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S.A(MD)Nos.388 & 432 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)Nos.388 & 432 of 2004

1.S.A(MD)No.388 of 2004:

1.P.Raman

2.P.Panneerselvam

... Appellants/Appellants/Plaintiffs

Vs.

1.Tamilarasan

2.Usha

3.Gopal

... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 18.03.2004 passed in A.S.No.138 of 1999 on the file of the I Additional Sub Court, Tiruchirappalli, confirming the judgment and decree dated 26.06.1998 passed in O.S.No.1934 of 1991 on the file of the III Additional District Munsif Court, Tiruchirappalli.

For Appellants : Mr.R.Subramanian

For Respondents : Mr.R.Devaraj



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2.S.A(MD)No.432 of 2004:

1.P.Raman

2.P.Panneerselvam

... Appellants/Appellants/
Defendants 2 & 3

Vs.

1.Shanthi

2.Sri Rangaraja Talkies Private Limited,
Represented by its Managing Director.

... Respondents 1 & 2/
Respondents 1 & 2/Plaintiffs

3.Balakrishnan

... 3rd Respondent/3rd Respondent/
1st Defendant

(R – 3 is given up as he remained exparte)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 18.03.2004 passed in A.S.No.137 of 1999 on the file of the I Additional Sub Court, Tiruchirappalli, confirming the judgment and decree dated 26.06.1998 passed in O.S.No.1931 of 1991 on the file of the III Additional District Munsif Court, Tiruchirappalli.

For Appellants : Mr.R.Subramanian

For RR 1 & 2 : Mr.R.Devaraj



COMMON JUDGMENT

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The concurrent Judgments and decrees passed in O.S.Nos. 1934 & 1931 of 1991 on the file of the III Additional District Munsif Court, Tiruchirappalli and in A.S.Nos.138 & 137 of 1999, on the file of the I Additional Sub Court, Tiruchirappalli are being challenged in the present Second Appeals.

2.As pleadings and submissions are common, both the appeals are heard together and disposed of by this common judgment.

3.Brief averments in the plaint in O.S.No.1931 of 1991 are as follows:

3.1.The first plaintiff is the Director of the second plaintiff a private company limited and the second plaintiff is running a cinema theatre called Sri Rengaraja Talkies in the suit property. The main object of the business is to exhibit films. For other details, the articles of association may kindly be referred to. The first plaintiff is one of the



directors of the second plaintiff and she is very much interested in maintaining and looking after the interest of the company in addition to the role played by the Managing Director of the company. Since the Managing Director of the company presently is otherwise occupied, he could not fully concentrate in the day-to-day affairs of the company and consequently, the first plaintiff is joining in the suit in order to protect the interest of the second plaintiff's company. In the year 1937, the plaintiff company having taken on lease the site viz., the suit property from the owners, had put up pucca constructions at a very heavy cost and running the theatre under the name Sri Rangaraja Talkies. The lease is continued from time to time periodically. The last of which is dated 28.10.1988. The lease in respect of the site viz., the suit property has been periodically renewed and pucca constructions put up early in the year 1937 and the theatre is being run till date undisturbed in any manner.

3.2.The suit property has been clearly described in the lease deed. It measures a total extent of 1 acre 55 cents, as described in the schedule. In the entire area, there is a big construction enclosed with a compound wall with a wide frontage before the building for access and accommodating the filmgoers. On the rear side, there was



a compound wall which fell down and is in the process of rebuilding.

The second plaintiff has got a 'C' form licence granted for talkies. They are paying property tax and professional tax. Thus, the second plaintiff is the absolute owner of the cinema talkies building which is housed in the suit property well within the four boundaries described in the lease document. While so, due to the natural calamity, the eastern rear side compound wall has fallen down. Due to financial constraints, the damaged wall could not be reconstructed. Taking advantage of the fact that the defendants are ably assisted by unsocial elements who are inimically disposed towards the plaintiff, the defendants in collusion and conspiracy with each other have been threatening to commit trespass and occupy the property on the rear side. It has become the order of the day now, particularly because some vested political persons are also encouraging the defendants in their unlawful attempts. The eastern side compound has fallen down and a small hut by its side intended for a watchman has also fallen down.

3.3.The defendants exaggerated at such resistance have been threatening to commit trespass at any cost unmindful of the consequences. Evidently, the police would not come to the plaintiffs rescue in view of political influence otherwise. The balance of



inconvenience is in favour of the plaintiffs. Under the said circumstances, unless there is a decree of permanent injunction restraining the defendants from interference with the plaintiffs possession, they are sure to take the law into their own hands and the consequences arising therefrom are beyond redemption. Knowing fully well in existence of an interim injunction order in favour of the plaintiffs and suppressing the same and in order to accomplish their attempted acts of trespass evidently with political influence and police help, the defendants filed a suit in O.S.No.1934 of 1991 on the file of the District Munsif Court, Trichy, as if there were in possession of the property claimed by them in that suit and though interim order was not granted, got an advocate commissioner appointed for inspection of the property in order to make it appear as if they are in possession of the suit property and the defendants audaciously with political influence and police have trespassed T.S.No.735/2 on the event of the commissioner's inspection for the rear side of the auditorium and renewed the thatched shed, unlawfully occupied the same and enacted a drama of allegedly possession being already with them before the Advocate Commissioner. The Advocate Commissioner prevailed to file a report to their advantage and he has filed a report accordingly, as if the portions A & B are in the occupation of the defendants 2 and 3. The



plaintiffs have seriously objected to this report. But now that it is a subsequent event that has compelled the plaintiffs to seek further relief of recovery of possession so committed by trespass. The plaintiffs are entitled to recovery of possession of the said trespassed property which these defendants claim as suit property in the suit. The plaintiffs submit that they have got a permanent lease of T.S.Nos.735/1 and 735/2 totally measuring 1.55 acres of which the trespassed portions form part on the rear side of the auditorium hall.

3.4.The plaintiffs submit that their right, title and possession of the entire extent of 1.55 acres which take in the trespassed portions in the unlawful possession of the defendants in prior proceedings in O.S.No.86 of 1964 on the file of the District Munsif Court, Trichy and confirmed in appeal in A.S.No.84 of 1968 on the file of the Sub Court, Trichy by judgment dated 11.11.1968. The erstwhile lessee at that point of time who happened to be the servant of the plaintiffs having died his legal heirs continuing in possession attempted to assert untenable rights which resulted in the files of the suit and a clear finding given with regard to the rights of the plaintiffs to T.S.Nos. 735/1 and 735/2. After the said heirs had left the property right through the watchmen shed was in existence until the defendants by



filing the suit in O.S.No.1934 of 1991 trespassed into the same and thus are in unlawful possession. The plaintiffs are entitled to recover possession of the same. Hence, the plaintiffs have filed the suit for permanent injunction restraining the defendants from in any way interfering with the plaintiffs' peaceful possession and enjoyment of the suit 'A' schedule property, for recovery of possession of the suit 'B' schedule property from the defendants and future profits.

4.The defendants in O.S.No.1931 of 1991 filed a written statement stating that the averments made by the plaintiffs were false. It is an admitted fact that the cinema theatre runs in the name of the second plaintiff. The defendants stated that the suit schedule property was not leased out to the plaintiffs and there was no compound wall to the east of the theatre and their predecessors had been in possession for more than 25 years and prescribed for title by adverse possession. As the plaintiffs attempted to disturb their possession, defendants 2 and 3 filed a suit in O.S.No.1934 of 1991 for injunction.



5.The averments made by the plaintiffs in the plaint in O.S.No.1934 of 1991 is that the suit property originally belonged to their father-Paramasivan and they have been in possession and enjoyment of the same for the past 25 years. The plaintiffs father was in possession and enjoyment of the property for the past 12 years without any hindrance. The father of the plaintiffs has also acquired the right to usufruct in respect of the suit property. The flood relief amount for the suit property was received on 29.11.1977. The father of the plaintiffs died in the year 1988 leaving behind the plaintiffs mother and sisters of the plaintiffs. By way of succession, the suit property belonged to the plaintiffs. The suit property is only the usufructuary interest of the plaintiffs. No one has any right or responsibility in the suit property. The house owned by the defendants is situated at Chattara Road, Srirangam. The said cinema theatre is being run by the first defendant on rent. The defendants are trying to take possession of the terraced house occupied by the plaintiffs in the suit property. On 10.08.1991, the defendants attempted to transfer the plaintiffs' interest and usufruct in the suit property. The defendants have money and manpower and they are lawless. Hence, the plaintiffs have filed the suit seeking for permanent injunction.



6.The written statement filed by the defendants in O.S.No. 1934 of 1991 are as follows:

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6.1.These defendants have been sued only in their individual capacity and individually, they have no right in the property belonging to Sri Rangaraja Theatre which has already filed a suit in O.S.No.1931 of 1991 on the file of the District Munsif Court, Trichy and got an order of injunction. Admittedly, the first defendant though the Managing partner is not actually managing the theatre, but the second defendant alone is the director of the theatre. The third defendant has nothing to do with Rangaraja theatre much less any of the defendants had any occasion to interfere with the alleged possession of the plaintiffs. Neither the plaintiffs nor their predecessors-in-title have got any act of possession or enjoyment of the portion of the property belonging to Sri Rangaraja theatre described in the plaint in O.S.No. 1931 of 1991. Under these circumstances, the plaintiffs have no locus standi to lay a claim on the property described in the plaint. Furthermore, there is no such property available in Boosthithi as the suit property described in the plaint in the near area of Sri Rangaraja theatre. The description of the property is very misleading and the sketch of the plaintiffs relating to the property claimed by them is



incorrect and does not bear out even such details as are necessary to indicate the theatre's property so as to substantiate their alleged claim to the property claimed by them which they falsely claimed title by adverse possession only and not tracing any title to their own ancestral rights. As set out in the plaint in O.S.No.1931 of 1991, Rangaraj Theatre is in possession and enjoyment of the entire extent of the property shown in the said plaint and any attempt to claim or create novel rights in respect of the same will have no meaning much less they can claim any false and imaginary rights in respect of the same. Hence, the claim of the plaintiffs that the plaintiffs and their predecessors-in-title have been in possession and enjoyment of the suit property herein for more than 25 years adversely enjoying the same and by such adverse possession they have acquired title is denied. It is only a wishful statement. The alleged kist receipts have been produced and have nothing to do with the property of the aforesaid theatre. There cannot be a house tax assessment for the property claimed by the plaintiff in Srirangaraja Talkies Theatre area. If at all anyone is procured evidently upto 1990-91 that cannot create any right to the claim of the plaintiffs who have neither title nor possession. The plaintiffs cannot claim title to the property belonging to the said theatre which has been all these years enjoying the entire



extent of the property taken on lease from the lessor. The claim of the plaintiffs inheriting the alleged property from the said Paramasivam is false.

6.2.The contention of the defendants has nothing to do with the alleged suit property as they are living in Sathara Street is false. The fact remains that the vast extent of the area has been taken on lease as set out in the plaint in O.S.No.1931 of 1991 in which there is a pucca structure of Rangaraja theatre with all appurtenances measuring a total extent of 1.50 acres and is in their enjoyment from 1937 onwards. It bears Door No.86. The said theatre alone has been right from 1937 onwards in possession and enjoyment of the aforesaid property wherein none else has got any right, title, interest or possession in any manner whatsoever. There are clinching records and proceedings which clearly will demonstrate that the said property covering a large extent as stated above is in the exclusive possession and enjoyment of Sri Rangaraja Talkies only. When the plaintiffs therein attempted to commit trespass into the suit property taking advantage of the fact that due to the natural calamity, the eastern rear side compound wall had fallen down which could not be reconstructed immediately by the said theatre due to financial strain. The plaintiffs at



the instigation of certain avowed enemies of the said theatre and defendants 1 and 2 ably assisted by unsocial elements have filed the suit and moved for an interim order. The action of the plaintiffs was suitably repelled by an appropriate order of injunction having been obtained by the said theatre. At no stretch of the imagination, the plaintiffs can lay a claim to the property of the theatre apparently giving a wrong survey number and door number and description with incorrect particulars. The plaintiffs have neither title which claims on the basis of so-called adverse possession nor possession and prayed for dismissal of the suit.

7.Both the suits were tried together and disposed of by a common judgment.

8.Before the trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A10 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B.1 to B. 17 were marked and on the side of the Court, Ex.C.1 & Ex.C.2 were marked.



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S.A(MD)Nos.388 & 432 of 20



9.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in O.S.No. 1931 of 1991 and dismissed the suit in O.S.No.1934 of 1991.

10.Aggrieved by the Judgments and decrees passed by the trial Court, the defendants 2 and 3 as appellants, had filed an Appeal Suit in A.S.Nos.137 and 138 of 1999 on the file of the first Appellate Court.

11.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, dismissed the appeal suits.

12.Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeals have been preferred at the instance of the defendants 2 and 3 as the appellants.



13.At the time of admitting the Second Appeal in S.A(MD)No.388 of 2004, this Court had framed the following substantial questions of law for consideration:

'1) Whether in law the Courts below are right in granting a decree for recovery of possession when declaration of title is not sought vide 1998-1-CTC-501?

2) Whether in law the Courts below are right in holding that the appellants had not prescribed for title by adverse possession especially after the lower appellate Court had specifically found that the appellants had been in possession for well over the statutory period?

3) Whether in law the Courts below were not wrong in refusing to grant the appellants a decree for injunction when they had been in open, continuous undisturbed and adverse possession for well over 12 years to the knowledge of the respondents?'

14.At the time of admitting the Second Appeal in S.A(MD)No.432 of 2004, this Court had framed the following substantial questions of law for consideration:

'1.Whether the Courts below are justified in granting a decree for recovery of possession without a prayer for declaration title to the property?



2. Whether in law, the Courts below are correct in holding that the appellants/defendants had not prescribed title to the suit property by adverse possession specifically when the lower Appellate Court held that the appellants/defendants had been in possession of the suit property for well over the statutory period?'

15.The learned counsel appearing for the appellants would submit that the Courts below omitted to see that when the appellants had squarely denied the title of the respondents, a suit for mere recovery of possession without seeking declaration of their title was not maintainable; the Courts below erred in overlooking that the boundary description and extents did not tally in Exs.A.1 and A.9 relied on by the appellants for showing their title; the Courts below omitted to see that the appellants had proved possession from 1971; the Appellate Court finds that the appellants had been in open continuous possession for well over the statutory period, erred in holding that the possession was not adverse, the Appellate Court erred in deciding that as the appellants did not know who are the owners of the property and they could not claim adverse possession; the Courts below failed to note that admittedly the respondents were in the next property and that they did not attempt to disturb the possession of the appellants; the



Courts below failed to note that a decree for injunction could be granted against the respondents as they had lost any alleged title to the property; the Courts below ought to have noted that the property leased was not identified or localized with reference to boundaries, survey numbers and extent especially since there is variation in the respondents documents and the Courts below omitted to see that the suit property was assessed to tax in the name of the appellants and that they had been paying tax for several years and prayed for allowing the Second Appeals.

16.The learned counsel appearing for the respondents in both the Second Appeals would submit that the respondents 1 & 2/plaintiffs have filed a suit in O.S.No.1931 of 1991 on the file of the trial Court for the relief of permanent injunction from in any way interfering with the plaintiffs peaceful possession and enjoyment of the suit mentioned 'A' schedule property, for recovery of possession of 'B' schedule property from the appellants/defendants and for future profits from the date of plaint till delivery of possession of 'B' schedule property. The appellants/plaintiffs had filed another suit in O.S.No.1934 of 1991 on the file of the trial Court for the relief of permanent injunction restraining the respondents 1 to 3/defendants from any way



interfering with the peaceful possession of the appellants/plaintiffs and for the suit cost to be paid by the respondents 1 to 3/defendants.

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17.The learned counsel further submitted that according to the respondents 1 & 2/plaintiffs in O.S.No.1931 of 1991, the first plaintiff, namely Shanthi is one of the directors of the second plaintiff limited company and the second plaintiff Sri Rangaraja Talkies has taken on lease of the site with a larger extent of 1 acre 55 cents situated in two survey numbers ie., T.S.Nos.735/1 and 735/2 totally and the lease under registered document of lease taken from Mahant of Kaligopura mutt, which was marked as Ex.A.1 and the said property belongs to Kaligopura mutt and Mahant. The abovesaid property has been leased out to the respondents 1 & 2/plaintiffs and Exs.A.1 to A.3 are lease deeds and survey sketch extract. Further to substantiate their right over the property which is in possession and enjoyment of the respondents 1 & 2/plaintiffs with them, payment of kist receipts have been marked as Ex.A.4 and Ex.A.5, tax receipts has been marked as Ex.A.6 and sales tax receipts for running the theatre has been filed as Ex.A.7, Ex.A.8 establishes the right, interest and possession of the property with the respondents/plaintiffs. Their right and interest of possession over the suit property have been upheld by a judgment



rendered in A.S.No.94 of 1988 and it was a case of attempt to cause interference made by some third parties by interfering in the respondents 1 & 2/plaintiffs possession and enjoyment of the suit property and trespass has been committed by the third parties and was vacated through the process of law in the said proceedings and Ex.A.10 is the tax assessment wrongly made in the name of the appellants/defendants has been cancelled. The suit property has been built up with a fence and a compound wall and due to natural calamity, it has fallen down and taking advantage of the same, the appellants/defendants in O.S.No.1931 of 1991 have attempted to trespass into the property. On 31.08.1991, when the compound wall fell down, the appellants/defendants attempted to commit trespass into the suit property.

18.The learned counsel further submitted that according to the appellants/defendants, they have been in possession of the suit property in their own right for more than 25 years and in order to protect their interest. The appellants/plaintiffs has also filed a suit in O.S.No.1934 of 1991 and the said suit was filed against three individuals namely Thamilarasan, Usha and Gopal/the respondents 1 to 3 in S.A(MD)No.388 of 2004 and in the suit filed by the appellants



herein, neither Rangaraja Talkies nor the first plaintiff in O.S.No.1931 of 1991 has been added as a party and the said suit has been filed for the relief of permanent injunction with the similar defence in the suit in O.S.No.1931 of 1991, in respect of the suit property measuring 32 feet from east to west and 51 feet from north to south. Further, the appellants have made a case similar to one as pleaded in their written statement in the suit and they made out a cause of action that they are in possession of the property for more than statutory period and that the appellants herein in the suit in O.S.No.1934 of 1991 stated that they are the sons of the deceased Paramasivam and the said Paramasivam had been in possession and enjoyment of the suit property right from the year 1997 and on 10.08.1991, the respondents 1 to 3/defendants in the abovesaid suit have attempted to disturb their possession of the appellants herein. Subsequently, a commission application has been ordered and the commissioner's reports have been marked as Ex.C.1 and C.2. Exs.B.1 to B.12 filed by the appellants herein is only self-serving and they cannot be accepted as they are not public documents and they are only created one and no credence can be given to them and prayed for dismissal of the Second Appeals.



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19.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and also perused the records carefully.

20.The suit property is a exclusive property which is in possession and enjoyment of the respondents 1 & 2/plaintiffs forming part of larger extent by way of a lease and the documents filed by the respondents 1 and 2/plaintiffs as Ex.A.2 and Ex.A.3 are accepted by the appellants herein and further D.W.1 has admitted that the property which they claim in their suit in O.S.No.1934 of 1991 is comprised within the survey field sketch and the property belongs to Rangaraja theatre and it is proved by Ex.A.1-registered lease deed and further the suit property claimed by the appellants herein in O.S.No.1934 of 1991 only within the property to which the respondents herein have got right, title and interest under Exs.A.1 to A.3 and Ex.A.9.

21.The appellants herein contended that they are in possession of the property adversely to the knowledge of the true owner can be acceptable, however, the owner of the property was not a party before the Court, but the lessee, the respondents 1 &



2/plaintiffs have filed the suit in O.S.No.1931 of 1991 and the suit filed by the appellants herein in O.S.No.1934 of 1991 is filed against only three individuals and the appellants herein has also not added Rangaraja Theatre as a party and further, no public document has been filed that they are in possession of the property and the appellants herein are in continuous possession adversely without the knowledge of the owner. It may be noted that the settled law is that adverse possession exists unless there is hostile assertion of title with such a must as against the true owner for more than the statutory period. Here, admittedly, there is no continuous possession and enjoyment proved by the documents or by any other legal or acceptable evidence. There is no hostile assertion of title to the knowledge of owner with such animus to acquire title by adverse possession. However, long years of possession may be that will not confer the person by claiming it to claim title to the property.

22.The respondents 1 and 2/plaintiffs are able to prove and substantiate by documents and also admissions of the appellants herein themselves that the property belongs to the respondents 1 and 2/plaintiffs and they are in possession and enjoyment of the suit property and in fact they have asserted such right in the earlier



proceedings decided under Ex.A.8. In the evidence of P.W.1, who is one of the Directors and who has been arrayed as the second defendant in O.S.No.1934 of 1991, is categorical in asserting continuous possession and enjoyment with the respondents 1 & 2/plaintiffs attempted to demolish the alleged construction. The respondents 1 & 2/plaintiffs have proved that they have got right and interest over the suit property.

23.It is admitted case of both parties that the respondents 1 & 2/plaintiffs were having watchman shed behind the auditorium and that was vacated through process of Court under Ex.A.8. The appellants herein sought to commit trespass and filed the suit and pending suit despite injunction, the appellants herein have trespassed, hence, the respondents 1 & 2/plaintiffs sought for the relief of possession by way of amending the plaint. The appellants herein trespassed into the suit property and put up temporary sheds and filed the suit in O.S.No.1934 of 1991 for the relief of injunction to claim title by adverse possession. As the respondents 1 & 2/plaintiffs have proved their right, the onus is on the appellants herein to prove the same. Since the respondents 1 and 2/plaintiffs have proved their right, it is for the appellants herein to prove that they are entitled to the suit



property by adverse possession. While examining, whether the appellants herein/defendants in O.S.No.1931 of 1991 have proved that they have the right to enjoy the suit property, the appellants herein as plaintiffs in O.S.No.1934 of 1991 have stated in paragraph 3 of the plaint that 'the suit property was in possession and enjoyment of one Paramasivam, the father of the plaintiffs for a period of more than 25 years. Since the father of the plaintiffs had been enjoying the possession of the suit property continuously for more than 12 years without any interruption, the father of the plaintiffs has usufructuary right in respect of the suit property. Due to the lapse of years, the plaintiffs' father has 'prescriptive title' in respect of the suit property.

24. Similarly, in O.S.No.1931 of 1991, the appellants herein/defendants in their written statement stated that 'the said land is affected by 'prescriptive title' to the appellants herein/defendants 2 to 4, as they have built a house on the vacant land on the eastern side of the cinema theatre and have been lived there for 25 years. Further D.W.1-Pannerselvam in his examination has stated that suit 'B' schedule property is experienced against us through experience and longevity and they did not pay rent or lease to the suit property to anyone. Further, in the cross-examination he stated that 'I do not



remember the survey number where we have put shed in the suit schedule property and the survey numbers are not mentioned in details. Further, he has stated that the appellants herein/defendants do not know the subject matter of the suit property is Survey No.735/2. Survey Nos.735/1 and 735/2 belonged to them. He further stated that until today, the appellants herein/defendants do not know who owns Survey No.735/1 and 735/2. However, the appellants herein/defendants in their counter-argument, prosecution have not given any credible evidence that the suit property was affected by adversary and from what date in the counter-claim, the prosecution evidence in the suit property in O.S.No.1931 of 1991, as the defendants have not testified that they are entitle by way of adverse usufruct and no documents have been produced, depending on whether the real owner of the land is aware of the adverse usufruct and no documents have been produced as to whether the real owner of the land is aware of the adverse usufruct and Survey Nos.735/1 and 735/2. Since P.W.3 has stated that he did not who was affected and merely because he has been occupying the suit property for a long period of time, he cannot claim a right against it by way of adverse possession. Since the appellants herein/defendants in O.S.No.1931 of 1991 was not in a position to prove the fact that they are in adverse



possession. Hence, this Court finds that after filing the suit in O.S.No. 1934 of 1991, the suit 'B' schedule property was not encroached upon by the respondents 1 to 3 herein/defendants 1 to 3 and before filing the suit, they have put up shed in the suit schedule property and the trial Court has rightly decreed the suit filed by the respondents 1 & 2/plaintiffs in O.S.No.1931 of 1991 and dismissed the suit filed by the appellants herein in O.S.No.1934 of 1991.

25.Further, it is seen that while the respondents 1 & 2/plaintiffs cross examined the appellants herein/defendants, they admitted the fact that the place where the hut is placed in Survey No. 735/2. It is the said property which has been mentioned as suit 'B' schedule property by the respondents 1 & 2/plaintiffs. The total extent of the suit property in Survey Nos.735/1 and 735/2 is 1 acre 55 cents. The respondents 1 & 2/plaintiffs have relied on Ex.A.1-lease deed in the year 1988. As per the lease deed, it is proved that the respondents 1 & 2/plaintiffs have been the tenants from the earlier period and it is stated that the appellants herein/defendants have been in possession and enjoyment of the suit 'B' schedule property on the basis of long tenure by way of adverse possession and the onus is on the appellants herein/defendants to prove the ownership for the long term



possession. Therefore, the appellants herein/defendants have not made it clear through the documents to substantiate the claim that their father Paramasivam has been in swadeenam for more than 25 years in the suit property and thereafter, the appellants herein/defendants have been in swadeenam continuously for more than 12 years. According to the appellants herein/defendants, even though they are said to be resident since 1972, the document Ex.B2 is of the year 1977. As aforesaid, the appellants herein/defendants are continuously enjoying the suit 'B' schedule property by adverse possession has not been proved, the relief sought for by the appellants/defendants cannot be granted.

26.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the appellants herein/defendants and in favour of the respondents/plaintiffs.



S.A(MD)Nos.388 & 432 of 20

27.In the result, both the Second Appeals stand dismissed.

No costs.

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Internet : Yes/No
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To

- 1.The I Additional Sub Court,
Tiruchirappalli.
- 2.The III Additional District Munsif Court,
Tiruchirappalli.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A(MD)Nos.388 & 432 of 20





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S.A(MD)Nos.388 & 432 of 20

V.BHAVANI SUBBAROYAN, J.

ps

Judgment made in
S.A(MD)Nos.388 & 432 of 2004

14.11.2024