

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2018

PRONOUNCED ON : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.216 of 2004

1. Kumar
2. Ayyappan
3. Selvaraj
4. Dakshayani

..Appellants

Vs.

1. Vedagiri
2. T.V.Rajendran
3. M.R.Ganesan Naicker

..Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.09.2003 passed in A.S.No.133 of 2002 on the file of the Principal District Court, Chengalpet, confirming the Judgment and Decree dated 04.10.2002 passed in O.S.No.142 of 1997 on the file of the Additional Subordinate Court, Chengalpet.

For Appellants : Mr.C.Vediappan
for M/s.R.Karthikeyan

For Respondent : Mr.J.Srinivasa Mohan
Nos.1 & 2

Respondent No.3 : No appearance
set exparte vide order
dated 19.06.2018

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 30.09.2003 passed in A.S.No.133 of 2002 on the file of the Principal District Court, Chengalpet, confirming the Judgment and Decree dated 04.10.2002 passed in O.S.No.142 of 1997 on the file of the Additional Subordinate Court, Chengalpet.

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

3. Suit for Declaration, Possession, Past and future mesne profits.

4. The case of the plaintiffs, in brief, is that the lands described in the plaint A schedule properties belonged to Subbaraya Naicker purchased by him in Court auction sales in E.P.No.877 /1912 in S.C.No. 1006 / 1908 and E.P.No.878 /1912 in S.C.No.1007/1908 on the file of the District Munsif Court, Chengalpattu and was in the possession and enjoyment of the same till his demise in 1943 and thereafter, his son Rudrakotti Naicker was in the possession and enjoyment of the abovesaid properties along with his sons viz., Ganesa Naicker and Umakanthan and Rudrakotti Naicker died on 13.06.1973 and in an oral family arrangement between Ganesa Naicker and Umakanthan in 1975, one half of the A schedule properties were allotted to Umakanthan towards his share and the said share allotted to Umakanthan had been described in the plaint B schedule properties and the other half of the A schedule properties was allotted to Ganesa Naicker, the third defendant and since then, Umakanthan was in the possession and enjoyment of the B schedule properties till his demise on 25.04.1991. The plaintiffs 1 to 3 are his sons and the 4th plaintiff is his wife and they had succeeded to the plaint B schedule properties. Rudrakotti Naicker executed a registered partition deed dated 10.12.1959 dividing the properties owned by him amongst himself and his two sons and as the third defendant was not satisfied with the abovesaid division, a panchayat was convened in July, 1975 in the presence of the Panchayatdars and the properties were re-divided and the said partition had been effected in two Kurchits recorded a few days later as an aid to memory and it was signed by both the parties and accordingly, the B schedule properties had been given to Umakanthan towards his share and the defendants 1 & 2 who are the henchmen of the third defendant filed O.S.No.229 of 1985 on the file of the Sub Court, Chengalpattu against the third defendant and the deceased Umakanthan claiming title to the properties described in the plaint A schedule properties and for permanent injunction by laying a claim that they had purchased the said properties from G.Ravikumar and his brother, sons of late Govardhana Varma by way of two registered sale deeds dated 26.06.1985. The deceased Umakanthan contested the abovesaid suit and the properties originally belonged to Subbaraya Naicker and his descendants and that Govardhana Varma and his sons have no right whatsoever in the said properties and during the pendency of the abovesaid suit, Umakanthan died and without impleading his Legal representatives, the defendants 1 & 2 had obtained an exparte decree against the third defendant on 20.06.1991 and on the strength of the same, unlawfully trespassed into the B scheduled properties and accordingly, enjoying the benefits thereof and inasmuch as the B schedule properties belonged to the

plaintiffs, hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants 1 & 2, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts and the purchase of the plaint A schedule properties by Subbaraya Naicker in the Court auction sale is admitted and to the knowledge of the defendants, Rudrakotti Naicker was in the possession and enjoyment of the A schedule properties as the absolute owner thereof and the defendants specifically denied the oral family arrangement alleged to have been effected between Ganesa Naicker, the third defendant and Umakanthan during 1975 and the abovesaid alleged oral family arrangement is imaginary and make-belief affair and the further allegations that Umakanthan had been allotted the B schedule properties towards his share by way of the oral family arrangement and that, he had been in the possession and enjoyment of the suit properties are all false and it is further false to state that the plaintiffs had succeeded to the B schedule properties as the legal descendants of the deceased Umakanthan. The case of the plaintiffs that Rudrakotti Naicker executed a registered partition deed dated 10.12.1959 dividing the properties amongst himself and his two sons and the third defendant being dissatisfied with the abovesaid partition and following the same, the Panchayat was convened in July, 1975 to effect partition amongst the third defendant and Umakanthan and that, in the said arrangement, the B schedule properties had been allotted to Umakanthan and the said arrangement had been followed by the execution of koorchits a few days later as aid to memory are all false and not admitted and the case of the plaintiffs that Rudrakotti Naicker died intestate is false and on the other hand, he had executed a Will dated 09.06.1973 in respect of his properties bequeathing the same in favour of his co-brother Govardhana Varma and his sister's daughter and as per the said Will, the properties purchased by the defendants fell to the share of the deceased Govardhana Varma and after his demise, his sons had succeeded to the said properties and the defendants had purchased the said properties by way of two sale deeds dated 26.06.1985 as detailed in the written statement and accordingly, being in the possession and enjoyment of the purchased properties and prior to them, it was only Govardhana Varma and after the demise of Govardhana Varma, his sons had been in the possession and enjoyment of the said properties and in recognition of the enjoyment of the said properties by the defendants, patta had been issued in their favour and they had been paying the kists in respect of the said properties in their own right and neither Umakanthan nor the third defendant challenged the sale deeds effected in favour of the defendants 1 & 2 by the sons of Govardhana Varma and it is true that the defendants filed O.S.No.229 of 1985 on the file of the District Munsif Court, Chengalpattu against Umakanthan and Ganesa

Naicker, the third defendant and it is false to state that after obtaining the decree in the said suit, the defendants had trespassed into the B schedule properties and it is false to state that the defendants are liable to pay the past and future mesne profits as claimed in the plaint. On the other hand, the defendants had been in continuous possession and enjoyment of the properties acquired by them by way of the sale deeds dated 26.06.1985 and also since the days of their vendors and their father and thereby, perfected their title to the said properties by way of adverse possession and in fact, the deceased Govardhana Varma had alienated certain properties acquired by him in favour of Maniammal, Mohanammal and Kaliammal by way of the various sale deeds and similarly, the son of the deceased Govardhana Varma had also alienated another item of the properties in favour of one Pandian son of Chellappa Naicker and the plaintiffs had not questioned the abovesaid sale transactions and the suit is bad for non-joinder of necessary parties and there is no cause of action for the suit and the suit is therefore liable to be dismissed.

6. In support of the plaintiffs' case, PWS 1 to 5 were examined and Exs.A1 to A5 were marked. On the side of the defendants, DWS1 to 3 were examined and Exs.B1 to B20 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 plaintiffs' suit. Aggrieved over 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:

" (i). Whether the Courts below are right in rejecting Ex.A5?

(ii). Whether the findings of the Courts below, that Govardhana Varma prescribed title by adverse possession is legally sustainable, when there is no piece of pleadings and evidence let in by the defendants in that regard?

(iii). Whether the Courts below are right in holding that the 1st and 2nd defendants have perfected title by adverse possession, when the title of their vendors itself is not proved legally and that the oral evidences adduced by the plaintiffs are to the effect that the

plaintiffs father was in possession of the suit properties?"

9. C.M.P.No.6810 of 2018 has been filed by the appellants / plaintiffs under Order XLI Rule 27 of the Civil Procedure Code.

10. According to the petitioners/appellants, the documents, now, projected by them by way of additional evidence could not be produced before the Courts below, despite the due diligence exercised by the petitioners and by projecting the abovesaid additional documents, the petitioners have not placed any contrary claims other than the pleas already made by them before the Courts below and accordingly, the additional documents projected by the petitioners being useful to advance their case, the documents should be received in evidence and hence, according to the plaintiffs, they had been necessitated to lay the petition for the receipt of the additional evidence enumerated in the petition.

11. The respondents in the counter have contended that the petition laid by the petitioners for the reception of the additional evidence under Order 41 Rule 27 does not satisfy the ingredients contained therein and the documents projected by the petitioners by way of additional evidence would go to show that the petitioners had not only knowledge about the same but the said documents were in their possession, even during the course of trial and therefore, the case of the petitioners that despite the diligence, they could not produce the said documents before the Courts below cannot be accepted and the petitioners have not given any valid reason for not placing the said documents before the Courts below and hence, the petition does not merit acceptance and liable to be dismissed.

12. The point that arises for consideration in the above petition whether the same is entitled for acceptance.

13. It is not in dispute that the plaint A schedule properties originally belonged to Subbaraya Naicker and the same could be evidenced from the documents marked as Exs.A1 & A2. It is also not in dispute that Rudrakotti Naicker is the only son of Subbaraya Naicker and it is thus found that Rudrakotti Naicker succeeded to the plaint A schedule properties as the sole legal heir of his father Subbaraya Naicker. It is also not in dispute that Umakanthan and the third defendant, Ganesa Naicker are the sons of Rudrakotti Naicker and the plaintiffs 1 to 3 are the sons and the 4th plaintiff is the wife of Umakanthan. It is further seen that as per the case of the plaintiffs, a partition had been effected amongst Rudrakotti Naicker and his two sons viz., Umakanthan and Ganesa Naicker dated 10.12.1959 by way of a registered partition deed marked as Ex.A3 and it is noted that the plaint A schedule properties

had been allotted to Rudrakotti Naicker and the B schedule properties mentioned in the partition deed were allotted to the third defendant Ganesa Naicker and the C schedule properties mentioned in the partition deed were allotted to Umakanthan. Thus, it is found that in respect of the properties owned by Rudrakotti Naicker and his family, they had already effected a valid partition by way of Ex.A3 partition deed. Now, it is the case of the plaintiffs that Ganesa Naicker, the third defendant expressed his dissatisfaction over the partition effected by way of Ex.A3 and accordingly, it is stated that a Panchayat was convened in July, 1975 and in the presence of the Panchayatars as named in the plaint, the properties had come to be again re-divided and thereunder, it is the case of the plaintiffs that the plaint B schedule properties, i.e. one half of the plaint A schedule properties and now described as the plaint B schedule properties, had been allotted to Umakanthan and the other half of the plaint A schedule properties had been allotted to the share of Ganesa Naicker and it is the further case of the plaintiffs that a few days later, koorchits had come to be executed evidencing the abovesaid partition as an aid to memory and thus, according to the plaintiffs, the plaint B schedule properties belonged to Umakanthan and after the demise of Umakanthan, it is only the plaintiffs, who are entitled to the plaint B schedule properties and it is further stated by the plaintiffs that Umakanthan and thereafter, the plaintiffs had been in the possession and enjoyment the plaint B schedule properties and the defendants 1 & 2 had preferred a suit against Umakanthan and the third defendant, Ganesa Naicker in O.S.No.229 of 1985 on the file of the Sub Court, Chengalpattu and in the guise of the exparte decree obtained by them in the above said suit, according to the plaintiffs, the defendants 1 & 2 had trespassed into the B schedule properties and occupying the same without any authority and enjoying the benefits of the same and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

14. Thus, it is found that the plaintiffs lay a claim of title to the plaint B schedule properties only by way of the alleged family arrangement said to have been effected in July, 1975 in the presence of the Panchayatars and the koorchit executed following the same and the xerox copy of the koorchit has been marked as Ex.A5. The defendants have stoutly challenged the abovesaid family arrangement projected by the plaintiffs and the so-called allotment of the B schedule properties in favour of Umakanthan and the other properties in favour of Ganesa Naicker and also challenged stiffly the case of the plaintiffs that they had effected koorchits evidencing the abovesaid family arrangement and thus, it is the defence of the defendants 1 & 2 that the abovesaid version projected by the plaintiffs are made only to snatch the suit properties from the defendants and should not be accepted in any manner.

15. Moreover, it is the case of the defendants that Rudrakotti Naicker did not die intestate and on the other hand, according to them, he had executed a Will dated 09.06.1973 in respect of his properties and bequeathed the same in favour of Goverdhana Varma, the father of the defendants' vendor and according to them, Goverdhana Varma had been in the possession and enjoyment of the bequeathed properties, after the demise of Rudrakotti Naicker as his own and enjoying the same and after his demise, his sons succeeded to the said properties and later, his sons alienated the suit properties in favour of the defendants by way of the sale deeds dated 26.06.1985 and since then it is only the defendants, who had been in the possession and enjoyment of the suit properties by obtaining patta, paying kist etc., and thus, it is the case of the defendants that they had been in the possession and enjoyment of the properties acquired by them by way of the abovesaid sale deeds marked as Exs.B1 and B2 right from the days of Goverdhana Varma and thereby, they had acquired title to the suit properties by way of adverse possession on account of their long and continuous enjoyment as their own.

16. Inasmuch as the defendants have vehemently challenged the family arrangement projected by the plaintiffs and the re-division of the properties as claimed by the plaintiffs and also disputed the case of the plaintiffs that the B schedule properties had been allotted to Umakanthan in the alleged family arrangement and also challenged the genuineness and validity of the koorchit said to have come into existence a few days after the family arrangement, it is for the plaintiffs to establish the abovesaid case projected by them. When it is the case of the plaintiffs that Rudrakotti Naicker and his two sons viz., Umakanthan and Ganesa Naicker had already effected a valid partition of the properties belonging to them under Ex.A3 partition deed during 1959 itself, their further case that 16 years thereafter, as the third defendant had complained of dissatisfaction over the said partition, the third defendant Ganesa Naicker and Umakanthan had decided to redivide the properties once again in July, 1975 as such cannot be readily believed and accepted. If at all, the third defendant, as the case may be, had any reservation about the partition effected under Ex.A3 deed, as rightly determined by the Courts below, the third defendant should have called upon his brother Umakanthan by way of a legal notice inviting his consent for redividing the properties again and accordingly, should have taken effective measures with reference to the same in the manner known to law. When it is found that the properties belonging to Rudrakotti Naicker's family had been already divided by way of Ex.A3 registered partition deed and the parties thereto had been allotted separate properties towards their shares and when it is further seen that the parties,

accordingly, had been enjoying their respective shares since 1959 onwards, the theory projected by the plaintiffs that during July, 1975 the third defendant expressed dissatisfaction over the said partition deed as such cannot be believed without any material to substantiate the same. With reference to the abovesaid case of the plaintiffs, there is no acceptable and reliable evidence other than the evidence of one of the Panchayars examined as PW5. In so far as the present case laid by the plaintiffs, it is found that the third defendant had remained exparte. Even then, nothing prevented the plaintiffs from summoning the third defendant and adduce his evidence in support of their case with reference to the so-called family arrangement effected in July, 1975, particularly, when it is the case of the plaintiffs that the said family arrangement had been brought about only at the instance of the third defendant and according to them, it is he, who had expressed dissatisfaction over the partition effected under Ex.A3 partition deed. But, no such endeavour had been taken by the plaintiffs to summon and examine the third defendant in proof of their case.

17. It is found that PW5 has adduced evidence regarding the so-called family arrangement effected in July, 1975 between Umakanthan and the third defendant. However, merely on the basis of his oral evidence as such, we cannot straightaway determine that such a family arrangement had been effected as per law. As rightly determined by the Courts below, it is not the case of the plaintiffs that after the dissatisfaction expressed by the third defendant, the parties had decided to blend and merge the divided properties together and started to enjoy the same jointly and thereafter, choose to redivide the suit properties again in the so-called family arrangement. On the other hand, it is found that even during the time, when the so-called family arrangement is stated to have taken place, the properties had been already divided amongst the parties and there had been no blending of the properties again and in such view of the matter, their case as well as the testimony of PW5 that Umakanthan and Ganesa Naicker had once again redivided the properties orally as such cannot be believed and accepted. Further, there is no reliable material placed by the plaintiffs to evidence that in the so-called family arrangement, the plaint B schedule properties had come to be allotted to Umakanthan and the other half of the plaint A schedule properties had come to be allotted to the third defendant, Ganesa Naicker. Even with reference to the said case, the plaintiffs had not chosen to examine the third defendant. Merely because, the third defendant had remained exparte, it cannot be construed that he had not opposed the plaintiffs' case or only repudiating the defence version. The act of the third defendant in remaining exparte can be viewed either way and in such view of the matter, merely because, the third defendant had remained exparte, we cannot safely hold that the case projected by the plaintiffs

whatever it may be, is true, sans valid proof and material pointing to the same.

18. That apart, there is no material placed by the plaintiffs to hold that since the oral division of the properties by way of the so-called family arrangement effected during July, 1975, Umakanthan had been enjoying the plaint B schedule properties separately and the third defendant had been enjoying the other half of the plaint A schedule properties in their own by asserting independent title. With reference to the possession and enjoyment of the properties as such, there is no material forthcoming on the part of the plaintiffs. It is thus found that the so-called oral partition of the properties effected by way of the alleged family arrangements remains only on paper without any material to substantiate the same.

19. No doubt, the plaintiffs have chosen to mark the xerox copy of the koorchit, which, according to them, had come to be executed a few days after the so-called family arrangement as an aid to memory of the so-called family arrangement. What had happened to the original koorchit, there is no plea put forth by the plaintiffs. At least, to show that the original koorchit had been handed over to the custody of the third defendant Ganesa Naicker, no material is placed. Now, according to the plaintiffs, only at that point of time, the xerox machines came into existence and accordingly, they had endeavoured to take the xerox copies of the executed koorchit amongst them and it is thus contended that Ex.A5 is one of the xerox copies so taken during the relevant point of time. However, there is no material as such placed by the plaintiffs that during that point of time, xerox machines had come into existence and with the aid of the same, koorchit copy now projected and marked as Ex.A5 had been taken from the original Koorchit. It is thus found that there is no proper explanation adduced by the plaintiffs as to the existence of the original koorchit as well as in whose custody the same remains.

20. In addition to that, as rightly put forth by the defendants' counsel, the xerox copy of the koorchit marked as Ex.A5 had come to be exhibited only subject to the objection put forth by the defendants. It is therefore seen that even at the time of the marking of the same, objection had been raised by the defendants with reference to its marking. That apart, on a perusal of the xerox copy of the koorchit marked as Ex.A5, it is found that there is no reference contained therein that prior to the execution of the same, the parties had chosen to divide the properties orally by way of a family arrangement and a few days thereafter, they had chosen to execute the koorchit as an aid to memory and Ex.A5 is the xerox copy of the said koorchit. No reference at all is made in the document Ex.A5 as to the parties

having effected any division of the properties belonging to them by way of a family arrangement. On the other hand, a reading of the contents of Ex.A5 would only go to show that only by way of the said document, the parties thereto viz., Umakanthan and Ganesa Naicker had chosen to redivide the properties once again and it is thus found that when the recitals contained in Ex.A5 proceed to recite that the parties thereto had determined to effect redivision of the properties belonging to them again and thereby, decided to take separate shares as detailed thereunder, following the execution of the said document, as rightly put forth by the defendants' Counsel, Ex.A5 can only be deemed to be a document partaking the character of a partition deed and accordingly, it is found that when Ex.A5 koorchit being a regular partition deed, whereunder, the parties had chosen to redivide the properties once again, such a document requiring compulsory stamping and registration as per law, when Ex.A5 is found to be not stamped and registered as mandated under law, on the above score alone, it is found that no safe reliance could be attached to Ex.A5 for upholding the case of the plaintiffs. Thus, it is found that, as rightly put forth by the defendants' counsel, Ex.A5 is found to be not a document evidencing the family arrangement already effected and on the other hand, when it is found to be a document, in and by which, the parties thereto had chosen to redivide the properties belonging to them once again and decided to take alleged separate shares detailed therein, as a corollary to the same, it is found that Ex.A5 requires compulsory stamping and registration as provided under law and sans the abovesaid mandatory requirements, Ex.A5 cannot be relied for any puprose and it is thus found that the case built by the plaintiffs based on Ex.A5 does not stand scrutiny in the eyes of law and liable to be discarded totally. That apart, as rightly put forth by the defendants' counsel, Ex.A5, even assuming for the sake of arguments that it could be received in evidence without registration for collateral purpose, considering the nature of the document as above discussed, in the light of the decision of the apex Court reported in CDJ 1971 SC 002 (Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao & Others), it is found that as per Sections 35 & 36 of the Stamp Act, the said document, without being duly stamped as per the requisites of law, it cannot at all be received even for any collateral purpose and such being the position of law, it is found that no right would flow in favour of the plaintiffs based on Ex.A5 document and it is thus found that the claim of title to the plaint B schedule properties by the plaintiffs based on the so-called family arrangement and the koorchit marked as Ex.A5 cannot be accepted and relied upon.

21. In the light of the above discussions, merely from the oral testimony of PW5, in the light of the abovesaid factors, when there is no reliable and valid material placed by the plaintiffs to show that a redivision had come to be effected

between Umakanthan and the third defendant as projected by them during July, 1975, by way of a family arrangement and the so-called family arrangement having also not been shown to be put into action by evidencing the separate enjoyment of the allotted shares by the respective parties, as above noted, and no documentary proof has been placed by the plaintiffs with reference to the same and when the koorchit projected by the plaintiffs as the outcome of so-called family arrangement does not make a reference to the same and on the other hand, it is only by way of the said koorchit marked as Ex.A5, the parties had chosen to effect the partition and when the same is not the case of the plaintiffs themselves and further, when Ex.A5 koorchit is found to be not duly stamped as well as registered as required under law and when the further case of the plaintiffs that they had again chosen to redivide the properties which had been already divided during 1959 itself under Ex.A3 without showing any blending or reunion of the properties again for effecting redivision as put forth by them in toto, it is found that as rightly determined by the Courts below, the redivision or the partition of the properties once again by Umakanthan and the third defendant by way of the family arrangement as projected by the plaintiffs is found to be not proved and established by the plaintiffs and accordingly, the Courts below are justified in disbelieving the above case of the plaintiffs in toto. No interference is called for with reference to the determination of the above aspects of the case projected by the plaintiffs against them by the Courts below.

22. In the light of the determination that the plaintiffs have miserably failed to establish the so-called family arrangement and the alleged koorchit said to have been executed following the same etc., not having been established, it is found that the plaintiffs cannot lay any claim of title to the plaint B schedule properties as such. Now, it is the case of the defendants that Rudrakotti Naicker did not die intestate as projected by the plaintiffs and on the other hand, according to them, he had executed a Will dated 09.06.1973 in favour of Govardhana Varma in respect of his properties viz., the plaint A schedule properties and according to the defendants, on the demise of Rudrakotti Naicker, based on the abovesaid Will, Goverdhana Varma succeeded to the said properties and enjoying the same as his own and thus, it is contended on their behalf that the plaint A schedule properties belonged to Goverdhana Varma based on the Will dated 09.06.1973. The above defence projected by the defendants is being disputed by the plaintiffs. Despite the same, the defendants have not chosen to produce the Will dated 09.06.1973 said to have been executed by Rudrakotti Naicker in favour of Goverdhana Varma and no valid reason has been projected by the defendants with reference to the same. Though it is contended on their behalf that the original Will had been entrusted to Villupuram Land Ceiling Office, however,

to evidence the same, there is no material forthcoming. That apart, the defendants laying a claim of title of their predecessor in title on the basis of the Will dated 09.07.1973, as rightly contended, they should have produced the Will or the certified copy of the same, in the event of their inability to produce the original of the same and furthermore, they should have also made endeavours to establish the authenticity of the said Will as required by law by examining the attestors to the said document in the manner known to law. However, the defendants had not chosen to examine any of the attestors or the persons associated with the said Will and accordingly, the first appellate Court is justified in holding that the plea projected by the defendants for claiming their predecessor's in title to the plaint A schedule properties as such cannot be believed and accordingly, it has to be held that the Will dated 09.07.1973 projected by the defendants is not established by the defendants.

23. However, the fact remains that the 4th plaintiff examined as PW1, during the course of her evidence, seems to have accepted the existence of the abovesaid Will, however on that score alone, as rightly determined by the first appellate Court, we cannot safely uphold the genuineness of the said Will. Be that as it may, now, it is the case of the defendants that their vendor's father Goverdhana Varma had acquired the plaint A schedule property by way of the abovesaid Will and been enjoying the same as his own and thereafter, enjoyed by his sons viz, the defendants' vendors and according to the defendants, by way of purchase of the same from their vendors under the sale deeds dated 26.06.1985 marked as Exs.B1 & B2, they had acquired title to the suit properties and accordingly, it is the case of the defendants that they and their predecessors in interest had been in the possession and enjoyment of the plaint A schedule properties in their own right openly, continuously by asserting title on themselves to the knowledge of one and all and thereby, prescribed title to the said properties by way of adverse possession. With reference to the abovesaid claim of the defendants, it is found that they had marked the patta in their favour as well the kist receipts paid in respect of the properties acquired by them and accordingly, it is found that the defendants, by placing overwhelming evidence, had established that the plaint A schedule properties are in their possession and enjoyment over a long period of time. That apart, it is also noted, as above seen that PW1 has admitted that the defendants had purchased the plaint A schedule properties from their vendors on the basis of the Will dated 09.06.1973 and also, it is found that PW1 has admitted clearly that the plaint A schedule properties are only in the possession and enjoyment of the defendants. Though the plaintiffs would claim that the defendants 1 & 2 had trespassed into the B schedule properties, following the decree obtained by them, in

O.S.No.229 of 1985 with reference to the abovesaid alleged case of the plaintiffs, there is no material forthcoming on their part. Be that as it may, when admittedly the defendants are in the possession and enjoyment of the plaint A schedule properties, which includes the plaint B schedule properties coupled with the fact that the plaintiffs have not placed any document worth acceptance to show that they or Umakanthan had been in the possession and enjoyment of the plaint B schedule properties, in particular, at any point of time or the plaint A schedule properties at any point of time, it is found that the defendants had come into in the possession and enjoyment the plaint A schedule properties inclusive the plaint B schedule properties only based on the sale deeds marked as Exs.B1 & B2 and accordingly, it is found that recognizing their possession and enjoyment, patta had been issued in their favour and accordingly, the defendants exercising absolute ownership over the said properties have been enjoying the same by paying kist etc., and as above seen, the defendants had also produced the kist receipts in respect of the suit properties. Another factor also would go to advance the theory projected by the defendants that they had acquired title to the plaint A schedule properties only from the rightful owners. It is the specific plea of the defendants that Goverdhana Varma had alienated the other properties acquired by him under the Will dated 09.06.1973 to various parties and also had pleaded that his son G.Ravikumar had also alienated another item of the properties in favour of one Pandian and to evidence the same, the defendants have marked the abovesaid copies of the sale deeds as Exs.B5 to B8 and with reference to the same, DW1, during the course of evidence had admitted the knowledge about the sale transactions effected by Goverdhana Varma and his son and had also deposed that she had no objection for the abovesaid alienation effected by Goverdhana Varma and his son. Thus, it is found that when the case of the defendants that Goverdhana Varma had derived the title to the properties only as per the Will executed by Rudrakotti Naicker and though the Will had not been established by the defendants as per law as above noted, but, when the existence of the Will and the enjoyment of Goverdhana Varma and his son and the defendants, the properties in dispute and all had been admitted by PW1 without any ambiguity and coupled with the fact that no document has been placed by the plaintiffs to show their possession of the suit properties in dispute at any point of time and also when it is seen that the following the acquisition of the properties from Rudrakotti Naicker, Goverdhana Varma and thereafter, his sons had alienated the various properties derived by them to others and when the plaintiffs had not thrown any challenge to the same and only challenging the sales effected in favour of the defendants 1 & 2, in toto, it is found that accordingly inasmuch as it is only Goverdhana Varma, who had acquired the plaint A schedule properties from Rudrakotti Naicker as above stated though the Will had not come to be

established in the manner known to law, the fact, however, remains that right from the death of Rudrakotti Naicker, it is only Goverdhana Varma and thereafter, his sons and after Exs.B1 and B2, the defendants, who had been in the possession and enjoyment of the plaint A schedule properties inclusive of the plaint B schedule properties in their own right, openly, continuously exhibiting absolute ownership by asserting their title to the same to the knowledge of one and all including the plaintiffs beyond the statutory period, the Courts below are found to be justified in upholding the case of the defendants that they had prescribed title to the suit properties by way of adverse possession, accordingly, it is found that the determination of the Courts below upholding the plea of title of the defendants to the properties in dispute by way of prescription based on the proper appreciation of the materials placed on record and the facts and circumstances of the case, both factually and legally, in such view of the matter, when no perversity is shown with reference to the same as such, it is found that the re agitation of the said issue once again by the plaintiffs in the second appeal as such cannot be allowed to be raised and in the abovesaid circumstances, the challenge made to the determination of the Courts below in upholding the plea of adverse possession in favour of the defendants cannot be considered to be a substantial question of law and this could also be from the decision of the apex Court reported in (2005) 11 SCC 549 (Parvathi and others Vs. S.R.S.Parvatrao Desai and another).

25. In the light of the above discussions, it is found that the Courts below are right in rejecting Ex.A5 and also justified in upholding the plea of adverse title of the defendants and their predecessors in interest based on the proper appreciation of the materials placed on record as above discussed and in such view of the matter, the substantial questions of law formulated in the second appeal are answered against the plaintiffs.

26. Insofar as the petition in CMP.No.6810 of 2018 laid for the reception of the addition evidence, as rightly put forth by the defendants' counsel, none of the ingredients contemplated under Order 41 Rule 27 CPC has been satisfied by the plaintiffs for obtaining the reception of the additional evidence. When the documents projected by way of the additional evidence are found to be to the knowledge of the plaintiffs much earlier to the institution of the suit and even during the course of the trial and when the plaintiffs have not placed any acceptable materials as to why they had not endeavoured to produce the said documents before the Courts below, despite having knowledge and further when the plaintiffs have not made out any case for justifying their inaction in not producing the said documents before the Courts below and when it is further seen that one of the documents projected by them is only the certified copy of the

koorchit already marked in the present litigation as Ex.A5 and that apart, when the documents projected as such would not throw any light as such in settling the controversies between the parties and in particular, advance the case of the plaintiffs in any manner, in my considered opinion, the case of the plaintiffs that the additional documents projected by them should be received in the evidence during the course of the second appeal as such cannot be countenanced, particularly, when the parameters governing the same as provided under Order 41 Rule 27 CPC are not met. Accordingly, the petition laid by the plaintiffs for the reception of the additional evidence is dismissed. In this connection, the counsel for the defendants, in support of his contention, also placed reliance upon the decision reported in (2010) 5 Supreme Court Cases 770 (Balathandayutham and another Vs. Ezhilarasan). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

In the light of the above discussions, the second appeal fails and is accordingly dismissed with costs. C.M.P.No.6810 of 2018 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

sms
To

1. The Principal District Court, Chengalpet.
2. The Additional Subordinate Court, Chengalpet.
3. The Section Officer, V.R.Section, High Court, Madras.

+1 CC to Mr.R. Karthikeyan, Advocate sr 44848.

+1 CC to Mr.J. Srinivas Mohan, Advocate sr 44995.

WEB COPY

S.A.No.216 of 2004

KS (CO)
SP(09/08/2018)