



S.A.No.1928 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	07.01.2025
Pronounced on	29.01.2025

CORAM

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

Second Appeal No.1928 of 2003

1.Pappayee Ammal (died)
2.P.Subramanian
3.P.Ammayappan
4.Saraswathy
5.Amaravathy
(AA2 to 5 are brought on record as LR's of the
deceased sole appellant vide order dated
21.02.2020 made in CMP(MD)No.10182 to 10184/2016)

... Appellants

-VS-

1.Ammaiyappan
2.Kaliappan

(cause title amended vide order dated 21.02.2002
made in CMP(MD)No.181/2016)

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree made in A.S.No.53 of 2002 dated 22.04.2003 on the file of the Principal District Court, Karur reversing the Judgment and Decree made in O.S.No.539 of 1998 dated 20.02.2002 on the file of the Principal District Munsif Court, Karur.



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For Appellants ... Mr.R.Subramanian for
Mr.N.C.Ashokkumar
For Respondents ... Mr.K.Govindarajan

JUDGMENT

The Second Appeal has been filed against the Judgment and Decree passed in A.S.No.53 of 2002 dated 22.04.2003 on the file of the Principal District Court, Karur reversing the Judgment and Decree passed in O.S.No.539 of 1998 dated 20.02.2002 on the file of the Principal District Munsif, Karur.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court in O.S.No.539 of 1998 on the file of the Principal District Munsif, Karur.

3. The plaintiffs in O.S.No.539 of 1998 on the file of the Principal District Munsif, Karur, are the appellants herein.



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4. The averments of the plaint are as follows:

The suit property is situated at Puliur village. The plaintiff purchased the suit property on 11.04.1974 from one Nallammal, K.Muthausamy and his son Thagavel, minor son Elango and the minor daughter of Nallammal by name, Arukkani. The original sale deed is pledged with the Bank and the xerox copy is filed along with plaint. At the time of sale, the suit property was under usufructuary mortgage to one Ammaiyappa Gounder and it was in his possession. The balance loan amount was paid by the plaintiff during the month of Chithirai in 1978 and the property was left to the possession of the plaintiff. The plaintiff and the prior owners of the suit property enjoyed the properties without any hindrance. In the suit land, there is vengal stones ridge east to west in the suit property. After the purchase and possession, the plaintiff spent Rs.80,000/- and dug a well. She also spent Rs.20,000/- to construct a compound wall in the well. She also spent Rs.17,000/- to convert the land as irrigated land. She also installed an oil engine in the suit well at a cost of Rs.15,000/- and irrigated water. Subsequently, on 20.11.1980, she obtained HP electric motor and subsequently, it was converted to 7.5 HP electric motor. She also installed a submersible motor-pump in the



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suit well. The southern boundary of the suit property was previously a ridge of Venga stones. Subsequently, the plaintiff cultivated 30 coconuts trees in the above ridge and the coconut trees are aged about 20 years. The defendants have no manner of right or enjoyment on the north of the above the ridge. Subsequently, the plaintiff's land was subdivided and survey number 1663/1 was to the plaintiff. As per the patta, the plaintiff is entitled for Hec.1.30.0. The plaintiff is paying kist for the past 24 years. Revenue Records are in favour of the plaintiff. Recently, the defendants obtained the thumb impression of the plaintiff for the purpose of measuring these lands. But, subsequently, the defendants claimed a legal right over the suit property and the defendants and their men also attempted to trespass into the suit property and also to measure the same. It was prevented by the plaintiff. Hence, the suit is filed for the relief of declaration of title of the plaintiff on the suit property and also for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff in the suit property.

5.The defendants filed a written statement and contested the suit.

The averments of the written statement are as follows:-



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The defendants are brothers and they are entitled to the southern half of the suit survey number 1663 and it is their ancestral property. The defendants are entitled for an extent of Ac. 2.69 1/2 cents. The plaintiff is entitled to the northern half in the suit survey number to an extent of Ac. 2.69 1/2 cents. The plaintiff purchased the said property by a sale deed on 11.04.1978 from the original owners Nallammal and others. The plaintiff can claim title only from the said date. The suit survey number was never measured by metes and bounds into two halves at any time. At present the plaintiff is in possession of 51-1/2 cents in excess of the actual extent for which she is entitled. Since the suit survey number was not measured before, it was not able to find out that the plaintiff is in excess possession of 51 ½ cents. The plaintiff and the defendants agreed to measure the land by a Government surveyor and to take equal half share by mutual adjustment on 02.04.1998. They also came to know the sub divisions effected under U.D.R. scheme. On 21.04.1998 the plaintiff and the defendants applied to the Tahsildar for proper measurement. The Firke Surveyor of Velliania Firka also measured the land on 17.07.1998 and prepared a plan. Only after the said measurement, both the parties came to know that the plaintiff is in excess possession of 51 ½ cents in the suit survey number. But subsequently,



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the plaintiff and her husband changed their mind and claimed absolute right over the excess land also. The plaintiff has no manner of title over the excess land to an extent of 51 ½ cents more fully described in the schedule property. The defendants have also filed a suit in O.S.No. 587/1998 for declaration of their title and for possession and *mesne* profits. There is no cause of action for the suit.. Hence the suit may be dismissed.

6. The defendants in the suit in O.S.No.539 of 1998 filed another suit in O.S.No.587 of 1998. The averments of the plaint in O.S.No.587 of 1998 are as follows:-

The plaintiffs are brothers and both the plaintiffs are jointly entitled to the southern half of the property in S.F.No.1663 of Puliur village in Karur Taluk. The above property is the ancestral property of the plaintiffs. The total extent of the plaintiffs' property is 2.69-1/2 Acres. The defendant is entitled to the northern half of the same survey number and she purchased the above property measuring only Ac. 2.69 1/2 cents as per the registered sale deed dated 11.04.1974. The said deed was executed by the original owners Nallammal and others, The defendant is claiming title only from the date of the sale deed i.e.



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11.4.1974. The entire property in S.F.No. 1663 was never measured to find out the actual measurement. Both the parties were under a wrong impression that the plaintiffs and the defendant are in equal possession of Ac. 2.69 1/2 cents. But later on, the plaintiffs came to understand that the defendant is in excess of possession of 51-1/2 cents which is against her sale deed. Subsequently, both the parties agreed to measure the land by a Government surveyor and on such survey, which was held on 02.04.1998 they came to understand the real measurement. Both the parties jointly applied to the Tahsildar, Karur on 2.4.1998 for the subdivision of S.F.No.1663. The Firka Surveyor measured the properties on 17.7.1998 and prepared plan. As per the measurement, the plaintiffs came to know that the defendant is in excess possession of 51-1/2 cents in the suit survey number. In the presence of mediators, the defendant agreed to pay the market value of the excess land to the plaintiffs. But subsequently, the defendant changed her mind and filed the suit in O.S.No.539/1998 for the relief of declaration of title and permanent injunction against the plaintiffs herein. Hence, the plaintiffs are filing the suit for declaration of their title to the suit property and also for possession and *mesne* profits. Hence, the suit may be decreed accordingly.



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7. The averments of the written statement filed in O.S.No.587 of 1998 are as follows:-

The defendant purchased the suit property from Nallamal and others by a registered sale deed on 11.04.1974. At that time, the suit property was in the possession of one Ammaiyappa Gounder under usufructuary mortgage. Subsequently, during the year 1978 the defendant cleared the mortgage loan and she was put in possession of the suit property. The defendant and her predecessors in- title were in continuous possession of the suit property. After 1978, the defendant has spent considerable amount to dug a well and also for the construction of compound wall in the well. She has also laid a water pipe line and developed the suit property. On 20.11.1980 she obtained electric service connection for 5 H.P electric motor and after several years, it was converted into 7.5 H.P. The defendant also installed one submergible electric pumpset in the above well in the suit property and there is one ridge east to west which is the boundary line. After the digging of the well, the defendant also planted 30 coconut trees on the ridge and at



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present, the trees are aged about 20 years. She has also planted life fence on the east to west ridge, which is aged about 20 years. The plaintiffs have no manner of right on the northern side of the above ridge. Subsequently, the suit property was measured under U.D., scheme and the suit survey number is sub divided as S.F.No.1663/1. The total extent is Hec.1.30.0. The defendant is paying kist for the past 24 years. At present, the plaintiffs are claiming their title over the suit property and also attempted to trespass into the suit property. The defendant prevented the above act with great difficulty. She also filed a suit in O.S.No.539/1998 against the plaintiffs herein. The plaintiffs obtained the thumb impression of the defendant in a blank paper and subsequently used the same to the suit for their convenience. It is denied that the plaintiffs are entitled for an extent of 2 Acre 69 ½ cents. The suit survey number was already partitioned and the defendant has also perfected her title by adverse possession. It is denied that the Firka Surveyor measured the properties on 17.07.1998 and it was found out that the defendant is in excess possession to an extent of 51 1/2 cents. There is no cause of action for the suit., Hence the suit may be dismissed with costs.



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8. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court in O.S.No. 539 of 1998 for consideration:

- 1) Whether the plaintiff is entitled for declaration of title?
- 2) Whether the plaintiff is entitled for permanent injunction?
- 3) To what relief?

9. The following issues were framed in O.S.No.587 of 1998 by the Trial Court:-

- 1) Whether the plaintiffs are entitled for declaration as _____ prayed _____ for?
- 2) Whether the plaintiffs are entitled for possession of _____ the _____ suit _____ property?
- 3) Whether the plaintiffs are entitled for mesne profits?
- 4) To what relief?

10. As agreed by both the parties, both the suits were tried jointly and common evidence was recorded. Before the Trial Court, on the side of the plaintiffs, two witnesses have been examined as P.W1 and P.W.2 and 12 documents have been marked as Ex.A1 to A12. On the side of the defendants, two witnesses have been examined as DW1 and DW2



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and two documents have been marked as Exs.B1 and B2. Besides, Ex.C1 and C2 have been marked.

11. On consideration of the oral and documentary evidence adduced by the respective parties and the submission made, the Trial Court decreed the suit in O.S.No.539 of 1998 and dismissed the suit in O.S.No.587 of 1998. Aggrieved over the same, the defendants in O.S.No.539 of 1998, who are the plaintiffs in O.S.No.587 of 1998 have preferred the appeal suits in A.S.Nos.53 and 54 of 2002 before the Principal District Judge, Karur. The First Appellate Court, upon consideration of evidence on record, allowed A.S.No.53 of 2002 and set aside the judgment and decree in O.S.No.539 of 1998 and O.S.No.539 of 1998 is dismissed. The First Appellate Court also dismissed A.S.No. 54 of 2002 and confirmed the judgment and decree in O.S.No.587 of 1998. Aggrieved by this, the plaintiff in O.S.No.539 of 1998 and the respondent in A.S.No.53 of 2002 has filed the present second appeal.

12. While admitting the second appeal, this Court has formulated the following substantial questions of law:-



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1. Whether the District Judge is correct in law in allowing the appeal on the ground that the appellant has not proved adverse possession totally overlooking the documentary and oral evidence available on record?

2. Whether the learned District Judge is correct in Law in allowing the appeal especially when the appellant has proved her open, continuous and hostile possession to the suit property adverse to that of the respondents?

13. The learned counsel for the appellants/plaintiffs submitted that the plaintiff in O.S.No.539 of 1998 on the file of the District Munsif Court, Karur is the 1st appellant. The plaintiff filed a suit for declaration and consequential injunction restraining the respondents/defendants from interfering with her possession in respect of the suit property bearing S.No.1663 of Pullyur Village measuring an extent of 3 acres 21 cents. The plaintiff contended that she purchased the suit property under registered sale deed dated 11.04.1974 (Ex.A.1) and has been possession and enjoyment of the entire extent of suit property within the four boundaries openly knowledge of the all the persons. There is a ridge



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between plaintiff's property and the defendant's property which is situated on the southern side. The plaintiff also filed Patta, Kist receipts to prove her possession and enjoyment of the suit property measuring an extent of 3 acre 21 cents. The defendants filed a written statement contending that plaintiff is entitled to northern portion and defendants are entitled to southern portion. They further contended that the plaintiff is in possession of 3 acres 21 cents, but she was only entitled to 2 acres 69 cents and the plaintiff is in possession of 51½ cents over and above her entitlement. As a counter blast, the defendants filed O.S.No.587 of 1998 for declaration and recovery of possession of above mentioned 51½ cents. The defendants admitted the plaintiff's possession and sought for recovery of possession. He further submitted that the claims in both suits are one and the same. Both the Courts have found that the defendants have not established their title. The plaintiff has prayed for declaration and injunction and has established better title. Therefore, they are entitled to 3 acres 21 cents of suit property as prayed for. During the pendency of the appeal, the plaintiff died and her legal representatives have been brought on record as the appellants 2 to 5. The Hon'ble Apex Court in judgment reported in **2015(1) LW 1 (Sri Gangai Vinayagar Temple and another Vs Meenakshi Ammal and others)** has held that



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if suits in which common issues are involved and a common trial conducted, the losing party must file appeal against all decrees. Otherwise, the decree which has not been challenged will operate as res-judicata.

14. The learned counsel further submitted that when a party proves his long possession, his possession has to be protected as against interference by someone who is not proved to have a better title. Thus, the learned counsel pleaded to allow the second appeal. In support of his contention, he has produced the following judgments:-

(i) (1973)2 SCC 358 (M.Kallappa Setty vs. M.V.Lakshminarayana Rao);

(ii) 2015(1) LW 1 (Sri Gangai Vinayagar Temple and another Vs Meenakshi Ammal and others)

(iii) 1990-1-L.W.182 (M.Subramaniam and others vs. C.Chottabhai)

(iv) 2016(2) CTC 77 (N.Valliammal (dead) vs. M.Kanniah and others)

(v) 2013(1) MWN (Civil) 206 (S.Lakshmi vs. M.Tamilselvi)



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15. The learned counsel for the respondents/defendants supported the Judgment and Decree of the First Appellate Court. He further submitted that unfortunately the Trial Court in para 19 of the judgment held that the appellant/plaintiff is in possession of 3 acre 21 cents more than 12 years, hence, he is entitled to 3 acre 21 cents by way of adverse possession. The Trial Court failed to do see that adverse possession concern no issues framed and evidence is addressed by the appellant before the Trial Court. He further submitted that the First Appellant Court, in its judgment in para 15, after considering entire pleading and evidence, held that the appellant/plaintiff has not adduced any evidence to prove adverse possession and there is no issue. Hence, he is not entitled by way of adverse possession. The First Appellant Court in para 19 of its judgment held that the burden of proof is heavy on the person who assertion title on the basis of adverse possession, but in this case, the respondent/plaintiff has miserably failed to plead and prove the fact of adverse possession as such the respondent/plaintiff is not entitled for permanent injunction. Thus, he pleaded to dismiss the second appeal.

16. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.



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17. On perusal of the records, the fact reveals that the plaintiff in O.S.No.539 of 1998 has claimed her title in the suit property based on the registered sale deed dated 11.04.1974, which is evidenced as Ex.A1 sale deed dated 11.04.1974. On perusal of the document Ex.A1 sale deed dated 11.04.1974, it reveals that the plaintiff had purchased 2.69 ½ Acre in S.No.1663 of Puliur Village, Karur Taluk with clear boundaries. This fact is admitted by both the parties and not disputed.

18. The defendants are brothers and they are having property on the southern half of the suit S.No.1663 and it is their ancestral property and they are entitled to the extent of 2.69 ½ Acres. This fact is also not disputed by both the parties and this is an admitted fact.

19. According to the defendants, the suit survey number was measured by Firka Surveyor on 17.07.1998 and prepared plan. After the said measurement, both the parties came to know that the plaintiff is in excess possession of 51 ½ cents in the suit survey number.



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20. According to the plaintiff, she is in possession of 51 ½ cents in excess of actual extent purchased by her by way of sale deed dated 11.04.1974 (Ex.A1) and she is enjoying the same for a long period and there are 30 coconut trees aged about 20 years and patta has been granted in favour of the plaintiff for 1.30.0 Acre and the revenue records are in favour of the plaintiff. Hence, the plaintiff sought to declare her title in the plaint schedule property to the extent of Acre 1.30.0 and prescribed title by adverse possession for the extent of excess land of 51 ½ cents.

21. According to the defendants, the excess land of 51½ cents belongs to the defendants. Hence, they filed the suit in O.S.No.587 of 1998 for declaration of their title and for recovery of possession.

22. On perusal of the records, it is noticed that the plaintiff had purchased only an extent of 2.69½ Acres on the northern portion of S.F.No.1663 as per sale deed Ex.A1 dated 11.04.1974. The plaintiff claimed excess of 51½ cents on the ground of long enjoyment and patta has been granted for total extent of 1.30.0 Hec and prescribed title by adverse possession. Therefore, she sought to declare her title over the plaint schedule property to the total extent of Hec.1.30.0.



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23. On perusal of the pleadings, it is noticed that the plaintiff had not specifically pleaded her title by adverse possession. She has pleaded her title only on the basis of continuous possession for several decades. Further, it is noticed that the Trial Court has not framed any issues whether the plaintiff had perfected her title by adverse possession. But in the judgment, the Trial Court had concluded that due to the continuous and uninterrupted possession, the plaintiff had perfected her titled. The above finding is given by the Trial Court without pleading and without issues and without any evidence, apart from the patta issued by the revenue department marked as Ex.A2.

24. The law relating to the adverse possession is well settled. A person, who claims title to the property by adverse possession, must definitely plead and prove how and when adverse possession commences and what was the nature of his possession. Further, it is also well settled principle that mere possession alone is not sufficient. Long possession is not necessarily adverse possession. Adverse possession refers to actual and exclusive possession coupled with intention to hold as owner and it become hostile to the rightful owner. Mere possession without a claim



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of right for a long 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. Further, it is more important that 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 another having an interest in it.

25. In this case, the evidence reveals that the plaintiff had not proved with sufficient evidence that she had enjoyed the property denying the right of the defendant in the suit. The factual position of the case has been discussed by the First Appellate Court in its Judgment in para 16 and 17. For better appreciation, it is extracted hereunder:-

16. Ex.A.1 contains definite extent of the property, which is mentioned as Ac.2.69 ½ cents. P.W.1 husband of the respondent have categorically admitted in evidence that at the time of purchase they have not measured the suit property. P.W.1 have deposed as follows:-



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”நான்கு புறமும் செக்குபந்தி கண்டு வா.சா.ஆ.
1 கிரைய பூமியை வாங்கினோம் கிழபுறம் குழந்தாய்
அம்மா பூமி இருந்தது. குழந்தாமி அம்மாள் பு
பூமிக்கும், நாங்கள் கிரையம் வாங்கிய பு
பூமிக்கும் இடையே அடையான கல் இருந்தது.
மேல்புறம் அம்மையப்ப கவுண்டர் பூமி
எல்லையாகும். கிரைய பூமிக்கும் அம்மையப்ப
கவுண்டர் பூமிக்கும் இடையே அடையாள
கல் இருந்தது. வடபுறமும் அம்மையப்ப கவுண்டர் பு
பூமி தான் ஆகும். கிரைய பூமிக்கும் வடபுறம் இருந்த
அம்மையப்ப கவுண்டர் பூமிக்கும் இடையில்
அடையான கல் இருந்தது. தென்புறம் பிரதியாதிகள்
பூமியாகும். பிரதிவாதிகள் பூமிக்கும், கிரைய பு
பூமிக்கும் இடையே வெங்கக்கல் பொளி இருந்தது.
எங்களுக்கு கிரையம் கொடுத்தவர்களும், அவர்களது
முன்னோர்களும் மேற்கண்ட நான்கு
எல்லைகளுக்குட்பட்ட பகுதியைத்தான் அனுபவித்து
வந்தார்கள்”

As per the above evidence PW1 have stated that there
in a stone ridge dividing the lands of the respondent and the
appellants. But as per the commissioner's report and plant
Exs.C1 and C2 The Comissioner have not mentioned that
there is a stone ridge east to west dividing the above
properties. Moreover, Ex. A.1 contains not only the
boundaries ,but also the specific extent of the land. Ex.A6 is
the prior title deed dated 07.04.1971 in which, Karuppanna
Goundar, son of Ammayappa Gounder purchased the suit



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property. The description of the property is mentioned as follows

“அபுசு 1663 நெம்பர் ஏக். 5.39க்கு வடபுரம் பாதிக்கு ஏக்கர் 2.69 1/2 க்கு வடபுறமாக மேல்புறம் லோகல் பண்டு ரோட்டுக்கு தெற்கு மேற்படி நம்பரில் கருப்பண்ண கவுண்டர் பூமிக்கு மேற்கு, 1663 காலைக்கு வடக்கு, அம்மையப்ப கவுண்டர் கிரைய பு பூமிக்கு கிழக்கு

Ex.A. 6 is the earliest document relating to the suit property. Ex.A. 7 is the usufructuary mortgage deed executed by the vendors of the respondents dated 2.1.1970 in which the property was given possession under usufructuary mortgage and it is categorically mentioned therein that the property is situated in S.F.No. 1663 and the total extent is Ac. 5.39 cents and the property subjected to the mortgage was on the northern side of the suit survey number measuring Ac. 2.69 1/2 cents subsequently, the respondent purchased the suit property and cleared the usufructuary mortgage debt and also putting possession of the suit property. In the plaint in O.S.No. 539/98 in the schedule of property the plaintiff have admitted that the extent of the suit property is Ac. 2.69 1/2 cents and the above extent is wrongly mentioned. The respondent purchased the property on 11.4.1974 under Ex. A.1. As already stated she has mentioned that herself was put in possession during the year 1978 and she is continuing



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in possession of the suit property. Prior to her, the predecessors-in-title were in continuous possession. As per the case laws already discussed mere possession for a very long period does not confer any legal right, especially a legal right of adverse possession on the respondent. To prove her title, the respondent should categorically plead and prove that she enjoyed the other men's property continuously with the knowledge of the real owner and the real owner have hostile title. But in this case the respondent/plaintiff have not mentioned any particular period from which the date of adverse possession commences, as per article 65 of the Limitation Act 1963, the period of limitation of 12 years commences only from the crucial date on which the alleged adverse possession commences. But either in the pleadings or in evidence, the respondent/plaintiff have miserably failed to give my particular date to calculate adverse possession. Likewise, P.W.2 have also deposed to the above fact that from the year 1975 the respondent / plaintiff is in possession of the property. He has also admitted even in the chief examination that he is not aware that the respondent/plaintiff is in excess of 51 ½ cents in the suit survey number. The evidence of P.W.2 is not sufficient to establish the alleged adverse possession by the respondent/plaintiff. D.W. 1, the 1st appellant herein have deposed that in the suit survey number 1663, the southern portion belongs to the appellants ancestrally and the appellants are entitled for Ac.2.69-1/2



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cents. He has also admitted the purchase by the respondent/plaintiff, but he has denied that there is no ridge in between the lands. As per the Commissioners report and plan, the commissioner has noticed a life fence and also coconut trees east to west in the suit property. D.W.1 deposed that subsequently both the parties agreed to measure the land and subsequently, the land was measured and only at that time, it was noticed that the respondent plaintiff is in excess possession of 51-1/2 cents in the suit survey number. But the defendants have not filed any document to prove the same. D.W.2 Firka Surveyor have deposed that no document is available regarding the alleged survey number of the suit survey number 1663. The above evidence is also not useful for the appellants.

17. The trial court have relied upon only Ex.A. 2, patta pass book, in which the total extent is mentioned as Hec. 1.30.0 in S.F. 1663/1 in patta number 835. It is settled law that patta is not a document of title Exs.A.3 to 5 are kist receipts and Ex.8 is the discharge receipts given by Ammaiyappa Gounder regarding the discharge of the usufructuary mortgage debt. Ex.A. 9 is the copy of chitta in which it is mentioned that patta is granted to the respondent in S.F.1663/1 to an extent of Hec.1.30.0. Ex.A.10 is the copy of adangal, which proves the possession of the respondent to an extent of Hec.1.30.0, Ex.A.11 is the adangal copy for 1396 fasli, which reveals that the respondent was cultivating



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to an extent of Hec.1.30.0. Ex.A.12 is the U.D.R patta given to the respondent/plaintiff. The trial court have discussed the above documentary evidence and concluded that the respondent/plaintiff is in continuous possession for a very long period and she has perfected her title due to possession. But the trial court has miserably failed to analyse whether the respondent/plaintiff have properly pleaded and proved the alleged adverse possession. As per the case Laws already discussed the fact of possession is entirely different from adverse possession. The burden of proof is heavy on the person who ascertain title on the basis of adverse possession. But in this case, the respondent/plaintiff have miserably failed to properly plead and prove the fact of adverse possession. As such, the respondent/plaintiff is not entitled for permanent injunction as prayed for. The above points are answered in favour of the appellants.

26. Therefore, the First Appellate Court is right in setting aside the judgment and decree of the Trial Court in O.S.No.539 of 1998 and allowed the appeal in A.S.No.53 of 2002. Further, it is noticed that though the defendants in the suit in O.S.No.539 of 1998 claimed title over the property to the extent of 51½ cents, they had not proved by filing any document. Therefore, the Trial Court dismissed the suit in O.S.No.587 of 1998 and the First Appellate Court also confirmed the



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same in A.S.No.54 of 2002.

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27. The argument of the learned counsel for the appellants/plaintiff that the respondents/defendants did not file further appeal against the decree passed by the First Appellate Court arising out of their suit and the decision rendered by the First Appellate Court has become final and conclusive and the decision of the First Appellate Court rendered in a common judgment would constitute *res judicata* when no appeal is filed against the said judgment, has no merits in view of the order 41 Rule 33 C.P.C. Order 41 Rule 33 C.P.C is extracted hereunder:-

“33. Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection 1 [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not



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have been filed against such decrees]:

Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.”

28. In view of the above, I find that the First Appellate Court is correct in law in allowing the appeal on the ground that the appellant/plaintiff has not proved adverse possession. I answered the substantial questions of law accordingly. The decisions produced by the learned counsel for the appellants/plaintiff are not helpful to the present case.

29. In the result, this Second Appeal fails and the same is dismissed. No costs.

29.01.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn
To:

- 1.The Principal District Judge, Karur.
- 2.The Principal District Munsif, Karur.



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3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

V.SIVAGNANAM, J.

skn

Judgment made in
Second Appeal No.1928 of 2003

29.01.2025.