



**S.A.No.21 of 2003**

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 09.07.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**S.A.No.21 of 2003**  
**and M.P.(MD) No.1 of 2012 and C.M.P.(MD) Nos.14369 of 2023 &**  
**8060 of 2024**

1.Lakshmanan (died)

2.N.Nalliappan

3.L.Pitchammal

4.L.Adammal

5.L.Raman

6.T.Pushbam

7.L.Lakshmanan

8.A.Vijaya

... Appellants

-vs-

1.The Executive Engineer,  
Public Works Department,  
Madurai.  
Thallakulam (Kesampatty Village,  
Periya Arun Reservoir Controller)  
Madurai City and District.



**S.A.No.21 of 2003**

WEB COPY

2.The Assistant Engineer,  
Periya Aruvi Water Reservoir Maintenance,  
Public Works Department,  
Melur Taluk and City,  
Madurai District.

... Respondents

(Appellants 3 to 8 are brought on record  
as L.Rs.of the deceased 1<sup>st</sup> appellant  
vide order of the Court, dated 27.01.2009,  
made in M.P.(MD) Nos.1 to 3 of 2008)

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.06.1998, passed in A.S.No.142 of 1996 on the file of Principal Sub-Court, Madurai, confirming the judgment and decree, dated 30.04.1996, passed in O.S.No.295 of 1995 on the file of District Munsif Court, Melur.

For Appellants : Mr.S.Vellaisamy

For Respondents : Mr.SRA.Ramachandran,  
Addl.Govt.Pleader.

### **JUDGMENT**

The plaintiffs in the suit are the appellants. The suit was filed for declaration of title and injunction. The suit was dismissed by the trial Court



**S.A.No.21 of 2003**

WEB COPY

and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.

2. According to the appellants/plaintiffs, the suit property was their ancestral property and they had been in possession and enjoyment of the same. It was further claimed by the plaintiffs that there was a reservoir called Periya Aruvi Reservoir on the western side of the suit property under the control of the defendants. The defendants gave out a threat from March, 1995, by claiming right over the suit property and attempted to lease out the usufructs of the coconut trees standing in the suit property to third parties. Hence, the plaintiffs were constrained to file a suit for declaration of title and injunction.

3. The defendants filed a written statement and denied the right as well as the possession of the plaintiffs over the suit property. It was alleged by the defendants that the suit property with Survey No.202/4A1 had been in possession and enjoyment of Public Works Department since 1965. It was also claimed that an irrigation sluice and surplus channel masonry works were constructed in the suit property in the year 1965 itself and the suit property was claimed to be part and parcel of Periya Aruvi Reservoir of Public Works Department. It was also claimed that after the construction of irrigation



**S.A.No.21 of 2003**

project in the year 1965, coconut trees were planted in the suit survey number and they started yielding fruits from the year 1983. Therefore, the defendants had been leasing out the usufructs to third parties from the year 1983, by conducting public auction. Thus, the suit property had been in possession and enjoyment of the defendants – Department from the year 1965 and hence the Department prescribed its title by way of adverse possession. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial Court, the first plaintiff was examined as P.W.1 and 4 documents were marked on the side of the plaintiffs as Exs.A-1 to A-4. On behalf of the defendants, an Officer of the Department was examined as D.W.1 and an employee of the irrigation project was examined as D.W.2. On behalf of the defendants, 4 documents were marked as Exs.B-1 to B-4.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the defendant Department had been in effective possession and enjoyment of the suit property from the year 1965 and hence they perfected title by adverse possession. As a necessary consequence, the suit was dismissed. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.142 of 1996 on the file of Principal



**S.A.No.21 of 2003**

WEB COURT

Sub-Court, Madurai. The first appellate Court affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 30.01.2003 :

*(1) Whether the Court can give finding of adverse possession without framing issues ?*

*(2) Whether the Courts below can uphold the contention of the defendants plea of adverse possession when they specifically took a stand that suit properties belonged to them ?*

7. Pending Second Appeal, the appellants also filed two petitions in M.P.(MD) No.1 of 2012 and C.M.P.(MD) No.14369 of 2023 under Order 41 Rule 27 of the Code of Civil Procedure to raise additional evidence. The respondents/defendants also filed C.M.P.(MD) No.8060 of 2024 to raise additional evidence.

8. The learned counsel appearing for the appellants submitted that both the Courts below came to the conclusion that the defendants had been in possession and enjoyment of the suit property from the year 1965 and hence



**S.A.No.21 of 2003**

they perfected title by adverse possession and as a consequence, the suit was dismissed. The learned counsel also submitted that the plea of adverse possession is not available to the Government Department and hence the Courts below ought not have upheld the plea of adverse possession and non-suited the plaintiffs. In this regard, the learned counsel relied upon a decision of the Supreme Court in **State of Haryana v. Mukesh Kumar and Others, 2011 (10) SCC 404**. The learned counsel further submitted that the additional documents produced by the plaintiffs in M.P.(MD) No.1 of 2012 and C.M.P.(MD) No.14369 of 2023 would establish the possession of the appellants over the suit property from the year 1971 and therefore, the findings of the Courts below as if the defendants established continuous possession over the suit property is liable to be set aside in the light of the additional documents filed in the Second Appeal. He also submitted that the suit property is the ancestral property of the plaintiffs and the said fact has been clearly proved by the additional documents produced before this Court.

9. The learned Additional Government Pleader, appearing for the respondents, submitted that the first plaintiff, who was examined as P.W.1, clearly admitted that irrigation sluice was constructed by Public Works Department in the suit property in the year 1965 itself and the said admission



**S.A.No.21 of 2003**

WEB COPY

clearly proved the effective control of the Department over the suit property from the year 1965 and, therefore, both the Courts below were justified in coming to the conclusion that the defendants perfected title by adverse possession. The learned counsel also submitted that the additional document produced by the respondents in C.M.P.(MD) No.8060 of 2024, namely, old A-Register of the year 2021 would establish that originally the suit property was classified as Government dry land. Therefore, the learned counsel submitted that the appellants cannot take advantage of the subsequent wrong entries in the revenue records and claim right over the suit property in the absence of any convincing document in their favour.

10. The plaintiffs filed a suit for declaration of title and injunction. Therefore, it is incumbent on them to prove their title over the suit property. Before the Courts below, the plaintiffs filed only two revenue documents viz., Settlement Jamabandhi Chitta and Adangal Extract for the fasli 1404, relevant to 1994, to prove their title over the suit property. In Ex.A-2 - Adangal Extract, produced by the plaintiffs, there is a clear noting in the remarks column that P.W.D. Channel existed in the suit survey number. Though the Adangal Extract produced by the plaintiffs stands in the name of the second plaintiff with Patta No.2146, in the remarks column, existence of



**S.A.No.21 of 2003**

P.W.D. Channel is mentioned. P.W.1, when he was examined, clearly admitted that the defendants constructed irrigation sluice in the year 1965 itself in the suit property. Therefore, the possession of the defendants over the suit property from the year 1965 is very well proved by the admission of P.W.1 and Ex.A-2 – Adangal Extract, produced by the plaintiffs. In such circumstances, both the Courts below non-suited the plaintiffs, by holding that they failed to prove their title as well as possession over the suit property. Incidentally, the Courts below also held that the defendants proved their title by adverse possession.

11. The learned counsel for the appellants/plaintiffs vehemently contended that the plea of adverse possession is not available to the respondents/defendants in the light of the decision of the Supreme Court in *State of Haryana v. Mukesh Kumar and Others*, cited supra.

12. In the above mentioned case, State of Haryana, represented by Superintendent of Police, Gurgaon, filed a civil suit for declaration of title and other consequential reliefs on a specific plea that ownership of the property was perfected by adverse possession. The said suit was dismissed by the trial Court and the findings of the trial Court were affirmed up to High Court. While



**S.A.No.21 of 2003**

considering the Special Leave Petition filed by the State, the Apex Court observed as follows :

*"43. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people.*

*44. Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.*

*45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department,*



**S.A.No.21 of 2003**

WEB COPY

*Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.*

*46. In our considered view, there is an urgent need for a fresh look on the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law."* (emphasis supplied by this Court)

13. Therefore, a reading of the above judgment would establish that the Apex Court held that the plea of adverse possession by the State was not at all desirable and the State, which is protector of the property of the citizens, shall not make an attempt to grab the property, by taking the plea of adverse possession. After so observing, the Apex Court recommended to the Government to take necessary steps for abolition of law of adverse possession, by making suitable amendments. Therefore, from the observation mentioned



**S.A.No.21 of 2003**

above, we cannot come to a definite conclusion that the plea of adverse possession available under Section 27 read with Article 65 of the Limitation Act was declared invalid. Till-date, Section 27 and Article 65 of the Limitation Act are available in the statute book and the same are not struck down by the Apex Court. As per the recommendation made by the Apex Court in the above mentioned judgment, no suitable amendments are introduced in the Parliament to delete Section 27 and Article 65 of the Limitation Act.

14. Even today, the plea of adverse possession is available to all persons, including State. Therefore, this Court is unable to accept the submission made by the learned counsel for the appellants that the plea of adverse possession is not at all available to the State. Further, the facts of the case in *Mukesh Kumar*, cited above, and the facts of the present case are distinguishable. In *Mukesh Kumar's* case, State filed a suit for declaration of title by relying on the plea of adverse possession. However, in the case on hand, suit for declaration of title and injunction was filed by a private individual against Public Works Department of the State and the State has taken a plea of adverse possession as a defence. If it is established that right available to the plaintiffs is extinguished by virtue of Section 27 read with Article 65 of the Limitation Act, the State could very well sustain the plea of



**S.A.No.21 of 2003**

adverse possession. Here, the plaintiffs have not sought for possession. Therefore, we need not go to the question whether the right of the plaintiffs is extinguished under Section 27 of the Limitation Act on the plea of adverse possession.

15. In the light of the discussion made above, we have to see whether the plaintiffs proved their title by leading cogent evidence. The two revenue documents produced by the plaintiffs before the Courts below are not at all useful to prove their title over the suit property. P.W.1, when he was examined, admitted that there was a partition between his father and paternal uncle and a document was available to prove the same. However, no such partition document was produced by the plaintiffs to prove their title over the suit property. The learned counsel appearing for the appellants, by relying upon the two tax receipts paid in the name of the plaintiffs for the fasli 1400 and 1403, relevant to the years 1990 and 1993, submitted that those two documents proved that patta for the suit property stood in the name of the plaintiffs and the plaintiffs also paid tax for the suit survey number even prior to the filing of the suit in the year 1995.

16. The two mortgage deeds, produced by the appellants as additional documents along with C.M.P.(MD) No.14369 of 2023 would not help



**S.A.No.21 of 2003**

WEB COURT

the appellants to prove their case. The first additional document was executed by one Lakshmanan, son of Raman in favour of Gani Routhar. The first plaintiff's name is Lakshmanan, son of Nalliappan. But, in the additional document produced by the appellants, the name of the mortgagor is mentioned as Lakshmanan, son of Raman. Therefore, the said mortgage deed, produced by the appellants, is not standing in the name of the appellant, namely, Lakshmanan, son of Nalliappan. The second additional document produced by the appellants stands in the name of Raman, son of Nalliappan. In the affidavit filed in support of C.M.P.(MD) No.14369 of 2023, there is no reference, how the document is related to the appellants. The names of the appellants are not found in the said document. In such circumstances, the additional documents, produced along with C.M.P.(MD) No.14369 of 2023, would not help the plaintiffs to prove their case in any way. A perusal of the additional documents 1 and 2, filed along with M.P.(MD) No.1 of 2012 would suggest that the plaintiffs paid tax for the land covered under Patta No.2146. Patta No.2146 is produced as additional document No.5 along with M.P.(MD) No.1 of 2012. The said document establishes that Patta for the suit property stood in the name of the plaintiffs. Additional document No.6 is A-Register, relating to the suit property. In A-Register also, the names of the plaintiffs are mentioned against the suit survey number with Patta No.2146. Though the



**S.A.No.21 of 2003**

WEB C

plaintiffs produced some old revenue documents and tax receipts in their name, the plaintiffs have not given any convincing reason for their failure to produce those documents before the Courts below. Documents 1 and 2, filed along with M.P.(MD) No.1 of 2012, were dated 06.08.1989. When those documents were very well available with the plaintiffs, they could have produced the same before the trial Court, had they exercised due diligence. For the reasons well known to the plaintiffs, they failed to exercise due diligence and produce those documents before the Courts below. Documents 3 to 6, filed along with M.P.(MD) No.1 of 2012, were dated 10.10.2012, 08.10.2012 and 01.10.2012. Therefore, those documents were obtained by the plaintiffs nine years subsequent to the filing of the Second Appeal. Though documents 3 to 6 were relating to the year prior to the filing of the suit, the plaintiffs have obtained copies of the same only after filing of the Second Appeal and produced them after nine years from the date of filing of the Second Appeal. The plaintiffs have not assigned any valid reasons for their failure to obtain certified copies of the same and file them before the Courts below.

17.The person, who seeks to produce additional evidence, must satisfy the ingredients of Order 41 Rule 27 of the Code of Civil Procedure



**S.A.No.21 of 2003**

scrupulously. Order 41 Rule 27 CPC cannot be used as a tool by unsuccessful party to make up his omissions or negligence at the time of trial. In other words, Order 41 Rule 27 is not a wild card to introduce new evidence in second appellate stage. In the present case, the appellants filed M.P.(MD) No.1 of 2012 to raise additional evidence by producing six documents. The Second Appeal was disposed of on merits without considering M.P.(MD) No.1 of 2012. Hence, the appellants filed a Review Application in R.A.No.88 of 2022 on the ground that the petition for raising additional evidence was not considered. The Review Application was allowed and the Second Appeal was posted for regular hearing again. Thereafter, the appellants filed another petition in C.M.P.(MD) No.14369 of 2023 to produce two more documents. Producing additional evidence in instalments by filing different petitions at different stages of Second Appeal reveals that the appellants, by invoking Order 41 Rule 27, want to make up their omissions and negligence at the time of trial.

18. In any event, the first plaintiff as P.W.1 admitted that there was a partition between his father and his paternal uncle in respect of the suit property. However, the said vital document was not produced before the Court. The plaintiffs are not entitled to succeed in a suit for declaration of title, by producing certain revenue documents before the Court, especially



**S.A.No.21 of 2003**

when P.W.1 admitted the existence of title document (i.e: alleged partition deed). Hence, the plaintiff is guilty of suppression of best evidence available with him. In the absence of any title documents, the plaintiffs are not entitled to declaration of title, as prayed for. As discussed earlier, P.W.1 clearly admitted that irrigation sluice in the suit property was constructed by Public Works Department in the year 1965 itself. Therefore, the respondent Department proved its effective possession from the year 1965 onwards. In such circumstances, the possession of the Department on the date of plaint was also proved. Therefore, the plaintiffs miserably failed to establish their title as well as possession over the suit property. As a necessary consequence, the suit is liable to be dismissed. The documents produced by the appellants as additional evidence in M.P.(MD) No.1 of 2012 and C.M.P.(MD) No.14369 of 2023, for the reasons mentioned earlier, would not have a bearing on the final outcome of the Second Appeal and hence those petitions are dismissed.

19. Therefore, I do not find any error in the final conclusion reached by the Courts below with regard to the dismissal of the suit. Even if the defendants in the present suit fail to prove their plea of adverse possession, unless the plaintiffs prove their title as well as possession over the suit property, they are not entitled to declaration and injunction, as prayed for. As discussed earlier, the plaintiffs failed to prove their title over the suit property.



**S.A.No.21 of 2003**

Hence, the Courts below are justified in dismissing the suit filed by the plaintiffs. The questions of law, framed at the time of admission, are answered accordingly against the appellants and in favour of the respondents.

20. The Second Appeal stands dismissed. No costs. Consequently, the connected M.P.(MD) No.1 of 2012 and C.M.P.(MD) Nos.14369 of 2023, filed by the appellants to raise additional evidence, are also dismissed for the reasons assigned earlier.

21. C.M.P.(MD) No.8060 of 2024 is a petition filed by the respondent Department to raise additional evidence. The respondents want to produce the following documents as additional evidence :

(1) Proceedings of the District Collector, Madurai in O.Mu.No.76597/2008, Pathi.1 (04.09.2008) (Certified Copy)

(2) Copy of "A" Register of Kesampatti Village, Melur Taluk, Madurai District. (Certified Copy) (During the relevant period from 1921 to 1984).

(3) Letter sent to the District Revenue Officer, Madurai for UDR correction (dated 12.09.2023)

(4) Village Administrative Officer Certificate (31.10.1995) to show the ownership and possession of the PWD Department.



**S.A.No.21 of 2003**

WEB COPY

22. Document Nos.1,3 and 4 were all only official communications, subsequent to the suit. Therefore, the said documents cannot be taken into consideration in support of the defendants' claim. Second document is A-Register of the suit village, relating to the years 1921 to 1984. Learned counsel for the defendants, by relying on the second document, submitted that in 1921 A-Register, the suit property was classified as Government dry land and, therefore, it will falsify the case of the plaintiffs. Document No.2, the very old document, was available with the Department even at the time of trial. However, the respondents/defendants failed to give any convincing reasons for their failure to produce the old A-Register before the trial Court. Therefore, the ingredients of Order 41 Rule 27 CPC are not satisfied. As a consequence, C.M.P.(MD) No.8060 of 2014 is also dismissed.

**09.07.2024**

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**S.A.No.21 of 2003**

To:

- 1.Principal Subordinate Judge,  
Madurai.
- 2.District Munsif,  
Melur.
- 3.Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court.



WEB COPY



**S.A.No.21 of 2003**

**S.SOUNTHAR, J.**

dixit

**S.A.No.21 of 2003**

**09.07.2024**