



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 29.01.2018

Delivered on: 20.03.2018

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CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.493 of 2016  
and  
C.M.P.(MD)No.11177 of 2017

Kannappan (Died)

1.K.Vasanthi

2.Minor K.Vaishnavi : Appellants/LRs of appellant-Defendant  
(The minor Appellant rep.by  
her monther and natural  
guardian the 1<sup>st</sup> Appellant)

-Vs-.

1.J.Ramanathan

2.Muthusubramanian

Through their power agent

RM.Jambulingam,

S/o.Ramasamy,

No.151, Thiruppathur Road,

Devakottai Town & Taluk,

Sivagangai District.

: Respondents/Respondents /Plaintiffs

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 26.06.2014 in A.S.No.6 of 2013 on the file of learned District Judge, Sivagangai confirming the judgment and decree dated 07.12.2012 in O.S.No.23 of 2005 on the file of learned Subordinate Judge, Devakottai and dismiss the suit filed by the respondents by allowing this Second Appeal.

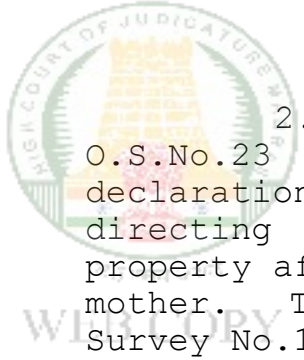
For Appellants : Mr.R.Sundar Srinivasan

For Respondents : Mr.T.V.Sivakumar

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#### JUDGMENT

The legal heirs of the defendant in the suit in O.S.No.23 of 2005 on the file of the Sub Court, Devakottai, are the appellants in the above Second Appeal.

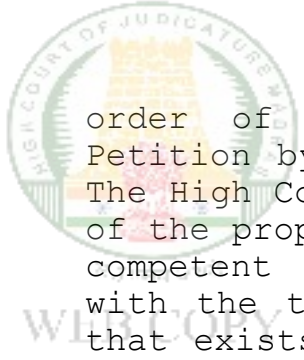


2.The respondents herein, as plaintiffs, filed the suit in O.S.No.23 of 2005 on the file of the Sub Court, Devakottai, for declaration that the suit properties belong to them and consequently directing the defendant to deliver vacant possession of the suit property after removing the superstructure put up by the defendant's mother. The suit property is an extent of 1508 sq. ft. in Town Survey No.14/5 part within Devakottai Municipal Town.

3.The case of the plaintiffs/respondents are as follows:

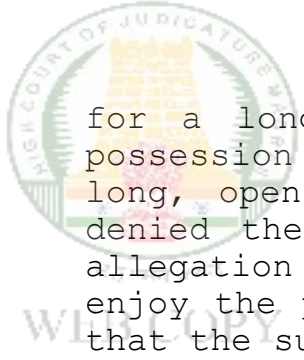
3.1.The suit properties and the properties which are situated on the northern side of the suit properties originally belong to one Arunachalam Chettiar. After purchasing the larger extent of properties, the said Arunachalam Chettiar was in possession and enjoyment of the same. One Meenakshi Ammal was working as a maidservant in the house of Arunachalam Chettiar and Arunachalam Chettiar gave licence to her to put up a thatched shed measuring 20 ft. x 11¼ ft. and a bunk shop measuring 5 ft. x 4 ft. in a portion of the property purchased by him. The licence given to the said Meenakshi Ammal is subject to the condition that she should remove the constructions whenever the property is required by him. Arunachalam Chettiar died leaving behind three sons and two daughters as his legal representatives and the legal heirs of Arunachalam Chettiar also allowed Meenakshi Ammal to continue her permissive occupation. Later the legal representatives of the said Arunachalam Chettiar formed a lay out and sold the property of Arunachalam Chettiar as plots to various persons. The plaintiffs have purchased plot Nos.1 and 3 along with other plots and that the suit property is located in part of portions of Plot Nos.1 and 3. After the death of original owner Arunachalam Chettiar, his legal heirs extended the licence to Meenakshi Ammal who promised to vacate the portion in her occupation on sufficient prior notice. After the property was laid out in plots and sold in favour of the plaintiffs, Meenakshi Ammal requested the plaintiffs to extend the licence and agreed to vacate the land and deliver vacant possession as and when it is required by the owners. Since the said Meenakshi Ammal never claimed any right and respected the plaintiffs' predecessor-in-interest and recognised their ownership over the site, the plaintiffs did not ask her to remove the superstructures as there was no threat or danger to their right or title over the site.

3.2.The defendant started residing with the said Meenakshi Ammal during her last days and Meenakshi Ammal died on 04.12.2003. After that when the plaintiffs approached the defendant, he agreed to vacate the land and deliver the vacant possession to the plaintiffs' power agent after dismantling the superstructures. However, later at the instance of some persons living in Devakottai who are inimical to the plaintiffs' power agent, for the first time in the year 2004, the defendant applied for change of name in favour of the defendant. Coming to know about the same, the plaintiffs sent objections to the Devakottai Municipality to change the name in favour of defendant. The municipality later changed the name of Registry to the names of plaintiffs by order dated 16.07.2014. The



order of Devakottai Municipality were challenged in the Writ Petition by the defendant before this Court in W.P.No.132 of 2004. The High Court by its order dated 31.08.2004 held that the ownership of the property can be validly and comprehensively decided only by a competent Civil Court and that the municipality cannot interfere with the title and direct the municipality to maintain status quo that exists prior to the order dated 16.07.2014. The appeal filed by the plaintiffs in W.A.No.4042 of 2004 was, however, disposed of with an observation that the property tax being assessed in the name of Meenakshi Ammal does not mean that Meenakshi Ammal became the owner of the property and that the ownership issue can be decided only by the Civil Court. Meenakshi Ammal throughout her life time did not claim ownership or have any adverse claim to that of Arunachalam Chettiar or his successors in interest including the plaintiffs, the defendant came into only in 2003. Meenakshi Ammal who had entered into the property with the permission of the said Arunachalam Chettiar is estopped from claiming independent right or title in her favour. The defendant who is claiming under the said Meenakshi Ammal is also estopped from putting forward title to the property as against the plaintiffs.

3.3.The suit was resisted by the defendant by filing a detailed written statement. Though the averments in the plaint was specifically denied with reference to each point, it is admitted that the said property originally belong to Arunachalam Chettiar. However, the defendant stated that Meenakshi Ammal is the mother of defendant and that she was a divorcee working as a maidservant under Arunachalam Chettiar. It was further stated that the said Arunachalam Chettiar executed an unregistered deed of sale in favour of Meenakshi Ammal and delivered possession of the said property to her in the year 1970. it is stated that Meenakshi Ammal thus came into possession of the said property purchased by her in the year 1970 as owner. It is further stated that Meenakshi Ammal put up a superstructure for her residence and also a bunk shop for doing petty shop business and that approval for the building was also obtained for the construction put up by Meenakshi Ammal. It is also stated that assessment of property tax was made in the name of Meenakshi Ammal and that she was paying tax right from 1971. it is further stated that the defendant resigned his job and came down to Devakottai and held his mother when she became ill and could not take care of herself and her business. It is also stated that the defendant filed a petition for transfer of assessment of property tax to his name in respect of the said property and that he was constrained to file a writ petition to restore the status quo to bring the property tax assessment in his name. Since in the writ petition the plaintiffs have alleged that the defendant's mother and this defendant are in possession as encroachers of the suit property the permissive possession now pleaded in the plaint is only to get over the plea of adverse possession and limitation and it is contended that the plaintiffs have invented the new plea of permissive possession with an object of defeating the rights of defendant. As a person who is continuing as owner of the property



for a long period, the defendant also pleaded title by adverse possession by stating that the defendant and his mother were in long, open and continuous possession. The defendant specifically denied the case of the license pleaded by the plaintiff and the allegation that Arunachalam Chettiar permitted Meenakshi Ammal to enjoy the property only as a licensee. It is specifically pleaded that the suit is barred by limitation. The defendant also contended that the description of the property as mentioned in the plaint is wrong and that false particulars have been furnished by the plaintiffs with motive.

4. The trial Court after framing proper issues found that the defendant's mother Meenakshi Ammal was only in permissive possession and that the suit is not barred by limitation. The trial Court also found that the defendant has not prescribed title by adverse possession, as the defendant admit the title of Arunachalam Chettiar and Meenakshi Ammal was only permitted to be in enjoyment of the property from 1971 as a licensee. Since the plaintiffs have established their title to the suit property, the trial Court found that the plaintiffs are entitle to get a declaration as to their title in respect of the suit property and for recovery of possession after removing the superstructure. The trial Court also directed the defendant to hand over the possession of the suit property after removing the superstructure within three months. Having regard to the findings of the trial Court the consequential relief of future mesne profits also was granted and directed separate enquiry under Order 12 of C.P.C. The defendant preferred an appeal in A.S.No.6 of 2013 before the District Court, Sivagangai. The lower appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved by the judgment and decree of the learned District Judge, Sivagangai in A.S.No.6 of 2013, the legal heirs of the defendant has preferred the above Second Appeal.

5. In the memorandum of appeal, the following substantial questions of law have been raised by the appellants:

1) Whether Courts below are justified in proceeding in assumption that the defendant admitted title of plaintiffs under Exhibit A1 to A3 when evidence of PW2 would go to show that he does not have authority to Ex.A1 to A3?

2) Whether the Courts below are justified in placing the burden of proof on the defendant when the plaintiffs have not established their title?

3) Whether Courts below are justified in not taking to consideration the material contradiction in the theory of permissive occupation guide their stand in the writ proceeding that Meenakshi Ammal was a trespasser and evidence of P.W.2 that his father did not give any permission to Meenakshi Ammal?



4) Whether Courts below are proper in not taking into account the discrepancy in the extent of suit property and the four boundaries and also the extent of permission occupation alleged?

5) Whether the lower appellate Court is proper in not framing proper points for determination on the basis of grounds raised in the grounds of appeal which resulted in miscarriage of justice?

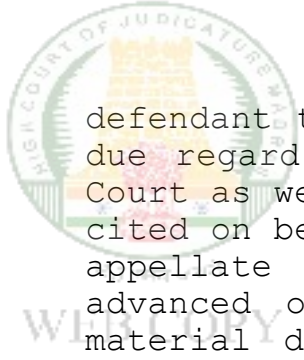
6. Before the trial Court, the father and power of attorney agent of the plaintiffs was examined as P.W.1. The son of Arunachalam Chettiar, the original owner of the suit properties was examined as P.W.2. The person, who has also purchased the property which is adjacent to the suit property has been examined as P.W.3. A retired Commissioner of Devakottai municipality has been examined as P.W.4. Apart from examining P.W.1 to P.W.4, the plaintiffs have produced Ex.A1 to Ex.A5. The defendant himself was examined as D.W.1 and one Mr.K.Rajaji has been examined as D.W.2. Defendant also produced documents Ex.B1 to Ex.B8.

7. While substantiating the questions of law raised by the appellant, the learned counsel for the appellant submitted as follows:

- a) it is for the plaintiffs to prove their title.
- b) in this case, the Courts below presumed that the defendant has admitted the title of plaintiffs under Ex.A1 to Ex.A3.
- c) merely because the defendant has pleaded adverse possession, the Courts below are not right in placing the burden of proof on the defendant to prove the case that the defendant has prescribed title by adverse possession. The specific case of the plaintiff that Meenakshi Ammal, defendant's mother, was in permissive possession was given a go-by long prior to the suit and the Courts below have failed to consider the material contradictions in the theory of permissive occupation and the fact that the plaintiffs have taken their stand in the writ proceedings that Meenakshi Ammal was a trespasser and the specific statement of P.W.2 that his father Arunachalam Chettiar did not give any permission to Meenakshi Ammal.

d) the plaintiffs have no consistent case with regard to the extent of the property that was permitted to be occupied by Meenakshi Ammal. The case relating to the portion of the property in the enjoyment of the defendant and his mother Meenakshi Ammal has not been specific and the plaintiffs who have filed a suit for recovery of possession have failed to prove the specific property identifiable on ground.

e) When it is admitted that the mother Meenakshi Ammal was in continuous possession from 1970 and the case of permissive occupation by Meenakshi Ammal is not proved by any acceptable evidence, the Courts below have not considered the case of the



defendant that he has prescribed title by adverse possession having due regard to the material evidence and circumstances. The trial Court as well as the appellate Court failed to consider the judgment cited on behalf of the appellant and the arguments. Since the lower appellate Court has not discussed the substance of the arguments advanced on behalf of the appellant and failed to consider the material discrepancies in the plea of permissive occupation, the judgment and decree of the lower appellate Court are liable to be set aside.

8.Per contra, the learned counsel appearing for the respondents submitted that Meenakshi Ammal, the mother of the defendant has admitted that she is a person in permissive occupation under Ex.B2 and that in the absence of any specific plea as to when the possession of Meenakshi Ammal became adverse, the proof regarding mere enjoyment of the property by Meenakshi Ammal and by defendant after the life time of Meenakshi Ammal, will not be helpful that they have prescribed title by adverse possession.

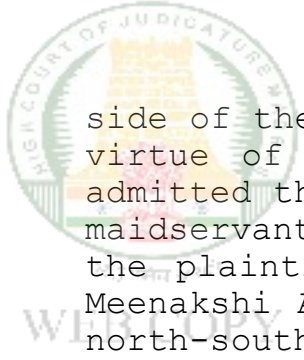
9.In the written statement, the specific plea raised by the defendant was that the defendant's mother was working as a servant under the original owner Arunachalam Chettiar. It was admitted by the defendant that his mother was working as a maidservant under the original owner Arunachalam Chettiar. But it is contended that the said Arunachalam Chettiar executed an unregistered deed of sale in favour of defendant's mother Meenakshi Ammal and delivered possession of the property to her in the year 1970. However, the said document is not produced by the defendant at any point of time earlier. It was further stated that when the plaintiffs made an attempt to prove that the said document must be a forged document, the defendant did not produce the said document at the appropriate time and at the appropriate forum. It is in these circumstances, it is submitted by the learned counsel for the respondent that the claim of defendant based on the unregistered sale deed is a concocted story and therefore, there is no legitimacy in the argument of the learned counsel for the appellant sustaining the plea of adverse possession from 1970.

10.The Courts below have considered the plea of title based on pleadings and documents and therefore, the contention of the learned counsel for the appellant that the plaintiffs have not proved their title cannot be accepted. The fact that the defendant and his mother was in permissive possession has been categorically found by the Courts below after analysing the pleadings and evidence in extenso and the finding on the question of adverse possession by the Courts below are well founded and unassailable.

11.Having regard to the findings of the Courts below and the arguments advanced by the learned counsel on both sides, this Court find it necessary to record the following facts.

<https://hcservices.ecourts.gov.in/hcservices/>

12.The suit property and other properties on the northern



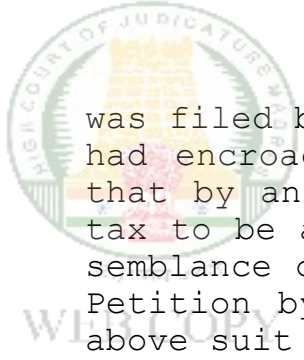
side of the property belonged to one P.L.A.R.Arunachalam Chettiar by virtue of purchase in 1965. Both plaintiffs and defendant have admitted that the mother of defendant Meenakshi Ammal was working as maidservant in the house of Arunachalam Chettiar. It is the case of the plaintiffs that the said Arunachalam Chettiar gave licence to Meenakshi Ammal to put up a thatched shed of east-west 20 feet and north-south 11¼ feet and a bunk shop of 20 sq.ft. in a portion of the property belonged to him and the said Meenakshi Ammal came into the property as a licensee and put up a thatched house and bunk shop for her residence and for running a business respectively. It is the case of the defendant that the mother of defendant Meenakshi Ammal wanted to do some business and requested Arunachalam Chettiar to sell the suit property to her and Arunachalam Chettiar executed an unregistered deed of sale in favour of the defendant's mother Meenakshi Ammal and delivered possession to her in the year 1970. Hence, it is the contention of the defendant that Meenakshi Ammal came in occupation to the property in the year 1970 as a owner. The defendant has produced the document Ex.B2 which is nothing but the approved plan for the construction put up by the defendant's mother Meenakshi Ammal, in the suit property in the year 1971. Though the document Ex.B2 indicate that the building plan approval was sought for by Meenakshi Ammal, Thiru.Arunachalam Chettiar has signed as the land owner. It is admitted that the legal heirs of Arunachalam Chettiar formed a layout in the area covering the suit property and sold the property in plots to various persons and plot Nos.1 and 3 comprising the suit property and adjacent property measuring about 5466 sq. ft. have been purchased by the plaintiffs under the documents Ex.A1 to Ex.A3, dated 26.03.1987. Thus, the plaintiffs 1 and 2 claim title on the strength of Ex.A1 to A3, the documents of title.

13.It is the case of plaintiffs that the licence that was given earlier to the said Meenakshi Ammal by Arunachalam Chettiar was extended by plaintiffs at the request of Meenakshi Ammal as Meenakshi Ammal is active in the way conducive to that of licensee and has never claimed any right of ownership and agreed to vacate as and when it is required by the plaintiffs.

14.It appears that dispute arose only when the defendant objected for changing the assessment of property tax in respect of the superstructure in the suit property from the name of mother of defendant Smt.Meenakshi Ammal to the name of plaintiffs from the assessment year 1988 to 1990.

15.In a writ petition filed by the defendant, it was directed that the status quo that existed prior to the order of Commissioner, Devakottai municipality should be restored and the aggrieved party should approach the Civil Court for appropriate relief to establish their claim of title.

<https://hcservices.ecourts.gov.in/hcservices/> 16.It is pertinent to point out that in the Writ Petition filed by the defendant in W.P.No.132 of 2004, a counter affidavit

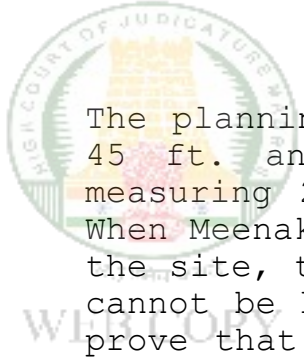


was filed by the first plaintiff stating that the defendant's mother had encroached over a portion of the properties of plaintiffs and that by an act of illegal trespass, she managed to obtain property tax to be assessed for the said property in her name to create some semblance of right in the property. After the disposal of the Writ Petition by order dated 31.08.2004, the respondents have filed the above suit in O.S.No.23 of 2005, on 31.03.2005.

17.From the facts admitted and the pleadings, it is to be held that the suit property originally belonged to Arunachalam Chettiar and there is no dispute. The fact that the plaintiffs have purchased the property from the legal heirs of Arunachalam Chettiar and their claim of title under Ex.A1 to A3 is well founded.

18.Referring to admission of P.W.2 that there may be other legal heirs to Arunachalam Chettiar as he had two wives and that through his first wife, he had a son, the learned counsel for the appellant submitted that the legal heirs of the deceased son of Arunachalam Chettiar have not sold the property to plaintiffs and that therefore, the plaintiffs have not proved their title through Arunachalam Chettiar. It is not in dispute that the documents Ex.A1 and A2 have been executed by legal heirs of Arunachalam Chettiar. Merely because Arunachalam Chettiar had another son through his second wife it cannot be a valid reason to negative the title of plaintiffs. The defendant is a stranger and his claim on the basis of an unregistered sale deed from Arunachalam Chettiar is not established. The defendant has now set up a plea of adverse possession and therefore, this Court is unable to accept the case of the defendant that the plaintiffs have not proved their title as per the documents of registered sale deeds under Ex.A1 to A3. When the rights of the vendors under Ex.A1 and A2 as legal heirs of Arunachalam Chettiar is not in dispute, it is not open to a stranger to question the validity of the same merely because the existence of some other heirs who are not parties to the sale deeds under Ex.A1 and A2 is admitted in evidence. A stranger who has no claim through them has no locus standi. Hence, this Court concur with the view expressed by the Courts below that the plaintiffs have established their title on the basis of the registered sale deed under Ex.A1 to A3.

19.The next question is whether the plaintiffs have established their case of permissive occupation by Meenakshi Ammal. The plaintiffs have specifically pleaded that Meenakshi Ammal, the mother of defendant was given licence to put up a small thatched shed for her residence and to construct a bunk shop for her livelihood as she happened to be the maidservant of Arunachalam Chettiar. The fact that the defendant's mother Meenakshi Ammal was working as a servantmaid under Arunachalam Chettiar is not in dispute. It is in these circumstances, the document Ex.B2 is crucial. When Meenakshi Ammal applied for planning permission before the executive authority, Devakottai municipality, she recognized her boss namely Thiru. Arunachalam Chettiar as the owner of the land.



The planning permission was in respect of a site measuring 53 ft x 45 ft. and the permission is for constructing a thatched hut measuring 20 ft. x 13 ft. and a bunk shop measuring 5 ft x 4 ft. When Meenakshi Ammal recognized Arunachalam Chettiar as the owner of the site, the case of oral sale or sale by an unregistered sale deed cannot be believed. Ex.B2 is a document filed by the defendant to prove that Meenakshi Ammal had put up a small construction even in the year 1971. The defendant in this case has not produced any material to show that the mother Meenakshi Ammal was in enjoyment of the suit property claiming ownership over the property. The fact that a construction was put up by the defendant's mother in 1971 and the assessment of property tax was made in the name of Meenakshi Ammal has to be considered in the light of the position that the title of Arunachalam Chettiar is admitted even under Ex.B2 in respect of the land. Since mother of defendant admitted title of Arunachalam Chettiar as land owner, the fact that Meenakshi Ammal was put in possession of the suit property as licensee and that she is in permissive occupation is well established.

20.However, the learned counsel for the appellant still submit that the case of permissive occupation pleaded by the plaintiffs is contrary to their stand in the counter affidavit filed by the first plaintiff in the Writ Petition filed by the defendant before this Court in W.P.No.132 of 2004. This document has been filed by the defendant as Ex.B7. This document is not disputed by the plaintiffs. It is also true that the plaintiffs have stated in Ex.A7 that the defendant's mother Meenakshi Ammal had encroached over a portion of the property and described the defendant's mother as encroacher. It is to be noted that there is nothing on record to show that there was any independent assertion of title by the said Meenakshi Ammal till her death (04.12.2003). It is also seen that the dispute arose only when the plaintiffs made an attempt to transfer assessment of property tax from the name of Meenakshi Ammal in their favour in 2004. Going by the records, there is no evidence to show that there was an assertion of title either by Meenakshi Ammal or by defendant prior to the death of Meenakshi Ammal on 04.12.2003. At the time when the plaintiffs sought for transfer of assessment of property tax, the defendant raised a dispute claiming title based on an unregistered sale deed alleged to have been executed by Thiru.Arunachalam Chettiar in favour of his mother Meenakshi Ammal. The learned counsel for the appellant further relied upon the evidence on P.W.1 and referred to his statement that Meenakshi Ammal and her son Kannappan have encroached the property illegally. The over all evidence of P.W.1 appears to be to the effect that Meenakshi Ammal was in enjoyment of the property illegally and that she was given permission to occupy a small extent of land and that she has encroached illegally some more property and that she agreed to vacate the property as and when the plaintiffs required. Now from the evidence of P.W.1, it cannot be concluded that it is not the case of the plaintiffs that Meenakshi Ammal was in permissive occupation. The learned counsel for the appellant then relied upon the evidence of P.W.2 during cross-examination and



submitted that P.W.2 also admits that his father never permitted Meenakshi Ammal to occupy any portion of the suit properties. However, the evidence of P.W.2 cannot be weighed on the basis of some slip answers and it has to be considered as a whole from the following portions:

“... என் தகப்பனார் மீனாட்சி அம்மாளை தாவாச் சொத்தில் சுவாதீனத்திற்கு அனுமதி கொடுத்தாரா என்று கேட்டதற்கு சாட்சி அனுமதி மட்டும் கொடுத்தார் என்று கூறுகிறார். மீனாட்சி அம்மாள் சாகும்வரை தாவாச் சொத்து மீனாட்சி அம்மாளால் கூரை வீடு கட்டப்பட்டும், பெட்டிக்கடை வைத்து அனுபவத்தில் இருந்தார் என்றால் ஆம். மீனாட்சி அம்மாள் தேவகோட்டை முனிசிபாலிட்டியில் அனுமதி பெற்று முறைப்படி கட்டிடம் கட்டவில்லை. மீனாட்சி அம்மாள் கட்டிடம் கட்டியதற்கான வரைபடம் தேவகோட்டை முனிசிபாலிட்டியில் அனுமதிக்கப்பட்டது. மீனாட்சி அம்மாள் தேவகோட்டை முனிசிபாலிட்டியில் எந்த அளவு இடத்திற்கு அனுமதி வாங்கினார் என்று எனக்குத் தெரியாது. என் தகப்பனார் மீனாட்சி அம்மாளுக்கு எந்த அளவு அனுமதி கொடுத்தார் என்று எனக்குத் தெரியாது. மீனாட்சி அம்மாளுக்கு ஆரம்பத்தில் எவ்வளவு விஸ்தீரணத்திற்கு அனுமதி அளிக்கப்பட்டதோ, அதே அளவு விஸ்தீரணத்தில் தான் கடைசி வரை இருந்தார் என்றால் தெரியாது. என் தகப்பனார் மீனாட்சி அம்மாளுக்கு இடமே கொடுக்கவில்லை. நான் கிரையம் கொடுத்த காலத்தில் தாவாச் சொத்தில் மீனாட்சியம்மாள், கூரை வீடு கட்டியும், பெட்டிக்கடை வைத்து அனுபவித்து வந்தார். ...

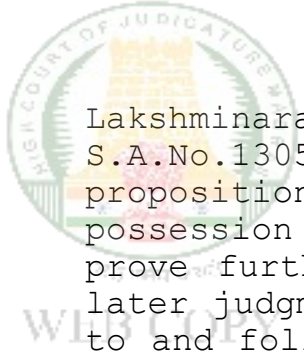
... தாவாச் சொத்தில் உள்ள கட்டிடத்திற்கு மீனாட்சியம்மாள் பெயரில் வரிவிதிப்பு ஏற்பட்டிருந்தது என்றால் ஆம். மீனாட்சி அம்மாள் என்னிடமோ, என் தகப்பனாரிடமோ, தாவாச் சொத்து அனுபவத்திற்கு வாடகை செலுத்தியது கிடையாது. என் தகப்பனார் காலத்தில் மீனாட்சி அம்மாளைத் தவிர பல நபர்கள் வேலை பார்த்தார்கள். மற்ற வேலைகாரர்களுக்கு இடத்தில் அனுமதி கொடுக்கவில்லை. எங்களிடம் 19.11.75ல் மீனாட்சி அம்மாள் அனுமதி வாங்கினார். இந்த விவரத்தை நான் எனது நிருபண வாக்குமூலத்தில் குறிப்பிட்டுச் சொல்லவில்லை என்றால் ஆம். எங்களிடம் மீனாட்சி அம்மாள் அனுமதி வாங்கும்போது எவ்வளவு விஸ்தீரணம் இடத்தை அனுமதி கொடுத்தோம் என்று சொல்ல முடியாது. வாதி வகையறா மேற்படி சொத்துக்களை கிரையம் வாங்கும் போது தன்னுடைய சொந்த உபயோகத்திற்குத்தான் கிரையம் வாங்கினார்கள். மேற்படி கிரையம் பெறுவதற்கு முன்பு மேற்படி மீனாட்சியம்மாளை மேற்படி சொத்தில் இருந்து காலி செய்ய சொல்லிவிட்டோம். ...”

21.Considering the full text of the evidence, it cannot be suggested that P.W.2 has admitted that his father never permitted the defendant's mother Meenakshi Ammal to occupy the suit property. Hence, this Court also concurred with the view expressed by the Courts below that the plaintiffs' predecessors-in-interest had permitted the defendant's mother Meenakshi Ammal to occupy a portion of the land in view of the fact that the said Meenakshi Ammal was a maidservant of Arunachalam Chettiar, the predecessor-in-interest of the plaintiffs.

22.The learned counsel appearing for the appellant relied upon a judgment of this Court in the case of Pappannan and others v. Kolandasamy reported in 2012 (3) MWN (Civil) 536 wherein it has been held as follows:

“20. At this juncture, I would like to dispel any wrong notion in this regard. There is no authority on the point that once the defendant raises the plea of adverse possession, the plaintiff is automatically relieved of his burden to prove his title on the assumption that the defendants should be deemed to have admitted the title of the plaintiff.





Lakshminarayana Padayachi v. Subramaniam (Deceased) and others in S.A.No.1305 of 2001, dated 20.11.2017 for a new and startling proposition that when the plaintiff sets up a case of permissive possession and fails to prove it, the burden then lies on him to prove further that he was in possession within 12 years. In the later judgment, the judgment reported in 2010-1-LW 439 was referred to and followed. This Court find that the facts of the case dealt by the Hon'ble Judge in the later case is entirely different and the law that was stated has not been applied. In the later case the facts of the case would indicate that the plaintiff in the case therein failed to establish the plea of lease even though it is established that the defendant was in continuous possession from 1960 in his own right and that therefore, it was held that the plaintiff has failed to establish that the suit was levied within 12 years from the adverse title set up by the defendant.

25.In the case of Deivanai Ammal (Dead) (cited supra) it has been held as follows:

"24.When there is an admission by the plaintiffs that the defendant is in permissive possession either for a larger extent or a smaller extent, the burden is heavily upon the plaintiffs to prove the said possession is within 12 years and it is not for the defendants to prove how and when adverse possession commenced. If the plaintiff pleads that the permissive possession is only 10 years prior to the filing of the suit, he has to prove the same.

25.In the present suit, the plaintiff acquires the property under the partition deed, dated 06.05.1968, (Ex.A1) and the sale deeds, dated 30.05.1968, 10.08.1989, and 07.07.1989 (Ex.A2 Ex.7 & 8). Deivanai Ammal acquires title under Ex.A22 dated 04.07.1960. Ex.B3 would show that she was living there prior to or around 1963 and continuously paying 'Kist'.

26.The Full Bench of this Court in The official Receiver of East Godavari at Rajamundry reported in 1940 (2) MLJ 190 was deciding a reference by a single Judge and the reference was

"whether, in a case where the plaintiff sets up a case of permissive possession and fails to prove it, the burden then lies upon the plaintiff to prove that he was in possession within 12 years of suit, or whether the onus is upon the defendant to prove adverse possession for a period of 12 years".

The Hon'ble Sir Alfred Henry Lionel Leach, Chief Justice, has held that

"in my opinion, the plaintiff, who is suing for possession of property in the occupation of another cannot rest his case on title alone. He must show that he has exercised the rights of



ownership by being in possession within 12 years of suit."

27. It is well settled law that a person, who claims title to the property by adverse possession must definitely allege and prove how and when adverse possession commences, but such onus will not be called for when the plaintiff sets up a case of permissive possession or in other words, the burden is upon the plaintiff to prove that the defendant was in permissive possession within 12 years of filing of the suit."

26. The law that is assumed by the learned Judge in the cited decision in paragraph 24 of the judgment is not the correct position and the learned Judge has followed the judgment of a Full Bench of this Court reported in 1940 2 MLJ 190. The Judgment of a Full Bench was by applying Article 142 of the Limitation Act, 1908 and therefore, the Full Bench has held that the plaintiff would have to establish not only his title but also the fact that he was in possession of the property within 12 years before suit. Article 142 of the Limitation Act, 1908 prescribes 12 years period as limitation for a suit for possession of immovable property when the plaintiff while in possession of the property has been dispossessed and the period of limitation begins to run from the date of dispossession or discontinuance. In view of Section 142 of Limitation Act, 1903, the position earlier was of course favoured a trespasser as against the true owner. However, Limitation Act, 1963 has brought a drastic change. Under Article 65, a suit for recovery of possession of immovable property based on title can be filed within a period of 12 years when the possession of the defendant becomes adverse to the plaintiff. The change in legal position under Articles 64 and 65 of the Limitation Act, 1963, is noted by the Hon'ble Supreme Court in Saroop Singh v. Banto and others reported in (2005) 8 SCC 330 wherein it is held as follows:

"The statutory provisions of the Limitation Act have undergone a change when compared to the terms of the Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within 12 years, preceding the date of institution of the suit. However, a change in legal position have been effected in view of the Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession."

27. Again in another judgment, the Hon'ble Supreme Court in the case of M. Durai v. Madhu and others reported in (2007) 2 MLJ 657 (SC) the decision in Saroop Singh case was followed and the position is reiterated as follows:

"The change in the position in law as regards the



burden of proof was obtaining in the Limitation Act, 1908 vis-a-vis Limited Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within 12 years' preceding the date of institution of the suit, under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."

28.The judgment of the learned Single Judge in the case of Deivanai Ammal (Dead) and others v. Periasamy @ Semba Gounder and others reported in 2010-1-LW 439 therefore does not reflect the correct position of law under Article 65 of the Limitation Act, 1963. The decision in Deivanai Ammal case is, therefore, per incuriam as the said decision is rendered without taking note of Articles 64 and 65 of the Limitation Act, 1963 and the decision of the Hon'ble Supreme Court and this Court on the interpretation of the Articles 64 and 65 of the Limitation Act, 1963.

29.The learned counsel for the appellant relied upon the judgment of a learned Single Judge of this Court in the case of Lakshminarayana Padayachi v. Subramaniam (Deceased) and others in S.A.No.1305 of 2001, dated 20.11.2017 wherein it has been held as follows:

"15. However, in the light of the above said facts, when it is found that it is only the defendant, who had been in possession and enjoyment of the suit property for a long period of time as above narrated and when the permissive occupation or otherwise of the suit property by the defendant as pleaded is not established by the plaintiff, as rightly argued by the counsel appearing for the defendant, it is only for the plaintiff to establish that permissive possession of the defendant is within 12 years prior to the filing of the suit and in the event of the failure of the plaintiff to establish the same, it is unnecessary for the defendant to establish adverse possession for the statutory period and on the other hand, it is for the plaintiff to prove his possession within 12 years and in this connection, the decision reported in 2010-1-L.W.439 ( Deivanai Ammal (Died) & others Vs. Periasamy @ Sambagounder & others) is relied upon and the decision reported in 2012 (3) MWN (Civil) 536 (Pappannan and 4 others Vs. Kolandasamy) is also relied upon for the contention that the burden of proof shifts on the plaintiff to prove the plea of permissive possession and on the failure of the plaintiff to establish the same, the plaintiff cannot be allowed to pick holes in the case of the defendant and thereby succeed in his case without establishing his title to the suit property as pleaded by



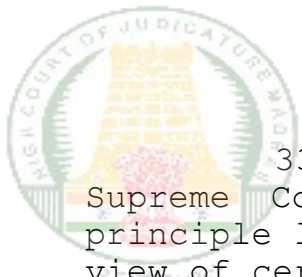
30. However, in the subsequent paragraph in the same judgment, it is seen that the facts in this case are entirely different and it is a case where the plaintiff has failed to establish that he has valid title to the property and that he has not filed the suit within 12 years from the date on which the defendant's title became adverse. Hence, the second judgment also is not helpful to the appellant.

31. The learned counsel for the respondents relied upon a judgment of Hon'ble Supreme Court in the case of Saroop Singh v. Banto and others reported in 2006-3-L.W. 6 which was already referred to. The Hon'ble Supreme Court in yet another case in Karnataka Board of Wakf v. Government of India and others reported in (2004) 10 SCC 779 has held as follows:

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. 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 the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

32. The Hon'ble Supreme Court in Saroop Singh's case has also held that animus possidendi is one of the ingredients of adverse possession and that unless the person possessing the land has a requisite animus the period of limitation does not commence. The learned counsel for the respondent further relied upon a recent judgment of the Hon'ble Supreme Court in the case of Dagadabai (Dead) v. Abbas reported in 2017-5-L.W. 127 wherein it is held that a plea of adverse possession being essentially a plea based on facts, it is required to be proved by the party raising it on the basis of proper pleadings and evidence. It is further held that burden of proof of such plea is therefore on the defendant who has raised it. It has been further held by the Hon'ble Supreme Court as follows:

"23) In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff."



33. However, this Court, with great respect to the Hon'ble Supreme Court, is not inclined to rest this judgment on the principle laid down in this judgment of the Hon'ble Supreme Court in view of certain other limitations to apply in the said principle.

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34. In the case of Parwatabai v. Sonabai reported in A.I.R. 1997 S.C. 381 the Hon'ble Supreme Court has held as follows:

"4. Art. 65 of the Act postulates that for possession of immovable property or any interest therein based on title, when the possession of the defendant becomes adverse to the plaintiff, the suit has to be filed within 12 years. Therefore, when the plaintiffs asserted their title on the basis of succession to the estate of their father, it is for the appellant to prove as to on which date the appellant's possession has become adverse to the respondents' title. In this case, the appellate Court and the High Court found that the appellant had not established as to what was the exact date from which the adverse possession started running. Since Parwatabai died in 1966, admittedly, the plaintiff had filed the suit in 1966 within 10 years. Under those circumstances, the appellant had not perfected the title by prescription."

35. It is a well settled proposition that mere possession of a person, however long, would not confer any right as against true owner. Unless the person who claims adverse possession has animus possidendi to hold the land adverse to the title of true owner the claim of adverse possession cannot be upheld. The assertion of the title must be clear unequivocal and for more than statutory period. To perfect title by adverse possession the possession must be hostile, open continuous and there must be animus possidendi. If it is shown that possession of the defendant is traceable to permissive possession at the commencement or that the person claiming adverse possession was enjoying the property without animus his possession cannot be treated as adverse to the real owner. The Hon'ble Supreme Court in the case of Deva (Dead) through LRs. v. Sajjan Kumar (dead) by LRs reported in (2003) 7 SCC 481 the Hon'ble Supreme Court has held as follows:

"Mere long possession of the defendant for a period of more than 12 years without intention to possess the suit land adversely to the title of the plaintiff and to the latter's knowledge cannot result in acquisition of title by prescription."

In terms of Article 65 of Limitation Act, 1963, starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but commences from the date the defendant's possession become adverse. In the case of Tmt.A.Vedanayagam and others v. Annakili and others reported in 2006-2-L.W. 742 a Division Bench of this Court has held

<https://hcservices.ecourts.gov.in/hcservices/>

as follows:

"25. Now the law is well settled, that the person, who



claims adverse possession, alone has to establish the same and on his failure, whatever may be the period of his occupation, the owner of the property is entitled to recover the property, which cannot be prevented. Therefore, the submission of the learned counsel for the defendants, that since the suit is not filed within 12 years, or within six months from the date of dispossession, the claim of the plaintiffs should be negatived, is legally unsound, deserves rejection, which could be seen from the observation of the Honourable Supreme Court in VASANTIBEN PRAHLADJI NAYAK AND OTHERS vs. SOMNATH MULJIBHAI NAYAK AND OTHERS [(200 4) 3 SCC 376], wherein the view of the Bombay High Court was affirmed, which reads:

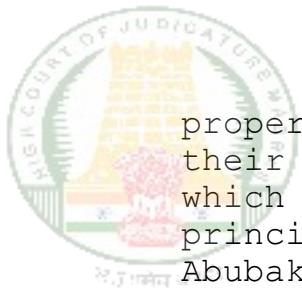
"In the case of Hanamgowda Shidgowda Patil v. Irgowda Shivgowda Patil [AIR 1925 BOMBAY 9 : 26 BOMBAY L.R. 829], it has been held that in cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but it commences from the date when the defendants' possession became adverse. Therefore, in the present case, the starting point of limitation for adverse possession cannot be taken as 29.11.1965 and one has to take the date when the respondents' possession became adverse."

In this view, the failure on the part of the plaintiffs or their predecessors-in-interest, in not taking steps to recover possession, on the basis of title, from the dates of their acquiring title to the suit properties, certainly, would not bar them from initiating the suit, for recovery of possession, at a later point of time. If it is to be held, that the suit is barred by limitation, then, it is for the contesting defendants, to make out a case of adverse possession, proving from which date their possession was adverse, on the basis of plea and evidence.

27. ....In view of the above settled position of law by the Apex Court, at present, if it is shown that the possession of the defendants in the case on hand, is traceable to permissive possession, or shown to be that they were in possession of the property, without any animus, but enjoying the same, not adverse to the real owner, as that of their property, then, whatever may be the length of period of possession, that will not vest a right, which could be recognised under law."

36. In yet another judgement, in the case of V.S. Pandurangam v. Kannan and others reported in 2000 Supp. MLJ 413 the learned Judge of this Court has held as follows:

"Pointing out the principle laid down by the Supreme Court, it was argued by the learned counsel for the appellant that it is not sufficient for the respective defendants to say that they are in possession of the



property, but they should further prove from which date their possession has become adverse to the real owner, which is very much lacking in this case. The same is the principle in the earlier Supreme Court decision reported in *Abubakar Abdul Inamdar (Dead by LRs) v. Harun Abdul Inamdar, J.T. (1995) 7 S.C. 179*. In that ruling, the learned Judges of the Supreme Court have pointed out the person claiming adverse possession should plead overt act, on the basis of which, it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs and his being in possession openly and hostilely. In the case on hand, though evidence had been adduced that the defendants have changed the house tax in their name and paid house tax from 1978 and thus exercised some overt act, nothing has been pleaded in the written statement and therefore, no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party, as pointed out by the Supreme Court. On a careful analysis of the evidence, I am clearly of the view that no satisfactory or acceptable evidence is available on the side of defendants in the suits, except O.S.No.1402 of 1984 that the respective defendants exercised hostile possession from a particular date or pleaded overt act and that they had animus to possess the property against the true owner, namely, the plaintiff. Therefore, I find it difficult to accept the submission of the learned counsel for the defendants in the suits that as the plaintiff has failed to prove his permissive possession, automatically the plea of adverse possession on behalf of the defendants gets proved and the same should be accepted by this Court. When a plaintiff institutes a suit for recovery of possession based on title, if a defendant intends to defeat the rights of the plaintiff, he has to establish that he is in adverse possession of the disputed property for a continuous period of 12 years with the requisite animus to possess the same against the true owner and by his continuous possession, the title of the true owner got extinguished by operation of law. If the defendant fails to satisfy the ingredients of adverse possession, as explained in various decisions cited supra, which apply to the facts of the present appeals, the plaintiff cannot be non-suited, merely because he was unable to prove his possession within a period of 12 years. In the case on hand, the evidence on record proves that the defendants in the respective suits have not satisfied the ingredients of adverse possession and established that the title of the plaintiff got extinguished."

37. The learned counsel for the respondents relied upon a judgment of this Court by a learned Single Judge in the case of *S.Subba Reddiar (Died) and others v. Bhagyalakshmi Ammal @ Guruvachi*



Ammal and another reported in 1996-2-L.W. 31. In the said judgment, the allegation in the plaint is that the plaintiffs' predecessor one Ramachandra Reddiar and the first defendant were close associates. The said fact was not denied anywhere in the written statement. This Court on the facts of the case has held as follows:

"21. From the above discussion and also on the basis of the law declared by the Supreme Court, it can safely be concluded that except for the fact that the defendant had possession of the property, they did not have the animus to hold the same against the plaintiffs or their predecessors. Inference can be drawn from the proved circumstances and also admitted circumstances that the defendants are in possession on the basis of some arrangement or permission, granted by the predecessors of the plaintiffs."

Since permissive occupation is proved in this case and the defendant has not proved as to when such possession became adverse the case of appellants that the defendant has prescribed title by adverse possession when the suit was filed cannot be accepted. From the admitted fact that the defendant Meenakshi Ammal was a maidservant of Arunachalam Chettiar and it is established that in 1970-1971 Meenakshi Ammal when allowed to occupy the property acknowledged the title of Arunachalam Chettiar, possession of Meenakshi Ammal should be taken only as permissive. Once possession is held to be permissive, length of possession is not significant and burden lies on the defendant to establish adverse possession for more than the statutory period. As pointed out earlier, no ownership or adverse claim by Meenakshi Ammal during her life time is proved. The defendant's claim of title based on the alleged unregistered sale deed is not proved. The plea cannot be believed in view of the document Ex.B2. Merely because the plaintiffs have earlier described the defendant and his mother as encroachers will not disentitle the plaintiffs' from raising the plea of permissive occupation. Having regard to the peculiar circumstances in this case, where there are change of circumstances the stand taken by the plaintiffs in the writ petition stand explained.

38. The learned counsel for the appellants relied upon a judgment of a Division Bench of this Court in the case of V. Muthiah Pillai (Died) and others v. Vedambal and others reported in AIR 1986 Madras 106 where the plea of adverse possession in case where the plaintiffs filed a suit alleging permissive possession is dealt with in extenso. It has been held as follows:

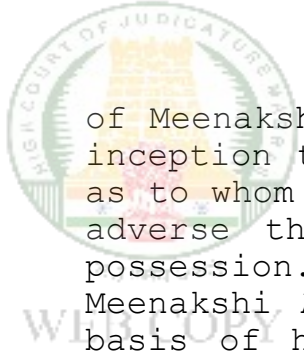
"15. .... The classical requirement of adverse possession are that the possession must be nec vi nec clam nec precario, that is to say, the possession required must be adequate in continuity, in publicity and in extent. It is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running out, if he exercises due vigilance to be aware of what is happening In Secretary of State v. Debendralal



trespasser to bring the facts of his adverse possession to the notice of the real owner. More exercise of possession exclusively and continuously would not be enough in all cases to show that the true owner if vigilant would be aware of what was happening. Permissive possession does not become hostile till there is an assertion of an adverse possession to the knowledge of the owner. (Sheodhari Rai v. Suraj Prasad Singh). The permissive character of the possession can be inferred from the attending circumstances even without direct evidence~ If possession is found to be permissive at the inception the possessor cannot prescribe or sustain title or any claim adversely to the grantor of the possession (Ouseph Ouseph v. Mathen Mariamma, AIR 1954 Trav- Co 297 at p. 298: 1954 Ker LT 8)."

39. From the above, it is evident that permissive character of possession can be inferred from the attending circumstances even without direct evidence and that a person if found to be in permissive possession at the inception, the possessor cannot prescribe or sustain title against grantor merely because he is in possession for long number of years. However, on facts of the case, it was held that the first defendant who set up the plea of adverse possession was found to have asserted her title in 1961 by executing a mortgage deed and by a publication in the newspaper claiming exclusive ownership adverse to the real owner even in 1961. Since the suit itself was filed beyond the period of 12 years after such claim of adverse possession, the Division Bench has held therein that the cordial relationship existed between the plaintiffs' predecessor-in-interest and the first respondent and the suggestion that the possession of first defendant at the inception was permissive cannot make the suit within time where it is alleged and proved that the possession of first defendant in the suit therein became adverse from 1961 and has prescribed title by adverse possession before the suit was laid in 1973. Hence, the judgment is not helpful to the appellant.

40. Adverse possession is not defined by any statute. However, it is acknowledged that adverse possession refers to actual and exclusive physical possession coupled with intention to hold the property as owner and hostile to the original owner. When a person openly and continuously enjoying a property under a claim of right adverse to the title, as true owner for more than the statutory period the person prescribes title by adverse possession in view of Section 27 of Limitation Act, 1963. Adverse possession means a hostile possession which is expressly or impliedly in denial of the title of the true owner. The possession must be actual, exclusive, open and under a claim of right and adequate in continuity to the extent so as to show that his possession is adverse to the true owner. Mere possession without a claim of right is not sufficient to create adverse possession. Permissive possession does not become hostile till there is assertion of an adverse title to the knowledge of the owner. In this case, it is already held that the defendant's mother Meenakshi Ammal came into possession was permitted to occupy the land and permitted to put up a temporary hut for the residence



of Meenakshi Ammal and bunk shop measuring 20 Sq. Ft. Since at the inception the possession was permissive unless the appellant proves as to whom the possession of Meenakshi Ammal or the defendant became adverse there is no scope for entertaining the plea of adverse possession. In this case, as pointed out earlier the possession of Meenakshi Ammal during her life time was not proved to be on the basis of her exclusive title at any point of time. Ex.B2 would clearly show that Arunachalam Chettiar was recognized as the owner of the land by Meenakshi Ammal even when she put up the construction.

41. Having regard to the position that a plea of adverse possession is essentially a plea based on facts the plea has been negated by Courts below applying the correct position of law.

42. The Courts below have framed proper issues. Even the appellate Court has framed the point for consideration as it is required in law. The courts below have applied the legal principles correctly and the judgment and decree of the Courts below are perfectly valid. This Court find no reason to interfere with the findings on facts. Hence, the question of law raised by the appellants are answered against the appellants in view of the affirmation of the findings of Courts below on all issues against the appellants.

43. As a result, this Second Appeal is dismissed and the judgment and decree of the lower appellate Court in A.S.No.6 of 2013 passed by the learned District Judge, Sivagangai, confirming the judgment and decree of the trial Court in O.S.No.23 of 2005 by the Sub Court, Devakottai, is affirmed. There is no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Judge, Sivagangai.
2. The Subordinate Judge, Devakottai.

**Copy to:**

The Section Officer, Vernacular Records,  
Madurai Bench of Madras High Court, Madurai (2 Copies)

+1CC to Mr.R.Sundar Srinivasan, Advocate, SR.No. 56295

+2CC to Mr.T.V.Sivakuamr, Advocate, SR.No. 56368 & 56621

Judgment made in  
Second Appeal (MD) No.493 of 2016  
20.03.2018