



S.A.No.210 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2022

PRONOUNCED ON : 30.01.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.210 of 2005
and C.M.P.No.3037 of 2005

- 1.Kuppusamy (Deceased)
- 2.Andal Ammal
- 3.Chinnasamy
- 4.Ramayee Ammal
- 5.Kalaiarasi
- 6.Anbzhagan
- 7.Gokul U
- 8.Elavarasan

...Appellants

[Appellants 5 to 8 brought on record as legal heirs of the deceased 1st appellant vide order dated 28.06.2018 made in C.M.P.No.1097 to 1099 of 2011 in S.A.No.210 of 2005

Versus

Pandu Konar

...Respondent



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Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.08.2001 made in A.S.No.127 of 2000 on the file of the Principal District Judge, Villupuram, reversing the Judgment and Decree dated 18.08.2000 made in O.S.No.813 of 1995 on the file of the II Additional District Munsif, Ulundurpet.

For Appellant : Dr.A.Thiyagarajan
Senior Counsel
for Mr.S.Ramesh Kumar

For Respondent : Mr.N.Suresh

JUDGEMENT

This Second Appeal is preferred as against the Judgment and Decree dated 29.08.2001 made in A.S.No.127 of 2000 on the file of the Principal District Judge, Villupuram, reversing the Judgment and Decree dated 18.08.2000 made in O.S.No.813 of 1995 on the file of the II Additional District Munsif, Ulundurpet.

2.The appellants herein are the defendants and the respondent herein is the plaintiff in the suit.



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3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.The case of the plaintiff is that he had filed a suit for declaration of title under the premise that originally the entire extent in the survey numbers being the subject matter of the suit viz., S.Nos.18 and 19 belonged to one Kuppa Konar and his younger brother Chinnaiya Konar. The said Kuppa Konar has three sons viz., Chinnasamy Konar, Duraisamy Konar and Thadha Konar. The plaintiff had purchased the properties from the descendants of the said Chinnasamy Konar and Duraisamy Konar.

5.It is the case of the plaintiff that the properties were already divided among the aforesaid brothers. As a matter of fact, the said Thadha Konar's only son was Periyathambi and Periyathambi had two wives viz., Lakshmi and Thangammal. Periyathambi's son was Pichan through first wife Lakshmi, and Pichan's wife was Kuppammal and the couple Pichan and Kuppammal begot Kuppusamy and Chinnasamy viz., defendants 1 and 3.



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6.It is the plaintiff's case that under Ex A9, the share Thadha konar obtained in the partition was specified by his grandson Pichan and he had executed settlement deed in favour of his wife Kuppammal specifically stating that he had got 87 cents as his share in S.No.18/1 and 35 cents as a share in S.No.19/2. On the basis of the above said settlement the said Pichan had clearly settled his right and share in respect of the above survey numbers. Under Ex.A10 on 29.08.1967, Kuppammal had executed a settlement deed in favour of her sons viz., 1st and 3rd defendants, the same share as her husband Pichan specifically stated under Ex.A9. But unfortunately, the 1st and 3rd defendants had executed two separate settlement deeds under Ex.B.43 and Ex.B45 under which each of them viz, 1st defendant had bequeathed 35 cents in respect of S.No.19/2 in favour of his wife, the 2nd defendant and 3rd defendant had executed yet another 35 cents in favour of his wife viz., the 4th defendant. However, it is very clear that both of them are totally entitled to only 35 cents in S.No.19/2 even as per Ex.A10. But they both totally dealt with 70 cents of land in favour of their wives. Therefore, those settlement deeds are void to the extent of more



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than 35 cents. Hence, the plaintiff filed the suit for the declaration of title and permanent injunction.

7.The case of the defendants is that Periyathambi Konar, Chinnasamy Konar and Duraisamy Konar had equally partitioned the properties orally and their legal heirs are enjoying the properties. The defendants 1 and 3 are the sons of Picha Konar. In S.No.18/1, the defendants 1 and 3 are entitled to 1.07 cents. In S.No.18/2 the defendants 1 and 3 are entitled to 40 cents. In S.No.19/2 the defendants 1 and 3 are entitled to 70 cents and on the basis of the above, the defendants 1 and 3 were enjoying the properties. The plaintiff having purchased the properties did not enjoy the same in full. Even after the purchase of the property by the plaintiff he had not claimed right over the same. In S.No.18/1, in the share of the defendants 1 and 3 of 1.07 cents, the 3rd defendant had executed a settlement deed to an extent of 20 cents. In S.No.18/2, the 3rd defendant executed a settlement deed in favour of 4th defendant in respect of 18 cents out of 40 cents. In S.No.19/2, the defendants 1 and 3 are totally entitled to 70 cents and the 1st defendant had executed a settlement deed for 35 cents in favour of 2nd defendant and the 3rd



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defendant had executed a settlement deed for 35 cents in favour of 4th defendant. Hence, the defendants prayed for dismissal of the suit.

8.Before the trial court, on behalf of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A23 were marked. On behalf of the defendants, D.W.1 to D.W.8 were examined and Exs.B1 to B56 were marked.

9.Considering the oral and documentary evidences adduced by the respective parties, the trial Court was pleased to dismissed the suit. However, the First Appellate Court, on appreciation of records, has held that the plaintiff is the title holder for the suit items 1 to 7 and 1.39 cents in 8th item and partly allowed the Appeal Suit.

10.Aggrieved over the said judgment and decree passed by the First Appellate Court, the present Second Appeal has been filed.



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11.The Second Appeal was admitted by framing the following substantial questions of law.

“1.Whether on the facts and circumstances of the case, the first appellate Court was right in allowing the appeal granting the reliefs in favour of the respondent in respect of item Nos.1 to 7 and 1.39 cents in Item No.8 without there being any evidence on records?

2.Whether the judgment and decree of the First Appellate Court in granting the above said reliefs in favour of the respondent is based on proper appreciation of the evidence on records?”

12.Learned Senior counsel appearing for the appellants/defendants would submit that out of the three equal shares, the plaintiff purchased the entire share of K.Chinnasamy and K.Duraisamy and therefore, he is entitled to $\frac{2}{3}$ rd share and the defendants are entitled to $\frac{1}{3}$ rd share, in the entire properties comprised in S.Nos.18/1, 18/2, 19/2. Further, the learned Senior Counsel by referring Exs.A1 to A7, which refers the property purchased by the plaintiff from other two co-sharers viz., legal heirs of Chinnasamy and Duraisamy, would submit that the plaintiff had purchased excess share i.e



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the shares belongs to the defendants, from the other two co-sharers and this aspect was well considered by the trial Court and without considering the evidence adduced by the defendants, the First Appellate Court reversed the judgment and decree passed by the trial Court by relying upon Exs.A9 and A10 and hence, he prayed to set aside the judgment and decree passed by the First Appellate Court .

13.Learned counsel appearing for the respondent/plaintiff would submit that Ex.A9 is the settlement deed executed by Pichai, to and in favour of his wife Kuppammal and Ex.A10 is the settlement deed executed by Kuppammal to and in favour of her sons viz., P.Kuppusamy and P.Chinnasamy. In both the settlement deeds, it has been categorically stated that they are entitled for 87 cents in S.No.18/1 and 35 cents in S.No.19/2, which was obtained out of the partition and the defendants have admitted that there was oral partition among Chinnasamy, Duraisamy and Thadha Konar. All those aspects were properly considered by the First Appellate Court. Therefore, he would submit that there is no need for any interference in the judgment and decree passed by the First Appellate Court.



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WEB COPY 14. Heard the learned Senior Counsel appearing for the appellants/defendants as well as the learned counsel appearing for the respondent/defendant.

15. Upon perusal, it is seen that the plaintiff purchased the property by virtue of Exs.A1 to A5 on various dates from the legal heirs of K.Chinnasamy Konar and K.Duraisamy Konar. The defendants have admitted that there was an oral partition between Chinnasamy Konar, Duraisamy Konar and Thada Konar and all are entitled for an equal shares. The defendants have also admitted that the sale deed executed in favour of plaintiff is valid upto particular extent in the suit survey numbers and there was a suggestion that the plaintiff was entitled to 39 cents in S.No.18/2 and 70 cents alone in item No.8. Hence, it is very clear that the plaintiff was entitled to the extent therein. Now a short question for consideration is whether the sale in favour of the plaintiff is valid and whether the partition as pleaded by the defendants is acceptable in the light of the documentary evidence contrary to Exs.A9 and A10.



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WEB COPY 16. At this juncture, it would be appropriate to extract paragraph No.9 and 12 of the judgment passed by the First Appellate Court, which reads as follows:

“9. On 17.3.1942, Periyathambi, son of Dhadha Konar executed a registered Settlement Deed Ex.A8 in favour of his wife Thangammal with respect to certain properties. ExA8 does not contain any suit items. Ex.A9 is registration copy of settlement deed executed by Pichai Konar, son of periyathambi konar in favour of his wife Kuppammal on 20.04.1942 with respect to 87 cents in survey No.18/1 and 35 cents in Survey No.19/2. The said settlor Pichan has referred in the deed as “என் பாகத்திற்கு வந்து, நான் அனுபவித்து வரப்பட்ட” and while mentioning the abovesaid extents, he has recited as “என் பாகம்”. A fervent plea was advanced on behalf of defendants that the plaintiff purchased undivided extends in the suit Survey Numbers. However on perusal of ExA9, it has come to light that three brothers were divided even during the year 1942. The abovsaid Kuppu Ammal had executed a registered settlement under original of Ex.A10 on 29.08.67 in favour of her sons, defendants 1 and 3 with



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respect to 87 cents in Survey No.18/1 and undivided 35 cents in Survey No 19/2. The plaintiff contends that since the defendants 1 and 3 derived title only for 35 cents in Survey No 19/2, namely in 8th item, both are entitled only 35 cents and they are not competent to execute settlement deeds for 35 cents each in favor of their wives under Ex B43 and B45. Ex.A20 is Patta Pass Book standing in the name of plaintiff and some others for 20 cents in Survey No 18/1. Ex.A21 is copy of 10 (1) adangal for Survey No.18/2 for an extent of 1.18 acres standing in the name of the plaintiff. It shows that in the year 1980 the name of the plaintiff was entered into the said Survey Number namely 7th item. Ex.A22 is another Patta Pass Book No.32 standing in the name of the plaintiff and others for 8th item property. Ex.A11 to A19 are the receipts for payment of land revenue paid by plaintiff for the Patta Numbers covered in the abovesaid Ex.A20 to A22. Ex.A23 is copy of registered Partition Deed executed between Ranganayagi Ammal. Narayana Konar and Rajamanicka Konar on 5.7.67 dividing their properties. It shows that the predecessors in title of the plaintiff had already partitioned their properties before selling their respective shares to the plaintiff.

12. 3rd defendant is D.W1, who in his evidence



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would state about the issuance of Patta No.145 and 970 in his name and Patta No.747 in the name of his wife. He also speaks about the execution of settlement deed in favour of his wife with regard to 35 cents in 8th item. He has produced Ex.B2 to B15. In his cross-examination, he admits that his father has executed settlement in favour of his mother with respect to 87 cents alone in 1st item, that the settlement does not contain 2nd item, that his father had not mentioned about 2nd item and that 35 cents was settled in Survey No.19/2, D.W1 has failed to derive title to suit 7th item. Admittedly, there is no document standing in the name of Dhadha Konar branch with regard to suit 7th item. Defendants are coming under Dhadha Konar branch. The learned counsel for the defendants argued in Vehemence that the purchases obtained by the plaintiff do not reflect actual shares of the co-sharers and that the plaintiff has failed to establish the title of his predecessors in title. Though the sale deeds obtained by him show as if certain items were remaining undivided on the dates of sales, since he has purchased subsequently remaining portions in the said properties, it should be treated that he has purchased specific items. Even D.W1 in his cross-examination says that he does not know the extent of entire properties belonging to Kuppa Konar and how the sons



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of Kuppa Konar effected partition between them. No persons connected with the partition was examined. However preponderance probabilities in this case would show that the descendants of Kuppa Konar had been enjoying specific items. Further Ex.A22 partition deed also comes to the rescue of plaintiff which shows that a partition was effected between Ranganayaki Ammal, Narayana Konar and Rajamanicka Konar. D.W.1 has also produced patta Ex.B48.”

17.In the above paragraphs, the First Appellate Court discussed Exs.A1 to A5, A9 to A23, B43 & B45 in detail and thereafter concluded that the plaintiff is the title holder for the suit items 1 to 7 and 1.39 cents in 8th item.

18.The defendants have not denied the sale deed in favour of the plaintiff. However, they admitted that the plaintiff had purchased the properties from the legal heirs of K.Chinnasamy and K.Duraisamy, but, the plaintiff does not enjoy those properties. When the defendants' did not specifically deny the sale deed, it would attract the provisions under Order



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VII Rule 5 CPC and the allegations in the plaint shall be taken into as admitted.

19.The learned counsel appearing for the plaintiff would submit that the plaintiff had purchased the property under Exs.A1 to A5 from the descendants of Chinnasamy Konar and Duraisamy Konar. In order to prove his title, the plaintiff had clearly come out with documentary evidence in the nature of partition deed which came to be executed under Ex.A23 by the legal heirs of Duraisamy Konar. The plaintiff has also come out with concrete evidence that the grandfather of defendants 1 and 3 viz., Periyathambi had clearly and specifically stated in the documents under Ex.A9 that he was only entitled to an extent of 35 cents in S.No.19/2 as his share and in respect of S.No.18/1, he was entitled to 87 cents and so stating he had executed settlement deed in favour of his wife under Ex.A9. The same was also carried forward under Ex.A10 by the settlement deed executed by Kuppammal, wife of Pichan in favour of her sons viz., defendants 1 and 3. But unfortunately the defendants 1 and 3 had executed Ex.B.43 and B.45 which dealt with 70 cents in S.No.19/2. As a matter of



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fact, in respect of S.No.18/1, in the earliest document under Ex.A9 executed by Picha konar in favour of his wife he has clearly restricted that he had got right only to an extent of 87 cents out of 3.20 acres in S.No.18/1. Whereas, in Ex.B45 it was illegally recited as if though he was entitled to 20 cents out of 3.20 acres in S.No.18/1, 18 cents in S.No.18/2 and 35 cents in S.No.19/2. The defendants under Ex B43 and B45 could not have executed more than they were entitled to which they have got under Ex.A9 and Ex.A10. Under Ex.A9 as adverted to above the defendants ancestor has clearly restricted his right as “என் பாகம் செண்டு 87” in so far as S.No.18/1. He had clearly restricted under Ex.A9 that “என் பாகம் செண்டு 35” in respect of S.No.19/2. Under Ex.A10, Kuppammal, the mother of defendants 1 and 3 had executed settlement deed only in respect of the property which she got viz., 87 cents in S.No.18/1 and 35 cents in S.No.19/2.

20.So, what the defendants 1 and 3 got under Exs.A9 and A10 were only 87 cents in S.No 18/1 and 35 cents in S.No.19/2. But unfortunately in the settlement deed under Ex.B43 1 defendant dealt with 35 cents in S.No.19/2 and 3rd defendant under Ex.B.45 dealt with yet another 35 cents



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in S.No.19/2. Both of them were totally entitled to only 35 cents in

S.No.19/2. Moreover, in S.No.18/1 under Ex.A9 the ancestor of defendants

1 and 3 had clearly restricted his right as 87 cents as "என் பாகம்" in S.No.18/1 out of 3.20 acres. Whereas, in the written statement, it is illegally claimed that in S.No.18/1 both of them were entitled to 1.07 acres jointly and 3rd defendant had dealt with 20 cents out of this 1.07 acres, Whereas in the settlement deed under Ex.A9 it is clearly recited therein that their father was entitled to only 87 cents out of 3.20 acres. Hence, the contention in the written statement that 20 cents falls within the alleged 1.07 acres as their alleged share in S.No.18/1 cannot be proved and valid and hence the defence as submitted by the defendants is not acceptable.

21.The learned counsel for the respondent further submits that Ex.A23 is yet another piece of documentary evidence that the descendants of the Duraisamy konar viz., Picha konar, Krishna konar and Irusa konar's legal heirs have executed partition deed and partitioned the properties which covers the suit survey numbers also. The plaintiff has clearly purchased the properties from those sharers by the documents covered under Exs.A2 to



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A5. Hence, it is very clear under Ex.A1 that the plaintiff has purchased the properties covered in the suit from the descendants of Chinnasamy konar and under Exs.A2 to A5 purchased the properties from the descendants of Duraisamy konar. The recitals in the sale deeds relating to the jointness in the properties will only clearly mean that among the legal heirs of the above said two persons the properties were in joint possession. Whereas, so far as Thadha konar's branch is concerned they have clearly stipulated as to their share in so far as S.Nos.18/1 and 19/2 are concerned specifically restricting their share under Ex A9 and A10 viz., 87 cents and 35 cents respectively in the above said survey numbers. Hence the defendants cannot claim more than what they were entitled to in the properties.

22. When the defendants submit that their grandfather is entitled to 1.07 cents in S.No.18/1 and he settled 87 cents in favour of his wife and the remaining portion is with their grandfather and therefore, they are entitled for entire 1.07 cents, in order to prove the same, the defendants supposed to have produced some documents showing that they are in enjoyment of the property. However, no documentary or oral evidence is made available



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before this Court to substantiate the same. The sale deed executed in favour of the plaintiff i.e Exs.A1 to A5 is not under challenge, which shows that the defendants admitted those document without any denial. Considering all these facts, the First Appellate Court has rightly held that the plaintiff is the title holder for the suit items 1 to 7 and 1.39 cents in 8th item and partly allowed the Appeal Suit. Accordingly, all the substantial questions of law are answered.

23.In view of the above, the appellants/defendants are not entitled to the relief as sought for in the present appeal. Accordingly, the Second Appeal is dismissed confirming the judgement and decree passed by the First Appellate Court. Consequently, connected civil miscellaneous petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No

Speaking Order / Non Speaking Order

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To

- 1.The Additional District Judge,
Fast Track Court – V, Chennai.
- 2.The V Assistant Judge,
City Civil Court, Chennai.



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KRISHNAN RAMASAMY, J.

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