IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 21st DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N.SESHASAYEE

C.S.No.586 of 2012

M/s Sathyanarayana Bros,
Partnership Firm,
Rep by its Managing Partner,
Mr.K.R.Purushotham,
Old Nos.83 & 84, Dr Radhakrishnan Salai,
Mylapore 600 004. : Plaintiff

Vs

1.T.Kokila

2.T.Elumalai

3.Tmt Sarala

4.T.Narayanan

5.T.Kumar

6.T.Manikandan

7.Selvi T.Usha

8.Selvi T.Shanthi

All at: Old No.84, Dr Radhakrishnan Salai,
Mylapore, Chennai 600 004. ... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a

judgment and decree against the defendants as follows:

a) Declare that the plaintiff is the absolute owner of the suit schedule B property and consequently direct the defendants to quit and deliver vacant possession of the suit schedule B property to the plaintiff.

b) Direct the defendants to jointly severally pay the plaintiff a sum of Rs.1,40,000/- towards past mesne profits for the period from 01.06.2011 till date of plaint and ascertain the future mesne profits of the property from the date of suit till date of delivery of possession by appointing an Advocate Commissioner under Order 20, Rule 12 of CPC.

c) Direct the defendants to bear the costs of the suit.

This Suit alongwith the Tr.C.S.No.195 of 2018 having been heard on 09.12.2021 in the presence of Mr.K.Harishankar, Advocate for the Plaintiff herein, and Mr.J.R.K.Bhavanantham, for Mr.N.Palanisamy, Advocates for the defendants herein, and upon reading the Plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the defendants have proved none of the basic ingredients such as nec vi, nec clam, nec precario to prove that they have acquired title by adverse possession and the reading of the entire case creates a strong probability that Thangappan would have entered possession only on the permission given by the owners, turning to mense profits in as much as the defendants are in admitted possession, there cannot be any mense profits before the date of revocation under Ex.P.12 dated 05.05.2011, however, they are liable to pay mense profits at a moderate rate of Rs.3,000/- per month from 01.06.2011, **it is ordered and decreed as follows:-**

That M/s Sathyanarayana Bros, Partnership Firm, Rep. by its Managing Partner Mr.K.P.Purushotham, the Plaintiff herein, be and is hereby declared as owner of the suit property morefully setout in the schedule-B hereunder.

2. That the defendants herein, be and are hereby directed to delivery vacant possession of the said B-Schedule property, within 30 days from this date.

3. That the defendants herein, be and are hereby directed to pay mense profit at the rate of Rs.3,000/- from 01.06.2011 till the date on which the possession is delivered.

4. That the defendants herein, do pay to the plaintiff herein, the costs of this suit, as and when taxed by the taxing officer of this court and noted in the Margin thereof.

Schedule of Suit Property

Schedule – A

All that piece and parcel of land of an extent of 1 ground and 1450 Sq.ft or thereabouts be a little more or less, being part of R.S.No.1130/1 and part of old Door No.25, Edward Elliots Road, (Old Door No.84, Dr.Radhakrishnan Salai)

North by	R.S.No.1145
East by	Portion of the Property bearing Survey No.1130/1
South by	Dr.Radhakrishnan Salai (R.S.No.1129)
West by	Part of Old Door No.25, Dr.Radhakrishnan Salai, Mylapore, belonging to Messrs Sathyanarayana Brothers (Plaintiff)

Situate in the Sub Registration District of Mylapore and Registration District of Madras – Chengalput.

Schedule – B

All that Asbestos Shed of an approximate extent of 200 Sq.ft. forming part of Schedule A Property on the South Eastern Side of Schedule A Property.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 21st DAY OF JANUARY 2022.

Sd/-
ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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16.02.2022

C.S.No.586 of 2012

ORDER :-

DATED: 21.01.2022

THE HON'BLE MR. JUSTICE N.SESHASAYEE

FOR APPROVAL: 17.02.2022

APPROVED ON: 18.02.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.12.2021

Judgment Pronounced on : 21.01.2022

CORAM : JUSTICE N.SESHASAYEE

C.S.No.586 of 2012 & Tr.C.S.No.195 of 2018

C.S.No.586 of 2012 :

M/s.Sathyanaraya Bros
Partnership firm
Rep. by its Managing Partner Mr.K.P.Purushotham
Old No.83 & 84, Dr.Radhakrishnan Salai
Mylapore – 600 004. .... Plaintiff

Vs

1.T.Kokila
2.T.Elumalai
3.Sarala
4.T.Narayanan
5.T.Kumar
6.T.Manikandan
7.T.Usha
8.T.Shanthi .... Defendants

Tr.C.S.No.195 of 2018 :

1.T.Kokila (Deceased)
2.T.Elumalai

3.Sarala
4.T.Narayanan
5.T.Kumar
6.T.Manikandan
7.T.Usha
8.T.Shanthi .... Plaintiffs
[Plaintiffs 3 to 8 are impleaded as L.Rs of the deceased
1st plaintiff as per order dated 13.02.2020 in A.No.8954/2019]

Vs

1.Purushothaman
2.Syamala .... Defendants

Prayer in CS.No.586 of 2012 : Civil Suit filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 CPC, praying to pass a judgment and decree against the defendants as follows :

(a) to declare that the plaintiff is the absolute owner of the suit Schedule B property and consequently direct the defendants to quit and deliver vacant possession of the suit Schedule B property to the plaintiff;
(b) to direct the defendants to jointly and severally pay the plaintiff a sum of Rs.1,40,000/- towards past mesne profits for the period from 01.06.2011 till the date of plaint and ascertain the future mesne profits of the property from the date of suit till the date of delivery of possession by appointing an Advocate Commissioner under Order XX Rule 12 of CPC;
(c) to direct the defendants to bear the costs of the suit
(d) to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in Tr.C.S.No.195 of 2018 : Civil Suit filed under Order VII Rule 1 of CPC, praying to pass a judgment and decree against the defendants as follows :

(a) to declare that the plaintiffs are the absolute owners of the plaint schedule mentioned property;

(b) to grant a permanent injunction restraining the defendants 1 and 2, their men, agents, servants or any one claiming through them from in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs.

(c) to direct the defendants to pay to the plaintiffs the costs of this suit and

(d) to grant such further or other reliefs as this Court may deem fit and proper.

<u>In C.S.No.586 of 2012 :</u>

For Plaintiff : Mr.K.Harishankar

For Defendants : Mr.J.R.K.Bhavanantham for Mr.N.Palanisamy

<u>In Tr.C.S.No.195 of 2018 :</u>

For Plaintiffs : Mr.J.R.K.Bhavanantham for Mr.N.Palanisamy

For Defendants : Mr.K.Harishankar

COMMON JUDGMENT

Preliminary:

1.1 There are two suits: (a) Tr.C.S.No.195 of 2018 and C.S.586 of 2012. The first of the two suits is the Tr.C.S.195 of 2018. It was originally laid as O.S.No.4825/2010 for bare injunction before the City Civil Court by a certain Kokila and Elumalai, both as between themselves are the mother and the son. The defendants are shown to be Purushottam and Shyamala.

1.2 Later, these plaintiffs came forward with an application to amend the plaint and to convert it into one for declaration of title on the allegation that they have prescribed title by adverse possession.

1.3 The trial Court returned the plaint for want of pecuniary jurisdiction. Accordingly, the case came before this Court and it is taken on record as Tr.C.S.No.195 of 2018, as per the order in I.A.No.18665 of 2015 dated 11.08.2016. During the pendency of the suit, the first plaintiff Kokila died, and her other children were impleaded as plaintiffs 3 to 8.

1.4 The other suit is C.S.586 of 2012. It is laid by a firm Satyanarayana & Brothers, the partners of which are stated to be the defendants in C.S.195 of

2012. This suit is for declaration of its title & for recovery of property against the plaintiffs in C.S.195 of 2018.

1.5 So far as the suit properties are concerned, the plaintiffs in C.S.195 of 2018, has described it as a block of land over which they claim title by adverse possession over an extent of 3,689 sqft., bearing door Nos: 83/84 of Dr.Radhakrishnan Road. According to the plaintiff-firm in C.S.586/2012, the suit property pertaining to which they seek relief is limited to about 200 sq.feet (described in B Schedule property) out of a larger extent of 1 ground and 1,450 sq.feet (A-schedule property).

1.6 Both the suits were tried jointly, and evidence was recorded in C.S.586 of 2012. In this judgement, for narrative convenience, parties would be referred to by their rank in C.S.586 of 2012. So far as the plaintiff is concerned, it would be referred to as the firm.

Pleadings:

2. The defendants have instituted their suit first. Hence it will be appropriate to start with their case. However, to avoid repetition and infuse narrative convenience, pleadings of the parties are stated in a way which is considered convenient for easy comprehension.

3. The allegations of the defendants (as plaintiffs in C.S.195 of 2018) are:

- The defendants are the absolute owners of a block of property, which is on the eastern portion of Old Door Nos.83/84, corresponding to New Door No.119/120 of Dr.Radhakrishnan Salai, Mylapore, Chennai. It measures 108.5 ft. x 34 ft. covering a total extent of 3,689 sq.ft.,
- Purushothaman and Shyamala, (who are named as defendants) are the owners of the adjacent property. They have attempted to tresspass into the suit property, and claimed that they are the owners of the said property. They do not have any right or title over the suit property.
- Late Thangappan, the father of the defendants was in possession of the suit property for over 50 years, and had perfected title by adverse possession.
- On 03.05.2010, Purushottaman and Shymala visited the schedule property and threatened to vacate the same, and cautioned that dire consequences would visit the defendants, if they did not vacate.
- The defendants gave a police complaint on the same day. But, they were advised by the police to get an order of the Court. Hence, the suit.

4. The case of the firm viz-a-viz in both the suits are:

- The suit is not properly instituted. The suit property belonged to M/s.Sathyanarayana Bros., a partnership firm, but the suit is laid against individual partners. The firm carried on business as building contractors and engineers, and that business continues till date.
- The description of the suit property is not correct. The suit property described in the schedule of the plaint has a separate Door No.84, Dr.Radhakrishnan Salai. Its original Door No. was No.25, Edwards Elliots Road, Chennai. It measures an extent of 1 ground and 1,450 sq.ft.(approximately 3,850 sq.ft). On 26.02.1969, it was purchased by M/s.Sathyanarayana Bros., from a certain Padmasani Ammal. The firm has been enjoying the entire property in assertion of its title to the same. Since the purchase of the property, the revenue records were mutated in its name and it is in its possession. At the time when the property was purchased, it was a vacant land and was used for parking lorries of the plaintiff-firm.
- Earlier to the above said sale, in 1963, the first plaintiff had purchased the property adjacent to the property bearing door No:84. This property is in door No:83. For both the properties comprised in Door No.83 & 84, there is only one entrance, and it was through the main door in 84. Till date, the firm is using the main door in Door.No.84 for ingress into and egress out of the entire property.

- On 01.12.1962, late Thangappan was employed as a watchman, and he was staying in the property as a permissive occupant. After the purchase of the property by M/s. Satyanarayana Bros., he was allowed to occupy a small portion of the property measuring an extent of 200 sq.ft., on the northern side, and he was to perform his duties as a watchman of the entire premises in Door Nos.83 & 84.
- At all times, the firm had asserted its title over the property. It had mortgaged the property with M/s.Bank of Baroda on 24-07-1969. These documents were in the Bank till 1992. Indeed, the Bank instituted a civil suit before this Court for realising its loan dues. Even after the institution of the suit by the mortgagee-Bank, the plaintiff firm continued to deal with this property, and mortgaged it to one Vallaraj in 2007, and the property at the time of institution of the suit was in encumbrance.
- After the demise of Thangappan on 23.8.1989, at the request of Kokila, his widow (originally, the first plaintiff in the C.S.No.195 of 2018), was employed as the watch-person on a monthly salary of Rs.3,500/-, and she continued to be a permissive occupant as was her husband late.Thangappan. She was paid salary upto January 2010.
- The allegation of adverse possession is unsustainable. The defendants_have carefully omitted to provide the commencing date

when they begin to hold the property hostile to the title and interest of the true owner of the property, which is a key factor required to be pleaded in every case founded on adverse possession. Both Thangappan and Kokila were mere permissive occupants, and that can never mature to prescribe title by adverse possession against the interest of the real owner. Indeed, there is no separate electricity connection, water connection or sewerage connection to the portion where Thangappan and his family stayed. The entire property-tax and other taxes and rents payable, are being paid by the firm.

- While so, on 10.02.2010, Kokila issued a legal notice on Purushottaman wherein she had given her address as No.83, Dr.Radhakrishnan Salai, whereas in the suit, they had changed the address to Door No.83/84, Dr.Radhakrishnan Salai. This implies that the defendants are unsure of the door number. It is of interest to note that in the notice dated 10.02.2010, there is no assertion of title by adverse possession. On the other hand, Kokila had only demanded terminal benefits due to Thangappan.
- At no time, was there any attempt to force evict the defendants, though in January, 2010, Purushottaman, the Managing Partner of the firm, did request the defendants to vacate the premises as the firm intended to develop the property into a multi-storeyed building.

Indeed, there was an attempt to resolve the issue through mediation, but when mediation failed, the plaintiffs in C.S.No.195 of 2018 have come up with a theory of adverse possession to suit their case.

- It is in this circumstances, the firm issued a legal notice dated 05.5.2011, revoking the permission granted to Kokila to occupy the property measuring 200 sq.ft., and to deliver vacant possession of the portion by 31.05.2011. Ever since, the defendants are in unauthorised occupation of the property.
- The firm is entitled to mesne profits at the monthly rate of Rs.10,000/- from January ' 2011. From August 2012, the defendants are creating hindrance to the plaintiff to enter into the property. Hence, the firm has instituted its suit in C.S. 586 of 2012 for declaration of title with recovery of property and seek mesne profits.

5. The defendants have filed a written statement as well as an additional written statement to the suit filed by the firm, wherein they allege:

- The plaintiff lacks *locus standi* to institute the suit and it is not maintainable. The plaintiff has not disclosed all the partners of the firm. In its judgement in ***M/s.Sathyanarayana Bros Private Ltd Vs. Tamil Nadu Water Supply and Drainage Board*** [2004 (5) SCC

314], to which the plaintiff itself was a party, the Hon'ble Supreme

Court refers to a correspondence dated 24.02.1971, and recorded that the plaintiff is not a firm, but a private limited company.

- There is no truth in the allegation that Thangappan was a watchman in the plaintiff's property. He was never a watchman of the plaintiff's firm, nor was his widow Kokila, neither was paid any salary by the firm.
- The allegation that the first defendant Kokila had caused issuance of legal notice on 10.02.2010 is false, and it is a manipulated document. It is manufactured.
- Thangappan has been in possession of the property for more than 50 years and long prior to the alleged purchase of the property by the plaintiff in 1963 or 1969, as the case may be.
- So far as the alleged uncertainty about the door numbers of the suit property is concerned, the firm has created all the confusion by describing the property into 'A' and 'B' schedule property. It is true that there is a gate in Door No.84.
- When the interim injunction granted by the Court in O.S.No.4825/2010 (before transfer of that suit to this Court) was in force, the plaintiff-firm attempted to demolish the building where the defendants stayed. It was only by the timely intervention of the police, the attempted demolition was prevented.

- The suit notice of the plaintiff dated 05.5.2011 is misconceived and it was issued about one year after the Court had passed an order of interim injunction in O.S.No.4825 of 2010. Hence, the suit is liable to be dismissed.
- The suit is barred by limitation.

6. On the above pleadings, the following issues are framed:

C.S.No.195 of 2018	***C.S.No.586 of 2012***
1) Whether the plaintiffs are entitled for declaration of his title in the suit property and injunction as prayed for? *2) Whether the suit is liable to be dismissed on the ground of non-joinder of necessary parties?* *3) Whether the plaintiffs have established the identity of the suit schedule property?* *4) What is the property court fee paid on the amended plaint in O.S.No.4825 of 2010, transferred and re-numbered as Tr.C.S.No.195 of 2018?* *5) Whether the plaintiffs*	*1) Whether the defendants are permissive occupants of the plaint schedule B property by virtue of permission granted to late Mr.A.N.Thangappan, who was working as watchman in the plaintiff's firm?* *2) Whether the defendants have a right to continue in possession of the plaint schedule B property after revocation of permission by the plaintiff?* *3) Are the defendants entitled to the plea of adverse possession as against the plaintiff?* *4) Whether the plaintiff is entitled for declaration of his title to the plaint schedule B property and*

C.S.No.195 of 2018	*C.S.No.586 of 2012*
had valued the suit and paid the appropriate Court fees in accordance with the Tamil Nadu Court Fees and Suits Valuation Act 1955? 6) *To what other reliefs, the parties are entitled to?*	*consequently entitled to vacant possession?* 5) *Whether the plaintiff is entitled to claim mense profits for the use and occupation by the defendants on and from 01.06.2011 till delivery of possession and if so, at what rate?* 6) *Whether the suit is barred by limitation?* 7) *Whether the plaintiff in C.S.No.586 of 2012 could maintain the suit in view of the bar imported under Section 69(2) of the Partnership Act?* 8) *To what other reliefs, the parties are entitled to?*

7. As outlined in paragraph 1.6 above, both the suits are jointly tried and evidence was recorded in CS.No.586 of 2012 filed by the firm. For the plaintiff, its Managing Director was examined as PW1, and through him Ext.P1 to P21 came to be marked. For the defendants, the second defendant was examined as DW1 and the fourth defendant was examined as DW2. They have produced Ext.D1 to Ext.D10.

8.1 Before narrating the arguments advanced on either side, the controversy may be stated in brief : The firm claims that it had purchased the property in Door No.83 in 1963 and Door No.84 in 1969. It also claims that it appointed a certain Thangappan as its watchman, and permitted him to occupy about 200 sq.ft., in asbestos shed. This is described in the B schedule in the suit that it had laid. Thangappan lived there with his family. The defendants, however, claim title by adverse possession not just to this 200 sq.ft. portion but to the entire extent in door No:84. This instantly implies that they admit the title of the true owner. The critical point therefore is if the defendants have managed to prove prescription of their title by adverse possession over an extent of 3,850 sq.ft.

8.2 Secondly, the defendants raise an issue of *locus standi* of the firm – as to its very existence, and claim that it had long since been converted into a private limited company, and attacks the very maintainability of the suit. This plea of the defendants, it must be stated, is equally likely to affect the maintainability of their own suit in C.S.195 of 2018, as it was directed only against two individuals, and neither the firm, nor the company is a party to the suit.

9. It is in this backdrop, the arguments of the learned counsel for the firm argued:

(a) On 23-12-1963, Vide Ext.P-1 it had purchased the property in door No:83. The property to its immediate east bears door no:84. This property in door No:84 is described in the A schedule in the suit filed by the firm. This property originally belonged to a certain Rajagopala Iyengar. On 21-02-1969, Vide Ext.P-2 sale deed, the firm purchased it from his widow Padmasani Ammal. Ever since, the property tax receipts were paid by the firm, and some of the receipts are produced Vide Ext.P-7. The firm had always asserted its title over the property and had even obtained loan on the strength of the security of the A schedule property. Ext.P-5 is one such mortgage deed.

(b) That the defendants in their suit assert title based on adverse possession. It is not the case of the firm that the defendants are not in possession of specific portion of the property in door No:84. It is its contention that a certain Thangappan was working as a watchman and he was allowed to stay in about 200 sq.ft where there is an asbestos-roofed house. That Thangappan was in the employ of the firm is proved by Ext.P-3 series of receipts for payment of salary to Thangappan in 1989.

(c) While so, on 23-08-1989 Thangappan died. Ref: Ext.D-2, the death certificate of Thangappan. Thereafter, on the request of his widow, the first defendant, she was employed as a watch-person by the firm. Ext.P-6 series are the receipts for the salary paid to the first defendant. These bear the thumb impression of the first defendant. Indeed, D.W.1, the second defendant admits that his mother Kokila (the first defendant) did not know to read or write, which corroborates the genuineness of these documents.

(d) Facts being what they are, sometime in January, 2010, the firm required Kokila to vacate for it to put up a multi-storeyed building there, she issued Ext.P-9 legal notice, dated 10-02-2010. In this notice, she merely demanded terminal benefits for the services rendered by Thangappan, but nowhere did she whisper anything about her claim to title to the property by adverse possession. Soon thereafter, she, along with her son, laid O.S.4825 of 2010 (which is since transferred to this court as C.S.195 of 2018) for bare injunction. Given the scenario, the firm had issued Ext.P-12 suit notice dated 05-05-2011, revoking the licence the firm had granted to the defendants to occupy the B-schedule property, and required them to surrender possession and laid the suit.

(e) Possession of both Thangappan, and after his demise by the defendants is essentially permissive. The point therefore is not whether the defendants are in possession, but when their possession has turned hostile to the title of the plaintiffs. Where the servants in the employ of the firm were to claim title by adverse possession, then the burden is squarely on them to establish it. Here, the defendants did not plead a specific date or year from which their possession has become hostile to the title of the true owner and to their knowledge either in the written statement in C.S.No. 586 of 2012, or in their own plaint in C.S.No.195 of 2018. The defendants have merely produced certain documents such as Ext.D-1 to D-6 and D-8 to D-10, all of which may be relevant to prove their place of residence or may serve as ID proof, but still they are not relevant to project a case for adverse possession. In other words, the defendants were not able to establish none of the ingredients for establishing a plea of adverse possession. Reliance was placed on the ratio in ***Brijesh Kumar and another Vs Shardabai (Dead) through Lrs*** [(2019) 9 SCC 369], ***Ram Nagina Rai and another Vs Deo Kumar Rai (Deceased) through Lrs*** [(2019) 13 SCC 324]***Chatti Konati Rao & Others Vs Palle Venkata Subba Rao*** [(2010)14 SCC 316], ***Maria Margarida Sequeira Fernandes & Others Vs Erasmo Jack De Sequeira, through Lrs.*** [(2012) 5 SCC 370].

(f) Taking through the evidence, learned counsel submitted that while defendants claim right to the property covered in Door Nos. 83 & 84, the 2nd defendant/D.W.1 confines his claim to Door No.84 whereas the 4th defendant/D.W.2 claims that they are in possession of Door Nos. 83 and 84. Reading the evidence of D.W. 1 and D.W.2, it becomes evident that the defendants are not certain about the property over which they claim title by adverse possession.

(g) D.W.1, in his evidence would say that there is an asbestos shed measuring about 625 sq.ft where they all live, and that there was a gate to Door No.83 and it was closed by the plaintiff, and later door No.84 was opened. He further deposed that the firm, which is the true owner of the property had obtained the permission of the defendants to enter upon its own property, and this is plainly amusing.

(h) This apart, going by his testimony, there should be at least some 11 or 12 members living under the same roof which barely has an extent of 625 sq.ft. On this point, while DW.1 initially deposed that all are living in the same house, later he did make a statement that his sister had moved away. The defendants have also made a startling statement in evidence that earlier there was a wall which divided Door Nos. 83 and 84, that some 15 years prior to the date of this deposition, P.W.1 had demolished, and that they did not pursue to take action for the same. If the deposition of D.W.1 could be considered on its face value, it does not stand scrutiny on the touchstone of conduct of a reasonable person conducting himself in the ordinary course of life. Despite such conduct, the defendants assert title by adverse possession for the entire property covered by Ext.P-2. It is impermissible for a former servant of the firm to claim title by adverse possession and that the same is often deprecated by the judiciary. Reliance was placed on the ratio in ***Himalaya Vintrade Pvt. Ltd., Vs Md.Zahid and another*** [2021 SCC Online SC 744], ***A. Shanmugham Vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*** [(2012) 6 SCC 430] and ***S.Nirmala Vs Kanniammal & others*** [2016-5-L.W.647],

(i) The defendants had laid the suit initially for bare injunction, but later, it was amended to include the prayer for declaration of title, and in view of higher valuation, the suit came to be transferred to this Court. The defendants however, had not paid the court-fee as per the statute, but only as per the assessment.

(j) So far as the status of the plaintiff – whether it is a firm or a private limited company, the defendants are keen to confuse the Court with M/s.Sathyanarayana Private Limited Company and M/s. Sathyanarayana Firm, and Ex.P15 series etc., would show that firm and the company are two separate entities and that the firm continues till date.

10. In response, the counsel for the defendants contended:

- The plaintiff is a partnership firm. It is extremely doubtful that the firm could be in existence now. In its judgement in ***M/s.Sathyanarayana Brothers Private Ltd Vs. Tamil Nadu Water Supply and Drainage Board*** [2004 (5) SCC 314], the Hon'ble Supreme Court has recorded that the firm M/s.Sathyanarayana Brothers had been converted into a Private Limited Company sometime in 1971, and this is deliberately suppressed. If it is so, the suit as constituted cannot be sustained.
- The plaintiff has produced only a copy of the partnership firm. Since in terms of Section 575 of the Companies Act, 1956, as was then in vogue, the entire property of the company will vest only in the company incorporated under the Act. In terms of the provisions under Section 565, 566 and 567(b) of the Company Law, when a partnership firm is converted into a private limited company, it is mandatory that the deed of partnership is delivered to the Registrar of Companies. Since because this document is with the Registrar of Companies, the plaintiff could not produce the original partnership

deed.

- The plaintiff claims that he had purchased the property under Ext.P2 in 1969. Admittedly Thangappan had died in 1989, which is well beyond the period of 20 years.
- The properties covered under Ext.P1 and Ext.P2 never had two gates and there was only one gate in Door No.84.
- Ext.P3 and Ext.P6 series of receipts for payment of salary respectively to Thangappan and his wife Kokila are forged and fabricated documents. Since the genuineness of these documents were denied by the defendants, the burden is on the plaintiff to establish that Thangappan and Kokila indeed had actually executed these receipts. Indeed, in none of these receipts is there a reference to the actual salary payable to Thangappan or to his wife Kokila. It is significant to note that Ext.P3, set of receipts were not referred to in Ext.P12, suit notice. Secondly, these receipts have zero relevance since the firm (assuming it is competent to institute the suit) has lost its right to sue as the defendants have prescribed titled to the property by adverse possession.
- The next piece of evidence which the plaintiff relies on is Ext.P9, dated 10.02.2010. The plaintiff alleges that in this notice, Kokila had only demanded the terminal benefits payable to Thangappan, and this

document too is manufactured for the purpose of the case. In the face of the pointed denial by the defendants, the plaintiff ought to have examined the counsel who is alleged to have issued Ext.P-9 notice.

- The firm has asserted that it has been dealing with the property by creating a mortgage over it. Here, even though the firm has contented that it had mortgaged the property with Bank of Baroda, no documents supporting the same was ever produced. So far as the mortgage to Vallaraj is concerned, it is surprising that the plaintiff had created a mortgage for a meagre sum of Rs.5.0 lakhs on a property which worth several crores.
- Going by the testimony of P.W.1, it is never known whether the partnership was in existence. He says that the firm came into existence sometime in 1956 or 1957, but later he changed it to 1963. None of the original partners are now alive and there is nothing on record to indicate how their shares are dealt with.
- So far as Ext.P9, notice to plaintiff is concerned, only the xerox copy is produced by P.W1, but not the originals.

Discussion and Decision

Issues 4 & 5 in C.S.195 of 2018

11.1 A discussion on these two issues may well set the tone for the discussion to follow. They relate to valuation of the suit and the adequacy of the court fee paid. Initially defendants have laid the suit for bare injunction as O.S.4825 of 2010 before the V Assistant City Civil Court. Later Vide order in I.A.18665/ 2012, dated 11-08-2016, the plaint was amended to include a prayer for declaration of title. The suit is accordingly valued by the plaintiff at Rs.5,53,35,000/- under Sec.25(b) of the Tamil Nadu Court Fee & Suit Valuation Act, and a court fee of Rs. 5,55,775/- has been paid.

11.2 The correctness of this valuation and the adequacy of the court fee paid is challenged by the firm. It has even filed A.No.3207 of 2018 for the said purpose, but it was not decided preliminarily. In its affidavit filed in support of the said application it is averred that the market value of the property is at least 8,85,36,000/- and if the court fee were to be paid on half its value under Sec.25(b) of the Court Fee Act, the plaintiff must at least pay Rs.33,20,100/-.

11.3 First, the firm has not produced any material to pronounce on the valuation. With no material to support the correct valuation of the suit property, this court accepts the valuation of the suit. And, the court fee paid is more than what is required to be paid under Sec.25(b) of the T.N.Court

Fee & Suit Valuation Act. These issues are decided in favour of the defendants.

12. There is another aspect that draws the focus of the court which it could not ignore, nay should not ignore. Thangappan had died in August, 1989. His widow Kokila was an illiterate. Of the eight defendants who were living when the suit went for trial, only the second and fourth defendants have examined as D.W.1 and D.W.2. Of them D.W.1 is a primary school drop-out as could be seen from Ext.D-1. And the entire family of nine was stated to be living in a 625 sq.ft area in an asbestos-roofed room/shed/house, though there is some variation in the number. The point however is that, the size of the family, and quality of the house where the defendants live or some among them lived, and the quality of their education provides ample scope to understand the standard of life which these defendants live, or that they could afford. Therefore, from where, and how these defendants could raise Rs.5,55,775/- to pay the court fee? Is there anyone behind the defendants who actually invests in the litigation? Even going by the statement of the defendants the suit property comprised in door No:84 is valued more than Rs. 5.50 crores, and the property is in heart of the City. While there is hardly any cross examination on the point, still the available

evidence preponderates a probability that the litigation is financed by an invisible face in this litigation, and possibly by some land-mafia.

Issues 1 to 4 in C.S.No.586 of 2012 and Issue 1 & 2 in C.S.No.195 of 2018 :

13. The defendants largely make the task of this Court easy. They claim title by adverse possession against two individuals. Still in the suit laid by the firm, they contend that the firm had ceased to exist, and it had long been converted into a registered company. Plaintiff have produced Ext.P-1 and P-2 sale deeds (of which Ext.P-2 pertains to suit property) which show that the property was purchased by the firm. Either way, they have not instituted the suit against the true owners. Indeed these defendants do not seem to be sure of those against whom they have to institute the suit, and it allowed it happen despite the firm producing Ext.P-2 sale deed. Therefore, the defendants' case on *locus standi* of the firm, if it were to be taken to its logical end, then their suit in C.S.195 of 2018 should fail instantly, as it is not laid against the true owners of the property against whom they seek prescription of title by adverse possession. The issue on *locus standi* of the firm is thus seemingly boomeranging against the defendants who has raised the issue.

14. Turning to the larger issues, it is not in dispute, and rather it cannot be in

dispute that the firm M/s.Satyanarayana Bros., had purchased the properties in Door No.83 under Ext.P1, and Door No.84 under Ext.P2. These properties, as stated a few times earlier, were purchased in the name of the firm. The defendants would contend that the firm has not produced the various deeds of retirement or re-constitution of the firm and also the accounts books to show that it has been continuously in business. But then who are they to ask it? What right do they have? The defendants are merely seeking a right over a piece of property which admittedly is not their own. It is not the duty of the firm as a plaintiff to show case all their internal affairs to those who are utter strangers to it. Secondly, when in law, the initial burden of proof itself is on the defendants to prove their plea of adverse possession, the firm hardly need to do anything more than defending an action. The fact that the firm had filed an independent suit shift the initial burden of proof from the defendants to the firm. Now, with the finding that C.S.195/2018 is not filed against the true owners, that suit has to be dismissed even at the threshold. And, the firm needs to do more than obtaining recovery of possession of the portion in the physical occupation of the defendants.

15. Turning to the allegation founded on the judgement in

M/s.Sathyanarayana Bros Private Ltd Vs. Tamil Nadu Water Supply and

Drainage Board [2004 (5) SCC 314], while narrating the facts of that case, the Hon'ble Supreme Court has recorded that vis-a-vis a contract the appellant before it had entered into with Tamil Nadu Water Supply and Drainage Board, that for the purpose of participating in a tender the firm was converted into a private limited company. P.W.1 however, in his tetimony has explained that the company was formed essentially to participate in government tenders and that the firm also continues. He also has produced Ext.P15 for the purpose. This Court is not in agreement with the challenge of the defendants to the *locus standi* of the firm to institute the suit. The reasons are:

- The Hon'ble Supreme Court though has merely recorded a piece of information , and it is not a fact in issue inter parties in that case.

- Secondly, the fundamental difference between the partnership firm and closely controlled private limited company is only with regard to the extent of the liability. In the case of the firm, the entire assets of the firm will be answerable to meet the liability of the firm, and once they are exhausted, the partners would be personally liable unless there is a cap on the extent of their personal liability. In the case of a company, only the assets of the

company will be answerable at the first instance, and the shareholders liability extends only to the extent of the shares. It needs to be borne in mind that as per the Companies Act, 1956, then in vogue, a private limited company can be formed which may take over the business of the firm, and that the firm can be admitted to the benefit of the company. Therefore, it could be possible that the firm has been in existence. These aspects cannot be ignored by the Court, more so when the firm has produced Exts.P-15. These are official documents and there is hardly any contra material available to discredit their effect. And title to the property is something that should concern those who hold a right in it, whether, individually, or as a firm, or even as a company. It is not for the non-title holders such as the defendants to agitate it. In law, they ought to focus on discharging their initial burden, but in doing it they were caught on the wrong foot even in the opening over of the game, when they instituted their suit for declaration of title against wrong persons. And, if at all any, given the nature of the pleading and the burden of proof that it has cast on the parties, even if there is any merit in the contention of the defendants, the same is curable under Section 99 CPC. The issue of *locus standi* fails.

16. Turning to the plea of adverse possession is concerned, it has come out in evidence that the properties in Door Nos.83 and 84 now lie as a single block. The total combined extent is about 12,920 sq.feet (3 and 3/8 grounds + 1 ground 1,450 sq.ft.), of which, Ext.P2 alone covers an extent 1 ground and 1,450 sq.ft. equal to 3,850 sq.feet. This property is an enclosed property. It is an admitted case on either side that the entrance to this block of huge property is through the gate to door No:84. Here the testimonies on behalf of the defendants are intriguing, amusing and curious. It is already seen that the defendants are not sure of the original title holders against whom they seek declaration. The other aspects are:

- In the suit notice in Ext.P-9, the address of the first defendant (now dead) gives it as door No:83, but in their suit in C.S.195 of 2018, they describe the suit property is in Door Nos: as 83/84. And they give the total extent as 3,689 sq.ft. How they arrived at this when the total combined extent of both the properties in door Nos:83 and 84, which lie as one single block of property is about 12,920 sq.ft. Where exactly the suit property in C.S.195 of 2018 is to be located in the larger area? Is it in door No:83 or in 84 and in the combined extent? And D.W.1 and D.W.2 speak in two separate voices. While one limits the claim to door no:84, the other claim right over both. They instantly points to:(a) that the description of the property as detailed in the plaint in C.S.195 of 2018 is not correctly given as is required under Order VII Rule 3 CPC. And in the context of the adverse possession, the defendants are not sure of the property in relation to which they seek prescription of title by adverse possession.

- The defendants in their oral evidence has deposed that there was a wall separating Door Nos.83 and 84 and that Purushotaman, the Managing Partner of the firm had demolished it some 15 years before the oral evidence of D.W.1 and D.W.2, recorded sometime in September, 2019. And according to them, even Thankappan during his life time had perfected title by adverse possession , which implies they are conscious of their own alleged title over whatever property in relation to which that they seek declaration of their title. If that is so unless the defendants are saintly, they would not have opted not to raise an issue when the dividing wall was demolished. Amazing to believe if only the defendants were conscious of their own title which their father had prescribed even before his death in 1989. Secondly, the oral evidence of the defendants also discloses that that the Managing Director and

others connected with the firm would enter the entire property only through the gate in Door No.84. And, they provide immense amusement when they depose with zero shame that the title holders of the property had sought their (defendants') permission to enter the property. When somebody in whose name the title to the property is, and if he is also continued to have access to his property, then it is inconceivable and imponderable in law that there could be a case for adverse possession.

- Here the plaintiff have produced Ext.P3 and Ext.P6, set of receipts obtained from the parents of the defendants for payment of salary. The defendants instantly shifted the burden on the plaintiff by denying their genuineness. Now, have they atleast produced any documents that contained the thumb impression of Thangappan or his wife to prove that the thumb impression in Ext.P3 and Ext.P6 are not the thumb impressions of those by whom they were purported to have been affixed?

- And even if Ext.P3 and Ext.P6 were suspicious, still the defendants owe the duty to explain how and in what circumstances they come to be in possession of a fully enclosed property. It

would be a shocking inconsistence in the behaviour of men in their ordinary course of human transaction, they they would tolerate any utter strangers entering and putting up a small house in their property.

It is a classical case of a licence granted to the defendants parents, which is now exploited by them against the licensor. Only in licence the possession co-exists as between the licensor and the licencee. Obviously the defendants are over-ambitious and greedy, and have raised a plea of adverse possession with no clarity on any of the features pertaining to it.

17. The defendants have proved none of the basic ingredients such as *nec vi, nec clam, nec precario* to prove that they have acquired title by adverse possession. In the context, the following passages from the judgement of the Hon'ble supreme Court in ***A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangham, Rep. By its President and others*** [(2012) 6 SCC 430], is apposite :

> *"34. Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the administration of justice and this can be sufficiently taken care of if the courts adopt realistic approach granting restitution.*

> *36. Unless wrongdoers are denied profit or undue benefit from*

frivolous litigations, it would be difficult to control frivolous and uncalled-for litigations. Experience also reveals that our courts have been very reluctant to grant the actual or realistic costs. We would like to explain this by giving this illustration. When a litigant is compelled to spend Rs.1 lakh on a frivolous litigation there is hardly any justification in awarding Rs.1000 as costs unless there are special circumstances of that case. We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.

38. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive *benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.*

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5 It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."

The judgement of this Court in ***S.Nirmala Vs Kanniammal & others*** [2016-5-L.W.647], is also along the same lines and this court fully endorses the law as stated. All the issues are decided against the defendants.

18. The reading of the entire case creates a strong probability that Thangappan would have entered possession only on the permission given by the owners. Turning to mense profits inasmuch as the defendants are in admitted possession, there cannot be any mense profits before the date of revocation under Ext.P12 dated 05.5.2011. However, they are liable to pay

mense profits at a moderate rate of Rs.3,000/- per month from 01.06.2011.

19. **Conclusion:**

A) C.S.No.586 of 2012 is decreed with costs and the plaintiff's title to the suit property is declared, and the defendants are directed to delivery vacant possession of the B schedule property within 30 days from today. The defendants are further directed to pay mense profits at the rate of Rs.3,000/- from 01.06.2011 till the date on which the possession is delivered.

B) C.S.No.195 of 2018 is dismissed with costs.

Sd./-N.S.S.J.
21.01.2022

APPENDIX

I. Witnesses :

Plaintiffs :	
PW1	K.R.Purushotham
Defendants :	
DW1	T.Elumalai
DW2	T.Narayanan

II. Exhibits :

Plaintiffs :		
Ext.P1	23.12.1963	Xerox copy of the sale deed executed in favour of M/s.Satyanarayana & Bros,,
Ext.P2	21.02.1969	Xerox copy of the sale deed executed

Plaintiffs :		
		in favour of M/s.Satyanarayana & Bos., by one Padmasani Ammal
Ext.P3 (series)		Xerox copy of the receipts towards salary received by late A.N.Thangappan
Ext.P4	19.10.1994	Xerox copy of patta issued in favour of M/s.Satyanarayana Bros.
Ext.P5	04.06.2007	Mortgage deed executed by the plaintiff M/s.Satyanarayana Bros. in favour of Mr.P.Vallaraj
Ext.P6 (series)		Xerox copy of the receipts made to Mrs.Kokila, w/o.late A.N.Thangappan, the first defendant
Ext.P7		Xerox copy of receipt for payment made by M/s.Satyanarayana Bros, the plaintiff, towards property tax
Ext.P8	April '2020	Xerox copy of legalheirship certificate of late.Thangappan
Ext.P9	10.02.2010	Xerox copy of the legal notice issued by Kokila, first defendant to Mr.K.R.Purushothaman, the plaintiff
Ext.P10	06.08.2010	Certified copy of the order in CRP(PD) No.2515 of 2010 filed by Kokila against Purushothaman & another
Ext.P11	28.03.2011	Certified copy of the order in IA.No.9526/2010 in OS.No.4825/2010 on the file of V Assistant City Civil Court, Chennai.
Ext.P12	05.5.2011	Xerox copy of the legal notice issued by the plaintiff M/s.Satyanarayana Bros to the defendants
Ext.P13	20.5.2011	Xerox copy of the reply notice given by the defendants to the plaintiff.
Ext.P14 (series)		Photographs
Ext.P15	31.01.1956	Xerox copy of Acknowledgement of Registration of Firm
Ext.P16	19.07.1971	Xerox copy of Memorandum of Association of M/s.Satyanarayana Bros.
Ext.P17	25.12.2020	Xerox copy Income Tax Return

Plaintiffs :		
		Acknowledgement for filing of returns by M/S.Satyanarayana Bros for the assessment year 2020-2021.
Ext.P18	26.12.2020	Xerox copy Income Tax Return Acknowledgement for filing of returns by M/S.Satyanarayana Bros Private Ltd., for the assessment year 2020-2021.
Ext.P19	05.7.2019	Xerox copy of declaration form filed by the plaintiff firm for the period 2018-2019 along with copy of receipt for payment of fees
Ext.P20		Details of the company/Master Data obtained from the website of the Ministry of Corporate Affairs about the plaintiff company
Ext.P21	27.07.2021	Certificate issued by the Chartered Accountants
Defendants :		
Ext.D1		Xerox copy of School Record Sheet of Mr.T.Elumalai, the second defendant
Ext.D2	05.02.2010	Xerox copy of Death Certificate of Mr.Thangappan
Ext.D3	28.6.1995	Xerox copy of receipt towards payment of first permium in LIC by T.Elumalai, the second defendant.
Ext.D4		Xerox copy of Ration/Family Card issued by the Civil Supplies and Consumer Protection Department to Mrs.Kokila, first defendant.
Ext.D5	20.01.2009	Xerox copy of payment made by Mr.T.K.Manikandan, 6th defendant for mobile charges, for the period 20.12.2008 to 19.01.2009
Ext.D6		Xerox copy of legalheirship certificate of late.Thangappan
Ext.D7		Xerox copy of Encumbrance Certificate issued by the Sub Registrar, Mylapore.
Ext.D8		Xerox copy of Voter ID card of

Plaintiffs :		
		Mrs.Kokila, 1st defendant
Ext.D9		Xerox copy of Voter ID card of Mr.Elumalai, 2nd defendant
Ext.D10		Xerox copy of Voter ID card of Mr.Manikandan, 6th defendant

Sd./-N.S.S.J.
21.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.