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S.A.No.79 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **R.KALAIMATHI**

S.A.No.79 of 2023

1.Kannammal
2.Dhavasamuthu
3.Venkatachalam

... Appellants/Plaintiffs

Vs.

1.Pushpa
2.Kavitha
3.Kalaivanan
4.The Tahsildar,
Harur Taluk,
Dharmapuri District.
5.The Inspector of Police,
(Land Grabbing Cell),
Office at District Superintendent of Police,
Dharmapuri District.
6.The Government of Tamilnadu,
rep.by the District Collector,
Dharmapuri District.
7.B.Sivakumar

... Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C. to set aside the Judgment and decree dated 20.06.2022 passed in A.S.No.5 of 2018 on the file of the Subordinate Court, Harur, Dharmapuri District, confirming the Judgment and decree dated 11.12.2017 passed in O.S.No.18 of 2012 by the District Munsif Court, Harur.

For Appellants : Mr.C.Prabakaran

For R2 to R3 : Mr.N.Manokaran
for M/s.R.S.Selvam



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For R4 to R6 : Mr.P.Gurunathan
Addl.Govt.Pleader

For R7 : Mr.J.Pradeep

JUDGMENT

This Second Appeal has been preferred against the Judgment and decree dated 20.06.2022 made in A.S.No.5 of 2018 by the Subordinate Court, Karur by the plaintiffs herein.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. The case of the plaintiffs is that the suit property had been in possession and enjoyment of the suit property of the first plaintiff's husband, Varadharajan since 1980. Originally, the suit property belongs to the legal heirs of Rajaanna Chettiar. The defendants no.1 to 3 and the plaintiffs were in possession and enjoyment of the suit property for the statutory period and the first plaintiff and her husband Varadharajan have perfected title to the suit property through adverse possession.

3.1.Though originally the suit property belonged to Rajanna Chettiar and his legal heirs, they never enjoyed the suit property at any point of



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time. The first plaintiff and her husband cultivated the suit property and paid land tax to the Government. The first plaintiff's husband died before 11 years. After the death of said Varadharajan, his legal representatives namely, his wife and sons, plaintiffs no.1 to 3 have been in possession and enjoyment of the suit property. In consideration of the said enjoyment, revenue records were mutated in the name of first plaintiff in the year 2000. Plaintiffs have dug a well and constructed a house with asbestos roof to an extent of 450 sq.ft.. The first plaintiff has been paying house tax and electricity bills for the Service Connection No.657.

3.2. The defendants no.1 to 3 do not belong to the suit village and they hail from Salem. Chinnathambi, who is the brother of the first plaintiff's husband Varadharajan, never worked with his brother in the suit land. He was residing at Salem and he would come and demand her husband for a share in the suit property. It is learnt that the said Chinnathambi created some documents with the help of persons, who have no right or title over the suit property, and he died earlier.

3.3. While so, the defendants no.1 to 3 in the third week of October 2010, entered into the suit property and disturbed the possession and enjoyment of the plaintiffs. They were prevented by the villagers. Hence, on 04.11.2011, the first plaintiff caused to issue a legal notice to the



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defendants no.3 & 4. The defendants no.1 to 3 lodged a complaint before the 5th defendant - Inspector of Land Grabbing Cell, Dharmapuri, and on 26.01.2012, the police came to the suit property and damaged the crops. The 4th defendant has mutated the revenue records in respect of the suit property and the 7th defendant has purchased a portion of the suit property illegally from defendants no.1 to 3 by way of sale deed dated 19.06.2014. Hence, the suit is filed for declaration of title through adverse possession and for permanent injunction against defendants no.1, 3 & 5 so as not to disturb the peaceful possession and enjoyment of the suit property, and to declare the above said sale deed as null and void, as it stands in the name of 7th defendant.

4. Per contra, the defendants no.1 to 3 would *inter alia* contend that the details given in the plaint, to the effect that the first plaintiff, her husband Varadharajan, and her son have been in possession and enjoyment of the suit property are totally incorrect. It is also incorrect to state that the suit property originally belonged to Rajaanna Chettiar of Kambainallur. The plaintiffs are put to strict proof of the fact that they have been in possession and enjoyment of the suit property and that they have perfected title by adverse possession.



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4.1. It is not in dispute that the first defendant's husband Chinnathambi, is the brother of first plaintiff's husband, Varadharajan. The true state of affairs is that the first defendant's husband and the father of the defendants no.2 & 3 Karuppasamy @ Chinnathambi, were owning the land to an extent of 4.70 acres in S.No.135 (suit property), as per sale deed dated 22.12.1997. The plaintiffs do not have any right or title over the suit property. The suit property was in enjoyment of the said Chinnathambi till his lifetime and after his demise, defendants no.1 to 3 have been in possession and enjoyment of the suit property.

4.2. As the plaintiffs have encroached upon the suit property, the third defendant lodged a complaint before Dharmapuri Land Grabbing Cell in the year 2011, and a case was registered in Cr.No.14 of 2011. A joint patta was granted in the name of first plaintiff and the first defendant's husband. The defendants no.1 to 3 have been paying kist for the suit property.

5. The Trial court, based on the divergent pleadings, framed relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, the first plaintiff has examined herself as P.W.1 and one Thandavan, Murugan, Ramachandran have been examined as P.W.2 to P.W.4 respectively and Ex.A1 to Ex.A14 have been marked. Ex.A5, Ex.A11 and Ex.A12 are the



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kist receipts. Ex.A6 & Ex.A13 are the pattas stand in the name of first plaintiff Kannammal, Varadharajan and Rajanna Chettiar in respect of the suit property. Ex.A14 is the Adangal Extract in respect of the suit property stands in the name of Rajanna Chettiar for the fasli years 1396 to 1418. On the side of defendants no.1 to 3, first defendant has examined herself as DW1 and one Paramasivam and Mani have been examined as DW2 and DW3 respectively and Ex.B1 to Ex.B11 have been marked. Ex.B1 is the Original Sale Deed dated 22.12.1997 executed by K.N.Venkaraman, S/o.K.V.Nanji Chettiar in favour of Chinnathambi, S/o.Thannatchi Nadar in respect of 0.70 cents in suit survey number. Ex.B4 is the Chitta dated 05.08.2014 stands in the name of Varadharajan, H/o.Kannammal, (1st plaintiff), Pushpa W/o.Chinnathambi (D1), Kavitha, D/o.Chinnathambi (D2) and Kalaivanan, S/o.Chinnathambi (D3) in respect of the suit property. Ex.B5 dated 29.03.2014 is the xerox copy of Adangal in respect of the suit property which stands in the name of Smt.Pushpa Chinnathambi. The said Adangal- Ex.P.5 has been issued by the Village Administrative Officer, which cannot be relied upon, as he is not an Authorised Officer to issue documents as per the Revenue Standing Orders.

6. Upon consideration of oral and documentary evidence and after hearing the arguments advanced by the learned counsel for both sides, the Trial Court dismissed the suit.



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7. Aggrieved, the plaintiffs preferred Appeal before the Subordinate Court, Harur, Dharmapuri District in A.S.No.5 of 2018. The first Appellate Court on merits concurred with the findings of the Trial Court and dismissed the Appeal Suit.

8. The following substantial questions of law arise for consideration and the details are given hereunder :-

- i) Whether the findings of the Courts below are correct in holding that the suit was bad for non-impleadment of necessary parties when the necessary parties who made rival claims of the plaintiffs against whom the suit was filed have been impleaded?
- ii) Whether the Courts below erred in non-considering the exhibits marked by the plaintiffs to prove their possession in respect of the suit property for more than the statutory period against the defendants 1 to 3?
- iii) Whether plaintiffs are entitled to the relief of declaration based on the law of adverse possession who perfected their title against the defendants 1 to 3 ?



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9. The sum and substance of the case of the plaintiffs no.1 to 3 is that the suit property originally belonged to one Rajanna Chettiar of Kambainallur. The first plaintiff's husband Varadharajan had been in possession and enjoyment of the suit property for 30 years and above. Hence, the said Varadharajan and his wife, Kannammal first plaintiff have perfected title by adverse possession. It is the further case of the plaintiff that they dug a well and constructed a house with asbestos roof to an extent of 450 sq.ft. and have been in possession and enjoyment of the suit property.

10. It is an admitted fact that the first defendant's husband Chinnathambi, is the brother of first plaintiff's husband Varadharajan.

11. The defendants no.1 to 3 disputed the fact that the suit property originally belonged to Rajanna Chettiar of Kambainallur. Rather, the defendants no.1 to 3 would contend that the first defendant's husband Chinnathambi, purchased a portion of the suit property measuring 0.70 cents by way of Sale Deed dated 22.12.1997 from one K.N.Venkatraman, S/o.K.V.Nanji Chettiar. It is the case of defendants no.1 to 3 that after the lifetime of first defendant's husband Chinnathambi, they are in possession and enjoyment of the entire extent of the suit property.



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12. P.W.1 has filed her proof affidavit in line with the contents of the plaint details. P.W.1 would claim that she and her children are in possession and enjoyment of the suit property. P.W.2 Thandavan S/o.Ramalingam of Pallipatti Village, would state that his proof affidavit details were given by the plaintiffs. Hence, his evidence need not be looked into. P.W.3 Murugan S/o.Rajanna Chettiar, has supported the case of the plaintiffs. It is the evidence of P.W.3 that his father Rajanna Chettiar is not alive and he does not have legal issue. Where as, D.W.1 Pushpa Chinnathambi would claim that she along with the defendant no.2 & 3 have been in possession and enjoyment of the suit property Ex.B6 - dated 24.09.2009 and Ex.A13 - dated 03.05.2007 are pattas standing in the name of first plaintiff Kannammal, Varadharajan and Rajanna Chettiar in respect of the suit property. Ex.B4 dated 05.08.2014 is the patta stands in the name of first plaintiff and defendants no.1 to 3 in respect of the suit property. Ex.B4 was issued after suit was laid [after 13.01.2012].

13. It is relevant to refer to the observation made by the Hon'ble Supreme Court in ***S.M.Karim Vs. Bibi Sakina, AIR 1964 SC 1254, Parsinni Dead) By Lrs.and Ors. vs. Sukhi & Ors. and D.N.Venkarayaappa & Another vs. State of Karnataka, 1997 (7) SCC 567***, wherein it has been held that it is well settled principle of law that a party claiming adverse possession must prove that his possession is necvi,



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nec clam, nec-Precario, peaceful, open and continuous. The possession must be adequate in continuity, publicity and in extent to show that their possession is adverse to the true owner.

14. The Hon'ble Supreme Court in ***Guruvvara Sahab vs. Gram Panchayat Village Sirthal 2014 (1)SCC 669***, has observed that right of adverse possession can be used as a defence and cannot be used as a sword. This Judgment was delivered on 11.12.2017, whereas, the suit was filed in the year 2015 based on adverse possession. Law is settled with regard to adverse possession that the plaintiffs did not have any right to lay the suit based on adverse possession.

15. It is interesting to note that the Hon'ble Supreme Court (Full Bench) in ***Ravinder Kaur Grewal and Others vs. Manjit Kaur and Others, (2019) 8 SCC 729***, overruled the above said Judgment and laid down the law as given hereunder :-

“adverse possession is heritable and there could be tacking of adverse possession by two or more persons as the right is transmissible i) it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. ii) Again tacking is based on the fulfillment of certain conditions, tacking may be by possession by the purchaser, legatee or assignee etc., so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute



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conferral of right by adverse possession for the prescribed period.”

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16. It is relevant to note that, in case of public property, such rights would not accrue. The Hon'ble Supreme Court held that in the statute of limitation, in case of Government properties, no rights – accrue by adverse possession.

17. The learned counsel for the appellants/plaintiffs would strenuously contend that, by referring to the Judgment of the Hon'ble Supreme Court passed in Ravinder Kaur Grewal and Others vs. Manjit Kaur and Others, (2019) 8 SCC 729 by stating that the plaintiffs have perfected their title to the suit property by adverse possession. As per the law laid down in the above said case, the plaintiffs have laid the suit and both the Trial Court and the First Appellate Court have concurrently dismissed the suit is totally incorrect.

18. Of course, the plaintiffs are entitled to claim that they have perfected their title to the suit property by adverse possession, provided their possession is peaceful, open and continuous to the knowledge of the owner namely Rajanna Chettiar. No such details are found in the plaint from which date onwards, Varadharajan had been in adverse possession of the suit property. More so, after the life time of the Original Owner,



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Rajanna Chettiar, his legal representatives are not added as defendants in the suit. The plaintiffs are under obligation to prove that they have been in possession of the suit property to the knowledge of the owner, which is peaceful, open and continuous for more than the statutory period (above 12 years).

19. From the evidence of P.W.3, as mentioned supra, it appears that Rajanna Chettiar is not alive, but no details are found in the plaint in this regard.

20. Apart from the above said ingredients, the plaintiffs are also required to plead and prove that Varadharajan had *animus possidendi* and that after his lifetime, plaintiffs no.1 to 3 also have *animus possidendi* and have been holding the land adverse to the title of the true owner. The law is also well settled that adverse possession can be claimed only against the true owner of the property.

21. In this regard, it is relevant to refer to the observations made by the Hon'ble Supreme Court in ***Dagadabai (Dead) by Lrs vs.Abbas @ Gulab Rustum Pinjari*** (decided on 18.04.2017). The Hon'ble Supreme Court has held that it is a settled principle of law of adverse possession that any person, who claims title over the property on the strength of



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adverse possession, and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well settled that such person must necessarily first admit the ownership of the true owner, over the property to the knowledge of the true owner, and secondly, the true owner has to be made as a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

22. The plaintiffs are non-suited for the below said reasons:

- i) Specifically, from which date onwards Varadharajan was holding the suit property adverse to the interest of the true owner.
- ii) Continuous and open possession, as mentioned supra, is not established by the plaintiffs.
- iii) Rajanna Chettiar and after his lifetime, his legal representatives are not arrayed as defendants in the suit.

23. In the absence of essential pleadings, as mentioned supra and the proof thereof, this Court is of the view that the case of the plaintiffs falls on the ground as it is not maintainable in law.



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24. The trial Court as well as the First Appellate Court, after elaborate discussions, have uniformly non-suited the plaintiffs. This Court does not find any infirmity or perversity in the findings of the First Appellate Court. This Court also does not find any good reason to upset the findings of the First Appellate Court. The substantial questions of law are answered against the plaintiffs.

25. Above being position, this Second Appeal stands dismissed. Sequel to this, Judgment and Decree made in A.S.No.5/2018 by the Subordinate Court, Karur stands confirmed. There is no order as to costs.

31.10.2025

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order



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R.KALAIMATHI,J.

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To

- 1.The Subordinate Court, Harur, Dharmapuri District.
- 2.The District Munsif Court, Harur.
3. The Tahsildar,
Harur Taluk,
Dharmapuri District.
- 4.The Inspector of Police,
(Land Grabbing Cell),
Office at District Superintendent of Police,
Dharmapuri District.
- 5.The District Collector,
Dharmapuri District.

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