

Achal Reddy

Vs

Ramakrishna Reddiar and Others

Civil Appeal No. 1945 of 1974

(G. L. Oza, Smt. M. S. Fathima Beevi JJ)

17.11.1989

JUDGMENT

M. FATHIMA BEEVI, J. -

1. This is an appeal by special leave against the judgment and decree dated October 9, 1973 of the High Court of Judicature at Madras in Letters Patent Appeal No. 78 of 1969.
2. The appellant was the first defendant in O.S. No. 53 of 1959 in the Munsiff's Court, Chingleput. The respondents are the legal representatives of Munisubba Reddi, the plaintiff therein. That suit was instituted on February 11, 1959 for recovery of possession of the suit property with mesne profits. The suit was decreed by the trial court on November 7, 1960. The first appellate court by the revised judgment dated August 5, 1961 in A.S. No. 21 of 1961 reversed the decree. The second appeal preferred by the plaintiff was dismissed by the High Court in S.A. No. 426 of 1965 on January 31, 1969. However, the Division Bench of the High Court allowed the Letters Patent appeal filed by the plaintiff.
3. It is necessary to set out few facts for the purpose of this appeal. The suit property having an extent of 13 acres and 42 1/2 cents originally belonged to one Dasu Reddi. He conveyed possession of the land to one Varada Reddi under an oral agreement of sale on July 10, 1946. A deed of sale was drawn up on July 17, 1947, but Dasu Reddi died before it could be registered. Thereafter his sons Rajaram Reddi and Ramalinga Reddi executed Ex. A-1 sale deed in favour of Munisubba Reddi on October 6, 1949. Varada Reddi, aggrieved, instituted O.S. No. 78 of 1949 against Munisubba Reddi and his vendors for specific performance of the contract for sale, asserting his possession in pursuance of the agreement dated July 10, 1946. Varada Reddi died pending the suit. Muthukrishna Reddi was impleaded as his legal representative. That suit was decreed in his favour on December 13, 1952. The decree became final, but was not executed.
4. In the present suit the plaintiff Munisubba Reddi alleged that he was put in possession of the land by Muthukrishna Reddi after the said decree under an arrangement evidenced by Ex. A-4 dated December 12, 1955 and while in possession, the defendants Achal Reddi and others trespassed into the property in 1956. Achal Reddi contested the suit denying the petitioner's title and the alleged trespass and claiming that Muthukrishna Reddi had orally transferred his rights and conveyed possession to him for valuable consideration.
5. The trial court in granting the petitioner a decree for possession found that the plaintiff's title under the sale deed of 1949 as against his vendors was made perfect and title did not pass to Muthukrishna Reddi as he did not choose to execute the decree and the petitioner was in possession

within 12 years prior to the suit. It was found that the first defendant Achal Reddi has no title to the suit property and that he is not in possession of the same. The first appellate court by the judgment dated August 5, 1964 rendered after the remand considered the question of title as well as possession and held :

"If Muthukrishna Reddi had enforced the decree in O.S. No. 76 of 1949 for specific performance against the plaintiff and his vendors, that would have put an end to the title of the plaintiff under Ex. A-1. As already stated, the decree was allowed to lapse leaving the title of the plaintiff under Ex. A-1 unaffected. The title that vested in the plaintiff on June 6, 1949 continued to remain with him thereafter for the above reasons. As against this, the defence contention that defendant 1 under an oral agreement, became the owner of the properties cannot stand. My finding, therefore, is that the plaintiff has title to the properties under Ex. A-1.

6. The learned Judge, however, found that the plaintiff was not in possession of the suit land in 1955 and the plaintiff having neither proved possession nor dispossession at any time was not entitled to a decree.

7. In S.A. No. 426 of 1965 these concurrent findings of the trial court as well as the first appellate court on the question of plaintiff's title had not been challenged. The only question raised therein and considered by the learned Single Judge was whether the plaintiff was in possession within 12 years of suit in order to enable him to recover possession and whether for that purpose he could say that his vendors and before him, Dasu Reddi were in possession of the property and consequently he could add that period to the period before June 6, 1949, the date of sale in his favour. The learned Judge was of the view that if Varada Reddi's possession was permissive, then the possession should be deemed to have continued with the original owner Dasu Reddi and thereafter his sons, but if on the other hand the possession of Varada Reddi was adverse even as against the original owner, the plaintiff would not be entitled to add the period before June 6, 1949 and such possession could not enure to his benefit. After referring to the decision in *Annamali Chettiar v. Muthiah Chettiar* (ILR (1965) 1 Mad 254 : 78 Mad LW 172) the learned Judge held that Varada Reddi's possession was adverse to Dasu Reddi from July 10, 1946, on the assumption that a sale had been effected orally even on July 10, 1946 leaving only execution of the sale deed to be done later. This assumption of the learned Single Judge was found to be faulty by the Division Bench.

8. The Division Bench noticed that all that the plaintiff has to prove is that he or his predecessor-in-title was in possession at any time between February 11, 1947 and February 11, 1959. If between February 11, 1947 and July 17, 1947 the possession of Varada Reddi was possession held on behalf of Dasu Reddi then it could be held that the plaintiff's predecessor-in-title had been in possession within 12 years prior to the suit. The Division Bench held that the transaction of July 10, 1946 was in fact and in law only on oral agreement for sale and that on the assumption that it was an oral sale the learned Single Judge failed to apply the legal position as enunciated in *Annamali v. Muthiah* (ILR (1965) 1 Mad 254 : 78 Mad LW 172). They observed that possession as held by Varada Reddi subsequent to July 10, 1946 and before he instituted the suit in 1949 for specific performance was in the consciousness that it was only possession on behalf of the real owner. Even if the execution of an infructuous sale deed on July 17, 1947 by Dasu Reddi in favour of Varada Reddi is assumed to have altered the complexion of events in any manner, the possession by Varada Reddi from July 1, 1946 up to July 17, 1947 at least was clearly possession held on behalf of Dasu Reddi, the predecessor-in-title of the plaintiff. If the plaintiff's predecessor had been in possession of the suit property on July 17, 1947, that is to say within 12 years prior to the institution of the present suit on

February 11, 1959, there can be little doubt that the plaintiff must succeed on the question of possession as well. In this view the judgment of the learned Single Judge was reversed.

9. There is no controversy that the plaintiff has to establish subsisting title by proving possession within 12 years prior to the suit when the plaintiff alleged possession within 12 years prior to the suit when the plaintiff alleged dispossession while in possession of the suit property. The first appellate court as well as the second appellate court proceeded on the basis that the plaintiff is not entitled to succeed as such possession has not been proved. The concurrent findings that the plaintiff had title in spite of the decree for specific performance obtained against him, when that decree had not been executed are not assailed by the appellant in the High Court. The appellant cannot, therefore, urge before us on the basis of the findings in the earlier suit to which he was not a party that Ex. A-1 sale deed is one without consideration and does not valid title on the plaintiff. The sole question that has been considered by the High Court is that of subsisting title. We have to consider whether the question of law as to the character of the possession Varada Reddi had between July 10, 1946 and July 17, 1947 is adverse or only permissive. In the case of an agreement of sale the party who obtains possession, acknowledges of the vendor even though the agreement of sale may be invalid. It is an acknowledgment and recognition of the title of the vendor which excludes the theory of adverse possession. The well settled rule of law is that if a person is in actual possession and has right to possession under a title involving a due recognition of the owner's title his possession will not be regarded as adverse in law, even though he claims under another title having regard to the well recognised policy of law that possession is never considered adverse if it is referable to a lawful title. The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties stipulating for a total divestiture of all the rights of the transferor in the property, and in a case in which there is a mere executory agreement of transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely against the transferor. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse.

10. In the case of an executory contract of sale where the transferee is put in possession of the property in pursuance of the agreement of sale and where the parties contemplate the execution of a regular registered sale deed the animus of the purchaser throughout is that he is in possession of the property belonging to the vendor and that the former's title has to be perfected by a duly executed registered deed of sale under which the vendor has to pass on and convey his title. The purchaser's possession in such cases is of a derivative character and in clear recognition of and in acknowledgment of the title of the vendor. The position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title

and interest in the property. This applies only in a case where there is a clear manifestation of the intention of the owner to divest himself of the right over the property. On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself. The correctness of the decision in *Annamali v. Muthiah* (ILR (1965) 1 Mad 254 : 78 Mad LW 172) cannot, therefore, be doubted.

11. The parties are concluded by the finding of the Division Bench that the transaction of July 10, 1946 between Dasu Reddi and Varada Reddi is only an agreement for sale and not an oral sale of the property. If that be so the possession of Varada Reddi in pursuance of such an agreement of sale and in the expectation that there would be a complete divestiture of all the rights of the owner in his favour on execution of a regular sale deed, until the execution of the sale deed, was only possession on behalf of Dasu Reddi. Such possession having been within a period of 12 years prior to the present suit, the plaintiff succeeds in having established the possession of his predecessor-in-interest within 12 years prior to the date of the suit. The plaintiff is, therefore, entitled to a decree in his favour. The decision of the letters patent bench of the High Court is correct and we confirm the same. The appeal is accordingly dismissed with costs.

</html