

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2015

CORAM:

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

Second Appeal Nos.2052 & 2053 of 2004

SA.No.2052 of 2004

1.Tmt.Santha
2.Mangalakshmi

Defendants/Respondents/ Appellants

.. Vs ..

1.K.Kollapuri (deceased)
2.K.Rajendran
3.K.Karunanidhi
4.Sokkubai
5.Ilankani
6.Sathyavani

.. Plaintiffs/Appellants/Respondents

RR4 to 6 are brought on record as LR's of the deceased R1
vide order of Court dated 14.06.2012 made in
CMP.No.9016 of 2006 in SA.2052 of 2004.

SA.No.2053 of 2004

1.Cheran
2.Mangalakshmi
3.Tmt.Santha

.. plaintiff/Respondent/Appellants

.. Vs ..

1.K.Karunanidhi
2.Sokkubai
2.K.Kollapuri (deceased)
4.K.Rajendran
5.Ilankani
6.Sathyavani

.. Plaintiffs/Appellant/
Respondents

RR4 to 6 are brought on record as LR's of the deceased R1
vide order of Court dated 14.06.2012 made in
CMP.No.9017 of 2006 in SA.2053 of 2004.

Prayer : Both the Second Appeals are filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 22.10.2003 made in A.S.Nos.261 and 262 of 2000 respectively on the file of the Additional District & Sessions Court (Fast Track Court No.II), Chennai reversing the Judgment and Decree dated 22.03.2000 made in O.S.Nos.5450 & 5615 of 1994 respectively on the file of the City Civil Court, Chennai.

For Appellants : M/s.M.Sriram

For Respondents : M/s.Inamdar Ameenur Rahman

COMMON JUDGMENT

The appellants herein are the defendants in OS.No.5450 of 1994 and the plaintiff in OS.No.5615 of 1994. While OS.No.5450 of 1994 is filed by the deceased first respondent and the respondents 2 and 3 for the relief of partition and separate possession of half share of the suit property and for future mesne profits, OS.No.5615 of 1994 is filed by the appellants in SA.No.2053 of 2004 for permanent injunction restraining the defendants 1 to 3 who are the plaintiffs in OS.No.5450 of 1994 from in any manner interfering with their peaceful possession and enjoyment of the suit property.

2. Both the suits are filed in respect of same property bearing door No.6, Kumarasamy Rajapuram, 3rd street, Demellows Road, measuring an extent of 400sq.ft within the four boundaries morefully described in the suit schedule.

3. For the sake of convenience, the parties are referred to as per their rank in the comprehensive suit in OS.No.5450 of 1994 which is also earlier in point of time.

4. The suit property originally belonged to one Kandasamy and the husband of the first defendant/Santha and the father of the second defendant/Mangalakshmi and father-in-law of the first plaintiff in OS.No.5615 of 1994 by name Natarajan was admittedly the son born to the original owner Kandasamy and Irusammal. The first plaintiff in OS.No.5450 of 1994 by name Kollapuri is the father, whereas the plaintiffs 2 and 3 are his sons. The first plaintiff Kollapuri was admittedly born to Irusammal. While according to the plaintiffs, the deceased first plaintiff/Kollapuri and Natarajan were the sons born to Kandasamy and Irusammal and Kandasamy during his life time partitioned the property between his two sons Kollapurai and Natarajan by a partition memo dated 15.10.1960 and as both the sons were minors Kandasamy was looking after the property on behalf of the minors and after the death of father/Kandasamy during 1976 and mother/Irusammal during 1984, the brother Natarajan was managing the affairs of the suit property as Kollapurai was unemployed and leading a wayward life and possession of the suit property was with Natarajan till his death during 1994 and such possession was for himself and on behalf of his brother

Kollapuri, who is the co-owner of the property and after his death on 27.02.1994, the first defendant came to be in the occupation of the same and the plaintiffs 2 and 3 who are the sons of the first plaintiff and the second defendant, who is the daughter of other brother Natarajan acquired interest in the suit property by birth as co-owners and the possession is on behalf of all the co-owners and while all the plaintiffs are together entitled to half share, the defendants are entitled to half share in the suit property. The first plaintiff also paid Rs.3000 during 1988 being his share towards the discharge of his father's debts. Though the plaintiffs have been demanding partition and separate possession since 1987 from the deceased brother and thereafter the defendants, the defendants have been evading the same.

5. The plaintiffs claim for partition and separate possession for half share was seriously disputed by the defendants by denying the paternity of the first plaintiff and by denying the first plaintiff share to claim any right in the suit property. According to the defendants the first plaintiff Kollapuri was not born to Kandasamy and Irusammal but born to Irusammal through her first husband by name Pettai Munusamy @ Munusamy and the suit property after the death of original owner Kandasamy was devolved upon his only son late Natarajan and during and after the life time of Natarajan, the defendants have been in possession and enjoyment of the property and the defendants 1 and 2 become entitled to equal half share in the same and the first defendant Santha sold her half share in favour of her son in law by name Cheran by sale deed dated 07.03.1994 and after the sale deed the second defendant and her husband who are the plaintiff in OS.No.5615 of 1994 are the absolute owners of the suit property and the dispute as raised by the plaintiffs was given quietus in the panchayat held and the plaintiffs were paid Rs.3000/- and the plaintiffs having received the amount started interfering with the peaceful possession and enjoyment of the property without any right to do so and the first plaintiff also issued legal notice claiming share in the suit property ignoring the decision of the panchayat.

6. Both the suits were commonly tried by the Trial Court. The trial Court on the basis of common oral and documentary evidence adduced on both sides, arrived at conclusion that the first plaintiff Kollapuri was not proved to be the son born to Kandasamy and Irusammal and Ex.A7 partition agreement or partition memo is for want of proof and want of registration, cannot be held to be true and valid document binding on the defendants, as such, the plaintiffs and the defendants are not the co-owners and the plaintiffs cannot claim partition of the suit property as heirs of Kandasamy and Irusammal and the defendants have been admittedly in possession and enjoyment of the suit property and such possession is not on behalf of the plaintiffs and the plaintiffs cannot interfere with the possession and enjoyment of the property. The trial Court having found so, dismissed the suit for partition and decreed the suit for permanent injunction in favour of the defendants in OS.No.5450 of 1994. Aggrieved against the same, the plaintiffs preferred AS.Nos.261 and 262 of 2000. The lower appellate Court reversed the findings of the

trial Court by casting the burden on the defendants to disprove the paternity of Kollapuri and by placing reliance on Ex.A6 birth extract and by accepting the validity of Ex.A7 unregistered partition deed dated 15.10.1960. The lower appellate court accepted the claim of the plaintiff and found that Kollapuri was the son born to Kandasamy and Irusammal and Kandasamy partitioned the property between his two sons Kollapurai and Natarajan under Ex.A7 and the possession of Natarajan was on his behalf and on behalf of his co-owner and the possession of the first defendant/wife of Natarajan was again on behalf of all the co-owners i.e, the plaintiffs and the second defendant and the signature of Kollapuri was obtained in the statement recorded by the Panchayat and in the Panchayat decision without knowing the contents of the same and the payment of Rs.3000/- to Kollapuri by Natarajan under Ex.B3 was only towards discharge of debts incurred by Kandasamy and on the basis of such findings held that the plaintiffs are entitled to half share in the suit property along with mesne profit and accordingly allowed both the appeals by decreeing the partition suit and by dismissing the injunction suit. Hence, the present two second appeals by the defendants in partition suit and plaintiffs in the injunction suit.

7. Both the second appeals are admitted on the following common substantial questions of law :

(i) Whether the findings of the lower appellate court that the first respondent is the son of Kandasamy based on Ex.A6 which is not supported by oral and documentary evidence when admittedly the first appellant's husband viz., K.Natarajan is the son of Kandasamy?

(ii) Whether the findings of the lower appellate court are perverse when the lower appellate Court having come to the conclusion that in those days in the birth certificate there will be an entry with regard to male or female and the names of parents, the lower appellate Court ought not to have believed Ex.A6 in favour of the first respondent when there is a rival contention by the appellant that Ex.A6 is with regard to first appellant's husband viz., Natarajan?

(iii) Whether the suit for partition filed by the respondents is liable to be dismissed on the ground of non-joinder of necessary parties when the other legal heirs of the deceased Kandasamy are very much alive?

(iv) Whether Ex.A7 Kurchit is admissible in evidence when admittedly it was not properly stamped and properly registered?

(v) Whether the lower appellate Court is correct in coming to the conclusion that the appellants are not entitled for injunction against the co-owners when the first respondent has not proved the fact that he is the son of Kandasamy and

whether the lower appellate Court is not correct in following the principle of possession follows title?

8. Heard the rival submissions made on both sides and perused the records.

9. The facts that the suit property originally belonged to Kandasamy and one K.Natarajan who was the husband of the first defendant/Santha and the father of second defendant/Mangalakshmi had been in possession and enjoyment of the property during his life time and died during 1994 and the defendants 1 and 2 have been in possession and enjoyment of the same and the first defendant sold half share in the suit property in favour of one Cheran, who is none else than the husband of the second defendant/Mangalakshmi and the son in law by name Cheran is also arrayed as one of the plaintiffs in the injunction suit filed by the defendants 1 and 2 herein are not denied herein. The plaintiffs claim half share in the suit property on the ground that the first plaintiff was born to Kandasamy and Irusammal and Kandasamy partitioned the suit property in equal share among his two sons and the possession of the suit property by Kandasamy before the partition and thereafter by Natarajan and after his death by the defendants 1 and 2 are on behalf of the plaintiffs. The plaintiffs in support of their claim as stated above relied on two documents i.e., Exs.A6 and A7. Ex.A6 is purported to be the birth certificate of Kollapuri and Ex.A7 is unregistered document styled as partition memo purportedly executed by Kandasamy. The genuineness and validity of both documents was not accepted by the trial Court. Ex.A7 was held to be not true and valid and not binding on the defendants by the same trial Court. Whereas the lower appellate Court reversed the findings of the trial court and accepted the claim of the plaintiff by relying on those documents.

10. As far as Ex.A6 is concerned, the same was admittedly the birth extract obtained from corporation during 1993. The reading of the same reveals that the same is in respect of male child born on 07.04.1939 to one Kandasamy and Irusammal residing at No.24, Old Cheque madu salai, Madras and it does not contain the name of the child. The plaintiffs have as rightly found by the trial court not proved that it relates to Kollapuri and not to other son of Natarajan. Though the name of the parents are given in Ex.A6 as Kandasamy and Irusammal, their address given in the same is different from that of the address of the parents mentioned in other documents. The reading of the recitals contained in Ex.X4 statement of Kollapuri, Ex.B1 decision of the Panchayatars and Ex.A7 unregistered sale deed would reveal that Kandasamy and Irusammal originally resided at 3rd street, Kumarasmy Rajapuram and thereafter shifted to Thiru.Vi.Ka Nagar and they had another house in VOC Nagar which was handed over to Kollapuri etc., Further in none of the documents, Kandasamy and Irusammal were stated to be residing at Choolai area. The deceased first plaintiff has except examining himself as PW1 not examined any other independent witness in support of his claim that he was born to Kandasamy and Irusammal and Ex.A6 birth extract related to him. However, the appellate Court accepted the documents as relating

to Kollapuri not on the basis of any other independent evidence but on the failure of the defendants to prove the birth certificate of other son Natarajan. In my considered view, such course adopted by the lower appellate Court court is totally erroneous and on misconception of law and facts. The plaintiffs having come to Court with specific claim are bound to prove the same and to succeed on the strength and weakness of their own case and not otherwise.

11. Even otherwise, the defendants have in order to show that the deceased Kollapuri admitted himself to be the son of Pettai Munusamy, produced Ex.B1 containing the statement of Natarajan and Kollapuri and panchayat decision dated 27.11.1988 signed by the plaintiffs and the defendants and the Panchayatars, Ex.B2 receipt for payment of the amount and Ex.B3 undertaking affidavit, Ex.X4 letter signed by the second plaintiff/Rajendran in the presence of Panchayatars, who recorded Ex.B1 statement of Natarajan and Kollapuri and who also recorded Ex.B2 receipts and Ex.B3 Undertaking affidavit. In all these documents and in the evidence of DW2 the deceased Kollpauri was described as the son of Pettai Munusamy.

12. Exs.B1 to B4 and X4 would reveal that all the documents wherein Kollapuri was described as the son of Pettai Munusamy were signed by either Kollapuri or Kollapuri and his son Rajendran. Though the first plaintiff/Kollapuri as PW1 in his evidence seek to deny the contents of the same and seeks to putforth new plea that his signature was obtained without reading out the contents of the same, no such case is put forth regarding Ex.X4 which is signed by the second plaintiff/Rajendran wherein the second plaintiff/Rajendran undertook to bring Kollapuri for the Panchayat. The plaintiffs have also not denied the signature in Ex.B3 affidavit of undertaking, wherein Kollapuri admitted the factum of Receipt of Rs.3000/- and agreed not to make any claim in respect of property in question. When that being so, no reliance can be placed on Ex.A6 birth extract in support of the case of the plaintiffs regarding the paternity of the first plaintiff/Kollapuri. While the trial court has duly appreciated the documentary evidence available before the same, the lower appellate Court omitted to consider the vital aspects as discussed above in respect of the documents as referred to above and the same has misguided the lower appellate court and placed more reliance on Ex.A6 to accept the plaintiffs claim.

13. The next document to be looked into is Ex.A7 purported to be partition memo and partition agreement. Though the document is styled as partition agreement, the same is purported to be the document in respect of the partation made by the original owner Kandasamy among Kollapuri and Natarajan in respect of the suit property. While the trial court rightly ignored the same for want of any registration, the lower appellate Court failed to consider the nature of the document and validity and legality of the same for want of registration. As rightly argued by the learned counsel for the defendants, the parties having claimed the relief on the basis of the documents the unregistered documents cannot be received as evidence and cannot even be looked into

for collateral purpose as viewed by the learned brother judge of this court in the judgment reported in 2015-1-LW-137 Ramalingam and others V. Ramachandran wherein it is held that the document having been not properly stamped and registered, is invalid evidence as such the reliance placed on the same by the lower court for holding the claim of the plaintiffs is legally unsustainable.

14. Excluding Ex.A6 and Ex.A7 the plaintiff's claim regarding the paternity of Kollapuri and regarding their right to claim share in the property has by relying on Ex.B1 to Ex.B3 and Ex.X4, to be necessarily negated and is rightly negated by the trial Court.

15. Regarding the plea of possession, the same is admittedly with Natarajan during his life time and thereafter with the defendants 1 and 2. The plaintiffs claim that the same is on behalf of the co-owners cannot be accepted in view of the denial of paternity of first plaintiff/Kollapuri and his right to any share in the suit property. In the event of the plaintiffs case being negated in this regard, the possession of the defendants is only in their own right as legal representatives of the deceased Natarajan, whose paternity is not disputed. The husband of the first defendant and the father of the second defendant/Natarajan who was admittedly born to Kandasamay and Irusammal, is entitled to the entire property and his wife and his daughter who are the defendants 1 and 2 herein, are entitled to succeed to the same in equal shares. The first defendant/Santha having sold the property to her son-in-law/Cheran who is the first plaintiff in the injunction suit, he becomes the co-owner of the property along with the second defendant and their possession in the capacity of the owners cannot be disturbed by the plaintiff without any right to do so. The judgment and decree of the lower appellate court hence warrants interference and the substantial questions of law are accordingly answered in favour of the appellants/defendants.

16. In the result, both the second appeals are allowed thereby setting aside judgment and decree of the lower appellate Court and by restoring the judgment and decree of the trial Court. No costs.
Tsh

Sd/-

Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

1. The Additional District & Sessions Court
(Fast Track Court No.II), Chennai
2. The Registrar,
City Civil Court, Chennai.

+2 C.C. To MR.M.SRIRAM, Advocate in SR.NO.13817

+2 C.C. To MR.INAMDAR AMEENUR RAHMAN, Advocate in SR.NO.14044 &
14045 [6/11/2015]

SA.Nos.2052 & 2053 of 2004

AD(CO)
sd : 14/10/2015



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