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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2021

PRONOUNCED ON : 19.07.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.122 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

1.A.Lalitha

2.Victoria Ammal

...Appellants/Appellants/Defendants

vs.

1.Palani

2.Chandran

3.Nehru

4.Murugadass

...Respondents/Respondents/Plaintiffs

Prayer: This Second Appeal has been filed under Section 100 of the Code of the Civil Procedure, against the judgment and decree dated 30.12.2009 made in A.S.No.86 of 2007 on the file of the Additional Sub Court, Thiruvannamalai, confirming the Judgment and decree dated 28.09.2007 made in O.S.No.275 of 2006 on the file of the Principal District Munsif Court, Thiruvannamalai.

For Appellant : Mr.N.Damodaran

For Respondents : Mr.R.Rajaraman

J U D G M E N T

This case was not admitted when it was listed for admission. However, a notice of admission was ordered on 13.03.2012 as per the practice of this Court that was in vogue then.

2. Notice was served on the respondents. The respondents are thus represented by their counsel eventhough neither the above appeal was admitted nor substantial questions of law were framed for being answered.



3. The appellants were the defendants in O.S.No.275 of 2006 on the file of Principal District Munsif , Tiruvannamalai. The respondents had filed O.S.No.275 of 2006 against the appellants for a declaration of title and for delivery of the suit schedule property from the hands of the appellants.

4. The substantial questions of law that arises in this appeal is whether the suit filed by the respondents to recover the possession from the appellants was within time and whether the appellants can claim adverse possession over the suit schedule property.

5. Limitation to recover possession of immovable property is twelve years from date on which possession by the second appellant became adverse to the respondents.

6. A reference may be made to Art.65 of the Limitation Act, which is extracted as under:-

"Description of suit		Period of limitation	Time from which period begins to run
65.	For possession of immovable property or any interest therein based on title. Explanation.—For the purposes of this article— (a) where the suit is by a remainder man, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversioner or devisee, as the case may be, falls into possession;	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff."

8.



(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.

7. Limitation to recover possession of immovable property is twelve years from date on which possession by the person claims adverse possession. Mere possession is not enough. It has to be adverse possession as recognized by law as this expression is not defined in the Act.

8. Under Section 27 of the Limitation Act, 1963, the right to recover the property gets extinguished, if a suit is not filed within the time prescribed under law. The adverse possessor does not derive title from the former owner of the property. Rather, independently derives right and title over the property due to hostile possession. The right which is extinguished is the right of the lawful owner had from a person who claim adverse possession due to efflux of time and on account of hostile possession with the knowledge of the de jure owner.

9. A person 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 of the property.

10. Whether the possession was adverse or not is often a mixed question of law and fact and conclusions have to be drawn from the facts namely, ouster or adverse possession

11. In *Ravinder Kaur Grewal v. Manjit Kaur*, (2019) 8 SCC 729, it was observed as follows:-

30. In an article published in Harvard Law Review on "Title by Adverse Possession" by Henry W. Ballantine, as to the question of adverse possession and acquisition of title it has been observed on strength of various decisions that adverse possession vests the possessor with the complete title as effectually as if there had



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been a conveyance by the former owner. As held in *Toltec Ranch Co.v.Cook* [*Toltec Ranch Co.v.Cook*, 1903 SCC OnLine US SC 226 : 48 L Ed 291 : 191 US 532 (1903)] , US at p. 542. But the title is independent, not derivative, and "relates back" to the inception of the adverse possession, as observed. (See *Field v.Peoples* [*Fieldv.Peoples*, 180 Ill 376, 383 : 54 NE 304 (1899)] ;*Bellefontaine Improv. Co.v.Niedringhaus* [*Bellefontaine Improv. Co.v.Niedringhaus*, 181 Ill 426 : 55 NE 184 (1899)] .*Lasalle County Carbon Coal Co.v.Sanitary District*[*Lasalle County Carbon Coal Co.v.Sanitary District*, 260 Ill 423, 429 : 103 NE 175 (1913)] ; *AMES, LECTURES ON LEGAL HIST.* 197; 3 *ANGLO-AMERICAN ESSAYS*, 567.) The adverse possessor does not derive his title from the former owner, but from a new source of title, his possession. The "investitive fact" is the disseisin and exercise of possession as observed in *Camp v.Camp* [*Camp v.Camp*, 5 Conn 291 (1824)] ;*Price v. Lyon* [*Price v. Lyon*, 14 Conn 279, 290 (1841)] and *Coal Creek Consol. Coal Co.v.East Tennessee Iron & Coal Co.* [*Coal Creek Consol. Coal Co.v.East Tennessee Iron & Coal Co.*, 105 Tenn 563 : 59 SW 634, 636 (1900)] It has also been observed that titles to property should not remain uncertain and in dispute, but that continued de facto exercise and assertion of a right should be conclusive evidence of the de jure existence of the right.

12. *Annakili v. A. Vedanayagam*, (2007) 14 SCC 308, the court 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.

13. The Court further observed that *Animus possidendi* as is a well known concept. It is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land does not necessarily ripen into possessory title for the said purpose.



14. It held that the possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, for a period of more than 12 years without anything more does not ripen into a title.

15. In *S.M. Karim v. Bibi Sakina*, (1964) 6 SCR 780 : AIR 1964 SC 1254, the Honble Supreme Court held as follows:-

" Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found."

16. The Court further held that long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. In *Bishun Dayal v. Kesho Prasad* [AIR (1946) PC 202] the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.

17. In *P.T. Munichikkanna Reddy v. Revamma*, (2007) 6 SCC 59. The defendant-respondents in their written statement denied and disputed the assertion of the plaintiffs and pleaded their own right, title and interest as also possession in or over the said 1 acre 21 guntas of land. The trial Judge decreed the suit inter alia holding that the plaintiff-appellants have acquired title by adverse possession as they have been in possession of the lands in question for a period of more than 50 years. On an appeal by the respondents before the High Court, the said judgment of the trial court was reversed holding:

"(i) ... The important averments of adverse possession are twofold. One is to recognise the title of the person against whom adverse possession is claimed. Another is to enjoy the property adverse to the title-holder's interest after making him known that such enjoyment is against his own interest. These two averments are basically absent in this case both in the pleadings as well as in the evidence....



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(ii) The finding of the court below that the possession of the plaintiffs became adverse to the defendants between 1934-36 is again an error apparent on the face of the record. As it is now clarified before me by the learned counsel for the appellants that the plaintiffs' claim in respect of the other land of the defendants is based on the subsequent sale deed dated 5-7-1936.

It is settled law that mere possession even if it is true for any number of years will not clothe the person in enjoyment with the title by adverse possession. As indicated supra, the important ingredients of adverse possession should have been satisfied."

18. There the court observed that an adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. (See *Downing v. Bird* [100 So 2d 57 (Fla 1958)] ; *Arkansas Commemorative Commission v. City of Little Rock* [227 Ark 1085 : 303 SW 2d 569 (1957)] ; *Monnot v. Murphy* [207 NY 240 : 100 NE 742 (1913)] ; *City of Rock Springs v. Sturm* [39 Wyo 494 : 273 P 908 : 97 ALR 1 (1929)] .)

19. In para 30, the Court held as follows:-

" 6. Efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such



22. There, the Court referred to the 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 Sakina [AIR 1964 SC 1254], Parsinni v. Sukhi [(1993) 4 SCC 375] and D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .)

23. The Court recognised that 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.

24. It was further recognised that 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 the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128]

25. In Ram Daan v. Urban Improvement Trust, (2014) 8 SCC 902 : (2014) 4 SCC (Civ) 669 : 2014 SCC OnLine SC 595 it was observed as under:-

" 11. It is settled position of law laid down by the Privy Council in Perry v. Clissold [1907 AC 73 (PC)] : (AC p. 79)

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the



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case, his right is forever extinguished, and the possessory owner acquires an absolute title."

The above statement was quoted with the approval by this Court in Nair Service Society Ltd.v.K.C. Alexander [AIR 1968 SC 1165] . Their Lordships at para 22 emphatically stated: (AIR p. 1175)

"22. The cases of the Judicial Committee are not binding on us but we approve of the dictum in Perry v.Clissold[1907 AC 73 (PC)] ."

26. In Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453 : 2019 SCC OnLine SC 975 in para 51 it was held as under:-

51. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation in Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

53. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once the right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

57. In Article 65 in the opening part a suit "for possession of immovable property or any interest



58. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of the Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in praesenti to obtain it, not in futuro. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property.

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title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

27. The Court therefore held that decisions of the Court in Gurdwara Sahib v. Gram Panchayat Village Sirthala [Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630 and the subsequent decision [State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj, (2017) 9 SCC 579 : (2017) 4 SCC (Civ) 671] and Dharampal v. Punjab Wakf Board, (2018) 11 SCC 449 : (2018) 5 SCC (Civ) 148] cannot be said to be laying down the law correctly. Thus they were hereby overruled. The Court held that the plea of acquisition of title by adverse possession can be taken by the plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on the aforesaid basis in case of infringement of any rights of a plaintiff.

28. If the suit was filed in time, the plea of adverse possession cannot be sustained. On the other hand, if the adverse possession is to be occupied, the appellants had to satisfy the requirement of law as discussed above. In which case, the suit will be time barred under Article 65 of the Limitation Act, 1963.

29. Heard learned counsel for the appellant and the learned counsel for the respondent. I have also perused the judgment and decree of the Trial Court in O.S.No.275 of 2006 and that the impugned judgment and decree of the Appellate Court in A.S.No.86 of 2007.

30. In this appeal, the appellants have raised the following questions of law as substantial questions of law:-

"(1) Whether the courts below erred in law and misdirected themselves in rejecting the plea of acquisition of title to the suit property by adverse possession by the appellants herein when they have proved their long, uninterrupted possession and enjoyment of the suit property for more than the statutory period with an



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element of corpus possidendi and animus possidendi, by adducing necessary oral as well as documentary evidences?

(2) Whether the lower appellate court is correct in refusing to entertain the application filed by the appellants for reception of additional documents under Order 41 Rule 27 C.P.C. without properly advertng to the reasons as adduced by the appellants and on the premises that it requires taking of evidence which approach is against well established principles of law?

(3) Whether the courts below are correct in decreeing the suit in favour of the respondents when the preponderance of probabilities of the case proves the continuous possession and enjoyment of the suit property by the appellants especially when the respondents have failed to prove their possession of the suit property upto 20.05.2006 the date of alleged trespass by the appellants herein and when the suit instituted by the respondents is barred by Limitation?"

31. I have considered the arguments advanced by the learned counsel for the appellant and the respondent. I have also considered the arguments advanced by the learned counsel for the appellant and the respondent.

32. Coming to the facts of the case, before the Trial Court, the appellants had taken a plea that the 2nd appellant was in possession of the suit schedule property since 1978 and had perfected the title over suit schedule property due to adverse possession.

33. The 2nd appellant executed Ex.A6 Registered Settlement Deed dated 13.03.2006 and settled the suit schedule property in favour of her daughter, 1st appellant herein.

34. The learned counsel for the appellants submits that the 2nd appellant had purchased the suit schedule property from the father of the respondents vide Ex.A.2 dated 04.12.1978 but by oversight in the recitals of the said exhibit, the suit schedule property in S.No.67/16 was not mentioned.



35. It was submitted on behalf of the appellants that though extent of 55 cents in the suit schedule to the property was not conveyed in Ex.A.2 sale deed dated 4.12.1978, nevertheless, the 2nd appellant continued to exercise possession over the suit schedule property and obtained a consolidated patta not only for the property conveyed in Ex. A2 dated 04.1978 but also for the suit schedule property in S.No.67/16 vide Ex.B.2 dated 22.09.1982.

36. When the respondents and their mother attempted to disturb the possession over the suit schedule property in S.No.67/16 in 1985, the 2nd appellant filed O.S.No.968 of 1995 against them for declaration of title over the suit schedule property and for a permanent injunction.

37. Though the learned counsel for the appellants submitted that since the respondents had ceased to interfere with their peaceful possession over the suit schedule property, the aforesaid suit (O.S.No.968 of 1995) was allowed to be dismissed for non-prosecution on 08.09.1998 as O.S.No.968 of 1995 had become infructuous due to cessation of threat by the respondents.

38. Defending the decision of the First Appellate Court dismissing the appeal filed by the appellants before the Appellate Court in A.S.No.86 of 2007 in upholding the judgment and decree dated 28.9.07 of the Trial Court in O.S.No.275 of 2006, the learned counsel for the respondents submits that not only the Trial Court but also the Appellate Court have come to a fair conclusion.

39. It is the contention of the learned counsel for the respondents/plaintiffs that the respondents/plaintiffs are children of one Natesa Udaiyar of Madhurampattu Village in Tiruvannamalai District and that their father had sold only an extent of 0.86 Cents in S.No.70/1B and 1.26 Acres in S.Nos.71/8 to the appellants vide Ex.A2 way back in 1978 and retained the balance of 55.8 cents of suit schedule property in S.No.67/16.

40. It was submitted that the suit schedule property in S.No.67/16 measuring about 22.5 Hectares equal to 55.8 cents ($22.5 \times 2.48 = 55.8$ cents) continued to be in the possession of the respondents father Thiru.NatesaUdaiyar during his life time and thereafter with respondents.



41. It was further submitted that without producing any documents to substantiate the ownership over the suit schedule property, the second appellant executed Ex.A6 Registered Settlement Deed dated 13.03.2006 in favour of the first appellant which was a self serving document to scuttle the property interse between themselves.

42. The learned counsel for the respondents further submits that the so called settlement of the suit schedule property by the 2nd appellant in favour of the 1st appellant vide Ex.A6 Registered Settlement Deed dated 13.03.2006 was just three months prior to the filing of the suit. It was made with a view to give an semblance of legitimacy to the claim for possession as the respondents did not wish to sell the land to the appellants.

43. The learned counsel for the respondents submitted that Patta in Ex.B.1 dated 22.09.1982 was obtained behind the back of the respondents by taking advantage of the fact that respondents were absentee landlord to tile and without any documents.

44. The learned counsel for the respondents further submitted that the appellants have taken diametrically opposite stand before the Trial Court and the Appellate Court and therefore both the Courts have rightly rejected the appellants plea.

45. That apart, it is further submitted that the fact that the appellants had filed O.S.No.968 of 1995 and allowed it to be dismissed for default on 08.09.1998 itself shows that there was no continuous adverse possession or hostile to the rights of the respondents.

46. He therefore submits that no substantial questions of law arises for consideration in this appeal. That apart, the learned counsel for the respondents further submits that even if the I.A.No.175 of 2008 was filed to mark additional documents under Order 41 Rule 27 of C.P.C vide Exs.B7 to B10 (Adangals from 1982) was allowed to be marked, the appellants could not have established adverse possession based on these documents.

47. In this connection, the learned counsel for the respondents placed reliance on the following decisions of the Hon'ble Supreme Court as under:-



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i. State of Haryana Vs Mukesh Kumar &Ors, (2011) 10 SCC 404.

ii. S.M.Karim Vs MST.Bibi Sakina, AIR 1964 SC 1254.

iii. P.T.Munichikanna Reddy & Others Vs Revamma and Others, (2007) 6 SCC 59.

iv. Union of India Vs Ibrahim Uddin and another, (2012) 8 SCC 148.

v. Basayya I. Mathad Vs RudrayyaS.Mathad and others, (2008) 3 SCC 120.

vi. Municipal Corporation for Greater Bombay Vs Lala Pancham of Bombay & Others, AIR 1965 SC 1008

vii. State of Uttar Pradesh Vs Manbodhan Lal Srivastava, AIR 1957 SC 912.

48. It is submitted that the suit has been rightly decreed by the trial Court in O.S.No.275 of 2006 and the appeal filed by the appellants was rightly rejected by the First Appellate Court in A.S.No.86 of 2007 by its Judgment and decree dated 30.12.2009/

49. The Trial Court noting the inconsistency in the plea regarding ownership and adverse possession, decreed O.S.No.275 of 2006 filed by the respondents by its Judgment and Decree dated 28.09.2007.

50. Aggrieved by the Judgment and Decree Judgment and Decree dated 28.09.2007 of the Trial Court in O.S.No.275 of 2006, the appellant had filed A.S.No.86 of 2007 before the Additional Subordinate Judges Court, Tiruvannamalai (the Appellate Court).

51. In A.S.No.86 of 2007, the appellant filed I.A.No. 175 of 2008 and proposed to mark additional documents as Ex.B-7 to B-13 being the Kist receipt of the year 1985 onwards for the Fasli 1395 to 1399 and Fasli 1401-1406 and Fasli 1408-, 1410 to 1417 to establish possession over the suit schedule property in S.No.67/16. The Appellate Court dismissed both A.S.No.86 of 2007 and I.A.No.175 of 2008.

52. He submits that in O.S.No.968 of 1995, the 2nd appellant had filed Exs.B-7 to 13 and therefore they could not be filed these documents to substantiate that the 2nd appellant



was in possession of the suit schedule property in S.No.67/16 during the trial in O.S.No.275 of 2006.

53. He further submits that the appellant therefore filed I.A.No.175 of 2008 in A.S.No.86 of 2007 under Order 41 Rule 27 of CPC to mark the documents.

54. The learned counsel for the appellants submits that the Appellate Court erred in rejecting the application in I.A.No.175 of 2008 inasmuch as Exs.B7 to B10. He submits if the Appellate Court had allowed marking of these document, the appellants would have established adverse possession over the suit schedule property right from 1978.

55. It was submitted that vide Ex.B.1 dated 22.09.1982 a consolidated patta was also granted for the suit schedule property and the properties covered by Ex.A2 dated 04.12.1978 and therefore the suit schedule property was in possession of the 2nd appellant without any interruption from the respondents and that the application satisfied with the requirements of Order 41 Rule 27 of C.P.C.

56. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in A.Andisamy Chettiar vs A.Subburaj Chettiar, (2015) 17 SCC 713.

57. That apart, the learned counsel for the appellants also placed reliance on the following decision of the Hon'ble Supreme Court and this Court:-

" i. Nedunchezhiyan and Others Vs Rani and Others, 2020 SCC Online Mad 11573.

ii. R.Balakannan Vs Lakshmi and Others, 2017 SCC Online Mad 28887.

iii. Arundhati Mishra Vs Sri Ram Charitra Pandey, (1994) 2 SCC 29.

iv. K.Kasinathan and Another Vs N.Umasankar, (2020) 1 CTC 246.

v. VenkatasubramaniyaChettiar (died) and Others Vs Perumal Chettiar and Others, 2012 (3) CTC 160.

vi. Ravinder Kaur Grewal and others Vs Mani Kaur and others, (2019) 8 SCC 729."



58. Facts are not in dispute. The 2nd appellant purchased only an extent of 1.25 acres of land vide Ex.A.2 dated 01.02.1978 from the respondent's father. The 2nd appellant did not purchase the suit schedule property measuring 55.8 cents from the respondent's father. The suit schedule property and the property in Ex.A.2 came in the hands of the respondents father under Ex.A.1 Sale Deed dated 17.09.1952.

59. The 2nd appellant, however, claims to be in possession of the suit schedule property right after execution of the sale deed in Ex.A.2 on 04.12.1978. The 1st appellant also obtained patta vide Ex.B.1 dated 22.09.1982.

60. It is not clear on what basis Exhibit B1 Patta dated 22.09.1982 came to be issued in favour of 2nd appellant by the Tahsildar. Considering the period when the aforesaid Patta was issued, it appears it would have been issued under the Updating Registry Scheme" (UDR) of 1980 of the Government of Tamilnadu which had its share of mistakes.

61. For obtaining UDR patta under the aforesaid scheme, 2nd appellant was required to establish ownership over the land by a valid document before the Revenue Officials at the Taluk or was holding the land under a ryotwari settlement issued under Estate Abolition Act, 1948.

62. There is no dispute that 2nd appellant was not having any antecedent documents to substantiate the same. Thus, Ex.B.1 patta dated 22.09.1982 obtained by the 2nd appellant in the year 1982 was without any basis and cannot be establish either title or possession by the 2nd appellant over the suit schedule property since 1982.

63. The respondents were absentee landlord. Perhaps to take advantage of the absence of the respondents after their father death, the 2nd appellant may have attempted to usurp the suit schedule property which was retained by the respondents' father for himself and his family on account of Ex.B2.

64. Earlier attempt to perfect the title over the suit schedule property by the 2nd appellant was by filing a suit for a declaration of title over the suit schedule property in O.S.No.968 of 1995 against the respondents and their mother



during her life time was not pursued to its logical end. Instead, it was allowed to be dismissed for non-prosecution on 08.09.1998. Thus, endeavour of the 2nd appellants to establish title over the suit scheduled property had failed.

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65. Curiously, the 2nd appellant executed a settlement deed dated 13.03.2006 in favour of the 1st appellant settling only the extent of the property measuring 55.8 cents which was not sold by the respondent's father to the 2nd appellant vide Ex.A.2 dated 14.12.1978. It thus makes it clear that the 2nd appellant took an elusive chance in a bid to perfect the title without nixing with the land purchased by her from the respondents father vide Ex A2.

66. Though documents were produced to establish adverse possession before the Trial Court in O.S.No.275 of 2006, these documents did not establish possession from either 1978 or from 1982 after Ex.B1 patta was issued. Before the Trial Court, the appellants should have produced independent evidence to establish adverse possession.

67. Though before the Appellate Court, the appellant filed I.A.No.195 of 2008 under Order 41 Rule 27 of the Civil Procedure Code, the Appellate Court had correctly rejected the application filed by the appellant for the following reasons:-

" i) Appellants stated any Exs.B7-13 Adangal were not filed before the Trail Court at the time of Trial though before the Trial Court patta, chitta and 'A' Register were filed before the Trial Court.

ii) Appellants stated that they were in possession of the land from 1978 (as per the Ex A 2). However, Adangal were filed from the year 1986 not from 1978.

iii) Appellants claimed to be in adverse possession of the suit schedule property. However Adangal documents ought to have examined by proper witnesses.

iv) Appellants had not proved that they were in possession of the suit property without any interruption and with knowledge of the plaintiff.



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v) PW 1 in his evidence state that south to north ridgepole was situated in the suit property. The appellant have not proved the suit property was enjoyed as a single land without any ridgepole.

68. Even otherwise, since O.S.No.968 of 1995 was allowed to be dismissed for non-prosecution on 08.09.1998 by the 2nd appellant. Therefore, the plea of the 2nd appellant that she was in continuous possession of the suit schedule property to infer adverse possession cannot be countenanced.

69. Execution of Ex.A.6 Settlement Deed dated 13.3.2006 in favour of the 1st appellant by the 2nd appellant to settle the suit schedule property was with a view to give a semblance of legitimacy to it which the 2nd appellant could not achieve by filing O.S.No.968 of 1995 for a declaration and a permanent injunction against the respondent's and their mother.

70. Further, having filed a suit for a declaration of title to the suit schedule property earlier and having failed to obtain a decree would act as an issue estoppel against the appellants.

71. There was a break in the continuous possession even if there was possession earlier. It cannot be said that the 2nd appellant had established adverse possession. Therefore, no fault can be found with the impugned decision of the Appellate Court dismissing in both the application filed by the appellant's under Order 41 Rule 27 of the Civil Procedure Code and the appeal of the appellant. Therefore, the present appeal is liable to be dismissed.

72. Thus, the substantial questions of law is answered against the appellant in this appeal. Accordingly, the present appeal is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



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To:

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1. The Additional Sub Judge,
Thiruvannamalai,
2. The Principal District Munsif,
Thiruvannamalai.

+1cc to Mr.N.Damodaran, Advocate, S.R.No.34428

+1cc to Mr.R.Rajaraman, Advocate, S.R.No.34558

S.A.No.122 of 2012

GP[co]
NSK 23/11/2021