



SA(MD)No.60 of 2008

THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.02.2026

PRONOUNCED ON : 01.06.2026

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.(MD).No.60/2008

and

Cros.Objn.(MD).No.54/2012

1.Mirthinjiya Bhattar [Died]	... Appellant /
Defendant	
2.S.M.Subramanian	
S/o.Mirthinjiya Bhattar	... 2 nd Appellant

****2nd Appellant is brought on record
as LR of the deceased sole appellant
vide order dated 30.01.2019 in CMP.
(MD).Nos.549 to 511/2019 in
SA.(MD).No.60/2008**

Vs

S.N.Subramanian S/o.Late Nainakannu Bhattar 38, North Avani Moola Street Madurai 625 001.	... Respondent / 2 nd Plaintiff
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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 13.11.2006 passed in



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AS.No.194/2003 by the learned I Additional District Judge, Madurai, modifying the judgment and decree of the learned II Additional Subordinate Judge, Madurai, passed in OS.No.267/1992 dated 29.04.2003.

For Appellant : Mr.S.Parthasarathy, Senior counsel for
Mr.S.Natesh Raju
For Respondent : Mr.V.Raghavachari, Senior counsel for
Mr.S.Ramesh

JUDGMENT

(1)The unsuccessful defendant is the appellant in the Second Appeal.

The Second Appeal arises out of the judgment and decree dated 13.11.2006, passed in AS.No.194/2006, by the learned II Additional District Judge, Madurai, modifying the judgment and decree of the Trial Court dated 29.04.2003, made in OS.No.267/1992, by the learned II Additional Subordinate Judge, Madurai.

(2)For the sake of convenience, the parties are referred to, as per their ranking before the Trial Court.

Facts in brief:-

(3)The plaintiffs filed the suit in OS.No.267/1992, for partition and separate possession and for rendition of accounts. The suit properties



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are situate in Tirupparankundram Village. The plaintiffs contend that the suit properties along with the other properties, originally belonged to one Nainakannu Bhattar [Senior]. On the death of Nainakannu Bhattar [Senior], his two sons, namely, Chella Bhattar and Subramania Bhattar [Senior], inherited his properties as his legal heirs. On the death of Chella Bhattar, his wife Subbammal, filed a suit in OS.No. 540/1971, on the file of the Sub Court, Madurai, for partition of her share in the suit properties. In the said suit for partition, Subramania Bhattar's [Senior] wife, namely Subbulakshmi Ammal, was arrayed as the 4th defendant and the three sons of Subramania Bhattar [Senior], namely, Nainakannu Bhattar [Junior], Mirthunjiya Bhattar and Subramania Bhattar, were arrayed as defendants 1 to 3. The said suit ended in a compromise on 01.08.1974. According to the plaintiffs, as per the Compromise Decree, which is binding on all parties, the suit properties were allotted to the share of the three sons of Subramania Bhattar [Senior], namely, Nainakannu Bhattar [Junior], Mirthunjiya Bhattar and Subramania Bhattar. While so, Nainakannu Bhattar [Junior], died leaving behind him the plaintiffs as his legal heirs and Subramania Bhattar [Junior] died without any heirs. The plaintiffs



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contend that as the legal heirs of the deceased Nainakannu Bhattar [Junior], they along with Mirthinjiya Bhattar, the defendant herein, became entitled to the suit properties in equal shares. The plaintiffs further contend that the 2nd plaintiff was adopted by the first plaintiff and Nainakannu Bhattar [Junior] and therefore, both the plaintiffs were entitled to half share in the suit properties. The plaintiffs contend that the defendant herein was in management of the suit properties on behalf of all the sharers and since the plaintiffs did not want to keep the property undivided, they filed the suit for partition and rendition of accounts.

(4)The defendant in his written statement, admitted that the suit property originally belonged to Nainakannu Bhattar [Senior]. The defendant did not deny the genealogy mentioned in the plaint and the relationship of the parties. The defendant denied adoption of the 2nd plaintiff by Nainakannu Bhattar [Jr] and stated that the said Nainakannu Bhattar [Jr] died leaving behind the 1st plaintiff alone as his sole legal heir. The defendant denied the plaintiff's contention that Subramania Bhattar [Jr] died without leaving any legal heir. According to the defendant, at the time of Subramania Bhattar's [Jr]



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death, his mother Subbulakshmi Ammal, was alive and therefore, the share of Subramania Bhattar devolved on her. The defendant contended that the 2nd plaintiff is the son of one Karpooora Bhattar and his name was only Sekar @ Raja. The defendant further contended that in the earlier suit in OS.No.540/1971, the plaintiff therein was allotted the southern portion of the present suit properties in items No. 1, 2 and 3 and only the northern portion in the said items were allotted to the defendants therein. The defendant also contended that out of 4 acres 98 cents in suit item No.4, 2 acres and 42 cents in the western portion alone was allotted to defendants 1 to 3 therein. The defendant denied that the entire extent in items No.8, 9 and 10 belonged to the family of Nainakannu Bhattar [Sr]. According to the defendant, in items NO.8, 9 and 10, the family of Nainakannu Bhattar [Sr] was entitled to only half share. The defendant further contended that even during the lifetime of Nainakannu Bhattar [Jr], there was a family arrangement on 09.06.1975, between the brothers and the same was subsequently treated as final partition. In the said family arrangement, the northern portion of items No.1 to 3 and half of items No.4 and 9, were allotted to the defendant. Items No.5 and 8 alone were allotted to



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Nainakannu Bhattar [Jr] and similarly, item No.6 was jointly allotted to Nainakannu Bhattar [Jr] and Subramania Bhattar. The defendant contended that one of the properties in Door No.43, was kept as common property to be enjoyed by all the three brothers. According to the defendant, pursuant to the family arrangement and during the lifetime of Nainakannu Bhattar [Jr] and Subramania Bhattar [Jr], they had alienated their share of properties and at the time of death of Nainakannu Bhattar [Jr] only items No.5 and 8 remained. The defendant further contended that the 1st plaintiff as the sole legal heir of Nainakannu Bhattar succeeded to items No.5 and 8 of the suit property and thereafter, on her death, the suit items devolved on his mother, who was living at the time of Chellammal's death and thereafter to him. The defendant specifically denied the claim of the 2nd plaintiff that he was the adopted son of Nainakannu Bhattar. According to the defendant, the alleged adoption was invalid and fraudulent. The defendant contended that since the 2nd plaintiff, at the time of adoption, was over 20 years of age, the adoption was against law and custom. The defendant further contended that the invalidity of the adoption was proved by the school records and the transfer



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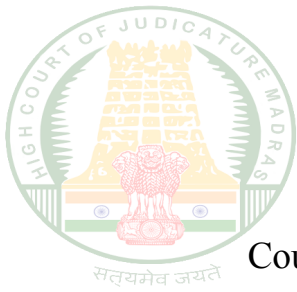
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certificate of the 2nd plaintiff which continued in the name of Karpooora Bhattar, his natural father. The defendant therefore contended that the suit was meritless and the same deserved to be dismissed.

(5)The plaintiffs filed a reply statement stating that the 2nd plaintiff was adopted by Nainakannu Bhattar [Jr] in the year 1961, when he was about 3 years old. The plaintiffs denied the family arrangement dated 09.06.1975, and also the reversionary rights claimed by the defendant. The plaintiffs therefore contended that the defence deserved to be rejected and the suit decreed.

(6)Before the Trial Court, the plaintiffs examined 5 witnesses and marked Exs.A1 to A37. The defendant examined himself as DW1 and marked Exs.B1 to B18.

(7)The Trial Court, after framing necessary issues, decreed the suit by passing a preliminary decree for partition and separate possession of plaintiffs' one half share in the suit properties and as far as rendition of accounts, the Trial Court directed the plaintiffs to file separate proceedings. Aggrieved by the judgment and decree of the Trial Court, the defendant filed an appeal in AS.No.194/2003, on the file of the learned District and Sessions Judge, Madurai. The Lower Appellate



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Court, after framing points for consideration, concurred with the findings of the Trial Court that the adoption pleaded by the 2nd plaintiff was proved and that the family arrangement dated 09.06.1975 set up by the defendant, was not proved. The Lower Appellate Court, however modified the preliminary decree passed by the Trial Court by decreeing the plaintiffs' one-third share in the suit properties instead of one-half share, decreed by the Trial Court. Aggrieved by the judgment and decree of the Courts below, the defendant has filed the above Second Appeal.

(8)At the time of admission of the Second Appeal, this Court framed the following substantial question of law:-

"Whether the findings of the Courts below are erroneous on account of misconstruction of documents in Ex.A1 and failure to consider the documents in Exs.B1 and B2?"



(9)The genealogical tree given in the plaint is as follows:-

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Senior Nainakannu Bhattar [died]

X
X

Chella Bhattar [died] Senior Subramania Bhattar [died]
X X
Subbammal Subbulakshmiammal
X

Nainakannu Bhattar Miruthunjiya Bhattar Subramanian
[Died] **[Defendant]** [Died]
X [No issue]
Chellammal **[1st Plaintiff]**
X
S.M.Subramanian **[2nd Plaintiff]**

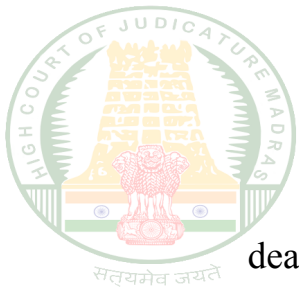
(10)The admitted case of the parties is that Nainakannu Bhattar [Sr] died leaving behind Chella Bhattar and Subramania Bhattar [Sr] and that, on the death of Chella Bhattar, his wife Subbammal filed a suit for partition of her share in the suit properties in OS.No.540/1971, in which the wife and three sons of Subramania Bhattar [Sr], i.e., Subbulakshmi Ammal, Nainakannu Bhattar [Jr], Mrithinjiya Bhattar and Subramania Bhattar [Jr] were arrayed as defendants. According to the plaintiffs, in the said partition, the suit properties were allotted to



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the legal heirs of Subramania Bhattar [Sr]. However, the defendant contended that only the northern portion of items 1,2 and 3 were allotted to the legal heirs of late Subramania Bhattar [Sr] and the southern portion was allotted to the plaintiffs in the said suit. The defendant further contended that out of 4 acres and 98 cents in suit item 4, the western portion of 2 acres and 42 cents was allotted to the legal heirs of Subramania Bhattar [Sr] and that the entire extent in items No.8, 9 and 10, did not belong to the family of Subramania Bhattar [Sr]. According to the defendant, there was a family arrangement on 09.06.1975, where under the suit items No.1 to 3 and half of items No.4 and 9, were allotted to the defendant and the remaining properties were allotted jointly to Nainakannu Bhattar [Jr] and Subramania Bhattar. The defendant's further case was that the property in Door No.43, was kept for common enjoyment of the three brothers and that, Nainakannu Bhattar [Jr] as well as Subramania Bhattar had sold some properties allotted to them in the family arrangement. According to the defendant, Nainakannu Bhattar [Jr] had left only suit items 5 and 8 at the time of his death. The defendant, while denying the adoption of the 2nd plaintiff, contended that on the



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death of the 1st plaintiff, the property inherited by her as the sole legal heir of Nainakannu Bhattar [Jr], devolved upon his mother and thereafter to him. The defendant contended that the adoption was legally invalid as it was in violation of the provisions of the Hindu Adoption and Maintenance Act, 1956, and factually also, the evidence on record proved that the 2nd plaintiff continued to be the son of Karpooora Bhattar, his natural father,

(11)The learned Senior counsel for the appellant submitted that the adoption of the 2nd plaintiff by the 1st plaintiff and her husband, is illegal and invalid as it is against the provisions of the Hindu Adoption and Maintenance Act, 1956. The learned Senior counsel further submitted that the evidence on record, particularly, Exs.A37, B1 and B18, falsified the plea of adoption in the year 1961/1962 raised by the 2nd plaintiff. The learned Senior counsel submitted that though the alleged adoption is stated to have taken place in 1961/1962 and the Adoption Deed came to be executed only in 1981, there is absolutely no evidence during the interregnum to prove the factum of adoption. It was further submitted that the documentary evidence on record, far from supporting the plea of adoption, militates against the same and



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therefore, the Courts below ought to have rejected the plea of adoption. The learned Senior counsel therefore prayed that the judgment and decree of the Courts below deserved to be set aside.

(12)The learned Senior counsel for the appellant, relied on the following judgments in support of his contentions:-

- [1] 1998 [2] MLJ 351 [*Muthu Goundar Vs. Poosari @ Palaniappan and 4 Others* ;
- [2]AIR 1959 SC 504 [*Kishori Lal Vs. Chalthibai*]
- [3]SA.No.1350/1980 [*Mahalingam Vs. Kannayan*]
- [4]2024 [16] SCC 78 [*Moturu Nalini Kanth Vs. Gainedi Kaliprasad [Dead] through LRs*]
- [5]AIR 1964 SC 136 [*Raghavamma and Another Vs. Chenchamma and Another*]
- [6]AIR 2002 SC 1428 [*Jaisingh Vs. Sakunthala*]
- [7]2017 [2] LW 97 [*K.M.Subramaniam Vs. Parvathiammal [died] and Others*]

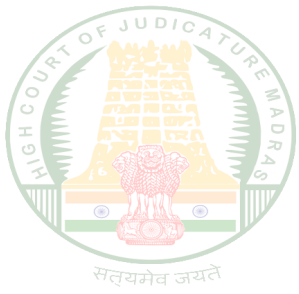
(13)Per contra, Mr.V.Raghavachari, learned Senior counsel for the respondent, submitted that the 2nd plaintiff proved that he is the adopted son of late Nainakannu Bhattar and Chellammal by adducing oral and documentary evidence. The learned Senior counsel submitted that the 2nd plaintiff was adopted when he was 3 years old and the said adoption was reduced to writing under Ex.A1 and therefore, there was



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a presumption as to the validity of adoption as per Section 16 of the Act. The learned Senior counsel further submitted that the appellant had failed to discharge effectively, the burden of rebutting the said presumption. The learned Senior counsel submitted that the contention of the learned counsel for the appellant that the 2nd plaintiff was the only son and therefore, he could not be given in adoption, is neither supported by the pleadings nor by evidence. As regards the documentary evidence, namely, Exs.A37, B1 and B18, the learned counsel submitted that the biological mother of the 2nd plaintiff was examined as PW5 and she categorically deposed that the 2nd plaintiff was given in adoption when he was 3 years old and in the light of her evidence, the adoption can neither be denied nor doubted, more so, by a third party to adoption. The learned Senior counsel therefore prayed that the Second Appeal deserved no merit and is liable to be dismissed. The learned Senior counsel for the respondent therefore submitted that the judgment and decree of the Courts below do not warrant interference by this Court. The learned Senior counsel for the respondent, relied on the following judgments in support of his contentions:-



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[a]1989 [1] ALT 132 [Veersetty and Others Vs. Patlolla Anjaiah]

[b]2010 [14] SCC 466 [Atluri Brahmanandam Vs. Anne Sai Bapuji]

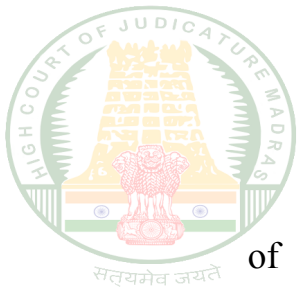
[c]2013 [4] SCC 97 [Laxmibai [Dead] through LRs Vs. Bhagwantbuva [dead] through LRs]

[d]2016 [12] SCC 483 [Bijender and Another Vs. Ramesh Chand and Others]

[e]AIR 2017 DEL 15 [Satish Vs. Smt.Om Bati]

(14)This Court has bestowed careful and anxious consideration to the rival submissions advanced on either side and also perused the materials on record.

(15)The 1st plaintiff died during the pendency of the suit. The dispute relates to right to the suit properties which belonged to Nainakannu Bhattar [Jr]. Whereas the 2nd plaintiff claims right to the suit properties as the adopted son of the first plaintiff and late Nainakannu Bhattar [Jr], the defendant claims right as a reversioner. The 2nd plaintiff relying on the Adoption Deed [Ex.A1], contends that as the adopted son of late Nainakannu Bhattar [Jr], he is entitled to half share in the suit properties. The defendant denies the adoption as invalid and contends that on the death of the 1st plaintiff, as the sole legal heir



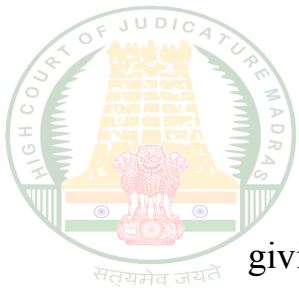
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of his deceased brother, late Nainakannu Bhattar [Jr], the suit properties devolved on his mother and later, on him.

(16) In the light of rival submissions, the pivotal issue that arises for consideration in the present Second Appeal is the validity of the adoption of the 2nd plaintiff. Ex.A1, is the Adoption Deed dated 28.02.1981 and is admittedly, not contemporaneous with the adoption. As per its recitals, the adoption is stated to have taken place in the year 1961/1962, when the 2nd plaintiff was about three years old. It is trite that mere production of a registered Adoption Deed would not, by itself, conclusively establish the factum of adoption nor automatically attract the presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956.

(17) In this regard, useful reference may be made to the judgment of the Hon'ble Supreme Court, in the case of *Moturu Nalini Kanth Vs. Gainedi Kaliprasad [Dead] Through LRs* reported in 2024 [16] SCC 78, wherein, referring to the judgment of Karnataka High Court in *Govinda Vs. Chimabal [1967 SCC OnLine Kar 144]*, the Apex Court held that a registered deed of adoption is not by itself, proof of adoption and that the factum of adoption, including the ceremony of



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giving and taking, must be independently established by cogent evidence.

(18)The Hon'ble Supreme Court, in the said judgment, while approving the view taken by the Punjab and Haryana High Court in ***Dhanno Vs. Tuhi Ram [AIR 1996 P&H 203]***, held that the presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956, is rebuttable and that mere production of a registered document would not dispense with the proof of essential ceremonies of adoption.

(19)The burden, therefore, squarely rests upon the plaintiffs to prove the factum and validity of the adoption before resorting to the statutory presumption under Section 16 of the Hindu Adoption and Maintenance Act. The view of this Court that the burden rests on the plaintiffs to prove the factum of adoption is fortified by the judgment of the Apex Court in ***Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another [AIR 1964 SC 136]***, wherein it was held that a person who seeks to displace a natural line of succession to property by setting up adoption, must discharge the burden that lies upon him to prove the factum of adoption and its validity.



(20)In the present case, the oral evidence of PWs.2, 3 and 5 are relied upon to establish the ceremonies and factum of adoption conducted in 1961/1962.

(21)The evidence of PW2 in chief, is as follows:-

"...கற்பூர பட்டரின் மகனை தத்து எடுத்தார், அவர்தான் வாதி, 1962 ம் ஆண்டில் சுவீகாரம் எடுக்கப்பட்டது, மார்ச் மாதத்தில் எடுத்தார்கள், தேதி நினைவில்லை, அங்கு அப்போது சடங்கு முறைகள் செய்யப்பட்டன, பூஜை பொருட்களும் தீபங்களும் இருந்தன, வாதியின் பெற்ற தாய் தந்தையர் வாதியை அவரது வளர்ப்பு தாயார் தந்தையிடம் கையை பிடித்து கொடுத்தார்கள், வளர்ப்பு தாய்தந்தையும் பெற்றுக்கொண்டார்கள், அதன்பின் செல்லம்மாள் வாதியை மடியில் வைத்துக்கொண்டு தம்ளரில் பால் கொடுத்தார், நைனார்கண்ணு பட்டர் அவரது தந்தை சுப்பா பட்டர் என்ற சுப்பிரமணியன் பட்டரின் பெயரை தனது தத்து புத்திரனுக்கு வைத்தார், அப்போது வாதியின் வயது சுமார் 3 வயது....."

(22)PW3 in his chief examination, stated as follows:-

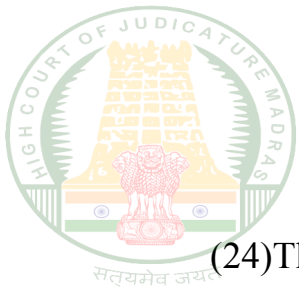
"1962ல் சுவீகாரம் எடுத்துக்கொண்டார்கள். தேதி மாதம் நினைவில்லை, அதுவகை வீட்டில் வைபவம் நடந்தது, மத சம்பந்தப்பட்ட சடங்குகள்



நிகழ்ந்தன, இறுதியாக பெத்தேறாமம் நடந்தது, மேற்படி நிகழ்ச்சியில் கற்பூர பட்டரும் அவரது மனைவி வாதியின் கையை பிடித்து நைனாகண்ணு பட்டர் மற்றும் செல்லம்மாஸிடம் ஒப்படைத்தார்கள், வாதியின் பெயர் ஆதியில் சேகர் என்று இருந்தது, மேற்படி நிகழ்ச்சியில் அதனை சுப்பிரமணியன் என்று மாற்றினார்கள்,,,"

(23)PW5, in her chief examination, stated as follows:-

"1962ம் வருடம் மாசி மாதம் சுவீகாரம் எடுத்துக்கொண்டனர், சுவீகாரம் நடப்பதற்கு வீட்டளவில் குடம்ப உறவினர்களை அழைத்தும் சுவீகாரத்திற்குரிய விசேடங்களை செய்தும், அப்போது தத்து லேறாமம் செய்யப்பட்டது, நானும் என் கணவரும் 2ம் வாதியை கையைப் பிடித்து செல்லம்மாஸ் நைனாகண்ணு பட்டரிடம் ஒப்படைத்தோம், அவர்களும் பெற்றுக்கொண்டனர், செல்லம்மாஸ் 2ம் வாதிக்கு பெற்றுக்கொண்டவுடன் பால் கொடுத்தார், நைனாகண்ணு பட்டர் தனது தகப்பனாரின் பெயரை குட்ட வேண்டுமென்று விரும்புவதால் அவருக்கு சுப்பிரமணியன் என்று பெயர் குட்டினார், நைனாகண்ணு பட்டர் செல்லம்மாஸ் அவர்களுக்கு தெரிந்த குடும்பத்தினர் அல்லாத பெரியவர்களும் தெரிந்தவர்களும். மற்றும் சுந்தர் ராமன் என்பவரும் இருந்தனர்,,,"

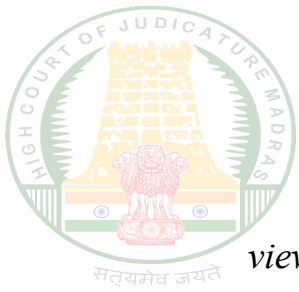


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(24)The learned Senior counsel for the respondents would submit that, in view of the evidence of the aforesaid witnesses, supporting the adoption, the statutory presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956, attached to Ex.A1, is attracted.

(25)There can be no quarrel with the proposition that once a registered Deed satisfying the requirements of Section 16 is produced, a presumption as to the validity of the adoption would arise. PWs.2, 3 and 5 have spoken about the adoption ceremony. However, the mere existence of such oral evidence, would not automatically render the adoption immune from scrutiny, for the presumption is only a rebuttal presumption and not a conclusive one.

(26)Useful reference in this regard, is made to the judgment of the Apex Court reported in **1998 [8] SCC 701 [Deu Vs. Laxmi Narayanan]**, wherein the Hon'ble Supreme Court held that *"in view of Section 16 of the Act, whenever any document registered under law is produced before the Court purporting to record an adoption made and is signed by the persons mentioned therein, the Court should presume that the adoption has been made in compliance with the provisions of the statute, unless and until it is disproved."* It is further held that *"in*



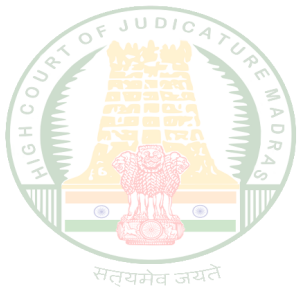
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view of Section 16 of the Act, it is open to the parties to disprove the Deed of Adoption by initiating independent proceedings."

(27)In **AIR 2002 SC 1428 [Jai Singh Vs. Shakuntala]**, it was held as follows:-

"2.The Section thus envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption that adoption has been made in accordance with law. Mandate of the statute is rather definite since the Legislature has used "shall" instead of any other word of lesser significance. Incidentally, however the inclusion of the words "unless and until it is disproved" appearing at the end of the statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption. It is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession – thus onus of proof is rather heavy. Statute has allowed some amount of flexibility, lest it turns out to be solely dependent on a registered adoption deed. The reason for inclusion of the words "unless and until it is disproved" shall have to



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*be ascertained in its proper perspective and as such the presumption cannot but be said to be a rebuttable presumption. Statutory intent thus stands out to be rather expressive depicting therein that the presumption cannot be an irrebutable presumption by reason of the inclusion of the words justice noticed above. On the wake of the aforesaid the observations of the learned Single Judge in **Modan Singh Vs. Mst.Sham Kaur and Others [AIR 1973 P&H 122]** stands confirmed and we record our concurrence therewith."*

(28)The said judgment was followed in ***Laxmibai [Dead] Through LRs and Another Vs. Bhagwanthbuva [Dead] Through LRs and Others [2013 [4] SCC 97]***. The Hon'ble Supreme Court, in the aforesaid judgment, held as follows:-

"22.1....Therefore, there is a presumption under Section 16 of the 1956 Act, to the effect that the aforementioned adoption has been made in compliance with the provisions of the 1956 Act, until and unless such presumption is disproved. In the event that a person chooses to challenge such adoption, the burden of proof with respect to rebutting the same, by way of procedures accepted by law, is upon him."

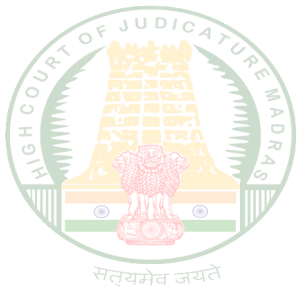


(29) It is therefore clear that it is always open to the defendant to dislodge the said presumption by adducing contra evidence or by demonstrating from the surrounding circumstances and documentary evidence that the adoption is improbable or untrue. It is also trite that the burden of rebutting the presumption lies upon the defendant. The defendant who has chosen to challenge the adoption, is bound to prove the invalidity of the same. The learned Senior counsel for the appellant/defendant relied on both oral and documentary evidence on record to establish the falsity of the adoption claimed to have been taken place in the year 1961/1962. The learned Senior counsel relied on the following documentary evidence in support of his case that the alleged adoption did not take place in the year 1961/1962:-

➤ *Ex.A-37/10.06.1975 – PUC Transfer Certificate of the respondent wherein he was mentioned as "K.SEKAR @ RAJA BATTAR".*

➤ *Ex.B-18/1975 – PUC Register of Admission and Withdrawn of Madura College wherein he was mentioned as "K.SEKAR @ RAJA BATTAR" and son of Karpooora Battar.*

➤ *Ex.B-1/01.08.1978 – Transfer Certificate of Madura College wherein he was mentioned as "K.SEKAR @*



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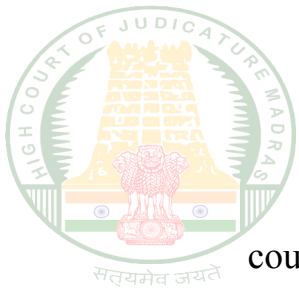
RAJA BATTAR" and son of Karpooora Battar.

➤*Ex.A-1/28.02.1981 – Even in the adoption deed the respondent was mentioned as "K.SEKAR @ RAJA BATTAR" and son of Karpooora Battar.*

➤*Ex.B-2/05.06.1981 – Adoption invitation of respondent in this document also he was mentioned as "K.SEKAR @ RAJA BATTAR" and son of Karpooora Battar."*

(30)The learned Senior counsel, drawing attention of this Court to the oral evidence of the plaintiffs' witnesses, contended that their own testimony unmistakably demonstrates that no adoption ceremony had, in fact, taken place in the year 1961/1962. According to the learned Senior counsel, a cumulative reading of the entire oral and documentary evidence on record would clearly establish that the alleged adoption is a mere fabrication, brought into existence only with a view to lay claim over the properties of Nainakannu Bhattar [Jr].

(31)The learned Senior counsel submitted that it is settled legal position that the documentary evidence should be preferred over the oral evidence. In support of the said legal submission, the learned Senior



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counsel relied on the judgment of this Court reported in **1998 [2] MLJ**

351 [Muthu Goundar Vs. Poosari @ Palaniappan and Others]. In the light of the settled legal principles referred to supra, this Court shall now examine whether the defendant has successfully rebutted the statutory presumption of adoption arising under Section 16 of the Hindu Adoption and Maintenance Act, 1956.

(32)At the outset, the objection of the learned Senior counsel for the respondent that the defendant has no right to challenge the adoption, being a third party to it, is considered. The learned Senior counsel submitted that the 1st plaintiff [adoptive mother] and PW5 [the natural mother] admitted the adoption and therefore, the defendant who is a third party, had no right to challenge the adoption. Indisputably, the defendant is the brother of late Nainakannu Bhattar [Jr]. The couple Nainakannu Bhattar [Jr] and Chellammal had no issues. On the death of the 1st plaintiff and in the absence of any legal heirs to the couple Nainakannu Bhattar [Jr] and Chellammal, in the natural line of succession, the suit property would devolve on Nainakannu Bhattar's [Jr] mother, who was living at the time of Chellammal death and thereafter, on him. The adoption of the 2nd plaintiff, if proved, would



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interfere with the defendant's right to the suit properties and therefore, this Court is of the view that the defendant has a right to challenge the adoption as a party entitled to succeed to the estate of his deceased brother, Nainakannu Bhattar [Jr]. The learned Senior counsel for the respondent submitted that in any event, the evidence on record particularly, the evidence of plaintiffs' witnesses and the documentary evidence Ex.A10 and Ex.A36 proved the adoption of the 2nd plaintiff by the couple Nainakannu Bhattar [Jr] and Chellammal [1st plaintiff].

(33)Admittedly, the 2nd plaintiff was born on 31.05.1958 to Karpooora Bhattar and Nagasundarambal. The 2nd plaintiff claims half right over the suit properties as the adopted son of Nainakannu Bhattar [Jr] and Chellammal. The oral and documentary evidence on record, when appreciated in its entirety, renders the plaintiffs' version of an adoption having taken place in the year 1961/1962 wholly doubtful and improbable. Significantly, all the documents relied upon by the plaintiffs pertain only to the period subsequent to 1981 and the 2nd plaintiff also admits to the same. Only Ex.A36 relates to the year 1978. Even in Ex.A36, the 2nd plaintiff's initial is shown as "K" and his name is mentioned as "Sekar @ Raja Bhattar.K". At the same time,



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Exs.A37, B1 and B18 pertaining to School and College records of the 2nd plaintiff, consistently describe him as "K.Sekar @ Raja Bhattar" son of "Karpoor Bhattar", even long after the alleged adoption in 1961/1962. Significantly, even Ex.A1, the Adoption Deed dated 28.02.1981, describes the 2nd plaintiff in the very same manner.

(34)The cumulative effect of the aforesaid documents unmistakably demonstrate that till the year 1981, the 2nd plaintiff continued to be recognized only as the son of Karpoor Bhattar. Had the adoption truly taken place in 1961/1962 and had his name been changed immediately thereafter as "S.N.Subramanian", as now claimed, the same would have found reflection in the contemporaneous school and college records. Significantly, the 2nd plaintiff admitted in his cross examination that his name change as "S.N.Subramanian", came to be gazetted only in the year 1983-1984. The 2nd plaintiff also categorically admitted that all documents produced by him, were subsequent to 1981 and that no document prior thereto, had been filed. The absence of any contemporaneous evidence, materially undermines the plaintiffs' case.

(35)The available documentary evidence, being contemporaneous in

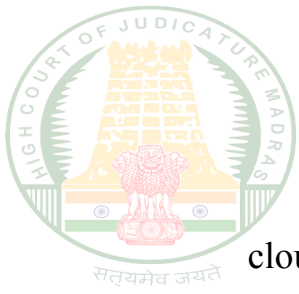


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nature, deserves greater evidentiary weight that the interested oral testimony adduced by the plaintiff and his witnesses. As rightly contended by the learned Senior counsel for the appellant, acceptable documentary evidence must prevail over oral assertions unsupported by contemporaneous documents. In support of the said settled legal proposition, worthy reference is made to the judgment of this Court reported in **1998 [2] MLJ 351 [Muthu Goundar Vs. Poosari @ Palaniappan and Others]**. There is thus, a complete absence of contemporaneous documentary evidence to substantiate the plea that the 2nd plaintiff had been adopted in the year 1961/1962.

(36) Even the explanation of PW2 and PW5 for the necessity of adoption by Nainakannu Bhattar [Jr] and Chellammal does not inspire confidence. PW2 and PW5 testified that the adoption was necessitated on account of the alleged incapacity of Nainakannu Bhattar [Jr] and Chellammal to beget children. Admittedly, at the relevant point of time, the said couple were only about 30 and 25 years of age respectively. In the absence of any medical evidence, the plea that they were incapable of bearing children cannot be accepted. The said circumstance, instead of supporting the plaintiffs' case, casts a serious



cloud over the alleged adoption of the year 1961/1962.

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(37)The evidence of PW2 further discloses that no invitation was printed for the alleged adoption ceremony and that it was conducted merely as a family function notwithstanding the admitted financial status of Nainakannu Bhattar [Jr]. Curiously, not even a single photograph or contemporaneous document relating to the alleged adoption ceremony of 1961/1962 has been produced . On the contrary, the photographs and invitation relied upon by the plaintiffs' relate to the ceremony conducted in the year 1981. Moreover, if truly, an adoption had taken place in 1961/1962, there was no necessity whatsoever for printing Ex.B2 in the year 1981, inviting relatives and friends for an "adoption ceremony" and "upanayanam ceremony". The conduct of holding another adoption probablises the defense version and renders the earlier adoption highly doubtful.

(38)Equally damaging is the evidence of PW3, who was examined to prove the alleged adoption of 1961/1962. PW3 admitted that he had been residing in Avani Moola Street only for about 22 years prior to the year 2002, thereby indicating that he would have come to reside there only, around 1981. Further, his own evidence reveals that he



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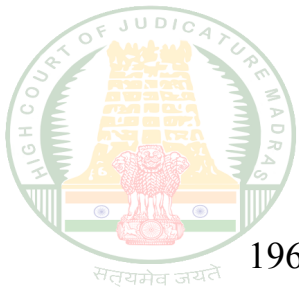
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would have been only about 15 years old at the time of the alleged adoption.

(39)PW5, in her cross examination admitted that at the time of the alleged adoption in the year 1961/1962, the 2nd plaintiff was her only son. Though there is no legal prohibition against giving an only son in adoption, the ordinary course of human conduct and normal societal practice would militate against such course. The said view of this Court is supported by the judgment of the Hon'ble Supreme Court in ***AIR 1964 SC 136 [Raghavamma Vs. Chenchamma]***.

(40)The conduct of the plaintiffs in the pleadings also assumes significance. In the plaint, there was neither any reference to Ex.A1, nor to the alleged adoption of the year 1961/1962. Only after the defendant specifically denied the adoption in his written statement, the 2nd plaintiff, by way of reply statement, introduced the story of his adoption at the age of 3 years. Even therein, there was no reference to the Adoption Deed. Such shifting stands materially undermines the credibility of the plaintiffs' case.

(41)On an overall consideration of the oral and documentary evidence, this Court is of the clear view that the alleged adoption of the year



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1961/1962 is shrouded in suspicious circumstances and is unsupported by any reliable contemporaneous evidence. The testimonies of PW2, PW3 and PW5 are partisan and hence, this Court is of the view that it could be unsafe to act upon their testimonies. This Court finds that the adoption of the year 1961/1962 is highly improbable since it is unsupported by any contemporaneous documents.

(42)As held by the Hon'ble Supreme Court in ***Kishorilal Vs. Chaltibai*** [AIR 1958 SC 504], an adoption being one which alters the natural course of succession and diverts natural heirs of their rights, must be proved by evidence free from suspicion and of such cogency as to leave no room for doubt. Tested on the said touchstone, this Court finds that the plaintiffs have miserably failed to establish the alleged adoption of the year 1961/1962. This Court is of the further view that the evidence on record sufficiently rebuts the presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956. On a scrutiny of the evidence on record, this Court is of the view that the evidence unmistakably indicates that the story of an earlier adoption in 1961/1962 was introduced only with a view to overcome the statutory embargo contained in Section 10[iv] of the Hindu Adoption and



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Maintenance Act, 1956, which reads as follows:-

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"10. Persons who may be adopted.-*No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-*

(i)

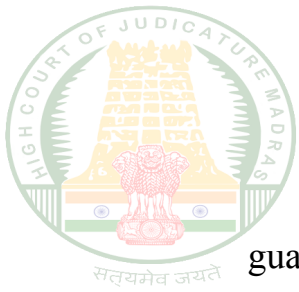
(ii)

(iii).....

(iv) *he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."*

(43)Admittedly, the 2nd plaintiff was aged about 23 years on the date of Ex.A1, in the year 1981. It is to be noted that it is not even the plaintiffs' case that there existed any custom or usage in his community permitting adoption of a person above the age of 15 years. Consequently, the adoption purportedly effected under Ex.A1 is *ex facie* contrary to Section 10[iv] of the Act.

(44)The next question that arises for consideration is as to the extent of jurisdiction of this Court, under Section 100 CPC, to interfere with the concurrent findings recorded by the Courts below regarding the validity of the alleged adoption. This Court is of the considered view that the jurisdiction to scrutinise the evidence is not altogether excluded in Second Appeal. Though ordinarily this Court would be



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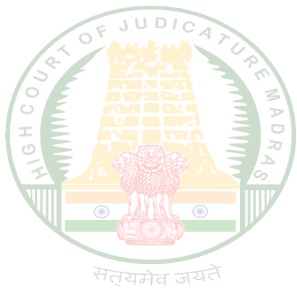
guarded to interfere with concurrent findings of fact, such restraint would not operate where the findings are shown to be perverse, based on misreading of evidence, or otherwise suffering from manifest legal infirmity.

(45)The following judgments reiterate the principle that in exceptional circumstances, interference with concurrent findings would indeed be warranted.

(46)In ***Kochukakkada Aboobacker [Dead] by LRs and Others Vs. Attah Kasim and Others*** reported in ***1996 [7] SCC 389***, the Hon'ble Supreme Court held that "*when the Trial Court and the Lower Appellate Court failed to consider the relevant document in proper prospective and effect of those documents on the rights of the parties, this Court is entitled to reconsider the evidence by drawing inferences from the admitted documents.*"

(47)So also in ***Major Singh Vs. Rattan Singh [Dead] through LRs and others [1997 [3] SCC 546]***,the Hon'ble Supreme Court held as follows:-

"Under these circumstances, when the Courts below have rejected and disbelieved the evidence on the ground that the propounder had not properly discharged his duty, it is duty of the High Court to consider whether the



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reasons given by the courts below are sustainable in law. In view of the above reasoning of the Trial Court as affirmed by the Appellate Court, necessarily the High Court requires to go into that question to test the reasons. In this perspective, the High Court has rightly gone into that question and found that the reasons given by the Courts below are flimsy. Thus, there is substantial question of law that has arisen for consideration and the High Court has rightly considered the question, we entirely agree with the High Court."

(48) This Court, in the judgment reported in **1995 [2] LW 467 [Seeni Ammal Vs. Veerayee Ammal]**, on appreciation of the earlier case laws, concluded that *"if the findings of the Courts below are not supported by evidence or are based on misconception or are erroneous, and perverse, this Court can interfere in the Second Appeal."*

(49) The findings of the Courts below resting on stray documents, while completely overlooking contemporaneous documentary evidence wholly inconsistent with plea of adoption, are clearly perverse and cannot be sustained in law. The Trial Court relied primarily on Ex.A10 and Ex.A36 to render a finding in favour of the plaintiffs. The Trial Court failed to appreciate that these documents are not contemporaneous with the alleged adoption in 1961/1962. The Trial Court failed to note that Ex.A10 is dated 31.07.1988 and is after the



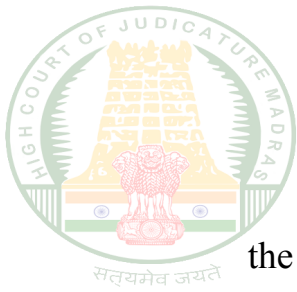
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adoption in 1981. Ex.A36 is a stray document and even in the said document, the 2nd plaintiff's name and initial is mentioned as "Sekar @ Raja Bhattar K", son of Nainakannu Bhattar. The Trial Court erred in thinking that Ex.A36 supports the 2nd plaintiff. In fact, Ex.A36 is against the plaintiffs since it clearly establishes that as late as 1978, his name had not changed and that he continued with his natural father's initial.

(50)As regards the appreciation of the case by the Lower Appellate Court, the least said the better. The Lower Appellate Court, by a very cryptic judgment, held that since the first plaintiff admitted the adoption of the 2nd plaintiff and some of the documents and invitations showed that Nainakannu Bhattar [Jr] and Chellammal, are the parents of 2nd plaintiff, the Trial Court had correctly found that the adoption was proved. The said finding is absolutely perverse since the documents and invitations referred to, have no bearing on the adoption stated to have taken place in 1961/1962.

(51)The Courts below having failed to consider the evidence on record in proper perspective and having failed to appreciate the legal principles governing the law of adoption, this Court is inclined to interfere with



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the judgment of the Courts below. *Accordingly, the substantial question of law is answered in favour of the appellant.*

(52)The Second Appeal is accordingly **allowed** and the judgment and decree of the Courts below are set aside **and the suit in OS.No. 267/1992 stands dismissed.** Consequently, the Cross Objection is **dismissed.** No costs.

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AP

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Internet : Yes

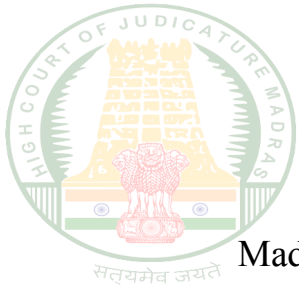
NCC : Yes

Speaking Order

To

- 1.The I Additional District Judge, Madurai.
- 2.The II Additional Subordinate Judge, Madurai.
- 3.The Section Officer,
VR Section,

35/37

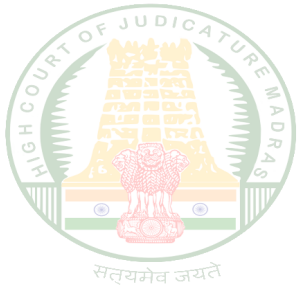


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Madurai Bench of Madras High Court

Madurai.

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N.MALA, J.

AP

Judgment in
SA.(MD).No.60/2008

01.06.2026