

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 18.12.2019

Delivered on: 07.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.1423 of 2008

1.Dhananjezhiyan
2.Asodhai

... Appellants/Plaintiffs

vs.

1.Kuppu
2.Nallammal
3.Poongodi

.... Respondents /Defendants

Second Appeal is filed against the judgement and decree dated 24.03.2008 passed by the Subordinate Judge, Kallakurichi, in A.S.No.9 of 2005, confirming the judgement and decree, dated 27.10.2004, passed by the Additional District Munsif No.II, Kallakurichi, in O.S.No.422 of 2002.

For appellants :: Mr.S.Sounthar

For Respondents :: Mr.P.Valliappan

JUDGEMENT

This second appeal is filed by the plaintiffs in the suit as against the judgement and decree dated 24.03.2008 passed by the Subordinate Judge, Kallakurichi, in A.S.No.9 of 2005, confirming the judgement and decree, dated 27.10.2004, passed by the Additional District Munsif No.II, Kallakurichi, in O.S.No.422 of 2002, which was one for declaration of title and permanent injunction.

2.The appellants herein are the plaintiffs and the respondents are the defendants in the suit. The suit was filed by the appellants/plaintiffs seeking declaration of title and permanent injunction, restraining the respondents/defendants from interfering with their peaceful possession and enjoyment of the suit scheduled properties.

3.The parties, for the sake of convenience, are referred

to hereunder according to their litigative status and ranking before the trial Court.

4.The case of the plaintiffs before the trial Court in brief would run thus:

The first plaintiff is the son of one Mr.Mari, through the second wife and the second plaintiff is the first plaintiff's wife. The first defendant is the first wife of Mari and defendants 2 to 4 were born through the first wife of Mari, viz., Chinnammal, who is the first defendant in the suit. According to the first plaintiff, his father Mari and defendant No.1, the first wife of Mari, executed an agreement-Ex.A1, on 08.01.1988, by which, originally, a portion of item No.2 of the suit Scheduled properties, was bequeathed to the first plaintiff and his brother one Veeramuthu. According to the plaintiffs, after the death of Mari, Veeramuthu, the first plaintiff's brother, executed a sale deed dated 16.10.1989, by which, he has sold to the first plaintiff item No.1 of the suit Scheduled properties. On 27.02.1991, by a registered sale deed, 2nd item of the suit Scheduled properties was sold to the first plaintiff by his brother Veeramuthu. Thereafter, the first plaintiff executed a registered sale deed in respect of item No.1 of the suit Scheduled properties in favour of his wife, the second plaintiff, on 13.03.2002. Therefore, according to the plaintiff, they are in possession and enjoyment of both the items of the suit scheduled properties. Since, their possession and enjoyment of the suit properties was sought to be disturbed, at the instance of the respondents/defendants, a suit was filed seeking for declaration of title and permanent injunction. According to the plaintiffs, they possess title on the basis of Ex.A1 document, dated 08.01.1988, executed by the first plaintiff's father, viz., Mari and defendant No.1, the first wife of Mari. The plaintiffs also set up a case for title by way of 'adverse possession', as they enjoyed the property for more than the statutory period, alternatively.

5.A written statement was filed by the first defendant resisting the prayer of the plaintiffs stating that the document, executed by the first plaintiff's father Mari and first defendant/Chinnammal, dated 08.01.1988, i.e. Ex.A1, was not a valid document, since it was not a registered or stamped document and therefore, such document cannot be an acceptable piece of evidence at all for the purpose of declaring the title to the suit Scheduled properties in favour of the plaintiffs. According to the first defendant, Ex.A1 was not only an unregistered document, but it was an incomplete document for the reason that one of the parties to the agreement/Muchalika, viz., Defendant No.1/Chinnammal, did not affix her signature at all. Therefore, the said document Ex.A1 cannot be relied on for any

other purpose, even assuming it can be relied upon by the plaintiffs for collateral purpose.

6.The first defendant strongly objected to the grant of alternative relief of 'adverse possession' to the plaintiffs on the ground that being co-owners of the properties, they cannot alternatively claim title to the properties by way of prescriptive right i.e., through adverse possession. According to the first defendant, the principal plea taken in the plaint was that originally the suit scheduled properties belonged to Mari; the second wife of the said Mari i.e. the mother of the first plaintiff pre-deceased him and by family arrangement, viz., agreement dated 08.01.1988 (Ex.A1) and by a subsequent sale, the suit scheduled properties were given to the plaintiffs and therefore, they are the rightful owners of the suit properties. While so, by feeble averments in the plaint, the plaintiffs also pleaded title through adverse possession, not consistent with the principal plea.

7.The trial Court, after adverting to the pleadings and evidence let in on behalf of the parties and also after perusing the evidence on record, has dismissed the suit. According to the trial Court, the plaintiffs cannot rely upon Ex.A1 document, which was an unregistered and unstamped document and the contention raised on behalf of the plaintiffs that the said document can be relied upon for collateral purpose for showing the nature of possession was discountenanced, as the trial Court found that the entire claim of ownership was on the basis of the agreement/Muchalika, dated 08.01.1988 (Ex.A1) and therefore, the prayer of the plaintiffs was rejected.

8.As against the dismissal of the suit, the plaintiffs herein filed an appeal before the lower Appellate Court in A.S.No.9 of 2005. The lower Appellate Court, which framed the issues, has in extenso relied upon various decisions cited by the parties and finally agreed with the judgement and decree passed by the trial Court and dismissed the appeal, vide its judgement dated 24.03.2008. According to the lower Appellate Court, the trial Court was right in giving a legal finding that the entire claim of ownership was on the basis of Ex.A1, however, the said document cannot be relied upon as an acceptable piece of evidence, since, as admittedly the document was an unregistered and unstamped one. Moreover, the appellate Court also found that the document itself was incomplete, since one of the parties to the document, viz., Chinnammal/defendant No.1, had not signed the document. Therefore, the lower appellate Court found that in any event, Ex.A1 cannot be the basis for grant of relief to the plaintiffs. Moreover, the appellate Court also found that the other registered sale deeds executed by the brother of first plaintiff and also the first

plaintiff in favour of the second plaintiff cannot be relied upon, since the original title conferred under Ex.A1, dated 08.01.1988, was an invalid document and therefore, the subsequent transactions, consequently, cannot be held valid. In the said circumstances, the other documents, viz., Revenue records, patta, tax receipts etc., produced on behalf of the plaintiffs would be of no evidentiary value for the purpose of establishing the title to the suit Scheduled properties. The lower appellate Court has also found that the alternative plea of 'adverse possession' was an inconsistent plea and therefore, the same was not maintainable. The lower appellate Court has given such a finding on the basis of several decisions cited before it on behalf of the defendants. In the circumstances, the lower appellate Court has confirmed the judgement and decree of the trial Court by dismissing the appeal. Aggrieved by the said judgement and decree of the lower appellate Court, the plaintiffs are before this Court by way Second Appeal.

9.This Court, while admitting the Second Appeal, has framed the following substantial questions of law:

"a)Whether the Courts below have committed an error of law in rejecting Ex.A1 as inadmissible in law in toto over looking the settled proposition of law that unregistered documents can be looked in to for the collateral purpose of proving the nature any character of possession?

b)Whether the finding of Courts below that appellants failed to prove hostile title to suit property is vitiated by non consideration of Ex.A2-A9 which are public and revenue documents."

10.Shri.S.Sounthar, the learned counsel appearing for the appellants/plaintiffs would submit that as far as the unregistered document viz., Ex.A1, dated 08.01.11988, is concerned, Courts have repeatedly held that unregistered documents can be relied upon for collateral purpose like nature of possession. According to the learned counsel, as far as the present case on hand is concerned, possession aspect should be taken into consideration for deciding the claim of right through adverse possession, since possession was admittedly with the plaintiffs from 08.01.1988 through Ex.A1 for more than the statutory period. Unfortunately, both the Courts below have placed too much reliance on the aspect as to whether unregistered document was admissible in evidence or not, without appreciating the fact that the said document could atleast be relied upon for the purpose of deciding the claim of the plaintiffs for prescriptive right. The learned counsel would

also contend that there were several documents like Exs.A2 to A9, which were ignored by both the Courts below. According to the learned counsel, those documents would show that the plaintiffs had title to the suit scheduled properties and were in possession of the same. In fact, there were registered sale deeds, viz., Ex.A2-dated 16.10.1989, Ex.A3-dated 27.02.1991 and Ex.A5-dated 13.03.2002 and also Revenue records like Patta, Tax receipts etc., Unfortunately, both the Courts below have completely overlooked and discarded those documents on the reasoning that the initial document, viz., Ex.A1-dated 08.01.1988 was invalid and therefore, the subsequent transactions and documents were consequently invalid.

11.As far as the plea of adverse possession is concerned, the learned counsel would submit that the plaintiffs had taken this plea in the plaint itself, as could be seen from the averments in the plaint. According to the learned counsel, there was nothing wrong in claiming an alternative prayer, viz., title through adverse possession, since the plaintiffs, even at the time of drafting the plaint, were doubtful about their title through Ex.A1, dated 08.01.1988. Such alternative plea taken by the plaintiffs cannot be construed as inconsistent or contradictory in nature. Unfortunately, both the Courts below have found that the plea of adverse possession cannot be taken by a person who claims ownership in the first place to the properties concerned. The learned counsel would also rely on the decision of the Hon'ble Supreme Court of India in Bondar Singh and Others vs. Nihal Singh and Others [(2003) 4 Supreme Court Cases 161] in support of his contention that Ex.A1 could be relied upon for collateral purpose. He would particularly draw reference to a portion of Paragraph No.5 of the said decision, which would run thus:

"5.The main question as we have already noted is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor interest of the plaintiff, is an admitted document in the sense its execution is not in dispute. The only defence set up against said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for

collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized. "

12.The learned counsel, therefore, would submit that Ex.A1 could be relied upon for the purpose of establishing the case of the plaintiffs about their adverse possession and both the Courts below have erred in dismissing the claim of the plaintiffs in regard to the Revenue documents, which were marked before the trial Court, like, Patta Ex.A6-dated 19.06.2002, Tax Receipts-Ex.A8 etc., by which, it was clearly established that the plaintiffs herein were in hostile possession for more than the statutory period and they were entitled to prescriptive right.

13.Finally, the learned counsel for the plaintiffs would submit that if not the claim of title under document Ex.A1, dated 08.01.1988, the plaintiffs are, atleast, entitled to succeed on the ground of adverse possession, since their possession was open and continuous for more than the statutory period and was also hostile and adverse to the title holders and both the Courts below ought to have allowed the claim of the plaintiffs on that aspect. Therefore, the learned counsel would submit that the judgements and decrees of both the Courts below need to be interfered with.

14.Per contra, Mr.Valliappan, the learned counsel appearing for the respondents/defendants would submit that it is an admitted case that the principal claim of the plaintiffs was on the basis of Ex.A1 document, dated 08.01.1988, which document was admittedly not registered and therefore was defective. The contention raised on behalf of the plaintiffs that Ex.A1 could be relied upon for collateral purpose was completely misconceived for the simple reason that the claim of the plaintiffs principally was on the basis of the said document, as according to them, they derived their title under Ex.A1, dated 08.01.1988. Thereafter, subsequent sale deeds, viz., Exs.A2, A3 and A5 were executed, by which, the plaintiffs became title holders to the suit scheduled properties. Therefore, the learned counsel would submit that both the Courts below have rightly discountenanced the arguments advanced on behalf of the plaintiffs that Ex.A1 was principal document, under which the title was sought to be derived by the plaintiffs and therefore, the question of relying on the said document for collateral purpose did not arise at all. In the said circumstances, both the Courts below have rightly held that since the entire claim

was on the basis of Ex.A1, by the plaintiffs, the said document being unregistered one, was inadmissible in evidence and therefore, rejected the contentions raised on behalf of the plaintiffs.

15. According to the learned counsel for the defendants/respondents, the so called Revenue records marked before the trial Court, viz., Ex.A6, A8 etc., were just obtained by the defendants just before the preparation of plaint in order to raise the claim of adverse possession, alternatively. The learned counsel would also submit that the crucial document, viz., Ex.A1, dated 08.01.1988 was also defective for the simple reason that one of the parties to the agreement, viz., defendant No.1/Chinnammal did not sign the document and this aspect was rightly considered by both the Courts below and held that the said document was even otherwise not a valid document to be relied upon by the plaintiffs. Therefore, the learned counsel would submit that the legal principle is well settled that unregistered documents cannot be relied upon by the parties and in this case, admittedly, the entire premise on which the suit was laid for claiming title is on the basis of the said document, viz., Ex.A1, dated 08.01.1988. Therefore, both the Courts below have applied the legal principle correctly and rejected the document Ex.A1 regarding its admissibility.

16. The learned counsel would strenuously contend that in regard to the alternative plea of 'adverse possession' taken by the plaintiffs is concerned, the Courts have time and again held that the pleas of title through documents and adverse possession cannot coexist. According to the learned counsel, in this case, the plaintiffs have principally pleaded that they derived title under Ex.A1, dated 08.01.1988, but alternatively they had also pleaded title through adverse possession. Such alternative plea of adverse possession is blatantly inconsistent to the principal claim and therefore, such a plea was discountenanced by both the Courts below, rightly. In fact, the lower Appellate Court has relied upon several decisions in support of the legal principle, viz., a co-sharer of the property cannot claim adverse possession against other co-sharers.

17. The learned counsel would also submit that the claim of adverse possession must be from the inception, as held by various Courts and in this case, the plaintiffs did not establish their claim of adverse possession from the inception of their possession. In fact, there was no animus possidendi even remotely by the plaintiffs in regard to the suit scheduled properties and in the absence of any adverse possession as against the title holders, the question of pleading prescriptive right did not arise at all. The learned counsel would also submit that the alternative plea of adverse possession can be

raised by defendants and not by plaintiffs. The learned counsel for the respondents/defendants would also submit that the entire focus of the plaint was to the effect that the plaintiffs derived title from Ex.A1 document dated 08.01.1988 and the possession by the plaintiffs from 1988 was because of the derivative title, according to the claim of the plaintiffs and the alternative plea of adverse possession, in such circumstances, is blatantly inconsistent, contradictory and would change the very character of the main plea taken in the plaint by the plaintiffs. In fact, the Courts below have also found that the boundaries of the properties are also not properly mentioned in the so called Muchalika- Ex.A1, dated 08.01.1988. He would submit that in all fours, both the Courts below found that the claim of the plaintiffs was unsustainable and hence, rightly dismissed the prayer of the plaintiffs.

18.The learned counsel for the respondents/defendants would rely on the following decisions in support of his legal contention as to whether the alternative plea of adverse possession can co-exist with the plea of possession by drawing title from Ex.A1 (Muchalika), dated 08.01.1988, and whether EX.A1 could be relied upon as admissible piece of evidence, in the facts and circumstances of the case.

(i)Chinnaponnu (died) and another vs. Lakshmana Naidu & Others [2002(5) CTC 147]. The learned counsel would draw reference to Paragraph No.15 of the judgement, which is extracted hereunder:

"15. Even if we assume that to prove adverse possession it is not necessary to acknowledge the title of another and that it is sufficient to show that the long possession, open and continuous, ought to have put true owner on guard, yet, this question must be answered in favour of the appellant. The respondents claim that they are entitled to the suit property by virtue of Ex.A1. Therefore, adverse possession would mean setting up title hostile to themselves. These two pleas cannot coexist and therefore, it is only in these circumstances that the new substantial question of law was permitted to be raised by the appellant and it is answered in favour of the appellant."

19.In the above case, the learned Judge of this Court has held that the right of adverse possession cannot be claimed when there was a permissive occupation, since there was no animus possidendi.

(ii) Neelavathi vs. Shanmugam and another [2005(2) CTC 58]. The learned counsel would draw the attention of this Court to Paragraph No.7 of the judgement, which is extracted hereunder.

"7. Again, when plaintiff had relied upon a particular document of title, namely, Ex.A-1 gift deed, in order to claim right and title to suit property, she cannot claim it by adverse possession, because when once she claims title upon a particular document, then whatever right plaintiff claims would be flowing if at all under that document, in which case there is no element of adverse nature of possession in order to make out a case of prescription by title. Thus, the substantial question of law is answered against the appellant/plaintiff and I find no reason to allow this second appeal."

20. In the above case, the learned Judge of this Court has held that a person claiming right and title under document of title cannot claim title by adverse possession or prescriptive title.

(iii) Pappayammal vs. Palanisamy and Others [2005(3) CTC 292. Learned counsel would draw the attention of this Court to Paragraph Nos.32 and 33, wherein the learned Judge of this Court, in extenso, has dealt with the concept of 'adverse possession' and also as to when such prescriptive right could be claimed by the parties. Paragraph Nos.32 and 33 are extracted hereunder:

"32. The following are the important principles, laid down in the above decisions of this Court as well as the Supreme Court :

i) A party can plead adverse possession only when he admits that another person has got title.

ii) In the case of a co-owner, mere possession, however long it might be, would not constitute adverse possession. The possession must be over the statutory period and there must be clear ouster to the knowledge of the co-owner against whom the adverse possession is pleaded.

iii) As between the co-owners, there must be evidence of open assertion of hostile title coupled with exclusive possession and

enjoyment of one of them to the knowledge of the other, so as to constitute the ouster. The burden of making out ouster is on the person, claiming to displace the lawful title of the co-owner, by his adverse possession.

iv) The party pleading adverse possession must state with sufficient clarity as to from when his adverse possession commences and the nature of his possession.

v) When the co-owners are close relations, something more is to be proved, to prescribe title by adverse possession, than a case between two strangers.

vi) It would not be sufficient to show that one co-owner was in separate possession of the property and another co-owner was out of possession.

vii) A single circumstance of payment of tax or mutation of records would not, by itself, establish ouster or adverse possession as against the co-owner.

33. Keeping in mind the above settled principles, we shall go into the question. In this case, it is not the case of the second defendant that the plaintiff or plaintiff's husband was the co-owner of the suit property. As stated above, the second defendant can plead adverse possession only when she admits that the plaintiff has got title. In fact, the title of the plaintiff has not been admitted. On the other hand, it is the case of the second defendant that the suit properties were purchased by Kuppanna Gounder, who is her husband, as separate properties, and, immediately after the purchase, her husband entrusted the suit properties to her, being the second wife, for maintenance, by way of family arrangement. A specific stand is taken by the second defendant through the written statement, denying the title of the plaintiff. She claimed that she alone is the title holder of the properties, since the purchaser of the properties, who had his separate properties, entrusted them to her by way of family arrangement. Therefore, the question of adverse possession would not arise. Consequently, the findings given by both the Courts below, with reference to adverse possession in favour of

the second defendant, as correctly pointed out by the learned Senior Counsel for the appellant, are not correct."

(iv) M.S. Zeenath vs. Mohd. Hameed (deceased) and 12 others [2008(6) CTC 588]. The learned counsel would rely on Paragraph No.22 of the judgment, which would run thus:

"22. In addition to the claim of ownership in respect of the suit property, the plaintiff has also made a claim on the basis of adverse possession. The initial claim was on the ground that the property was purchased by him in the name of his mother and therefore, it was evident that he claims ownership of the property and as such he got a valid title in respect of the suit property. However, he also claims adverse possession. The claim to a property on the basis of title as well as adverse possession are two different concepts and such claims are mutually contradictory."

21. In the above case, the learned Judge of this Court has categorically held that claim to property on the basis of title as well as adverse possession are two different concepts and such claims are mutually contradictory.

(v) Ramasamy and another vs. Arulmighu Visweswaraswamy Veeraraghavaperumal Temple, Tiruppur, rep. by its Executive Officer and another [2015(3) MWN (Civil) 1]. The learned counsel would draw the attention of this Court particularly to Paragraph No.16 of the judgement, which is extracted hereunder:

"16. The plaintiffs are the persons who filed the suit claiming title to the suit property and praying for a declaration and injunction contending on the ground that they had got derivative title. At the same time, they have also based their claim on their contention that they had perfected title by adverse possession. The claim of derivative title and adverse possession shall not go together. That is the reason why they have taken the plea that though they had purchased the property from their vendors, they came to know the fact that the suit property was a devadayam minor inam land only when they received a notice dated 06.01.1995 from the Executive Officer of the first defendant temple

and that by the continuous possession of their vendor from the date of the order of the Tribunal produced as Ex.A16 and by themselves from the date of their purchase, they had perfected title by adverse possession. Under such circumstances, the burden shall stand heavily cast on the appellants/plaintiffs. The first respondent/first defendant temple has established its title based on oral evidence and Exs.B1 and B2 besides relying on Ex.A16 order of the Inam Abolition Tribunal. Ex.A16-order of the Tribunal conclusively establish the title of the temple. The title of the temple as per the said order, has been admitted by the appellants/plaintiffs. Only based on such admission they claimed perfection of title by adverse possession. The plaintiffs miserably failed in their attempt to substantiate their contention that they have perfected title by adverse possession. Hence third substantial question of law is also liable to be answered against the appellants/plaintiffs and in favour of the respondents/defendants."

22.In the above case, the learned Judge has held that the claims of 'derivative title' and 'adverse possession' shall not go together.

(vi)Recent decision of this Court in Chandra Sundararaj (died) and another vs. C.M.Dhinakaran @ Suresh and three others [2019(6) CTC 517]. The learned counsel would rely on Paragraph No.12 of the judgement, which is extracted hereunder:

"12.(xvi) Be that as it may, a reading of the family arrangement shows that it is not a mere partition between the heirs of Late C.M.Sundararaj. It records certain obligation which are in effect relinquishments of rights over the properties by the heirs of C.M.Sundararaj. While the first defendant relinquishes his share in the Besant Nagar Property, the plaintiffs 1 and 2 relinquished their right over the industrial land namely, the B schedule property. The very fact that the family arrangement is in writing, under which the parties, who are the members of the family relinquish their interest in the property the same requires registration and proper stamping in accordance with law. In the absence of such registration and proper stamping, the document

cannot be construed as valid. It is seen from the instrument itself that it was executed on 01.06.1994 and the second plaintiff has not signed it, though she figured as a party to the instrument. There are no attestors also. I have already concluded that the explanation offered by the defendant for non-production of the original is unconvincing. Therefore, I am of the considered opinion that the family arrangement dated 01.06.1994 cannot said to be a full fledged family arrangement brought about in the presence of the elders of the family in order to settle the disputes between the members of the family. The instrument which results in relinquishment of share in a particular item of property by one of the members is not valid without being registered and duly stamped under law. Hence, Issue No.5 is answered in favour of the plaintiffs and against the first defendant."

23. In the above case, the learned Judge of this Court has held that the document, which is unregistered and unstamped, cannot be construed as valid. The learned counsel for the respondents/defendants would submit that in this case, the most crucial document relied upon by the plaintiffs, for establishing their right of title over the suit scheduled properties, was Ex.A1-Muchalika, which is admittedly an unregistered and unstamped document and therefore, both the Courts below have rightly discountenanced the case of the plaintiffs both in terms of facts and law. Therefore, the learned counsel would submit that the questions of law framed by this Court, while admitting the Second Appeal, need to be answered against the appellants/plaintiffs.

24. Considered the submissions and various legal contentions raised on behalf of the parties and perused the pleadings and materials placed on record.

25. It is a case where a proverbial person chasing two rabbits ending up catching none. The plaintiffs, who laid the suit, as could be seen from the averments of the plaint, premised their entire case on the basis of Ex.A1, dated 08.01.1988, which was admittedly an unregistered and unstamped document, which rightly was held to be invalid by both the Courts below. Although serious arguments were advanced on behalf of the appellants/plaintiffs that the said document Ex.A1 could be relied upon for collateral purpose, as Courts have held so, such arguments did not merit serious consideration of this Court for the simple reason that the title emanates, as far as

the plaintiffs are concerned, only from Ex.A1 document. Therefore, if at all any reliance could be placed on the said document, it is only for the purpose of tracing the title of the plaintiffs. Therefore, by no stretch of legal standards, the said document Ex.A1 could be relied upon for collateral purpose. Such arguments advanced on behalf of the plaintiffs/appellants is misconceived and incorrect and have to be brushed aside.

26. Even otherwise, it is an admitted fact that one of the parties to the document-Ex.A1 (Muchalika), viz., the first defendant/Chinnammal, had not signed the document Ex.A1. Therefore, the said document is incomplete and cannot be admissible in evidence. In fact, Ex.A1 is not a document in the eye of law at all. In the said circumstances, the judgements and decrees of the Courts below, dismissing the claim of the plaintiffs, cannot be held as illegal or incorrect, warranting interference by this Court.

27. In the recent decision of this Court, which was cited on behalf of the respondents/defendants, in the case of Chandra Sundararaj (died) and another vs. C.M.Dhinakaran @ Suresh and three others [2019(6) CTC 517], the learned Judge of this Court has reiterated the law succinctly, in the extracted portion above. In any event, the legal principle on that aspect is well settled that an unstamped and unregistered document cannot be relied upon in Court proceedings when such document becomes the basis of the claim of a person tracing his/her title. Therefore, this Court is of the considered view that both the Courts below have rightly rejected the document Ex.A1.

28. As regards the issue of claiming prescriptive right on the ground that the plaintiffs were in possession since 1988 and their possession was open and continuous beyond the statutory period and therefore, they were entitled to title by adverse possession, this Court, after perusing several judgements, which were cited on behalf of the respondents/defendants, cannot come to any other conclusion other than to accept the contention of the respondents/defendants that in the facts and circumstances of the case, the plea of 'adverse possession' cannot be raised along with the plea of title to the property under a document. Both pleas are mutually contradictory, as held by the Courts below and such different reliefs, characterised by application of different set of laws, cannot be a matter of common adjudication. The appellants/plaintiffs herein cannot be allowed to ride two horses with two different characteristics, as such litigious journey on two horses by the plaintiffs would obviously not reach the desired end and rightly so their journey has fallen by the wayside.

29. When title was the principal claim in the suit by the

plaintiffs, the plaintiffs cannot be allowed to take an alternative route to succeed in the suit proceedings on the basis of their claim of title through adverse possession.

30.As rightly contended by the learned counsel Mr.Valliappan for the respondents/defendants that the claim of title by 'adverse possession' must be from the inception. In this case, such claim of title by adverse possession did not crystallise from the beginning of possession in 1988, since in 1988, even according to the plaintiffs they had derived title under Ex.A1 document. In such circumstances, the claim of open and continuous possession from 1988 by the plaintiffs is alien to the concept of 'adverse possession'.

31.Moreover, if the plaintiffs have to succeed in regard to their claim of right by 'adverse possession', the most important fact to be proved is animus possidendi, which means there must be a hostile ownership, adverse to the true owner of the property. In this case, such hostile possession is completely absent and therefore, in the absence of animus possidendi, the plaintiffs cannot have any right to claim title by 'adverse possession' at all. Although it is not necessary for this Court to consider the plea of 'adverse possession' on merits, as various decisions have been cited on behalf of the respondents/defendants that the claim of 'derivative title' and claim of 'title by adverse possession' cannot go hand-in-hand, as both claims are mutually exclusive and contradictory, in order to meet the arguments placed on behalf of the appellants/plaintiffs, this Court is constrained to give its finding on the merits of the claim of the plaintiffs in regard to their alternative plea of 'adverse possession'.

32.In these circumstances, this Court is of the considered view that the claim of 'adverse possession', even assuming for a moment can be maintained, notwithstanding several citations placed for consideration, the plaintiffs are not entitled to claim their title by 'adverse possession' as their possession from 1988, by no stretch of legal standards, could be construed as hostile. Such hostile possession must be open and continuous beyond the statutory period, which is not the case of the plaintiffs herein. Therefore, in all fours, the claim of the plaintiffs has to be discountenanced and both the Courts below have rightly passed the judgements and decrees, negating the claim of the plaintiffs.

33.As prefaced in the judgement, the plaintiffs herein have commenced their legal proceedings by choosing two routes and ultimately they landed nowhere. The trial Court as well as the appellate Court have appreciated the correct position of law and also have appreciated the facts and circumstances of the

case and ultimately held that the plaintiffs are not entitled to the reliefs. This Court does not find any infirmity at all in the approach of both the Courts below and therefore, the judgements and decrees of both the Courts below have to be upheld.

34. In the light of the discussion supra, the substantial questions of law framed in the Second Appeal have to be answered against the appellants/plaintiffs and accordingly, the substantial questions of law are answered against the appellants/plaintiffs. The Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CO)

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