

(2000) 12 MAD CK 0014

In the Madras High Court

Case No : Second Appeal No. 902 of 1989

The Paraloga Matha Church, Cherukadai and Fr. Arul Raj

APPELLANT

Vs

M. Kesavan

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 27

Citation : (2000) 12 MAD CK 0014

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Thiagarajan for Mr. P. Ananthakrishna Nair, for the Appellant; K. Mohanamurali, for the Respondent

Judgement

V. Kanagaraj, J.—This Second Appeal is directed against the judgment and decree dated 23.8.1988 made in A.S. No. 17 of 1984 by the

Court of Subordinate Judge, Padmanabhapuram thereby dismissing the said appeal and confirming the judgment and decree dated 16.11.1983

made in O.S. No. 263 of 1980 by the Court of Principal District Munsif, Padmanabhapuram. To trace the history of the case, the appellants herein

have filed the suit in the trial Court against the respondent praying to pass a decree for recovery of possession of the suit property or in the

alternative directing the defendant to close the entrances of the compound wall on the south of the suit property and to remove the roof of the

latrine projecting in the suit property by means of a mandatory injunction and for costs on averments such as that the first plaintiff is the owner of 4

cents of property as per the sale deed dated 14.2.1977 and the defendant is the adjacent owner of a land measuring 15 cents on the Northern side

of the suit property; that the defendant unlawfully trespassed into the suit property and constructed a compound wall on the Southern side of the suit property from East to West on 18.5.1977 and no amount of mediation yielded any good result but the defendant filed a suit in O.S. No. 209 of 1978 on the file of the same Court for permanent injunction restraining the plaintiffs from making use of the suit property on allegations that it is a poramboke land and during the pendency of the suit, he also unlawfully opened a new entrance in the compound wall of the Southern side of the suit property and created a lavatory on 26.11.1979, the roof of which is projecting, into the suit property, but that suit was dismissed against the defendant and since the defendant has unlawfully trespassed into and taken possession of the suit property, the plaintiffs are constrained to file this suit for recovery of the possession of the suit property from the defendant and in case the Court finds that the plaintiffs are not entitled to get such a relief, for an alternative decree of mandatory injunction to close the new entrance made by the defendant in the compound wall on the Southern side of the suit property and to remove the roof of the lavatory projecting into the suit property.

2. In the written statement filed by the respondent/defendant, besides generally denying all the allegations of the plaint, it would specifically be alleged that the plaintiff is not the owner of the suit property and it is a poramboke land and is in undisturbed possession and enjoyment of the defendant and his vendors for over 50 years and the very bona fide of the sale deed dated 14.2.1977 itself is disputed; that no portion of the property, which is belonging to the plaintiffs is within the boundary of the defendant as shown in the Commissioner's plan submitted in O.S. No. 209/78 and the very Commissioner's plan is incorrect and not accepted by the defendant; that it is mischievous to aver that the defendant unlawfully trespassed into the suit property and constructed a compound wall on the Southern side of the suit property on 18.5.1977; that it was in existence long before the said date; that it is wrong to state that the suit in O.S. No. 209/78 was dismissed against the defendant; that the plaintiffs are not entitled for a mandatory injunction also; that the plaintiffs are neither owners nor do they have any right or interest in the property comprised in old S. No. 31/56 A that even in the event that the Court arrives at the conclusion to recognise the plaintiffs to be the owners, the

defendant is entitled to the property by means of adverse possession or having easementary right over the same for convenient enjoyment of his

adjacent house since he is in enjoyment of the same for over the statutory period; that the suit is not maintainable for the vice of multifariousness

and that the plaintiff is not entitled to any of the reliefs sought for. On such averments, the defendant would pray to dismiss the suit with costs.

3. Since the plaintiffs filed a petition for amendment of the valuation of the relief of recovery of possession and the same was allowed, the

defendant filed an additional written statement alleging that even after amendment, no proper Court fee is paid and would pray to dismiss the suit

with costs.

4. On the above pleadings of parties, the trial Court has framed the following four issues for determination of the suit:

1. Whether the plaint schedule property is part of old survey No. 3156/A correlates resurvey No. B5/47?

2. Whether the defendant has any manner of right over the suit property?

3. Whether the plaintiff is entitled to recovery of the suit property? and

4. Whether the plaintiff is entitled to mandatory injunction as an alternative relief?

Thereafter, the trial Court has conducted the trial, wherein on the part of the plaintiffs, one T. Archangel would be examined as P.W. 1 for oral

evidence and 11 documents would be marked as Exs. A. 1 to A. 11. On behalf of the defendant, the defendant besides examining himself as

D.W.1 would also examine one A. Raman as D.W.2 for oral evidence and seven documents would be marked as Exs. B.1 to B.7. In

consideration of all the materials placed on record, the trial Court would ultimately arrive at the conclusion to dismiss the suit without costs.

5. Aggrieved, the plaintiff has preferred an appeal in A.S. No. 17 of 1984 before the Court of Subordinate Judge, Padmanabhapuram and the said

appellate Court also having framed four points similar to the issues framed by the trial Court, would ultimately dismiss the appeal, thereby

confirming the judgment and decree passed by the trial Court and it is only against these concurrent decisions made on the part of the trial Court

and the first appellate Court, the plaintiff has come forward to prefer the above Second Appeal on certain grounds as brought forth in the

memorandum of grounds of appeal and this Court has admitted the same for determination of the following substantial question of law.

Having found that the plaintiffs have title to the suit property, are the Courts below correct in holding that the defendant has prescribed title by

adverse possession, when the evidence only discloses that at the most the defendant has been in possession only from 1971?

6. During arguments, the learned counsel appearing on behalf of the appellants would submit that the suit is for recovery of 1-1/2 cents out of 4

cents shown as the suit property; that the title of the appellants is comprised in old S. No. 3156 A; that the defendant claims title to the property in

S. No. 3157 admittedly extending 15 cents; that both the Courts below found the title in favour of the appellants, but since the suit property is in

possession of the defendant, they have concluded that the defendant has prescribed title to the portion of the suit property in his enjoyment by

adverse possession; that the lower Courts have negated the claim of title by the defendant since he has not established that aspect; that

alternatively, he takes the plea of adverse possession; that no issue has been framed on the pleading of adverse possession and there is no

discussion as to how the plea of adverse possession has been proved nor any valid evidence let in to the effect of adverse possession by the

defendant; that the first appellate Court also has not framed any point regarding adverse possession claimed by the defendant; that the points are

nothing but the repetition of the issues framed by the trial Court.

7. Continuing to argue, the learned counsel would cite from U.N. Mitra's Law of Limitation & Prescription at page 1180, wherein it is found that

before a party can succeed in establishing his title on the basis of the adverse possession, he must show on what date he came into possession

whether the fact of his possession was known to the true owner and what was the period of such adverse possession. There must be a clear

observation of hostile title." Then, the learned counsel would cite a judgment of the Apex Court delivered in Mahavir and Another Vs. Rural

Institute, Amravati and Another, wherein it is held:

The claim of the petitioners that they have perfected title by adverse possession has been negated by all the Courts. No question of adverse

possession arises unless it is pleaded and proved that after the possession was

taken and handed over to the third respondent, the petitioners have asserted their own right to the knowledge of the third respondent and it had acquiesced in it and remained in uninterrupted possession and enjoyment, nee vi nee lam and nee pre cario. That was not the case. Therefore, they cannot have any semblance of right by prescription.

8. At this juncture, the learned counsel for the appellants would cite para 14 of the trial Court judgment, wherein the learned trial Judge citing the judgment of the Delhi High Court delivered in Debi Singh v. Bhim Singh reported in AIR 1971 Del 316 wherein it has been held that "a person entitled to get possession must prove that he was in possession before the alleged trespasser got into possession," has remarked that the defendant has put up the house, compound wall and the latrine in 1971 itself. In the present suit which is not for declaration of title and recovery of possession over the property, which is admittedly in the possession of the defendant and as the plaintiffs have not proved that they were in possession before the alleged trespasser got into possession, the plaintiffs are not entitled for recovery of possession and for mandatory injunction and has dismissed the suit without costs.

9. To the above stand taken on the part of the lower Court, the learned counsel would remark that this proposition holds good so far as Article 65 of the Limitation Act is concerned, but the relevant Article in this case is Article 64 as could be seen from U.N. Mitra's Law of Limitation & Prescription based on previous possession and not based on title but possession, dispossession and for delivery of possession, that the case in hand falls under Article 65 of the Limitation Act wherein possession for 12 years is required that the plaintiff has alleged that the defendant trespassed in 1977 and came forward to file the suit in the year 1980, that for declaration of title based on possession, possession follows title and at this point, the lower Court erred in its finding that the plaintiff has not come forward to file the suit for declaration and recovery of possession on ground which would have clarified many a doubt.

10. For adverse possession, the learned counsel would cite a number of judgments. The first judgment cited by the learned counsel is one delivered by the Apex Court in Indira Vs. Arumugam and Another, wherein it is held:

...when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the

defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited.

11. The next judgment cited by the learned counsel for the appellant is one delivered in *Siri Ram v Bishan Singh* and another reported in AIR 1952

Pep 46 wherein it has been held:

In a suit within Article 144, the initial onus on plaintiff is to establish his title and he is not under any obligation to prove his possession within twelve

years of the suit. When the plaintiff's title has been proved or is admitted, the burden is on the defendant to establish that he, or persons through

whom he claims, has or has been in possession adverse to the plaintiff for over twelve years before the suit. The defendant has also to prove when

his possession became adverse. The rule that the plaintiff must prove his possession within twelve years of the suit, applies only to the case of a

plaintiff basing his claim on his prior possession.

12. The next judgment cited by the learned counsel for the appellant is one delivered by the Gauhati High Court in *Angomjambam Tomba Singh*

and another v R. Maipaksana Singh and others reported in AIR 1975 Gauhati 12 wherein it is held:

Where in a suit for possession based on title the plaintiff's title has been found Article 65 is applicable and the burden is on the defendant to prove

that the suit is barred by adverse possession.

13. The other judgment cited by the learned counsel for the appellant is one delivered by the Nagpur High Court in *Tukaram Bajirao v Tukaram*

Yeshwant reported in AIR 1927 Nagpur 37 wherein it has been held:

The law presumes that possession follows title and does not favour forcible entry into possession by trespassers. Further, the presumption is

prospective rather than retrospective in operation. The presumption of continuity has an operation in the future, because if it be shown that a

particular state of things was existing at a particular time, that state of things will be presumed to continue in the absence of anything to the contrary.

14. The other judgment cited by the learned counsel for the appellant is one delivered in *Imdad Husain Khan v Mt. Haidari Khanam* and another

reported in AIR 1927 Oudh 551 wherein it is held:

To prove title to land by adverse possession for the statutory period, it is not sufficient to show that some acts of possession have been done; the possession required must be adequate, in continuity, in publicity and in extent, to show that it is possession adverse to the competitor, in other words, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation.

15. The next judgment cited by the learned counsel for the appellants is one delivered by this Court in Bhagavathy Pillai (died) and Another Vs.

Savarimuthu and Another, wherein it is held:

For the purpose of Article 64 there is no question of proving title. Article 65 relates to suits for possession based on title. In such a case the period

of limitation is 12 years when the possession of the defendant became adverse to the plaintiff. If in a suit falling under Article 65, the defendant

wants to defeat the rights of the plaintiff, he has to establish his adverse possession for a period of 12 years, which has the effect of extinguishing

the title of the owner by the operation of Section 27 of the present Act. If he fails to do so, then the plaintiff cannot be non-suited merely because

he was not able to prove possession within 12 years.

16. The last judgment cited by the learned counsel for the appellants is one delivered by the Apex Court in S.M. Karim Vs. Mst. Bibi Sakina,

wherein it is held:

The alternative case that the title of the person purchasing benami in Court auction was extinguished by long and uninterrupted adverse possession

of real owner is open to the latter to make if his possession is disturbed. If the possession of the real owner ripens into title under the Limitation Act

and he is dispossessed, he can sue to obtain possession, for he does not then rely on the benami nature of the transaction. But the alternative claim

must be clearly made and proved. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to

show when possession becomes adverse so that the starting point of limitation against the party affected can be found. A mere suggestion in the

relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to

raise such a plea. Long possession is not necessarily adverse possession and the

prayer clause is not a substitute for a plea.

With this, the learned counsel would conclude his argument ultimately praying to allow the above appeal suit setting aside the judgment and decrees

passed by both the courts below.

17. In reply, on the part of the learned counsel for the respondent, he would argue that the disputed portion is 1.05 cents said to have been

occupied in the year 1977; that the plaintiffs filed that suit in 1978 for recovery of possession and therefore possession by the defendant was not

disputed; that for over 50 years, the defendant is in possession and enjoyment of the said property thus perfecting his title by adverse possession:

that if at all there is a claim for the plaintiff, it could be against the original seller and not against the defendant in this suit. Citing from the appellate

Court's judgment in Para 5 wherein it is clearly held that the defendant has proved his claim, the learned counsel for the respondent would argue

that having entered into possession of the suit property and constructing a lavatory therein, the defendant has been making use of the same for his

purpose, which has been proved by voluminous documents such as Ex. B. 4, the approved plan by the Municipality dated 16.6.1971 and

therefore the appellate Court has safely arrived at the conclusion that the defendant has perfected his title by adverse possession.

18. The learned counsel would also cite a number of judgments from decided cases in the past, the first one being the recent judgment of the Apex

Court rendered in a civil appeal arising out of SLP (Civil) dated 16.4.1999 delivered in the case of Kondiba Dagadu Kadam Vs. Savitribai Sopan

Gujar and Others, wherein it has been held:

The right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in

accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a Second Appeal can be

maintained and no court has the power to add to or enlarge those grounds. The Second Appeal cannot be decided on merely equitable grounds.

The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The

substantial question of law has to be distinguished from a substantial question of fact.

It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in Second Appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in Second Appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence.

19. The other judgment cited by the learned counsel for the respondent is one delivered by the Apex Court in *Nedunuri Kameswaramma Vs.*

Sampati Subba Rao, wherein it has been held:

Where the parties went to trial fully knowing the rival case and fed all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to offer.

Citing the above judgment, the learned counsel for the respondent would remark that in the case in hand, issues have been framed, but it is not to the specific question of adverse possession and would cite a judgment of the Apex Court delivered in *Shaik Mohammed Umar Saheb Vs.*

Kaleskar Hasham Karimsab and Others, wherein it has been held:

Framing of issues - Unsatisfactory nature of issue ½ Effect - Election petition - Charges of corrupt practice - Separate issue with regard to each charge not framed - Issues framed confusing and misleading - Appellant,

however, knew exactly what points he had to meet and had contradicted

evidence adduced by petitioner - Because of unsatisfactory nature of issues, whole trial held not vitiated.

20. The other judgment cited by the learned counsel for the respondent is one delivered by the Madhya Pradesh High Court in Ramsharan Vs.

Mahipatrao, wherein it has been held:

Civil P.C. (5 of 1908), S. 100 - Second Appeal Reappreciation of evidence - Concurrent finding of two Courts below of plaintiff proving his title

on evidence on record- Not open for High Court to reappreciate evidence in Second Appeal to take a different view of matter.

The other judgment cited by the learned counsel for the respondent is one delivered by the Apex Court in Maniar Ismail Sab and Others Vs.

Maniar Fakruddin and Others, wherein it has been held: ""Civil P.C. (5 of 1908), S. 100 - Second Appeal - Concurrent finding of fact -

Interference by High Court - Not permissible - Order of High Court interfering with finding of fact - Set aside.

21. The last judgment cited by the learned counsel for the respondents is one delivered by a Division Bench of this Court in Motimul Sowcar Vs.

Visalakshi Ammal and Others, wherein it has been held:

In Second Appeal, the High Court would not reverse the concurrent findings of fact by the lower Courts, except for the clearest and strongest of

reasons, which could be held to be tantamount to interference on a question of law.

For repelling the arguments of the learned counsel for the appellants, citing from page 5 of the printed appellate Court's judgment to the effect that

he came to possession of the suit property on 16.6.1971 when permission was granted, the learned counsel for the respondent would remind that

up to that time, the defendant was living in a thatched shed put up there and the plaintiff purchased the property only under the sale deed dated

14.2.1977. The learned counsel for the respondent would end up his argument ultimately praying to dismiss the above appeal.

22. In consideration of the pleadings by parties and having regard to the materials placed on record and upon hearing the learned counsel for both

what comes to be known is that it is a suit filed by the appellants herein praying for recovery of possession of the suit property and in the alternative

to issue a direction to the defendant to close the entrances of the compound wall on the South of the suit property and to remove the roof of the latrine projected in the suit property by means of a mandatory injunction and for costs.

23. At the outset it is to be noted that the plaintiff has not come forward to pray for a declaration of his title to the suit property, but only for recovery of possession and alternatively for mandatory injunction on grounds that he became the owner of the four cents of land by virtue of a sale deed dated 14.7.1977, and the defendant is the adjacent land owner, who unlawfully trespassed into the suit property and constructed a compound wall on the Southern side of it from East to West on 18.5.1977: that when objected to, the defendant filed a suit in O.S. No. 209 of 1978 in the same Court for a permanent injunction against the plaintiff and the same was decided against the defendant and that during the pendency of the suit, he opened the new entrance in the compound wall and created a lavatory on 26.11. 1979 and on such grounds, the plaintiff would seek the relief sought for.

24. On the contrary, in the written statement filed by the defendant, he would plead that the suit property is not belonging to the plaintiff but it is a poramboke land and is in his undisturbed possession and enjoyment and that of his vendors for over 50 years: that the sale deed dated 14.2.1977 under which the plaintiffs are said to have purchased their properties including that of the suit property itself is not a bona fide document and hence he was necessitated to file the suit in O.S. No. 209 of 1978 and it is false that his defendant has trespassed into the suit property and it is also wrong to state that the said suit filed by the defendant was dismissed: that the plaintiffs are neither the owners nor do they have any right or interest in the property comprised in S. No. 3156-A: that even in the event that the Court arrives at the conclusion to recognise the plaintiffs to be the owners, the defendant is entitled to the property by means of adverse possession or having easementary right over the same. On such averments, the defendant would seek to dismiss the suit with costs.

25. The trial Court having framed four issues, has ordered the trial in the suit in which both parties have adduced oral and documentary evidence and in appreciation of the same, the lower Court remarking that it is clear that

when the plaintiffs purchased their property, they were not in possession of the suit property and when such is the case, the plaintiffs are not entitled to ask for recovery of possession and the mere suit filed for recovery of possession and alternatively for mandatory injunction without seeking the relief of declaration of their title would not lie and that the defendant had put up his house, compound wall and latrine in 1971 itself and is admittedly in possession of the defendant and therefore the plaintiffs are not entitled for recovery of possession and for mandatory injunction as prayed for and would ultimately dismiss the suit without costs.

26. Aggrieved the plaintiffs have filed an appeal in A.S. No. 17 of 1984 on the file of the Court of Subordinate Judge, Padmanabhapuram and the

said Court having framed four points similar to that of the issues framed by the trial Court and having gone into the facts and circumstances of the

case as pleaded and projected in evidence would ultimately arrive at the conclusion to dismiss the appeal without any order as to costs thereby

confirming the judgment and decree passed by the trial Court. While passing the said decree the appellate Court has remarked that the red-

marked portion of the plaint schedule of property, which has been belonging to the plaintiff, by virtue of long possession and enjoyment of the same

by the defendant, the defendant has perfected his title by means of adverse possession. But, however, the appellate Court was prompted to arrive

at the conclusion only to confirm the judgment and decree passed by the trial Court in the circumstances of the case. It is this remark made as a

passing reference and without holding the same for any conclusion to be arrived at in the suit so far as the results are concerned by the appellate

Court has been taken strong exception of by the appellants herein i.e. the plaintiffs and hence this Court has admitted the above Second Appeal for

determination of the following substantial question of law.

Having found that the plaintiffs have title to the suit property, are the Courts below correct in holding that the defendant has prescribed title by

adverse possession, when the evidence only discloses that at the most the defendant has been in possession only from 1971?

27. Though four cents of lands have been shown as the suit property in the plaint schedule by the plaintiffs, from the arguments of the learned

counsel for the plaintiffs it is highlighted that the disputed portion is only 1 1/2

cents out of 4 cents, comprised in old S. No. 3156-A for the recovery of which alone, the suit has been filed: that the lower Courts have negatived the claim of title by the defendant since he has not established that aspect: that alternatively he takes the plea of adverse possession: that without any issue having been framed or points made on the pleadings of the adverse possession and without any discussion held on that point, as to how the plea of adverse possession has been proved and without any valid evidence let in to that effect, the first appellate Court has arrived at the conclusion that the defendant has perfected his title by means of adverse possession so far as the suit property is concerned.

28. Humpty number of judgments would be cited on either side relating to the subject of adverse possession, and the scope of Second Appeal and jurisdiction of the Court u/s 100 CPC and adhering to the principles and proposition as propounded by the upper forums of law including the Supreme Court of India and sticking to the norms and adhering the substantial question of law framed for determination of the above Second Appeal so as to arrive at a valid decision in the Second Appeal, no wide discussion need be necessary to go into the legality of the question of adverse possession raised in this case, since they are not going to serve any useful purpose, the point of perfection of title by adverse possession by the defendant has been arrived at on facts by the first appellate Court, it has become necessary on the part of this Court to focus its attention from the factual background of the case and the evidence made available on this subject.

29. So far as the trial Court is concerned, from among the four issues framed, there is also an issue framed to the effect "whether the defendant has any manner of right over the suit property." Likewise, the first appellate Court also has framed point No. 2 viz. whether the defendant has got a right of enjoyment in the suit property similar to that of the issue framed by the trial Court. Though the first appellate Court has come nearer to the adverse possession, the manner in which this point has been framed on the part of the first appellate Court cannot in any manner be termed as a point framed on the question of perfection of title by adverse possession by the defendant, so as to allow parties to lead evidence towards that aspect of the case. However, since no issue has been basically framed by the trial

Court wherein parties are afforded with such wide opportunities to adduce evidence, both oral and documentary, parties were absolutely not in a position to adhere to the point of perfection of title by adverse possession on the part of the defendant and hence only focusing their attention on the issues framed, parties have adduced evidence based on which the trial Court has rightly arrived at its conclusion to dismiss the suit in appreciation of the evidence adduced.

30. So far as this conclusion arrived at on the part of either the trial Court or the first appellate Court regarding the rights of the plaintiffs thereby dismissing the suit and the first appeal, they have been perfectly done on facts and destined to decide the above Second Appeal, this Court cannot, normally, interfere with nor does this Court think it is necessary in the circumstances of the present case to go into the facts.

31. However, so far as the finding regarding the defendant perfecting the title to the suit property by means of adverse possession is concerned, no proper issue or point framed either in the suit or on appeal and therefore the remarks made on the part of the first appellate Court to the effect that the defendant has perfected his title to the suit property by means of adverse possession is definitely erroneous though no finding is given on this point. If at all, the defendant has any such right, his remedy lies elsewhere and not in this suit wherein the plaintiffs have come forward to seek certain remedies based on his pleadings in the plaint. Regarding the possession of the defendant also, the plaintiff would come forward to say that he is admittedly in possession of the suit property after his purchase of the same in the year 1977 and the evidence also discloses only to that effect as the substantial question of law goes. On the part of the defendant, he may come forward to say that himself and his predecessors-in-title had been in possession and enjoyment of the suit property for 50 years or more and hence this is also not a matter of consideration so far as this suit is concerned. Hence, undoubtedly, the remarks offered on the part of the first appellate Court to the effect that the defendant has perfected his title to the suit property by means of adverse possession is unnecessary, uncalled for and unwarranted. Therefore, it has become necessary on the part of this Court to order deletion of such remarks. But, however, so far as the first appellate Court arriving at its conclusion based on evidence regarding

the other points in dismissing the appeal preferred by the plaintiffs confirming the judgment and decree of the trial Court are concerned since they

have been concurrently held based on the facts and circumstances and on evidence made available before the lower Courts, this Court does not

find any valid or tangible reason to interfere with the same.

In result, subject to the above remarks made in the preceding paragraphs, the above Second Appeal fails and the same is dismissed. However, in

the circumstances of the case, there shall be no order as to costs.