

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 08.09.2017

Judgment Pronounced on : 02.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.1003 of 2014

and

M.P.No.1 of 2014

Rohilant Ebens

...Appellant/Respondent/Plaintiff

Vs.

1.Rukkumani Ammal

2.Mangai

3.Murugan

4.Shakthivel

5.Sathiavani

6.Kaliammal,
W/o.Krishnan

7.Kaliammal
W/o.Konangi Ramasamy

8.Chakkaravarthy

...Respondents/Appellants/Defendants

This second appeal has been filed under Section 100 of CPC, against the Judgment and Decree dated 25.04.2014 made in A.S.No.38 of 2013 passed by the learned Subordinate Judge, Thiruppattur, reversing the Judgment and decree dated 18.09.2013 passed by the learned Principal District Munsif, Thiruppattur, Vellore District in O.S.No.83 of 2007.

For Appellant : Mr.Parthasarathy,
Senior Counsel for
M/s.J.Ramakrishnan

For Respondents : Mr.Venkatachalapathy
Senior Counsel for
M/s.M.Sriram

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 25.04.2014 made in A.S.No.38 of 2013 passed by the learned Subordinate Judge, Thiruppattur, reversing the Judgment and decree dated 18.09.2013 passed by the learned Principal

District Munsif, Thiruppattur, Vellore District in O.S.No.83 of 2007.

2. Brief facts of the case is as follows:-

The suit property, measuring to an extent of 7.86 acres, and Well situated in Survey No.85 Kottur Village, Elagiri Hills, originally belonged to one Elavi Gounder and his son Govindan. On 30.06.1965, they sold the entire extent of 7.86 acres in favour of one Nithyanandhan, Smt.Mariyamma Mathew, George, Ramari and one Rajagopal. Nithiyanandham, Smt.Mariayamma Mathew, George and Rajagopal were each sold 1 acre land and balance 3.86 acres of land were sold to one Raman through registered sale deeds. Nithiyananthan, Mariyamma Mathew have sold their property to the plaintiff on 19.02.2007. The other predecessors in title and that legal heirs have sold their respective properties to the plaintiff on 19.02.2007. The defendants 1 to 4 are the wife and sons of Govindan. Since the defendants attempted to interfere with the peaceful possession and enjoyment of the plaintiff's property, he filed the suit for permanent injunction. Subsequently, as the defendants denied the title of the plaintiff, he amended the plaint for declaratory relief and injunction. Hence, the suit.

3. According to the defendants, the suit properties to an extent of 7.86 acres in Survey No.85 Kottur Village, Elagiri Hills including house, Well situated therein was purchased by one Rama Gounder @ Cart Raman through sale certificate dated 08.11.1940. Rama Gounder had two sons namely, Elavi Gounder and Krishnan. Krishnan had a son by name Govindan. In the year 1965, Krishnan and Govindan executed a sale deed in favour of four different persons who are residing at Chennai and Kolkatta. Though the sales were effected in 1965, Krishnan and Govindan and the defendants constrained to reside in the suit properties without any interruption. Though the alleged sales are of the year, 1965, none of the persons who claims to have purchased the property took possession nor enjoyed the property. The plaintiff has purchased the land only on 19.02.2007 through power of attorney after being fully aware of the fact that the suit properties are in possession and enjoyment of the defendants. The plaintiff has already purchased other properties from the defendants and he is aware of the possession of the suit properties by the defendants. The plaintiff being a speculative purchaser, taking advantage of the entries in the joint chitta and adangal of the alleged purchasers in the year 1965 along with the defendants, has obtained alleged power of attorney from the said persons in Chennai and Kolkotta and has entered into Sham and nominal documents on 09.12.2007 in order to defeat the right of the defendants. The plaintiff as a speculative purchaser, mortgaged the sale deed dated 09.02.2007 and also the earlier sale deeds of the year 1965 and has come up with the

suit. Now, the defendants 1 to 7 have sold the property to the 8th defendant through sale deed dated 23.04.2008 and later a rectification deed was also executed. Hence, the suit is sought to be dismissed.

4.The 8th defendant filed a separate written statement and stated that she has purchased the suit property for valid consideration. The plaintiff or his vendor have never been in possession of the suit property. Hence, she sought for dismissal of the suit.

5.After contest, the trial Court decreed the suit as prayed for. Aggrieved upon that the defendants preferred the first appeal before the lower appellate Court and after contest, the lower appellate Court allowed the appeal and reversed the findings of the trial Court. Hence, the unsuccessful plaintiff has come forward with this second appeal.

6.At the time of admission, the following substantial questions of law were formulated by this Court in this second appeal for consideration.

(1) Taking note of the principles of "Justice, Equity and Good Conscience", the defendants 1 to 7, having admitted the sale transaction effected by their ancestors in favour of the plaintiff's predecessors in title in respect of suit properties under Exs.A6 to Ex.A9 and Ex.A33, in the eye of law, whether can they justify in setting up their alleged title adverse to the interest of genuine lawful purchasers and as such the judgment and decree of the learned first appellate Judge in entertaining such a vexatious claim of alleged adverse possession is not perverse?

(2) Having regard to the fact that the plaintiff is a true owner of the suit properties, in any event, whether the learned first appellate Judge has not erred in not presuming the plaintiff's possession by applying the principle of "possession follows title", more particularly when the suit properties are landed and cultivable properties?

7.The learned counsel appearing for the Appellant/Plaintiff would submit that the lower appellate Court has wrongly placed the burden on the plaintiff, whereas the burden is on the defendants, who have alleged adverse possession against the true owner. Further, the basic ingredients of adverse possession was

not proved by the defendants. However, the lower appellate Court, without considering properly the proof of adverse possession and the oral and documentary evidences available on record, came to a wrong conclusion which is against settled position of law. As per the admission of the defendants, the plaintiff and their predecessors in title have purchased the suit property from the original owner Elavi Gounder and Raman. Even then, they denied the title of the plaintiff on the ground that they are in possession and enjoyment of the suit property and prescribed title over the suit property by adverse possession. According to the plaintiff, mere long possession is not sufficient to prove the plea of adverse possession. The plea of adverse possession must be proved by continuous un interrupted and hostile possession against the true owner with documentary proof and otherwise, it cannot be upheld. It is the settled position with regard to the law of adverse possession, but it is contended that the lower appellate Court miserably failed to consider these principles and wrongly came to the conclusion and upheld the contention of the defendants. Hence, interference of this Court is necessarily warranted. Therefore, the plaintiff seeks to entertained the appeal.

8.The learned counsel appearing for the respondents would submit that the plea of adverse possession was pleaded and proved with oral and documentary evidences by the defendants. Hence, the lower appellate Court upheld the contention of the defendant and there is no infirmity on the findings of the lower appellate Court. Therefore, this appeal is devoid of merits and the same has to be dismissed.

9.I have heard the rival submissions and also perused the materials available on record.

10.On perusal of the records, it is clear that according to the plaintiff, the suit properties originally belonged to captain James Kelly, due to arrears of land revenue, the properties reverted back to the Government and subsequently in the public auction one Rama Gounder purchased the same as per the certificate dated 18.11.1940. The son of Rama Gounder got two sons Elavi Gounder and Krishnan. On 30.06.1965, Elavi Gounder and Govindan son of the Krishnan sold the properties to 5 persons, namely, 1).K.Raman Menon, 2)C.V.George, 3) P.Rajagopal, 4)P.M.Nithyanandan and 5)Mrs.Mariam Mathew Allapad. All the sale deeds were executed on 30.06.1965. Raman Menon purchased the land to an extent of 3.86 acres and other purchasers have purchased 1 acre each, totally 7.86 cents. Raman Menon's sons Anand Menon and Vijay Menon gave Power of Attorney to Nithiyanantham. They sold 3.86 cents of land to the plaintiff and the wife of C.V.George sold 1 acre to the plaintiff. Rajagopal's wife namely, Geetha Menon and daughter

Meera Asha Menon sold their 1 acre land to the plaintiff on 23.04.2007. Nithiyananthan sold his one acre land to the plaintiff on 19.02.2007 and Mrs.Mariamamma Mathew Allapad also sold her one acre land to the plaintiff on 19.02.2007. The above said sale deeds were produced as Ex.A1 to Ex.A9. The Power of Attorney deeds are produced as Ex.A10 and Ex.A11. The Revenue Records are produced as Ex.A12 to Ex.A15. On the strength of the sale deeds, Patta, Chitta and Adangal is also changed in the name of the plaintiff. Ex.A33 is the certified copy of sale deed executed by Elavi Gounder and Govindan in favour of Rajagopal. After purchase of the properties, the plaintiff has also paid tax to the Government. The said Tax receipts were produced as Ex.A25 to Ex.A27. Chitta and Adangal where stands in the name of the plaintiff are produced as Ex.A28 and Ex.A29. The Remaining Exhibits A-18 to A-24 are the Encumbrance Certificate with regard to the suit property. The plaintiff has also produced Ex.A16 and Ex.A17 sale deeds executed by the defendants 1 to 7 in favour of 8th defendant and also the rectification deed. Ex.A30 and Ex.A31 are the FIR and Charge sheet regarding to the allegation of the defendants to disturb the possession of the plaintiff. These are the documents relied on by the plaintiff to prove his claim.

11.On the other hand, the defendants have produced certificate of sale by auction, kist receipts and original partition deed in the name of defendants 1 to 5. The said sale deeds stands in the name of the Raman and Elavi Gounder. Copy of decree and judgment in previous litigation, sale deed executed by the defendants 1 to 7 to the 8th defendant and correction deed and the certified copy of the order of High Court in the proceedings taken by the defendants and the letter issued by the Sub Collector, Thiruppathur are produced as Ex.B1 to Ex.B13.

12.The fact that the suit property originally belonged to one Raman and after his demise, it belongs to Elavi Gounder and Krishnan is not disputed. The defendants have also admitted in their written statement as follows:-

(In para 4 of the written statement)

"..... It appears that the said Krishnan and Govindan in the year 1965 executed 4 sale deeds in favour of four different persons who are all permanent residents of Chennai and Kolkotta. Though the sales were affected in the year 1965 by the said Krishnan and Govindan, they died intestate on 1940 and on 21.10.2000 respectively, leaving behind the defendants herein and one Sathiyavani as their heirs. Here again, these defendants submit that though the alleged sales are of the year,

1965, none of the persons who claims to have purchased the suit property, took possession thereof nor enjoyed the same as falsely described in para 4 and 5 of the plaint."

(Para 5 of the written statement)

The plaintiff being a speculative purchaser, taking advantage of the entries in the joint chitta and adangal of the alleged purchasers of the year 1965 along with the defendants, he obtained some alleged Power of Attorney from the said persons from Chennai and Kolkatta and entered into some sham and nominal documents on 19.02.2007 in order to defeat the valuable rights of the defendants herein over the suit properties."

(In para 9 of the written statement) "The defendants herein perfected the title by adverse possession by way of long, continuous and uninterrupted possession and enjoyment right from 1940 to as on date over the suit property. The present suit for a bare injunction is not maintainable."

(In para 10 of the written statement)

"The defendants are having their respective residence and residing there in the suit properties. The plaintiff is fully aware of the said fact who is also a local resident and running a school and also purchased the some properties from the defendants family."

These are the stands taken by both sides. Both sides have also relied number of citations in respect of their stand to strengthen the same. How far they are relevant have to be analysed.

13. The learned counsel appearing for the appellant relied on a ruling reported in 2012 (8) SCC 516 in AHMEDSAHEB (DEAD) BY LRS. AND OTHERS Vs. SAYED ISMAIL, wherein it is held as follows:-

It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. In our considered opinion, that vital aspect in the case (viz) the admission of the respondent in the written statement about the rate of rent and the further admission about its non-payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim.

13.1.The learned counsel for the appellant also relied on the ruling reported in 1998 (7) SCC 498 in BISHUNDEO NARAIN RAI (DEAD) BY LRS. AND ANOTHERS Vs. ANMOL DEVI AND OTHERS, wherein it is held as follows:-

".....A combined reading of Section 8 and Section 54 of the transfer of property Act suggests that though on execution and registration of a sale deed, the ownership and all interests in the property pass to the transferee, yet that would be on terms and conditions embodied in the deed indicating the intention of the parties. It follows that on execution and registration of the sale, deed, the ownership title and all interests in the property pass to the purchaser unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that title has not passed on registration of the sale deed. Such intention can be gathered by intrinsic evidence, namely, from the averments in the sale deed itself or by other attending circumstances subject, of course, to the provisions of Section 92 of the Evidence Act,1872....."

13.2.Likewise, he relied on another ruling reported in 2004 (1) SCC 779 in KARNATAKA BOARD OF WAKF Vs. GOVERNMENT OF INDIA AND OTHERS, wherein it is held as follows:

"11.....Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Dr. Mahesh Chand Sharma v. Raj Kumari Sharma]"

13.3.Another ruling of this Court reported in 2015 (1) MLJ 157 in SAGUNTALA Vs. DR.KESAVACHARIYALU (Died), wherein it is held as follows:-

"The documentary title would prevail over the possessory title."

13.4. Another ruling reported in 2009 (16) SCC 517 in HEMAJI WAGHAJI JAT Vs. BHIKHABHAI KHENGARBHAI HARIJAN AND OTHERS, wherein it is held as follows:-

"14. In Secy. Of State of India In Council Vs. Debendra Lal Khan, it was observed that the ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor."

"23. This court had an occasion to examine the concept of adverse possession in T. Anjanappa & Others v. Somalingappa & Another [(2006) 7 SCC 570]. The court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed."

13.5. Another ruling reported in 2009 (12) SCC 101 in VISHWANATHA BAPURAO SABALE Vs. SHALINIBAI NAGAPPA SABALE AND OTHERS, wherein it is held as follows:-

"15. All the four deeds executed on 2-07-1955 are registered documents. They carry a presumption of valid execution. There is no proof to show that the said documents were sham or nominal. The learned courts below have clearly held that the appellant failed to discharge the heavy onus on him. We would however consider the contentions raised before us independently."

13.6. Another Judgment reported in 2007 (6) SCC 59 in P.T. MUNICHICKANNA REDDY AND OTHERS Vs. REVAMMA AND OTHERS, wherein it is held as follows:-

"The ingredients of adverse possession have succinctly been stated by this Court in S.M. Karim v. Mst. Bibi Sakina [AIR 1964 SC 1254] in the following terms: "Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found"

14. Per contra, the learned counsel appearing for the

respondent/ defendants relied on a ruling reported in 2005 (3) Law Weekly 603 in ALAMELU AMMAL Vs. KRISHNA NATTAR AND OTHERS, wherein it is held as follows:-

"10.....On the other hand, the defendants have produced Ex.B1 viz., patta pass book wherein the defendants names (Krishnan Vagaiara) for the suit properties and Ex.B2 Chitta extract to show that the names of the defendants (Krishnan Vagaiara) Exs.B4 to B18 which are cultivating Adangal Extracts relating to the suit properties for faslis 1381 to 1394 continuously for the period of 14 years i.e., before filing of the suit and after filing of the suit wherein the defendant's name as Krishnan Vagaiara alone have been entered as cultivation of the suit properties."

14.1.The learned counsel for the respondent also relied on the ruling reported in 2003 (1) M.L.J. 277 in K.KRISHNAN AND ANOTHER Vs. S.MARI NAICKER AND ANOTHER, wherein it is held as follows:-

"11.....From the evidence available on record, I am also inclined to hold that the first defendant had been in open and continuous possession asserting title in himself as against the whole world and that the plaintiffs or their parents as predecessors in title had not taken any steps to exercise due vigilance in order to arrest time running against them."

14.2.Another ruling reported in 2012 (5) Law Weekly 194 in MRS.THANGAM NAIR (DECEASED) AND ANOTHER Vs. KAMALACHI AMMAL AND OTHERS, wherein it is held as follows:-

"10.The person, who is in enjoyment of another man's property must enjoy it as its owner, hostile to the title of rightful owner positively, openly, continuously to the knowledge of the owner of the property. Of course, seeking title on such a basis is a wrongful act. But it is a right acquired as recognised under law, namely, under the provisions of Limitation Act."

15.Now, let us discuss the merits of the case on the basis of the law laid down by the Apex Court as well as this Court. The first citation referred in 2012 (8) SCC 516(cited supra) is with regard to the admission made in the pleadings as well as in the evidence is the best evidence and needs no further corroboration. In the written statement of the defendants as stated supra, they have clearly and categorically admitted about

the purchase of the suit property made by the plaintiff vendor and the plaintiff himself. Therefore, as rightly contended that the plaintiff need not prove any thing by way of corroboration to Ex.A1 to Ex.A4 sale deeds. The above said Apex Court citation relied on by the plaintiff is applicable to the facts of this case.

16.The 2nd citation referred by the learned counsel for the appellant/plaintiff in 1998 (7) SCC 498 (cited supra). In the above said case, the law laid down by the Apex Court is that a combined reading of Section 8 and Section 54 of the transfer of property Act suggests that though on execution and registration of a sale deed, the ownership and all interests in the property pass to the purchaser unless a different intention is expressed subject to Section 92 of the Evidence Act. The vendor of the plaintiff as well as original vendor of the plaintiff have executed the sale deeds, namely, Elavi Gounder and Govindan in the year 1965 itself. They have transferred the title, interest, ownership in the property. They have not expressed different intention in the sale deed. So, as per the sale deeds relied on by the plaintiff in Ex.A1 to Ex.A9 and Ex.A33, they have proved the title to the suit properties. Against that documents, the defendants are claiming rival title on the basis of adverse possession. Now, the plaintiff has proved his title to the suit property and possession through the revenue and all documentary evidence, the initial burden is discharge by the plaintiff. Hence, the burden to contradict the same got shifted to the defendants.

17.On the side of the defendants, they have produced Ex.B1 to Ex.B13. Out of which, Ex.B1 is the certificate of sale issued during auction. It is not disputed that the same stands in the name of one Raman Gounder and it is not helpful to prove the possession of the defendants. The defendants have produced Ex.B2, which consists of 61 kist receipts standing in the name of Murugan, Govindan and Elavi Gounder. Ex.B3 and Ex.B7 are partition deeds dated 29.12.2006 between defendants 1 to 5. Both the documents are one and the same. Ex.B4 the chitta stands in the name of Raman and Elavi Gounder in respect of Survey No.84/3, 85/7 and 80/6. The suit property relates to Survey No.85. Thus, Survey No.85/7 alone relates to the suit property and other two chitta and not related to the suit properties. Ex.B5 to Ex.B13 are all subject the suit. Therefore, they cannot be considered for proving adverse possession. So, the relevant document available to prove the adverse possession is Ex.B2 alone. Now let us analyse Ex.B2 Kist receipts.

18.The specific case of the defendants is that as per para 4 of the written statement is that they are residing in the suit property even prior to 1965 and the first defendant along with

her husband Govindan resided in the suit property without any interruption from any quarter and continues to live there even after the death of Govindan till date. The defendants 2 to 4 including one Sathyavani were born and brought up in the suit property and they are also residing there from their birth. The 3rd defendant who deposed as D.W.1 has stated in his evidence that “என் வீட்டிற்கு 10 ஆண்டுகளாக மின் இணைப்பு உள்ளது. மின் இணைப்பு உள்ள வீடு கோட்டூர் கிராமத்தில் ஊரின் உள்ளே இருக்கின்றது. தாவா சொத்திற்கும் மேற்சொன்ன வீட்டிற்கும் இடையே 2 கிமீ தூரம் இருக்கும்.” It is clearly reveal that the defendants are not residing in the suit property. Further, in Ex.B3 the partition deed, there is no recital about any house in the suit properties. Even in the sale deed executed by the defendants 1 to 7 which is marked as Ex.B8 and rectification deed Ex.B9, also there is recitals with regard to house situated in the suit properties. It is clear that the documents, Ex.B3, Ex.B8 and Ex.B9 have not disclosed any thing about the house situated at the suit properties.

19.Further, D.W.1 has clearly and categorically admitted that nearly 27 receipts produced by them relates to poromboke land in their possession and not to suit property. Out of the 61 receipts, in receipt No.20, patta number is mentioned as 314. In receipt No.21, patta number mentioned as 328. In receipt No.31, patta number mentioned as 18. In receipt Nos.42,43,44,46 and 48, patta number mentioned as 18. The receipt No.51, patta number mentioned as 18. The receipt No.54 to 61 relates to the prior by 1965. The suit property is situated in Patta No.173. Patta No.18,34, 328 are not related to the suit property. Payment of tax to the revenue authorities is not sufficient to prove the possession, as it is collected without any basis of document. Further more, the specific case of the defendants is that they are residing in the suit property and they are cultivating the suit property. On the side of the defendants, they relied on the ruling reported in 2005(3) Law Weekly 603(cited supra) in support of their contention. In the said referred case, the defendants produced Ex.B1 patta pass book, Ex.B2 Chitta, in which the defendants name find place and also Ex.B14 to Ex.B18 which are cultivated adangal extract for the contracted period of 14 years, i.e., before filing of the suit and after filing of the suit, wherein the defendants names were shown as cultivates tenant of the said suit property. In such circumstances, the Court held that adverse possession was proved by the defendant in that case. But, in this case, no such documentary evidence is adduced by the defendants to prove their continuous and un interrupted physical possession. Therefore, the above said citation is not applicable to the facts of the case on hand..

20.The another citation relied on by the defendants in 2003 (1) MLJ 277(cited supra). In the above said citation, it was

held that to prove the adverse possession, it is sufficient if possession is open and without any concealment. In the case on hand, the alleged possession by the defendants is not proved by the documentary evidence. Hence, the said citation is also not applicable to the facts of this case. Another ruling reported in 2012 (5) Law Weekly 194(cited supra), the essential requirements for the perfection of title by adverse possession, namely, 1)date of entering into possession, 2)nature of possession, 3)exercise of act of ownership undisturbed and 4) continuously to the knowledge of the owner of the property is stated. Since the above said ingredients was not proved in that case, the Division Bench held that the question of adverse possession will not arise in the said case. It is pointed out by the learned counsel appearing for the plaintiff/appellant that the above said ingredients are not complied by the defendants/respondents. As per their written statement, they have pleaded that the defendants and their forefathers are in continuous possession and enjoyment of the suit property right from 1940. The defendants forefathers executed a sale deed in favour of the plaintiff vendor only in the year 1965. So, the possession of the defendants for the year 1940, till 1965 cannot be considered as adverse possession, as they have been in possession as lawful owner of the property. So, the first ingredient was is pleaded and by the defendants. Hence, the said citation is also not applicable to the facts of this case as the same is not in favour of the defendants.

21.On the side of the plaintiff, the learned counsel relied on various citations and stated that what is adverse possession and how it has to be proved. The learned counsel for the plaintiff/appellant referred the citation in 2004 (1) SCC 779 (cited supra), wherein it is laid down for the proof of adverse possession that (a) on what date he came into possession (b)what was the nature of his possession (c)Whether the factum of possession was known to the other party, (d)how long his possession has continued and (e) his possession was open and undisturbed is to be proved. A person pleading adverse possession has no equities in his favour and as he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. It is pointed out that in the case on hand, the defendants miserably failed to comply with the above said 5 points. In another ruling reported in 2009 (16) SCC 517(cited supra), it is held that the classical requirements of adverse possession is that it should be nec-vi, nec-clam, nec precario and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. The above said classical requirements must be proved by the defendants. In another citation referred in 2007 (6) SCC 59 (cited supra), it is the specifically held that when

possession become adverse it should be specified pleaded so that the starting point of limitation against the party affected can be found. As per the principles laid down by the Apex Court in the said ruling, in the case on hand, the defendants never pleaded when adverse possession started against the true owner.

22.Further, in 2009 (12) SCC 101(cited supra), the Apex Court held that in the said case all the four deeds executed on 02.07.1955 are registered documents, they carry a presumption of valid execution. There is no proof to show that the said documents were sham or nominal. In the case on hand, the defendants alleged in their written statement that "the plaintiff being a speculative purchaser, taking advantage of the entries in the joint chitta and adangal of the alleged purchasers of the year,1965 along with the defendants, he obtained some alleged power of attorney from the said persons from Chennai and Kokatta and entered into some sham and nominal documents on 19.02.2007 in order to defeat the valuable rights of the defendants herein over the suit properties." The documents relied on by the plaintiff is Ex.A1 to Ex.A9 and Ex.A33, but there is no proof on the side of the defendant to show that the above said documents are sham and nominal. As rightly pointed out that they are registered documents and they carry presumption of valid execution. Hence, in any angle, the documents relied on by the plaintiff clearly prove that they purchased the suit properties from their vendor who in turn purchased the properties from the defendants forefathers in the year,1965 and they have been in possession and enjoyment of the suit property. Further, the principle of possession follows title will also be allowed since the suit properties are not cultivable lands as no proof was filed by the defendants to show that they have been in possession and enjoyment of the suit properties by cultivating lands. The documents relied on by the defendants marked as Ex.B1 to Ex.B13, no where it has been stated that the suit properties are under the cultivation of the defendants. When the suit properties are vacant and not cultivable land, the principles of possession follows title is clearly applicable. However, the lower appellate Court ,without proper appreciation of oral and documentary evidences, arrived at the wrong conclusion that the plea of adverse possession was proved by the defendants, without following the principles laid down by the Apex Court with regard to proof of adverse possession. In view of the above discussion, it is apparent that the findings of the lower appellate Court suffers from infirmity and the same is unsustainable. Hence, necessarily it has to be set aside. Further more, the trial Court gave a finding with appropriate reasoning and as such for reversing the findings of the trial Court, the lower appellate Court has to adduce reasons on the basis of evidence available on record. However, the lower appellate Court has not given any acceptable

finding for holding that adverse possession is proved. In fact, as pointed out by the learned counsel for the plaintiff, the basic ingredients of adverse possession is neither pleaded nor proved by the defendants. In such circumstances, the findings of the lower appellate Court is certainly not well founded and the interference of this Court is warranted. For the reasons stated above, this Court comes to a conclusion that the Substantial Question of Law raised by the appellant/defendant is tenable and the same is answered in favour of the appellant/plaintiff. As such, the appeal is to be entertained. The point is answered accordingly.

23. In the result, the second appeal is allowed. No costs. The Judgment and decree dated 25.04.2014 made in A.S.No.38 of 2013 passed by the learned Sub Judge, Thirupattur is hereby set aside and the Judgment and decree dated 18.09.2013 in O.S.No.83 of 2007 passed by the learned Principal District Munsif, Thirupattur is hereby restored. Connected M.P is closed.

rrg

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Court,
Thirupattur.

2.The Principal District Munsif,
Thirupattur.

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.76087/18

+1cc to Mr.Sriram, Advocate, S.R.No.76213/18

GP(CO)
KAK(21/12/2018)

S.A.No.1003 of 2014

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