

**(1922) 12 MAD CK 0042**  
**In the Madras High Court**

Ammakannu Ammal and Others

APPELLANT

Vs

Narayanaswami Mudaliar and Others

RESPONDENT

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**Date of Decision :** 07-12-1922

**Acts Referred:**

**Citation :** AIR 1923 Mad 633 : 72 Ind. Cas. 635 : (1923) 17 LW 629

**Hon'ble Judges :** Ramesam, J; Coutts-Trotter, J

**Bench :** Division Bench

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## Judgement

1. The finding which we have called for in this case has been returned and the learned Judge finds that the joint family, of which Tholasingam was a member, acquired a title to the property in suit by prescription. That finding of fact is challenged on the ground that though this old lady had married and gone away to Royapuram and never again resided in the property in the ordinary sense, she is to be held to have kept alive her rights in it against the accrual of prescription by the fact that, occasionally, she came and stayed a few days as a guest. That seems to be so, but that will not operate to make the possession of the family of defendants Nos. 1 to 3 less exclusive so as not to extinguish the rights of the old lady in the property. This contention does not require discussion.

2. It is next argued that the suit is not maintainable because at the time it was brought the plaintiffs were not in possession of the property and that no stranger, even after the completion of the prescription, can sue anybody for possession, because she had not got an iota of title at all as he is merely a man who has prescribed against the title of the true owner and who is left with nothing, unless by mere brute force he can succeed in holding the property against anybody who tries to come up. To my mind this is an absolutely untenable argument and is based on what to my mind is a complete misunderstanding of the decision of the Court of Appeal in the case of Tichborne v. Weir (1892) 67 L.T. 735 . There a tenant had a lease and somebody, a stranger, came and stood for thirty years in the shoes of the tenant and paid, rent to the landlord. It was sought at the end of a very long period to enforce

against the person in occupation of the premises by the landlord the performance of a covenant to repair, and the argument on which it was sought to base that contention was this: the Statute in effect transferred the estate of the person prescribed against to the lands of the person in occupation. Their Lordships observed that it was an incorrect interpretation of the law and that what the Statute did was not to transfer the title of the person prescribed against with all its burdens to the person in occupation but to extinguish the whole title and to create, not by transfer but by an act of creation, a new title in the person who completed the prescribed statutory term. That being so, that case has no application to the present circumstances and we must hold that the person who has completed the statutory prescription is entitled to eject any person with no title who seeks to retain possession of the premises.

3. The result is, that the appeal fails and is dismissed with costs of the first respondent.