



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.07.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.1217 of 2019 and
C.M.P. Nos. 26489 of 2019 and 1048 of 2020

K.R.Venkatasamy

...Appellant

Vs.

1. Subburathinam

Kannammal (died)

2. Mahalakshmi

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 19.08.2019 made in A.S. No.20 of 2016 on the file of the learned Subordinate Judge, Gobichettipalayam, Erode District, reversing the judgment and decree dated 22.06.2016 made in O.S. No.129 of 2003 on the file of the learned District Munsif, Gobichettipalayam.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY For Appellant : Mr. E.V. Chandru @ E.Chandrasekaran
for Mr. V. Anandhamurthy
For Respondents : Mr. N. Manokaran
for Mr. N. Chinnaraj

JUDGMENT

The present Second Appeal is directed against the judgment and decree dated 19.08.2019 made in A.S. No.20/2016 on the file of Sub court, Gobichettipalayam, reversing the judgment and decree dated 22.06.2016 made in O.S. No.129/2003 on the file of District Munsif Court, Gobichettipalayam.

2. This Second appeal is preferred by the plaintiff in the above suit. Hereinafter in this judgment, the parties would be referred to as per their rank in the original suit.

3. The case of the plaintiff is that on 28.08.2001 the plaintiff purchased the suit property from one E.V. Marappa Gounder and ever



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

since the said purchase, the plaintiff is in possession and enjoyment of the suit property. After purchase, the plaintiff presented an application for transfer of patta in his name from the name of his vendor. Accordingly patta number 674 was issued in the name of the plaintiff. The plaintiff is paying kists to the Government for the suit property. While so, on 12.05.2003, the defendants, who are total strangers, trespassed into the suit property and also denied the plaintiff's title over the suit property. Hence, the plaintiff was constrained to file the above suit for the following reliefs:

- a) To grant a permanent injunction restraining the defendants, their men and agent from in any manner trespass into the suit property or interfering in any manner with the plaintiff's peaceful possession and enjoyment of the same.
- b) To declare that the plaintiff is the absolute owner of the suit property as per the sale deed dated 28.08.2001.
- c) To grant mandatory injunction directing the defendants to put the plaintiff in possession of the same within a time stipulated by the trial court and in case they fail to do so, an officer of the trial court



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY may be directed to do the same at the cost of the defendants.

4. The suit was resisted by the 1st defendant by filing a written statement. It is submitted that, in a suit between the said Marappa Gounder and one Kaliyanna Gounder, a compromise decree was passed in a final decree petition in I.A. No.48/1987 in O.S. No.116/1981 in which an extent of 10 cents in suit survey number was allotted to Marappa Gounder, the vendor of the plaintiff. Even before and after passing of the said compromise decree, the defendants family are alone in possession and enjoyment of the above 10 cents for the past 25 years. The said Marappa Gounder was never in possession and enjoyment of the suit property even after passing of the compromise decree on 21.01.1987. The defendants' family are in possession and enjoyment of the suit property by permissive possession under Kaliyanna Gounder. Therefore, the defendants have perfected title to the suit property by way of adverse possession, since they have been in continuous and uninterrupted possession of the suit property. Hence the suit is liable to be dismissed.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY 5. Based on the above pleadings, materials on record and arguments advanced by the respective counsel for the parties, the trial court, vide its judgement and decree dated 22.06.2016, decreed the suit in favour of the plaintiff.

6. Aggrieved over the judgment and decree passed by the trial court, the defendants preferred the appeal suit in A.S. No.20/2016 before the Sub-court, Gobichettipalayam. The first appellate court reversed the judgment and decree passed by the trial court in O.S. No.129/2003 dated 22.06.2016.

7. Challenging the judgment and decree passed by the first appellate court, the plaintiff has preferred the Second Appeal under Section 100 of CPC.

8. The Second Appeal has been admitted on the following Substantial questions of law.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

"1. Whether the lower appellate court erred in declining the relief to plaintiff on the ground of adverse possession in favour of defendants when no proper pleadings to that effect was made by the defendants in their written statement?

2. Whether the lower appellate court is right in granting adverse possession to the defendants when they have pleaded mutually inconsistent pleas of permissive possession and adverse possession?"

9. Mr.E.V.Chandru, learned counsel for the appellant submits that in the absence of pleadings regarding the commencement of adverse possession by the defendants, the first appellate court erroneously held that, the defendants have perfected title over the suit property by adverse possession. It is further submitted that the defendants have raised the plea of permissive possession and also adverse possession which cannot coexist. The learned counsel further submits that mere continuance of unauthorised possession by the defendants even for more than 12 years,



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

does not enable the defendants to claim title by adverse possession. There must be some overt act on the part of the defendants indicating assertion of hostile title.

9.1. He further submits that, in this case, it is admitted fact that the defendants entered into possession over the land in dispute by the permission granted by one Kaliyanna Gounder. The possession thus initially being permissive, the burden is heavy on the defendants to establish that it became adverse. A permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner, the plaintiff herein. Mere possession for however length of time does not result in converting the permissive possession into adverse possession. The plaintiff suit is based on title for possession and once the title is established, on the basis of relevant documents and other evidence, unless the defendants prove adverse possession for the prescriptive period, the plaintiff cannot be non suited. The learned counsel further submits that unless possessor have animus possidendi and hold the land



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

adverse to the title of the true owner, mere possession of the land would not ripen into possessory title for the said purpose and that in terms of Article 65 of the Limitation Act, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants' possession becomes adverse.

9.2. The further submission of the learned counsel for the appellant is that, if the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise and that, now the ordinary classical requirement of the adverse possession is that it should be *nec vi nec clam nec precario*. The possession required must be adequate in continuity in publicity and in extent to show that it is possession adverse to the competitor. Therefore, the learned counsel for the appellant submitted that in order to get the benefit of adverse possession, firstly, there must be a pleading. Secondly, the pleading must contain the necessary elements namely, admitting the title of the plaintiff, claiming an open and



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

hostile possession to that of the title holder and thirdly, an intention to possess to the detriment of the title holder. In the case on hand, the pleading was that of permissive possession. Hence, the defendants cannot claim permissive possession and adverse possession which does not coexist. The first appellate court erroneously declined the relief claimed by the plaintiff on the ground of adverse possession. In support his contentions, the learned counsel for the appellant relied on the following judgments.

- 1. Gaya Parshad Dikshit vs. Dr. Nirmal Chander and another reported in (1984) 2 Supreme Court Cases 286.**
- 2. Thakur Kishan Singh (dead) vs. Arvind Kumar reported in (1994) 6 Supreme Court Cases 591.**
- 3. Indira vs. Arumugam reported in 1997 SC 1204.**
- 4. Annakili vs. A. Vedanayagam and others reported in (2007) 14 Supreme Court Cases 308.**
- 5. Shri Uttam Chand (D) through Lrs vs. Nathu Ram (D) through Lrs. & others (Judgment of the Hon'ble Supreme Court dated 15.01.2020 in Civil Appeal No.190 of 2020)**



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY 6. Judgment of this Court in A.S. No. 507 of 2015 dated 11.07.2023 (M. Sekaran (died) through Lrs vs. Palaniammal and others)

10. *Per contra*, the learned counsel for the respondents submits that the respondents have perfected title in the suit property by adverse possession. They are in permissive possession under one Kaliyanna Gounder and that even after the compromise decree passed by the sub court Gobichettipalayam, the said Marappa Gounder was not in possession and enjoyment of the suit property. The respondents/defendants are alone in continuous possession and enjoyment of the suit property for more than 25 years without any interruption. The learned counsel further submits that once 12 years period of adverse possession is over, the owner's right is lost and the possessory owner acquires the right, title and interest possessed by the outgoing owner, against whom he has established the period of prescription. His further contention is that, for adverse possession it is sufficient that the possession was overt and without any attempt at



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

concealment so that the person against whom time running should exercise due vigilance to be aware of what was happening. The defendants have let in oral and documentary evidence to show that they are in continuous enjoyment of the suit property as their own and the real owner, namely, the plaintiff, did not take any step to assert his right and to interrupt the running of the period of limitation. Therefore, the very cause of adverse possession which has been established by the defendants cannot be ruled out in such manner as contended by the plaintiff/appellant herein. He would further contend that, it is trite law that, in a suit for declaration of title, the burden always lies on the appellant/plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the respondents/defendants would not be a ground to grant relief to the plaintiff. In the present case, the appellate court had rendered a finding and held that the defendants have let in oral and documentary evidence to show that they are in possession and enjoyment of the suit properties in open and continuous possession asserting title in them as against the whole world and the plaintiff or his predecessor in title had not taken any



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

steps to exercise due vigilance in order to arrest time running against him. Hence, there is no ground to interfere with the judgment of the appellate court. In support his contention the following judgments are relied upon by the respondents/defendants.

- 1. Ravinder Kaur Grewal and others vs. Manjit Kaur and others reported in (2019) 8 SCC 729.**
- 2. Tnangamani vs. Santhiagu reported in 2000 -3- LW 848.**
- 3. Sadasiva Gounder & Another vs. Purushothaman reported in 2000 (3) MLJ 785.**
- 4. K. Krishnan & Another vs. S. Mari Naicker & Another reported in 2003 (1) CTC 290.**
- 5. Jatindra Nath Mondal & Ors vs. Harimoti Dassi & Another reported in AIR 2004 Cal 188.**
- 6. Union of India and others vs. Vasavi Cooperative Housing Society Limited and others reported in (2014) 2 SCC 269.**
- 7. Olympic Industries vs. Mulla Hussainy Bhai Mulla Akberally and others reported in (2009) 15 SCC 528.**



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

**WEB COPY 8. Des Raj and others vs. Bhagat Ram (died) by Lrs and others
reported in (2007) 9 SCC 641)**

**9. Narain Prasad Aggarwal (dead) by Lrs. vs. State of Madhya
Pradesh reported in (2007) 11 SCC 736.**

11. Heard on both sides. Records perused.

12. The only question to be decided in this appeal is, whether the first appellate court was justified in concluding that the defendants have perfected the title by adverse possession over the suit property.

13. At the outset, it is relevant to mention that the defendants have not produced any documents to show that they are the owners of the suit property by purchasing the same or by acquiring the same by any mode of transfer. Also, there is nothing on record to show that the property in question is the ancestral property of the defendants. However, alternative case of the defendants is that the vendor of the plaintiff, namely, Marappa Gounder was allotted with the suit property in the suit in O.S. No.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

116/1981 dated 21.01.1987 between Marappa Gounder and one Kaliyanna Gounder. However, even after the said compromise decree, the said Marappa Gounder/vendor of the plaintiff, was never in possession and enjoyment of the suit property. Whereas, the defendants are in permissive possession of the suit property under Kaliyanna Gounder for more than 25 years. In other words, the defendants do admit that the plaintiff is the owner of the property. But, the sole contention of the defendants is that they have perfected the title by adverse possession, and that the suit to claim possession of the suit property is beyond the period of limitation. It is the specific case of the plaintiff that the defendants have not perfected the title by virtue of adverse possession.

13.1. Since the defendants have raised a plea of adverse possession, the burden is on them to prove affirmatively that the bar of limitation prescribed under Article 65 of the schedule of the Limitation Act, 1963, viz., 12 years, is applicable. But, the limitation of 12 years begins when the possession of the defendants would become adverse to that of the plaintiff. Thus, it is incumbent on the plaintiff to file a suit for



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

possession within 12 years from when the possession of the defendants becomes adverse to the plaintiff. Article 65 pre supposes that the limitation starts only if the defendants prove the factum of adverse possession affirmatively from a particular time. Adverse possession means a hostile assertion, i.e., a possession which is expressly or impliedly in denial of the title of the true owner. The person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed. In deciding whether the acts alleged by the person constitute adverse possession, regard must be given to the animus of the person doing such acts, which must be ascertained from the facts and circumstances of each case. It is needless to observe that where the possession can be referred to a lawful title, it would not be considered to be adverse, the reason being that the person whose possession can be drawn to a lawful title, will not be permitted to show that his possession was hostile to another's title. Simply put, one who holds possession on behalf of another, does not by mere denial of the other's title, make his possession adverse so as to give



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB.COM himself the benefit of the statute of limitation.

13.2. In the matter on hand, the defendants' contention is that they have perfected the title by adverse possession. All through, as is evident from the material evidence on record and their contentions, the defendants have tried to show that they have been in continuous possession of the property for more than 25 years. But there is no iota of evidence to show as to when the defendants' possession in fact became adverse to the interest of the plaintiff. Except the payment of taxes for being in possession of property, no material is produced by the defendants to show whether the possession was really hostile to the actual owner. There is absolutely nothing on record to show that there was a hostile assertion by the defendants. I do not find that the defendants had hostile animus at any point of time, from the facts and circumstances of this case.

13.3. No doubt, the non-use of the property by the owner even for a long time may affect the title of the owner under certain circumstances.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

The acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. There is a lot of difference between simple possession and adverse possession. Every possession is not adverse possession. The defendants will not acquire adverse possession by simply remaining in permissive possession for howsoever long it may be.

13.4. Until the defendants' possession becomes adverse to that of the real owner, the defendants continue in permissive possession of the property. Only if the defendants' possession becomes adverse to the interest of the real owner and the real owner fails to file the suit for possession within 12 years, as prescribed under Article 65 of the Limitation Act, from the point of time the possession by the defendants becomes adverse to the plaintiffs, the real owner loses his title over the property.

13.5. The defendants are not only required to prove that they have been in possession of the suit property continuously and uninterruptedly,



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

but also need to prove, by cogent and convincing evidence, that there is hostile animus and possession adverse to the knowledge of the real owner.

13.6. Furthermore adverse possession commences with wrongful possession and is asserted against rightful ownership. Essential pleadings include actual, conclusive, open and uninterrupted hostile possession with clear intent to claim ownership of the property in question, contrary to the true owner's rights. In order to claim adverse possession, specific averments as to when and how the possession became adverse to the true owner are necessary for computing the limitation period from thereon. The plea of adverse possession is essentially a factual plea and such plea should be pleaded specifically and proved by adducing substantive legal evidence. Long possession by itself would not be sufficient to prove adverse possession. *Animus Possidendi* against the true owner is also necessary. Further, permissive possession would never be adverse to the real owner.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

13.7. It is not in dispute that the plaintiff has purchased the suit property from Marappa Gounder. It is also not in dispute that the said Marappa Gounder was allotted the suit property by virtue of decree passed in O.S. No.116/1981. Hence, the plaintiff and his vendor are the title holders. There is nothing on record to show that the defendants are enjoying the suit property for more than statutory period by prescribing title in themselves adverse to the title of plaintiff and his vendor. Though the defendants are in possession of the suit property, there is nothing to show when their possession turned adverse to the plaintiff. Even in the written statement filed by the 1st defendant, it is stated that the defendants were permitted to occupy the suit property by one Kaliyanna Gounder. It is further stated that in a suit in O.S. No.116/1981 between the plaintiff's vendor Marappa Gounder and Kaliyanna Gounder, a compromise decree was passed in which the suit was decreed in favour of the said Marappa Gounder. However the said Marappa Gounder never was in possession of the suit property. From the above averments, it is made clear that the defendants are only in permissive possession in the suit property.

Page 19 of 24



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

However, the defendants are required to prove, by cogent and convincing evidence, that there is hostile animus and possession adverse to the knowledge of the plaintiff. There must be some overt act on the part of the defendants indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough. The possession thus initially being permissive, the burden was heavy on the defendants to establish that it became adverse. It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendants prove adverse possession for the prescriptive period, the claim of the plaintiff cannot be rejected.

13.8. In the case on hand, the mere fact that, even after passing of the decree, the plaintiff's vendor and the plaintiff did not take any steps to take possession of the property do not amount to adverse possession over the suit property by the defendants. There is nothing on record to show that the defendants' permissive possession over the property became adverse to the interest of the real owner, at any point of time. On the



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY

contrary, the records reveal that the permissive possession of the defendants continued till the filing of the suit. Though the defendants have relied upon certain documents to establish their possession in the suit property, at the most, they depict the possession of the defendants and not their adverse possession. Therefore, the above documents and the judgments relied upon by the defendants do not support their claim of adverse possession.

14. Having regard to the totality of the facts, in my considered opinion, the first appellate court is not justified in arriving at the conclusion that the defendants have perfected title by adverse possession. All the substantial questions of law are answered accordingly in favour of the appellant.



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY 15. In the result,

1. The Second Appeal is allowed. No costs. Consequently connected miscellaneous petitions are closed.
2. The decree and judgment dated 19.08.2019 made in A.S. No.20 of 2016 on the file of the learned Subordinate Judge, Gobichettipalayam, Erode District, is set aside.
3. The judgment and decree dated 22.06.2016 made in O.S. No.129 of 2003 on the file of the learned District Munsif, Gobichettipalayam, is upheld.

02.09.2025

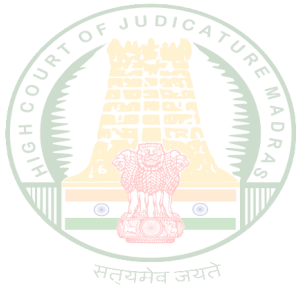
Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

WEB COPY To

1. The Subordinate Judge, Gobichettipalayam, Erode District.
2. The District Munsif, Gobichettipalayam.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.1217 of 2019 and C.M.P. Nos.26489 of 2019 & 1048 of 2020

K.GOVINDARAJAN THILAKAVADI,J
bga

Pre-delivery judgment in
S.A.No.1217 of 2019
and
C.M.P. Nos. 26489 of 2019 and 1048 of 2020

02.09.2025