



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.Nos.1517, 1708 and 1797 of 1999

S.A.No.1517 of 1999

1. Mani (Deceased)
2. Indrani (Deceased)
3. Madurai Gramani (Deceased)
4. Ezhumalai (Deceased)
5. M.Nalinakumari
6. M.Devika
7. M.Sukumaran

(Appellants 5 to 7 brought on record as LR's and 2nd appellant recognised as LR of the deceased 1st appellant vide order of Court date 06.07.2012 made in C.M.P.Nos.345 & 346 of 2008 in S.A.No.1517 of 1999)

Memo is recorded 2nd appellant died Memo is USR.No.2326 of 2018 dated 05.03.2018 Appellants 6 and 7 are recorded as LR's of the deceased 2nd appellant vide order of Court dated 15.03.2018 made in S.A.No.1517 of 1999 (MDIJ)

8. M.Chandiran
9. M.Murugaiyan
10. Vijaya

(Appellants 8 to 10 brought on record as LR's of the deceased 3rd appellant vide order of Court dated 22.02.2018 made in C.M.P.Nos.946 to 948 of 2012 in S.A.No.1517 of 1999 (MDIJ))



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

11. Sivakami
12. K.E.Sivakumar
13. K.E.Gunasekaran
14. K.E.Shanmugam
15. K.E.Selvam

(Appellants 11 to 15 brought on record as LR's of the deceased 4th appellant vide order of Court dated 22.02.2018 made in C.M.P.No.931 to 933 of 2012 in S.A.No.1517 of 1999 (MDIJ))

16. M.Karungaran (Died)

(6th Respondent transposed 16th Appellant vide order of Court dated 22.07.2019 made in S.A.No.1517 of 1999 as per memo dated 22.07.2019 are recorded)

17. K.Gowri
18. K.Purushothaman
19. Anandhi
20. K.Krishnakumar

(Appellants 17 to 20 brought on record as Lrs of the deceased 16th Appellant viz M.Karunakaran vide Court orders dated 24.08.2021 made in CMP No.12873, 12880 and 12883 of 2021 in S.A.Nos.1708, 1517 and 1797 of 1999 (AQJ))

...Appellants/Respondents/Plaintiffs
Vs.

1. M.E.Boomiyappa Mudaliar
2. M.E.Thirunavakarasu
3. Gowri Ammal
4. Bhuvaneshwari
5. Malliga

...Respondents/Appellants/Defendants

Prayer in S.A.No.1517 of 1999: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 30.03.1999 made in A.S.No.68 of 1998 on the file of the Sub Court,



S.A.Nos.1517, 1708 and 1797 of 1999

Madurantakam reversing the Judgment and decree dated 27.03.1997 made in O.S.No.484 of 1994 on the file of District Munsif Court, Madurantakam and allow this Second Appeal with costs throughout by decreeing the suit as prayed for.

For Appellant : Mr.M.S.Subramanian

For Respondents :

For R1 to R3 : No Appearance

For R4 & R5 : Mr.V.Srikanth

S.A.No.1708 of 1999

1. Mani (Deceased)
2. Indrani (Deceased)
3. Madurai Gramani (Deceased)
4. Ezhumalai (Deceased)
5. M.Nalinakumari
6. M.Devika
7. M.Sukumaran

(Appellants 5 to 7 brought on record as 2nd LR's and appellant recognised as LR of the deceased 1st appellant vide order of Court dated 06.07.2012 made in C.M.P.Nos.349 & 350 of 2008 in S.A.No.1708 of 1999)

Memo is recorded 2nd appellant died Memo is USR.No.2306 of 2018 dated 05.03.2018 Appellants 6 & 7 are recorded as LR's of the deceased 2nd appellant vide order of Court dated 05.03.2018 made in S.A.No.1708 of 1999 (MDIJ)

8. M.Chandiran
9. M.Murugaiyan
10. Vijaya

(Appellants 8 to 10 brought on record as LR's of the deceased 3rd appellant vide order of Court dated 22.02.2018 made in C.M.P.No.949 to 951 of 2012 in S.A.No.1708 of 1999 (MDIJ))



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

11. Sivakami
12. K.E.Sivakumar
13. K.E.Gunasekaran
14. K.E.Shanmugam
15. K.E.Selvam

(Appellants 11 to 15 brought on record as LR's of the deceased 4th appellant vide order of Court dated 22.02.2018 made in C.M.P.No.934 to 936 of 2012 in S.A.No.1708 of 1999 (MDIJ))

16. M.Karungaran (Died)

(2nd Respondent transposed 16th Appellant vide order of Court dated 22.07.2019 as per memo dated 22.07.2019 are recorded (TKRJ))

17. K.Gowri
18. K.Purushothaman
19. Anandhi
20. K.Krishnakumar

(Appellants 17 to 20 brought on record as LR's of the deceased 16th Appellant viz M.Karunakaran vide Court Order dated 24.08.2021 made in C.M.P.No.12873, 12880 and 12881 of 2021 in S.A.No.1708, 1517 and 1797 of 1999 (AQJ))

...Appellants/Respondents/Plaintiffs
Vs.

1. Malliga

...Respondent/Appellant/Plaintiff

Prayer in S.A.No.1708 of 1999: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 30.03.1999 made in A.S.No.69 of 1998 on the file of Sub Court,



S.A.Nos.1517, 1708 and 1797 of 1999

Madurantakam reversing the judgment and decree dated 27.03.1997 made in O.S.No.563 of 1994 on the file of District Munsif Court, Madurantakam and allow this Second Appeal with costs throughout by dismissing the said suit.

For Appellants :Mr.M.S.Subramanian

For Respondent :Mr.V.Srikanth

S.A.No.1797 of 1999

1. Mani (Deceased)
2. Indrani (Deceased)
3. Madurai Gramani (Deceased)
4. Ezhumalai (Deceased)
5. M.Nalinakumari
6. M.Devika
7. M.Sukumaran

(Appellants 5 to 7 brought on record as LR's and 2nd appellant recognised as LR of the deceased 1st appellant vide order of Court dated 06.07.2012 made in C.M.P.Nos.347 and 348 of 2008 in S.A.No.1797 of 1999)

Memo is recorded 2nd appellant died Memo is USR.No.2307 of 2018 dated 05.03.2018 Appellants 6 & 7 are recorded as LR's of the deceased 2nd appellant vide order of Court dated 05.03.2018 made in S.A.No.1797 of 1999 (MDIJ)

8. M.Chandiran
9. M.Murugaiyan
10. Vijaya

(Appellants 8 to 10 brought on record as LR's of the deceased 3rd appellant vide order of Court dated 22.02.2018 made in C.M.P.No.952 to 954 of 2012 in S.A.No.1797 of 1999 (MDIJ))



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

11. Sivakami
12. K.E.Sivakumar
13. K.E.Gunasekaran
14. K.E.Shanmugam
15. K.E.Selvam

(Appellants 11 to 15 brought on record as LR's of the deceased 4th appellant vide order of Court dated 22.02.2018 made in C.M.P.No.937 to 939 of 2012 in S.A.No.1797 of 1999 (MDIJ))

16. M.Karungaran (Died)

(2nd Respondent transposed 16th Appellant vide order of Court dated 22.07.2019 made in memo dated 22.07.2019 are recorded (TKRJ))

17. K.Gowri
18. K.Purushothaman
19. Anandhi
20. K.Krishnakumar

(Appellants 17 to 20 brought on record as LR's of the deceased 16th Appellant Viz.M.Karunakaran vide court Order dated 24.08.2021 made in C.M.P.No.12873, 12880 and 12881 of 2021 in S.A.No.1708, 1517 and 1797 of 1999 (AQJ))

...Appellants/Respondents/Defendants

Vs.

Bhuvaneshwari

...Respondent/Appellant/Plaintiff

Prayer in S.A.No.1797 of 1999: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 30.03.1999 made in A.S.No.70 of 1998 on the file of Sub Court, Madurantakam reversing the Judgment and decree dated 27.03.1997 made in



S.A.Nos.1517, 1708 and 1797 of 1999

O.S.No.564 of 1994 on the file of District Munsif Court, Madurantakam and allow this appeal with costs throughout by dismissing the said suit.

For Appellants :Mr.M.S.Subramanian

For Respondent :Mr.V.Srikanth

COMMON JUDGMENT

These three second appeals are arising out of a three different appeals in A.S.No.68 of 1998, A.S.No.69 of 1998 and A.S.No.70 of 1998. The above three first appeals were arising out of a common judgment passed in O.S.No.484 of 1994, O.S.No.563 of 1994 and O.S.No.564 of 1994. Since all the second appeals are arising out of a common order, this Court deems it appropriate to pass common judgment in all the three Second Appeals.

2.The plaintiffs in O.S.No.484 of 1994 are the appellants in all the three second appeals. The respondents in S.A.No. 1517 of 1999 are the defendants in O.S.No.484 of 1994. The respondent in S.A.1708 of 1999 and 1797 of 1999 are the plaintiff in O.S.No.563 of 1994 and O.S.No.564 of 1994. The respondents Mallika and Bhuvaneshwari are subsequent purchasers from the defendants 1 to 3 in O.S.No.484 of 1994.



WEB COPY



S.A.Nos.1517, 1708 and 1797 of 1999

3. For convenience sake, the parties will be referred according to the litigative status in O.S.No.484 of 1994.

4. Brief pleadings in O.S.No.484 of 1994

(a) This plaintiff submits that the 1st plaintiff's father Munusamy Gramani and 3 and 4 the plaintiffs are brothers. The 2nd plaintiff's is mother of the 1st plaintiff. The 1st plaintiff's father Munusamy Gramani died leaving behind the plaintiffs 1 and 2 as his legal heirs. The mother of the 2nd and 4th plaintiff and Grandmother of the 1st plaintiff was one Thiayal Nayaki Ammal. She advanced a loan of Rs.300/- on 12.10.1946 to one Kalyani Ammal on usufructuary mortgage of the suit property. According to the plaintiffs, the mortgage was not at all redeemed even after 30 years. The 1st and 3rd defendants are the legal heirs of Kalyani Ammal. As per the Limitation Act, 1963, the usufructuary mortgage has to be redeemed within 30 years, from the redemption period stipulated in the document. According to this plaintiffs, the said Kalyani Ammal did not redeem the mortgage within 30 years. Since 30 years period elapsed, the plaintiffs submit that they become



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

the owner of the schedule mentioned property by perfecting title by adverse possession. This plaintiffs submit that, they and their family members have been in possession and enjoyment of the suit property since 12.10.1946. They further submits that, they have been enjoying the property as owner of the same, and the defendants 1 to 3 have no right, title and interest over the suit property. While so, the defendants 1 to 3, to grab the suit property, have created illegal and void sale deed in favour of the defendants 4 and 5 on 31.10.1994. Since the defendants 4 and 5 are attempting to interfere with the possession, the plaintiffs has come forward with the suit for the relief of declaration and for consequential injunction.

(b) Resisting the above plaint averments, the defendants submit that the suit property is the absolute property of the deceased Kalyani Ammal, who has purchased the same from her vendor Munuswamy Mudaliar under a sale deed dated 29.12.1938. The defendants 1 to 3 admit the execution of the usufructuary mortgage by late Kalyani Ammal in favour of Thiayal Nayaki Ammal. It is the further submission of the defendants that the deceased Kalyani Ammal has mortgaged the suit property along with one another property situated in Urani Village, Madurantakam Taluk comprised in Survey



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

No.148. These defendants further submit that subsequently in the year 1976, the deceased Kalyani Ammal has discharged the mortgage amount and also redeemed the mortgage. According to the defendants, at the time of discharge of the mortgage debt, the deceased Kalyani Ammal had demanded for return of the original mortgage deed dated 12.10.1946, however, the same was not returned to the Kalyani Ammal on the pretext that the original mortgage deed had lost during the rain and flood which took place during December 1966. Believing the words of Thiayal Nayaki Ammal, the Kalyani Ammal did not insist for the return of original mortgage deed. However, obtained the acknowledgment for the return of discharge on 18.06.1976 in the registration copy of the said mortgage deed. After the discharge, the deceased Kalyani Ammal permitted her husband of the deceased Thiayal Nayaki Ammal Viz., Kuppu Gramani to manage the properties. Based on such license, Kuppu Gramani was permitted by the deceased Kalyani Ammal, to reside in a portion of the property comprised in S.No.40/3. After the life time of Kuppu Gramani, the plaintiffs were acted hostile towards the defendants. Hence, the defendants have requested the plaintiffs to vacate and hand over the possession of the property. Aggrieved by which, the plaintiffs have come out



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

with the present suit with false and frivolous allegations. If at all the deceased Kalyani Ammal has not discharged the alleged mortgage debt, the plaintiffs should have included the property comprised in S.No.148, situated in Urani village in the suit Schedule, whereas they have failed to do so. The defendants submits that the deceased Kalyani Ammal has also created usufructory mortgage in favour of one Jeevarathinammal of Kottaikkadu Village in respect of remaining extent in the suit Survey Number. Subsequent to the said mortgage, the said Kalyani Ammal has also filed a suit for redemption in O.A.No.180 of 1976 and O.A.No.181 of 1976. Since, Kalyani Ammal has filed the suit for redemption against Jeevarathinammal, if the amount had not discharged with Thiayal Nayaki, she would have filed the similar suit for redemption. The defendants further submits that they have paid the kist to the Government, and the patta also stands in the name of deceased Kalyani Ammal. Hence, the defendants prayed to dismiss the suit.

5. Pleadings in O.S.No.563 of 1994 & O.S.No.564 of 1994

(a) The 4th and 5th defendants, in O.S.No.484 of 1994 are the plaintiffs in these suits. They are the subsequent purchaser of the suit property and has



S.A.Nos.1517, 1708 and 1797 of 1999

also filed a separate written statement, wherein they supports the case of the defendants 1 to 3. The 4th and 5th defendants further submits that they have purchased certain extent of land out of total 5 acres in S.No.42 from the defendants 1 to 3 under a registered sale deed dated 30.10.1994 and 31.10.1994. Therefore, it is the submission of the 4th and 5th defendants that in respect of the land they purchased, they are absolute owner of the property. They would further contend that their vendor has got right, title and interest over the suit property to execute the sale deed in favour of the Malliga and Bhuvaneswari. Hence, praying for declaration and permanent injunction in respect of their respective suit property.

(b) The above suit was resisted by the defendants on the ground that the vendor of the plaintiff is not the owner of the property and that this defendant alone is the owner of the property and have been in actual physical possession and enjoyment of the same. Hence, contended that the vendor of the plaintiff can not transfer any title to the plaintiff. Therefore, the defendants prayed to dismiss the suit.



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

Evidence and documents and finding of both the Courts below:-

6. All the above suits were disposed of by common judgement dated 27.03.1997. The documents were marked in O.S.No.484 of 1994. On behalf of the plaintiffs, eight documents have been marked as Ex.A1 to A8, and on behalf of the defendant six documents have been marked as Ex.B1 to B6. As a Court documents two document, Ex.C.1 and Ex.C.2 were marked. On behalf of the plaintiff's the 1st plaintiff Mani was examined as P.W.1. On the other hand, on behalf of the defendants, 5 witnesses were examined as D.W.1 to D.W.5.

7. After having considered the either side submission and after considering the oral and documentary evidence, the trial Court on the finding that the discharge of mortgage dated 18.06.1976 has not been proved and that the plaintiffs in O.S.No.484 of 1994 have perfected title by way of adverse possession. Hence decreed the suit in O.S.No.484 of 1994 and dismissed the suit filed by the subsequent purchasers Malliga and Bhuvaneswari in O.S.No.563 and 564 of 1994.



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

8. Aggrieved with the above finding, the defendants in O.S.No.484 of 1994 and the plaintiff in O.S.No.563 of 1994 and O.S.No.564 of 1994 preferred three different First appeals in A.S.Nos.68, 69 and 70 of 1998. The First Appellate Court has also disposed of the above three appeals by three Judgments, but all are dated 30.03.1999. Wherein, the First Appellate Court found that the Kalyani Ammal discharged the mortgage on 18.06.1976 and that the plaintiffs in O.S.484 of 1994 did not perfect title by way of adverse possession. Eventually, allowed the appeal, by dismissing the suit O.S.No.484 of 1994 and decreed the suit in O.S.Nos.563 and 564 of 1994.

9. Aggrieved with the said finding, the plaintiffs in O.S.No.484 of 1994 and the defendants in O.S.No.563 and 564 of 1994 are before this Court.

10. At the time of admission of these second appeal, the following substantial question of law has been formulated:-

(a) Substantial Question of Law in S.A.No.1517 of 1999

1. The Lower Appellate Court went wrong in granting a declaration of



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

title to the purchasers in their suits without a finding as to the nature of possession of the appellants herein.

2. The Lower Appellate Court having denied the relief of injunction to the purchasers holding that the appellants herein are in possession should have held that such possession is not permissive but only adverse.
3. The Lower Appellate Court should have held that the appellants herein have prescribed title by adverse possession and decreed their suits and dismissed the suits filed by the purchasers in entirety inclusive of the relief of declaration.

(b) Substantial Question of Law in S.A.Nos.1708 and 1797 of 1999

1. Whether the Lower Appellate Court's Judgment is vitiated on wrongly placing the burden on the Appellants herein?
2. Whether the inconsistent plea and discrepant evidence have been not appreciated by the Lower Appellante Court with regard to the discharge of the mortgage?
3. Without a finding of permissive possession when the appellant continues in possession after the alleged discharge of the mortgage is



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY not the possession adverse?

4. Whether there can be a decree for more declaration of title when the consequential relief of injunction is negatived?

Submissions of the either side counsel:

11 (a). The learned counsel for the plaintiffs would submit that the defendants mother Kalyani Ammal has created usufructuary mortgage in favour of Thiayal Nayaki Ammal on 12.10.1946, and that such mortgage was not redeemed for a period of 30 years. Therefore, by virtue of Article 61 of the Limitation Act, their right of redemption becomes extinguished, and that Thiayal Nayaki and her legal heirs namely the plaintiffs have perfected title by way of adverse possession. Therefore, contended that the sale deed executed in favor of 4th and 5th defendant is void.

11 (b). The learned counsel for the plaintiffs would also submit that the plaintiffs predecessor-in-title have perfected title by way of adverse possession. Therefore, the defendants 1 to 3 have no right title over the suit property so as to execute the sale deed in favour of the defendants 4 and 5. The learned counsel for the plaintiffs would further contend that, if the said



S.A.Nos.1517, 1708 and 1797 of 1999

Kalyani Ammal has discharged the usufructuary mortgage dated 12.10.1946, the original mortgage deed-Ex.A.1 could have been returned to Kalyani Ammal. Since the original mortgage deed is with the plaintiffs, it must be construed that the usufructuary mortgage has not been discharged and redeemed.

11 (c). In support of the plaintiff's case, the learned counsel relied on the judgment of the Single Judge of this Court in *Nachiyappan Vs. Periyakaruppan [2021 (1) CTC 408]* and the Judgment of the Hon'ble Supreme Court comprised by three Hon'ble Judges in *Ravinder Kaur Grewal Vs. Manjit Kaur [2019 (8) SCC 729]* and yet another Judgment of the Hon'ble Supreme Court reported in *Nazir Mohamed Vs. J. Kamala [2020 (19) SCC 57]*. Hence, prayed to allow the Second Appeal.

12(a). Per contra, the learned counsel for the defendant would submit that very suit is hit by the principles of non-joinder of necessary party as one of the legal heirs of Kalyani Ammal, namely her daughter Lalitha Ammal was



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

not impleaded, and that the Revenue records of the suits property still stands in the name of Kalyani Ammal. Therefore, there could not have been any possibility for the plaintiffs to plead adverse possession. It was further contended by the learned counsel for the defendants that by surreptitious conduct, the mother of the plaintiff have retained the original mortgage deed, however, the endorsement made in Ex.B.1 would unequivocally prove the redemption of mortgage.

12(b). It is further submission of the learned counsel for the defendant that the son of Thiayal Nayaki Ammal namely Elumalai, who was the 4th plaintiff, has attested the discharge made in Ex.B1, and that the said discharge has been proved by examining the D.W.3, who was the attesor to the said discharge. The learned counsel for the defendants would further submit that P.W.1, who was the 1st plaintiff, was a minor at the time of alleged transaction and he could not have knew about any of the transaction. Thus, the non examination of 4th plaintiff would go against the plaintiff, and the learned counsel prayed to draw adverse inference against the plaintiff. It was the further submission of the learned counsel for the defendant that the



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

mere continues possession of the suit property by the plaintiff will not derive possessory title by adverse possession, and that there are no documents produced by the plaintiff to show that their possession has been adverse for a statutory period against the defendants. The learned counsel would further contend that they have discharged the usufructuary mortgage and furthermore, the plaintiffs cannot seek the relief of adverse possession as a sword. Hence, prayed to dismiss all the second appeals.

I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

13. From the submissions of the either side, this court is of the view in order to decide substantial question of all the Second Appeals , the following points are to be considered:-

1. Whether the defendant has proved the redemption of mortgage through Ex.B.1.

2. Even if the redemption is proved, whether the plaintiffs has perfected title by way of adverse possession over the suit property?



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

14. Let us consider the above points one after another. Coming to the redemption, the defendant is very much relying upon Ex.B. 1. According to the defendants, at the time of redemption during 1976, when Kalyani Ammal (Mortgagor) approached the Thiayal Nayaki Ammal (Mortgagee) expressing her willingness to redeem, according to the defendant, the Thiayal Nayaki Ammal informed the Kalyani Ammal that the original mortgage deed has lost during heavy rain and flood, which happened in the year 1966. In pursuance thereof, the registration copy of mortgage deed Ex.B.1 was obtained on 12.07.1976 and in the said registration copy of the mortgage deed, the redemption was endorsed by Thiayal Nayaki Ammal by affixing her left hand thumb impression. In order to prove such endorsement in Ex.B.1, the defendants examined one of the attester Mr. Govindhan as D.W.3. The said Govindhan has explained the due execution of Ex.B.1 *qua* the discharge of the usufructuary mortgage .

15. However, the learned counsel for the appellants/plaintiffs would invite the attention of this Court in respect of admission made by D.W.3



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

about the date of knowledge of loss of the original mortgage deed Ex.A.1 is on 16.07.1976. Therefore contend that, had there been a knowledge of loss of Ex.A1 during July 1976, the Ex.B.1 the registration copy of the mortgage deed would have been obtained subsequent to 16 July 1976, whereas, the Ex.B.1 was obtained on 12.07.1976. Therefore, strongly contended that the story of obtaining the registration copy is unbelievable. This Court is not persuaded with the submissions made by the learned counsel appearing for the appellants on the following reasons:-

(a). The attesor D.W.3 was examined during the year 1997, almost 21 years after the transaction that had taken place. Therefore, the slight variations in the date cannot be given undue weightage, by totally ignoring the other attending circumstances.

(b). The foremost attending circumstances for relying upon Ex.B1 and the case put forth by the defendants is, based on the spontaneity of the Ex.B1.

16. During 1976, there could not have been any prediction or prognosis for Kalyani Ammal against the filing of the instant suit in the year



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

1994, and further if the Kalyani Ammal obtained Original Mortgage deed, no necessity would have arisen for her to receive registration copy. Therefore, this court is of the view that the very existence and availability of registration copy of the usufructuary mortgage deed-Ex.B1 which was received in the month July 1976 would probabalize the case of the defendant that only because of not giving original mortgage deed Ex.A1, on the pretext of it's loss, such arrangement of making endorsement in the registration copy had arisen.

17. In order to vindicate the defendants submission, the learned counsel for the defendants would contend that though the defendant has examined on Mr.Govindhan-D.W.3, who was the attesor to the endorsement in Ex.B.1., no contra evidence was let in by the plaintiffs to disprove the defendant's case. Though Mrs. Thiayal Nayagi's, two sons, who knew about the mortgage personally namely the 3rd and 4th plaintiff Madurai Gramani and Elumalai were not examined, the 1st plaintiff Mani was examined as P.W.1. Admittedly he (P.W.1) was minor at the time of Ex.B.1 endorsement and had no personal knowledge about the endorsement made in Ex.B.1. Therefore,



S.A.Nos.1517, 1708 and 1797 of 1999

the learned defendant counsel would submit that an adverse inference has to be drawn against the plaintiffs. In this connection, if we look at the evidence of P.W.1, in the year 1996, the 1st plaintiff was aged about 34 years, therefore, during 1976 his age could only be 14 years. Therefore, it becomes highly unsafe to rely P.W.1 statement in the place of D.W.3 Govindhan's evidence qua the attester of Ex.B1.

18. According to plaintiff, to prove that mortgage was not discharged, they very much relying the possession and holding of original mortgage deed namely Ex.A1 with them. Even according to P.W.1, he would admit as follows:-

“மழையில் 85, 86, போய் விட்டது, எல்லா பத்திரங்களும் போய் விட்டது. பிராதில் இது பற்றி சொல்லவில்லை. எக்.ஏ.1 என்னிடம் இல்லை. வேறு ஒருத்தர்கிட்ட வாங்கி போட்டேன். என் சித்தப்பா கிட்ட இருந்தது. நான் கொடுத்து வைக்கவில்லை.”

19. Therefore, even according to the P.W.1, the original is lost during rain and he did not possess Ex.A.1 and the same was obtained from his Maternal uncle. Furthermore, he has also not aware as to whether the



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

mortgage was discharged or not. In this regard P.W.1 admits as follows:-

“எதிருரை படித்துப் பார்த்தேன். 1976ல் கல்யாணி இருக்கும் போது கடன் பைசல் ஆகி இருக்கிறது என்றால் தெரியாது.....எக்.ஏ.1 கைத்தவறியது இப்பொழுது பொய்யாக போட்டேன் என்றால் சரியில்லை. இது மதுரை கிராமணி கிட்ட வாங்கினேன் மதுரை ஏழுமலை திட்காத்திரமாக உள்ளனர். அவர்களை விசாரித்தால் முழு விவரம் தெரியும்.”

20. Therefore, according to the P.W.1, he did not know as to whether the mortgage was discharged or not and according to him, the person, who knew about such mortgage was only the 3rd and 4th plaintiffs and that they are hale and healthy. Apart from that, the original mortgage deed-Ex.A.1 was obtained from the Madurai Gramani namely the 3rd plaintiff. However, the plaintiff did not think fit to examine the persons who knew about the transaction personally. Therefore, in the absence of any infer evidence, this Court is of the firm view that finding of fact recorded by the First Appellate Court that the mortgage was discharged by the Kalyani Ammal through the Ex.B.1 registration copy of the mortgage deed is liable to be accepted.

21. Though, the original was filed by the plaintiff, the case put forth by the defendants that Thiayal Nayagi Ammal did not hand over the original



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

mortgage deed on the pretext of loss of the same during flood cannot be brushed aside. Further the defence of the defendant vindicated through the non examination of the person, who personally knew about the transaction namely the 3rd and the 4th plaintiff. More pertinently, when Ex.A.1 was in possession of the 3rd plaintiff Madurai Gramani, only through the examination of the Madurai Gramani/3rd plaintiff, the nature of possession of such document could be explained in detailed way. As stated supra, the plaintiffs have miserably failed to examine the 3rd and 4th plaintiff, who are the material witness. Therefore, an adverse inference has to be drawn against the plaintiffs in this regard.

22. Now, that it is relevant to refer Article 61 of the Limitation Act, 1963 as follows:-

<i>Description of Suits</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
61. By a mortgagor-		
(a) to redeem or recover possession of immovable property mortgaged;	Thirty years	When the right to redeem or to recover possession accrues.
(b) to recover possession of	Twelve years	When the transfer becomes



S.A.Nos.1517, 1708 and 1797 of 1999

<i>Description of Suits</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
immovable property mortgaged and afterwards transferred by the mortgagee or a valuable consideration;		known to the plaintiff.
(c) to recover surplus collections received by the mortgagee after the mortgage has been satisfied	Three years	When the mortgagor re-enters on the mortgaged property.

23. According to Article 61 of the Limitation Act, 1963, the limitation to redeem the mortgage is 30 years and that 30 years will begin to run, when the right to redeem or to recover accrued. Here in our case, the usufructuary mortgage was on 12.10.1946 and it was agreed to redeem within a period of 3 years. Therefore, the right to redeem and recover possession commences from 1949. Here the defendants is having 30 years to redeem the mortgage. Whereas, the defendant has redeemed the mortgage on 18.07.1976 namely 3 years prior to the period of limitation fixed for redemption of mortgage. Therefore, this Court is of the view that the defendants has redeemed the mortgage within a period of limitation.

24. The next line of the defence put forth by the plaintiffs is that they



S.A.Nos.1517, 1708 and 1797 of 1999

have perfected title by way of adverse possession. In order to understand the concept of adverse possession, this Court deems it appropriate to rely upon the following judgments as follows-

1. State of Haryana Vs. Mukesh Kumar and Ors. [(2011) 10 SCC 404],

wherein Hon'ble Supreme Court held as follows:-

“ 31 . A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission.

36. In Hemaji Waghaji Jat case, this Court ultimately observed as under: (SCC p. 529, paras 32-33)

32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation.

40. The Parliament must seriously consider at least to abolish "bad faith" adverse possession, i.e., adverse possession achieved through intentional trespassing. Actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief.

44. Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible."

2. Annasaheb Bapusaheb Patil Vs. Balwant [1995 (2) SCC 543], the judgment of the Hon'ble Supreme Court presided by three Hon'ble Judges bench and the relevant portion of the Judgment is extracted here under:-

"14. Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date the defendant's interest becomes adverse to



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title cannot divest another of that title by pretending that he had no title at all."

3. Chatti Konati Rao Vs. Palle Venkata Subba Rao [2010 (14) SCC

316], the relevant portion of the Judgment is extracted here under:

"12. We have bestowed our thoughtful consideration to the submission advanced and we do not find any substance in the



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

submission of Mr. Bhattacharya. What is adverse possession, on whom the burden of proof lie, the approach of the court towards such plea etc. have been the subject matter of decision in a large number of cases. In the case of T. Anjanappa v. Somalingappa it has been held that mere possession however long does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owner's title. Relevant passage of the aforesaid judgment reads as follows:

20. It 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's 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's hostile action.

*13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of **Karnataka Board of Wakf v. Government of India and Ors.** It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the*



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

judgment which is relevant for the purpose reads as follows:

11. *In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina, Parsinni v. Sukhi and D.N. Venkatarayappa v. State of Karnataka) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma (1996) 8 SCC 128."*



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

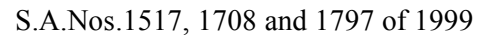
4. Hemaji Vaghaji Jat Vs. Bhikhabhai Khengarbhai Harijan [2009 (16)

SCC 517], the relevant portion of the Judgment is extracted here under:-

*25. There is another aspect of the matter, which needs to be carefully comprehended. According to **Revamma's** case, the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, this Court observed that (SCCp.77, para 43)*

*43. "Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgments of **Beaulane Properties Ltd. v. Palmer** (2005) 3 WLR 554 and **JA Pye (Oxford) Ltd. v. United Kingdom** (2005) 49 ERG 90. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."*

25. On perusal of the above judgments what would emerge is that according to **P.T.Munichikkanna Reddy Vs. Revamma** case reported in (2007) 6 SCC 59, the right of property is considered to be not only a constitutional or statutory right, but also a human right. When the property



26. Therefore, on the basis of the above propositions, the learned counsel for the defendants would contend that the plaintiffs have to strictly prove the defence of adverse possession. The learned counsel for the defendant would also rely on the judgments of the Hon'ble Supreme Court in *Chatti Konati Rao Vs. Palle Venkata Subba Rao [2010 (14) SCC 316]* (cited supra), to contend that the person comes up with the pleading of an adverse possession cannot have any equities in their favour.

27. Therefore, as per the above ratio, the plaintiffs have to establish that the possession becomes adverse against the owner namely the defendants. Apart from that the *animus possidendi* must also be there to show that they have been in the possession of the property as owner there of and mere possession of how so many years will not confer title under adverse



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY possession.

28. In similar line, the above defence has also been relied by a three-judges bench of the Hon'ble Supreme Court in *Annasaheb's case* (cited supra). As per the above ratio, burden is upon the person, who plead adverse possession.

29. Therefore from the above ratios, it is clear that the burden of proof is upon the plaintiffs and the same is heavy and the plaintiff has to prove his long and continuous possession adverse to the interest of the real owner. In our case, though the plaintiffs have been in continuous possession there *animus possidendi qua* there intention to enjoy the property as that of its owner has not been reflected from their conduct.

30. Admittedly, the patta in respect of the suit property stands in the name of Kalyani Ammal, and the plaintiffs in unequivocal terms has admitted that they have never paid kist to the property. Had the plaintiffs enjoyed the property as its owner, adverse to the interest of the defendant, they could



S.A.Nos.1517, 1708 and 1797 of 1999

have paid tax in their name. As held in the various precedents, mere long possession will in no way helpful to the plaintiff to claim possessory title over the property, unless they have exercised right of ownership over the property with a knowledge to the real owner namely defendants.

31. Here, the plaintiff did not submit any document to show that their possession was adverse to the defendant, that too with the knowledge of the defendants and that they have exercised the right of ownership over the suit property. At this juncture, it is relevant to refer the admission made by the P.W.-1 as follows:

“தாவா சொத்திற்கு எங்கள் பெயரிலோ முதாதை பெயரில் வரவில்லை. ஜாமின் ஒழிப்பு போது பட்டா கான மனு எதுவும் நாங்கள் கொடுக்கவில்லை. தற்போது கிஸ்து ரசீது கட்டவில்லை. கிஸ்து பட்டாதாரர் பெயரில் கட்டினேன். என் பெயரில் மாற்றிக் கொடுக்கவில்லை. சர்வே 42 பட்டா நம்பார் 102. கல்யாணி அம்மா பெயரில் வந்தது. 102 வந்தது இருக்கிறது. நான் கட்டவில்லை. எவ்வளவு நாள் ஆனது தெரியாது. கிஸ்து கடைசியாக கட்டியது 1988ல் அப்ப என் பட்டா நம்பர் தெரியாது. பட்டா ஆகவில்லை. அவங்க பெயரில் பட்டா இருந்தது.”

Though, the plaintiff has submitted certain Revenue records, it is pertinent to mention here that while looking at the plaint, the plaintiff did not



S.A.Nos.1517, 1708 and 1797 of 1999

plead as to from when onwards their possession become adverse.

32. The learned counsel for the plaintiffs would draw the attention of this court in respect of Ex.B.1-endorsement and would contend that the Ex.B.1 endorsement is a false endorsement as it contains that as on 18.07.1976, the husband of Thiayal Nayagi Ammal namely Kuppu Gramani was dead. In support thereof, the learned counsel appearing for the plaintiffs invited the attention of this Court in respect of written statement filed in O.S.No.484 of 1994. Wherein, in para 5, they have stated that the license in respect of the suit property has been granted to the husband of the deceased Thiayal Nayagi Ammal after discharge of the mortgage debt. Therefore, would contend that when their pleading states that at the time of discharge, the husband of Thiayal Nayagi was alive, the contrary recital in Ex.A.1 has to be held as false, But, this Court could not accept this argument. Since this Court believed the Ex.B.1 endorsement, such a pleading in Para 5 of the written statement will have any bearing over the decision of this case. Therefore, this Court is of the firm view that the plaintiffs has not proved their case of adverse possession in the manner known to law.



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

33. In order to assimilate the above discussion, this Court would like to recapitulate the points discussed herein before.

1.The defendants has proved the endorsement made in Ex.B.1, registration copy of the mortgage deed.

2. The plaintiff failed to examine Elumalai (4th plaintiff), who is one of the attessor to the endorsement made in Ex.B.1.

3. The 1st plaintiff Mani (P.W.1) was 14 years old at the time of discharge and admittedly, he did not know about the transaction personally.

4. The person, who knew the transaction according to the admission of the P.W.1 are, 3rd and 4th plaintiffs, but they were not examined.

5. The plaintiff did not plead as to from when onwards, their possession become adverse to the defendants.

6. The plaintiff did not submit any documents to prove their adverse possession with *animus possidendi*.

34. Therefore, this Court is of the indubitable view that, the defendants proved the discharge of mortgage through Ex.B.1. Further, the plaintiffs have miserably failed to prove the non redemption of mortgage and the adverse



S.A.Nos.1517, 1708 and 1797 of 1999

WEB COPY

possession. Thus, this court could not find any material to deviate from the findings of the First Appellant Court. Hence, the substantial question of law formulated are answered in favour of the respondents.

35. In the result, all the second appeals are dismissed. There shall be no order as to costs.

17.11.2023

Internet : Yes/No

Index: Yes/No

mac

To

1.The District Munsif Court, Madurantakam

2.The Sub Court, Madurantakam



WEB COPY



S.A.Nos.1517, 1708 and 1797 of 1999

C.KUMARAPPAN, J.

mac

S.A.Nos.1517, 1708 and 1797 of 1999

17.11.2023