

(2009) 08 MAD CK 0256
In the Madras High Court
Case No : A.S. No. 533 of 1992

K. Rukmani (died), R. Kasthuri (died) and K. Surendran APPELLANT
Vs
Adikesavan (died) and Others RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Evidence Act, 1872 — Section 114
Limitation Act, 1908 — Article 142, 143
Registration Act, 1908 — Section 92

Citation : (2009) 6 MLJ 1195

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; K.N. Thambi, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The plaintiff is the appellant. The suit has been filed for declaration, possession and for mandatory injunction. The suit having been dismissed, the plaintiff has preferred the appeal.

2. The case of the plaintiff in a nut shell is as follows:

The plaintiff's husband and one Samu Naidu are brothers. The defendants 1 & 2 are the sons of late Samu Naidu who died in the year 1978. The second defendant died pending the suit and the defendants 4 to 6 are the legal representatives of the deceased second defendant. The third defendant is the Pattukottai Municipality from whom the relief of mandatory injunction has been sought for, for changing the revenue records. The suit property which is a house was originally owned by the deceased Samu Naidu. The deceased Samu Naidu obtained loan from the Pattukottai Co-operative Bank. Apart from that, he has also received loan from the plaintiff. In order to clear the debts, the deceased Samu Naidu sold the suit property in favour of the plaintiff by way of registered sale deed under Ex.A3 dated 09.04.1955. The loan obtained by Samu Naidu has also be discharged. On 10.04.1955 a tenancy agreement has been entered into

between Samu Naidu and the plaintiff fixing the period of tenancy for one year under Ex.A16. Thereafter, the deceased Samu Naidu continued to be a tenant by paying the rent. He died in the year 1978. After his death, the defendants 1 & 2 started asserting that the suit property belongs to them. When the plaintiff approached the third defendant for the purpose of changing the records stood in the name of Samu Naidu, the third defendant has refused to do so in view of the objections by the defendants 1 & 2. Hence the plaintiff is constrained to file the suit as prayed for.

3. The case of the first defendant in brief is as follows:

It is not true that there was a sale as mentioned in the plaint under Ex.A3. It is also not true that the deceased father Samu Naidu has executed Ex.A16 tenancy. The said document executed under Ex.A3 and Ex.A16 are sham and nominal documents created for the purpose of avoiding creditors of the deceased Samu Naidu. The defendants have been enjoying the suit property as absolute owners. The alleged tenancy and payment of rent is not true. The suit is liable to be dismissed, since the defendants have become owners based upon adverse possession. The suit is also liable to be dismissed in view of the bar u/s 67 of the Limitation Act, 1963, since the suit has not been filed after the determination of tenancy mentioned in Ex.A16. Therefore, the first defendant prayed for dismissal of the suit.

4. The case of the third defendant is as follows:

The third defendant is neither a necessary nor a proper party to the suit. The suit is a dispute between the plaintiff and the defendants 1 and 3 to 5. Therefore, the suit has to be dismissed as against the third defendant.

5. The defendants 3 to 5 have filed written statement which proceeds as follows:

The first defendant has informed the defendants 3 to 5 as well as the second defendant that the suit property belongs to the plaintiff only. The first defendant also informed the defendants 2 to 5 that the suit property was sold by the father of the first defendant in favour of the plaintiff and intimation has been given by the plaintiff seeking rent and to repair the damages in the house with the arrears of rent. However, the first defendant has changed his stand after filing of the suit by the plaintiff by stating that the suit property belongs to the defendant 1 & 2. The second defendant has refused to accept the written statement filed by the first defendant. The first defendant has told the other defendants that he had stated earlier that the suit property belongs to the plaintiff in order to avoid the partition between the defendants 1 & 2. Therefore, the written statement filed by the first defendant is not correct and the suit property only belongs to the plaintiff alone.

6. Before the Trial Court, the plaintiff has examined three witnesses apart from marking Ex.A1 to A4. Ex.A2 is the auction notice sent by the Pattukottai Co-operative Bank to the deceased Samu Naidu. Ex.A3 is the registered sale deed in

favour of the plaintiff by the deceased Samu Naidu. Ex.A4 is the payment of loan in the name of Samu Naidu. Ex.A7 and Ex.A8 are the statement given by Samu Naidu before the Criminal Court and Civil Court respectively to the effect that the suit property belongs to the plaintiff. Ex.A9 is the copy of the plaint in O.S. No. 630 of 1972 showing the boundary of the suit property in the said suit as a one belonging to the plaintiff. Ex.A16 is the lease deed executed between the plaintiff and Samu Naidu.

7. On behalf of the defendants four witnesses have been examined and Ex.B1 to B.82 have been marked by the first defendant. Exs.B83 to B85 are the sale deeds of the third parties indicating that the boundary of the said sale deed showing the name of the deceased Samu Naidu with reference to the suit property.

8. P.W.1 is the husband of the plaintiff. He has deposed that he was present at the time of execution of Ex.A3. P.W.1, as mentioned earlier is the brother of the deceased Samu Naidu. He speaks about the execution of Ex.A3 as well as Ex.A16. P.W.1 also says that the deceased Samu Naidu died in the year 1978. He further stated that under Ex.A7 and A8, the deceased Samu Naidu has deposed before the Court that the suit property belonged to the plaintiff. According to P.W.1, after the death of deceased Samu Naidu, the defendants 1 & 2 has started claiming to the suit property and the third defendant has refused to change the tax records in the name of the plaintiff in view of the objections of the defendants 1 & 2. He further states that the loan to the Co-operative Bank has been discharged by him.

9. P.W.2 is the person who has made improvement in the suit property at the instant of the plaintiff. According to P.W.2, the materials have been supplied by P.W.1 and the work has been done when the deceased Samu Naidu was alive. He also deposed that the wages have been paid by P.W.1. Similarly, P.W.3 has deposed about the factum of the payment of rent by Samu Naidu in favour of the plaintiff.

10. The first defendant has examined four witnesses in support of his case. He examined himself as D.W.1. He has stated that there was a suit filed in O.S. No. 630 of 1972 by one Devaraj and others against Samu Naidu and defendants 1 & 2. In the said suit, the plaintiff has been made as the 4th defendant. However, the plaintiff has been deleted and compromise has been entered into between the parties. The said Devaraj also filed another suit in O.S. No. 75 of 1978. The present suit has been filed by the plaintiff in O.S. No. 628 of 1982 before the District Munsif and thereafter the same has been presented before the Sub Court, Pattukottai. He did not know Ex.A3, but he has come to know about the same only after filing of the suit. His father has executed certain documents to third parties for obtaining loans. In his cross examination he has stated that it is true that in O.S. No. 630 of 1972 in the description of the suit property involved therein, the present suit property has been shown as if the same belongs to the plaintiff. He also admits that under Ex.A8, the deceased Samu Naidu has stated

that the suit property belongs to the plaintiff. There is a further admission by the first defendant that there is no constrained relationship between the first defendant and the second defendant. D.W.2 to D.W.4 are the persons who have been examined in support of Exs.B83 to B95, wherein the boundary of the sale deeds mentions the suit property with reference to the deceased Samu Naidu. The defendants 4 to 6 have been said Ex- parte.

11. The following issues have been framed by the Trial Court:

- (1) Is the plaintiff entitled to the relief of declaration?
- (2) Is the plaintiff entitled for possession?
- (3) Is the plaintiff entitled for mandatory injunction?
- (4) Is the sale deed dated 10.04.1955 is sham and nominal one?
- (5) Is Samu Naidu, a tenant of the plaintiff?
- (6) Is the first defendant entitled to get title by adverse possession?
- (7) Is the suit barred by limitation?
- (8) Is the suit liable to be dismissed for mis-joinder of parties?
- (9) What other relief the plaintiff is entitled to?

12. The trial Court on a consideration of the oral and documentary evidence let in by the parties coupled with the pleadings has dismissed the suit on the ground of limitation after holding that the suit property belongs to the plaintiff and the document executed under Exs.A3 and A16 are true and genuine. The suit has been dismissed on the ground that after the determination of Ex.A16, the suit has not been filed within 12 years as required under Article 67 of the Limitation Act, 1963. Hence being aggrieved against the same, the plaintiff has preferred this appeal.

13. The learned Counsel for the appellant submitted that the Court below has committed an error in dismissing the suit on the ground of limitation since in the present case the first defendant has challenged the title of the plaintiff. According to the learned Counsel, when the title is disputed, in such an event Article 65 of the Limitation Act, 1963 alone would be applicable and not Article 67 of the said Act. The learned Counsel further submitted that the duty is cast upon the defendants to prove that he is a tenant by sufferance. According to the learned Counsel, a mere determination of the lease agreement will not put an end to the status of the tenant from being a statutory tenant to that of a trespasser or a tenant by sufferance.

14. The learned Counsel submitted that when Exs.A3 and A16 are found to be true, the onus is on the defendants to show that the tenancy has come to an end. Therefore, the Court below was not correct for dismissing the suit on the ground of limitation. The learned Counsel further submitted that the cause of

action has arisen only in the year 1980-81, when the defendants have started questioning the title of the plaintiff. It is further submitted that a reading of the evidence of the first defendant would show that the earlier suit filed by a third party was in the year 1972 and even in the suit the said property has been shown as the one belonging to the plaintiff. The mere fact that the parties to the said suit have deleted the plaintiff who was arrayed as the 4th defendant in the said suit itself would show the intention of the first defendant and even assuming the said suit can be taken as the starting point, the present suit has been filed in the year 1982 well within a period of limitation. The learned Counsel also submitted that there is difference under the old Limitation Act, 1908 and the present Limitation Act, 1963 and accordingly what is required under present Act is to show the title of the plaintiff and thereafter the onus shifts on the defendants to raise and prove the plea of limitation. Therefore, the learned Counsel prayed for decreeing of the suit.

15. The learned Counsel relied upon the judgment reported in *Annakili Vs. A. Vedanayagam and Others*, ; *P.T. Munichikkanna Reddy and Others Vs. Revamma and Others*, and *M. Durai Vs. Madhu and Others*, , to show that the party who pleads adverse possession has to prove the same. Similarly, the learned Counsel has also relied upon the judgment reported in 1993 LW 711 (*Kuppuraj v. K.Arjunan and Ors.*); 100 LW 1188 (*Krishnaveni Ammal v. Sundaralakshmi Ammal and Ors.*) and 2000 3 MLJ 773 (*Mr. Govindarajulu rep. by his Power of Attorney Agent, G. Radhamma v. K. Subramanian*), to contend that in a suit for declaration and injunction where the tenant has set up the plea of adverse possession, only Article 65 of the Limitation Act, 1963 would apply and not Article 67 of the said Act. The learned Counsel also relied upon the judgment reported in *Navaneethammal Vs. Arjuna Chetty*, , to submit that a tenant cannot be allowed to set up the plea of adverse possession. Hence the learned Counsel sought for the suit to be decreed.

16. Per contra, the learned Counsel for the first respondent submitted that even though the Court below has given a finding that Exs.A3 and A16 are true and genuine in view of the documents filed by the first defendants to show his possession coupled with the evidence of D.W.1 to D.W.4, it is clear that the said documents are sham and nominal. According to the learned Counsel, the first defendant has been enjoying the suit property as a owner and the plaintiff has never been in possession of the suit property. It is submitted that the documents have been executed in order to escape from the liabilities incurred by his father. It is also submitted that the first defendant has been enjoying the suit property adverse to the title of the plaintiff with necessary "animus" for more than 25 years and in any case the suit is liable to be dismissed, since the same is barred by limitation. The learned Counsel contended that the suit having been not filed within 12 years from the expiry of the period mentioned under Ex.A16, the Court below has correctly dismissed the same as not maintainable.

17. The learned Counsel relied upon the judgment reported in AIR 1970 Raj 63

Sita Ram and Ors. v. Govind, that in a case where the tenant has holding over and asserting hostile title and no rent has been paid by the tenant, only Article 67 alone would be applicable. The learned Counsel also relied upon the judgments reported in Smt. Shakuntala S. Tiwari Vs. Hem Chand M. Singhanian, ; 1965 1 MLJ 383 (Thailammal v. Batumalai); Sidram Lachmaya Vs. Mallaya Lingaya Chilaka, ; AIR 1945 Peshawar 16 (Ishar S. Dass v. Qazi Mohd.) and AIR 1940 Lah 410 (Banwari Lal v. Mt. Hussaini and Anr.), in support of his case to contend that after the determination of the tenancy, a tenant will become tenant by sufferance and therefore the period of limitation in such a case filed by the landlord seeking possession would start from the date of determination of the tenancy. Hence according to the learned Counsel only Article 67 of the Limitation Act, 1963 alone would be applicable and not Article 65 of the said Act. Therefore the learned Counsel prayed for the dismissal of the appeal.

18. I have considered the submissions of the learned Counsel for the appellant as well as the learned Counsel for the first respondent. In the present case the plaintiff has filed the suit based upon Exs.A3 and A16. Ex.A3 is the registered sale deed executed by the deceased Samu Naidu who is brother of the plaintiff's husband on 09.04.1955. Ex.A16 is the lease deed between the parties executed on 10.04.1955 in pursuant to Ex.A3 sale deed. As contended by the learned Counsel for the appellant, Ex.A3 is the registered document entered into between the plaintiff and the father of the first defendant. u/s 92 of the Registration Act, a party to a document cannot question the execution or the contents of the documents. The explanation of the said section is that the same can be challenged as sham and nominal. Chapter 6 speaks about the execution of oral documentary evidence.

a) Section 91 of the Indian Evidence Act 1872 is extracted hereunder for ready reference: Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.

b) Section 92 of the Indian Evidence Act, 1872 is also extracted hereunder for ready reference:

Exclusion of evidence of oral agreement.-When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.

Proviso (2).-The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).-The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).-The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).-Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to or inconsistent with, the express terms of the contract.

Proviso (6).-Any fact may be proved which show in what manner the language of a document is related to existing facts.

19. A perusal of the above said provisions would clearly show that when a party to a document admits its due execution then, he cannot turn round and challenge the terms contained therein. However, it is still open to the said person to contend that the document is sham and nominal and vitiated by fraud. In other words, if the above said party, who executes the document is able to satisfy the provisos, the said party is entitled to succeed in his contentions.

20. While making such a plea, the party concern who speaks against the registered document will have to make out a strong case in support of his contentions. In such a situation, the onus is heavily on the party who speaks against the document. Therefore, it is permissible to a party to a document to contend and prove that the deed was intended to acted upon but only a sham and nominal document. However, the said party cannot go against the terms of the document after admitting the character of the document. In other words, the terms of the documents in which a person is a party cannot be varying on contradicting by oral evidence to that of the document itself as sham and nominal is one thing and to say that the content of the document is not correct is another thing. In this connection, it is useful to refer the judgment of the Hon''ble Supreme Court reported in Roop Kumar Vs. Mohan Thedani, wherein, the Hon''ble Supreme Court has read as follows:

19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms u/s 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contracting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.

In 2007 (3) MLJ 467 (Bhandari Construction Company v. Narayan Gopal Upadhye) wherein, the Hon"ble Supreme Court has held is hereunder extracted for useful reference:

15. When the terms of the transaction are reduced to writing, it is impossible to lead evidence to contradict its terms in view of Section 91 of the Evidence Act. There is no case that any of the provisos to Section 92 of the Act are attracted in this case. Why the case that was sought to be spoken to by the respondent was not set up by him in the complaint was not explained. The case set up in evidence was completely at variance with the case in the complaint. There was no evidence to show that the consideration was to be Rs.9,00,000/-, especially, in the light of the recitals in the registered agreement. There was also no document to show the payment of Rs. 4,00,000/- by way of cash. Hence, this was no evidence to show the balance amount due under the agreement after the admitted payment of Rs. 5,00,000/- was paid. The affidavit produced before the State Forum and the evidence of the colleague of the respondent is clearly inadmissible and insufficient to prove any such payment. Thus, the case set up by the respondent in his evidence was not established. It is in that situation that the District Forum, taking note of the payment of Rs. 5,00,000/- and the failure of the respondent to encash the cheque for Rs. 5,00,000/- that was returned by the company, ordered the complainant to pay the balance amount due under the transaction as evidenced by the written instrument and take delivery of the premises in question and in the alternative, gave him the option to take back the sum of Rs. 5,00,000/- with interest. Neither the State Commission, nor the National Commission has given any sustainable reason for differing from the conclusion of the District Forum. A mere suspicion that builders in the country are prone to take a part of the sale amount in cash, is no ground to accept the story of payment of Rs. 4,00,000/- especially when such a payment had not even been set up in the complaint before the District Forum. Not only that, there was no independent evidence to support the payment of such a sum of Rs. 4,00,000/- except the ipse dixit of the respondent. The affidavit of the Bank employee filed in the State Commission cannot certainly be accepted as evidence of such a payment. Payment of such a sum had clearly been denied by the company. The respondent had, therefore, to prove such a payment. His case that the purchase price was Rs. 9,00,000/-, itself stands discredited by the recitals in

the agreement dated 27.07.1997 in which the purchase price was recited as Rs. 7,75,000/-. Not only that, the respondent did not have a receipt for evidencing the payment of Rs. 4,00,000/- and if the amount was paid on 05.07.1997 or 08.07.1997, as claimed by him, he would certainly have ensured that the payment was acknowledged in the agreement for sale executed on 27.07.1997. The agreement for sale actually speaks of his obligation to pay the balance to make up Rs. 7,75,000/- after acknowledging receipt of Rs. 5,00,000/-. The respondent is not a layman. He is a practising advocate. According to him, he specialises in documentation. He cannot, therefore, plead ignorance about the existence of the recital in the agreement. He cannot plead ignorance of its implications.

21. In the judgment reported in 2009 (2) CTC 861 (Vimal Chand Ghevarchand Jain and Ors. v. Ramakant Eknath Jajoo), the Hon"ble Supreme Court has held that a heavy burden of proof lies upon the defendants to show that the transactions was a sham and nominal one. Therefore, on a consideration of the above said legal papers, this Court is of the view that the defendants cannot contend against the terms of the documents in Exs.A3 and A16.

22. Therefore, on a consideration of the above said legal position, this Court is of the opinion that the contention of the learned Counsel for the first respondent that the Exs.A3 and A16 are sham and nominal cannot be accepted. The Trial Court after going through the evidence has clearly held that Exs.A3 and A16 are true and genuine.

23. The issue can be seen from another angle as well. In the present case, admittedly Ex.A3 is the registered document. In view of the fact Ex.A3 being a registered document and the same has been executed as early as on 09.04.1955 a presumption arises in favour of the said document. In the judgments reported in 2002 2 LW 3 (State of Haryana v. Ram singh); Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., ; 2007 5 MLJ 100 (G. Devadasan v. A. Sundarapandy (died) and 9 Ors.) and 2000 TNLJ 304 (Backiam and Anr. v. Krishnan), the Hon"ble Supreme Court as well as the Hon"ble High Court have held that there is a presumption u/s 114 of the Indian Evidence Act regarding a registered document that the same has been executed properly. An act done by the registering authorities in their official capacity is also presumed to be true unless the same is proved otherwise by the party who challenges the action. Therefore on a consideration of the above said legal position also the first respondent cannot question Ex.A3 particularly by taking into consideration of the fact that the said document has not been questioned by his father Samu Naidu when he was alive.

24. The learned Counsel for the appellant raised a technical objection that the first respondent cannot question the findings of the trial Court without filing a cross appeal, this Court is of the opinion that the appeal being a continuation of the proceedings and the right of appeal having been provided under the Civil Procedure Code, such a contention cannot be accepted. In the judgment reported

in Chokalingaswami Idol thr. R.N. Pillai Vs. Gnanapragasam (Dead) by LRs., , the Hon"ble Supreme Court has held that a findings given against a party can be questioned in an appeal filed by the other party. In the judgment reported in 2007 11 SCC 75 (S. Nazeer Ahmed v. State Bank of Mysore and Ors.), the Hon"ble Supreme Court has held that for supporting a decree passed by a trial Court, it is not necessary for the respondent in the appeal to file a memorandum of cross objection challenging a particular finding by the trial Court against him when the ultimate decree itself is in his favour. The Hon"ble Supreme Court was pleased to hold that the memorandum of cross objection is needed only if the respondent claims any relief which was negative to him by the trial Court.

25. Therefore, on a consideration of the above said facts, this Court is of the opinion that the objections raised by the learned Counsel for the appellant deserves to be rejected and under those circumstances the respondent is permitted to question the findings of the trial Court which has been held against him. However, as stated above in view of the reasons given, the findings of the trial Court so far as the execution of Exs.A3 and A16 are concerned are hereby confirmed.

26. In the present case, the plaintiff has examined three witnesses in support of her case. P.W.1 is the husband of the plaintiff who was present at the time of execution of Exs.A3 and A16. He also speaks about the payment of rent by the deceased Samu Naidu and the defendants thereafter. P.W.2 is the person who is engaged by the plaintiff to undertake repairs of the suit property. P.W.3 also speaks about the payment of rent in favour of the plaintiff. It is also seen that in view of the objections raised by the plaintiff, the plaintiff was deleted in the said suit and a compromise decree has been entered into. The said suit was filed by the neighbour who is residing adjoined to the suit property. The above said facts would clearly show that the plaintiff is having clear title to the suit property and the defendants 1 and 2 are the tenants.

27. In so far as the plea of adverse possession is concerned, it is a well settled principle of law that the party who sets up the plea of adverse possession has to plead and prove his case. It is also settled principle of law for proving the adverse possession necessary "animus" will have to be established against the true owner. In the present case, there is no pleadings or evidence let in by the first defendant to show that the date and period from which the first defendant or his father has started claiming the suit property as the one belonging to them absolutely.

28. In the judgment reported in M. Durai Vs. Madhu and Others, followed by the judgment reported in P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, and Annakili Vs. A. Vedanayagam and Others, , the Hon"ble Supreme Court has clearly held that the two important elements constituting adverse possession are that the possession of the defendants who become adverse to the plaintiff and the defendant himself continues to remains possession for a period of 12 years thereafter. It has been further held that a mere possession will not

ripen in to possessive title and the burden of proving the same lies on the defendants who asserts title based upon adverse possession. The Hon''ble Supreme Court was pleased to hold that what is sufficient for the plaintiff is to prove his title and once the title is proved, the burden shifts to the defendants and established that he has perfected his title by adverse possession. It has been further held that under Article 64 and 65 of the Limitation Act, 1963, onus is on the defendants to prove the question of limitation as against the earlier provisions contained in Article 142 and 143 of the Limitation Act, 1908. Therefore, on a consideration of the above said judgments, this Court holds that the plea of adverse possession has not been established.

29. Apart from the same, in the present case on hand in view of the findings given by the Court below and also in view of the findings given by this Hon''ble Court, the question to be seen is as to whether the first defendant being the tenant can be allowed to raise the plea of adverse possession. When once it has been held that the first defendant and his father have been tenant, then the onus is on the first defendant to show that the tenancy has come to an end and they have started enjoying the suit property as a owner. In the judgment reported in *Navaneethammal Vs. Arjuna Chetty*, , the Hon''ble Supreme Court has held that even after the determination of the tenancy, a tenant who continues to be in possession after the expiry of the lease cannot claim title by adverse possession since his possession is only a permissive possession and not adverse possession.

30. Similarly in the judgment reported in 2007 6 MLJ 337 (*Kamakshi Builders v. Ambedkar Educational Society and Ors.*), the Hon''ble Supreme Court has clearly held that in a case where the tenancy has been determined the tenant continues to be a tenant and notwithstanding such a determination and therefore the claim of the tenant for adverse possession cannot be accepted since there is no "animus possidendi". In the judgment reported in *Shri Ajit Chopra Vs. Shri Sadhu Ram and Others*, , the Hon''ble Supreme Court has held that a fresh period of limitation would start from the state of denial of title. In the present case, the 1st defendant has not proved the date from which he denied the title of plaintiff whereas the plaintiff has specifically averred that the defendants 1 and 2 denied the title from 1980-81 onwards. Therefore, on a consideration of the above said legal principle, this Court holds that a tenant cannot be allowed to raise the plea of adverse possession.

31. In so far as the judgments relied upon by the learned Counsel for the first respondent, a reading of the above said judgments would show that they are not applicable to the present case on hand. In the judgment reported in *Sidram Lachmaya Vs. Mallaya Lingaya Chilaka*, , the full Bench of the Bombay High Court was dealing with any case filed by the tenant as against the landlord. The said judgment has been considered by this Court in the judgment reported in 2000 3 MLJ 773 (*Mr. Govindarajulu, rep. by his Power of Attorney Agent, G.Radhamma v. K.Subramanian*), wherein the Hon''ble High Court was pleased to hold that when a suit is filed for declaration and for possession instead of mere

possession and when the title is disputed by the defendants, Article 65 alone would be applicable and not Article 67 of the Limitation Act, 1963. Similarly in the judgment reported in 100 LW 1188 Krishnaveni Ammal v. Sundaralakshmi Ammal and Ors., this Court has held that in a suit for declaration of title and recovery of possession only Article 65 of the Limitation Act would be applicable. In the judgment relied upon by the learned Counsel for the respondents reported in Smt. Shakuntala S. Tiwari Vs. Hem Chand M. Singhania, , the facts involved in the said case are totally differed from the present case. In the said case, the suit is filed for mere possession by the landlord, wherein the Hon''ble Supreme Court was pleased to hold that in such a situation Article 67 alone would be applicable.

32. Moreover in the present case, this Court finds that the trial Court has committed an error in holding that the tenant would become a trespasser and tenant by sufferance automatically after the determination of the lease. When the tenant has taken a plea that there is no tenancy and when he has chosen to question the very sale deed executed by his father the Court below ought to have accepted the evidence of the plaintiff side instead of holding that automatically the period of limitation would run after the expiry of the period mentioned under Ex.A16. The position has been made clear by the recent judgment of the Hon''ble Supreme Court reported in 2007 6 MLJ 337 (Kamakshi Builders v. Ambedkar Educational Society and Ors.), wherein the Hon''ble Supreme Court has clearly stated that notwithstanding the termination of the tenancy, a tenant continues to be a tenant, therefore under those circumstances Article 67 of the Limitation Act, 1963 would not be attracted and in its place only Article 65 of the said Act alone is applicable. The Hon''ble Supreme Court in the said case has considered the earlier judgment of the Hon''ble Supreme Court relied upon by the learned Counsel for the respondents reported in Smt. Shakuntala S. Tiwari Vs. Hem Chand M. Singhania, , and held that in such a case, the tenant can neither raise the plea of adverse possession and nor content that Article 67 of the Limitation Act, 1963 alone would be applicable. The Hon''ble Supreme Court was pleased to hold that Article 67 of the Limitation Act, 1963 is a special provision which would apply in a case where the tenant has seized to be a tenant in terms of the provisions of the Rent Control Act.

33. In so far as the reliance made by the first defendant upon Exs.B83 to B85 is concerned, the same cannot be relied upon to prove the title of the first defendant since they are not the sale deeds inter-parties between the plaintiff and the defendants. Moreover, a mere recital in the said sale deeds about the boundary to the property covered therein cannot be basis for deciding the title between the parties.

34. Hence on a consideration of the entire facts and circumstances of the case coupled with the legal principles, this Court is of the opinion that the appeal filed by the plaintiff deserves to be allowed and accordingly the appeal is allowed. In the circumstances of the case, there is no order as to costs.