

CASE NO.:
Appeal (civil) 4880 of 2007

PETITIONER:
Annakili

RESPONDENT:
A. Vedanayagam & Ors

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.6500 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. Plaintiffs-Respondents are owners of the property in question. They purchased the same from Corporation of Madras by a registered deed of sale dated 19.4.1944. The owners of the property, namely Krishnadoss Lala and his brother, however, partitioned their suit properties on or about 5.5.1968 whereupon the suit properties were allotted to the share of Krishnadoss Lala. After his demise, the same vested in his heirs and legal representatives. They, along with one Mohamed Idris and one K. Peer Mohideen entered into an agreement whereby and whereunder, it was agreed that the property should be released from the notification of the year 1973 issued by the Tamil Nadu Slum Clearance Board.
3. Plaintiffs-Respondent herein purchased the suit properties not only from the heirs and legal representatives of the said Krishnadoss Lala but also from the said Mohamed Idris and K. Peer Mohideen for valuable consideration by a registered deed of sale dated 30.9.1986.
4. Defendants claimed possession of the suit properties described in Schedule \021A\022 of the plaint therein since 1957. On or about 1.12.1972, the Government of Tamil Nadu designated an area including the suit properties as slum area. It was transferred to Tamil Nadu Slum Clearance Board.
5. Pursuant to a scheme undertaken by the World Bank in regard to sale of land situated in Corporation Division No.122, Kamaraja Puram, T. Nagar slum areas to the persons who were in occupation of the portions thereof, the Department of House and Urban Development, Government of Tamil Nadu issued two GOMs bearing No.1117 dated 27.6.1979 and GOMs No.1100 dated 29.8.1980 in that behalf.
6. The suit property was allotted to the husband of the appellant as appears from a letter dated 18.3.1981 which is to the following effect :
\023In pursuance of the orders stated above, action is being taken to allot land extending 18.5 sq. mtrs. In Kamaraja Puram Scheme Plot No.17 is allotted to you. You have to pay the necessary amount in the following manner. A sum of Rs.89/- should be paid along with the application. Later on you have to pay Rs.13/- as monthly installment (including interest) for period of 10 years. On completion of 10 years and after payment of all the installments the land will be given to you through a sale deed. Besides this you have to pay a sum of Rs.8/- per month towards development charges and Rs.2/- per month towards water and drainage charges. You are hereby requested to apply in the pro forma

annexed herein and to execute a lease cum sale agreement document in favour of Slum Clearance Board within 7 days from the date of receipt of this notice. If you fail to send this application with advance payment receipt, it is construed that you are not in need of the land allotted to you and the same will be allotted to some other person after evicting you from the premises.\024

7. Plaintiffs-respondents, however, moved the High Court by way of filing a writ petition in the year 1989 for issuance of a writ of or in the nature of mandamus directing the State of Tamil Nadu to denotify the land in question as a slum area and put them back in the possession thereof. By a judgment and order dated 10.1.1990, the said writ petition was allowed. The area in question was directed to be denotified and the respondents herein were found entitled to obtain vacant possession of the said property.

8. Appellant and other persons similarly situated were not parties therein. They preferred a Writ Appeal before the Division Bench of the High Court which was numbered as writ appeal No.272 of 1990. The Division Bench of the High Court by a judgment and order dated 21.3.1990 found the title of the respondent herein having regard to the admitted facts in the said proceedings, but upon holding that as the appellants have ventured to put forth a case that their occupation of the property relate back to 60 years which conferred the right to them de\022 hors the said proceedings and as direction to hand over the vacant possession would result in dispossession of the third parties to which the learned Single Judge had no occasion to advert to and adjudicate upon the rights of the third parties, because they were not parties in the said writ petition, directed :

\023Further, there is a grievance, expressed by the learned counsel for the parties, that without even a prayer, therefore, the learned Single Judge has directed respondents 1 and 2 to declare that the property ceased to be a slum area. This grievance is a tenable one and requires amelioration. There was no prayer at all to the above effect. The enquiry into that question will take us into a different sphere. Hence, we do not think it will be in order to make a declaration that the property ceased to be a slum area.

In the said circumstances, we find a warrant to vacate and we do vacate the directions of the learned single Judge to respondents 1 and 2 to declare that the property ceased to be a slum area and also to hand over vacant possession of the property to the petitioners. The prayer in the writ petition to the extent of the denotification asked for alone could be and is being sustained. The other controversies with reference to recovery of possession from the third parties and the declaration with reference to the property ceasing to be a slum area are left open.\024

9. Consequent upon the said decision of the Division Judge, the Government of Tamil Nadu cancelled the earlier notification dated 1.12.1972 notifying the suit properties as slum area.

10. Respondents filed a suit on 26.9.1995 which was marked as CS No.1485 of 1995 (re-numbered as 14770 of 1990) praying, inter alia, for the following reliefs :

\023(a) direct the defendants to quit and deliver vacant possession of the premises mentioned in Schedule B, C, D and E and remove all structures put up by the defendants and in default direct the plaintiffs to remove the structure and recover the cost from the defendants.

(b) to award past mesne profits at Rs.3,60,000/-

jointly and severally towards past mesne profits.

(c) to award future mesne profit at the rate of Rs.10,000/ per month jointly and severally.

(d) to award future mesne profit at the rate of Rs.10,000/- per month jointly and severally.\024

10. In their written statement, the appellant, inter alia, contended :

(1) That the Plaintiffs have not filed a suit for declaration of title but merely a suit for possession which is not maintainable inasmuch as the title of the Plaintiffs/Respondents herein have been denied in all proceedings.

(2) That the Plaintiffs/Respondents herein are not the owners of the property and have not been in possession of the property from 19.4.1944 onwards.

(3) The Defendant/Petitioner herein are in continuous uninterrupted possession and have perfected title by adverse possession.

(4) That the allotment of the Slum clearance Board was only a recognition given to the Defendants right to continue in possession forever.\024

11. The learned Trial Judge dismissed the said suit opining that the suit land had been in occupation of the appellants for a long time and that they have acquired title by adverse possession. The suit was also held to be barred by limitation.

12. By reason of the impugned judgment, the High Court allowed the appeal filed by the respondents herein directing the appellant to deliver possession of the property to the respondents.

13. Mr. Dayan Krishnan, learned counsel appearing on behalf of the appellants, would submit that the High Court proceeded on an erroneous basis that the title of the suit property was not in dispute.

It was submitted that the High Court committed a serious error in opining that the appellant had no animus to possess the suit property adverse to the interest of the plaintiff-respondent.

14. Evidences on record would clearly show, Mr. Krishnan would submitted, that the appellant had been in continuous possession for more than 60 years and, thus, they had perfected their title by adverse possession. It was urged that the Respondents having not sought for any relief in regard to declaration of their title, the suit will be governed by Article 64 and the Schedule appended to Article 65 of the Limitation Act, 1963.

15. Mr. V. Raghavachari, learned counsel appearing on behalf of the respondents, on the other hand, drew attention of this Court not only to the findings of the Division Bench of the High Court in Writ Appeal No.272 of 1990 but also to another writ application filed by the appellant herein in the year 1989 and the judgment passed therein as also in the writ appeal to contend that in view of the findings of the Division Bench of the High Court in the aforementioned writ proceedings which was disposed of in the year 1991, limitation, if any, would start running only from the said date and not prior thereto. It was contended that the petitioner had never asserted any right in them but had all along being asserting their title under the settlement made by the Corporation of Madras.

16. The fact that title of the land was with Corporation of Madras is not in dispute. It is furthermore not in dispute that the Corporation of Madras had transferred the suit property in favour of Mr. Krishnadoss Lala. Despite the fact that the Corporation of Madras had divested itself of the said property, it erroneously transferred the same in favour of Tamil Nadu Slum Clearance Board on 1.12.1973. Pursuant thereto, certain development activities were taken by the Board. At that point of time, Shri Krishnadoss Lala submitted a representation to the Corporation of Madras stating that although the property belonged to him, the same was illegally transferred to the Tamil Nadu Slum Clearance Board. The Corporation accepted the said mistake on its part and informed the Tamil Nadu Slum Clearance Board thereabout. A

request was made to the Board to exclude the said property from the list of properties owned by the Slum Clearance Board. The predecessors and representatives of the respondent thereafter paid the development charges incurred by the Slum Clearance Board. A request was made by the Board to denotify the Slum area but the State did not take any action thereupon.

17. It was in the aforementioned factual scenario, the writ petition was filed. Appellant herein indisputably had been claiming title only on the basis of purported settlement made in their favour by the Tamil Nadu Slum Clearance Board. It was not their case that even prior to 1.12.1972 when the area was declared as slum area, they have acquired title by adverse possession. Indisputably, therefore, the Corporation of Madras or Tamil Nadu Slum Clearance Board did not have any title in the suit property. They could not have transferred any right, title and interest in the said land to the appellants and others similarly situated.

18. We may notice that the appellant, in his writ application filed before the High Court of Judicature at Madras being writ petition No.7785 of 1987, stated :

\023In accordance with the scheme the slum dwellers of Kamarajapuram were provided with the bank loan for constructing their houses or putting up construction. We understand that financial assistance was availed from World Bank for construction drainage, toilet and bathroom facilities and as well as for making water supply to the slum dwellers of Kamarajapuram. We obtained the Loan from bank as already submitted through the Slum Clearance Board and put up new constructions after obtaining sanction from the Corporation, and are in possession and enjoyment of our respective land and superstructure. We were paying the installments towards sale consideration and towards bank loan and also development charges etc., since 1981.\024

19. It was under the said title, therefore, the appellant and others had been claiming the land. They had been paying installments to the Slum Clearance Board. In the writ petition filed by the appellants and others, a prayer was made for issuance of direction to the Slum Clearance Board to accept instalments from them. The said writ petition was dismissed. A writ appeal preferred thereagainst, inter alia, by the appellant herein, was dismissed by a Division Bench of the High Court, holding :

\023We have heard learned counsel for the parties at length and perused the materials on record. It is seen from the facts narrated above, that after 19.4.1944 sale, the property in question does not belong to the Corporation of Chennai. The transfer of the property thereafter to the Slum Clearance Board on 17.12.1973 is only a mistake. That apart, the owners of the property have said the amounts spent by the Slum Clearance Board for the development of the property and had also paid compensation to most of the slum dwellers for their resettlement. They have also agreed to pay compensation to the remaining slum dwellers for their resettlement. The order directing denotification has been upheld by the Division Bench in W.A. No.272 of 1990 and the appellants had not agitated this issue at the appropriate time, when they had the knowledge of the decision dated 21.3.1990 and also when G.O. was issued on 16.5.1991 pursuant thereto. Civil Suit is pending only for possession. Under the circumstances, the arguments advanced by the appellants now are not sustainable, as the same had not been agitated at the appropriate time. As such, the order of the

learned single Judge cannot be said to be unjust. In any view of the matter, in the facts of the given case, we do not find any error or illegality in the order of the learned single Judge so as to call for interference. The writ appeal is, therefore, dismissed.\024

20. Even in the said writ petition, the appellant did not claim any independent right on the basis of adverse possession or otherwise. We have noticed hereinbefore that the writ application filed by the respondents herein directing the Government of Tamil Nadu to issue a notification denotifying the area as Slum area was allowed by the learned Single Judge. The said finding of the learned Single Judge was not overturned. The Division Bench, while upholding the title of the respondents in relation to the said land, was of the opinion that the learned Single Judge was not correct in directing handing over of possession of the suit properties in favour of the respondents, although the appellant and persons similarly situated were in possession thereof. In the aforementioned premise, it was not necessary for the respondents to file a suit for a declaration of their title. Appellant had preferred the said appeal. The decision of the Division Bench was rendered in presence of the appellant. The judgment of the Division Bench of the High Court operates as *res judicata*. The finding in regard to the title of the respondents had attained finality.

21. We cannot accept the submission of Mr. Dayan Krishnan that it was obligatory on the part of the respondent to file a suit for declaration of their title also. As the title of the respondents in the suit property had already been adjudicated upon, a suit for recovery of possession on the basis of the said title attracted Article 65 of the Schedule appended to the Limitation Act 1963. In terms of the said provision, it was for the appellant to show that she and her predecessor had been in possession of the suit property on the basis of the hostile title and as a result whereof the title of the plaintiff-respondent extinguished.

22. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. For the said purpose, not only *animus possidendi* must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.

23. In *Saroop Singh v. Banto & Ors.* [(2005) 8 SCC 330], in which one of us was a member, this Court held :

\02329. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See *Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak*).

30. \023Animus possidendi\024 is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite *animus* the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite *animus*. (See *Mohd. Ali v. Jagadish Kalita* Para 21.)\024

24. The said statement of law was reiterated in *T. Anjanappa & Ors. v. Somalingappa & Anr.* [2006] (8) SCALE 624 = (2006) 7 SCC 570], stating :

\023It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner\022s title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former\022s hostile action.\024

25. Yet recently, in P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors. [(2007) 6 SCC 59], this Court noticed the recent development of law in other jurisdiction in the context of property as a human right to opine :
\023Therefore, it will have to be kept in mind the courts around the world are taking an unkind view towards statutes of limitation overriding property rights.\024

26. We may also notice that this Court in M. Durai v. Muthu & Ors. [(2007) 3 SCC 114], noticed the changes brought about by Limitation Act, 1963, vis-à-vis, old Limitation Act, holding :
\023The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-a-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession.\024

27. Appellant herein, it will bear repetition to state, did not raise any claim on adverse possession prior to the filing of the aforementioned writ appeal. She and her husband has been claiming title only through or under the Board. No independent title was claimed. Respondents, on the one hand and the Corporation of Madras, Slum Board and the Government of Tamil Nadu on the other were litigating since 1973. They accepted the title of the respondents. Respondents also reimbursed the Board in regard to the expenditure incurred by them. In the aforementioned fact situation, it is not possible to hold as has been contended by Mr. Dayan Krishnanan, that the Division Bench posed unto itself a wrong question leading to a wrong answer or the appellant had acquired title by adverse possession or otherwise.

28. For the views we have taken, there is no infirmity in the judgment of the High Court. The appeal is dismissed. No costs.