



S.A.No.669 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.669 of 2000

1.Rajaratnam (Died)	... Appellant/1 st Respondent/Plaintiff
2.Saratha (Died)	
3.Geetharani	
4.Mehala	
5.Vembu	
6.Baskar	
7.Gajalakshmi	... Appellants 2 to 7

(Appellants 2 to 7 are brought on record as LR's of the deceased sole appellant vide order, dated 27.11.2008 made in M.P(MD)No.

1 to 3 of 2008 by ACAAJ)

(Appellants 3 to 7 are the LR's of the 2nd appellant as per order dated 20.11.2018 in memo USR.No.135 of 2018 by TKJ)

-Vs-

1.Seeniammal (Died)	..1 st Respondent/Appellant /1 st Defendant
2.Rajalingam	...2 nd Respondent/2 nd Respondent /2 nd Defendant
3.Veeramalai	...3 rd Respondent /3 rd Respondent /3 rd Defendant
4.Akila	... 4 th Respondent

(R4 impleaded as per order dated 20.03.2019 in C.M.P(MD) No.1862 of 2019 in S.A.No.669 of 2000)



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 11.08.1999 in A.S.No.51 of 1999 on the file of the Principal Sub Court, Tiruchi, reversing the judgment and decree dated 05.03.1999 in O.S.No.382 of 1997 on the file of the Principal District Munsif Court, Tiruchi.

For Appellants : Mrs.J.Anandhavalli

For R4 : Mr.K.Prabhakar

JUDGMENT

1.1. The plaintiff in the suit is the first appellant. The suit is for declaration of title and recovery of possession. The suit was decreed by the trial Court. On appeal filed by the first defendant, the findings of the trial Court were reversed by the First Appellate Court and hence, the first appellant has filed this second appeal. The first appellant died pending Second Appeal and hence, his legal representatives were brought on record as appellants 2 to 7. It is also brought to the notice of this Court that pending Second Appeal, the contesting



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first respondent had passed away and the 4th respondent herein claiming herself as illegitimate daughter of Pichaiammal, pre-deceased daughter of the first respondent, who was in possession of the suit property, was impleaded as the 4th respondent.

1.2. According to the deceased first appellant/plaintiff, he purchased the suit property from the second respondent on 02.05.1983 under Ex.A4. The second respondent got the suit property allotted to his share in a final decree passed in O.S.No.176 of 1958 on the file of the Sub Court, Thirumangalam. The deceased first respondent was arrayed as 211th defendant in the said partition suit. It was further averred in the plaint that the second respondent filed an Execution Petition in E.P.No.430 of 1972 for taking delivery of suit property, which was allotted to him in the above said final decree and delivery was effected in favour of the second respondent on 14.03.1974. The delivery account was marked as Ex.A8. It was further averred that on 15.03.1974 there was a sale agreement between the first respondent and the second respondent, whereunder the first respondent agreed to purchase the suit property for a sale consideration of



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Rs.1,200/- and paid an advance of Rs.100/-. It was further submitted that the first respondent entered the suit property as a permissive occupant under the agreement. It was further submitted that the first respondent failed to perform his part of the agreement and get the sale deed in his favour and hence, lost his right under the sale agreement. It was further averred by the deceased first appellant that on request made by the first respondent, the second respondent allowed her to enjoy the thatched house in the suit property from 01.06.1974 as a tenant. Even after purchase of the suit property by the deceased first appellant from the second respondent, the first respondent was allowed to continue as a tenant in the suit property. As the first respondent committed default in payment of rent, a notice was issued by the first appellant on 02.07.1987 terminating the tenancy in her favour. The first respondent came up with a reply claiming title over the suit property as if it was her husband's ancestral property. Therefore, the deceased first appellant was constrained to file a suit for declaration of title and recovery of possession.



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2. The second respondent remained ex-parte and the first appellant filed a written statement and contested the suit. In the written statement, the first respondent claimed that the suit property was ancestral property of her husband. The title of the first appellant/plaintiff and the second respondent were specifically denied. It was also stated in the written statement that the first respondent did not receive any summons or notice in the earlier suit for partition in O.S.No.176 of 1958 and E.P.No.430 of 1972 and hence, those proceedings will not bind her. The first respondent also denied the delivery of possession in favour of second respondent through Court in execution proceedings. The first respondent also denied the sale agreement and tenancy pleaded in the plaint. The first respondent also claimed that she had granted licence to the third respondent to enjoy usufructs of the coconut trees in the suit property. On these pleadings, the parties went to the trial.

3. Before the trial Court, the deceased first appellant/plaintiff was examined as PW1 and one independent witness Muthu was examined as PW2. Fourteen documents were marked on the side of the first appellant as Ex.A1 to Ex.A14. On



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4. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the first respondent was a tenant under the second respondent. The trial Court also had given a finding that the deceased first appellant/plaintiff proved his title over the suit property and consequently entitled to recover of possession. Aggrieved by the said judgment, the first defendant in the suit viz., the deceased first respondent herein filed an appeal in A.S.No.51 of 1999 on the file of the Subordinate Court, Thiruchirapalli. The First Appellate Court concurred with the findings of the trial Court with regard to the title of the deceased first appellant and held that the suit property belonged to deceased first appellant/plaintiff. However, the relief of recovery of possession prayed for by the deceased first appellant was negatived by the First Appellate Court on the ground that the first respondent prescribed her title by adverse possession. Aggrieved by the said judgment, the deceased first appellant



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filed this Second Appeal and after his death, appellants 2 to 7 were brought on record as his legal representatives.

5. At the time of admission of the Second Appeal, the following substantial questions of law were framed:

“1.Whether in law the lower appellate Court is right in dismissing the suit after finding that the appellant was entitled to declaration?

2.Whether in law the lower appellate Court is right in finding that the first respondent had perfected title by adverse possession when the first respondent had not pleaded or proved that she had the necessary animus and long continuous enjoyment?

3.Whether in law the lower appellate Court was not wrong in brushing aside Exs.A5 to A8 which categorically proved that possession had been taken from the first respondent through Court?”

6. The learned counsel for the appellants, elaborating the substantial questions of law framed at the time of admission, submitted that the first respondent failed to prove her plea that the suit properties were ancestral



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properties of her husband. The learned counsel by taking this Court to the delivery account marked as Ex.A8, dated 14.03.1974 submitted that the suit property was taken delivery through Court by the vendor of the first appellant namely the second respondent from the first respondent. In the delivery account, the son of the first respondent namely Karuppanan signed as a witness. Therefore, it is proved that the possession of the suit property was validity taken from the first respondent by the second respondent, in pursuance of the final decree for partition passed in his favour, subsequently, the second respondent under Ex.A4 sold the properties to the first appellant. Therefore, the title of the first appellant is proved by the documentary evidence. As far as the plea of adverse possession raised by the first respondent is concerned, except the interested testimony of first respondent herein, there is no other evidence available on record to support to plea of adverse possession.

7. The learned counsel by taking to this Court to the evidence of DW1 submitted that necessary animus for adverse possession was not at all proved by the evidence of DW1 and therefore, the First Appellate Court erred in giving a



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finding that the first respondent perfected title by adverse possession. In this regard, the learned counsel for the appellants relied on the decision of this Court in *M.Subbiah Vs. T.Subbiah (died) and others* reported in **2009 (1) CTC 366**, for the proposition that law and possession without necessary animus would not constitute adverse possession.

8.Per contra, the learned counsel appearing for the 4th respondent, who claims under the deceased first respondent, submitted that the first appellant raised two pleas with regard to the character of first respondent's possession over the suit property and both the pleas namely agreement holder and tenant were not proved by the first appellant by any acceptable evidence. Under these circumstances, when the first respondent is able to establish her possession from 1975, well after the statutory period of twelve years, the First Appellate Court is justified giving a finding that the first respondent perfected title to the suit property by adverse possession.



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9. The learned counsel for the 4th respondent by relying on judgment of the Apex Court in ***Ramesh Vs. N.Narayana Reddy (Dead) by LRs***, reported in ***(2004) 7 SCC 541***, submitted that while deciding the limitation for maintaining a suit for recovery of possession, the applicability of Articles 64 and 65 of the Limitation Act have to be decided based on the pleadings of the parties and in cases where possession of the plaintiff was ousted 12 years prior to the suit, the plaintiff cannot take shelter under Article 65 of the Limitation Act and maintain a suit for recovery of possession beyond the period of 12 years.

10. The learned counsel further relied on the judgment of the Apex Court in the case of ***Nazir Mohamed vs. J.Kamala and Others*** reported in ***(2020) 19 SCC 57***, for the proposition that in cases where the rightful owner of the property fail to assert his right of possession within the period prescribed under the law of limitation, his right gets distinguished and the possessory owner acquires an absolute title.



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11. In the case on hand, the first appellant purchased the suit property from the second respondent under Ex.A4, dated 02.05.1983. The second respondent got the suit property allotted to his share in a final decree passed in O.S.No.176 of 1958. The final decree was marked as Ex.A5. In pursuance of the allotment of the suit property towards his share under a final decree passed by the Court, the second respondent filed an Execution Petition in E.P.No.430 of 1972 and had taken possession of the suit property through Court under Ex.A8 - Delivery Account. A perusal of Ex.A8 - Delivery Account would suggest that the son of the first respondent namely Karupannan signed in the delivery account as a witness. Though the first respondent raised a plea that she had not received any notice in O.S.No.176 of 1958 and E.P.No.430 of 1972, she failed to lead any evidence in support of the said contention. The presumption available in favour of judicial acts is attached to Ex.A5 and Ex.A8. Therefore, this Court can safely come to a conclusion that in a partition suit to which, first respondent was a party as 211th defendant, the suit property was allotted to the share of the second respondent and he had taken possession of the suit property on 14.03.1974 through Court under Ex.A8. Thereafter, the second respondent sold the suit



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property to the first appellant. Hence, the title of the first respondent is proved by un-impeachable documentary evidence. Both the Courts below had given a finding that the first appellant proved his title over the suit property and the said finding of fact had attained finality.

12. It is settled law right to possession is an essential incidence of title. When a person succeeds in proving his title to the property as a necessary consequence, he is entitled to recover possession based on title as against any person found to be in possession of the property, unless the other person proves his better title or his special legal status to retain possession. In the case on hand, though the first respondent raised a plea that the suit properties were ancestral properties of her husband, she miserably failed to lead any evidence in support of the said plea. Therefore, the first respondent has not proved any semblance of right over the suit property. Therefore, in a suit for recovery of possession filed by the original owner of the property, the first respondent only has two defences either she can plead right to retain a possession by virtue of her another status like statutory tenant or by adverse possession. It is also equally settled law when a suit



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for recovery of possession is filed based on title, the same has to be filed within 12 years from the date on which, the possession of the defendant had become adverse to the title of plaintiff. It would be appropriate to extract relevant Article in Limitation Act, 1963.

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 purpose of this article- (a)Where the suit is by a remainderman, 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 remainderman, reversioner or devisee, as the case may be, falls into possession; (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	Twelve years	When the possession of the defendant becomes adverse to the plaintiff



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13. Therefore, the crux of the issue is whether the first respondent proved her plea of adverse possession by cogent evidence. It is settled law a plea of adverse possession should be specifically raised and meticulously proved by cogent evidence.

14. In the case on hand, the first respondent firstly claimed title to the suit property by stating that the suit properties were ancestral properties of her husband. Secondly, she also pleaded that her husband himself had been in possession of the suit property for more than the statutory period by adverse possession. The first respondent though pleaded adverse possession, it is not specifically pleaded what was the starting point of adverse possession of the first respondent. As far as the evidence available on record in support of the adverse possession is concerned, the first respondent has not produced any documentary evidence before this Court. Therefore, except the interested oral testimony of the first respondent as DW1, there is no other evidence available on record to support the plea of adverse possession. I have perused the evidence of DW1. No where in her evidence, she asserted her hostile title over the suit property. In these



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circumstances, absolutely there is nothing on record to prove the plea of adverse possession raised by the first respondent in her written statement.

15. It is settled by the decisions of this Court and also the decisions of the Apex Court that mere possession however long, would not constitute adverse possession, unless such possession is accompanied by necessary animus to exclude the real owner. It would be appropriate to refer to the decision of the Hon'ble Apex Court in ***Ravinder Kaur Grewal and others vs. Manjit Kaur and others*** reported in ***MANU/SC/1053/2019***, wherein it was observed as follows:-

“60. The adverse possession requires all the three classic requirements to coexist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge.”

In the case on hand, absolutely there is no evidence available on record to prove animus on the part of the first respondent to constitute adverse possession. The First Appellate Court without considering the absence of animus, came to the conclusion that the first respondent succeeded in proving the title by prescription.



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16.The learned counsel for the 4th respondent by relying on *(2004) 7 SCC 541* submitted that Article 64 of Limitation Act, is applicable to the present case. The present suit is not a suit based on prior possession, it is based on title. Therefore, there cannot be any doubt that Article 65 of Limitation Act is applicable to this case to calculate the limitation of filing of the suit. In the said case, the plaintiff suppressed material facts concerning his earlier ouster from the suit property and presented the suit. Therefore, on the facts of that case, the Apex Court held that the suit filed by the plaintiff after 12 years was barred by limitation. In the case on hand, the first respondent has not pleaded the starting point of hostile possession likewise she has not averred that she dispossessed the first appellant from the suit property. Though the first appellant pleaded that the first respondent entered the suit property as a permissive occupant, the First Appellate Court found that the pleading of the first appellant regarding permissive occupation and tenancy were not satisfactorily proved. Merely because, the plea of permissive occupation is not proved, we cannot presume, the first appellant was dispossessed by the first respondent. The word 'dispossession' involves forcible removal of a person from that property. The said Act involves



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both animus intention and over tact. In the case on hand, as already discussed, the first respondent has not produced any evidence to prove her animus. In these circumstances, the judgment relied upon by the learned counsel for the 4th respondent is not applicable to the facts of the present case.

17.The learned counsel for the appellants also relied on the judgment reported in **(2020) 19 SCC 57**, wherein, it was held as follows:-

"52.As held by the Privy Council in Perry v. Clissold, 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 right or possession by law, within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever distinguished, and the possessory owner acquires an absolute title".

18.1. A perusal of the above judgment would make it clear that the person in the assumed character of owner namely a person in hostile possession of the



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property with necessary animus acquires an absolute title, if the rightful owner of the property failed to assert his possession within the period prescribed by law of limitation. In the case on hand, we already discussed that the possession of the first respondent cannot be termed as possession in assumed character of owner or hostile possession with animus. In this connection it would be appropriate to refer to the judgment relied on by the learned counsel for the appellants in the case of ***M.Subbiah Vs. T.Subbiah (died) and others***, cited supra, wherein it was observed as follows:-

"14.At this juncture, the Court has to perpend the circumstances under which adverse possession can be claimed. In order to analyse the above legal aspect, it would be more useful to look into the following decisions:

(a) In Ponnaiyan v. Munian (died) and others, 1995 (2) MLJ 294, it has been held that it is well established that a person who claims title to the property by adverse possession must definitely allege and prove how and when adverse possession commenced and what was the nature of his possession.



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(b) In Roohnisha Beevi and 15 others v. A.M.M.Madhudu Mohamed and 29 others, 1998 (1) LW 244, it has been held like thus;

"The party pleading adverse possession must state with sufficient clarity as to when his adverse possession commenced and the nature of its possession."

"Adverse possession means a hostile assertion i.e., a possession which is expressly or impliedly in denial of title of the true owner."

"The person who bases his title on adverse possession, therefore, must show by clean and unequivocal evidence i.e., possession was hostile to the real owner and amounted to a denial of his title to the property claimed."

(c) In The State of Tamil Nadu represented by the District Collector, Tiruchirapalli v. K.Purushothaman, 1998 (2) LW 171, it has been held that long possession itself is not adverse possession and possession with animus to hold it against the true owner is the basic requirement to prescribe title by adverse possession.



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15.From the conjoint reading of the decisions referred to supra, it is made clear that the person who claims adverse possession must have requisite animus and without requisite animus, his or her possession however long would not be adverse to the real owner and further the person who claims adverse possession must state as to when and in what manner his possession becomes adverse to real owner. Unless these conditions are established plea of adverse possession cannot be entertained".

18.2. Therefore, it is settled law that mere possession without animus is not sufficient to prove the adverse possession. In the case on hand, as discussed earlier, the first respondent miserably failed to prove animus so as to claim adverse possession.

19.1. In view of the discussions made above, the questions of law framed at the time of admission are answered in favour of the appellants and the Second Appeal is allowed by setting aside the judgment and decree of the First Appellate Court to the extent it negated the relief of recovery of possession.



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a) the Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court, in so far as it is against the appellants in refusing the prayer for recovery of possession;

b) the judgment and decree passed by the trial Court is restored;

c) In the facts and circumstances of the case, there would be no order as to costs.

03.02.2023

NCC : Yes

Index : Yes

vsd

To

1.The Principal Sub Court,
Tiruchi.

2.The Principal District Munsif Court,
Tiruchi.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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