

S.A.(MD)No.211 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2026

DELIVERED ON : 30.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.211 of 2022

and

C.M.P.(MD)Nos.2500 & 5221 of 2022

Kanniappan (died)

- 1.Vellaiammal
- 2.Subramani
- 3.Sankar
- 4.Ilayaraja
- 5.Tamizharasi
- 6.Bakkiam

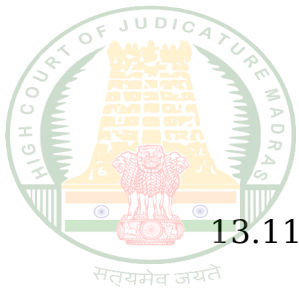
... Appellants

Vs.

Kaliappan

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 04.12.2021 in A.S.No.163 of 2020, on the file of the Sub Court, Manaparai, partly reversing the judgment and decree dated



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13.11.2018 made in O.S.No.184 of 2006, on the file of the
Additional District Munsif, Manaparai.

For Appellants : Mr.Raguvaran Gopalan
For Respondent : Mrs.J.Padmavathi Devi

JUDGMENT

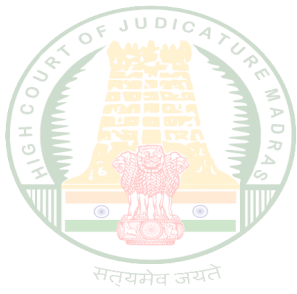
The defendants are the appellants, aggrieved by the reversal findings rendered by the First Appellate Court.

2.I have heard Mr.Raguvaran Gopalan, learned Counsel appearing for the appellants / defendants and Mrs.J.Padmavathi Devi, learned Counsel appearing for the respondent / plaintiff.

3.This Second Appeal was admitted by this Court on 28.03.2022 on the following substantial questions of law:

“1) Whether the finding of the lower appellate court that the suit would fall under Article 65 of the Limitation Act and not Article 64 as it is a suit for recovery of possession based on title is correct in light of the judgment in Ramiah vs. Narayana Reddy (2004) 7 SCC 541?

2) When the suit as levied by the plaintiff vis-a-vis suit B schedule property can be termed



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as suit for recovery of possession based on title merely based on the prayer sought when the plaint averments taken as whole speak about prior possession of plaintiff and subsequent dispossession by defendants?’

Factual Backdrop:

4.The brief facts that are necessary to decide the Second Appeal and answer the two substantial questions of law framed by this Court at the time of admission are hereunder:

4.1.The plaintiff, claiming to be the owner of the Schedule A and B properties, sought for injunction in respect of Schedule A property and for a relief of declaration and recovery of possession in respect of Schedule B property. According to the plaintiff, the defendants without consent and knowledge of the plaintiff had entered upon the schedule B property, which belongs to the plaintiff and had also threatened to encroach even in respect of Schedule A property and in such circumstances, the reliefs above mentioned have been sought for.

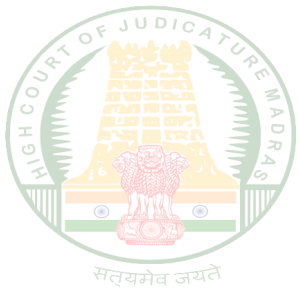
4.2.The defendants filed a written statement admitting the title of the plaintiff in respect of A schedule property. However, according to the defendants, B schedule property is not belonging to the plaintiff and it has always been an integral part of the



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defendants' property. It is further pleaded that there is a 5 feet level difference between both Schedule A and Schedule B properties and they are separated by 5 feet in height and therefore, the claim of the plaintiff cannot be true. It is also contended by the defendants that for the last 15 years and more, trees have been grown and there are few 'Vadhamadakki' trees which have been planted only by the defendants and therefore, the claim of the plaintiff that the defendants have encroached into the plaintiff's property on 10.04.2006, when the plaintiff and his family were away from the suit property is only a figment of imagination of the plaintiff.

4.3.On the above pleadings, parties went to trial. The trial Court granted a decree in favour of the Schedule A property ie., relief of permanent injunction. However, in respect of Schedule B property, the suit was dismissed. Plaintiff alone preferred a First Appeal and the defendants accepted the verdict in respect of A schedule property and did not choose to prefer any appeal. In the First Appeal, the appellate Court reversed the findings in respect of Schedule B property and granted a decree, as against which the present Second Appeal has been filed.



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Arguments of Mr.Raguvaran Gopalan, learned Counsel for the appellants:

5.Mr.Raguvaran Gopalan, learned Counsel appearing for the appellants would firstly contend that the Schedule B property is only a narrow piece of land of a width of 1.2 meters, running to a length of 55.2 meters. In this regard, he would invite my attention to the report of the Advocate Commissioner, which clearly mentions the lay of the properties as well as the level difference between the two properties and also the existence of a bund [Varappu]. It is therefore, his contention that when the bund separates the properties of the plaintiff and the defendants, the properties which were lying on either side would naturally belong to the respective parties and plaintiff cannot stake a claim in respect of lands which are lying further across the bund, towards the defendant's property.

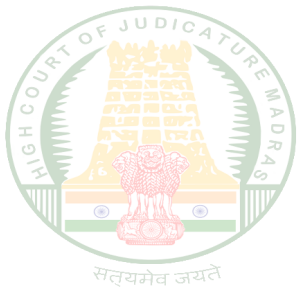
6.Learned Counsel would further state that the appellant does not dispute the title of the plaintiff. However, the appellant is aggrieved by the findings of the First Appellate Court holding that Article 65 of the Limitation Act, would apply and not Article 64. Pointing out to Articles 64 and 65 of the Limitation Act, learned Counsel for the appellants would state that the suit ought to have



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been filed within 12 years from the date of actual dispossession under Article 64. The trial Court, based on the pleadings and evidence has rightly come to the conclusion that the 'Vadhamadakki' trees were aged more than 15 years and therefore, the defendants were in possession of the schedule B property even prior to the period of 12 years and in such circumstances, non-suited the plaintiff finding that Article 64 alone would apply and not Article 65 of the Limitation Act.

7.Learned Counsel has also relied on the decision of the Hon'ble Supreme Court in ***Ramiah Vs. Narayana Reddy***, reported in **(2004) 7 SCC 541**. Learned Counsel would also state that mere inclusion of relief of declaration will not enable the plaintiff to take advantage of Article 65 of the Limitation Act and pointing out the cause of action on which the plaintiff has come to Court, learned Counsel would contend that the plaintiff has approached the Court only based on the alleged dispossession and admittedly, there is no cloud over the title of the plaintiff and therefore, the First Appellate Court ought not to have held that the suit is in time, bringing it within Article 65 of the Limitation Act.



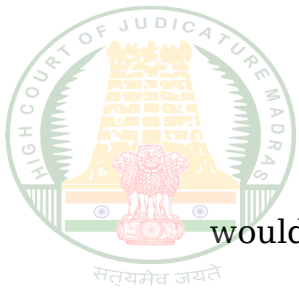
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Arguments of Mrs.J.Padmavathi Devi, learned Counsel for the respondent:

8.Per contra, Mrs.J.Padmavathi Devi, learned Counsel appearing for the respondent would contend that the property that belongs to the plaintiff is one composite property and only for the sake of convenience, the plaintiff has split Schedule A and B, since Schedule B has already been encroached upon by the defendants. She has taken me through the report of the Advocate Commissioner and contended that the Commissioner had given a clear finding that the defendants have encroached into the plaintiff's property. She would also point out to the plaintiff's boundaries that have been set out by the Advocate Commissioner, which clearly highlights the fact that the bund is situated inside the plaintiff's property alone and she would also point out that the bund is not running to the entire length dividing the properties of the plaintiff and the defendants, but only is situated in the middle of the property belonging to the plaintiff and defendants on either side.

9.Learned Counsel has relied on the decision of the Hon'ble Supreme Court in the case of ***M.Radheshyamlal Vs. V.Sandhya and another***, reported in ***(2024) 13 SCC 275***. Learned Counsel



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would state that the Second Appeal does not raise any substantial questions of law and deserves to be dismissed.

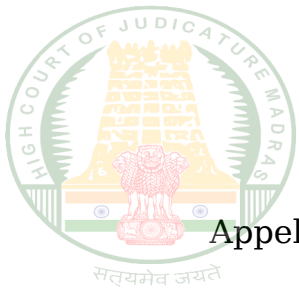
Analysis:

10.I have carefully considered the submissions advanced by the learned Counsel on either side.

11.Though two substantial questions of law have been framed, both the substantial questions of law revolve only around whether Article 64 would apply as contended by the appellants / defendants or Article 65 would apply as contended by the respondent / plaintiff.

12.The case of the plaintiff is that taking advantage of the absence of the plaintiff and his family members on 10.04.2006, the defendants have encroached into a portion of the bund, which lies inside the property of the plaintiff.

13.The trial court has noticed the findings of the Advocate Commissioner and existence of 'Vadhamadakki' trees but non-suited the plaintiff, especially observing that when the trees are aged a minimum of 15 years, the defendants should have been in possession for over the statutory period of 12 years. The First



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Appellate Court has however, relied upon the Advocate Commissioner's report, which had clearly pointed out to an encroachment by the defendants into the plaintiff's property and held that Article 65 alone, would apply to the facts of the case and rejected the plea of the appellants that Article 64 of the Limitation Act alone has to be applied.

14.No doubt, there is no direct evidence with regard to the actual date on which the encroachment is alleged to have been made by the appellants / defendants, excepting for pleading in the plaint and the oral evidence of plaintiff supporting the plaint pleadings. On the contrary, it is the case of the defendants that Schedule B property has always been part of the defendants' property and there has been no such incident on 10.04.2006 as contended and alleged by the plaintiff. The relevant articles which are relied on by the appellants and the respondent are extracted for easy reference:

Article 64. <i>For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.</i>	<i>Twelve years</i>	<i>The date of dispossession.</i>
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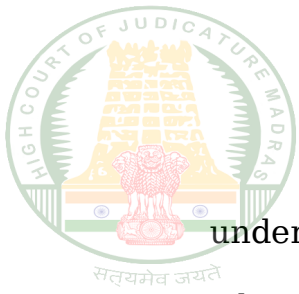


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Article 65.<i>For possession of immovable property or any interest therein based on title.</i> <i>Explanation.- For the purposes of this article-</i> <i>(a)where the suit is by a reaminderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;</i> <i>(b)where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</i> <i>c)where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchase shall be deemed to be a representative of the judgment debtor who was out of possession.</i>	<i>Twelve years</i>	<i>When the possession of the defendant becomes adverse to the plaintiff.</i>
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15.From the above, it is seen that the difference between the two Articles is only that the limitation for recovering of possession



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under Article 64 would commence from the date of dispossession, whereas under Article 65, limitation would commence from the date on which possession of the defendants becomes adverse to the plaintiff. In other words, while invoking Article 65, it is not necessary for the plaintiff to bring the action within a period of 12 years from the date of dispossession. Admittedly, limitation period for both Articles 64 & 65 of the Act is only 12 years. The defendants does not dispute the title of the plaintiff. In fact, it is only Schedule B property, which is 1.2 meters in width and 55.2 meters in length, which is being claimed by the defendants to be forming part of the defendants' property.

16.An Advocate Commissioner was appointed before the trial Court in I.A.No.376 of 2006 and the Commissioner has filed a report, taking the assistance of the Surveyor and he also filed a plan. The report clearly finds the bund to be lying within the plaintiff's property and the Commissioner has also noted the actual extent of encroachment made by the appellants / defendants. Curiously, the defendants have not cross-examined the Advocate Commissioner on these aspects, especially the findings regarding encroachment as well as finding of the bund lying inside the plaintiff's property. The trial Court has misdirected itself with regard to the extent of 'Vadhamadakki' trees to come to an



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erroneous conclusion that the defendants have been in possession for over 12 years. It is not a case which was even pleaded by the defendants that because of the age of 'Vadhamadakki' trees lying inside his property, it should be presumed that the defendants have been in possession of Schedule B property for more than the statutory period of 12 years. The stand of the defendants in the written statement was only that the bund separates the properties of the plaintiff and the defendants and on the bund, the 'Vadhamadakki' trees are standing for over 15 years and therefore, by no stretch of imagination, the claim of the plaintiff that the defendants have encroached into the bund in April 2006 could be true or possible in the first place.

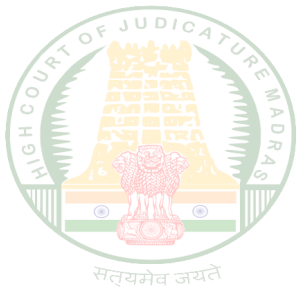
17.Though the defendant has contended that the bund separates the properties of the plaintiff and the defendants, the report of the Advocate Commissioner falsifies such a contention taken by the appellants / defendants. In fact, the Advocate Commissioner has measured the property with the assistance of the land surveyor and identified even the extent of encroachment made by the defendants. The defendants have not been able to effectively cross examine the Advocate Commissioner to discredit the findings of the Advocate Commissioner regarding the encroachment into the plaintiff's property. In fact, the Advocate Commissioner has given a



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categorical finding that three 'Vadhamadakki' trees are situated inside the plaintiff's property alone and has also noticed that the bund does not separate the properties of the plaintiff and the defendants. The memo of instructions given by the defendants was also acted upon by the Advocate Commissioner.

18.From the sketch filed along with the Commissioner's report as well, it is clear that both Schedule A and B properties are situated within S.No.142/36A. It is not the case of the appellants / defendants that he owns properties in S.No.142/36A. The case of the defendants is that he owns properties in S.No.538 and 141 and also does not seriously dispute the plaintiff's claim to title in respect of S.No.142/36A. In such view of the matter, the extent of the age of the 3 trees is not in any manner relevant to decide the possession of the defendants. Unfortunately, the trial Court has misdirected itself regarding the findings of the report of the Commissioner that the trees are 15 years old and the defendants have also pleaded about the same and therefore, went on to render a finding that the defendants' possession is over the statutory period of 12 years and therefore, the suit is barred invoking Article 64 of the Limitation Act.

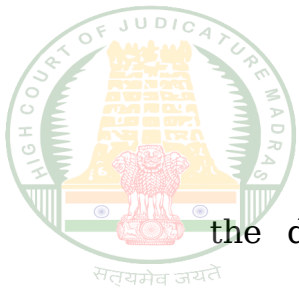


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19.The First Appellate Court has however, rightly appreciated the case of the defendants and taking into account the pleadings as well as oral and documentary evidence and the report of the Commissioner, has rightly come to the conclusion that the survey numbers are entirely different and accepted the findings of the Advocate Commissioner that the defendants have encroached into Item B of the suit property. Further, as rightly contended by the learned Counsel for the respondent / plaintiff as well, the property situated in Schedule A and B are not independent properties, but only forming part of one property and only for the sake of convenience, the property has been shown as Schedule A and Schedule B in the plaint.

20.I see force in the said submission of the learned Counsel for the respondent for the simple reason that Ex.A.1 Patta Pass Book pertains to S.No.142/36A. Patta Pass Book reflects S.No. 142/36A as one parcel of land measuring 59 acres and 50 cents. The title of the plaintiff is also not disputed by the defendants. Therefore, only in order to seek different relief namely, relief of injunction in respect of Schedule A and relief of declaration and possession in respect of B schedule property, the suit property has been bifurcated as Schedule A and B. In such circumstances, when



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the defendants admit the title of the plaintiff to Schedule A property, it would naturally imply that Schedule B property which forms part of Schedule A is also admitted to be property of the plaintiff. The First Appellate Court has therefore, rightly held that the plaintiff is entitled to the disallowed relief of declaration and possession as well.

21.Coming to the question of limitation and applicability of the correct Article of the Limitation Act, according to Mr.Raguvaran Gopalan, Article 64 which mandates the suit to be filed within 12 years from the date of dispossession is alone applicable. In this regard, the decision of the Hon'ble Supreme Court in **Ramiah's** case has been relied on. In **Ramaiah's** case, the Hon'ble Supreme Court held that the applicability of relevant Article would have to be necessarily decided based on the pleadings and on facts found that the plaintiff having filed the suit 13 years after the date of dispossession, could not maintain the suit and Article 64 would apply to the facts of that case. The fundamental difference between Article 64 and 65 of the Limitation Act is that when Article 65 is invoked, possession of immovable property is sought to be recovered based on title. The burden would certainly be on the plaintiff to establish title and once title is established, then the plaintiffs would be entitled for the relief of



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possession. Plaintiff cannot be non-suited to the consequential relief of possession, unless the defendant sets up a plea of adverse possession for over the prescribed period of 12 years and establish the same by adducing satisfactory oral and documentary evidence.

22.In the present case, it is not the case of the defendants that the defendants are in adverse possession. It is the case of the defendants that the bund separates the property of the plaintiff and the defendants, which stand cannot be countenanced, in view of the report of the Advocate Commissioner clearly finding that the bund is situated within the property of the plaintiff and the property which is now sought to be recovered and described as Schedule B property as S.No.142/36A. In such circumstances, I do not see why the plaintiff should be non-suited for invoking Article 65 of the Limitation Act.

23.In fact, the claim on which the plaintiff approached the Court was that on 10.04.2006 alone the defendants have encroached the property of the plaintiff. Suit has been filed a couple of months thereafter in June 2006 and in such circumstances, suit was certainly within the period of limitation and in fact even in the plaint, the plaintiff clearly alleges that on 10.04.2006, Schedule B property has been encroached and when



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the defendants were questioned about the same, he has threatened that he would also encroach upon the first item of the Schedule A property as well. The evidence of the parties therefore, have to be tested in the light of the pleadings and in the absence of the defendants being able to establish that the Schedule B property is forming part of his absolute or independent property and not belonging to the plaintiff, merely because the defendants had pleaded about the existence of 'Vadhamadakki' trees in Schedule B property, cannot be a reason for holding that the defendants have been in possession for over 12 years and therefore, the claim of the plaintiff is time barred.

24.The first appellate Court has rightly held that the plaintiff had proved title by producing Ex.A.1 patta and Ex.A.3 partition deed and also took note of the fact that the appellants had themselves admitted that the plaintiff became entitled to the property through the said partition deed. The appellate court had also taken note of the surveyor's sketch finding an encroachment made by the defendants and applied the ratio laid down by the Hon'ble Supreme Court in the case of **Indira Vs. Arumugam reported in 1999 AIR SC 1549**, entitling the plaintiff to the consequential relief of possession. Once the plaintiff had established title to the suit property and in the absence of the

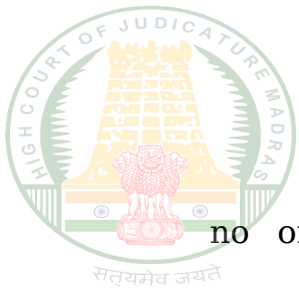


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defendants setting up the plea of adverse possession and establishing such plea by satisfactory pleadings as well as evidence, the plaintiff is entitled to succeed.

25.In such circumstances, the plaintiff's case was certainly more probable and having satisfied the Court that the plaintiff had valid title to the Schedule B property as well, the plaintiff was certainly entitled to the consequential relief of possession, following declaration of title in his favour. However, in the present case, the plaintiff having established his title to the suit property which was in fact candidly admitted by the appellants / defendants, the plaintiff was certainly entitled to invoke Article 65 of the Limitation Act and in such circumstances, I do not see how the appellate Court has fell in error in reversing the erroneous findings of the trial Court which non-suited the defendants applying limitation, excepting the plea of the appellants that they have been in possession of the Schedule B property for 15 years, which finding was based on an incorrect and erroneous appreciation of the pleadings as well as report of the Advocate Commissioner.

26.For all the above reasons, I do not find any merit in this Second Appeal. Substantial questions of law are answered against the appellants. The Second Appeal stands dismissed. There shall be



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no order as to costs. Consequently, connected miscellaneous petitions are closed.

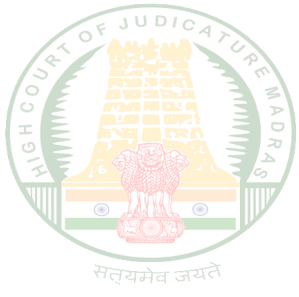
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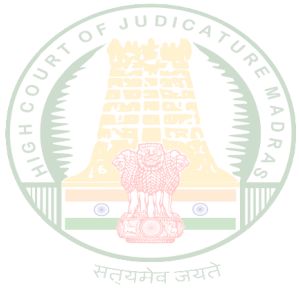
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To

1.The Subordinate Judge,
Manaparai.

2.The Additional District Munsif,
Manaparai.

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



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

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