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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 25.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1398 of 2008

and

M.P.No.1 of 2008

P.Manickam
Son of Pappa Konar,
Perumal Koil Street,
Pinnavasal,
Tiruvarur Taluk.

... Appellant/Appellant/Defendant

Vs.

P.Panneerselvam,
Son of Pappa Konar,
Perumal Koil Street,
Pinnavasal,
Tiruvarur Taluk.

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Subordinate Judge, Tiruvarur, dated 02.06.2008 in A.S.No.40 of 2007 and thereby confirming the judgment and decree of the Learned District Munsif, Tiruvarur, dated 18.06.2007 in O.S.No.80 of 2006.

For Appellant : Mr.T.Sai Krishnan
for M/s.Sai & Bharath

For Respondent : Mr.S.Sadhasivam

J U D G M E N T

Challenge in this second appeal is made to judgment and decree dated 02.06.2008 passed in A.S.No.40 of 2007 on the file of the Subordinate Court, Tiruvarur, confirming the judgment and decree dated 18.06.2007 passed in O.S.No.80 of 2006 on the file of the District Munsif Court, Tiruvarur.



2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for declaration and possession.

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4. The case of the plaintiff in brief is that the defendant is his natural brother. The plaintiff was brought up by his maternal uncle Kuppusamy and after attaining majority, the plaintiff learnt tractor driving and out of the income derived from the driving of the tractor and out of his own funds, the plaintiff had acquired the suit property and other properties by way of the sale deed dated 24.03.1983 and enjoying the same. Accordingly, the plaintiff had put up the terraced building in the eastern portion of S.No.88/7 and enjoying the suit property. The defendant came to the suit village for livelihood and for want of funds for his medical expenses and other needs, accordingly sought the permission of the plaintiff to put up a thatched shed in the western portion in S.No.88/7 and the same being acceded to by the plaintiff by considering the relationship between the parties, the defendant had put up the thatched hut in the western portion in S.No.88/7. However, the defendant subsequently endeavored to obtain patta in respect of the portion over which he had been permitted to occupy by the plaintiff and on coming to know the same i.e. that the defendant had endeavored to obtain the patta to the suit property, the plaintiff objected to the issuance of the patta in favour of the defendant qua the suit property and also issued the legal notice to the defendant on 08.09.2004 calling upon him to hand over the vacant possession of the property in his occupation and to the same, the defendant has sent a reply dated 14.09.2004 containing false allegations. Meanwhile, the defendant had put up the tiled superstructure in the portion occupied by him and therefore, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the suit has not been properly valued by the plaintiff and if the suit subject is properly valued, the Court below would not have the jurisdiction to entertain the suit laid by the plaintiff. Further, put forth the case that the plaintiff is not the owner of the suit property and disputed that the suit property and other properties had been acquired by the plaintiff out of his own funds and income derived from the driving of the tractor. According to the defendant, it is only the defendant who had conducted the marriage of the plaintiff and they had properties in Vittukatti village, which were sold in the year 1979 by the plaintiff and the defendant and after they leaving the village, out of the sale proceeds, it is only the defendant, who had paid money for the purchase of the suit property and other properties even in the year 1981 and took the possession of the same, however the sale deed was registered in the year



1983 and after the purchase of the suit property in 1981, the extent of 24 cents were divided into two halves and the plaintiff took the eastern half portion and the defendant took the western half portion and accordingly the plaintiff and the defendant had been in the possession and enjoyment of their respective portions by putting up superstructure thereon and enjoying the same by paying tax etc., Only thereafter, the defendant came to know that the plaintiff had fraudulently obtained the registration of the suit property in his name exclusively and he cannot take the advantage of the same for claiming absolute title over the suit property. The plaintiff has no means to acquire the suit property in his own name. The case projected by the plaintiff that he had permitted the defendant to occupy the western portion of the property is totally false and on the other hand, the defendant in his own right, is in the occupation and enjoyment of the said portion. The defendant's possession has been recognized by the revenue authorities and accordingly he had been granted patta and it is only the defendant, who had been continuously enjoying the same by paying Kists, house tax etc., and without prejudice to the abovesaid contentions, according to the defendant, he has also prescribed title to the suit property by way of adverse possession and inasmuch as, he has been in open, exclusive and interrupted possession of the suit property to the knowledge of the plaintiff, he has prescribed title to the same and accordingly sought for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A8 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B26 were marked.

7. On a consideration of the oral and documentary evidence adduced in the matter and the submissions putforth by the respective parties, the Courts below were pleased to grant the reliefs in favour of the plaintiff as prayed for. Challenging the same, the second appeal has been preferred by the defendant.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(a) Have not the Courts below erred in holding that the plaintiff proved his case by Ex.A1 of a suit for declaration and recovery of possession without considering the fact that the defendant has established his possession of the suit property by the Exs.B1 to B23?

(b) Whether or not the Courts below erred in considering the deposition of D.W.2 when he categorically stated that the partition happened in the year 1980 between the plaintiff and



the defendant?

(c) Whether or not the findings of the Courts below regarding the declaration of the suit property in favour of the plaintiff is sustainable in law when he did not even produce any of the single piece of evidence to show his title except Ex.A1?

(d) Whether or not the Courts below erred in holding that the defendant is not entitled for the relief of adverse possession, he firstly seeks a relief by his ownership and subsequently he seeks the relief of adverse possession when he continuously was in possession of the suit property from the year 1980?

9. The relationship between the parties is not in dispute. Now according to the plaintiff, the suit property belong to him absolutely. From the materials placed on record, it is found that admittedly the suit property and other properties had been acquired from one Muthammal by way of a registered sale deed dated 24.03.1983, which document has been marked as Ex.A1 and the defendant has admitted that it is only through Ex.A1, the suit property had come to be acquired and Ex.A1 stands in the name of the plaintiff and on the other hand, the defendant has putforth the claim that though the abovesaid sale deed had come to be registered in the name of the plaintiff, it is he who had advanced the sale consideration for Ex.A1. With reference to the same, the defendant would purforth the case that the parties had ancestral properties in the native village and after alienating the same, according to the defendant, out of the sale proceeds obtained from the sale of the ancestral properties, the sale consideration for Ex.A1 had been furnished by him. However, as regards the abovesaid plea projected by the defendant, as rightly concluded by the Courts below, though the existence of certain properties in the native village is not in dispute, there is no material projected on the part of the defendant as to when the properties in the native village has been alienated, for how much sale consideration the same had been alienated and with reference to the same, though the defendant examined as D.W.1 would admit the same and that the abovesaid facts could be gathered from the sale deeds pertaining to the abovesaid properties, for the reasons best known to him, he had not endeavored to produce the sale deeds pertaining to the sale of the properties in the native village, to establish as to when actually the ancestral properties were alienated and what was the amount obtained by way of the said sale etc., Therefore, when Ex.A1 sale deed is found to be standing only in the name of the plaintiff, if really, it is only the defendant who had advanced the sale price, naturally necessary recitals pointing to the same would have been incorporated in Ex.A1 sale deed. However, on a perusal of Ex.A1 sale deed, the recitals contained



therein do not point out that the sale consideration had been parted with by the defendant. On the other hand, it is found that the sale consideration had been only furnished by the plaintiff.

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10. According to the defendant, the plaintiff has no wherewithal to advance the sale consideration for Ex.A1. However, considering the fact that the plaintiff has been engaged as a tractor driver and earning income, out of the same, moreso, when considering the driving license standing in the name of the plaintiff marked as Ex.A4 as well as the bank accounts balance which could be gathered from the pass books marked as Exs.A5 and A6, as rightly concluded by the Courts below, at the time of acquisition of the suit property and other properties under Ex.A1, the plaintiff is found to be having sufficient funds to pay the sale consideration on his own. In such view of the matter, when the recitals contained in Ex.A1 also disclose that it is only the plaintiff who had furnished the sale consideration and when the defendant has also admitted the employment of the plaintiff as a tractor driver and earning income during the relevant point of time, all put together, as rightly held by the Courts below, it is only the plaintiff who had purchased the suit property and other properties under Ex.A1 independently out of his own income.

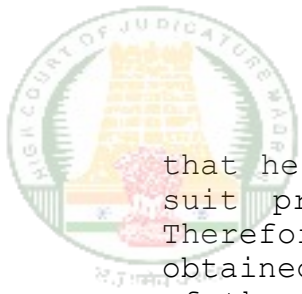
11. If really the defendant had parted with the sale consideration for Ex.A1, when according to the defendant, he had abundant knowledge that the sale deed had been secured in the name of the plaintiff, it is not clear as to why the defendant had not thereafter endeavored or initiated any action objecting to the registration of Ex.A1 in the name of the plaintiff exclusively. In this connection, the defendant examined himself as D.W.1 has admitted that he had not issued any notice either to the vendor of the plaintiff or to the plaintiff in connection with the same and further admitted that he has not initiated any civil action against the plaintiff and the vendor with reference to the same. Therefore, the contention put forth by the defendant that the plaintiff had fraudulently obtained Ex.A1 sale deed in his name, as such, cannot be countenanced. If really, it is only the defendant who had parted with the sale consideration and when the defendant having abundant knowledge of Ex.A1 having been registered in the name of the plaintiff exclusively, his conduct in not challenging the same as per law, the resultant position is that inasmuch as the plaintiff had acquired the properties under Ex.A1 independently out of his own income, the defendant has not endeavored to initiate any action questioning Ex.A1 sale deed as per law.

12. The defendant would put forth the claim the partition of the property comprised in S.No.88/7 and the allotment of the



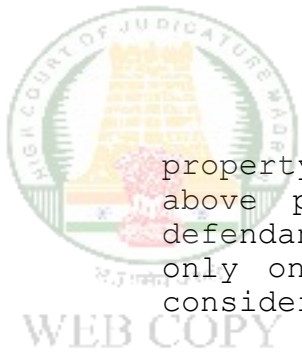
western portion to him. The partition pleaded by the defendant is oral. The defendant has not pleaded as to on what date, month and year, the partition had been effected and no acceptable material pointing to the partition is placed on record. The defendant would admit that only after the sale deed had been executed, he and the plaintiff had effected the partition. The sale deed Ex.A1 is dated 24.03.1983 whereas the defendant in the written statement would putforth the case that the partition had been effected in the year 1981 itself. On the other hand, D.W.2 in his evidence would state that the partition had been effected during the year 1980. According to the defendant, prior to Ex.A1 sale deed, the agreement of sale had been entered into with reference to the properties acquired under Ex.A1 sale deed. However, with reference to the same, to evidence that the agreement of sale had been entered into in the name of the defendant prior to Ex.A1 absolutely, there is no material putforth by the defendant. Furthermore, as above pointed out, the defendant has also not established that it is he, who had parted with the sale consideration to the vendor either under sale agreement or under Ex.A1 sale deed. Similarly, the claim of the defendant that the possession had been taken over in the year 1981 itself is not supported by acceptable and reliable materials as such. In such view of the matter, when the defendant during the course of his evidence has admitted that the partition had been effected only after Ex.A1, the case pleaded that the partition had been effected in the year 1981 itself falls to the ground. In such view of the matter, the further claim of the defendant that he had been allotted the western portion and the eastern portion was allotted to the plaintiff also cannot be accepted in any manner. When the defendant having failed to establish his claim of valid title to the suit property, as above discussed, it does not stand to reason as to why the plaintiff should endeavor to effect the partition in respect of the property comprised in S.No.88/7 with the defendant. Therefore, the case projected by the defendant that the suit property had been allotted to him in the oral partition effected in 1981 cannot at all be believed and rightly rejected by the Courts below.

13. When the defendant has failed to establish his valid claim of title to the suit property, for the reasons putforth by him as above discussed, ie., he having failed to establish that it is he who had parted with the sale consideration for Ex.A1 and he having failed to establish the plea of oral partition, in such view of the matter, it does not stand to reason as to how come the defendant had secured the patta in respect of the suit property. It has been admitted by the defendant examined as D.W.1 that for the issuance of patta in his name, he has not exhibited any document to the authorities concerned evidencing his claim of title to the suit property and further admitted



that he has not disclosed that the sale deed in respect of the suit property Ex.A1 stands only the name of the plaintiff. Therefore, it is found that the defendant has stealthily obtained the patta qua the suit property suppressing the title of the plaintiff qua the same and accordingly the plaintiff on coming to know the obtainment of the patta by the defendant, raised objection to the same and consequently the patta granted the defendant had been canceled during the year 1995. Thereafter the parties had come forward with the present suit for claiming title to the suit property.

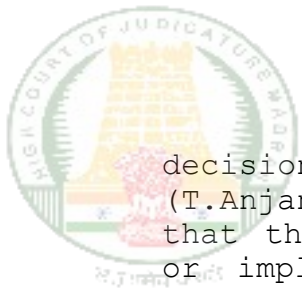
14. The defendant throughout in his written statement as well as in the course of his evidence, would only state and harp upon that he is claiming the title to the suit property only on a pucca title and would also state that he has been in the possession and enjoyment of the suit property only on the premise that the suit property is his absolute property. Despite the abovesaid position, the defendant also taken the plea of adverse title. Now according to the defendant, he has been in the exclusive possession and enjoyment of the suit property right from 1981 in his own right and also would state that without prejudice to the abovesaid contention, he has also prescribed title to the suit property by way of adverse possession on account of open, continuous and uninterrupted possession of the suit property right from 1981 to the knowledge of the plaintiff by asserting title on himself. Thus, for claiming title to the suit property in his own right as well as for claiming title to the suit property by way of adverse possession, the defendant would project his case that he has been in the possession and enjoyment of the suit property form 1981 onwards. The abovesaid case projected by the defendant is based on the premise as according to him only during 1981 the partition had been effected and he had been allotted the suit property. As above pointed out, the defendant has failed to establish the plea of oral partition putforth by him. When from Ex.A1 and other documents projected by the plaintiff, it is seen that it is only the plaintiff who has the valid title to the suit property and when the defendant has failed to establish his lawful authority to remain in the possession of the suit property right from 1981 as pleaded by him, the inevitable conclusion that could be arrived at, as putforth by the plaintiff and as determined by the trial court, the possession of the suit property by the defendant is only on the permission given by the plaintiff. Though the plaintiff has not pleaded as to when he had actually granted the permission to the defendant to occupy the suit property, however, when the defendant has failed to establish as to how come he had acquired the possession of the suit property, when the plaintiff is found to be the owner of the suit property as above discussed, the defendant's claim of possession and enjoyment of the suit



property in his independent right not having been established as above pointed out, all put together, it is found that the defendant's possession of the suit property should have been only on the permission granted by the plaintiff particularly, considering the close relationship between the parties.

15. As regards the plea of adverse possession put forth by the defendant, when he is asserting title to the suit property independently ie., he would only state that it is he who is having title to the suit property and the plaintiff is not having title to the suit property and thereby when the defendant is not admitting the plaintiff's claim of title to the suit property, it does not stand to reason as to how the defendant would be entitled to claim the adverse title qua the suit property against the plaintiff. Even in the decision relied upon by the defendant's counsel reported in 2019 (8) SCC 729 [Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others] for seeking claim of title by way of adverse possession, it has been held that the possession must be adequate in continuity, in publicity and in extent and it must be adverse to owner, in open, visible, notorious and peaceful denial of owner's title or knowledge and it has been further held that neither mere long possession nor possession as trespasser would qualify for adverse possession. Such being the position of law, when the defendant is not admitting the plaintiff's claim of title to the suit property in any manner and on the other hand, would only stick on to his stand that it is he, who is having independent title to the suit property as put forth by him, however, as above pointed out and discussed, he having failed to establish his case of title totally and when it has been held rightly by the Courts below, that it is only the plaintiff who has the valid title to the suit property, the defendant's possession of the suit property could only be either by way of trespass or by way of the permission granted to him by the plaintiff. Even assuming that the plaintiff has failed to establish the plea of permission put forth by him qua the defendant's possession of the suit property and when the defendant has come forward with the case that he is in the possession and enjoyment of the suit property in his independent right and not on the permission granted by the plaintiff and also put forth the case that he has not trespassed into the suit property and had acquired and enjoying the same independently in his own right from 1981 onwards and as above pointed out, when the defendant is not admitting the plaintiff's claim of title to the suit property, in such view of the matter, the claim of adverse title projected by the defendant against the plaintiff cannot be legally sustained as such.

16. As regards the pleas and proof to be put forth for proving the case of adverse possession, the apex Court in the



decision reported in (2006) 7 Supreme Court Cases 570 (T.Anjanappa and others Vs. Somalingappa and another) has held that the possession must be hostile, in denial, either express or implied, of title of the real owner and for that the possessor must clearly know the actual owner of the property and only then can be situation of being in hostile possession and question of denying title of true owner would arise. The abovesaid principles of law had been outlined in the abovesaid decision as follows:

"Adverse possession - concept - Possession must be hostile, in denial, either express or implied, of title of the real owner - For that it is essential that possessor must clearly know the actual owner of the property - Only then can be situation of being in hostile possession and question of denying title of true owner would arise - Possession must be peaceful, continuous and open, capable of being known by parties interested.

The concept of adverse possession contemplates a hostile possession i.e.. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tend to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. An



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occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.

Vidya Devi V. Prem Prakash, (1995) 4 SCC 496; War v. Carttar, (1865) LR 1 Eq 29 : 35 Beav 171: 55 ER 860; Rains v. Buxton, (1880) 14 Ch D 537: 43 LT 88, relied on Annasaheb Bapusaheb Patil v. Balwant, (1995) 2 SCC 543: AIR 1995 SC 895, cited Halsbury's Laws of England 1953 Edn., Vol. I, relied on

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."

17. Similarly in the decision reported in (2007) 3 Supreme Court Cases 569 (Krishnamurthy S. Setlur (Dead) By Lrs. Vs. O.V. Narasimha Setty and others), it has been held by the apex Court that the person claiming title to the property by way of adverse possession must plead and prove the date on and from which he claims to be in the exclusive, continuous and



undisturbed possession and also that such possession was actual and to the knowledge of the real owner and further to show hostile title had been communicated to the real owner and the position of law on that aspects has been outlined by the apex Court in the abovesaid decision as follows:

"Limitation Act, 1963 - S.27 and Arts. 64 & 65 - Adverse possession - Duty of the plaintiff making claim for - Nature of the question as to whether the possession is adverse or not - Duty of first appellate court to examine the conclusion reached by trial Court in that regard - Held, the plaintiff must plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession and also that such possession was actual and to the knowledge of the real owner - He has also to show hostile title and communicate it to the real owner - The question whether the possession is adverse or not though often a simple question of fact, may sometimes be a question of law or a mixed question of law and fact - The conclusion drawn from the facts as to ouster or adverse possession, held, is a question of law and must be considered by the first appellate Court - In the present case, questions of law arising therein such as whether the tenant's possession could be treated as the owner's possession for the purpose of computing of limitation period not answered by the first appellate Court - Moreover, its decision suffering from many other serious errors - Such a decision, held, called for interference under Art. 136 of the Constitution.

The right extinguished by Section 27 of the Limitation Act, 1963 is the right which the lawful owner has and against whom a claim for adverse possession is made. Therefore, 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. The question whether possession is adverse or not is often one of simple fact but it may also



the plea of title and adverse possession simultaneously and from the same date and the position of law with reference to the same has been explained by the Apex Court in the decision reported in 2020 SCC Online SC 672 [Narasamma and others Vs. A.Krishnappa (Dead) Through Lrs.] as follows:

"29. We may also note that on the one hand, the appellants herein have sought to take a plea of bar of limitation vis-à-vis the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. We fail to appreciate how, on the one hand the appellants claimed that the wife of the original defendant, appellant 1 herein, had title to the property in 1976 but on their failure to establish title, in the alternative, the plea of adverse possession should be recognised from the very date.

30. We also find that the reliance placed by learned counsel for the appellants in Ravinder Kaur Grewal & Ors.⁸ is also misplaced. The question which arose for consideration before the three Judge Bench was whether, a suit could be maintained for declaration of title and for permanent injunction seeking protection on a plea of adverse possession, or that it was an instrument of defence in a suit filed against such a person. In fact, if one may say, there was, for a long time a consistent view of the Court that the plea could only be of shield and not a sword. The judgment changed this legal position by opining that a plea to retain possession could be managed by the ripening of title by way of adverse possession. However, to constitute such adverse possession, the three classic requirements, which need to co-exist were



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again emphasized, 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.

31. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned counsel for the respondent herein, which succinctly set forth the legal position.

32. In Karnataka Board of Wakf case, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that "... the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.."

33. The aforesaid judgment in turn relied upon the judgment in Mohan Lal (Deceased) Thr. LRs.10, which observed in para 4 as under:

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he



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admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

34. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial.

35. In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

36. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out.

37. We may also note another judicial pronouncement in [Ram Nagina Rai & Anr. v. Deo Kumar Rai \(Deceased\)](#) by LRs & Anr. 13 dealing with a similar factual matrix, i.e., where there is permissive possession given by the owner and the defendant claims that the same had become adverse. It was held that it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title 12 years hence from that time.



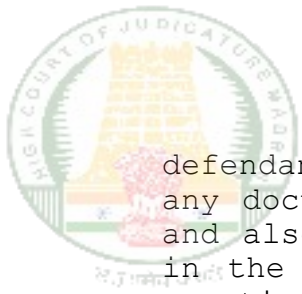
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38. The legal position, thus, stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date.

39. We have, thus, no hesitation in coming to the conclusion that the appeal is meritless and is accordingly dismissed with costs."

19. In the light of the above position of law enunciated by the Apex Court in the abovesaid decision, it is found that the plea of title raised by the defendant and the plea of adverse possession putforth by him cannot be validly upheld in the eyes of law.

20. In addition to that when the present suit has come to be laid by the plaintiff on 09.01.2006 though the defendant's claim that he has been in the possession and enjoyment of the suit property right from 1981 onwards, however, considering the documents projected by the defendant in toto it is noted that apart from Exs.B11 and B13 which are dated 20.10.1989 and 20.02.1997, they being house tax receipts and the other documents projected by the defendant are only ranging from 1994 onwards, though the defendant would claim that he has been in the possession and enjoyment of the suit property right from 1981 onwards, however to evidence his claim of possession and enjoyment from 1981, no acceptable and reliable materials are forthcoming on the part of the defendant. It is found that the patta which is said to have been issued in favour of the defendant has been granted only on 31.07.1990 which has been marked as Ex.B23. On the objection raised by the plaintiff to the same, as above pointed out, the patta issued in favour of the defendant had been cancelled in the year 1995 itself and thereby, the parties are now agitating their claim of title to the suit property in the present civil action. When the plaintiff has presented the plaint on 09.01.2006 and when the other documents of possession putforth by the defendant are only ranging within the period of 12 years prior to the institution of the suit, in such view of the matter, the abovesaid documents by themselves would not be sufficient and adequate to hold that the defendant has been openly, continuously and uninterruptedly been in the possession and enjoyment of the suit properties, that too, to the knowledge of the plaintiff by challenging his title with Animus possidendi beyond the statutory period and accordingly, the Courts below are found to be justified in negating the plea of adverse possession putforth by the



defendant. When the defendant has admitted that he has not shown any document of title to the authority who had issued the patta and also admitted that he had suppressed the sale deed obtained in the name of the plaintiff to the authority concerned while granting the patta and when further admitted that the DRO had advised the parties concerned to approach the Civil Court for adjudicating the title in issue and when the defendant's patta had been cancelled during 1995 merely on the production of certain electricity bills and house tax receipts on the part of the defendant ranging from 1994 onwards, we cannot uphold his plea of adverse possession. Moreover, according to the defendant in the written statement, the plaintiff has filed his objections to the revenue authorities for the issuance of the separate patta being given to the defendant. All put together, the contention raised by the defendant's counsel that the Courts below had erred in not upholding the plea of adverse possession raised by the defendant as such cannot be countenanced.

21. Considering the pleas and the oral and documentary evidence adduced by the respective parties in toto, it is found that the plea of adverse possession of the defendant to the suit property cannot at all be countenanced in any manner and therefore, the Courts below are found to be justified in negating the said plea of adverse possession. When the plea of partition raised by the defendant is found to be totally a false case particularly the defendant having contradicted as regards the plea of partition in the written statement and in the oral evidence and when the evidence of P.W.2 is also found to be unacceptable, when according to the defendant in the course of his evidence, the partition had been effected only after Ex.A1 sale deed and when the plaintiff's claim of title to the suit property has been clearly established from Ex.A1, merely because the plaintiff has not placed any document of possession evidencing his possession qua the suit property, the defendant having failed to establish his plea of title by way of adverse possession, as above discussed, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendant.

22. The reasonings and conclusions of the Courts below for upholding the plaintiff's case and rejecting the defence version being founded on the proper appreciation of the materials available on record both oral and documentary, both on factual matrix as well as on the points of law and when they are not shown to be in any manner, perverse, illegal and irrational, I do not find any valid reason to interfere with the same.

23. The plaintiff's counsel in support of his contention placed reliance upon the decision reported in AIR 1964 Supreme Court 1254 [S.M.Karim Vs. Mst.Bibi Sakina] . The principles of



law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

24. In conclusion, the judgment and decree dated 02.06.2008 passed in A.S.No.40 of 2007 on the file of the Subordinate Court, Tiruvarur, confirming the judgment and decree dated 18.06.2007 passed in O.S.No.80 of 2006 on the file of the District Munsif Court, Tiruvarur are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Subordinate Court,
Tiruvarur.
2. The District Munsif,
District Munsif Court,
Tiruvarur.

Copy to:
The Section Officer,
VR Section,
High Court,
Chennai.

+2ccs to Mr.S.Sadasivan, Advocate, S.R.No.19743

+1cc to Mr.T.Sai Krishnan, Advocate, S.R.No.19510

Judgment made in
S.A.No.1398 of 2008
and
M.P.No.1 of 2008

SSD(CO)
SU(07/10/2021)