oral and documentary placed before them and in a way gone into the evidence onceover and reversed the findings rendered by the Court below and consequently allowed the Second Appeal. dismissed the suit filed by the plaintiff.

Aggrieved by the judgment of the High Court, the present appeal has been filed by the plaintiff appellant by Special Leave.

Mr. K. Rajendra Chowdary, learned counsel appearing for the appellant submitted that the High Court exceeded its jurisdiction under Section 100 CPC in reversing the concurrent findings of the Courts below. He also submitted that the High Court went wrong in placing the onus of proof regarding the character of possession of the suit land by the defendant, on the plaintiff when admittedly the defendant was let into the possession as a tenant under a registered lease deed of the year 1935. The High Court, according to the learned counsel ought not to have discussed the issue of adverse possession with reference to Article 139 of the old Limitation Act, 1908 as no such plea was taken in the written statement nor any issue was framed concerning that. He further invited our attention to the well founded reasoning and the concurrent findings supported by evidence, of the lower Appellate Court which did not call for any interference by the High Court while exercising the jurisdiction under section 100 C.P.C.

Mr. R. Sundarvardhan, Sr. Counsel appearing for the defendant-respondent strongly supported the judgment of the High Court mainly on the basis of Article 139 of the old Limitation Act which

corresponds to Article 67 of the new Limitation Act, 1963. According to the learned Sr. Counsel, it is an admitted fact that after the expiry of the lease in the year 1938, the defendant never paid any rent for his continued possession in the suit property and in the absence of any exercise of ownership by the landlord for a continuous period of over twelve years, the defendant prescribed title by adverse possession. He also placed reliance on the fact of payment of kists (land revenue) to the suit land by the defendant. He submitted that the High Court has given good reasons for interfering under section 100 CPC stating that the findings rendered by the Court below were not based on materials to sustain those findings and therefore, it must be taken that the findings were rendered by court below based on no evidence. According to the learned counsel on the admitted facts of this case, namely, that neither the lessor nor his legal representative having not claimed any rent continuously for a period of twelve years after the expiry of the lease, Section 116 of the Transfer of Property Act would not come to the aid of the lessor or his successors in interest when the tenant invokes the aid of Article 139 of the old Limitation Act. He wants the Court to look into Article 139 of the old Limitation Act alone for counting the period of limitation imply from the expiry of the date of the lease ignoring the hard fact that the defendant continued after the expiry of lease either as tenant holding over or as a tenant by sufferance.

Mr. Rajendra Chowdary, learned counsel for the appellant in reply submitted that in terms of the registered lease deed, the lessee/defendant/respondent herein was bound to pay the kists for the suit land and therefore, the payment of kists after the expiry of the lease will not make any difference in the case. He also contended that the defendant for the first time set up hostile title in himself only on 27.4.1957 in his reply notice. The suit filed in 1962 is well within time.

We have considered the rival submission. Before discussing the merits of respective rival submission, it is necessary to bear in mind that the case set up by the defendant in the Trial Court was prescription of title by adverse possession after surrendering the suit land and again re-entering the same. No plea contending that the suit was barred under Article 139 of the old Limitation Act was taken by the defendant in the trial court. Therefore, there was no necessity for framing any issue or letting in oral evidence on that aspect. This aspect assumes importance in considering the evidence.

This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciating the evidence just to replace the findings for the lower courts.

Let us see whether the High Court on the facts of his case has exceeded its jurisdiction in reversing the findings of the lower Appellate Court by re-appreciating the evidence.

Before the Trial Court, the crucial issue was regarding adverse possession. On that issue, the Trial Court found that as the tenant/defendant came into possession of the land only in pursuance of the lease deed, his possession was merely a permissive one. It was further found that there was no evidence before the Trial Court to show that prior to the date of Exbt. A-6 (reply by defendant) he had never claimed independent title to the suit property and had brought that animus to the notices

to the land-lord or the successors in title. The Trial Court also noticed an important fact and observed as follows:

> "In the writte statement, it is stated that after the expiry of the lease period mentioned under Exbt. A-3, he had surrendered possession of the land and that he again got the possession of the land in his own independant right and from that date onwards, he has been in possession of the land continuously uninterruptedly as the owner of the lands. This claim has been given a go-by by him in his deposition."

The Trial Court also found that in as much as the defendant asserted his independant right in the land in himself only under Ext. A-6 dated 27.4.1957, his possession was not adverse to the owners of the land as the suit came to be filed within five years thereafter.

The First Appellate Court framed the question for consideration on ramand as follows:

> "Whether, having regard to the evidence, oral or documentary and the probabilities of the case, there could be an inference of implied assent by the land-lord to the continuance in possession by the tenant after the termination of the term under Exbt. A-3".

In discussing the oral evidence, the first appellate court held as follows:

"Before advertising to the arguments of counsel appear for both parties. I would like to refer to the oral evidence in this case, plaintiff's vendor Mohamed Ghouse Sahib was examined as P.W.I. He is a retired Post Master and is aged about 70 years. His definite testimony is that after the demise of Samad Sahib, he (P.W.I) and Khader Sahib were collecting rents, that the there were rent arrears to the extent of Rs.200/- or Rs.250/-, that they gave notice to the defendant and that after receipt of the notice, the defendant was paying some amounts in instalments. he denied that after the expiry of the lease period in Ex. A-3, the defendant surrendered possession of the property and that because the property remained unoccupied, the defendant trespassed upon the lands As rightly pointed out by the learned counsel for the plaintiff, the evidence of P.W. 1 with regard to the collection of rents by him and Khader Sahib and payment of some amount by the defendant in instalment was not challenged at all in cross-examination. In this connection. I may point out the admission of the defendant as D.W.2 that there is no enmity between him and P.W.1. In the absence of any motive. I do not understand as to why P.W.1 who is a respectable witness should come and make false statement in Court so far as this aspect of the case is concerned. I see no valid reason to disbelieve him in this respect."

Again in para 12, the lower Appellate Court held as follows:

> "No doubt, the defendant as D.W.2 would say that there is enmity between him and P.W.2. But on this ground alone, the evidence of P.W.2 that he had seen P.W.1 and Khader Sahib at the village when coming to collect rents(elicited during cross-examination) cannot be rejected as false. His evidence when considered

alongwith the other circumstance in this case appears to me quite probable and acceptable. P.W.3, Veeraraghava Pillai is the husband of the plaintiff and karnam of Ulli village for more than 30 years. His definite testimony is that the defendant was a tenant holding over of this land."

On a perusal of the lower Appellate Court judgment, we find hat findings rendered by the lower Appellate court were very well based on materials placed before it and the contrary conclusion reached by the High Court is not sustainable. The lower Appellate court in its judgment has appreciated all relevant oral and documentary evidence and observed as follows:

"On the side of the defendant, we have the evidence of D.Ws. 1 to 5 of them D.W.1 is the Hand Writing Expert He was examined with reference to Ex. A-4. His evidence is not relevant for our present limited enquiry. D.W. 3 Ramakrishan is a resident of Ulli village. D.W.4 Mahadevan is a resident of Gopampatti. D.W. 5 Karunagaran is a contractor by profession at Gudiyatham. There three witnesses claim to own lands near the suit property. They would say that the defendant has been in possession and enjoyment of the suit land for the last 32 to 35 years. But they are not in a position to say as to in what capacity the defendant entered into possession of this property. Their evidence that the defendant is in continuous possession and enjoyment of the suit lands is of no significance because the admitted case of the plaintiff is that the defendant is in possession from 1935 but as a tenant holding over. The evidence of defendant as D.W.2 would certainly throw some light in deciding the issue before us. For better appreciation I would prefer to extract the relevant on by the plaintiff.

"One Sahib leased out the property to me for three years under a registered lease deed. I cultivated the land for tow years. I the third year the Sahib took me to P.W.3's house. My father accompanied me. P.W.3's father told me that the Sahib would not come thereafter and the lease deed was cancelled and that thereafter I could enjoy the land and I need not worry since the former's son. P.W.3 was the village karnam. Thereafter, I was enjoying the land without any interruption. The lessor, my father and P.W. 3's father went to P.W.3 fathers's house. At that time P.W.3 was the village karnam. I was sent for about for or five hours later. P.W. 3 was not present at the time. His father told that they had decided that the lease period had expired and that thereafter I could enjoy the land as my own without paying rent to anybody and I should pay the kists my self. At that time, including me only four ' persons were present. The Sahib was then present. The incident took place at the beginning of the third lease year. I was not asked to give any amount in pursuance of the decision. The entire land is wet land. Even at that time the land was worth two thousand rupees. I so not know whether my father gave any amount in pursuance of the decision. I did not ask him about it. I did not give the rent for the third year. From the date of the registered lease deed I am in continuous possession and enjoyment of the land. Due to forget fulness I have not stated the above incident in my written statement and also to my counsel who gave the reply notice: I did not tell him that I had surrendered possession of the land and thereafter the land was in nobody's possession for some

time and that I again got into possession of the land"

Again in paragraph 18, the learned Subordinate Judge held as follows:

" As already stated, in the reply notice Ex. A-6 the defendant is silent about his induction into possession of the suit property at any time as a lessee, any alleged surrender or his occupation finding the property lying unoccupied. In his written statement his specific case is that at the end of term under Ex.A-3 he surrendered possession of the suit property and that thereafter he was in possession of the property in his own right. A third case was put forward during the trial through the mouth of the defendant as D.W.2, I have already adverted to his evidence in this respect. That would show that even at the end of the second year i.e. in the year 1937 and before the commencement of the third year, he was taken to P.W. 3's father's house by some Sahib that his father was also present and that he was informed that the lease was cancelled and that he could enjoy the land as he liked. It has to be noted that even according to D.W.2 this property was worth Rs.2000/- at that time. It is highly unlikely that no prudent man would have given up his right in such a valuable property in favour of another person without any consideration. It is not the case of the defendant that he had done some services to the family of the original owners of this property or that he paid some consideration towards the value of this property and that because of such consideration, he was orally asked by the Sahib to enjoy the land as his own. When in the year 1935, the defendant and Samad Sahib have taken the precaution of getting lease deed registered, it is unlikely that the defendant would have failed to obtain something in writing when as alleged by him (D.W.2. the Sahib asked him to enjoy the land as he liked saying that the lease was cancelled. As already stated the case set out by the defendant in his reply notice is that the property remained unoccupied and that so he entered into possession and occupied it. Having regard to these facts and having regard to the evidence of P.Ws. 1 to 3 with regard to the collection of rents and the property as a tenant and also having regard to the probabilities and circumstances of this case, I find no difficulty in coming to the conclusion that there should have been an implied assent by the landlord to the continuance in possession by the defendant after termination of the term under Ex. A-3".

In the light of these findings of the courts below, the High Court on re-appreciation of evidence found as follows:

"Thus there is nothing as and by way of evidence which can be taken to support the contention of the respondent that there was a tenancy after the expiry of the original tenancy in the year 1938"

"I have discussed the facts to show that there are no materials to support the findings of the lower Appellate Court that there was a continuation of tenancy after the expiry of the original lease."

> "That there must be some act which evidence the lessor being agreeable to the tenant being in possession of the property leased so as to infer an assent. In the absence of such a conduct in the present, it is not possible to draw the inference that there was any assent on the part of the plaintiff to the defendant continuing in possession of the property."

In our considered view the lower Appellate Court has fairly appreciated the evidence in the above background and has reached the conclusion that the suit was not barred by Limitation. Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material.

Article 139 of the old Limitation Act reads as follows:

> Article 139
>
> ---------- Description of Period of Time from which suit limitation period begins to run
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> ----------
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> By a landlord to recover possession from a tenant — Twelve years — When a tenancy is determined.
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> The date on which the tenancy is determined will be the date from which the period of limitation would begin to run for the purpose of Article 139 of the old Limitation Act.
>
> One mode of determining tenancy under Transfer of Property Act is by way of surrender by the tenant. We have seen on facts that an attempt was made by the defendant- respondent that he had surrendered the suit property after the expiry of the lease and thereafter re-entered the suit land and continued in possession in his own right. However, this case was not accepted by the trial court as well as by the appellate court for well-founded reasons as noticed above. That being the position the possession by the defendant on the fact as found by the First Appellate Court, in this case, after the expiry of the lease further continuance was only permissive and will not give cause for prescribing title by adverse possession. Further, for the first time, while replying to the notice by the vendor of the plaintiff, the defendant openly set up a hostile title and the suit having been filed within five years therefrom is not barred by limitation.

In the circumstances, we are satisfied that the High Court was not justified in interfering with the judgments of the courts below. Consequently, the appeal is allowed. There will be no order as to costs.