

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 18.07.2018

Pronounced on : 24.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1527 of 2001

G.Kumar

...Appellant

versus

Sakunthala Ammal

...Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub-Judge, Ponneri passed in A.S.No.31 of 1998 dated 23.06.2000 confirming the judgment and decree of the learned District Munsif Court, Ponneri, passed in O.S.No.113 of 1988 dated 14.10.1996.

For Appellant :Mr.K. Surendranath

For Respondent : Mr.Ravikumar Paul
for Mr.R. Krishnaswamy

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Ponneri in A.S.No.31 of 1998 dated 23.06.2000 confirming the judgment and decree passed by the District Munsif, Ponneri in O.S.No.113 of 1988 dated 14.10.1996. सत्यमेव जयते

2. The appellant herein had filed a suit in O.S.No.113 of 1988 on the file of the District Munsif, Ponneri for declaration of his title over the suit property; for recovery of vacant possession of the suit property after removing superstructure put up in the suit property; for recovery of mesne profits and for permanent injunction restraining the defendant from obtaining any electric service connection for the suit property. The learned District Munsif by the judgment and decree dated 14.10.1996 had dismissed the said suit without costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.31 of 1998 on the file of the Sub-Judge, Ponneri. The learned Sub Judge, Ponneri, by the judgment and decree dated 23.06.2000, had

dismissed the said appeal with costs confirming the judgment and decree passed by the trial court. Feeling aggrieved, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3. The averments made in the plaint are, in brief, as follows:

a) The suit property originally belonged to one S.Lakshmi Kanthammal. She sold the suit property to one Madhav Singh under a registered sale deed dated 15.11.1979. About eight years ago, some months before purchase by the said Madhav Singh, the defendant trespassed into the suit property and unauthorisedly put up a superstructure. When Madhav Singh, after his purchase, demanded the defendant to remove the superstructure and hand over vacant possession of the suit property, acknowledging his title to the suit property, requesting for some time to vacate, the defendant sought for the permission of Madhav Singh to continue her occupation in the suit property. The said Madhav Singh agreed for the same. Thereafter, the occupation of the suit property by the defendant is only a permissive one. But unfortunately, the defendant did not vacate from the suit property. Since the said Madhav Singh had urgent necessity for money, he had sold the suit property to one Subramaniam under a registered sale deed dated 26.03.1995. Subsequently, the said Subramaniam for his urgent need for money, sold the suit property to the plaintiff under a registered sale deed dated 02.08.1985 and thus the plaintiff has become an absolute owner of the suit property.

b) The plaintiff, before purchase of the suit property, informed the defendant about his intention to purchase and asked the defendant to vacate the suit property. Though the defendant informed the plaintiff that she had no objection for the purchase of the suit property by the plaintiff and she promised that she would vacate the suit property within one year, after purchase when the plaintiff demanded for delivery of vacant possession, the defendant refused to vacate the same and hence, he issued a lawyer's notice demanding for vacant possession. The defendant, after receipt of the said notice had sent a reply notice dated 30.09.1987 with false averments. Further, the defendant attempted to get electric service connection for the suit property and hence, the plaintiff had sent another notice dated 17.02.1988. Even thereafter, the defendant tried to get electric service connection and hence, the plaintiff had filed the above suit for the aforesaid reliefs.

4. The averments made in the written statement are, in brief, as follows:

a) It is false to state that the defendant trespassed into the suit property about eight years ago some months prior to the

purchase by Madhav Singh and unauthorisedly put up a superstructure. It is also false to state that the said Madhav Singh demanded the defendant to remove the superstructure and deliver vacant possession and at that time, the defendant acknowledging the said Madhav Singh's title, requested him to grant time for vacating the same and the said Madhav Singh agreed for the same and hence, thereafter the defendant's possession is only a permissive one. Originally, the suit property and the adjacent sites measuring 13 cents belonged to one Lakshmi Kanthammal. The said Lakshmi Kanthammal entered into a sale agreement with regard to the entire 13 cents with three persons viz., Babulal, Pandian and the defendant. It was agreed that the said Babulal and Pandian had to purchase 5 cents each and the defendant had to purchase 3 cents and the said agreement was entered as early as in the year 1974. The defendant had paid her amount to the said Lakshmi Kanthammal through the said Babulal by pledging her jewels. For convenience, the sale agreement was executed in respect of the entire property in the name of Babulal. But to the defendant's surprise, the said Lakshmi Kanthammal registered the sale deeds only in respect of the 10 cents and she did not come forward to register the sale deed in favour of the defendant in respect of the remaining 3 cents.

b) The defendant personally met the said Lakshmi Kanthammal and her son-in-law, who was a practicing advocate and informed the defendant that since the sale agreement is in favour of Babulal, they do not want themselves get into unnecessarily litigation. This was happened in January, 1975. Immediately the said Lakshmi Kanthammal and Babulal attempted to vacate the defendant from the suit property and the same was prevented by the defendant. From that time onwards, the defendant has been in open, peaceful, uninterrupted and continuous possession of the suit property adverse to the interest of Lakshmi Kanthammal and her subsequent purchasers including the plaintiff. As such, the defendant perfected her title to the suit property by adverse possession. The superstructure put up by the defendant was assessed for property tax. While so, the said Babulal with a view to defeat and defraud defendant's rights, colluding with the said Lakshmi Kanthammal created the sale deed in favour of Madhav Singh who was actually working as clerk under Babulal. The said sale deed is not valid and binding upon the defendant. At the instigation of the said Babulal, the said Madhav Singh had sent lawyer's notice and for that, the defendant had sent a suitable reply.

c) The said Babulal made attempts to evict the defendant by force and hence, the defendant had filed a suit against the said Babulal in O.S.134 of 1984 on the file of the Principal District Munsif, Ponneri for the relief of permanent injunction and the said suit was decreed. Only after filing of the said

suit, the said Babulal created a sale deed in favour Subramaniam and the said Subramaniam created a sale deed in favour of the present plaintiff. Even now, it is only the said Babulal who is actually behind the scene. Since the defendant has perfected title to the suit property by adverse possession, the plaintiff is not entitled to get any relief and therefore, she prayed to dismiss the above suit.

5. Based on the aforesaid pleadings, the learned District Munsif, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1. He also examined two more witnesses as PW2 and PW3. He had marked Exs.A1 to A11 as exhibits. On the side of the defendant, the defendant examined herself as DW1. She also examined one more witness as DW2. She had marked Exs.B1 to B27 as exhibits. One document was marked as Ex.X1 through PW3.

6. The learned District Munsif, after considering the materials placed before him, found that the defendant has perfected title by adverse possession. Accordingly, he dismissed the suit without costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.31 of 1998 on the file of the Sub-Judge, Pooneri . The learned Sub-Judge dismissed the said appeal with costs confirming the judgment and decree of the trial court. Feeling aggrieved, the plaintiff has filed the present appeal.

7. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

i) Whether the courts below were right in dismissing the suit accepting the plea of adverse possession pleaded by the defendant, especially when the commencement and continuance of possession is legal and proper, referable to a contract ?

ii) Whether the courts below were right in accepting the plea of adverse possession and dismissing the suit particularly when the possession of the defendant is only permissive possession?

iii) Whether the courts below were right in upholding the defendant's plea of adverse possession, even though the defendant claims title in herself?

iv) Whether the court below were right in dismissing the suit on the ground of mere possession of the suit property by the defendant even though the defendant has no title to the property?

v) Whether the courts below were right in dismissing the suit by accepting the plea of adverse possession even though the defendant/respondent was not in open, continuous and un-interrupted possession of the suit property?

vi) Whether the Lower Appellate Court was right in not considering the registered sale deeds, Exhibits A-1 to A3?

vii) Whether the Courts below had not erred by its failure to consider the material documents?

Viii) Whether the Courts below had not erred in misreading the evidence thereby constituting an error of law?

ix) Whether the Courts below were right in throwing the onus of burden of proof on to the shoulders of the plaintiff/Appellant to prove that the defendant has not prescribed title by adverse possession over the suit property?

x) Whether the Courts below were right in holding that the defendant/respondent had prescribed title by adverse possession even though the defendant has not proved her un-interrupted possession of the suit property for the statutory period?

xi) Whether the Courts below were right in dismissing the suit on the ground that the defendant/respondent had prescribed title by adverse possession even though there are lot of discrepancies in the evidence let in by the defendant regarding her possession of the suit property?

xii) Whether the Courts below had not erred to see that the defendant/respondent was not residing in the suit property, as per her own documents Ex.B.6, B.9 to B.11, even as late as the year 1984?

8. Heard Mr.K.Surendranath, learned counsel for the appellant and Mr.Ravikumar Paul for Mr.R.Krishnaswamy, learned counsel for the respondent.

9. Question Nos.i to xii:

The learned counsel for the appellant/plaintiff has submitted that the courts below failed to consider that since the defendant is pleading adverse possession, the burden is upon her to prove that she has perfected title by adverse

possession. He further submitted that the courts below failed to consider that the defendant has not specifically pleaded that on which date she came into possession of the suit property. He further submitted that the oral evidence of PW1 and PW3 would show that the plaintiff trespassed into the suit property only some months before the purchase by Madhav Singh. He further submitted that the said Madhav Singh had purchased the suit property under a registered sale deed dated 15.11.1979, whereas the above suit was filed on 29.02.1988 i.e., within twelve years from the date of trespass made by the defendant and hence the suit is not barred by limitation. He further submitted that the evidence of PW1 to PW3 would clearly show that the said Madhav Singh after purchase, demanded the defendant to remove the superstructure and hand over the vacant possession of the suit property and at that time, the defendant acknowledged the title of the said Madhav Singh and requested to grant some time to vacate the suit property and also sought permission to continue her occupation in the suit property and hence the defendant's possession is only a permissive one and that being so, the courts below ought not to have held that the defendant has perfected title to the suit property by adverse possession. He further submitted that since the defendant has taken a plea of adverse possession, the burden is upon her to prove adverse possession, but the courts below picked up the holes in the evidence of the PW1 to PW3 and held that the plaintiff has failed to prove that when actually the defendant came into possession of the suit property. He further submitted that since the defendant is trying to defeat the rights of the true owner (plaintiff), it is for him to prove adverse possession and hence he prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and decree the suit as prayed for.

10. The learned counsel for the appellant/plaintiff in support of the aforesaid contentions, relied upon the following decisions:

1. Abubakar Abdul Inamdar (dead) by her LRs. and others Vs. Harun Abdul Inamdar and others, AIR 1996 SC 112
2. Dr. Mahesh Chand Sharma Vs. Raj Kumari Sharma (Smt) and Others (1996) 8 SCC 128.
3. Mohan Lal (deceased) through his LRs. Kachru and Others Vs. Mirza Abdul Gaffar and another (1996) 1 SCC 639
4. Veeramuthu Vs. Puttalayee 1997 (2) CTC 245
5. Konda Lakshmana Bapuji Vs. Govt. of A.P. and Others (2002) 3 SCC 258.
6. Karnataka Board of Wakf Vs. The Govt. of India (2004) 10 SCC 779.
7. Tmt. A. Vedanayagam & Others Vs. Annakili & 5 others 2006 -2- L.W. 742.

11. Per contra, learned counsel for the respondent/defendant has submitted that the evidence of DW1 and DW2 would clearly show that the defendant has trespassed into the suit property even in the year 1974 and put up a superstructure therein. He further submitted that the evidence of PW1 and PW3 would clearly establish that the request made by the said Madhav Singh, Babulal and the plaintiff have been declined by the defendant and continues to be in possession of the suit property for more than statutory period without any interruption and therefore the contention of the plaintiff that the defendant's possession is only permissive one is false. He further submitted that the evidence of PW1 to PW3 itself would show that neither Madhav Singh nor the plaintiff's vendor viz., Subramaniam have not taken steps for recovery of possession of the suit property through courts of law and that itself shows that they have abandoned their rights over the suit property. He further submitted that the courts below taking into consideration of all the aforesaid facts have rightly rejected the claim of the plaintiff and in the said concurrent factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

12. Learned counsel for the respondent, in support of the aforesaid contentions, has relied upon the following decisions:

1. Raruha Singh Vs. Achal Singh & Others Vs. CDJ 1960 SC 170: 1961 AIR SCC 1097.
2. Kshitish Chandrabose Vs. Commissioner of Ranchi, CDJ 1981 SC 030: AIR 1981 (SCC) 707; 1981 (2) SCC 103.
3. Devaki Pillai Vs. Gouri Amma CDJ 2002 Ker HC 610 : 2003 (1) KLT 421.

13. The suit property is a vacant site measuring about 3 cents situated in T.S.No.100/1 C.2 and it was a portion of S.No.100/1C measuring about 13 cents. It is an admitted fact that originally the entire extent of 13 cents belonged to one Lakshmi Kanthammal.

14. The said Lakshmi Kanthammal entered into a sale agreement with one Babulal (PW3) on 23.11.1973, to sell the entire extent of 13 cents for Rs.16,000/-. A xerox copy of the said sale agreement has been produced by PW3 and marked as Ex.X.1. A perusal of the said document would show that on the date of the agreement itself that the PW3 viz., Babulal had paid a sum of Rs.6000/- as advance and it was agreed that the balance amount of Rs.10,000/- to be paid before 31.12.1973 and get the sale deed executed. Though in the said document, it is not specifically stated that the possession of the said property was given to the said Babulal on the date of agreement itself, oral evidence of PW3 and the recitals found in Ex.A3 (Registered

sale deed executed by Lakshmi Kanthammal in favour of Madhav Singh dated 15.11.1979) would show that the possession of the suit property was given to PW3 in the month of December 1973 itself when the said Lakshmi Kanthammal received the balance sale consideration. Further, the evidence of PW3 and Ex.A3 would show that the said Lakshmi Kanthammal had sold 10 cents of land to third parties as per the instructions of Babulal in the year 1973 itself and only the possession of the suit property measuring 3 cents was given to the said Babulal.

15. According to the plaintiff, some months before the purchase by the said Madhav Singh, the defendant trespassed into the suit property and unauthorisedly put up a superstructure. But the case of the defendant is that the original owner Lakshmi Kanthammal entered into the sale agreement in respect of the entire extent of 13 cents to sell 5 cents each to Babulal and Pandian and 3 cents to her. The sale agreement was executed in the name of Babulal. Her further case is that she has paid the sale consideration to the said Lakshmi Kanthammal through Babulal in the year 1974 itself, but the said Lakshmi Kanthammal executed sale deed in favour of Babulal and Pandian only in respect of 10 cents and in respect of remaining 3 cents, she made a request to execute the sale deed in her favour, but the said Lakshmi Kanthammal did not come forward to register the sale deed in favour of her. Her further case is that she occupied the suit property even in the year 1974 itself and put up a superstructure and from that date onwards, she is in possession of the suit property continuously, openly and without any interruption and hence, she perfected title by adverse possession.

16. Since the defendant has taken a plea of adverse possession, the burden is upon her to establish that she has been in possession and enjoyment of the suit property openly, continuously and with the knowledge of true owner over the statutory period. The defendant has pleaded in her written statement that in January, 1975 itself, the said Lakshmi Kanthammal and Babulal attempted to evict the defendant from the suit property and the defendant prevented the same. In Ex.B1 notice dated 10.07.1980 which has been issued by the said Madhav Singh through his advocate, it is stated that in or about the month of March, 1977, the defendant requested the said Babulal to permit her to occupy the said property having the temporary hut and she undertook to remove the hut and vacate site whenever required by him. But in the plaint, the plaintiff has stated that some months before the purchase made by the said Madhav Singh, the defendant encroached the suit property and unauthorisedly put up the superstructure. The said Babulal, while examining himself as PW3, deposed that in the month of April, 1979, he went to Rajasthan and after two months, he came

back and at that time, he found that the hut was put up in the suit property and he was informed that the said superstructure was put up by the defendant.

17. The statement of the plaintiff and Babulal are not consistent with regard to the fact that when the defendant occupied the suit property and also to the fact that whether she occupied the suit property with the permission of Babulal or she trespassed into the suit property. For Ex.B1 notice, the defendant has sent a reply through her advocate vide Ex.B2 dated 08.08.1980. In the said reply notice itself, she has clearly stated that she has occupied the suit property and put up superstructure in the year 1974 itself. She also marked a copy of the said reply notice to the original owner Lakshmi Kanthammal and Babulal (PW3). She also denied the averments made in Ex.B1 notice that she came into possession of the suit property only with the permission of Babulal. The said Madhav Singh has not sent any rejoinder denying the claim made by the defendant in Ex.B2 notice and also has not taken any steps to file a suit for delivery of possession of the suit property. The defendant sent a notice to the said Lakshmi Kanthammal on 24.09.1976 through registered post vide Ex.B9 and the said Lakshmi Kanthammal refused to receive the said notice and returned the same and the returned postal cover has been marked as Ex.B10. In Ex.B9 itself, the defendant has categorically stated that she paid advance in 1974 itself and put up a hut and residing there and that in 1975, the said Lakshmi Kanthammal colluding with Babulal had attempted to evict her from the suit property. So, it is clear that even on 24.09.1976 through Ex.B9, the defendant clearly asserted that she is in possession of the suit property by putting up superstructure from the year 1974 and the said Lakshmi Kanthammal made attempts to evict her in the year 1975 and the same was resisted by her. It is also seen from Ex.B6 that the defendant had issued a lawyer's notice dated 07.07.1984 to Lakshmi Kanthammal, Babulal and Madhav Singh wherein also she has clearly asserted that she is in possession of the suit property from the year 1974 and since those persons have attempted to evict her by force, she lodged a complaint before Cholvaram Police Station. Ex.B7 is the postal acknowledgment which shows that the said Babulal had received the said notice on 18.07.1984 but he has not chosen to send any reply. Since the plaintiff, Madhav Singh and Babulal have taken different stand with regard to the fact that when the defendant has occupied the suit property, the oral and documentary evidence adduced by the defendant would probabilise her case that she has been in possession and enjoyment of the suit property from the year 1974, continuously, openly and without any interruption.

18. In Abubakker Abdul Inamdar (dead) by her LRs and others Vs. Harun Abdul Inamdar and Others (cited supra), the Hon'ble Supreme Court in paragraph No.5 has held as follows:

" 5. With regard to the plea of adverse possession, the appellant having been successful in the two courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single 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. It is true that some evidence, basically of Municipal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court caught the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was rightly reversed by the High Court requiring no interference at our end."

19. In Dr. Mahesh Chand Sharma Vs. Rajkumari Sharma (Smt) and Others (cited supra), the Hon'ble Supreme Court in paragraph No.37 has held as follows:

"37. In this connection, we may emphasise that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendant Nos.2 to 5 as the case may be is rejected."

20. In Mohan Lal (deceased) through his LRs. Kachru and others Vs. Mirza Abdul Gaffar and another (cited supra), the Hon'ble Supreme Court in paragraph Nos.3 and 4 has held as follows:

"3. The only question is whether the appellant is entitled to retain possession of the suit property. Two pleas have been raised by the appellant in defence. One is that having remained in possession from 8-3-1956, he has perfected his title

by prescription. Secondly, he pleaded that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882 (for short 'the Act')."

4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi. nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant. "

21. In Veeramuthu Vs. Puttalayee (cited supra), this court, in paragraph No.12 has observed as follows:

"12. The question of adverse possession is, indisputably, a mixed question of law and fact and, therefore, often held to be merely a matter for the Court to decide, whether on the peculiar facts of a particular case possession of the claimant is such as would constitute, in law, adverse possession so as to ripen into title on account of such possession being actual and uninterrupted, open and notorious, exclusive, adequate in continuity, publicity and extent and under a claim of right for the statutory period. It is also an axiomatic principle that possession to constitute must have a competitor capable of swing and exercising due diligence to take steps to oust the adverse possessor. The possession of a party by virtue of an injunction obtained by him against his opponent cannot be held to be adverse to and against the real title holder against whom such injunction has been obtained by the person asserting competing title and claiming adverse possession. In Friends Bureau v. Corporation of Calcutta, AIR 1980 Cal. 57, a Division Bench of the Calcutta High Court observed as follows:

"30. In the facts and circumstances of the case, we are also of view that the plea of adverse

possession cannot be taken against a party which was kept out of possession by the process of law or had no right or entry in consequence of the order of the Court. In this case, the decree holder could not take the writ of delivery of possession earlier because the execution case itself was stayed by the order of the court. It is well established principle that prescription does not run against a party which is unable to act."

22. In *Konda Lakshmana Bapuji Vs. Govt. of A.P. and Others* (cited supra), the Hon'ble Supreme Court, in paragraph No.53, has held as follows:

"53. The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has 'animus possidendi' to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect title by adverse possession as against the Government is 30 years."

23. In *Karnataka Board of Wakf Vs. The Govt. of India*, (cited supra), the Honourable Supreme Court, in paragraph No.11, has observed as follows:

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the

title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma."

24. In Tmt.A.Vedanayagam & Others Vs. Annakili & 5 others, (cited supra), a Division Bench of this court in paragraph No.25 has held 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."

25. From the aforesaid decisions, it is clear that the person who claims adverse possession has to plead and prove that he has perfected title by adverse possession. In this case, the defendant has pleaded in her written statement that she is in possession and enjoyment of the suit property exclusively, openly, continuously and hostile to the true owner from the year 1974. She has asserted the said right in the notice dated 24.09.1976 which was sent by her to the original owner Lakshmi Kanthammal vide Exs.B9. Subsequently, when the purchaser of the suit property viz., Madhav Singh sent a lawyer's notice dated 10.07.1980 vide Ex.B1, the defendant in the reply notice dated 08.08.1980 vide Ex.B2 has once again asserted that she has been in possession of the suit property from the year 1974 by putting up a superstructure and she also declined the request made by the said Madhav Singh to vacate the suit property, but the said Madhav Singh did not send any rejoinder denying the claim made by the defendant and also he has not filed any suit for recovery of possession.

26. On the contrary, he sold the suit property to one Subramaniam vide Ex.A2 sale deed dated 26.03.1985. In the said sale deed, he has stated that he is in possession of the suit property and he delivered the possession to the said Subramaniam. Subsequently, the said Subramaniam sold the suit

property to the plaintiff vide Ex.A1 sale deed dated 02.08.1985. In the said document also, it is stated that the possession has been given to the plaintiff but actually the aforesaid persons did not take possession of the suit property. As already pointed out that with regard to the fact that when she came into possession of the suit property and in what capacity the defendant came into possession, the said Madhav Singh, Babulal and the plaintiff took different stands. All these facts would probabalise the case of the defendant. Therefore, this court is of the view that the defendant has pleaded and proved the adverse possession.

27. In Raruha Singh Vs. Achal Singh & Others, (supra), the Hon'ble Supreme Court in paragraph No.8 has observed as follows:

"8. Incidentally we may point out that the High Court should not have entered into the question of appreciating the evidence as it appears to have done in the last portion of its judgment. This Court has repeatedly pointed out that in second appeal the High Court's jurisdiction is confined to questions of law. In this particular case the District Court had pointed out that the trial court had made an obvious mistake in regard to the date of the construction of the Panbharan. After all the questions at issue had to be tried in the light of oral evidence and surrounding circumstances. In such a case, if the appellate Court recorded definite findings it was not open to the High Court to attempt to reappriciate that evidence. However, the decision of the High Court is based principally on the view that the High Court took about the application of S. 17 (c) of the Easements Act to the allegations made by the appellant in the plaint; and as we have held in the circumstances of this case it was not open to the High Court to adopt such a course. If the channel represented by the red dotted line on the map was alleged to be an artificial channel there can be no doubt that S.17 (c) would be inapplicable."

28. From the aforesaid decision, it is clear that in the Second Appeal, the High Court's jurisdiction is confined to the question of law. In this case, the trial court has held that the defendant has proved adverse possession and the same has been confirmed by the first appellate court. So, in the said concurrent factual findings, this court cannot interfere.

29. In Kshitish Chandrabose Vs. Commissioner of Ranchi, (supra), the Hon'ble Supreme Court has observed as follows:

"We have gone through the judgment of the High Court dated 17th February, 1967 and we find that the High Court has reversed the findings of fact recorded by the two courts below on the question of adverse possession without at all displacing the reasons given by the courts below or considering the important circumstances proved and relied on by them. The High Court based its decision on three circumstances: In the first place it was of the opinion that no clear case of adverse possession was put forward by the plaintiff in his plaint, and all that had been pleaded was that certain building materials were placed on the land in dispute for some time. Here, with due respect, we are constrained to observe that the High Court committed a serious error of record. The allegations in para 6, 7, 8, 9, 15, 17 and 19 are clear and specific to show the nature of the overt acts committed by the appellant to the knowledge and notice of the defendant. It was not a question of a stray or sporadic act of possession exercised by the plaintiff but the plaint shows that there was a consistent course of conduct by which the plaintiff asserted his hostile title against municipality ever since 1912. It has also been clearly alleged in the plaint that in spite of the objection taken by the municipality the plaintiff had asserted his hostile by giving notice to the municipal authorities and in the year 1953 even in a criminal case started between the parties it was found that the plaintiff was in possession. The High Court has not at all adverted to any of the circumstances which have been considered by the courts below. For instance, one of the most important facts which clearly proved adverse possession was that the plaintiff had let out the land for cultivatory purpose and used it himself from time to time without any protest from the defendant. During the period of 45 years no serious attempt was made by the municipality to evict the plaintiff knowing full well that he was asserting hostile title against the municipality in respect of the land. For these reasons, therefore, the first ground on which the High Court based its finding cannot be supported. It was then observed by the High Court that mere sporadic acts of possession exercised from time to time would not be sufficient for the acquisition of title by adverse possession. As discussed above, the High Court has not at all cared even to go through the evidence regarding the nature of the acts said to have been

committed by the appellant nor to find out whether they were merely sporadic or incidental. Another reason given by the High Court was that the adverse possession should have been effective and adequate in continuity and in publicity. Here, the High Court has gone wrong on point of law. All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded but that is not the case here. The findings, however, clearly show that the possession of the plaintiff was hostile to the full knowledge of the municipality. In this connection we might extract below the well considered findings recorded by the trial Court and Additional Judicial Commissioner both on the question of title and that of adverse possession."

30. From the aforesaid decision, it is clear that law requires that the possession must be open and without any attempt and concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded but that is not a case here. The findings of the courts below would clearly show that the possession of the defendant was hostile to the full knowledge of the original owner and subsequent purchasers. As already pointed out that the defendant asserted her hostile title against the original owner and subsequent purchasers ever since 1974 and therefore, in view of the aforesaid decision also, in the present case, the defendant has proved her adverse possession.

31. In Devaki Pillai Vs. Gouri Amma, (supra) in paragraph Nos.10 and 16, the Kerala High Court has observed as follows:

"10. In Anchal Reddi v. Ramakrishna Reddiar (AIR 1990 SC 553) the Supreme Court held that a person claims to be in possession under an executory contract cannot claim adverse possession since his possession commenced under an agreement of sale though the parties contemplated an execution of a registered sale deed. In such a case the person in possession is aware of the fact that he is in possession of the property belonging to the vendor and that the former's title has to be perfected by a duly executed registered deed. The Supreme Court also observed that in a case where under an oral transfer and or under an unregistered sale deed transfers the property and puts the transferee in

possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property, in such a case the owner of the property does not retain any vestige of right in regard to the property and the transferee retains the same with clean animus that he has become the absolute owner of the property....."

16. It may not be permissible for this Court in second appeal to reappreciate the evidence and come to a different conclusion. Even if a person enjoys the property as his own for a large number of years and for more than 12 years before the date of suit and if the true owner does not take any action within the period of limitation it can be said the person in possession has perfected title by adverse possession as the three conditions of 'peaceful, 'open, and 'continuous' possession to constitute adverse possession are satisfied by him. The burden to plead and prove such possession is on him and whether he has succeeded in that attempt is a question of fact."

32. From the aforesaid decision also, it is clear that it may not be permissible for the High Court in second appeal to re-appreciate the evidence and come to a different conclusion. It is also clear that the person who claims adverse possession, has to satisfy the three conditions of 'peaceful', 'open' and 'continuous' possession. In this case, the defendant has satisfied the aforesaid three conditions viz., 'peaceful', 'open' and 'continuous' possession for more than twelve years. Further, as already pointed out that the courts below have concurrently held that the defendant has perfected title by adverse possession and in the said factual concurrent findings, this court cannot interfere. Accordingly, the aforesaid substantial questions of law are answered against the appellant/plaintiff.

33. In the result, the second appeal is dismissed. No costs.

sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Sub-Judge,
Ponneri.
2. The District Munsif Court,
Ponneri.
3. The Section Officer,
V.R. Section,
Madras High Court.

+1cc to Mr.V.Ajay Khose, Advocate Sr.5912
+1cc to M/S.G.R.Selvarajan, Advocate Sr.5640

S.A.No.1527 of 2001

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