

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.724 OF 2004
and
CMP.No.5627 of 2004

M.Vasu

...Appellant

Vs.

1. Neela

2. The General Manager,
Southern Railway
Chennai-600 003.

3. The Senior Divisional Personnel officer,
Divisional Railways Manager's Office,
Personnel Branch, CEN Division,
Chennai-600 003.

4. P.Rajeswari (minor)

5. P.Nagamma (minor)
[minors rep. by their mother
and natural Guardian the
1st respondent]

...Respondents

PRYER : This second appeal filed under Section 100 C.P.C. against the judgment and decree dated 22.08.2003 made in A.S.No.129 of 2002 on the file of the V Additional City Civil Court, Chennai, confirming the judgment and decree dated 26.03.2002 made in O.S.No.4723 of 1998 on the file of XIII Assistant City Civil Court, Chennai.

For Appellant : Mr.S.Umapathy

For Respondents : M/s.T.MuthamilSelvi
Mr.V.M.Venkataramana for R1
M/s.A.P.Srinivas for R2 and R3

J U D G M E N T

The unsuccessful plaintiff is the appellant herein. The Second Appeal is admitted on the following Substantial Questions of Law::

"1. Whether the Courts below are correct in disbelieving Ex.A2 which is a registered adoption deed from which adoption stands proved under Section 16 of the Hindu Adoption and Maintenance Act?

2. Whether the Courts below are right in rejecting the adoption deed though the same is not disputed or rebutted? and

3. Whether a deed of adoption reciting earlier adoption preceded by legal ceremonies would confer no status on an adopted person?

2. The dispute arises for consideration herein is whether the plaintiff, who claims himself to be the adopted son of the deceased Palani or the respondents 1, 4 and 5, who claim to be the second wife and the children born to deceased Palani through the second wife are entitled to the payment of retirement-cum-pension benefits due to Palani as Southern Railway Employee.

3.The facts that Palani and his first wife Gowri had no issues and Palani married the first respondent/Neela during 1984 and after the death of Gowri, Palani and the first respondent had been living together as the husband and wife and the first respondent-Neela gave birth to the Respondents 4 and 5, by names P.Rajeswari and P.Nagamma in the course of her living together with the deceased Palani and Palani died on 07.04.1996, are not seriously denied.

4.The dispute arose only after the death of Palani. As far as the plaintiff is concerned, he claims himself to be the adopted son of the deceased Palani on the strength of the oral evidence of PW2 and PW3 and on the strength of Ex.P2-registered adoption deed dated 31.08.1995 and Ex.P6-Legal heirship Certificate, dated 06.12.1996 and Ex.A7 - order dated 24.03.1998 in C.A.No.58 of 1997 and Exs.A11 and A12 medical attendance identity Card of Palani and Ex.P13-nomination filed by Palani to the Railway Department.

5. It is true that the above referred to oral and documentary evidence, particularly, the recitals contained in Ex.P2 - Adoption Deed, dated 31.08.1995 would show that Palani adopted the plaintiff at his early age in accordance with law and the plaintiff was brought up by Palani and Plalani also during his life time, gave nomination form for including the name of the plaintiff in his medical identity card and after his death, the death ceremony was conducted only by the plaintiff and he was given the death benefit amount for meeting out the funeral expenses of the deceased Palani. As such, the findings of the Courts below as if the plaintiff failed to prove his adoption is certainly by overlooking the material evidence adduced on the side of the plaintiff.

6. Be that as it may, as far as the defendants 1, 4 and 5 are concerned, the first defendant was admittedly living with the deceased Palani. The fact that she gave birth to fourth defendant by name Rajeswari through Palani was also accepted by the Courts below and the fourth defendant was hence declared to be the legitimate child of the deceased Palani and held to be entitled to claim the benefits due to Palani. While doing so, the Courts below failed to consider that Palani's first wife died as early as in the year 1986 and thereafter Palani continued to live with the first defendant, Neela, till his life time and in that event, the relationship can be, in view of the observations made in the following judgments held to be as husband and wife and such stand taken herein is supported by the observations made in the following judgments:

(i) RAGHUVIR KUMAR (MINOR) BY NEXT FRIEND AND MOTHER SMT.D.P.KAMALAKUMARI AND ANOTHER V. SMT. SHANMUGHAVADIVU AND OTHERS (AIR 1971 Madras 330)

(ii) a Division Bench of Karnataka High Court in SMT.PARAMESHWARI BAI V. MUTHOJIRAO SCINDIA (AIR 1981 KARNATAKA 40) and

(iii) a decision of the Madurai Bench of this Court in S.MUTHULAKSHMI V. THE RECORD OFFICER, THE MADRAS REGIMENT, POST BOX NO.1, WELLINGTON, NILGIRIS & ANOTHER (2014-4-L.W.297).

7. In all the above cited cases, the Division Bench of Karnataka High Court and learned brother Judge of this Court following the judgment of the Supreme Court in RAMESH CHANDRA RAMPRATHAPJI DAGA V. RAMESHWARI RAMESH CHANDRA DAGA reported in AIR 2005 SCC 422 and in MOHABBAT ALI KHAN V. MUHAMMAD IBRAHIM KHAN AND OTHERS reported in AIR 1929 PRIVY COUNCIL 135, held that when the man and woman proved to have lived together as husband and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.

8. In my considered view, the observation made in the judgment of our High Court and other High Courts, is squarely applicable to the facts of the present case wherein the first defendant Neela and the deceased Palani lived together as husband and wife for more than a decade, as such, the relationship would give her the status of legally wedded 'wife' that too after the death of his first wife much earlier.

9. As far as the legitimacy of the fifth defendant by name P.Nagamma is concerned, there were sufficient documents available to show that she was born to Palani through first defendant Neela. Both the defendants 4 and 5 were given birth by the first defendant Neela. The documents relied on to accept the legitimacy of the fourth defendant are hospital record and school records, wherein Palani was

mentioned as the father of the child. Similar documents were available for the fifth defendant, however, the same were not accepted for the simple ground that the particulars in the documents were entered at the instance of the first defendant-Neela. In my considered view, the particulars mentioned in the documents declaring the deceased Palani as the father of the fifth defendant are sufficient enough to prove the legitimacy of the fifth defendant, as such, the finding of the Courts below that the fifth defendant is not borne to Palani cannot be hence sustained.

10. Thus, for the discussions held above, this Court has no hesitation to hold that both the plaintiff and the defendants 1, 4 and 5 are entitled to claim the death cum retirement benefits of the deceased Palani in equal share and the plaintiff is entitled to get 1/4th share in the benefits as above referred to. As far as the claim for pension is concerned, the first defendant is entitled to claim the same. As far as the claim for compassionate appointment is concerned, out of three children, the only person who is eligible to seek the same is the fourth Defendant - P.Rajeswari, aged about 28 years, who remains unemployed. Accordingly, the suit is decreed in part in respect of death cum retirement benefits due to Palani and the Substantial Question of Law are hence answered.

11. In the result, the judgment and decree of the Courts below are set aside and the suit is decreed holding the first plaintiff and the defendants 1, 4 and 5 as entitled to all the retirement-cum-death benefits due to Palani in equal shares and the first defendant Neela is entitled to family pension and the fourth defendant Rajeswari is entitled to seek compassionate appointment in the Southern Railway on account of the death of Palani and the Second Appeal is accordingly disposed of. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kal

To

1. The V Additional Judge,
City Civil Court,
Chennai.

2. The XIII Assistant Judge,
City Civil Court,
Chennai.

3. The General Manager,
Southern Railway,
Chennai - 600 003.

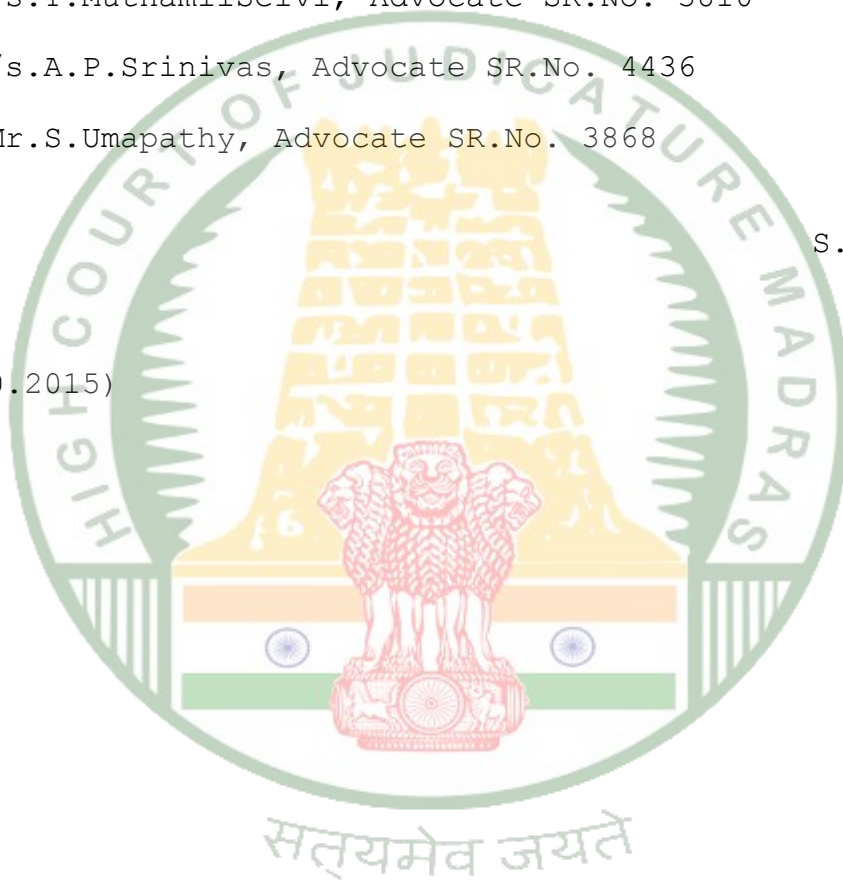
1 CC to M/s.T.MuthamilSelvi, Advocate SR.No. 3810

1 CC to M/s.A.P.Srinivas, Advocate SR.No. 4436

1 CC to Mr.S.Umapathy, Advocate SR.No. 3868

S.A.No.724 OF 2004

CNR (CO)
PSI (07.10.2015)



WEB COPY