K.V. SWAMYNATHAN AND ORS.

v.

E.V. PADMANABHAN AND ORS.

DECEMBER 21, 1990.

[K.N. SAIKIA AND M. FATHIMA BEEVI JJ.]

Constitution of India, 1950—Article 136—Concurrent findings of trial Court and High Court—Interpretation of document of title and finding of existence of adverse possession—Whether questions of law.

Code of Civil Procedure, 1908—Order 7, rule 1—Suit for possession—Delivery pursuant to Court's decree—Effect of—Question of adverse possession—When arises.

Transfer of Property Act, 1882—Sections 54, 55(f)—Sale—Delivery when takes place—Duty of seller indicated.

The appellants-plaintiffs instituted a suit (O.S. No. 298/76) against the respondents-defendants, for title and exclusive ownership of the suit-properties in T.S. No. 666/2 and for recovery of possession and for damages for wrongful use and occupation of the properties by the defendants.

The appellants-plaintiffs' case was that originally the suit-properties were joint-family properties of one Annayyar, who adopted one Vakil Ramaswamy as his son. After the adoption he had three aurasa sons-Ellayar, Sankaranarayana Iyar and Meenakshisundaram Iyer.

On 21.8.1896, a partition was entered into between the Annayyar and his sons and the properties including the suit-properties were allotted to the aurasa sons.

On 31.5.1926 over the properties, the aurasa sons executed a mortgage deed in favour of one Yaghasami Iyer, who obtained a decree filing a suit (O.S. No. 147/1932).

On 4.7.1934 when the hypotheca was brought to sale by the mortgagee in execution of the decree in O.S. No. 147/1932, the aurasa sons executed a subsequent mortgage deed in favour of one Salem Bank.

On 9.12.1942, the Bank mortgaged the properties to the father of

A the appellants. While so, he also purchased vide a sale deed an undivided 1/3rd share of the equity of redemption in the properties from Sankaranarayana Iyar, one of the aurasa sons of Annayyar.

On 12.12.1942, Ellayyar, another aurasa son, entered into an
B agreement with the father of the appellants for the sale of his 1/3rd share.

Defendants 13 and 14, meanwhile, in collusion with Ellayyar brought into existence a sale deed in their favour by antedating an agreement for sale of his share. This forced the father of the appellants to file a suit (O.S. No. 202 of 1942) against Ellayyar and his sons and the
C defendants 13 and 14, for specific performance of the agreement for sale. The suit was decreed in favour of the father of the appellants, against which appeal preferred, was also dismissed.

On 7.2.1945, in pursuance to the decree, the Court executed a sale
D deed in favour of the father of the appellants, and symbolic possession of the properties was taken by him.

The appellants contended that their father had mortgage rights over the suit-properties in T.S. No. 666/2 and he had become the owner of the equity of redemption in respect of 2/3rd of the properties in T.S.
E No. 665 and T.S. No. 666. The balance share of 1/3rd was purchased by the defendants 13 and 14 from Meenakshisundaram, the youngest aurasa son of Annayyar, on 29.12.1942.

The father of the appellants filed a suit for partition and separate possession of the 2/3rd share (O.S. No. 54 of 1950) against the
F defendants 13 and 14.

On 28.3.1950, a preliminary decree for partition and separate possession was passed by consent of the parties. When the final decree proceedings were pending a compromise was entered into by the parties, according to which, final decree was passed on 6.10.1950.

G

As per the final decree the properties were demarcated and allotted between the parties and on 19.1.1953 the father of the appellants was issued possession receipt, who could take only the symbolic possession of the properties, because tenants were there in the properties. Since then the father of the appellants and the appellants were in pos-
H session of the suit-properties.

Further the appellants-plaintiffs averred in the instant suit-plaint that a portion of the land was acquired by the Municipality and in C.C. No. 3 of 1957 the Municipality was ordered to pay the appellants compensation for the land acquired by it. A

It is stated that the names of the appellants were recorded in Revenue Records and in the Town Survey Field Register and the House Tax Demand Register of the Municipality. B

The appellants were paying the Municipal Property tax of the house Door Nos. 268, 269, 270, 271, 271-A and 272 in T.S. No. 666/2 from 1.4.1964 to 30.9.1969, when respondents-defendants 1 to 3 made objections and the Municipality registered the Door Nos. 272 in the name of the defendant No. 1, whereas Door Nos. 269, 270, 271 and 271-A were registered in the names of the defendants Nos. 2 and 3 and Door No. 268 in one Kalyana Sundaram's name. C

The appellants filed a writ petition against such alternations made by the Municipality, which was dismissed by the High Court, as remedy was available by suit. D

When their appeal was dismissed, by the Division Bench of the High Court, the appellants-plaintiffs filed the instant suit (O.S. 298/1976). E

Defendant No. 1's case was that the portion of the suit properties, consisting of Door Nos. 269 to 272 became her father-in-law's properties under a family arrangement, as he being the adopted son of Annayyar. On his death, his son, the husband of the defendant No. 1, became entitled to the properties in T.S. No. 666/2 and he was in possession and enjoyment thereof directly and through tenants. F

On 1.5.1945 defendant No. 1's husband leased out a vacant site in T.S. No. 666/2 to the father of the defendants 2 to 4 for a period of 10 years, whereon the lessee put up Door Nos. 269, 270, 271 and 271-A.

On the death of her husband, the defendant No. 1 granted fresh lease to the defendants 2 to 4, who sublet the buildings to defendants 5 to 8. G

The defendant No. 1 stated that her predecessors and she was in continuous and uninterrupted possession of the suit-properties in T.S. No. 666/2 for more than 60 years and had perfected title to the suit- H

properties by adverse possession and the appellants-plaintiffs did not have any right, title or interest over the suit-properties. She also denied all other contentions of the plaintiffs.

The second defendant corroborated the facts stated by the first defendant and adopted the written statement of the defendant No. 1.

The sixth defendant stated that he took Door No. 270 on lease from the father of the defendants 2 to 4 to do business and the father-in-law of the defendant No. 6, the defendant No. 7, took the Door No. 271 on lease from the father of the defendant Nos. 2 to 4 and later on the defendant No. 6, the son-in-law of defendant no. 7 took possession of Door No. 271 from defendant No. 7 and the business run by him therein. The defendant No. 6 adopted the written statement of his lessors-defendants 2 to 4.

In the joint-written statement, the defendants 9 and 10 claimed to be in possession of Door No. 272, which was belonging to the Mahaganapathi Dhandayathapani Swamy temple of the Sambanda Swamy Matam. According to the defendants 9 and 10, their father had been in occupation of the Door No. 272, as he was doing the services in the temple and on his death, the defendants 9 and 10, being his sons, were in possession and enjoyment thereof. They also averred that the proceedings in O.A. No. 28 of 1970 were pending before the Deputy Commissioner, Hindu Religions and Charitable Endowment with respect to Door No. 272. They had perfected title to the property, which was in their possession for more than 50 years.

The contentions of the defendant No. 11 were that he was running a petty shop in Door No. 272 for more than 25 years and the H.R.& C.E. Board had issued notices to all occupiers like him to surrender possession to the Sambanda Swamy Matam, as the suit-properties belonged to the Matam.

The 12th defendant stated that Door No. 268, where he was residing originally belonged to Ellayyar's family. On 14.11.1896, under a deed executed by the members of Ellayyar's family, the paternal grand father of the defendant 12 was permitted to live in Door No. 268, and to perform puja in their family temple. The defendant had been performing pooja after the deaths of his grand father and father. The defendant No. 12 stated that ever since 14.11.1896 he and his pre-decessors-in-interest had been in possession and enjoyment of Door No. 268.

Defendants 13 and 14 stated that in O.S. No. 54/1950 the properties were divided between them and the father of the appellants-plaintiffs and same was allotted and delivered to them. They took delivery of possession of the same, wherein they had put up superstructures and subsequently affected partition between them.

All the respondents-defendants claimed that the appelaints-plaintiffs had no right, title or interest on the suit-properties in T.S. No. 666/2; that the suit was barred by limitation; that plaintiff-appellants could not claim any relief from them; and that all of them have perfected title, as they were in uninterrupted and peaceful possession and enjoyment of the suit properties in T.S. No. 666/2 since a long time.

During the pendency of the suit, the defendant No. 15 was impleaded, being the legal representative of the defendant No. 1, on her death.

Dismissing the suit, the trial Court held that the appellants-plaintiffs had no title to the suit properties, that the husband of the defendant No. 1 and his heirs had been in possession and enjoyment of Door Nos. 269 to 272 through their tenants for over the prescriptive period, that Door No. 272 and T.S. No. 666 were not temple properties as contended by defendants 9 and 10, that the 12th defendant was entitled to be in occupation of a portion of Door No. 268 in lieu of his services to the temple.

In their appeal to the High Court, the appellants-plaintiffs contended that the trial Court erred in coming to the conclusion that the plaintiffs had no title to the suit properties; and that when once the title of the plaintiffs to the suit properties was found in their favour, it was for the defendants to establish that they had prescribed title to the suit properties by adverse possession and limitation.

The respondents-defendants contended that the title having been found in their favour, the suit was rightly dismissed.

Dismissing the appeal of the appellants, the High Court held that as the appellants-plaintiffs had not proved their title over the suit-properties, they were not entitled to a decree for recovery of possession of the suit-properties. The High Court also declined the leave to appeal.

In this Court, the respondents raised a preliminary point contending that this appeal against the concurrent findings of the Courts below

A to be dismissed. The appellants contended that the questions formulated by the High Court were questions of law.

It was the contentions of the appellants that their father had derived title to suit properties-the 2/3rd shares of the aurasa sons as Annayyar, on the basis of sale deeds dated 19.12.1942 and 7.2.1945 B executed in his favour about 38 years prior to the filing of the instant suit, which were executed by the Court in pursuance of the decree for specific performance; that the defendants 13 and 14 purchased 1/3rd share of the 3rd aurasa son by the sale deed dated 29.12.1942; that all the three sale deeds expressly referred to the suit-properties in T.S. No. 666/2, even though there was no reference as to the boundaries and the C High Court erred in not mentioning in its judgment the vital fact that the sale deeds-the documents of title-expressly included the suit-properties; that other documents like the mortgage deed dated 4.7.1934, the deed of assignment of mortgage right dated 9.12.1942, the deed of mortgage dated 31.5.1921, the sketch and the revenue map etc. expressly referred to the suit-properties; that though the instant suit-D properties were not the subject matter in the partition suit in O.S. No. 54 of 1950, between the father of the appellants-plaintiffs and defendants 13 and 14, it would not affect their title to the instant suit-properties; that by a process of argumentative inference title was to be found in the certified copy of the original plaint; that the defendant No. 1 only claimed title or possession related to Door Nos. 269 to 272 and E defendant No. 12 (respondent No. 7) claimed the Door No. 268 on the basis of permissive possession vide document dated 14.11.1896, that on the questions of adverse possession of Door Nos. 269 to 272 by defendant No. 1 was not justified, as per the witness evidence it was stated that the father-in-law of defendant No. 1 was in possession only over Door No. 272 and it had commenced by way of permissive posses-F sion only at the time of partition between the father-in-law of defendant No. 1 and other members of the family and permissive possession could not be converted into adverse possession because the defendant No. 1 did not set up any evidence to prove that there was such hostile title to the knowledge of the true owner; that the defendant 1(respondent No. 8) made sales of the suit properties to respondents 9 to 12.

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The respondents-defendants, on the other hand, contended that the concurrent findings of the Court's below were based on the Exts. and the conduct of the appellants-plaintiffs and their father through-out the litigation. Further they contended that if really T.S. No. 666/2 belonged to the aurasa sons under the partition deed, the plaintiffs' father would H be entitled only to 2/3rd share in the suit properties under the sale deeds

in Ext. A. 5 and A.8, and defendants 13 and 14 would be entitled to the remaining 1/3rd share and the instant plaint could have proceeded on the basis that the appellants-plaintiffs were entitled to only 2/3rd share and defendants 13 and 14 were entitled to the remaining 1/3rd share, which was not the basis on which the present plaint had been filed. A

Dismissing the appeal of the appellants-plaintiffs, this Court, B

HELD: 1.01. Concurrent findings of fact will not be disturbed unless it is shown that there has been a miscarriage of justice or the violation of some procedure or principle or that they have been arrived at by reason of any error or method or mistake through neglect of any aspect of the evidence, or important aspects of the case escaped notice or failed to receive due emphasis, or that the forms of legal process were disregarded or principles of natural justice were violated or substantial and grave injustice resulted or that it cannot be supported by the evidence or it is perverse, or that the rule of prudence that the evidence of an unreliable witness should not as accepted without corroboration has been departed from. It is also true that they will not be disturbed on the ground that inadmissiable evidence was received, when the findings cannot on any reasonable view be regarded as based or dependent upon such evidence. [731B-D] C D

1.02. In an appeal by special leave there has to be a substantial question of law. [731D] E

1.03. Interpretation of a document of title is a question of law. [731H]

1.04. Construction of a document of title which was the foundation of the rights of parties necessarily raises a question of law. [732B] F

1.05. The question as to whether the possession of a person can be regarded in law as adverse possession is partly a question of fact and partly a question of law. [732D]

Mithilesh Kumari v. *Prem Benahi Khare,* [1989] 2 SCC 95: J.T. 1989 (1) SC 275, Distinguished. G

Kaolapati v. *Amar,* AIR 1939 PC 249: 44 CWN 66; *Chunilal V. Mehta & Sons, Ltd* v. *The Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314: [1962] 3 Supp. SCR 549; *Jadu Gopal* v. *Panna Lal,* AIR 1978 SC 1329: [1978] 3 SCR 855 and *Meenakshi Mills, Madurai* v. *The Commissioner of Income-tax, Madras,* AIR 1956 SC 49: [1956] SCR 691, followed. H

A *State Bank of Travancore* v. *A.K. Panikkar,* **AIR 1971 SC 996;** *Kesar Singh* v. *Balwant Singh,* **AIR 1957 SC 487: [1962] Supp. (1) SCR 325;** *Sabapathi* v. *Huntlay,* **AIR 1938 P.C. 91: 173 IC 19;** *Sitalakshmi* v. *Venkata,* **34 CWN 593, 597;** *Khoo Sit* v. *Lim Thean.* **[1912] AC 323, 325;** *Sarju* v. *Jwaleshwari,* **AIR 1951 SC 120: [1950] SCR 781;** *Radha Prasad* v. *Gajadhar,* **AIR 1960 SC 115: [1960] 1 SCR 663;** *Karbada* v. B *Chhaganlal,* **AIR 1969 SC 395;** *Robin* v. *National Trust Ltd.,* **101 IC 903: AIR 1927 PC 66;** *Watt* v. *Thomas,* **[1947] AC 484, 486;** *Sara Veeraswami* v. *Talluri,* **AIR 1949 PC 32: 1949 Mad. 487: 75 IA 252;** *Benmak* v. *Austin Motor Co. Ltd.* **[1955] 1 All. E.R. 326,** *H.L. Bodhraj* v. *Sitaram,* **40 CWN 257: 160 IC 45; AIR 1936 PC 60 and** *Virappa* v. *Periakaruppan,* **49 CWN 211: AIR 1945 PC 35, referred to.**

C **The path of the Law (1897) in collected Legal Papers Page 173; Best 11th Ed. S. 12-Referred to.**

2.01. In the instant case, while interpreting the Exts. A. 5 and A. 8, and the decree one has to take into consideration what the Parties D **themselves intended.** *Quia non refert out quis intionem suam declarat, verbis out rebus ipsis vel factis.* **It is immaterial whether the intention be collected from the words used or the acts done. Intention was manifested in the acts performed by the parties concerned pursuant thereto. It was immaterial that T.S. No. 666 was there in the deeds.** *Intentio mea imponit nomen operi meo.* **My intent gives name to my act.** *Facta sunt* E *potentiora verbis.* **Facts are more powerful than words.** *Factum cuique suum adversarie nocere debet.* **A party's own act should prejudice himself, not his adversary.** *Traditio loqui facit certam.* **Delivery makes a deed speak. Delivery gives effect to the words of a deed. What was delivered purusant to the decree on interpretation of the sale deeds has to be accepted as the parties themselves after night-long deliberation** F **fixed and accepted. [745B-D]**

2.02 The right to T.S. No. 666/2 having not been acquired at all, no question of adverse possession against the plaintiffs would arise at all. The plaintiffs case has to fail for want of proof of title to T.S. No. 666/2. [745E]

G

2.03. Adverse possession by nature implies the ownership of another. Where one person is in possession of property under any title, and another person claims to be the rightful owner of the property under a different title, the possession of the former is said to be adverse possession with reference to the latter. Adverse possession is a statutory H **method of acquiring title to land by limitation. It depends on** *animus* **or**

intent of occupant to claim and hold real property in opposition to all the world; and also embodies the idea that the owner of the property has knowledge of the assertion of ownership of the occupant. [745F] A

3.01. Under Section 54 of the Transfer of Property Act, delivery of tangible property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Under section 55(f) of that Act the seller is to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature permits. [746C] B

3.02. In the instant case the father of the appellants was never proved to have acquired ownership of T.S. No. 666/2. there is no evidence of T.S. No. 666/2 ever having been delivered to him. On the other hand the Commissioner's plan and the partition decree did not include T.S. No. 666/2. It cannot, therefore, be said that the father of the appellants acquired any title to it. Obviously the appellants also could not inherit the same. [746B, D] C

D

Austin on Jurisprudence P. 177, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1224 of 1980.

From the Judgment and Order dated 18.12.1979 of the Madras High Court in Appeal No. 919 of 1975. E

Shanti Bhushan, P.N. Ramalingam, S.V. Ramesh, S. Balakrishnan, Ramesh N. Keshwani and Vijay Kumar for the Appellants.

U.R. Lalit, S. Srinivasan and P.K. Chokkalingam for the Respondents. F

The Judgment of the Court delivered by

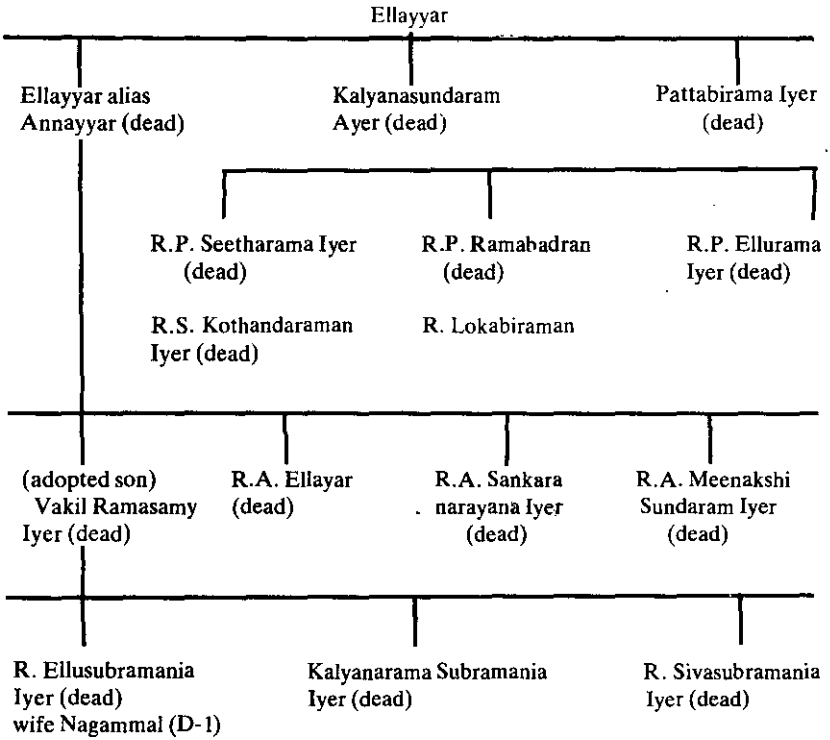
K.N. SAIKIA, J. This plaintiffs' appeal by special leave is from the Judgment of the Madras High Court, dated 18.12.1979 in A.S. No. 919 of 1975, dismissing the appeal against the Judgment and decree of the Subordinate Judge, Erode, dismissing the suit. The plaintiffs in O.S. No. 298 of 1970 sought a declaration that they were the exclusive owners of the plaint schedule properties and for recovery of possession thereof alongwith a prayer that the defendants 1-12 and 15 or such of them as were liable should be directed to pay Rs.3,600 as damages for G H

wrongful use and occupation of the suit properties.

The suit property as described in schedule B to the plaint is comprised in Town Survey (shortly, T.S.) No. 666/2 in Erode Municipality. There are in all six house-doors in the suit property bearing Door Nos. 268, 269, 270, 271, 271-A and 272.

The parties for tracing their title admit the following genealogy:

GENEALOGY



The four instant appellants K.V. Swamynathan, K.V. Ganesan, V. Ramasundaram and V. Samigasundaram, all sons of K.S. Vaiyapuri Chettiar instituted O.S. No. 298 of 1970 aforesaid against the 14 original defendants, namely, (1) R. Nagammal, widow of R. Ellusubramania Iyer, (2) E.V. Padmanabhan, son of R.K. Venkatasami Naicker, (3) E.V. Gopinath, son of R.K. Venkatasami Naicker, (4) Srimathi Audal, wife of G. Venkatakrishnan, (5) P. Thambayya Naidu, resident of Door Nos. 268, 269 and 270, (6) P. Rangasami, carrying on business at Door Nos. 271 and 271-A, (7) A.K. Pangianna,

father-in-law of (6) above, (8) Venkatachalam, shopkeeper at Door Nos. 271 & 271-A (9) S. Beshadri Iyer of Door No. 272, (10) Lakshmi Ammal, resident of Door No. 272, (11) A. Ramaswamy of Door No. 272, (12) N.B. Darayanasami Sastri, resident of Door No. 268, (13) A. Marimuthu Mudaliar, businessman at Door No. 275-A and (14) A. Arumuga Mudaliar, carrying on business at Door No. 275. By order dated 29.1.1974 in I.A. 1283/73, Meenammal, wife of R. Ramamoorthy Iyer was added as defendant No. 15. A. Marimuttu Mudaliar and A. Nagammal having died, their legal representatives were brought on record. In this appeal, however, there are only 12 respondents.

Ext. A-1 reproduced herein is the sketch map for the site T.S. No. 666 in Ward 1, Brough Road, Brode Town.

The plaintiffs' case was: The buildings and the vacant sites in original T.S. No. 666 and T.S. No. 665 which lay North of T.S. No. 666 were the joint family properties of the propositus Ellayyar alias Annayyar, hereinafter called Annayyar. Before the aurasa sons were born to Annayyar, he adopted one Ramasamy Iyer, who later came to be known as Vakil Ramasamy Iyer. Besides the adopted son Vakil Ramasamy Iyer, Annayyar had, as would be clear from the gendslogical table, three aurasa sons, namely, R.A. Sllayar, R.A. Sankaranarayana Iyar and R.A. Meenakshisundaram Iyer. Vakil Ramasamy Iyer had three sons, namely, Ellusubramania Iyer, kalayanarama Subramania Iyer and Sivasubramania Iyer. The first defendant, Nagammal is the widow of Ellusubramania Iyer and daughter-in-law of Vakil Ramasamy Iyer. On 21.8.1896 a partition was entered into among Annayyar and his aurasa sons and his adopted son Ramasamy Iyer. Under the partition deed, the suit properties were allotted to R.A. Ellayar, R.A. Sankaranarayana Iyer and R.A. Meenakshisundaram Iyer, the aurasa sons of Annayyar. On 31.5.1921, the aurasa sons of Annayyar executed a mortgage over the properties, obtained by them under Ext. S. 5 partition deed including the suit properties, to one Yaghasami Iyer who filed O.S. No. 147 of 1932 in the Sub Court, Coimbatore and obtained a decree. When the hypotheca was brought to sale by the mortgagee in execution of the decree, the mortgagors, namely, the aurasa sons executed on 4.7.1934 the subsequent Ext. A. 3 mortgage in favour of Salem Bank Limited. The mortgagee, Salem Bank Limited in turn assigned their rights under Ext. A. 3 mortgage to K.S. Vaiyapuri Chettiar. the deceased father of the plaintiffs under Ext. A. 4 dated 9.12.1942. While so, the said Vaiyapuri Chettiar purchased an undivided 1/3rd share of the equity of redemption in T.S.

A Nos. 665 and 666 from R.A. Sankaranarayana Iyer, one of the aurasa sons of Annayyar. The sale-deed is marked as Ext. A. 5. On 12.12.1942, R.A. Ellayyar, one of the aurasa sons of Annayyar entered into an agreement with Vaiyapuri Chettiar for the sale of his 1/3rd share in the equity of redemption over T.S. Nos. 665 and 666. Then defendants 13 and 14 in collusion with the said Ellayar brought B into existence a sale deed in their favour by antedating an agreement for sale. Therefore, the plaintiffs' father Vaiyapuri Chettiar filed O.S. No. 202 of 1942 in the Sub-court, Coimbatore against R.S. Ellayyar and his sons for specific performance of the agreement for sale of the 1/3rd share of the equity of redemption in T.S. No. 665 and 666. The defendants 13 and 14 were also made party defendants to the said suit. The suit ended in a decree for specific performance being granted in C favour of the plaintiffs' father Vaiyapuri Chettiar. Appeal from that decree was dismissed by Ext. A. 9 Judgment dated 11.7.1946. On 7.2.1945, the Subordinate Judge, Coimbatore executed Ext. A. 5 sale deed in favour of Vaiyapuri Chettiar in execution of the decree for specific performance, and he is said to have taken symbolic possession D of the properties. Thus, the plaintiffs' father Vaiyapuri Chettiar, the plaintiffs claimed, had mortgage rights over T.S. Nos. 665 and 666, when which were allotted to the aurasa sons of Annayyar under Ext. S. 5, partition deed and he became the owner of the equity of redemption in respect of 2/3rd of the said properties under Exts. A. 5 and A. 6. The balance of 1/3rd share in T.S. Nos. 665 and 666 which was vested E under R.K. Meenakshisundaram Iyer, the youngest of the three aurasa sons of Annayyar was admittedly purchased by defendants 13 and 14 on 29.12.1942 under Ext. A. 6 with a direction to discharge the 1/3rd share of the mortgage debt due to the plaintiffs' father under Ext. A. 4 assignment of Ext. A.3.

F The plaintiffs' father Vaiyapuri Chettiar, it is averred, then filed O.S. No. 54 of 1960 in the Sub Court, Coimbatore against defendants 13 and 14 for partition and separate possession of the 2/3rd share in the buildings and lands in T.S. Nos. 665 & 666. A preliminary decree for partition and separate possession was passed by consent of parties on 28.3.1950. Exhibit A. 11 is the certified copy of the preliminary decree G in that suit. When the final decree proceedings were pending, Vaiyapuri Chettiar and defendants 13 and 14 entered into a compromise. Accordingly, a final decree was passed on 6.10.1960 under Ext. S. 1. It is the case of the plaintiffs that as per Ext. S. 1 final decree the northern portion of T.S. No. 665 and a portion in the western extremity of T.S. No. 664 were allotted to defendants 13 and 14 and H the remaining portions of the property in the suit O.S. No. 64 of 1950

were allotted to the plaintiffs' father. The plaintiffs claimed that their father obtained symbolical possession of the properties allotted to him under the final decree on 19.1.1953 under Ext. A. 13 possession receipt passed in fevour of Vaiyapuri Chettiar in S.P. No. 23 of 1961 in O.S. No. 54 of 1960. According to the plaintiffs symbolic possession happened to be taken by the plaintiffs' father because there were tenants in the buildings on the suit properties. Since that date it is claimed, the plaintiffs' father and the plaintiffs have been in possession of the buildings and vacant portions in T.S. Nos. 665, 666 and 664.

In 1954, a portion of T.S. No. 666 was compulsorily acquired by the Erode Municipality. Subsequently T.S. No. 666 came to be sub-divided and T.S. No. 666/1 was allotted to the acquired portion and to the remaining portion T,S. No. 666/2. Compensation for the acquired portion in T.S. No. 666 was, it is stated, ordered to be paid to the plaintiffs in C.C.. No. 3 of 1957. Subsequently, it is stated, the plaintiffs were registered as the sole and exclusive owners of T.S. No. 666/2 in the revenue records. The Erode Municipality also said to have registered the names of the plaintiffs in the Town Survey Field Register. Again in March-April, 1964 the Erode Municipality is said to have registered the names of the plaintiffs in the House Tax demand register in respect of house doors Nos. 268, 269, 270, 271, 271-A and 272, situated in T.S. No 666/2. The plaintiffs claim to have been paying the property tax to the Municipality from 1st April, 1964 to 30th September, 1969, Whereat defendants 1 to 3 having raised objections the names in the property tax register were altered and Door No. 272 was registered in name of the first defendant and Door Nos. 269, 270, 271, & 271-A were registered in the names of the defendants 2 and 3. Door No. 269 was registered in the name of Kalyanasundaram Iyer. When the plaintiffs came to know of these alterations they filed Writ Petition No. 2790 of 1967 against the alterations but the Writ Petition was dismissed on the ground that the remedy of the plaintiffs lay in civil suit. Their writ appeal also failed. Subsequently they filed the instant suit O.S. 298 of 1970 for aforesaid reliefs. According to the plaintiffs, the defendants have no manner of right or title over the suit properties.

Defendants 1, 2, 6, 9, 10, 11, 12, 13, and 14 filed separate written statements.

The first defendant has denied that the building and the vacant site in T.S. Nos. 666 and 665 belonged to Annayyar and his three aurasa sons. According to her, her father-in-law Vakil Ramasamy Iyer

bacame entitled to the portion consisting of Door Nos. 269 to 272, Brough Road, Brode under a family arrangement. On his death, his son, her husband Ellusubramania Iyer, became entitled to the properties and he was in possession and enjoyment thereof directly and through tenants. On 1.5.1945, the first defendant's husband Ellusubramania Iyer based out the vacant site comprised in then T.S. No. 666 to one R.K. Venkatasamy Naicker, deceased father of defendants 2 to 4 for a period of ten years under Ext. S. 34. The said Venkatasamy Naicker put up Door Nos. 269, 270 and 271-A in T.S. No. 666. On the death of her husband and Venkatasami Naicker the first defendant herself granted a fresh lease in respect of Door Nos. 269, 270, 271 and 271-A to defendants 2 and 4. They in turn have sublet the said buildings to defendants 5 to 8. According to the first defendant, her predecessors and she have been in possession of the suit properties for more than 60 years and the three aurasa sons of Annayyar had absolutely no manner of right, title or interest over T.S. No. 666. It is categorically stated by the first defendant that the plaintiffis' father Vaiyapuri Chettiar did not obtain T.S. No. 666 or Door Nos. 269 to 272 under Exts. A. 5. and A. 8. The first defendant has also denied that defendants 13 and 14 obtained rights over 1/3rd share in T.S. No. 666/2 under the sale taken by them from Meenakshisundaram Iyer under Ext. A. 6. sale deed. The allegation that the plaintiffs' father took symbolical possession of T.S. No. 666/2 and the buildings thereon in execution of Ext. B.1 final decree in O.S. No. 54 of 1960, Sub-court, Coimbatore, has also been denied. On the other hand, it is categorically stated by the first defendant that the plaint schedule in O.S. No. 54 of 1960, on the file of the sub-court, Coimbatore filed by the plaintiffs' father for partition of the 2/3rd share purchased by him under Ext. A. 5. and A. 8. did not include T.S. No. 666 or Door Nos. 268 to 272 standing thereon; and that she was not aware of the acquisition proceedings in O.P. No. 3 of 1957, sub-court, Erode, she claims to be the owner of Door Nos. 268 to 272. The Erode Municipality according to her, ordered registration to be effected in her name in respect of the houses after due enquiry and after giving notice to the plaintiffs; and that, in any event, she and her predecessors-in-title have been in open, uninterrupted, and continuous possession of the suit properties for more than 60 years and that they have perfected title to the suit properties by adverse possession and limitation.

In his written statement, the second defendant corroborated that the first defendant's deceased husband Ellusubramania Iyer leased out the vacant site to his deceased father Venkatasamy Naicker for a period of two years under Ext. A. 30 dated 1.5.1946. The lessee was

permitted to construct buildings at his own expenses and at the end of ten years period, the lessee was to surrender possession of the property with the buildings to the lessor. There was an option given to the lessee to continue in possession of the property for a further period of five years, provided he increased the rent to Rs. 30 from Rs. 15 as originally fixed. According to him, pursuant to the lease deed Venkatasamy Naicker, father of defendants 2 to 4 constructed the buildings hearing Door Nos. 269, 270, 271 and 271-A. On 26.3.1963, the first defendant executed another lease deed in favour of Venkatasamy Naicker leasing out the site and the buildings bearing Door Nos. 269, 270 & 271, on a monthly rent of Rs.70. The said lease deed is marked as Ext. B. 3 and the period of lease was ten years. Venkatasamy Naicker died in 1964, and thereafter defendants 2 to 4 have been in possession and enjoyment of the said buildings and the site. Subsequently there was a family arrangement among defendants 2 to 4 under which the leasehold properties have been allotted to defendants 2 and 3. In other respects the second defendant has adopted the written statement of the first defendant.

The sixth defendant claims to be the sub-tenant under the father of defendants 2 to 4 in respect of Door No. 270. According to him, he took the lease from the father of defendants 2 to 4 in 1954 for the purpose of running a cycle shop and milk depot. subseqently he has been carrying a soda factory and milk depot in the buildings. Door No. 271 was taken on lease by the 7th defendant from the father of defendants 2 to 4 in 1953. He was continuing a hotel and beeda business. The sixth defendant is his son-in-law. Subsequently the 7th defendant has left the management of the hotel and beeda business to the 6th defendant who has also stated that he has made improvements in Door Nos. 270 and 271 by spending more than Rs.2500 and has paid electricity security deposit for Door No. 270. In other respects he has adopted the written statement of his lessors-defendants 2 to 4.

Defendants 9 and 10 have filed a joint written statement. They claimed to be in possession of Door No. 272 Brough Road, Brode. According to them, this property, which is a portion of T.S. No. 666 belongs to Mahaganapathi Dhandayuthapani Swamy temple belonging to Sambanda Swamy Matam. The plaintiffs have no manner of right, title or interest over the said property. Originally the father of these defendants had been in occupation of this property. He was then doing services in the temple. He died in 1915 and thereafter defendants 9 and 10 have been in possession and enjoyment thereof. They have further averred that the proceedings in O.A. No. 28 of 1970 are pending

A before the Deputy Commissioner, Hindu Religious and Charitable endowment, Coimbatore with respect to the property. They aver that the plaintiffs are not entitled to any relief; and they filed an additional written statement stating that in any event, they have perfected title to the site and Door No. 272, which has been in their possession for more than 50 years.

B

The 11th defendant stated that he has been running a petty shop in Door No. 272 in T.S. No. 666 for more than 25 years, and that T.S. Nos. 637 to 669 are all properties belonging to Sambanda Swamy Matam and the H.R. & C.E. Board had issued notices to all occupiers of T.S. Nos. 637 to 669 to surrender possession to Sambanda Swamy Matam. He also denied any right of the plaintiffs to the property in his C possession.

The 12th defendant is in Door No. 268. According to him Door No. 268 in T.S. No. 666 belonged to Ellayyar's family; and that his paternal grandfather, one Narayana Iyer, was employed as a Poojari in D Dhandeswaran Maha Genapathi and Dhandapani temples belonging to Ellayyar's family and as early as on 14.11.1896 a document was executed by the members of the family of Ellayar in favour of his paternal grandfather under which his paternal grandfather was permitted to live in the building and perform pooja in their temple. After the death of his grandfather his father was performing pooja and after his E death, he has been performing pooja in the temple. He also has denied the right of the plaintiffs in Door No. 268 in T.S. No. 666 either under Ext. A. 3. mortgage or under Ext. A. 5. The plea that the plaintiffs' father took symbolical possession of Door No. 268 is also denied. According to him Door No. 268 was not the subject matter of Ext. B. 1 final decree. Since his property was not acquired by the municipality, F he says, there was no nccessity at all for him to intervene in the land acquisition proceedings. Ever since 14.11.1896 he and his predecessors-in-interest have been in possession and enjoyment of Door No. 268 and the suit is barred by limitation.

Defendants 13 and 14 stated that in O.S. No. 54 of 1950 the G properties were divided between them and the plaintiffs' father, and that the suit properties were allotted to them according to the Commissioner's plan Ext. B. 2. Further, they stated, 'A' portion in the plan was delivered to them and the 'B' portion was allotted to the decreeholder Vaiyapuri Chettiar. They have denied the averment of the plaintiffs that only symbolical possession was given to Vaiyapuri H Chettiar. they state that in the order in E.S. No. 200 of 1954, the

executing court held that the decree-holder had obtained actual delivery of possession of the properties after demarcation and division thereof by the construction of the contemplated walls and on the properties taken delivery of by them under the said decree, they had put up superstructure and subsequently affected partition of the properties among themselves. According to them, no relief could be claimed by the plaintiffs against them.

The plaintiffs filed a reply statement to the contentions raised by the various defendants in their written statements.

During pendancy of the suit, the first defendant died and the 15th defendant was impleaded as her legal representative.

On the above pleadings, thirteen issues were framed of which the following need be mentioned:

> "1. Whether the first defendant's father-in-law bacame entitled to Door Nos. 268 to 272 Brough Road, Erode, under a family arrangement?
>
> 2. Whether the first defendant's husband became entiled to the said items under a family arrangement?
>
> 3. Whether the plaintiffs have title to the suit properties?
>
> 4. Whether the first defendant has perfected title to Door Nos. 269 to 272 by adverse possession?
>
> 5. Whether defendants 2 and 3 are tenants?
>
> 6. Whether Door No. 272 and T.S. No. 666 are temple properties?
>
> 7. Whether the 12th defendant is antitled to Door No. 268?"

During the trial the plaintiffs marked Ext. A. 1 to A. 154, and examined the first plaintiff as P. W. 1 and two independant witnesses as P. Ws. 2 and 3. The defendants marked Exts. B. 1. to No. 217 and examined the husband of the 15th defendant and the defendants 6, 2, 13 and 9 as S. Ws. 1 to 5.

A On a consideration of the oral and documentary evidence, the trial Court found on issue No. 3 that the plaintiffs have no title to the suit properties. Deciding issues 1, 2, 4, and 5 in favour of the defendants the trial Court found that Ellusubramania Iyer and his heirs have been in possession and enjoyment of Door Nos. 269 to 272 through their tenants for over the prescriptive period and that fact B probabilised the family arrangement pleaded by the first defendant. On issue No. 6, it was held that Door No. 272 and T.S. No. 666 were not temple properties as contended by defendants 9 and 10. On issue No. 7, the trial Court found that the 12th defendant was entitled to be in occupation of a portion of Door No. 268 shown as 'C' plot in Ext. A.1. in lieu of his services to the temple. In the result, the trial Court C dismissed the suit with costs by Judgment dated 31st January, 1975. Plaintiffs appealed.

In the Hight Court the appellants contended that the Subordinate Judge, Brode erred in coming to the conclusion that the plaintiffs have no title to the suit properties; and that "when once the title of the D plaintiffs to the suit properties is found in their favour, it is for the defendants to establish that they have prescribed title to the suit properties by deverse possession and limitation." The respondents' contention was that the title having been found in their favour the suit was rightly dismissed.

E The High Court formulated the following two questions for determination:

"1. Whether the plaintiffs have title to the suit properties?

2. Whether the defendants have prescribed title to F the suit properties by adverse possession and limitation?"

Naturally, the second question would arise only if the first question was answered in the affirmative. The High Court observed that if according to the plaintiffs, the suit properties originally belonged to Annayyar and that under Exhibit P-5 partition deed the suit proper- G ties devolved on Annayyar's aurasa sons, namely, R.A. Bllayyar, R.A. Sankaranarayanan Iyer and R.A. Meenakshisundaram Iyer and the plaintiffs' father Vaiyapuri Chettiar purchased the 2/3rd share of R.A. Bllayyar and R.A. Sankaranarayanan Iyer over the suit properties, if the plaintiffs have to succeed in the suit, it has to be found that under Exhibit P. 6 partition deed among Annayyar, his aurasa sons H and Vakil Ramasamy Iyer, father-in-law of the first defendant, the suit

properties were allotted to the aurasa sons, and that by subsequent purchase from Ellayyar and R.A. Sankaranarayana Iyer, Vaiyapuri Chettiar obtained 2/3rd share over the suit properties. The High Court has come to the conclusion that on the face of the overwhelming evidence it is not possible to accept the case of the plaintiffs that they are owners of the suit properties. As the plaintiffs have not proved there title over the suit properties, they are not entitled to a decree for recovery of possession of the suit properties. The High Court accordingly affirmed the findings of the trial court on all the issues and confirmed the Judgment and Decree of the trial court and dismissed the appeal with costs; and also declined leave to appeal.

At the hearing before us a preliminary point was raised by Mr. U.R. Lalit, the learned counsel for the respondents, that this appeal having been against concurrent findings arrived at by the courts below it has to be dismissed; and he relies on paragraph 6 of the decision in *Mithilesh Kumari* v. *Prem Behari Khare,* [1989] 2 SCC 95: JT 1989 (1) SC 275. Mr. Shanti Bhushan, learned counsel for the appellants, submits that both the questions formulated by the High Court are questions of law; and he relies on the decisions in *Chunilal V. Mehta & Sons. Ltd.* v. *The Century Spinning and Manufacturing Co. Ltd.,* AIR 1962 SC 1314: [1962] (3) Supp. SCR 549; *Jadu Gopal* v. *Panna Lal,* AIR 1978 SC 1329: [1978] (3) SCR 855; *Meenakshi Mills, Madurai* v. *The Commissioner of Income-tax, Madras*, AIR 1956 SC 49: [1956] SCR 691; *State Bank of Travancore* v. *A.K. Panikkar*, AIR 1971 SC 996 and *Kesar Singh* v. *Balwant Singh*, AIR 1957 SC 487: [1962] Supp. (1) SCR 325.

The preliminary objection need not detain us for long. In *Mithilesh Kumari* (supra) in paragraph 6 this Court ovserved:

> "It has been said in a series of decisions that ordinarily this Court in an appeal will not interfere with a finding of fact which is not shown to be perverse or based on no evidence *Babu* v. *Dy. Director*, AIR 1982 SC 766 but will interfere if material circumstances are ignored by the High Court.
>
> .....
>
> .....
>
> It was noted in *Ganga Bishan* v. *Jay Narayan,* AIR 1966 SC 441 that ordinarily this Court, under Article 136 of the Constitution, would be everse to interfere with concurrent findings of fact recorded by the High Court and the Trial Court. But where there are material irregularities

affecting the said findings or where the court feel that justice has failed and the findings are likely to result in unduly excessive hardship this Court could not decline to interfere merely on the ground that findings in question are findings on fact. So also in *Uday Chand Dutt* v. *Saibal Sen*, AIR 1968 SC 367 it was said that in an appeal by special leave under Article 136 of the Constitution of India where there are concurrent findings of the courts below this Court is not called upon to reconsider the entire evidence in detail to ascertain whether the findings are justified. In *Ram Singh* v. *Ajay Chawla*, AIR 1988 SC 514, where the concurrent finding was that the appellants were in unauthorised occupation of premises of which the respondents were the owners this Court did not interfere with the concurrent finding of fact."

The question, however, is whether the findings on the above two questions formulated by the High Court are pure findings of fact as distinguished from questions of law or mixed questions of law and fact. A 'fact' as distinguished from 'law' may be said to be that out of which the point of law arises. Law is a principle; fact is an event. The law, with respect to any particular set of facts is a decision of a court with respect to those facts so far as that decision affects that particular person. Mr. Justice Holmes, in 'The Path of the Law' (1897) in Collected Legal Papers at page 173 said: "The prophecies of what the courts will do in fact and nothing more pretentious are what I mean by the law."

An issue may be of fact or law or partly of fact and partly of law, raised by the pleadings, or otherwise and if decided may likely to be decisive of the litigation. If a party intends to raise a point of law on the facts pleaded, he may raise the point in pleading.

A party may by pleading raise any point of law. The facts alleged by a party may not be sufficient to raise the legal inference, or to afford the ground for relief. A party's own allegation may be insufficient to support the conclusion which he puts forward.

"Fact" means and includes-any thing, state of things, or relation of things, capable of being perceived by the senses; any mental condition of which any-person is conscious. The expression "facts in issue" means and includes- any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of

any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows. A

Benthan has classified facts into physical and psychological. By "physical facts" are meant such as either have their seat in some inanimate being or if in one that is animate, then not by virtue of the qualities which constitute it such; while "psychological facts" are those B which have their seat in an animate being by virtue of the qualities by which it is constituted animate. Thus, the existence of visible objects, the outward acts of intelligent agents, the *res gestae* of a law suit, etc, range themselves under the former class; while to the latter belong such as only exist in the mind of an individual: as for instance the sensations and recollections of which he is conscious, his animus or C intention in doing particular acts, etc. It was formerly considered that psychological facts were incapable of direct proof by the testimony of witnesses and their existence could only be ascertained either by confession of the party whose mind is their seat, or by presumptive inference from physical facts. But it is now recognised that the state of a man's mind is as much the subject of evidence as the state of his D digestion (see also *Sabapathi* v. *Huntley*, AIR 1938 PC 91: 173 IC 19) and accordingly witnesses are permitted to testify directly as to their own mental condition, although not generally to that of others. (Best, 11th Ed s. 12). A man's mental condition may be indicated by his conduct or by assertions. The former evidence is circumstantial and the latter direct. E

Best has also divided facts into two other classes viz, one is, that they were either, events or states of things. The fall of a tree is 'an event', the existence of tree is 'a state of things'. The other is, positive or affirmative and nagative.

F

There is always due importance on trial court's findings of fact. In *Sitalakshmi* v. *Venkata*, 34 CWN 593, 597 the Judicial Committee again drew the attention of the appellate courts to the principle laid down in *Khoo Sit* v. *Lim Thean*, [1912] AC 323, 325 that a trial Judge sees, bears and questions witnesses and a finding of fact arrived at by him on oral testimony should not be disturbed except in rare cases G where some error susceptible of being dealt with wholly by argument is disclosed, such as omission to take account of circumstances or probabilites material to an estimate of the evidence or giving credence to testimony which turns out one more careful analysis to be substantially inconsistant with itself or with indisputable fact. See also *Sarju* v. *Jwaleshwari*, AIR 1951 SC 120: [1950] SCR 781: *Radha Prasad* v. H

A *Gajadhar,* AIR 1960 SC 115: [1960] (1) SCR 663; *Karbada* v. *Chhaganlal,* AIR 1969 SC 395. As to the exceptions to the rules, see *Robin* v. *National Trust Ltd.*, 101 IC 903: AIR 1927 PC 66. The gist of the many decisions has been summarised by VISCOUMT SIMON in a case where he said:

B "... This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration" *Watt* v. *Thomas,* [1947] AC 484, 486; followed in *Sara Veeraswami* v. *Talluri,* AIR 1949 PC 32; 1949 Mad 487: 75 IA 252).

C An appellate court should not differ lightly from the finding of the trial judge on a question of fact, but a distinction in this respect must be drawn between the perception of facts and the evaluation of facts. Where there is no question of credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a postion to evaluate the evidence as D the trial judge, and should form its own independent opinion, though it will give weight to the opinion of the trial judge (*Benmak* v. *Austin Motor Co. Ltd.*, [1955] 1 All E.R. 326, HL.

In a case where the Judicial Committee preferred view of the subordinate Judge to that of the High Court in the matter of the E credibility of witnesses, it was observed that it is open to an appellate court to differ from the court which heard the evidence where it is manifest that the evidence accepted by such court of first instance is contradictory or is so improbable as to be unbelievable or is for other suffficient reasons unworthy of acceptance. But such grounds must exist, if a conclusion as to credibility, opposed to that of the judge who F had the great advantage of seeing and hearing the witnesses, is to be justified (*Bodhraj* v. *Sitaram,* 40 CWN 257 : 160 IC 45 : AIR 1936 PC 60). Where the trial judge has approached the evidence from a wrong standpoint and has applied wrong standards of probability, it is not merely a question of credibility of witnesses and the appeal court is not obliged to accept the estimate of the trial judge. When the appellate G court itself did commit such arrers it will not be acceptable to this Court.

When the findings as regards facts have been drawn from "argumentative inferences" from the testimony oral or documentary produced by a witness, and depend upon "the weight of evidenced" H and "the inherent improbability of the story" and not on the credibility

induced by his "whole demeanour in the witness-box", or "the manner in which he answers questions"—the trial court is in no better position than the court of appeal in discovering the truth (*Virappa* v. *Periakaruppan*, 49 CWN 211: AIR 1945 PC 35). A

It is true that concurrent findings of fact will not be disturbed unless it is shown that there has been a miscariage of justice or the violation of some procedure or principle or that they have been arrived at by reason of any error or method or mistake through neglect of any aspect of the evidence, or important aspects of the case escaped notice or failed to receive due emphasis, or that the forms of legal process were disregarded or principles of natural justice were violated or substantial and grave injustice resulted, or that it cannot be supported by the evidence or it is perverse, or that the rule of prudence that the evidence of an unreliable witness should not be accepted without corroboration has been departed from. It is also true that they will not be disturbed on the ground that inadmissible evidence was received, when the findings cannot on any reasonable view be regarded as based or dependant upon such evidence (*Kaolapati* v. *Amar*, AIR 1939 PC 249: 44 CWN 66). B C D

In an apeal by special leave there has to be a substantial question of law. The meaning of the expression "substantial question of law" was given by this Court in *Chunilal V. Mehta* v. *Century Spinning & Manufacturing Co. Ltd.*, (supra) in the following terms: E

> "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion; be whether it is of general importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well-settled and there is a mere question of applying those principles or that the plea, raised is palpably absurd, the question would not be a substantial question of law." F G

In that case the construction of a managing agency agreement, which was neither simple nor free from doubt was held to be a substantial question of law. Interpretation of a document of title is a question of law. H

A In *Chunnilal V. Mehta* (supra) a Constitution Bench of this Court laid down that it was well settled that construction of a document of title which was the foundation of the rights of parties necessarily raises a question of law. It was said in paragraph 2:

> Indeed it is well settled that the construction of a documents of title or of a document which is the foundation of the rights of parties necessarily raises a question of law."

B

In *Jadu Gopal* v. *Panna Lal* (supra) this Court observed in paragraph 33:

> "The existence or non-existence of both these primary facts depends on a construction of the basic documents: Deed of trust (Ex.l), Deeds Ex.3 and Ex.2. Construction of these basic documents which go to the root of the matter, is a question of law and could be gone into in second appeal."

C

D As regards the question of adverse possession it has been held by this Court that the question as to whether the possession of a person can be regarded in law as adverse possession is partly a question of fact and partly a question of law. In *Meenakshi Mills, Madurai* v. *The Commissioner of Income-tax, Madras*, (supra) this Court observed:

> "The further question that has to be determined is whether the above facts are sufficient to constitute adverse possession in law. Is the user continuous or fugitive? Is it as of right or permissive in character? Thus for deciding whether the defendant has acquired title by adverse possession, the Court has firstly to find on an appreciation of the evidence what the facts are, so for, it is a question of fact. It has then to apply the principles of law regarding acquisition of title of adverse possession, and decide whether on the facts established by the evidence, the requirements of law are satisfied. That is a question of law."

E

F

G We accordingly overrule the preliminary objection and proceed to decide this appeal on merits.

Mr. Shanti Bhushan argues that the father of the plaintiffs Vaiyapuri Chettiar had derived title to T.S. No. 666 on the basis of sale deeds executed in his favour about 90 years prior to the filing of H the instant suit. They are Ext. A. 6 dated 10.12.1942 and Ext. A. 3

dated 7.2.45 which were executed by the Court in pursuance of the decree for specific performance. A

As has already been said, by these two sale deeds 2/3rd share has purchased by the plaintiffs' father Vaiyapuri Chattiar. The 3rd aurasa son also sold his 1/3rd share in favour of defandants 13 and 14 by Ext. A. 6 dated 29.12.1942. According to counsel all these three sale deeds B expressly referred to T.S. No. 666 which made it clear that even if no reference to the boundaries was made yet the documents of title clearly included T.S. No. 666 also, and the High Court erred in not mentioning in its Judgment the vital fact that these three documents of title expressly included T.S. No. 666. According to counsel, even the mortgage deed dated 4.7.1936 Ext. A. 3. which has been executed by the 3 aurasa sons in favour of Salem Bank also expressly referred to not only C T.S. No. 665 but also T.S. No. 666 in the description of the property. This document also would declare that aurasa sons and title to T.S. No. 666 also which they had conveyed by subsequent title in favour of Vaiyapuri Chettiar and defendants 13 and 14. Similarly it is pointed out that Ext. A.L. dated 9.12.1942 an assignment of mortgage right by D Salem Bank to the plaintiffs' father Vaiyapuri Chettiar in which also the property had been described by reference to T.S. No. 666 and it included not only T.S. No. 666 but also T.S. No. 665. Even a reference to the boundaries in Ext. A. 2 dated 31.5.1921 being the mortgage deed by the aurasa sons would according to him make it clear that even these boundaries could have reference only to T.S. No. 666 and to T.S. E No. 665. The Southern boundary of the property therein had been described as "North of Dandapani Temple and Chatram buildings'. According to counsel T.S. No. 666 was partly to the north of T.S. No. 668 and partly to the north of T.S. No 637 as would be clear not only from the Ext. Sketch A. 1 but also from the published revenue map Ext. A. 213. A reference to that revenue map would, according to counsel, F show that T.S. No. 666 was partly to the north of 666 and partly to the north of 667 and that was why in Ext. A. 2/1921 the boundaries of the property therein was described as being to the north of Dandapani Temple and Chatram etc. building. Counsel denies, in face of emphatic assertion by the respondents, that there was a Chatram in T.S. No. 666 also. According to him a Chatram existed in T.S. No. 668 G only and the temple existed in T.S. No. 667 only, and there was no Chatram in T.S. No. 666 but certain individual persons were occupying T.S. No. 666 and that there was no document clearly establishing that there was any Chatram in T.S. No. 666 but all established that there was only one Chatram at Brough Road (perundurai Road) in Erode that was in T.S. No. 668. That was the only document relied on by the H

A defendant as the power of attorney Ext. B. 170 dated 25.1.1904 and, according to counsel, even this document did not refer to any two Chatrams but referred to only two Chatram properties. The original Tamil entries which have been referred to in the High Court judgment and the revenue map which was prepared on the basis of sketch and map in 1899 Ext. S. 213, it is submitted, T.S. No. 668 contained the B Chatram (Chaultry) had two distinct buildings contained in the same survey number. One to the West and other to the East as shown in revenue map of 1899 and that it is clear that these were regarded as two Chatram properties in the power of attorney dated 25.1.1904 Ext. B. 170. The oral statement of D.W. 4 the Poojari, that the suit property was known as 'Sudhra Chaultry' was, it is submitted, clarified C when he stated in cross examination: "To my knowledge the suit property was not used as a Chaultry at any time." As we shall see hereafter this assertion was belied by evidence on record.

Mr. Shanti Bhushan further submits that even the reference to the boundaries in the partition deed of 1896 Ext. B. 5 dated 21.8.1986 D showed that the property which was allotted to the aurasa sons under that partition deed include T.S. No. 666 also, namely, "East of the house of Sivarama Chetty and Ponnaya Chetty," Interpreting the statement it is submitted that a reference to the Town Survey Field Register extract of Erode Town Ext. A. 150 would show that Sivarama Chetty was the occupant of T.S. No. 662 and Ponnaya Chetty was the E occupant of 663. A reference to records of measurement Ext. A. 134 would also show, according to him, that Survey No. 662 was not the West of Survey No. 666 at all and if 665 alone had been the subject matter of partition deed of 1896 the Western boundary could have only shown the house of Ponnaya Chetty and it could not have by any possibility mentioned the house of Sivarama Chetty also. On the other F hand, it is submitted , if both these survey Nos. 665 & 666 were the subject matter of that partition deed then the houses of Sivarama Chetty and Ponnaya Chetty both have to be of the Western boundaries under partition. It may be mentioned that the High Court clearly found a Chatram on T.S. No. 666.

G With reference to the partition suit OS No. 54 of 1950 it is submitted that even if T.S. No. 666 had not been the subject matter of partition in the suit between the plaintiff Vaiyapuri Chettiar and the defendants 13 and 14, yet it would not affect their title to Survey No. 666 but would continue to be joint between them, and that it is settled law that persons can bring a suit for possession over a property against H persons who do not have any title to it particularly if they join all

concerned as defendants. Since defendants 13 and 14 have been impleaded as defendants in the suit it would be immaterial as to whether in suit OS No. 54 of 1950 T.S. No. 666 had or had not been divided between them. Counsel points out that the certified copy of the original plaint showed that the first part of the description of the property was in Tamil which referred to T.S.. Nos. 665 & 666 and only thereafter something had been added by typing in English which might at the best introduce some ambiguity in the document relating to the partition suit and, therefore, the document related to question of title which arose out of the title deed executed in 1942 and 1945 i.e. Ext. A.6. and A.8 could be referred to. Thus by a process of argumentative inference title is to be found in this document.

Counsel points out that the first defendant did not claim any title or possession to the whole of T.S. No. 666 but only to the part of that T.S. number where Door Nos. 269 to 272 were situated as shown in Sketch Plan shown as Ext. A. 1 and para 3 of her written statement clearly showed that her sole claim to the title or possession related to that portion only of survey No. 666 whereupon Door Nos. 269 to 272 were situated and DW-1, the sole witness of Defendant No. 1, said in his evidence:

> "During my father-in-law's childhood days itself his father Ramaswamy Iyer died. Partition was effected. In it, under Ex. B. 5 in T.S. No. 666 there was no share given to Vakil Ramaswamy Iyer."

It is also submitted that the defendant No. 12 was the Poojari N.G. Narayanasami Sastri who is respondent No. 7 herein and who has given evidence as DW-4 acted as such on the basis of the permission given to him by document dated 14.11.1896 and since then he and his ancestors had been in possession of Door No. 268.

It is further submitted that in 1956 when a part of survey No. 666 was compulsorily acquired under the Land Acquisition Act for the construction of a lane by the Municipal Board that part was No. 666/1 and the rest of the Survey No. 666 was numbered as 666/2 and the Award dated 21.8.1953 was only in favour of the plaintiff Vaiyapuri Chettiar which also indicated that he was the owner of T.S. No. 666 and was entitled to compensation and respondent No. 7 was a party among others to the Land Acquisition Proceedings.

On the question of adverse possession it is submitted by Mr.

A Shanti Bhushan that even the claim of adverse possession of Door Nos. 269 to 272 was not justified in law and DW-1 who is the son-in-law of Defendant No. 1 clearly deposed:

> "But a permission was given to Vakil Ramasamy Iyer to stay in one portion of T.S. No. 666 to continue his advocate
B practice. I do not know that, permission was given under Ex. B. 5 or later. But at door No. 272 Ramaswamy Iyer was residing and doing advocate practice."

According to counsel it is clearly a matter of admission that the possession of Vakil Ramasamy Iyer was only over Door No. 272 and was limited to that portion of Survey No. 666 and it had commenced by
C way of permissive possession only at the time of partition between him and the rest of the family and no part of Survey No. 666 was given in partition to Vakil Ramasamy Iyer except in Door No. 272 and that permissive possession cannot be converted into adverse possession unless clearly the hostile title is asserted by the person in possession to
D the knowledge of the true owner; and that no evidence was laid on behalf of the defendant No. 1 that any such hostile title to the knowledge of the true owner was ever set up, so as to prescribe any kind of title to that portion of T.S. No. 666, and their possession could, therefore, be regarded only as possession on behalf of the true owner. It is pointed out that by the sale deeds dated 19.6.75, 21.8.84 and
E 22.8.84 the legal representatives of defendant No. 1, i.e. respondent No. 8 herein, had sold the entire suit property, namely, T.S. No. 666 to respondent Nos. 9 to 12. It should, however, be noted that the question of permissive or hostile possession presupposes title of the plaintiffs without which the question would not arise at all.

F Mr. U.R. Lalit, learned counsel appearing for the respondents, submits in refutal that the concurrent findings of the courts below are wholly based on the Exts. and the conduct of the plaintiffs and their father throughout the litigation. The plaintiffs' case to the extent that their father Vaiyapuri Chettiar became entitled to 2/3rd share belonging to R.A. Ellayyar and R.A. Sankaranarayana Iyer, the aurasa sons
G of Annayyar under Ext. A. 5 and from respondents 13 and 14 similarly acquired 1/3rd share of Meenakshisundaram Iyer under Ext. A. 8. is not denied. But it is pointed out that Vaiyapuri Chettiar then filed O.S. 54 of 1950, in the Sub-court, Coimbatore against defendants 13 and 14 for partition and recovery of his 2/3rd share under Exts. A. 5 and A.8. Exhibit A. 10 is the copy of the plaint filed by Vaiyapuri
H Chettiar where he averred that he had obtained an undivided 1/3rd

share of the plaint schedule properties from R.A. Sankaranarayana Iyer under a sale deed dated 10.12.1942 Ext. A.5 and he obtained a decree for specific performance against R.A. Ellayyar and his sons in respect of his 1/3rd share in O.S. No. 202 of 1942 and in execution of the decree in E.P. No. 82 of 1944, the Sub-court had executed a sale deed Ext.A.8 in his favour on 7.2.1945 in respect of the said undivided 1/3rd share belonging to R.A. Ellayyar. It was therein admitted that for the remaining 1/3rd share defendants 13 and 14 had obtained a sale deed, Ext. A.6, from Meenakshisundaram Iyer and his snos. It is pointed out that the property schedule therein included only T.S. Nos. 664/Part and 665 and buildings bearing New Door Nos. 140 and 141 Brough Road (Ward No. 18) and New Door Nos. 273, 274 and 275 in T.S. Nos. 664/Part and 665. The said property was described as bounded on the East by perundurai Road, on the South by the Chatram etc. buildings, belonging to Sankaranarayana Iyer, Ellayyar and Meenakshisundaram Iyer, on the West by the scavenging lane belonging to Sankaranarayana Iyer, Ellayyar and Meenakshisundaram Iyer and the house of N.N. Krishnaswamy Mudaliar and on the North by Easwaran Koil Road and Ellusubramania Iyer's house. Significantly the present suit properties which are T.S. No. 666/2 and the buildings bearing Nos. 268 to 272 were not included in the plaint schedule in O.S. No. 54 of 1950. If really the case of the plaintiffs was that what was conveyed to the aurasa sons of Annayyar under B. Schedule of Ext. B. 5 included or covered Survey No. 666/2, there could be no earthly reason why the plaint in O.S. No. 54 of 1950, which was a suit filed by Vaiyapuri Chettiar, the successor-in-interest of Sankaranarayana Iyer and Ellayyar for partition and recovery of possession of his 2/3rd share could not have included T.S. No. 666/2 and also door Nos. 268 to 272. It is not disputed that O.S. No. 54 of 1950 was filed by Vaiyapuri Chettiar for partition of his 2/3rd share of the property obtained by him under Exts. A. 5 and A. 8. and that the plaint description did not include or cover Survey No. 666/2 and Door Nos. 269 to 272. The fact that Vaiyapuri Chettiar omitted to include T.S. No. 666/2 in the plaint schedule in O.S. No. 54 of 1950 particularly when he has described the plaint schedule properties with meticulous care, mentioning T.S. number of the land as well as door numbers of the buildings therein proves that he did not get any right, title or interest over T.S. No. 666/2 under Exts. A. 5. and A. 8—sale deeds. We find the submission reasonable. *Expressio unius est exclusio altorious.* Expression of one thing is the exclusion of another. The submission that Vaiyapuri Chettiar in his anxiety to get rid of defendants 13 and 14 from joint ownership of the properties. might have failed to correctly describe the properties in the plaint in O.S. No.

64 of 1960 is not acceptable. It clearly showed what properties were required by Vaiyapuri Chettiar by dint of Exts. A. 5. and A. 8. Naturally he could not have laid claim to more than what he received under the two transactions evidenced by the two Exts. A. 5 and A. 8. This is consistent with the jack that defendants 13 and 14 also did not raise any claim to T.S. No. 666/2 at all in that suit. Again during the trial of that suit both parties made a joint endorcement on the basis of which a preliminary decree Ext. A. 11 dated 26.3.1950 was passed granting a decree in favour of Vaiyapuri Chettiar for 2/3rd share of the suit properties. The description of the properties therein was, as it necessarily had to be, the same as in the plaint. Pursuant to the preliminary decree the plaintiff, Vaiyapuri Chettiar filed I.A. No. 1452 of 1990 Ext. 139 in O.S. No. 54 of 1950 for the appointment of a Commissioner to divide the properties in terms of the preliminary decrees. Accordingly a Commissioner was appointed on 25.8.1950 and Ext. S. 215 was the Commissioner's report wherein the Commissioner had stated that on 23.9.1950 he visited the properties and took Measurements for dividing the properties into three equal shares. At about 5 P.M. the plaintiff and the defendants represented to him that they themselves had come to an agreement regarding the mode of division of the properties in the presence of Panchayatdars. *The Parties, the Panchayatdars and the Commissioner set throughout the hight, discussed the mode of division and ultimately came to an agreement with regard to mode of division. An agreement was entered into on the same day and the said agreement was marked as Ext. A. 135 in that suit.* 'A' schedule in the agreement had been allotted to the present defendants 13 and 14 while 'B' schedule had been allotted to Vaiyapuri Chettiar. The property that had been allotted under 'B' schedule of Ext. A. 135 to Vaiyapuri Chettiar comprised T.S. Nos. 664/Part and 665/part and Door Nos. 273 and 274 and the vacant site. The said property was said to be bounded on the North by Easwaran Koil Road and Ellusubramania Iyer's house, on the West by Brough Road, on the South by Dhandapani Koil and the Chetram and building belonging to Pillayyar, Sankaranarayana Iyer and Meenakshisundaram Iyer and on the East by scavenging lane belonging to Ellayyar and the house of N.N. Krishnaswami Mudaliar. No portion of T.S. No. 666/2 and none of the door Nos. 268 to 272 had been included in the A. Schedule property allotted to Vaiyapuri Chettiar under Ext. A. 135. The Commissioner had further stated in Ext. B.215 that on the basis of the agreement he took measurements and drew up a plan with the help of the kernam of Brode and one Surveyor. The plan prepared by the Commissioner has been marked as Ext. A. 2. The portion marked 'A' in Ext. A. 2 has been allotted to defendants 13 and 14 and the portion marked as 'S' in

Ext. B.2 has been allotted to Vaiyapuri Chettiar. On the basis of Exts. B.215 report and A. 2 plan, a final decree was passed by the Sub-court, Coimbatore in terms of Ext. A. 135 on 6.10.1930. Ext. O. 1 is the said final decree. Pursuant to the final decree, Vaiyapuri Chettiar obtained possession of the property. Exhibit A. 12 is the warrant of possession dated 12.1.1953 and it showed that the property was delivered over without dispossession of those who were shown to be occupying the buildings as found in Ext. B.2 plan. Mr. Lalit points out that not a whisper has been made in the present suit that the description of the plaint property in Ext. A. 10 suit was not correct and that for some cause or other T.S. No. 666/2 has been omitted to be included in the plaint schedule. Counsel submits that if really T.S. No. 666/2 belonged to the aurasa sons under the partition deed, the plaintiffs' father would be entitled only to 2/3rd share in the suit properties under Exts. A. 5 and A. 8 and defendants 13 and 14 would he entitled to the remaining 1/3rd share and the present plaint could have proceeded on the basis that the plaintiffs were entitled to only 2/3rd share and defendants 13 and 14 were entitled to the remaining 1/3rd share. But that is not the basis on which the present plaint had been filed. We find force in this submission. As the High Court observed, no plausible explanation has been given in the plaint as to why the plaintiff's father, who must have known what exactly was the property that he purchased under Exts. A. 5 and A. 8 did not include T.S. No. 666/2 and Door nos. 268 to 272 in Ext. A. 10 plaint. P.W. 1 admitted that no objection was filed to Ext. B. 2 plan prepared by the Commissioner. P.W. 1 and stated that the Commissioner did not measure the property lying south of the portion marked as 'B' in Ext. B. 2 plan, for being measured by the Commissioner. As Mr. Lalit submits, when Vaiyapuri Chettiar, the Panchayatdars and defendants 13 and 14 sat with the Commissioner the whole of the night on 23.9.1950, they must have been aware of the actual situs and extent of the land which had to be divided between Vaiyapuri Chettiar on one hand and defendants 13 and 14 on the other. If really they were entitled to T.S. No. 666/2 and Door Nos. 268 to 272, either Vaiyapuri Chettiar or defendants 13 and 14 would surely have insisted the said land being included and divided therein. The failure on the part of Vaiyapuri Chettiar to include the suit properties in O.S. No. 54 of 1950 and getting them divided therein is very significant and cannot be ignored. There is also the mention of an agreement arrived at between the parties. It clearly showed that the documents of title by virtue of which the partition was claimed did not mean to include T.S. No. 666/2. The proceedigs in O.S. No. 54 of 1950, submits Mr. Lalit, commencing from the filing of Ext. A. 10 plaint and culminating in delivery of possession under Ext. A. 135 are sufficient

A B C D E F G H

A to prove that the plaintiffs' father did not acquire any right over T.S No. 666/2 and door Nos. 268 to 272. *Quod per recordum probatum non-debitesse negatum.* What is proved by record ought not to be denied.

Mr. Lalit refers to Ext. B. 170, the Power of Attorney dated
B 25.4.1904 executed in favour of one Kalyanasundaram Iyer for the purpose of management of Temple properties shown in its B Schedule in Tamil. From the text the High Court held that it was clear that there were two Chatrams and a Pillaiyar Koil which belonged to the Ellayyar family. This clearly belied the submission that there was no Chatram on T.S. No. 666 and the only Chatram was on T.S. No. 668. It was the
C Chatram on T.S. No. 666 that formed the southern boundary, in Ext. B-4 Sudhra Chathira tiled house and in Ext. B-5, B Schedule, Sudhra Chaultry. Again, Mr. Lalit points out, the plaintiffs filed an application before the Erode Municipality for permission to put up a construction on the vacant site in the properties obtained by them in execution of the decree in O.S. No. 54 of 1950. Exhibit A. 19 is the
D approved plan under which the plaintiffs obtained sanction for the construction of the building. A perusal of Exhibit A. 19 sanctioned plan shows that the construction was proposed only in T.S. Nos. 665/ Part and 664/Part. Apart from the site on which the construction was proposed, the plan showed the then existing construction on the property. *The southern boundary was given as Door No. 268 and T.S. No.*
E *666.* If really the plaintiffs were entitled to T.S. No. 666/Part they would not have shown, in Ext. A. 19, T.S. No. 666 as the southern boundary of their properties. The High Court rightly observed that this was one of the circumstances which went against the case of the plaintiffs that they were entitled to the suit properties. P.W. 1 had admitted that the northern boundary in Ex. A. 19 was the common
F wall which was shown in Ext. B. 2 plan as separating the portions marked as A and B therein. He had further admitted that the measurement on the southern side of the property shown in Ext. A. 19 was 139 feet, which tallied with the southern measurement shown in Ext. B. 2 plan. P.W. 1 had also not disputed the fact that the eastern boundary shown in Ext. A. 19 and Ext. B. 2 was the same. The High Court
G observed that these circumstances clearly proved that the plaintiffs were not entitled to any portion of T.S. No. 666/2 and the buildings therein.

Admittedly under Ext. A. 13 the plaintiffs took symbolical possession of the properties allotted to him under Ext. B. 1 final
H decree in O.S. No. 54 of 1950. Exhibit A. 13 itself showed that there

were occupants in the buildings found in the portions marked at A and B in Ext. B. 2 plan. Therefore, symbolic possession was delivered. It could by no means show, in view of T.S. No. 666/2 having not been included in the decree, that symbolical possession of T.S. No. 666/2 was taken.

It is in evidence that one Devathi Rao was running a hotel in Door Nos. 273 and 274. Exhibit B.2 plan showed that a coffee club building existed in the B marked portion. Therefore, Devathi Rao was not in occupation of the building situated in T.S. No. 666/2. The 12th defendant was living in Door No. 268 which comprised portions marked A, B and C in Ext. A. 1 sketch and performing poojas in the temple. The 10th defendant was in possession of Door Nos. 271 and 271-A. The 5th defendant Thambayya Naidu was in occupation of Door Nos. 269 and 270. There is no evidence of the Bailiff having affixed notice of symbolical delivery on Door. Nos. 268 to 272. It is in evidence that in Ext. A. 13 possession receipt contained only the attestation of Devathi Rao, who was conducting a coffee hotel in the B marked portion, in Ext. B. 2. It is also in evidence that the plaintiffs did not pay house tax for buildings other then Door Nos. 273 and 274, nor they thought it fit to cnquire till 1964 as to who were paying the house tax in respect of the buildings situated in the suit properties. The High Court has rightly observed that it was rather strange that when the plaintiffs have come forward with a case that they obtained symbolical delivery of the suit properties under Ext. A. 13 possession reciept in O.S. No. 54 of 1950, they are not in a position even to say as to who were in occupation of the buildings in the suit properties on the date of Ext. A. 13. If there were tanants, as stated by P.W. 1, in the properties at the time when the plaintiff obtained symbolical possession under Exhibit A. 13, the tenants must have attorned to him and as and when the old tenants left the premises new tenants could have been inducted into the premises only with the knowledge of the plaintiffs, who claim to be the owners of the properties. The High Court has therefore concluded that there was absolutely no evidence of any act of possession having been exercised by the plaintiffs in respect of the properties prior to 1964 except as regards the construction of a lavatory to an extent of 400 square feet. Admittedly prior to 1964 no notice had been given to the contesting defendants by the plaintiffs. The High Court therefore concluded that the failure to exercise any act of possession over the suit properties and coupled with the fact that the plaintiffs did not even attempt at any time to find out as to how and under what right these various defendants have been in possession of the suit properties can only lead to the irressistible couclusion that the plaintiffs and their predecessors-

A in-interest did not obtain any right, title or interest over the suit properties. We do not find any reason to differ in this regard.

Mr. Lalit refers us to Ext. B. 34 which is the registered lease deed dated 1.5.1946, executed by Ellusubramania Iyer in fevour of R.K. Venkataswamy Naicker, father of defendants 2 to 4 who claimed B possession of Door Nos. 269, 270, 271 and 271A. The second defendant in his written statement has stated that his father obtained Ext. B. 34 lease deed and then constructed Door Nos. 268, 270 and 271A. This plea of the second defendant was made out by Ext. B. 34 lease deed, whereby a vacant site in T.S. No. 666 was leased out to Venkataswamy Naicker for a period of ten years on a monthly rent of Rs.15. The leassee had been permitted to put up building. There was a provision C that on the termination of the lease the land together with the buildings should be surrendered to the lessor. The lease had been renewed subsequently by the first defendant himself. The High Court observed that when P.W. 1 was confronted with Ext. B. 34 lease deed, he did not deny the fact that Ellusubramania Iyer executed Ext. B. 34 in D favour of father of defendants 2 to 4. There is no evidence to show that the plaintiffs or anybody else under the permission of the plaintiffs constructed the buildings bearing Door Nos. 269 to 271, There is evidence to show that the second defendant's father having taken lease under Ext. B. 34 from Ellusubramania Iyer and having put up construtions bearing Door Nos. 269 to 271. Exhibits B. 35 to B. 37 are the rent E receipts issued by Ellusubramania Iyer to the leassee for receipt of rents. Exhibits B. 39 to B. 42 are records to show that the leassee Venkataswamy Naicker sublet the buildings to various persons. Exhibits B. 43 and B. 44 are the accounts maintained by Venkataswamy Naicker for the construction of the buildings. The High Court was rightly convinced that door Nos. 269 to 271 were put up by Ven- F kataswamy Naicker pursuant to Ext. B. 34. High Court found it impossible to believe that if really the plaintiffs were entitled to the suit properties, they would have remained quiet when Venkataswamy Naicker had constructed not one but three buildings over the suit properties which would not have failed to attract the attention of the plaintiffs. The explanation that the plaintiffs came to know about the G lease deed and the occupation of the defendants 2 to 4 in portion of T.S. No. 666 or any portion of the suit properties only at the time when the plaintiffs filed a writ petition in the High Court, cannot be accepted. It was not denied that the T.S. number referred to in Ext. B. 34 is 666.

H In Ext. A. 132 dated 24.5.1911 entered into among Ellusubra-

mania Iyer and others, Ellusubramania Iyer had been allotted 'A' schedule property. The property that fell to the share of Vakil Ramasamy Iyer under C. schedule under Ext. B. 5 partition deed, has been allotted to Ellusubramania Iyer. The property is described as lying on the South of Easwarn Koil Street, on the North of the house of Nilayyar and the vacant site, on the East by the house of Ramachandra Rao and on the West by Perundurai Road. This property is shown in Ext. A. 1 sketch as T.S. No. 664. It is admitted by all parties to the suit that the survey number of this portion is only T.S. No. 664. The plaintiffs themselves have admitted that these defendants are in possession of Door Nos. 268 to 272 and they were unable to give any explanation as to how and when these persons came into possession of the respective doors occupied by them. Mr. Lalit submits that this probabilised that the plaintiffs had no title to the suit properties. We are inclined to agree.

Mr. Lalit also explains two other facts in evidence. As has already been said a portion of T.S. No. 666 was compulsorily acquired by the State under the Land Acquisition Act. Exhibit A. 15 shows that the Municipal Commissioner had applied for the acquisition of 582 square feet of land in T.S. No. 666 for the formation of a scavenging land. Exhibit A. 16 dated 21.3.1966 was the Award passed by the Tehsildar, Erode, of Rs.532-0-3. The names of the occupiers of the property were given therein one of whom was Vaiyapuri Chettiar. Exhibit A. 17 is the order passed in C.C. No. 3 of 1957, on the file of the Sub-court, Erode under Section 31(2) of the Land Acquisition Act. The 7th claimant in C.C. No. 3 of 1957 was Vaiyapuri Chettiar and he having died, the present plaintiffs were impleaded as claimants 8 to 11 and they were found to be entitle to the compensation amount awarded by the Tehsildar under Ext. A. 16. Mr. Shanti Bhushan, learned counsel for the appellants, heavily relied upon Ext. A. 17 as an instance where the title of the plaintiffs over T.S. No. 666 was recognised and compensation for the portion enquired from that survey number was given to the plaintiffs. Mr. Lalit refutes the claim submitting that no notice was given to the defendants and as such they were not aware of it. Counsel further submits that Ext. A. 17 contained a list of documents filed therein by the present plaintiffs and that only the documents which have been marked in this suit as Ext. A. 5. sale deed executed by Sankaranarayana Iyer in favour of Vaiyapuri Chettiar, Ext. A. 8. sale deed executed by the sub-judge, Coimbatore to Vaiyapuri Chettiar, Ext. A. 3 mortgage deed executed by R.A. Ellayyar in favour of Salem Bank and Ext. A. 4 assignment of mortgage executed by the Salem Bank in favour of Vaiyapuri Chettiar had

been filed, along with a copy of revenue map of Erode Town Block No. 23. This means none of the documents connected with O.S. No. 54 of 1950, on the file of the Sub-court had been filed by the plaintiffs such as Ext. A. 10 plaint, A 11 preliminary decree, B.213 Commissioner's report, B.1 final decree, B.2 plan drawn by the Commissioner and A.13 possession receipt. In the circumstances, the High Court rightly concluded that the mere fact that under Ext. A.17 order dated 30.11.1957 the plaintiffs were allowed to draw the compensation in respect of a portion of T.S. No. 666, could not constitute any proof that the plaintiffs had title to the suit properties. We see no reason to differ.

Mr. Shanti Bhushan emphasised the fact of the plaintiffs erecting a lavatory in 1958 covering an area of 400 square feet inside T.S. No.666/2. Mr. Lalit, however, points out that it was admitted that the first defendant tried to prevent the plaintiffs from constructing it and that notwithstanding the opposition, it was constructed. We agree with the High Court that this opposition strengthened the case of the contesting defendants showing that the plaintiffs were opposed by the first defendant when they attempted to exercise their title over T.S. No. 666/2 by constructing a lavatory as early as 1959. Admittedly, the plaintiffs had not taken any steps against the first defendant immediately thereafter till 1964. At that time Door Nos. 268 to 272 were existing on the suit properties and the contesting defendants were admittedly in the possession thereof. There was no evidence of any proceeding initiated earlier against them. Mr. Lalit submits that the proceedings of the Erode Municipality with respect to the transfer of registration in respect of T.S. No. 666, in the name of one or the other parties to the suit was not of much significance as the same had started only in 1964 and the suit was filed in 1970. Therein also, at one stage the transfer of registration was effected by the Municipality in the name of the plaintiffs. But immediately the first defendant raised objection to the same and the Municipality got the registration transferred back to the original name. Thereupon, the plaintiffs filed the writ petition in the High Court and the same having failed they filed writ appeal which also having failed they filed the present suit for declaration of their title to the suit properties and for possession thereof.

On close consideration of the evidence on record, the arguments advanced by the learned counsel for the parties and the reasons given by the High Court affirming the decree of the trial court, and the historical introduction to the derivation of title by the plaintiffs as

given by Mr. Shanti Bhushan with analysis and precision, we had to discuss the evidence in detail. However, from what the plaintiffs' father himself considered to have acquired by dint of Exts. A.5 and A. 8 and the decree obtained by him in O.S. No. 54 of 1950 appeared to us to be much more important than what the plaintiffs have claimed in this suit. While interpreting the Exts. A. 5 and A. 8 and the decree one has to take into consideration what the parties themselves intended. *Quia non refert out quis intionem suam declarat. verbis out rebus ipsis vel factis.* It is immaterial whether the intention be collected from the words used or the acts done. Intention was manifested in the acts performed by the parties concerned pursuant thereto. It was immaterial that T.S. No. 666 was there in the deeds. *Intentio mea imponit nomon operi meo.* My intent gives a name to my act. *Facta sunt potentiora verbis.* facts are more powerful than words. *Factum cuique suum adversario hocere debet.* A party's own act should prejudice himself, not his adversary. *Traditio logui facit certam.* Delivery makes a deed speak. Delivery gives affect to the words of a deed. What was delivered pursuant to the decree on interpretation of the sale deeds has to be accepted as the parties themselves after night-long deliberation fixed and accepted.

In the above view of the matter, the right to T.S. No. 666/2 having not been acquired at all, no question of adverse possession against the plaintiffs would arise at all. The plaintiffs case has to fail for want of proof of title to T.S. No. 666/2. The second question posed by the High Court would not arise.

Adverse possession by nature implies the ownership of another. Where one person is in possession of property under any title, and another person claims to be the rightful owner of the property under a different title, the possession of the former is said to be adverse possession with reference to the latter. Adverse possession is a statutory method of acquiring title to land by limitation. It depends on *animus* or intent of occupant to claim and hold real property in opposition to all the world; and also embodies the idea that the owner of the property has knowledge of the assertion of ownership by the occupant. "ownership of property is, says Austin, "a species of jus in rem. It is a right residing in a person, over or to a person or thing; and availing against other persons universally or generally. The obligations implied by it are also negative as well as universal" (Austin on Jurisprudence p. 177). "It is a right imparting to the owner a power of indefinite user, capable of being transmitted to universal successors by way of descent, and imparting to the owner the power of disposition (from himself and

A his successors per universitatem and from all other persons who have a *spes successionis* under any existing concession or disposition), in favour of such person or series of persons as he may choose, with the like capacities and powers as he had himself, and under such conditions as the municipal or particular law allows to be annexed to the B dispositions of private persons." (Ibid, p. 412-13).

In the instant case Vaiyapuri Chettiar was never proved to have acquired ownership of T.S. No. 666/2. Under section 54 of the Transfer of Property Act, delivery of tangible property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Under section 55(f) of that Act the seller is to give, on C being so required, the buyer, or such person as he directs, such possession of the property as its nature permits. There is no evidence of T.S. No. 666/2 ever having been delivered to Vaiyapuri Chettiar. On the other hand the Commissioner's plan and the partition decree did not include T.S. No. 666/2. It cannot, therefore, be said that Vaiyapuri D Chettiar acquired any title to it. Obviously, the plaintiffs also could not inherit the same.

This appeal accordingly fails and is dismissed. We leave the parties to bear their own costs of the appeal.

V.P.R. Appeal dismissed.