



S.A.(MD) No.574 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.574 of 2012

and

M.P.(MD) No.2 of 2012

1.Abdul Anees Khan Khader
2.Asees Khan
3.Kapeel Khan
4.Rafeek Khan

... Appellants/Appellants/
Defendants 6 to 9

Vs

1.P.R.Sivashanmugam
2.P.Chenniappan
3.R.Palaniappan
4.R.Ganesan
5.M.K.Srinivasan
6.M.K.Manikavasagam

... Respondents/Respondents/
Plaintiff and Defendants 1 to 5

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 11.08.2011 made in A.S.No.5 of 2009 on the file of Principal Sub Court, Karur, confirming the judgment and decree dated 05.12.2008 made in O.S.No.461 of 2000 on the file of the Principal District Munsif Court, Karur.



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For Appellants : Mr.S.Ramesh

For Respondents : Mr.D.Senthil
for Mr.P.Banuprasath for R1 to R4 & R6

: R5 – Died

JUDGMENT

Defendants 6 to 9 in O.S.No.461 of 2000, on the file of the Principal District Munsif Court, Karur, which they had lost successively both before the trial Court, and also before the first appellate Court in their first appeal in A.S.No.5 of 2009 on the file of the Principal Sub Court, Karur, are the appellants herein. For narrative convenience, parties are referred to by their rank before the trial Court.

2.1. The suit is for declaration of plaintiff's title over 38 cents of land in S.No.847/A2D of Punjai Pugalur Village, Karur Taluk, and for certain ancillary relief of injunction. According to the plaintiff, this property was the subject matter of a partition deed in Ext.A.1, dated 14.10.1949, to which certain Ramasamy Pillai and his brother Kumarasamy Pillai were parties. In



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this partition, the suit property came to be allotted to the share of Ramasamy Pillai. The plaintiff and defendants 1 to 3 are the children of Ramasamy Pillai. Kumarasamy Pillai's children are defendants 4 and 5. On the demise of Ramasami Pillai, plaintiff and defendants 1 to 3 became entitled to the suit property.

2.2. Defendants 6 to 9 have some right over the property to the south of the suit property. When the plaintiff faced certain threat to his title from defendants 6 to 9, he laid the suit. To complete the narration, the suit was originally laid for a bare injunction, but after the defendants made certain claim over the suit property based on a different source of title, the plaintiff amended the plaint to include the relief of declaration of title over the suit property.

3.1. Defendants 1 to 5 did not contest the suit. The line of defence adopted by defendants 6 to 9/the appellants herein may now be stated. The suit property and others comprised in S.No.847/A originally belonged to certain Abdul Salaam Khan. S.No.847/A has a total extent of 2.66 acres.



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According to defendants 6 to 9, they have obtained 1.53 acres, the right of Abdul Salaam Khan. As regards the balance 83 cents, they claim the same to be their ancestral property. In other words, the claim of defendants 6 to 9 in effect exhausts the entire extent available in S.No.847/A. On 17.11.1951, under Ext.B.1, Abdul Salaam Khan mortgaged the property with one Palanimuthu Pillai. He in turn, executed Ext.B.2 dated 17.11.1957, and made over the mortgagee's right to one Subbaraya Gounder. On 01.05.1959 Vide Ext.B.3, Subbaraya Gounder made over the right he obtained under Ext.B.2 to one Begumjan, the wife of the 6th defendant. Indeed the sixth defendant is the brother of Abdul Salaam Khan, the original owner of the property.

3.2 Subsequently Vide Ext.B.4-sale deed dated 17.07.1963, Abdul Salaam Khan sold the property in favour of the daughters of Begumjan. Thus, Begumjan's daughters had become the absolute owners of the property. The purchasers under Ext.B.4 are not parties to the suit. Begumjan had passed away and her husband and sons are defendants 6 to 9.



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4.1. Given the resistance which the defendants offered to the cause of action of the plaintiff, the suit went into trial. Before the trial Court, the plaintiff examined himself as P.W.1. He also examined three independent witnesses as P.W.2 to P.W.4 and has produced Ext.A.1 to Ext.A.23. For the defendants, the 8th defendant examined himself as D.W.1 and they produced Ext.B.1 to Ext.B.16.

4.2. Some of the crucial documents on the basis of which both sides attempt to support their respective claim of title have already been introduced. One critical document that requires a specific mentioning here is Ext.A.10 dated 14.01.1953. This is a partition deed under which Abdul Salaam Khan claims right and the contesting 6th defendant is also a party to this document. Under Ext.A.10, Abdul Salaam Khan obtained a mere 50 cents in S.No. 847/A under the 'B' Schedule to the said document.

4.3. On appreciating the evidence before it, the trial Court decreed the suit. It's line of reasoning is that defendants 6 to 9 have not produced any documentary evidence to support their claim for 83 cents which D.W.1 in



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his evidence has conceded that the defendants do not claim. And, when under Ext.A.10, Abdul Salaam Khan had obtained only 50 cents, the Court wondered how this 50 cents enlarged into 1.53 acres. This line of reasoning was accepted by the first appellate Court as well in A.S.No.5 of 2009. Challenging the said decree, defendants 6 to 9 are before this Court.

5. The appeal was admitted on 05.09.2012 for considering the following substantial question of law:

“Whether the Courts below were right in relying upon Ex.A5, Ex.A6 and Ex.A7, wherein the present appellants/defendants are not a party to the proceedings and whether the third party is bound by the said documents?”

6. Opening the argument, learned counsel for the appellants submitted:

- The principal document on which the plaintiff relies in to support his title is Ext.A.1-partition deed. While tracing the title to the property in S.No.847/A, measuring a total extent of 38 cents, the document recites that it was obtained by the plaintiff's uncle Kumarasamy Pillai in an auction. A partition deed *per se* cannot create title, and its



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legitimacy must be established on the basis of proof of pre-existing title to the property. However, the plaintiff has chosen not to produce any document pertaining to the auction which is recited in Ext.A.1-partition deed.

- So far as reliance made to Exts.A.11, A.16, A.17 and A.19-sale deeds are concerned, where the property of Kumarasamy Pillai was referred to as one of the boundaries, they cannot be considered unless the parties thereto or successors in interest are examined before the Court. Reliance was placed on *V.A.Amiappa Nainar (Died) vs. N.Annamalai Chettiar (Died)* [AIR 1972 Mad 154] and *Ponnusamy and others vs. Annamalai Chettiar and another* [1999 M.L.J. (Supp.) 456].
- The purchasers under Ext.B.4 are the daughters of the sixth defendant. Indeed these purchasers under Ext.B.4 had laid at least two suits, the first in O.S.No.181 of 1987 against the Indian Railways for a bare injunction that the Railways should not disturb their possession. This suit came to be decreed by Ext.B.5-judgment dated 08.08.1980. Thereafter, they laid O.S.No.174 of 1999, against the



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State of Tamil Nadu for mutating the revenue records in their favour.

In this suit, the judgment in the earlier suit in O.S.No.181 of 1987 was exhibited as Ext.A.5. And O.S.No.174 of 1999 too came to be decreed Vide Ext.B.14-judgment, dated 15.06.2004. The cumulative effect of these documents would categorically go to establish that the purchasers under Ext.B.4 are entitled to 1.53 acres in S.No.847/A.

7. Per contra, the learned counsel for the first respondent/plaintiff argued:

- So far as the recital regarding Kumarasamy Pillai obtaining 38 cents in S.No.847/A in an auction is concerned, even though no documentary evidence was produced by the plaintiff, yet the fact that Kumarasamy Pillai had some property in this survey number stands established by the fact that it is referred to as the eastern boundary of the properties sold by Abdul Salaam Khan, in Exts.A.11, A.16, A.17 and A.19-sale deeds executed by him in favour of third parties. Inasmuch as all these documents are executed by their vendor, they will bind the purchasers under Ext.B.4-sale deed. Therefore, the judgment in *V.A.Amiappa Nainar* case will not have any application



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in this case. This apart, the plaintiff has examined P.W.2 and P.W.3 both of whom are the individuals or the purchasers under Exts.A.11 and A.16-sale deeds executed by Abdul Salaam Khan. And this will cure whatever objection raised by the appellants.

8. The critical point is that Ext.A.10 is a source of title to Abdul Salaam Khan. In this, he was allotted 'B' Schedule property. The 'B' Schedule property deals with few items of properties. The only property that remained was a property adjacent to Railway's property and it might not be disputed that this property is the property in S.No.847/A, since Ext.A.1-partition deed under which the plaintiff claims title also refers to a land leading to the Railways. D.W.1, in his cross examination, also concedes that the patta for entire block of property stands in the name of Railways. If these factors are factored-in to ascertain the property covered in S.No. 847/A, which Abdul Salaam Khan had obtained in terms of Ext.A.10-partition deed, then he had obtained only 50 cents. How this 50 cents had suddenly enlarged into 1.53 acres is a mystery which the defendants have not answered.



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9. The submissions on rival side are weighed. It was mildly indicated to this Court which this Court gathered from the submissions of the learned counsel for the appellants that after the demise of the sixth defendant/the first appellant herein, his daughters ought to have been arrayed, and that the Court may not pass a judgment against their interest without hearing them. This may appear impressive but then, they are only the purchasers under Ext.B.4. It may be that the purchasers under Ext.B.4 may not be before the Court. However, the title to the property is evaluated on the basis of title documents and the facts. These documents conveyed are not susceptible to a different conclusion or interpretation. This is not explained. May be the purchasers under Ext.B.4 can explain but, that precisely is not an issue before this Court for the present. Secondly, the appellants alone appeared to have obstructed the title of the plaintiff and necessarily the plaintiff need to seek a decree only against those who so obstructed his title.

10. Turning to the plaintiff's title, this Court finds that the recital in Ext.A-1 making a reference to the auction appears to have been adequately corroborated by the eastern boundary description of the property sold under



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Exts.A.11, A.16, A.17 and A.19. All these documents would indicate that Kumarasamy Pillai did possess some property in S.No.847/A. The burden is now on the defendants to explain how they justify their pleading that Kumarasamy Pillai never had any property in that locality.

11. In conclusion, this Court does not find any merit in this appeal. Accordingly, this Second Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

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N.SESHASAYEE, J.

abr

To

- 1.The Principal Sub Court,
Karur.
- 2.The Principal District Munsif Court,
Karur.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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