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**(2003) 01 MAD CK 0101**  
**In the Madras High Court**  
**Case No : S.A. No. 1729 of 1992**

Venkatesa Pillai

APPELLANT

Vs

K. Sabapathi Chettiar (died), Savithriammal and S. Ethiraj

RESPONDENT

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**Date of Decision :** 24-01-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

**Citation :** (2003) 01 MAD CK 0101

**Hon'ble Judges :** A.K. Rajan, J

**Bench :** Single Bench

**Advocate :** P. Veeraraghavan, for the Appellant; C. Chinnaswamy for S. Haja Mohiden Gishthi and E. Sampath Kumar for R2, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.K. Rajan, J.—The Second Appeal has been admitted on the following substantial questions of law:

1. Whether the learned Subordinate Judge, after having found that the appellant has been in possession of the suit land from 1974-75 prior to the

date of filing of the suit and that the respondents having failed to prove their title and prior possession of the suit land was correct in law in

dismissing the suit on the ground that the appellant has not properly proved his title to the land?

2. Whether on account of long and uninterrupted possession of the suit land with the appellant as his ancestral property the lower appellate court

was in error in raising the presumption under law that the appellant acquired title to the suit property under a lawful grant?

3. Having regard to the principles laid down in the decision reported in Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, :

whether the appellant on the basis of his prior possessory title is entitled in law to recover possession of the suit property from the respondents.

2. Mr. Veeraraghavan, learned counsel for the appellant submits that the case of the plaintiff is that he was in possession of the suit property for

more than twelve years, the statutory period, and therefore he becomes the owner by adverse possession. Further, when he was in possession of

the property, the respondents herein encroached into the property and therefore he filed a suit both for declaration as well as recovery of

possession of B.-Schedule property; The trial Court rightly decreed the suit as prayed for but the Appellate Court reversed the findings and

dismissed the suit and hence it is liable to be set aside.

3. The appellate Court has held that the only document filed to prove the possession are Ex.A8 and A9, House Tax receipts for the period relating

to 74-75 to 84-85, the tax has been paid on a single day for the entire period; hence the appellate Court has rightly held that no value can be

attached to that for proof of continuous possession. Learned counsel referred to the Judgment of the Supreme Court in Nair Service Society Vs.

K.C. Alexander 1968 S.C. 1165 and submitted that a person in possession of land has a good title against all the world except the true owner;

and hence, between the two trespassers, the trespasser who is in possession from an earlier date gets better title than the trespasser trespassed into

the property on the subsequent date; Therefore, even assuming that the declaratory prayer cannot be granted, yet the appellate Court should have

granted the prayer for recovery of possession.

4. Mr. Chinnaswamy, learned Senior Counsel for the respondents would submit that the property does not belong to the appellant herein.

Therefore, the appellant is not entitled for declaration as prayed for. The Appellate Court has rightly rejected his claim. He further contended that

as per Section 110 of the Evidence Act it is for the plaintiff to prove his case but the plaintiff failed to prove his case and hence the judgment of the

appellate Court cannot be set aside.

5. Admittedly as per the plaint, the cause of action for the suit arose on 30.4.1981 and on 1.5.81 when the defendants/respondents herein

encroached the property which was in possession of the plaintiff/appellant herein. Admittedly, the suit has been filed only on 17.2.1983. That is the

suit has been filed six months after the trespass by the defendant. As per Section 5 of the Specific Relief Act a person entitled to possession of immovable property may recover it by a suit for ejection on the basis of title, such suits are governed by Article 64 of the Limitation Act. When a person has been dispossessed of an immovable property, for recovery of possession notwithstanding any other title only Section 6 of the Specific Relief Act applies. Sub-Section (2) of that Section provides only six months as limitation for filing the suit. The Supreme Court has also held in the above cited decision that when "six months has passed, the question of title can be raised by the defendant and if he does so the plaintiff must establish a better title or fail." That is when a person is in occupation of the property without any ownership of the property and when such a person is dispossessed, the suit for recovery of possession would lie only if the suit was filed within a period of six months from the date of dispossession. But in this case, admitted by the suit has been filed only after a lapse of more than one and a half years. Therefore, the suit is not maintainable on that ground. Inasmuch as the suit property belongs to the temple and the plaintiff claims only possessory right when he had lost the possession for more than one and a half years, the suit for recovery of possession does not lie. Therefore, the suit has to be dismissed.

6. The second appeal fails and the same is dismissed. The substantial questions of law are answered against the appellant. The judgment and decree of the first Appellate Court is confirmed. No costs.