



S.A.No.779 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.779 of 2000

1.Subramanian
2.R.Anguchamy
3.Pappa

... Appellants

Vs

Kasinathan (Died)
2.Meenal
3.Thenmozhi (Died)
4.A.Manjula
Respondents

...

(Respondents 2 and 3 are brought on record as LR of the deceased sole respondent vide Court order dated 19.01.2023 in M.P.(MD)Nos.1 to 3 of 2009)

(Respondent 4 is also brought on record as LR of the deceased sole respondent vide Court order dated 22.06.2023 made in C.M.P.(MD)No. 1258 of 2023)

(R3 died and R4, who is already on record is recorded as LR of the deceased R3 vide Court order dated 11.01.2024 made in S.A.No.779 of 2000)

(The order dated 11.01.2024 is recalled, and memo dated 01.04.2024 presented before the Court on 01.04.2024 is recorded to the effect that R3 died and R2, who is already on record is recorded as LR of the deceased R3 vide Court order dated 01.04.2024 made in S.A.No.779 of 2000)



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PRAYER: Second Appeal filed under Section 100 of C.P.C. read with Order XLI Rule 1 of C.P.C. against the judgment and decree in A.S.No. 80 of 1998 dated 10.11.1999 on the file of the Principal District Judge, Ramanathapuram, reversing the judgment and decree dated 27.02.1998 in O.S.No.298 of 1994 on the file of the District Munsiff, Paramakudi.

For Appellants : Mr.M.Thirunavukkarasu

For Respondents : Mr.D.Senthil for R2
No Appearance for R4
R1 & R3 died.

JUDGMENT

The defendants are the appellants. The deceased first respondent filed a suit for declaration of title and injunction in respect of suit items 1 and 2, with alternative prayer for recovery of possession in respect of item 2. The suit was dismissed by the trial Court. The first appeal filed by the deceased first respondent Kasinathan/plaintiff was allowed by the first appellate Court, by granting a declaration that said Kasinathan was co-owner of the suit property and for consequential injunction in respect of first item of the suit property. In respect of second item, the first appellate Court granted a decree for limited declaration as mentioned



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above and recovery of possession. Aggrieved by the said judgment and decree, the defendants have come by way of this Second Appeal.

2. According to the respondents/plaintiffs, the suit property originally belonged to plaintiff's paternal grandfather Vellaisamy Konar and he died even before coming into force of "The Hindu Succession Act, 1956" [hereinafter referred to as "the 1956 Act" for the sake of convenience]. The said Vellaisamy Konar had one son, Nagarathina Konar, father of the plaintiff and two daughters viz., Ramayee and Alagammal. Since Vellaisamy Konar died prior to coming into force of the 1956 Act, on his death, the plaintiff's father Nagarathina Konar acquired Vellaisamy Konar's share in the suit property by way of survivorship. Thus, he became owner of entire suit property. The said Nagarathina Konar left the house 10 years back and his whereabouts was not known and hence, claiming that his absence shall be treated as civil death, the first respondent Kasinathan laid a suit for declaration of title and other consequential relief.

3. The suit was resisted by the appellants herein by specifically denying the averments found in the plaint, as if Vellaisamy Konar died prior to coming into force of the 1956 Act. It was the specific case of the appellants that Vellaisamy Konar died subsequent to coming into force of



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the 1956 Act and hence, on his death, the sisters of Nagarathina Konar viz., Ramayee and Alagammal, mother of appellants 1 and 2, were also succeeded to the suit property. It was also pleaded by the appellants that there was a partition after the death of Vellaisamy Konar and the southern portion of the suit property was allotted to the share of Alagammal and northern portion of the suit property was allotted to the share of Ramayee, mother of Subramanian. It was also pleaded that Ramayee gave up her right in the northern portion of the suit property in favour of Alagammal and she put up a house thereon and had been residing. It was also claimed that the house that was in existence of the suit property got dilapidated and the suit property had been in possession and enjoyment of the appellants. The appellants also denied the plea raised by the respondents /plaintiffs, as if the mother of the second appellant Alagammal was permitted to occupy the suit property by father of the plaintiff. On these pleadings, the appellants sought for dismissal of the suit.

4. The trial Court, on appreciation of oral and documentary evidence came to the conclusion that the respondents/plaintiffs failed to prove their plea that Vellaisamy Konar died prior to the 1956 Act and hence, mother of the appellants 1 and 2 were also entitled to a share in



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the suit property and consequently, dismissed the suit. Aggrieved by the same, the first respondent/plaintiff preferred an appeal in A.S.No.80 of 1998 on the file of Principal District Court, Ramanathapuram. The first appellate Court reversed the finding of the trial Court and came to a conclusion that the respondents proved that Vellaisamy Konar died prior to the 1956 Act and consequently, the father of deceased first respondent Nagarathina Konar entitled to the entire suit property. The first appellate Court also came to a conclusion that even assuming the death of Nagarathina Konar was not proved by the respondents/plaintiffs, as a son of Nagarathina Konar, the deceased first respondent/plaintiff entitled to be declared as a co-owner of the property and for consequential reliefs. Aggrieved by the said findings rendered by the first appellate Court, the appellants/defendants are before this Court.

5. At the time of admission, this Court formulated the following substantial questions of law, by an order dated 15.10.2003:

“1. Whether the Lower Appellate Court was correct in placing the burden of proof with regard to the date of death of Vellaisamy Konar on the defendants?

2. Whether the Lower Appellate Court was correct in presuming that the father of the plaintiff Nagarathina Konar was dead when the plaintiff himself had admitted in chief



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examination that he was alive?

3. Whether the Lower Appellate Court was correct in placing the burden of proof with regard to the death or otherwise of Nagarathian Konar on the defendants?

4. Whether the claim of the plaintiff is tenable in the light of Exhibits B.2 to B.25?

5. Whether the finding of the Lower Appellate Court that the defendants are trespassers is sustainable when no such plea has been raised by the plaintiff?

6. Whether the plaintiff has succeeded to the suit property by survivorship?"

6. The learned counsel appearing for the appellants submitted that the first respondent as a plaintiff failed to prove the specific plea that the original owner Vellaisamy Konar died prior to the 1956 Act. The first appellate Court wrongly shifted the burden on the defendants to prove that Vellaisamy Konar died subsequent to the coming into force of the 1956 Act. Therefore, the finding rendered by the first appellate Court with regard to the date of death of Vellaisamy Konar is unsustainable. The learned counsel further submitted that the appellants by producing various revenue documents, which were marked as Ex.B2 to Ex.B25 proved their possession over the suit property and hence, the first appellate Court ought not to have treated them as trespassers.



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7. The learned counsel appearing for the respondents by taking this Court to the evidence of D.W.1 and D.W.2, submitted that the finding rendered by the first appellate Court with regard to the date of death of Vellaisamy Konar was based on the admission of appellants' witnesses and hence, the said finding of fact need not be interfered with.

Answer to substantial questions of law Nos.1 and 6:

8. It is the specific case of the respondents/plaintiffs that original admitted owner of the property viz., Vellaisamy Konar died prior to coming into force of the 1956 Act and the same has been stoutly denied by the appellants/defendants in the written statement. The first appellate Court, based on the admissions made by D.W.1 and D.W.2, came to the conclusion that Vellaisamy Konar died prior to 1956.

9. D.W.1, during the course of cross examination admitted that he was three years old, when Vellaisamy Konar died. The age of D.W.1 was shown as 47, when he was examined on 23.06.1997. Therefore, he should have born in the year 1950. If it is accepted that Vellaisamy Konar died when D.W.1 was three years old, he should have died in the year 1953. The relevant portion of D.W.1's evidence reads as follows:



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“வெள்ளைச்சாமி கோனார் நான் பிறந்ததற்கு பின்னால் தான் இறந்தார். அங்குச்சாமிக் கோனாரை எனக்கு தெரியும். எனக்கு 3 வயதாகியிருக்கும்போது வெள்ளைச்சாமி கோனார் இறந்துவிட்டார். அங்குச்சாமி கோனார் இறக்கும்போது நாகரெத்தினக்கோனாருக்கு 45 வயது இருக்கும். வெள்ளைச்சாமிகோனார் தாவாக்கிராமத்தில் தான் இறந்தார். வெள்ளைச்சாமி கோனார் அவர் மகன் நாகரெத்தினத்திற்கும் பாகம் ஏதும் ஏற்படவில்லை.□

10. A perusal of the vernacular extract of D.W.1's evidence would indicate that Vellaisamy Konar died when he was three years old. Taking into consideration the age of D.W.1, given as 47 at the time of examination, the first appellate Court rightly came to the conclusion that Vellaisamy Konar should have died around 1953.

11. The above said admission of D.W.1 was very well corroborated by the admission of D.W.2 in his cross examination. The relevant portion of D.W.2's evidence reads as follows:

“வெள்ளைச்சாமி கோனாரை எனக்கு தெரியும். வெள்ளைச்சாமி கோனார் இறக்கும்போது எனக்கு 10 அல்லது 12 வயது இருக்கும்.□

12. A perusal of the above evidence of D.W.2 would indicate that Vellaisamy Konar died when D.W.2 was aged about 10 or 12. The age of D.W.2 was mentioned as 55 years on the date of examination



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[11.08.1997]. Therefore, he should have born in the year 1942. If 12 years is added to 1942, then Vellaisamy Konar should have died in the year 1954. Therefore, the finding rendered by the first appellate Court that Vellaisamy Konar died prior to coming into force of the 1956 Act is based on admissions of D.W.1 and D.W.2 and there is no perversity in the said finding rendered by the first appellate Court. Therefore, the questions of law Nos.1 and 6 are answered against the appellants and in favour of the respondents.

Answer to substantial questions of law Nos.2, 3, 4 and 5:

13. Once this Court has come to the conclusion that Vellaisamy Konar died prior to the 1956 Act, his daughters viz., mothers of appellants 1 and 2, Ramayee and Alagammal cannot claim any share in the suit property. On the death of Vellaisamy Konar, his share in the property will go into his only son Nagarathina Konar by survivorship. The deceased first respondent is the son of said Nagarathina Konar. The plaintiff examined himself as P.W.1 and he asserted that Nagarathina Konar has not been heard for more than 10 years. The first appellate Court had noted that in chief examination in one sentence P.W.1 deposed as if Nagarathina Konar was alive but in next sentence he asserted that he



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has not been seen for the past ten years. Hence, as per golden rule of evidence, after weighing entire evidence of P.W.1 as a whole, first appellate Court came to a conclusion that P.W.1 asserted that Nagarathian Konar has not been heard for the past 10 years. There is no contra evidence on record to suggest that Nagarathina Konar was heard by anybody, who was expected to know about the whereabouts within 7 years immediately preceding the presentation of plaint. Therefore, the civil death of Nagarathina Konar can be safely presumed.

14. In that case, the first respondent is entitled to declaration of title to the suit property as prayed for. Even assuming that Nagarathina Konar's death is not proved, as a son of Nagarathina Konar, the deceased first respondent/plaintiff is entitled to a share in the suit property, as the suit property is admittedly ancestral in character. Therefore, the deceased first respondent is entitled to a declaration that he is a co-owner of the suit property along with Nagarathina Konar and his daughters. Therefore, the first appellate Court instead of granting a declaration of absolute title, granted a lesser relief of declaration that first respondent / plaintiff was co-owner of the suit property. Even if, Nagarathina Konar is alive, co-ownership of 1st respondent by virtue of birth cannot be denied. Hence, the said finding requires no interference from this Court.



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The appellants/defendants produced the revenue documents to show their possession over the suit 2nd schedule property. It is settled law, revenue documents are not documents of title and it can be pressed into service only for the purpose of possession over the suit property. Even as per the admitted case of the first respondent/plaintiff, the second appellant's mother Alagammal was allowed to occupy the southern portion of the suit property, by putting up a superstructure and therefore, the revenue documents produced by the appellants, to prove their possession, would not advance their case in any way. The respondents established their right over the suit property. The appellants are unable to establish their right over the suit property. In such circumstances, the first appellate Court rightly treated them as trespassers and granted a decree for recovery of possession in respect of item 2 of the suit property. Accordingly, the questions of law Nos.2, 3, 4 and 5 are answered against the appellants and in favour of the respondents.

15. In view of the conclusion reached by this Court in questions of law Nos.1 to 6, I do not find any thing to interfere with the judgment and decree passed by the appellate Court and accordingly, the Second Appeal stands dismissed. There shall be no order as to costs.



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NCC : Yes / No
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S.SOUNTHAR, J.

vsm

To

- 1.The Principal District Judge, Ramanathapuram.
- 2.The District Munsiff, Paramakudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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