

(1999) 08 MAD CK 0035
In the Madras High Court

Valliammal (died) and Others

APPELLANT

Vs

M.K. Musthafa (died) and Others

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1999) 3 MLJ 369

Hon'ble Judges : P. Thangavel, J

Bench : Division Bench

Judgement

P. Thangavel, J.—This second appeal has been filed against the judgment and decree dated 30.12.1986 on the file of the learned

Subordinate Judge, Chingleput and made in A.S.No. 22 of 1985, reversing the judgment and decree dated 15.2.1985 in O.S.No. 188 of 1982 on

the file of the District Munsif, Madurantakam.

2. The facts that are necessary for deciding the substantial questions of law in this second appeal are as follows: The suit property originally

belonged to Sri Kothandaramaswami Devasthanam, Madurantakam. The suit site and the adjacent property was in the occupation of Parimala

Kanthiammal and she put up a thatched construction over the suit site. She was residing in the property adjacent to the suit site. Parimala

Kanthammal usufructuarily mortgaged the superstructure over the suit site to one Rathina Naicker and his wife Lakshmi Ammal on 26.8.1953,

who, in turn was collecting the rent from Parimala Kanthammal by putting her in possession of the said property. The said Parimala Kanthammal

sold the superstructure over the suit property to the defendant on 20.4.1956 and the defendant was paying rent to Rathina Naicker and his wife

Lakshmiammal. The said Rathina Naicker and Lakshmi Ammal assigned the usufructuary mortgage dated 26.8.1953 in favour of Abdul Khader

Sahib, the father of the plaintiff and thereafter, the defendant began to pay rent in respect of the superstructure to Abdul Khader Sahib. Abdul

Khader Sahib purchased the suit property on 7.2.1958 from Kothandaramaswami Devasthanam, Madurantakam and asked the defendant to quit

and deliver vacant possession of the suit property after removing the superstructure and by paying the principal sum of Rs. 350 due under the

usufructuary mortgage deed mentioned above. As there was no compliance of demand, Abdul Khader Sahib filed a suit for sale of the mortgaged

property to realise the amount due under the said mortgage deed in O.S.No. 214 of 1960 on the file of the District Munsif's Court, Chingleput

against the defendant and her vendor Parimala Kanthammal. The defendant is estopped from denying the title of Abdul Khader with regard to the

mortgaged property. The suit in O.S.No. 214 of 1960 was decreed by the trial court, but in appeal in A.S.No. 428 of 1961 on the file of the

District Court, Chingleput, the judgment and decree of the trial court were reversed and the suit filed by Abdul Khader Sahib was dismissed. The

defendant, after the disposal of the appeal, requested Abdul Khader Sahib to permit her to continue in the suit property for some more time and

she was permitted to continue in possession by Abdul Khader Sahib on or about 1.9.1962. The possession of the defendant is permissive from

1.9.1962. Abdul Khader Sahib died in April 1963 and in the family arrangement between the plaintiff, his brothers and sisters in or about August

1963, the suit property was allotted to the plaintiff. Patta for the suit property was granted in favour of the plaintiff under Tamilnadu Act 30 of

1963 by the Settlement Tahsildar after holding an enquiry on 2.4.1970. An appeal filed in C.M.A.No. 138 of 1970 on the file of the Principal

Subordinate Judge, Chingleput by the defendant as appellant, was dismissed and the order of the Settlement Tahsildar, dated 2.4.1970 has

become final. The plaintiff has been paying tax to the Municipal Authorities and the property is registered in the name of the plaintiff by the

abovesaid authority. The defendant did not vacate and deliver vacant possession of the suit property despite notice issued to her. The defendant is

liable to pay damages at the rate of Rs. 15 per month. It is under the said circumstances, the plaintiff has come forward with this suit for declaration

of his title to the suit property for delivery of vacant possession of the suit property and for damages at the rate of Rs. 15 per month till delivery of possession.

3. The defendant resisted the suit claim on the following grounds: The suit property originally belonged to Sri Kothandaramaswami Devasthanam,

Madurantakam. The thatched house, along with the superstructure in the suit property, was sold by one Parimala Kanthammal to the defendant by

means of a registered sale deed dated 20.4.1956 since the site belonged to Devasthanam. From the date of purchase, the defendant is in

possession and enjoyment of the suit property. No rent was paid. This defendant never paid any rent to Rathina Naicker. Abdul Khader Sahib, the

father of the plaintiff filed a suit in O.S.No. 214 of 1960 on the file of the District Munsif's Court, Chingleput on the strength of the assignment of

usufructuary mortgage deed executed by Parimala Kanthammal in favour of Rathina Naicker and the suit was decreed by the trial court, but was

dismissed in appeal in A.S.No. 428 of 1961 by the District Judge, Chingleput, During the pendency of the second appeal is S.A.No. 560 of 1963,

preferred by Abdul Khader against the judgment and decree of the first appellate court, he died and the plaintiff herein along with the other legal

heirs was impleaded as appellants. The case pleaded in this suit has not been raised in the earlier proceedings mentioned above. This defendant

never asked the permission of Abdul Khader to continue in the suit property. As per G.O.Ms.No. 1597, dated 11.4.1957, the suit property and

other properties forming Thiruvilakku Manyam belonging to Sri Kothandaramaswami Devasthanam were ordered to be sold at Rs. 40 per cent to

the occupants thereof. As such, the Devasthanam ought to have executed a sale deed in respect of the site under the occupation of the defendant.

But the Devasthanam has failed to do so. The Settlement Tahsildar in a suo motu proceedings, passed an order issuing patta to the plaintiff under

Tamilnadu Act 30 of 1963 and the appeal in C.M.A.No. 138 of 1970 filed by the defendant on the file of Sub Court, Chingleput, was dismissed.

In spite of the abovesaid proceedings, this defendant is in uninterrupted possession for over 30 years by paying house tax and prescribed title to

the suit property. It is under the said circumstances, the defendant has sought for the dismissal of the suit filed by the plaintiff.

4. After considering the material evidence placed before court, the learned District Munsif, has come to the conclusion that the defendant has perfected title to the suit property by adverse possession and that therefore, the plaintiff is not entitled to declaration and possession as well as damages as prayed for in the suit. Aggrieved at the said judgment and decree, the plaintiff as appellant, filed an appeal in A.S.No. 22 of 1985 on the file of Sub Court, Chingleput. After considering the material evidence and the judgment of the trial court, the first Appellate court has come to the conclusion that the defendant had not prescribed title to the suit property by adverse possession and that, therefore, the plaintiff is entitled to the reliefs as prayed for in the suit. Accordingly the appeal was allowed and the suit was, decreed as prayed for. Aggrieved at the abovesaid judgment and decree, the defendant, as appellant has come forward with this second appeal.

5. During the pendency of the second appeal, the sole respondent M.K. Mustafa died on 1.9.1995, leaving behind the proposed respondents 2

and 3 as his legal representatives and the defendant, who is the appellant, has come forward with C.M.P.No. 19177 of 1998 u/s 5 of the

Limitation Act to condone the delay of 1054 days in seeking to set aside the abatement caused by the death of the sole respondent and

C.M.P.No. 19178 of 1998 under 0.22, Rule 9, C.P.C. to set aside the abatement caused by the death of the sole respondent and C.M.P.No.

19179 of 1998 under 0.22, Rule 4, C.P.C. to bring on record respondents 2 and 3 as legal representatives of the deceased sole respondent on

the ground that the death of the respondent was known to. the appellant only after receiving a letter from his counsel on 23.11.1998 about the

listing of the appeal for hearing and that the delay in filing the petition was not wanton or wilful. Notice was taken to the counsel for the proposed

respondents 2 and 3 and he has no objection for allowing the abovesaid petitions. In view of the reasons stated in the affidavits filed in support of

the above petitions and having regard to the fact that the counsel for the proposed respondents 2 and 3 has no objection for allowing these

petitions, these petitions are allowed and respondents 2 and 3 are impleaded as legal representatives of the deceased sole respondent.

6. This Court admitted the second appeal on the substantial question of law as to whether the decisions rendered by the courts below without

impleading Sri Kothandaramswami temple as a necessary party to the suit, are correct. The main dispute raised by both the parties in this appeal

is, as to whether the defendant has prescribed title to the suit property by adverse possession. Therefore, both the questions referred to above

have to be considered in this second appeal.

7. The fact remains that the suit site and the land adjacent to it belonged to Sri Kothandaramaswami Devasthanam, Madurantakam and the suit

property is a Thiruvilakku Manyam for the abovesaid temple. A perusal of Ex.A-1 dated 26.8.1953, the registration copy of usufructuary

mortgage deed executed by Parimala Kanthammal in favour of one Rathina Naicker and his wife Lakshmi Ammal would disclose that the suit site

and the portion adjacent to it were usufructuarily mortgaged in favour of the said Rathina Naicker and his wife for a sum of Rs. 350. It would also

disclose that the abovesaid property had come to Parimala Kanthammal from her grandfather Kothandarama Gounder. It is not in dispute that the

superstructure standing in the suit property was put up by Parimala Kanthammal, though the site belonged to the abovesaid devasthanam. The

pleading in the plaint would disclosed that the said Rathina Naicker and his wife Lakshmi Ammal put Parimala Kanthammal in possession of the

suit property inclusive of the superstructure standing thereon on the understanding of payment of rent by Parimala Kanthammal to the mortgagees.

Though there is no evidence to establish such lease agreement between Parimala Kanthammal on the one hand and Rathina Naicker and his wife

on the other hand, it is not in dispute that Parimala Kanthammal continued to be in possession of the suit property even after the execution of the

usufructuary mortgage deed dated 26.8.1953. Ex.A-2, dated 20.4.1956 is the registration copy of the sale deed executed by Parimala

Kanthammal in favour of the defendant Valliammal with regard to the superstructure in the suit property. A perusal of Ex.A-2 would disclose that

Parimala Kanthammal, as owner of the superstructure, sold the said superstructure in favour of the defendant for Rs. 150 admitting the ownership

of Kothandaramaswami Devasthanam, Madurantakam to the site, on which the superstructure stands. It would also disclose that the defendant

was put in possession of the said superstructrue along with the site referred to above at the time of the execution of the abovesaid sale deed. The

abovesaid documentary evidence would go to show that the superstructure in the suit property has gone to the hands of the defendant as owner

thereof along with the site mentioned in Ex.A-2 though title to the abovesaid site vested with Sri Kothandaramaswami Devasthanam,

Madurantakam. Ex.A-3, dated 4.12.1957 is the registration copy of the assignment deed executed by Rathina Naicker and his wife Lakshmi

Ammal in favour of Abdul Khader Sahib. A perusal of Ex.A-3 would disclose that the usufructuary mortgage obtained under Ex.A-1, dated

26.8.1953 was assigned by Rathina Naicker and his wife Lakshmi Ammal in favour of Abdul Khader Sahib for Rs. 350. Admittedly Abdul

Khader Sahib as plaintiff, instituted a suit on the abovesaid assigned mortgage against Parimala Kanthammal and Valliammal, the defendant herein,

for recovery of the amount due under the said mortgage and a preliminary decree was passed in favour of the plaintiff for sale, of the first item of

the hypotheca in the first instance and the sale of the second item of the hypotheca as last item as seen from the printed copy of the judgment in

O.S.No. 214 of 1960, dated 25.3.1961, marked as Ex.A-6. In the appeal in A.S.No. 428 of 1961 filed by Valliammal, the defendant herein, on

the file of the learned District Judge, Chingleput against the judgment and decree in O.S.No. 214 of 1960; the appellate court has set aside the

judgment and decree of the trial court and allowed the appeal on the ground that the said mortgage was really discharged and the subsequent

assignment in favour of the plaintiff was merely a contrivance to get at the properties in collusion between the mortgagees. In the second appeal in

S.A.No. 560 of 1963 on the file of this Court preferred against the judgment and decree in A.S.No. 42 of 1961 dated 28.8.1962, this Court was

pleaded to hold that there is something more suspicious in the action of the plaintiff in bringing the suit against the defendants and, therefore, there

can be no interference in the judgment and decree passed by the first appellate court, though not on the same grounds, on which the first appellate

court has come to that conclusion. Therefore, Abdul Khader Sahib could not get anything out of the proceedings initiated as mentioned above by

getting assignment of the usufructuary mortgage deed executed by Parimala Kanthammal in favour of Rathina Naicker and his wife Lakshmi

Ammal with regard to the suit property.

8. Ex.A-4 dated 7.2.1958 is the registration copy of the sale deed executed by Sri Kothandaramswami Devasthanam by its Executive Officer in

favour of Abdul Khader Sahib, the father of the plaintiff for Rs. 40 with regard to a site measuring 17" x 17" in S.No. 1084 in Madurantakam. A

perusal of Ex. A-4 would disclose that possession of the said property was not handed over to Abdul Khader Sahib at the time of execution of the

sale deed, but he was asked to take possession of the said property by himself. Therefore, possession of the suit property could not have come to

the father of the plaintiff viz., Abdul Khader Sahib by virtue of the original of Ex.A-4, Ex.A-8 dated 2.4.1970 is copy of the order passed by the

Settlement Tahsildar-III, Chingleput under Act 30 of 1963. A perusal of the abovesaid order would disclose that one Kuppuswamy, son of the

defendant Valliammal was examined as a witness before the Settlement Tahsildar and he has deposed that his father Ellappa Naicker has been

residing in the thatched shed in S.No. 1084/13 for the past 25 years, that his father had purchased the superstructure (thatched shed) from one

Parimala Kanthammal and that a civil litigation is pending with regard to the said property. The plaintiff, M.K. Mustafa, who was examined as a

witness before the Settlement Tahsildar, has deposed that his father acquired the site and purchased the superstructure on the site from one

Lakshmi Ammal, that his father rented the thatched shed to Ellappa Naicker, the husband of the defendant herein and that he is paying property tax

to the authorities concerned for the site.

9. After considering the evidence of the witnesses referred to above, the Settlement Tahsildar came to the conclusion that the father of the plaintiff

herein had acquired the site in S.No. 1084/13 by means of a sale deed, that he owns kudivaram right in the abovesaid site and that the civil

litigation referred to by the son of the defendant herein relates only to superstructure. On such conclusion he directed Madurantakam Town

Panchayat to issue ground rent patta u/s 13(1) of Act 30 of 1963 in favour of the plaintiff M.K. Mustafa. The abovesaid order of the Settlement

Tahsildar would disclose that ground rent patta was issued in favour of the plaintiff based on the sale deed executed by Sri Kothandaramaswami

Devasthanam, Madurantakam in favour of Abdul Khader Sahib for the site referred to in the said document. It is the admitted case of the

defendant that an appeal in C.M.A.No. 138 of 1970 was filed against the order passed as seen in Ex.A-8, dated 2.4.1970 and the appeal was

dismissed in 1973, confirming the order of the Settlement Tahsildar. Therefore, the issue of patta based on the sale deed Ex.A-4, dated 7.2.1958

in favour of the plaintiff with regard to the suit property has become final, though neither the plaintiff nor his father was in possession of the suit site

from the date of purchase.

10. Learned Counsel for the appellant would contend that the defendant had prescribed title to the suit property inclusive of the site by enjoying the

same for over the statutory period, that the sale of the suit property to Abdul Khader Sahib contrary to G.O.Ms.No. 1597, Revenue, dated

11.4.1957, is not valid, that issue of patta with regard to the suit property in favour of the plaintiff based on the sale deed, cannot confer any right

to claim possession and that therefore, the plaintiff is not entitled to any relief claimed in the suit. On the other hand, learned Counsel appearing for

the respondents would contend contra, stating that the defendant was in possession of the suit site as a tenant under Abdul Khader Sahib, that

subsequently, after the disposal of the appeal from the proceedings initiated in O.S.No. 214 of 1960, the defendant continued in possession of the

site on permission of Abdul Khader Sahib and that therefore she cannot be heard to say that she has prescribed title to the suit site by adverse

possession. Learned Counsel for the respondents further submits that the plaintiff is not disputing the title of the defendant for the superstructure in

the suit property. A perusal of G.O.Ms.No. 1-597, Revenue, dated 11.4.1957, marked as Ex.B-36, would disclose that the Government of

Tamilnadu have sanctioned sale of 2.44 acres of inam dry land in R.S.No. 1084 in Madurantakam Village, known as Thiruvilakku Manyam,

belonging to Sri Kothandaramaswami Devasthanam, Madurantakam, to the present occupiers at the rate of Rs. 40 per cent. Of course, the

defendant had purchased the superstructure in the suit property even on 20.4.1956 and she has been in possession and enjoyment of the

superstructure along with the site after the sale deed executed by Parimala Kanthammal. The Government Order referred to above had come into

force with effect from 11.4.1957. Therefore, Sri Kothandaramswami Devasthanam, Madurantakam, ought to have sold the site to the defendant

as per the abovesaid Government order. But, contrary to the abovesaid Government Order, the abovesaid Devasthanam had sold the demised

property to Abdul Khader Sahib. Though the defendant had sent petitions to various authorities in connection with the sale contrary to the

Government Order, which are supported by documentary evidence marked as exhibits before the trial court, the sale in favour of Abdul Khader

Sahib, was not questioned and set aside by any competent authority or by competent court so far. Therefore, the contention raised by learned

Counsel for the defendant that the sale deed executed in favour of Abdul Khader Sahib by Sri Kothandaramswami Devasthanam,

Maduranatkkam, is void, cannot be sustained. The Settlement Tahsildar has also acted on the sale deed referred to above and issued patta in

favour of the plaintiff rejecting the objections raised by the son of the defendant to the effect that the family of the defendant is residing in the suit

site and the superstructure put up thereon for over 25 years. The fact remains that the defendant is residing with her family in the suit site and

superstructure thereon continuously from 20.4.1956, when the superstructure in the suit site was sold to her by Parimala Kanthammal by putting

her in possession.

11. Ex.B-7 is the copy of the plaint in O.S.No. 214 of 1960 filed by Abdul Khader Sahib, as plaintiff against Parimala Kanthammal and

Valliammal, the defendant herein, as defendants for recovery of a sum of Rs. 250 together with interest, from the defendants and in default of

payment of the said amount, to bring the suit properties to sale for realising the amount due to the plaintiff. In the pleadings in the plaint, Abdul

Khader Sahib has specifically stated that the mortgaged property, which is a house, was leased back by the mortgagees to the mortgagor and the

1st defendant Valliammal was in possession of the said property as a tenant and that the rent was being paid by the 1st defendant to the

mortgagees. It is also pleaded that Abdul Khader sahib was collecting rent from Valliammal for about a month, that the defendant Valliammal had

purchased the suit property from Parimala Kanthammal and that thereafter the defendants in the abovesaid suit were continuing in possession

without paying any rent for the property mortgaged. Learned Counsel for the defendant contends that Abdul Khader Sahib himself had admitted in

the pleadings in the plaint in O.S.No. 214 of 1960, that the defendant herein has been in possession and enjoyment of the suit property inclusive of

suit site from the date of purchase of the superstructure under the original of Ex.A-2, dated 20.4.1956. Learned Counsel for the defendant further

contends that the tenancy pleaded by Abdul Khader Sahib, the plaintiff in the suit with regard to the site, cannot be accepted for want of evidence

before court. The fact remains that there is no evidence, for the alleged leasing of the suit site by the mortgagees or by Abdul Khader Sahib to

Parimala Kanthi Ammal or to the defendant and also for payment of rent for one month as alleged in the plaint referred to above. In view of the

said position, the contention raised by learned Counsel for the defendant as mentioned above, cannot be brushed aside,

12. Yet another contention put forward on behalf of the plaintiff is that the defendant had requested Abdul Khader Sahib to allow her to continue

in the suit property for some time, to find out alternative arrangement after the disposal of the appeal in A.S.No. 428 of 1961 or S.A.No. 560 of

1963 referred to above and that the defendant was allowed to continue in possession with permission. Learned Counsel for the appellants

contends contra to it. As rightly contended by learned Counsel for the appellants, there is no need for the defendant to request Abdul Khader

Sahib after succeeding in both the appeals referred to above to permit her to reside in the suit property to find out alternative accommodation.

Therefore, such contention raised on behalf of the plaintiff cannot be sustained.

13. Ex.B-8, dated 12.4.1976 is the notice sent by the plaintiff M.K. Mustafa through his Advocate to the defendant Valliammal. A perusal of

Ex.B-8 would disclose that Abdul Khader Sahib was in possession and enjoyment of the suit site from the date of sale till his death in the year

1963, that the defendant has put up the hut in the abovesaid site and was paying rent and that the defendant subsequently had taken hostile attitude

and has been in unlawful possession as a trespasser. In the reply notice sent under the original of Ex.B-9, dated 23.4.1976, the defendant has

asserted that Abdul Khader Sahib had not purchased the suit property bearing Door No. 30, measuring 1 cent in S.No. 1084 of Madurantakam,

that she has been in possession and enjoyment of the said property for about 30 years and that she never paid any money as rent at any time

before. She has also stated that the alleged sale deed in favour of his father Abdul Khader Sahib is null and void. In the pleadings in paragraph 3 of

the plaint in the present suit, the plaintiff has stated as follows:

On 7.2.1958 the said Abdul Khader Sahib purchased the suit property from Sri Kothandaramaswami Devasthanam, Madurantakam and asked

the defendant to quit and deliver vacant possession of the suit property after removing the superstructure and paying the principal sum of Rs. 350

due under the usufructuary mortgage deed dated 26.8.1953. The defendant did not comply with the request of Abdul Khader Sahib and thereafter

a suit was filed by him for the sale of the mortgaged property for the realisation of the amount due under the mortgage deed in O.S.No. 214 of

1960 on the file of the this Honourable Court, (Chingleput District Munsif's Court) against the defendant and her vendor Parimala Kanthi Ammal.

A conjoint reading of the pleadings in the plaint in O.S.No. 214 of 1960, the notice and the reply notice marked as Exs.B-8 and B-9 respectively

and the averments in the plaint in the present suit, would disclose that the defendant is enjoying the suit site along with the superstructure ½

purchased by her, without paying any rent and adopting hostile attitude towards Abdul Khader Sahib and after him, his son, the plaintiff herein, as

unlawful possessor or trespasser. As already pointed out, there is no evidence to show the tenancy between Abdul Khader Sahib or the plaintiff

herein and the defendant herein at any time before. The permissive occupation pleaded by the plaintiff against the defendant is also without any

proof. But the defendant continues in possession of the suit property inclusive of the suit site from 20.4.1956, when purchased the superstructure

asserting right in herself to the suit site and the superstructure and disputing the right of Abdul Khader Sahib or his son to the suit site. As already

pointed out, Abdul Khader Sahib was not in possession of the suit site even at the time of the execution of the sale deed under Ex.A-4 dated

7.2.1958 by Sri Kothandaramswami Devasthanam, Madurantakam, but was instructed to take possession of the site described in the said sale

deed. It is not even the case of the plaintiff that possession was taken by Abdul Khader Sahib and after him by the plaintiff himself from the

defendant at any time before.

14. In G. Muthuvel Pillai Vs. Hazarath Syed Sha Mian Sakkab Kadhiri Thakal,

Thanjavur and Others, , while considering the question of discontinuity of adverse possession at the time vesting in Government of entire estate from the date of notification for grant of patta by the concerned authority under the Madras Estates (Abolition and Conversion into Ryotwari) Act 1948, this Court has held as follows:

The first respondent's possession of the suit from the date of the compromise decree (Ex.B-2) has been adverse and it is not possible to accept the contention of the learned Counsel for the appellant that the mere vesting of the estate had resulted in the discontinuity of possession of the first respondent, especially having regard to the proviso to Section 3 under which the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta. There is, therefore, nor reason to interfere with the concurrent finding that the first respondent has acquired title by prescription in respect of items 1 and 2 and that of the lower appellate court that he has acquired title by prescription even to item 3 of the suit properties.

The decision referred to above will lead to the conclusion that the proceedings before the Settlement Tahsildar in respect of issue of patta with regard to the suit site in favour of the plaintiff based on the sale deed executed in favour of Abdul Khader Sahib will not in any way cause discontinuity to the adverse possession pleaded by the defendant.

15. In (1934) 66 MLJ 134 (Privy Council) , it was held as follows:

The classical requirement is that the possession should be *nec vi clam nec precario*. Mr. Dunne for the Crown appeared to desiderate that the adverse possession should be shown to have been brought to the knowledge of the Crown, but in their Lordships opinion there is no authority for this requirement. It is sufficient that the possession be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. If the rights of the Crown have been openly usurped it cannot be heard to plead that the fact that was not brought to its notice. The Limitation Act is indulgent to the crown in one respect only, namely, in requiring a much longer period of adverse possession than in the case of a subject; otherwise there is no discrimination in the statute between the Crown and the subject as regards the requisites of adverse possession. It may be added that

it is not necessary in order to establish adverse possession that

the proof of acts of possession should cover every moment of the requisite period.

16. In AIR 1981 707 (SC) , the Apex Court was pleased to hold that possession must be open and without any attempt at concealment and that

there is no necessity that possession must be so effective as to bring it to the special knowledge of the owner. In V. Muthiah Pillai (Died) and

Others Vs. Vedambal and Others, , a Division Bench of this High Court has held as follows:

The concept of adverse possession contemplates a hostile possession i.e., a possession which is expressly or impliedly in denial of the title of the

true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights, but denies them. The

principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his

possession was hostile to the real owner and amounted to a denial of his title to the property claimed . . .

The classical requirement of adverse possession are that the possession must be nec vi nec clam nec precario, that is to say, the possession

required must be adequate in continuity, in publicity and in extent. It is sufficient that the possession be overt and without any attempt at

concealment so that the person against whom time is running out, if he exercises due vigilance, to be aware of what is happening.

The decisions referred to above will lead to the conclusion that the defendant is continuing in possession of the suit site along with the

superstructure purchased by her with effect from 20.4 1956, proclaiming that none including Abdul Khader Sahib or the plaintiff herein has got any

right or title to the suit site, The said fact has also been admitted by the plaintiff as mentioned above. In view of the principles laid down in the cases

cited above, there can be no difficulty to hold that the defendant has been in possession and enjoyment of the suit property inclusive of the suit site

for over the statutory period adverse to the interest of the plaintiff and his predecessor-in-title and prescribed title to the same by adverse

possession.

17. Learned Counsel for the respondents brought to the notice of this Court

another passage in the decision referred to above, viz., V. Muthiah

Pillai (Died) and Others Vs. Vedambal and Others, , which runs as follows:

Where a stranger is in possession it is not necessary do so to the knowledge of the true owner, but it is sufficient if the possession is hostile,

notorious and exclusive, so that the owner could perceive the same.

In this case, so far as the defendant is concerned, she is a stranger to the purchaser of the suit site, viz., Abdul Khader Sahib. The proceeding

initiated against her by Abdul Khader Sahib as mentioned above, based on the assignment of the usufructuary mortgage, ended against his interest,

upto High Court. He himself has admitted that she is in possession of the property purchased by him without recognizing his right to the suit

property from the date of purchase. In view of the said position, the passage extracted above will not in anyway advance the case of the plaintiff.

18. In the decision in The State Bank of Travancore Vs. Aravindan Kunju Panicker and Others, , cited by learned Counsel for the respondents, it

was held that permissive possession cannot be converted into adverse possession unless it is proved that the person in possession asserted an

adverse title to the property to the knowledge of true owners for a period of 12 years and more. In Kuppuraj Vs. K. Arjunan and Others, , it was

held that the tenant cannot claim title to the property in dispute by adverse possession unless he surrenders possession of the property to the

landlord and mere failure to pay rent regularly to the landlord cannot clothe him with a right to claim title by prescription. The abovesaid two

decisions can have no application to the facts and circumstances of this case.

19. Learned Counsel for the respondents has brought to the notice of this Court the notices Exs.A-10 to A-12 with regard to the suit property

bearing Door No. 30, Old Police Line Street, Madurantakam and Exs.A-13 to A-34 property tax receipts issued by the authorities concerned for

the abovesaid suit property from 1973 to 1984-85 either in the name of Abdul Khader or in the name of the plaintiff M.K. Mustafa and would

contend that Abdul Khader Sahib and after him, the plaintiff have been exercising right over the suit site by paying house tax to the authorities

concerned. Exs.A-40 to A-44, the property tax demand register extracts for the period from 1970-71 to 1983-84 were also produced to

establish that the name of Abdul Khader was registered in the property tax

demand register for Door No. 30, Old Police Line Street, Madurantakam, The defendant has produced Exs.B-20 to B-33, property tax receipts for payment of property tax to the suit property bearing Door No. 30, Old Police Line Street, Madurantakam. A perusal of the said Documents, would disclose that Exs.B-24, B-25, B-29, B-30 and B-33 are standing in the name of Parimala Kanthammal for payment of the house tax to the above said property, while the other receipts are standing in the name of the defendant for payment of property tax from 1954-55 to 1972. A perusal of the documents produced on the side of the plaintiff would disclose that the name of Valliammal has been registered and struck off and in that place, the name of Abdul Khader was added. According to the defendant, she had objected the same by writing letters as seen from Ex.B-14, dated 1.4.1976 and Ex.B-12 dated 28.2.1978. In the said letters, she has also objected the failure on the part of the Municipal Administration in collecting the house tax from Valliammal, inclusion of the name of Abdul Khader and the name of Mustafa later and the collection of house tax from them. In the light of the above documentary evidence, it is clear that the plaintiff had made attempts to include his name in the property tax demand register without the knowledge of the defendant and started paying property tax to the suit property behind the back of the defendant. It is relevant to point out that the plaintiff is owning a house property adjacent to the demised property and the existence of such property should have been made use of by the plaintiff to include his name in the municipal records behind the back of the defendant. The fact remains that Abdul Khader Sahib, or, after his death, the plaintiff herein was not put in possession of the suit site from the date of purchase of the site till this date. There is continuous litigations between the plaintiff and the defendant with regard to the demised site and in all the litigations, the defendant has been disputing the right and title of the father of the plaintiff and the plaintiff to the suit site and she is continuing in possession from 20.4.1956. The present suit has been filed on 11.9.1980. Therefore, the payment of house tax to the authorities concerned without being in possession from the date of purchase on 7.2.1958 till 11.9.1980 will not amount to exercising of right of possession over the property and it will not also interrupt the continuity of the possession of the suit site by the

defendant from 20.4.1956 till the date of filing of the suit. Likewise the patta issued in favour of the plaintiff will not interrupt the continuity of the possession of the suit site by the plaintiff. In view of the said position, this Court is not able to agree with the conclusions arrived at by the first appellate court that the defendant has not perfected title to the suit property by adverse possession and that therefore, the plaintiff is entitled to the reliefs as prayed for in the suit. Therefore, the judgment and decree of the first appellate court are to be set aside and that of the trial court are to be restored.

20. In fine, the second appeal is allowed and the judgment and decree of the first appellate court are set aside and that of the trial court are restored. In the circumstances of the case, both the parties are directed to bear their own costs throughout. Consequently C.M.P.No. 8381 of 1987 is closed.