

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.409 of 2013

1.Veeramani  
2.Gayathri [Minor]  
3.Vaidhegi [Minor]  
[2<sup>nd</sup> and 3<sup>rd</sup> Minor Appellants are  
represented by their mother and  
natural guardian Mrs.Veeramani] ...Appellants/Defendants

-Versus-

1.Amudhavalli  
2.Christian ... Respondents/Plaintiff

This second appeal is filed against the judgment and decree dated 04.08.2010 passed in A.S.No.60 of 2007 by the learned Additional Subordinate Judge at Puducherry reversing the judgement and decree dated 07.06.2007 passed in O.S.No.552 of 2005 by the learned II Additional District Munsif, Puducherry.

For Appellants : Mr.J.Kumaran

For Respondents : Mr.G.Ashokapathy for  
M/s.Pass Associates

JUDGMENT

The defendants in O.S.No.552 of 2005 on the file of the learned II Additional District Munsif, Puducherry, are the appellants herein. The plaintiffs in the suit are the respondents herein. The plaintiffs filed the suit for declaration that the plaintiffs 1 and 2 are the

only legal heirs of the deceased - Samikannu S/o.Irudayanathan, who died on 19.02.2005 at Government Hospital, Puducherry. By judgement and decree dated 07.06.2007, the learned II Additional District Munsif, Puducherry, decreed the suit thereby declaring that the plaintiffs 1 and 2 and the defendants 2 and 3 are the legal heirs of the deceased Samikannu. Aggrieved over the same, the plaintiffs filed an appeal in A.S.No.60 of 2007 before the learned Additional Subordinate Judge, Puducherry. By decree and judgement dated 04.08.2010, the learned Additional Subordinate Judge allowed the appeal and set aside the decree and judgement of the trial court and instead, declared the plaintiffs 1 and 2 alone as the legal heirs of the deceased Samikannu. Aggrieved over the same, the defendants are now before this court with this second appeal.

2. I have heard the learned counsel on either side and also perused the records carefully.

3. The facts of the case would be as follows:- Admittedly, Samikannu S/o.Irudayanathan was a Christian. It is also admitted that the 1st plaintiff married the deceased Samikannu on 08.02.1982. The 2nd plaintiff is the son born out of the said wedlock. This position is admitted by the defendants. According to the plaintiffs during the subsistence of the said marriage between the 1st plaintiff and the deceased Samikannu, he had illicit relationship with the 1st defendant and out of the same, the defendants 2 and 3 were born. Since there was no marriage between Samikannu and the 1st defendant, according to the plaintiffs, the defendants are not the legal heirs of the deceased. Thus, according to the plaintiffs, the plaintiffs alone are the legal heirs of deceased Samikannu.

4. The case of the defendants is that it is true that the 1st plaintiff is the wife and the 2nd plaintiff is the son born out of the marriage between the 1st plaintiff and the deceased Samikannu. But, it is not correct to say that there was no marriage between the 1st defendant and the deceased Samikannu. As a matter of fact, there was marriage celebrated between the 1st defendant and the deceased Samikannu on 03.12.1989 and the same was registered as per the provisions of The Special Marriage Act on 10.02.1990. It is only out of the said wedlock, the defendants 2 and 3 were born. Thus, according to the defendants, they are also the legal heirs of the deceased Samikannu.

5. Based on the above pleadings, appropriate issues were framed by the trial court. During trial, on the side of the plaintiffs, 2 witnesses were examined and 10 documents were marked and on the side

of the defendants 4 witnesses were examined and 14 documents were marked. Having considered the above oral and documentary evidence, the trial court decreed the suit thereby declaring that the plaintiffs and the defendants 2 and 3 are the legal heirs of the deceased. But, that was reversed by the first appellate court. That is how, the defendants are now before this court with this second appeal.

6. In this second appeal, the following substantial questions of law arise for consideration:-

(1) Whether the marriage between the deceased Samikannu and the 1st defendant held on 03.12.1989 is valid or void?

(2) Whether the defendants 2 and 3 shall be treated as legitimate children of Samikannu in the event the marriage between the 1st defendant and the deceased Samikannu is found to be void?

7. As I have already pointed out, there is no dispute that there was marriage between the 1st plaintiff and the deceased Samikannu and that the 2nd plaintiff was born out of the said wedlock. There was no dissolution of the marriage between the 1st plaintiff and the deceased. Therefore, indisputably, the plaintiffs are the legal heirs of the deceased.

8. Now, turning to the case of the defendants, from Ex.B.3 as well as Exs.B.1 and B.2, it is crystal clear that there was marriage between the deceased Samikannu and the 1st defendant on 03.02.1989. The birth certificates of the defendants 2 and 3 proved as Exs.B.4 and B.5 respectively, would go to show that their biological father was the deceased Samikannu. The other documents such as, voters list, family card and cremation certificate of the deceased Samikannu would go to substantiate the fact that there was marriage between the 1st defendant and Samikannu on 03.02.1989. As a matter of fact, under Exs.B.13, the deceased Samikannu had nominated the defendants as his legal heirs. Ex.B.14 is the copy of the service register extract which also shows the same. From these documents, the trial court found that there was marriage between the 1st defendant and the deceased Samikannu and the said marriage was registered as per the provisions of The Special Marriage Act. The trial court found that the marriage between the 1st defendant and the deceased Samikannu is void as per Section 4 of The Special marriage Act because of the subsistence of the marriage between the 1st plaintiff and the deceased Samikannu. Therefore, in my considered opinion, the trial court was right in holding that though there was a marriage between

the 1st defendant and the deceased Samikannu, in law, the said marriage is void. As per Section 26 of the Special Marriage Act, notwithstanding the fact that the said marriage between the 1st defendant and the deceased Samikannu is void, the defendants 2 and 3, who are the children born out of the said void marriage are illegitimate children of the deceased Samikannu and they will get all the benefits of Section 26 of the Special Marriage Act. The trial court rightly appreciated the facts and accordingly held that the defendants 2 and 3 are also legal heirs of the deceased. But, unfortunately, the first appellate court has, without proper application of mind, in a casual manner, has reversed the decree of the trial court. In paragraph 23 of the judgement, the learned Additional Subordinate Judge has stated that the marriage between the 1st plaintiff and the deceased Samikannu was solemnized according to the Hindu Marriage Act. This is clearly wrong. Secondly, without reference to Section 26 of the Special Marriage Act, the first appellate court has simply stated that the plaintiffs alone are the legal heirs because the marriage between the 1st plaintiff and the deceased Samikannu is valid. Had the first appellate court been apprised of Section 26 of the Special Marriage Act, I am sure that the first appellate court would not have reversed the well considered judgement and decree of the trial court. For the above reason, the judgement and decree of the first appellate court requires interference at the hands of this court.

9. In the result, the second appeal is allowed; the decree and judgement dated 04.08.2010 passed in A.S.No.60 of 2007 by the learned Additional Subordinate Judge, Puducherry, is hereby set aside and that the decree and judgement dated 07.06.2007 passed in O.S.No.552 of 2005 by the learned II Additional District Munsif, Puducherry, is hereby restored. Considering the facts and circumstances of the case, both parties shall bear their respective costs. Consequently, connected MP is closed.

Sd/-

Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Additional Subordinate Judge,  
Puducherry.

2.The II Additional District Munsif,  
Puducherry.

1 CC to M/s.Pass Associates, Advocate SR.No. 7003

Second Appeal No.409 of 2013

TEJ (CO)  
PSI (12.03.2015)



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