



S.A.No.847 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.847 of 2010

A.Rajaratnam (Died)

2.Maria Sebastiammal

3.R.Vincent

4.Mary Sebastiana

5.Minor. Ancilla Maria Faustina

6.Minor.Oliver Maria Infanto

(Minors A5 & A6 are represented  
by their guardian Mary Sebastiana  
vide Court order dated 19.04.2023  
made in CMP.No.849 & 846/2023  
in S.A.No.847/2010 (RHJ))

7.Andrews.T

8.Sanjay Alvin Andrews

(A1 died, AA2 to 8 are brought on record  
as legal heirs of the deceased/A1 vide  
Court order dated 19.04.2023 made in  
CMP.Nos.750, 751 & 752/2023 in  
S.A.No.847/2010 (RHJ))

... Appellants

Vs.



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S.A.No.847/01/2010

- 1.Smt.Ruzia Khadar
  - 2.Smt.Haroon Nissor
  - 3.Smt.Azima Izak
  - 4.Siddique Harroon Sait (Died)
  - 5.Zaid Sadiq
  - 6.Sameena Irfan
- (R4 died, RR5 & 6 are brought on record  
as legal heirs of the deceased R4 vide Court  
order dated 19.04.2023 made in CMP.No.915,  
919 & 921/2023 in S.A.No.847/2010 (RHJ))

... Respondents

**PRAYER:** Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 12.03.2010 made in AS.No.13 of 2009 on the file of the Subordinate Judge, Uthagamandalam, confirming the judgment and decree dated 22.04.2009 made in O.S.No.47 of 2004 on the file of the District Munsif Court, Coonoor.

For Appellants : M/s.R.Meenal

For R1 to R3 : Mr.K.Sukumaran

For R4 : Died

For R5 & R6 : No Appearance

### **JUDGMENT**

The unsuccessful plaintiff is before this Court on appeal. Pending



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appeal, the sole appellant died and the appellants 2 to 8 have been substituted as legal heirs. The fourth respondent in the appeal died and the respondents 5 & 6 have been impleaded as parties.

2. The appeal is filed challenging the judgment and decree dated 12.03.2010 in A.S.No.13 of 2009 on the file of Subordinate Judge, Uthagamandalam, confirming the judgment and decree dated 22.04.2009 in OS.No.47 of 2004 on the file of District Munsif Court, Coonoor.



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3. For the sake of convenience, the parties are referred to as per their

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**The brief facts, which give rise to the present Second Appeal, are as follows:**

4. According to the plaintiff, the suit property originally belonged to defendant's father Haroon Sait of Coonoor. The defendants' predecessors in title let the plaintiff's father into the suit property long back while he was in service under the said Haroon Sait. The house mentioned in the suit schedule property was specifically constructed and allotted to the plaintiff's father P.Anthonyswamy while he was under the service of the owner of the property, the defendant's father Haroon Sait. Neither the plaintiff's predecessor nor the plaintiff had ever paid any rent so as to create any other relationship but had been all along in the possession and enjoyment of the suit property. The plaintiff and his father Anthonyswamy had been enjoying



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the suit property to the knowledge of everybody including the said Haroon Sait.

5. Further, being in possession, the plaintiff had assessed the building in the suit property in his own name and thereby the plaintiff had acquired the title by adverse possession. The plaintiff inherited the suit property along with the building thereon from his father Anthony swamy and he had been in possession and enjoyment of the suit property for the past 35 years. The plaintiff's name was also shown in the Electoral list, property tax, water tax and land rent which all stands in the name of the plaintiff in the suit address and thereby the plaintiff has established his possession. Even though the father of the defendant Haroon Sait and his family members had been visiting the suit property, the plaintiff's father Anthony samy and the plaintiff were attending the works in the house and also in other properties of Haroon Sait and his family members. After 1965, the father of the



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defendant and his family members stopped visiting the plaintiff's place and the plaintiff and his father stopped their service to Haroon Sait and his family members. Thereafter, the plaintiff had no connection whatsoever with Haroon Sait and his family members.

6. The suit property measuring an extent of one acre 26.1/5 cents along with the building thereon is an agricultural land and the plaintiff is carrying on agricultural operations. While so on 30<sup>th</sup> June, the defendants visited the suit property and damaged the fencing and as such, the plaintiff lodged a complaint before the Sub-Inspector of Police, DB, Alwarpet Police Station on 01.07.1989 and the same was registered in No.36/1989. Since no action was taken and the defendants continued to disturb the possession of the plaintiff, the plaintiff has come up with the suit for declaration to declare his ownership over the suit property by adverse possession and also by consequential injunction.



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7. The defendants resisted the suit by filing the written statement contending that the defendant's father had only permitted the plaintiff to reside in the house as a tenant. The plaintiff had been only in permissive possession of the suit property which is admitted by him and therefore the plaintiff cannot claim any adverse or hostile possession by himself. The plaintiff's father had filed the application and made an attempt to include his name as the cultivating tenant but however, then the Special Tahsildar, Nilgiris by order dated 13.06.1972 held that the plaintiff and the plaintiff's father is entitled only to reside at the rental house and they have not been given any land for cultivation and thereby his application was rejected. The orders passed by the Special Tahsildar became final and the plaintiff did not agitate, by filing any appeal or revision. Even as on 27.05.1972, the plaintiff has given a rent chit agreeing to increase the rent and he has also paid two months advance rent and the plaintiff continued to pay the rent and



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remained as the tenant of the defendants. The defendant had become the owners of the suit property by way of gift deed executed by his father on 01.11.1979. The defendants have also been paying the municipal tax, in respect of suit building and therefore sought for dismissal of the suit.

### **Evidence and Documents:**

8. During trial, on the side of plaintiff PW.1 & PW.2 were examined and Exs.A.1 to A.37 were marked. On the side of the defendants, DW.1 and DW.2 were examined and Exs.B.1 to B.3 were marked. The Advocate Commissioner was appointed and his report, plan and the photographs were marked as Exs.C1 to C3.

### **Findings of the Trial Court:**

9. After analysing the evidence and documents, the Trial Court by judgment and decree dated 22.04.2009 dismissed the suit. Aggrieved, the



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plaintiff filed appeal in AS.No.13 of 2009 on the file of Sub ordinate Judge, Udhagamandalam. The Lower Appellate Court after reappraising the evidence dismissed the appeal. As against the concurrent finding of fact, the plaintiff is before this Court on appeal.

10. This Court by order dated 02.08.2010 only ordered notice regarding admission.

**Submission made by the learned counsel on both sides:**

11. The learned counsel appearing for the appellants vehemently argued that the plaintiff filed documents from the year 1964 which are all the tax receipts to show that the plaintiff had been paying the taxes in respect of suit properties and was residing in the suit properties for more than 35 years.



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12. The learned counsel further submitted that the plaintiff's father was in possession and enjoyment of the property and pursuant to his death, the plaintiff continued to be in possession and enjoyment of the suit property. The learned counsel further argued that DW.1 in his evidence admitted the possession of the plaintiff in respect of the suit property.

13. The learned counsel further contended that the Advocate Commissioner Report filed in Ex.C1 also clearly establishes the fact that the plaintiff is in possession and enjoyment of the suit property. Further the documents filed which are the voter identity card and all other address proof of the plaintiff confirms that the plaintiff is residing in the suit property and thereby the plaintiff was able to establish his possession for more than the statutory period and thereby the plaintiff was entitled for the relief of declaration based on adverse possession.



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14. The learned counsel further contended that when the plaintiff was able to file all the documents for claiming title by adverse possession and thereby establishing his possession, the defendants on the other hand did not file any document and they merely filed the xerox copy of the chitta which establishes the fact that the defendants are not in possession and enjoyment of the suit property.

15. The learned counsel further contended that both the courts below have not appreciated the document and evidence in proper prospective and therefore erroneous and sought for allowing this second appeal.

16. Per contra, the learned counsel appearing for the respondent argued that when the plaintiff has instituted the suit on the claim of adverse possession, the plaintiff has to first satisfy the ingredients which are required to prove adverse possession. The plaintiff has to prove that he was



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in open, clear, continuous and hostile possession to the knowledge of the true owner and adverse to his interest. Unless the plaintiff satisfy these conditions, the plaintiff is not entitled for the relief for adverse possession.

17. The learned counsel further argued that when even the plaintiff's father was admittedly working under Haroon Sait, the claim of the plaintiff that they were in possession of the property adverse to the interest of the true owner cannot be sustained and therefore taking this fact into consideration, both the courts below have rightly dismissed the suit which is based on the materials available on record and therefore no interference is required in the appeal and sought for dismissal of the appeal.

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



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**Analysis:**

19. Admittedly, the suit property originally belonged to one Haroon Sait of Coonoor. The plaintiff claims the relief of declaration by adverse possession contending that the plaintiff's father was in the possession of the suit property and after his demise, the plaintiff continued to be in possession for nearly 35 years and they have not paid any rent to the defendants and the defendants never cared to visit the property, questioned the possession of the plaintiff and as such, they prescribed title by adverse possession. The plaintiff had also filed the documents to show that he is in possession of the property by submitting the tax receipts paid by him and the voter identity card etc.

20. When the plaintiff has come up with the suit for declaration of title based on adverse possession, the plaintiff is bound to plead and prove that he had been in open, continuous and hostile possession, adverse to the interest of the owner. All three requirements must coexist – nec vi, i.e,



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adequate in continuity, nec clam, i.e., adequate in publicity and nec precario, i.e., adverse to a competitor, in denial of title and knowledge has to be proved. It is not only sufficient that the plaintiff should prove the possession but has to prove that the plaintiff had been in possession with the knowledge and adverse to the interest of the defendants. *Animus possidendi* has to be established by the plaintiff, for him to succeed in the suit instituted based on adverse possession.



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21. At this juncture, it is useful to refer the decision of the Hon'ble Supreme Court in **Government of Kerala and another vs. Joseph and others** reported in **2023 (5) CTC 664**. Relevant portion is usefully extracted hereunder:

*“21. Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgements rendered by this Court, the following principles can be observed:*

*21.1. Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist- 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 knowledge;*

*(a) In Radhamoni Debi v. Collector of Khulna, reported in (1900) SCC Online PC 4 the Privy Council held that -*

*“The possession required must be adequate in continuity, in publicity, and in*



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*extent to show that it is possession adverse to the competitor.”*

*(b) Further, the Council Maharaja Sri Chandra Nandi v. Baijnath Jugal Kishore reported in AIR 1935 PC 36 observed*

*“It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening.”*

*(c) A Bench of three judges of this Court in Parsinni v. Sukhi reported in (1993) 4 SCC 375 held that*

*“Party claiming adverse possession must prove that his possession must be 'nec vi, nec clam, nec precario' i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner.”*



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(d) In **Karnataka Board of Wakf v. Govt. of India** (two-Judge Bench) reported in (2004) 10 SCC 779 it was held:

*“It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”*

*This case was relied on in the case of **M. Venkatesh v. Bangalore Development Authority** reported in 2015 17 SCC 1(three-Judge Bench), **Ravinder Kaur Grewal v. Manjit Kaur** reported in (2019) 8 SCC 729 (three-Judge Bench).*

(e) This Court in a recent case of **M. Siddiq (D) through L.Rs. v. Mahant Suresh Das and Ors.** reported



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*in (2020) 1 SCC 1 (five-Judge Bench) reiterated this principle as under -*

*“748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being 'nec vi nec claim and nec precario'. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence.”*

*21.2 The person claiming adverse possession must show clear and cogent evidence to substantiate such claim;*



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This Court in **Thakur Kishan Singh v. Arvind Kumar** reported in **1994 6 SCC 591** (two-Judge Bench) held that-

*“5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession...”*

Reference may also be made to **M. Siddiq** (supra).

**21.3** Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;

(a) In **Gaya Prasad Dikshit v. Dr. Nirmal Chander and Anr.** (two-Judge Bench) reported in **(1984) 2 SCC 286** this Court observed

*“1... It is not merely unauthorised possession on termination of his licence that*



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*enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough.”*

*Reference may also be made to **Arvind Kumar** (supra); **Mallikarjunaiah v. Nanjaiah** reported in (2019) 15 SCC 756 (two-Judge Bench); **Uttam Chand** (supra).*

**21.4** *Such clear and continuous possession must be*



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*accompanied by animus possidendi - the intention to possess or in other words, the intention to dispossess the rightful owner; in **Karnataka Board of Wakf (supra)** it was observed-*

*“...Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature...”*

*(a) The case of **Annakili v. A. Vedanayagam** reported in 2007 14 SCC 308 (two-Judge Bench) also shed light on this principle as under -*

*“24. Claim by adverse possession has two elements: (1) the possession of the Defendant should become adverse to the Plaintiff; and (2) the Defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled*



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*principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession...*

*(b) In **Des Raj and Ors. v. Bhagat Ram** reported in (2007) 9 SCC 641 (twoJudge Bench) this Court observed*

*“21. In a case of this nature, where long and continuous possession of the Plaintiff-Respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the Plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his coowners and they were in know thereof.”*

*(c) This Court in **L.N. Aswathama v. P. Prakash***



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*reported in (2009) 13 SCC 229 (two- Judge Bench) had observed that permissive possession or possession in the absence of Animus possidendi would not constitute the claim of adverse possession.*

*(d) It was also held in the case of **Chatti Konati Rao v. Palle Venkata Subba Rao** reported in (2010) 14 SCC 316 (two-Judge Bench) -*

*“15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed...” (Emphasis supplied)*



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*Referring to the above judgement **Subha Rao** (supra) this Court has reiterated the cardinality of the presence of Animus possidendi in a case concerning adverse possession in **Brijesh Kumar and Anr. v. Shardabai (dead) by LRs.** reported in (2019) 9 SCC 369 (two- Judge Bench).*

*21.5 Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;*

*The prior position of law as set out in **Gurudwara Sahab v. Gram Panchayat Village Sirthala** reported in (2014) 1 SCC 669 (two-Judge Bench) was that the plea of adverse possession can be used only as a shield by the Defendant and not as a sword by the Plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of **Ravinder Kaur** (supra) had held that - "...Title or interest is acquired it can be used as a sword by the Plaintiff as well as a shield by the*



*Defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession... “*

22. Admittedly the plaintiff's father was only a permissive occupant and he was allowed to reside in the house as he was employed under the father of the defendant Haroon Sait. It is also the admitted case of the plaintiff that the plaintiff's father and also the plaintiff continued to work under the Haroon Sait and they were attending to the works of Haroon Sait and his family members. When admittedly, the plaintiff and his father had been put in possession of the suit property only as a permissive occupant and they have been in the employment of Haroon Sait and his family members, the possession of neither the plaintiff's father nor the plaintiff can be taken to be adverse to the true owners of the property. The suit properties belonged to Haroon Sait and thereafter it had been gifted in favour of the defendants through the gift deed whereby they became



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owners. When the plaintiff's father and the plaintiff have been permissive occupant in the suit property which was given to them for being in services of Haroon and his family, the plaintiff cannot claim that he had been in possession of the property adverse to the interest of the defendant.

23. To claim adverse possession, the plaintiff had to be in possession adverse to the interest of the defendants i.e asserting his title, but in the instant case, it is found that the possession was only based on permission, and thereby the possession can never be taken as hostile to the defendants. In fact the plaintiff has not even pleaded as to from which date his possession became adverse.

24. Further, the plaintiff's father also had filed application before the Special Tahsildar to record himself as cultivating tenant and the same was rejected by the Special Tahsildar and the order has been passed holding that



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the plaintiff is only residing there as a permissive occupant and he cannot claim any other right. Neither the plaintiff's father nor the plaintiff had chosen to challenge this order and the same has become final. When the plaintiff did not choose to challenge the same, and also admitted to be in possession as the permissive occupant, the claim of the plaintiff that he has perfected the title to the suit property by adverse possession cannot be sustained.

25. Both the courts below have arrived at the finding of fact which are based on the materials available on record, as the claim of plaintiff does not satisfy the ingredients to establish adverse possession and the same cannot be taken to be perverse.



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26. This Court does not find any substantial question of law arising for consideration in the above second appeal.



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27. Therefore, the second appeal stands dismissed. However, there is no order as to costs.

**14.03.2024**

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1.The Subordinate Judge, Uthagamandalam.

2.The District Munsif Court, Coonoor.

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