

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2018
PRONOUNCED ON : 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2013 of 1999

N.Sankaran,
by Power Agent,
Velu

... Appellant/Appellant/Plaintiff

Vs.

P.Sankaran

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 20.09.99 made in A.S.No.132/98 on the file of Principal Subordinate Judge, Nagapattinam, confirming the judgment and decree dated 12.10.98 made in O.S. No.219/96 on the file of District Munsif, Nannilam.

For Appellant : Mr.A.Muthukumar
For Respondent : Mr.R.T.Shyamala

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 20.09.99, passed in A.S.No.132/98, on the file of the Principal Subordinate Court, Nagapattinam, confirming the judgment and decree dated 12.10.98, passed in O.S. No.219/96, on the file of the District Munsif Court, Nannilam.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the plaintiff is the owner of the first item of the plaint schedule and the second item is the Government poramboke land situated to the south of the first item and the plaintiff is in possession and enjoyment of the second item also along with the first item. The first item of the plaint schedule properties is the joint family ancestral property of one Subramania Nadar and he sold

the same to the plaintiff by way of a registered sale deed dated 09.5.1990 and the second item of the suit properties was also enjoyed by Subramania Nadar along with the first item of the suit properties and accordingly, sold the same by way of the abovesaid sale deed and the plaintiff was put in possession and enjoyment of the suit properties by Subramania Nadar at the time of the executing the sale deed abovestated and while so, the defendant claiming to be in possession and enjoyment of the suit properties by putting up a thatched house for a long time and alleging trespass on the part of the plaintiff and also alleging that the plaintiff has dismantle the thatched house put up by the defendant in the suit properties despite his protests, thereby laid a suit against the plaintiff and others in O.S. No.152 of 1990 under Section 6 of the Specific Relief Act for recovery of possession and the said suit ended in a decree in favour of the defendant on 26.09.1996. Accordingly, on being advised, the plaintiff has filed the present suit seeking the declaration of title to the suit properties and the defendant's ancestral house is situated opposite to the suit properties and also immediately on the west of the suit properties and taking advantage of the proximity of the suit properties, the defendant might have committed some acts of trespass in the vacant suit properties and those act of trespass will not constitute adverse possession under law so as to deprive the plaintiff and his predecessors in title of the ownership of the same. Hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. Neither the plaintiff nor his predecessors in title has valid title to the suit properties. As regards the suit properties, particularly, the first item of the suit properties, Subramania Nadar was the original owner of the first item of the suit properties and had other properties also in the village and the defendant's father Pasupathinadar had been in possession and enjoyment of the first item of the suit properties as well as the second item to the knowledge of Subramania Nadar for more than several decades and adversely enjoying the suit properties to the knowledge of Subramania Nadar and the attempt made by Subramania Nadar to retrieve the possession of the suit properties ended in vain and even during the life time of Pasupathinadar, the thatched building was put up in the first item and the suit properties were fenced and enjoyed by him and accordingly, Pasupathinadar prescribed title to the first item of the suit properties by adverse possession and Subramania Nadar lost title to the said item even before the alleged sale of the same in favour of the plaintiff. Pasupathinadar had paid tax in respect of the thatched building put up by him in the first item of the suit properties and enjoying the same. The

second item of the suit properties was also enjoyed along with the first item of the suit properties by Pasupathinadar and by way of an oral arrangement, during the life time of Pasupathinadar, the defendant came into the possession of the suit properties with absolute title and possession as regards the items 1 and 2 of the suit properties respectively and the defendant is accordingly enjoying the suit properties by obtaining patta, paying tax, kist etc., and B memo had also been issued in favour of the defendant in respect of the second item and thus, the plaintiff is not entitled to obtain the reliefs sought for. While so, the proceedings in O.S. No.152 of 1990 will speak about the claim of title of the suit properties by the plaintiff, wherein the plaintiff's right has been negatived in the said suit and Subramania Nadar has lost title to suit properties on account of the adverse possession of the same by Pasupathinadar and the defendant and the present suit has been laid by the plaintiff only to prevent the defendant from executing the decree passed in O.S. No.152 of 1990 one way or the other. The plaintiff has no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A35 were marked. On the side of the defendant, DW1 was examined, Exs.B1 to B37 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been laid.

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

" 1. Whether the Courts below have not erred in law in holding that the judgment and decree in O.S.No.152/90 with the reasonings contained therein a summary suit for recovery of possession filed under Section 6 of the Specific Relief Act will operate as resjudicata in the present suit filed for the resjudicata in the present suit filed for the relief of declaration of title and consequential relief of permanent injunction?

2. Whether the Courts below have not erred in law in holding that the suit is barred by limitation in not applying the ration in the decided cases cited before them and in particular the ration in 1996 (2) L.W.31, 1996 (2) L.W.344, 1979 (1) M.L.J.419,

A.I.R. 1955 Mys 33 and other cases?

3. Whether the Courts below erred in coming to the conclusion that the respondent/defendant was in possession of the suit property for over 12 years and that possession was hostile where the same is not supported by either pleadings and evidence but only by subsequent improvement and development in the case while adducing oral evidence?"

9. It is not in dispute that the first item of the suit properties originally belonged to Subramania Nadar. The plaintiff claims title to the abovesaid first item, by way of purchase from Subramania Nadar under the sale deed dated 09.05.1990. The certified copy of the said document has come to be marked as Ex.A11. As regards the first item of the suit properties, the only mode of title claimed by the defendant is by way of adverse possession. According to the defendant, way back from the days of his father, the suit properties had been in the possession and enjoyment of the defendant's father Pasupathinadar to the knowledge of Subramania Nadar for several decades and according to him, Pasupathinadar himself had acquired title to the suit property by way of adverse possession as against Subramania Nadar and thus, it is contended that Subramania Nadar has lost his title to Pasupathinadar and therefore Subramania Nadar cannot make any valid alienation in favour of the first item under Ex.A11 document and further, according to the defendant, after his father, by way of a family arrangement, he has been in possession and enjoyment of the suit properties and prescribed title to the suit properties also by way of adverse possession and thus, it is contended that the plaintiff is not entitled to obtain the reliefs sought for.

10. Both parties agree that the poramboke property lying to the south of the first item is also enjoyed as one unit as projected by the parties concerned.

11. In this connection, it is found that the litigation in O.S. No.152 of 1990 has come to be levied by the defendant against the plaintiff in respect of the suit properties under Section 6 of the Specific Relief Act and accordingly, it is found that the said suit ended in a decree in favour of the defendant and the same has also been confirmed by the High Court in C.R.P.No.746/97 and the same could be evidenced from the documents marked as Exs.A1 & A2 and Exs.B1 & B2. The Courts below, in the present suit laid for the reliefs of declaration and permanent injunction have also relied upon the judgment and decree passed in O.S. No.152 of 1990 as the same would constitute resjudicata to the present suit and on that basis

also seem to have negatived the reliefs sought for by the plaintiff in the present suit. However, as rightly put forth by the plaintiff's counsel, O.S. No.152 of 1990 is laid under Section 6 of the Specific Relief Act and the nature and scope of the abovesaid suit being summary in nature, whatever that has been determined in the said suit could only be limited to find out the question of possession within a period of six months of the institution of the said suit ignoring the question of title. In other words, it is seen that the suit filed under Section 6 of the Specific Relief Act being a summary suit and the said suit is confined to find out the possession and dispossession within a period of 6 months from the date of institution of the suit ignoring the question of title, as per the above said provision of law, it is found that a person who has lost in the abovesaid suit is entitled to establish his title to the suit property and in the event of succeeding, he will be entitled to recovery of possession of the property notwithstanding the adverse decision rendered against him in the said suit and thus, it is seen that as against the decision under Section 6 of the Specific Relief Act, the remedy of the unsuccessful party is to file a suit based on title. The above position of law can be gathered from the decision reported in (2004) 4 SCC 664 (Sanjay kumar pandey and others Vs. Gulbahar sheikh and others). In the light of the abovesaid position of law, whatever be the findings rendered in O.S. No.152 of 1990, the same could only be confined with reference to the determination of the possession of the property or the dispossession of the property within six months from the date of the institution of the said suit and other than the same, the findings rendered in the said suit would be of no avail as to constitute resjudicata in the subsequent suit laid for declaration of title and other reliefs. Thus, it is found that the Courts below had erred in holding that the judgment and decree passed in O.S. No.152 of 1990 would constitute or operate as resjudicata to the present suit filed for declaration of title and the consequential relief of permanent injunction. The judgment and decree passed in O.S. No.152 of 1990 would not operate as resjudicata even as regards the claim of title on the plea of adverse possession as projected by the defendant. Accordingly, the first substantial question of law formulated in this second appeal is answered in favour of the plaintiff and against the defendant.

12. The suit has been laid based on title. Accordingly, it is found that Article 65 of the Limitation Act would apply to the case at hand. The defendant is seeking right to the suit property only based on adverse title. Accordingly, it is found that the suit laid by the plaintiff based on title would be maintainable unless and until the possession of the defendant has become adverse to the plaintiff. In other words, the plaintiff has got a period of 12 years for instituting the suit

based on title from the period when the possession of the defendant becomes adverse to the plaintiff.

13. In so far as this case is concerned, the defendant in specific has not put forth the case in the written statement as to from which date onwards his possession to the suit property has become adverse to the plaintiff's title. Further, the defendant has also not put forth anything specifically in the written statement as to from which date onwards his father's possession of the suit properties has become adverse to the title of Subramania Nadar, the previous title holder of the first item of the suit properties. Very vaguely it has been averred in the written statement that Pasupathinadar has been in possession and enjoyment of the first item of the suit properties, during the life time of Subramania Nadar to his knowledge by putting up a thatched house etc., and thereby prescribed title to the first item by way of adverse possession. It is stated by the defendant that the house tax receipts had been projected in O.S. No.152 of 1990 for nearly 35 years and thereby it appears that, according to the defendant, the first item of the suit property has been in the possession and enjoyment of the defendant's family for the past 35 years. However, as rightly put forth, no particular date has been mentioned in the written statement as to when from the plea of adverse possession has commenced against the plaintiff in respect of the suit property or as to when from the plea of adverse possession of Pasupathinadar has commenced as against the previous title holder Subramania Nadar.

14. In the decision reported in AIR 1996 SCC 869 (Dr.Mahesh Chand Sharma Vs. Smt. Raj kumari Sharma and others) the Apex Court has held that the party who makes the plea of adverse possession has to establish his case by placing all the facts necessary with reference to the same as well as clearly plead all the facts pertaining to the same as follows:

(H) Limitation Act (36 of 1963).Ss.64.65- Adverse possession - Onus on party pleading - Nature.

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 the facts necessary to establish his adverse possession.

As regards the plea of adverse possession, it has been held that the party taking the said plea should expressly and clearly aver as to when from his adverse possession has commenced and without the same, he cannot maintain the plea of adverse possession and the above position of law has been elucidated in

the decision reported in 1979 (1) MLJ 419 (Karmega kone Vs. Udayar Kone and others) as follows:

3. The plea of adverse possession is essentially a question based upon provable facts and cannot rest upon mere surmises and stories carved out in the course of the trial and in the witness box. The plea of adverse possession stands on the same footing as the plea of estoppel. It has been the consistent view of Courts that a plea of estoppel has to be pleaded and not only pleaded but also proved. So also a plea of adverse possession, which again rests upon proof of positive and essential facts, has to be pleaded, so that the adversary might be able to meet the specific case of the party, who unjustly wishes to wrest the property belonging to another and claim title it. himself on the plea of adverse possession. A plea of adverse possession essentially implies that the person claiming title to a property on that basis does not own it. He wishes to snatch it from the real owner on the bare ground that he was continuously, publicly and openly in possession of the property of the adversary to the knowledge of the adversary and without any objection or intervention on the part of the real owner. These are essential facts which form the rocky foundation of the plea of adverse possession. The law requires an express pleading on that question for the simple reason that the real owner, who is said to have been lethargic, might set up a case (might be true in some cases) that such possession of the claimant was only permissive and was never intended to be adverse so far as his real title was concerned and that, even if it could be projected as such an adverse claim, the time from which it should be deemed to have commenced should also be made specific and public, so that the real owner might be given a fair and just opportunity to plead otherwise and set up a case that such adverse possession as claimed by the other person did not begin on the date claimed by him.

In the decision reported in (2008) 7 MLJ 275 (Veerasekaran

and another Vs. Devarasu) the ingredients of the claim of adverse possession are held to be satisfied only if the party taking the said plea establishes the following factors namely:

(A) Adverse possession - Claim of Ingredients to be satisfied - A person claims adverse possession must definitely allege and prove (a) how and when adverse possession commenced, (b) what was the nature of his possession and (c) whether the fact of his adverse possession was known to the real owner - Question of adverse possession is one of fact - A person claiming adverse possession must establish the same by unequivocal evidence - Long possession is not adverse possession - No evidence to prove adverse possession in the present case - Plaintiff cannot succeed in the plea of adverse possession.

As above seen, the party making the plea of adverse possession should specifically state the date from which his possession has turned adverse to the title holder and without giving the definite date to enable the title holder to know when from he seeks adverse possession, the party cannot succeed in his plea of adverse possession and the position of law as regards the above aspects has been detailed in the following manner in the decision reported in (2001) 3 M.L.J. 28 (Pazhamaruthai alias Marudamathu And others vs M. Subramaniam)

(A) Limitation Act (XXXIV of 1963), Art.65 - Suit for recovery of possession on the basis of title - should be filed within 12 years from the date on which the adverse possession starts - Mere assertion in the written statement that possession was in the family for 42 years - Not sufficient to constitute adverse possession.

Article 65 of the Limitation Act lays down that the plaintiff should file a suit for recovery of possession on the basis of title within 12 years from the date on which adverse possession began. So, unless there is a definite date, the true owner will not know from when, the person in possession intended to hold the property adverse to his right. In this case, in the written statement filed by the appellant at para.4, it is merely averred that the appellant and his ancestors had been enjoying the property as their own for over 42 years. This is not sufficient to constitute adverse possession.

From the abovesaid decision, it could be seen that it would not be sufficient for a party to claim that he has been in possession adverse to the title holder over a period of years without specifying the particular date. Thus, it is seen that the claim of the defendant that he and his father had been in possession and enjoyment of the first item of the suit properties for 35 years or so by itself would not be sufficient to make the plea of adverse possession projected by him as satisfying all the ingredients necessary to constitute the case of adverse possession.

15. The above position of law has also been reiterated in the decision reported in 2008-2-L.W. 809 (Ponnambalam Vs. Pitchai) wherein also it has been specifically stated that the party making the plea of prescription should prove the same in a clinching manner. Mere possession for any number of years would not constitute title in his favour.

16. As regards the plea of adverse possession vis-a-vis the relatives, it has been held that, the fact that the patta stands in the name of a particular party and that he has been paying kist by itself would not help him in the absence of clear pleadings regarding adverse possession, particularly, when the parties are closely related and the same has been laid in the decision reported in 1995 (2) MLJ 294 (Ponnaiyan Vs. Munian (died) and others). Similarly, the party laying a claim of title to the property by adverse possession has to plead the said case with certainty and prove the same to hilt and to constitute adverse possession, his possession and enjoyment of the property in dispute has to be open, hostile and as a matter of right and intention to hold property for one's own exclusive use recognising nobody else right of possession constituting animus and the person claiming adverse possession must have both corpus and animus and the above position of law has been laid down in the decision reported in 1999 (I) CTC 428 (Nagarajan Vs. Rajamani Aiyar and seven others).

17. Keeping the above principles of law in mind, it has to be seen whether the plaintiff is in possession and enjoyment of the first item of the suit properties. In the written statement, the defendant has not whispered anything about his grandfather enjoying the suit property adversely to the previous title holder Subramania Nadar. Therefore, it is found that the Courts below has erroneously proceeded on the footing that the defendant has taken the plea of adverse possession right from the days of Natesan Nadar. However, without any such plea in the written statement, the oral evidence adduced by the defendant as regards the same cannot have any legs to stand and therefore, the claim of the defendant during the course of oral

evidence that the suit property had been in the possession and enjoyment of his grandfather adversely to the title holder cannot be countenanced in any manner. Further, according to the defendant, he has admitted that he does not know when his grandfather Natesa Nadar has acquired the possession of the first item of the suit properties. Therefore, it is seen that the Courts below had erroneously proceeded on the footing that the suit properties had been in the possession and enjoyment of the defendant's grandfather Natesa Nadar without any pleadings with reference to the same in the written statement. As above seen, the defendant has not stated clearly as to from which date onwards his father's possession has become adverse to the previous title holder Subramania Nadar. Very vaguely it has been stated that his father Pasupathinadar had prescribed title to the suit property by adverse possession even during the days of Subramania Nadar, the previous title holder. But with reference to the date from which he has sustained the said claim not having been mentioned in the written statement and also not fortified by adducing clear cut evidence, on the basis of vague details, we cannot presume that the defendant's father Pasupathinadar had prescribed title to the suit property by way of adverse possession even during the days of Subramania Nadar.

18. To establish the possession of the first item of the suit properties by Pasupathinadar and the defendant, some house tax receipts are relied upon by the defendant marked as Exs.B3 to B6, B8, B9, B19 and B20. All these tax receipts are found to be emanating from 1990 onwards and when it is found that the rival parties are at loggerheads in respect of the first item of the suit properties right from 1980 onwards, as seen from the institution of O.S.No.152 of 1990, the tax receipts projected by the defendant abovementioned commencing from 1980 onwards by itself would not entitle the defendant to claim the relief of adverse possession. The defendant's success in O.S.No.152 of 1990 by itself would not enable the defendant to contend that prior to the institution of the said suit itself he has been in possession and enjoyment of the first item for several years as claimed by him. As abovestated, the suit in O.S.No.152 of 1990 would only be useful with reference to the question of possession of a party in respect of the property in dispute over a period of six months prior to the institution of the said suit and nothing more and such being the position, merely on the footing that the defendant had been granted the decree in the abovesaid suit by itself we cannot presume that the defendant has been in possession and enjoyment of the suit property by putting up a thatched house therein for several decades prior to the institution of the said suit. On the other hand, the tax receipts as above seen projected by the defendant are only found to be running from 1980 onwards and not earlier to that.

19. From the document marked as Ex.A13, the sale transaction dated 10.11.1927, it is found that Natesa Nadar has acquired the property situated in survey number 123/7 of an extent of 11 cents and the abovesaid property is situated immediately to the west of the first item of the suit properties. As regards the same, there is no dispute. From the document marked as Ex.A14 dated 14.09.1960, it is found that Natesa Nadar has settled the eastern half of 11 cents in survey number 123/7 in favour of his daughter in law Shanmugavalli and in the abovesaid settlement deed, the description of the property would go to show that in the said eastern side a superstructure has been existing. From Ex.A15 partition deed, dated 20.02.68, it is found that Pasupathinadar and his brothers had effected partition of the property belonging to them, which includes the western half of the 11 cents in survey number 123/7 and it is seen that the western half has come to be allotted to Pasupathinadar and the description of the property under the said document shows that the superstructure put up therein bears door number 5B. From the document marked as Ex.A16, which is a release deed dated 06.10.89, effected amongst the defendant and his brothers, it is seen that the above said western of 11 cents has been allotted to the defendant and at the time of Ex.A16 transaction, the door number in the said property has been given as 5A1. Thus it is found that the door number 5B mentioned in Ex.A15 during the year 1968 has been changed as door number 5A1 during the year 1989 as could be evidence from the partition deed marked as Ex.A16. Thus, it is found that the defendant owns the property bearing the superstructure to the west of the first item bearing door number 5B, which later had been converted as door number 5A1. Further, as seen from the plaint averments, the defendant is also alleged to be owning ancestral house opposite to the suit property and also immediately to the west of the suit property and as above seen, even in the property settled in favour of Shanmugavalli, the superstructure was existing in the said settled property and accordingly, it is found that Pasupathinadar was owing several houses adjacent to the suit property as above described. Such being the position, the vague claim of the defendant that the superstructure put up by Pasupathinadar in the first item of the suit properties bears door number 5A and the same has been changed as 5A1 cannot be countenanced straightaway, when there is no material to hold that Pasupathinadar had put up superstructure in the suit property and that the said superstructure bears the door number 5A. On the other hand, from Ex.A17 property tax extract/certificate it is found that the door number 5A stands in the name of Pasupathinadar right from 1962 onwards till 1984-85 and such being the position, the claim of the defendant that door number 5A refers to the superstructure put up in the suit property, as such, cannot be countenanced straightaway. In this connection, the defendant, during the course of cross

examination of the plaintiff, has put a suggestion to him that door number 5B has been converted into door number 5A1 and further, also put a suggestion to him that only the superstructure put up in the property in between the suit property and the property to the west of the same bears door number 5A1 and also put a suggestion that during 1987-88 door number 5B has been converted into 5A1. Though the suggestions had been denied by the defendant, from the abovesaid factors, it is found that door number 5B has been later changed as 5A1 and door number 5A1 is relating to the property situated to the west of the first item of the suit properties and such being the position, it is found that merely on the production of certain tax receipts bearing door number 5A, it cannot be construed that the said superstructure had been put up in the first item of the suit properties by Pasupathinadar as projected by the defendant without any material pointing to the same. However in this connection, the Courts below seem to have placed reliance upon the findings rendered in O.S.No.152/90. However, when the abovesaid findings rendered in the said suit cannot be made use of for determining the possession or dispossession of the property in dispute, six months prior to the institution of the said suit, the Courts below had erred in holding that only the superstructure put up in the first item of the suit properties bears the door number 5A.

20. The aboveposition acquires significance inasmuch as the plaintiff has all along been taking the plea that no superstructure was ever put up in the first item of the suit properties at any point of time and that the defendant has projected such a case only to sustain his claim of adverse possession. When such a plea has been projected by the plaintiff and the defendant having taken the plea of adverse possession, the burden of proving the same squarely resting upon the defendant, it is for the defendant to establish, at the foremost, that his father had put up a superstructure in the first item of the suit properties and the said superstructure bears the door number 5A and later the door number 5A has been changed as 5A1 as projected in the case. On the other hand, when even according to the defendant's suggestion, as above seen, door number 5B only has been changed later as door number 5A1 and door number 5A1 pertains to the property situated to the west of the suit property and accordingly, it is seen that without any basis, it cannot be concluded that the superstructure alleged to have been put up in the first item bears the door number 5A and the same had been converted into door number 5A1 later. In this connection, though the defendant seems to place reliance upon the documents marked as Exs.B35 to B37, which are extracts issued by Nannilam town panchayat, when the same are being changed by the plaintiff, unless the entries found therein are correlated and established by the officers

concerned, no safe credence could be placed on the said documents for concluding that it is only door number 5A, which has been later altered as door number 5A1.

21. Be that as it may, when there is no material placed on record worth acceptance that a superstructure had been put up in the first item of the suit properties by either Pasupathinadar or the defendant at any point of time and when it is found that Pasupathinadar owns three houses in and around the suit properties bearing door numbers 5A1 and 5B and when according to the defendant, door number 5B has been later changed as door number 5A1, as above seen, it is seen that from the tax receipts projected by the defendant above adverted to, we cannot conclude that the defendant has prescribed title to the suit property by adverse possession. The tax receipts commences only from 1980 onwards and within 10 years thereafter the parties had started litigating the title in respect of the suit property as above seen and when the said tax receipts are not truly shown to be related to the alleged superstructure put up in the first item of the suit properties, no reliance at all could be placed upon the documents for accepting the plea of adverse possession projected by the defendant.

22. That apart, as seen from the evidence of PW2, the wife of the plaintiff's vendor, it is found that her father and the plaintiff's grandfather are brothers and thus, it is seen that the plaintiff and the defendant are closely related. The defendant, during the course of cross examination, has admitted that Subramania Nadar is related to him as pangali and also admitted that the relationship spoken to by PW2 is correct. Thus, it is found that the plaintiff's vendor Subramania Nadar is closely related to the defendant. Such being the close relationship between them, as above seen, the obtainment of patta, payment of kist by itself would not be sufficient for upholding the plea of adverse possession, particularly, when the said plea is projected against the relatives, and on that score also, it is found that the tax receipts projected by the defendant by itself would not be sufficient to uphold his plea of adverse possession as such.

23. In the documents pertaining to defendant's family ranging from Exs.A13 to A16, the first item of the suit properties has been given as the eastern boundary. If really the said property had been enjoyed by Pasupathinadar as his own property or by the defendant as his own property, the said property would have been described in the above said transactions/documents as belonging to Pasupathinadar or the defendant as the case may be. That apart, if the suit property had been acquired by Pasupathinadar by way of adverse possession, even during the life time of Subramania Nadar, while

effecting partition of the properties belonging to Pasupathinadar, the defendant and his brothers would have also dealt with the suit properties under the release deed dated 06.10.89, marked as Ex.A16. However, it is stated by the defendant during the course of evidence that the suit property had been given to him by way of family arrangement and during the course of evidence, he would state that he had acquired title to the suit property only from his father by way of an oral arrangement during the year 1975 and according to the defendant, only by way of the said oral arrangement/settlement, he claims title to the suit property in the present suit. Thus, it is found that the claim of title to the suit property is being projected by the defendant only on the basis of the oral arrangement/settlement. Thus, it is found that the defendant has no claim of title to the suit property on the plea of adverse possession and on the other hand, has projected the claim of title to the suit property only on the plea of oral arrangement/settlement effected in his favour by his father. When with reference to the above case of the defendant, there is no adequate pleas, convincing materials to sustain the same and when further the alleged oral arrangement/settlement has not been established to be having any legal approval, it is seen that, on that plea the defendant cannot claim title to the suit property as such. Thus, it is found that even the defendant is not sure as to how he seeks to claim of title to the suit property either by way of adverse possession or by way of a regular title. If according to the defendant, he claims title on both grounds, as rightly put forth, the same would be mutually inconsistent to each other and destructive to each other. Such being the position, it is found that the defendant has failed to establish the plea of adverse possession as projected by him by placing acceptable and reliable materials and it is found that the Courts below were carried away by the tax receipts projected by the defendant, which cannot be the sole basis for upholding the plea of adverse possession.

24. As regards the entitlement of the plaintiff to lay the suit for title without surrendering possession of the suit property to the defendant following the decree obtained by the defendant in O.S.No.152/90 reliance is placed upon by the plaintiff's counsel on the decision reported in 1967 (1) MLJ 346 (R.Gopalakrishna Pillai Vs. P.S.Venkatesam Pillai) wherein it has been held that the plaintiff would be entitled to maintain the suit for declaration of title and injunction without surrendering the possession as follows:

Specific Relief Act (I of 1877), section
9 - Decree for possession under, in favour of
defendant - suit by plaintiff in possession
without surrendering possession, for
declaration of title and for injunction

restraining defendant from executing his decree - Maintainability.

Where a decree for possession had been obtained by the defendant under Section 9 of the Specific Relief Act, a suit by the plaintiff in possession without surrendering such possession in pursuance of the decree in favour of the defendant, for a declaration of his title and for injunction for restraining the defendant from executing his decree would be maintainable. Section 9 of the Specific Relief Act by itself imposes no specific bar to a suit by the defeated party in possession before surrendering possession. There is nothing in the language of the section to take away the remedies available to a person in possession of property as of right and entitled to remain in possession.

25. In the light of the above discussions, it is found that the person who claims his title on the plea of adverse possession should establish the same by clear and unequivocal evidence and the same being absent in the present case and mere long possession for a period of more than 12 years with an intention to possess the suit property adversely from the title holder would not result in acquisition of title by prescription and that adverse possession must be adequate in continuity and publicity and in existence and sans cogent evidence to show the above factors as in the present case, it is found that the Courts below have erred in accepting the plea of adverse possession projected by the defendant and accordingly, also erred in holding that the suit laid by the plaintiff is consequently barred by limitation. In view of the same, the second and third substantial questions of law formulated in the second appeal are answered against the defendant and in favour of the plaintiff.

26. The defendant's counsel in support of her contentions placed reliance upon the decisions reported in AIR 1994 Delhi 337 (Manmohan Service Station Vs. Mohd. Haroon Japanwala and others), AIR 1987 SC 94 (Hari chand Vs. Daulat Ram), 1998 (I) CTC 529 (Kalavathi Vs. Chitra), 2010 (3) CTC 276 (Sevigounder Vs. 1. Ramaswamy 2. Nallammai) and AIR 1966 SC 605 (Ambika Prasad Thakur and others etc., Vs. Ram Ekbal Rai (dead) by his legal representatives and others etc.,). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

27. In the wake of the abovesaid reasonings and determination, the judgment and decree dated 20.09.99, passed in

A.S.No.132/98, on the file of the Principal Subordinate Court, Nagapattinam, confirming the judgment and decree dated 12.10.98, passed in O.S. No.219/96, on the file of the District Munsif Court, Nannilam are set-aside and the suit laid by the plaintiff in O.S.No.219/96 is decreed as prayed for with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

sli

To

1. The Principal Subordinate Judge,
Nagapattinam.
2. The District Munsif,
Nannilam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.A.Muthumumar, Advocate SR.No.34506
+1cc to Mr.R.T.Shyamala, Advocate SR.No.34484

S. A.No.2013 of 1999

GJII (CO)
GN (29/06/2018)

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