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Judgment dated 23.06.2023
in S.A.Nos.2035 and 2036 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.06.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.2035 and 2036 of 2000

1. Sankarammal
2. Manicakkamal (died)
3. Chandrasekaran
4. Muthukumar (Minor)
S/o Karuppiya,
Represented by Guardian
M.Chandrasekaran
(Third appellant permitted to act
as guardian of the fourth appellant,
vide order dated 22.11.2000
in C.M.P.No.15856 of 2000)
5. Parvathy
6. Nambu
7. Nagasundaram
8. S.Nambirajan
9. Soundaram
10. Kasthuri
11. Thangaleele
12. Dhurkhabai
(Appellants 7 to 12 brought as
LRs. of deceased second appellant,
as per the Order of Court, dated 15.10.2015
made in M.P.(MD).No1 to 3 of 2013)

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in S.A.No.2036 of 2000)

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.. Appellants in both the Second Appeals

Vs.

1. Rajanagam
2. Muniyammal
3. Mari Pitchai (died)
4. Meenambal
5. Muthulakshmi
(Fifth respondent brought on record
as LR. of the deceased third respondent
made in C.M.P.(MD).Nos/1510 and 1512
of 2020 in S.A.Nos.2035 and 2036 of 2000)

.. Respondents in S.A.No.2035 of 2000

1. Mari Pitchai (died)
2. Meenambal
3. Muniyammal
4. Rajanagam
5. Muthulakshmi
(Fifth respondent brought on record
as LR of the deceased first respondent,
made in C.M.P.(MD).Nos.1510 and 1512
of 2020 in S.A.2035 and 2036 of 2000)

.. Respondents in S.A.No.2036 of 2000

Second Appeal No.2035 of 2000 filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 17.11.1998 in A.S.No.133 of 1997 on the file of the Additional District Court, Ramanathapuram, against the judgment and decree dated 08.10.1996 in O.S.No.39 of 1993 on the file of the Additional District Munsif, Ramanathapuram.

Second Appeal No.2036 of 2000 filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 17.11.1998 in A.S.No.128

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of 1997 on the file of the Additional District Court, Ramanathapuram, against the judgment and decree dated 08.10.1996 in O.S.No.39 of 1993 on the file of the Additional District Munsif, Ramanathapuram.

For appellants : Mr.K.Sathiya Singh in both the Second Appeals

For respondents: Mr.T.Veerakumar for RR4 and 5 in S.A.2035 of 2000

and for RR2 and 5 in S.A.2036 of 2000

No appearance for RR-1 and 2 in S.A.2035 of 2000

No appearance for RR-3 and 4 in S.A.2036 of 2000

COMMON JUDGMENT

The appellants filed a suit in O.S.No.39 of 1993 before the trial Court against the respondents for declaration, permanent injunction and in the alternative, for recovery of possession and also for mandatory injunction. After trial, the said suit was decreed, against which, the defendants preferred two First Appeals in Appeal Suit Nos.128 of 1997 and 133 of 1997. Since both the First Appeals arise out of one and the same judgment in O.S.No.39 of 1993 of the trial Court, they were taken up together by the first appellate Court and they were heard and both the First Appeals were allowed, setting aside the judgment and decree of the trial Court. The plaintiffs have preferred these Second Appeals challenging the judgments and decrees of the first appellate Court, i.e. S.A. (MD).No.2035 of 2000 is filed challenging the judgment and decree in A.S.No.



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133 of 1997 and S.A.(MD).No.2036 of 2000 is filed challenging the judgment and decree in A.S.No.128 of 1997. Since the present Second Appeals arise out of the common judgment of the first appellate Court, they are taken up together and heard and the following common judgment is being rendered.

2. Brief facts of the case of the plaintiffs, as stated in the plaint, are as follows:

(a) The appellants/plaintiffs are claiming title under settlement deed, dated 13.06.1968. Based on the said settlement deed, the plaintiffs are in possession of the suit properties and they have constructed a house in a portion of the suit properties and enjoying the same and the remaining portion is being kept as vacant site being back-yard of the house and they have also planted trees in the boundaries and enjoying the same.

(b) The plaintiffs have prescribed title by adverse possession and they are in possession of the suit properties. When the defendants tried to interfere with the possession and enjoyment of the properties from the month of December 1991, when the plaintiffs have gone out of station and during that period, the defendants 1 to 3 interfered and encroached on the Northern end of item 1 of the suit properties and had put up a hut and they have also encroached on the North-East end of the second item of the suit properties and also constructed on



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the same.

(c) When the plaintiffs returned to their native place and on seeing the encroachment made by the defendants, they asked the defendants to remove the construction put up by them, which was refused and the defendants tried to encumber upon the properties and in a previous occasion, the husband of the first defendant tried to disturb the plaintiffs. Hence, the plaintiffs have filed the suit earlier in O.S.No.313 of 1979 on the file of the First Additional District Munsif Court, Ramanathapuram, which was decreed in favour of the plaintiffs and injunction was also granted.

(d) Though the defendants accepted the right, title and interest of the plaintiffs, but however, they tried to disturb them and also encroached on the properties. Therefore, the present suit is filed for the relief stated supra.

3. Brief facts of the case of the defendants, as stated in the written statement, are as follows:

(i) The second defendant denied the averments made in the plaint and also denied the right and title of the plaintiffs and the nature of the properties. The encroachment alleged to have been made by them, is also denied stating that they have not put up any hut and the plaintiffs made construction partly.

(ii) The suit properties originally belonged to the first defendant of a larger



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extent of 10 cents, out of which, the second defendant purchased 4 cents on 08.08.1991 under registered sale deed. In the said 4 cents, already there was a old thatched hut existing. Therefore, after purchasing the said property, the defendants constructed a permanent structure by spending Rs.20,000/-.

(iii) The plaintiffs knew about the said sale deed and on seeing the same, the plaintiffs did not raise any objection and hence, they are estopped from raising the objections subsequently, and they have also not made any objection at the time of construction.

(iv) Even the plaintiffs are not enjoying the said property and even after getting a decree in O.S.No.313 of 1979. Therefore, the plaintiffs are not entitled to get the relief sought for in the present suit.

(v) The fourth defendant has filed separate written statement, denying the right, title and interest of the plaintiffs and also the measurement of the properties in question and also the superstructure put up in the properties and also though the plaintiffs are brothers, they have entered into a family partition deed, in which the suit properties were not mentioned. The fourth defendant denied their encroachment and disturbance and also denied the earlier suit filed and the decree obtained therein.

(vi) The suit properties and the other extent of the adjacent properties originally belong to Vairamuthammal, being the wife of Muthuramalingam Pillai.



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They have enjoyed the properties in question. The said Vairamuthammal obtained the suit properties through a sale deed dated 09.05.1966 in favour of the minor son of the fourth defendant and the same was settled/handed over in favour of the son Minor Muthuramalingam on 20.03.1985 and the guardian of the minor son is enjoying the properties over and above the statutory period. Therefore, the fourth defendant has prescribed title by adverse possession.

(vii) The plaintiffs also admitted the right and enjoyment of the defendants and their predecessors-in-title. The fourth defendant had also constructed a building with the knowledge of the plaintiffs and they have not raised any objection and they are estopped from raising objection subsequently.

4. Based on the above pleadings, the trial Court framed the following issues:

- (i) Whether the suit properties belong to the plaintiffs ?
- (ii) Whether the plaintiffs are entitled to get the relief of permanent injunction ?
- (iii) Whether the first item of the suit properties belongs to the second and third defendants and second time of the suit properties belong to the fourth defendant ?
- (iv) Whether the plaintiffs are entitled to get the relief of recovery of



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possession ?

(v) Whether the plaintiffs are entitled to get mandatory injunction after removing the encroachment made by the defendants and get the vacant site ?

(vi) To what other relief the plaintiffs are entitled to ?

5. Pending trial, an Advocate Commissioner was appointed, who inspected the suit properties in the presence of both parties and filed a report and a plan.

6. Before the trial Court, in order to substantiate their respective cases, on the side of the plaintiffs, one witness was examined as P.W.1 and Exs.A-1 to A-6 were marked. On the side of the defendants, two witnesses were examined as D.Ws.1 and 2 and Exs.B-1 to B-11 were marked. Besides the above documents, two Court documents were marked as Ex.C-1 and Ex.C-2 being the Advocate Commissioner's report and plan.

7. After trial and considering the above pleadings and oral and documentary evidence, the trial Court decreed the suit, against which, the defendants 1 to 3 have preferred appeal in A.S.No.128 of 1997 and the fourth defendant has preferred appeal in A.S.No.133 of 1997. Both the First Appeals, i.e. Appeal Suit Nos.128 and 133 of 1997 were taken up together and the first



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appellate Court, while disposing of those First Appeals, had taken the following points for consideration:

(i) Whether the defendants who filed A.S.No.128 of 1997 are having any right and title in the suit properties and whether the plaintiffs have prescribed title by adverse possession ?

(ii) Whether the appeal in A.S.No.128 of 1997 is barred by the principle of res-judicata ?

(iii) Whether the plaintiffs have prescribed title by adverse possession in the second item of the suit properties ?

(iv) Whether the plaintiffs are having right and title in the suit properties ?

(v) To what relief the appellants are entitled to in both the First Appeals?

8. Considering the above points and based on the grounds of First Appeals, and the submissions made by the learned counsel on either side, and also perusing the judgment and decree of the trial Court, the lower appellate Court found that the judgment and decree rendered by the trial Court is erroneous and thereby, both the First Appeals were allowed, by setting aside the judgment and decree of the trial Court. Challenging the same, the plaintiffs have filed the present Second Appeals in S.A.(MD).No.2035 and 2036 of 2000.



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9. This Court, while admitting both these Second Appeals, formulated the following common substantial questions of law on 15.06.2023:

(i) Whether the judgment and decree passed by the trial Court in O.S.No. 313 of 1979 would bind the respondents 1 and 3 ?

(ii) Whether the respondents 1 and 2 have perfected their title by adverse possession over the suit properties ?

(iii) Whether the decrees and judgment of the lower appellate Court are sustainable in law insofar as the question of adverse possession, in view of the judgment reported in 1996 (2) MLJ 267 (Ramasami Vs. Krishnasami alias Krishnan) ?

(iv) Whether the appellants have established their title under Exs.A.1 to A. 5 ?

10. Since the issues involved in both the Second Appeals are one and the same, common substantial questions of law were formulated as above in both the Second Appeals.

11. Learned counsel for the appellants submitted that the plaintiffs' forefather had acquired title to the suit properties by purchasing the same in the Court auction held in the proceedings in E.P.No.537 of 1922 and took possession



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of the properties in the year 1923 in the execution proceedings in E.A.No.373 of 1922. Thereafter, the brothers of the plaintiffs executed a settlement deed in favour of the plaintiffs in respect of the suit properties in the registered settlement deed, dated 13.06.1968 (Ex.A-3). Therefore, the plaintiffs are the owners of the properties from time immemorial and even prior to that, the brothers and parents even in the year 1920 till the properties were in the family in the family arrangement prior to their predecessors-in-title and the properties came to the family of the plaintiffs through Court auction and from 1920 till the execution of the settlement deed in favour of the plaintiffs, the properties were in the hands of the ancestors of the plaintiffs and from 1968, the properties are in the hands of the plaintiffs.

12. The fourth defendant's minor son got title only under the sale deed, dated 20.03.1985 only, though the previous owner had acquired title under sale deed, dated 09.05.1966 and the fourth defendant had not produced the said title deed to establish his title, and they have acquired title from 1966. Therefore, the fourth defendant has not established the adverse possession of staying and as to on what date, they have entered into the suit properties and they have also established the right by prescription of title and obtained right by adverse possession and they have prescribed title by adverse possession.

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13. Further, though the appellants have asked for recovery of possession in the present suit as an alternative prayer, the appellants have also admitted the possession, but it is for the fourth defendant in the present suit to prove that his possession is open by assertion of hostile title and the fourth defendant has not established the date on which he entered into possession and he is enjoying the properties as his own, with the knowledge of the plaintiffs. The boundaries mentioned in Exs.B-4 and B-5 do not relate to the boundaries of item No.2 of the present suit properties and Exs.A-1 to A-4, the entire properties in S.No.627/819 belong to the plaintiffs.

14. Though the trial Court rightly appreciated the oral and documentary evidence, and also considered the learned Advocate Commissioner's report and plan and decreed the suit, the first appellate Court erred in holding that the fourth defendant and his predecessors-in-title are in possession from 1949, without considering or going through any of the documents. The first appellate Court also erroneously held that the fourth defendant is the owner of the second item of the suit properties herein, because, there is a difference in the survey number of the suit properties.



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15. Learned counsel for the plaintiffs further submitted that the first appellate Court failed to note that the judgment and decree in O.S.No.313 of 1979 on the file of the District Munsif Court, Ramanathapuram, between the plaintiffs and the previous owners of the defendants 1 and 2 from whom the second defendant herein purchased the properties and the plaintiffs have obtained decree in that suit. Further, learned counsel for the plaintiffs submitted that the trial Court failed to consider the fact that the defendants in O.S.No.313 of 1979 are the persons from whom the defendants 1 and 2 herein purchased the suit properties under the sale deed dated 08.08.1991, which is marked as Ex.B-1.

16. Further, the lower appellate Court failed to consider the judgment rendered in O.S.No.313 of 1979 which is binding on the defendants. The first defendant claimed right and title of the suit properties and the second and third defendants purchased the suit properties from the first defendant and they have purchased the suit properties only under the first defendant, and therefore, since already they are parties to the predecessors-in-title of the second defendant and are parties to the earlier suit filed in O.S.No.313 of 1979, their claim is barred by the principle of res-judicata. Since they were parties to the suit and they have not filed any appeal, and therefore, against that finding, they cannot raise the



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same claim in the subsequent suit.

17. The first appellate Court failed to consider the fact that Exs.A-1 to A-3 under which the plaintiffs' forefather acquired right over the suit properties in the year 1923 itself, through Court auction, the first appellate Court erred in holding that Exs.B-1 to B-11 are the proof for the possession of the defendants. They have failed to consider that the plaintiffs and their predecessors-in-title were in title and possession of the properties from 1923 and now the defendants are claiming title only from 1986 and the second and third defendants are claiming title from 1991 and the fourth defendant is claiming title only from 1985. Therefore, the present suit was filed in the year 1993 and therefore, even as per their documents, the second and third defendants would have been in possession from 1991 and the fourth defendant would have been in possession only from 1985. Hence, their possession is not over and above the statutory period.

18. Only the defendants should plead and prove that they are in possession for more than 12 years with the knowledge of the plaintiffs and that their claim of title is hostile against the plaintiffs. Therefore, the defendants have failed to establish their right and title against the plaintiffs, especially Exs.A-1 to

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A-3, clearly shows that they are having title and they are in possession from 1923 onwards. Though the trial Court rightly appreciated the evidence and decreed the suit, the first appellate Court failed to consider the same and the First Appeals were allowed and the judgment and decree of the trial Court were set aside and the suit was dismissed, against which the plaintiffs are before this Court by way of these Second Appeals.

19. Learned counsel for the defendants 2 and 3 submitted that the trial Court completely ignored on clear admission made by P.W.1 and that ever-since the date of Ex.A-3, there was a fence along SJ line in the Advocate Commissioner's plan and the same was put up by the plaintiffs themselves. The trial Court failed to consider the admission of P.W.1 in the evidence that the properties were not measured at the time of execution of settlement deed Ex.A-3 and hence, even though their predecessors-in-title purchased the properties in Court auction, and taken delivery of possession in 1923, and filed the subsequent suit, but they have admitted in the evidence regarding physical features of the properties, which clearly shows that the plaintiffs were not in possession and enjoyment of the properties. The trial Court failed to appreciate the oral and documentary evidence and decreed the suit, but the first appellate Court considered the appeals and re-appreciated the materials on record and the



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first appellate Court being the fact finding Court, while re-appreciating the evidence, observed that the plaintiffs were not in possession of the properties in question and the defendants are in possession of the same. Further the identity and the extent of the properties also varied.

20. Learned counsel for the defendants further submitted that even though the plaintiffs have earlier obtained decree in O.S.No.313 of 1979, the same was not acted upon and hence, the same would not bind the defendants 2 and 3, as they were not parties to the said suit. Learned counsel for the fourth defendant submitted that though the plaintiffs' father was said to have purchased the properties under Court auction and had taken delivery of the same in the Execution Proceedings in 1923 itself, after the death of their father, the brothers and sisters executed a family partition and therefore, in the said family partition, the suit properties were also not shown, which clearly shows that the suit properties were not the family properties of the plaintiffs.

21. Though the plaintiffs have stated that there were properties allotted to the father of the plaintiffs and after the death of their father, they have derived their title and subsequently, they have entered into partition during the life-time of their father and entered into partition deed and the properties were not shown



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in the partition deed and though they have stated that the properties were allotted to their father, there is no evidence to show that the properties were allotted to their father.

22. Further, the fourth defendant's son had derived title and since he was minor at that point of time, the fourth defendant was enjoying the properties, and therefore, the trial Court failed to appreciate the oral and documentary evidence, however, the first appellate Court being the fact finding Court, had re-appreciated the evidence.

23. Learned counsel for the defendants also submitted that the trial Court failed to appreciate the evidence of P.W.1 and also failed to consider Ex.A-3 and erroneously decreed the suit and the fourth defendant was in possession of the properties and they have right and title over the properties, and they have also constructed a house by spending huge amount and they are in possession and have prescribed title by adverse possession also. The plaintiffs are estopped from denying their right and title and they have not objected while constructing the building, despite knowing the fact that the fourth defendant is to construct a building in the properties. Therefore, the plaintiffs have filed the suit for recovery of possession and since they have admitted the possession of the



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properties, the plaintiffs are not entitled to get any relief in the suit much less than for declaration of title and recovery of possession, and hence, the Second Appeals against the fourth respondent is liable to be dismissed.

24. Heard both sides and perused the materials available on record.

25. As far as the substantial questions of law are concerned, it is seen that the specific case of the plaintiffs is that the father of the plaintiffs purchased the properties from one Nambi Narayana Pillai and participated in the Court auction held in E.P.No.537 of 1922 in O.S.No.53 of 1920 on the file of the Principal District Munsif Court, Paramakudi. Subsequently, they have filed Execution Application in E.A.No.373 of 1923 for delivery of possession and the possession has also been obtained and from 1923 onwards, his father was in possession and enjoyment of the suit properties. Even during the life-time of the father of the plaintiffs, the said Nambi Narayana Pillai and his brothers Sivagnanam Pillai, Kalyanasundaram Pillai and Shanmugasundaram Pillai entered into a partition under registered Partition deed, dated 19.08.1949 and therefore, with reference to their entire family properties, the suit properties were allotted to their father Nambi Narayana Pillai and during life-time, he enjoyed the properties and after his death, the plaintiffs' brothers executed settlement deed in favour of the



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plaintiffs under registered settlement deed, dated 13.06.1968 and therefore, they are in possession of the suit properties. Mutation of records had also taken place and the authorities had also paid the house tax in Door No.1-A, which stood in the name of the second plaintiff. The entire suit properties were in enjoyment of the plaintiffs and in the year 1991, the defendants tried to interfere with their possession. Even prior to that, in the year 1979, the husband of the first defendant, one Dinakar and Kulanjiammal, have disputed the title and therefore, the plaintiffs filed the suit against the said Dinakar, who is the husband of the first defendant and the said Kulanjiammal in O.S.No.313 of 1979, which was decreed in favour of the plaintiffs and the husband of the first defendant and Kulanjiammal should not interfere with the peaceful possession of the plaintiffs in the suit, and therefore, the defendants 1 to 3 have no right and title in the suit properties and they cannot raise any objection or dispute over the suit properties. After that suit only, the defendants 2 and 3 had purchased the properties from the first defendant and therefore, since the defendants 1 to 3's predecessor-in-title were parties to the above said suit in O.S.No.313 of 1979 on the file of the Principal District Munsif Court, Paramakudi, the findings rendered in the said suit will bind the defendants 1 to 3 herein also.

26. As far as the fourth defendant is concerned, he himself has admitted in his evidence that his minor son derived title and from the registered sale deed,



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dated 20.03.1985 (Ex.B-4) and they have constructed a house only thereafter, whereas the suit in O.S.No.313 of 1979 was filed only in the year 1979, and since the predecessors-in-title of the defendants 1 to 3 were parties to the suit, the decree passed in the said O.S.No.313 of 1979 will bind the defendant 1 to 3 in the present suit. The first substantial question of law is answered in the above terms.

27. As far as the second substantial question of law is concerned, as already stated, the plaintiffs got the property in question under registered settlement deed, dated 13.06.1968 and they were in possession of the suit properties and since the defendants 1 to 3's predecessor-in-title disputed their title, the plaintiffs earlier filed the suit in O.S.No.313 of 1979 against the predecessors-in-title and even at that time, the suit was decreed and therefore, the predecessors-in-title were restrained from interfering with the possession of the plaintiffs and therefore, from 1968 to 1979, they were in possession of the properties and even subsequently also, they were in possession of the properties.

28. The defendants 2 and 3 in O.S.No.313 of 1979 claimed title through the first defendant only under the registered sale deed, dated 05.08.1991 and the present suit in O.S.No.39 of 1993 had only been filed in the year 1993, and



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therefore, the defendants have not specifically pleaded and proved through oral and documentary evidence that they have perfected their title by adverse possession over the suit properties.

29. It is settled proposition of law that if a person is claiming title under adverse possession, they should prove that from the specific date on which they are in possession with the knowledge of the true owner, continuously for more than 12 years without their objection. Therefore, when once the defendants 1 and 2 claim title by adverse possession, it is for them to prove the date from which they are in possession of the suit properties with the knowledge of the true owner, continuously for more than 12 years without their objections and therefore, when once the defendants 1 and 2 claim title by adverse possession, it is for them to prove that from the date on which they are in possession of the suit properties, with the knowledge of the plaintiffs and without their objection continuously over and above the statutory period of 12 years. From the oral and documentary evidence and even the pleadings, the defendants 1 and 2 have not specifically pleaded and proved and further, earlier, their predecessors-in-title were parties to the earlier suit and from the date of the earlier suit, the date of which either from the defendants or their predecessors-in-title have entered into possession and they were continuously in possession over and above the



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statutory period of 12 years. Under the above circumstances, though the trial Court rightly appreciated the evidence and decreed the present suit, the first appellate Court failed to consider the fundamental principles and held that they were in adverse possession and therefore, they have prescribed title by adverse possession, which is erroneous and hence, this Court finds that the defendants 1 and 2 have not proved that they have perfected their title by adverse possession over the suit properties. The second substantial question of law is answered accordingly.

30. As far as the third substantial question of law is concerned, the learned counsel for the appellants relied on a decision of this Court in the case of Ramasami Vs. Krishnasamy alias Krishnan, reported in 1996 (2) MLJ 267, in which this Court observed as under:

"23. It is seen that an argument was put forward before the lower appellate Court that in the documents Exs.A-2 to A-4, it has been described as house sites with plot numbers, and the intention was to get good compensation. If that was the intention, according to me, the plaintiff has to fail for that reason alone. In that case, the intention was to create evidence for getting higher compensation by executing sham documents. The same can only be



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considered as a fraudulent intention on the part of the plaintiff and his father to defeat the rights of the Government. If that be so, the plaintiff and his father who themselves are parties to the fraud, are not entitled to get the assistance of Court."

31. As held in the above second substantial question of law, the plaintiffs have proved their title from 1923 onwards and till 1968 and even after 1968, till the earlier suit in O.S.No.313 of 1979, they have prescribed their title continuously and their title of the properties in respect of First Item of the suit properties and in the earlier suit also, they have obtained decree and when once the plaintiffs have proved their title and they have also pleaded that in the year 1991, when they were not in the suit properties and at that time, they were taking advantage of their business, the defendants have encroached on the same and had put up the construction. Therefore, the prayer of recovery of possession as well as mandatory injunction has been sought for in the present suit. When the defendants claim title by adverse possession, it is for the defendants to plead and prove in the plaint, except that they have stated that they have purchased the properties under the sale deed and they have not pleaded that on the date on which they have entered into the possession and



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from the date of sale deed, they could not have been in physical possession, and therefore, they should have examined the predecessors-in-title and proved the possession and they have not produced any oral and documentary evidence and from the date on which they are in possession, they have encroached and constructed a building. Therefore, when once the plaintiffs have proved that over and above the statutory period, they were in possession of the properties in question, especially with the knowledge of the defendants and without any interruption and using it continuously for more than the statutory period, they are entitled to claim adverse possession. Therefore, in this case, from the oral and documentary evidence, the first appellate Court, as a fact finding Court, has not properly re-appreciated the evidence and allowed the First Appeals, which is erroneous. Therefore, the third substantial question of law also is answered accordingly.

32. As far as the fourth substantial question of law is concerned, as already stated, the case of the plaintiffs that their father purchased the properties through Court auction in the year 1923 itself, and he was in continuous possession and thereafter, their brothers executed the settlement deed in favour of them and even in the Court auction purchase and decree and possession had already been marked, and settlement deed is in favour of them



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and the records were also mutated and house tax payment receipt has also been produced and therefore, through Exs.A1 to A-5, the plaintiffs have proved their title. When once the plaintiffs have proved their title, and also they have established the dispute raised by the defendants, they are entitled for permanent injunction, however, the plaintiffs admitted that a portion of the properties were encroached upon by the defendants, and since they have been in possession and since the defendants claim adverse possession and they have stated that there has been constructed portion and they have sought for mandatory injunction and recovery of possession, and therefore, when the plaintiffs have proved right and title over the properties, it is for the defendants to establish that the suit is barred by limitation and they have prescribed title by adverse possession. The fourth substantial question of law is answered accordingly.

33. On a perusal of the oral and documentary evidence and the learned Advocate Commissioner's report and plan, Exs.C-1 and C-2, this Court finds that the trial Court had rightly appreciated the evidence and decreed the suit, whereas the first appellate Court failed to re-appreciate the oral and documentary evidence and also the pleadings and the Advocate Commissioner's report and plan, in proper perspective and erroneously allowed the First Appeals and set aside the judgment and decree of the trial Court, which warrants



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interference.

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34. At this juncture, this Court now formulates the following additional substantial question of law :

(V) Whether the decision in O.S.No.313 of 1979 on the file of the District Munsif Court, Ramanathapuram wherein it is held that the appellants are the owners of the suit properties and that the said judgment is binding on the respondents 1 and 2, as they claim their right or interest in the suit land only by virtue of sale deed, dated 08.08.1991 executed by the third respondent/first defendant who in turn purchased under sale deed dated 07.03.1986 from one Mrs.Kalanjiathimmal who is the defendant in O.S.No.313 of 1979 and that the said judgment operates as res-judicata for the claim of the respondents 1 and 2 or not ?

Though the fourth defendant only simply stated in the written statement that the fourth defendant has prescribed title by adverse possession, whereas the sale deed in favour of his son, shows that it was only in the year 1999 and he has not specifically stated in the plaint as to what is the date on which he entered into possession and the date on which he had constructed superstructure. Therefore, in the absence of any specific plea, and he has also

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not produced any evidence, and specifically the date on which he entered into possession. Even from his title deed, only from the year 1991, but the suit was filed in 1993 in O.S.No.39 of 1993, then he could not have been in physical possession prior to the sale deed executed in favour of his son, dated 08.08.1991, though he has stated that in respect of 4 cents also and even several years ago, there was a hut in Door No.13/1B, this is not reflected in his sale deed, and therefore, as far as the adverse possession is concerned, the person who claims title by adverse possession, has to specifically plead and prove the same. In this case, on a perusal of the entire records, it is seen that the fourth defendant has not pleaded and proved the same in the manner known to law.

35. Therefore, in the above circumstances, this Court finds that the fourth defendant has not proved that he has prescribed title by adverse possession and he has also not proved his ownership and he has not filed counter claim and paid the necessary Court fee also. Therefore, the first appellate Court cannot grant a decree for adverse possession. Substantial question of law (v) is answered accordingly.

36. Since the plaintiffs have proved that their predecessors-in-title from



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1923 and from 1968, they have obtained possession by way of settlement deed, and thereafter, they have filed the suit in the year 1979 and obtained decree, they have proved their right, title and interest from 1923 to 1979 and the plaintiffs are having right, title and interest over the properties.

37. Further, the plaintiffs have stated that since regarding I-Schedule of properties, the predecessors-in-title to defendants 1 to 3, disputed their title and discharged them and they have filed the suit and obtained decree in their favour, and they have claimed title only subsequently in the year 1991.

38. As far as the second item of the suit properties is concerned, from the pleadings and oral and documentary evidence and the learned Advocate Commissioner's report and plan, and also the settlement deed, the plaintiffs have proved their right, title and possession over the properties and the fourth defendant has obtained sale deed in favour of his minor son only from the year 1985 onwards, whereas the present suit itself was filed only in the year 1993 and so, if the defendants have pleaded adverse possession, it is for them to prove their hostile title and possession over the suit properties and against the plaintiffs.

39. Therefore, this Court finds that the plaintiffs have proved their case



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and the defendants have failed to prove their case and no doubt, the plaintiffs have proved their case based on their own pleadings and evidence and they stood by their own legs and they had not taken advantage of the loopholes of the pleadings made by the defendants to establish their title, whereas the defendants herein claim title by adverse possession and hence, it is for the defendants to plead and prove in the manner known to law that over and above the statutory period, they were in hostile possession,

40. Therefore, from the oral and documentary evidence, and pleadings, this Court finds that the defendants have not established their title by adverse possession and on re-appreciation of the evidence regarding adverse possession, the findings on adverse possession by the first appellate Court are erroneous and therefore, it warrants interference by this Court and the substantial question of law No.V is answered in favour of the plaintiffs and against the defendants.

41. Therefore, both the Second Appeals are allowed. The judgment and decrees of the first appellate Court are set aside and that of the trial Court is confirmed. There shall be no order as to costs in both the appeals.

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Index: Yes/no

Speaking Order: Yes/no

Neutral case citation: Yes/no

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To

1. The Additional District Judge, Ramanathapuram.
2. The Additional District Munsif, Ramanathapuram.
3. The Section Officer,
VR Section, Madurai Bench of Madras High Court, Madurai.



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P.VELMURUGAN, J

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