



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A. (MD) No.71 of 2015

and

M.P. (MD) No.1 of 2015

Bharathidasan ... Appellant/Appellant/Defendant
vs.

Shanmugavel ...Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.35 of 2014 on the file of the Principal Sub Court, Tirunelveli, dated 30.10.2014 confirming the judgment and decree made in O.S.No.528 of 1991 on the file of the First Additional District Munsif Court, Tirunelveli, dated 04.10.2013.

For Appellant : Mr.V.Meenakshisundaram

For Respondent: Mr.R.Manimaran

JUDGMENT

The unsuccessful defendant in both the Courts below is the appellant before this Court.

2.The above second appeal emanates from the judgment passed in the suit O.S.No.528 of 1991 which is a suit filed for bare injunction. The parties are referred to in the same array as in the suit.

3.The property in question is comprised in R.S.No.490, which is now comprised in Natham S.No.985/1, in Munneerpallam Village, Melapalayam, Tirunelveli District. The property is described as a vacant site measuring east to west 5 carpenter feet and north to south 14^{1/2} carpenter feet together with a mud-walled hut with a damaged thatched roof. This property is said to be situated on the following side:

South of : Easwari Ammal Kovil street

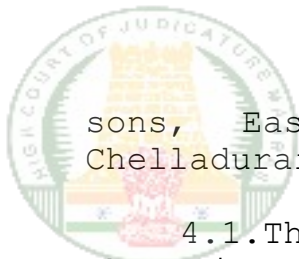
East of : Sudalaimadan's vacant site

North of : the east-west street

West of : Sudalaimadan's house.

PLAINTIFF'S CASE:

4.The plaintiff had come forward with the suit stating that the suit property originally belonged to one Veerakudumban. Veerakudumban had two sons, Subban and Pachaimal. Subban had two



sons, Easwaran and Velayutham and Pachaimal had one son, Chelladurai.

4.1.The plaintiff would contend that in the family partition, the suit property was allotted to the share of Velayutham and he has been in exclusive possession and enjoyment of the same. On 02.05.1977, the said Velayutham had sold the property to the plaintiff for a valuable consideration of Rs.500/- and the recitals of the said deed would clearly state that the said property fell to the share of Velayutham under a partition. He would further contend that he had also filed a suit O.S.No.303 of 1983 against Pachaimal for the very same relief of permanent injunction, and had also obtained an order of interim injunction and that the said suit was dismissed for default on 14.06.1990 and an application has been made to restore the said suit and the same is pending.

4.2.The plaintiff would further contend that Pachaimal thereafter had instigated the defendant to interfere in the plaintiff's possession and enjoyment of the suit property. When the property was purchased by the plaintiff, there was a hut and two palm trees and karuvai trees. According to the plaintiff, the hut had fallen down and the property was being enjoyed by storing hayrick and manure. He would further contend that he and his predecessors in title had also perfected title by adverse possession. Originally, the property was comprised in R.S.No.490 and now, the property is comprised as Natham S.No.985/1. On 25.08.1991, the defendant had attempted to disturb the plaintiff's possession, which was successfully prevented by the plaintiff and therefore, the plaintiff was constrained to file the suit in question.

DEFENDANT'S CASE:

5.The defendant had filed a written statement *inter alia* contenting that the suit property did not belong to Velayutham, the vendor of the plaintiff and consequently, the sale in favour of the plaintiff was invalid. He would admit that the property originally belonged to Veerakudumban, who had purchased the property under a registered sale deed dated 03.01.1924.

5.1.The defendant would further contend that the said Veerakudumban was in possession and enjoyment of the property throughout his life time and thereafter, his two sons had divided the property equally amongst themselves. The western half was allotted to the share of Subban and a similar extent was allotted to Pachaimal on the east. Pachaimal was in possession and enjoyment of his portion throughout his life time and thereafter, his only son, Chelladurai was in enjoyment of the said property by storing hayrick and manure in the vacant site. He would further contend that the plaintiff, who claims exclusive right to the entire property, has not given any details as to how Pachaimal was allotted



a share in the suit property and further, there are no details about the partition between Easwaran and Velayutham.

5.2.The defendant would further contend that he is a *bona fide* purchaser from the said Chelladurai under a registered sale deed dated 24.07.1991. As regards the plea of adverse possession projected by the plaintiff, it is the defense that the plaintiff could not plead adverse possession since he had filed a suit in the year 1983 against the vendor of the defendant subsequent to his purchase in the year 1977 and further his predecessors in title cannot claim adverse possession as they are the co-owners. Therefore, the defendant sought for a dismissal of the suit.

PROCEEDINGS PRIOR TO REMAND:

6.The learned I Additional District Munsif, Tirunelveli, who had framed 8 issues in the suit, by his judgment and decree dated 22.01.1996, was pleased to dismiss the suit by returning a finding that the plaintiff was not entitled to the decree for injunction.

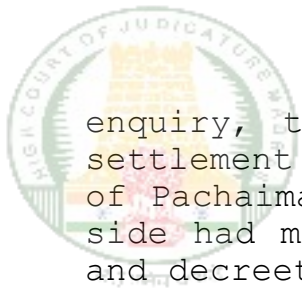
6.1.During trial, on the side of the plaintiff, the plaintiff examined himself as P.W1, one Eswaran was examined as P.W2 and 4 documents were marked as Ex.A1 to Ex.A4. On the side of the defendant, the defendant examined himself as D.W1, one Ramalingam and Natarajan were examined as D.W2 and D.W3 respectively and 6 documents were marked as Ex.B1 to Ex.B6.

6.2.Challenging the said judgment and decree dated 22.01.1996, the plaintiff has filed an appeal in A.S.No.27 of 1996 on the file of the Additional Subordinate Judge, Tirunelveli. The learned Judge had reversed the judgment and decree passed by the learned I Additional District Munsif, Tirunelveli. Challenging the same, the defendant has filed S.A.(MD) No.112 of 1999 before this Court and this Court by order dated 17.01.2013 had passed the following orders:

18.In fine, this Second Appeal is allowed without costs and the judgments and decrees passed by the Courts below are set aside and original suit No.528 of 1991 is remitted to the file of the Additional District Munsif Court, Tirunelveli. Both parties are entitled to adduce additional evidence. The Additional District Munsif Court, Tirunelveli is directed to dispose of Original Suit No.528 of 1991 before the end of June, 2013 and report the same to the Registry without fail. The Court fee paid on the appeal memorandum is ordered to be refunded to the appellant/defendant forthwith. Consequently, connected miscellaneous petition is closed.

THE JUDGMENT OF THE TRIAL COURT AFTER REMAND:

7.After the suit was remitted to the trial Court for fresh
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enquiry, the plaintiff on his side had marked Ex.A5, which is a settlement deed dated 18.04.1941 executed by Veerakudumban in favour of Pachaimal and his wife, Arumugathammal, and the defendant on his side had marked Ex.B7 and Ex.B8, which were the copies of the fair and decreetal order in I.A.No.1067 of 1991 and O.S.No.303 of 1983.

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7.1.The learned I Additional District Munsif, Tirunelveli, on considering the evidence on record had proceeded to decree the suit. The trial Court has arrived at a conclusion that the plaintiff was entitled to the decree for injunction by holding that the defendant had not denied the partition between Subban and Pachaimal and further since Veerakudumban had executed a settlement deed in favour of his son Pachaimal, there is a possibility that the suit property and its larger extent had been allotted to the share of Subban and consequently, the plaintiff, who claims title through the son of Subban, was entitled to the decree as prayed for. The learned District Munsif had further held that the plaintiff was entitled to the decree since the possession followed title as the suit property was a vacant site.

APPELLATE COURT:

8.Challenging the said decree and judgment dated 04.10.2013, the defendant had filed A.S.No.35 of 2014 on the file of the Principal Sub Court, Tirunelveli. The learned Sub Judge, by his judgment and decree dated 30.10.2014, confirmed the judgment and decree of the trial Court by dismissing the appeal. Aggrieved by the same, the defendant has filed the present appeal.

SECOND APPEAL:

9.This Court has admitted the above second appeal on the following substantial questions of law:

1.Whether the Courts below are right in holding that the present suit is not barred under Order 9 Rule of Civil Procedure Code when the respondent/plaintiff himself filed the formal suit in O.S.No.303 of 1983 on the file of the District Munsif Court, Tirunelveli against the vendor of the appellant/defendant on the basis of the very same source of title for the very same relief came to be dismissed for default on 14.06.1990?

2.When the title of the respondent/plaintiff has been denied all along and even in the previous suit filed by him in O.S.No.303 of 1983 on the file of the District Munsif Court, Tirunelveli, which was dismissed for default, whether the present suit for bare injunction is maintainable when there is a dispute regarding title between the parties?

3.Whether the Courts below are correct in holding that the property settled by the original owner Veerakudumban in favour of one of his son's by his name Pachammal and his wife Arumugathammal for enjoying the same till his life time under Ex.A5 has to be considered as allotment of property to the



share of Pachammal in respect of the estate of Veerakudumban?

4. Whether the respondent/plaintiff has not filed any document to prove his possession as such whether the Courts below are correct in granting permanent injunction in favour of the respondent/plaintiff?

5. Whether the Courts below are correct in accepting the alleged oral partition effected between the sons of Veerakudumban namely Subban and Pachammal on the basis of the oral evidence of P.W1 who is a stranger to the family and admittedly does not know even about the execution of Ex.A5 and thus the above said finding regarding oral partition is perverse and warrants interference?

SUBMISSION:

10. Mr. V. Meenakshisundaram, learned counsel appearing for the defendant would contend that this Court in its judgment remanding the suit O.S.No.528 of 1991 had observed that the plaintiff has not given any explanation with regard to Ex.A3 and further, the document, which was sought to be marked as an additional document (which was marked after remand as Ex.A5), has not been referred to in the plaint. The learned Judge has in fact observed as follows:

14. In fact, this Court has scanned the entire pleadings mentioned in the plaint and ultimately found that no explanation has been given with regard to the properties which have been dealt with under Ex.A3.

11. The remand was only for the purpose of marking Ex.A5, settlement deed since without marking the said document in the manner known to law, the substantial questions of law could not be decided. The learned counsel therefore would contend that the remand was only for the limited purpose of marking Ex.A5. He would further contend that there is no explanation forthcoming from the plaintiff as to how the property of Veerakudumban, to which, both of his sons were equally entitled to, has been exclusively allotted to the share of Subban. This explanation has not been provided anywhere in the pleading and it is impossible to trace the title of the plaintiff to the suit property. Even after the remand, the plaintiff has not taken steps to amend the pleadings.

12. The learned counsel would further contend that the earlier suit filed by the very same plaintiff had been dismissed for default and the application filed to restore the suit with a delay had also been dismissed and therefore, the judgment and decree in O.S.No.303 of 1983 had attained finality. Therefore, the present suit O.S.No.528 of 1991 was clearly barred by the provisions of Order IX Rule 9 of the Code of Civil Procedure. He would further argue that the suit for bare injunction was not maintainable without seeking the relief of declaration particularly when the title of the plaintiff to the suit property has been questioned.



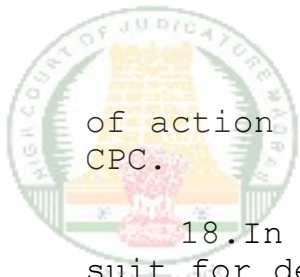
13.The learned counsel would further argue that the suit has been decreed only on the ground of probabilities and not on definite pleadings. In fact the evidence adduced by the plaintiff as P.W1 with reference to his title to the property has not been narrated in the plaint. The plaintiff had during the course of his oral evidence submitted that there was a family arrangement between Subban and Pachaimal. However, such a statement is not available in the plaint. Further, after remand also the plaintiff has not proceeded to amend the pleadings, particularly when in the earlier judgment prior to remand, this Court has held that there is no explanation given with regard to deal with Ex.A3.

14.The learned counsel drew the attention of this Court to the fact that in the earlier suit, which the plaintiff had filed against the said Chelladurai, son of Pachaimal, the plaintiff had raised the very same contention that the suit property was a vacant site consisting of two palm trees and karuvai trees and that the hut had fallen down and that the defendant therein was attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property.

15.However, in the present suit, the plaintiff had contended that he had filed a suit against the said Pachaimal in O.S.No.303 of 1983 and had obtained an order of interim injunction against him and further, the learned counsel would contend that it was Pachaimal, who has instigated the defendant to disturb the plaintiff's peaceful possession of the suit property. The learned counsel would submit that such a statement has been made when Pachaimal had died long back and therefore, the contentions in the pleadings were totally false.

16.The learned counsel would further contend that the present suit has been filed on the identical cause of action as pleaded in the earlier suit and therefore, the present suit was barred by the provisions of Order IX Rule 9 of the Code of Civil Procedure. The cause of action pleaded in the present suit is illusory and no fresh cause of action has arisen after the suit O.S.No.303 of 1983.

17.In support of this argument, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in the case of **Suraj Rattan Thirani and others Vs. Azamabad Tea Co. Ltd., and others** reported in **AIR 1965 Supreme Court 295 (V 52 C 53)** and would place reliance on paragraph No.30 therein, wherein, the Hon'ble Supreme Court has held that the bar under Order IX Rule 9 of CPC would apply where there were identical cause of action. He would rely upon the judgment of this Court in the case of **Ranjith Ammal Vs. Sivasubramanian** reported in **2010 (2) CTC 631**. He would also refer the judgment of the Hon'ble Supreme Court in **CA.No.6424 of 2019**, where, the Hon'ble Supreme Court has held that the very same cause



of action is clearly barred by the provisions of Order IX Rule 9 of CPC.

18. In support of his argument, regarding the failure to seek a suit for declaration when a cloud on title is cast, he would rely on the judgment of the Hon'ble Supreme Court in the case of **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by lrs., and others** reported in **(2008) 4 Supreme Court Cases 594**.

19. *Per contra*, Mr.R.Manimaran, learned counsel appearing for the plaintiff would contend that the documents filed by the plaintiff particularly, Ex.A3 and Ex.A5 would clearly demonstrate that the suit property and its adjacent property on the west had been allotted to the share of Subban's sons since Veerakudumban had settled the property to the south of the suit property in favour of Pachaimal and his wife, Arumugathammal. He would further contend that the description of four boundaries would clearly demonstrate the said fact.

20. The learned counsel would further contend that the suit is not barred by the provisions of Order IX Rule 9 of the Code of Civil Procedure as in the earlier suit, the cause of action was the threat to the plaintiff's possession caused by the defendant's vendor, whereas, the present suit has been instituted on account of the interference by the defendant. Further, he would contend that the judgments relied upon by the defendant would not apply to the facts of this case.

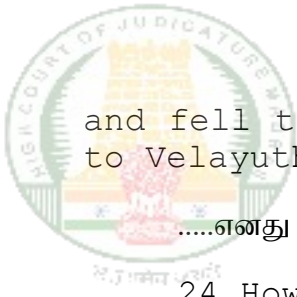
21. The learned counsel would further contend that the scope of interference in this appeal is limited and such concurrent finding of the fact based on appreciation of facts and evidence binding on the Court could be interfered only if such findings are against the provisions of law and against the pleadings or evidence or wholly perverse. In the instant case there is no such reason for interference. In support of this argument, the learned counsel would place reliance on the judgment of the Hon'ble Supreme Court in the case of **T.Ramalingeswara Rao (dead) thr. LRs., and another Vs. N.Madhava Rao and others** reported in **2019 (3) MWN (Civil) 208**.

DISCUSSION:

22. The arguments of the counsels can be broadly classified into the following heads:

A) LACK OF PLEADINGS:

23. The plaintiff has come forward with suit for bare injunction. The plaintiff is claiming title to the suit property on the basis of the sale deed dated 02.05.1977 executed by one Velayutham in his favour. The said sale deed has been marked as Ex.A1 and the vendor, Velayutham would assert ownership on the basis that the suit property in question was his ancestral property



and fell to his share in a partition. The sale deed with reference to Velayutham's right would read as follows:

.....எனது பித்தராஜ்ஜிதமாய்ப் பாத்தியப்பட்டதும் என் பாகத்துக் கிடைத்தும்.....

24.However, no details regarding the partition are stated. In fact the plaintiff in his plaint has contended as follows:

3.The schedule property originally belonged to one Veerakudumban. He had two sons by name Subban and Pachaimal. Subban had two sons by name Eswaran and Velayutham. In the family partition, the schedule property fell to the share of Velayutham. The said Velayutham was in exclusive possession and enjoyment of the schedule property.

25.A reading of the above would indicate that the partition had taken place between Subban, Pachaimal and their respective children. The total extent of the suit property and its larger extent is as follows:

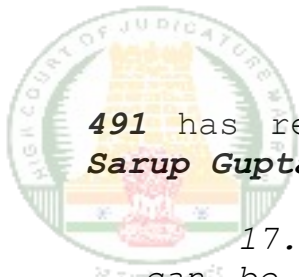
East-West	:10 carpenter feet
North-South	:14 ^{1/2} carpenter feet

26.There is no explanation forthcoming as to how when both Subban and Pachaimal are entitled to a equal share, half share in the above lands has been allotted exclusively to the share of the plaintiff's vendor, who is one of the sons of Subban. Nowhere in the plaint is there any pleading as to how and why Pachaimal has not been allotted a share. The plaintiff, who claims title under a sale deed dated 02.05.1977, has also claimed that he has perfected title by way of adverse possession. Therefore, the plaintiff has recognized a pre-existing right to Pachaimal and his son Chelladurai to the suit property.

27.The plaintiff has not come out with a clear case as to how the plaintiff's predecessors in title had obtained title to the suit property. The plaintiff would during his evidence try to prove his title by relying upon the boundary recitals given in Ex.A3 and also by presuming that in view of Ex.A5, settlement deed having been executed by Veerakudumban in favour of Pachaimal and his wife. It can be presumed that the plaintiff's predecessors in title were allotted the suit property and its adjacent property. None of this factors find the place in the pleadings. Even while remanding the matter in the earlier round of litigation, this Court had observed that there is no explanation with reference to the documents in the pleadings and despite such a finding, the plaintiff has not taken any steps to amend the pleadings but has proceeded to contest the case based on the original pleadings.

28.The Hon'ble Supreme Court in the case of **Bachhaj Nahar Vs. Nilima Mandal and another** reported in (2008) 17 Supreme Court Cases

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491 has relied upon the principles laid down in the case of **Ram Sarup Gupta Vs. Bishun Narain Inter College** and held as follows:

17. It is thus clear that a case not specifically pleaded can be considered by the Court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the Court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the Court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in **Bhagwati Prasad and Ram Sarup Gupta** referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded.

29. Therefore, in the instant case though the earlier round, this Court has observed that there is no explanation with reference to the documents in the pleadings, the plaintiff has not taken any steps to amend the pleadings. The Courts below have clearly erred in decreeing the suit based on presumption of probabilities. The plaintiff has not come to the Court with a specific case and has developed the pleadings during the course of evidence. Therefore, on this ground also the judgment and decree of the Courts below deserve to be reversed. The plaint does not contain any pleadings with reference to Ex.A5 and therefore, reliance upon this document to come to the conclusion that there was a family arrangement between Pachaimal and Subban is to say the least observed. Therefore, the substantial questions of law Nos. 3 and 5 are answered in favour of the defendant.

B) BAR OF ORDER IX RULE 9 OF THE CODE OF CIVIL PROCEDURE:

30. From the pleadings, it is evident that the suit property had been purchased by the plaintiff in the year 1977 and he has filed a suit O.S.No.303 of 1983 for permanent injunction in the year 1983 on the contention that his possession has been interfered by the defendant's vendor. The said suit was ultimately dismissed for default on 14.06.1990 and the application filed to restore the suit was ultimately dismissed only on 06.07.1994. In the meanwhile, the present suit has also been filed by the plaintiff.

31. On comparing the two suits, it is seen that in the earlier
<https://hccs.courts.gov.in/hccservices> O.S.No.303 of 1983, causes of action pleaded in both the suits are



identical. In the earlier suit, the statement made by the plaintiff was that Velayutham was in exclusive possession and enjoyment of the suit property, whereas, in the instant suit, the plea of partition has been introduced. In all other respects barring the date of alleged interference the two suits are similar in substance.

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32. In the judgment passed in **CA.No.6424 of 2019, dated 19.08.2019**, the Hon'ble Supreme Court has held that the subsequent suit filed on the same cause of action when the earlier suit was dismissed for default is clearly barred by the provisions of Order IX Rule 9 of CPC. A similar view has been taken by this Court in the case reported in **2010 (2) CTC 631**. That was a case, where a suit was filed by the successor in interest of the plaintiff in the earlier suit, which was dismissed for default. Even in this case, the learned Judge has held that the subsequent suit was clearly barred by the provisions of Order IX Rule 9 CPC. The Hon'ble Supreme Court in the case reported in **AIR 1965 Supreme Court 295 (V 52 C 53)** has held that in order to decide the question as to whether the cause of action in the two suits are identical, it has to be tested where the two suits are identical in substance and in the instant case, it is very evident that the two suits are identical in substance and therefore, once both the suits arise out of the same cause of action then the bar under Order IX Rule 9 CPC would automatically set in. Therefore, the substantial questions of law 1 and 2 are answered in favour of the defendant.

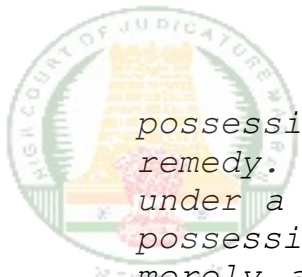
C) FAILURE TO SEEK A DECLARATION OF TITLE:

33. The plaintiff has come forward with the suit for permanent injunction on the basis that his vendor had a right to the suit property by virtue of a partition and family arrangement. The defendant in the written statement have clearly spelt out how the property had devolved on the sons of the original owner, Veerakudumban, after his death. The said fact has not been controverted by the plaintiff by filing a reply statement. The defendant has clearly pleaded an independent title to the property and had challenged the title of the plaintiff to the suit property. As a result a cloud had been cast on the title of the plaintiff to the suit property. Under the above circumstances, the plaintiff ought to have had his title declared to the suit property.

34. The Hon'ble Supreme Court in the case reported in **(2008) 4 Supreme Court Cases 594**, has summarized the position with reference to the suit for bare injunction relating to the immovable property and at paragraph 21, has held as follows:

21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and



possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

D) PLEA OF ADVERSE POSSESSION:

35.The plaintiff has also claimed adverse possession to the suit schedule property. In the plaint, the plaintiff has submitted as follows:

8.The plaintiff and his predecessors in title have also perfected title by being in open adverse and exclusive possession of the schedule property for more than 20 years. The survey number for the schedule property is R.S.No.495. Subsequently, the schedule property is re-surveyed as Natham S.No.985/1.

36.The defendant has countered the same by stating that the plaintiff cannot plea adverse possession since his entry into the property was only alleged to be on the basis of the sale deed dated 02.05.1977. The suit has been filed in the year 1983 alleging interference in the peaceful possession and enjoyment by the plaintiff. Therefore, the continuous possession has been interrupted. However, in the case of **Annakili Vs. A.Vedanayagam** reported in **MANU/SC/8027/2007 : 2007 (14) SCC 308**, the Hon'ble Supreme Court has held as follows:

24.Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title.

37.Further, the Hon'ble Supreme Court in its judgment reported in **AIR 2019 SC 3827**, has observed as follows:



57.The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi ie., adequate in continuity, nec-clam ie., adequate in publicity and nec-precario ie., adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required.

38.By applying the above ratio, the plaintiff in the instant case has clearly not proved his adverse possession and therefore, the plea of adverse possession deserves to be rejected.

39.The present suit filed for a simpliciter injunction without seeking a relief of declaration when the defendant had claimed an independent title to the suit property is not maintainable. The Court below has decreed the suit for bare injunction on the ground that the suit property is a vacant site and title follows possession. As already submitted, the defendant has seriously contested the title of the plaintiff to the suit property. That apart, the description of the property in the suit schedule would indicate that there is a superstructure over the suit property and the suit property is not a vacant site. Therefore, the findings of the Courts below that title follows possession would not *stricto sensu* apply to the facts of the instant case. The plaintiff has not been able to establish the fact that there has been a interference by the defendant to his possession and in the absence of said proof and in the absence of cause of action, the Courts below have erred in decreeing the suit. Therefore, the question of law No.4 is answered in favour of the defendant.

40.In fine, this Second Appeal is allowed and the judgment and decree passed in A.S.No.35 of 2014 on the file of the Principal Sub Court, Tirunelveli, dated 30.10.2014 confirming the judgment and decree made in O.S.No.528 of 1991 on the file of the First Additional District Munsif Court, Tirunelveli, dated 04.10.2013, is hereby set aside. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)



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To

1.The Principal Subordinate Judge,Tirunelveli.

2.The First Additional District Munsif,
Tirunelveli.

Copy to

The Section Officer, (2 copies)

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s.A.MANIMARAN, Advocate (SR-98859[F] dated 18/11/2019)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-98908[F]

S.A. (MD) No.71 of 2015

15.11.2019

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