



S.A.Nos.702 and 703 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.12.2023
Pronounced on	21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.Nos.702 and 703 of 2001

S.A.No.702 of 2001:

Ramayee Ammal

... Appellant/ Respondent/Plaintiff

-VS-

1. Perumal Udayar (died

2. Mannankatti Ammal

... Respondents

3. P.Sivapakkiam

4. Rajendran

5. Kaaththayee

6. P.Manjula

7. P.Ashok

8. P.Malar

... Respondents

(Respondents 3 to 8 brought on record as Lrs of the deceased 1st Respondent Viz., Perumal Udayar vide order of this Court dated 22.08.2019 made in CMP.Nos.565 to 567 of 2007 in SA.No.702 of 2001)



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PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 31.08.2000 on the file of the learned Principal District Judge, Villupuram passed in A.S. No.10 of 1999 reversing the judgment and decree dated 03.12.1998 on the file of the I Additional District Munsif, Ulundurpet passed in O.S. No.239 of 1995.

For Appellant : Mr.P.Dinesh Kumar
for Mr.A.Thiayarajan

For Respondents : Mr.S.Natarajan
for Mr.T.K.Saravanan

S.A.No.703 of 2001:

Andal Ammal ... Appellant/
Respondent/Plaintiff

-vs-

1. Perumal Udayar (died
2. Mannankatti Ammal ... Respondents

3. P.Sivapakkiam
4. P.Rajendran
5. Kaaththayee
6. P.Manjula
7. P.Ashok
8. P.Malar

... Respondents

(Respondents 3 to 8 brought on record as LR's of the deceased 1st Respondent viz., Perumal Udayar vide order of this Court dated 22.08.2019 made in CMP.Nos.568 to 570 of 2007 in SA.No.703 of 2001)



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PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 31.08.2000 on the file of the learned Principal District Judge, Villupuram passed in A.S.No.9 of 1999 reversing the judgment and decree dated 03.12.1998 on the file of the I Additional District Munsif, Ulundurpet passed in O.S.No.238 of 1995.

For Appellant : Mr.P.Dinesh Kumar
for Mr.A.Thiayagarajan
For Respondents : Mr.S.Natarajan
for Mr.T.K.Saravanan

COMMON JUDGMENT

These Second Appeals have been filed by the appellants as against the common judgment passed in A.S.Nos.9 and 10 of 1999 on the file of the learned Principal District Judge, Villupuram, dated 31.08.2000 wherein the appellants in A.S.No.9 of 1999 are the defendants in O.S.No.238 of 1995 and the appellants in A.S.No.10 of 1999 are the defendants in O.S.No.239 of 1995. Both the suits were tried before the I Additional District Munsif, Ulundurpet and the Suits were decreed in favour respondents / plaintiffs.



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Aggrieved by the above said judgment and decree, the defendants in both the suits have preferred the appeals before the Principal District Court, Villupuram. Both the appeals were heard together and common judgment was passed by allowing the appeals. As against the decrees and common judgment, the present Second Appeals have been filed by the respective respondents in the 1st appeal and plaintiffs in the suits.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the trial Court.

3.The brief facts of the averments made in the plaint in O.S.No.238 of 1995 before the trial Court, are as follows:

“A” schedule property belongs to one Pichai Konar by ancestors. After the demise of Pichai Konar, his sons, namely, Kuppusamy Konar and Chinnasamy Konar were enjoyed the properties. On 20.06.1981, the said Kuppusamy Konar and Chinnasamy Konar had partitioned the properties orally with the help of Panchayatdars. The northern half share of the property was allotted to Kuppusamy Konar. The southern half share of the property



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was allotted to Chinnasamy Konar. The half share allotted to Kuppusamy Konar is shown as “B” schedule property. The wife of Kuppusamy Konar has been enjoyed the property as cattle shed and also placed in the cattle fields. While so, on 09.03.1990, the said Kuppusamy Konar executed a settlement deed in favour of the plaintiff and pursuant to the settlement deed, the plaintiff has been enjoying the suit property. Since the plaintiff has been enjoying the properties continuously without any interruption for more than statutory period, the plaintiff is entitled to the property by way of adverse possession also. The defendants have no right to title or interest over the property. The defendants purchased the property in the western side of the “A” schedule property. The defendants attempted to encroach the “B” schedule property. Therefore, the plaintiff has filed a suit for declaration and permanent injunction.

4. The written statement filed by the first defendant, adopted by the second defendant is as follows:

The suit is not maintainable and the same is liable to be dismissed. The defendants specifically denied the averments that the property belongs to



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Pichai Konar and after the demise of Pichai Konar, his sons are enjoying the property and they partitioned the property and after the partition, “B” schedule was allotted to Kuppusamy Konar and thereafter, Kuppusamykonar was enjoying the property and the said Kuppusamy Konar executed the settlement deed in favour of the plaintiff, are all specifically denied. The property situated east west 12 feet x north south 106 feet does not belong to either plaintiff or her predecessors. In fact, in plaint “A” schedule property, only Pichai Konar is entitled to six feet and the said Pichai Konar has executed the settlement deed on 20.04.1942 in respect of that 6 feet house site. At the time of execution of the deed, four boundaries were categorically mentioned as east of Monickachetti and Chinnathambi Udayar. Therefore, Pichaikonar is entitled to 1/3 share i.e., east west 6 feet and the adjacent land situated in the eastern side belongs to Chinnathambi Udayar, who is the father of the defendant and in the northern side Manickachetti, house was situated. In “A”schedule property, east west is 6 feet and north west 106 feet belongs to Kuppusamy Konar and his brothers Chinnathambikonar and another younger brother. While so, it is false to state that “A”schedule property entirely belongs to Pichaikonar and his sons Kuppusamykonar and



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Chinnasamy Konar orally partitioned the properties. Kuppusamy Konar and Chinnasamykonar with a view to grab the probably situated in western side which belongs to the defendant, executed a settlement deed, dated 09.03.1990 in favour of the wife of Kuppusamy Konar but mentioning the wrong four boundaries. The said Kuppusamy Konar had no right over the property for an extent of 12x53 feet. Therefore, the settlement deed is not valid. Immediately, after two months of the settlement deed, the suit has been filed. Since the plaintiff is not in possession of the “B” schedule property, he is not entitled for declaration and the consequential relief of permanent injunction. Therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings, the following issues were framed by the trial Court:

1. Whether the plaintiff is in possession of the suit property based on the partition?
2. Whether the settlement deed dated 09.03.1990 is valid and acted upon?
3. Whether the plaintiff is entitled to the proeprty by her adverse possession?
4. Whether the defendants are owners of the suit property after the



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partition?

5. To what relief, the plaintiff is entitled to?

6. Before the trial Court, on the side of the plaintiffs, they examined P.W.1 to P.W.5 and marked Exs.A1 to A5. On the side of the defendants, they examined D.W.1 and D.W.2 and marked Ex.B.1.

7. After analyzing the evidence adduced on either side, the trial Court has decreed the suit. As against the decrees and judgments passed by the trial Court, the appellants have preferred the appeal in A.S.No.9 of 1999. The first appellate Court passed a common judgment along with the connected suit in O.S.No.239 of 1995 by allowing the appeals. Aggrieved by the said decree and judgment, the respondent / plaintiff has preferred this second appeal.

8. The brief facts of the averments made in the Plaint in O.S. No.239 of 1995 before the Trial Court are as follows:-

“A” schedule property belongs to one Pichai Konar by ancestors. After the demise of Pichai Konar, his sons, namely, Kuppusamy Konar and Chinnasamy Konar were enjoyed the properties. On 20.06.1981, the said Kuppusamy Konar and Chinnasamy Konar had partitioned the properties

8/23



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orally with the help of Panchayatdars. The northern half share of the property was allotted to Kuppusamy Konar. The southern half share of the property was allotted to Chinnasamy Konar. The half share allotted to Chinnasamy Konar is shown as “B” schedule property. The wife of Chinnsamy Konar has been enjoyed the property as cattle shed and also placed in the cattle fields. While so, on 09.03.1990, the said Chinnasamy Konar executed a settlement deed in favour of the plaintiff and pursuant to the settlement deed, the plaintiff has been enjoying the suit property. Since the plaintiff has been enjoying the properties continuously without any interruption for more than statutory period, the plaintiff is entitled to the property by way of adverse possession also. The defendants have no right to title or interest over the property. The defendants purchased the property in the western side of the “A”schedule property. The defendants attempted to encroach the “B” schedule property. Therefore, the plaintiff has filed a suit for declaration and permanent injunction.

9. The written statement filed by the first defendant in O.S. No.239 of 1995, adopted by the second defendant is as follows:



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The suit is not maintainable and the same is liable to be dismissed. The defendants specifically denied the averments that the property belongs to Pichai Konar and after the demise of Pichai Konar, his sons are enjoying the property and they partitioned the property and after the partition, “B” schedule was allotted to Chinnaamy Konar and thereafter, Chinnaamy konar was enjoying the property and the said Chinnaamy Konar executed the settlement deed in favour of the plaintiff, are all specifically denied. The property situated east west 12 feet x north south 106 feet does not belong to either plaintiff or her predecessors. In fact, in plaint “A” schedule property, only Pichai Konar is entitled to six feet and the said Pichai Konar has executed the settlement deed on 20.04.1942 in respect of that 6 feet house site. At the time of execution of the deed, four boundaries were categorically mentioned as east of Monickachetti and Chinnathambi Udayar. Therefore, Pichaikonar is entitled to 1/3 share i.e., east west 6 feet and the additional situated in the eastern side belongs to Chinnathambi Udayar, who is the father of the defendant and in the northern side Manickachetti, a house was situated. In “A” schedule property, east west is 6 feet and north west 106 feet belongs to Kuppusamy Konar and his brothers Chinnaamy konar and another



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younger brother. While so, it is false to state that “A” schedule property entirely belongs to Pichaikonar and his sons Kuppusamykonar and Chinnasamy Konar orally partitioned the properties. Kuppusamy Konar and Chinnasamykonar with a view to grab the probably situated in western side which belongs to the defendant, executed a settlement deed, dated 09.03.1990 in favour of the wife of Kuppusamy Konar but mentioning the wrong four boundaries. The said Kuppusamy Konar had no right over the property for an extent of 12x53 feet. Therefore, the settlement deed is not valid. Immediately, after two months of the settlement deed, the suit has been filed. Since the plaintiff is not in possession of the “B” schedule property, he is not entitled for declaration and the consequential relief of permanent injunction. Therefore, the suit is liable to be dismissed.

10. Based on the above said pleadings, the following issues were framed by the trial Court:

1. Whether the plaintiff is in possession of the suit property based on the partition?
2. Whether the settlement deed dated 09.03.1990 is valid and acted upon?



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3. Whether the plaintiff is entitled to the proeprty by her adverse possession?

4. Whether the defendants are owners of the suit property after the partition?

5. To what relief, the plaintiff is entitled to?

11. Before the trial Court, on the side of hte plaintiffs, they examined P.W.1 to P.W.5 and marked Exs.A1 to A5. On the side of the defendants, they examined D.W.1 and D.W.2 and marked Ex.B.1 and also marked Exs.C1 and C.2.

12. After analyzing the evidence adduced on either side, the trial Court has decreed the suit. As against the decree and judgment passed by the trial Court, the appellants have preferred the appeal in A.S.No.10 of 1999. The first appellate Court passed a common judgment along with the connected suit in O.S.No.238 of 1995 by allowing the appeals. Aggrieved by the said decree and judgment, the respondent / plaintiff has preferred this second appeal.

13. The learned counsel appearing for the appellant would contend that



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the appellants have filed separate Suits before the Trial Court for the relief of declaration and injunction and they are entitled to the properties through settlement deeds executed by their respective husband. The husband of the respective plaintiffs are entitled to the properties through their father and the properties were partitioned between husbands of plaintiffs through koorchit dated 20.06.1981. The respondent has no right or interest over the property and the Trial Court considering the evidence adduced on both sides, correctly decreed the Suit, but the 1st appellate Court erroneously allowed the appeal. The 1st Appellate Court failed to consider that boundaries referred in any document will not give any right or title to any person and the Appellate Court misconstrued the recitals in Ex.A.4 and came to an erroneous conclusion that the appellant is entitled to only six feet, whereas Ex.A.4 refers width and length in yards. Further, 1st appellate Court wrongly shifted the burden on the appellant, when the documetary evidence of Ex.A1, Ex.A2, Ex.A.3 and Ex.A.5 have not been rebutted. The appellants have amply proved their case through oral and documentary evidences, but the 1st Appellate Court erroneously allowed the appeals, and set aside the decree and judgments. Hence the decree and judgment of 1st Appellate Court are liable to



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be set aside.

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14. The learned counsel appearing for the appellant relied upon the following judgments:-

(i) *Madhavan v. Kannammal and 27 others reported in 1990-2*

– *L.W.*

(ii) *V.A. Amalappa Nainar v. N. Annamalai Chettiar reported in 84 LW 691.*

(iii) *Sinnadurai v. Karmegam reported in 1990 TNLJ 293.*

(iv) *Union of India and others v. Vasavi Co-operative Housing Society Limited and others reported in (2014) 2 Supreme Court Cases 269.*

(v) *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another reported in (2003) 8 Supreme Court Cases 752.*

15. The learned counsel appearing for the respondents would contend that the appellants have filed the Suit for declaration and permanent injunction based on the settlement deeds executed by their respective husbands. The plaintiffs have not produced the title deeds in their favour and the western



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side of the suit property was wrongly mentioned. In fact in the eastern side, 6 feet width and 106 feet length property belonged to Pitchai Konar. The said Pitchai Konar, on 20.04.1942 executed settlement deed in favour of his wife Kuppammal by mentioning the eastern side six feet width. In the said deed, the eastern side boundary was mentioned as Monickachetti and Chinnathambi Udayar. Therefore, the western side properties belonged to the defendants' father Chinnathambi Udayar and Monickachetti. Therefore the husbands of the plaintiffs cannot execute settlement deed for '12' feet, when they had right only for 6 feet. The above said aspects have not been considered by the Trial Court, at the same time, the 1st Appellate Court correctly allowed the appeals and dismissed the Suits. Therefore, these second appeals are liable to be dismissed.

16. Further the learned counsel appearing for the respondents has relied upon the following judgments:-

(i) Subramania Mudaliar v. Ammapet Co-operative Weavers Production and Sales Society Ltd., by its President S. Gopalaswami Mudaliar reported in 73 LW 756.

(ii) M. Vedamanickam Nadar v. M. Sudalaikannu Thevar.



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(iii) T.S. Govindaraj v. A.B. Kandaswami Goundar and another

reported in 69 LW 97.

(iv) Syed Mohd. Mashur Kunhi Koya Thangal v. Badagara

Jumayath Palli Dharas Committee and others reported in (2004) 7

Supreme Court Cases 708.

17. This Court heard both sides' and perused the materials available on record.

18. The following substantial questions of law were framed:-

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(i) Whether the 1st Appellate Court was right in holding that the appellant is entitled for only six feet is correct in law, when the Ex.A3, Ex.A.4 and Ex.A.5 refer in yards.

(ii) Whether the 1st Appellate Court was right in holding the Ex.B1 is sufficient to deny the claim of appellant is correct in law?

S.A. No.703 of 2001:-

(i) Whether the 1st Appellate Court was right in holding that the



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appellant is entitled for only six feet is correct in law, when the Ex.A3, Ex.A.4 and Ex.A.5 refer in yards.

(ii) Whether the 1st Appellate Court was right in holding the Ex.B1 is sufficient to deny the claim of appellant is correct in law?

19. These appellants have filed Suits in O.S. Nos.238 of 1995 and 239 of 1995 respectively. Before the Trial Court in O.S. No.238 of 1995 on the side of plaintiff, PW1 to PW5 were examined and Ex.A1 to Ex.A.5 were marked. On the side of defendants, DW1 and DW2 were examined and Ex.B.1 and Ex.B.2 were marked. In O.S. No.239 of 1995, on the side of plaintiff, PW1 to PW5 were examined and Ex.A1 to Ex.A.5 were marked. On the side of defendants, DW1 and DW2 were examined and Ex.B.1 and Ex.B.2 and also Ex.C.1 and Ex.C.2, Commissioner's report and plan respectively were marked. The Trial Court decreed both the Suits, on the same day, through separate judgments. The 1st Appellate Court passed common judgment relying the evidences by clubbing together. Therefore this Court before answering to the substantial questions of law, has to verify the procedural irregularities in the judgment of 1st Appellate Court by relying the



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evidence adduced in one case to another case, when there was no joint trial and no common judgment before the Trial Court.

20. In this case, the plaintiffs are different, the suit properties are also different, but the defendants are one and the same. However the first appellate Court has heard the appeals together and passed a common judgment. There was no common trial conducted and no common judgment was passed by the trial Court. The evidences in both cases were adduced separately and in both the suits, witnesses and documents are not one and the same. Therefore, the first appellate Court clubbing together and passing a common judgment by analysing the evidences after clubbing the evidences adduced on different suits by different plaintiffs, is not in accordance with law and the first appellate Court has failed to analyze the evidences separately in each case. The points for consideration also framed in common for both appeals wherein both the suits, issues were framed separately and the separate trials were also conducted and passed separate judgments. In both the Suits, settlement deeds were executed by different persons in favour of each of the plaintiffs for different properties. The plaintiff in both the suits



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are different and the suit property is also different and though the suit properties are adjacent to each other, the evidences were recorded separately in both suits. Therefore, the common judgment passed by the first appellate Court by analysing the evidences which were recorded in each case separately is not permissible under law.

21. In O.S.No.238 of 1995, the Commissioner was not appointed, whereas in O.S.No.239 of 1995, the Commissioner was appointed and the Commissioner's report was also marked as Ex.C.1 and Ex.C.2. The Commissioner report, which was marked in O.S.No.239 of 1995, has been relied upon by the appellate Court in O.S.No.238 of 1995 as evidence and commonly discussed for both the appeals. Further during pendency of the appeal in A.S. No.9 of 1999, additional documents were received as additional evidence and marked as Ex.A6 to Ex.A.8 and those documents were relied in A.S. No.10 of 1999, but the 1st Appellate Court relied those documents for the A.S. No.10 of 1999 while discussing the case through common judgment. There is no reference in the judgment as to how the 1st Appellate Court passed the common judgment and how relied the documents filed in one case to another case. The procedure adopted by the 1st Appellate



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Court is not in accordance with law and the same is unsustainable and thereby the decrees and common judgment of 1st Appellate Court are liable to be set aside. Therefore, this Court, without going into the merits of the case, is inclined to set aside the decrees and common judgment passed by the first appellate Court and remand back the cases to the first appellate Court for fresh consideration by analysing the evidences adduced by the respective parties in each case separately.

22. In the result, the S.A.No.702 of 2001 is allowed and the decree and common judgment passed in A.S.No.10 of 1999, dated 31.08.2000 on the file of the learned Principal District Judge, Villupuram, reversing the judgment and decree passed in O.S.No.239 of 1995, dated 03.12.1998 on the file of the 1st Additional District Munsif, Ulundurpet is set aside and the matter is remanded back to the first appellate Court for fresh consideration.

23. In the result, the S.A.No.703 of 2001 is allowed and the decree and common judgment passed in A.S.No.9 of 1999, dated 31.08.2000 on the file of the learned Principal District Judge, Villupuram, reversing the judgment and decree passed in O.S.No.238 of 1995, dated 03.12.1998 on the file of the 1st Additional District Munsif, Ulundurpet is set aside and the matter is



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remanded back to the first appellate Court for fresh consideration. There shall be no order as to costs.

21.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Judge,
Villupuram.
2. The I Additional District Munsif,
Ulundurpet.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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