

A.S.No.22 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 06.02.2025

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

A.S.No.22 of 2017
and
CMP.No.746 of 2017

N.K.Paneerselvam

...appellant

Vs

1.S.Azeemunissa Begum
2.Hassena Begum
3.Ghousia Begum
4.Mohammed Hasim Khan
5.Mohammed Aslam Khan
6.Mohammed Asif Khan
7.Mohammed Imran Khan
8.A.Mohammed Ismail

... Respondents

PRAYER: Appeal Suit filed Under Section 96 of the Civil Procedure Code, against the Judgment and decree dated 09.08.2016 passed in O.S.No.5223 of 2013 by the learned XVIII Additional City Civil Judge, Chennai.

For Appellant : Mr.M.L.Ganesh

For Respondents : Mr. V.Balaji



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JUDGMENT

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The appellant has filed this appeal against the Judgment and decree dated 09.08.2016 passed in O.S.No.5223 of 2013 by the learned XVIII Additional City Civil Judge, Chennai.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the original suit.

3.The appellant is the plaintiff in suit O.S. No. 5223 of 2013 on the file of the XVIII Additional City Civil Court, Chennai. As the plaintiff, he filed a suit against eight defendants, seeking relief for the delivery of vacant possession of the suit property after the removal of the superstructure at their cost. He also sought a declaration that he is the absolute owner of the suit property as per the sale deed, Document No. 3574 of 2018, along with a permanent injunction and other consequential reliefs.

4. The plaintiff claims ownership of the land, excluding the superstructure, based on his purchase from his vendor, the 8th defendant,

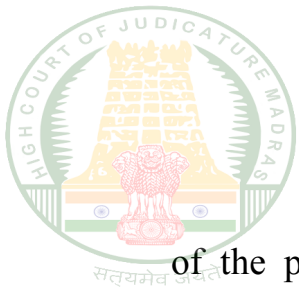


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through a sale deed dated 05.12.2008. However, defendants 1 to 7 dispute the plaintiff's right and title, asserting that the plaintiff's vendor had no ownership over the property. They contend that, since 1935, the mother-in-law of the 1st defendant, Fathimabevi, owned and possessed the suit property, having derived title over the land through a lease executed by K.S.Nagappa and Sons. She paid rent until 1950, after which no one demanded rent for the land. Consequently, they claim to have been in absolute, continuous, and uninterrupted possession and enjoyment of the land.

5. Defendants further state that Fathimabevi initially constructed a thatched shed on the land and later executed a settlement deed in favor of her son, Sarthar Khan, through Registered Document No. 691/1979. A rectification deed was subsequently executed to correct certain errors, registered as Document No. 112/1982.

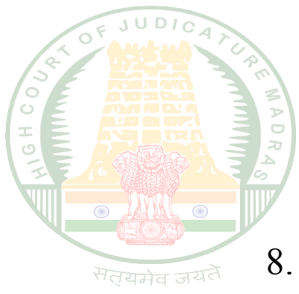
6. Upon the death of Sarthar Khan, his legal heirs, defendants 1 to 7, inherited the rights conferred under the settlement deed. They later removed the thatched structure and constructed a superstructure with the knowledge



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of the predecessors-in-title, the 1st defendant enjoyed the suit property, asserting hostile ownership against the titleholder. Consequently, the 1st defendant claims to have perfected title through adverse possession against the plaintiff and his predecessors.

7. Further, Defendants 1 to 7 submit that ownership of the superstructure, with property tax assessed in their names as per the findings in O.S. No. 5223 of 2013, the 1st defendant was declared the absolute owner of the superstructure along with leasehold rights over the property at Door No. 114, Parthasarathy Road. However, the plaintiff is now claiming ownership of both the land and the superstructure based on his purchase. The defendants argue that such a claim is not valid, as no notice of transfer of ownership was issued to them. Additionally, they contend that the plaintiff's vendor and the vendor's predecessor had no right or title to convey the property to the 8th defendant and that the property description in the sale deed is incorrect. Accordingly, they prayed for the dismissal of the suit.



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8. Before the trial court, both parties presented oral and documentary evidence. On the plaintiff's side, plaintiff was examined as P.W.1 and Ex.A1 to Ex.A26 were marked. On the defendants' side, 1st defendant was examined as D.W.1 and Ex.B1 to Ex.B.3 were marked.

9. Upon considering the evidence on record, the learner trial judge framed six issues for determination, and observed that there had already been previous suits O.S. No. 5867 of 2008 and O.S. No. 4701 of 2008 filed by defendants 1 to 7 against the legal heir of Kannappa Mudaliar, the 8th defendant Mohammed Ismail, and the present plaintiff. In O.S. No. 5867 of 2008, defendants 1 to 7 sought a declaration that the sale deed in favor of the 8th defendant, concerning the superstructure, was null and void. In O.S. No. 4701 of 2008, the 1st defendant sought a permanent injunction restraining the 8th defendant and the plaintiff from taking coercive possession of the suit property.

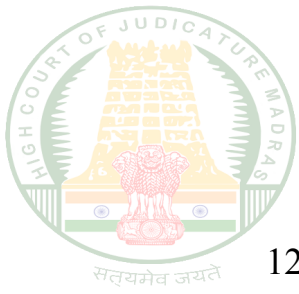
10. Both suits were decreed in favour of the plaintiff's vendor / 8th defendant, affirming the right of defendants 1 to 7 over the superstructure



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but not the land. Subsequently, the present suit was filed, seeking a declaration of title and recovery of possession of the vacant land. However, defendants 1 to 7 claimed that they had been in possession of the property since 1950, adverse to the titleholder, and had perfected ownership through adverse possession in respect of land.

11. The learned trial Judge also observed that as per Ex.A-2 and Ex.A-3, Fathimabevi was in possession under a lease deed from 1950 onwards for vacant site and later constructed the superstructure, which was settled in favour of her son in 1979. Since then, defendants 1 to 7 have been enjoying the property. Furthermore, the legal heirs of Kandappa Mudaliar, the original owner, never challenged the settlement deed in favour of the 1st defendant's husband. The plaintiff purchased the property only in 2008 from the 8th defendant. However, from 1979 onwards, no one else claimed ownership over the property. Therefore, the trial court concluded that the 8th defendant had no right to convey the property to the plaintiff.



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12. Accordingly, the trial court held that the plaintiff is not the absolute owner of the suit property as per the sale deed and is not entitled to recover possession. Thus, the suit was dismissed. Challenging these findings, the present appeal has been filed.

13 The learned counsel for the appellant has challenged the trial court's findings on following grounds.

i) The Trial court has failed to observe that the appellant herein had filed A.S.No.224/2013 against the judgment and decree passed in O.S.No.5867/2008 wherein the appellate court had modified the judgment by observing that the respondents 1 to 7 are not the owners of the suit land.

ii) The Trial court has completely brushed aside the Exhibit Nos.A2 & A3 wherein the title of the respondents 1 to 7 relates to super structure alone and the land belongs to the appellant's predecessors in title.

iii) The Trial court has failed to take judicial notice of the Exhibit Nos.A4 to A12 which discloses that the larger extent of land including the suit land originally belonged to Mr.Kanniappa Mudaliar and the same has been conveyed by his legal heirs and the ownership of the successors in



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interest admitted by the respondents 1 to 7 herein.

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iv) The Trial court ought not to have taken adverse inference against the appellant with regard to Door Number of the suit property since the 8th respondent has mentioned the previous door number in the sale deed executed in favour of the appellant herein.

v) The Trial court has erred in observing that the legal heirs of Mr.Kanniappa Mudaliar had filed two suits in O.S.Nos. 4701/2008 & 5867/2008 against the respondents 1 to 7 herein which is absolutely contrary to the factual position. As a matter of fact, the aforesaid suits were filed by the respondents 1 to 7 against the legal heirs of Mr.Kanniappa Mudaliar.

vi) The Trial court has erred in observing that the appellate court has confirmed the judgment and decree passed in O.S.No.5867/2008 filed by the respondents 1 to 7 and slightly modified the decree, which is absolutely factual error committed by the trial court in the impugned judgment and in this regard, it is relevant to extract the concluding paragraph of the judgment passed in A.S.No.224/2013 as follows, which is in favour of the appellant herein. "17" From the above, it is clear that the defendants and



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their predecessor in title are the owners of the suit land and the same was leased out to the plaintiffs and they have developed the property by constructing the superstructure and the same was settled to the present plaintiffs by their predecessor. The plaintiffs filed the suit for declaration only to the superstructure though they have mentioned in the schedule of property as land and superstructure. The trial court though rightly decreed the suit in favour of the respondents/plaintiffs, has also observed that the defendants 1 to 7 failed to prove how they required the suit land and there is no corroborative evidence and there is no correlative documents how the suit land was derived from Nagappa & Sons to Kannappa Mudaliar etc and how D1 to 7 executed the sale deed in favour of D8, who sold the suit property in favour of D9, which is not at all acceptable as the plaintiff have not claimed any right over the suit land and they are claiming right only in the superstructure".

vii) The Trial court erred in observing that the respondents 1 to 7 are enjoying the suit property hostile to the real owners from 1979 onwards and perfected their title by adverse possession.

viii) The Trial court has grossly failed to observe the relief sought for



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by the appellant in O.S.No.5223/2013 against the respondents 1 to 7 which is for recovery of possession of the suit property and it is not the case of the respondents 1 to 7 have derived unfettered title over the land and building through the Exhibit Nos.A2 & A3.

xi) The Trial court having extracted the evidence of legal heir of Mr.Kannappa Mudaliar. namely Mrs.Banumathy failed to observe the flow of title to the suit property which has been demonstrated by the appellant vide Exhibit Nos. A1, A4 to A12, A17 to A20, A24 to A26

x) The Trial court has completely omitted to take judicial notice of the evidence of DWI who categorically admitted that the adjacent owners of the suit property derived the title from the legal heirs of Mr.Kannappa mudaliar.

xi) The Trial court ought to have observed that DWI has admitted in the cross examination that her mother-in-law was lastly paying the lease rent for the suit property and after her demise, DW1 not remitting the same.

xii) The Trial court ought to have given credence to the public documents namely Legal heirship certificate, Death Certificate issued by the competent authorities which shows that the appellant's predecessor in



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title had inherited the larger extent of land including the suit property by succession based on Exhibit No.A1.

xiii) The Trial court ought to have observed the Exhibit A1 which confers title on Mr.Kannappa Mudaliar with regard to the suit property.

xiv) The Trial court ought to have observed the fact that the legal heirs of the deceased Mr.Kannappa Mudaliar had got title to convey the suit property and the respondents 1 to 7 being the owners of super structure alone cannot question or challenge the rights of the appellant herein. If the respondents 1 to 7 or predecessor in title had constructed the super structure on the lease hold land, the trial court cannot confer title on the respondents 1 to 7 based on their long possession unless and until the plea of adverse possession pleaded in the declaratory suit based on documentary evidence.

xv) The judgment of the trial court is completely biased and it suffers from grave legal and factual infirmities.

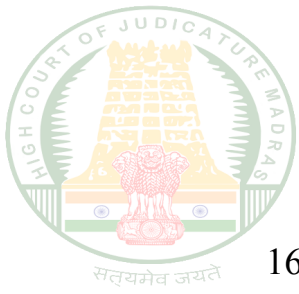
14. Submitting the above grounds, the learned counsel for the appellant/plaintiff argues that the trial court did not properly appreciate the recitals of the settlement deed, Ex.A2, dated 18-05-1979. In this deed, only



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the superstructure along with the leasehold right was settled in favour of the settlor's son, Sarthar Khan, by Fathimabevi. Therefore, the legal heirs of Sarthar Khan are entitled only to the superstructure and not to the land.

15. This aspect was rightly considered in the earlier suit proceedings in O.S. No. 5867 of 2008 and A.S. No. 224 of 2013, where the plaintiff and defendants 1 to 7, as well as the legal heirs of Kannappa Mudaliyar, were parties to the proceedings. In that appeal, the right of defendants 1 to 7 was confirmed only in respect of the superstructure, whereas, regarding the land, the appeal was allowed, and the suit was dismissed in respect of land. However, case in hand, the trial court failed to properly appreciate those aspects and erroneously held that defendants 1 to 7 had perfected their right and title over the land through long, uninterrupted possession since 1979, based on adverse possession. This finding, according to the learned counsel, is perverse, an improper appreciation of law and evidence, and, therefore, prayed for the judgment to be set aside.



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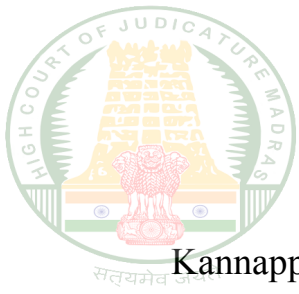
16. Per contra, the learned counsel appearing for the respondents/defendants 1 to 7 argues that, although the settlement deed transferred only the superstructure, their long, uninterrupted possession was rightly considered by the learned trial judge, who dismissed the suit. The learned counsel contends that the trial court's finding is valid under law and, therefore, prays for the dismissal of the appeal on the ground of devoid of merits.

17. Points for Consideration:

(i) Whether the plaintiff has perfected the right and title in respect of the land of the suit property?

(ii) Whether defendants 1 to 7 have perfected their right and title by way of adverse possession in respect of both the land and the superstructure?

18. According to the plaintiff, he purchased the suit property through the sale deed dated 05-12-2008 (Ex.A-10) from defendant 8, Mohammed Ismail, who, in turn, purchased the property from the legal heirs of



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Kannappa Mudaliyar through Ex.A-9, a sale deed dated 12-06-2008. Before that, Kannappa Mudaliyar had purchased the property from one Adhikesavalu through Ex.A-1, sale deed document No. 3860 of 1952. Through these three documents, the plaintiff has demonstrated his right and title over the suit land.

19. It is important to note that the legal heirs of Kannappa Mudaliyar, who are the present defendants, had already filed a suit, O.S.No. 5867 of 2008, in which the present plaintiff and his vendor, Mohammed Ismail, were shown as defendants 8 and 9. The present plaintiff alone contested that suit. In that case, the defendants claimed the right and title over the superstructure situated at New Door No. 36, Old Door No. 114, Parthasarathy Pillai Road, Old Washermanpet. They also prayed to declare the sale deed, standing in the name of defendant 8 and dated 12-06-2008, executed by the legal heirs of Kannappa Mudaliyar, as null and void.

20. After the trial, the said suit was decided in favour of the present defendants 1 to 7 concerning the superstructure, but their claim to the land



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was not accepted. Subsequently, an appeal, A.S. No. 224 of 2013, was preferred by the legal heirs of Kannappa Mudaliyar. The learned appellate judge partly allowed the appeal, further affirming that the rights of defendants 1 to 7 were confined only to the superstructure and not to the land.

21. Accordingly, the judgment and decree passed concerning the findings on the land in the suit property were set aside. However, regarding the superstructure alone, the earlier decree was confirmed in favour of Defendants 1 to 7. Subsequently, only the plaintiff filed the present suit to declare his right and title over the land, as described in the plaint schedule, and also prayed for the removal of the superstructure by Defendants 1 to 7 at their cost.

22. Regarding the superstructure, Defendants 1 to 7 claimed ownership based on the settlement deed dated 18-05-1979 (Ex. A-2). Upon examining the said document, it is evident that the mother-in-law of the first defendant executed a settlement deed in favour of her son,

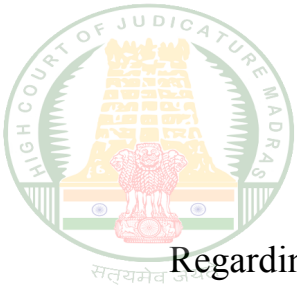


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Sardharkhan, concerning the superstructure on the leasehold land. It is an admitted fact that Defendants 1 to 7 acknowledge that D1's mother-in-law, Fathimabevi, had entered into a lease agreement with one Nagappa and Sons on a monthly rent basis, making her a tenant. She and her family occupied the property and constructed only the superstructure.

23. Therefore, based on Ex.A-2 (the settlement deed), Defendants 1 to 7 are entitled only to the superstructure and not to the land. Subsequently, in the sequence of events, Defendants 1 to 7 claimed ownership and title over the land, asserting that they had perfected their title through uninterrupted and continuous possession, hostile to the knowledge of the original owner, as they had not paid rent since 1959, and no one had demanded rent. They also contended that Kannappa Mudaliar and his legal heirs had not perfected their title through a valid sale and that the alleged sale was conditional.

24. However, in the earlier proceedings, the rights of Defendants 1 to 7 were confirmed only concerning the superstructure, not the land.

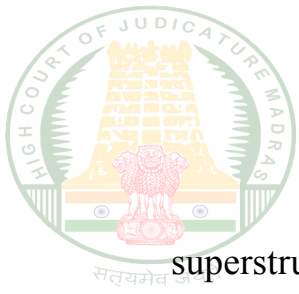


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Regarding the land, the appeal preferred by the legal heirs of Kannappa Mudaliar was allowed in A.S.No. 224 of 2013 on the file of the VI Additional City Civil Court, Chennai. The legal heirs of Kannappa Mudaliar sold the property to D7, from whom the plaintiff purchased the suit property. The sale deed included both the land and the superstructure. However, the plaintiff restricted his claim to the land alone and not the superstructure.

25. Though Defendants 1 to 7 disputed the legal heirs of Kannappa Mudaliar, in the earlier proceedings, Jagannayagi and her sons contested the suit, wherein these defendants had filed a suit against them, claiming to be the legal heirs of Jagannayagi and other legal heirs of Kannappa Mudaliar. Furthermore, the original title deed of Kannappa Mudaliar was marked as Ex.A-1, showing that he purchased the property from K.N.Adhikesavalu and others.

26. Defendants 1 to 7 admitted that D1's mother-in-law, Fathimabevi, was initially inducted as a tenant and permitted to construct the superstructure with leasehold rights. She subsequently transferred only the



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superstructure to her son, D1's husband, SardharKhan. It was also admitted that she had obtained leasehold rights from Kannappa Mudaliar and his sons and claimed rights only over the superstructure. A dispute later arose, leading to the filing of a suit in 2008, in which Defendants 1 to 7 were confirmed as the owners of the superstructure, but not the land.

27. Having initially claimed tenancy rights over the property, Defendants 1 to 7 implicitly acknowledged the ownership rights of either Nagappa and Sons or another party. However, they later sought to claim absolute ownership of the land by disputing the plaintiff's purchase, which included both the land and the superstructure. In all these proceedings, Defendants 1 to 7 consistently claimed rights over the superstructure, as evidenced by their settlement deed (Ex.A-2), which only transferred the superstructure and not the land.

28. Even in the settlement deed, only leasehold rights concerning the superstructure were transferred, while the land belonged to Nagappa and Sons. At no point did Defendants 1 to 7 claim absolute ownership of the



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land. Instead, they contested the purchase made by defendant 8 concerning both the land and the superstructure. The defendants' claim of ownership by way of uninterrupted long possession and enjoyment is not permissible under the law. In earlier proceedings, they had only asserted leasehold rights over the superstructure. Now, they have taken a contradictory stance by claiming ownership of the land through adverse possession, which is legally impermissible.

29. However, the trial court erroneously concluded that Defendants 1 to 7 had been enjoying the property hostile to the real and original owner since 1979, a finding that is illegal perverse and liable to be set aside. Accordingly, Issue No. 2 is answered.

30. Based on the sale deed (Ex.A-10), the plaintiff claims ownership and title over the suit land. The title deed of the plaintiff's vendor was marked as Ex.A-9, and the title deed of his vendor's vendor was marked as Ex.A-1. There is ample evidence that the vendor's vendor, Kannappa Mudaliar, originally owned eight grounds of land, which he later divided and sold to various persons, as documented in the sale deeds. Defendants 1

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to 7 have not denied these documents.

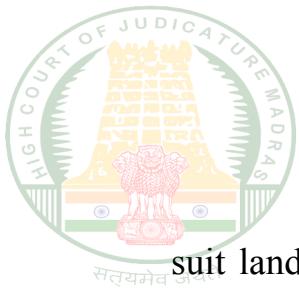
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31. The learned trial judge erroneously relied on the evidence of DW1 in O.S.No.5867 of 2008, the daughter of deceased Nadarajan (a legal heir of Kannappa Mudaliar), and failed to consider that, as per the settlement deed, only the superstructure was settled in favour of the first defendant's husband, Sardhar Khan. Defendants 1 to 7 have no right or title over the suit land. By focusing on minor inconsistencies in DW-1's evidence and disregarding material documents such as title deeds, the trial court wrongly dismissed the plaintiff's claim. This decision is entirely erroneous and liable to be set aside.

32. The plaintiff has successfully proven his right and title over the suit land, as confirmed in A.S. No. 224 of 2013. The plaintiff's predecessor's title was confirmed in the earlier suit proceedings arising from O.S.No. 5867 of 2008. Therefore, the plaintiff has established his ownership of the suit property. Accordingly, Issue No. 1 is answered.

33. As a result, the plaintiff is entitled to the vacant possession of the

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suit land. The suit is decreed, declaring the plaintiff as the absolute owner of the suit property. Defendants 1 to 7 are directed to remove the superstructure at their own cost and hand over vacant possession of the land within three months from the date of this order.

34. Accordingly, this appeal suit is allowed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

06.02.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The XVIII Additional City Civil Judge, Chennai.

2.The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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