

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 21842 OF 2017
Arising out of SLP(C) No.375 of 2015

VAIRAVAN CHETTIAR

Appellant(s)

VERSUS

K SUSEELA & ORS.

Respondent(s)

O R D E R

R.BANUMATHI, J.

Leave granted.

The question falling for consideration is whether the appellant-plaintiff who is the owner of the property is entitled to recover possession from the respondent-defendant who was in permissive possession.

The appellant-plaintiff claims that he is the owner of the suit property Survey No. 82/3 situated in 11, Erukkur Village, Sirkali Taluk, by a registered settlement deed dated 14.12.1949 executed by his Grandfather V.A.Annamalai Chettiar.

Defendant worked as a watchman in the appellant's farm. The defendant was residing in the suit property and his possession is only permissive possession. The appellant-plaintiff filed the suit for permanent injunction against the original defendant which was subsequently

amended as the one for possession. The Trial Court held that the respondent-defendant is only in permissive possession of the suit property and therefore, cannot set up a plea of adverse possession and negated the defendant's plea of adverse possession. The Trial Court while holding that the appellant-plaintiff is the owner of the property, held that the plaintiff has not come out with a clear case as to when the defendant has come in occupation of the property and on those findings dismissed plaintiff's suit.

Being aggrieved, the appellant-plaintiff had filed the appeal. The first appellate court reversed the findings of the Trial Court and held that the defendant having admitted the ownership of the appellant-plaintiff cannot claim adverse possession. Pointing out that the plaintiff is the owner of the suit property by virtue of settlement, the appellate Court set aside the judgment of the Trial Court and directed the respondent/defendant to deliver the vacant possession of the suit property.

The respondent-defendant preferred Second Appeal before the High Court. The High Court has allowed the Second Appeal by observing that the appellant-plaintiff has not amended the plaint in a proper manner and ultimately, the suit of the plaintiff came to be dismissed.

It is not in dispute that the appellant-plaintiff is the owner of the suit property by virtue of the settlement dated 14.12.1949. Admittedly, the respondent-defendant came to be in occupation of the property only as a worker under

the original owner and thus, possession of the original defendant was only permissive possession. Having come in possession of the property in his capacity as a permissive possession, the respondent-defendant cannot take the plea of adverse possession. In our view, the High Court erred in reversing the well considered judgment of the First Appellate Court on technical ground that the suit ought to have been amended for declaration of title. Be it noted that the respondent-defendant did not dispute the title of the appellant-plaintiff and judgment of the High Court cannot be sustained.

Learned counsel for the respondent-defendant submits that the original defendant passed away and the LRs of the original defendant are the widow and two unmarried daughters. It was submitted that the defendant actually contributed his physical labour in planting and raising the trees and developing the land and if they are to hand over the possession, the respondents will be subjected to hardship.

Having regard to the submission, we deem it appropriate to direct that the appellant-plaintiff shall waive his claim for mesne profits for the past period i.e. the appellant-plaintiff shall pay by way of demand draft for Rs.2,50,000/- (Two Lakh and Fifty Thousand only) directly to the respondents, within a period of four months from today. Payment of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) by the appellant to the respondent shall be in full

quit of claims, if any, by the respondents.

In the result, the judgment of the High Court is set aside and this appeal is allowed. The respondent-defendant shall hand-over vacant possession within a period of one month from the date of payment of amount of Rs.2,50,000/- (Two Lakh and Fifty Thousand only) The affidavit to the effect shall be filed by the respondents/LRs of the defendant in this regard within three weeks from today.

.....J
(R. BANUMATHI)

.....J
(UDAY UMESH LALIT)

NEW DELHI;
DECEMBER 13, 2017

ITEM NO.8

COURT NO.3

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).21842/2017 @ SLP No. (C)No. 375 of 2015

(Arising out of impugned final judgment and order dated 23.7.2014
in SA No. 1642 of 1999 passed by the High Court of Madras)

VAIRAVAN CHETTIAR

Appellant(s)

VERSUS

K SUSEELA & ORS.

Respondent(s)

Date : 13-12-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Arjun Krishnan, AOR
Mr. Vikas Singh Jangra, Adv.
Ms. Jennifer Rohita Xavier,
Ms. S. Lakshmi, Adv.

For Respondent(s) Mr. B. Karunakaran, Adv.
Mr. S. Gowthaman, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(B. PARVATHI)
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(Signed order is placed on the file)