



A.S.No.804 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 10.06.2025

Pronounced on: 20.06.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.804 of 2023
& C.M.P.No.28541 of 2023

1. Govindan,
S/o. Krishnan,

2. Shanmugam,
S/o. Govindan,

3. Gunasundari,
W/o. Govindan,
All are residing at New No.21, Old No.2/37,
Nallandimastri Street, Karamanikuppam,
Puducherry-605 004.

... Appellants/Defendants

/versus/

N.Thulasingham,
S/o.Nataraja Boopathi,
No.19, Nallandimastri Street,
Karamani Kuppam,
Puducherry-605 004.

... Respondent/Plaintiff

Appeal Suit has been filed under Section 96 read with Order 41 & 41 (A) of Code of Civil Procedure and Order IV of Madras High Court Rules, Appellate Side Rule, pleaded to set aside the judgment and decree dated 15-12-2020 passed in O.S.No.2 of 2014, on the file of the Learned III Additional District Judge, Puducherry.



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For Appellants : Mr.N.Manoharan,
for Mr.Prakash Adiapadam

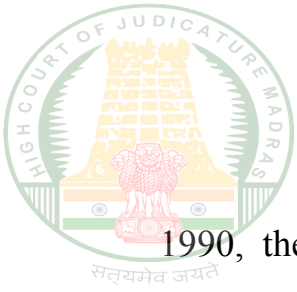
For Respondent : Mr.J.Srinivasa Mohan,
for M/s.TVJ Associates.

J U D G M E N T

The suit is filed for declaration and possession was allowed by the trial Court. Hence, the aggrieved defendants are before this Court through Appeal Suit.

2. The averments in the plaint are as below:-

Rajambalambal @ Rasambalambal is the paternal grandmother of the plaintiff. She settled the suit property in favour of the plaintiff and his brother Krishnamoorthy through a registered settlement deed dated 03.01.1957. At that time, both the beneficiaries were minors hence their father Nataraja Boopathi was appointed as guardian. Rajambalambal died on 24.05.1967. Krishnamoorthy, the brother of the plaintiff died on 19.06.1962. The plaintiff attained majority in the year 1969. The plaintiff's father died on 21.03.1985. After attaining majority, the plaintiff is in exclusive possession and enjoyment of the property. In the year



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1990, the 1st defendant, a distant relative of the plaintiff was engaged by the plaintiff for constructing a house at Cuddalore. The 1st defendant and his family members were permitted to stay in the suit property and supervise the construction work. Even after completion of construction, the 1st defendant and his family continued in possession of the suit property as a permissive occupant. Since the plaintiff was employed in the Government service, he was a landlord *in absentee*. Taking advantage of his absence, the defendants gained access to the suit property by creating documents and started claiming ownership by adverse possession. They are presently occupying 16 x 20 feet of suit property in the building put up by the plaintiff. On 26.08.1994, the 1st defendant agreed to vacate the place and executed a deed of handing over possession. Instead of vacating the building, the defendants started altering the structure. After giving criminal complaint and notice terminating the permission granted to occupy, the suit for declaration and delivery of possession is filed.

3. The averment in the written statement:-

In the written statement, the defendants have resisted the suit on the ground of maintainability. According to the defendants, the suit property belongs



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to their paternal grandfather Kuppusamy. The said Kuppusamy had two sons namely, Nataraja Boopathi and Duraivel. Nataraja Boopathi married one Mangavaram and had three children, namely, N.Thulasingam (the plaintiff), Krishnamoorthy (deceased) and Gunasundari (3rd defendant). Nataraja Boopathi, owned two houses, gave one thatched house to his daughter (3rd defendant) and another tilted house to the plaintiff. The defendants are residing in the house constructed on the suit property and the plaintiff resident next to the suit property. The 1st defendant, along with his wife, (the 3rd defendant) and their children are living in the suit property without any interruption from any body. The house in the suit land was built by the 1st defendant from out of his income. The suit property was mortgaged by Nataraja Boopathi to conduct his daughter's marriage. The mortgage was redeemed by the 1st defendant. In the year 1989, the 1st defendant demolished the thatched structure and put up a building over it and residing in the house. On 25.07.1989, due to fire mishap, the 1st defendant house got gutted. Subsequently, in the year 1990, the plaintiff agreed to sell the suit property to the 1st defendant, but despite persistent demand and legal notice, he had not come forward to sell the property. The undertaking letter dated 26.08.1994 not given effect, hence his possession of the property is adverse to the



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plaintiff. The suit for declaration and possession is not maintainable and shoutly resisted.

4. In his written statement, the 1st defendant further alleged that the plaintiff has borrowed money from him and as on date Rs.1,09,000/- is payable to him. The 2nd defendant is not a necessary party. Hence, the suit is liable to be dismissed on the ground of misjoinder of parties.

5. Based on the pleadings, the trial Court framed the following issues:

1. *Whether plaintiff is entitled to a declaration that he is the owner of suit property?*

2. *Whether D1 to D3 are entitled to vacate the suit property and hand over possession to the plaintiff?*

3. *Whether the agreement dated 01.08.1990 is a forged one?*

4. *Whether plaintiff claim is barred by the doctrine of Estoppel?*

5. *Whether suit is bad for mis-joinder of parties?*

6. *To what other relief, the plaintiff is entitled to?*



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6. On the side of the plaintiff, the plaintiff graced the witness box and marked 19 Exhibits (Ex.A.1 to Ex.A.19). On the side of the defendants, the 1st defendant Govindan and one Sekar were examined as D.W.1 & D.W.2 and marked 23 Exhibits (Ex.B.1 to Ex.B.23).

7. The trial Court held that the plaintiff has proved his title by way of documentary evidence. Whereas, the 1st defendant had pleaded adverse possession, failed to adduce reliable evidence that his possession was adverse to the plaintiff. The document dated 01.08.1990 purported to be an agreement to sue the premises held by the trial Court not proved. Hence, the trial Court allowed the suit, declaring the plaintiff is absolute owner of the suit schedule property with direction to the defendants to vacate the property and handover the possession within two months.

8. Grounds of appeal:-

The appeal is filed by the aggrieved defendants on the ground that the trial Court failed to consider the evidence which show that the defendants was in continuous possession without any interruption for more than 12 years and



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thereby, perfected their title by adverse possession. The trial Court ought to have fixed 16.01.1995 as the starting point of limitation and dismissed the suit as barred by limitation. The plaintiff has not filed any document to prove his title. After executing a mutual sale agreement Ex.B.4 in favour of the first defendant and relinquishing his right in the suit property, the plaintiff has lost any semblance of right or title in the suit mentioned property. The defendants, who are residing in the suit property for more than 25 years with the knowledge of the plaintiff and exclusion of the plaintiff cannot be termed as a permissive occupant. From the year 1988, the defendants are in continuous possession till their possession was disturbed in the year 2013. This forced the defendants to file an injunction suit in O.S.No.1617 of 2013, before the District Munsif Court, Pondicherry and obtained interim injunction, restraining the plaintiff from forcibly evicting the defendants.

9. The Learned Counsel appearing for the appellants, referring Ex.B.4, dated 01.08.1990, submitted that the plaintiff had admitted that the defendants put up the construction in the year 1988 worth Rs.75,000/- in the suit property and residing in the house. In order to clear his debt, the plaintiff has decided to sell his house and therefore, agreed to sell the property and execute the



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sale deed within 10 years. This document (Ex.B.4) admits several facts which are adverse to the plaintiff's case. The Court below not properly appreciated Ex.B.4.

10. Point for determination:-

Whether the plaintiff proved his claim that the defendants occupation in the suit premises was only with his permission and not adverse to him after executing Ex.A.11?

11. For the sake of convenience, the parties are described as per their status and ranking in the original suit.

12. The suit for declaration of title and recovery of possession, is filed by the plaintiff (brother) against his sister, brother- in-law and sister's son.

13. The plaintiff traces his title through Ex.A-1, a settlement deed dated 03.01.1957 executed by his paternal grandmother Rajambalambal @ Rasambalambal W/o.Gangadara Padayachi. Under Ex.A-1, the settlor Rajambalambal reserving the right of enjoyment of income from the properties



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alone till her lifetime, had given the suit property and two other properties absolutely to the plaintiff and his brother Krishnamoorthy, who were minors at that point of time. Nataraja Naicker, who is the father of the plaintiff was appointed as guardian for the minors property. Krishnamoorthy, one of the beneficiaries in the settlement deed, died before attaining majority. The plaintiff attained majority in the year 1969. Since then, he is in absolute enjoyment of the property. His father Nataraja Naicker @ Nataraja Boopathi died on 21.03.1985. The plaintiff says that around 1990, he permitted the defendants 1 and 3 to occupy the house in the suit property to look after the construction work on his behalf at Cuddalore. Even after the completion of the construction, the plaintiff allowed the defendants to continue to live in the suit property. Later, Panchayat was convened on 26.08.1994, in the presence of elders. Accounts were exchanged and reconciled. The plaintiff agreed to pay Rs.87,500/- to the first defendant. In turn, the defendants agreed to vacate the suit property on receipt of the said money from the plaintiff. It was also agreed that the first defendant shall remove the grill gate before vacating the suit property. The first defendant has to construct a house by 15th January 1995. In case of default in payment, the defendants shall vacate the premises on receipt of the said amount. Till the date of payment, the plaintiff has



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to pay interest at the rate of 30% to the defendants.

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14. The case of the plaintiff is that the defendants did not vacate the suit premises as per the letter of undertaking Ex.A.11, he did not construct house of his own, by 15.01.1995 as agreed. Contrarily altered the first floor structure in the suit land. On 29.07.2013, the plaintiff lodged the complaint (Ex.A-12) to the Orleanpet Police Station, but they did not interfere in the matter stating that it is a civil dispute and to seek redressal in the Court. Immediately, the plaintiff through Lawyer issued notice on 17.09.2013 (Ex.A.14) intimating the termination of permission granted to occupy and calling upon the defendants to vacate the property and hand over the vacant possession within 30 days.

15. In the cross examination, the plaintiff claims that he paid Rs.87,500/- to the first defendant through one Thiru.Sarangapani one of the Panchayatar and got the receipt for the payment. However, the plaintiff did not plead so in the plaint nor he filed receipt to show the payment of Rs.87,500/- to the first defendant, pursuant to Ex.A.1.



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16. The defendants have pleaded in the written statement that the plaintiff is not the absolute owner of the suit property. They deny that the first defendant and his family occupying the suit property in the year 1989 with the permission of the plaintiff. The first defendant is not a distant relative of the plaintiff, who came to the suit property to supervise the construction work at Cuddalore. In fact, the first defendant is the husband of plaintiff's sister, who is the third defendant in the suit. The first defendant married the third defendant on 09.11.1979. For delivery of the child, the third defendant came to her parents house. After delivery, her father Nataraja Boopathi, along with her brother Thulasingham (plaintiff) wanted her to stay with them in Pondicherry. Nataraja Boopathi, had two houses, one a thatched house and another a tiled house. Nataraja Boopathi offered the thatched house to the third defendant (Gunasundari) to stay with her family. Thus, the defendants came to reside in the suit property. His four children were born in that house. The property was mortgaged during the lifetime of Nataraja Boopathi for the marriage of his daughter. The property was redeemed from mortgagor by the first defendant. The first defendant from out of his income re-constructed the house which bear the Door No:21 (Old No:2/37). The plaintiff is residing in the next house bearing Door No:19 (Old No:2/36). The



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defendants gave loan of Rs.1,00,000/- to the plaintiff to settle the litigation with the neighbouring land owner and another Rs.9,000/- to meet out his personal expenses. The plaintiff gave an undertaking on 01.08.1990 in a form of agreement to sell the suit property to the defendant within 10 years from the date of agreement.

17. To prove all the above contentions, the defendants failed to produce documentary evidence. The only document, the defendants could place before the Court is Ex.B.4, a sale agreement purported to have been executed by the plaintiff. Most of the defence exhibits are subsequent to the filing of the suit and not perused documents.

18. Apart from denying the plaintiff's claim of absolute title in the suit property and agreement to sell the property, an alternate plea of adverse possession also taken by the defendant by stating, the plaintiff claims that on 26.08.1994 settlement arrived between him and the defendant in which the defendant agreed to vacate the house after receiving Rs.87,500/-. The plaintiff had not paid the money, the defendant had not vacated the house. The limitation for



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adverse possession commences from 26.08.1994, the date on which the said agreement Ex.A.11 entered. The possession of the defendants has become adverse to the right of the plaintiff and after lapse of 12 years, the title is perfected due to continuous and uninterrupted enjoyment. The pre-suit notice Ex.A.14 dated 17.09.2013 suitable reply under Ex.A.18 dated 17.10.2013.

19. Apart from the self destructive and mutually contradictory plea of denial of title and adverse possession, this Court also find the defendants have also ventured to file a suit for permanent injunction before the District Munsif Court, Puducherry in O.S.No.1617 of 2013 and had obtained interim injunction in I.A.No.1491 of 2013 on 3rd March 2015 (Ex.B.2) in respect of plot and single storeyed building bearing New Door No: 21, (Old No:2/37), Nalladi Mastri Street. In this suit, the defendants have claimed that the property originally belong to one Kuppusamy. He, by oral partition gave the property to his sons Nataraja Bhoopathi and Duraivel. The daughter of Nataraja Boopathi, who is the wife of the defendant is living in the house along with her family. His possession is disturbed by Thulasingham S/o.Nataraja Boopathi (the plaintiff in the present suit). This Court hold that by filing the suit for injunction claiming that his wife got the suit



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property by oral partition, later contra plea of adverse possession is self destructive.

20. In the cross examination, the first defendant had admitted that the suit property originally held by Rajambal sister of Nataraja Bhoopathi and admits that he wrongly stated in O.S.No.1617 of 2013 filed by him for injunction, that the property originally held by Kuppusamy. He admits the execution of Ex.A.11= Ex.B.1 (the agreement between the parties on 26.08.1994)

21. Ex.B.4 is dated 01.08.1990. It is a sale agreement purported to have been executed by the plaintiff in favour of the first defendant. The document (Ex.B.4) is the lynch pin of the defendant's case. The defendants relies on this document (Ex.B.4) as proof for constructing the house in the year 1988 from out of his funds at a costs of Rs.75,000/- and as proof for admission by the plaintiff that he will execute sale deed in favour of the 3rd defendant within 10 years, after clearing the bank loan, availed by him subjecting the suit property as security. The execution of this document (Ex.B.4) is denied by the plaintiff. This document does not bear the signatures of witnesses. No oral evidence to prove the due



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execution of this agreement let in by the defendants.

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22. In the proof affidavit filed in lieu of chief examination, he had sworn that pending suit, he had filed I.A.No.738 of 2015 under Order XXVI Rule 10 A of C.P.C., to get expert opinion on the disputed signature in Ex.B.4. The trial Court dismissed the application. Against the dismissal order, he preferred C.R.P.(PD).No.4440 of 2015 and the same was dismissed with liberty to file appropriate application after marking of the said document.

23. The defendants have not taken effective steps for comparison by expert after the purported sale agreement got admitted in evidence by assigning Exhibit number Ex.B.4. The trial Court, while considering the issue about Ex.B.4, had observed that though opportunity to the defendant was provided to compare the signature in the disputed document with the admitted document, he had not taken steps to furnish contemporaneous admitted signature of the plaintiff. Hence, after comparing the admitted signature found in Ex.B.1 with the disputed signature in Ex.B.4 held that though there is resemblance but not signed by same person. Further, the trial Court has also observed that the plaintiff was serving as Police



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Constable in Puducherry Government. Therefore, getting contemporaneous

document containing the admitted signature of the plaintiff is not difficult.

Having failed to pursue the application and in the absence of witness to the disputed document Ex.B.4, held the issue against the defendant.

24. Apart from failure to prove Ex.B.4, for other reasons also, Ex.B.4 is not worthy for consideration to decide the suit. Ex.B.4 is dated 01.08.1990. The recital in the agreement indicates that the plaintiff had borrowed loan from the bank and after clearing the loan, he will execute the sale deed. The time for completing the contract is fixed as 10 years. It is very unique and un-natural for any agreement for sale of immovable property to fix 10 years time. This document is relied by the defendants for the purpose of establishing that the house in the suit land was constructed by him investing around Rs.75,000/-. It is not worthy of consideration after the parties have entered into an agreement on 26.08.1994 (Ex.A.11) which is not disputed. By admitting this document namely, Ex.A.11 which contains recitals in the nature of superseding the agreement entered earlier. Therefore, even if Ex.B.4 is held to be true, it will not help the case of the defendants either to claim right in the property as a sharer or by adverse



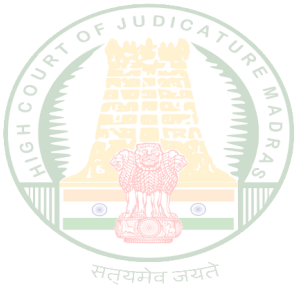
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possession.

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25. According to Ex.A.11 = Ex.B.1, in the presence of Panchayatar, the accounts between the plaintiff and the first defendant had been reconciled and both have mutually agreed that, the plaintiff has to pay a sum of Rs.87,500/- to the first defendant. On receipt of the said money, the defendants have to vacate the house, removing the grill gate fixed by him in the suit property. The defendants has to construct house of his own by 15.01.1995. In case of delay in paying this money beyond 15th January, 1995, the plaintiff is liable to pay interest at the rate of 30%. The plaintiff, in his cross examination had deposed that he gave this money to Sarangapani, who was one of the Panchayatar. However, to substantiate this claim, the plaintiff had not produced any receipt or examined the said Sarangapani to prove the payment.

26. Thus, it has to be held that, agreement Ex.A.11 not given effect till date. As a consequence, the defendants are still in possession and enjoyment of the property. Whether such enjoyment and possession will blossom into perfecting the title by adverse possession is the point left to be determined.



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27. The trial Court, while considering the plea of adverse possession raised by the defendants in his written statement, had observed that the defendants have not admitted the absolute title of the plaintiff to set up a claim of adverse possession against him. The defendants can take the plea of adverse possession only on admitting the title of the plaintiff and his possession was adverse to the plaintiff with his knowledge and was continuous without interruption. The defendants have not let in evidence to prove that his possession in the suit property was adverse to the plaintiff.

28. To successfully claim adverse possession, the person occupying the land must demonstrate continuous, open and hostile possession for more than 12 years. In this case, the possession of the defendants admittedly open and continuous but not hostile to the true owner.

29. This Court find that Ex.A.11, dated 26.08.1994 is a document admitted by both the parties. In this document, the defendants admit the suit property in occupation of the defendants belongs to the plaintiff and the

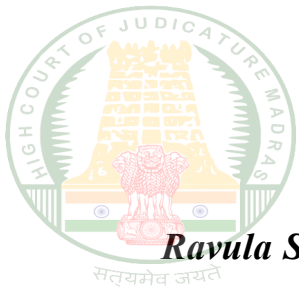


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defendants has agreed to vacate the premises after receiving Rs.87,500/- from the plaintiff, before 15.01.1995 he will construct a house for himself. Therefore, it is contended by the defendants/appellants that the plaintiff failed to pay Rs.87,500/-, hence the hostility commences after 15.01.1995, the date on which the plaintiff/N.Thulasingham was supposed to pay Rs.87,500/- and get possession.

30. The Learned Counsel for the respondent, referring to the default clause in Ex.A.11, submits that in case of failure to pay Rs.87,500/- within 15.01.1995, the 1st defendant/Govindan is entitled for interest at the rate of 30%. 15.01.1995 is not the last date for payment of Rs.87,500/- but the date before which the defendants to construct a house for himself to enable him to shift from the suit property. Hence, the occupation of the suit premises by the 1st defendant is not hostile to the title of the plaintiff but by implied consent. Therefore, the plea of adverse possession is not sustainable and the suit does not suffer any legal bar of limitation so long as the defendants have not expressly ousted the plaintiff.

31. The Learned Counsel appearing for the respondent/plaintiff relies on the judgment of the Hon'ble Supreme Court in *Narne Rama Murthy -vs-*



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Ravula Somasundaram and others reported in ***(2005) 6 SCC 614***, and submitted

that the trial Court had not framed any issue relating to limitation or adverse possession, since there is no express pleadings regarding limitation.

“5.....When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation.....”

32. In contrary, the Learned Counsel for the appellants relying on the recent judgment of the Hon'ble Supreme Court rendered in ***Nikhila Divyang***



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Mehta & another vs. Hitesh P.Sanghvi and others reported in ***2025 SCC Online***

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SC 779, contended that, Section 3 of the Limitation Act, 1963 contemplates that every suit instituted after the period prescribed under the Act shall be dismissed even if limitation has not been set up as a defence.

33. According to the Learned Counsel for the appellants, the Article 58 of the Limitation Act, 1963 prescribes three years as Limitation to file suit for declaration of title from the date of knowledge. In this case, refusal to vacate is known to the plaintiff in the beginning of 1995. Therefore, even without pleading in exercise of power under Section 3 of the Limitation Act, the trial Court should have dismissed the suit.

34. Further, relying upon the judgment of the Hon'ble Supreme Court in ***Union of India and others vs. Vasavi Cooperative Housing Society Limited and others*** reported in ***(2014) 2 SCC 269***, it was submitted that, in a suit for declaration of title, the burden is on the plaintiff to establish his case irrespective of whether the defendants prove their case or not. Therefore, the trial Court ought to have dismissed the suit on the ground that the plaintiff failed to prove his title.



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35. The plaintiff has proved his title in the property through the Ex.A.8 settlement deed executed by Rajambalambal. The contra title set up by the first defendant/Govindan through Kuppusamy, is wrong and fairly admitted by the first defendant himself in his cross examination. The plaintiff's case is that the defendants were put into possession to look after the construction activity. Whereas, the first defendant claims that he came to Pondicherry and stayed in the suit property at the request of Nataraja Boopathi. Either way his entry to the suit land was only on permission and not by trespass.

36. Continuous and open enjoyment of the property alone is not sufficient to claim adverse possession. The third element, namely '*hostile*' to the owner is the most important component. In this case, the third element is absent. Therefore, the possession of defendants 1 to 3 is not adverse possession.

37. There cannot be any contra view to what the Apex Court observed in the judgments cited by the Learned Counsel for the appellants. In the instant case, the knowledge of denying the right to possess and title had commenced only



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on 30.08.2000, the date when the defendants instituted suit in O.S.No.1617 of 2013 and taken on file, admittedly with false averment regarding the title to the suit property. As already discussed earlier, Ex.A.11, dated 26.08.1994, agreement is a mutual conditional agreement with default clause and consequences. The cause of action for seeking declaration does not arise through this document but only from the date of instituting the injunction suit by the defendants denying the title of the plaintiff herein.

38. As a result, the *Appeal Suit is dismissed*. The judgment and decree dated 15.12.2020 passed in O.S.No.2 of 2014, on the file of the Learned III Additional District Judge, Puducherry stands confirmed. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

20.06.2025

Index :Yes.

Speaking order/non speaking order

Neutral citation :Yes/No.

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To,

1.The III Additional District Judge, Puducherry.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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