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O.S.A.No.167 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

Reserved on 29.02.2024	Delivered on 21.03.2024
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

O.S.A.No.167 of 2013

- 1.P.C.Vethagiri
- 2.P.V.Kumar
- 3.P.V.Ravikumar

P.V.Saraswathi (died)

...Appellants

Vs.

P.R.Chittibabu Mudaliar (decd)

P.C.Kubendran (decd)

- 1.P.K.Rajan
- 2.P.K.Gnanam
- 3.P.K.Naresh

P.C.Nehru (decd)

- 4.P.N.Angamma aliasYasodha
- 5.P.N.Sundari
- 6.P.N.Sridhar
- 7.P.C.Nagarathinam
- 8.P.C.Thanigaivelu
- 9.P.T.Mahalakshmi
- 10.P.T.Harinath
- 11.Kumudhavalli

1/30



12.Vasantha
13.Devika Rani
14.Kumaravelu (died)
15.K.Premakumari
16.K.Balasubramanian
17.J.Lakshmi

...Respondents

(R15 to 17 brought on record as LR's of the deceased
R14 viz, Kumaravel vide Court order dt.28/2.2020
made in CMP.Nos.4653 & 4660/2020 in OSA/167/2013)

Prayer: Original Side Appeal filed under Clause XXXIX, Rule (1) of the
Original Side Rules, r/w. Clause 15 of Letters Patent, against the judgment
and decree dated 20.12.2011 made in C.S.No.1253 of 1992.

For Appellants : Mrs.R.Poornima

For Respondents : Mr.T.V.Lakshmanan

for R1 to R6 & R8 to R10

Mr.T.Dhanasekaran for R14, R15 to 17

Mr.S.Rajkumar for R13 - No appearance

Mr.K.A.Mariappan for R11 & R12

- No appearance

R7 - served - No appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The plaintiffs 1 to 3 in C.S.No.1253 of 1992, a suit for partition are
on appeal, aggrieved by the dismissal of the suit with reference to the
properties described in schedules 'L' & 'M' to the plaint. The plaintiff sued



for partition and separate possession of their 9/48th share in the suit properties and for allotting the 'C' schedule properties to them as per the family arrangement dated 05.04.1978 and also for division of 'L' & 'M' schedule properties, contending that the suit properties were originally allotted to one Murugesu Mudaliar at a partition between him and his brother that took place on 25.02.1924 and the said Murugesu Mudaliyar died in 1936, leaving behind his only son, P.M.Rathnasabapathy Mudaliar, who also died in 1942.

2.It is claimed that the 'L' & 'M' schedule properties were settled by the said Murugesu Mudaliyar on one P.R.Subramania Mudaliar, who was the illegitimate son of Rathnasabapathy Mudaliar. According to the plaintiffs, as per the said settlement deed the property was settled on Subramania Mudaliar and his wife, Shivabhushanam Ammal just prior to their marriage and it provided that the property shall go to the children born to them. In the event, the said Shivabhushanam Ammal and Subramania Mudaliar died without issues, the properties shall revert back to the other heirs of Murugesu Mudaliar. It is claimed that Rathnasabapathy Mudaliar died leaving behind his son by name Chittibabu/ 1st defendant.



3.The plaintiffs 2 to 4 are the sons and daughter of the 1st plaintiff.

The defendants 3 to 5 are the sons of the 2nd defendant. The defendants 7 to 9 are the daughters and son of the 6th defendant. The defendants 12 & 13 are the daughter and son of the 11th defendant. The 14th defendant is the wife of the 1st defendant / Chitti Babu. Defendants 15, 16 & 17 are the daughters of Chitti Babu. Since the 18th defendant, son of one Masilamani Mudaliar claims certain right to the 'L' & 'M' schedule properties as if he is the adopted son of Subramania Mudaliar, the illegitimate son of Rathnasabapathy Mudaliar, he was impleaded as the 18th defendant.

4. It is the contention of the plaintiffs that though the settlement deed dated 09.03.1930 marked as Ex.P4 settles the properties found in 'L' & 'M' schedules to the suit to Subramania Mudaliar and his to be wife Shivabhushanam Ammal, the said settlement provides for the reversion of the property to the other heirs of Murugesu Mudaliar, in the event settlees do not have any issues "**born**" to them. Contending that Subramania Mudaliar and Shivabhushanam Ammal died issueless, the plaintiffs sought for partition of 'L' & 'M' schedules also. Since there is no dispute regarding the claim of the plaintiffs to schedules 'A' to 'K', we are not advertng to the



pleadings regarding those properties. The 18th defendant also does not make a claim to the suit schedules 'A' to 'K'. The other defendants, in fact, accepted the claim of the plaintiffs and some of them wanted their shares also to be declared.

5.The 18th defendant alone resisted the suit, contending that the schedule 'L' & 'M' properties do not belong to the joint family, of which, the 1st defendant was shown to be a Kartha. He would contend that, he, being the adopted son of Subramania and Shivabhushanam Ammal, who are settlees under the documents, he would be entitled to inherit those properties and hence the properties did not revert back to the estate of Murugesha Mudaliar.

6.In support of his claim for adoption, the 18th defendant would rely upon the document styled as adoption deed dated 24.06.1967, which was marked as Ex.D1. He would also contend that his adoptive father, when he was alive, had executed a Will dated 25.09.1967 and he has got it probated in O.P.No.779 of 1994 and therefore, as a legatee under the Will, he gets an absolute right over the properties that were settled on Subramania Mudaliar



and his wife Shivabhushanam Ammal under Ex.P4, settlement deed dated 09.03.1930. According to the 18th defendant, while Subramania and his wife Shivabhushanam Ammal would get absolute right under the settlement deed dated 09.03.1930 to the 'L' & 'M' schedules, he as the adoptive son of Subramania and Shivabhushanam Ammal would inherit the property that was subject matter of the settlement deed dated 09.03.1930.

7. On the above pleadings, the learned single Judge framed the following issues:-

- "1. Whether the plaintiffs are entitled to partition and separate possession of 9/48th share in Schedule 'H' properties in the plaint as per family arrangement dated 05.04.1978?*
- 2. Whether the 17th defendant Devikarani is entitled to 1/48 share in the suit properties.*
- 3. Whether the plaintiffs are entitled to allotment of 'C' schedule property as per the family arrangement dated 05.04.1978?*
- 4. Whether the deed of Revocation dated 07.11.1989 is valid and binding upon the plaintiffs ?*
- 5. Whether the plaint schedule 'L' and 'M' properties are joint family properties and are liable for partition ?*
- 6. Whether the defendants 2,6,10,11 and 18 are liable to render accounts from the suit properties ?*
- 7. What relief are the plaintiffs entitled to ?"*



8. Upon consideration of the pleadings and evidence available on record and the fact that there was no dispute regarding the shares that the parties are entitled to in schedules 'A' to 'K' and accepting the memorandum of family arrangement dated 05.04.1978, the learned single Judge answered Issues 1 to 3 in the affirmative and Issue No.4 in the negative thus, affirming the allotments made under the memorandum of family arrangement dated 05.04.1978.

9. Addressing Issue No.5, the learned Judge found that in view of the Ex.D1, adoption deed, which is a registered document, which is entitled to a presumption under Section 16 of the Hindu Adoptions and Maintenance Act, it was not open to the plaintiffs to question the adoption of the 18th defendant by Subramania and Shivabhushanam Ammal. On the said conclusion, the learned Judge held that the plaintiffs would not be entitled to share in the 'L' & 'M' schedule of properties. There was also a decree for accounting for the income against defendants 2, 6, 10, 11 & 18. The said decree is not under challenge. The challenge is now restricted to the conclusions of the learned Judge on the validity of the adoption and the interpretation of the term "பிறக்கும் சந்ததி" in Ex.P1, settlement deed.



10. We have heard Mrs.R.Poornima, learned counsel for the appellants and Mr.T.V.Lakshmanan, learned counsel for the respondents 1 to 6 & 8 to 10. Mr.T.Dhanasekaran, learned counsel for the respondents 14 to 17, Mr.S.Rajkumar, learned counsel for R13 and Mr.K.A.Mariappan, learned counsel for the respondents 11 & 12. The 7th respondent though served, is not appearing either in person or through counsel.

11. Mrs.R.Poornima and Mr.T.V.Lakshmanan, learned counsel would in unison contend that the settlement deed dated 09.03.1930 executed by Murugesu Mudaliar in favour of Subramania Mudaliar, though confers an absolute right on Subramania and his wife Shivabhushanam Ammal, provides for reversion of the property to the other heirs of the Murugesu Mudaliar in the event Subramania and Shivabhushanam Ammal do not have any children born to them. Interpreting words "பிறக்கும் சந்ததி" as meaning only children born to Shivabhushanam Ammal and not adopted child or children the learned counsel would submit that the 18th defendant will not be entitled to L & M schedule properties.



12.The learned counsel would submit that even assuming that the 18th defendant / Kumaravelu is the adopted son of Subramania Mudaliar and Shivabhushanam Ammal, he will not be entitled to property in question.

They would also point out that the 18th defendant would claim as the adopted son under the Will said to have been executed by his father, P.R.Subramania Mudaliar on 25.09.1967. They would point out that the said Will was marked as Ex.D2. The said Will provides that the bequest is made to Kumaravelu as he is the adopted son of Subramania Mudaliar and Shivabhushanam Ammal.

13.Contending that the bequest is made in favour of the adopted son as a *persona designata* and therefore, unless he proves adoption, Kumaravelu cannot take legacy under the Will. In support of this submission, the learned counsel would rely upon the judgment of the Hon'ble Surpeme Court in ***AL.PR.Rangannathan Chettiar and another Vs. AL.PR.AL.Perikaruppan Chettiar and others*** reported in ***AIR 1957 SC Page 815.***

14.The learned counsel would also submit that the deed of adoption



marked as Ex.D1 is not one evidencing adoption that took place after coming into force of the Hindu Adoptions and Maintenance Act, 1956 and hence, the presumption enacted under the Section 16 of the said Act would not stand attracted. In support of the said submission, the learned counsel would rely upon the judgment of the learned single Judge of the Orissa High Court in ***Ranjit Sahu Vs. Nilambar Sahu and Others*** reported in ***AIR 1978 Orissa 48*** and the judgment of the Full Bench of the Jammu & Kashmir High Court ***Shamsher Singh Vs. Deputy Custodian General*** reported in ***AIR 1973 J&K 89***. Reliance is also placed by the learned counsel on the judgment of the Hon'ble Supreme Court in ***Addagada Raghavamma and Others Vs. Addagada Chenchamma and Others*** reported in ***AIR 1964 SC 136***. Reliance is also placed on the oft quoted judgment of the Hon'ble Supreme Court in ***Pentakota Satyanarayana and Others Vs. Pentakota Seetharatnam and Others*** reported in ***AIR 2005 SC 4362*** to buttress the contention that an adoption requires very strong proof and the same cannot be a matter of presumption, since it displaces the original succession to the property.

15. On the above contentions, the learned counsel for the appellants as



well as the respondents, who are sailing with the appellants would submit that the Trial Court fell in error in applying the presumption under Section 16 of the Hindu Adoptions and Maintenance Act, 1956 to uphold the adoption of 18th defendant and to dismiss the suit in respect of 'L' & 'M' schedule properties.

16. Contending contra, Mr. T. Dhanasekaran, learned counsel for the respondents would submit that the presumption enacted under Section 16 would apply and the deed of adoption dated 24.06.1967, being a registered instrument produced from proper custody would also be entitled to the presumptions applicable to old document under Section 90 of the Evidence Act. He would further contend that *de hors* the adoption deed, the Will dated 25.09.1967 executed by Subramania marked as Ex.D2 would also prove the factum of adoption as the 18th defendant has been referred to as the adopted son in the said Will. The fact that this Court has granted probate to the same Will in O.P.No.779 of 1994 is also projected as a determining factor for the correctness of the recitals made under the Will. The learned counsel would also place reliance on an unreported judgment of the Karnataka High Court in RSA.No.498 of 2007 in respect of the



contention that the registration deed of adoption executed in the year 1956, recognizing an adoption that took place in 1954 would be entitled to a presumption under Section 16.

17.From the rival contentions, the following points emerge for determination in this appeal.

i) *Whether the term "பிறக்கும் சந்ததி" used in the settlement deed Ex.P4 executed by Murugesu Mudaliar in favour of his illegitimate grandson, Subramania Mudaliar would mean and include adopted son also.*

ii) *Whether the 18th defendant has proved the adoption in the manner required by law.*

iii) *Whether the presumption enacted under Section 16 of the Hindu Adoptions and Maintenance Act would apply to Ex.D1, adoption deed which was executed in 1967 evidencing an alleged adoption that said to have taken place on 18.04.1943.*

iv) *Whether the bequest made under Ex.D2, Will would be termed as a bequest to a persona designata or it would take effect as a bequest to Kumaravelu, the 18th defendant even in the absence of proof of adoption.*

ON THE POINTS:



18.Ex.P1, settlement deed executed by Murugesa Mudaliar in favour of his illegitimate grand son (அபிமான பேரன்), Subramania and his to be wife is the earliest document relating to suit schedules 'L' & 'M'. Under the said instrument, Murugesa Mudaliar settles the properties, which are shown in schedules 'L' & 'M' to the suit in favour of Subramania Mudaliar, and his would be wife Shivabhushanam Ammal. The said document states that the settlees are entitled to be in enjoyment of the property and use the income therefrom for their sustenance during their life time.

19.The actual dispossession in vernacular is as follows:-

உங்கள் விஷயத்தில் எனக்கு இருக்கும் அன்பு விஸ்வாசத்தினாலும், உங்கள் சுவாஜனைக்காக உங்களுக்கு ஒரு வித Provisions-களை செய்து வைக்க வேண்டுமென்கிற தீர்மானம் கொண்டு இதனடியில் A&B ஷெடியூலில் விவரிக்கப்பட்டும், சுமார் ரூபாய் 4000.00 நாலாயிரம் ரூபாய் மதிப்புள்ள இரண்டு வீடு மனைகளையும் இந்த Settlement பத்திர மூலமாய் இப்போதே உங்களுக்கு கொடுத்து விட்டு உங்கள் சுவாதீனம் செய்து விட்டிருக்கிறபடியாலும் உங்களிருவர்களுடைய கலியாணம் இந்த 1930ம் வருஷம் மார்ச்சி மாதம் 10ம் தேதி திங்கள் கிழமை தினம் கலியாணம் முடிக்கப்போகிறபடியாலும், உங்களிருவர்களின் கலியாணம் முடிந்த பிறகு மேற்படி வீடு மனைகளில் வரப்பட்ட குடிக்கூலி வகையறாக்களை நீங்களிருவரும் சேர்ந்து வசூல் செய்துகொண்டு அப்படி வசூலாகும் துகையில் மேற்படி வீடு மனைகளுக்குண்டாகிய வரிகளை செலுத்தி மேற்படி வீடு மனைகளுக்குண்டாகிய ரிபேர்



வகையறாக்களை அப்போதுக்கப்போது செய்து மேல் கண்ட வரி ரிபேர் சிலவுகள் போக மைத்ததுகையை நீங்களிருவரும் உங்களுடைய ஜீவ திசைவரையில் உங்களிருவர்களின் சாப்பாட்டு சிலவுகளுக்கு உபயோகித்துக்கொள்ள வேண்டியது. உங்களிருவர்களுடைய ஜீவதிசைக்கு பிறகு உங்களுக்கு பிறக்கும் ஆண் சந்ததிகள் ஒருவராயிருந்தால் பூராவாகவும், பலவராயிருந்தால் சம பாகமாகவும் ஒருக்கால் ஆண் சந்ததியில்லாமல் பெண் சந்ததியிருந்தால் அப்பெண் சந்ததிகளும் ஒருவராயிருந்தால் பூராவாகவும், பலவராயிருந்தால் சமபாகமாகவும் தானதிட விக் கிரயங்களுக்கு யோக்கியதையாய் ஆண்டு அனுபவித்துக் கொள்ள வேண்டியதே தவிர இன்று முதல் நானாவது என் ஜீவதிசைக்குப் பிறகு நீங்கள் இருவர்களாவது மேற்படி வீடு மனைகளை தானம் விக் கிரையம் அடமானம் ஜாமீன் முதலிய எவ்வித பாரதீனமும் செய்ய நம்மில் யாருக்கும் அதிகாரம் கிடையாது.

20.Heavily relying upon the term "பிறக்கும் ஆண் சந்ததி", the learned counsel for the appellants and the other respondents would submit that "பிறக்கும் ஆண் சந்ததி" would not include an adopted son or a daughter. In support of their submission, they would rely upon the judgment of the Hon'ble Division Bench of this Court in **Muppidathi Ammal Vs. Muthuswami Pillai and Others** reported in **AIR 1928 Mad 126** wherein Hon'ble Justice Curgenvin, speaking for the Bench, while discussing the word 'சந்ததி', observed as follows:-

"1.The first question in this second appeal is as to the meaning to be attached to the word "Santhathi" as used in the



compromise Ex.D. whether it includes an adopted as well as a natural born son. There is perhaps a significant difference between the phrasing of Ex.C embodying the provision made by Nainar Pillai in favour of his daughter Piramu Ammal born after the adoption of his son, and Ex D, the compromise now in question, for, in the former, the words used are:

if issue (santhathi) are not born to (or forthcoming from) you, which seems clearly to exclude an adopted son, while in the latter the expression is:

*2.The phrase appears to me to be fully compatible with the view that both a natural and an adopted son was contemplated, for there is no doubt that in ordinary Hindu usage expressions signifying "offspring," "progeny", "issue", though in English they are ordinarily restricted to natural children, include children adoption. **One would, therefore, expect the word to have been accompanied by some appropriate qualification had it been intended to exclude an adopted son.**"*

21.The other learned Judge on the Bench, Hon'ble Justice C.V.Ananthakrishna Iyer also concurred with the opinion of the Hon'ble Justice Curgenvan and he observed as follows:-

3.I agree. The question that arises for decision in this case is about the proper interpretation to be placed on the



*expression used in Ex.D. 'If the defendant Piramu Ammal left no "Santhathi" the properties should go to the plaintiff (Shanmugha Nainar Pillai).' It is contended by the learned vakil for the appellant that the word 'Santhathi' should be confined to children born of Piramu Ammal, and that the existence of an adopted son of Piramu Ammal would not prevent the property going to the plaintiff. I am unable to accept that contention. The word 'santhathi' though a Sanskrit word is also in general use among people who use Tamil. This question whether the word 'Santhathi' is wide enough to include adopted son, arose for decision in the case Balasubramania Pillai V. Picha Pillai (1916) M.W.N. 306, and I agree with Sankaram Nair, J. that the word in general use is wide enough to include adopted son also. Justice Seshagiri Aiyar would seem to go further and would seem to be of the opinion that the word means "the heir in general" see Raja of Ramnad V. Sudnara Pandia Swami Thevar(AIR1915Mad664). If the context clearly shown that the word was not used in its ordinary sense, the question might be different. In the present case, I am not able to say that the context justifies us in placing a different construction. On the other hand, turning to Ex 0 under which Nainar Pillai settled the properties on his daughter Piramu Ammal, we find the expression used is : **if no 'santhathi' be born to you.**"*

22.Reliance is also placed on the dictionary meaning assigned to



words 'சந்ததி'. The learned counsel would contend that while the words 'சந்ததி' by itself would take within its sweep an adopted son, if it is qualified by a prefix or a suffix which would indicate an exclusion of an adopted son, then an adopted son will not take the property as a heir.

23.Drawing our attention to the contents of the settlement deed EX.P4 dated 09.03.1930 extracted supra, the learned counsel would contend that the settlor had used a specific expression "உங்களுக்கு பிறக்கும் ஆண் சந்ததிகள்", meaning there by the word 'சந்ததி' is qualified by the word "பிறக்கும்" occurring as a prefix.

24.Drawing our attention to the observation of the Division Bench in ***Muppidathi Ammal Vs. Muthuswami Pillai and Others*** reported in ***AIR 1928 Mad 126***, the learned counsel would submit that the Division Bench had held that the term, if issue are not born to you would exclude an adopted son. As a corollary, if the word சந்ததி is qualified by the word பிறக்கும் in the case on hand, it would also exclude an adopted son. Unfortunately, we find these contentions were not adverted to by the learned Judge when he decided on the validity of the adoption alone. We therefore, find that even



assuming adoption to be true, Kumaravelu / 18th defendant would not qualify as a heir "born" to Subramania and Shivabhushanam Ammal in order to inherit their property under settlement deed dated 09.03.1930 marked as Ex.P4. Therefore, Point No.1 framed for determination is answered in favour of the appellants.

Point No.2 & 3:-

25. These points can be disposed of together since they are interconnected. The learned Judge had upheld the adoption on the ground that it is evidenced by Ex.D1, the deed of adoption. The said document, though registered, evidences an adoption that had took place on 18.04.1943. The learned counsel for the appellants would vehemently contend that this document by itself cannot be taken as proof of adoption more so, when adoption is denied. Our attention is drawn to Section 16 of the Hindu Adoptions and Maintenance Act, 1956, which reads as follows:-

"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."

Section 16 provides that on production of a registered instrument purporting to record an adoption made which is signed by the person giving and the person taking the 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. While the learned counsel for the 18th defendant would vehemently contend that Section 16 will apply to Ex.D1, adoption deed, the learned counsel appearing for the appellants and the other respondents would submit that Section 16 will apply only to documents evidencing adoption made after coming into force of the Act.

26. Reliance is placed on the language, particularly, the later portion of the Section which provides that the presumption is to an adoption having been made in compliance with the provisions of Hindu Adoptions and Maintenance Act and not otherwise. Therefore, the learned counsel would submit that the learned Judge erred in attaching presumption enacted under Section 16 to the said instrument of adoption. It is also pointed out that the document does not satisfy the requirements of Section 16 also.



27. Though it is executed by Subramania Mudaliar, the adoptive father the natural father has not signed the document as an executant but he has signed as a witness. The learned counsel for the appellants would rely upon the judgment of the Full Bench of the Jammu & Kashmir High Court in ***Shamsher Singh Vs. Deputy Custodian General*** reported in ***AIR 1973 J&K 89*** and the judgment of the single Judge of the Orissa High Court, Hon'ble Justice Ranganath Mishra as he then was, in ***Ranjit Sahu Vs. Nilambar Sahu and Others*** reported in ***AIR 1978 Page 48*** in support of their submissions.

28. The Full Bench Jammu & Kashmir High Court which has been followed by the Orissa High Court as on an interpretation of provisions of Section 16 held that a registered document evidencing a adoption made prior to coming into force of the Hindu Adoptions and Maintenance Act, 1956 will not be entitled to a presumption under Section 16 of the Act. The opinion of the Full Bench was expressed in the following terms:-

"9.....The contention of the learned counsel for the petitioner that there was a registered deed of adoption in favour of the petitioner which created a presumption in favour of adoption under Section 16 of the Hindu Adoptions and



Maintenance Act 1956 and that therefore the courts below had committed a legal error in this regard is devoid of merit in as much as Section 16 can have no application to the present case. A presumption under Section 16 of the Act can be raised if the adoption is made under the Act. Here the petitioner is alleged to have been taken in adoption six years before the execution of the deed of adoption and before the Act came into force. According to Section 5 of the Act all such adoptions as are made after the commencement of the Act are to be regulated by the Act. It is only in respect of those adoptions made after the commencement of the Act that presumption under Section 16 of the Act can be drawn. But, as pointed out above, the alleged adoption in the instant case was made in the year much before the Act came into force, therefore no such presumption can be drawn under Section 16. This is also in view of Section 30 of the Act which provides that nothing contained in the Act shall affect any adoption made before commence of the Act and vldy and effect of any such adoption shall be determined as if this Act had not been passed."

29. We do not see any reason to take a different view on the language of Section 16 and we are in respectful agreement with the view expressed by the Hon'ble Full Bench. We therefore, conclude that the learned Single Judge



was not right in applying the presumption under Section 16 to Ex.D1, adoption document. The judgment of the learned single Judge of the Karnataka High Court relied by the learned counsel for the 18th defendant does not consider the language of Section 16 when it applied presumption to the document executed prior to coming into force of the Act. The learned Judge of the Karnataka High Court merely applied the presumption under Section 16 to a document executed in 1954. We are therefore, not inclined to accept the said judgment as a precedent to the proposition that even document executed prior 1956 would be entitled to presumption enacted under Section 16 of the Hindu Adoptions and Maintenance Act, 1956.

30.The learned counsel for the 18th defendant would submit that presumption under Section 90 regarding documents that are 30 years old would apply to the Ex.D1, since it is more than 30 years old and it has been produced from proper custody. The submissions of the learned counsel overlooks the extent of presumption that could be drawn under Section 90. It is settled law, the presumption under Section 90 would not extend to the contents of the document. The presumption is only with reference to the execution and attestation of the document and nothing beyond that. While



the presumption under Section 90 may dispense with the proof of execution of the instrument, it would not dispense with the proof of contents of the instrument. Once it is held that the presumption under Section 16 of the Hindu Adoptions and Maintenance Act would not apply to Ex.D1, the adoption deed, there is no presumption of the adoption as such therefore, it was for the 18th defendant to have proved the adoption by independent witness more so, when it is sought to be denied.

31.In fact, when the suit was filed in the year 1992, Subramania was alive and hence, the properties covered by 'L' & 'M' schedules were not made part of the suit. Only after the death of Subramania on 07.01.1994, the plaint was amended and these properties were included in the schedule and the 18th defendant who claimed as the adopted son was impleaded as a party on 17.10.1997 by order made in A.No.1237 of 1997. Therefore, the 18th defendant has not made any attempt to prove the adoption by any other independent evidence, except Ex.D1, the adoption deed. No attempt has been made to examine any of the descendant of the adoptive father, Masilamani Mudaliar to prove adoption.



32.No doubt, the adoption is said to have been taken place in 1943, finding direct evidence to prove the evidence may be difficult but, at the same time, the 18th defendant should have at least produced some evidence to show that he was shown as an adopted son of P.R.Subramania Mudaliar in any other document or records. No attempt has been made in that direction also. The Will said to have been executed by Rathnasabapathy Mudaliar in the Month of February, 1937 has been produced along with the typed papers. But, we do not find that the said Will has been produced before the Trial Court and therefore, we can not look into the said Will as it not made part of the records. In the light of the above, we find that Ex.D1 is not entitled to the presumption created under Section 16 of the Hindu Adoptions and Maintenance Act,1956 and the 18th defendant has not proved the adoption in the manner known to law.

Point No.4:-

33.The next contention is that under Ex.D2, Will dated 25.09.1967. Subramania Mudaliar had bequeathed L&M schedule properties in favour of the 18th defendant and therefore, he would take as a legatee under the said instrument. Reliance is placed on the fact that probate has been granted to



the said Will in O.P.No.779 of 1994. At the outset, we would like to point out that grant of probate only means that the execution of the Will has been proved, it does not determine the correctness of the recitals in the instrument.

34.We shall now advert to the contention of the learned counsel for the appellant and the other respondents based on the judgment of the Hon'ble Supreme Court in *AL.PR.Rangannathan Chettiar and another Vs. AL.PR.AL.Perikaruppan Chettiar and others* reported in *AIR 1957 SC Page 815*.

35.Before going into the legal issue, we shall extract the bequest made in the Will. The testator makes the following recital in respect of the bequest:-

"என்னுடைய ஜீவியதசைக்குப் பிறகு ஏ. செட்டியூலில் சொல்லிய ஒன்று முதல் ஆறு வரையில் உள்ள ஐட்டங்களில் உள்ள வீடு மனைகளை என்னுடைய ஸ்வீகார புத்திரன் குமரவேலு முதலியார் கைப்பற்றி தானதிவினிமய விக் கிரயங்கள் முதலிய சகலவித சாசனங்களும் செய்ய யோக்கிய முள்ளவராய், புத்திர பெளத்திர பாரம்பரியமாய் ஆண்டு அனுபவித்துக் கொண்டு குடும்ப விஜயமான கீழ்கண்ட தர்ம காரியங்களை சரிவர குறைவு இல்லாமல் காலாகாலத்தில் உச்சிதானசாரமாக செய்ய கடமை பட்டவர்."



Pointing out to the bequest made, the learned counsel for the appellants would submit that the 18th defendant would take the legacy only on proof of adoption. The learned counsel would also point out that the bequest is not in favour of Kumaravelu but in favour of the adopted son of Subramania Mudaliar. Therefore, according to the learned counsel, unless the adoption is proved, the bequest will not take effect.

36. Our attention is drawn to the following passage in the judgment of the Hon'ble Supreme Court in ***AL.PR.Rangannathan Chettiar and another Vs. AL.PR.AL.Perikaruppan Chettiar and others*** reported in ***AIR 1957 SC Page 815:-***

"7. The question as to whether a disposition in such terms is to the person intended therein as a persona designata or by reason of his filling a particular legal status which turns out to be invalid is one of some difficulty and has been considered by the Courts in quite a large number of cases some of which have been cited before us. An elaborate consideration of these various cases cannot finally determine the question that arises in individual cases, which must ultimately depend on its own facts and the terms of the particular document containing the disposition.

It is enough to refer to two cases of the Privy Council



cited before us, viz., Nidhoomoni D bya v. Saroda Pershad Mookerjee, 2 Ind App 253 (P C) (B) and Fanindra Deb Baikat v. Rajeswar Das, 12 Ind App 72 at p.89 (PC) (C). As pointed out in the first case the question in all such cases is whether the gift of the property by the testator to a person who is referred to as having been adopted is one which is dependent on whether all the requisites of a valid adoption have been complied with or whether it is to a designated person notwithstanding that it was desired and expected that the requisites for a valid adoption were complied with. As pointed out by their Lordships in the second case.

"the distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances."

"If a man makes a bequest to his wife A.B. believing the person named to be his lawful wife, and he has not been imposed upon by her, and falsely led to believe that he could lawfully marry her, and it afterwards appears that the marriage was not lawful, it may be that the locality of the marriage is not essential to the validity of the gift. Whether is not essential to the validity of the gift. Whether the marriage was lawful or not may be considered to make no difference in the intention of the testator."



37. After saying so, the Hon'ble Supreme Court on the facts of that case held that the dispossession therein was not dependent on the proof of adoption. If we are to examine the document in question before us namely, Will Ex.D2 it very clearly shows that the bequest is in favour of the adopted son, Kumaravelu. Even while nominating as an Executor of the instrument, the testator specifically states that my adopted son, Kumaravelu shall be the executor of the document. Therefore, on a reading of the instrument before us, we find that the bequest was initiated to the adopted son and not to Kumaravelu as a *persona designata*. Kumaravelu, having failed to prove the adoption, he cannot take the legacy as a legatee under the Will.

38. In the light of the above conclusions, all the four points that are framed for determination in the appeal are answered in favour of the appellants and against the 18th defendant, who figures as the 14th respondent in the appeal.

39. In the light of the above answers, the judgment of the learned single Judge dismissing the suit with reference to the 'L' & 'M' schedule properties is liable to be set aside and it is accordingly, set aside. This appeal



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is **allowed** and the suit in C.S.No.1253 of 1992 will stand decreed as prayed for in its entirety. There will be a preliminary decree for partition as prayed for in the suit. We direct the parties to bear their own costs, since the legal contentions that had been urged before us do not appear to have been urged before the learned single Judge.

(R.S.M., J.) (R.S.V., J.)
21.03.2024

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Internet:Yes

Index:Yes

Speaking

Nuetral Citation :Yes



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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