



S.A.Nos.489, 657 & 658 of 2000

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 25.11.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.489, 657 & 658 of 2000

S.A.No.489 of 2000:

Mohamed Kasem Sahib (died)

2.S.Iasama Bivi

3.M.Mohammed Ali

4.M.Sheik Dawood

5.M.Hussain Moideen

6.S.Ramisa Bivi

7.M.Mohammed Buhari

8.M.Shamsudeen

9.M.Nagoor Meeran (died)

10.S.Subitha Bivi

11.N.Saabeera

12.Kaalesha (Major)

13.Kareem (Major)

14.Khafruddin (Major)

15.Khaleel Rahman (Major)

16.N.Kaadarma

17.Dowlath Begum (Major)

18.M.Mohammed Razack .. Appellants

(Appellants 2 to 10 and respondent 12)



S.A.Nos.489, 657 & 658 of 2000

brought on record as LRS of the deceased sole appellant vide order of this Court dated 01.02.2013 made in C.M.P.No.438 to 440 of 2009 in C.M.P.Nos. 15988 to 15990 of 2005 in S.A.No.489 of 2000)

(Appellants 11 to 17 brought on record as LRS of the deceased 9th appellant vide order of this Court dated 01.02.2013 made in C.M.P.No.509 of 2010 in C.M.P.No.1413 of 2008 in S.A.No.489 of 2000)

(Appellants 12 to 15 and 17 are declared as major and their guardians are discharged vide order of this Court dated 11.01.2021 made in C.M.P.Nos. 6890 to 6894 of 2020 in S.A.No.489 of 2000)

(12th respondent transposed as 18th appellant vide order of this Court dated 24.07.2019 made in C.M.P.No.8168 of 2019 in S.A.No.489 of 2000)

Vs.

Sivakami Ammal (died)

2.Wahab Sahib

3.Abdul Khader Sahib (died)

4.K.P.M.Mohideen Meera Sahib (died)

5.Alima Bee (died)

6.M.Johara Muthu

7.M.Avula Muthu

8.M.Muhammed Hussain (died)



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9.M.Shamsudeen

10.Asma

11.Sherifa

12.G.Gunasekari

13.B.Umapathi

14.S.B.Suryakumar

15.B.Yuvarajan

16.Sameera

17.H.Imran

18.M.H.Murthasa

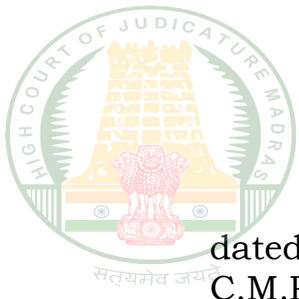
19.M.H.Hasbiya Fathima .. Respondents

(R3 died. No LRs need to implead, R2 notice Dispensed with. Memo recorded vide order dated 14.06.2022 in S.A.No.489 of 2000)

(R4 died. R5 to R11 brought on record of LRs of deceased KPM. Mohideen Meera Sahib vide order dated 05.12.2018 made in CMP. Nos.15988 to 15990 of 2005 in SA.No.489 of 2000)

(RR 6 to 11 are recorded as LRS of the deceased 5th respondent viz., Alima Bee vide order of this Court dated 17.03.2020 made in S.A.No.489 of 2000 as per memo dated 17.03.2020 are recorded)

(RR 12 to 15 brought on record as LRS of the deceased R1 vide order of this Court



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dated 07.03.2020 made in
C.M.P.No.12770, 12773 and 12774 of
2019 in S.A.No.489 of 2000)

(RR 16 to 19 are brought on record as LRS
of the deceased 8th respondent vide order
of this Court dated 12.01.2023 made in
C.M.P.Nos.981 & 986 of 2023 in
S.A.No.489 of 2000)

Prayer: Appeal filed under Section 100 of CPC, praying to set
aside the judgment and decree dated 31.08.1999 made in
A.S.No.24 of 1998 on the file of the Sub Court, Madurantakam
reversing the judgment and decree dated 30.01.1997 made in
O.S.No.123 of 1985 on the file of the District Munsif Court,
Madurantakam and allow the Second Appeal with costs through
out by dismissing A.S.No.24 of 1998.

For Appellants	: Mr.M.S.Subramanian
For RR 6 to 11	: Mr.V.Chandrakanthan
For RR 12, 14 & 15	: Mr.Y.Kannadasan
For R13	: Mr.Haja Nazirudeen, Senior Counsel, for Mr.R.Tholgappian

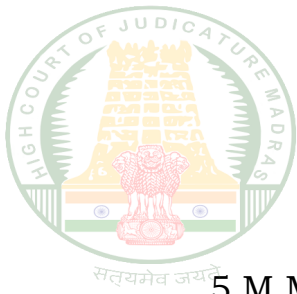
S.A.No.657 of 2000:

K.P.M.Mohideen Meera Sahib (died)

2.Alima Bee (since died)

3.M.Johara Muthu

4.M.Avula Muthu



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5.M.Muhammed Hussain (deceased)

6.M.Shamsudeen

7.Asma

8.Sherifa

(Appellants 2 to 8 are brought on record as LRS of the deceased sole appellant vide order of this Court dated 13.06.2019 made in C.M.P.Nos.3347 to 3349 of 2007 in S.A.No.657 of 2000)

9.A.Sameera

10.H.Imran

11.M.H.Murthasa

12.M.H.Hasbiya Fathima .. Appellants
(Appellants 9 to 12 brought on record as LRS of the deceased 5th appellant vide order of this Court dated 12.01.2023 made in C.M.P.No.1039 of 2023 in S.A.No.657 of 2000)

Vs.

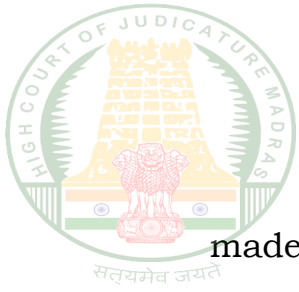
Sivakami Ammal (died)

2.Wahab Sahib (Exparte)

3.Mohammed Kasim Sahib (died)

4.Abdul Khader Sahib (died)

(Memo recorded. R2 is exparte & R4 remained exparte in A.S.No.24 of 1998, there was no need to implead the LRS of R4 vide order of this Court dated 20.12.2022)



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made in S.A.No.657 of 2000)

WEB COPY 5.S.Iasama Bivi

6.M.Mohammed Ali

7.M.Sheik Dawood

8.M.Hussain Moideen

9.S.Ramisa Bivi

10.M.Mohammed Razack

11.M.Mohammed Buhari

12.M.Shamsudeen

13.M.Nagoor Meeran (died)

14.S.Subitha Bivi

15.G.Gunasekari

16.B.Umapathi

17.S.B.Suryakumar

18.B.Yuvarajaj

(R1 died. RR 15 to 18 brought on record as LRS of the deceased R1 and S.A.No.657 of 2000 restored vide order of this Court dated 28.09.2022 made in C.M.P.Nos.16556, 16548, 16550, 16544 & 16559 of 2022 in S.A.No.657 of 2000)

19.N.Saabira

20.N.Kaalesha



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21.N.Kareem

22.N.Khafruddin

23.N.Khaleel Rahman

24.K.Kaadarma

25.N.Dowlath Begam .. Respondents

(RR 19 to 25 brought on record as LRS of the deceased R13 vide order of this Court dated 12.01.2023 made in C.M.P.No.1029 of 2023 in S.A.No.657 of 2000)

Prayer: Appeal filed under Section 100 of CPC, praying to set aside the judgment and decree dated 31.08.1999 made in A.S.No.24 of 1998 on the file of the Sub Court, Madurantakam reversing the judgment and decree dated 30.01.1997 made in O.S.No.123 of 1985 on the file of the District Munsif Court, Madurantakam and allow the Second Appeal with costs through out by dismissing A.S.No.24 of 1998.

For Appellants : Mr.V.Chandrakanthan

For RR 5 to 12, 14,
19, 20, 22 to 25: Mr.M.S.Subramanian

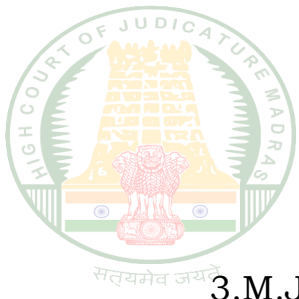
For RR 15, 17 & 18 : Mr.Y.Kannadasan

For R16 : Mr.Haja Nazirudeen,
Senior Counsel
for Mr.R.Tholgappian

S.A.No.658 of 2000:

K.P.M.Mohideen Meera Sahib (died)

2.Alima Bee (since died)



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3.M.Johara Muthu

4.M.Avula Muthu

5.M.Muhammed Hussain (deceased)

6.M.Shamsudeen

7.Asma

8.Sherifa

(Appellants 2 to 8 are brought on record as LRS of the deceased sole appellant vide order of this Court dated 13.06.2019 made in C.M.P.Nos.3350 to 3352 of 2007 in S.A.No.658 of 2000)

9.A.Sameera

10.H.Imran

11.M.H.Murthasa

12.M.H.Hasbiya Fathima .. Appellants

(Appellants 9 to 12 brought on record as LRS of the deceased 5th appellant vide order of this Court dated 12.01.2023 made in C.M.P.No.1045 of 2023 in S.A.No.658 of 2000)

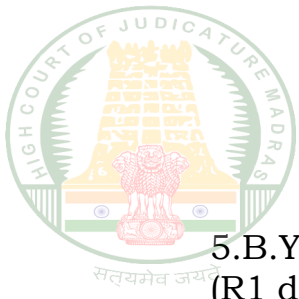
Vs.

Sivakami Ammal (died)

2.G.Gunasekari

3.B.Umapathi

4.S.B.Suryakumar



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5.B.Yuvarajaj .. Respondents

(R1 died. RR 2 to 5 brought on record as LRS of the deceased R1 viz., Sivakami Ammal vide order of this Court dated 28.09.2022 made in C.M.P.Nos.5211 to 5213, 5196 & 5204 of 2021 in S.A.No.658 of 2000)

Prayer: Appeal filed under Section 100 of CPC, praying to set aside the judgment and decree dated 31.08.1999 made in A.S.No.23 of 1998 on the file of the Sub Court, Madurantakam reversing the judgment and decree dated 30.01.1997 made in O.S.No.144 of 1985 on the file of the District Munsif Court, Madurantakam and allow the Second Appeal with costs through out by dismissing A.S.No.23 of 1998.

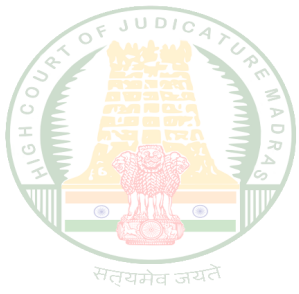
For Appellants : Mr.V.Chandrakanthan

For RR 2, 4 & 5 : Mr.Y.Kannadasan

For R3 : Mr.Haja Nazirudeen,
Senior Counsel
for Mr.R.Tholgappian

COMMON JUDGMENT

These three second appeals impugn the judgment and decree of the Court of the learned Subordinate Judge at Madurantakam in A.S.No.23 of 1998 & A.S.No.24 of 1998 dated 31.08.1999 in reversing the judgment and decree in O.S.Nos.123 & 144 of 1985 on the file of the District Munsif Court at Madurantakam, dated 30.01.1997.



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2. Since all the three appeals are connected to each other, they are disposed of by this common judgment.

3. For the sake of convenience, the parties shall be referred to as per their ranks in O.S.No.123 of 1985.

4. The facts gleaned from the pleadings are as follows:

The properties situated in Old Survey No.68/5, 68/6 and 68/7 of Vilambur Village, Kadapakkam Firka, Madurantakam Taluk, Chengalpattu District, belonged to the 4th defendant, K.P.M.Mohideen Meera Sahib. He had mortgaged the property in favour of one Balasundara Mudaliar, the husband of the plaintiff-Sivagami Ammal. Balasundara Mudaliar brought forth a suit for foreclosure in O.S.No.410 of 1962, on the file of the learned District Munsif at Chengalpattu. A preliminary decree was passed on 18.08.1966. Subsequently, a final decree also came to be passed. As the mortgagor failed to comply with the decree by defaulting in payment, Balasundara Mudaliar presented an execution petition in E.P.No.278 of 1968. The petition sought the sale of the mortgaged properties. The Court



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ordered sale and the property were sold on 11.02.1970.

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Balasundara Mudaliar, being a permitted decree holder, successfully bid in the auction and knocked the auction in his favour. The sale was confirmed in his favour on 23.08.1970. He took out an application in E.A.No.163 of 1971 to take possession of the property. The learned District Munsif ordered the application and Balasundara Mudaliar / the successful auction purchaser took possession of the same on 09.08.1971. Pending the litigation, the mortgagor / 4th defendant sold the property in favour of the defendants 2 & 3.

5. The plaintiff alleged that Balasundara Mudaliar was in possession and enjoyment of the property till he passed away on 04.11.1982. She pleaded that her husband had orally gifted the property to her and that, she had been in possession and enjoyment of the same on and from that date. She pleaded that she mutated the revenue records in her favour and paid kist for the properties.

6. The plaint further alleged that the defendants, who have



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no right, title, or interest in the property, approached her to

alienate the same in their favour. The plaintiff refused to do so.

Angered by the same, the defendants attempted to trespass into the suit properties. One such attempt was made on 17.04.1985, which the plaintiff's watchman successfully prevented. Fearing that they would be successful on the next occasion, she presented a suit for declaration of title and for injunction on 19.04.1985.

7. Pending the suit, she had taken out an application for injunction. The said application I.A.No.285 of 1985 came to be dismissed. The plaintiff pleaded that the defendants, thereafter, trespassed into the property. Consequently, she amended the plaint into one for delivery of possession in I.A.No.844 of 1991.

8. Suit summons were served on the defendants. The defendants 2 & 3 filed a written statement. They admitted that the property belonged to the 4th defendant, K.P.M.Mohideen Meara Sahib. They pleaded that they purchased an extent of 2.60 acres in Survey No.198/5, by way of a registered sale deed dated 07.06.1965. They pleaded that they are in possession and



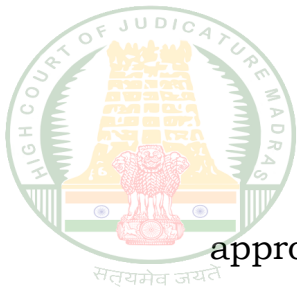
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enjoyment of the property by paying the revenue charges. They added that the revenue records continues to stand in the name of the vendor, Mr.K.P.M.Mohideen Meara Sahib. They pleaded that they removed the trees standing in the land and have been raising casuarina crops and were generating funds by cutting and selling the same.

9. They pleaded that they were not parties to the suit in O.S.No.410 of 1962 or to the execution proceedings in E.P.No.278 of 1968. Hence, they urged that the decree and the Court auction sale, which took place in 1970, would not bind them. They took a plea that the decree in O.S.No.410 of 1962 might be a collusive one and the Court auction sale does not have any force in law. They denied the fact that Balasundara Mudaliar took possession of the property as pleaded in the plaint. Instead, they asserted that they have been in continuous possession and enjoyment of the property from the date of purchase, without interruption from anybody, at any time and hence, they had perfected title by adverse possession.

10. They denied the fact that the defendants had



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approached the plaintiff for purchasing the property. They added that the remaining 68 cents continues to be in possession of their vendor's family. They denied that the plaintiff had any right, title or interest over the property and stated that there is no cause of action for the suit and pleaded that the same may be dismissed.

11. The 4th defendant entered appearance in the suit. He filed a separate written statement. He admitted to the sale to an extent of 2.60 acres in favour of the defendants 2 & 3. He pleaded that he retained the balance of 68 cents. On this 68 cents, he added that he had put up a hut and was paying house tax for the same. He also stated that his sister's son Ibrahim, and his family members are residing therein. He denied that Balasundara Mudaliar ever took possession of the property and that the delivery was merely a paper delivery. He further pleaded that the plaintiff has no title to the property and the defendants had never attempted to trespass into the same.

12. He further pleaded, he had filed a suit in O.S.No.144 of 1985 against the plaintiff herein as she attempted to dispossess

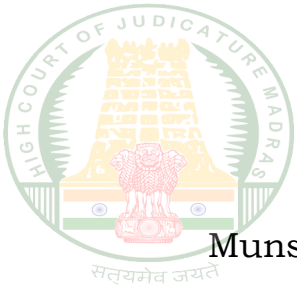


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him from the property. He pointed out that Advocate Commissioner's report in that suit would point out that he is in possession and enjoyment of the same. Insofar as the revenue records are concerned, he added that the plaintiff had exerted influence with the officers of the Revenue Department and procured the patta in her favour. This too, was just before the filing of the suit. Hence, he had initiated proceedings before the revenue authorities to cancel the patta in favour of the plaintiff. As he alleged that as the plaintiff does not have title to the suit property and that, she is not in possession for the same, there is no cause of action for the suit and that the suit should be dismissed with costs.

13. More or less on the same pleas, the 4th defendant as the plaintiff presented O.S.No.144 of 1985 seeking declaration of title with respect to 68 cents out of 3.28 acres. The plaintiff Sivagami Ammal filed a written statement which mirrors her plea in O.S.No.123 of 1985.

14. Both the parties filed a memo for joint trial of O.S.Nos.123 of 1985 and 144 of 1985. The learned District



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Munsif ordered the memo. The evidence was recorded in the primary suit in O.S.No.123 of 1985.

15. In order to substantiate her case, the plaintiff examined herself as PW1 and her son as PW2. The 4th defendant examined himself as DW1 and the 2nd defendant was examined as DW2. Two other persons were examined as DW3 & DW4. On the side of the plaintiff, Exs.A1 to A7 were marked. On the side of defendants, Ex.B1 to B41 were marked. The report of the Advocate Commissioner and the plan drawn by him were received by the Court as Exs.C1 & C2.

16. The learned Trial Judge framed the following issues to be answered in O.S.No.123 of 1985:-

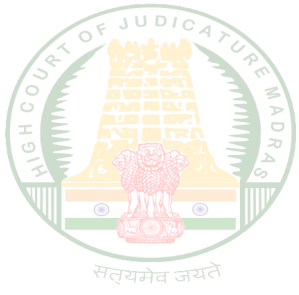
"1.வாதி தாவா சொத்தை உடைமையில் பெறுவதற்குரியவரா?

2.வாதி தாவா சொத்தை அனுபவ பாத்தியம் மூலம் எதிரிடை அனுபவ உரிமை வந்துவிட்டதாகச் சொல்வது உண்மையா?

3.வாதி தாவா சொத்தில் விளம்புகை உரிமை பெறுவதற்குரியவரா?

4.பிரதிவாதிகள் தாவா சொத்தில் அனுபவ பாத்தியதை மூலம் எதிரிடை அனுபவ உரிமை வந்துவிட்டதாகச் சொல்வது உண்மையா?

5. 9.8.71ல் தாவாச் சொத்தை வாதியின் கணவர் நீதிமன்ற டெலிவரி மூலம் சுவாதீனத்தில் எடுத்துக் கொண்டதாகச் சொல்வது உண்மையா?



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6.வாதி நிரந்தர தடையுத்திரவு பெற அருகதை உடையவரா?

7.வேறு என்ன பரிகாரம்?"

17. Similarly, he framed the following issues to be answered in O.S.No.144 of 1985:-

"1.வாதி தாவா 'பி' அட்டவணைச் சொத்தில் விளம்புகை கோர தகுதி உடையவரா?

2.வாதி நிரந்தர தடையுத்திரவு கோர தகுதி உடையவரா?

3.எதிரிடை சுவாதீன உரிமை மூலம் எதிரிடை சுவாதீன உரிமை வாதி பெற தகுதி உடையவரா?

4.இறந்துபோன பிரதிவாதியின் கணவரான பாலசுந்தர முதலியார் செங்கற்பட்டு மாவட்ட நீதிமன்ற ஆ.வ.எண்.410/62ல் 11.2.70-க்கு விடப்பட்ட நீதிமன்ற ஏல உத்தரவின்படி தாவா சொத்தை பெற்றாரா?

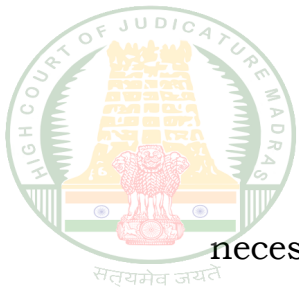
5.பிரதிவாதியின் கணவர் தாவா சொத்தில் சுவாதீனம் எடுத்துக் கொண்டாரா?

6.வாதி தாவா சொத்தில் சுவாதீனத்தில் உள்ளாரா?

7.வேறு என்ன பரிகாரம்?"

18.The learned Trial Judge came to a conclusion as follows:-

(i)The other legal heirs of Balasundara Mudaliar had not been impleaded and hence, the suit was bad for non-joinder of



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necessary parties;

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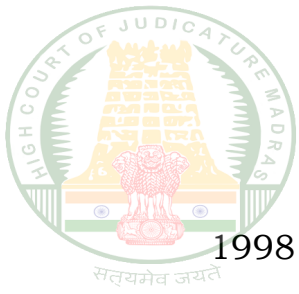
Mudaliar had been in possession and enjoyment of the property;

(iii)The plaintiff had not filed the “co-relation register” to prove that old Survey Nos.68/5, 68/6 & 68/7 correspond to new Survey Nos.198/5 and had not described the suit schedule of property in a proper manner; and finally,

(iv)The alleged oral gift had not been proved by Sivagami Ammal – the plaintiff.

Consequently, he dismissed O.S.No.123 of 1985 and decreed O.S.No.144 of 1985.

19. Aggrieved by the judgment and decree, Sivagami Ammal preferred an appeal before the Principal Subordinate Judge at Chengalpattu. This appeal was received as A.S.No.47 of 1997. This appeal corresponds to O.S.No.144 of 1985. She also preferred an appeal against the dismissal of her suit in O.S.No.123 of 1985 before the Principal Subordinate Judge at Chengalpattu. This appeal was numbered as A.S.No.48 of 1997. Subsequently, both the appeals were transferred to the file of the Sub Court at Madurantakam and re-numbered as A.S.No.23 of



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1998 and A.S.No.24 of 1998.

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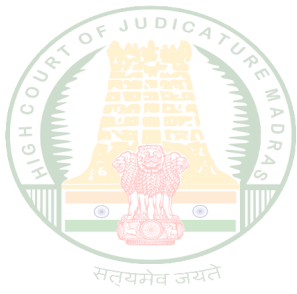
20. The learned Subordinate Judge by a judgment dated 31.08.1999, allowed both the appeals. By allowing A.S.No.23 of 1998, he dismissed the suit in O.S.No.144 of 1985 and by allowing A.S.No.24 of 1998, he decreed the suit in O.S.No.123 of 1985 and declared the title of the plaintiff and directed delivery of possession.

21. Aggrieved by the same, three second appeals have been preferred. S.A.Nos.657 & 658 of 2000 have been preferred by the original owner of the property, namely, K.P.M.Mohideen Meera Sahib and S.A.No.489 of 2000 has been preferred by the 2nd defendant against the judgment and decree in A.S.No.24 of 1998.

22. Being appeals which impugn the same judgment and decree, this Court clubbed the appeals and heard them together.

23. At the time of admission, the following substantial questions of law were framed in all the appeals:

“1.When the plaintiff has claimed title



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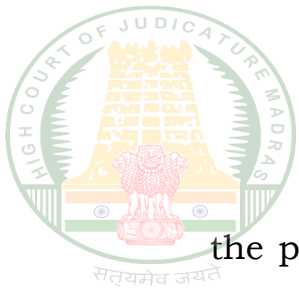
under a settlement from her husband, can there be a decree declaring her title when admittedly she has not proved any such settlement?

2.Is not the suit bad for non-joinder of parties?

3.Have not the defendants prescribed title by adverse possession when it is proved they have been in possession from 1965 (prior to Court auction purchase)?”

24. I heard Mr.M.S.Subramanian for the appellant in S.A.No.489 of 2000, Mr.V.Chandrakanthan for the appellants in S.A.Nos.657 & 658 of 2000. They were opposed by Mr.Haja Nazirudeen, Senior Counsel appearing for Mr.R.Tholgappian.

25. Mr.M.S.Subramanian and Mr.V.Chandrakanthan submitted that the Lower Appellate Court had erred in allowing the appeals. They pleaded that the said court ought to have come to a conclusion that the appellants have perfected title by adverse possession with respect to 2.60 acres and 68 cents, respectively. They pleaded that the plaintiff, Sivagami Ammal had failed to prove that Balasundara Mudaliar had taken actual possession of the property. Though the plaintiff claimed title to



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the property by virtue of a settlement deed, she had not proved the same. They pointed out that Balasundara Mudaliar had left behind the plaintiff, five sons and a daughter and since the remaining legal heirs have not been impleaded as parties to the suit, it is fatal to the case. In addition, Mr.M.S.Subramanian urged that Balasundara Mudaliar was aware of the purchase that had been made by the defendants 2 & 3, in the year 1965 and as he had not taken any steps to take actual possession of the property, they have perfected title to the property by adverse possession. Both the counsels pleaded that the Trial Judge had properly appreciated the case, whereas the Lower Appellate Court had neither discussed and considered the documents filed by the defendants nor the witnesses produced by them and had erroneously allowed the appeal.

26. Per contra, Mr.Haja Nazirudeen, learned Senior Counsel pleaded that there is no dispute with regards the identity of the property, yet the learned Trial Judge held to the contrary. He urged that Balasundara Mudaliar had acquired title to the property by way of a Court auction sale and had taken delivery under Ex.A3. Ex.A3 being a record of the Court, carries

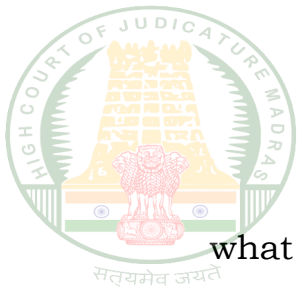


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the presumption under Section 114(e) of the Indian Evidence Act, 1872, and the defendants had not let in any evidence to displace the presumption, attached to the said document.

27.He added that the defendants 2 & 3 are purchasers pendente lite and therefore, they are bound by the decree passed against their vendor, the 4th defendant. He took a plea that even assuming that the delivery was a paper delivery, by virtue of the Court auction sale, title vests with Balasundara Mudaliar and not with the 4th defendant. He added that though the plaintiff, Sivagami Ammal had pleaded an oral gift, however, that becomes immaterial as it is undisputed, she is the wife of the auction purchaser and as a co-owner of the property, she is entitled to maintain a suit for title and recovery of possession. In such a suit, he states other co-owners are not necessarily to be made parties.

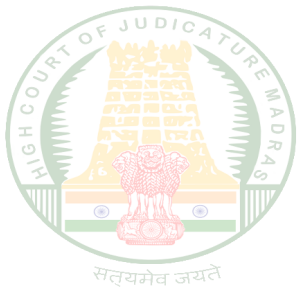
28. With respect to the plea of adverse possession, he argued that it is a settled position of law that a person pleading adverse possession would have to specifically state the starting point, when his possession became adverse to the owner and in



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what manner the property was enjoyed by him in an open, continuous, and hostile manner to the knowledge of Balasundara Mudaliar and his wife, Sivagami Ammal. He pointed out that the defendants 2 & 3 had pleaded ignorance about the mortgage suit and the execution proceedings and delivery of possession, which indicates that they did not know, who the actual owner of the property was and consequently, cannot plead adverse possession. He pointed out that the documents relied upon by the defendants are all revenue receipts and they utmost point out the possession of the defendants 2 to 4 and are not helpful to substantiate the plea of adverse possession. Consequently, he urged that the plea of the defendants is absolutely moonshine and that the judgment and decree of the Lower Appellate Court deserves to be confirmed and sought for dismissal of the second appeals.

29. I have carefully considered the submissions of both sides and have gone through the records. I have paid anxious consideration to the submissions made by the respective counsels.



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30. Before I delve into the facts of the case, the previous proceedings become relevant.

31. It is not in dispute that the entire extent of 3.28 acres belonged to one K.P.M.Mohideen Meera Sahib. He executed a mortgage in favour of one S.M.Mohideen Kasim Sahib, who in turn, made over this mortgage in favour of one, Balasundara Mudaliar. On account of the defaults committed by the debtor; the creditor, Balasundara Mudaliar presented O.S.No.410 of 1962. Summons was served in the suit on both the defendants. They remained *exparte*. Consequently, a preliminary decree had been passed by the learned District Munsif at Chengalpet.

32. Ex.A7 reveals that K.P.M.Mohideen Meera Sahib filed an application to set aside the *exparte* decree and the *exparte* decree was set aside. As the *exparte* decree had been set aside, the final decree application, which was filed on the basis of the original *exparte* decree, was not prosecuted and it was dismissed for default. After restoration, a fresh preliminary decree came to be passed on 18.08.1966. Balasundara Mudaliar filed an application for passing of final decree in I.A.No.1087 of 1967.



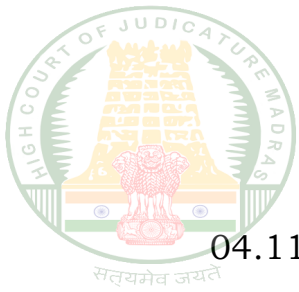
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Final decree also was passed on 18.03.1969.

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33. The suit register extract of O.S.No.410 of 1962 indicates that an appeal had been preferred to the Sub Court, Chengalpet in A.S.No.375 of 1966. It came to be dismissed on 07.04.1967. It also shows that a second appeal had been presented to this Court in SA.No.1496 of 1967, which came to be dismissed on 06.12.1967.

34. As the preliminary and final decree had attained finality, Balasundara Mudaliar presented E.P.No.278 of 1968 on the file of the District Munsif Court at Chengalpet. With the decree not being satisfied, the Execution Court ordered sale. Balasundara Mudaliar, being a permitted decree holder, participated in the auction and purchased the entire extent of the property on 11.02.1970. The sale was also confirmed in his favour on 23.03.1970. In order to take possession of the property, pursuant to the sale, Balasundara Mudaliar filed an application in E.A.No.163 of 1971. Delivery was ordered and he took delivery on 09.08.1971. Balasundara Mudaliar died on



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04.11.1982.

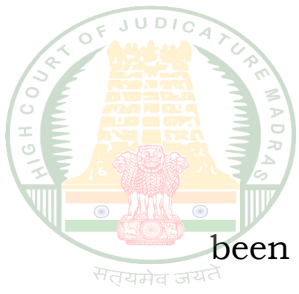
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35. O.S.No.123 of 1985 was initially presented for declaration and injunction. Subsequently, it was amended to the relief of recovery of possession was presented on 09.08.1985. When the suit was originally presented, the owner, K.P.M.Mohideen Meera Sahib, had not been impleaded as a party to the suit. K.P.M.Mohideen Meera Sahib, in order to protect his alleged possession, presented O.S.No.144 of 1985 on the file of the District Munsif Court at Madurantakam. Subsequently, he was impleaded as a party to the first suit.

36. The facts and pleadings have already been adverted to and hence, are not been reiterated in this portion of judgment.

Non-impleading of other legal heirs to the suit

37. It is not in dispute that Balasundara Mudaliar left behind several heirs including, Sivagami Ammal. In fact, the person, who deposed as PW2, is his son. The trial court, on the basis of the plea taken by the defendants and the admission of the plaintiff Sivagami Ammal that there are other legal heirs, dismissed the suit on the point that other legal heirs had not



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been impleaded.

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38. The view taken by the learned District Munsif is against the settled position of law of this court, which has been holding the fort for nearly a century or more. The earliest of the judgments I am able to trace is ***Syed Ahamed Sahib Suttari v. Magnacite Syndicate Limited, (1915) 2 LW 460***. It was urged before the Mr.Justice Seshagiri Ayyar that one of the lessors is not competent to maintain a suit for ejectment in law without impleading the other co-lessors. Referring to the judgment in ***Sri Raja Simhadri Appa Rao v. Prattipati Ramayya ILR (1906) 29 Mad 29*** and ***Korapalu v. Narayana, (1913) 25 MLJ 315***, Justice Ayyar held that one of the several tenants, in common, can sue to recover possession of his share from the joint lessee.

39. In that case, the plaintiff, as a tenant in common with others in respect of the suit property. He sued for ejectment and damages. He alleged that the first defendant had trespassed upon the property over which he did not have a right. The defendants denied the same. Parties proceeded to trial and the learned Principal District Munsif at Salem decreed the suit.



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Aggrieved by the same, the defendants preferred an appeal to the District Court at Salem. The learned District Judge dismissed the suit, holding that one co-owner cannot, maintain a suit for ejectment of a trespasser without impleading the co-owners. The appeal came up before a Division Bench consisting of Seshagiri Ayyar and Kumaraswamy Sastri, JJ. The learned Judges held that as against a trespasser, any one of the co-owner can maintain an action.

40. Following this verdict, the Hon'ble Mr. Justice M. Srinivasan, (as His Lordship then was) held in ***Ramachandran and two others. v. Valliammal and two others, (1992) 2 LW 470*** that a suit by one co-owner can certainly be maintained for ejecting trespassers and recovering possession. He pointed out that such a suit was for the benefit of all the co-owners, in the event there being other co-owners. The view taken by the Division Bench in ***Syed Ahmed Sahib Shutari***'s case has been consistently followed by this court as is clear from the judgment reported in ***Palani Ammal v. L. Sethurama Aiyangar. (1949) 62 LW 204***. This position having been settled, this issue need not detain us any further.



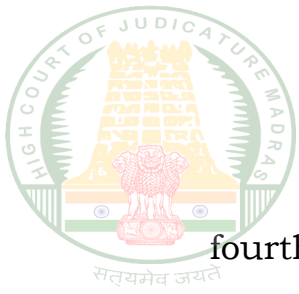
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This Court, applying these precedents has to conclude the suit filed by Sivagami Ammal, as a legal heir of Balasundaram Mudaliyar, to recover the property from the defendants is perfectly maintainable. The view taken by the learned District Munsif, as pointed by Mr. Justice Seshagiri Ayyar, is unsupported by any authority to the contrary.

Lis Pendens

41. The defendants 2 and 3 (Appellants in SA.No..489 of 2000) are purchasers of the property from the fourth defendant. It is a plea of Mr.M.S.Subramanian that the defendants 2 and 3 had purchased the property by way a registered document on 05.06.1965 and therefore, this amounts to notice to Balasundara Mudaliar of the fact that they were in possession of the property and hence, they have been holding the property adverse to the purchaser. Though this argument appears tantalising in the beginning, on the scrutiny, it becomes clear that there is nothing more in this argument than a cotton candy held in the hands of a child.

42. The suit filed by Balasundara Mudaliar against the



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fourth defendant commenced in 1962. *Lis pendens* commences with the presentation of a plaint and continues till the execution is terminated. There is a difference between the word 'presentation' and 'institution'. 'Institution' occurs when a plaint is found to be in order and the court furnishes a number to the plaint. *Lis pendens* does not commence when the suit is numbered, but commences much earlier when a plaint is filed before a court of competent jurisdiction. Though this clarification does not make a difference to the present case, I am doing so in order that I must not be understood to have held *lis pendens* commences only when the suit is taken on file by the court. *Lis Pendens* commenced with the filing and is not postponed till the papers are scrutinized and the case is numbered.

43. The defendants 2 and 3, by virtue of the sale deed dated 05.06.1965, acquired the equity of redemption that the mortgagor-the fourth defendant possessed. They could have, under the sale deed, extinguished the mortgage and obtained clear title to the property. They did not do so. Though Mr.M.S.Subramanian pleaded that the defendants 2 and 3 had filed an application to implead themselves in O.S.No.410 of 1962

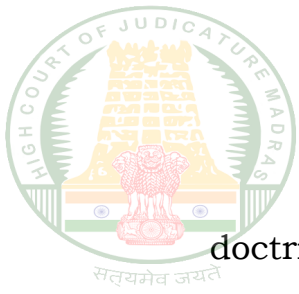


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and the application had been dismissed, a perusal of the records do not reflect the same.

44. Taking the submissions of the learned counsel to be true, I feel that, it would still not make a difference to the case. This is because, having purchased the property from the mortgagor, the purchasers merely step into his shoes. The sale deed does not act adverse to the interest of Balasundara Mudaliar. Post the sale, Balasundara Mudaliar, merely had two more persons, who are entitled to discharge the mortgage.

45. The sale deed dated 05.06.1965 will not operate as an adverse document as against the mortgagee. For adverse possession to operate, there must exist a true owner and another person acting in adverse to his interest. One person cannot hold the property in adverse possession against oneself. Similarly, a purchaser of the mortgaged property from the mortgagor cannot hold the property in adverse possession against the mortgagee. Therefore, from 05.06.1965, till the EP was terminated, after Balasundaram Mudaliyar took possession, the *lis* continued. Hence, the purchase by the defendants 2 and 3 attract the



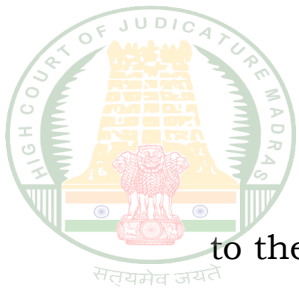
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doctrines of *lis pendens*. Consequently, they are bound by the decree in O.S.No.410 of 1962 and the execution proceedings initiated on that decree.

Adverse Possession

46. When this aspect was pointed to Mr.M.S.Subramanian, he pleaded that post the purchase by Balasundara Mudaliar, adverse possession commences. For the purpose of proving adverse possession, the possession must not be a passive one. It must be proven to be hostile, open, continuous, and with an intention to possess the property as the owner *Animus Possidendi*. Merely because possession has been for a long duration in a passive form, it is insufficient to extinguish the rights of the true owner. The defendants 2 to 4 ought to have let in evidence to show that they held the property *nec vi, nec clam, nec precario with animus possidendi* in that capacity. In the view of this court, they have failed to do so.

47. Though the Supreme Court in ***Hemaji Waghaji Jat v. Bhikabhai Khengarbhai Harijan, (2009) 16 SCC 517*** criticised that the doctrine of adverse possession, as being unfair



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to the true owner and called for a legislative review, nevertheless,

the doctrine holds field. Continuing this view, Mr.Justice Dalveer

Bhandari renewed his call for amendment to the Limitation Act

to remove the concept of adverse possession in ***State of***

Haryana v Mukesh Kumar and Others (2011) 10 SCC 404.

He declared that the theory of adverse possession is perceived by

the general public as a dishonest way to obtain a title to the

property. He pointed out that when a court deals with adverse

possession, it should remember the person raising such plea has

no equity in his favour, since he seeks to defeat the right of the

true owner. He pointed out that it is for a person claiming title by

adverse possession to clearly plead and establish all necessary

facts to substantiate that claim. The principles laid down by the

learned Judge found acceptance in ***Ravinder Kaur Grewal v.***

Manjit Kaur and others, (2019) 8 SCC 729.

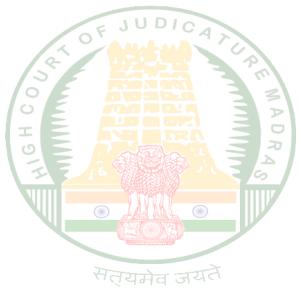
48. As long as the Doctrine of adverse possession remains

in the books, this court will have to apply the principles laid

down by the Supreme court in ***T.Anjanappa & Others v.***

Somalingappa, (2006) 7 SCC 570. The court observed as

follows:



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“20. ... The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.”

49. It is here that the written statement filed by the defendants 2 and 3 in S.A.No.489 of 2000 becomes relevant. They pleaded that, after purchasing the property from the fourth defendant on 07.06.1965, they had been raising casuarina crops over the suit property, harvesting and selling the same. They pleaded that, as on the date of filing of the suit, they had raised casuarina crops. They wanted the suit to be dismissed on the ground that they were not parties to the foreclosure suit in O.S.No.410 of 1962 or the execution petition in E.P.No.268 of 1968. They pleaded that, as they are in continuous possession of the property, they perfected title by adverse possession. However, There is not even a sentence in the written statement



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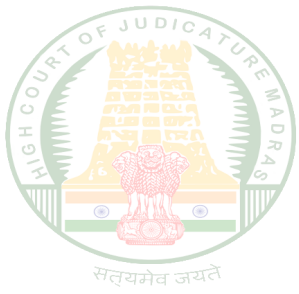
that the defendants held the property in a hostile manner.

Though they have pleaded that they have been raising casuarina crops on four occasions, absolutely no evidence has been let in before the court to establish that plea.

50. Continuous possession, as pointed out above, does not by itself amount to adverse possession. All the three ingredients have to be satisfied. Since adverse possession, being a plea to defeat the legal title of the actual owner, the court would have to be very cautious while appreciating and granting the said plea. If there is a lack of pleading, or if the evidence is bereft of the legal requirements, a court cannot accept the plea of adverse possession. The defendants not having produced any document to substantiate their plea of adverse possession, I am constrained to hold against them.

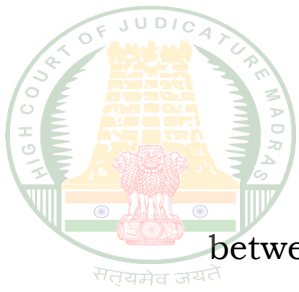
Paper Delivery

51. A faint attempt had been raised by the defendants that the delivery that has been taken by Balasundara Mudaliar is only a paper delivery and not an actual delivery. On the aspect of delivery, there are few observations that I have to make.



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WEB COPY 52. If the decree-holder, holds out at the time of taking delivery that he is satisfied with symbolic delivery and not with actual delivery, then he cannot turn around and file a second execution petition and seek for actual delivery alleging that there is no legal, complete or effective delivery on the earlier occasion. Once actual delivery is recorded, the court has to come to a conclusion that it has been so. This is because, the court is permitted to presume that judicial and official acts have regularly been performed. Delivery effected by a bailiff is not a judicial act, but it is certainly an official act. There has been one instance of this Court calling for a finding from the trial court as regards, who is actually in possession of the property, despite the plea of delivery. Such an exercise is undertaken only in exceptional cases, as pointed out in ***K.Ramalingam and others v. K.N.Krishna Reddi and Another, (1974) 87 LW 63***. Even in such cases, the learned Judge held that calling for a report from the trial court, when there is a delivery athatchi is not warranted in every case, where the petitioner alleges that he or she is in actual possession and that the delivery is only a paper delivery. The court is entitled to ask for a report, when the time gap



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between the actual delivery and the grant of an interim order by the appellate court is short. That is not the situation in the present case. Here, the delivery was taken in 09.08.1971 and the suit came to be filed in the year 1985.

53. The fourth defendant had taken a plea that the delivery receipt is only a paper delivery and not an actual delivery. The defendants 2 and 3 did not even plead to that effect. They attempted to circumvent the decree in O.S.No.410 of 1962 pleading it is a collusive decree. When allegations are made that the decree is only a paper decree, a mere averment in the written statement to that effect is wholly insufficient.

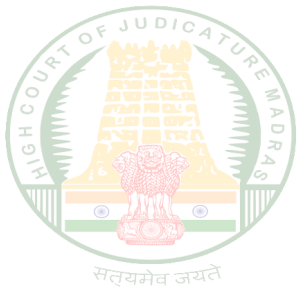
54. The Hon'ble Mr.Justice M.Srinivasan has held that a bald allegation that delivery is only a paper delivery and the appellant continuous to be in possession is hardly sufficient to direct an enquiry as to, whether there has been actual delivery or not. In addition, to such a plea, the party pleading that the delivery is a paper delivery should plead fraud with full particulars in order to support such a plea. He cautioned that in every case, the judgment debtor is interested in stating that there



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is no physical delivery in order to obtain an order from the
appellate court (See, **C. Ramasami v. Kuruva Boyan, 1991 (1)**
LW 244).

55. Insofar as the plea of fraud is concerned, there must be specific averments to that effect in the pleadings. Order VI Rule 4 of the Code of Civil Procedure demands that in all cases where a party pleading relies upon any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases, where particulars may be necessary, beyond those such are exemplified in the appendix particulars (dates and items if necessary) should be included in the pleadings. The reason for the Code demanding such an averment is because, when a party alleges a fraud is said to have been practised by the other party utilising the offices of the Bailiff, an opportunity should be given to the person relying upon such a report to let in evidence to prove to the contrary. A vague or a general plea can never be a substitute for a specific pleading. The precise nature of a fraud exercised, the manner of use of influence by the deceased Balasundara Mudaliar on the Bailiff and the unfair advantage obtained by him should have been specifically stated.

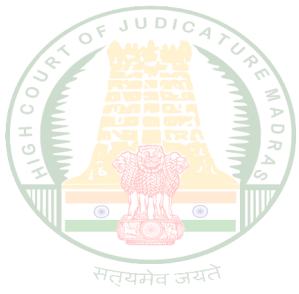


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WEB COPY 56. The Code of Civil Procedure is a code of fairness and a litigant, who has been charged with improper conduct, should not be taken by surprise. I need not expound this principle as the Constitution Bench has clearly held so in ***Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd. And Others*, AIR 1963 SC 1279**. The view taken in this judgment has been recently followed by the Supreme Court in ***Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd. And Others*, (2022) 2 SCC 573**. Hence, I am of the view that the verdict of Mr. Justice M. Srinivasan in ***C. Ramasami v. Kuruva Boyan***, cited supra applies to the facts of the present case.

57. I also take support of the view expressed in the following judgment:

- (i) ***Shenbagavalli v. Nagooran and Another*, (2022) 3 MLJ 159** paragraph Nos.14 and 15;
- (ii) ***Thiruvaduthurai Adheenam Gurumaha Sannithanam v. K. Manickam*, (2008) 6 CTC 215**; and
- (iii) ***Govindaswamy Pillai v. Marudan*, (2002) 1 LW 113**.



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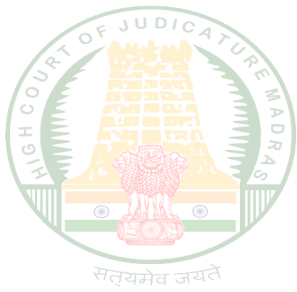
58. In the light of the above discussion, I answer the substantial questions of law in the following terms:

Question No.1:-When the plaintiff has claimed title under a settlement from her husband, can there be a decree declaring her title when admittedly she has not proved any such settlement?

As the plaintiff is a co-owner of the property, on the death of her husband, Balasundara Mudaliar, she is entitled to maintain the suit for declaration of title and for recovery of possession against third parties/trespassers. She maintains the suit, for and on behalf, of the co-owners. Therefore, this substantial question of law is answered against the appellants.

Question No.2:- Is not the suit bad for non-joinder of parties?

Since the question of law No.1 is answered against the appellant, the fact that the other legal heirs of Balasundara Mudaliar were not impleaded as parties to the suit becomes irrelevant and loses significance. Accordingly, this question too, is answered against the appellant.



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Question No.3:- Have not the defendants prescribed title

by adverse possession when it is proved they have been in possession from 1965 (prior to Court auction purchase)?

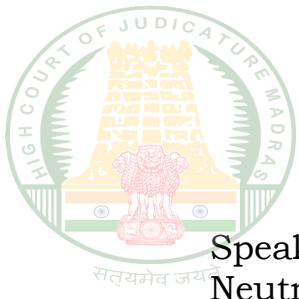
As the defendants have not proved their open, hostile and continuous possession of the property, they have not proved their title by adverse possession.

59. In fine, all the second appeals stand dismissed. Accordingly, the judgment and decree dated 31.08.1999 passed in A.S.Nos.24 of 1998 on the file of the Sub Court, Madurantakam reversing the judgment and decree dated 30.01.1997 passed in O.S.No.123 of 1985 on the file of the District Munsif Court, Madurantakam, and A.S.Nos.23 of 1998 on the file of the Sub Court, Madurantakam reversing the judgment and decree dated 30.01.1997 passed in O.S.No.144 of 1985 on the file of the District Munsif Court, Madurantakam are hereby confirmed. Costs throughout.

25.11.2025

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Index : Yes / No
Internet : Yes / No



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Speaking Order : Yes / No
Neutral Citation : Yes / No

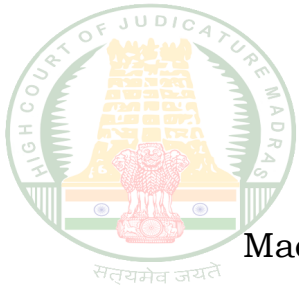
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To

1.The Subordinate Judge,
Sub Court,
Madurantakam.

2.The District Munsif,
District Munsif Court,

42/44



Madurantakam.

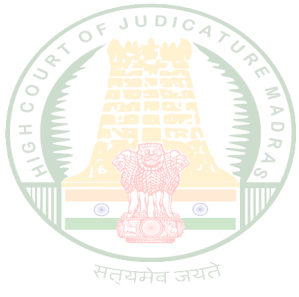
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V.LAKSHMINARAYANAN, J.

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