

S.A.(MD)No.559 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.02.2025

Pronounced on : 25.02.2025

CORAM:

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HON'BLE MR.JUSTICE B.PUGALENDHI**

**S.A.(MD)No.559 of 2023
and
C.M.P(MD)No.13186 of 2023**

The State of Tamil Nadu
Represented by
The District Collector,
Madurai.

... Appellant / Appellant / Defendant

-Vs-

1.Panthanathammal

2.A.Santhi

3.R.Latha

4.Tamil Selvi

5.Sasikala

6.Sumathy

7.Vasuki

... Respondents 1 to 7 /
Respondents 1 to 7 /
Plaintiffs

8.P.R.P.Exports, Rep.by its Partner,
P.Palanichamy, S/o.Pinna Thevar,
No.379, Sarveshwarar Kovil Street,
Anna Nagar, Madurai – 20

... 8th Respondent/
8th Respondent / 3rd Party



S.A.(MD)No.559 of 202८

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree of the learned Principal District Judge, Madurai in A.S.No.2 of 2016 dated 13.03.2020 by confirming Judgment and decree passed by the District Munsif, Madurai Taluk in O.S.No.237 of 1995 dated 11.12.1995 by allowing the Second Appeal.

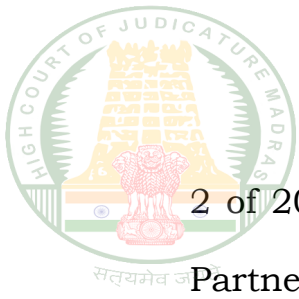
For Appellant : Mr.R.Baskaran
Additional Advocate General
Assisted by S.RA.Ramachandran
Additional Government Pleader

For Respondents : Mr.J.Bharathan
for Mr.V.Meenakshi Sundaram for R.8

R1 to R7 - exparte

JUDGMENT

The State of Tamil Nadu was the defendant in O.S No.237 of 1995 on the file of the District Munsif Court, Madurai Taluk. The suit was filed by the respondents 1 to 7 herein for the relief of declaration of title and permanent injunction in respect of the suit property. The suit was decreed on 11.12.1995. Aggrieved by the same, the appellant herein filed an appeal before the Principal District Judge, Madurai. There was delay in filing the appeal. Hence, petition for condonation of delay was also filed. The delay was eventually condoned and the appeal was numbered as A.S.No.



S.A.(MD)No.559 of 2023

2 of 2016. During the intervening period, P.R.P Exports rep.by its Partner P.Palanisamy purchased the suit property under Ex.A79 dated 10.06.2005. Hence, the purchaser was impleaded as 8th respondent in the first appeal. Before the first appellate court, additional evidence was adduced and Ex.A77 to Ex.A94 were marked. The first appellate Court dismissed the appeal on 13.03.2020 confirming the decision of the trial Court. Challenging the same, this Second Appeal came to be filed.

2. There was delay of 340 days in filing the second appeal. To condone the same, CMP(MD)No.5444 of 2023 was filed. Notice was ordered by the learned Single Judge on 26.04.2023. On 11.09.2023, the Hon'ble Administrative Judge posted the said CMP along with few other matters before us. The original plaintiffs remained exparte even before the first appellate court. The purchaser alone contested the appeal. After hearing the learned counsel for the 8th respondent/purchaser, we condoned the delay on 25.09.2023. The second appeal was admitted on 25.09.2023 on the following substantial questions of law :

“a) Whether the continuation of the appeal by the learned First Appellate Court notwithstanding the dictum of the Full Bench of this Hon'ble Court in the case of T.K. Shanmugam v State in WP No. 1295 of



WEB COPY

S.A.(MD)No.559 of 202८



2009 dated 27.11.2015 as reported in 2015 (2) CWC 849 laying down the dictum that no civil court can exercise jurisdiction regarding the question of encroachment in water bodies and that the persons can be directed to approach only the Hon'ble High Court under Article 226 of the Constitution of India was without jurisdiction ?

b) Whether the finding of the Courts below that the respondents derived the suit property by way of adverse possession is legally sustainable insofar as the the suit property classified as water body in the revenue records.

c) Whether the findings of the courts below that the suit property is under the possession and enjoyment of the said Govindasamy Naidu for 37 years is legally sustainable insofar the suit property classified as water storage area of Vandiyur Tank.

d) Whether reliance on Kist Receipts Exs.A8 to A33 and A49 to A59 is legally permissible as the same does not confer title on the respondents but on the other hand they are the penalty charges levied on the respondents for illegal occupation of the land classified as water body.”

3.The learned Additional Advocate General appearing for the

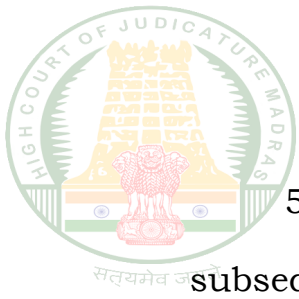
State reiterated all the contentions set out in the memorandum of



S.A.(MD)No.559 of 202८

grounds of appeal and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the judgments and decrees passed by the Courts below and allow the Second Appeal as prayed for.

4.Per contra, the learned counsel appearing for the eighth respondent who is the sole contestant submitted that no substantial question of law arises for consideration. He has filed elaborate written arguments and took us through its contents. His core argument is that in the UDR A-Register, the suit property has been classified as “Vandiyur Kulam Neerpidi”. It only means that it is a water catchment area ; it does not mean that the suit property is a water body. In fact, he would claim that in the earlier records, the land was classified as “wet land”. The records filed before the Courts below show that the land revenue was collected from the plaintiffs' family since 1961 onwards. The learned counsel took pains to controvert the contention of the learned Additional Advocate General that what was paid was not Kist (land revenue) but B memo penalty. The possession and enjoyment of the plaintiffs date back to 1961. That is why, the Public Works Department Engineer under Ex.A34 dated 07.03.1966 recommended assigning the suit property in favour of Govindasamy Naidu, who is none other than the father-in-law of the first plaintiff and grandfather of the other plaintiffs.



WEB COPY

5.The learned counsel further submitted that on account of subsequent developments, it is now physically impossible for the suit property to even be a water catchment area for Vandiyur tank. The possession of the plaintiffs' family was open, uninterrupted and continuous. It has been held by the Hon'ble Supreme Court that one can claim title on the strength of adverse possession also. When the courts below have concurrently found in favour of the plaintiffs, the learned counsel would submit that in exercise of jurisdiction under Section 100 of CPC, it may not be appropriate for this Court to interfere with factual findings. He called upon this Court to dismiss the Second Appeal.

6.We carefully considered the rival contentions and went through the evidence on record.

7.The suit is for declaration and permanent injunction. The plaintiffs sought declaration that they have acquired title to the suit property by prescription and by lost grant, and that they are solely and exclusively entitled to the suit property. As rightly submitted by the learned Additional Advocate General, the plea of adverse possession and the plea of lost grant cannot go together **[vide M.Siddiq (Ram Janmabhumi Temple – 5 J) v. Suresh Das (2020) 1 SCC 1, para 1174]**. Conceding this legal position, the



S.A.(MD)No.559 of 202७

learned counsel for the eighth respondent submitted that he would confine himself to the ground of adverse possession alone.

WEB COPY

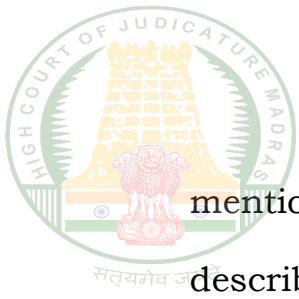
8.The plaint was drafted in English. Paragraph No.5 of the plaint reads that the suit property was originally classified as “water spread area” and that it is situated in the foreshore of Vandiyur tank ; Govindasamy Naidu (father-in-law of the first plaintiff and paternal grandfather of the other plaintiffs) was cultivating the same from 1958 till 1981 ; he was paying kist to the Government and after his demise, the plaintiffs have been enjoying the suit property as their own ; the Executive Engineer, PWD, Periyar Vaigai Division vide letter No.116 dated 07.03.1966 recommended assigning the land in favour of Govindasamy Naidu ; only in the year 1995, there was threat of dispossession; apprehending summary eviction from the suit property, the suit was filed for declaration of title in their favour and to protect their possession.

9.The learned counsel for the eighth respondent vehemently submitted that the suit property is not a water body. It is beyond dispute that in the plaint averments, the suit property has been described as “foreshore area” and “water spread area”. Oxford Advanced Learner's Dictionary defines the word as “the part of the



shore between the highest level reached by the water and the area of land that has buildings, plants etc., on it". That part of the shore between the highest and lowest levels reached by the water is commonly called as "foreshore". P.Ramanatha Iyer's Advanced Law Lexicon defines "foreshore" as that strip of land that lies between the high and low watermarks and that is alternatively wet and dry according to the flow of tide. The same definition has to be applied by analogy to a tank also. Section 2(d) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 defines the "foreshore area" as the land above full tank level and upstream of the tank bund. Section 2(o) of this said Act defines "water spread area" as an area covered by water spread at full tank level. Section 8 of the Act penalises entry into the land in the water spread and foreshore areas of the tank without any lawful authority. The person convicted shall be punished with imprisonment which may extend to three months or with fine of five thousand rupees or both. From the foregoing definitions, one can safely conclude that the water spread and foreshore areas of a tank are also water bodies. Foreshore area and water spread area are integrally connected to the tank.

10.Vandiyur tank is one of the major water bodies in the city of Madurai. In the revenue records, the suit property has been



S.A.(MD)No.559 of 2023

mentioned as water spread area. The plaintiffs themselves have described the suit property as foreshore area of Vandiyur tank. Interestingly, the suit schedule includes a water channel that is 150 feet long and 25 feet wide. The suit property is comprised in Survey No.151/1 in Uthangudi Village. When the lands purchased by one Amsaveni came to be classified as Red Hills catchment area in the master plan, she sought re-classification and permission to develop her land by filing WP No.26673 of 2017. The writ petition was dismissed by the Division Bench on 24.04.2023 on the ground that the planning authorities cannot permit any development or regularization in the catchment area and doing so will be a violation of the statute as well as the constitutional duty to protect environment.

11.The plaintiffs sought declaration that they had perfected their title against the Government by adverse possession. To prove this claim, they originally marked Exs.A8 to A33 and A38 to A76 which are payment receipts for the period from 1962 onwards. The learned counsel for the eighth respondent would call them as kist receipts. The learned Additional Advocate General on the other hand would challenge the said description. He pointed out that the plaintiffs cannot take advantage of the description “LR” found in the said receipts. He drew our attention to Section 9 of the Tamil



S.A.(MD)No.559 of 202८

WEB COPY

Nadu Land Encroachment Act, 1905 which states that the amount of assessment and penalty imposed under the said Act on any person unauthorizedly occupying any land shall be deemed to be land revenue (LR). The learned counsel for the eighth respondent on the other hand pointed out that no B memo notice was ever issued and that what was paid was only kist and not penalty.

12.'Kist' has been defined in H.H.Wilson's Glossary of Judicial and Revenue Terms as a document given at the beginning of the year to the revenue payer by the collector or zamindar, in which the time and amount of the installments to be paid or specified ; the amount paid as an installment ; as a revenue term it denotes the portion of the annual assessment to be paid at a specified periods in the course of the year ; such periodical payment is called kist. The levy of land revenue/kist is a prerogative of the crown according to the ancient and common law of India also known as customary law of India. The collection of land revenue is in the nature of a king's share of the produce [***Gopalan v. State of Madras (1958 2 MLJ 117)***].

13.Section 3 of Madras Act II of 1864 mandates that every landholder shall pay to the collector or other officer empowered by him to receive it, the revenue due upon his land on or before the

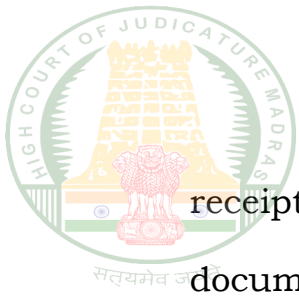


S.A.(MD)No.559 of 202.

WEB COPY

day on which it falls due, according to the kistbandi or other engagement and where no particular day is fixed, then within the time when the payment falls due according to local usage. The expression “landholder” has been defined in Section 1 of the Act. When a trespasser was levied with a certain amount as land revenue payable in respect of the site occupied by him by styling it as “prohibitory assessment”, the Division Bench of the Madras High Court held that the imposed was not land revenue and the demand therefor was unauthorised (vide ***Madathapu Ramaya v. Secretary of State for India in Council 1903 SCC OnLine Mad 56***). To legalise such assessments, the Madras Land Encroachment Act, 1905 was enacted. Section 3 of the Act provided for levy of assessment on lands unauthorisedly occupied and the amount of assessment and penalty imposed under this Act would be deemed to be land revenue.

14. We carefully went through the documents marked by the plaintiffs as Exs.A8 to A33 and A38 to A76. Merely because the letters “LR” are found in those documents, the receipts cannot assume the character of kist receipts. The plaintiffs have not filed any notice issued by the competent authority assessing them to tax. When payments were made for particular assessment years, they had been accepted and receipts issued. An ordinary kist



receipt will contain the patta number. Admittedly, the aforesaid documents do not bear any patta number. These documents establish only one fact. That is Govindasamy Naidu was in possession of the suit property since 1961 and after his demise, the plaintiffs were in enjoyment.

15.The question that calls for consideration is whether such possession though spread over several years ripened into adverse possession for the statutorily prescribed period of thirty years. The essential ingredients constituting adverse possession are well settled. A learned Judge of the Madras High Court in the decision reported in **1995 1 L.W 680 (Ponnaiyan vs. Munian (died) and ors)** held as follows :

"8. There is no statutory definition of adverse possession. Adverse possession refers to actual and exclusive possession coupled with intention to hold as owner. Adverse possession becomes hostile to the rightful owner, when a person openly and continuously possesses a land under a claim of right adverse to the title of the true owner for the statutory period. Adverse possession means a hostile possession which is express or implied in denial of the title of the true owner. Such possession must be actual and exclusive, under a claim of right, adequate in continuity in publicity and in extent so as to show that it is adverse to the true owner. Such possession, in denial of title of the true owner must be peaceful, open and continuous. Mere



WEB COPY



S.A.(MD)No.559 of 202७

possession without a claim of right for over a long time is not sufficient to create adverse possession. A mere user of property cannot be taken as a definite assertion of proprietary right, there must be some definite quality in the possession, before it can be called adverse and there must be some fact of unequivocal character which may put the owner on guard. There can be no adverse possession if the person claims does not know that he is enjoying somebody else's land. He must have the intention of using the property adversely against the another having an interest in it. To summarise it, a person by holding possession of the property for the statutory period can acquire title only when his possession is 1) under a claim of title 2) hostile to the true owner and 3) actual, open, uninterrupted, continuous and exclusive.

9. It is well established that a person who claims title to the property by adverse possession must definitely allege and prove how and when adverse possession commences and what was the nature of his possession. A Division Bench of this Court in *Rangappa v. Rangaswami*, A.I.R. 1925 Mad. 1005 has held as follows:

“... the question whether possession in any given case has been adverse or not being a question of fact, the requirement of the law is strict and imperative that any plaintiff who seeks to rely upon the acquisition of title by adverse possession, should expressly plead it in his plaint....”

10. In *Ganda Singh v. Ram Narain* (A.I.R. 1959 Punjab 147) a Full Bench of the Punjab High Court has, while considering



WEB COPY



S.A.(MD)No.559 of 202७

the proof required in a claim for adverse possession, observed as follows:

“In order to succeed on the plea of adverse possession, several facts have to be stated and substantiated by the party basing his title on this plea. Burden of proving all the elements of adverse possession is on the party setting up such title. The plaintiffs in this case, in order to succeed, had to allege and establish, that their possession was actual, adverse, exclusive, peaceful, continuous, unbroken, open, notorious, visible, distinct, unequivocal and hostile under a colour of title, or, claim of right. He must further prove the date of commencement, the territorial extent and the length of his adverse possession.”

11. In *S.M. Karim v. Mst. Bibi Sakina*, A.I.R. 1964 S.C. 1254 = 1964(2) S.C.J. 224, the Supreme Court has held as follows:

“Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found a mere suggestion in the relief clause that there was an uninterrupted possession for ‘several 12 years’ or that the plaintiff had acquired “an absolute title” was not enough to raise such a plea”.

12. In another decision reported in *Kamiega Kone v. Udayar Kone*, 1979(1) M.L.J. 419 = 92 L.W. 299, T. Ramaprasada Rao, C.J. has held as follows:

“The plea of adverse possession is an essential question based upon provable facts and cannot rest upon mere



WEB COPY

S.A.(MD)No.559 of 202७



surmises and stories weaved out in the course of the trial and in the witness box. The plea of adverse possession stands on the same footing as the plea of estoppel. It has been the consistent view of Courts that a plea of estoppel has to be pleaded and not only pleaded but also proved. So also a plea of adverse possession, which again rests upon proof of positive and essential facts, has to be pleaded, so that the adversary might be able to meet the specific case of the party, who unjustly wishes to wrest the property belonging to another and claim title in himself on the plea of adverse possession. A plea of adverse possession essentially implies that the person claiming title to a property on that basis does not own it. He wishes to snatch it from the real owner on the bare ground that he was continuously, publicly and openly in possession of the property of the adversary to the knowledge of the adversary and without any objection or intervention on the part of the real owner. These are essential facts which form the rocky foundation of the plea of the adverse possession. The law requires an express pleading on that question ...”

13. In a recent judgment of the Supreme Court in *Parsinni (dead) by LRs. and others v. Sukhi and others*, [1993\(4\) S.C.C. 375](#), in para 5 of the judgment has observed as follows:

“... The burden undoubtedly lies on them to plead and prove that they remained in possession in their own right adverse to the respondents. ... The party claiming adverse possession must prove that his possession must be ‘*nec vi, nec clam, nec precario*’ i.e., peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in



WEB COPY



S.A.(MD)No.559 of 202७

extent to show that their possession is adverse to the true owner.”

14. On the question of animus of the person in possession, this Court has held in *Anantha Pillai v. Rathnasabapathy Mudaliar*, 1968(2) M.L.J. 574 = 82 L.W. 5 as follows:

“The concept of adverse possession contemplates a hostile possession, i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights, but denies them.”

For deciding whether the alleged act of a person contributed adverse possession, the animus of the person doing those acts is the most crucial factor.

15. In *Ejaz Ali Qidwai v. The Special Manager, Court of Wards, Barhampur Estate*, (1935)68 M.L.J. 397 = A.I.R. 1935 P.C. 53 = 41 L.W. 242, the Privy Council has held as follows:

“The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

Thus, for deciding whether the alleged acts of a person constitute adverse possession, the animus of the person doing those acts is the most crucial factor.”

16.The Madras High Court in an another decision reported in

1998 2 LW 171 (vide ***State of Tamil Nadu v. K.Purushothaman***)



had held that the question of adverse possession is a mixed question of law and fact and even if long possession is proved, an inference cannot be drawn that it is adverse possession. Long possession itself is not adverse possession. Possession with animus to hold it against the true owner is the basic requirement to prescribe title by adverse possession. The learned Judge quoted the following passage from UN Mitra's law of limitation and prescription:

“11. In ‘U.N. Mitra's Law of Limitation and Prescription’ -10m Edition (1992), at page 1176, the learned Author has said thus: —

“Adverse, possession is essentially a hostile possession, possession in denial of the title of the true owner. It includes possession held by a defendant in practical contravention of the plaintiffs rights while the plaintiff is standing by. It has been variously described: (a) it is possession of another's land with intent to hold it and claim it as his own; it must commence in wrong and must be maintained against right; (b) it is possession with animus to hold the property in the possessor's own right and against the right of the rightful owner; (c) it is possession hostile and exclusive; (d) it is an invasion of title; (e) it is wrongful entry into possession. Generally speaking where an owner is not deprived of any rights which he exercises or can exercise there is no case of adverse possession.



WEB COPY



S.A.(MD)No.559 of 202

A person will be said to be in adverse possession if he does something which the owner would have done and does not do, or if he does something which adversely affects the rights of the owner and he knows about it. Where there is no denial of the owner's title the possession of the defendant is not adverse to the owner, Possession of one person consistent and reconcilable with the title of another cannot be adverse to the latter.....”

17.“Animus possidendi” is one of the ingredients of adverse possession and unless the person possessing the land has the requisite animus, the period for prescription does not commence. In Paragraph 7 of the plaint, there is a reference to Lr.No.166 dated 07.03.1966 written by the Executive Engineer, Public Works Department, Periyar Vaigai Division recommending to the Tahsildar, Madurai to assign the suit property in favour of Govindasamy Naidu since the adjoining lands have been assigned to others and Govindasamy Naidu has been cultivating the same for six years. This document was marked by the plaintiffs as Ex.A34. This itself indicates that Govindasamy was in expectation that the suit property would be assigned to him by the government in future recognizing his possession. On the own showing of the plaintiffs, at least in the year 1966, there was no assertion of hostility. In fact, there is nothing on record to show that the title of



the government was ever challenged. The suit was instituted in 1995.

WEB COPY

18.The suit property is a government property. The Hon'ble Supreme Court in the decision reported in **(2010) 5 SCC 203 (R.Hanumaiah and anr vs. Secretary to Government of Karnataka)** had expounded the approach to be adopted by courts in such cases. Paragraphs 19 to 23 of the said decision read as follows :

“Nature of proof required in suits for declaration of title against the Government

19. Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The *first* difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The *second* difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation



WEB COPY



S.A.(MD)No.559 of 202७

Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that



WEB COPY



S.A.(MD)No.559 of 202७

plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored.



WEB COPY

S.A.(MD)No.559 of 202,



23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc. or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government. Be that as it may.”

19.In ***Mandal Revenue Officer v. Goundla Venkaiah*** (2010) 2 SCC 461, it was observed that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right or title of the State to immovable property and give an upper hand to the encroachers, unauthorized occupants or land grabbers.

20.If such a strict approach as delineated above has to be adopted in cases where the claim of adverse possession is made against government properties, a still higher threshold is required in cases where public interest is directly involved. Certain lands are earmarked for public purpose. A learned Judge of the Madras

High Court in the decision reported in **2022 (2) CTC 19**



S.A.(MD)No.559 of 202७

(Thankappan v State of Tamil Nadu, rep. By District

Collector, Nagercoil) while relying upon the decision of the

Hon'ble Apex Court in **M.C. Mehta v Kamal Nath and others**

(1997 (1)SCC page 388 para 34) had held as follows:

“21. In view of the above said Hon'ble Supreme Court judgment, whenever a property is classified and reserved for any public purposes like water body, road, park etc., the Government is only a Trustee of the said properties. The Government has got only a right of administration and maintenance of these properties. As far as those properties reserved for public purposes are concerned, the Government is only the legal owner and the beneficial ownership vests on the general public for whose benefit, the Government is entitled to maintain and administer the said properties. To summarize, where the Government chooses to classify a particular survey number and reserve it for a public purpose, the title of the Government is downgraded to the level of a Trustee for that property.

22. If a party in occupation of a property claims title by adverse possession, one of the mandatory ingredients to be proved by him is that he should have animus to hold the said property adversely as against the real owner. In the case of properties reserved for public purposes, a dual ownership is being created in the nature of legal ownership and beneficial ownership. The legal ownership is vested in the Government while the beneficial ownership is vested in the beneficiaries/general public. The occupier should not only prove his animus as against the legal owner but also as against the beneficial owners(General public). Interestingly,



WEB COPY



S.A.(MD)No.559 of 202७

the occupier is also one of the beneficial owner for whose benefit the said property is classified and reserved by the legal owner. In such circumstances, the occupier cannot have an animus as against each one of the individuals of the general public. When the occupier himself is a beneficial owner, the question of acquiring title by adverse possession does not arise at all.

23.The occupier can plead and prove title by adverse possession only as long as the Government property remains as a Government Poramboke, not being reserved for any public purposes. Only in those cases, the occupier can invoke [Article 112](#) of the [Limitation Act](#) and claim title by adverse possession. In all other cases, where the properties are being classified and reserved for public purposes, since he cannot have any animus as against all the beneficial owners, the occupier cannot acquire title by adverse possession. The private rights of an individual to acquire title by adverse possession cannot be upheld when the same is put up against the public rights of the beneficial owners. Hence, no occupier can acquire title by adverse possession over a water body or any other land reserved for public purposes despite being in possession beyond the statutory period of 30 years.”

21.It was categorically held by the Hon'ble Full Bench in the decision reported in **(2016) 1 LW 168** (vide **T.K. Shanmugam v. State of Tamil Nadu**) that water bodies cannot be alienated. If the government itself cannot voluntarily part with a water body, it goes without saying that the plea of adverse possession cannot be



S.A.(MD)No.559 of 202.

made in respect of a water body. A water body has to be maintained as such for all times to come. Even if they have fallen into disuse, they must be restored to their pristine condition. This is what the doctrine of public trust and the doctrine of inter-generational equity mandate. The Hon'ble Supreme Court has been emphasizing this principle of law and it has become a part of our environmental jurisprudence. The claim of the plaintiffs fly in the face of this proposition.

22.It is beyond dispute that Survey No.151/1 was not assigned in favour of the plaintiffs. No patta was given to them. They had only been in uninterrupted enjoyment of the property for over 34 years. We carefully went through the plaint averments and the testimony of PW.1, PW.2 and DW.1 and the documents marked on either side. The plaintiffs' emphasis is only on open and continuous enjoyment to the knowledge of the officials. Merely because the officials kept quiet or allowed the plaintiffs to enjoy the suit property, that would not necessarily result in the Government losing its title over the suit property. Issuance of receipts will not constitute acknowledgement of the plaintiffs' ownership. Neither Govindasamy Naidu nor his legal heirs denied the title of the Government. They never asserted ownership over the suit property. They did not exhibit any hostility till the filing of the suit in the year 1995. The plaintiffs were obliged to prove that they were in



S.A.(MD)No.559 of 202७

adverse possession since 1965. The Hon'ble Supreme Court of India in the decision reported in **2023 SCC OnLine SC 961 (State of Kerala v. Joseph)** held that long period of possession does not translate into the right of adverse possession and that surmises, conjectures and approximations cannot serve the basis for taking away the right over land resting with the State and place the said bundle of rights in the hands of one who did not have any such rights.

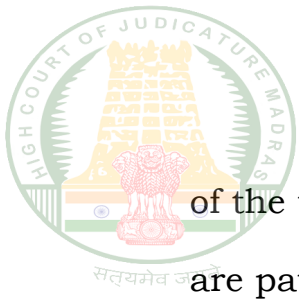
23.A water body cannot be confined only to the land where the water gets actually collected. It includes the bund and the foreshore area and the water spread area also. These are all Government porambokes. Their occupation itself is objectionable. Merely because the officials have been indifferent and have not taken action in time to secure the eviction of the encroachers, that would not mean that the encroachers would acquire rights therein. In case after case, it has been held that mere production of revenue documents such as kist receipts is not sufficient to prove the plea of adverse possession **(1996) 1 CTC 699**.

24.The first appellate court held that the plaintiffs have derived title over the suit property by assigning certain reasons : (i) the plaintiffs' family have been continuously cultivating the suit property for more than thirty years ; (ii) they have produced kist



S.A.(MD)No.559 of 202.

receipts for fasli years from 1370 to 1403 ; (iii) their cultivation has been open, public, continuous and without interference and with the knowledge of the true owner for more than the statutory period of thirty years. None of these reasons can pass muster. They run counter to the elementary principles of law pertaining to adverse possession. Nowhere the courts below have held that Govindasamy Naidu developed the necessary animus possidendi and after such hostile assertion, the parties were in possession for more than the statutory period of thirty years. The plaint is completely silent as to when there was hostile assertion denying the government's title over the suit property. What has not been pleaded cannot be proved in evidence. The courts below lost sight of the fact that the suit property is a government property and more than that it is a foreshore area of a large tank. The other reasons assigned by the first appellate court are quite shocking. It is true that after decree was passed, there was transfer of property and application for issuance of patta. Following the order made in WP No.21195 of 2004 dated 03.08.2004, patta came to be issued. But, such an order was passed only in view of the decree made in O.S No.237 of 1995. In the writ order dated 03.08.2004, it was clarified that if the decree is set aside, it would be open to the government to recall the patta. Therefore, grant of patta in the year 2004 could not be a ground for dismissing the first appeal and confirming the decision



of the trial court. The reasons assigned by the first appellate court are patently erroneous.

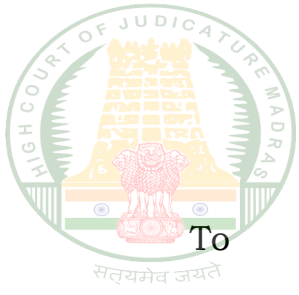
WEB COPY

25.Since the suit property is a foreshore area of a tank and since the ingredients to prove the plea of adverse possession are absent in this case, we answer the second and third substantial questions of law in favour of the appellant. We may not categorise the payment receipts marked by the plaintiffs as penal charges but they do not appear to be kist receipts. The fourth substantial question of law is answered accordingly. Since the aforesaid three substantial questions of law have been answered against the plaintiffs/8th respondent and in favour of the appellant, there is no need to consider the applicability of **T.K.Shanmugam** ratio to the facts of this case.

26.The impugned judgments are set aside. This Second Appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs. We deeply appreciate Thiru.R.Baskaran, the learned Additional Advocate General for effectively assisting us.

[G.R.S., J.] & [B.P., J.]
25.02.2025

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
MGA /SKM



S.A.(MD)No.559 of 202८

To

WEB COPY

1. The Principal District Judge, Madurai.
2. District Munsif, Madurai Taluk.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.559 of 2023

G.R.SWAMINATHAN, J

and

B.PUGALENDHI, J.

MGA/SKM

**Judgment made in
S.A.(MD)No.559 of 2023**

25.02.2025