

PETITIONER:
ACHAL REDDI

Vs.

RESPONDENT:
RAMAKRISHNA REDDIAR AND ORS.

DATE OF JUDGMENT 17/11/1989

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
OZA, G.L. (J)

CITATION:
1990 AIR 553 1989 SCR Supl. (2) 193
1990 SCC (4) 706 JT 1989 (4) 322
1989 SCALE (2) 1130

ACT:
Limitation Act, 1963: Section 65--Adverse possession--Implies commenced in wrong and maintained against right--Purchaser getting possession under executory contract of sale--Whether could contend possession was adverse.

HEADNOTE:

A, the owner of the land in question, conveyed possession of it to B under an oral agreement of sale. A deed was drawn up within about a week, but before it could be registered, A died and his sons executed a sale-deed in respect of the land, in favour of C. Aggrieved, B instituted a suit against C and A's sons for specific performance. B died during the pendency of the suit and his son D was impleaded as his legal representative. The suit was decreed in favour of D. Though the decree became final, it was not executed.

C filed a suit alleging that he was put in possession by D and that E and others trespassed into the property. E contested the suit on the ground that D had orally transferred his rights and conveyed possession to him for valuable consideration. The Trial Court decreed the suit. On appeal, the first appellate court held that C was not entitled to a decree.

On appeal to the High Court, the Learned Single Judge held that B's possession was adverse to A on the assumption that a sale had been effected orally leaving only execution of the sale deed to be done later and so, C would not be entitled to add the period before the sale in his favour on 6.6.49 for the purpose of calculating the period of possession for 12 years, prior to the suit, and that such possession could not enure to his benefit under the Limitation Act, 1963. However, the concurrent findings of the Trial Court and the first Appellate Court on the question of C's title had not been challenged.

The Division Bench reversed the above judgment holding that the Learned Single Judge failed to apply the correct legal position on the assumption that the transaction of 10.7.46 was only an oral sale.

This appeal by special leave has been filed by E against the judgment of the Division Bench.

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Dismissing the appeal, this Court,

HELD: 1. If a person is in actual possession and has a 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 contend that his possession was adverse. 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. [198F-G; 199A]

2.1 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 and 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 acknowledgement 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 clear 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 permissible or derivative and in law is deemed to be on behalf of the owner himself. [199B-F]

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2.2 In the instant case, the parties are concluded by the finding of the Division Bench that the transaction of 10.7.46 was only an agreement for sale and not an oral sale of the property. [199G]

Annamalai Chettiar and Another v. Muthiah Chettiar and Another, ILR 19651 Madras 254 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1945 of 1974.

From the Judgment and decree dated 9.10.1973 of the Madras High Court in L.P.A. No. 78 of 1969.

S. Padmanabhan, K.M.M. Khan and Vineet Kumar for the Appellant.

Vepa Sarathy and Ramesh N. Keshwani for the Respondents.

The Judgment of the Court was delivered by

M. FATHIMA BEEVI, J. 1. This is an appeal by special leave against the judgment and decree dated the 9th October, 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 11.2.1959 for recovery of possession of the suit property with mesne profits. The suit was decreed by the trial court on 7.11.1960. The first appellate court by the revised judgment dated the 5th August, 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 31.1.1969. 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 10.7.1946. A deed of sale was drawn up on 17.7.1947, but Dasu Reddi died before it could be registered. Thereafter his sons Rajaram Reddi

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and Ramalinga Reddi executed Ex. A. 1 sale deed in favour of Munisubba Reddi on 6.10.1949. 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 10.7.1946. Varada Reddi died pending the suit. Muthukrishna Reddi was impleaded as his legal representative. That suit was decreed in his favour on 13.12.1952. 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 12.12.1955 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 Reddy 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 5.8.1964 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. 76/1949 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 unaf-

fectured. The title that vested in the plaintiff on 6.6.1949 continued to remain with him thereafter for the above reasons. As against this, the defence contention that the 1st defendant 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."

The learned Judge, however, found that the plaintiff was not in possession of the suit land in 1955 and the plaintiff having neither

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proved possession nor dispossession at anytime was not entitled to a decree.

6. 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 6.6.1949, 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 6.6.1949 and such possession could not enure to his benefit. After referring to the decision in Annamalai Chettiar and Another v. Muthiah Chettiar and Another, ILR 19651 Madras 254 the learned Judge held that Varada Reddi's possession was adverse to Dasu Reddi from 10.7.1946, on the assumption that a sale had been effected orally even on 10.7.1946 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.

7. 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 11.2.1947 and 11.2.1959. If between 11.2.1947 and 17.7.1947 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 10.7.1946 was in fact and in law only an 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 Annamalai v. Muthiah, (Supra). They observed that possession as held by Varada Reddi subsequent to 10.7.1946 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 17.7.1947 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 1.7.1946 upto 17.7.1947 at least was clearly possession held on behalf

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of Dasu Reddi, the predecessor-in-title of the plaintiff. If the plaintiff's predecessor had been in possession of the suit property on 17.7.1947, that is to say within 12 years prior to the institution of the present suit on 11.2.1959,

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.

8. 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 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 inspite 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 confer 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 10.7.1946 and 17.7.1947 is adverse or only permissive. In the case of an agreement of sale the party who obtains possession, acknowledges title of the vendor even though the agreement of sale may be invalid. It is an acknowledgement and recognition of the title of the vendor which excludes the theory of adverse possession. The well-settled rule of law is that if person is in actual possession and has a 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 toto 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 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,

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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.

9. 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 acknowledgement 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 *Annamalai v. Muthiah* (supra) cannot, therefore, be doubted.

10. The parties are concluded by the finding of the Division Bench that the transaction of 10.7.1946 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,

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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.

G.N.

Appeal dismissed.

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