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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13 / 03 / 2024

JUDGMENT PRONOUNCED ON : 12 / 06 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.2259 OF 2003
AND CMP NO.21315 OF 2003

R.Ganesan (Died)	...	1 st Defendant / 1 st Respondent Appellant
2.Manimegalai Ganesan		
3.G.Parri		
4.G.Poonkunran	...	Appellants
(Appellants 2 to 4 and respondents 8 and 9 brought on record as the LR's of the Sole Appellant viz., Era. Ganesan vide order of Court dated 30.07.2019 made in CMP Nos. 1957 to 1959 of 2009 in S.A.No.2259/2003)		

Versus

1.V.Shanmugam (Died)	...	Plaintiff / Appellant / Respondent
2.A.Aranganathan	...	2 nd Defendant / 2 nd Respondent / 2 nd Respondent



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3.A.Asokan

... 3rd Defendant /
3rd Respondent /
3rd Respondent

4.J.Govindaraj

... 4th Defendant /
4th Respondent /
4th Respondent

5.Sarojammal (Died)

6.S.Parthiban

7.Sampoornammal

8.Madhavi Ganesan

9.Vaikarai Senthil Kumar

... Respondents

(Respondents 5 to 7 were brought on record as the
LRs of the deceased 1st respondent viz.,
V.Shanmugam vide order of Court dated
30.07.2019 made in CMP Nos.19148 of 2005
in SA No.2259 of 2003)

(R5 – died, RR6 and 7 (already on record)
are legal heirs of the deceased R5 vide Court
order dated 05.06.2023 made in SA No.
2259 of 2003 and CMP No.21315 of 2003)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment in A.S.No.72 of 2002 dated 04.06.2003 on the file of the Additional District Sessions Judge (Fast Track Court) Ranipet, Vellore District allowing the appeal and set aside the decree and judgment of the District Munsif Court, Sholinghur in O.S.No.55 of 1993 dated 28.08.1997.



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For Appellants : Mr.G.Poonkumaran
Senior Counsel
for Mr.R.Thirugnanam
For Respondent 4 : Mr.B.Ullasavelan
For Respondents 6 & 7 : Mr.K.V.Subramanian
Senior Counsel
for Mr.M.A.Abdul Wahab
For Respondent 8 : Mr.Karunakaran

J U D G M E N T

This Second Appeal is directed against the decree and judgment dated June 4th, 2003 passed in A.S.No.72 of 2002 by the 'learned Additional District and Sessions Judge, Fast Track Court – II, Ranipet' [henceforth 'First Appellate Court' for the sake of brevity] setting aside the order of dismissal of injunction dated August 28th, 1997, passed in O.S.No.55 of 1993 by the 'learned District Munsif, Sholinghur' [henceforth 'Trial Court' for the sake of brevity].

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Suit.

Case of the Plaintiff:

3.The plaintiff purchased 25 Cents of land in *Survey No.754/15* situated towards the east of the lake channel - 'Perumal Kovil Mettu Kalvai',



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vide Sale Deed dated *February 25, 1982*, from one Seshadri. About 5 years before instituting the Suit (Suit was filed on *February 19, 1993*), the plaintiff had encroached upon the aforementioned lake channel, occupying an area extending 15 feet in width from East to West and 100 feet in length from North to South, located in *Survey No.754/14*. The encroached area of land constitutes the Suit Property.

3.1. According to the plaintiff, he is in possession and enjoyment of the encroached land by making it fit for cultivation and has raised crops on it. The said lake channel was not in use. Hence, the plaintiff's possession and encroachment was never disturbed by anyone else. B-Memos were never issued for the encroachment. While so, in the 2nd week of February, 1993, the first defendant (D1) with the assistance of the second, third and fourth defendants (D2 to D4) trespassed on a portion of the encroached land measuring 10 feet from East to West and 100 feet from North to South and laid a foundation by removing the thorn fencing put up by the plaintiff. Hence, the Suit for mandatory injunction directing D1 to remove the foundation and permanent injunction restraining D1 to D4 from raising any further construction on the Suit Property.



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Case of D1 and D4:

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4. According to D1 and D4, plaintiff has no manner of right, title or interest over the Suit Property and he has not been in possession and enjoyment of the same at any point in time. He is not entitled to the reliefs of mandatory and permanent injunction. *Survey No.754/14* is a Patta land of an extent of 6 Cents. In a portion of the said 6 Cents land, 'Perumal Kovil Mettu Kalvai' has been in existence and in use. D1's land is flanked by 'Perumal Kovil Mettu Kalvai' and 'Sindhileri Kalvai'. It is situated in between both channels. D1 and his ancestors have successively been in enjoyment and possession of the land in *Survey No.754/14* for a very long period. D1's father constructed shops and leased them out, apart from using some for himself. On *February 20, 1943*, D1's father – Rajabadar Mudhaliar mortgaged the land in *Survey No.754/14* along with some other properties in assertion of his right as absolute owner. D1's father passed away on *January 5, 1973*. On *August 27, 1992*, as per Oral Partition among family members, the Suit Property along with some other properties was allotted to D1. The foundation work began on *January 24, 1993*, and was completed on *January 31, 1993*. The plaintiff demanded a 2-foot-wide strip of land that runs the



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length of Suit Property adjacent to his land. Since D1 refused, the plaintiff has filed this false Suit. D2 to D4 have no right, title or interest in the Suit Property, hence, they are unnecessary parties to the Suit. Suit Property does not belong to the Government. The suit is not maintainable without impleading the government as a party. Hence, he prayed to dismiss the Suit.

Case of D2 and D3:

5.D2 and D3 filed a Written Statement stating that D1 is alone in having title over the Suit Property and hence, D2 to D4 are unnecessary parties. In all other aspects, they adopted D1's Written Statement.

6.The Trial Court held that the plaintiff failed to establish the exact extent of encroachment that he has made and possession and enjoyment therein and that D1 has also failed to establish his title and possession over the Suit property and that hence, the plaintiff is not entitled to the reliefs sought for. Accordingly, the Trial Court dismissed the Suit.

7.The First Appellate Court found that the plaintiff is in possession and enjoyment of Suit Property and the plaintiff perfected title by adverse possession. Accordingly, the First Appellate Court allowed the



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appeal and set aside the Trial Court's dismissal decree and judgment, and decreed the Suit.

8. Feeling aggrieved with the same, D1 has filed this Second Appeal.

Substantial Question of Law:

9. This Second Appeal was admitted by this Court on January 30th, 2004 and the following substantial questions of law were framed:

“(a) Whether the suit is maintainable or not, on account of that the 1st Respondent / Plaintiff is claiming the suit property as the poramboke land and if so, the Government i.e., Sholinghur Municipality is the necessary party, but Section 80 (sic 18) of C.P.C. Notice was not issued to the Municipality and it has not been made as a party. On the ground of non-joinder of parties, the suit can be dismissed or not?

b) Whether the first respondent / plaintiff herein is not in actual possession of the suit schedule property, in the above circumstances, whether the first respondent / plaintiff is entitled to get the permanent injunction or not?



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c)The respondents 2 to 4 are unnecessary parties to the suit, but they have been impleaded in the suit proceedings. Hence, on the ground of mis-joinder of parties, the suit has to be dismissed or not?

d)Whether the first respondent has perfected his title to the suit property by way of adverse possession or not? ”

Arguments:

10.Learned Counsel for the appellant / D1 would argue that the land *Survey No.754/14* is a Patta land. During the lifetime of D1’s father, D1’s father enjoyed the land in *Survey No.754/14* by mortgaging and leasing out the properties thereon. After his father, D1 is in enjoyment and possession of the same. The old constructions are still there in the Suit Property.

10.1.Further would submit that, in the land *Survey No.754/14*, two lake channels, 3 to 5 feet in width, run along the length of a portion of the land. The strip of land in between the channels had been in possession and enjoyment of D1’s forefathers and is now in the hands of D1. The plaintiff has no right in *Survey No.754/14*. He has been illegally encroaching



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on the land on the eastern side of 'Perumal Kovil Mettu Kalvai'. Only with a view to bend/coerce D1 to give a portion of his property to the plaintiff, the Suit has been filed. Further, the government has not been added as a necessary party in the Suit. The Trial Court rightly dismissed the Suit. However, the First Appellate Court based on surmise and conjectures allowed the first appeal and reversed the Trial Court's judgment. Accordingly, he prayed to allow the appeal. In support of his submission, the learned counsel for the appellant / D1 relied on the following judgments:

i)Judgment of the Hon'ble Supreme Court in R.Hanumaiah and Another Vs. Secretary to Government of Karnataka Revenue Department and Others [2010 (8) MLJ 998 (SC)]

ii)Judgment of this Court in Prabha & Others Vs. Ayyavu [2022 (2) LW 430]

iii)Judgment of this Court in Tiruvannamalai Karuneeekar Sangam Vs. Saradambal Ammal [2023 (5) CTC 138]

iv)Judgment of this Court in M.Sekaran (Died) Vs. Palaniammal [2023 (5) CTC 186]



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11.Learned Counsel for the respondent / plaintiff would submit that on the western side of the plaintiff's property 'Perumal Kovil Mettu Kalvai' is located. Next to the channel, on its west side, is D1's land. The said lake channel has not been in use for years. The plaintiff has encroached a strip of land between 'Perumal Kovil Mettu Kalvai' and his land and has been enjoying it along with his land. While so, D1 encroached the said portion measuring 10 feet from East to West and 100 feet from North to South, high handedly and laid foundation for construction of Convention Center. The plaintiff has possessory title over the Suit Property and is in settled possession of the same. He is entitled to protect his possession. The Government has not interfered with the plaintiff's possession. Hence, the Government is not a necessary party to the Suit. The defendant has no right to encroach on the portion that is in possession and enjoyment of the plaintiff. The First Appellate Court after considering the evidence available on record allowed the appeal. There is no reason to interfere with the same. Accordingly, he prayed to dismiss the appeal. In support of his contention, learned counsel for the respondent / plaintiff relied on the following judgments:

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i)Judgment of this Court in A.P.Kuppusamy and Others Vs. P.Kumarapalayam Municipality [2007 (1) MLJ 827]

ii)Judgment of the Hon'ble Supreme Court in Somnath Burman Vs. Dr.S.P.Raju and Another [1970 (2) MLJ 29]

iii)Judgment of the Hon'ble Supreme Court in Biswajit Sukul Vs. Deo Chand Sarda and Others [2018 (10) SCC 584]

Discussion and Decision

12.This Court has considered both sides' submissions and perused the evidence available on record. This Court would like to begin with Ex-B.5 – Chitta issued by Deputy Tahsildar and Ex-C.5 – Surveyor's plan and commissioner's report. On perusal of Ex-B.5 – Chitta, it is seen that *Survey No.754/14* consisting of Hectare 0.02.5 (6 Cents) and *Survey No.754/6* consisting of Hectare 0.03.5 (8.6 Cents) stand jointly in the name of Narasimma Chetty, Kannapa Chetty Arjuna Chetty and Saraswathy Ammal in *Patta No.1197*. Hence, *Survey No.754/14* is a Patta land and not *poramboke* land as alleged by the plaintiff.



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13.In Ex-C.5 – Surveyor’s Sketch, the Surveyor after taking proper measurement, has noted that the plaintiff has encroached an extent of 742 square feet in *Survey No.754/4*. Further, it reveals the fact that along the western side boundary, a lake channel is running; and that along the south-eastern boundary runs the ‘Perumal Kovil Mettu Kalvai’ and the same converges with the other lake channel at the Southern side of the land in *Survey No. 754/14*. D1’s land lies in between both the channels. D1 has laid foundation in 1089 ½ square feet of land.

13.1.Further, it reveals that on the north side land in *Survey No.754/14*, D1 encroached 441 ¾ square feet land belonging to Pathway *poramboke*. Hence, *Survey No.754/14* is not a government land or channel *poramboke*, but it is a Patta land. Though the plaintiff has filed the Suit alleging that *Survey No.754/14* is a *poramboke* land, mid-way the trial, he changed his stand by filing Ex-A.3 and deposing that *Survey No.754/14* is a Patta land owned by Narasimmah Reddy Family.

14.D1 examined himself as D.W.1. He produced Ex-B.1 to Ex-B.14. Ex-B.1 is a Mortgage Deed whereby D1’s father for himself and on



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behalf of his two minor sons executed a simple mortgage in respect of *Survey*

No. 754/14 along with some other properties in favour of Sanjeevi Mudhaliar. Ex-B.2 is a document executed by one Kannaiyan in favour of D1's father whereby a strip of land in *Survey No.754/14* was rented out to Kannaiyan. Ex-B.3 is a Rental Agreement executed between D1's father and one Balakrishna Mudhaliar in the year 1951 in respect of a property / building in *Survey No.754/14*. Ex-B.4 is also a Rental Agreement between D1's father and one Vasudevan in respect of property / building in *Survey No.754/14*. Ex-B.5 - Chitta and Ex-B.6 – Adangal for the fasli year 1400 and 1402, both relating to *Survey No.754/14* stand in the name of Narasimha Reddy in *Patta No.1197*. Ex-B.7 and Ex-B.8 are Kist receipts standing in the name of Ganesan – D1. He paid land tax for *Patta No.1197* which relates to *Survey No.754/14*. All these documents support the case of D1.

15.Further, Plaintiff produced Ex-A.3 – Partition Deed executed between S.P.Narasimah Chettiyar, S.P.Govindarasu Chettiyar and their mother, whereby 'A', 'B' and 'C' schedule properties were allotted to them respectively. Perusal of Ex-A.3 would reveal the fact that the said brothers had been involved in various businesses including money lending business.



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Survey No.754/14, and some other properties were kept as a property common to both A and B schedule properties. Relevant extract is hereunder:

“ . . . 1, 2 லக்கமுள்ளவர்களுக்கு சம்மந்தப்பட்ட A+B பொது சொத்துக்கள் . . ச நெ 754/6.0.9 இதில் பொதுவில் பாகம் செண்டு 0.2க்கு தீர்வை ரூ.0.3.8 மதிப்பு ரூ 4.11.0 . . ச நெ 754/12-0.1 செண்டுக்கு தீர்வை 0.1.0 மதிப்பு 1.9.0 . . ச நெ 754/14 0.6 செண்டுக்கு தீர்வை 0.8.0 மதிப்பு 12.8.0 . . ச.நெ. 754/15 0.25ல் பொதுவில் இவர்கள் பாகம் 0.3க்கு தீர்வை ரூ.0.5.0க்கு மதிப்பு ரூ. 7.13.0 . . ச.நெ. 759/6 0.6 செண்டுக்கு தீர்வை 0.8.0 மதிப்பு 12.8.0. . . ”

16.Both sides did not examine the parties to Ex-A.3 or the parties' representatives. Hence, it is not clear whether A+ B schedule properties were owned by their family or A+ B schedule properties were properties mortgaged in favour of them. Be that as it may, from Ex-A.3 it is clear that, *Survey No. 754/4* is not lake *poramboke* or government *poramboke* as pleaded by the plaintiff. Ex-B.2 to Ex-B.8 and Ex-C.1 to Ex-C.5 would *prima facie* establish that D1's possession and title in *Survey No.754/14*.



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17. Merely because channels run in *Survey No.754/14*, there is no presumption that the said land is *poramboke* land (*See R.Hanumaiah and Another Vs. Secretary to Government of Karnataka [2010 (8) MLJ 998 (SC)]*). A canal / water channel may run on Patta land and there is nothing wrong with it. If anyone encroaches the channel and thereby causes diminishing of water, the beneficiary or *aayakatudhars* of the channel can institute a Suit for injunction against the person who caused obstruction. Further, the authorities concerned with the channel are revenue authorities. They are entitled to initiate appropriate action against the encroacher or obstructor as the case may be. In this case, D.W.1 has clearly deposed that he neither encroached the 'Sindhileri' channel nor the 'Perumal Kovil Mettu' channel. He has laid foundation within the stretch of his land between the lake channels. Notably, *Survey No.754/14* is an extent of 6 Cents (2613.36 square feet). As per Ex-C5 - Surveyor's report, D1 has constructed only in an area of 1089 square feet. From the evidence available on record, it can be concluded that D1 established his possession. On the other hand, the plaintiff failed to establish his case originally pleaded, and also his subsequent plea wherein he denied D1's title and possession over the Suit Property. Since the



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plaintiff is neither claiming through Narasimha Reddiar and family nor their legal representative, the plaintiff cannot maintain a Suit against the defendant.

18.Furthermore, the plaintiff who filed the Suit for mandatory injunction and permanent injunction ought to have ascertained the facts before filing the Suit and pleaded only the true facts. As stated *supra*, plaintiff himself has disowned his case mid-way the trial.

18.1.P.W.1 has deposed that he encroached on a portion of lake channel 5 years before instituting the Original Suit; that he did not pay B-Memo charges to the Government; and that he did not verify whether *Survey No.754/14* is a Patta land or Government land. Relevant extract is as follows:

“ . . . 1947-ல் கண்ணப்ப முதலியாருக்கும் பின்பு 29.12.51-ல் அதே கண்ணப்ப முதலியாருக்கும் 17.4.70-ல் வாசுதேவனுக்கு வாடகைக்கு விட்டு ராஜாபாதர் அனுபவித்து வந்தது எனக்கு தெரியாது. அதை குறித்து ஐய்யனேரிக்கு ரோடுக்கு தெற்கே சிந்தனேரி கால்வாய்க்கு கிழக்கே, பெருமாள் மேட்டு கால்வாய்க்கு மேற்கே என்று



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அவர் நிலத்திற்கு வடக்கே என்று சொல்லி முத்திரை தாளில் வாடகைக்கு விட்டது எனக்கு தெரியாது. அவர் கடக்கால் போட்டுள்ள இடம் அதற்கு மேலண்டை இடம் கணேசன் சுவாதீனத்தில் தான் உள்ளது. அவர் கடக்கால் போட்டுள்ள இடம் அப்புரவுப்படுத்தி எனக்கு கொடுக்க வேண்டுமென்று வழக்கில் கேட்டு இருக்கிறேன். கணேசன் வசம் உள்ள இடம் எவ்வளவு என்று குறிப்பிட்டு நீதிமன்றம் மூலம் சுவாதீனம் பெற நான் கேட்கவில்லை என்றால் தவறு. கேட்டு இருக்கிறேன். வீராசாமியை வைத்து கடக்கால் போட்டாரா என்று தெரியாது. கடக்கால் போட்டது மூன்று நாள் போட்டதற்கு மண் வெட்டியது 24.1.93 முதல் 26.1.93 முடிய என்றால் எனக்கு தெரியாது. நான் ஊரில் இல்லை. அந்த தேதியில் போட்டு இருக்கலாம். . . “

18.2. In his cross-examination, he has deposed as follows:

“நான் முதலில் சாட்சியம் அளிக்கும் போதும், தாவா போடும் போதும் தாவா சொத்தை கால்வாய் புறம்போக்கு என்று நினைத்தேன். இரண்டு பக்கமும் ஏரிக்கால்வாய் போவதால் அந்த நிலத்தை கால்வாய் புறம்போக்கு என்று நினைத்தேன். தாவாவில் என்னுடைய தாவா விசாரணை முடிந்த பிறகு தாவா சொத்து நரசிம்ம ரெட்டி வகையறாவுக்கு சொந்தமானது என்று தெரிய வந்தது. அதற்காக பதிவாளர் அலுவலகத்தில் பத்திரத்தின் நகல் ஒன்று வாங்கி வந்துள்ளேன். பத்திரத்தில் நரசிம்ம ரெட்டியாரும் கோவிந்தராஜீ



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ரெட்டியாரும் பாகப்பிரிவினை பிரித்துக்கொண்டதாக அப்பத்திரத்தில் குறிப்படப்பட்டுள்ளது. பத்திரத்தின்படி சொத்து நரசிம்ம ரெட்டி வகையறாவுக்கு பாத்தியப்பட்டது என்று தெரிந்து கொண்டேன். அந்த பத்திரத்தின் நகலை நீதிமன்றத்தில் தாக்கலிடுகிறேன். அது வா.த.சா.3 ஆகும்...”

18.3.Hence, this Court is of the view that the plaintiff filed the Original Suit without even ascertaining the basic particulars and nature of the Suit Property. Therefore, he is not entitled to the reliefs of mandatory injunction and permanent injunction.

19. Adverse Possession

19.1.This Court finds it appropriate to summarize the law on this subject. Adverse Possession begins with wrongful possession and is claimed against rightful ownership. Key requirements include actual, conclusive, open, and uninterrupted hostile possession with a clear intent to assert ownership of the property in question, adverse to the true owner's rights. To establish a claim of adverse possession, specific allegations regarding when and how the possession turned adverse to the true owner are essential for



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determining the limitation period from that point onward. Adverse possession is primarily a matter of fact and must be pleaded with specificity and substantiated with legal evidence. Mere long-term possession alone is insufficient to establish adverse possession. *Animus Possidendi* against the true owner is also required. Furthermore, permissive possession can never be considered adverse. In this case, according to the plaintiff, government is the true owner. If so, to claim adverse possession, statutory period is 30 years as per Article 112 of the Limitation Act, 1963.

19.2. In this case, P.W.1 himself has deposed that he encroached the Suit Property only 5 years before the date of instituting the Suit which is *February 2, 1993*. Relevant extract of P.W.1's deposition dated *July 10, 1995* is as follows:

“ . . . என் நிலத்திற்கு மேலண்டை பக்கம் பெருமாள் மோட்டு கால்வாய் இருந்தது. அது ஏரி தண்ணீர் கால்வாய். அதில் ஏரி தண்ணீர் 10 வருடங்களாக வருவதில்லை. உபயோகம் இல்லை. என் கழனியையும் அதை தாண்டி மேலும் அடுத்துள்ள ஏரி கால்வாயை நான் தோட்ட கால்வாயாக நாற்றங்கால் வைத்து மிளகாய் கத்தரி செடி மற்றும் நெல் பயிரும்கூட செய்து இருக்கிறேன். அவ்வாறு 7, 8 வருடங்களாக அந்த ஏரி கால்வாய் இடத்தை அனுபவித்து வருகிறேன். அரசு



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அதற்காக தண்டதீர்வை செய்யவில்லை. பி
மெமோயெதுவும் கொடுக்கவில்லை. . . ”

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19.3.Further, the plaintiff neither impleaded the concerned District Collector to represent the government nor the legal representatives of S.P.Narasimah Chettiyar and S.P.Govindarasu Chettiyar. They are necessary parties to the case. In their absence, plea of adverse possession is not maintainable.

20.As stated supra the plaintiff has not established his alleged settled possession in *Survey No.754/14* which is a Patta land. In view of his subsequent stand, relief of injunction against D1 is not maintainable. Substantial Questions of law are answered accordingly in favour of defendant No.1 and against the plaintiff.

21.The First Appellate Court came to the conclusion that the plaintiff is in enjoyment of the Suit Property; and that the plaintiff perfected title by Adverse Possession. It is not based on any material evidence but mere surmise and conjectures. Hence, the said findings are liable to be set aside



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through this Second Appeal.

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22.Except the judgment of the Hon'ble Supreme Court in ***R.Hanumaiah's case*** (cited supra), the other case laws relied on by the learned counsel on either side are not relevant to the facts and circumstances of this case.

Result:

23.In fine, the Second Appeal is allowed. Decree and judgment passed by the First Appellate Court dated *June 4, 2003 in A.S.No.72 of 2002* is hereby **set aside**. Trial Court's dismissal decree and judgment dated *August 28, 1997 in O.S.No.55 of 1993* is **hereby confirmed**. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

12 / 06 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order

21/23



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