



S.A.No.1174 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.1174 of 2003

1.Govinda Konar
2.Nallan Konar
3.Rengasamy Konar
4.Dhandapani Konar
5.Palani Konar

... Appellants

vs.

1.Ramu Konar (died)
2.R.Muthusami
3.Santha
4.Kamatchi
5.Panchalai
6.R.Ranganathan
7.Rajambal
...Respondents

(R2 to R7 brought on record as the legal heirs of the deceased R1 vide order dated 02.09.2004 in C.M.P.No.16562 of 2003)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.01.2003 in A.S.No.113 of 2002, passed by the learned Additional Sessions Judge (Fast Track Court), Kallakurichi, confirming the judgment and decree dated 06.12.1999 in O.S.No.73 of 1996 passed by the learned II Additional



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District Munsif, Kallakurichi.

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For appellants	: Mr.P.Dinesh Kumar for M/s.Sarvabahuman Associates
For R2	: Mrs.G.V.Seethalakshmi for Mr.E.Vijay Anand
For R1	: Died
For R3 to R7	: No appearance

J U D G M E N T

The defendants in the suit are before this Court in this Second Appeal. Pending this Second Appeal, the sole respondent died and the respondents 2 to 7 were substituted as his legal heirs.

2. This Second Appeal has been filed against the judgment and decree dated 22.01.2003 in A.S.No.113 of 2002, on the file of the learned Additional Sessions Court (Fast Track Court), Kallakurichi, confirming the judgment and decree dated 06.12.1999 in O.S.No.73 of 1996 on the file of the II Additional District Munsif Court, Kallakurichi.

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



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The brief facts, which gave rise to this Second Appeal, are as follows:

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4. According to the plaintiff, the suit properties and several other properties originally belonged to one Rangasamy Konar, who is the father of the plaintiff and first defendant. Pursuant to the death of Ramasamy Konar in the year 1965, both the plaintiff and first defendant inherited the suit properties and they were in joint enjoyment and possession of the same. There was an oral partition in their family in the year 1980 by which the suit properties were allotted to the share of the plaintiff and equal share of the properties were also allotted to the share of the first defendant. As such, from the year 1980, the parties had taken possession of their respective shares allotted in the oral partition and they had been in possession and enjoyment of the shares allotted in their favour. The plaintiff had been paying kist to the Government and the patta under UDR scheme had also been issued in favour of the plaintiff in respect of the suit properties. The plaintiff had dug a well and laid underground water pipeline for effective cultivation in the suit properties and thereby, the plaintiff alone was having absolute right and possession over the suit properties. While so, the defendants 2 to 5, who are the sons of the first defendant, having no right over the suit properties, attempted



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to interfere with the possession and enjoyment of the plaintiff. As such, the plaintiff came up with the suit for declaration and permanent injunction.

5. The defendants resisted the suit by filing a written statement disputing that the suit properties were allotted to the share of the plaintiff. According to them, there was no partition at any point of time and the plaintiff and the first defendant always remained as joint family until their father died and after the death of their father, the first defendant's mother Kannammal had executed a release deed dated 10.09.1977, thereby, relinquishing her right in the suit property in favour of the first defendant and the plaintiff, pursuant to which, both the plaintiff and the first defendant became entitled to all the joint family properties in equal share and they were in possession in the properties. Thereafter, an extent of 0.88 cents along with the well situated in R.S.No.76/5 was purchased by both the plaintiff and the first defendant through a registered sale deeds dated 31.05.1979, 29.04.1980 and 09.07.1980. For the sake of convenience, the first defendant was put in possession in some of the family properties and the plaintiff was in possession of the properties for



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the past 8 years. But, there is no actual partition by metes and bounds and both the plaintiff and the first defendant had also been sharing income from the suit properties and as such, sought for dismissal of the suit.

Evidence and documents:

6. During trial, on the side of the plaintiff, one Muthusamy and Sadaiyan were examined as P.W.1 and P.W.2 and Exs.A1 to A15 were marked. On the side of the defendants, the first defendant examined himself as D.W.1 and marked Exs.B1 to B8.

Findings of the Courts below:

7. After analysing the evidence and documents, the Trial Court decreed the suit. The Trial Court found that the plaintiff, by filing the documents in Exs.A1 to A15, had proved that there was an oral partition in the family properties and without the oral partition, the Revenue records filed in Ex.A1 series, which are pattas, could not have been issued separately in the name of the plaintiff and further, the document filed in Ex.A15, which is the sale deed executed by the first defendant



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selling a portion of the suit property allotted to him, whereby, the boundaries to the suit properties specifically makes it clear that it is bounded on the properties allotted to the share of the plaintiff and further, the admission of D.W.1/first defendant that even though he had spent a sum of Rs.90,000/-, he did not claim any share from the plaintiff, is not believable.

8. Aggrieved by the same, the defendants filed an appeal in A.S.No.113 of 2002 on the file of the II Additional District Court, (Fast Track Court), Kallakurichi. The Lower Appellate Court, after re-appreciating the evidences, by judgment and decree dated 22.01.2003, dismissed the appeal.

9. Aggrieved by the concurrent finding of fact, the defendants are before this Court in this Second Appeal.

Substantial questions of law:

10. This Court, by order dated 18.07.2003, admitted this Second Appeal and framed the following substantial questions of law:



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“a) Whether the Courts below are correct in law in upholding the plea of oral partition in the total absence of evidence to support such a claim made by the plaintiff?

b) Have not the Courts below acted against well settled principle of law in relying and acting upon UDR patta as positive proof of title?”

Submissions on both sides:

11. The learned counsel appearing for the defendants/appellants argued that even though the plaintiff has come up with the suit in respect of 13 items of the suit properties, the defendants restrict the claim in this Second Appeal only in respect of item nos.9 and 10, which pertain to the well.

12. The learned counsel further argued that even though the oral partition was denied by the defendants, from the documents available on records, it can be ascertained that the properties were, in fact, divided and the respective parties had taken possession of their shares. However, as far as the well, which is situated in item nos.9 and 10, is concerned, it has



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been retained for the joint enjoyment of both the plaintiff and the first defendant.

13. The learned counsel further argued that when both the Courts below mainly placed reliance on Exs.A1 to A14, which are pattas and kist receipts, the Courts below failed to note that even though all the other items of the suit properties stand exclusively in the name of the plaintiff, as far as the well in item nos.9 and 10 is concerned, the patta had been issued jointly in the name of the plaintiff and the first defendant, which would establish the fact that the plaintiff and the first defendant are in joint possession of the properties and the same was retained by them in common.

14. The learned counsel further argued that in fact, P.W.1, in his evidence, had categorically admitted that the first defendant is also entitled to joint use of the well in item nos.9 and 10 of the suit properties, which has not been taken note of by the Courts below, while decreeing the suit. The learned counsel contended that since both the Courts below have not considered the admission of the plaintiff and also not considered



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the patta issued in respect of item nos.9 and 10 in their proper perspective, the finding arrived at by the Courts below is erroneous and sought for allowing this Second Appeal.

15. Per contra, the learned counsel appearing for the plaintiff/respondent argued that the plaintiff, by filing the suit, has clearly established that there was an oral partition in their family and from the documents filed in Exs.A1 to A14, i.e., pattas and kist receipts, which have been issued in favour of the plaintiff, he has established that only since there was an oral partition in the family, the parties have taken possession of their respective shares and were in enjoyment and carrying on cultivation. When the pattas were issued under the UDR scheme, the documents in Exs.A1 to A14 were issued in the name of the plaintiff.

16. Further, the learned counsel contended that the document in Ex.A15 is the sale deed executed by the first defendant, conveying a portion of the properties allotted in his favour to third party. The sale deed in Ex.A15 clearly establishes that when there was no oral partition and if the properties had not been divided between the plaintiff and the



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first defendant, there was no possibility for the first defendant to execute the sale deed exclusively in favour of the third party and further, the schedule to the sale deed also makes it clear that the properties, which he had sold, are surrounded by the properties allotted to the plaintiff. Further, the fact that the first defendant claims that he had spent a huge amount for digging well in item nos.9 and 10 of the suit properties and he has admitted that he had not claimed any share from the plaintiff might go to show that since he was not having any joint interest, he had not claimed share from the plaintiff.

17. According to the learned counsel, both the Courts below have rightly taken note of all the aspects and arrived at a finding, which is not perverse and sought for dismissal of this Second Appeal.

Analysis of the submissions:

18. Admittedly, the suit properties, along with several other properties, originally belonged to one Rangasamy Konar and he had two sons viz., Govinda Konar and Ramu Konar, who are the plaintiff and the first defendant.



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19. According to the plaintiff, there was an oral partition in the family in the year 1980 and thereby, all the 13 items of the suit properties have been allotted to the share of the plaintiff and as per the allotment, the plaintiff has also taken possession of his respective share and he has been doing cultivation and hence, he is in possession and enjoyment of the suit properties. The plaintiff had filed the document in Ex.A1 series, which are pattas, issued in respect of the suit properties and the documents in Exs.A2 to A14, which are the kist receipts, issued in favour of the plaintiff for the suit properties. By filing the document in Ex.A15, which is the sale deed, the plaintiff claims that when the defendant had sold a portion of the properties allotted in his favour, he is estopped from denying oral partition that happened in the year 1980.

20. The defendants, on the contrary, even though deny the oral partition, claim that the well in item nos.9 and 10 were exclusively purchased by the plaintiff and the first defendant and all other properties were treated as joint family properties of the plaintiff and the first defendant, which were in common enjoyment and they were also sharing



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the revenue derived from the suit properties.

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21. The sale deed filed in Ex.A15, which is executed by the first defendant in favour of the third party, conveying the share allotted to him in the oral partition, makes it clear that in fact, there had been an oral partition in the family, whereby, the properties of Rangasamy Konar and also the properties purchased by them, had been allotted to both the plaintiff and the first defendant and also the parties have taken possession of their respective shares. Only as the oral partition was acted upon, they were in enjoyment of their respective shares. Further, pattas in Ex.A1 series, have been issued in favour of the plaintiff, which establish the fact of the oral partition and the possession of the plaintiff. The kist receipts filed in Exs.A2 to A14 also go to show that the plaintiff, who was in possession of the suit properties, had been paying kist to the Government and was in enjoyment of the suit properties.

22. However, the issue, now, as far as the well in item nos.9 and 10 of the suit properties is concerned, the Courts below have mainly relied on the pattas in Ex.A1 series and have arrived at a finding that since the pattas in Ex.A1 series are exclusively issued in the name of the



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plaintiff, the defendant cannot make any claim in the well in item nos.9 and 10 of the suit properties. On perusal of the pattas in Ex.A1 series, it could be seen that in so far as the properties in item nos.1 to 8 and 11 to 13 are concerned, the patta has been issued exclusively in the name of the plaintiff, which shows that these properties were, in fact, allotted to the share of the plaintiff and he had been exclusively in possession of the respective properties.

23. Whereas, from a perusal of the patta in respect of the well in survey nos.69/5A and 76/5C, which are the item nos.9 and 10 of the suit properties, the patta stands jointly in the name of the plaintiff and the first defendant. When the patta in respect of the well in item nos.9 and 10 stands jointly in the name of the plaintiff and the first defendant, the finding arrived at by the Courts below that the patta has been issued in the name of the plaintiff alone in respect of the well, is by misreading of evidence. Further, a perusal of the evidence of P.W.1 goes to show that he has admitted that in respect of the well in item nos.9 and 10, both the plaintiff and the first defendant are having right to use the same. Further, the Courts below had relied on the statement that since the first defendant



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had spent a sum of Rs.90,000/- and he had not claimed any share from the plaintiff, it will go to show that since there was no joint enjoyment, the same was not claimed, which is only an assumption.

24. From the joint patta issued in respect of the item nos.9 and 10 of the suit properties, which is the well and also the admission of P.W.2 in his cross-examination that both the plaintiff and the first defendant are jointly entitled to enjoy item nos.9 and 10 of the suit properties, the finding in respect of item nos.9 and 10, arrived at by the Courts below are not based on materials available on record and perverse and is liable to be interfered with.

25. In view of the above discussions, the substantial questions of law are answered in favour of the appellant only in respect of item nos.9 and 10 of the suit properties, which is the well.

26. Accordingly, this Second Appeal stands allowed only in so far as the item nos.9 and 10 of the suit properties are concerned, and in all other aspects, the judgment and decree of the Courts below are



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confirmed.

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27. In the result, this Second Appeal is partly allowed. However, there shall be no order as to costs.

13.03.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Principal Subordinate Judge, Krishnagiri.
2. The District Munsif, Krishnagiri.
3. The Section Officer, V.R.Section, High Court, Madras.



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