



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 24.11.2021

JUDGMENT PRONOUNDED ON : 02.12.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD) .No.1209 of 2005

S.Thangaraj
S/o.Sankaralinga Konar

...Appellant/Appellant/
Defendant

Vs

1.P.Ramalakshmi Ammal
W/o.Late.Perumal Konar

2.P.Shammugasundari
D/o.Late.Perumal Konar

3.P.Thangaponnu
D/o.Late.Perumal Konar

4.P.Balamurugan
S/o.Late.Perumal Konar

...Respondents/Respondents/
Plaintiffs

PRAYER : Second Appeal is filed under Section 100 of C.P.C, to allow the second appeal by setting aside the judgment and decree of the Subordinate Court, Ambasamudram passed in A.S.No.93 of 2004 dated 28.07.2005 confirming the judgment and decree of the District Munsif Court Cum Judicial Magistrate Court, Cheranmahadevi passed in O.S.No.448 of 2000 dated 23.04.2004.

For Appellant : Mr.P.Senthurpandian
Advocate

For Respondents :Mr.S.Kumar
Advocate
For M/s.Uma Ramanathan

JUDGMENT

The defendant is the appellant herein.

2.The plaintiffs filed O.S.No.448 of 2000 before the District Munsif Cum Judicial Magistrate Court, Cheranmahadevi for the relief of permanent injunction restraining the defendant from encroaching the plaint 3rd schedule property or alienate or encumber the said property



3.The suit was decreed by the trial Court. The defendant had filed A.S.No.93 of 2004 before the Subordinate Court, Ambasamudram. The first appeal was dismissed. As against the concurrent finding, the present second appeal has been filed by the defendant.

4.The second appeal was admitted on the following substantial questions of law:

"(i)whether the Courts below are legally right in relying upon the deed of cancellation of sales in Ex.A10 cancelling the sale deed Ex.B3 after 20 years under which poolu konar the predecessor in title sold half of the disputed 3rd item property to Angappa Konar which are against Sections 90 and 91 of Evidence Act and transfer of property Act?

(ii)whether the Courts below are legally right in granting a decree of injunction with regard to the 3rd item property without the respondent/plaintiff asking for declaration of his title particularly when title is strongly disputed?

(iii)the Courts below having found that Exhibits A2 to A7, Exhibits A12 to A29 of the respondent/plaintiff are not related to the disputed 3rd item property and thus their possession having not been proved, are legally right in granting a Decree for injunction in their favour based on possession relying upon the Building permit?

5.The learned counsel for the plaintiffs before the trial Court has contended that the suit schedule properties originally belonged to one Perumal Konar under Exhibit A1 sale deed. According to the plaintiffs after death of the said Perumal Konar, the legal heirs of Perumal Konar are in possession and enjoyment of the suit schedule properties who are the plaintiffs in the present suit. The plaintiffs further contended that they have produced revenue records to establish their right and possession over the suit schedule properties. The plaintiffs further contended that the defendant is the son of one Sankaralinga Konar who is the elder brother of the deceased Perumal Konar, the husband of the first plaintiff and he is attempting to encroach the 3rd item which is a vacant site.

6.The defendant has filed a written statement and disputed the Exhibit A1 sale deed in favour of the said Perumal Konar. The defendant further disputed the right title and possession of the plaintiffs . The suit 1st item of the property has been sold away under Exhibit B3 by the father of the said Perumal Konar. The defendant further contended that the entire 2nd schedule property belongs to the Sankaralinga Konar and the defendant is in enjoyment as a co-owner and there cannot be a decree for injunction as against the co-owner till the 2nd schedule property is partitioned.

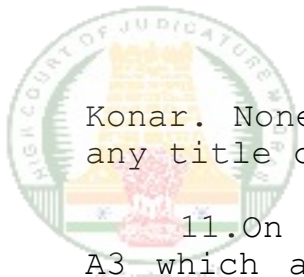


7.The trial Court found that 3rd item of suit schedule property has been allotted to one Poolu Konar under Exhibit A1 family arrangement. Under Exhibit B3, the said Poolu Konar had executed a sale deed in favour of one Angappa Konar for an extent of 4 cents. Thereafter, the said sale deed has been cancelled by the Poolu Konar under Exhibit A10. In the result, 4 cents of property which was allotted to Poolu Konar under Exhibit A1 family arrangement was retained by the said Poolu Konar. One Nallakannu Konar was allotted another 4 cents under Exhibit A1 family arrangement. The legal heirs of the said Nallakannu Konar had sold away the said 4 cents to Poolu Konar under Exhibit A11. The said Poolu Konar became owner of 8 cents, thereafter, the said Poolu Konar has executed Exhibit A1 sale deed in favour of his son namely Perumal Konar for 8 cents of property. The present plaintiffs are the legal heirs of the said Perumal Konar. The trial Court after going through the documents and revenue records, came to the conclusion that the plaintiffs are the owners of the properties and they are in possession of the suit schedule properties. The trial Court also came to the conclusion that the 3rd item of suit schedule property is in enjoyment of the plaintiffs and decreed the suit as prayed for.

8.The First Appellate Court after a detailed discussion, came to the conclusion that the suit schedule properties are vacant site and they are in possession and enjoyment of the Poolu Konar and thereafter, the plaintiffs are in possession of the said properties. The First Appellate Court also came to the conclusion that the defendant is no way connected with the suit schedule properties and he is not entitled to disturb the possession of the plaintiffs and thereafter, dismissed the appeal. As against the same, the present second appeal has been filed.

9.Heard the learned counsel for the appellant and the learned counsel for the respondents.

10.Admittedly, one Sankaralinga Konar was the owner of 12 cents of property. After his demise, his three sons namely Nallakannu Konar, Poolu Konar and Pechi Konar entered into a family arrangement under Exhibit A1 under which each one of them got 4 cents. The legal heirs of Nallakannu Konar have executed a registered sale deed in favour of the Poolu Konar under Exhibit A11 for an extent of 4 cents which was allotted in favour of Nallakannu Konar in the family arrangement. Thus, it is seen that the said Poolu Konar became the owner of 8 cents of land. Though Poolu Konar had sold away 4 cents of land under Exhibit B3 in favour of Angappa Konar, the said sale deed has been cancelled by him under Exhibit A10. The cancellation of the said sale deed has not been challenged by the purchaser namely Angappa Konar. Hence, the said Poolu Konar retained 8 cents of land. The said 8 cents was sold away by Poolu Konar in favour of his son namely Perumal Konar under Exhibit A1 registered sale deed. The present plaintiffs are the legal heirs of the said Perumal



Konar. None of the documents on the side of the defendant discloses any title or possession in favour of the defendant.

11.On the other hand, the plaintiffs have filed Exhibits A2 and A3 which are tax receipts, Exhibits A7 and A8 which are building plan approval granted by the Town Panchayat for construction of a building in the suit schedule properties. The Courts below have found that Exhibits B8 to B13 tax receipts filed by the defendant does not relate to the suit schedule properties. The trial Court as well as the Appellate Court have concurrently found that the plaintiffs have established their title and possession over the suit schedule properties.

12.The defendants have relied upon the cancellation deed namely Exhibit A10 to dispute the title of the plaintiffs. One Angappa Konar is the purchaser under Exhibit B3 sale deed executed by Poolu Konar. The said sale deed has been cancelled by the said Poolu Konar under Exhibit A10 on the allegation that the purchaser has not discharged the mortgage. This cancellation under Exhibit A10 could be challenged only by the purchaser namely Angappa Konar and the present defendant cannot question the legality or otherwise of Exhibit A10 cancellation deed.

13.In view of the above discussions, all the substantial questions of law are answered as against the appellant and the second appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

Note :

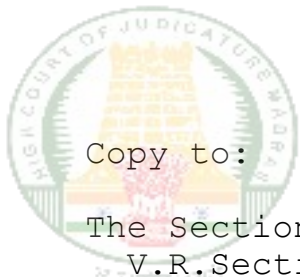
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Subordinate Judge
Ambasamudram

2.The District Munsif Cum Judicial Magistrate
Cheranmahadevi

<https://hcservices.ecourts.gov.in/hcservices/>



Copy to:

The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai

+1 CC to M/s.SENTHUR PANDIAN, Advocate (SR-36936[F] dated 02/12/2021)

+1 CC to M/s.S.KUMAR, Advocate (SR-37090[F] dated 02/12/2021)

S.A(MD) .No.1209 of 2005

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MGJ(04.01.2022) 5P 7C