

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.10.2020

Pronounced on: 15.10.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

S.A.No.1123 of 2010
& M.P.No.1 of 2010

Nallangi Konar,
S/o.Late Chinna Samy,
Pallakadu Village,
Naduvalur Post, Gangavalli Taluk,
Salem District. ... Appellant/2nd Defendant

/versus/

1. Kumaresan,
S/o.Sadayan,
Pallakadu Village,
Naduvalur Post,
Gangavalli Taluk,
Salem District.
2. Tmt.Pichayee,
W/o.Chinnasamy Konar,
Appamasamudram Village,
Attur Taluk, Salem District. ... Respondents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree passed in A.S.No.2 of 2005 dated 27.08.2009, on the file of Subordinate Judge, Attur, confirming the judgment and decree in O.S.No.387/1996 on the file of District Munsif, Attur, dated 29.04.2004.

For Appellant : Mr.S.Kamadevan

For R1 : Mr.V.Rajesh

For R2 : No appearance

JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent No.1.

2. This Second Appeal is filed by the 2nd defendant/Nallangi Konar in the suit aggrieved by the concurrent findings of the Courts below. The suit O.S.No.387 of 1996 was filed by the Kumaresan through his mother against Chinnasamy Konar and Nallangi Konar (Appellant herein) for declaration and injunction in respect of suit property.

3. According to the plaint, the plaintiff is the absolute owner of the suit property which was purchased in his name from one Pichayee on 24.11.1995 for valuable consideration. The said Pichayee is the daughter of the 1st defendant. The plaintiff vendor Pichayee got the property through settlement deed dated 06.06.1983 executed by her father, the 1st defendant and same was sold by Pichayee for consideration of Rs.33,000/~ to the plaintiff on 24.11.1995. After the alienation of the property by her daughter, the 1st defendant with ulterior motive on 07.12.1995 cancelled the settlement deed executed in favour of his daughter Pichayee. The said cancellation deed is void, invalid and not binding on the plaintiff. However, after illegal and invalid cancellation of the settlement deed, the defendant Nos.1 & 2 joint together and tried to dispose the plaintiff forcibly. Hence, the suit for declaration and consequential injunction is prayed for.

4. The defendant contested the suit on the ground that the plaintiff is not the absolute owner of the property. The sale deed executed by Pichayee in favour of the plaintiff on 24.11.1995 is not a valid transaction since the settlement in favour of Pichayee was cancelled by the 1st defendant prior to the alienation and said cancellation was registered subsequently. The settlement deed in favour of Pichayee by the 1st defendant is a sham and nominal document not acted upon. The possession was not given to Pichayee pursuant to the said settlement deed. Hence, it was cancelled subsequently on 07.12.1995. The property being an ancestral property, 1st defendant has no right to settle the property in favour of Pichayee.

5. The Trial Court, on considering the evidence both documentary and oral has held that, the suit property is a self acquired property of the 1st defendant. He has absolute right to settle the property. The settlement deed (Ex.A.2) dated 06.06.1983 is valid and irrevocable. The subsequent cancellation

is void. Pursuant to the settlement deed, the property has absolutely got vested with Pichayee. The said Pichayee in turn has sold the property to the plaintiff for valuable consideration. Hence, the plaintiff is entitled for relief of declaration and injunction.

6. Aggrieved by the said decree, the plaintiff has preferred the appeal before the Subordinate Court, Attur.

7. The Appellate Court, on re-appreciation of the evidence affirmed the decree of the Trial Court. Having settled the self acquired property in favour of his daughter, the 1st defendant is estopped from cancelling the settlement deed. The recital of the settlement deed (Ex.A.2) reveals that the property was transferred in praesenti to Pichayee and the said Pichayee has given the possession to the plaintiff on execution of the sale deed (Ex.A.1) dated 24.11.1995.

8. The Learned Counsel appearing for the appellant contended that the settlement deed dated 06.06.1983 in favour of Pichayee was not acted upon and she never took possession of the property. Therefore, the cancellation of settlement executed by the 1st defendant is valid and the declaration of title as well as injunction ought not to have been decreed in favour of the plaintiff/respondent herein.

9. On examining the relevant documents and the oral evidence of the witnesses, this Court is unable to come at any other different decision than what the Lower Courts have arrived. The said Chinna Samy Konar, who is the 1st defendant in the suit has settled the property to his daughter on 06.06.1983, stating that, the property is a self acquired property. He out of love and affection, settle the property in favour of his daughter Pichayee and from that day onwards, the possession passes to Pichayee and the settlor hereinafter have no right over the property, after 12 years of execution of this settlement deed, the 1st defendant has registered the document naming it as ?cancellation of settlement?. This document has no enforceability. The vendor of the plaintiff, who got the property under the settlement deed (Ex.A.2) had mutated the revenue records, taken possession of the property and had been enjoying till she sold the property to the plaintiff under sale deed dated 24.11.1995 document marked as Ex.A.1.

10. While so, knowing that the respondent has purchased the property from her daughter, the defendants have tried to disposes the plaintiff which has let to filing of the suit for declaration of title and injunction.

11. The Courts below, on facts have found that the title and possession vest with the plaintiff and decreed the suit accordingly. There is no merit in the Second Appeal. Hence, the Second Appeal is dismissed, with costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

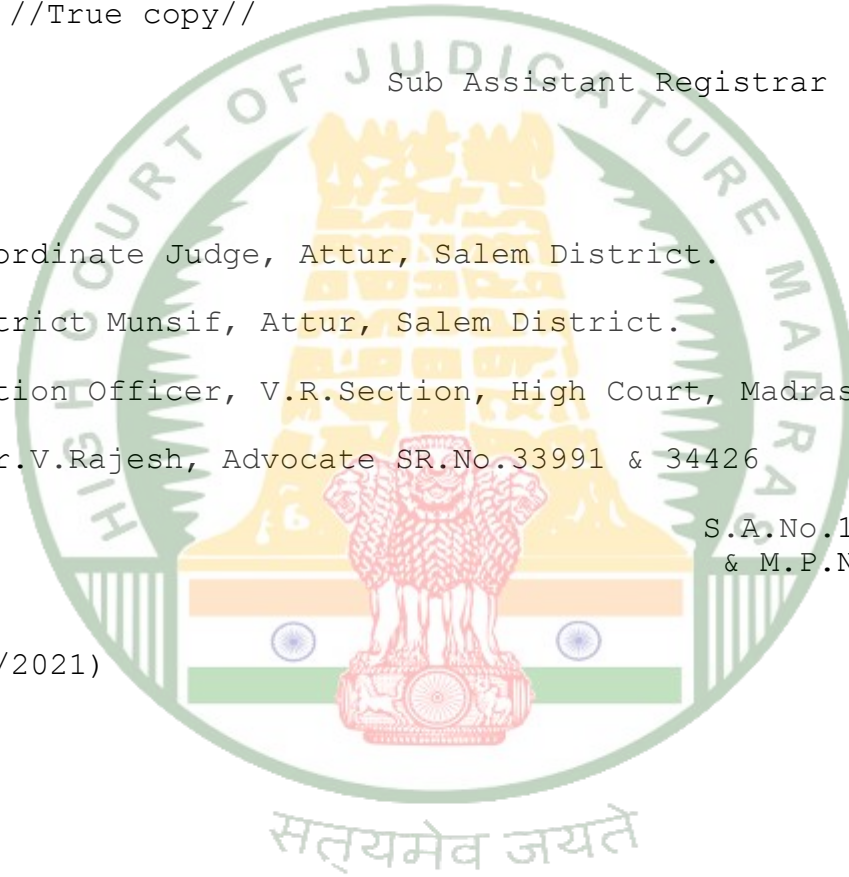
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To:

- 1.The Subordinate Judge, Attur, Salem District.
 - 2.The District Munsif, Attur, Salem District.
 - 3.The Section Officer, V.R.Section, High Court, Madras.
- +2cc to Mr.V.Rajesh, Advocate SR.No.33991 & 34426

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KK(CO)
GMY(06/05/2021)



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