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S.A.NOS.1534 AND 1535 OF 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20 / 02 / 2024

JUDGMENT PRONOUNCED ON : 29 / 04 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

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1.Madalai Muthu (Died)
2.Meenakshi (Died)
3.Arun (Died)
4.Mohan
5.M.Banu
(5th appellant brought on record and appellants 1, 3 and 4 recorded as LR's of the 2nd appellant (deceased) vide order of Court dated 08.04.2011 made in CMP Nos.339 and 340 of 2011 in S.A.Nos. 1534 and 1535 of 2002)

(Appellants 1 to 3 died. Appellants 4 & 5 are LR's of the appellants 1 to 3 (deceased) as per the memos dated 19.02.2019 and vide Court order dated 21.06.2021 made in S.A.Nos.1534 and 1535 of 2002)

... Defendants / Appellants
Appellants in both SAs'

Versus

1.Sivagamiammal (Died)
2.Karthikeyan

... Plaintiffs / Respondents
Respondents in both SAs'



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PRAYER IN S.A.NO.1534 OF 2002: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.03.2002 passed in A.S.No.25 of 2001 by the learned Subordinate Judge, Mettur, confirming the judgment and decree dated 23.04.2001 passed in O.S.No.262 of 1991 by the learned District Munsif, Mettur.

PRAYER IN S.A.NO.1535 OF 2002: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.03.2002 passed in A.S.No.43 of 2001 by the learned Subordinate Judge, Mettur, confirming the judgment and decree dated 23.04.2001 passed in O.S.No.68 of 1998 by the learned District Munsif, Mettur.

For Appellants : Mr.R.Muralidharan
(in both SAs')

For Respondent-2 : Mr.T.R.Rajagopalan
(in both SA's) Senior Counsel
for Ms.P.Veena Suresh

COMMON JUDGMENT

These Second Appeals are directed against the common judgment and decree dated March 26, 2002, passed in A.S.No.25 of 2001 and A.S.No.43 of 2001 by the 'learned Subordinate Judge, Mettur' [henceforth 'First Appellate Court' for the sake of brevity] confirming the common judgment and decree dated April 23, 2001 passed in O.S.No.262 of 1991 and O.S.No.68 of 1998, by the 'learned District Munsif, Mettur' [henceforth 'Trial Court' for the sake of brevity].



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2.The appellants no.(1) to (4) herein are the defendants no.(1) to (4) in O.S.No.262 of 1991 and O.S.No.68 of 1998. The respondents herein are the plaintiffs in the said Suits. For the sake of convenience, henceforth, the parties herein will be referred to as per their array in the Suits.

3.The case of the plaintiffs is as follows:

3.1.The suit properties were ancestral properties allotted to R.S.Kandasamy in a partition among his brothers. On and after the said partition, R.S.Kandasamy was enjoying the suit properties. R.S.Kandasamy married the first plaintiff namely, Sivagamiammal according to their caste customs and rituals in the year 1943. Hence, the first plaintiff is the legally wedded wife of Late R.S.Kandasamy. No children were born to the couple. Hence, the first plaintiff and R.S.Kandasamy decided to adopt a son. On December 2, 1981, first plaintiff Sivagamiammal and R.S.Kandasamy jointly adopted the second plaintiff as their son. Thereafter, R.S.Kandasamy passed away on May 2, 1990, at Salem. He was buried in the Suit properties. The second plaintiff, being the adopted son of R.S.Kandasamy performed all the



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final rites of Late R.S.Kandasamy. After the demise of R.S.Kandasamy, the plaintiffs became the absolute owners of the suit properties and they started enjoying the estate of R.S.Kandasamy.

3.2.The first defendant was a Commercial Tax Officer working in Tondiarpet Division Commercial Tax Office, Madras. His father name is Arockiasamy. Second defendant is the wife of the first defendant. The defendants 3 and 4 are the sons of the defendants 1 and 2. The defendants have no right, title, interest or possession over the suit properties. On May 20, 1990, the defendants came to the suit properties and made attempts to trespass into the suit properties. The defendants are strangers to the suit properties. The plaintiffs with the help of relatives and neighbours rightly prevented the defendants from their illegal attempt to trespass.

3.3.Initially, the plaintiffs filed a Suit for permanent injunction in O.S.No.262 of 1991. Since the defendants created a cloud over plaintiffs' title, the plaintiffs filed another Suit in O.S.No.68 of 1998 for declaration of title and permanent injunction.



4.The case of the defendants is as follows:

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4.1.R.S.Kandasamy executed two separate registered Wills dated December 12, 1986, and February 11, 1987, in favour of the defendants. R.S.Kandasamy passed away on May 2, 1990. Thereafter, the registered Wills came into force and the defendants are in possession and enjoyment of the suit properties. Hence, the defendants alone are the absolute owners of the suit properties. The plaintiffs have no right, title, interest or possession over the suit properties.

4.2.According to the defendants, Arputhammal is the first wife of R.S.Kandasamy, who is no more. Madalai Muthu (first defendant) is the son of R.S.Kandasamy and Arputhammal. The plaintiffs suppressed the said facts intentionally. The defendants are not strangers to the suit properties. The suits filed by the plaintiffs are not maintainable. The plaintiffs did not approach this Court with clean hands. The defendants alone are in possession and enjoyment of the suit properties as owners thereafter. Accordingly, they prayed to dismiss the same.



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5.The following issues were framed in O.S.No.262 of 1991 by

the Trial Court:

- (i)Whether the plaintiffs are title holders of the suit properties?*
- (ii)Whether the plaintiffs are in possession over the suit properties?*
- (iii)Whether the plaintiffs are entitled to the relief of permanent injunction?*
- (iv)To what other reliefs?*

6.The following issues were framed in O.S.No.68 of 1998 by the

Trial Court:

- (i)Whether the Wills dated December 12, 1986 and February 11, 1987 allegedly executed by Late R.S.Kandasamy are valid and binding on the plaintiffs?*
- (ii)Whether the first defendant is the son of Late R.S.Kandasamy and his first wife Arputhammal?*
- (iii)Whether the Court fee has been paid correctly?*
- (iv)Whether the plaintiffs are title holders of the suit property?*
- (v)Whether the plaintiffs are in possession over the suit property?*
- (vi)Whether the plaintiffs are entitled to the relief of declaration and permanent injunction?*



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(vii) Whether the second plaintiff is the adopted son of R.S.Kandasamy and Sivagamiammal?

(viii) Whether the cancellation of adoption deed dated December 11, 1986 is true, valid and binding on the second plaintiff?

(ix) To what other reliefs?

7.Both the suits were jointly tried. Before the Trial Court, in order to prove the case, the plaintiffs examined P.W.1 to P.W.5 and marked Ex-A.1 to Ex-A.38. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and Ex-B.1 to Ex-B.10 were marked. Original served summon in O.S.No.241 of 1991 on the file of Sub Court, Sankari was marked as Ex-C.1 during cross examination of D.W.1. Signature of the first defendant in Ex-C.1 was marked as Ex-C.2 during cross examination of first defendant. To be noted, O.S.No.241 of 1991 was transferred to District Munsif, Mettur and assigned O.S.No.68 of 1998.

8.The Trial Court gave findings that the alleged Wills dated December 12, 1986 and February 11, 1987 were not proved and the first defendant failed to prove that R.S.Kandasamy married Arputhammal and he



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was the son born to them; that the second plaintiff is the adopted son of R.S.Kandasamy; that the cancellation of Adoption Deed is not true and not binding on the plaintiffs; that the plaintiffs are in possession and enjoyment over the suit properties and are entitled to the relief of declaration. Accordingly, the Trial Court, decreed both the suits as prayed for.

9. Feeling aggrieved with the said judgment and decree, the defendants preferred appeals in A.S.No.25 of 2001 and A.S.No.43 of 2001 before the First Appellate Court and the First Appellate Court concurred with the views of the Trial Court and dismissed both the appeals.

10. Feeling aggrieved with the concurrent findings of the Trial Court and the First Appellate Court, the defendants have preferred these two Second Appeals.

11. This Court, on September 12, 2002, admitted these Second Appeals on the following substantial questions of law:



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“1.When the execution of Ex.B2 Registered Will dated 12.12.1986 is established in accordance with Section 68 of the Indian Evidence Act, 1872 read with Section 63(c) of the Indian Succession Act 1925 and the second respondent examined as P.W.1 has admitted the execution of the Will, whether the courts below are justified in law in not upholding the same, on the basis of surmises and conjectures?

2.When as per Section 16 of the Hindu Adoptions and Maintenance Act of 1956, to prove adoption, it has to be shown that after adoption, adoptee was treated as his son by adopter and that mere placing of registered adoption deed is not sufficient, whether the respondents can claim any right on the basis of Ex.A1 Adoption Deed, which is not proved in accordance with law (vide AIR 1996 Punjab & Haryana 203)?”

Arguments

12.The learned counsel for the appellants/defendants has argued that the second plaintiff is not the adopted son of Late R.S.Kandasamy and Sivagamiammal; that the plaintiffs failed to prove Ex-A.1 – Adoption Deed; that R.S.Kandasamy himself cancelled the alleged adoption by way of Cancellation of Adoption Deed on December 11, 1986 (Ex-B.3); that in these circumstances, the plaintiffs ought to have proved the factum of adoption, but the plaintiffs miserably failed to prove the said factum; and that both the



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Courts did not consider the evidence properly. Hence, he prayed to allow these Second Appeals.

13.In support of his submissions, learned counsel for the appellants relied on the judgments in Kishori Lal Vs. Mt.Chaltibai [AIR 1959 SC 504 (V 46 C 65)]; K.Srinivasa Iyengar Vs. K.Srinivasan and Another [1973 (2) SCC 327]; Arakhita Swain Vs. Kandhuni Swain [AIR 1983 ORISSA 199]; Kashibai W/o. Lachiram Vs. Parwatibai W/o. Lachiram [1996-1-LW-317]; Smt.Dhanno W/o. Balbir Singh and Others Vs. Tuhi Ram (Died) son of Puran son of Raje and others [AIR 1996 PUNJAB AND HARYANA 203]; Kousalya Ammal Vs. Valliammai Ammal and Another [AIR 1998 Madras 287]; M.Vanaja Vs. M.Sarla Devi (Dead) [AIR 2020 SC 1293]; and T.Tamilarasan Vs. Arokkiasamy [2007 (3) CTC 456].

14.Per contra, learned Senior Counsel for the second respondent has argued that the defendants did not deny the factum of adoption of the second plaintiff and the execution of Adoption Deed (Ex-A.1) in their written statements; that the first defendant is a retired Commercial Tax Officer and he



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did not establish that R.S.Kandasamy married Arputhammal and he was born to R.S.Kandasamy and Arputhammal. On the other hand, the plaintiffs established that the first defendant was born to Arockiasamy by marking certified copy of Sale Deed (Ex-A.37) and Voters list (Ex-A.38). The third defendant (D.W.1) who is the son of first defendant has clearly admitted the execution of Adoption Deed (Ex-A.1). Further, when the plaintiffs put a suggestion to D.W.2, who is the attester of Ex-B.2 – Will, that R.S.Kandasamy did not execute the Will and the alleged signature found in Ex-B.2 is not that of R.S.Kandasamy – he has answered that he lacks knowledge of the same. Further, he deposed that he knew about the factum of adoption of second plaintiff only when R.S.Kandasamy cancelled the Adoption Deed. He further argued that once adoption is established, the adoptive parents have no right to cancel the adoption deed. Both the Courts after analysing the oral and documentary evidence concurrently found that the second plaintiff is the adopted son of R.S.Kandasamy and Sivagamiammal and the plaintiffs were in possession and enjoyment of the suit properties. Post the demise of the first plaintiff Sivagamiammal, second plaintiff Karthikeyan is in possession and enjoyment of the suit properties.



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Hence, there is no warrant to interfere with the said concurrent findings.

Accordingly, he prayed to dismiss both these Second Appeals.

15.This Court has considered the rival submissions and the evidence available on record.

16.The plaintiffs filed a Suit in O.S.No.262 of 1991 before the Trial Court, seeking permanent injunction. The defendants filed written statement denying the title. Hence, the plaintiffs filed another suit in O.S.No.68 of 1998 before the Trial Court, seeking declaration and permanent injunction. The case of the plaintiffs is that the first plaintiff is the wife of R.S.Kandasamy and out of their wedlock, no child was born to them. Hence, R.S.Kandasamy and Sivagamiammal decided to go for adoption. Accordingly, they adopted the second plaintiff as their son. The second plaintiff is none other than the grandson of R.S.Kandasamy's brother. The plaintiffs have filed the original Adoption Deed along with the plaint.



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Factum of adoption

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17.Second plaintiff has been examined as P.W.1. During examination, P.W.1 deposed that he has been adopted by R.S.Kandasamy and Sivagamiammal; that on and after the date of adoption, he has been treated as the adopted son of R.S.Kandasamy and Sivagamiammal; that he has performed the final rites of R.S.Kandasamy; that he is none other than the brother's grandson of R.S.Kandasamy; that after the demise of R.S.Kandasamy, the plaintiffs are in possession and enjoyment over the suit properties. P.W.2 Bharathi is none other than the paternal uncle of P.W.1. In his chief examination, he deposed about the factum of adoption and the execution of Ex-A.1 – Registered Adoption Deed. Further, he deposed that post the lifetime of Sivagamiammal, the second plaintiff is in enjoyment and possession over the suit properties. It is pertinent to extract the relevant portion of Ex-A.1 – Registered Adoption Deed dated December 2, 1981.

“...R.S.கந்தசாமி ஆகிய நான் எழுதிவைத்த தத்துப்
பத்திரம் என்னவென்றால்,

எனக்கு வயது 70 ஆண்டுகளுக்கு மேல் ஆகிறது.
இதுவரையில் எனக்கு மகப்பேறு இல்லை. இனிமேல்



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மகப்பேறு ஏற்படும் என்கிற நம்பிக்கையுமில்லை. எனக்கு விவாகமாகி சுமார் 39 வருஷம் ஆகிறது. என் வாழ்நாளுக்குப்பின் என் சமய மரபின்படி எனக்குச் செய்ய வேண்டிய சடங்குகளைச் செய்ய வேண்டி என் உடன்பிறந்த தம்பியான R.S.சின்னுசாமியின் மகன் வயிற்று பேரனுமான வீரக்கல்புதூர் கிராமம் குஞ்சாண்டியூரில் வசிக்கும் மனோகரன் குமாரன் மைனர் சுமார் 5 வயதுள்ள கார்த்திகேயன் என்பவனை என் விருப்பத்தின்படியும் என் மனைவி சுமார் 57 வயதுள்ள K.சிவகாமியின் விருப்பத்தின்படியும் ஷை மனோகரன் என்பவர் மனைவி ஜமுனா இசைவின்படியும் நம் உற்றார் உறவினர் முன்னிலையில் சமய முறைப்படி நடைபெற்ற சடங்குகளை முடித்து என் தத்துப்புதல்வனாக ஏற்றுக்கொண்டேன். இதுமுதல் என் தத்துப்புதல்வனான ஷை கார்த்திகேயனுக்கு என் சொந்த புதல்வனுக்குச் சட்டப்படி ஏற்பட்ட எல்லா உரிமைக் கடைமைகளும் உண்டு எனக்கு பாத்தியப்பட்ட சகல ஸ்தாவர ஜங்கம சொத்துக்களிலும் ரொக்கத் துகைகளிலும் ஆகியவற்றில் என் சொந்த புதல்வனாக இருந்திருந்தால் அவனுக்கு என்ன உரிமைகள் ஏற்படுமோ அத்தனை உரிமையும் உண்டு. நானும் என் மனைவியும் உள்ளவரையும் எங்கள் ஆயுள் காலத்திற்குப்பின்னும் எங்களுக்கு ஆற்றவேண்டிய கடமைகளையும் சமய முறைப்படி ஏற்பட்ட சடங்குகள் முதலியவற்றையும் ஆற்றக் கடவன் இந்தப்படிக்கு என் சொந்த அறிவோடு நன்றாக சிந்தித்து பிறர் தூண்டுதல் எதுவுமின்றி ஒப்பி எழுதி வைத்த தத்துப்பத்திரம் சரி.”



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Notably, in Ex-A.1 Registered Adoption Deed, R.S.Kandasamy's wife Sivagamiammal and four others have signed as witnesses, besides the biological parents of the adoptive son, namely Manokaran and Jamuna.

18.P.W.3 to P.W.5 deposed that after the demise of R.S.Kandasamy, the plaintiffs are managing the affairs of the School, which was run by R.S.Kandasamy during his lifetime.

19.The defendants filed written statement in both the suits and they did not deny the factum of adoption and the execution of Adoption Deed (Ex.-A.1). The defendants resisted the suits by stating that R.S.Kandasamy executed a Will dated December 12, 1986 and subsequently, another Will dated February 11, 1987. In short, the third and fourth defendants claim testamentary succession. They did not specifically deny the adoption. In fact, third defendant examined as D.W.1 has admitted the factum of adoption including the execution of Ex-A.1 – Registered Adoption Deed. The relevant portion extract of the evidence of D.W.1 is as follows:



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“ஆர்.எஸ்.கே.வுக்கும் அவரது மனைவிக்கும் குழந்தைகள் இல்லை. ஆர்.எஸ்.கே.வின் அண்ணன் மகனின் ஒருவர் பெயர் மனோகரன் என்றால் சரிதான். அவரது மனைவி பெயர் ஜமுனா என்றால் சரிதான். அந்த மனோகரனுக்கும், ஜமுனாவுக்கும் பிறந்தவன்தான் இந்த கார்த்திகேயன் என்றால் சரிதான். ஆர்.எஸ்.கே.வுக்கும், சிவகாமியம்மாளுக்கும் குழந்தையில்லை என்பதினால் மனோகரனுக்கும், ஜமுனாவுக்கும் பிறந்த கார்த்திகேயனை தத்து எடுத்து அதனை ரிஜிஸ்டர் செய்துள்ளார்கள் என்றால் சரிதான். அந்த தத்துப் பத்திரத்தில் ஆர்.எஸ்.கே. சிவகாமியம்மாள், மனோகரன், சிவகாமியம்மாள் ஆகியோர்கள் நால்வரும் கையெழுத்து செய்துள்ளார்கள். இந்திய சட்டப்படி ஒரு குழந்தையை ஒருமுறை தத்து எடுத்துக்கொண்டால் அந்த தத்துவை ரத்து செய்யவே சட்டப்படி முடியாது என்றால் சரியல்ல...”

Since there is no denial of adoption, the defendants impliedly admitted the factum of adoption.

20. On the other hand, the plaintiffs marked Adoption Deed as Ex-A.1. In the Adoption Deed, R.S.Kandasamy and his wife Sivagamiammal, who were the adoptive parents, and Manokaran and Jamuna who were the biological parents of the adoptive son, have signed. Further, in Ex-A.1, it has



been stated that the adoption took place in the presence of elders and relatives of both the families. Admittedly, R.S.Kandasamy and his wife Sivagamiammal (first plaintiff) and Manokaran and Jamuna, who are the biological parents of second plaintiff belong to Hindu religion. Hence, the Hindu Adoptions and Maintenance Act, 1956 is the applicable law in this case. It is apposite to extract here Section 16 of the Hindu Adoptions and Maintenance Act, 1956:

“16.Presumption as to registered documents relating to adoption. - Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

The Adoption Deed (Ex-A.1) has fulfilled the requisite conditions as per law. Hence, Adoption Deed (Ex-A.1) attracts the presumption under Section 16 of The Hindu Adoptions and Maintenance Act, 1956. The defendants did not rebut the presumption. The Trial Court as well as the First Appellate Court have decided that the second plaintiff is the adopted son of R.S.Kandasamy.



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21.The case of the defendants is that R.S.Kandasamy cancelled

Ex-A.1 – Adoption Deed vide Ex-B.3. Relevant extract of Ex-B.3 is hereunder:

“...R.S.கந்தசாமி ஆகிய நான் எழுதி வைத்த தத்துப் பத்திரத்தின் ரத்துப் பத்திரம் என்னவென்றால் எனக்கு வயதான காரணத்தால் நாளது வரையில் மகப்பேறு ஏற்படாத காரணத்தால் என் வாழ்நாளுக்குப் பின் என் சமய மரபின்படி எனக்குச் செய்ய வேண்டிய சடங்குகளைச் செய்ய வேண்டியும் என் மனைவி கே.சிவகாமியின் விருப்பத்தின்படியும் என்னையும் என் மனைவி கே.சிவகாமியையும் எங்கள் ஆயுள் காலம் வரை சவரகூஷணை, பணிவிடை செய்யும் பொருட்டும் என் உடன்பிறந்த தம்பியான R.S.சின்னுசாமியின் மகன் வயிற்று பேரனுமான வீரக்கல்புதூர் கிராமம் குஞ்சாண்டியூரில் வசிக்கும் மனோகரன் குமாரன் மைனர் சுமார் 10 வருடமுள்ள கார்த்திகேயன் என்பவனை என் விருப்பத்தின்படியும் என் மனைவி கே.சிவகாமியின் விருப்பத்தின்படியும் ஷை மனோகரன் ஷையார் மனைவி ஜமுனா இசைவின்படியும் நம் உற்றார் உறவினர் முன்னிலையில் சமய முறைப்படி நடைபெற்ற சடங்குகளை முடித்து என் தத்துப்புதல்வனாக ஏற்றுக் கொண்டு அதற்கு ஆதரவாக 2.12.81 தேதியில் ஒரு தத்துப் பத்திரம் எழுதி ஷை பத்திரம் மேட்டுர் சப்ரி ஆ. 4.41 வா.137 138 பக்கங்களில் 3/82 நெ ஆக பதிவு செய்து இருந்ததில் ஷை தத்துப் புதல்வனான மைனர் கார்த்திகேயன் என் சொல்படி கேளாமலும் என் மனைவி சொல்படி



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கேளாமலும் என்னை சவரகூஷணை செய்யாமலும் எங்களிடமிருந்து வராமலும் அவன் தாய் தகப்பனிடம் இருந்து வருவதாலும் என்னை பலவிதத்தில் இம்சை செய்வதாலும் இனி என்னையும் என் மனைவியையும் கவனிக்க மாட்டான் என்று தோன்றுவதாலும் நானும் எனது மனைவியும் தீர்க்கமாக ஆலோசனை செய்து எடுத்த முடிவின் பேரில் நான் 2.12.81ல் எழுதி வைத்த 4 புத்தகம் 3/82 நெ. தத்து ஆவணத்தை இந்த ரத்து ஆவணத்தின் மூலம் ரத்து செய்து விட்டேன். இனி மேல் ஷை மைனர் கார்த்திகேயன் எனக்கு தத்துப் புத்திரன் கிடையாது. நாங்களும் அவனை வளர்ப்பு தந்தையோ இல்லை மற்றபடி என் சொத்து சுகங்களில் ஷை கார்த்திகேயனுக்கு எந்தவிதமான பாத்தியமும் உரிமையும் கிடையாது. என் வாழ்நாளுக்குப்பின் என் சமய மரபின்படி எனக்குச் செய்ய வேண்டிய சடங்குகளைச் செய்ய வேண்டியதில்லை. இந்தப்படி நான் எழுதி வைத்த தத்துப் புத்திரத்தின் ரத்துப் புத்திரம் சரி.”

To be noted, Sivagamiammal is not a party or witness to Ex-B.3 and Sivagamiammal asserted the factum of adoption and Ex-A.1 – Adoption Deed in the plaint.

22.It is evident from the said document that R.S.Kandasamy has executed the Adoption Deed adopting the second plaintiff as his son. This



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Court is of the view that once the adoption took place, it cannot be cancelled subsequently as per Section 15 of The Hindu Adoptions and Maintenance Act, 1956, which is extracted hereunder:

“15.Valid adoption not to be cancelled.-No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.”

Hence, the adoption is valid. In view of the evidence of P.W.1 and P.W.2 and discussion alluded to supra, this Court concludes that the second plaintiff is the adopted son of R.S.Kandasamy.

Is first defendant is son of R.S.Kandasamy

23.The case of the defendants is that the first defendant's mother Arputhammal was the first wife of R.S.Kandasamy. However, there is no piece of evidence available on record to show that R.S.Kandasamy married Arputhammal. Admittedly, the first defendant is an educated person and has

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served as a Commercial Tax Officer. If really R.S.Kandasamy was his father,

he could have very well produced his Service Register and School

Certificate. Be that as it may, the first defendant himself admitted that in the

School records, his father's name was shown as Arockiasamy. The plaintiffs

produced Sale Deed (Ex-A.37) which stands in the name of the first

defendant. In the said Sale Deed, the first defendant has been described as

son of Arockiasamy. Further, it is evident from the Voters List (Ex-A.38) that

the first defendant is the son of Arockiasamy. During cross examination, the

first defendant (D.W.1) has admitted the contents of the Sale Deed (Ex-A.37)

and the Voters List (Ex-A.38) as true. The defendants relied on Ex-B.4 and

Ex-B.7. Ex-B.4 is the letter dated February 2, 1989, said to have been written

by R.S.Kandasamy to first defendant wherein R.S.Kandasamy has described

Madalai Muthu as “dear son” (அன்பு மகனுக்கு). Ex-B.7 is the discharge

summary dated October 29, 1986 of R.S.Kandasamy. It is typical for public

figures like R.S.Kandasamy, who held a prominent position within a political

organization to address individuals with terms of endearment such as “dear

son” or similar expressions. Therefore, it is possible that R.S.Kandasamy may

have addressed the first defendant in this manner. From the discharge



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summary, it is seen that the first defendant admitted R.S.Kandasamy in the hospital. In the absence of pleadings and proof to show that R.S.Kandasamy married Arputhammal, Ex-B.4-letter written by R.S.Kandasamy to Madalai Muthu and Ex-B.7-discharge summary do not help the case of the defendants. Both, the Trial Court and First Appellate Court concurrently found that first defendant was not the son of R.S.Kandasamy. In view of the above reasons, there is no need to interfere with the said findings.

Testamentary Succession

24.The case of the defendants is that R.S.Kandasamy executed two Wills dated December 12, 1986 and February 11, 1987. In fact, the defendant no.(3) and (4) filed O.S.No.208 of 1991 on the file of Sub Court, Sankari seeking permanent injunction against first plaintiff herein. The said suit was later transferred to District Munsif, Mettur and assigned as O.S.No.162 of 1999 and the same was dismissed as not pressed and the certified copies of the judgment and decree were marked as Ex-A.31 and Ex-A.32 respectively. The said suit was also filed based on the Wills said to have



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been executed by R.S.Kandsasamy. The suit properties in the present suits and the suit properties in O.S.No.162 of 1999 are one and the same.

25.The defendants filed Ex-B.2 original Will dated December 12, 1986 and the certified copy of the same was marked as Ex-B.9 i.e., Ex-B.2=Ex-B.9. With a view to prove the Will (Ex-B.2), the defendants examined D.W.2 who is one of the attestors of the Will (Ex-B.2). In his cross examination, he deposed as follows:

“...உயிலில் ஆர்.எஸ்.கந்தசாமி கையெழுத்துப்
போடவில்லையென்றும், இதிலுள்ள கையெழுத்து
அவருடையது அல்ல என்றால் தெரியாது...”

26.Further, according to the defendants, the last Will was executed on February 11, 1987. However, the same was not produced by the defendants. Hence, both the Courts found that the defendants failed to prove Ex-B.2 as per Section 63 of Indian Succession Act, 1956 read with Section 68 of the Indian Evidence Act, 1872. This Court does not find any illegality or irregularity in the said findings. Moreover, the alleged last Will dated



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February 11, 1987 executed by R.S.Kandasamy, has neither filed nor proved by the defendants. Hence, this Court is of the considered view that Ex-B.2 Will dated December 12, 1986 and the alleged last Will dated February 11, 1987 are not proved by the defendants.

Possession and Enjoyment

27. After the demise of R.S.Kandasamy, the plaintiffs are in possession and enjoyment over the suit properties. After demise of first plaintiff, the second plaintiff is in possession and enjoyment over the suit properties by paying water tax, electricity charges and property tax etc. To prove their possession, the plaintiffs produced Ex-A.5 to Ex-A.19 and Ex-A.24 to Ex-A.28 (Property tax receipt, electricity consumption charges receipt and water tax receipt etc.). The Trial Court as well as the First Appellate Court after considering the said documents, concluded that the plaintiffs are in possession and enjoyment over the suit properties. This Court is of the view that the said findings are based on the records and there is no need to interfere with the said findings.



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28. In both the suits, an extent of 12 cents in S.No.85/8, an extent of 26 cents in S.No.85/10 and an extent of 7 cents in S.No.85/18A are described as the suit properties. The case of the plaintiffs is that the suit properties are ancestral properties. An extent of 38 cents comprised in S.No.85/8 and S.No.85/10 were purchased by R.S.Kandasamy vide Ex-B.8 Sale Deed dated January 7, 1951. Hence, the said extent of 38 cents is the self acquired properties of R.S.Kandasamy. The remaining extent of 7 cents in S.No.85/18A might be the only ancestral property among the suit properties. It is relevant to note that no issues were framed as to whether the suit properties are self acquired properties or ancestral properties of R.S.Kandasamy. Further, the Wills have not been proved by the defendants and hence, the question as to whether the suit property is ancestral property or not, does not gain significance. Therefore, this Court shall not delve into the said question.

29. The learned counsel relied on decisions within the factual matrix where adoption had been denied. In this case, as stated *supra*, the defendants did not deny the factum of adoption and the execution of



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Ex-A.1 – Adoption Deed. Therefore, those case laws are not applicable to the facts and circumstances of this case.

30.In view of the concurrent findings rendered by the Trial Court as well as the First Appellate Court, the facts and circumstances of the case, this Court is of the considered view that the second plaintiff is the adopted son of R.S.Kandasamy and after the demise of R.S.Kandasamy, the plaintiffs are entitled to the relief of declaration. The substantial questions of law framed in these Second Appeals are accordingly answered in favour of the respondents / plaintiffs and against the appellants / defendants. There is no merit in these two Second Appeals and accordingly, the appeals must fail.

31.In fine, both the Second Appeals are dismissed. No costs.

29 / 04 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

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To
WEB COPY

- 1.The Subordinate Judge
Subordinate Court
Mettur.
- 2.The District Munsif
Mettur.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
S.A.NOS.1534 AND 1535 OF 2002

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