



S.A.No.135 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.135 of 2024
and
C.M.P.No.4661 of 2024

1.Leelavathi

2.Pravamba @ Pravambal

... Appellants

Vs.

1.Ganesan

2.Sanjeevikumar

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.01.2023 in A.S.No.9 of 2022 on the file of the III Additional District and Sessions Court, Virudhachalam, confirming the judgment and decree dated 22.12.2021 in O.S.No.316 of 2014 on the file of the Additional Subordinate Court, Virudhachalam.

For appellants

: Mrs.R.T.Shyamala
for Mr.S.P.Harikrishnan

JUDGMENT

The plaintiffs before the Courts below are the appellants before this Court, challenging the judgment and decree passed against them.



2. The facts which have culminated to the filing of the above second appeal are hereinbelow set out and the parties are referred to as before the Trial Court.

FACTS OF THE CASE:

2.1. The above suit was filed by the plaintiffs for partition of their half share in the suit schedule properties. It is their contention that the suit properties belonged to one Veerasamy, son of Perumal, and it was his ancestral properties. Some other properties had been purchased by the said Veerasamy by selling the ancestral properties and these properties have been purchased in the name of the said Veerasamy and the second defendant. Veerasamy had two sons viz., Mukesh Ayodhi and Ganesan who is the first defendant. Mukesh Ayodhi is the father of the first plaintiff and the husband of the second plaintiff. He died on 22.03.2000 leaving behind him the surviving plaintiffs as his legal representatives.



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2.2. The plaintiffs would submit that apart from them, there are no other legal representatives for Mukesh Ayodhi. The mother of Mukesh Ayodhi, one Amaravathi died 30 years ago. After the death of Mukesh Ayodhi, with a view of grabbing the property, the first defendant had executed a settlement deed dated 26.03.2002 in favour of the second defendant. In the recitals of the said settlement deed, it has been stated that the first defendant and his father Veerasamy were enjoying the property. Veerasamy died intestate in the year 2004.

2.3. The plaintiffs would submit that the suit properties were being enjoyed as joint family properties and they are entitled to 1/12th share in the suit properties being the legal representatives of the other son of the deceased Veerasamy viz., Mukesh Ayodhi.

2.4. The defendants had filed a written statement *inter alia* contending that the first defendant had gone to Mumbai in search of job and he had worked in various capacities at Mumbai. Mukesh



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Ayodhi had only studied upto 8th standard and had refused to go to school and was leading a wayward life. Thereafter, the first defendant had asked the said Mukesh Ayodhi to come to Bombay where he joined the first defendant and worked as a vegetable vendor, coolie, assistant in electrical shop, *etc.* The said Mukesh Ayodhi had also got into bad company and was involved in petty thefts, Kandhu vatti business, *etc.*, and he had also got arrested and had served term in jail. Thereafter, the first defendant asked him to return to the native village. He had returned to the native village and was in illegal relationship with one Devagi. She had taken him outside the village and lived with him for three days.

2.5. The first defendant would submit that it is at this juncture, when the second plaintiff, who was of a questionable character, had come in contact with his brother Mukesh Ayodhi. It is his contention that she was already married and was having a child who is the first plaintiff. In the year 2000, Mukesh Ayodhi returned to the



Sembalakurichi Village along with the plaintiffs and was in a live-in relationship with the second plaintiff. The second plaintiff is not the legally wedded wife of Mukesh Ayodhi and the first plaintiff is not his child. The said Mukesh Ayodhi, once again, left for Mumbai leaving his earnings with the second plaintiff. The income from the agricultural land was also taken by the second plaintiff. On returning from Mumbai, the said Mukesh Ayodhi asked the second plaintiff to give some money which she refused and therefore, he, on account of her threats, had committed suicide. Therefore, the defendants would submit that neither the second plaintiff nor the first plaintiff had any right, title or interest to the suit properties. The plaintiffs were not the legal representatives of Mukesh Ayodhi and therefore, the defendants sought for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“1. Whether the plaintiff is entitled for preliminary



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decree for partition as prayed for?

2.Whether the plaintiff is entitled for permanent injunction as prayed for?

3.To what other reliefs the plaintiff is entitled to?”

4. The second plaintiff had examined herself as P.W.1 and marked Exs.A1 to A7. The first plaintiff had examined herself as P.W.2 and had examined two other witnesses and marked Ex.A8 to A22. The defendants had examined the first defendant as D.W.1 and marked Exs.B2 to B5 through the first defendant. The first exhibit on the side of the defendants is the passport of the second plaintiff and it was marked during the cross-examination of P.W.1. The second defendant had examined himself as D.W.2 and marked two other documents.

5. The learned Judge had come to the conclusion that the plaintiffs were not entitled to the relief claimed by them as the second plaintiff was not the wife of Mukesh Ayodhi and neither was the first



plaintiff, his daughter. The Court had noticed several discrepancies in the evidence of P.W.1. Ultimately, the learned Judge dismissed the suit.

LOWER APPELLATE COURT:

6. Challenging the same, the plaintiffs had filed an appeal in A.S.No.9 of 2022 on the file of the III Additional District Court, Virudhachalam.

7. The Lower Appellate Court had also confirmed the judgment and decree of the Trial Court and therefore, the plaintiffs are before this Court.

8. Heard Mrs.R.T.Shyamala, learned counsel for Mr.S.P.Harikrishnan, learned counsel appearing on behalf of the appellants.



DISCUSSION:

9. The plaintiffs have come to Court seeking partition on the ground that the first plaintiff was the daughter and the second plaintiff is the wife of one Mukesh Ayodhi who was the son of the Veerasamy and the brother of the first defendant herein, and they are entitled to an equal half share in the suit properties. The documents which have been marked on the side of the plaintiffs are family card, gas book, PAN card, voter ID, etc. The second plaintiff who claims as the wife of the deceased Mukesh Ayodhi has nowhere given the details of the date of marriage between her and the said Mukesh Ayodhi and also the date on which the first plaintiff was born to them.

10. That apart, P.W.1 – the second plaintiff had clearly deposed that the first plaintiff had birth certificate. However, the same had not been produced. In response to specific questions, she had stated that she does not know the date on which she and the deceased Mukesh Ayodhi got married, but, would say that it had taken place 30



years ago in a temple. However, there is nothing on record to show her as his wife.

11. That apart, the first plaintiff, who produced her passport, had failed to submit her Birth Certificate which is the best evidence to prove that she is the daughter of the said Mukesh Ayodhi. She would rely upon the Succession Certificate to prove that she is the daughter of Mukesh Ayodhi. In response to the question regarding her birth and Birth Certificate, P.W.2 – the first plaintiff had deposed as follows:

“வா.சா.ஆ.10 பாஸ்போர்ட்டில் நான் பிறந்த ஊர் செம்பளக்குறிச்சி என்று போடப்பட்டுள்ளது. நான் தாக்கல் செய்துள்ள குடும்ப அட்டை, பேன் கார்டு, வாக்காளர் அடையாள அட்டை ஆகியவைகள் 2005க்கு பிறகு பெறப்பட்டவைகள் என்று சொன்னால் சரிதான். “நான் ஆந்திரா மாநிலத்தில் குண்டூர் மாவட்டம், பிடிசூரல்லா என்ற ஊரில் பிறந்தேன். என்னுடைய பிறப்பு சான்றிதழ் இருக்கிறதா என்றால் இல்லை. அந்த பிறப்பு சான்றிதழை தாக்கல் செய்தால் என்னுடைய உண்மையான அப்பா பெயர் தெரிந்துவிடும் என்பதால் தான் நான் அதை வைத்து கொண்டு தாக்கல் செய்யவில்லை என்று சொன்னால் சரியல்ல. அயோத்திக்கு நான்



பிறந்திருந்தால் இந்த தேதியில் இந்த இடத்தில் பிறந்தேன் என்று
குறிப்பிட்டிருப்பேன் என்றாலும் அதனால் பிராதித் அந்த விபரங்களை
குறிப்பிடவில்லை என்றாலும் சரியல்ல.”

12. The Court had also taken note of the passport of the second plaintiff which was marked through her as Ex.B1. The name that was found in the plaint document does not reflect in Ex.B1. She has in Ex.B1 declared that she has no children. Except for her, *ipse dixit* regarding her having married the said Mukesh Ayodhi, there is no other document to prove the same. The description of her residence in Ex.B1 is also different. The plaintiffs have kept away the best evidence viz., Birth Certificate of the first plaintiff. The defendants have also produced Ex.B5 - notes which have been written by Mukesh Ayodhi to his brother which would throw doubts with regard to the legality of his relationship with the second plaintiff. The suit properties being ancestral properties and the first plaintiff having failed to prove that she is the offspring of the said Mukesh Ayodhi, the Courts below have not committed any error in non suiting the



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plaintiffs. I see no reason to hold otherwise.

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Accordingly, this second appeals stands dismissed.

Consequently, the connected C.M.P. stands closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To

1. The III Additional District and Sessions Judge, Virudhachalam.
2. The Additional Subordinate Court, Virudhachalam.
3. The Section Officer, V.R. Section, High Court, Madras.



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