



S.A.Nos.681 to 684 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 20.04.2023

DELIVERED ON : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.681 to 684 of 2003
and
C.M.P.Nos.6530 to 6533 of 2003

S.A.No.681 of 2003

1.Subbiah Nadar

2.Singadurai Nadar

... Appellants / Appellants /
Defendants 1 & 2

Vs.

1.Kiliammal (died)

... 1st Respondent / 1st Respondent
/ Plaintiff

2.Anaikannu Nadar @ Thangadurai Nadar

3.Amaravathi Ammal

4.Easuvadiyal @ Thangammal

5.Umaiymmai @ Thanga Ratnam

6.Perumal

7.Sudalaikasi

... Respondents 2 to 7 / Respondents 2 to 7 /
Defendants 3 to 8

8.P.Parameshwari

... 8th Respondent

(Respondents 3 & 6 are given up)



S.A.Nos.681 to 684 of 2003

(R8 is brought on record as LR of the deceased 1st respondent vide Court order dated 25.02.2022 made in C.M.P.(MD)Nos.1183 to 1185, 1189, 1191, 1193 to 1199 of 2022 in S.A.Nos.681 to 684 of 2003)

S.A.No.682 of 2003

Sudalaikasi

... Appellant / Appellant /
8th Defendant

Vs.

1.Kiliammal (died)

... 1st Respondent / 1st Respondent
/ Plaintiff

2.Subbiah Nadar

3.Singadurai Nadar

4.Anaikannu Nadar @ Thangadurai Nadar

5.Amaravathi Ammal

6.Easuvadiyal @ Thangammal

7.Umaiymmai @ Thanga Ratnam

8.Perumal

... Respondents 2 to 8 / Respondents 2 to 8 /
Defendants 1 to 7

9.P.Parameshwari

... 9th Respondent

(Respondents 4 to 8 are given up)

(R9 is brought on record as LR of the deceased 1st respondent vide Court order dated 25.02.2022 made in C.M.P.(MD)Nos.1183 to 1185, 1189, 1191, 1193 to 1199 of 2022 in S.A.Nos.681 to 684 of 2003)

S.A.No.683 of 2003

Singadurai Nadar

... Appellant / Appellant / Plaintiff



S.A.Nos.681 to 684 of 2003

Vs.

1.Kiliammal (died)

2.Parvathiammal

3.Sudalaikasi

... Respondents 1 to 3 / Respondents /

Defendants 2 to 4

4.P.Parameshwari

... 4th Respondent

(R3 is given up)

(R4 is brought on record as LR of the deceased 1st respondent vide Court order dated 25.02.2022 made in C.M.P.(MD)Nos.1183 to 1185, 1189, 1191, 1193 to 1199 of 2022 in S.A.Nos.681 to 684 of 2003)

S.A.No.684 of 2003

Sudalaikasi

... Appellant / Appellant /

2nd Plaintiff (3rd Defendant transposed
as 2nd Plaintiff)

Vs.

1.Kiliammal (died)

2.Parvathi Ammal

3.Subbiah Nadar

... Respondents 1 to 3 / Respondents /

Defendants 1, 2 and 4

4.P.Parameshwari

... 4th Respondent

(Respondents 2 & 3 are given up)

(R4 is brought on record as LR of the deceased 1st respondent vide Court order dated 25.02.2022 made in C.M.P.(MD)Nos.1183 to 1185, 1189, 1191, 1193 to 1199 of 2022 in S.A.Nos.681 to 684 of 2003)



S.A.Nos.681 to 684 of 2003

PRAYER in S.A.Nos.681 & 682 of 2003: These Second Appeals filed under Section 100 of the Civil Procedure Code, praying this Court to set aside the judgment and decree dated 28.02.2002 made in A.S.No.80 of 2000, A.S.Nos.82, 2 and 9 of 2001 on the file of the learned Principal Subordinate Judge, Tenkasi, confirming the judgment and decree dated 30.06.2000 made in O.S.Nos.551 and 615 of 1992 and O.S.No.3 of 1993 on the file of the District Munsif Court, Tenkasi.

For Appellants : Mr.D.Nallathambi
For Mr.A.Sankarasubramanian
(in all S.As.)
For R2 & R8 : Mr.M.Saravanan
For R4, R5 & R7 : No Appearance
(in S.A.No.681 of 2003)
For R2 & R3 : No Appearance
For R9 : Mr.M.Saravanan
(in S.A.No.682 of 2003)
For R4 : Mr.M.Saravanan
(in S.A.Nos.683 & 684 of 2003)

COMMON JUDGMENT

These Second Appeals are filed challenging the common judgment and decree dated 28.02.2002 made in A.S.No.80 of 2000, A.S.Nos.82, 2 and 9 of 2001 on the file of the learned Principal Subordinate Judge, Tenkasi, confirming the



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common judgment and decree dated 30.06.2000 made in O.S.Nos.551 and 615 of 1992 and O.S.No.3 of 1993 on the file of the District Munsif Court, Tenkasi.

2.The brief case of the plaintiff in O.S.No.551 of 1992 reads as follows:-

(i) The suit properties and other properties originally belonged to one Anaikannu Nadar, who had three sons, namely, Arumuga Nadar, Kuttalinga Nadar and Ponnusami Nadar. The suit properties were partitioned orally before 1960, in which the 1st schedule was allotted to Kuttalinga Nadar, the 2nd schedule was allotted to Ponnusami Nadar and the 3rd schedule was allotted to Arumuga Nadar. The 4th schedule Well is common to these properties. After the death of the said Kuttalinga Nadar, his properties devolved upon his son, namely, Anaikannu Nadar, who is the husband of the plaintiff. Since Anaikannu Nadar married one Parvathi as 2nd wife, there was a family dispute and by way of family arrangement in the year 1970 the properties of Anaikannu Nadar ie., 1st schedule and proportional share in the 4th schedule common Well were given to the plaintiff and ever since 1970 the plaintiff is in possession. Therefore, the plaintiff perfected title by way of adverse possession.



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(ii)Whereas the 2nd schedule devolved upon the defendants 1 and 2 as they are the legal heirs of Ponnusami Nadar. They are also entitled to 1/3rd share in the 4th schedule Well. The 3rd schedule devolved upon the defendants 3 to 6 as they are the legal heirs of Arumuga Nadar and they are also entitled to 1/3rd share in the 4th schedule Well. Since the husband of the plaintiff died before six years, the defendants 1 and 2 by taking advantage of the same attempted to make the plaintiff to sell her property to them, however, she refused. They have also installed a common pump set, for which electricity connection was obtained in the name of the 1st defendant. The plaintiff has also some other properties through settlement deed dated 15.10.1965. The 2nd defendant purchased some properties from the husband of the plaintiff. Therefore, the plaintiff filed O.S.No.297 of 1992. Aggrieved by the same, the defendants 1 and 2 said that they would prevent the plaintiff from disturbing the possession and enjoyment of the suit property. Therefore, the plaintiff filed the present suit in O.S.No.551 of 1992, seeking declaration that the 1st schedule belongs to the plaintiff and the plaintiff is entitled to 1/3rd share in the 4th schedule Well and for consequential injunction restraining the defendants from disturbing the plaintiff's possession and enjoyment of the above properties. The defendants 3 to 7 are proforma defendants. The 7th



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defendant is the alienee of the 3rd defendant regarding 1/12th share in the 4th schedule Well. The 8th defendant has been impleaded as per order in I.A.No. 181/98. He does not have any right over the 1st schedule under the Will as claimed by him.

3.In the written statement, the defendants 1 and 2 contended as follows:-

(i)the 1st schedule does not belong to the plaintiff and she is not in possession. In the 4th schedule Well and pump set, neither the plaintiff nor the defendants 3 to 7 have any right. The suit properties are not entitled to irrigation right from the Well. The Well exclusively belongs to the defendants 1 and 2, it was inherited by them through their mother. In the sale deed in favour of their mother dated 05.08.1955, this property is given to be the 8th item. The 4th schedule Well was dug by the defendants 1 and 2 before 12 years. The plaintiff never paid any share for the electric motor or electricity charges. Taking advantage of UDR patta of the year 1985 in favour of the plaintiff, she is making unnecessary claim over the 4th schedule.

(ii)Further, the plaintiff is not the wife of Anaikannu Nadar, because she left her husband and led immoral life. No family arrangements had taken place in



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the year 1970 in the family of Anaikannu Nadar. The 1st schedule is not in possession of the plaintiff and she cannot claim adverse possession. Kuttalinga Nadar's 1st wife is still live. Kuttalinga Nadar died on 12.12.1950 leaving behind his two wives, Muthammal and Mookammal and son, namely, Anaikannu Nadar. It is not true that he died on 24.9.1932.

(iii)After the settlement in 1965, which was cancelled, there is no family arrangement. In the family oral partition between Muthammal's family, the suit property and other house property were allotted to Muthammal, who sold a portion of the suit property to the 2nd defendant. On 03.04.1992, Muthammal filed O.S.No.3 of 1993. The present suit is also bad for non-joinder of Muthammal, Anaikannu Nadar's wife Parvathi Ammal and his son Sudalaikasi. The 4th defendant is the plaintiff's sister and the 7th defendant is the plaintiff's son-in-law. These defendants never attempted to purchase the 1st schedule from the plaintiff. The defendants 3 to 6 admitted that the 4th schedule Well and pump set belong to the defendants 1 & 2.

4.It is the case of the 8th defendant that the suit is not maintainable and the same is bad for non joinder of Muthammal, Anaikannu Nadar and this



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defendant, namely, Sudalai Sami, who is the son of Anaikannu Nadar through the second wife of Parvathi Ammal. The partition between Arumugam Nadar, Kuttalinga Nadar and Ponnusami Nadar is admitted. The suit properties and other properties were allotted to the share of Kuttalinga Nadar. After his death, his properties were orally partitioned between Muthammal, Mookkammal and Anaikannu Nadar, in which the 1st schedule and the house property was given to Muthammal. She has settled it in favour of this defendant. Kuttalinga Nadar died before 40 years. The estate of Muthammal has enlarged into an absolute estate and through 1965 registered settlement deed, the plaintiff has been given the properties. The suit property has not been given to the plaintiff. The oral family arrangement of the year 1970 is not true. Muthammal has sold a portion of the 1st schedule to the 2nd defendant. After the death of Muthammal on 14.11.1994, the property devolved upon this defendant as the legatee of Muthammal. The suit may be dismissed with cost.

5.The brief case of the plaintiff in O.S.No.615 of 1992 / the 2nd defendant in O.S.No.551 of 1992 is that the suit property and other properties belonged to one Kuttalinga Nadar. He died before 42 years leaving behind his wife ie., 1st defendant and son Anaikannu Nadar as his legal heirs. The 1st defendant is



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entitled to half share and Anaikannu Nadar is entitled to half share. The half share of the 1st defendant, which was a limited widow's estate and enlarged into an absolute estate after the amendment of Hindu Succession Act in the year 1956. She enjoyed her half share and was in possession of it. The above Muthammal on 08.04.1992 executed a sale deed of the suit property in favour of the plaintiff. The 3rd defendant is the second wife of Anaikannu Nadar. The 4th defendant is his son. The 2nd defendant is the ex-wife of Anaikannu Nadar. The defendants have no right over the suit property. The remaining properties of the 1st defendant have been bequeathed to the 4th defendant. The defendants 2 to 4 are claiming right over the suit property and attempting to disturb the plaintiff's possession from 16.12.1992 onwards. The 2nd defendant has filed O.S.No.551 of 1992 claiming that the suit property belongs to her and has obtained an ad-interim Injunction. Hence, the suit in O.S.No.615 of 1992 has been filed for a declaration that the suit property belongs to the plaintiff and for the consequential relief of permanent injunction restraining the defendants from disturbing the plaintiff's possession.

6.It is the case of the 2nd defendant that the suit property does not belong to the plaintiff and it is not in his possession. The sale deed in favour of the plaintiff dated 08.04.1992 is not true and legally valid and not binding upon the



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plaintiff. Kuttalinga Nadar died on 20.04.1932. At that time Hindu Women were not entitled to any right in the properties of her husband. Therefore, she was not having any share in the property of Kuttalinga Nadar. The suit properties and other properties originally belonged to Anaikannu Nadar, who is having three sons, namely, Arumuga Nadar, Kuttalinga Nadar and Ponnusami Nadar and they orally partitioned the properties, wherein the suit properties and other properties were allotted to Kuttalinga Nadar, who died on 24.09.1932. Therefore, his son, namely, Anaikannu Nadar inherited the properties by survivorship and joint patta No.565 was granted in his name. In the year 1970, in the family oral arrangements, S.Nos. 115/2 and 115/2A were given to this defendant's possession. She has also perfected title by adverse possession and Patta No.155 has been given in the name of this defendant. Moreover, the plaintiff is entitled to 1/3rd share in the Well situated in S.No.115/2. This defendant is the wife of Anaikannu Nadar. She is cultivating the suit properties. As the plaintiff attempted to disturb her possession along with his brother on 12.10.1992, O.S.No.551 of 1992 was filed and ad-interim injunction in I.A.No.1351 of 1992 was obtained. The suit property never belongs to the 1st defendant and was never in her possession. The suit may be dismissed with cost.



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7.The case of the plaintiff in O.S.No.3 of 1993 / 1st wife of Kuttalinga Nadar is that the suit properties and other property belong to her husband's father viz., Anaikannu Nadar, whose sons partitioned it orally in which the suit property and other properties devolved upon Kuttalinga Nadar's share. He died leaving behind his two wives Muthammal and Mookkammal and son, namely, Anaikannu Nadar before 42 years. As per the law existing at that time, Anaikannu Nadar was entitled to half share and two wives of Kuttalinga Nadar were entitled to half share which has ripen into an absolute estate. The suit property was enjoyed in common by Muthammal, Mookkammal and Anaikannu Nadar through patta No.565. Anaikannu Nadar initially married the 1st defendant and because of her immoral life, he remarried the 2nd defendant through whom the 3rd defendant is the only son. Originally the above Muthammal, Mookkammal and Anaikannu Nadar executed a settlement of certain properties in favour of the 1st defendant on 15.10.1965. It was subsequently cancelled on 20.10.1976. In the oral partition between the plaintiff and Anaikannu Nadar, the suit property devolved upon the plaintiff, who enjoyed it and mortgaged it to the 4th defendant. Therefore, the defendants are estopped from denying the plaintiff's right. In the collusion of the revenue officials, the 1st defendant has obtained UDR Patta and she is claiming right over the suit



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properties. The defendants have no right or possession of the suit property. The plaintiff came to know that without impleading her, the 1st defendant has filed a suit in O.S.No.551 of 1992 as if the suit property belongs to her. The 2nd defendant is compelling the plaintiff to transfer the property in the name of the 3rd defendant. Hence, the suit is filed for a declaration that the suit property belongs to the plaintiff and for the consequential relief of permanent injunction restraining the defendants from disturbing the plaintiff's possession.

8.Subsequent to the suit, the plaintiff / Muthammal died on 14.11.1994. The 3rd defendant Sudalaikasi claiming himself as the legatee of the plaintiff under a Will dated 09.12.1993 has been transposed into the 2nd plaintiff. The suit prayer is admitted for declaration that the suit property belongs to the 2nd plaintiff.

9.The case of the 1st defendant is that the suit is not maintainable. The plaintiff is not in possession over the suit property. Kuttalinga Nadar died on 24.09.1932. At that time, the Hindu Women's Right to Property Act, 1937 had not come into force and the same had not been extended to agricultural land till 1947. Therefore, the plaintiff did not get one half share. The properties devolved upon the plaintiff's husband Anaikannu Nadar through survivorship and he was given



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patta vide Patta No.385. Thereafter, in the oral family arrangement in 1970 the suit properties including 0-20-0 Hec., in S.No.115/2 and 0.21.0 Hec. in S.Nos.115/2A were given to this defendant. She has been in possession and enjoyment of the same and she has also perfected title before 12 years by adverse possession. After the family arrangement, patta No.155 has been given in the name of the 1st defendant and she is paying kist for it. For the above lands, the 1st defendant is entitled to take water for her 1/3rd share in the Well situated in S.No.115/2. This defendant has been cultivating the land. The plaint is silent about the oral partition. This defendant has filed O.S.No.551 of 1992 and has obtained ad-interim injunction. This suit has been filed at the instigation of the 4th defendant, his brother, namely, Singadurai Nadar and their power agent Lakshmanan Perumal. This defendant was not a divorcee. The settlement in her favour cannot be cancelled. In O.S.No.354 of 1976, it has been held that the settlement in favour of this defendant is valid. The plaintiff is estopped from disputing it.

10.The learned counsel appearing for the appellant in S.A.No.681 of 2003 would submit that the plaintiff in the suit in O.S.No.551 of 1992 is not entitled to claim any right in the 1st schedule and she is not entitled to 1/3rd share in



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the 4th schedule common Well. The Courts below found that the alleged oral family arrangement of the year 1970 was set up by the plaintiff only for the purpose of this case and that being the case, the suit ought to have been dismissed. The claim of the plaintiff in the said suit is only based on the oral family arrangement and once the family arrangement was not accepted by the Courts below, the suit ought to have been dismissed, because the founder of the oral agreement itself was not substantiated and the same was rejected by the Courts below, but erroneously held that she is entitled to the title by adverse possession, even there is no plea of adverse possession and they have not proved the adverse possession. Further, Kuttalinga Nadar died on 12.12.1950 and not on 24.09.1932 as alleged by the plaintiff. The Courts below erroneously rejected the documents Ex.B.24, B.25 and B.27. Anaikannu Nadar, husband of the plaintiff died only on 20.01.1986. Muthammal, wife of Kuttalinga Nadar is entitled to half share in the 1st schedule and 1/6th share in the 4th schedule Well and since the plaintiff is only co-sharer with Muthammal, who is the wife of Kuttalinga Nadar, there cannot be any adverse possession against co-owners and there is no plea of ouster. Though the trial Court rejected the oral agreement and the date of death of Kuttalinga Nadar as pleaded by the plaintiff, erroneously granted the relief of declaration only based on the adverse possession, which is against the principles of law.



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11.The learned counsel appearing for the appellant in S.A.No.682 of 2003 would submit that the Courts below rightly rejected the family arrangement of the year 1970 set up by the plaintiff. Therefore, the Courts below ought to have dismissed the suit. The death certificate of Kuttalinga Nadar produced by the appellant was accepted by the trial Court and the date of death of Kuttalinga Nadar is only 12.12.1950 and not 24.09.1932. As the Hindu Women's Right to Property Act, 1937 came into force, the widow is also entitled to share from the husband's estate. Therefore, Muthammal was entitled to half share in the suit schedule property and 1/5th share in the 4th schedule Well. Once the Courts below rejected the plea of oral settlement and the date of death of Kuttalinga Nadar and accepted that Muthammal is the co-owner of the suit property along with son of Kuttalinga Nadar, the plaintiff in the said suit is not entitled to get any absolute right and therefore, the suit for declaration is not maintainable as against co-owners and also the plea of adverse possession is also not maintainable against the co-owners. At the best, the plaintiff cannot claim ouster, since the property is ancestral property. However, the trial Court erroneously held that the plaintiff in the suit is entitled to decree for declaration by way of adverse possession, which warrants interference by this Court.



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12.The learned counsel appearing for the appellant in S.A.No.683 of 2003 would submit that the trial Court rightly rejected the alleged oral family arrangement of the year 1970 in favour of the 1st respondent in this appeal and rightly held that the date of death of Kuttalinga Nadar is not 24.09.1932 but 12.12.1950. After Hindu Women's Right to Property Act, 1937 came into force, Muthammal, who is the wife of Kuttalinga Nadar is entitled to half share in the suit property, however, the trial Court failed to consider the said fact and decreed the suit in O.S.No.551 of 1992 and simply, dismissed the other suits based on the result of the earlier suit. Once the alleged oral family settlement of the year 1970 is rejected, other suits should have been decreed. Therefore, dismissal of the suits warrants interference.

13.The learned counsel appearing for the appellant in S.A.No.684 of 2003 would submit that admittedly, the suit properties and other properties originally belonged to one Anaikannu Nadar and their sons orally partitioned the suit properties and other properties, wherein the 1st schedule was allotted to Kuttalinga Nadar, who had two wives, namely, Muthammal and Mookammal. Kuttalinga Nadar died leaving behind Muthammal, Mookammal and his son



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Anaikannu Nadar. The 1st defendant is none other than the wife of Anaikannu Nadar and Anaikannu Nadar died only on 12.12.1950. Therefore, Muthammal is entitled to half share in the suit property and the plea of oral family arrangement was rejected by the Courts below and no reason was given for not considering Ex.B.24, B.25 and B.27, which are all valid documents. Though the Courts below accepted the ancestral characters; the relationship of the parties; the date of death of Kuttalinga Nadar and the widow of Kuttalinga Nadar is entitled to get a share, erroneously, the Courts below dismissed the suits without any reasons. Therefore, the judgment and decree of the Courts below warrant interference and the same are liable to be set aside.

14.In respect of the contention, the learned counsel for the appellant in all the appeals has relied upon the following judgment:-

(i)**Marappa Gounder (deceased) and others Vs. Ramalingam (deceased) and others** reported in **2002 (4) L.W. 300**;

(ii)**Guruvammal and another Vs. Subbiah Naicker and 5 others** reported in **2000 (1) L.W. 488**; and

(iii)**Bhavani Municipality, Rep. by its Commissioner Vs. V.S.R.Arthanarisamy and others** reported in **(2022) 7 MLJ 378**.



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15.The learned counsel for the 1st respondent / Kiliammal, who is the contesting respondent in all the appeals would submit that the 4th schedule Well is the common Well. Though the defendants 1 and 2 in O.S.No.551 of 1992 had taken a defense in the written statement that the 4th schedule Well is not a common Well and they claimed exclusive right over the Well, in the grounds of appeal they have stated that the first wife of Kuttalinga Nadar viz., Muthammal is entitled to 1/6th share in the Well. Therefore, the claim in respect of the 4th schedule was given up by the appellants.

16.He would further submit that the 1st schedule was given to the 1st respondent herein in the settlement and Kuttalinga Nadar / father-in-law of the 1st respondent died in the year 1932. At that time, no right was given to the widow, therefore, the 1st wife Muthammal was not entitled to have any share. Hence, the husband of the 1st respondent / Anaikannu Nadar has got the property. After the death of Anaikannu Nadar, she is entitled to possession over the property and therefore, in an earlier occasion she filed a suit in O.S.No.297 of 1992. The said suit was decreed in favour of her and got patta. As she was granted patta in her favour and she was enjoying the property, she is entitled to an exclusive right over the suit property.



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17.He would further submit that the property should have been in the name of male family members i.e., Kuttalinga Nadar or his son Anaikannu Nadar or his son Sudalai Samy, if at all it was enjoyed as a joint family property or coparcenery property and there is no necessity to the revenue records stand in the name of Kiliammal, female member of the family. Even though the trial Court and the Appellate Court had not accepted the alleged family settlement of the year 1970 in favour of the 1st respondent, considering the entire materials oral and documentary evidence, the Courts below found that the first respondent was in exclusive possession over the suit property, therefore, she perfected title by adverse possession. Hence, the suit filed by her was decreed and the suits filed against her were dismissed. Therefore, the decrees and judgments of the Courts below do not warrant any interference.

18.Heard the learned counsel on either side and perused the materials available on record carefully.

19.Since the issue in all the suits revolves on the same property, all the suits have been decided together. The appeals filed by the respective parties



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against the said decree and judgment of the trial Court were dismissed.

Challenging the same, the present appeals have been filed. Therefore, all the appeals have been taken together. In all the appeals, this Court formulated same type of substantial questions of law, especially, as to whether the contesting respondent was entitled to claim title by adverse possession and she had established the same.

20. Admittedly, the suit properties and other properties belonged to one Anaikannu Nadar, who had three sons, namely, Arumuga Nadar, Ponnusamy Nadar and Kuttalinga Nadar and they partitioned the properties between themselves, wherein the 1st schedule was allotted to Kuttalinga Nadar, the 2nd schedule was allotted to Ponnusamy Nadar, the 3rd schedule was allotted to Arumuga Nadar and the 4th schedule was the common Well. Though initially, it was vehemently contended that the 4th schedule is not a common Well, subsequently, the appellants had given up the said claim by way of filing the grounds of appeal and they accepted that Muthammal is entitled to 1/6th share.

21. It is the claim of the 1st respondent in all the appeals that Kuttalinga Nadar died in the year 1932, for which she also produced Ex.A.1, death certificate



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of Kuttalinga Nadar, which shows that the date of death of Kuttalinga Nadar is 24.09.1932. It was vehemently objected by the defendants and they also produced Ex.B.7, which shows that the date of death of Kuttalinga Nadar is 12.12.1950 and also produced Ex.B.8 another death certificate of Anaikannu Nadar, who is the son of Kuttalinga Nadar, which shows that the date of death of Anaikannu Nadar is 17.01.1986. Further, Ex.B.9 school records sheet of Anaikannu Nadar shows that in the year 1951, he joined in 1st standard. Therefore, Anaikannu Nadar could have born in the year 1944 or 1945. If Ex.A.1 is accepted and the date of death of Kuttalinga Nadar is 24.09.1932, definitely, Anaikannu Nadar could not have born to Kuttalinga Nadar. Therefore, as per Ex.B.7, the actual date of death of Kuttalinga Nadar is 12.12.1950.

22.It is to be noted that if the family arrangement of the year 1970 is not true, after the oral partition, the document should have been continued in the name of Kuttalinga Nadar or after the death of Kuttalinga Nadar in the name of his son Anaikannu Nadar or his son, Sudalaikasi or atleast in the name of wives of Kuttalinga Nadar, namely, Muthammal or Mookammal, but could not have been in the name of 1st respondent, who is the wife of Anaikannu Nadar. If it is coparcenary property or if it is ancestral property, admittedly, in ancestral property



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even the wife has also got right. All the documents clearly shows that the property stands in the name of the 1st respondent in all the appeals and patta also stands in her name. It is also relevant to note that the family members of the family are not the coparceners at the relevant point of time. Therefore, it is clear that there is no coparcenary right.

23.Even assuming that Muthammal is having a share after the enactment of Hindu Women's Right to Property Act, 1937, after the death of Anaikannu Nadar, his half share would equally go to the 1st respondent and Sudalaikasi. At the most, from the husband's share, Kiliammal has got the property and proved her long possession.

24.In O.S.No.551 of 1992, the defendants 3 to 7 set *ex-parte*. As far as the defendants 1 and 2 in O.S.No.551 of 1992 / appellants in S.A.No.681 of 2003, from the branch of Ponnusamy Nadar, are concerned, they had accepted that Muthammal is entitled to 1/6th share in the suit Well and they had also accepted that it is a common Well. They had also filed a suit, since their possession and enjoyment were disturbed by the members from other branches and since the plaintiff in O.S.No.551 of 1992 / Kiliammal established her right, the said suit was



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decreed. Therefore, under these circumstances, both the Courts below by rightly appreciating the facts of the case and evidences, decreed the suit in O.S.No.551 of 1992 and dismissed the suits in O.S.No.615 of 1992 and 3 of 1993.

25.The judgments relied upon by the learned counsel for the appellants are not applicable to the present case on hand.

26.In view of the above, the substantial questions of law are answered in favour of the 1st respondent in all these appeals and this Court does not find any perversity in the judgments of the Courts below. Therefore, all these appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

MYR

To

1.The Principal Subordinate Judge, Tenkasi.

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2.The District Munsif, Tenkasi.

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



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P.VELMURUGAN, J.

MYR

Common Judgment made in
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