

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved Date : 11.11.2019

Pronounced Date : 19.05.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1050 of 1999

and

CMP.Nos.18562 of 2017 and 21459 of 2019

M.Thirunavukkarasu

...Appellant/Respondent/Plaintiff

Vs.

Annamalai University,
rep. By its Registrar,
having its Office at
Annamalai Nagar,
Chidambaram Taluk.

...Respondent/Appellant/Defendant

PRAYER: Second Appeal has been filed under Section 100 of Code of Civil Procedure to set aside the judgment and decree of the learned District Judge, Cuddalore in AS.No.80 of 1997 dated 08.12.1998 allowing the appeal and reversing the judgment and decree of the learned Sub-Judge, Chidambaram in OS.No.5 of 1997 dated 17.10.1997.

For Appellant : Mr.R. Srinivasan

For Respondent : Mr.K. Sathish Kumar
Standing Counsel

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the District Judge, Cuddalore, in AS.No.80 of 1997 dated 08.12.1998 reversing the judgment and decree passed by the Sub-Judge, Chidambaram in OS.No.5 of 1997 dated 17.10.1997.

2. The appellant herein had filed a suit in OS.No.12 of 1993 on the file of the Sub-Court, Chidambaram for the relief of declaration of his prescriptive title over the suit property and for consequential relief of permanent injunction restraining the defendant, its men, etc., from interfering with his possession of the suit property. The said suit was subsequently transferred to the District Munsif Court, Chidambaram on the point of jurisdiction and renumbered as OS.No.979 of 1995. Thereafter,

the plaintiff had amended the suit value and hence the plaint was returned with a direction to represent the same before the proper court. Accordingly, the plaintiff had represented the plaint before the Sub-Judge, Chidambaram and hence the suit was renumbered as OS.No.5 of 1997.

3. The learned Sub-Judge, Chidambaram, by the judgment and decree dated 17.10.1997 had decreed the suit as prayed for with costs. Aggrieved by the same, the defendant had filed an appeal in AS.No.80 of 1997 on the file of the District Judge, Cuddalore. The learned District Judge, by the judgment and decree dated 08.12.1998, had allowed the said appeal by setting aside the judgment and decree of the trial court and dismissed the suit with costs throughout. Feeling aggrieved, the plaintiff has filed the present second appeal.

4. For the sake of convenience, the parties are referred to as described before the trial court.

5. The averments made in the plaint are in brief as follows:-

The entire suit property measuring 1700 sq.ft was occupied by the plaintiff in the year 1976 and put up a thatched shed in which he is residing in a portion and in another portion he is running a grocery shop. The plaintiff has been paying property tax, professional tax and also license fee for the shop. The plaintiff has been in continuous and uninterrupted possession of the suit property for more than the past 15 to 16 years. He has prescribed title by adverse possession. To the shock and surprise of the plaintiff, on 02.03.1993, a few staff of the defendant assembled before the suit property and said that the suit property belongs to the defendant and called upon the plaintiff to vacate and handover the entire suit property immediately. Hence, the plaintiff was constrained to file the above suit for declaration of his title and for consequential relief of permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit property.

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

The total extent of the suit RS.No.170/4-A is 25 cents which was acquired by the Government and handed over to the University and that the University is in possession of the same by paying kist. The patta also stands in the name of the defendant. One Rajan, employee of the University was in permissible possession by paying ground tax and after his death, the hut was removed. After the appointment of the new Vice-Chancellor, to expand the garden, the subordinates of the defendant went to inspect the property and it was found that the sons of the said Rajan had

trespassed upon the suit property and put up a hut. Hence, a notice was issued to the sons of the said Rajan to vacate the property. They had set up the plaintiff to file the above suit. The plaintiff has no title or prescriptive to the suit property and he is not in possession of the suit property. Therefore, the defendant prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned Sub-Judge, had framed issues and tried the suit. During trial on the side of the plaintiffs, the plaintiff examined himself as PW1 and also examined three more witnesses as PWs 2 to 4. He had marked Exs.A1 to A25 as exhibits. On the side of the defendant, two witnesses were examined as Dws 1 and 2 and 15 documents were marked as Exs.B1 to B15.

8. The learned Sub-Judge, after considering the materials placed before him found that the plaintiff has proved his title over the suit property by adverse possession through oral and documentary evidence. Accordingly, he decreed the suit as prayed for. Aggrieved by the same, the defendant had filed an appeal before the District Court, Cuddalore. The learned District Judge had allowed the said appeal and set aside the judgment and decree of the Trial Court and dismissed the suit. Feeling aggrieved, the plaintiff has filed the present second appeal.

9. This court at the time of admitting the second appeal, has formulated the following substantial question of law:-

"Whether the dismissal of the suit by the appellate court though the plaintiff had established his title by adverse possession can be sustained in the eye of law?"

10. During pendency of the second appeal, the appellant/plaintiff has filed CMP.No.18562 of 2017 under Order 41 Rule 27 of CPC to permit him to produce Ex.A11 (Bank Pass Book) and bank statement as additional documentary evidence. He also filed another application in CMP.No.21459 of 2019 under Order 41 Rule 27 of CPC seeking permission to produce a certified copy of the plaint filed in OS.No.100 of 2004 on the file of the District Munsif Court, Chidambaram as additional documentary evidence. The respondent/defendant has opposed these petitions by filing counter.

11. The aforesaid petitions were heard along with the second appeal.

12. Mr.R.Srinivas, the learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in reversing the well considered judgment of the trial court. He further submitted that the first appellate court

failed to consider the oral evidence of Pws 2 to 4. He further submitted that the first appellate court having found that the plaintiff has proved his possession from the year 1981 by producing house tax receipts it should have dismissed the appeal as the plaintiff has filed the suit in the year 1993 i.e., after 12 years and thereby he perfected his title by adverse possession. He further submitted that since the plaintiff is in possession of the suit property continuously even at the time of filing of the suit i.e., in the year 1993, the first appellate court erred in holding that since the plaintiff has failed to produce any document to show his possession for the year 1993, the plea of adverse possession must fail.

13. The learned counsel for the appellant/plaintiff has further submitted that the old Door No for the suit property was 10 and new Door No is 11-A. He further submitted that Ex.A11 (Bank passbook) would show that the plaintiff had opened a bank account on 02.01.1979 itself for the address having Door No.10. He further submitted that the said Bank Pass book was filed along with the plaint, but subsequently, the plaint was returned along with the documents on the point of jurisdiction. After taking back the plaint along with the documents, the plaintiff had represented the same before the sub-court, Chidambaram, but at that time, the plaintiff had retained the said Bank pass book and made an endorsement in the plaint that he will produce the same during trial. Due to passage of time, the plaintiff does not remember what happened. Now, he said pass book is available and hence the plaintiff wants to file the same before the court as it is very crucial for establishing his case of adverse possession. He further submitted that the plaintiff has obtained his recent account statement from the bank which will prove that the account is in force till date and address given is the suit property. He further submitted that the said Bank Statement may be received as additional documentary evidence.

14. The learned counsel for the appellant/plaintiff has further submitted that when the plaintiff's suit was pending before sub-court, Chidambaram, the respondent herein had filed a suit against the appellant herein for recovery of possession in OS.No.45 of 1997 on the file of the sub-court, Chidambaram and subsequently, it was transferred to the court of District Munsif, Chidambaram on the point of jurisdiction and renumbered as OS.No.100 of 2004 and the same is still pending. He further submitted that the pendency of the said suit was not placed as record by the respondent before the first appellate court. The said suit was not within the knowledge of the appellant at the time of judgment in OS.NO.5 of 1997. So, inspite of due diligence, the plaintiff could not file a copy of the said plaint in this case either before the trial court or before the first appellate court. He further submitted that a copy of the

said plaint is very essential to prove the case of the plaintiff and therefore he prayed to receive the said document also as additional documentary evidence and allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree of the trial court.

15. In support of the aforesaid contentions, the learned counsel for the appellant/plaintiff relied upon the following decisions:-

1) Ravinder Kaur Gnewal and others Vs. Manjit Kaur and others, 2019 SCC online SC 975;

2) Balkrishnan Vs. Satyaprakash and others (2001) 2 SCC 498.

16. Per contra, Mr.K.Sathish kumar, the learned standing counsel for the respondent / defendant has submitted that the appellant/plaintiff has not stated any valid reason for adducing additional evidence in the second appeal. He further submitted that in the second appeal, the appellant can raise only the substantial question of law, not on the facts and therefore he prayed to dismiss the petitions seeking leave to produce additional documentary evidence.

17. The learned counsel for the respondent has further submitted that the plaint shows that along with the plaint a bank pass book dated 2.01.1979 was filed and the same was marked as Ex.A11, but, now the plaintiff wants to produce some other Bank Pass Book which was issued on 14.06.1984 and hence the said Bank Pass Book cannot be received. He further submitted that the appellant/plaintiff has not produced any other document to show that the old Door No for 11-A was 10 and under the said circumstances, no reliance can be placed upon the address mentioned in the Bank Statement. He further submitted that the address might have been mentioned in the Bank Statement only at the instance of the appellant/plaintiff during pendency of the second appeal and hence the said document cannot be received as additional evidence. He further submitted that a copy of the plaint filed in OS.No.100 of 2004 is in no way relevant to decide the issues in this case and hence the said document also cannot be received as additional evidence.

18. The learned counsel for the respondent/defendant has further submitted that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, he has to clearly plead and establish all facts necessary to establish adverse possession. He further submitted that mere long possession would not affect the true owner's title. The person who claims adverse possession should plead and prove on what date he came in to possession and when his possession became adverse to the true owner. He has to plead

and prove that his possession is continuous, exclusive and undisturbed to the knowledge of the real owner of the land. He further submitted that in this case, the plaintiff failed to establish how his possession was known to the officers of the University. He further submitted that the documents filed by the plaintiff were created only to grab the property of the University. He further submitted that even as per Ex.A1 the plaintiff was in possession of the suit property only from the year 1982 and that being so, 12 years would complete only in the year 1994, but the plaintiff has filed the suit on 25.01.1993 i.e, before completing 12 years. Taking into consideration of the aforesaid facts, the first appellate court has rightly held that the plaintiff has failed to establish the plea of adverse possession and in the said factual findings this court cannot interfere and therefore he prayed to dismiss the second appeal and also the petitions filed by the appellant to receive additional evidence.

19. In support of the aforesaid contentions, the learned counsel for the respondent/defendant relied upon the following decisions:-

- 1) Annakili Vs. A.Vedanayagam and others (2007) 14 SCC 308;
- 2) Ravinder Kaur Grewal and others Vs. Manjit Kaur and others, 2019 SCC Online 975.

20. Before deciding the substantial questions of law, let us first consider whether the petitions which were filed by the appellant/plaintiff under Order 41 Rule 27 of CPC to receive additional documentary evidence (CMP.Nos.18562 of 2017 and 21459 of 2019) have to be allowed.

21. CMP.No.18562 of 2017 has been filed to receive the Bank Pass Book and Bank Statement. In the affidavit filed in support of the said Petition, the appellant has stated in paras-3 to 6 as follows:-

"3. The suit was initially filed in the sub-court, Chidambaram. It was later returned to be presented in the District Munsif Court at Chidambaram. It was pending in the said District Munsif Court and again it was returned to be presented in the Sub-court, Chidambaram where it was taken on file as OS.No.5 of 1997 and disposed there.

4. I submit that at some point of time I needed the original pass book of State Bank of India, which account (Saving A/c) was opened by me residing in the suit property in the year 1979. During the return of the plaint, I had taken back the pass book and made an endorsement in the plaint that I will produce it during trial. Due to passage

of time, I do not remember what happened. Now, the said pass book which appears to have been marked as A-11, is with me. I need to file this document into the court at this stage as it is very crucial for establishing my case of adverse possession.

5. Due to the confusion created by the transfer of the suit from one court to the other, it could not be filed earlier and inspite of my due diligence it could not be produced in trial. I am also filing the recent bank statement to prove that the account is in force, till date and the address given is the suit property.

6. I will be greatly and irreparably prejudiced if the aforesaid documents is not taken on the file in this second appeal."

22. Originally, the suit was filed before the sub-court, Chidambaram on 25.01.1993 and the same was numbered as OS.No.12 of 1993. A perusal of the plaint shows that along with the plaint 23 documents were filed. Document No:11 has been shown as Bank Pass Book dated 02.01.1979. The deposition of PW1 shows that on 05.07.1995 the said document was marked as Ex.A11, before the sub-court, Chidambaram. Subsequently, it appears that the said suit was transferred to the file of the District Munsif, Chidambaram on the point of jurisdiction and the same was renumbered as OS.No.979 of 1995. Thereafter, the plaintiff has amended the value of the suit and hence, the learned District Munsif, Chidambaram has returned the plaint to present the same before the proper court. Accordingly, it appears that the plaintiff has taken back the plaint along with the documents and presented the same before the Sub-Court, Chidambaram. But at that time, the plaintiff has retained the Bank Pass Book dated 02.01.1979 (Ex.A11) and made an endorsement by the learned counsel for the plaintiff that the plaintiff will produce the said document during trial. After recording the said endorsement, the learned Sub-Judge, Chidambaram has taken the case on file as OS.No.5 of 1997 and proceeded with the trial and disposed of the same on 17.10.1997 and decreed the suit as prayed for.

23. It is pertinent to note that as per the endorsement made by the learned counsel for the plaintiff, Ex.A11 was not produced either before the trial court or before the First Appellate Court. Both the courts passed judgments without Ex.A11 before the court.

24. The Bank Pass Book, now, shout to be produced by the appellant/plaintiff was issued by the Indian Bank and the same does not contain any court seal to show that it was already filed along with the plaint. Further, it does not contain any

endorsement to show that it was marked as Ex.A11. Further, the said document is not dated 02.01.1979 as contended by the appellant in his affidavit and petition. On the contrary, the said document shows that it was issued on 14.06.1984. However, in the said pass book it has been mentioned as plaintiff had opened his account on 02.01.1979. If the plaintiff had opened his account on 02.01.1979, a pass book would have been issued on 02.01.1979 and the plaintiff might have produced the said pass book along with the plaint and marked the same as Ex.A11, but subsequently, when the plaint was returned with a direction to present before the proper court, the plaintiff had retained the said pass book for the reasons known to him only. Now, it appears that he wants to produce some other pass book which was issued on 14.06.1984 as if he has filed only the said pass book along with the plaint and also marked as Ex.A11. As already pointed out that the said document does not contain any court seal and also there is no endorsement to the effect that it was marked as Ex.A11. Under the said circumstances, this court is not able to accept that the Bank Pass Book now sought to be produced was filed along with the plaint and the same was marked as Ex.A11. Hence, the said document cannot be received now.

25. The second document sought to be produced by the appellant is the statement of account issued by the Indian Bank, Usupur Branch dated 16.08.2017. Though in the said document it is stated that statement from 02.01.1979 to 16.08.2017 it contains only two pages starts from 30.04.2016 and ends on 11.08.2017. So, from the said document it cannot be said that on the date of opening of the account what was the address given by the plaintiff. Further, even assuming that at the time of opening the account on 02.01.1979, the plaintiff gave an address that he was residing and running a grocery shop at Door No.10 that will not lead to an inference that the old Door No for the suit property was 10. Because the particulars about the Door Nos and property tax will be maintained only by the local bodies. The plaintiff could have either summoned the property tax register or obtained an extract of the property tax register and produced before the court and proved that the old Door No for the suit property was 10. But the plaintiff has not done so. Hence, no useful purpose will be served by receiving the said Bank Statement.

26. One more document sought to be produced by appellant is the certified copy of the plaint filed by the respondent herein in OS.No.100 of 2004 on the file of the District Munsif, Chidambaram. To receive the said document the appellant has filed CMP.No.21459 of 2019. In the affidavit filed in support of the said petition, the appellant has simply stated that the said document is very essential to his case. But he has not stated how the said document is very essential to his case. The

said plaint was filed by the respondent seeking declaration of its title and for recovery of possession of the suit property from the appellant herein. At the most, the said document can be used to show that the respondent University has admitted the possession of the appellant in the suit property. Both the courts below concurrently found that the appellant/plaintiff is in possession of the suit property. But the question to be decided is whether the appellant/plaintiff has proved the adverse possession. Hence, the aforesaid document is not required to enable this court to decide the issue involved in this case. Accordingly, CMP.Nos.18562 of 2017 and 21459 of 2019 are liable to be dismissed.

27. Now let us consider the substantial question of law formulated in this second appeal. According to the appellant/plaintiff, he has perfected the title to the suit property by adverse possession. Recently, a three Judge Bench of the Hon'ble Supreme Court in Ravinder Kaur Grewal and Others Vs. Manjit Kaur and others (cited supra) held that there is no bar for the plaintiff to file a suit for declaration of title and permanent injunction based on the adverse possession. Now, the law is well settled, that the person, who claims adverse possession, 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.

28. In Karnataka Board of Wakf Vs. Government of India and Others (2004) 10 SCC 779, the Hon'ble Supreme Court in para-11 has observed as under:

"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.

29. From the aforesaid decision, it is clear that 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 would not affect his title. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is also clear that a person who claims adverse possession, has to prove that on what date he came into possession, what was the nature of his possession, whether the factum of possession was known to the other party, how long his possession had continued and his possession was open and undisturbed. It is also clear a person claiming 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 his adverse possession.

30. In Krishnamurthy S.Setlur (dead) by LRs Vs. O.V.Narasimha Setty (2007) 3 SCC 569, also in para-12, the Hon'ble Supreme Court reiterated the principle that the plaintiff who makes a claim for adverse possession has to plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession. Further, in para-13, it has held that the person who claims adverse possession has to show a hostile title and he has to communicate his hostility to the real owner.

31. In T. Anjanappa Vs. Somalingappa (2006) 7 SCC 570 the Hon'ble Supreme Court in para-20 has observed thus:

"20. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial

of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

32. In Annakili Vs. A. Vedanayagam and others (cited supra) the Hon'ble Supreme Court in para-24 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 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 do not ripen into a title."

33. In Ravinder Kaur Grewal and others Vs. Manjit Kaur and others (cited supra), also the Hon'ble Supreme Court in para-65 has held that the adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e., adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e., adverse to a competitor, in denial of title and his knowledge. Further, it has held that Animus Possidendi under hostile colour of title is required and that the trespasser's long possession is not synonym with adverse possession.

34. In Balkrishan Vs. Satyaprakash and others (cited supra) the appellant's claim was that he purchased the suit land from the original owners on 25.08.1960. The suit land was in fact

under attachment and ultimately sold by auction in 1963. One Mohan Singh purchased the same in the name of his minor son Rajendra Singh. The said minor Rajendra Singh through his guardian/father had filed an application under Section 250 of the Madhya Pradesh Land Revenue Code, 1959 before the Tahsildar, Gua, against the appellant for restoration of possession. Hence, the appellant filed a suit in 1964 for declaration and injunction. The suit was dismissed on 23.12.1966, but the appellant remained in possession. The Tahsildar finally allowed the application for restoration of possession on 20.06.1971. The appellant filed an appeal against the order of Tahsildar, but the same was dismissed on 04.09.1973. Thereafter, the said Rajendra Singh sold the suit land to the respondents 2 and 4 therein. The appellant, however, continued to remain in possession and filed another suit for declaration of title on the basis of his adverse possession on 06.12.1986. The appellant's suit was decreed and the respondent's first appeal was dismissed. The first appellate court found that the adverse possession would commence from 04.09.1973 (the date on which, the appeal filed by the appellant against the Tahsildar's order was dismissed) and the period of 12 years was completed on 04.09.1985 where as the suit was filed on 06.12.1986, therefore, the appellant perfected his title by adverse possession. But the second appeal filed by the respondents therein was allowed by the High Court holding that the appellant had not perfected his title by adverse possession as the order of the Tahsildar against him was still valid. As against the same, the plaintiff filed an appeal, by special leave, before the Hon'ble Supreme Court. Under the said circumstances, the Hon'ble Supreme Court in para-11 has held as follows:

"11. In our view this conclusion of the High Court is erroneous. The fact remained that in spite of order of the Tehsildar against the appellant which was not acted upon, nor executed, the appellant continued in possession of the suit land and, therefore, the continuity of his possession of the suit land was neither interrupted nor lost. Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession."

35. But, in the present case, the facts are totally different. In this case, the defendant-University has not initiated any proceedings either before Tahsildar or before any other authorities for recovery of possession. Only after filing of the present suit by the plaintiff, the defendant - University has filed a suit in OS.No.100 of 2004 on the file of the

District Munsif for declaration and recovery of possession. Hence, the aforesaid decision will not apply to the facts of this case.

36. In the instant case, the plaintiff has pleaded in his plaint that he occupied the entire suit property measuring about 1700 sq.ft in the year 1976. He further stated that at that time it was a vacant land and after occupying it he constructed a superstructure with a thatched roof. He further stated that a portion of the said superstructure was used by him as his house and the remaining portion was used by running a grocery shop. He also averred that he has been paying house tax, property tax (land) for the suit property and he has also been paying shop license fee and professional tax for the grocery shop in the suit property. He also pleaded that he has been in continuous and uninterrupted possession of the suit property for more than 15 to 16 years. He further pleaded that all along his possession was open and hostile and was within the knowledge of the various authorities of the defendant and therefore he perfected title by adverse possession over the suit property.

37. In order to substantiate his claim, though the plaintiff has examined himself as PW1 and also examined three more witnesses as P.Ws 2 to 4 and also marked Exs.A1 to A25 as exhibits, he has not produced any documentary evidence to show that he has been in possession of the suit property from the year 1976 as pleaded in the plaint.

38. Exs.A1 to A10 are house tax receipts. They started from the year 1982. The receipt for payment of profession tax (Ex.A12) also started from the year 1982. Though in the plaint, in the list of documents, the plaintiff has mentioned the document No.11 as Bank Pass Book dated 02.01.1979, and admittedly the said document was marked as Ex.A11 during trial, and thereafter when the plaint was returned on the point of jurisdiction, after taking back the plaint along with the said document, the plaintiff did not file the said document, when he presented the plaint before the proper court (Sub-Court, Chidambaram). On the contrary, the learned counsel for the plaintiff has made an endorsement on the plaint to the effect that the said document (Ex.A11) will be produced at the time of trial. But, the plaintiff has not produced the said document till the disposal of the suit by the trial court. He has not produced the said document before the first appellate court also. But he filed a petition in CMP.No.18562 of 2017 under Order 41 Rule 27 of CPC before this court on 22.08.2017 to receive a Bank Pass Book and also Bank statement as additional documentary evidence. The said petition also has been heard along with this second appeal and held that the said petition is liable to be dismissed vide in para-24 of this judgment. Hence,

the said document cannot be received as additional evidence.

39. Since the appellant/plaintiff, after taking back Ex.A11, (Bank Pass Book dated 02.01.1979) has not produced the same before the court, and tried to produce some other pass book said to have been issued on 14.06.1984, an adverse inference has to be drawn against him. According to the appellant/plaintiff, the said Ex.A11 has been filed only to prove the fact that the old Door No for the suit property was 10 and by showing the said address, he has opened the account on 02.01.1979 itself and hence he has been in possession from 02.01.1979 onwards. Even assuming that Ex.A11 contains the particulars that the plaintiff was residing at Door No.10 at the time of opening his account i.e., on 02.01.1979 that itself not sufficient to hold that the old Door No for the suit property was 10.

40. Since the Door numbers are being allotted by the local bodies and also collected property tax, they only will maintain the Property Tax Registers. As already pointed out that the plaintiff could have summoned the concerned Property Tax Register or obtained an extract for the said Register and produce before the court and prove that the old Door No for the suit property was 10. But he has not taken any steps either to summon the property tax Register or produce an extract for the said Register and prove that the old Door No for the suit property was 10 and from which date he has been residing in the suit property.

41. Further, if really the plaintiff has been residing from the suit property by putting up a thatched shed from the year 1976, and paid house tax (property tax) he could have produced house tax receipts for the said period also. But he has not produced any house tax receipt prior to the period of the year 1982. He has not stated any reason for not producing house tax receipt or professional tax receipt or license fee receipt prior to the period of the year 1982. Therefore, the contention of the plaintiff that he has occupied the suit property and put up a thatched shed in the year 1976 itself cannot be accepted.

42. It is true that the PWs 2 to 4 have adduced evidence that the plaintiff has been in possession of the suit property from the year 1976, but their oral evidence is not supported by the documentary evidence. From the documents produced by the plaintiff at the most it can be said that he has been in possession of the suit property from the year 1982. In such a case, the statutory period of 12 years will be completed only in the year 1994. But, the plaintiff has filed the suit on 25.01.1993 itself. On that date 12 years not completed and that being so, the plaintiff cannot contend that he has perfected title by adverse possession. It is also to be pointed out that

though the plaintiff has pleaded in his plaint that he has been in continuous and uninterrupted possession of the suit property for more than the past 15 to 16 years and all along his possession was open and hostile and was within the knowledge of the various authorities of the defendant, he has not stated how the authorities of the defendant came to know his possession of the suit property. Admittedly, the defendant is an University. It has vast extent of land. Ex.B8 shows that several employees of the University have occupied the land of the University and put up superstructures and residing there. Under the said circumstances if the persons who are not the employees of the University, like the plaintiff also encroached portions of the land, it would be very difficult for the University to identify them and take action immediately, unless the encroachers themselves voluntarily disclosed their encroachment. In this case, except the bald allegation that he has been in possession of the suit property for more than 15 to 16 years to the knowledge of the various authorities of the University, no other material has been produced before the court to show how the authorities got the knowledge about his possession in the suit property. On this ground also, the contention of the plaintiff, that he has perfected title over the suit property by adverse possession cannot be accepted.

43. For the aforesaid reasons this court is of the view that the plaintiff is not entitled to the relief of declaration of title and for permanent injunction. However, considering the fact that the plaintiff is in settled possession and that the defendant-University itself has filed a suit for declaration of its title and for recovery of possession in OS.No.100 of 2004 on the file of the District Munsif, Chidambaram, this court is of the view that the plaintiff's possession shall be protected atleast till he is evicted by due process of law i.e., till the defendant - University gets decree for possession in OS.No.100 of 2004.

44. At this juncture, it would be relevant to refer to the decision in Rame Gowda (D) by LRS Vs. M. Varadappa Naidu (D) by L.Rs & Another (Appeal (Civil) No.7662 of 1997 on the file of the Hon'ble Supreme Court dated 15.12.2003) wherein a three Judge Bench of the Hon'ble Supreme Court after referring to various decisions has held as follows:-

".....If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking law in his own

hands,.....”

45. In view of the aforesaid decision of the Hon'ble Supreme Court, the plaintiff is entitled to protect his possession till he is evicted by due process of law. To that extent, the judgments and decrees of the courts below have to be modified. Accordingly, the substantial question of law is answered.

46. In the result, CMP.Nos.18562 of 2017 and 21459 of 2019 are dismissed. The second appeal is partly allowed. The judgments and decrees of the courts below are modified as follows:

1) That the suit is dismissed in respect of the relief for declaration of title of the plaintiff over the suit property;

2) That the defendant-University shall be restrained by means of an injunction from interfering with the peaceful possession of the suit property, by the plaintiff, until he is evicted by due process of law; and

3) that considering the facts and circumstances of the case, the parties are directed to bear their costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gv

To

1.The District Judge, Cuddalore.

2.The Subordinate Judge, Chidambaram.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

S.A.No.1050 of 1999
and

CMP.Nos.18562 of 2017 and 21459 of 2019

SAI (CO)
SP(19/12/2020)