

Equivalent citations: AIR 2004 Mad 134, (2003) 3 MLJ 20

Bench: M Thanikachalam

Raju And Parvathi vs Muthuammal And Ors. on 4/7/2003

ORDER

M. Thanikachalam, J.

1. In a suit for declaration and possession, in respect of the suit property, though the plaintiff succeeded before the trial Court with the support of the 7th defendant, failed in his attempt before the first appellate Court, when the same was questioned by the contesting defendants and the result is, this second appeal by the plaintiff.

2. The first appellant/plaintiff claiming title to the suit property viz., a house bearing Door No. 174/W6 Natham Survey No. 77/B/15A, alleging that this property originally belonged to one Ganapathy Ammal, which was succeeded by her only daughter as per law then prevailed, that on her death the property devolved upon her sons and daughters, that he obtained a release deed from other heirs of Pillaiyar Ammal, daughter of Ganapathy Ammal and therefore, he is entitled to the suit property as an absolute owner. Thus, tracing title, not only under a release deed dated 5.9.84, as well as tracing the previous title through his grand mother, the first appellant filed the suit for declaration against defendants 4, 6, 9 and 10 as well as for mesne profits, past and future.

3. The contesting defendants/respondents have filed a detailed written statement, not only denying the allegations in the plaint, but also claiming title in themselves, labeling the suit property as ancestral property in which the plaintiff or the other family descendants have no semblance of title, that from the year 1918 onwards, the defendants' predecessors in title and interest were in possession and enjoyment of the suit property, continuously, openly and to the knowledge of others and after their demise respectively, they continued to be in possession of the same as rightful owners, even to the knowledge of alleged owner viz., the plaintiff and others for the past more than 45 years, which conferred upon them title over the suit property, by adverse possession, which should necessarily follow that the claim of the plaintiff, if any, might have been extinguished by efflux of time, which should follow further that the plaintiff is neither entitled to declaration nor possession nor profits.

4. The learned District Munsif, Srivilliputhur, considering the pleadings of the parties, has framed as many as 10 issues. The parties in order to buttress their respective claims, produced 39 documents, exhibited as A1 to A39; and 20 documents exhibited as B1 to B20, in addition to the examination of the plaintiff as P.W.1 as well as the examination of the first defendant as D.W.1.

5. The learned District Munsif, evaluating the above materials, scanning the documentary as well as oral evidence, answered issue Nos. 1 to 3 & 5 to 9 in favour of the plaintiff, answered issue No. 4 against the contesting defendants, as seen from the conclusion in para-14 of the judgment. The learned trial Judge unable to persuade himself, to accept the case of the contesting defendants, whereas the case of plaintiff inspired him to grant a decree and in view of the matter, the suit was decreed without cost, granting time to hand over possession of the property also.

6. The defendants 1 to 4, 6, 8 and 10 thought it fit that their case was negated by the learned District Munsif, without any basis or foundation, that too, against the law, not considering the settled position and therefore, they have approached the Subordinate Judge, Srivilliputhur in A.S. No. 80/89, for relief.

7. The learned Subordinate Judge upon appreciating the evidence available on record, unable to take a positive conclusion, as seen from the judgment and as rightly pointed out by the learned counsel for the appellants herein, however, concluding that the plaintiff as well as the defendants have failed to prove their case to his satisfaction, allowed the appeal, and set aside the decree and judgment of the trial Court, presumably on the ground that the plaintiff, who has come to the Court, is not entitled to pick and choose the loopholes available in the defence and on this ground he would not be allowed to succeed. In this view of the matters, probably, the appeal was allowed, concluding that the decree and judgment of the trial Court, could not be allowed to sustain and the result was setting aside of the same.

8. The plaintiff disappointed by the reasoning said to have been assigned in the appellate Court judgment, joining with the 7th defendant, who supports the case of the plaintiff, preferred this second appeal and the second appeal was admitted on the following substantial questions of law:

" 1. Whether the judgment of the lower Appellate Court, Sub Court, Srivilliputhur, is in accordance with Order 41 Rule 31 C.P.C.?

2. Whether after the enactment of the Benami Transactions (Prohibition) Act, 1988 is it open to the defendants to plead that the sale in favour of Ganapathiammal was a benami transaction?

3. When in the absence of evidence of throwing the suit property in the common hotchpot, whether the same could be treated as joint family property?

4. When in a suit for declaration of title and for recovery of possession, if the plaintiffs title is proved and the defendant does not establish a better title or adverse possession, whether the suit is to be decreed? and

5. Whether the lower appellate Court was right in non suiting the plaintiff purely on the basis of oral evidence?

9. Heard the learned counsel Mr. T. Srinivasaraghavan, who is appearing for the appellants, and the learned counsel Mr. K. Rajkumar, who is appearing for the contesting respondents, who have taken me through the pleadings and evidence meticulously, in support of their respective claims, to dislodge the first appellate court's finding as well as to sustain the trial Court's finding, respectively.

10. The learned counsel for the appellants would contend, that the lower appellate Court failed to follow Order 41 Rule 31 C.P.C., while setting aside the decree and judgment of the trial Court, failed to note the prohibition imposed to take the plea of benami transaction as per the provisions of Benami Transactions (Prohibition) 1988, which resulted in, injustice in dislodging the trial Court's finding, failed to note that there is no evidence of worthy mentioning that the suit property has been treated by the family members as joint family property at any point of time, throwing the same in the common hotchpot, that in the absence of clear cut evidence to prove the adverse possession, instead of decreeing the suit, dismissed the same, by allowing the appeal and therefore, on the above grounds, the appellants are entitled to succeed, dislodging the decree and judgment of the first appellate Court and restoring the decree and judgment of the trial Court.

11. Per contra, the learned counsel appearing for the contesting respondents would contend, that the documents from the year 1918 amply establish the fact, that the suit property was always with the family and enjoyed by the family members by transacting also, that at any point of time, the so called name lender, Ganapathy Ammal or her daughter, Pillaiyar Ammal or her daughters and sons never enjoyed the property as that of their own, whereas the exclusive control and enjoyment was always with the contesting defendants, and even in the absence of title; by hostile and uninterrupted possession, the title of the appellants, if any, would have been lost, which should necessarily follow, that the decree of the trial Court is erroneous, which was rightly set aside by the first appellate Court, despite the fact, convincing reasons were not assigned.

12. From the above submission as well as from the pleadings, it is clear, that the main points that arise for consideration are, whether the suit property was possessed and owned by Neerathalingam and his descendants, as the joint family properties or, Ganapathi Ammal was the absolute owner of the same; that irrespective of the title, whether the contesting defendants have perfected title to the suit property by adverse possession.

13. In order to appreciate and to reach the just conclusion, we have to remember the relationship between the parties and how they traces title to the suit property. Neerathalinga Achari and his wife Ganapathi Ammal, who died 50 and 40 years ago respectively, had three sons and one daughter and they are, Ramalinga Achari, Rakka Muthu, Veerappan Achari and Pillaiyar Ammal. The first defendant is the wife of Ramalinga Achari, who died on 19.2.1978, not disputed. Pillaiyar Ammal is the only daughter died on 13.5.1958 and her husband died on 10.10.1975, not disputed. Their legal heirs are the plaintiff, Seeniammal, Samuthiram, Thangavelu, Lakshmi, Mariyammal. As far as the relationship narrated above, which is indicated in the genealogy appended to the plaint, not disputed. The plaintiff claims absolute title to the suit property through his mother and grand mother alleging that his grand mother, Ganapathi Ammal had purchased the suit property in her name, which was inherited by her only daughter, Pillaiyar Ammal under the law then prevailed, which was inherited by her heirs, who have executed a release deed in favour of the plaintiff under Ex.A9, thereby vesting absolute right in respect of the suit property, in favour of the plaintiff alone.

14. On the other hand, the first defendant and her supporters would contend that the property was purchased in the name of Ganapathy Ammal, by Neerathalinga Achari as benami and in order to save the property from the clutches of the possible claim by the pangalis, Neerathalinga Achari transferred the ancestral property originally in the name of one Muslim Gentleman, then immediately within two months retransferred the same in favour of Ganapathi Ammal under Ex.A2. It is the specific and undoubted defence of the defendants, despite the fact Ex.A2 stands in the name of Ganapathi Ammal, regarding the suit property, it was always with the possession and enjoyment of Neerathalinga Achari, then succeeded by his male descendants, then in the partition allotting the same to Ramalinga Achari, whose estate was succeeded by the first defendant and her supporters. As an alternative plea, on the basis of the long and uninterrupted hostile possession, extinguishment of the title in favour of the plaintiff, if any, is also pleaded, and on that basis, adverse possession also urged.

15. Before going into the question of adverse possession, let me see, who was the rightful owner, how and under what circumstances, the property left from the family, then returned to the family.

16. As contended on behalf of the contesting defendants/respondents, admittedly as evidenced by Ex.A1 also, the suit property originally belonged to one Neerathalinga Achari, the common ancestors of the parties. Neerathalinga Achari transferred or conveyed this property on 24.10.1918, in favour of one Ibrahim Labbai for a stated consideration of Rs. 100/-. Thereafter, the same was purchased in the name of his wife as seen from the registration copy of a sale deed dated 13.12.1918. As spoken by D.W.1, within the short period, the property was reconveyed to the same family, of course, in the name of Neerathalinga Achari's wife. At this distance of time, no evidence is available, as to, under what circumstances Neerathalinga Achari conveyed the property and under what circumstances his wife Ganapathi Ammal purchased the same within the period of two months, except the uncorroborated interested oral evidence of D.W.1

17. Considering the proximity, without the supportive evidence, the learned counsel Mr. K. Rajkumar appearing for the contesting defendants, would contend, that the time factor alone would prove that it should be a benami transaction, probably to prevent the hands of others, from laying any claim, as if the property belonged to Neerathalinga Achari or the joint family. Though the contention appears to be some what reasonable, considering the short period of transactions, I hesitate to fix my seal of approval, to the plea of benami, since to prove the benami, essential ingredients are absent, for which I could say there is nil evidence. Further, as rightly contended on behalf of the appellants, in view of the Benami Transactions (Prohibition) Act, 1988 it is not open to the contesting defendants, to plead that the sale in favour of Ganapathi Ammal was

a benami transaction. I find no acceptable argument or answer from the learned counsel for the contesting defendants/respondents, to negative the said acceptable legal position. Therefore, in view of the settled position at present, since the plea of benami transaction is prohibited, and the plea is also barred, the court should conclude that the property might have been purchased by Ganapathi Ammal, or the property might have been purchased by her husband, to benefit Ganapathi Ammal and in both the way, it should be held that Ganapathi Ammal was the absolute owner of the property, on record from 13.12.1918.

18. The contesting defendants would contend that after the property was purchased in the name of Ganapathi Ammal, this property was enjoyed along with other joint family properties, blending the same and therefore, the suit property could not have the separate character of exclusive property of Ganapathi Ammal, as held by the Apex Court in SMT. PUSHPA DEVI vs. THE COMMISSIONER OF INCOME TAX, NEW DELHI , which reads as follows:

"A Hindu female, not being a coparcener, cannot blend her separate property with joint family property. Whether that separate property is the female's absolute property or whether she has a limited estate in that property would make no difference to that position."

Hence, this defence of plaintiff and converting the separate property as that of joint family property, would not be available to the contesting defendants and on this ground, the property, if purchased by Ganapathi Ammal will not lose the character of her self acquisition or the property belonged to her.

19. It is not clear from the evidence, when Ganapathi Ammal died, though it is said, that she died in the year 1947. What ever may be the date of death of Ganapathi Ammal, it seems, she died before the advent of Hindu Succession Act. Admittedly, at the time of the death of Ganapathi Ammal, she left her daughter Pillaiyar Ammal, whose son is the plaintiff. According to the plaintiff, Pillaiyar Ammal inherited the property of her mother, as the law then prevailed, under which the other male heirs of Ganapathi Ammal or Neerathalingam had no salable or claimable interest and in this view, absolute title is claimed in favour of the legal heirs of Pillaiyar Ammal. If Ganapathi Ammal or Pillaiyar Ammal have not lost the title to the suit property, under the process known to law, then we may not have any option, except to accept the case of the plaintiff, restoring the decree and judgment of the trial Court. On the other hand, if it is shown or proved to the conscious of this court, by acceptable legal evidence, which could be re-appreciated even in the second appeal, then the claim of the plaintiff and his brothers and sisters, as the heirs of Pillaiyar Ammal may not be available to them and in this view, it should be concluded, the claim of the plaintiff is unsustainable. To have this conclusion, the adverse possession pleaded by the contesting defendants must be established. The adverse possession pleaded, if proved, then it will have the effect of extinguishing the title of Ganapathi Ammal and Pillaiyar Ammal and in this view of the matter, Pillaiyar Ammal's heirs had nothing to inherit from their mother, especially the suit property. The burden is very very heavy upon the shoulders of the contesting defendants, to prove their claim of adverse possession, since they have taken that stand and the law is well settled on this point. Before going into the adverse possession, as contended by the learned counsel for the appellants, let me see whether the lower appellate Court has committed any mistake of law not following the mandatory provisions of Order 41 Rule 31.

20. Order 41 Rule 31 reads-

"The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision, and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall bear the date on which it is pronounced and shall be signed by the Judge or by the Judges concurring therein."

From the above mandatory provisions, it is seen that a duty is cast upon the appellate authority, to frame points for determination, assign decision thereon supported by reasons, for the decisions and thereby reversing or modifying or setting aside the judgment of the trial Court, as the case may be.

21. In this case, the learned Subordinate Judge has failed in his duty, to follow the mandate of Order 41 Rule 31 since, he has not framed the point for determination, and I should say unhesitatingly, as contended by the learned counsel for the appellants also, that the learned Subordinate Judge has not assigned proper reason, to reverse the finding of the trial Court framing necessary points also. Unfortunately, without appreciating the plea and counter plea and analysing the evidence available on record, supported by legal position, the learned Subordinate Judge, landed himself in surmises and conjectures and confusing himself, unable to come out from the same, for some reason or other, set aside the decree and judgment of the lower court, by allowing the appeal only on the ground that the plaintiff who has come to the Court, failed to prove his case, forgetting the fact, that it is incumbent on the part of the appellate court, to assign reason for setting aside a reasoned decree and judgment rendered by any trial Court. In this view of the matter, substantial question of law No. 1 framed, appears to be correct. However, on this ground alone, setting aside the first appellate court's decree and restoring the trial Court's decree is not an automatic one. The parties have placed their case, before the courts and adduced evidence documentary as well as oral in their support. When the first appellate court, perversely set aside the trial Court's judgment, in the second appeal, the evidence could be reassessed and nothing prevents this Court from doing so.

22. In Bondar Singh and others vs. Nighal Singh and others , the Apex Court has held reiterating the settled position of law that,

"If the findings of the subordinate courts on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under Section 100 C.P.C. A High Court cannot shut its eyes to perverse findings of the courts below"

23. On the basis of the dictum laid down by the Apex Court, I should conclude, in view of the perverse finding given by the first appellate court, it is the duty of this Court also, though sitting in the second appeal, to assess the evidence on record, in order to render real justice to the parties instead of throwing the case on technicalities. In this view of matter, adverse possession, which was not properly considered by the trial Court, which was not at all adverted to by the first appellate Court, has to be decided by this Court.

24. The suit is one for declaration and possession including claim of mesne profits from 1982, thereby showing the suit property is in the possession and control of defendants 4,6,9 & 10. To explain the possession, an attempt is made in the plaint, in paragraph 5 as well as

8. According to the plaintiff, after the death of Ganapathi Ammal in the year 1947, the property devolved upon the only female heir Pillaiyar Ammal, but the property was managed and controlled by the husband of the first defendant by name Ramalinga Achari. Thus, the possession of the suit property, at least from the year 1947, with the first defendant family, is admitted. It is also not the case of the plaintiff, that Ramalinga Achari or after his death, his wife, the first defendant, paid any rent to the plaintiff recognizing her title and interest. On the other hand, the plaint would read, that Ramalinga Achari had occupied the property and he was permitted to do so because of the relationship. The 7th defendant and her husband by name Samuthiram were living in the suit property from the year 1967 or so, which is pleaded in paragraph-5 of the plaint, is more or less admitted, in the written statement. The plaintiff would contend, that her brother was residing in the suit

property, along with his wife as the heir of Pillaiyar Ammal, whereas the contesting defendants would contend that the son-in-law of the first defendant was permitted to reside in the house, only as son-in-law and he was never in possession of the suit property, as rightful owner, claiming inheritance through Pillaiyar Ammal. At the time of filing of the suit, Samuthiram or D7 were not residing in the suit property and for that, an explanation is given, in para-8 of the plaint, as if they were driven out of the house elsewhere in the year 1982, itself. It is not the case of the plaintiff, in the plaint that from the year 1967-82, when Samuthiram and his wife, D7 were in occupation of the building or a portion of the building, which is the subject matter of the suit, the contesting defendants were not resided or they have vacated the premises. Therefore, it is crystally made clear, that Ramalinga Achari and his descendants, are continuing in possession of the suit property, from the year 1947 at least, till the date of filing of the suit.

25. The important witness, who could speak about the possession of the suit property, as the heir of Pillaiyar Ammal, must be Samuthiram. Because. admittedly, he was residing in the suit building. For the reasons best known to the plaintiff, to explain the possession, whether on the basis of heir of Pillaiyar Ammal or on the strength of the son-in-law of the first defendant, he was not examined and in my view, deliberately, he avoided the box, thereby compelling to draw an adverse inference. D.W.1 would state that he was residing in the house as tenant, but later on vacated, the premises. Whether he was living as tenant or otherwise as said above, non examination takes its role, thereby proving the continuous possession of the suit property, with Ramalinga Achari and the first defendant alone.

26. The non examination should compel any court to draw an adverse inference, that even if he had been examined, he would not have supported the case of the plaintiff. In this view of matter, accepting the oral evidence of D.W.1 and the plea in the written statement, it should be held that Samuthiram was not residing in the property in the capacity as the heir of Pillaiyar Ammal, whereas, he should have been permitted to occupy a portion of the building, being the son-in-law of the first defendant, which will not give any crack or gap, in the possession of the first defendant's family, as far as the suit property is concerned. Therefore, I find no hurdle of any nature or of any other problem to say emphatically, even without contradiction, that the possession of the suit property was always with Ramalinga Achari and thereafter with the first defendant and her family members, till the date of filing of the suit, and even today.

27. The pleadings in paragraph-5 of the plaint, that as if the first defendant and her husband were permitted to look after the suit house, remained as dead letters, in the absence of evidence. No other legal heirs of Pillaiyar Ammal was living in the suit building. For not occupying the suit property, by the plaintiff, an explanation is given, as if she was unable to reside in the suit house, since she got married and settled elsewhere, near Kovilpatti. It is not known, what had happened to the other heirs, from whom the plaintiff has cleverly obtained a release deed, Ex.A9, probably to have a consolidated claim, against the heirs of Ramalinga Achari, seeking the support of others. If Pillaiyar Ammal and other heirs had any title, at least after the death of Pillaiyar Ammal, in the year 1955, her heirs ought to have claimed some right and to prove that they did so, I see nil evidence. In this view of matter, the story projected in the plaint, that as if Ramalinga Achari and her wife were living as permissive occupiers, should be rejected since it appears to my mind, undoubtedly that this plea is taken to break the neck of adverse possession, if possible, giving a discontinuity or explaining the possession not adverse, whereas permissive.

28. As said above, the written statement is very emphatic, that Ramalinga Achari and his heirs were enjoying the property independently, without reference to Pillaiyar Ammal, which is also well spoken by D.W.1, which is further supported by documentary evidence also, which I will advert infra. Thus, having settled the position, of possession as one with the first defendant and her predecessors in interest continuously from 1918, or at least from 1947, unquestionably, we have to see the adverse possession claimed.

29. The learned counsel for the appellants would contend, that the contesting defendants have claimed title to the suit property, labeling the same as joint family property and therefore, the claim of title on the basis of adverse possession is not available to them. In other words, according to him, a person, who claims title to the

suit property on the basis of title deed or on the basis of ancestral claim, is not entitled to claim adverse possession, which should be mutually contradictory, in view of the absence of animus to enjoy the same, adverse to the real owner or showing hostility. If a man enjoys a property as his own, there may not be any hostile possession or animus to enjoy the property, against the interest of the real owner and in this view for such a person, title to the property by adverse possession would not be made available. It is also the contention of the learned counsel for the appellants that the so called animus to enjoy the suit property, adverse to the real owner was not informed or known to the real owner and in this view of the matter also, in this case, adverse possession is not available to the contesting defendants. This plea is taken on the basis that the person, who is enjoying the property must be conscious that the property belongs to somebody else and then only he can claim adverse possession.

30. The learned counsel for the appellants would contend, that the close relation admitted or permitted to be in possession of the property, will not clothe him to claim adverse possession, since it is the ordinary practice prevailing in the Hindu Community, to manage the property belongs to family by a male belonged to that family. In aid reliance is placed on the decision of the Supreme Court in the case of Kanakarathanammal v. V.S. Loganatha Mudaliar and another, wherein the Apex Court of this land has held as

follows:

"In ordinary Hindu families property belonging exclusively to a female member would also be normally managed by the manager of the family"

This principle is not disputed and to apply the same, it should be shown that the property was allowed to be in the hands of the contesting defendants as permissive holders. The general presumption in this case or the prevailing situation as observed in the above ruling, is not available in our case, because of the fact that the hostile and notorious possession was with the contesting defendants, the fact being thought the plaintiff and his sisters and brothers have chance to take action for the recovery of the property for more than two decades. In this view of the matter on the general presumption that the property belonging exclusive to a family member would be managed by the manager of the family, may not be applicable to this case, in view of the further fact that neither the first defendant nor the other contesting respondents, are the manager of the family, admittedly.

31. The learned counsel for the contesting defendants/respondents questioning the above principle, would urge that a person who failed to prove the claim of title, otherwise could still claim adverse possession and the main ingredient required is there should be animus to enjoy the property, as his own property. In support of the above contention, aid is sought from Sadasiva Gounder and another vs. Purushothaman (2000 (3) M.L.J. 785). In the case involved in the above decision, as seen from the facts, a person who claimed adverse possession, failed to prove the same, whereas by proving his long possession, his title was upheld. In the above decision, it is observed that-

"There is a school of thought that to claim adverse possession there must be an admission that the property belonged to the other party and the party claiming adverse possession has to have this 'animus' viz., that it is somebody else's property, that, that somebody alone had title and he did not have title. Animus in the legal parlance would mean mind, design, will intention, disposition. To claim with regard to possession, the term is animus possidendi, which means the intention of possessing. The person claiming adverse possession must intend in his mind to possess a property as his own. It does not mean that he must be conscious that the property belongs to somebody else. All that is required by the term 'animus' in the context of adverse possession is that the person must have intention to possess the property as his own."

It is also further held, specifically that - where the person sets up title in himself and fails to substantiate the same, the question may rise as to whether such a person can still claim adverse possession answering in the affirmation. I respectfully agree with the above observation, and to apply the same principle, what is required

in this case is, that the contesting defendants should have enjoyed the property as that of their own to the knowledge of the claimants in this case viz., the plaintiff and his brothers and sisters. It is not mandatory that a person, who is in possession of the property, enjoying the same with animus should take the same to the knowledge of the rightful owner, if any. If the rightful owner, claims to know that the property is enjoyed by others, but failed to take any action for several decades, then nothing should prevent to draw a presumption that the so called rightful owner had knowledge and the person, who is in enjoyment of the property was enjoying the same adverse to the real owner.

32. For adverse possession, there is no statutory definition. Adverse possession refers to actual and exclusive possession, giving cause of action to the so called owner to take action for recovery of possession. The possession so contemplated, must be with the animus domini i.e. the intention to hold the property and the corpus possession i.e. the physical control of such property. In our case, all the ingredients require to affix the seal of adverse possession, are available in plenty, supported by evidence also. That is why, I have already pointed out the pleadings, regarding the possession and how the possession was not explained or proved as that of permissive possession, thereby compelling us, to draw a presumption in favour of the person, who commenced in wrong and maintained against the right.

33. D.W.1 has categorically given evidence, that the suit property was always in their possession, for the past more than 45 years and they have enjoyed the same as their own, including mortgaging the same, after the death of Pillaiyar Ammal. In aid Ex.B.2 was produced, which would go to show, that Ramalingam Achari i.e. husband of D.W.1 usufructually mortgaged the property, on 18.2.1957 in favour of one Balakrishnan. When D.W.1 had spoken about the usufructuary mortgage and the possession, they are not seriously questioned. As seen from Ex.B.3, from the year 1970-71, the suit property was assessed only in the name of Ramalinga Achari and Ramalinga Achari alone had paid tax as proved by Exs.B5 to B10. Admittedly, service connection for the suit house, also stands in the name of Ramalinga Achari or the first defendant, as the case may be. The fact that the Municipality recognised Ramalingam Achari and the first defendant, as the owner of the suit property by assessing the tax, coupled with the uninterrupted possession, at least from the year 1947, should prompt anyone, to say that they have enjoyed the property, with an animus to enjoy the same as owner and at no point of time they have recognized the plaintiff, or his brothers or sisters and mother, as the owner of the suit property.

34. If really, Ganapathy Ammal or her daughter Pillaiyar Ammal were the owner and enjoyed the property in that capacity, definitely, they should have paid tax, after assessing the property, in their name. Admittedly, after the alleged settlement deed, Ex.A9, under the guise of acquiring title by the release deed, the plaintiff somehow or other transferred the property tax assessment, in his name, but that would not have the effect of giving a gap, to the physical and continuous possession of the suit property, admittedly, by the contesting defendants. In this view of the matter, even on the basis of satisfactory oral as well as the documentary evidence, I am inclined to accept the plea of adverse possession ignoring the plea of the contesting defendant at first, setting up title in themselves. In this view of the matter, I am constrained to hold that the contesting defendants would have acquired title to the property by adverse possession. Assuming even Pillaiyar Ammal or her predecessors, had title in view of the fact, sale deed standing in the name of Ganapathi Ammal, it has been extinguished by efflux of time by the time of filing of the suit. The fact that Ganapathi Ammal owned some other properties, as seen from certain documents, will not militate the case of the adverse possession.

35. As far as the adverse possession is concerned, unfortunately, neither the trial Court, nor the first appellate Court, has considered the plea of adverse possession in its proper perspective, since possession is the criterion, to establish the title, coupled with other factors. Though the lower appellate court has failed to consider all these matters elaborately, in view of the available evidence, assessing the same, I would hold that the plaintiff has no title to the suit property, on the date of filing of the suit, whereas the contesting defendants had perfected title to the property, by adverse possession. As seen from some of the documents, while giving boundaries to certain properties, Ganapathi Ammal's name is mentioned, as the owner of the suit property. On that basis, it was contended that title of Ganapathi Ammal was recognized including by Arumugham and

therefore, they should be estopped from claiming title in themselves, on the principles of attestation. There is no evidence worthy of mentioning, that Ramalinga Achari or others attested the documents, knowing its contents or the recitals were shown to them. The position being so, it may not be possible for this Court, to say that by attestation or otherwise, the first defendant or his predecessors in interest were prevented from claiming title to the suit property, that too, by adverse possession. In this view of matter, this argument should be negated. Hence, these points are answered accordingly.

The result, therefore is, the appeal is dismissed. But under the facts and circumstances of the case, directing the parties to bear their respective costs throughout.