

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 15.11.2016
PRONOUNCED ON : 25.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.495 of 2008 and M.P.No.1 of 2008
and M.P.No.1 of 2010

1.Radha
2.Suseela
3.Radhiya

... Appellants/Defendants 1 to 3

Vs.

1.Rani Ammal
2.The Officer, MES,
AGEBR(5)
Avadi,
Chennai - 600 054.

... Respondents/Plaintiffs
4th Defendant

Second Appeal under Section 100 of C.P.C., has been filed against the judgment and decree passed in A.S.No.33 of 2005 dated 28.09.2006 on the file of the Subordinate Judge, Poonamallee confirming the judgment and decree passed in O.S.No.243 of 1998 dated 28.02.2005 on the file of the District Munsif, Poonamallee.

For the Appellants : Mr.R.Venkatesan

For the Respondent - 1 : Mr.K.S.Gnanasambandan

Respondent - 2 : No Appearance

J U D G M E N T

The defendants 1 to 3 in the suit are the appellants before this Court.

2. One Mrs.Rani Ammal, W/o late Durai had filed a suit for permanent injunction restraining the fourth defendant from paying any amount to the defendants 1 to 3; to declare that she is the only legal heir of the deceased Raman as per Will dated 07.04.1997; for mandatory injunction directing the fourth defendant to pay the death benefits of late Raman to the plaintiff;

3. Rani Ammal / plaintiff based her claim on two grounds
1. As adoptive mother of the deceased Raman and
 2. As a beneficiary of the Will executed by late Raman.

4. The defendants 1 to 3, who are the appellants before this Court contested the claim of the plaintiff Rani Ammal denying her claim that she is the adopted mother of Raman and also disputing the genuineness of the Will, the trial Court, after considering pleadings of respective parties framed the following issues.

- 1) Whether the plaintiff is entitled for declaration as prayed for?
- 2) Whether the plaintiff is entitled to Mandatory injunction as prayed for?
- 3) To what relief plaintiff is entitled?

5. The parties were subject to examination. On the side of the plaintiff 12 exhibits were marked through four witnesses PW.1 to PW.4. On the side of the defendants 12 exhibits were marked through two witnesses. The Trial Court held that the plaintiff Rani Ammal is adoptive mother of the deceased Raman and the Will marked as Ex.A10 is genuine. Therefore, suit was allowed as prayed for.

6. Aggrieved by the said judgment and decree, the defendants 1 to 3 preferred an appeal before the lower appellate Court, which in re-appreciation of the evidence has confirmed the trial Court judgment. Hence, having lost the case before both the courts below, the defendants 1 to 3 have preferred this second appeal on the ground that, the alleged adoption of late Raman by the plaintiff Rani Ammal was not proved through due evidence. Further, as per Section 11(iv) of Hindu Adoptions and Maintenance Act (78 of 1956) a Hindu Female cannot adopt a male who is not 21 years younger than her. This Provision of Hindu Adoptions and Maintenance Act 1956 has been over looked by the Courts below while appreciating the fact of adoption claimed by the plaintiff. The discrepancies in the alleged Will marked as A10 was not given due weightage by the Courts below.

7. The learned counsel for the appellants submitted that the courts below has miserably failed to appreciate the evidence let in by the plaintiff in proper prospective and both the courts below lost sight of the fact that there was no sufficient pleadings in the plaint to show Raman was taken into adoption by the plaintiff and her husband on a particular day, at a particular place, in compliance with the provisions set out in Section 11 of Hindu Adoptions and Maintenance Act. Further the learned counsel for the appellant pointing out the observation

of the Trial Court that the signature of the deceased Raman found in his identity Card, marked as Ex.A1 and in the Will marked as Ex.A10, varies on comparison, but, failed to held that the Will is invalid, contrarily, held that Will proved by the plaintiff in the manner known to law. Inspite of holding that there is variance in the disputed signature found in the Will the trial court ended in an erroneous conclusion.

8. Per contra, learned counsel for the respondent submitted that though the plaintiff claims right over the retirement benefits of Raman as his adoptive mother based on the succession, even under the Will marked as B10, she is entitle for mandatory injunction as prayed in the suit.

9. Section 11 of the Hindu Adoptions and Maintenance Act 1956 reads as follows:-

Other conditions for a valid adoption :- In every adoption, the following conditions must be complied with:

(i) If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the

parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth (or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption;

Provided that the performance of datta homan shall not be essential to the validity of an adoption.

10. It is not the case of the plaintiff that on a particular day, as per the custom, in the presence of relatives and the natural parents of the deceased Raman, she and her husband took into adoption. Pleadings as found in the plaint is very vague and does not contain any of the above information. During deposition plaintiff has deposed that her husband also was present at the time of adoption. There is no independent evidence to corroborate this claim. However, the Courts below has accepted the evidence of PW1 to hold that there was valid adoption.

11. As pointed out by the counsel for the appellant, when there is no pleadings or substantial evidence to hold that the alleged adoption of Raman by the plaintiff is in compliance of Section 11 of the Hindu Adoption and Maintenance Act, such a conclusion by the Trial Court is erroneous and therefore this Court holds that the plaintiff has not positively proved the adoption. At the time of adoption as she was not 21 years elder than the adoptive person. Such an adoption cannot be held to be valid. Therefore the plea of the plaintiff that she has to be declared as legal heir of deceased Raman as his adoptive mother is not sustainable.

12. In so far as the Will marked as Ex.A10 is concerned, the Courts below, after analysing the evidence of adduced witness and the recitals of the Will, has held that it has been voluntarily executed by Raman and it is a genuine Will of Raman. In this contest, the learned counsel for the appellant relying upon several judgments of the Hon'ble Supreme Court of India submitted that the circumstances surroundings at the time of execution of Will must be taken note of.

(2007) 11 Supreme Court Cases 621 - Savithiri and others Vs. Karthyayani Amma and others

2011 (2) CTC 700 - Ghisalal Vs. Dhapubai (Dead) by L.Rs. & others

2008 3 RLW (SC) 2517; 2008 0 Supreme (Raj) 40: - Brijendra Singh Vs. State of M.P. & Anr

1) The Will has dis-inherited by close relatives who are the appellants herein.

2) The signature of the Testator found in the Will is different from the admitted signature.

3) the Will has been allegedly executed while Raman was sick and incapable of taking his own decision. Therefore it should not be construed as a voluntarily expression of Raman.

13. The Hon'ble Supreme Court in the case reported in 2007 11 SCC 621 (Savithri and others Vs. Karthyayani Amma and Others) in identical fact has held in paragraph 22 which reads as follows:-

Deprivation of a due share by the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. For the said purpose, as noticed hereinbefore, the background facts should also be taken into consideration. The son was not meeting his father. He had not been attending to him. He was not even meeting the expenses for his treatment from 1959, when he lost his job till his death in 1978. The testator was living with his sister and her children. If in that situation, if he executed a will in their favour, no exception thereto can be taken. Even then, something was left for the appellant.

14. As in the facts of the above case, in this case also, the deceased Raman was suffering from cancer and he was neglected by the appellants, who are cousins. The recital of Will A10 indicates that Raman was outcasted by the relatives. Since he was born to a concubine as we find in the recital of the Will Ex.A10. He recognising the plaintiff as one who had taken care of him has bequeathed the property mentioned in the Will in favour of the plaintiff. The Family Card, which is marked as Ex.A4 indicates that Raman was living along with plaintiff. While so the plaintiff is not a total stranger of the deceased Raman. There is evidence to show that plaintiff is closely related to Raman's mother. Therefore, though the plaintiff may not have right over the properties of Raman, as adoptive mother, since the Will found to be proved, she is entitled to the properties through the testimonial Will of Raman.

15. To that extent, the findings of the Courts below is modified and consequential prayer 1(b) in O.S.No.243 of 1998

for mandatory injunction directing the fourth defendant to pay death benefits of late Raman to the plaintiff herein which is laying in the hands of the fourth defendant is allowed. The relief sought by the plaintiff that she alone is legal heir of the deceased Raman, as per the Will dated 07.04.1997 is declined. The decree passed by the trial court and the Judgment passed by the First Appellate Court are modified as stated above. Accordingly, Second Appeal is disposed of. No order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

adl

To

1. The Subordinate Judge,
Poonamallee.
2. The District Munsif,
Poonamallee.

+1cc to Mr.B.Ganesha Moorthy, Advocate, S.R.No.69550
+1cc to Mr.K.S.Gnanasambandan, Advocate, S.R.No.69094

S.A.No.495 of 2008
and
M.P.No.1 of 2008
and
M.P.No.1 of 2010

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