

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5622 OF 2002

ELUMALAI NAICKER & ANR.

... APPELLANTS

VERSUS

CHANDRAN NAICKER

... RESPONDENT

O R D E R

This appeal by special leave is by the plaintiffs in a suit for declaration of title, possession, permanent injunction, mandatory injunction and mesne profits. The second appellant claims to be the owner of the suit properties that is two portions of survey No.209/6 of Kadapakkam village measuring 1.75 acres and 60 cents described as items (1) and (2) respectively in the plaint Schedule. The first appellant is the husband of second appellant. The respondent - defendant is the brother of the second appellant. For convenience, we will refer to the appellants and respondent by their ranks in the suit, as plaintiffs and defendant.

2. The plaint averments in the suit filed in the year

1987, in brief, are as follows:

(a) The second plaintiff purchased the suit properties under a registered sale deed on 25.11.1977 executed by one Ratnavelu PW-2, who had earlier purchased the suit properties from Adikesavalu under sale deed dated 25.1.1972.

(b) The second plaintiff was in possession of the suit lands even prior to the sale in her favour and she had perfected her title by adverse possession also.

(c) In or about in March 1981, the second plaintiff's brother namely Chandran Naicker (defendant) sought her permission to reside in a portion of her property and offered his services to look after the fruit bearing trees therein. The second appellant permitted the defendant to put up at his own cost, a thatched hut in a portion of her land (the portion described as item (2) in the plaint Schedule) and permitted him to reside there free of rent, in consideration of his assurance of service by looking after the fruit bearing trees in the suit schedule item (1) property.

(d) After a few years, as defendant's service was not satisfactory, the plaintiffs called upon the defendant to

vacate the thatched hut. He failed to do so and set up a claim that he was the owner of the suit schedule item(2) land measuring 60 cents. This necessitated filing of the suit for declaration of title, possession, injunction and mesne profits.

3. The defendant contended in his written statement that he had occupied the 60 cents of land (suit schedule item no.2 land) in the year 1970 and has been in possession and enjoyment thereof openly, peacefully and continuously and had perfected his title by adverse possession. He alleged that he constructed the thatched hut and planted trees in the 60 cents land and his open and uninterrupted possession of the said portion from 1970 was not objected to either by plaintiff or anyone else claiming to be the owner; and that the second plaintiff was also in similar possession of the adjoining portion that is remaining portion of Survey No.209/6 (suit schedule item (1) land). He denied the allegation that he was in occupation of 60 cents of land only from the year 1981 under permission from the plaintiffs or that he was engaged to keep a watch over the fruit bearing trees in suit schedule item(1) land. He claimed that he has been paying taxes in respect of suit schedule item(2) property and that he was recorded as the owner of the said land in the Revenue records. He did not deny the

ownership or possession of second plaintiff in respect of suit schedule item no.1 land measuring 1 acre 75 cents.

4. The trial court framed appropriate issues regarding title, adverse possession, possession, permanent injunction, mesne profits. The second plaintiff examined herself as PW1 and examined her vendor Rathnavelu as PW2. The defendant gave evidence as DW1 and examined one R. Ramachandran as DW2. Both sides also tendered documentary evidence. The documents exhibited by plaintiffs consisted of title deeds, Jamabandhi, Chitta and Adaugal Extracts and tax receipts. The documents exhibited by defendant consisted of house tax receipts.

5. After appreciating the evidence, the trial court decreed the suit on 16.7.1990. The first appellate court allowed the appeal by the defendant on 28.6.1991, reversed the judgment of the trial court and dismissed the suit. The second appeal filed by the plaintiffs was dismissed by the High Court on 12.10.2001 and the decision of the first appellate court was confirmed. Feeling aggrieved, the plaintiffs have filed this appeal by special leave.

6. The first appellate court which is the final court of fact has recorded a finding that the defendant is in

possession of the suit schedule item no.2 land (60 cents) ever since 1970 and that plaintiffs have failed to prove that second plaintiff had been in possession of both items of suit schedule earlier or that she had permitted the defendant to occupy a portion of her land (suit schedule item no.2) in the year 1981. The first appellate court has also held that the defendant was in open peaceful and uninterrupted possession of the suit schedule item no.2 and paid the house taxes from 1972-73, in respect of the house constructed by him. The said findings of fact were not disturbed by the High Court. We find that the said findings are based on admissions and documentary evidence and do not call for interference in exercise of jurisdiction under Article 136 of the Constitution.

7. PW.2, Ratnavelu who sold the suit scheduled property (items 1 and 2 of the plaint schedule) to second plaintiff has given different versions in regard to possession of the suit properties in his evidence. One version is that from the date of purchase in 1972 from Adikesavalu till the date of sale in 1977 in favour of second plaintiff, he was in possession of the suit properties and he delivered possession thereof to the second plaintiff at the time of sale in 1977. Another version is that the second plaintiff was in possession of

the suit properties from the year 1973. The second plaintiff (PW1) stated in her evidence that she was in possession of the suit properties for 25 years, that is from 1966, which was about 11 years prior to the purchase by her. The second plaintiff also admitted in her evidence that the defendant was in possession of the 60 cents of the land and thatched hut (suit schedule item 2) from the year 1970 itself. This clearly belies plaintiffs' case in the suit that defendant entered possession of the suit schedule item (2) only in the year 1981, under her express permission. The above evidence supports the claim of defendant that he has been in possession of suit schedule item (2) in his own right ever since 1970.

8. Another significant aspect is that the sale deed in favour of second plaintiff (Ex.A1) described the 60 cents out of Sy. No.209/6 (suit schedule item 2) as distinct and separate from suit schedule item (1) measuring 1 acre 75 cents in Sy. No.209/6. Both items were contiguous lands forming part of the same survey number belonging to a single owner (PW2) and sold to a single purchaser (PW1). The entire land was covered by same patta. If possession thereof had been delivered to the second plaintiff as a single unit, there was no need to describe the two portions separately in the sale deed. When this

fact is considered with the averment in the plaint that plaintiffs and their predecessors in title had acquired title to the suit property by adverse possession, it is evident that the two portions were described separately as they were treated as distinct properties, in the possession of second plaintiff and defendant respectively from 1970 onwards long prior to the sale in favour of second plaintiff. This would also support the claim of the defendant that he perfected his title to suit schedule by adverse possession. It is probable that second plaintiff and her predecessors in title had also perfected title by adverse possession in regard to suit schedule item (1).

9. The Revenue records show that upto 1986, Adikeshavulu - second plaintiff's vendor's vendor was shown as the owner, though second plaintiff purchased the suit property in 1977 itself. It was only an year prior to the filing of the suit, the name of the second plaintiff was entered as owner. The second plaintiff produced and relied upon certain tax receipts to show that she has been in possession. But most of them related to a period subsequent to the sale in her favour. On the other hand the defendant also produced several house tax receipts which showed that he was paying the house tax in respect of the portion in his possession long prior to

1977 when second plaintiff purchased the property. The plaintiffs of course dispute the claim of defendant that the tax receipts produced by him relate to the suit schedule item (ii). Even if the tax receipts are excluded the very admission by the second plaintiff that the defendant has been in possession of 60 cents of land (suit schedule item 2) from 1970 onwards destroys the case of the plaintiff that she was in possession of the entire extent of 2.35 acres land in Sy. No.209/6 on purchase in 1977 and that she had permitted her brother (defendant) to occupy a portion thereof measuring 60 cents in the year 1981. Another unexplained feature is why second plaintiff would permit defendant to be in possession of a big chunk of 60 cents (out of total area of 2 acres 35 cents) if he was engaged merely to look after the fruit bearing trees in the land.

10. If on the basis of the aforesaid evidence the first appellate court recorded a finding that plaintiffs had failed to make out title and possession in regard to suit schedule item (2) and that defendant had established open, peaceful and uninterrupted possession in his own right for more than 12 years as on the date of suit it cannot be said that the said findings were erroneous or called for interference in second appeal by the High Court.

11. The first appellate court after due consideration of the evidence has recorded a finding of fact in favour of the defendant, which has been confirmed by the High Court. We find no reason to interfere with such finding. The appeal is therefore dismissed.

.....J.
(R.V. RAVEENDRAN)

.....J.
(LOKESHWAR SINGH PANTA)

NEW DELHI,
SEPTEMBER 30, 2008.

