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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2025

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THE HONOURABLE MR.JUSTICE P. DHANABAL

S.A. No.428 of 2018

K.Balambal (died)

1.C.Kothandan

2.Sargunam

3.K.Mani

4.K.Rajam

5.K.Mathiyazhagan

.. Appellants

Vs.

1.Indira

2.Gnanamani

.. Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the Subordinate Judge, Kanchipuram made in A.S. No.27 of 2012 dated 22.12.2017 reversing the judgment and decree of the Principal District Munsif, Kanchipuram made in O.S. No.267 of 2008 dated 22.02.2012.

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For appellants : Mr.N.Ramesh

For respondents : Dr.A.Thiagarajan,
Senior Advocate for
Mr.S.Ramesh Kumar

JUDGMENT

This Second Appeal has been preferred as against the judgment and decree dated 22.12.2017 passed in A.S. No.27 of 2012 on the file of the Subordinate Judge, Kanchipuram.

2.For the sake of convenience and brevity, the parties will be referred as plaintiff, first defendant and second defendant as ranked in the Trial Court.

3.The deceased plaintiff Balambal has filed a suit in O.S.No.267 of 2008 before the Principal District Munsif, Kanchipuram and the same was



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decreed through judgment and decree dated 22.02.2012. Challenging the said judgment and decree, the defendants, who are the respondents herein have preferred an Appeal Suit before the Subordinate Judge, Kanchipuram in A.S. No.27 of 2012 and the same was allowed by setting aside the judgment and decree passed by the Trial Court. Since the plaintiff died during the pendency of the case, her legal heirs/appellants herein were brought on record and they filed this Second Appeal.

4.The brief facts of the plaint are as follows:

The suit schedule property was absolutely belonged to the plaintiff. She purchased the same from one M.Vadivel and Krishnan through a Registered Sale Deed dated 25.12.1978. The first defendant is her husband's brother's daughter and the second defendant is the husband of the first defendant. After purchase of the property, the plaintiff had put up construction in the property and permitted the defendants to reside there



before 10 years and the defendants are in permissive possession of the suit property. The defendants are trying to claim title over the property and they also put up an un-authorized construction, without the consent or permission of the plaintiff. Therefore, the plaintiff issued notice to them on 20.03.2004 to vacate the premises and after receipt of the notice, they have not vacated the premises. Therefore, she filed the suit for declaration and recovery of possession against the defendants.

5.The brief averments of the written statement filed by the second defendant are as follows:

(a)The suit is not maintainable and the plaintiff is not entitled to any relief as prayed for in the plaint and the second defendant denied all the allegations contained in the plaint except those that are specifically admitted by the defendants. The averments in respect of the purchase of the property and the construction put up in the suit schedule mentioned 'abcd'



portion and the permissive possession are denied. Originally, the property bearing Door No.43, Bavaji Street, Kanchipuram, belonged to one Chinnakannu Pillai. The said Chinnakannu Pillai died long time back leaving his 3 sons and 2 daughters, i.e. (1) Jayarama Pillai, (2) Kothanda Pillai, (3) Duraisamy Pillai, (4) Parvathy and (5) Krishnaveni. The plaintiff is the daughter of Parvathy and the first defendant is the daughter of Jayarama Pillai. One Padma is the daughter of the said Krishnaveni. The said Duraisamy Pillai married the said Krishnaveni's daughter Padma.

(b) In or about the year 1985, a family arrangement took place to divide the property bearing Door No.43, Bavaji Street, Kanchipuram between the above said 3 brothers. The said Jayarama Pillai, who is the father of the first defendant, has agreed to give his share to his brother Kothanda Pillai. In lieu of the same, the said Kothanda Pillai and his wife Balammal have agreed to give the suit property to Jayarama Pillai's



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daughter i.e. the first defendant Indira. The said family arrangement was made in the presence of one Rajendran. Therefore, as per the above said family arrangement, the suit property was given to Jayarama Pillai's daughter Indira. At that time, it was a vacant site. Thereafter, in the year 1985, the first defendant put up construction in the suit property out of her own family fund. From the year 1985 till date, the first defendant is residing along with the second defendant and the plaintiff Balammal and her husband Kothanda Pillai promised to execute a Release deed in favour of the second defendant if necessary. The second defendant believed the promise made by the plaintiff and her husband and kept quiet for all these years under the impression that the plaintiff and her husband Kothanda Pillai will not claim any right over the said property based on the said family arrangement. Suppressing the said fact, the plaintiff filed the suit as against the defendants, as if the defendants are in permissive possession. The defendants are the absolute owners of the suit property and the plaintiff is not entitled to any claim. Therefore, the suit is not maintainable and the



same is liable to be dismissed.

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6. Based on the above pleadings and hearing both sides and after perusing the records, the following issues were framed by the Trial Court:

- '1. Whether the plaintiff is entitled for declaration against the defendants?*
- 2. Whether the ABCD portion in schedule mentioned property is belonged to the plaintiff?*
- 3. To what relief the plaintiff is entitled?'*

7. Before the Trial Court, to prove the case on the side of the plaintiff, PW1 was examined and she marked exhibits A1 to A5. On the side of the defendants, DW1 and DW2 were examined and no documents were marked. Based on the above said documents and evidence adduced on both sides, the Trial Court decreed the suit. Aggrieved by the said judgment and decree, the defendants have preferred an Appeal Suit in A.S. No.27 of 2012



before the Subordinate Judge, Kanchipuram. The First Appellate Court

framed the following points for determination:

'1. Whether the plaintiff is not entitled to get the relief of declaration and recovery of possession as prayed for?

2. Whether the decree and judgment passed by the Trial Court is correct or not?

3. Whether the appeal can be allowed?

4. To what other relief?'

8. After hearing both sides and perusing the records, the Appellate Court allowed the appeal by reversing the judgment and decree of the Trial Court. Aggrieved by the said judgment and decree passed by the First Appellate Court dated 22.12.2017, the present Second Appeal has been filed by the plaintiff.



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9.This Court, at the time of admitting this Second Appeal, framed the

following substantial questions of law:

‘1.In the absence of any pleading in the written statement or evidence during trial or issue to that effect, whether the defendants are entitled to claim adverse possession?’

2.After finding that the plaintiff has proved her title whether the First Appellate Court was right in holding that mere long possession of defendants would become adverse to the plaintiff’s title?’

10.Learned counsel for the appellants would submit that the plaintiff is the owner of the property and she purchased the same from one Vadivel and Krishnan through a registered Sale Deed dated 25.12.1978. The first defendant is her husband's brother's daughter and thereby, she permitted the first defendant to reside along with the second defendant, who is the husband of the first defendant and for more than 10 years, they are in possession and enjoyment of the same in view of the permissive possession. While so, the defendants are claiming right over the property

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and acted against the interest of the plaintiff. Therefore, the plaintiff requested the defendants to vacate the premises and they failed to do so and therefore, the plaintiff filed the suit for the relief of declaration and recovery of possession.

10.1.Learned counsel for the appellants further submitted that pending case, the plaintiff died and therefore, her legal heirs were brought on record. He would further submit that the claim of the defendants is that the property belonged to one Chinnakannu Pillai, who had 3 sons and 2 daughters and the plaintiff and the first defendant are the one of the legal heirs of Chinnakannu Pillai. Thereafter, the plaintiff and her husband, based on the family arrangement took place in the year 1985, handed over the property to the first defendant. But there is no proof for the above said family arrangement. In order to prove the case of the plaintiff, she was examined as PW1 and she marked Exs.A1 to A5 and on the side of the



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defendants, no documents were marked, but two witnesses were examined as DW1 and DW2. During the evidence of the plaintiff, she has stated about the purchase of the property and the construction put up by her and also the permissive possession given to the defendants. Ex.A1 is the Original Sale Deed executed in favour of the plaintiff dated 25.12.1978 and Ex.A3 is the Chitta extract and Ex.A4 is the certified copy of the Sale Deed executed in favour of the vendor of the plaintiff. Therefore, the plaintiff has proved her title and the defendants have failed to prove their contentions that they are entitled to the property.

10.2.Learned counsel for the appellants submitted that the plaintiff, being the title holder, permitted the defendants to reside for some time and their possession is permissive possession and the defendants have taken a plea of adverse possession. The Trial Court, after considering the evidence adduced on both sides, decreed the suit. However, the First Appellate



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Court, only based on the cross examination of the defendants stating that the defendants are occupying the property from the year 1988, came to the conclusion that the defendants are entitled to adverse possession. Therefore, without any pleading or evidence, the First Appellate Court has decided the adverse possession. Though the First Appellate Court, admitted the title of the property, only based on the oral evidence without any documents and pleading, decided the adverse possession and therefore, the judgment and decree passed by the First Appellate Court is liable to be set aside and the judgment and decree passed by the Trial Court has to be restored by allowing this Second Appeal.

11.Learned counsel for the respondents would submit that originally, the suit property belonged to Chinnakannu Pillai, father in law of the plaintiff. The first defendant is the grand daughter of Chinnakannu Pillai through his son Jayarama Pillai. Chinnakannu Pillai had 3 sons and 2



daughters. The plaintiff is the daughter of one Parvathy and the plaintiff got married to one Kothanda Pillai. The plaintiff has filed the suit as if she purchased the property through a Sale Deed dated 25.12.1978 and permitted the defendants to reside in her property. Learned counsel for the respondents further submitted that an oral arrangement took place in the year 1985 between three brothers to divide the family property. The first son has agreed to give his share to his brother Kothanda Pillai, who is the husband of the plaintiff. In lieu of the same, the plaintiff and her husband agreed to give the suit property to the daughter of Jayarama Pillai, the first defendant herein. Therefore, the first defendant is in possession and enjoyment of the property from the year 1985 till date. She had also put up a construction out of her own funds. The plaintiff and her husband promised to execute the Release Deed, but they failed to do so. The plaintiff examined herself as PW1 and marked Exs.A1 to A5 and on the side of the defendants, they examined DW1 and DW2 and no documents were marked.



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11.1.Learned counsel for the respondents would further submit that the Trial Court erroneously came to a conclusion that the defendants failed to examine one Rajendran or Jayarama Pillai or anyone of their relatives to prove that the oral family arrangement took place in the year 1985 between 3 brothers to divide the family property and the suit property till date, stood in the name of the plaintiff and to claim the adverse possession, the precise date from which the respondents' possession became adverse to the plaintiff has to be proved by the defendants and decreed the suit. The First Appellate Court, based on the admission made by PW1 in her evidence that the house was built by the defendants and they are in possession from the year 1988 itself and therefore, the plaintiff has not filed the suit within 12 years from the date of the alleged trespass by the defendants, has held that the suit is barred by limitation and the suit has to be instituted within 12



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years and therefore, the plaintiff, who filed the suit, has to prove her suit filed for declaration and recovery of possession.

11.2.Learned counsel for the respondents further submitted that the plaintiff has not denied the family arrangement either by way of a reply statement or by way of her cross examination. Therefore, the plaintiff is not entitled to the relief and the First Appellate Court has passed the well reasoned judgment and there is no substantial questions of law involved in this case and this Second Appeal is liable to be dismissed.

12.This Court heard both sides and perused the records.

13.In this case, the plaintiff has filed the suit for declaration and recovery of possession as against the defendants. According to the plaintiff, she purchased the property from one M.Vadivel and Krishnan through a



Sale Deed dated 25.12.1978 and she put up construction and she has been in possession and enjoyment of the property. The first defendant is none other than the plaintiff's husband's brother's daughter. The plaintiff permitted the defendants to reside in her property and accordingly, the possession of the defendants is permissive possession.

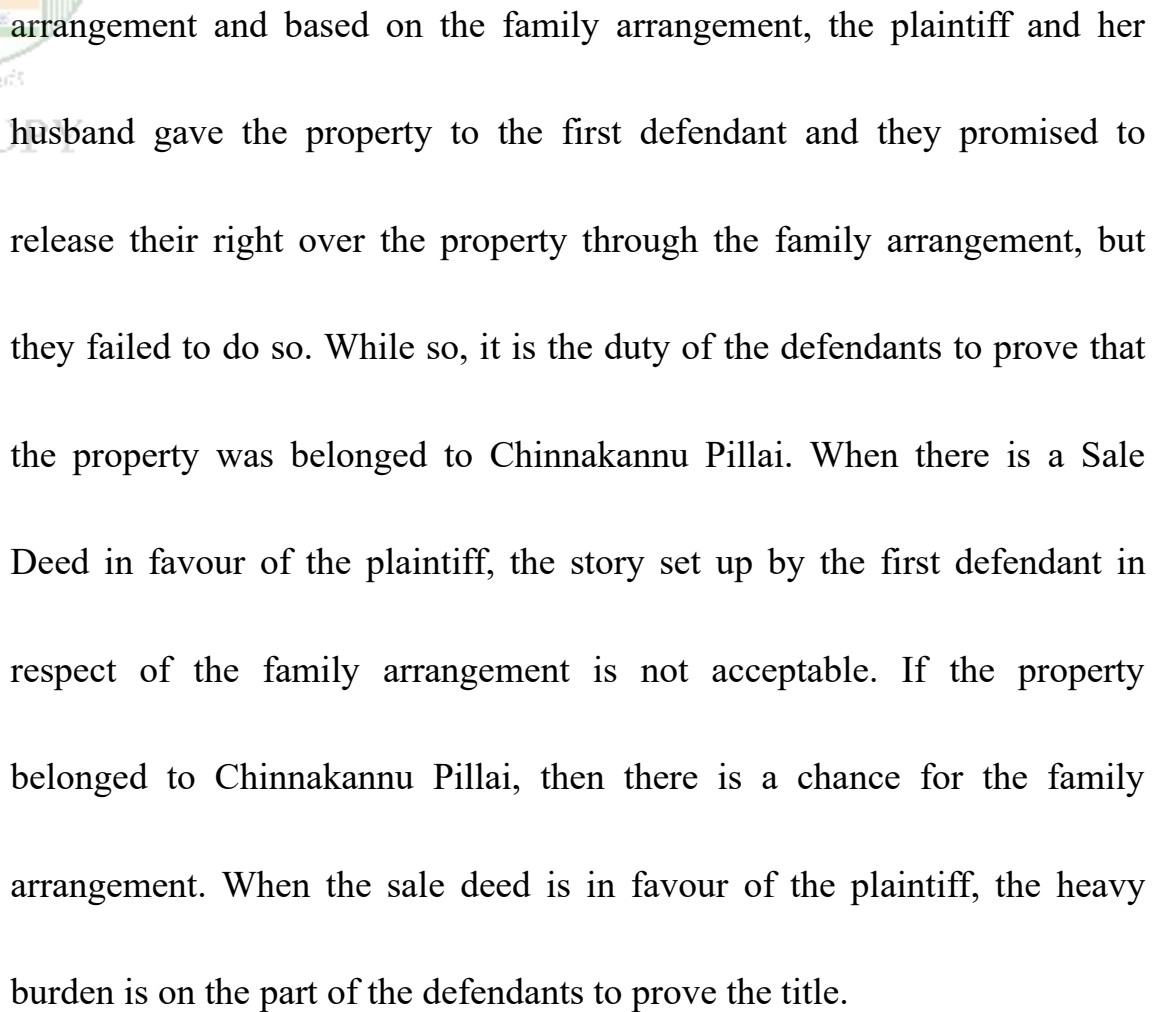
14. In order to prove her case, she examined herself as PW1 and she marked A1 to A5. Ex.A1 is the original sale deed executed in favour of the plaintiff. Ex.A2 is the plaint plan copy. Ex.A3 is the Chitta extract. Ex.A4 is the Certified copy of the sale deed executed by one Narasima Mudaliar in favour of Vadivel Vagayara and Ex.A5 is the certified copy of the Sale deed executed by Krishnan in favour of Vadivel Naicker. On the side of the defendants, DW1 and DW2 were examined and no documents were marked.



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15.The contention of the defendants is that the property originally belonged to one Chinnakannu Pillai, who had 3 sons and 2 daughters. The plaintiff is the daughter in law of Chinnakannu Pillai and she got married to one Kothanda Pillai, one of the sons of Chinnakannu Pillai. The first defendant is the daughter of Jayarama Pillai and grand daughter of Chinnakannu Pillai. As per the family arrangement in the year 1985, the property was allotted to the first defendant by the plaintiff and her husband and thereby, the first defendant had put up construction in the property and she is in possession and enjoyment of the same. Therefore, the plaintiff has no right or interest over the property.

16.On a careful perusal of the documents and the evidence of PW1, they revealed that the property was purchased by the plaintiff through a Sale Deed dated 25.12.1978 and she was in possession and enjoyment of the property. The defendants set up a plea that there was a family



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and the defendants also admitted their possession. The oral and documentary evidence adduced by the plaintiff proved the title and thereby the contention of the plaintiff that the defendants were permitted to reside in her property and their possession is permissive possession is acceptable. Therefore, she is entitled to the relief of declaration and recovery of possession.

18. On a careful perusal of the judgment and decree of the Trial Court, it revealed that the plaintiff has proved her case through oral and documentary evidence and the defendants failed to prove the family arrangement said to have taken place and the Trial Court has correctly decreed the suit. But the First Appellate Court, merely placing the reliance on the one word admitted by the plaintiff that the first defendant has put up construction in the year 1988, had erroneously held that the plaintiff has not filed the suit within the period of limitation. When the defendants set up a



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plea that the property belonged to Chinnakannu Pillai and the sons of Chinnakannu Pillai orally partitioned the property in the partition and the property was allotted to the first defendant, it is the duty of the first defendant to prove the same. Having failed to prove the same, the contention of the defendants is not acceptable.

19.The case of the plaintiff is that she has purchased the property and permitted the defendants in her possession. Therefore, the defendants, who were in permissive possession, cannot claim adverse possession and the First Appellate Court, miserably failed to understand the concept of adverse possession and erroneously allowed the appeal and dismissed the suit.

20.As far as first substantial question of law, i.e., in the absence of any pleading in the written statement or evidence during trial or issue to that effect, whether the defendants are entitled to claim adverse possession



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property orally and the defendants have also not pleaded about the adverse possession and only contended that they are in possession of the property for more than 25 years. It is well settled law that mere long possession is not sufficient to prove the adverse possession. There must be proper pleadings and evidence to prove the adverse possession. However, the First Appellate Court in the judgment has observed that PW1 in her evidence has stated that in the year 1980 the first defendant was married and after that only, the first defendant has come into possession of the property and also stated that without her consent, the first defendant had come into the possession of the property. So the case of the plaintiff that permissive possession was given before 10 years of filing the suit was not true as pleaded by the plaintiff because as per pleadings, in the year 1988, permissive possession has been given to the first defendant. In her evidence, she has stated that without her consent, the first defendant was in possession and enjoyment of the property and therefore, the first defendant is in possession for a period of 28 years and there has been no permissive



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above said findings are erroneous and the same are unsustainable and liable to set aside. Thus, the first substantial question of law is answered.

23. As far as second question of law, i.e. after finding that the plaintiff has proved her title whether the First Appellate Court was right in holding that mere long possession of defendants would become adverse to the plaintiff's title is concerned, according to the plaintiff, the defendants are in permissive possession. According to the first defendant, the property was allotted to her through a family arrangement. The said family arrangement has not been proved. Therefore, the plaintiff has clearly established the title of the property in her favour through sufficient evidences and she also filed records and the defendants, without any evidence, cannot occupy the property and therefore, the possession of the defendants is permissive possession.



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24. In this context, the Trial Court also in the judgment discussed that as per the pleadings in the written statement as well as the evidence, the family arrangement took place in the presence of one Rajendran and one Jayaram Pillai, but the defendants failed to examine them as witnesses and examined one Vijayan as DW2 and his evidence, which clearly established that he is only a hear say evidence and he has not known anything about the family arrangement. To prove the family arrangement, the defendants failed to examine the witnesses in whose presence the said family arrangement was made.

25. In the absence of any records, mere oral evidence cannot over ride the documents registered in accordance with law. The Trial Court also held that the defendants have deliberately failed to prove through oral and documentary evidence that the suit property was given in exchange of the property to the defendants herein by the plaintiff. The defendants also



admitted that the property till date stood in the name of the plaintiff and it was purchased in her name in the year 1978. The plaintiff also stated that due to close relation between the plaintiff and the defendants, the defendants were permitted to reside in the portion of the suit property and before 10 years they are trying to put up temporary superstructure and the plaintiff requested to hand over the possession of the property and therefore, as per Article 64 and 65 of the Limitation Act, the limitation is 12 years from the date of his possession or when the title becomes adverse to the plaintiff, who is the title holder.

26. In the absence of any proof for the plea raised by the defendants that they are in possession, based on the family arrangement from the year 1985, the version of the plaintiff has to be accepted and therefore, on the date of notice issued by the plaintiff, it has to be treated as denial of the possession by the defendants. Therefore, there is no adverse possession and



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the suit was filed in the year 2012 and therefore, the Trial Court has correctly applied the law and appreciated the facts and evidences in a proper perspective manner. But the First Appellate Court erroneously set aside the decree and judgment of the Trial Court and therefore, the defendants are not entitled to claim adverse possession. Moreover, they did not claim any adverse possession, but the First Appellate Court itself decided the adverse possession and the limitation even without any issues.

27.Learned counsel for the appellants relied upon the following judgments:

a)D.N.Venkatarayappa vs. State of Karnataka reported in 1997 SCC Online SC 97;

b)M.Durai vs. Muthu and others reported in 2007 SCC Online SC 67;



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c)Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and

others reported in 2008 SCC Online SC 1439;

d)Mohan Hirachand Shah vs. Geeta Kumarchand Shah and others

reported in 2024 SCC Online SC 4077;

e)Kishundeo Rout and others vs. Govind Rao and others reported in

2025 SCC Online SC 1665.

28.On a careful perusal of the judgments relied upon by the learned counsel for the appellants, it is clear that if the purchaser continues to remain in possession in his own right dehors the title, necessarily he is required to plead and prove the date from which he disowned the title of the true owner and began to assert his own title adversely. In the absence of any such plea or evidence establishing the point of time at which his possession became hostile to the real owner, a claim of adverse possession against the original owner cannot be accepted at the appellate stage.



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29. As far as the burden of proof is concerned, the party who pleaded adverse possession has to prove the same and if the plaintiff proved his title, the burden shifts to the defendants to establish that they had extinguished the title by perfecting their own title through adverse possession. Though the party has been in adverse possession without proper pleadings or proof, the party cannot be entitled to the relief of adverse possession. Furthermore, when no case of acquisition of title by adverse possession is made in the pleadings, nor is the question raised directly or indirectly, the party ought not to be allowed to succeed upon such a case. The true test for permitting a plea of title by adverse possession, even though it has not been specifically raised in the pleadings, is to determine whether the opposite party is likely to be prejudiced if such a plea is allowed to be taken. Unless the plea of adverse possession has been specifically raised in the pleadings, put in issue and evidence is



adduced affording the opposite party an opportunity to review the case, the plea of adverse possession cannot be allowed to be raised for the first time in appeal.

30. In the case on hand, the First Appellate Court, without any pleadings, has decided that the possession is adverse to the plaintiff. Therefore, the Appellate Court has not applied the law correctly and the judgment and the decree passed by the First Appellate Court are unsustainable.

31. Learned counsel for the respondents relied upon the following judgments:

a) K.K. Modi vs. K.N. Modi and others reported in AIR 1998 SC 1297;

b) Narayan Bhagwantrao Gosavi Balajiwale vs. Gopal Vinayak

Gosavi and others reported in 1959 SCC Online SC 54;



c)Amrendra Pratap Singh vs. Tej Bahadur Prajapati and others

reported in 2004 (10) SCC 65;

d)Chinnappa vs. Peddanna @ Venkatasamy and others (S.A. No.383

of 1999);

e)Kannappan (died) vs. K.Vasanthi and another (S.A. (MD) No.493

of 2016;

f)Ravinder Kaur Grewal and others vs. Manjit Kaur and others

reported in 2019 (8) SCC 729;

g)Narendra Kumar Tripathi vs. Karuna Auddy and others reported in

2020 (3) SCC 220.

32.On a careful perusal of the judgments relied upon by the learned counsel for the respondents, it is clear that a plaintiff who bases his claim on title has to prove not only the title but also possession within 12 years preceding the suit based on Article 65 of the Limitation Act. A suit for



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possession based on the title has to be filed within 12 years when possession becomes adverse to the concerned plaintiff. Further it is clear that adverse possession includes dealing with ones' property which results in extinguishment of the true owner's title in the property and vesting the same in the person in possession thereof and thus amounts to transfer of immovable property in a wider sense. It is for the party, who taken a plea of adverse possession, has to prove the adverse possession. The remedy is available not only to a person who has perfected title to the property by adverse possession, but also to a person in settled possession who is yet to perfect such title and once the statutory period of twelve years of adverse possession is completed, the earlier title stands extinguished and the possessory owner acquires the right, title and interest possessed by the outgoing person/owner against whom he has established the period of prescription.



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33. In the case on hand, according to the plaintiff, she is the owner of the property and she permitted the defendants to occupy the property and the defendants are in permissive possession. According to the defendants, they are in possession and enjoyment of the property from the year 1985 through family arrangement. When the defendants failed to prove the family arrangement on the date of refusal to vacate the premises, is the starting point of limitation. According to the plaintiff, in the year 2004 after the defendants refused to vacate the premises, she filed the suit in the year 2012. Therefore, the Trial Court has correctly decreed the suit and First Appellate Court erroneously allowed the appeal by dismissing the suit.

34. It is well settled law that mere long possession of the defendants would not become adverse to the plaintiff's title. The defendants have to prove the continuous possession to the knowledge of the plaintiff for the statutory period of 12 years. In the present case, the defendants have not



admitted the title of the plaintiff and they claim themselves to be the owners of the property. Therefore, the First Appellate Court was wrong in holding that mere long possession of the defendants would amount to adverse possession. Thus, the substantial questions of law are answered.

35. In view of the above said discussions, the judgment of the Appellate Court is unsustainable and the same is liable to be set aside. Accordingly, this Second Appeal is allowed and the judgment and decree passed by the Subordinate Judge, Kanchipuram made in A.S. No.27 of 2012 dated 22.12.2017 are set aside and the judgment and decree passed by the Principal District Munsif, Kanchipuram made in O.S. No.267 of 2008 dated 22.02.2012 are restored. No costs.

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Index: Yes / No

Speaking order / Non-speaking order

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1.The Subordinate Judge,
Kanchipuram.

2.The Principal District Munsif,
Kanchipuram.



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P.DHANABAL,J.

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