A DHARMARAJAN AND OTHERS

v.

VALLIAMMAL AND ORS.

DECEMBER 11, 2007

B **(H.K. SEMA AND V. S. SIRPURKAR, JJ.)**

Code of Civil Procedure, 1908 – s.100 – Second appeal – Re-appreciation of evidence – High Court set aside judgment of first appellate court on basis of non-existent substantial questions C *of law and accepting an entirely new case based on un-pleaded facts and non-existent rights – Held: High Court erred in law – Judgment of first appellate court restored.*

One 'M' filed a suit being O.S. No. 555 of 1981 for D **declaration and injunction against the appellants in respect of certain landed property on the ground that 'K', who had put up a thatched shed in the suit property, had perfected her title to the same by adverse possession and after her demise, her foster son 'DO', the husband of respondent No.1, derived title and** E **continued in possession as a legal heir and later sold the suit property to the plaintiff. It was stated that the plaintiff and his predecessor had acquired title by adverse possession for more than 60 years.**

The case of defendants-appellants was that they had F **purchased the property from members of one Iyer family under sale deeds dated 15.7.1980 and 19.9.1980. They claimed that since 'K' was a maid servant in the service of Iyer family, she was permitted to stay on the suit property and after her demise,** G **'DO' started working as servant, and he too was permitted as such to stay in the suit property; and that after the purchase, appellants were paying the taxes and 'DO' was staying in the property with their permission. Defendant-appellant no.1 also filed a suit being O.S. No.280 of 1982 for declaration of title**

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against respondent no.1, the wife of 'DO' and their daughter in respect of eastern half portion of suit property in O.S. No.555 of 1981.

Trial Court by a common judgment decreed the suit filed by 'M' and dismissed the other suit filed by appellant no.1. The first appellate court dismissed suit filed by 'M' and decreed the suit filed by appellant no.1 only to the extent of the decree of declaration of title. 'M' and respondent no.1 filed two separate second appeals which were allowed by the High Court.

In the instant appeals, it was contended that the first appellate court was the final court of facts and yet even without discussing the appellate court judgment, the High Court re-appreciated the evidence and upset the well considered judgment of the appellate court; that an entirely new case which was not even pleaded was found out by the High Court and on that basis decree was passed; and that the case regarding adverse possession was very rightly held not proved by the first appellate court and moreover the plea regarding adverse possession was a confused plea inasmuch as it was not even pleaded as to against whom was the possession of 'K' and 'DO' adverse.

Allowing the appeals, the Court

HELD: 1.1. The High Court has gone into a dangerous area of appreciation of evidence, that too on the basis of non existent substantial questions of law. None of the five questions framed by the High Court could be said to be either question of law or a substantial question of law arising out of the pleadings of the parties. [60-D] [61-A] [Para 8]

1.2. The first question of law, as mentioned in the judgment, could not and did not arise for the simple reason that the plea of adverse possession has been rightly found against the plaintiff 'M'. K's possession, even if presumed to be in a valid possession in law, could not be said to be adverse possession as throughout it was the case of appellant no.1 that it was a permissive

A possession and that she was permitted to stay on the land belonging to the members of the Iyer family. Secondly, it has nowhere come as to against whom was her possession adverse. In order to substantiate the plea of adverse possession, the possession has to be open and adverse to the owner of the B property in question. The evidence did not show this openness and adverse nature because it is not even certain as to against whom the adverse possession was pleaded on the part of 'K'. Further, even the legal relationship of 'DO' and 'K' is neither pleaded nor proved. All that is pleaded is that after K's demise C 'DO' as her foster son continued in the thatched shed allegedly constructed by 'K'. There was no question of the tacking of possession as there is ample evidence on record to suggest that 'DO' also was in the service of Iyer family and that he was permitted to stay after 'K'. Besides, his legal heirship was also D not decisively proved. This Court, therefore, does not see as to how the first substantial question of law came to be framed. This is apart from the fact that ultimately High Court has not granted the relief to the respondents on the basis of the finding of this question. On the other hand the High Court has gone into E entirely different consideration based on reappreciation of evidence. [61-A to G] [Para 8]

1.3. The second and third questions are not the questions of law at all. They are regarding appreciation of evidence. The fourth question is regarding the admissibility of Exhibit A-8. F There is no question of admissibility as the High Court has found that Exhibit A-8 was not admissible in evidence since the Tehsildar who had issued that certificate was not examined. Even the fifth question was a clear cut question of fact and was, therefore, impermissible in the second appeal. [Para 8]

G [61-G, H] [62-A]

1.3. Plaintiff 'M' claimed title and possession in respect of the suit property by virtue of Exhibit A-1, a sale deed dated 10.10.1980, and prior to that he had also obtained the mortgage H in respect of this property from 'DO'. It was, therefore,

imperative on his part to prove a valid title of 'DO'. The High Court has rightly not accepted the case of adverse possession though it has given a confused finding about it. However, the pleadings indicate that the only plea regarding the ownership of 'DO' was based solely on the plea of his adverse possession. Once that position is clear, the High Court could not have gone into any other aspect which was not even pleaded in the plaint since the burden was entirely on the plaintiff 'M', his being a prior suit. [62-B to D] [Para 9]

1.5. The High Court has given a finding that 'K' was in possession of the land for 50 years or so and thereafter her foster son 'DO' continued and, therefore, the possession of 'K' and 'DO' could be tacked together and that the appellate court was wrong in treating the possession of 'K' and subsequently by 'DO' as distinct and separate. All these findings are of no use whatsoever for the simple reason that the theory of adverse possession had already failed. Even the High Court has observed that it is not as if the plaintiff is claiming the right only by adverse possession. [62-FG] [Para 9]

2.1. The High Court has also held that the suit property was a village Natham and, therefore, the person who first occupied the same and was residing therein is entitled to title. The High Court has, without any basis, held that it was an unoccupied Natham and 'K' had entered the possession and was residing there by putting up a house and fencing the property and that she would be entitled to declaration of her occupancy rights or title because the Government is not claiming it as a poramboke or its vesting with the Government. There is no basis for this finding of the High Court. There is no pleading about this. There is not even an iota of evidence in the village records in favour of either 'K' or 'DO' and their so-called rights. The High Court has thus found out an entirely different case. [62-G, H] [63-A to C] [Para 9]

2.2. The High Court has also erred in holding that a continuous possession independently by the person in possession

A will definitely entitle him to the property in view of the fact that the property is only a Natham and not a poramboke. This was not a case pleaded in the plaint at all. In fact excepting the plea of adverse possession, no other plea has been raised. Similarly, the High Court erred in going into the question of identity of B suit property without there being any pleading.

[63-C to E] [Para 9]

3. Defendant-appellant no.1 produced Exhibit B-6, a Judgment, to show that the land belonged to the Iyer family C under whom the defendants claimed title. There is a receipt (Exhibit B-3) on record of the house tax paid by the Iyer family which is long prior to the suit. There is also a certificate (Exhibit B-5) to show that house was registered in the name of one of the members of the Iyer family for a period even prior to 1977. D The appellate court had accepted this documentary evidence. This concludes the matter and in the absence of any revenue records in favour of either 'K' or 'DO', there was no question of their title over the land. The High Court has gravely erred in interfering with a well considered judgment and findings of fact E of the appellate court.

[63-F] [64-F] [65-B] [Paras 10, 11]

4. In the absence of pleadings, the High Court gravely erred in finding out an entirely new case on the basis of unpleaded facts and non existent rights. As regards the suggestion of F respondent that this was a Natham and the parties had proceeded on that basis and, therefore, the long standing possession of 'K' and thereafter of 'DO' would clothe them with the ownership; in the first place that it was a Natham was not pleaded. Secondly, there is nothing to suggest that this long standing possession G could clothe the 'K' and 'DO' with the ownership rights. That was neither a case pleaded nor proved. Again there was nothing in the shape of revenue records in favour of 'K' and 'DO'. Thus, the judgment suffers from error of law. [Paras 12 and 14] [65-C, D] [66-D] H

Gurudev Kaur and Ors. v. Kaki and Ors. **(2007) 1 SCC 546 – relied on.**

The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharamapuri District v. I.V. Swaminatha and Ors. **(2004) 3 L.W. 278 – referred to.**

5. Once the suit of 'M' fails, the other suit filed by defendant-appellant no.1 being OS 280 of 1982 in respect of the Eastern half portion of the suit property must succeed. The first appellate court has rightly granted the declaration in that suit and has also restricted the relief only to the declaration since defendant-appellant no.1 and the other defendants had not terminated or revoked the licence of 'DO' or his wife respondent No.1 or the daughter. The first appellate court had also correctly held that appellant in AS No.10/1995 in OS No.280/1982 had established title of his vendors and further that his vendors has passed a valid title to him with respect to the suit property under Exhibits B-12 and B-13. The appellate court was right in holding that defendant no.1 and other defendants were not entitled to the injunction prayed for. [Para 16] [66-G, H] [67-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4535-4536 of 2001.

From the Judgment and Order dated 25.06.1999 of the High Court of Madras in Second Appeal Nos. 2235 & 2236 of 1986.

F.R. Kumar (for M/s. Parekh and Co.) for the Appellants.

P. Krishnamoorthy, R. Nedumaran and Sunil Kumar Singh, for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. A common judgment passed by Madras High Court allowing two Second Appeals is in challenge before us. The Single Judge of the Madras High Court set aside the appellate judgment, again a common one allowing appeals against the common

A judgment passed by District Munsiff, Bhawani whereby the District Munsiff had decreed the suit filed by one Muthuswami Gounder and dismissed the other suit filed by Dharmarajan, the appellant herein. A short history of the case would be essential.

B 2. K. Muthuswami Gounder filed a suit registered as O.S. No.555 of 1991 for declaration and injunction alleging that he had purchased suit property Survey No.324/D1 under a Sale Deed dated 10.10.1980 from one Doraiswamy who was in possession and enjoyment of the property. The said Doraswamy was claimed to be a foster son of one C Karupayee who had expired in the year 1961 and who was claimed to be in possession and enjoyment of the suit property wherein she had put up a thatched shed and was residing for more than 30 years. It is claimed that after Karuapyee her foster son who was none else but his sister's son obtained the possession and enjoyed the said suit D property. Before this sale deed dated 10.10.1980, he had executed a Mortgage Deed in respect of the suit property in favour of the plaintiff Muthuswami Gounder dated 15.6.1980. It was further claimed that Doraiswamy was permitted to occupy the suit property as tenant on monthly rent of Rs.50/-. It was further asserted that defendants 1 to E 7, i.e., the present appellants had also wanted to purchase the property from Doraiswamy but having failed, they were falsely claiming certain rights in the suit property by creating some false documents and that they had no right, title or possession. It was claimed that the plaintiff and his predecessor, namely, Doraiswamy had acquired the title by F adverse possession for more than 60 years. It is on this basis that Muthuswamy Gounder claimed a decree for declaration of his ownership as also for the injunction against the present appellants.

3. As against this, the present appellants claimed that this property in fact belonged to first defendant therein, (the appellant no.1 herein) G in so far as the Eastern half of the property was concerned since it was purchased by the first defendant from one Venkataramana Iyer. It was claimed that the suit property originally belonged to one K.V. Krishnasamy and others and they were throughout in possession and enjoyment of the suit property and were paying house tax also. The H

other appellants claimed the other half of the property on the plea that they had purchased the same from the other co-sharer Venugopal Iyer who had inherited the property from K.V. Krishnasamy and others. It was claimed that Karuppayee was working as a maid servant under one Venugopala Iyer and it was he who had permitted her to put up the thatched shed in the suit property and after the death of Karuppayee, Doraiswamy started working as a servant of Venugopala Iyer and as such he was in occupation of the thatched salai (house) with the permission of Venugopala Iyer. It was claimed that the property stood in the name of Venugopala Iyer in Kavundapady Panchayat. In short it was contended that the present appellants were owners of the property which they had purchased on 15.7.1980 and 27.8.1980 vide different sale deeds. It was further claimed that after the purchase of the suit property, the present appellants who were the defendants in Suit No.555 of 1981 were paying the taxes and Doraiswamy was staying in the property with their permission. The original defendants, the appellants herein stoutly denied the right of ownership on the part of Doraiswamy to transfer the property in favour of the plaintiff. They also denied that Karuppayee and after her Doraiswamy were in independent possession of the property. They also denied that Karuppayee or, as the case may be Doraiswamy, had perfected their title by adverse possession. Thus, the Appellant No.1 Dharamrajan claimed half of the property whereas the rest of the appellants claimed the other half of the property being purchasers from the members of Iyer family.

4. The Appellant No.1 Dharamarajan also filed a suit being OS No.280 of 1982 in respect of the Eastern one half portion of the suit property of which he claimed the ownership through the sale deed in the earlier suit. This suit was filed against Valliammal and Palaniammal, who were the legal heirs of Doraiswamy. It must be stated here that Doraiswamy had by then expired. This was also a suit for declaration of title of Dharamrajan. In this suit it was claimed that the property originally belonged to the father of Krishnasamy Iyer, Kandsamy Iyer and the father of one Vengugopala Iyer. In the family arrangement the suit property was allotted to the father of Kandasamy Iyer and Venkatasubramania Iyer, the son of Krishnasamy Iyer and the first

A appellant Dharamarajan had purchased the suit property from Venkataramana Iyer on 15.7.1990 who was none else but the son of Krishnaswami Iyer, both of whom were the heirs of Kandasamy Iyer. An injunction was also claimed against the defendants. Valliammal and Palaniammal firstly claimed that one suit was already filed against B Doraiswamy being OS No.531 of 1981 and the said suit was dismissed. Doraiswamy had expired on 18.5.1981 and since Valliammal and Palaniammal were the legal heirs of Doraiswamy, the suit was not maintainable against them. Both these ladies claimed that they were in possession of the suit property as the tenants under Muthuswami C Gounder, the plaintiff in OS No.555 of 1981. They denied the ownership of the Iyer family on the suit property and claimed that it was false to allege that the suit property was ever allotted to the father of Kandasamy Iyer and Venkatasubramia Iyer. It was, therefore, pleaded that the vendors of the plaintiff- Appellant No.1 herein were not entitled to the D suit property and they were never in possession of the same. It was claimed that the suit property was a poramboke land and it was throughout in possession of Karuppayee Ammal who had perfected title to the same by adverse possession. It was only Karuppayee who had put up thatched salai in the suit property and her successor E Doraiswamy was the husband of the first defendant Valliammal and father of Palaniammal and after the death of Karuppayee Ammal he continued to be in possession of the suit property as the heir of Karuppayee Ammal. Karuppayye Ammal had died 20 years ago and after he death Doraiswamy had mortgaged the suit property to F Muthuswamy Gounder on 10.10.1980 and thereafter the Doraiswamy and defendants 1 and 2 continued to be in possession of the suit property as tenants of Muthuswamy and on that count the suit was liable to be dismissed.

G 5. The Trial Court decreed the Suit No.555 of 1981 and dismissed Suit No.280 of 1982 filed by the appellant no.1 in respect of the half of the suit property. Two appeals came to be filed which were allowed whereby the Appellate Court dismissed Suit No.555 of 1981 and decreed Suit No.280 of 1982 only to the extent of the H decree of declaration of title. However, since the plaintiff therein (the

appellant herein) had not terminated the licence of Valliammal and Palaniammal in respect of the suit property that relief was denied to the appellant No.1 herein and the suit succeeded only partly. As stated earlier, the plaintiff Muthuswamy Gounder filed Second Appeal No.2236 of 1986 while Valliammal filed Second Appeal No.2235 of 1986 which appeals have been allowed by the learned Single Judge of the High Court and that is how the parties are before us in the present two appeals.

6. Learned counsel appearing for the appellant seriously criticized the High Court judgment firstly that the High Court had entered into a prohibited arena of re-appreciation of evidence. It was contended that the appellate court was the final court of facts and yet even without discussing the appellate court judgment, considering the approach thereof, the High Court had re-appreciated the evidence and had upset the well considered judgment of the appellate court. Secondly, the learned counsel urged that an entirely new case which was not even pleaded by the plaintiff in Suit No.555 of 1981 was found out by the High Court and on that basis chose to decree the said suit which was dismissed by the appellate court. It was further pointed out that the sole plea raised in the plaint was that the plaintiff had derived his title vide a Sale Deed from Doraiswamy who himself had continued to be in adverse possession after Karupayee Ammal. In short the basis of the plea of plaintiff was his valid title. Learned counsel was at pains to point out that the case regarding adverse possession was very rightly held not proved by the appellate court and indeed there could not be any adverse possession since the adverse nature of possession was not proved at all. Learned counsel pointed out that the plea regarding adverse possession was a confused plea inasmuch as it was not even pleaded as to against whom was the possession of Karupayee Ammal and Doraiswamy adverse. Learned counsel, therefore, pleaded that once that plea was rejected, there was no question of decreeing the suit and the suit should have been straightaway dismissed as was done by the appellate court. Instead the High Court had found entirely different theory by trying to re-appreciate the evidence even regarding

A the boundaries of the plot and the identification thereof which was nobody's case.

7. As against this the learned counsel for the respondent supported the judgment and suggested that though the plea of adverse possession B was not proved, still what was transferred by Doraiswamy was a possessory title. Learned counsel tried to urge that Karupayee Ammal continued on the land and she became the owner of the land in question because of her long possession over natham poramboke and hence Doraiswamy who continued after her demise would inherit the same C rights, he being her legal representative. It is these rights which he had transferred in favour of Muthuswami Gounder and, therefore Muthuswamy Gounder had a better title as against the present appellant Dharamrajan who merely claimed a Sale Deed from non-existent owner.

D 8. A glance at the High Court judgment suggests that the High Court has gone into a dangerous area of appreciation of evidence, that too on the basis of non existent substantial questions of law. The five questions of law framed by the High Court were as follows:

E "(1) Whether the admitted long possession of the original owner Karupayee and that of Doraiswamy who claims title through her cannot be tacked together in law for the purpose of adverse possession?

F (2) Whether the burden is not on the plaintiff who is out of possession to prove that he has got valid title in the suit properties as laid down by this Court?

(3) Whether non-examination of the vendors of the plaintiff is not fatal to the case of the plaintiff?

G (4) Whether Ex.A-8 is not admissible in evidence? And

(5) Whether lower appellate court is justified in decreeing the suit for declaration, having found that the defendants are in possession and having refused to grant injunction in favour H of the plaintiff?"

In our opinion none of these questions could be said to be either question of law or a substantial question of law arising out of the pleadings of the parties.The first referred question of law could not and did not arise for the simple reason that the plea of adverse possession has been rightly found against the plaintiff. Karupayee Ammal's possession, even if presumed to be in a valid possession in law, could not be said to be adverse possession as throughout it was the case of the appellant Dharmarajan that it was a permissive possession and that she was permitted to stay on the land belonging to the members of the Iyer family. Secondly it has nowhere come as to against whom was her possession adverse. Was it adverse against the Government or against the Iyer family? In order to substantiate the plea of adverse possession, the possession has to be open and adverse to the owner of the property in question. The evidence did not show this openness and adverse nature because it is not even certain as to against whom the adverse possession was pleaded on the part of Karupayee Ammal. Further even the legal relationship of Doraiswamy and Karupayee Ammal is not pleaded or proved. All that is pleaded is that after Karupayee Ammal's demise Doraiswamy as her foster son continued in the thatched shed allegedly constructed by Karupayee Ammal. There was no question of the tacking of possession as there is ample evidence on record to suggest that Doraiswamy also was in the service of Iyer family and that he was permitted to stay after Karupayee Ammal. Further his legal heirship was also not decisively proved. We do not, therefore, see as to how the first substantial question of law came to be framed. This is apart from the fact that ultimately High Court has not granted the relief to the respondents on the basis of the finding of this question. On the other hand the High Court has gone into entirely different consideration based on reappreciation of evidence. [The second and third questions are not the questions of law at all. They are regarding appreciation of evidence. The fourth question is regarding the admissibility of Exhibit A-8. In our opinion there is no question of admissibility as the High Court has found that Exhibit A-8 was not admissible in evidence since the Tehsildar who had issued that certificate was not examined. Therefore, there will be no question of admissibility

since the document itself was not proved. Again the finding of the High Court goes against the respondent herein. Even the fifth question was a clear cut question of fact and was, therefore, impermissible in the Second Appeal.

9. It must be remembered that plaintiff Muthuswamy Gounder had claimed the title and possession in respect of the suit property by virtue of Exhibit A-1, Sale Deed dated 10.10.1980 and before which he had also obtained the mortgage in respect of this property from Doraiswamy. It was, therefore, imperative on the part of the plaintiff to prove a valid title on the part of the Doraiswamy. The High Court has rightly not accepted the case of adverse possession though it has given a confused finding about it. However, one look at pleadings suggests that the only plea regarding the ownership of Doraiswamy was based solely on the plea of his adverse possession. Once that position is clear, the High Court could not have gone into any other aspect which was not even pleaded in the plaint. Instead of discussing the evidence of the plaintiff since the burden was entirely on the plaintiff Muthuswamy Gounder, his being a prior suit, the High Court went on to discuss the evidence on the part of defendant Dharamrajan who was the purchaser of the Eastern half of the suit property under Exhibit B-12 and B-13 and the other defendants 2 to 5 who had purchased the Western half of the suit property under Exhibit B-1 and B-2. Thereafter the High Court has given a finding that Karupayee Ammal was in possession of the land for 50 years or so and thereafter her foster son Doraiswamy continued and, therefore, the possession of Karupayee Ammal and Doraiswamy could be tacked together and that the appellate court was wrong in treating the possession of Karupayee Ammal and subsequently by Doraiswamy as distinct and separate. All these findings are of no use whatsoever for the simple reason that the theory of adverse possession had already failed. Even the High Court has observed that it is not as if the plaintiff is claiming the right only by adverse possession. Further the High Court found out that the property was a village Natham and, therefore, the person who first occupied the same and was residing therein is entitled to title. The High Court has, from nowhere, found out that it was an unoccupied

Natham and Karupayee Ammal has entered the possession and was residing there by putting up a house and fencing the property and that she would be entitled to declaration of her occupancy rights or title because the Government is not claiming it as a poramboke or its vesting with the Government. We fail to follow any basis for this finding of the High Court. There is no pleading about this. There is not even an iota of evidence in the village records in favour of either Karupayee Ammal or Doraiswamy and their so-called rights. There is a Gram Panchayat in the village and we are certain that there would have been some evidence in the shape of revenue records in favour of either of these two, had the case of uninterrupted possession of Karupayee Ammal on village Natham for 50 years, was true. The High Court has found out an entirely different case. The High Court has lastly held that a continuous possession independently by the person in possession will definitely entitle him to the property in view of the fact that the property is only a Natham and not a poramboke. We are afraid this was not a case pleaded in the plaint at all. In fact excepting the plea of adverse possession, no other plea has been raised. Therefore, the High Court has clearly erred in this aspect. Similarly the High Court in para 13 went into the question of identity of suit property without there being any pleading and a long and unnecessary discussion.

10. There was a previous litigation in OS No.49 of 1963 before the Subordinate Judge, Erode which was the suit for partition and separate possession filed by one Venugopal Iyer against Venkataramana Iyer and his sons. The appellant Dharamrajan had produced Exhibit B-6, the Judgment which showed that the Brahmin family under whom the present defendants claimed title was represented by four brothers representing four branches and they were Ramaswamy Iyer, Venkatasubba Iyer, Krishnaswamy Iyer and Subramaniya Iyer. There was a partition between these four brothers and as per the Agreement Krishnaswamy Iyer and Subramania Iyer were allotted the property jointly as against their shares, Ramaswamy Iyer and Venkatasubba Iyer were dealing separately their respective shares. It was Subramania Iyer's son Venugopal Iyer who was the plaintiff in the said suit while

A Venkataramana Iyer and his sons who were the descendants of Krishnaswamy Iyer were the main defendants therein. The High Court has gone through this judgment and has recorded that ultimately the partition was granted only in respect of Survey No.361/D of Kavundapadi village which was Plaint "A" Schedule and the backyard B of the house which was Plaint "B" Schedule and in other aspects the suit was dismissed. What the High Court has failed to see is that there is a mention of the property in the suit in this litigation. The High Court ultimately gave a finding that the suit property was not the subject matter as it was lying South of Kattabomman Street and this property C was not, therefore, partitioned in the said suit. In its enthusiasm the High Court has given a finding that the house was extended further south to the East West Kattabomman Street and, therefore, the vendors of the defendants (Dharamrajan and others) had not chosen to deal with suit property even as early as 1957. Ultimately the High Court D has given a finding that the suit property was not the subject matter of Exhibit A-11 partitioned in the year 1957.

11. It was pointed out by the learned counsel appearing on behalf of the appellant that there is a definite mention in Suit OS No.49 E of 1963 of the suit property. As if this was not sufficient, the learned counsel has also pointed out that the suit property was registered in the name of Venugopala Iyer in Kavundapadi Panchayat and he has also paid house tax to the Panchayat for the suit property. There is a receipt (Exhibit B-3) on record of the house tax paid by the Iyer family F which is long prior to the suit. There is also a certificate (Exhibit B-5) to show that house was registered in the name of Venugopala Iyer for a period even prior to 1977. The appellate court had accepted this documentary evidence. In our opinion that would be the end of the matter and in the absence of any revenue records in favour of either G Karupayee Ammal or Doraiswamy, there was no question of their title over the land. The High Court has, in para 24, recorded:

> "The question of adverse possession does not actually arise because the Brahmin family never asserted title over the suit property and the defendants only with a view to harass the

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plaintiff has gone and taken sale deeds from the members of the Brahmin family in the year 1980 knowing fully well that all along the family never asserted title and had never been in possession of the suit property." A

In our opinion these findings are entirely erroneous and the High Court has gravely erred in interfering with a well considered judgment and findings of fact of the appellate court who has accepted the case of the defendant and has chosen to hold that the plaintiff in OS No.555 of 1981 was not able to discharge the burden at all. B

12. In the absence of pleadings, the High Court gravely erred in finding out an entirely new case on the basis of unpleaded facts and non existent rights. Learned counsel for the respondent tried to suggest that this was a Natham and the parties had proceeded on that basis and, therefore, the long standing possession of Karupayee Ammal and thereafter of Doraiswamy would clothe them with the ownership. In the first place that it was a Natham was not pleaded. Secondly, there is nothing to suggest that this long standing possession could clothe the Karupayee Ammal and Doraiswamy with the ownership rights. That was neither a case pleaded nor proved. Again there was nothing in the shape of revenue records in favour of Karupayee Ammal and Doraiswamy. Learned counsel relied upon the judgment of the Madras High Court in *The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharamapuri District* vs. *I.V. Swaminatha & Ors.* **[(2004) 3 L.W. 278]** delivered by the Division Bench thereof in support of his contention that a long possession over Gram Natham ripens into the ownership rights. We are afraid the judgment is being read too broadly. No such proposition of law emerges from that judgment. C D E F

13. On the other hand the appellate court has rightly relied on the tax receipts and the entry in the name of Venugopala Iyer in respect of the suit land in Survey No.324 Ward No.4. The appellte court had also correctly held that the suit property was mentioned in Exhibits B-6 and B-7 as also in the decree in OS 49 of 1963 in Item No.1 of Schedule C property which was not divided. All the lengthy discussion by the High Court over that issue was not only uncalled for G H

A but the High Court has gravely erred in setting aside the finding of the appellate court that the suit property was the property of Item No.I of Schedule C in Exhibit B-7.

14. This Court has, time and again, explained the scope of B Section 100 CPC, more particularly in *Gurudev Kaur & Others* vs. *Kaki and Others* **[(2007) 1 SCC 546]** where it was held that even before the 1976 amendment the scope of such interference under Section 100 drastically curtailed and narrowed down. It is specifically held that the High Court would have jurisdiction of interfering only in C a case where substantial questions of law are involved and those questions are clearly formulated in the Memorandum of Appeal. We have already shown that the questions formulated were neither the questions of law nor substantial questions of law. This is apart from the fact that in the present case the High Court has completely gone astray D inasmuch as it is not even realized that it was a case which was not even pleaded. In *Gurudev Kaur's case* the above mentioned position stated by us in respect of substantial question of law has been reiterated. Thus, the judgment suffers from error of law.

15. Learned counsel for the respondent lastly suggested that E Doraiswamy had transferred the possessory title and, therefore, the plaintiff in OS No.555 of 1981 was justified in filing the suit against the present defendants. This was not even the case pleaded. On the other hand what was pleaded was adverse possession alone. This is apart from the fact that all through the plaintiff claimed a title and ownership F from Doraiswamy, who according to the plaintiff, had both ownership and the title to the suit property. The term possessory title was not even whispered anywhere. We are, therefore, unable to accept the contention of the learned counsel on behalf of the respondent.

G 16. Once the suit of Muthuswamy Gounder fails, then the other suit filed by Dharamrajan being OS 280 of 1982 in respect of the Eastern half portion of the suit property must succeed. The appellate court has rightly granted the declaration in that suit and has also restricted the relief only to the declaration since Dharmrajan and the other H defendants had not terminated or revoked the licence of Doraiswamy

or his wife Valliammal or daughter Palaniammal. The First Appellate Court had also correctly held that appellant in AS No.10/1995 in OS No. 280/1982 had established title of his vendors and further that his vendors has passed a valid title to him with respect to the suit property under Exhibits B-12 and B-13. We also accept the judgment of the appellate court that Dharamrajan and other defendants were not entitled to the injunction prayed for.

17. In the result the appeals succeed with costs. The judgment of the High Court is set aside and that of the First Appellate Court is restored.

B.B.B. Appeals allowed.