



S.A.No.1078 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgement Reserved on : 28..04..2023

Judgement Pronounced on : 24..05..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1078 of 2000

and

C.M.P.No.10020 of 2000

Tiruvannamalai Karuneeekar Sangam,
Rep. by its Secretary – S.A.Pandurangan
S/o.S.Arumugham Pillai,
Tirukoilur Road,
Tiruvannamalai.

[Cause Title accepted vide order dated 17.07.2000
made in C.M.P.No.8526 of 2000]

..... Appellant

-Versus-

1. Saradambal Ammal (Died)
2. Radhakrishnan
3. Chinnaiyyan
4. Vijaya
5. Sampathlakshmi
6. Uma Maheswari
7. Sampooranam

..... Respondents

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated against the judgement and decree dated 22.03.2000 made in A.S.No.12 of 1999 on the file of the Principal Subordinate Judge,



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Tiruvannamalai, confirming the judgement and decree dated 25.07.1997 made in O.S.No.160 of 1980 on the file of the Additional District Munsif, Tiruvannamalai.

For Appellants : Mr.T.Dineshkumar

*For Respondents : Mr.R.Thiagarajan
for RR2 to 7*

R1-Died

JUDGEMENT

This Second Appeal arises against the judgement and decree dated 25.07.1997 in O.S.No.160 of 1980 passed by the learned Additional District Munsif, Tiruvannamalai as confirmed by the judgement and decree dated 22.03.2000 in A.S.No.12 of 1999 passed by the learned Principal Subordinate Judge, Tiruvannamalai.

2. The original suit was presented for a decree of declaration of plaintiff's title to the suit property and for recovery of possession.

3. The case of the plaintiff is that it is a society registered under the Societies Registration Act. The predecessors of the plaintiff had purchased the suit property on behalf of its members of Karuneeekar Sangam on 10.06.1905. The purchase was made from and out of the common funds which belonged to



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the community. I am informed that Karuneeekar Community members are those

belonging to Pillaimar community [பிள்ளைமார்க் வகுப்பு]. The purpose of the purchase was for the construction of a Mutt [மடம்] for the benefit of the community people who come to Tiruvannamalai. Tiruvannamalai being an important religious place, it is known that devotees throng to the temple during festivals and on other important religious occasions.

4. It is the case of the plaintiff that properties purchased in the name of the sangam were being managed by the representatives of the community and also by renting them out to various third parties. Sometime in the year 1946, one Rajamanickam Pillai filed a suit in O.S.No.402 of 1946 on the file of the District Munsif, Tiruvannamalai, for declaration of his title. It was contended in that suit, that the suit property belongs to the plaintiff community. The said suit was dismissed and it was confirmed in A.S.No.331 of 1949. The plaintiffs further pleaded that yet another suit was presented in O.S.NO.447 of 1957 seeking declaration of title and injunction and the said suit was decreed in favour of Karuneeekar Community.



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5. The plaintiff would state that the property situated in S.No.604/1 at Tiruvannamalai Town, measuring to an extent of 7004 square feet was leased out in favour of several third parties viz., Neelappa Choudry, Muthappa Choudry, Ellakkal, Nataraja Pillai and Babukkal. The northern portion of the property was lying vacant. Therefore, one Parasurama Naidu wanted to run a wood fuel depot on it and took up the premises on rent. The said Parasurama Naidu was paying rent and on his death, the property was taken over by his daughter – Saradhammal Ammal, who is the 2nd defendant. The plaintiff would further state that the defendants had constructed a building in S.NO.604/2 and it was objected to by the plaintiff. According to them, taking advantage of the construction in S.No.604/2, they have trespassed into the property belonging to the plaintiff sangam. The plaintiff came to know that the municipality, without the knowledge of the plaintiff, had effected sub-division of the property belonging to it in S.No.604/1 as S.Nos.604/1A, 604/1B1, 604/1B2, 604/1B2A & 604/1B2B. The suit property is under the present sub division S.No.604/1B2A and 604/1B2B.

6. It is the case of the defendants that the plaintiff is not a registered society and that the plaint is silent as to who are all the members of the alleged



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Karuneeekar Sangam. According to them, there is no relationship between Seer Karuneeekar Caste Mutt or Seer Karuneeekar Nandhavana Madalaya Dharma Paripalana Sabai and the plaintiff. They would further deny that the suit property had been purchased for the purpose of the benefit of the community and that the property had never been leased out to any person. On the contrary, they would plead that the property is a Government Natham Poramboke, which had been encroached upon by the defendants in and around 1961 and they had constructed a building thereon. They would further plead that from 1961 till date, i.e., till 1979, they are in occupation of the property and that they have perfected title by adverse possession. They would also plead estoppel by conduct and would state that the property was never lying fallow. They would deny the title of the plaintiff and would state that as they are in possession and they have perfected title by adverse possession, the suit has to fail.

7. Based on the above pleadings, the following issues and additional issues were framed by the trial court for consideration:-

எழுவினாக்கள்:-

1. தாவா சொத்துக்களின் வாதி உரிமை விளம்புகை பெற்றுள்ளாரா?

2. 10.06.1905ம் தேதியிட்ட கிரையப்பத்திரம் உண்மையானதா? பிரதிவாதிகளைக் கட்டுப்படுத்தக்கூடியதா?



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3. தாவா சொத்துக்களில் வாதி எதிரிடை பாத்தியதை மூலம் உரிமை பெற்றுள்ளாரா-

4. தாவா சொத்துக்கள் ஆதியில் நத்தம் புறம்போக்கா? பிரதிவாதிகள் அதில் இருக்க அனுமதிக்கப்பட்டிருந்தனரா?

5. 1ம் பிரதிவாதி, தாவா சொத்துக்களில் எதிரிடை பாத்தியதை மூலம் உரிமை பெற்றுள்ளாரா?

6. தாவா சொத்திலான பிரதிவாதியின் உரிமையை மறுப்பதின் மூலம் வாதி முரண்படுகிறாரா?

7. அ.வ.எண்.402/46 & 447/57 லான தீர்ப்புக்கள் இப்பிரதிவாதியை கட்டுப்படுத்தக்கூடியதா?

8. வாதியால் செலுத்தப்பட்டுள்ள நீதிமன்றக்கட்டணம் சரியானதில்லையா?

9. பிரதிவாதியை வெளியேற்றி, சுவாதீனம் பெற வாதி உரிமையுடையவரா?

10. 1ம் பிரதிவாதி, வாதிக்கு தாவா சொத்தை ஒப்படைப்பு செய்ய வேண்டுமா?

11. வாதி அடையத்தக்க பரிகாரம் யாது?

கூடுதல் எழுவினாக்கள்:-

1. ஏ.திருநாவுக்கரசு கருணீகர் சங்கத்தின் செயலர் என்பது உண்மையா?

2. மேற்படி திருநாவுக்கரசு மேற்படி தாவாவை தொடர்ந்து நடத்த அருகதை உள்ளவரா?

8. During the course of trial, on the side of the plaintiff Sangam, one Appasami Pillai, the then Secretary of the plaintiff sangam, S.Balasubramaniam, the then President of the plaintiff sangam and one Gopalsami were examined as P.W.1 to P.W.3 respectively and Ex.A.1 to A36 were marked. On the side of defendant, the deceased sole defendant-



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Kuppusami Naidu examined himself as D.W.1 and Ex.B.1 to Ex.B.73 were marked. In addition, the report and rough sketch filed by the Advocate Commissioner were marked as Ex.C.1 and Ex.C.2.

9. The learned trial judge dismissed the suit holding that there is no relationship between the plaintiff and the purchasers of the property. This decree was confirmed by the first appellate court. Aggrieved by the said findings, the present second appeal has been presented.

10. At the time of admission, the following substantial question of law was framed:-

(1) Whether the courts below are correct in law in rejecting Ex.A.9 and A26 as inadmissible in evidence overlooking the provisions contained in Section 13 of the Evidence Act?

11. Mr.T.Dineshkumar, learned counsel for the appellant would submit that the total extent of the property available in S.Nos.604/1 and 604/2 is around 7210 square feet. Excluding the government poramboke land in



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S.No.604/2, the available land in this survey number is 7004 square feet. He

would state that the community persons had twice proved their title before the court under Ex.A.26 and Ex.A.8. He would further submit that the sub division of the property would make no difference since the sangam had filed a suit in O.S.No.1078/1980 on the file of the District Munsif, Tiruvannamalai and the said suit had been decreed on 08.09.1995. This document has been filed as Ex.A.36. He would further point out that the said property had been taken on lease by the father-in-law of the sole defendant under Ex.A.3 & Ex.A.4 and later his wife had also been paying rent for the property under Ex.A.28 to Ex.A.30. He would state that the land in S.No.604/1 is not a government poramboke , but it is gramanatham and finally he would urge that the documents filed would go to show that the plaintiff sangam are the owners of the property, who had succeeded to the Paripalana Sangam and earlier, the members of the community had obtained the same by way of sale in 1905. Therefore, he would plead that the second appeal has to be allowed and the suit has to be decreed.

12. Countering these submissions, Mr.R.Thiagarajan, learned counsel for the contesting respondents would submit that the purchase made in 1905 was



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not by Karuneeekar Sangam and therefore, it cannot claim to be the owner of the property. He would submit that the suit in O.S.NO.449 of 1957 does not relate to the suit property, but, it relates to some other property. He would further state that in Ex.A.26, no survey number had been given in the decree. He would claim that a valid assignment had been given in favour of the deceased sole defendant by the Government (Municipality) under Ex.B.73 and therefore, the defendants are entitled to be in possession of the property. He would state that on 10.06.1905, there was no sangam in existence and therefore, how sangam came into existence at all had not been explained by the plaintiff. He would further urge that the property is a government poramboke land and that the property had been sub divided by the municipality and no objection had been raised by the plaintiff at that time and therefore, it is too late to present the suit.

13. He would also plead adverse possession as against the plaintiff in order to get the suit dismissed. He would state that Ex.B.1 to B.70 show continuous possession of the sole defendant in the property from 1960 to 1980. He would say that cause of action is false. The cause of action read that the defendant had trespassed into the property in 1980, whereas as submitted by



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him already, he would say that the defendant is in possession from 1962 onwards. He would state that in any event, there is no proof to show that Karuneekar Dharma Paripalana Sabai had handed over the property to the plaintiff.

14. He would state that it is true that Parasurama Naidu had taken possession of the property on lease but, he would state that he had handed over the same. Thereafter, in the vacant land, which is a government poramboke land, the defendant had encroached and constructed a building. He would rely upon a judgement rendered by me in S.A.No.181 of 2010 dated 18.04.2023 to state that I have to hold that the property does not belong to the sangam and it belongs to the Government and therefore, the court should not grant any relief to the plaintiff. He would further state that the plaintiff is a society registered under the Societies Registration Act and therefore, the judgement in *Illachi Devi v. Jain Society* [(2003) 8 SCC 413] would apply and therefore, the suit is not maintainable.

15. Mr.R.Thiagarajan, learned counsel would finally urge that there is no correlation between the property purchased under Ex.A.2 and the suit property



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and therefore, the second appeal has to be dismissed.

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16. The parties in this proceedings will be referred to as per their ranks in the suit for the sake of convenience.

17. I have heard the learned counsel on either side in detail and also gone through the pleadings, voluminous records and the judgements of both the trial court as well as the first appellate court.

18. The plaintiff claims that the property was purchased in 1905 from one Durasami Iyer by (1) Pachaiya Pillai, (2) Murugappillai, (3) Ponnusami Pillai, (4) Sengalvaraya Pillai, (5) Kuppusami Pillai (I) and (6) Kuppusami Pillai (II). The property is situated within the four boundaries as mentioned hereunder:-

“சன்னதி வீதியில் முனிசிபாலிட்டி 17 நெ. வீடு மேற்படி சன்னதி வீதிக்கும் தெற்கு அய்யங்குளம் அக்கிரகார தெருவுக்கும் மேற்கு நாங்கள் குடியிருக்கும் வீட்டுக்கும் காலி மனைக்கும் குரு மூர்த்திக்கு கிழக்கு பசங்கரை ராமசாமி அய்யர் வீட்டு தோட்டத்திற்கும் வடக்கு இதன் மத்தியில் மனை, மனைத்தோட்டம் கி. மே. ஜாதி அடி 44, வ. தெ. ஜாதி அடி 165 அதிலுள்ள தட்டோடு வீடு துலக்கடை 8 கதவு வாசக்கால் ஜதை 4 இதுகளையும் மேற்படி மனைத் தோட்டத்திற்கு தென்மேற்கு முலையில்”



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19. In and around 1933, Parasurama Naidu, the father-in-law of the deceased sole defendant and the father of the 2nd defendant had taken the property on lease for running a fuel depot. The said Parasurama Naidu had recognized the lessor to be Seer Karuneeakar Mutt

“.....எங்களில் 1 லக்கமிட்ட சீர் கருணீக ஜாதியாருக்கு சொந்தமான அடியில் கண்ட சீர்கருணீகர் ஜாதியார் மடத்தில் 2 லக்கமிட்டவர் விறகு வியாபாரத்துக்காக வாடகைக்கு ஒப்புக்கொண்டு வாடகை மாதம் ஒன்றுக்கு 6.0. வீதம்”

“சீர் கருணீகர் நந்தவன காரியதரிசியுமான சீர் கருணீகர் ஜாதி உபாத்தியாயர் வேலை ஜீவனம் க.சி.நடேசப்பிள்ளை 1. மேற்படியூர் சன்னதி வீதியிலிருக்கும் பாலகண்ண குமாரன் கவரை ஜாதி சப் காண்டிராக்டர் வியாபார ஜீவனம் பரசுராம நாயுடு 2. நாங்கள் இருவரும் ஏபோபித்து எழுதிக்கொண்ட வாடகை பாத்திரம்”

The persons who executed the lease deed were the then office bearers of Seer Karuneeakar Madam. This lease was yet again extended under Ex.A.4 for a period of five years. The persons who had executed this document also were the then Secretary/Office Bearers of Seer Karuneeakar Sangam. In this document too, the title of Seer Karuneeakar Madam for the year 1905 was recognized as is clear from the following words:

“.....1 லக்கமிட்ட அடியில் கண்ட இடத்திற்கு காரியதரிசி ஜேறாதாவில் சொந்தக்காரர். 2 லக்கமிட்டவர் 2 லக்கமிட்டவர் வாடகைக்கு ஒப்புக் கொண்டனர். 1 லக்கமிட்டவருடைய ஜாதியாருக்குச் சொந்தமான அடியில் கண்ட இடத்தை 10.06.1905ல் துரைசாமி அய்யர் சுந்தர அய்யர்



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இவர்களிடம் கருணீக ஹாதியருக்கு மடமாக உபயோகிக்க கிரையம் பெற்று

அது முதல் 1 லக்கமிட்டவரின் வகையறா காரியதாசி ஷேறாதாவில்

அனுபவத்தில் இருந்துவரும் இடத்தை 2 லக்கமிட்டவர் நாளது முதல் 5

வருஷ கெடுவு.....”

Therefore, these documents conclusively show that Seer Karuneeekar Madam was the owner of the property situated in the aforesaid boundaries. Therefore, the argument that there is no correlation between the suit property and the property purchased under Ex.A.2 has to be rejected. The documents under Ex.A.3 and Ex.A.4 are more than 30 years old and therefore, they can be considered as ancient documents within the meaning of Section 90 of the Indian Evidence Act, 1872. One of the documents is a registered one and it has been produced from proper custody. Therefore, the requirement of Section 90 is satisfied. Apart from that, the father-in-law of the 1st defendant and the father of the 2nd defendant had conceded to the title of the Karuneeekar Community specifically in these documents. Hence, it is not open to the defendants to urge to the contra.

20. A perusal of the judgement in O.S.No.402 of 1946 dated 08.01.1949 marked under Ex.A.26 would show that the suit property had been purchased from and out of the subscriptions raised by one Sabapathy Mudaliar for and on



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behalf of Seer Karuneeakar Sabai from its community members. The sale deed was executed in the name of six leaders of the community hailing from different centres and that they have been in possession and enjoyment of madam's property. In the said judgement, the court had come to a clear and categorical conclusion that Karuneeakar Community was the owner on the basis of Ex.B.1 [marked as Ex.A.1 in the present suit]. The finding of the learned trial judge is as follows:-

“21. Issue 6:- Though it was not within the ambit of the plaint to implead defendants 1 to 4 in any official or representative capacity, yet the President, 2nd defendant, had made it clear by unimpeachable documentary evidence that the title to the suit property was always within the Karuneeakar community and that their Matam had perfected its title by open, uninterrupted and adverse possession.”

Thus, from the above, it is clear that Karuneeakar community had title to the suit property. The schedule of property in the aforesaid suit tallies with the schedule of property under Ex.A.2.



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21. The plaintiff in O.S.No.402 of 1946, who claimed right to the property and in which suit the title of Karunekar Sangam was declared (Ex.A.7 & Ex.A.26), took up the matter on appeal to the learned Principal Subordinate Judge at Vellore. This appeal in A.S.No.331 of 1949 was decided on 19.09.1950. The first appellate court, under Ex.A.8, confirmed the said judgement and decree of the trial court. The learned appellate judge came to a conclusion that the disputed site lies in the suit property belongs to the entire community and no single individual can claim any independent right. Subsequently, Karunekar community, through its members, filed a suit in O.S.No.449 of 1957 seeking declaration that the property belongs to Karunekar Community of Madras State as represented by the plaintiff therein and for an order of injunction not to interfere with the possession of the community. In this suit, the plaintiff in the previous proceedings and few other persons were impleaded defendants. After full-trial, the suit in O.S.No.449 of 1957 came to be decreed on 23.11.1960 (Ex.A.9). It is interesting to read the schedule of property that had been annexed to the aforesaid suit. The said schedule reads as follows:-

“N. Arcot திருவண்ணாமலை சப் கஸ்பா
திருவண்ணாமலை சந்ததி தெருவில் 2வது வார்டு 1வது
பிளாக், விதிக்கு தெற்கு, அய்யங்குள அக்கிரகார
தெருவுக்கு மேற்கு, 1ம் பிரதிவாதி ஜாகாவுக்கு கிழக்கு.



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பகங்கரை ராமசாமி அய்யர் வீட்டிற்கு வடக்கு. இதன் மத்தியில் புஞ்சை சர்வே 604/2 சதுர அடி 194 மற்றும் சர்வே 604/1 சதுர அடி 7004. அடங்கிய ஜாகா, தென்புறம் கி x மே ஜாதியடி 43 ½ வடபுறம் கி x மே ஜாதியடி 45 ½ கீழ்புறம் வ x தெ அடி 57 மேல்புறம் வ x தெ ஜாதி அடி 165, இந்த ஜாகாவும் இதில் உள்ள கூரை கட்டிடமும் இதற்கு தென்மேற்கு முலையில் உள்ள டவுன் சர்வே 605/1ல் கிணர் ஜாகா கி x மே ஜாதியடி 10 வ x தெ ஜாதியடி 10. இதில் உள்ள கிணர் இவைகளில் பாதியும், கிணர் ஜலபாக்கியத்தையும், கீழ்புறம் ராட்டினம் உள்படவும், இவைகளுக்கு பழைய Door No.74 புதிய Door No.75”

Therefore, it is clear not once but, thrice, the title of the plaintiff's community had been upheld with respect to S.No. 604/1 to an extent of 7004 square feet with the above boundaries. The boundaries in the present suit are as under:-

“T.S. District, Tiruvannamalai Town, Sannadhi Street, S.No.604/1 of an extent of 7004 sq.ft. on this 1420 sq.ft. (present sub division No.604/1B2A) bounded by South of T.S.No.604/2, West of Ayyangula Agraharam Street, East of Pavun Sivaprakasam's house, north of the plaintiff's tenants house (in the present sub division No.604/1B2B)”



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22. The present suit relates to 1420 square feet of 7004 square feet, already declared as belonging to the plaintiffs. I have gone through Ex.A.9 and I am constrained to reject the argument of Mr.R.Thiagarajan, who vehemently argued that Ex.A.9 does not relate to the suit property. The argument that Ex.A.26 does not relate to the suit property is also erroneous. I have compared the boundaries in Ex.A.26 with the boundaries under Ex.A.2 and with the present suit. They tally. On the contrary, I have to come to a clear conclusion on the basis of the documentary evidence that the property, in fact, belonged to 'Karuneeekar Community of Madras State' at large.

23. It is here that Ex.A.33 becomes relevant. Under Ex.A.33, a resolution had been passed by Nandhavana Paripalana Sangam which reads as under:-

“விஜயம் 1 நமது சபைக்கு சம்மந்தப்பட்ட மடம், நந்தவனம் பிற சொத்துக்களை நிர்வகிக்கவும் திறம்பட செயல்படவும் நமது சமுதாயத்தினருடைய உழைப்பு ஒருமுகமாக்கப்பட வேண்டும் என்ற காரணத்தாலும் பதிவு எண்.6/79 நாள் 31.01.1979ஆக பதிவு செய்யப்பட்டுள்ள இச்சபையை பதிவு எண்.20/78 நாள் 26.06.78 ஆக பதிவுள்ள கருணீகர் சங்கத்துடன் இணைத்து செயல்படும் விஜயம்.

தீர்மானம் 1

இச்சபைக்கு பாத்தியப்பட்ட மேற்படி சொத்துக்கள் அடுத்த நபர்களின் ஆக்கரமணத்தில் இருப்பதை கைப்பற்றி நமது சமுதாயத்தினரின் நலனுக்காக பயன்படுத்தவும், நமது



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சமுதாயத்தினருக்குள் இரு சங்கமாக பிளவுபட்டு செயல்படாமல் ஒரே சங்கமாக இணைந்து ஒருமுகமாக செயல்பட வேண்டிய அவசியம் ஏற்படுவதாலும் 6/79 நாள் 31.01.79ம் ஆக பதிவுள்ள இச்சபையை 20/78 நாள் 26.07.78 ஆக பதிவுள்ள கருணீகர் சங்கத்துடன் இணைந்து செயல்பட தீர்மானிக்கப்படுகிறது

தீர்மானம் 2

இத்தீர்மான நகலை திருவண்ணாமலை தரு மாவட்ட பதிவாளர் அவர்களுக்கு அனுப்பி அங்கிகாரம் பெற்ற பிறகு இச்சபைக்கு சம்மந்தப்பட்ட ஸ்தாவர ஜங்கம் சொத்துகள், மூல தஸ்தாவேஜுகளையும் இச்சபைக்கு சம்மந்தப்பட்ட இதர அனைத்து தஸ்தாவேஜுகளையும் கருணீகர் சங்க நிர்வாகிகளின் அனுமதியுடன் ஒப்படைக்க தீர்மானிக்கப்படுகிறது.

ஒம்/- செயலாளர்

ஒப்பம்/- தலைவர்”

24. This resolution states that Paripalana Sabai which was running the madam and maintaining its properties was unable to carry on its activities and they had decided to merge it with the plaintiff sangam. This corresponds to the further resolution passed by Karuneekar Sangam, Tiruvannamalai, whereunder the following resolution was passed:-

“23.11.80ல் நடைபெற்ற பொதுக் குழுவில் ஏகமனதாக நிறைவேற்றப்பட்ட தீர்மானங்கள்

1. திருவண்ணாமலையில் செயல்பட்டுவந்த சீர்கருணீகர் நந்தவன மடாலய தருமபரிபாலன சபையும் கருணீகர் சங்கமும் இணைந்து 40/80 பதிவு எண் கொண்ட கருணீகர் சங்கமாக செயல்பட பெரிதும் உதவிய திரு ந.நமசிவாய பிள்ளை, திரு அண்ணாமலை



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பிள்ளை, திரு துரை அப்பாசாமி பிள்ளை அவர்களை மனமார
பாராட்டி இச்சங்கம் நன்றி தெரிவித்துக் கொள்கிறது.

.....
.....”

25. Ex.A.33 & Ex.A.34 answer the doubt raised by Mr.R.Thiagarajan that there is no link between the plaintiff and Paripalana Sabai. To put it in different words, six leaders of the community had purchased a property in 1905 and they had maintained the same. Thereafter, disputes had arisen as to the ownership of the property which were concluded in 1949 and 1957. But, due to difference between the members of the community, an association had been formed called the Nandhavanam Paripalana Sabai. This was a sabai created for the purpose of cultivating and giving/offering flowers to the deity at Tiruvannamalai. In order to find peace in the community, Nandhavana Paripalana Sabai handed over the suit schedule mentioned property to the plaintiff. The plaintiff's predecessor having proved their title to the property by way of two proceedings have to be declared as owners of the same. This link had unfortunately not been looked into by the courts below. It is here, the judgements of the courts read with Section 13 of the Indian Evidence Act, 1872 become relevant.



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26. In **Dinamoni v. Brajmohini [(1902) ILR 29 Cal 190 (PC)]** it was held, while interpreting Section 13 of the Evidence Act, that a previous judgement though not interparties is admissible in order to show who parties were, what dispute was and who was declared to retain the same. The said judgement was confirmed by the Supreme Court in **Tirumala Tirupati Devasthanams V. K.M.Krishnaiah, [(1998)3 SCC 331]**. The relevant paragraphs are extracted hereunder:-

"9. In our view, this contention is clearly contrary to the rulings of this Court as well as those of the Privy Council. In *Srinivas Krishna Rao Kango v. Narayan Deviji Kango*, speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter parties is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgements other than those falling under Ss. 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B. K. Mukherjea, J. (as he then was) speaking on behalf of a Bench of four learned Judges in *Sital Das v. Sant Ram*, held that a previous judgment not inter parties, was admissible in



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evidence under Section 13 of the Evidence Act as a 'transaction' in which a right to property was 'asserted' and 'recognised'. In fact, much earlier, Lord Lindley held in the Privy Council in *Dinamoni v. Brajmohini* (1902) ILR 29 Cal 190 (198) (PC) that a previous judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in dispute were and who was declared entitled to retain them. The criticism of the judgment in *Dinamoni v. Brajmohini* and *Ram Ranjan Chakerbati v. Ram Narain Singh* (1895) ILR 22 Cal 533 (PC) by Sir John Woodroffe in his commentary on the Evidence Act (1931) p. 181 was not accepted by Lord Blanesburgh in *Collector of Gorakhpur v. Ramsunder*, AIR 1934 PC 157 : 61 IA 286.

10. For the aforesaid reasons, we reject the contention of the learned counsel for the respondent/plaintiff and hold that the TTD could rely on the judgment in OS 51/37 as evidence to prove its title in regard to the suit property, even though the present plaintiff was not a party to that suit. Point No. 1 is held accordingly against the respondent."

27. This view of the Supreme Court had been followed by this Court in

S.Govindarasu Udayar v. Pattu and 2 others [1999 – 2 – L.W. 184].



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28. Apart from this, I would also rely upon the view of the Supreme Court of India, in **Srinivasa Krishna v. Naryaana** [AIR 1954 SC 379 = 67 LW 515] wherein their Lordships had held that previous judgement is admissible under section 13 of the Evidence Act as assertions on title and the manner in which they were recognized. It was held that such judgements are admissible as instances where there had been claims and how they were settled. In view of the clear and categorical pronouncements laid out above, I have to necessarily hold that the judgements under Ex.A.26, Ex.A.7, Ex.A.8 r/w Ex.A.33 and Ex.34 pertaining to title and rental transactions conclusively prove that the property belongs to the plaintiff sangam. Both the courts below have unfortunately not taken notice of these binding principles.

29. The argument that there was no sangam in 1905 and therefore, the present plaintiff cannot maintain the suit is of no avail. This has been conclusively answered as aforesaid.

30. The judgement of this court in **Karuneggar Sangam rep. by its President v. The Tahsildar and others** [S.A.No.181 of 2010 dated



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18.04.2023] upon which reliance has been placed by the learned counsel

Mr.R.Thiagarajan is of no avail. That related to an assignment by the Government with respect to **S.No.604/2**. But, the present suit relates to S.No.604/1. S.No.604/2 was admittedly a poramboke land. However, S.No.604/1 is not.

31. Taking advantage of the sub division made by the municipality, Mr.R.Thiagarajan would argue that the property having been sub divided and the sub division not having been objected to by the plaintiff, it has to be non-suited. This is in my opinion, an argument in futility for more than one reason. Firstly, revenue records will never confer title on a property. Ex.B.71 is a Town Survey Extract which is a revenue record. Therefore, no right can be claimed by the defendants on the basis of said record. Secondly, it is clear from Ex.A.36 that the plaintiff sangam had, in fact, objected to the sub division and after full-trial, the said suit had been decreed. Ex.A.36 was a suit between the plaintiff herein and Tiruvannamalai Municipality objecting to the sub division of the property into S.Nos.604/1A, 604/1B1, 604/1B2A & 604/1B2B. Therefore, the argument of Mr.R.Thiagarajan that the plaintiff had not objected to the sub division is contrary to the record. The judgement in



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O.S.No.1078 of 1980 has been placed before me. The said suit was decreed by the learned District Munsif on 08.09.1995 and the sub division that had been made by the municipality was declared to be illegal and the same was set aside. The said decree had become final. Therefore, I am not in a position to agree with the submission that sub division was made but was not objected to. On the contra, the records before me very clearly show that the sub division was objected to and a suit had been filed and the same had been decreed and it had become final. Therefore, that objection too is without any basis.

32. It is pertinent to point out here that mutation of revenue records was at the instance of Kuppusami Naidu, the 1st defendant, without the knowledge of the plaintiff sangam. Therefore, such revenue records cannot confer title or any right on the first defendant as against the interest of the plaintiff sangam who have shown continuity in title from 10.06.1905 till date.

33. The argument of Mr.R.Thiagarajan that the defendants have perfected title by adverse possession is based on Ex.B.2 to Ex.B.73. Ex.B.2 to B.70 are municipal records. Mere payment of taxes will not amount to adverse possession. The very fact that the defendants plead adverse possession shows



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that the 1st defendant (deceased) had conceded to the title of the plaintiff sangam. See, **Dagadabai v. Abbas [(2017) 13 SCC 705, para 16)]**. Therefore, it is too late in the day for the defendants to plead that the plaintiff does not have title to the suit property.

34. In order to establish the claim of adverse possession, a defendant must prove something more than that merely he/she is in possession of the property for over a long period. I would take guidance from the judgement in **Pilla Akkayamma v. Channappa [ILR 2015 Kar 3841]** wherein while dealing with the principles of adverse possession, Justice Abdul Nazeer [as he then was] was pleased to hold as follows:-

“27. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person, who does not acknowledge others' rights but denies them. Possession implies dominion and control and the consciousness in the mind of the person having dominion over an object that he has it and can exercise it. Mere possession of the land would not ripen into possessory title. Possessor must have animus possidendi and hold the land adverse to the title of the true owner.



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Occupation only implies bare use of the land without any right to retain it. In order to constitute adverse possession, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. To prove title to the land by adverse possession, it is not sufficient to show that some acts of possession have been done. The possession required must be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. In other words, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation.

.....
.....

30. In a suit falling under Article 65 of the Limitation Act, plaintiff must establish his title to the property. He need not prove that he was in possession within 12 years. If he fails to prove his title, the suits fails, and the question of adverse possession does not arise in such a case. When the plaintiff has established his title to a land, the burden of proving that he has lost that title by reason of the adverse possession of the defendant lies upon the defendant. If the defendant fails to prove that he has been in adverse possession for more than 12 years, the plaintiff is entitled to succeed simply on the strength of his title. A person alleging that he has



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become owner of immovable property by adverse possession must establish that he was in possession of the property peaceably, openly and in assertion of a title hostile to the real owner. Stricter proof is required to establish acquisition of title by adverse possession for the statutory period.”

35. I have also informed myself of the Supreme Court judgement in State of **Haryana v. Mukesh Kumar [(2011) 10 SCC 404]** wherein the Court held as follows:-

“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.”

36. The aforesaid view of Justice Nazeer has found acceptance at the hands of a Constitutional Bench of the Supreme Court in **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, [(2020) 1 SCC 1, para 1154)]**. Applying this test to the facts in hand, I have to necessarily come to a conclusion that the defendants have failed to prove the plea of adverse possession. The plea of adverse possession having failed and the plaintiff



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having proved its title to the suit property, a decree for recovery of possession necessarily has to follow.

37. A crucial factor which constrains me to look against the defendants is Ex.A.3 and Ex.A.4. Under these two documents, the 1st defendant's father-in-law and the 2nd defendant's father - Parasurama Naidu had taken the property on lease. According to Mr.R.Thiagarajan, learned counsel, the said lease was surrendered by Parasurama Naidu and thereafter, the land had been encroached by the defendants. Firstly, there is no proof of surrender and secondly, there is a positive evidence that the 2nd defendant, the daughter of Parasurama Naidu and the wife of the 1st defendant continued to be in possession of the property as a lessee.

38. In the case on hand, I am satisfied that the a lessee cannot claim adverse possession and, in any event, the defendants have not established all the facts necessary to succeed in their claim.

39. The payment of rents and account books have been produced before the court under Ex.A.5. This shows that Parasurama Naidu was regularly paying rent to the plaintiff's predecessors. Apart from that the 2nd defendant had



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endorsed her signature under Ex.A.28 as a tenant of the property. As late as 18.04.1965, Saradhambal Ammal had admitted that she was paying rent for the period from 01.04.1963 to 31.03.1965 and had endorsed her signature at the bottom of Ex.A.30. The relevant portion is at page 59 of Ex.A.30. A tenant having taken possession of the property cannot plead adverse possession. This is clear from the view of the Supreme Court in **Nand Ram v. Jagdish Prasad [(2020) 9 SCC 393]**.

40. In the said judgement, referring to Section 111, 108 (q) and 116 of the Transfer of Property Act, 1882, the court held that a lessee continues to be liable to the lessor till the possession has been actually restored to the lessor and till such handing over of possession, semblance of relationship continues. The court further held that in law there is a presumption of continuity of tenancy and against the possession of the tenant becoming adverse. This doctrine of estoppel of a tenant continues to operate even after the termination of the tenancy and debars a tenant, however defective the title of the lessor may be from pleading adverse possession without first openly and second, actually surrendering possession of the property to the lessor. The court also was pleased to hold that a tenant by mere continuance in possession is deemed to



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have acknowledged both the lessor's title and his or her liability to pay mesne profits for the use and occupation of the property continues.

41. In the instant case, as seen from the above, the defendants have pleaded adverse possession and I have found that this amounts to admission of the plaintiff's title. Apart from that, Exs.A.3, A4 and A.30 and other rental books produced before the trial court positively convince me that the defendants had taken possession of the property as lessees and today, are turning around and pleading that they are the owners of the property by prescription. Such a plea is impermissible.

42. I have to point out that Ex.A.28 is the rental receipt which had been executed before the dispute had arisen between the plaintiff and the defendants. The documents under Ex.A.28 to Ex.A.30 conclusively prove the relationship of lessee and lessor between the 1st defendant and the plaintiff sangam.

43. The other factor to be noticed is that the construction made by the defendants was just before the presentation of the plaint. This is clear from the Advocate Commissioner's report filed under Ex.C.1. The report reads as



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follows:-

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“1. I find A B C D as marked in the plan is a new enclosure of 4 walls just built without proper roofing and without flooring. There is only sand filled up on the floor. Only pucca walls have been raised on all four sides of A B C D portion, the walls having been raised just 1 or 2 days before the date of my inspection as I felt by physical verification of the wetness on the wall. The walls are also yet to be cemented. As I have shown in the plan there is a bath room and latrine (newly build with above mentioned fashion without pucca roofing) and only with Tatched (தாது) roofing of which the southern wall is the portion of the main wall of C.D. and the northern portion of wall is marked as M N O. In this newly build portion there is a Cycle shop in the northern corner. The A D portion measures 13 ½ feet. This A B C D portion of the suit property is on the western side of Ayyangulam street and south of Sannadhi street.

2. In rear portion of A B C D i.e, B E F C (as shown in the enclosed plan) I find the following physical features. As shown in the plan there is a raised foundation to about 1 ½ feet (P Q R S). P.Q. measuring 20 feet and P.S. measuring 12 feet. No building is raised on it. I find the entire B E F C portion is without any roofing whatsoever. On the northern side of the B E



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F C portion there is staircase leading to the defendants portion dwelling upstairs as shown in the plan. I find the suit property is bounded by Nararaja Pillai's house on the southern side and Dr.Sivaprakasam's house on the western side. There is one Sappoto and Neam tree as shown in the plan. The portion B.E. Measuring 24 ½ feet and B.C. Measures 29 feet. There is a vacant portion of 5' in front of A.D. portion in the suit property.

44. An Advocate Commissioner's report may be read as evidence in a suit as per Order 26, Rule 10 of CPC. In the instant case, though the Advocate Commissioner had filed a report stating that the construction is new, no objection was filed by the defendants. This is despite the fact that the defendants were present at the time of inspection of site by the Advocate Commissioner. No steps were taken to cross-examine the Advocate Commissioner in order to controvert the report. Therefore, I read the Advocate Commissioner's Report and Sketch as evidence in the suit. The result of it being that the defendants cannot claim that construction had been in place from 1960 onwards. The Advocate Commissioner had visited the suit property in 1980, soon after the presentation of the plaint on 23.01.1980. The rough plan under Ex.C.2 annexed to the Advocate Commissioner's report (Ex.C.1) shows that the construction had been made on the vacant land that had then



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been available. I have already held in S.A.No.181 of 2010 that the defendants have a right by virtue of an assignment with respect of S.No.604/2. The present construction has been shown in S.No.604/1.

45. The statement that the cause of action pleaded in the plaint is false and therefore, the suit has to be dismissed does not appeal to me. Here is the case where the plaintiff sangam has been litigating for more than 30 years starting from 1946 till 1980, when the present suit was presented. Consistently, the title of the plaintiff has been upheld. They have been taken on appeal and the appeals also ended in their favour. The cause of action is a bundle of facts which results in deciding the court's jurisdiction and granting a decree. I will not read one line in the said paragraph whereunder cause of action is pleaded in order to non-suit the plaintiff. The entire reading of the plaint discloses a cause of action that there has been a consistent attempt by the lessee to deny the title of the lessor.

46. The courts have already held that a separate paragraph for cause of action is not necessary. I rely upon a judgement of a Division Bench of Lahore High Court in **Fateh Ali Shah v. Muhammad Baksh** [1927 SCC OnLine Lah 589 : ILR (1928) 9 Lah 428 : AIR 1928 Lah 516] wherein two-judges of the Division Bench were pleased to hold as follows:-



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“Moreover, the Civil Procedure Code nowhere provides that the plaintiff shall state in a separate paragraph of the plaint the date of accrual of the cause of action. All that it requires is that the facts constituting the cause of action and when it arose should be stated in the plaint. Order VII, Rule 1 of Civil Procedure Code, is quite clear on this the plaints and the pleadings in Appendix A of the first schedule to the Civil Procedure Code do not contain a separate paragraph stating when the cause of action arose. The omission to mention the dates of reversal of the entries and dispossession of the plaintiffs was not noticed by the parties when the issues were framed but the necessary information, it appears, was supplied during the trial. In my opinion, this was merely a formal omission which does not in any way affect the merits of the case and the plaintiffs cannot be tied down to the date of the accrual of the cause of action mentioned in the plaint. The Court is entitled, as the learned Senior Subordinate Judge has done, to determine the date on which the cause of action arose from the facts alleged and proved.”

47. A meaningful reading of the plaint must disclose a cause of action.

As pointed out already, a reading of the plaint shows a cause of action. The mere fact that a single sentence in an unnecessary paragraph states that



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possession had been taken in 1980 does not persuade me to non-suit the plaintiff. Apart from that, as noticed in the previous paragraph, the construction had been made about 2 days prior to the visit of the Advocate Commissioner to the site. The Advocate Commissioner had visited the site on 30.01.1980. Therefore, I am of the clear view that the argument that cause of action paragraph states that trespass was made in 1980 has to be read in that light. Therefore, that objection too of Mr.R.Thiagarajan is rejected.

48. As far as the objection that the plaintiff society is not a juristic person and therefore, the suit is not maintainable, I am not willing to accept the same because such objection has not been raised in the written statement or before the trial court or before the first appellate court. The question as to whether the plaintiff is a juristic person or not, is not a pure question of law. Therefore, it cannot be raised for the first time in the second appeal and hence, I reject that objection too.

49. None of these issues have been gone into by the courts below. They have not taken into consideration the judgements of the Supreme Court and that of the Privy Council holding that a judgement which is not interparties is admissible under Section 13 of the Indian Evidence Act. The courts below ought to have probed the title in detail, especially, Exs.A.2, A7 to 9 and the



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lease deeds under Exs.A.3, A4 and A28 to A30. Had they done so, I am sure they would have come to a conclusion that the plaintiff is the owner of the property and is entitled for a decree of title and possession.

50. In the light of the discussions made above, the judgement and decree of the trial court as well as the first appellate court are liable to be set aside and the suit has to be decreed as prayed for with costs throughout.

In the result, this Second Appeal is allowed; the decree and judgement dated 25.07.1997 dismissing the suit in O.S.No.160 of 1980 by the learned Additional District Munsif, Tiruvannamalai and as confirmed by decree and judgement dated 22.03.2000 in A.S.No.12 of 1999 by the learned Principal Subordinate Judge, Tiruvannamalai, are set aside; and the suit in O.S.No.160 of 1980 is decreed as prayed for. Costs throughout.

The plaintiff sangam is declared as the absolute owner of the suit property and consequentially entitled for recovery of vacant possession. Time for delivery of vacant possession of the suit property is 3 (Three) months. Consequently, connected CMP is closed.

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Index : yes / no
Neutral Citation : yes / no
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- 1.The Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District.
- 2.The Additional District Munsif, Tiruvannamalai, Thiruvannamalai District.



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V.LAKSHMINARAYANAN, J.

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Pre Delivery Judgement
in
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