

(1913) 11 MAD CK 0028
In the Madras High Court

Meethale Vittil Raman

APPELLANT

Vs

Puthulath Ambu and Others

RESPONDENT

Date of Decision : 13-11-1913

Acts Referred:

Citation : AIR 1914 Mad 800(1) : 24 Ind. Cas. 95

Hon'ble Judges : Spencer, J; Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The plaintiff's case was that the defendants' possession was not adverse in 1900 (the suit was brought in 1910) because the defendants became lessees in 1900 under the tarwad of which the plaintiff is the karnavan.

2. The defendants said that, as members of the same tarwad, they have been in possession up to date of suit of the plaintiff's house. On the case of both parties, no question of adverse possession for more than 12 years before suit in the defendants as against the tarwad (on behalf of which the plaintiff sues) arises at all in this case.

3. The nature of the possession for the purposes of acquiring a title by prescription and the character and extent of the title acquired by possession depend on the nature of the animus possidendi and whether that animus is based on a real or false or pretended title does not matter, except that the title acquired by prescription cannot be higher than what could be acquired if the pretence or falsehood was true. Here, even if the pretence of the defendants was true, they could not acquire any title by prescription against the tarwad, as the possession, supposing the pretence was true, cannot be adverse against the tarwad.

4. The learned District Judge seems to be in error in holding that the plaintiff's claim to eject was based only on the alleged letting of 1900. It was also based on the title of the tarwad.

5. We must set aside the order of the learned Judge of this Court and the

decrees of the lower Courts and give judgment for the plaintiff for possession of the house sued for.

6. As the plaintiff set up a false case of letting, and in view of the fact that defendants have been in possession, though not adversely, for several years, we direct the parties to bear their respective costs in all Courts.