



S.A. NO.2143 OF 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09 / 06 / 2026

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CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.2143 OF 2003

1.Rasayee (Died)
W/o/. Ganesan

2.Kantham
W/o. Kasinathan

Both of them residing at
Kottagam Village,
Virudhachalam Taluk.

3.Madhanavalli
W/o. Uththandi
Kalamedu Village,
Ulundurpet Taluk,

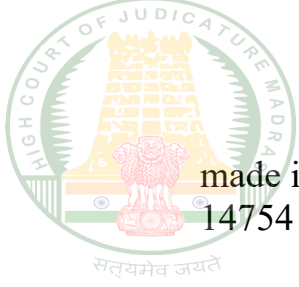
... Appellants /
Respondents /
Plaintiffs

4.Mahalakshmi
W/o. Selvarasu
220, South Street, Kottagam Village,
Virudhachalam, Cuddalore.

5.Lakshmi
C/o. Moorthi
3/352, North Street,
Kottagam, Cuddalore.

... Appellants /
LRs' of deceased
1st Appellant

(Appellants 4&5 brought on record as
LRs' of the deceased 1st appellant
vide Order of Court dated June 10, 2022



made in CMP Nos.14751, 14752 and
14754 of 2021 in S.A.No.2143 of 2003)

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Vs.

1.Govindaswamy (Died)
S/o. Ayyakannu
Narumanam Village,
Virudhachalam Taluk.

... 1st Respondent /
4th Respondent /
1st Defendant

2.Sembayee (Deceased)
W/o. Subramanian
Kotteri Village,
Virudhachalam Taluk.

(R2 – died, leaving no LRs' on record
vide Order of Court dated April 24,
2015 made in S.A.No.2143 of 2003
Memo USR No.2893 dated April 24,
2015)

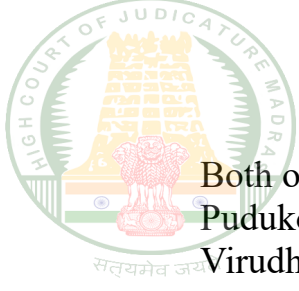
3.Ranganathan
S/o. Natarajan

4.Rajani
S/o. Ranganathan

Both of them residing at
Narumanam Village,
Virudhachalam Taluk.

5.Ranganathan
S/o. Rangaswamy

6.Balakrishnan
S/o. Arumugam



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Both of them residing at
Pudukooraipttai,
Virudhachalam Taluk.

... Respondents 2 – 5 /
Appellants 1 – 5 /
Defendants 3 – 7

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7.G.Balakrishnan
S/o. Govindaswamy
Narumanam Village,
Kuppam Natham Post,
Virudhachalam Taluk, Cuddalore District.

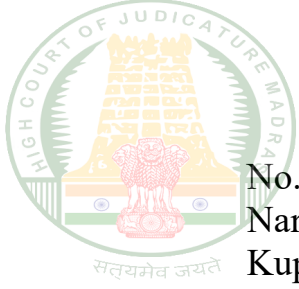
8.Jambulingam
S/o. Govindaswamy
Narumanam Village,
Kuppam Natham Post,
Virudhachalam Taluk, Cuddalore District.

9.Chakravarthy
S/o. Govindaswamy
Narumanam Village,
Kuppam Natham Post,
Virudhachalam Taluk, Cuddalore District.

10.Ravichandran
S/o. Govindaswamy
Narumanam Village,
Kuppam Natham Post,
Virudhachalam Taluk, Cuddalore District.

11.Subha
D/o. Late Mathiazhagan
Grand daughter of Govindaswamy
No.15, Kabilan Street, Odai Street,
Narumanam Village,
Kuppam Natham Post,
Virudhachalam Taluk, Cuddalore District.

12.Soorya
S/o. Late Mathiazhagan
Grand son of Govindaswamy



No.15, Kabilan Street, Odai Street,
Narumanam Village,
Kuppam Natham Post,
Virudhachalam Taluk, Cuddalore District.

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13.Thamaraiselvi (Died on 28.06.2017)
W/o. Rajavel
D/o. Govindaswamy
Vadakku Street, Mudanai Village,
Virudhachalam Taluk, Cuddalore District.

14.Vasantham
W/o. Mayavel
D/o. Govindaswamy
Veera Viskakuppam Post,
Panruti Taluk, Cuddalore District.

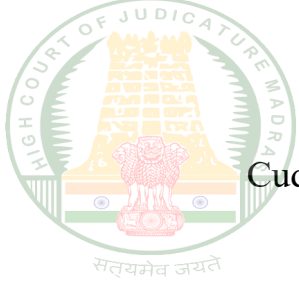
... Respondents 7 – 14 /
LRs' of deceased
1st Respondent

15.M.Thamizharasi
W/o. Mathialagan
D/o. Thamaraiselvi
No.15, Odaitheru, Narumanam Village,
Kupantham Post, Viruthachalam Taluk,
Cuddalore District.

16.D.Kalaiyarasi
W/o. Dharmalingam
D/o. Thamaraiselvi
Manalmedu Village and Post,
Chidambaram Taluk, Kadalur District.

17.R.Manikandan
S/o. Rajavel and Thamaraiselvi
North Street, Mudanai Village,
Viruthachalam Taluk, Cuddalore District.

18.R.Selvakumar
S/o. Rajavel and Thamaraiselvi
North Street, Mudanai Village,
Viruthachalam Taluk,



Cuddalore District.

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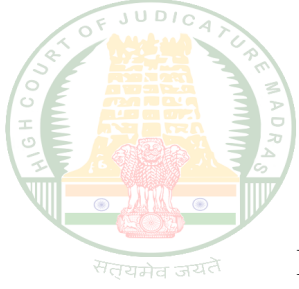
... Respondents 15 – 18 /
LRs' of deceased
Respondent No.13

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****Respondents 7 and 14 are brought on record as LR's of the deceased 1st Respondent and Respondents 15 to 18 are brought on record as LR's of the deceased 13th Respondent and Respondents R15 to 18 are set *ex-parte* vide Order of Court dated January 11, 2023 made in CMP Nos.16433, 16434, 16437, 14746, 14755, 14864 of 2022 in S.A.No.2143 of 2003.**

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated June 30, 2003 made in A.S. No.7 of 2003 on the file of the Principal Sub Court, Vridhachalam, reversing the Judgment and Decree dated October 28, 2002 made in O.S. No.1069 of 1989 on the file of the Principal District Munsif, Vridhachalam.

For Appellants	:	Ms.D.E.Anisree Sangavi for Ms.Usha Raman
For Respondents 3-6	:	Ms.P.Mahalakshmi
For Respondents 8, 9, 10 & 12	:	Served - No appearance
For Respondents 1 & 13	:	Died, Steps taken
For Respondent-2	:	Died, No legal heir as per Memo dated May 24, 2015
For Respondent-7	:	Deceased
For Respondents 15-18	:	<i>Ex-parte</i> vide Court Order dated January 11, 2013
For Respondents 11 & 14:	:	Given up



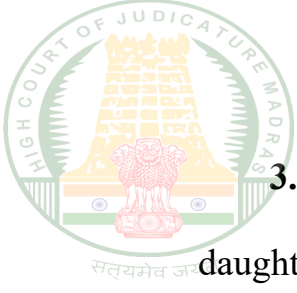
J U D G M E N T

Feeling aggrieved by the Judgment and Decree of 'the Principal Sub Court, Vridhachalam' ['First Appellate Court' for short] passed in A.S. No.7 of 2003, wherein and whereby the Judgment and Decree dated October 28, 2002 of 'the Principal District Munsif Court, Vridhachalam' ['Trial Court' for short] passed in O.S. No.1069 of 1989 was reversed, the plaintiffs in the Original Suit have come up with this Second Appeal.

2. For the sake of convenience, the parties will hereinafter be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. Case of the plaintiffs is that an extent of 2 Acre 76 Cents in Re-Survey No.123/1 of Narumanam Village, Vridhachalam Taluk was originally owned by Appadurai as his ancestral entitlement. Appadurai passed away intestate in the year 1957 and he was survived by his wife - Chellammal and his three daughters who are the plaintiffs herein. After the demise of Appadurai, his wife and the plaintiffs who were then minors, were enjoying the aforesaid extent of 2 Acre 76 Cents.

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3.1. On January 6, 1959, Appadurai's wife, for herself and her minor daughters viz., plaintiffs, sold an extent of 1 Acre out of the aforesaid 2 Acre 76 Cents, situate on the western side thereof, to the first defendant by way of registered Sale Deed. Appadurai's wife and the plaintiffs continued to the enjoy the remaining extent of 1 Acre 76 Cents within specific four boundaries in the Suit survey number, which is the suit property herein.

3.2. All the plaintiffs got married by the year 1966 and moved out of the Suit village. Hence the suit property was orally leased out [*Varam*] to the defendants 3 and 4, who are their relatives. Fifth defendant is the son of fourth defendant. Then, in 1981, Appadurai's wife / plaintiffs' mother passed away intestate.

3.3. Under the UDR Scheme [Updating the Registry Scheme], without the knowledge of the plaintiffs' side, at the instigation of defendants 1 and 2, the authorities issued Patta in the name of defendants 3 and 4 and thereby undermined the plaintiffs' title and rights over the suit property. Hence, the plaintiffs issued legal notice on April 28, 1989 to defendants 1, 2 and 5. Defendants 1 and 2 replied on May 15, 1989. After exchange of notices, the plaintiffs have come up with this Suit for declaration, delivery of possession and *mesne* profits under Order XX Rule 12 of the Code of



Civil Procedure, 1908 from the date of plaint till the date of delivery along with costs.

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CASE OF DEFENDANTS 1 TO 5

4. The fourth defendant filed a written statement on August 25, 1992 and the same was adopted by the other original defendants, namely defendants 1 to 3 and 5. According to the defendants, one Chinnathambi Padayatchi orally purchased the suit property from Kuppa Padayatchi by way of an oral sale. Subsequently, Chinnathambi Padayatchi's sons, namely Nataraja Padayatchi and Ponappa Padayatchi, divided and enjoyed the suit property equally. The eastern side 88 Cents was enjoyed by Nataraja Padayatchi and the western side 88 Cents was enjoyed by Ponappa Padayatchi.

4.1. After the demise of Nataraja Padayatchi, his eastern 88 Cents fell into the hands of his son – Ranganatha Padayatchi (Defendant No.4), who subsequently gave the said 88 Cents to his son / fifth defendant - Rajini in a partition. UDR Patta was issued in favour of defendants 4 and 5 in respect of the eastern 88 Cents. Fourth defendant mortgaged the eastern 88 Cents. Defendants 4 and 5 have been in enjoyment of the same for more



than 30 years and therefore, they have perfected title by adverse possession

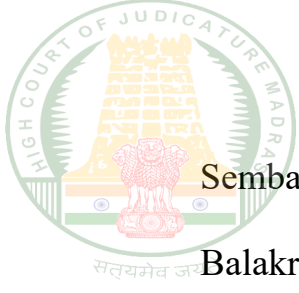
as well.

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4.2. As regards the other 88 Cents on the western side enjoyed by Ponappa Padayatchi, upon his demise, it fell into the hands of his daughter - Sembayee, who orally conveyed the same to one Aarumugam, who in turn gave it to his son / seventh defendant - Balakrishnan in a partition.

4.3. Neither the plaintiffs nor her parents never ever were in possession and enjoyment of the suit property. Defendants 1 and 2 have no right or title over the suit property. They are not necessary parties to the Suit. Hence, the Suit is bad for misjoinder of parties. Stating so, the defendants 1 to 5 sought to dismiss the Suit.

5. Subsequently, on June 11, 2001, the fourth defendant filed an additional written statement stating that Ponappa Padayatchi executed registered Will dated June 2, 1948, bequeathing his western 88 Cents in favour of his daughter - Sembayee and his son-in-law - Subramanian. Thereafter, on June 3, 1957, Sembayee executed a Gift Settlement Deed in favour of her husband - Subramanian. The said Gift Settlement Deed did not come into force, as Subramanian failed to maintain Sembayee. Hence,

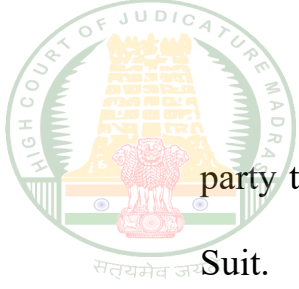
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Sembayee conveyed the western 88 Cents in favour of Arumugam and Balakrishnan (later impleaded as seventh defendant). The Suit is bad for non-joinder of necessary parties namely Arumugam and Balakrishnan.

6. Further, the fourth defendant filed another additional written statement and the same was adopted by fifth defendant. It is averred therein that there was no reason to implead defendants 6 and 7 as parties to the Suit and on that score as well, the Suit is liable to be dismissed.

CASE OF DEFENDANTS 6 AND 7

7. After the filing of additional written statement by fourth defendant, one Ranganathan and Balakrishnan were impleaded as defendants 6 and 7 to the Suit. Seventh defendant filed a written statement and the same was adopted by sixth defendant. Defendants 6 and 7 would reiterate the averments contained in the written statement of defendants 1 to 5 (not those averments in the fourth defendant's additional written statement) and further aver that upon the demise of Ponappa Padayatchi, his western 88 Cents fell into the hands of Ponappa Padayatchi's daughter - Sembayee, who sold the same to seventh defendant's father - Arumugam by way of an oral sale, who in turn gave the same to the seventh defendant in a partition. It is further averred that sixth defendant is an unnecessary



party to the Suit. Stating so, the defendants 6 and 7 sought to dismiss the Suit.

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TRIAL COURT

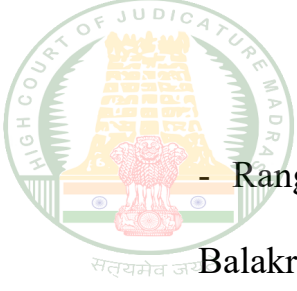
8. The parties went to trial on these pleadings. The Trial Court framed the following issues:

- "(i) *Whether the plaintiffs are entitled to the relief of declaration and recovery of possession and other reliefs as prayed for ?*
- (ii) *To what other reliefs the plaintiffs are entitled to ?*"

8.1. On June 17, 2002, the Trial Court framed the following issues:

- (i) *Whether it is true that the western 88 Cents in the Suit survey number belongs to the seventh defendant and that the eastern 88 Cents thereof belongs to the defendants 4 and 5 ?*
- (ii) *Whether the suit property belongs to the plaintiffs ?*

9. On the side of the plaintiffs, the second plaintiff was examined as P.W.1, the third plaintiff was examined as P.W.2, the first plaintiff was examined as P.W.3, one Ramarathinam was examined as P.W.4 and Ex-A.1 to Ex-A.8 were marked. On the side of the defendants, the fourth defendant

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- Ranganathan was examined as D.W.1 and the seventh defendant -

Balakrishnan was examined as D.W.2 and Ex-B.1 to Ex-B.7 were marked.

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10. After full-fledged trial, the Trial Court found that the plaintiffs' father - Appadurai had leased out the entire 2 Acre 76 Cents in the Suit Re-Survey No.123/1 in favour of one Sathyanathan *vide* Ex-A.1 - Registered Lease Deed dated June 5, 1939. Further the Trial Court found that on January 6, 1959, the plaintiffs' mother for herself and for the plaintiffs who were then minors, sold 1 Acre thereof to the first defendant *vide* Ex-A.2 - Sale Deed. Ex-A.7 and Ex-A.8 - Adangal Extracts for the *Fasli* Years 1372 to 1381, 1385 and 1389 respectively show that from *Fasli* Year 1372 to 1377, the land comprised in Suit survey number was cultivated / enjoyed by the plaintiffs' mother - Chellammal and the first defendant and subsequently, the fourth defendant's name was added in the Adangal Extract. Further, the plaintiffs' mother's name remained in the Adangal Extracts upto the *Fasli* Year 1389, that is to say, upto the year 1989 -1990. The Trial Court further found that the oral sale (in 1988 for a consideration of Rs.2,500/- according to D.W.2) was not proved and there is no document to trace seventh defendant's title, and hence, the defendants' title and exclusive enjoyment over 30 years have been belied. The Trial Court concluded that the plaintiffs have established their title and proved their

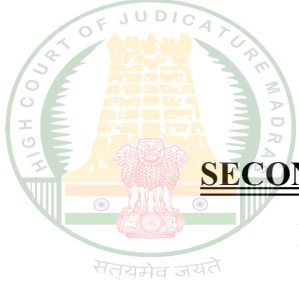
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case. Accordingly, the Trial Court decreed the Suit for declaration, delivery of possession and *mesne* profits.

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FIRST APPELLATE COURT

11. Dissatisfied with the Judgment and Decree of the Trial Court, the defendants 3 to 7 preferred an Appeal Suit. The First Appellate Court held that the total extent of 2 Acre 76 Cents in Suit survey number originally belonged to Kuppa Padayatchi and there is no dispute with the same on either side. The plaintiffs' father - Appadurai was in possession and enjoyment of only an extent of 1 Acre in the Suit survey number and only that extent was leased out to one Sathyanathan under Ex-A.1 - Lease Deed and was subsequently sold under Ex-A.2 - Sale Deed to first defendant. The First Appellate Court further held that there is no document to show that the plaintiffs or their parents were in title or possession of the remaining 1 Acre 76 Cents in the Suit survey number. Accordingly, the First Appellate Court allowed the Appeal Suit and set aside the Judgment and Decree of the Trial Court.

**SECOND APPEAL**

12. Feeling aggrieved by the Judgment and Decree of the First Appellate Court, the plaintiffs have come up with this Second Appeal.

Pending the Second Appeal, the first appellant / first plaintiff passed away and hence her legal representatives were brought on record as Appellant Nos.4 and 5. Similarly, the second respondent / third defendant passed away and the factum of demise has been recorded.

13. The Second Appeal was admitted on December 5, 2003 on the following Substantial Questions of Law:

- (i) *Whether the plaintiffs suit based on title could be dismissed for want of proof of possession when the title was an admitted fact without defendants establishing their own title to justify retention of possession?*
- (ii) *Whether in the absence of proof of adverse possession by appropriate pleadings and documentary evidence, was not the lower appellate court in error in non suiting the plaintiffs?"*

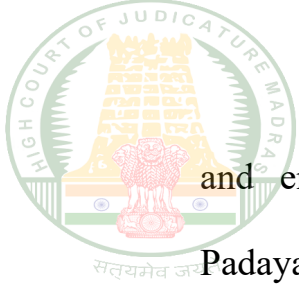
ARGUMENTS

14. Ms.D.E.Anisree Sangavi, representing Ms.Usha Raman, learned Counsel for the appellants would submit that upon considering the oral evidence as well as the documents in Ex-A.1 - Registered Lease Deed dated June 5, 1939, executed by the plaintiffs' father in favour of one

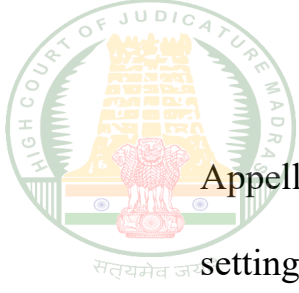
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Sathyathan, Ex-A.2 - Sale Deed dated January 6, 1959 in favour of first defendant executed by plaintiffs' mother and plaintiffs (then minors), and Exs-A.7 and A.8 - Adangal Extracts in which the plaintiffs' mother is jointly as a cultivator, and also upon considering that the defendants' plea of oral sale above the value of Rs.100/- is not valid as per the Transfer of Property Act, 1882 and not proved, the Trial Court rightly decreed the Suit as prayed for. But the First Appellate Court based on surmise and conjectures, and without proper appreciation of the documentary and oral evidence available on record, particularly Ex-A.1, Ex-A.2, Ex-A.7 and Ex-A.8, set aside the Trial Court's Judgment and Decree that too without assigning any valid reason. Accordingly, she would pray to set aside the Judgment and Decree of the First Appellate Court and restore that of the Trial Court.

15. *Per contra*, Ms.P.Mahalakshmi, learned Counsel appearing for Respondents 3 to 6 would submit that Chinnathambi Padayatchi purchased an extent of 1 Acre 76 Cents from Kuppa Padayatchi who is the grandfather of the plaintiffs by way of oral sale, long ago. Further reiterating the averments contained in the written statement, she would submit that the said extent was enjoyed by Chinnathambi Padayatchi and successively by Nataraja Padayatchi and Ponnappa Padayatchi, who divided

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and enjoyed the said extent equally. Post the lifetime of Nataraja Padayatchi and Ponnappa Padayatchi, the 88 Cents share of the former fell into the hands of defendants 4 and 5 and that of the latter fell into the hands of third defendant. Third defendant orally sold her 88 Cents to one Arumugam who in turn gave the same to his son / seventh defendant in a partition. The documents of the defendants which are revenue records namely Adangal, Kist Receipts, *etc.*, show that the suit property is in possession and enjoyment of the defendants 4, 5 and 7. The defendants 4, 5 and 7 and their predecessors-in-title have been in possession and enjoyment of the suit property for more than 30 years and hence, have perfected the title by way of adverse possession. There is no proof that the plaintiffs leased out [*Varam*] the suit property in favour of the defendants 3 and 4. Defendants 3 and 4 never paid any lease amount by way of cash or kind to the plaintiffs. Hence, the plaintiffs' case that the defendants 4, 5 and 7 and their predecessors-in-title are in possession and enjoyment of the suit property as lease holders (*Varamdar*) is not proved. She would refer to Ex-B.5 - Will dated June 2, 1948 executed by Ponnappa Padayatchi in favour of his daughter / third defendant and son-in-law and contend that a portion of suit property was in possession and enjoyment of Ponnappa Padayatchi as early as in 1948 which probablizes the case of the defendants. The First

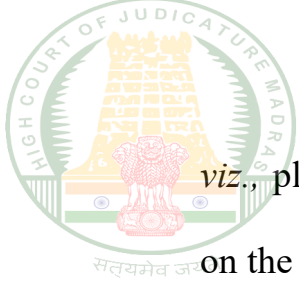
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Appellate Court rightly dismissed the Suit by allowing the appeal and setting aside the Judgment and Decree of the Trial Court. There is no need to interfere with the same. Accordingly, she would pray to dismiss the Second Appeal.

DISCUSSION

16. Heard on either side. Perused the evidence available on record.

17. On the side of the plaintiffs, the registered Lease Deed dated June 5, 1939 executed by the plaintiffs' father - Appadurai in favour of one Sathyanathan for a period of three years, is marked as Ex-A.1. It was executed in respect of the entire extent of 2 Acre 76 Cents in the Suit survey number viz., Survey No.123/1 and some other property. From the description of property thereof, it could be seen that the entire extent in Suit survey number along with some other property originally belonged to Kuppa Padayatchi and upon his demise (before 1939), the properties fell into the hands of the plaintiffs' father who by exercising his right, leased out the entire extent of in the Suit survey number under Ex-A.1 for three years. It is an admitted fact that the plaintiffs' father passed away in the year 1957. In the year 1959, under Ex-A.2 - Sale Deed, the plaintiffs' mother - Chellammal for herself as well as for her then minor daughters

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viz., plaintiffs, sold an extent of 1 Acre in the Suit survey number, situate on the western side thereof, to the first defendant. What could be seen from Ex-A.1 and Ex-A.2 is that the entire extent of 2 Acre 76 Cents in the Suit survey number originally belonged to the plaintiffs' grandfather and that it was enjoyed by the plaintiffs' grandfather, plaintiffs' father and plaintiffs' mother & plaintiffs successively.

18. In the Adangal Extracts in Ex-A.8 for the *Fasli* Year 1372 to 1377 and 1381 respectively to 1381 (roughly 1962 to 1971), the entire extent of Suit survey number stands jointly in the name of plaintiffs' mother Chellamal and first defendant - Govindaswamy. As stated *supra*, western 1 Acre in Suit survey number was sold to the first defendant under Ex-A.2 - Sale Deed. Conjoint reading of Ex-A.2 and Ex-A.8 shows that the suit property measuring 1 Acre 76 Cents was in direct possession and enjoyment of the plaintiffs' mother - Chellammal till 1971.

19. In the Adangal Extracts in Ex-A.7 for the *Fasli* Years 1382, 1385 and 1389 (roughly 1972 to 1979), initially for the *Fasli* Years 1382 and 1385, the property in Suit Survey Number entirely stood in the name of fourth defendant – Ranganathan and plaintiffs' mother – Chellammal and subsequently, in the *Fasli* Year 1389, the said Survey Number was sub-



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divided into two sub-divisions namely 123/1A – 0.45.0 Hectares stood in the name of the third defendant – Sembayee and plaintiffs' mother - Chellammal and 123/1B – 0.33.5 Hectares stood in the name of fourth defendant – Ranganathan and plaintiffs' mother – Chellammal. Whereas, in Ex-B.1 - Adangal Extracts, the entire extent in Suit survey number stands in the name of fourth defendant - Ranganathan from the *Fasli* Years 1381 to 1386. For the *Fasli* Years 1387 and 1388, S.No.123 was sub-divided into two sub-divisions. S.No.123/1B – 0.33.5 Hectares in the name of Ranganathan and 123/1C – 0.33.0 Hectares – jointly in the names of Rathnavel and Ranganathan. The entries in Ex-A.7 and Ex-B.1 - Adangal Extracts are conflicting with each other. When entries are conflicting, the authority who issued the Adangal Extracts ought to have been examined but either side failed to do so.

20. Further, Ex-B.2 and Ex-B.3 are the Chitta Extracts for the *Fasli* Year 1387 to 1394 in which Survey Nos.123/1A (0.45.5 Hectare), 123/1B (0.33.5 Hectare) and 123/1C (0.33 Hectare) stand in the name first defendant - Govindasamy, third defendant - Sembayee and one Ranganathan son of Ramasamy. It can be seen that Ex-B.2 and Ex-B.3 are also conflicting with Ex-B.1. Anyways, Ex-A.8 - Adangal Extracts, which



shows the plaintiffs' mother's possession and enjoyment of the suit property till 1971, remains clear

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21. Perusal of Ex-B.4 shows that, in Adangal Extracts for *Fasli* Years 1389, 1391 and 1394, the entire extent in Suit survey number stands in the name of Rathanavel and fourth defendant - N.Ranganathan; and in Adangal Extracts for *Fasli* Years 1396, 1398, 1399 and 1403, it stands in the name of third defendant - Sembayee and fifth defendant - Rajini. In Adangal extracts for the *Fasli* Years 1404 and 1405, it stands in the name of third defendant – Sembayee and fourth defendant – N.Ranganathan.

22. Ex-B.7 - UDR Patta in respect of an extent of 0.33.5 Hectare in Survey No.123/1B stands in the name of third defendant - Sembayee and seventh defendant's father - Arumugam. Ex-B.6 is the Kist Receipts issued after Ex-B.7 - UDR Patta. Ex-B.6 – Kist Receipts contains receipts in the names of Balakrishnan, Ranganathan, Sanniyasi, Kothandapani and R.Arumugam respectively.

23. Conjoint readings of Ex-A.7 and Ex-B.1 to Ex-B.7 shows that the defendants came into possession and enjoyment of the suit property only after 1971. This probablizes the plaintiffs' case that they all got

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married and residing elsewhere from the suit property by 1966; that their mother passed away in 1981; that hence, the plaintiffs leased out [*Varam*] the suit property in favour of defendants 3 and 4. The defendants' plea of oral sale by plaintiffs' grandfather to fourth defendant's grandfather - Chinnathambi Padayatchi is not proved and even if taken to be proved, as it is above the value of Rs.100/-, oral sale is invalid as per the Transfer of Property Act, 1882. There is no pleadings or proof of any particulars regarding the oral sale, like the year, sale price, *etc.* When under Ex-A.2, 1 Acre was sold for Rs.1,200/- in 1959, the subject matter of the oral sale being 1 Acre 76 Cents, would have definitely been above Rs.100/-. The plea of oral sale is not believable, *inter-alia* in view of the fact that the defendants got into possession only after 1971. Oral gift if any is also invalid in view of Section 123 of the Transfer of Property Act, 1882 (Act No.4 of 1882).

24. As regards the UDR Patta in Ex-B.7, as stated *supra*, the plaintiffs' mother's title and possession of the suit property till 1971 is proved by way of documentary evidence, which means Patta before the UDR Settlement Scheme would have stood in the name of plaintiffs' mother or father. When so, the UDR authorities ought to have issued notice to the plaintiffs' side and conducted inquiry, before issuing UDR Patta in

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favour of the defendants 3, 4 and seventh defendant's father. Had they conducted such an inquiry, they would have not issued UDR Patta in favour of the defendants 3, 4 and seventh defendant's father. There is no evidence available on record to show that such an inquiry was conducted after duly issuing notice. Further, seventh defendant's case is that his father - Arumugam purchased western 88 Cents in the suit property from third defendant - Sembayee for Rs.2,500/- by way of oral sale. D.W.2 / seventh defendant has deposed that the sale value was for Rs.2,500/- in 1988. The same is not just plausible, but also invalid as oral sale for value above Rs.100/- cannot be made [See Section 54 and Section 123 of the Transfer of Property Act, 1882].

25. Description of property in Ex-A.1 - Lease Deed clearly describes the entire extent of 2 Acre 76 Cents in Survey No.123/1. There is no dispute with the fact that the entire extent of Survey No.123/1 is 2 Acre 76 Cents. Four boundaries are essential only when a portion of a larger extent in a survey number is described. When the entire extent is the subject matter, the First Appellate Court is not right in its finding that the description of property in Ex-A.1 does not specify boundaries and is not clear and that Ex-A.1's subject matter is only 1 Acre in Survey No.123/1 and not the entire extent therein, is based on surmise and conjectures and

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are not at all justifiable. Further, the Trial Court, based on Ex-A.1, Ex-A.2 and the revenue records available on record and also considering the oral evidence and the facts and circumstances of this case, had held that the plaintiffs have proved their case and established title over the suit property. The Trial Court finding is correct. But the First Appellate Court without assigning any reason for differing with the Trial Court, set aside its reasoned findings. As stated *supra*, the plaintiff and the plaintiffs' mother are the title holders and they have been in possession till 1971. The First Appellate Court is not right in non-suiting the plaintiffs by finding that the plaintiffs were not in possession of the suit property, when the Suit is itself *inter-alia* for recovery of possession. ***Substantial Question of Law No.(i) is answered accordingly.***

26. As stated *supra*, the defendants' got into possession only after 1971 and the plaintiffs' case of lease in favour of defendants 3 and 4 is probable. Hence, after 1971, the defendants were in possession of the suit property as lease holders (*Varamdars*). To be noted, the defendants 3 and 4 are not registered tenants under the Tamil Nadu Cultivating Tenants Protection Act, 1955, nor have they made any claim or plea thereunder. Once the defendants entered the suit property as lease holders, they cannot



take the plea of adverse possession, unless the denial of title from a certain

point of time and *animus* possession is expressly brought to the notice of

the owner. It is apposite to cite here the decision of a Co-ordinate Bench of

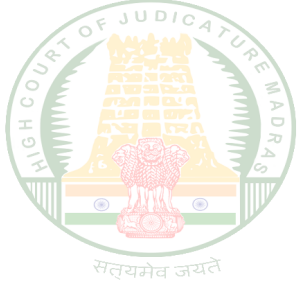
this Court in ***Mamuthabai -vs- G.Ramakrishnan***, reported in **2024 (III)**

CTC 622 DB : 2024 MHC 1625. Relevant extracts read thus:

"31.Point No.(iii) relates to Adverse Possession. This Court deems fit to summarise the law in this regard. 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.

32.Further, the Hon'ble Supreme Court in Karnataka Board of Wakf Vs. Government of India and Others reported in 2004 (10) SCC 779 held as follows:

11.In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts



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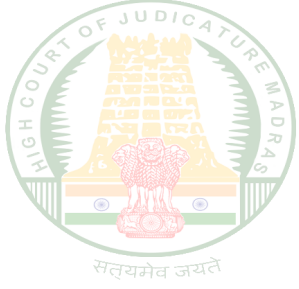
a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is “ nec vi, nec clam, nec precario ” , that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina [AIR 1964 SC 1254], Parsinni v. Sukhi [(1993) 4 SCC 375] and D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128]'

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36. Further, the plea of title and adverse possession cannot go together. It is settled law that there is no bar to take an inconsistent plea of title and adverse possession in the written statement. But the defendants at appropriate time i.e., at the time of trial or even at the time of arguments before the Trial Court, should have elected either one of the pleas."

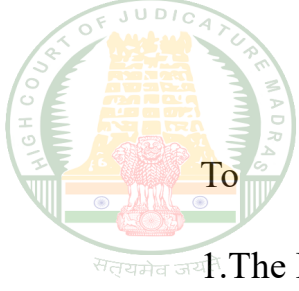
27. In this case, the defendants have not effectively pleaded and proved the plea of adverse possession satisfying its essential ingredients, they have in effect merely taken a name sake plea. ***Substantial Question of Law No.(ii) is answered accordingly.***

CONCLUSION

28. The Second Appeal is allowed. The Judgment and Decree of the First Appellate Court is set aside. The Judgment and Decree of the Trial Court is reinstated. In the facts and circumstances of this case, there shall be no order as to costs. Civil Miscellaneous Petition, if any, is closed.

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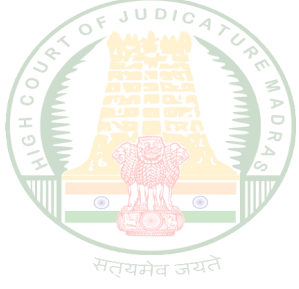
Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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1.The Principal Sub Court
Vridhachalam.

2.The Principal District Munsif Court
Vridhachalam.



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R.SAKTHIVEL, J.

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