

(2001) 12 KL CK 0070
In the High Court Of Kerala
Case No : S.A. No. 806 of 1989 (D)

Raman Pillai Krishna Pillai and others	APPELLANT
Vs	
Kumaran Parameswaran and others	RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Evidence Act, 1872 — Section 13, 40, 41, 42, 43

Citation : AIR 2002 Ker 133

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : G. Unnikrishnan, A.K. Chinnan, B. Sureshkumar Paravoor and B. Radhakrishnan Thottathil, for the Appellant; L. Mohanan and D. Sajeev, for Respondent Nos. 2 and 12, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Mohamed Shafi, J.—The plaintiffs in O.S. No. 14/1972 on the file of the Munsiffs Court, Neyyattinkara are the appellants.

2. The suit originally filed by the plaintiffs was for permanent prohibitory injunction. Subsequently after the defendants filed written statement, the suit was amended claiming declaration of title and recovery of possession. Originally the suit was dismissed by the trial Court by judgment dated 4-7-1974. In A.S. 438/74 preferred by the plaintiffs the appellate Court set aside the decree and judgment and remanded the case to the trial Court for fresh disposal. Again the suit was dismissed by the trial Court by judgment dated 30-11-1987. The plaintiffs again took up the matter in appeal and by judgment dated 16-1-1989 in A.S. 69/78 the appellate Court set aside the decree and judgment passed by the trial Court and remanded the suit for fresh disposal after giving an opportunity to the plaintiffs to take out a commission to identify the plaint schedule property. Subsequently the trial Court by judgment dated 30-9-1982 decreed the suit declaring the plaintiffs title to and possession of the plaint schedule property except the house in which the 3rd defendant is residing and

passed a decree for permanent prohibitory injunction restraining the defendants from trespassing upon the plaint schedule property and committing any waste therein.

3. The defendants challenged the decree and judgment before the appellate Court in A.S. No. 181/83 and the plaintiffs preferred memorandum of cross-objection with regard to the findings of the trial Court regarding the house situated in the property found in possession of the 3rd defendant. The appellate Court by judgment dated 7-4-1989 modified the decree and judgment passed by the trial Court to the extent that it declared the plaintiffs' title to and possession in respect of the 10 cents marked as plot AR A5 A4 A3, 10 cents marked as K K1 K2 KJ and building Nos. 1 and 3 marked in Ext. C3 plan and set aside the decree in respect of the remaining portion of the plaint schedule property. The lower appellate Court also dismissed the memorandum of cross-objection filed by the plaintiffs. Hence the plaintiffs have preferred the above Second Appeal before this Court.

4. During the pendency of the second appeal the 1st appellant died and additional appellants 3 to 7 are impleaded as his legal representatives as per order in CM.P. 1541/98. The 3rd respondent died and additional respondents 4 to 8 are impleaded as his legal representatives as per order in CM.P. 123/93. The 1st respondent died and additional respondents 9 to 14 are impleaded as his legal representatives as per order in CM.P. 419/99.

5. The plaint schedule property consists of two items viz. 10 cents comprised in Sy. No. 661/6 and 1 acre and 12 cents comprised in Sy. No. 661/5 of Perumkadavila Village in Neyyattinkara Taluk. According to the appellants the plaint schedule properties are portions of property belonged to Mathevan Pillai Narayana Pillai of Naduvila Veedu, the father of the 2nd plaintiff. He assigned 25 cents in Sy. No. 661/5 with buildings etc. in favour of the plaintiffs as per Ext. A1 sale deed dated 29-1-1957. He gifted three items of properties, 10 cents comprised in Sy. No. 661/5, 10 cents in Sy. No. 661/6 and 70 cents in Sy. No. 661/5 in favour of the plaintiffs as per Ext. A2 gift deed dated 24-4-1957. The aforesaid Mathevan Pillai Narayana Pillai had executed Ext. A1 mortgage deed dated 22-4-1955 in respect of items 1 and 2 comprised in Ext. A2. He had also mortgaged 45 cents out of item 3 comprised in Ext. A2 as per mortgage deed Ext. A8 dated 30-12-1950 and Ext. A10 deed of further charge dated 25-4-1952. At the time of the gift deed 25 cents was in the actual possession of the donor. The 1st plaintiff obtained assignment of Ext. A11 mortgage as per Ext. A12 deed dated 9-4-1957. The plaintiffs obtained release of Exts. A8 and A10 mortgage and further charge as per Ext. A13 release deed dated 30-10-1957. Therefore, the plaintiffs had been in possession of 1 acre and 15 cents of land. 3 cents out of that property was acquired by the Govt, from the plaintiffs under the Land Acquisition Act and Ext. A16 series are the documents relating to the Land Acquisition proceedings. Thus the plaintiffs have been in possession of 1 acre and 12 cents of land comprised in Exts. A1 and A2. The 3rd defendant had been in

possession of a hut situated in the property and the entire remaining property has been in the possession of the plaintiffs. Since the defendants attempted to trespass upon the property the above suit is filed, This in short is the case of the plaintiffs.

6. The defendants contended that Mathevan Pillai Narayana Pillai had absolutely no right in or possession of the plaint schedule properties and the entire properties belonged to Velayudhan Raman and Velayudhan Kochummini, the predecessors-in-interest of the defendants. Velayudhan Raman and Velayudhan Kochummini gifted the properties in favour of their respective wives Parvathy Lekshmi and Chandanarnuthu Esakki in Kollam 1103 and thereafter they were in actual possession and enjoyment of the properties. Defendants are the children of Kumaran who was one of the sons of Velayudhan Raman. The 1st defendant has obtained assignment of the rights of the other heirs of Velayudhan Raman. The entire plaint schedule properties belong to the defendants exclusively and they are in possession of the same. The documents alleged to have been executed by Mathevan Pillai Narayana Pillai are void and the plaintiffs have not derived any right in or possession of the properties as per those documents. Some of the mortgage deeds executed by the predecessors-in-interest of the defendants were got assigned by Mathevan Pillai Narayana Pillai. The suits filed by the defendants to redeem those mortgages were dismissed on the simple ground that the mortgages are not redeemable in view of the provisions of the Kerala Land Reforms Act. Out of the two houses situated in the plaint schedule property the 3rd defendant is residing in one of the houses along with his sister. Therefore, the plaintiffs are not entitled to any right in the plaint schedule properties.

7. The substantial questions of law raised in this second appeal are : (1) Whether the Courts below applied the correct principle of law governing admission in pleadings regarding Ext. B4 written statement, (ii) Is the finding of the lower Court that the statements made in Ext. B4 and Ext. A22 constitute admission to the effect that the title of the tarward of the maker of the statements was lost by adverse possession and therefore, the plaintiffs have the burden to prove that they retrieved the properties after the dates of Exts. 134 and A22, correct in law. (iii) Is the finding of the lower Court that the predecessors of the defendants might have prescribed title by adverse possession after the date of Ext. A19 judgment erroneous in law. (iv) Is not the decision of the Court below vitiated on account of the omission to consider the evidence of the plaintiffs' witnesses regarding possession, (v) Is the finding on the question of title with reference to the documents alone without taking note of the oral evidence concerning the transactions evidenced by those documents sustainable in law. (vii) Is the finding that, the plaintiffs do not have title to and possession of the portion of the suit property other than the portion in respect of which the defendants made the concession, according to law.

8. The counsel for the respondents submitted that the very description of the

plaint schedule property is vague and there is no mention in the plaint with regard to the 1 acre and 12 cents of property now claimed by the appellants. He submitted that even in the amended plaint the description of the plaint schedule property is 10 cents comprised in Sy. No. 661/6 and 3.71 acres in Sy. No. 661/5 and there is no mention about the 1 acre and 12 cents as the plaint schedule property. Therefore, according to him as there is no specific mention with regard to the property in respect of which relief for declaration and recovery of possession is sought, the above suit is not maintainable.

9. The counsel for the appellants submitted that the description of the plaint schedule properly conforms to the requirements under Order 7, Rule 3 of the CPC and it is sufficient to identify the suit property. He also submitted that it is clear from the averments made in the written statement filed by defendants 1 to 3 that they understood the identification in respect of the property and they did not raise any plea regarding the identity of the plaint schedule property and no issue regarding the identity of the property is raised by the trial Court. Therefore, the above contention raised by the respondents is absolutely untenable.

10. It is pertinent to note that the trial Court had originally issued a commission to identify the plaint schedule property and the Commissioner's report and plan were marked as Exts. C 1 and C 1(a). Subsequently after remand of the suit by the lower appellate Court the commission report was remitted to the Commissioner and his fresh report and plan are marked as Exts. C2 and C3. Both the Courts below found that the plaint schedule property is identified by the Commissioner and correctly demarcated in Ext. C3 plan and the Courts below appended Ext. C3 plan to the decree passed by them. The respondents have no case that they were prejudiced by the vague description of the plaint schedule property in taking or moulding their defence. Therefore, they cannot contend in this Second Appeal that since the description of the plaint schedule property in the plaint is vague and indefinite, the above suit is not maintainable.

11. The counsel for the respondents submitted that the entire documents Exts. A 1 to A40 produced by the plaintiffs do not show that they have got title to the plaint schedule property. He submitted that Ext. A1 purporting to assign 25 cents in Sy. No. 661/5 by Mathevan Pillai Narayana Pillai to plaintiffs 1 and 2 on 29-1-1957 makes reference only to Patta No. 2912 as the title deed of the assignor and there is no reference to any of his prior title deeds. He also submitted that in Ext. A2 gift deed dated 24-4-1957 also there is no reference to prior title deeds of the donor except to Patta No. 2912.

12. Exts. A3 and A5 are copies of the settlement registers produced in this case. Ext. A3 shows that patta in respect of Sy No. 661/6 is standing in the names of the three tarwads/families and Neduvila Veetil family is the pattadar in respect of 1/32 shares in Sy. No. 661/6. There is no particular reference to any part of the property comprised in that Sy. No. in favour of any particular family mentioned in Ext. A3. Ext. A5 which is in respect of Sy. No. 661/5 also shows that the patta stands in the names of the three families and 1 /32 undivided

share belongs to Naduvila Veettil family. In Ext. A5 also there is no reference to any particular portion of the Sy. No. belonging to any of those families. Ext. A7 is the copy of the thandaper account No. 2912 standing in the name of Mathevan Pillai Narayana Pillai in respect of the properties comprised in 5 Sy. Nos. It shows that 10 cents in Sy. No. 661/ 6 and 80 cents in Sy. No. 661 /5 were transferred to lhandaper account No. 2913 in the year 1957 and another portion of 25 cents in Sy. No. 661/5 is also transferred in the year 1957. Ext. A7 further shows that different persons paid land revenue in respect of the property comprised in Sy. Nos. 661/5 and 661/6 in different years. Therefore, the counsel for the respondents submitted that there is absolutely no documentary evidence regarding the title to the plaint schedule property in favour of Mathevan Pillai Narayana Pillai under whom the plaintiffs are claimed title to the property.

13. The counsel for the respondents further submitted that mutation in revenue records will not confer title, in support of this contention the counsel for the respondents relied upon the decision in Narayana Iyer v. Vella, 1988 (1) KLT 856, wherein a single Judge of this Court has observed as follows :

"6. The settlement proceedings per se will not confer title to property. It is settled law that the grant of patta by itself will not confer title to the property. Settlement reports, are valuable as they may give sufficient data with regard to the areas coming within the operation of settlement. But they are not conclusive enough to find title on that sole basis. Mutation of names are not judicial proceedings, in which the title to and the proprietary right in immovable properties are determined."

14. In the decision in Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, the Supreme Court has observed as follows (at page 2722 of AIR) : 21. We have considered the rival submissions and we are of the view that Mr. Sanyal is right in his contention that the Courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954. Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Sawarni case Pattanaik, J. speaking for the Bench has clearly held as follows (SCC p. 227. para 7)

"7.....Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

15. Even though the above proposition that the settlement records as well as mutation of the names in the settlement registers will not confer title to the property in favour of the person mentioned in those records cannot be disputed, the appellants have contended that they are not solely relying upon Exts, A3, A5 and A7 thandaper accounts to contend that their predecessor-in-interest

Mathevan Pillai Narayan Pillai had title to and possession of the property and they have adduced sufficient and satisfactory evidence to establish Mathevan Pillai Narayana Pillai's title to the plaint schedule property.

16. In the book "The Indian Conveyancer", 10th Edition the learned author P.C. Mogha has observed at page 17 as follows :

"If the transferor is absolute owner of the property transferred, his title and the mode in which he acquired it need not generally be recited, but when he is not an absolute owner, recitals showing the extent of his interest and the title under which he holds it will be necessary."

17. Therefore, it is clear that the contention of the respondents that the plaintiffs have no title to the plaint schedule property since there is no reference to the prior title deeds of Mathevan Pillai Narayana Pillai in Exts. A1 and A2 and the thandaper register and mutation of name in the thandaper account will not confer title to the property is not sustainable since the plaintiffs are relying upon various documents produced by them in this case to establish the title of Mathevan Pillai Narayana Pillai and there is no need for the absolute owner to refer to his title deeds in the document executed by him conveying his interest in the property in favour of his assignees or donees.

18. The counsel for the respondents submitted that in this case the plaintiffs are attempting to establish their case on the weakness of the defence case and not by proving the title to and possession of the plaint schedule property claimed by them in the plaint.

19. It is true that the plaintiffs can succeed, in a suit based on title only by proving the case pleaded by them and not on the weakness of the defence case. In the decision in 1988 (1) KLT 856 referred to above, this Court has observed as follows :

"8. As the suit is based on title the plaintiff can succeed only if he has established it successfully. In other words, in a suit for ejectment the plaintiff can succeed only on the strength of his own title. In such a suit the weaknesses in the defence may not at all be germane when the plaintiff has failed to establish his title to the property. In other words, even if the title set up by the defendant is found against that would not be advantageous to the plaintiffs case if the title set up by him has not been proved. The plaintiff cannot, by highlighting the weakness in the defence case or lack of title for the defendant, succeed if the plaintiff himself failed to prove his title to property."

20. Therefore, it is clear that in the above suit seeking declaration of title and recovery of possession the plaintiffs can succeed only if they established their title to and possession of the plaint schedule property claimed by them.

21. As already noted the appellants' case is that Mathevan Pillai Narayana Pillai sold 25 cents in Sy. No. 661/5 with the building etc. to the plaintiffs as per Ext. A1 sale deed dated 29-1-1957 and executed Ext. A2 gift deed dated 24-4-1957 in

respect of three items viz. 10 cents in 661/5, 10 cents in 661/6 and 70 cents in 661/5. a total extent of 90 cents in favour of the appellants. Mathevan Pillai Narayana Pillai had executed . Ext. A11 mortgage deed dated 22-4-1955 in respect of 10 cents in Sy. No. 661/5 and 10 cents in 661/6, items 1 and 2 described in Ext. A2. 45 cents out of item 3 in Ext. A2 was mortgaged by Mathevan Pillai Narayana Pillai as per Ext. A8 mortgage deed dated 30-12-1950 and created further charge in the property as per Ext. A10 dated 25-4-1952. The remaining 25 cents out of Ext. A2 property was in his possession and he conveyed to the plaintiffs possession of that 25 cents as per Ext. A2. They have also contended that the 1st plaintiff obtained assignment of Ext. A1 1 mortgage right as per Ext. A12 assignment deed dated 9-4-1957 and both the plaintiffs obtained release of Ext. A8 mortgage and Ext. A10 further charge as per Ext. A13 release deed dated 30-10-1957. Therefore, according to them, the plaintiffs have been in possession of 1 acre and 15 cents as per Ext. A1 assignment deed and Ext. A2 gift deed. Their further case is that three cents out of that property is acquired by the Government as evidenced by Ext. A16 series and after the acquisition they have been in actual possession of 1 acre and 12 cents of land. Their further case is that the 3rd defendant was put in possession of a hut situated in the property and the entire remaining property was in the direct possession of the plaintiffs and when the defendants attempted to trespass upon the property, they have filed the above suit for necessary reliefs.

22. The case set up by defendants 1 and 3 who contested the suit is that Mathevan Pillai Narayana Pillai had absolutely no right in or possession of the plaint schedule property and the entire plaint schedule property along with the remaining area in those survey numbers belonged to the brothers Velayudhan Raman and Velayudhan Kochummini and they gifted the properties in favour of their wives. Kumaran, s/o. Raman had a share in the property as per the gift in favour of his mother and the defendants are the children of Kumaran. They have contended that the 1st defendant purchased the shares of others and defendants 1 and 3 are in possession of the entire property and the remaining extent.

23. The counsel for the appellants vehemently argued that apart from denying the title and possession of Mathevan Pillai Narayana Pillai in the plaint schedule property and setting up a rival title in their predecessor-in-interest, the defendants have not raised any plea of adverse possession and limitation against the plaintiffs or their predecessor-in-interest in the original written statement or the additional written statement filed by the defendants in the suit. He further argued that though the trial Court has entered correct and proper findings the lower appellate Court by misdirecting itself and relying heavily upon Exts. B9 and A10 found that the defendants had perfected their title to the property by adverse possession and limitation and decreed the suit only in respect of the portion of the property admitted by them to be belonging to and in the possession of the plaintiffs.

24. Ext. B4 is the certified copy of the written statement filed by Mathevan Pillai

Narayana Pillai in an earlier suit in O.S. 1867/1119 of Neyyattinkara Munsiffs Court. The counsel for the appellants vehemently argued that Ext. B4 written statement is not a public document and since only certified copies of public documents are admissible in evidence under S. 65(e) of the Evidence Act, it is not admissible evidence. Section 63 of the Evidence Act defines secondary evidence. Section 65 of the Evidence Act stipulates that only secondary evidence permissible under that section alone are admissible in evidence. Sub-section (e) of S. 65 stipulates that if the original is the public document, certified copy of the same is admissible in evidence as secondary evidence. Section 74 defines public document and written statement is not mentioned as public document in S. 74 of the Evidence Act. Therefore, the counsel for the appellants vehemently argued that certified copy of the written statement Ext. B4 filed by Mathevan Pillai Narayana Pillai is not admissible in evidence in this case. In support of this contention the counsel for the appellants relied upon the decision in Akshoy Kumar Bose and Others Vs. Sukumar Dutta and Others, and Gulab Chand and Others Vs. Sheo Karan Lall Seth and Others, .

25. In the decision reported in Akshoy Kumar Bose and Others Vs. Sukumar Dutta and Others, a single Judge of the Calcutta High Court has observed as follows (at page 321) :

"The written statement is not a public document and so a certified copy of it is not admissible in evidence. The learned Judge remarks that there is authority for the proposition that the certified copy of written statement can be admitted in evidence without calling for the original. I am not aware of any such authority, nor are the learned Advocates on either side aware of any such authority. In my opinion, the learned Judge is entirely mistaken in this view of the law."

26. In the decision reported in Gulab Chand and Others Vs. Sheo Karan Lall Seth and Others, a Division Bench of the Patna High Court had observed as follows :

"I cannot see how a plaint filed by a private person in Court to institute a case against some others can come within the descriptions of the documents given in that sub-section. Sub-section (2) of S. 74 can in no way include a plaint. The plaint is neither an act nor the record of an act of any public officer. There can be no strength in the contention that when the plaint is presented and the Court makes an order admitting or registering it, the plaint becomes an act or the record of an act of a public officer presiding over the Court. At the most, it will become a part of the record maintained by the Court in that case after the plaint is admitted and registered, but that itself will not make it a public document. If it were, then anything filed in a case in a Court of law either petitions or pleadings, private communications or documents which a party would file in a case would become public documents for the simple reason that they are on the record of a case in Court. The judgment and decree passed in a case are undoubtedly the acts of the Court, and they will be public documents on that account. Similarly, a petition of compromise which is made a part of the decree forms a part of the public document, but before its incorporation in the decree, it remains a private

document, though filed in Court, forming a part of the case record."

27. The counsel for the appellants submitted that it is clear from the above rulings that Ext. B4 copy of the written statement is not admissible in evidence. He has also submitted that the admission of the document Ex. B4 in evidence was vehemently opposed by the plaintiffs before the trial Court and the defendants had no case that the original written statement was destroyed or they did not succeed to get the original written statement produced in Court though called for in accordance with law. Therefore, he submitted that under no circumstances Ext. B4 copy of the written statement is admissible evidence and the same cannot be relied upon for any purpose in this case and as such the appellate Court has committed a grave error of law in relying upon Ext. B4 written statement in this case to enter findings against the plaintiffs.

28. The counsel for the respondents submitted that the above contention raised by the appellants that Ext. B4 is not admissible evidence and no reliance can be placed on that document is not at all tenable. He argued that admissions made by the parties in judicial proceedings stand in a different footing and judicial admissions made in Court are admissible in evidence. He also submitted that Ext. B4 written statement is considered in several judicial proceedings in which Mathevan Pillai Narayana Pillai who filed the written statement in Court was a party and accepted in those judicial proceedings.

29. Even if the contention of the appellants that Ext. B4 copy of the written statement is not admissible in evidence u/s 65 of the Evidence Act is accepted, the same is admissible under S. 58 of the Evidence Act being the facts admitted by the predecessor-in-interest of the plaintiffs need not be proved. Section 58 of Evidence Act reads as follows :

"58. Facts admitted need not be proved :? No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

30. In the decision in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, a three Judges Bench of the Supreme Court has observed as follows (at page 477) :

"Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under S. 58 of the Evidence Act made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of

the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

31. From the above decision of the Supreme Court, it is clear that admissions made by the parties in judicial proceedings are admissible evidence under S. 58 of the Evidence Act.

32. As already noted Ext. B4 is the certified copy of the written statement filed by Mathevan Pillai Narayana Pillai, 3rd defendant in O.S. 1867/1119. In para 3 of Ext. B4 Mathevan Pillai Narayana Pillai has admitted that the properties comprised in Sy. Nos. 660/2, 661/5 and 661/6 out of the plaint schedule item 1 are in the possession of the Madapathees since the last many years by paying the rent to the jenmy, adverse to the interests of the jenmy family and denying their right and therefore, the rights, if any, belonging to the jenmy family are lost and the Madapathees have perfected their right by adverse possession and limitation.

33. Ext. B8 is the judgment passed by the Munsiffs Court, Neyyattinkara in O.S. No. 324/1951 dated 29-5-1957. In that suit filed by Mathevan Pillai Narayana Pillai the trespass alleged is found against. Ext. B2 marked in Ext. B8 judgment is the written statement filed by the defendant in O.S. 1867/1119, which is Ext. B4 in this suit. Ext. B7 is the judgment passed by the Munsiff's Court, Neyyattinkara in O.S. 225/1961 dated 9-3-1962, filed by Mathevan Pillai Narayana Pillai against Nallathampi and others seeking redemption of mortgage. In that case the Court found that the defendants are not in possession of the property as mortgagees under the plaintiff and they are in possession of the property by virtue of independent title. The Court finding that the defendants are not in possession of the plaint property, dismissed the suit for redemption.

34. In O.S. No. 445/1966 before the Addl. Munsiffs Court, Neyyattinkara, in which Mathevan Pillai Narayana Pillai is the 3rd defendant as evidenced by Ext. B6 judgment, the Court considered the contentions raised by the 3rd defendant in Ext. B4 written statement which is marked as Ext. P5 in that suit regarding his plea that the rights of his tharawad in the property is lost by adverse possession and limitation. In Ext. B9 judgment in O.S. No. 673/1961 dated 30-3-1965 passed by the Addl. Munsiffs Court, Neyyattinkara Ext. B4 herein is marked as Ext. P9 and the Court considered the same and accepted and decreed the suit repelling the contentions raised by Mathevan Pillai Narayana Pillai as the 3rd defendant in that suit. It is submitted by the counsel for the respondents that though the judgment evidenced by Ext. B9 passed by the trial Court was set aside by the appellate Court, in Second Appeal this Court set aside the decree and judgment passed by the appellate Court and restored the decree and judgment passed by the trial Court. It is clear that in all these suits Ext. B4 written statement filed by Mathevan Pillai Narayana Pillai, the predecessor-in-interest of the plaintiffs stating that the rights of his tharawad are lost by adverse possession and limitation and the predecessor of the respondents herein

have perfected their right to those properties including the plaint schedule property by adverse possession and limitation is accepted. Under the circumstances the appellants at this distant point of time cannot contend that Ext. B4 is not admissible evidence being certified copy of the written statement, which is not a public document u/s 65 of the Evidence Act.

35. The counsel for the appellants brought to my notice that the documents marked in this case as exhibits do not contain proper endorsement as contemplated under Order 13, Rule 4 of the CPC, Order 13, Rule 4 of the CPC deals with endorsement on documents admitted in evidence which reads as follows :

"4. Endorsements on documents admitted in evidence - (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :?

- (a) the number and title of the suit.
- (b) the name of the person producing the document.
- (c) the date on which it was produced and
- (d) a statement of its having been so admitted ;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge."

36. In the documents Exts. A series and B series admitted in evidence in this case the learned Munsiff has not made any such endorsement and initialled as laid down in Order 13, Rule 4 of the C.P.C. as stated above. Instead the endorsements made on these exhibits bear only the number of the exhibit with initial of the Munsiff with date, Therefore, it is clear that those documents as stipulated in Order 13, Rule 4 of the. C.P.C. Such failure by the Presiding Judges of the Courts to make the requisite endorsements on the documents proved and admitted in evidence is deprecated and very severely commented upon by the appellate Courts in various decisions.

37. In the decision in *Sadik Hussain v. Hashim* (AIR 1916 Privy Council 27) the Privy Council has deprecated such practice by making the following observations :

"Finally, their Lordships feel bound to criticize adversely a practice followed in these two cases, which is as illegal as it is slovenly and embarrassing. By the 141st section of C.P.C. 1877, repeated in C.P.C. 1882 and practically re-enacted in Order XIII, Rule 4, of the Rules and Orders passed under the CPC of 1908, it is provided that a presiding Judge shall endorse with his own hand a statement that

it (i.e., a document proved or admitted in evidence) was proved against or admitted by the person against whom it was used. That course was in many instances not followed at the hearing of these two cases, with the result that embarrassing and perplexing controversies arose on the hearing of these appeals as to whether or not certain documents, prints of which were bound up in the record, had been given in evidence. There is no possible excuse for the neglect, in this manner of the duty imposed by the Statutes, since, so long ago as the 3rd March, 1884, a circular was addressed by the then Registrar of the Privy Council to the Registrar of the High Court of Calcutta calling attention to the requirements of the then existing law and the necessity of observing them. A copy of this circular was sent not only to the High Courts of Madras, Bombay and Allahabad, but in addition to the Judicial Commissioner of Oudh and other Judicial Commissioners. Their Lordships, with a view of insisting on the observance of the wholesome provisions of these Statutes, will, in order to prevent injustice be obliged in future on the hearing of Indian appeals to refuse to read or permit to be used any document not endorsed in the manner required."

38. In the decision in *Kannu Asan v. Trav. Forward Bank Ltd.*, 1956 KLT 203, the Travancore-Cochin High Court following the above decision of the Privy Council held that the documents should be admitted in evidence by complying with the provisions of Order 13, Rule 4 of the C.P.C.

39. Therefore, the admission of the documents as exhibits in this case by the learned Munsiff is not proper. The above aspect is highlighted only being of academic interest and for guidance in admitting documents in evidence by the Courts. In view of the fact that the entire documents admitted in evidence by the learned Munsiff are accepted and acted upon by both sides, in this second appeal the vehement arguments advanced by the counsel for the appellants that since the admission of the documents in evidence in this case is not proper, they cannot be relied upon in this case, is not sustainable. It is also pertinent to note that the learned counsel for the appellants only objects to the marking of those documents which go against the case of the appellants and the appellants have no grievance against the other documents admitted in evidence in the same manner. Therefore, this objection raised by the counsel for the appellants regarding the admissibility of those documents is not sustainable.

40. The counsel for the appellants contended that mere marking of a document will not dispense with the proof of the document and in view of the fact that Ext. B4 is marked in evidence, the respondent cannot rely upon that document without proof of the -contents of that document. In support of this contention the counsel for the appellants relied upon the decision in *Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others*, wherein the Supreme Court has observed as follows (at page 1868) :

"15. The. plaintiffs wanted to rely on Exhibits A-12 and A-13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgments. The mere marking of an exhibit does

not dispense with the proof of documents. It is common place to say that the negative cannot be proved. The proof of the plaintiffs' books of account became important because the plaintiffs' accounts were impeached and falsified by the defendants' case of larger payments than those admitted by the plaintiffs. The irresistible inference arises that the plaintiffs' books would not have supported the plaintiffs'.

41. The above decision of the Supreme Court has no application to the facts of this case. In this case the fact that Ext. B4 is the certified copy of the written statement filed by Mathevan Pillai Narayana Pillai in O.S. 1867/1119 is not disputed. As already noted in several judicial proceedings the Courts have admitted the same document in evidence, in several suits in which Mathevan Pillai Narayana Pillai was either plaintiff or defendant regarding the rights of Mathevan Pillai Narayana Pillai and the predecessor-in-interest of the respondents. Therefore, it cannot be contended that Ext. B4 written statement should be eschewed for want of proof of the contents of that document.

42. The counsel for the appellants submitted that the recitals made in various judgments relied upon and produced in Court by the respondents cannot be relied upon to accept the contention of the respondents and to find against the plaintiffs since they are not judgments inter partes. In support of this contention the counsel for the appellants relied upon the decision in State of Bihar Vs. Radha Krishna Singh and Others, , wherein the Supreme Court has observed as follows (at Page 712 of AIR) :

"135. The cumulative effect of the decisions cited above on this point clearly is that under the Evidence Act a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject-matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs-respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned above, they do not take us anywhere so as to prove the plaintiffs case."

43. Out of the judgments produced by the respondents and marked in evidence and referred to above, Exts. B6, B9 and B10 are inter partes between Mathevan Pillai Narayana Pillai, the predecessor-in-interest of the appellants and the predecessor-in-interest of the respondents and Exts. B7 and B8 are not inter partes. Therefore, even by the principles laid down by the Supreme Court in the above decision relied upon by the counsel for the appellants, the recitals in the judgments in Exts. B6, B9 and B10 can be relied upon.

44. In the decision in Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, the Supreme Court has observed as follows (at Page 1134) :

"8. It was argued by the learned counsel for the plaintiff-respondent that the

earlier judgment in O.S. No. 51 of 1937 dated 15-6-1942 was rendered in favour of the TTD against Hathiramji Mutt, that the plaintiff was not a party to that suit and hence any finding as TTD's title given therein is not admissible as evidence against the present plaintiff in this suit.

9. In our view, this contention is clearly contrary to the rulings of this Court as well as those of the Privy Council. In *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*, speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter partes is admissible in evidence under S. 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under Sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjee, J. (as he then was) speaking on behalf of a Bench of four learned Judges in *Sital Das Vs. Sant Ram and Others*, held that a previous judgment not inter partes, was admissible in evidence u/S. 13 of the Evidence Act as a "transaction" in which a right to property was "asserted" and "recognised".

45. Therefore, the contention of the appellants that the several judgments produced by the respondents in this case are not admissible in evidence and the recitals made therein cannot be relied upon in this suit regarding the rights of the contesting parties, is not sustainable.

46. The counsel for the appellants vehemently argued that the observation and finding of the lower appellate Court that in Ext. A19 judgment the presence and possession of the Madapathis in the property is admitted is incorrect and there is no basis for such a finding. In para 16 of Ext. A19 judgment in A.S. No. 99/1082 the appellate Court has observed as follows :

"16. Ext. A, Exts. BI and II most conclusively show that it was defendants 2 and 3 who were asserting a title to Ambalathara purayidom from 65 and who were successfully defeating the advance claims of plaintiffs and other persons. Plaintiffs and his children are living in a portion of the purayidom because he was authorised to enjoy it for sometime in lieu of his wages for attending to the charities. But that does not confer on him any right to the whole property or even to the portion that he was once in enjoyment for a particular purpose."

47. The above recital in Ext. A19 judgment go to show that the predecessors-in-interest of the respondents were in possession of a portion of the property in lieu of their wages for attending to certain charities as against the contention of the appellants that the respondents and their predecessors-in-interest have absolutely no right in or possession of the property.

48. The counsel for the appellants vehemently argued that a reading of the entire documents Exts. A and B series as a whole establish that there is absolutely no admission with regard to the rights of the respondents or their predecessors-in-title in the plaint schedule property. He vehemently argued that the observation made by the lower appellate Court in para 15 of the judgment

that there is admission of possession of the property by the predecessor-in-interest of the respondents in Ext. A22 is absolutely incorrect. He argued that in Ext. A22 partition deed it is only recited that Mathevan Pillai Narayana Pillai recovered possession of this property from strangers by his own effort and he is exclusively entitled to that property which is not partitioned as per that partition deed.

49. It is clear from the recitals in Ext. A22 that the plaint schedule property is not included in the partition deed since he recovered the property from strangers out of his own efforts and funds. The plaintiffs have not adduced any evidence to show that Mathevan Pillai Narayana Pillai had recovered possession of the property from those persons who are admittedly in possession of the property. If that contention is true, it supports the admission made in Ext. B4 that the rights of the tharawad is lost by adverse possession to the Madapathis. Even if the contention that the rights of the tharawad is not lost is accepted. Mathevan Pillai Narayana Pillai will not have exclusive right in the property.

50. In order to establish the title to and possession of the plaint schedule property set up by the plaintiffs, they have relied upon the following documents. Ext. A3 copy of settlement register in respect of Sy. No. 661/6 of Perumkadavila Village in the year 1969 which shows that the property stands in the name of the tharawad of the plaintiffs. Ext. A5 copy of the settlement register with regard to the Sy. No. 661/5 standing in the name of the tharawad of the appellants. Ext. A7 Patta in respect of the plaint schedule properties in Sy. No. 661/5. 661/6 and other items of properties stand in the name of Mathevan Pillai Narayana Pillai, Ext. A1 sale deed executed by Mathevan Pillai Narayana Pillai in favour of the plaintiffs. Ext. A2 gift deed executed by Mathevan Pillai Narayana Pillai in favour of the plaintiffs. Ext. A8 mortgage and Ext. A10 deed of further charge executed by Mathevan Pillai and Ext. A13 release of mortgage and further charge by the mortgagee to the 1st plaintiff. Ext. All mortgage executed by Mathevan Pillai Narayana Pillai and Ext. A12 sale deed obtained by the plaintiffs, Ext. A16 series regarding the acquisition of 3 cents out of the property in the year 1961 issued to the plaintiffs, Ext. A15 series land revenue receipts obtained by the plaintiffs for payment of the land revenue from 1961 onwards, Ext. A37 series Panchayat building tax receipts in respect of the building situated in the property and Ext. A38 series electricity bills and receipts for payment of electricity charges.

51. The appellants have contended that the respondents have not produced any document for payment of land revenue or building tax or any other document to prove possession. The counsel for the appellants argued that even though the settlement registers and tax receipts do not confer title to the property, they are valuable pieces of evidence of possession of the property by the appellants and their predecessor-in-interest since the respondents did not have patta standing in their name or their predecessor-in-interest nor they paid any land revenue in respect of the property. But, this contention of the appellants with regard to possession also is not acceptable in view of the various other documents

available in this case against the appellants.

52. Ext. B1 is the gift deed executed in Kollam 1102 ME corresponding to the year 1926 by the members of the appellants family to the predecessor-in-interest of the defendants referring to the codukur right in respect of 3 acres and 06 cents after the pronouncement of Ext. A19 judgment. The respondents have contended that Ext. B1 gift deed is executed since the possession of the property continued with the predecessor-in-interest of the respondents after Ext. A19 judgment. Ext. A4 is the release deed dated 25-10-1116 executed by the mother of defendants 1 to 3 to Mathevan Pillai Narayana Pillai in respect of the padippura building which shows that the predecessor-in-interest of the respondents was in possession of the property at that time. Ext B4 is the written statement filed by Mathevan Pillai Narayana Pillai as 3rd defendant in O.S. 1867/1119 already referred to above setting up possession of the property with the Madepathis and their title against the tharwad of Mathevan Pillai Narayana Pillai by adverse possession and limitation. Ext. A6 is the release deed dated 4-3-1121 ME corresponding to 19-10-1948 executed by the predecessor-in-interest of the respondents in respect of the hut situated in the plaint schedule property in favour of Mathevan Pillai Narayana Pillai. The execution of these documents by the predecessor-in-interest of the respondents establish the possession of the property by the predecessor-in-interest of the respondents, (sic) Ext. B8 judgment in O.S. 324/51 filed by Mathevan Pillai Narayana Pillai against the predecessor-in-interest of the respondents for recovery of possession of the property alleging to be mortgagees. The contention raised by the defendants therein is similar to the contention raised by the respondents in this suit. Exts. A1 and A2 sale deed and gift deed are seen executed after Ext. B8 judgment. Ext. B7 judgment in O.S. 225/61 filed by Mathevan Pillai Narayana Pillai against Nallathambi and others for redemption of mortgage show that the contention of the defendants therein that they are not in possession as per the mortgage alleged by Mathevan Pillai Narayana Pillai and they are in possession on the basis of the rights inherited from their predecessors is accepted and the suit filed by Mathevan Pillai Narayana Pillai is dismissed.

53. Ext. B5 decree in O.S. 445/66 and Ext. B6 judgment in O.S. 445/66 passed by the Addl. Munsiffs Court, Neyyattinkara show that in that suit filed by the 1st defendant herein against Mathevan Pillai Narayana Pillai and others for redemption of the mortgage is decreed negating the contentions raised by Mathevan Pillai. identical to the contentions raised by the plaintiffs in this suit. Ext. B9 judgment in O.S. 673/61 dated 30-3-1965 passed by the Munsiffs Court, Neyyattinkara shows that in that suit filed by the defendants herein against Mathevan Pillai Narayana Pillai and others identical contentions were raised and the suit was decreed negating the contentions raised by the defendants therein.

54. All these documents especially the judgments in various suits at different points of time establish that the Courts have accepted the contentions raised by the defendants herein and their predecessors-in-interest with regard to their title

to and possession of the plaint schedule property and negated the contentions raised by the appellants and their predecessors-in-interest.

55. Exts. A28 to A30 relate to O.S. 1281/68 filed by the 1st defendant herein for redemption of 10 cents out of the plaint schedule property against Mathevan Pillai Narayana Pillai and others. That suit for redemption of the mortgage was dismissed since it was deemed to be Ottikuzhikanam regarding which fixity of tenure is conferred under the Kerala Land Reforms Act. Exts. A31 to A33 relate to O.S. 1992/68 filed by the 1st defendant herein for redemption of another 10 cents of property and that suit was also dismissed since the transaction comprised therein being Ottikuzhikanam, the mortgagee is entitled to fixity of tenure. Therefore, the respondents admitted the title of Mathevan Pillai Narayana Pillai in respect of those 20 cents of property and the Appellate Court decreed the suit in favour of the appellants with regard to those 20 cents.

56. Dismissal of O.S. 1371/68 filed by the 1st defendant herein evidenced by Exts. A34 and A35 for redemption of the mortgage in respect of 10 cents and O.S. 668/75 filed by the defendants evidenced by Ext. A36 for declaration of title and possession of the property on the ground that the defendants could not prove their title to and possession of the property will not confer title upon the plaintiffs which they do not otherwise have in respect of the plaint schedule property.

57. The appellants have contended that Ext. A16 series relating to acquisition of 3 cents out of the plaint schedule property by the Government establishes appellants title to and possession of the plaint schedule property. The respondents have contended that Ext. A16 series do not pertain to the plaint schedule property. Even if the contention of the appellants that 10 cents comprised in Sy. No. 661/5 is acquired by the Government and the compensation in respect of the property is paid by the Government to the plaintiffs is accepted, that fact will not advance the case of the appellants any further in this case. Even according to the respondents, the plaintiffs were in possession of 20 cents out of the plaint schedule property. Therefore, acquisition of 3 cents evidenced by Ext. A16 series can very well be out of the property admittedly in the possession of the plaintiffs. Therefore, the acquisition of 3 cents out of Sy. No. 661/5 and payment of compensation evidenced by Ext. A16 series is of no help to the appellants to establish the plaintiffs title to and possession of the entire plaint schedule property.

58. On a careful consideration of the entire facts and circumstances of the case and the evidence on record it is clear that while the trial Court failed to consider the facts and circumstances of the case the evidence on record and the correct law applicable to the facts of this case, the appellate Court considered the entire facts and circumstances of the case and the evidence on record in the proper perspective and applied the proper law applicable to the facts of this case. Therefore, all the contentions raised by the appellants against the conclusions and findings arrived at by the appellate Court are not sustainable. Hence the

substantial questions of law raised in this case are answered against the appellants.

In view of my above findings it is clear that the judgment passed by the lower appellate Court under challenge in this second appeal is perfectly proper and valid and all the contentions raised by the appellants against the correctness, validity and sustainability of the judgment are unfounded. Hence the judgment passed by the lower appellate Court is confirmed and the second appeal is dismissed.