

Indira

Vs

Arumugam and Another

Civil Appeal No. 6110 of 1997

(S.B. Majmudar, Sujata V. Manohar JJ)

09.09.1997

ORDER

1. Leave granted.

2. We have heard learned counsel for the respective parties finally in this appeal and accordingly the appeal is being disposed of on merits. This appeal is preferred by the original plaintiff challenging the judgment rendered by the High Court of Judicature at Madras in Second Appeal No. 956 of 1983 whereby the learned Judge dismissed the second appeal and confirmed the decree of dismissal of suit as passed by the lower appellate court. At the time of admission of the second appeal the High Court framed the following substantial question of law :

"Whether in the light of Exs. A-3 and A-4 sale deeds and Exs. 9 and A-10 lease deeds there is any legal or factual basis for negating the claim of the plaintiff ?"

3. While discussing this substantial question of law, the learned Judge observed in paragraph 10 of the judgment as under :

"10. The learned Senior Counsel for the appellant repeatedly urged that the plaintiff is entitled to succeed on the basis of her purchase under Ex. A-2 and on the basis of the title acquired by Chinnakaruppan Chettiar under Exs. A-3 and A-4 though not on the basis of lease chits as the successor-in-interest of the lessor to get back and recover possession of the property. If the plaintiff has miserably failed to show that the purchasers under Exs. A-3 and A-4 have got possession of the properties and were shown to be in actual possession and remained in possession of the same pursuant to the title derived under Exs. A-3 and A-4 for a long period till Ex. A-2 was purchased by the plaintiff, it is to be taken that the plaintiff has made a purchase from PW 4 who himself did not have valid title to the property and the title acquired can be safely shown to have been lost by the inability on the part of the plaintiff to substantiate before the court that the plaintiff or her predecessor were in active and actual physical possession and enjoyment of the property. The further plea on behalf of the appellant that the trial court has not framed any issue on the case of adverse possession pleaded by the defendants and in the absence of any such issue and finding that the defendants have acquired title by adverse possession, the plaintiff must succeed on the basis of her title does not also appeal to me. In view of the fact that it is for the plaintiff who has come before the court first to substantiate her title and cannot be claimed to have been substantiated merely by producing some document of purchase but it must also be convincingly established to the satisfaction

of the courts that the title derived from possession and thereafter from prescription also by active and actual physical possession and enjoyment of the property."

4. The aforesaid reasoning of the learned Judge, with respect, cannot be sustained as it proceeds on the assumption as if old Article 142 of the earlier Limitation Act was in force wherein the plaintiff who based his case on title had to prove not only title but also possession within 12 years of the date of the suit. The said provision of law has undergone a metamorphic sea change as we find under the Limitation Act, 1963 Article 65 which reads as under :

#-----Description of suit Period of Time from
which period limitation begins to run-----65.
For possession of Twelve years When the possession of the immovable property or defendant
becomes adverse any interest therein based to the plaintiff. on title.-----
-----##

5. It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. Unfortunately, this aspect of the matter was missed by the learned Judge and, therefore, the entire reasoning for disposing of the second appeal has got vitiated. Only on that short ground and without expressing any opinion on the merits of the question of law framed by the learned Judge for disposing of the second appeal, this appeal is allowed. The impugned decision rendered is set aside and the second appeal is restored to the file of the High Court with a request to proceed further with the hearing of the appeal with respect to the substantial question aforementioned in accordance with law. No costs.