

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2017

PRONOUNCED ON: 21.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.1600 and 1601 of 2001

R.Balakannan

... Appellant in both appeals/1st Respondent
in SA.1600/1st Defendant in 1600/01

Vs.

1.Lakshmi
2.Elumalai
3.Vadivel
4.Perumal

5.Minor Vellachi

... Respondents 1 to 5/Appellants/
Plaintiff

6.Ramanathan

... 6th Respondent/2nd Respondent/2nd
defendant

Common Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.Nos.138 and 139 of 1997 on the file of the Principal District Judge, at Viluppuram dated 30-04-2001 thereby setting aside the Judgment and decree dated 30.01.1997 made in O.S.Nos.587 and 723 of 1995 respectively on the file of the II Additional District Munsif Court at Ulundurpet.

For Appellant

: Mr.V.Ayyadurai,
for Mr.R.Bharanidharan

For Respondents 1 to 5

: Mr.V.Raghavachari

R6

: Given Up

C O M M O N J U D G M E N T

Second Appeal No.1600 of 2001 is directed against the judgment and decree dated 30-04-2001 passed in A.S.No.138 of 1997 on the file of the Principal District Court, Viluppuram,

setting aside the judgment and decree dated 30.01.1997 passed in O.S.Nos.587 of 1995, on the file of the II Additional District Munsif Court, Ulundurpet.

Second Appeal No.1601 of 2001 is directed against the judgment and decree dated 30-04-2001, passed in A.S.No.139 of 1997, on the file of the Principal District Court, Viluppuram, setting aside the judgment and decree dated 30.01.1997 passed in O.S.No.723 of 1995, on the file of the II Additional District Munsif Court, Ulundurpet.

2. Parties are referred to as per their rankings in the trial Court.

3. O.S.No.587 of 1995 has been laid for declaration and permanent injunction.

4. O.S.No.723 of 1995 has been laid for declaration and permanent injunction.

5. Inasmuch as the parties involved in both the suits are almost one and the same and as issues involved in both the suits are also in respect of the same suit properties, the case of the respective parties are briefly stated as follows.

6. The case of the respondents in both the second appeals, in brief, is that the suit properties originally belonged to Perumal Kounder ancestrally and also by way of purchase and he had two sons and his son Jayaraman in or about 1950 died leaving behind his wife Azhavammal and Jayaraman and Azhavammal had no issues and Azhavammal, according to the respondents, relinquished her right in respect of the suit properties orally in favour of Perumal Kounder some 40 years ago and left to her mother's house and and thereafter, had no connection whatsoever with the family of Perumal Kounder as well as the suit properties and after the demise of Perumal Kounder in the year 1962, his other son namely Krishnamoorthy had been in possession and enjoyment of the suit properties against the interest of one and all, and his mother Vellakarachi died in the year 1979, and Krishnamurthy died in the year 1992 leaving behind the respondents as legal representatives and accordingly it is the case of the respondents that Perumal Gounder and thereafter Krishnamurthy had been in possession and enjoyment of the suit properties against the interest of one and all including Azhavammal and thereby, prescribed title to the suit properties as per law and thus, on the demise of Krishnamoorthy, the respondents being Class I heirs succeeded to the suit properties and while so, the appellant laid a false claim to the suit properties, as if, he had purchased the same from Azhavammal, wife of Jayaraman on 07.07.1993 and thereby attempted to encroach into the suit properties without any legal authority

and the right if any, held by Azhavammal in respect of the suit properties had got extinguished as above stated, since she had surrendered all her right to Perumal Kounder long back and therefore, according to the respondents, they had been necessitated to lay the suit against the appellant and another in O.S.No.587 of 1995 for appropriate reliefs.

7. The case of the appellant, in brief, in both the matters is that the suit properties originally belonged to Perumal Kounder ancestrally, however, it is false to state that his son Jayaraman died in or about 1950 and his wife Azhavammal had relinquished her right in favour of Perumal Kounder and after the death of Perumal Kounder in 1962, it is false to state that his suit properties had been inherited by his another son Krishnamoorthy and it is false to state that after the death of Krishnamoorthy, the respondents has succeeded to the suit properties as his legal representatives. On the other hand, according to him, Perumal Kounder and his two sons Jayaraman and Krishnamoorthy were in joint possession and enjoyment of the suit properties and divided the same in 1960, during the Thai month and accordingly, specific portions were allotted to the sons and the sons thereby had been enjoying the portions allotted to them separately and as it was agreed that the sons had to maintain the parents namely Perumal Kounder and his wife Vellakarachi, Perumal Kounder was not allotted any property in the above said partition and after the death of Jayaraman, Azhavammal being an illiterate lady, her brother-in-law was paying kist on her behalf in respect of the suit properties and hence, on the said factor, it cannot be stated that Krishnamoorthy has been enjoying the suit properties in his own right to the exclusion of Azhavammal and Azhavammal had conveyed her half share in the suit properties and other properties in favour of the appellant for a valid consideration on 17.06.1993 by way of a registered instrument and accordingly, it is only the appellant, who had obtained possession and enjoyment of the suit properties and paying kist etc and while so, the respondents attempted to interfere with the possession and enjoyment of the properties owned by the appellant and accordingly, the appellant had been necessitated to institute the suit against them for appropriate reliefs in O.S.No.723 of 1995.

8. The above said two suits as well as another suit in O.S.No.675 of 1995 laid by Ramanathan, who is the second defendant in O.S.No.587 of 1995, for the relief of permanent injunction, were all jointly tried and it is seen that in support of the case of the respondents, PWs 1 and 2 were examined and Exs.A1 to A50 were marked and in support of case of the appellant, DWs 1 to 4 were examined and Ex.B1 to B22 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, it is seen that the trial Court was pleased to dismiss the suit in O.S.No.587 of 1995 and O.S.No.675 of 1995 and decreed the suit in O.S.No.723 of 1995.

10. Agreed over the judgment and decree passed in O.S.No.587 of 1995 and O.S.No.723 of 1995, the respondents had preferred the first appeals in A.S.Nos.138 & 139 of 1997 and it is found that the first appellate Court had also dismissed the first appeals, preferred by the respondents. No appeal has been preferred by Ramanathan against the judgment and decree passed in O.S.No.675 of 1995.

11. Aggrieved over the judgment and decree of the first appellate Court in A.S.No.138 of 1997 and A.S.No.139 of 1997, it is found that the respondents had preferred S.A.Nos.1703 of 1999 and 1704 of 1999 and it is found that the High Court had disposed of the above said second appeals by setting aside the judgment and decree of the first appellate Court and for the reasons stated in the judgment, remitted the matter back to the first appellate Court for fresh consideration of the issues involved in the case, after providing adequate opportunities to both parties and accordingly, it is found that the first appeals had again come to be re-heard and disposed by the first appellate Court.

12. After the matter had been remitted back to the first appellate Court for fresh consideration of the issues involved in the same by the High Court as above adverted, it is found that the respondents have preferred an application in I.A.No.184 of 2001 in the first appellate Court for the reception of additional evidence and it is further found that the above said application has come to be entertained by the first appellate Court and accordingly, the additional documents projected as additional evidence have come to be marked as Exs.A51 to A58.

13. The first appellate Court, on a consideration of the materials placed afresh by the parties concerned, was pleased to set-aside the judgment and decree of the trial Court passed in O.S.No.587 of 1995, and by allowing A.S.No.138 of 1997, decreed the suit as prayed in O.S.No.587 of 1995 and set-aside the judgment and decree passed in O.S.No.723 of 1995 and by allowing the appeal in A.S.No.139 of 1997, dismissed the suit filed in O.S.No.723 of 1995. Aggrieved over the same, the present second appeals have come to be preferred.

14. At the time of admission of the second appeals, the following substantial questions of law were formulated for consideration:

(1)What is the scope of order of remand of this Court and whether the lower appellate Court has decided the case in accordance with the order of remand?

(2)Whether the oral relinquishment of the right in immovable property by a female member is valid in law?

(3)Whether the lower appellate Court was correct in its appreciation of the evidence of P.W.3?

15. It is not in dispute that the suit properties originally belonged to Perumal Kounder. It is further not in dispute that the suit properties consist of both the ancestral and self acquired properties of Perumal Kounder. It is further not in dispute that Perumal Kounder had two sons namely Jayaraman and Krishnamoorthy and Jayaraman's wife is Azhavammal and it is seen that they had no issues. Jayaraman predeceased Azhavammal. Materials placed disclose that Jayaraman died only during the year 1960. Hence, it is seen that the case of the respondents that he had died in the year 1950 has been rightly negatived by the first appellate Court. It is further seen that Jayaraman left behind his mother Vellakarachi and wife Azhavammal as his legal heirs and his mother, according to the respondents, died in the year 1979. It is found that Perumal Kounder died on 22.01.1963.

16. Briefly stated, according to the case of the respondents, after the demise of Jayaraman, his wife Azhavammal had left to her parents house and thereby surrendered/relinquished her right/interest in the suit properties in favour of Perumal Kounder and it is the case of the respondents that she was paid a sum of Rs.400/- in connection with the same, and it is the further case of the respondents that thereafter Azhavammal had no connection, whatsoever with the family of Perumal Kounder or any link or enjoyment with the properties belonging to the family of Perumal Kounder, and it is stated that Perumal Kounder and another son Krishnamoorthy had been enjoying the properties and after the death of Perumal Kounder, Krishnamoorthy alone had been enjoying the properties left behind by Perumal Kounder absolutely to the exclusion of one and all including Azhavammal for more than the statutory period openly and continuously exercising hostile attitude and thereby, it is the case of the respondents that the right of Azavammal, in respect of the suit property has got extinguished and therefore, it is contended that, it is only the respondents, who are the legal heirs of Krishnamoorthy who are entitled to succeed to the suit properties and on the other hand, it is contended that the appellant, on the claim of the

purchase of the half share of Jayaraman in the suit properties from Azhavammal on 17.06.1993, attempted to interfere with the possession and enjoyment of the respondents in respect of the suit properties and hence, it is stated that the respondents had been necessitated to lay the suit in O.S.No.587 of 1995 for appropriate reliefs.

17. The case of the respondents that Azhavammal had surrendered/relinquished her right/interest in the properties of Perumal Kounder is disputed by the appellant and on the other hand, it is contended that Azhavammal being an illiterate lady, her brother-in-law has been enjoying all the properties on behalf of her and accordingly, Azhavammal continued to exercise her right/interest in respect of the properties of Perumal Kounder and as such had half share in the same and accordingly, it is the case of the appellant that he had purchased the same from Azhavammal on 17.06.1993 and hence, it is the case of the appellant that the respondents had thereby attempted to interfere with the possession and enjoyment of the said properties and hence, he had been necessitated to lay the suit in O.S.No.723 of 1995.

18. As above seen, the first appellate Court, at the first instance had accepted the case of the appellant and negatived the case of the respondents. In S.A.No.1703 and 1704 of 1999, the High Court while disposing of the matter, finding that the Courts below have failed to consider the evidence of PW2, who had spoken about the relinquishment of right/interest of the properties concerned by Azhavammal and also the Courts below basing their judgment only on the evidence of D.W.3 solely and further finding that the Courts below have not properly appreciated the evidence as regards the relinquishment made by Azhavammal and the Courts below also not having properly considering the documents filed in the matter in the proper perspective, as to the enjoyment of the properties concerned by Krishnamoorthy, asserting his own right with reference to the same and also the Courts below failing to determine the share to which Azhavammal would be entitled to in the properties concerned, even if the case of the appellant is to be accepted as true, finding that in such an event Azhavammal would be entitled to only 5/18th share and accordingly felt that the matters require fresh consideration and on the above said points, with a direction to the first appellate Court to reconsider the same afresh, remitted back to the first appellate Court to dispose of the appeals accordingly on merits. Following the same, as above mentioned, additional evidence has been marked on the side of the appellants as Exs.A51 to A58 and the first appellate Court, on an appreciation of the materials placed on record, accepted the case of the respondents and negatived the case of the appellant.

19. The main issue involved in this matter is as to whether the respondents and their predecessors in interest had prescribed title to the disputed properties by way of adverse possession ousting the right of Azhavammal in respect of the same, as per law.

20. In this connection, it is seen that though PW1 would speak about the surrender/relinquishment of Azhavammal in respect of the suit properties, it is found that she has no personal knowledge about the same and had heard about the same only from her mother-in-law. Therefore, as such the evidence of PW1 would be of no use to sustain the above case of the respondents. However, in this connection, we have the evidence of PW2, who is aged 85 years and accordingly, from the evidence of PW2, it is found that after the demise of Jayaraman, Azhavammal surrendered/relinquished her right/interest in favour of Perumal Kounder and left to her parents house and it is found that thereafter Azhavammal had not exercised any right/interest in respect of the suit properties. No doubt, no written instrument had been obtained for evidencing the relinquishment of Azhavammal's right in the disputed properties. In this connection, before going further, it is apposite to refer to the position of law on the subject issue. The adverse possession when claimed against the co-owners, the relevant points to be established are the plea of surrender/ ouster of rights of the co-owners by the cumulative presence of various factors like mutation of name in revenue records, payment of tax, long possession and management of property, appropriation of income to the exclusion of the co-owners and the co-owners being kept out of possession of the properties concerned and being dealt with separately etc., These aspects had been gone in detail in the decision reported in 1999 (III) CTC 263 (D.V. Jaganathan and five others Vs. P.R. Srinivasan and five others) as follows:-

18. With reference to the surrender as pleaded by the first defendant said to have been effected by Thangammal in his favour, reference is made to the observations of the learned author Raghavachariar in his "Hindu Law" in paragraph Nos. 545 and 546. Reference is made to the observation that Hindu Widow can renounce the estate in favour of the nearest reversioners and by a voluntary act efface herself from the succession as effectively as if she had then died and such voluntary effacement was sometime referred to as a surrender and sometimes as relinquishment or abandonment of her rights. Such a surrender may be effected by any process having that effect provided that there is a bona fide and total

renunciation. The learned author further observed that no written instrument was required under law.

19. Learned counsel also refers to the judgment of a learned single Judge of this Court reported in *Periakaruppan Chettiar v. Natarajan Chettiar*, 1957 (II) M.L.J. 610. After examining the facts of the particular case, the learned Judge held that it was open to a Hindu Widow to renounce the estate in favour of her nearest reversioners and by a voluntary act by effacing herself from succession as effectively as if she had died. The essential requisites of a valid surrender were that it must be in favour of the nearest reversioner, the surrender must be total and not partial, it must be bona fide and not a device to divide the property with the reversioners. It was also held that the surrender effected by a widow in ignorance of her rights was not valid in law.

20. The following observation in paragraph No. 11 of the judgment of the Supreme Court reported in *Mummaredi v. Durairaja*, AIR 1952 SC 109, is also relied upon.

"The doctrine of surrender or relinquishment by the widow of her interest in the husband's estate which has the effect of accelerating the inheritance in favour of the next heir of her husband is now a well-settled doctrine of Hindu Law which has been established by long series of judicial decisions. Though the judicial pronouncements cannot be said to be altogether uniform or consistent, yet there can be no doubt as regards the basic principle upon which the doctrine rests, namely, that it is self effacement by the widow or the withdrawal of her life estate which opens the estate of the deceased husband to his next heirs at that date. It must

be remembered thus observed the Judicial Committee in *V. Sitanna v. Viranna*, 61 Ind. App. 200 AT P. 207;

"that the basis of the doctrine is the effacement of the widow's estate widow's estate and not the ex facie transfer by which such effacement is brought about. The result merely is that the next heir of the husband steps into the succession in the widow's place "

The effacement may be effected by any process and it is not necessary that any particular form should be employed. All that is required is that there should be a bona fide and total renunciation of the widow's right to hold the property and the surrender should not be a mere device to divide the estate with the reversioner (vide *Rangasami Goundan v. Nachiappa Goundan*, 46 Ind. App 72. It would be clear from the principle underlying the doctrine of surrender that no surrender and consequent acceleration of estate can possibly be made in favour of anybody except the next heir of the husband. It is true that no acceptance or act of consent on the part of the reversioner is necessary in order that the estate might vest in him, vesting takes place under operation of law."

21. The Apex court in the decision reported in (2014) 15 SCC 432 (*Pangu alias Apputty (Dead) through legal representatives and others Vs. Narayani and others*) while explaining the essential elements to be proved for establishing the plea of adverse possession has in the following manner discussed the issues, taking into consideration the various decisions of the Supreme Court as below:

33. The learned counsel for the defendants Nos. 1 to 9 have rightly relied upon the judgment of this Court in support of their contention in the case of *Amrendra Pratap Singh v. Tej Bahadur Prajapati* wherein this Court held as under :- (SCC pp. 79-80, paras 22-23)

"What is adverse possession?

22. Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession

of immovable property or any interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, on the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property ought to be one which is

alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section."

34. Further, the learned counsel relied upon the judgment in *Sunder Das v. Gajananrao*, wherein it was held by this Court as under :- (SCC pp.708-09, para 10)

"10.The evidence of Defendant 1 when read in its correct perspective showed that he was informed by one Ganpati that the property belonged to King and the King of Datia had given it to the ancestor of the plaintiffs Mukundrao to stay therein and accordingly he thought that Defendant 6 would not be having title to the property. It must be kept in view that the plaintiffs' ancestor Mukundrao had died 60 years prior to the suit. Therefore, even if originally the property might have belonged to the King it was being occupied by the plaintiffs' ancestor Mukundrao and his descendants since generations as owners thereof and even by doctrine of adverse possession they would have perfected their title. It may also be kept in view that there was nothing on the record to suggest that the King of Datia had ever attempted to put forward any claim of ownership over the suit property. Even that apart it was not the case of the plaintiffs

themselves that the suit property did not belong to their father or their ancestors. On the contrary their case is that the suit house did belong to their father jointly with them. Therefore, it is too late in the day for the learned counsel for the plaintiffs to submit that suit house did not belong to the plaintiffs and, their father or that at the time of the sale plaintiffs' father had no right, title or interest in the suit house. In our view the evidence on record clearly establishes that the defendants made all permissible efforts to find out the legal necessity which prompted Defendant 6 to enter into the said transaction in their favour."

Therefore, based on the above mentioned cases, it is clear that the plaintiff No. 1 and defendant Nos. 10 to 17 have lost their title to the suit schedule properties essentially because of their default and inaction, which has stretched over a period of more than 50 years. Thus, their rights were lost by operation of law and doctrine of adverse possession.

22. The learned counsel for the respondents in support of his contention also placed reliance on the decision reported in (1978) 1 SCC 669 (Yeshwantrao laxmanrao ghatge and another vs. Baburao bala yadav (dead) by LRs) The principles of law expatiated in the above said decision are also taken into consideration and applied to the facts and circumstances of the case at hand.

23. Applying the above principles of law adumbrated in the above decisions to the case at hand, it has to be seen whether the respondents have by way of ouster excluded Azhavammal from claiming right/interest in the properties in dispute and extinguished her right, by way of adverse possession on account of their continuous long and hostile enjoyment in respect of the disputed properties and thereby acquired unquestionable right with reference to the same, by operation of law. It is found that Jayaraman had died during 1960. It is the case of the respondents that after the demise of Jayaraman, Azhavammal left to her parents house and staying with her brothers. From the voters list and the entries marked thereunder as Ex.A45, A46, A49 and A50, as rightly determined by the first appellate Court, it is found that Azhavammal had been only residing with her brothers and not with the family of Perumal Kounder and thus it is found that by way of the above said materials it has come to light that for a long period of time Azhavammal had not continued to live with family of Perumal Kounder or as the case

may be, with family of Krishnamoorthy, her brother-in-law and on the other hand, residing only with her brother separately and accordingly, it is seen that different entries are noted in the voters list pointing to her disassociation from the family of Perumal Kounder and these facts would go to show that Azhavammal had ceased to be a member of the family of Perumal Kounder and Krishnamurthy, as the case may be and living separately.

24. It is further seen that Azhavammal, no doubt, had been residing in the same village, separately with her brothers and if she really had continued to exercise her right or interest of her husband's share in the properties concerned, atleast some materials would have been placed on the side of the appellant to evidence the same. On the other hand, it is seen that inasmuch as Azhavammal had no at all shown any inclination to exercise any right of ownership as regards the half share of her husband in the properties concerned, it is seen that no document has been placed as such evidencing that she had asserted her title to the said properties by securing patta and paying kists or otherwise. That apart, if she had been a living member of Perumal Kounder's family, should have been also taken together while alienating the properties of Perumal Kounder. On the other hand, it is found from the documents marked as Ex.A9 to A15, the copies of the sale deeds, whereunder several properties of Perumal Kounder had come to be sold to third parties, in which sale transactions Azhavammal had not chosen to participate. Though Azhavammal is found to be residing in the same village, it is seen that the appellant cannot feign that she may not have any knowledge about any of the said transactions. If she really had exercised any sort of right or interest over the properties concerned, she would have challenged the above said transactions one way or other, on the other hand, despite the knowledge of the above said transaction, it is found that she has not thrown any challenge to the same. The facts above taken cumulatively would only go to show that inasmuch as she had surrendered her right/interest in the properties concerned to Perumal Kounder, thereafter she did not express any interest at all to claim any right or ownership over the properties concerned. This factor would only go to show that inasmuch as she has severed her connection with the family of Perumal Kounder, after the death of her husband, it is seen that she has not exhibited any interest to lay any claim in the properties of her husband and also not questioned the sale transactions effected in respect of the properties of Perumal Kounder under Exs.A9 to A15.

25. Further it is noted that from the evidence of PW2, after the demise of Jayaraman, Azhavammal had received some monetary amount and thereafter quit the family of Perumal

Kounder, thereby giving up her right or interest over the properties concerned and it is found that no written instrument has been obtained with reference to the above said surrender or relinquishment. That alone would not in any manner militate against the case of the respondents. As seen from the above said principles of law adumbrated in the decisions of various Courts noted supra, it is seen that for any family arrangement or surrender etc., strictly no written instrument would be required under law and even if the same requires any written instrument as per law, the other factors pertaining to the case, as above seen that Azhavammal had not shown any interest to exercise any right/interest over the properties concerned would only lead to the conclusion that after the demise of her husband, she had chosen to leave the family of her husband and only living with the family of her brothers and hence given up the estate of her husband in favour of her father-in-law, which had come to be succeeded by her brother-in-law Krishnamoorthy, on the demise of her father-in-law. Therefore, the facts seen above would only go to show that Azhavammal had surrendered her interest in the properties concerned in favour of Perumal Kounder, after the demise of her husband.

26. The appellant has set up the case of oral partition during the year 1960, before the demise of Jayaraman amongst Perumal Kounder and Jayaraman and Krishnamoorthy. It is his case that in the said partition, separate properties were allotted to Jayaraman and Krishnamoorthy, however, no property was allotted to Perumal Kounder as his sons had agreed to maintain their parents. If the above plea of oral partition, as also spoken to by DW3 has any element of acceptance, as rightly contended, the appellant would have disclosed through proper channels as to what are the properties allotted to Jayaraman and what are the properties allotted to Krishnamoorthy. When the properties of Perumal Kounder comprise of both his ancestral and self-acquired properties, to say that he has not been allotted any share during the alleged oral partition and his future had been left to the custody of his sons as such cannot be readily accepted. Therefore, the above factor by itself would only belie the oral partition set out by the appellant. That apart, if really separate properties had been allotted to Jayaraman and Krishnamoorthy, as pleaded by the appellant, Jayaraman, following the oral partition, would have exercised the ownership of the properties allotted to him by obtaining patta, paying kists etc or otherwise. Further, after the demise of Jayaraman his wife Azhavammal would have also continued to exercise exclusive ownership over the above said properties as above stated in one way or other, but with reference to the same, nil material is placed on the side of the appellant and this would only go to show that inasmuch as no oral partition had been effected in respect of the properties of Perumal Kounder during

1960, as put forth by the appellant, it is seen that no particulars, no materials pointing to the same has been placed by the appellant and in such view of this matter, merely on the oral testimony of DW3, we cannot safely come to the conclusion that the parties had effected the oral partition during 1960, as put forth by the appellant.

27. In so far as the exercise of the complete ownership over the properties concerned by paying kists, obtaining patta and dealing with the properties etc., as rightly found by the first appellate Court, the appellants have marked the patta Ex.A16 and also marked various kists receipts ranging from 1963 onwards and this could be evidence from the documents marked as Exs.A17 to A31, A33 to A43. Further, it is also found that during the appellate stage the respondents have also marked additional evidence Ex.A51 to A58, Adangal extracts, which would go to show that as rightly determined by the first appellate Court, it is only Krishnamoorthy, who had exercised ownership over the properties concerned by retaining them in his possession and enjoyment for several fasilis and accordingly, ranging from fasili 1374 onwards, the Adangal/chitta extracts have come to be exhibited in the matter as Exz.A51 to A54 and a perusal of the same would go to show that inasmuch as either Jayaraman or Azhavammal had not at all exercised any separate ownership over the properties concerned, their names had not been included thereunder and further, the appellant has also not chosen to mark any Adangal extract to buttress his case to show that either Jayaraman or Azhvammal had been in possession and enjoyment of the properties concerned. Therefore, the Adangal/Chitta Extracts also buttresses the case of the respondents and when Adangal Extracts constitute the best evidence qua the possession and enjoyment of the properties concerned, it is seen that the first appellate Court rightly has rightly placed reliance upon the same for upholding the case of the respondents as regards the plea of ouster coupled with other materials placed and as discussed above.

28. It is seen that the appellant claims right to the properties concerned only by way of Ex.B2, the sale deed which had been obtained from Azhavammal. This is found to have come into existence on 17.06.1993, by that time, it is found that the suit has come to be laid by the respondents on 22.07.1993 itself. Therefore, all the kists receipts filed on the side of the appellants almost ranging only pursuant to Ex.B2 and by the time, the lis between the parties had come to be laid, it is found that the kists receipts placed by the appellants by themselves would not be adequate and sufficient to uphold his case that Jayaraman and Azhavammal had exercised the separate ownership of the properties concerned and been in possession and enjoyment of the said properties. Therefore, the above aspect

of the matter also only throws strength to the case of the respondents and belies the case of the appellant.

29. Another aspect of the issue is that, as rightly put forth by the respondents' counsel, the above argument has been projected without derogation to the case of the respondents as regards the plea of ouster, it is found that, when Jayaraman died during the year 1960, he left behind his mother and wife to succeed him. If Jayaraman had been allotted any properties as such, he would have been allotted 1/3 share in the properties concerned. Therefore, on his demise, the said half share would devolve upon his legal heirs, his mother and wife. They are each entitled to obtain 1/6 share in the same. In the partition projected by the appellant, when it has not been shown that the properties had been only allotted to Krishnamoorthy and Jayaraman and when the properties comprise of both the ancestral and self acquired properties of Perumal Kounder, it is found that, if at all any partition had taken place, Perumal Kounder would also have been allotted a share and in such view of the matter, it is found that Perumal Kounder and his two sons would have been allotted each 1/3 share and on the demise of Perumal Kounder, his legal heirs being his wife Vellakarachi, his pre-deceased son's wife Azhavammal and his other son Krishnamoorthy, they would be entitled to inherit the said share and so seen, it is found that they would be each entitled to obtain 1/9th share in the share of Perumal Kounder. In the light of the above said calculations made as per Section 8 and 15 of the Hindu Succession Act, this Court had already concluded that the share of Krishnamoorthy in the properties concerned would be 13/18th share and that of Azhavammal would only be 5/18th share. Such being the position of law, even assuming the case of the appellant to be true, which in fact has not at all has been established as discussed above, at the most, Azhavammal would be entitled to convey only 5/18th share and not half share as put forth by the appellant. Therefore, this aspect of the matter would only throw doubt and suspicion in the claim of the appellant that he has acquired half share right in the properties concerned from Azhavammal pursuant to Ex.B2.

30. The determination of the shares to which the parties are entitled to as above discussed is only placed for explaining that Azhavammal would not to be competent to alienate half share in the properties concerned.

31. In the light of the above discussions, it is found that considering that not a scrap of paper has been placed on the part of the appellant to evidence that either Jayaraman or Azhavammal had exercised any semblance of right or ownership over the properties concerned as above discussed and per contra, when it is found that right from the death of Jayaraman, it is

only Perumal Kounder and his other son Krishnamoorthy, who had been exercising complete and full ownership over the properties concerned to the exclusion of one and all including Azhavammal and it is further seen that Azhavammal had not been associated with the family of Perumal Kounder after the demise of her husband, and living separately with her brothers and thereafter, she had not even taken any interest whatsoever in the properties concerned and not even questioned the exercise of complete and absolute ownership of Perumal Kounder and Krishnamoorthy over the properties concerned and when it is further found that Perumal Kounder and Krishnamoorthy had been dealing with the properties as full owners thereof to the knowledge of Azhavammal and thereby exhibiting a hostile attitude in their exercise of their ownership over the properties concerned for more than the statutory period completely ousting Azhavammal, it is found that by operation of law, the right, if at all held by Azhavammal in the properties concerned, had got extinguished and in such view of the matter, Azhavammal's right to the properties concerned got effaced, as outlined in the above said decision, and as for the same, there is no need for any particular process and when it is seen that any particular form can be employed and accordingly, it is found by the first appellate Court that when Azhavammal had completely surrendered/renounced her right in the properties concerned and thus, correctly held that eventually it is only the respondents who had asserted their title to the suit properties by way of their continuous, long, uninterrupted and hostile enjoyment for more than the statutory period and thereby rightly determined that the respondents have acquired title to the properties by prescription and ouster.

32. As rightly argued when the existence of co-ownership had ceased to exist since the death of Jayaraman, it is found that as rightly determined by the first appellate Court, the respondents have established their claim to the suit properties by way of prescription by long and continuance enjoyment of the properties exhibiting hostile attitude to one and all including Azhavammal.

33. In the light of the above position, it is found that the first appellate Court has gone into the issues in accordance with the directions of remand made by this Court and accordingly, rightly held that the respondents have established the relinquishment of the right over the properties concerned by Azhavammal as per law and in toto, it is found that the first appellate Court had appreciated both the oral and documentary evidence in the matter, in the right perspective, both factually as well as legally and applying the correct principles of law to the case at hand, rightly held that the respondents have established their title to the suit properties. Inasmuch as the parties did not endeavor to place any submission with reference

to the share to which they would be entitled to, in the light of establishment of hostile possession on the part of the respondents, it is seen that they had been not necessitated to press the first appellate Court to determine the said issue and by way of the same, it cannot be held that the first appellate Court had determined the points involved in the matter contrary to the remand directions of this Court in S.A.Nos.1703 & 1704 of 1999. Accordingly, the substantial questions of law formulated in the second appeals are answered.

34. In conclusion, both the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition if any, is closed.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

sli/mfa

To

- 1.The Principal District Judge, Viluppuram.
- 2.The II Additional District Munsif, Ulundurpet.
- 3 The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.V.Raghavachari, Advocate SR.No.91323

सत्यमेव जयते S.A. Nos.1600 & 1601 of 2001

GJII (CO)
GN(12/02/2018)

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