

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2016

PRONOUNCED ON : 14.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 139 of 2011

1.R.Balasundaram

R.Ramalinga Chettiar (Died)

Sundara Valli Ammal (Died)

Gnanambal (Died)

Radhambal (Died)

Rukumaniammal (Died)

Lakshmipathi (Died)

2.Sugunammal

Mangalam (Died)

R.Sathasivam (Died)

3.S.Satya Priya

4.S.Kumaran

5.S.Balaji

6.S.Ravindran

7.Gayathri

8.Ramesh

9.Raja

...

Appellants

(Cause title accepted vide

order of court dated 22.11.2010 made in

M.P.No.1 of 2010 in S.A.Sr.3425/09)

Vs.

R.Krishnan

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.07.2008 passed in A.S.No.528 of 2007 on the file of VII Additional City Civil Court at Chennai, confirming the Judgement and decree dated 11.12.2006 passed in O.S.No.1497 of 1991 on the file of the learned VIII Assistant Judge City Civil Court, Chennai.

For Appellants : Mr.D.Nellaiappan

For Respondent : Mr.K.V.Sundararajan

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 10.07.2008 passed in A.S.No.528 of 2007 on the file of the VII Additional City Civil Court, Chennai confirming the judgement and decree dated 11.12.2006 passed in O.S.No.1497 of 1991 on the file of the VIII Assistant City Civil Court, Chennai, by the defendants.

2. The suit has been laid for partition.

3. The case of the plaintiff in brief is as follows:

The first defendant is the son of the second defendant. Defendants 2 to 6 and the mother of the defendants 7 to 9 viz., Andal Ammal are the sons and the daughters of late Punniavathy Ammal wife of late Rajagopal Chettiar. The suit property was originally owned and possessed by late Vadamalai Chettiyar under the sale deed dated 01.08.1967. Vadamalai Chettiyar died on 12.02.1911 leaving behind his wife Unnamalai Ammal as his sole and surviving legal heir. After his death, Unnamalai Ammal inherited the suit property and was

enjoying the same. Unnamalai Ammal died on 13.10.1955 and after her death, the suit property was inherited by Kannammal, the only sister of Vadamalai Chettiyar as the legal heir of Late Vadamalai Chettiar. After the death of Kannammal, the suit property was inherited by her daughter Punniavathy ammal. The said Punniavathy ammal, who is the mother of the plaintiff, was enjoying the suit property till her life time and she died in the year 1979 leaving behind her son and daughters to jointly inherit the property and enjoy the same in common. Thus, the plaintiff is entitled to get 1/7th share in the suit property. While so, the first defendant, without any authority started to interfere with the suit property and he inducted tenants in the suit property and collected rent and profits in collusion with his father viz., the second defendant. However, the second defendant has been giving assurance that he will partition the suit property amongst the legal heirs of Punniavathy Ammal. However, inasmuch as the defendants 1 & 2 did not keep up their promise, the plaintiff caused a legal notice dated 24.07.1989 demanding partition. A reply notice dated 06.08.1989 was issued stating that the first defendant is the absolute owner of the suit property and that, the deceased Unnamalai Ammal had adopted the first defendant on 02.09.1954. The above case of the adoption pleaded by the first defendant is totally false and not accepted by the plaintiff. Hence, the suit for partition.

4. The case of the defendants in brief is as follows:

The suit is not maintainable either in law or on facts. The relationship of the parties is admitted. It is true that after the death of Vadamalai Chettiar, the suit property was inherited by his widow Unnamalai Ammal. The said Unnamalai Ammal died on 13.10.1955 and as she had taken the first defendant as her adopted son on 02.09.1954, the suit property was succeeded to by the first defendant as her adopted son and he had been in possession and enjoyment of the same from 13.10.1955 onwards by paying taxes etc., It is only the first defendant, who had performed the funeral obsequies and other ceremonies of Unnamalai Ammal. Therefore, the question of Kannammal succeeding to the property, after the death of Unnamalai Ammal does not arise. Further, the question of Punniavathy Ammal succeeding to the property, after the death of Kannammal also does not arise. Punniavathy Ammal, who is the grandmother of the first defendant was living with the first defendant's father in the suit property and therefore, the mere fact that Punniavathy Ammal was living with the second defendant would not lead to the conclusion that either Punniavathy ammal or Kannammal had right to the suit property. The plaintiff is not entitled to seek any partition in the suit property. The true facts are mentioned in the reply notice dated

06.08.1989. Hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 7 were marked. On the side of the defendants' DW1 has been examined and Exs.B1 to 6 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to grant the preliminary decree for partition as prayed for in the plaint. The aggrieved parties preferred the first appeal and the first appellate court was also pleased to confirm the judgement and decree of the trial Court. Challenging the same, the present second appeal has been preferred.

7. The short point that arises for consideration in this case is whether the first defendant is the adopted son of Unnamalai Ammal. That the suit property was originally owned by Vadamalai Chettiar is not disputed. That Unnamalai Ammal, wife of Vadamalai Chettiar succeeded to the property on his death is also not disputed. According to the plaintiff, Unnamalai Ammal died issueless and therefore, the suit property was inherited by one Kannammal, the only sister of Vadamalai Chettiar as the legal heir of the deceased Vadamalai Chettiar and after the death of Kannammal, the suit

property was inherited by her daughter Punniavathy ammal.

8. The main defence put up to resist the claim for partition is that the first defendant is the adopted son of Unnamalai Ammal. The said fact has been seriously controverted. Therefore, it could be seen that the onus of proof that the first defendant is the adopted son of Unnamalai Ammal squarely rests upon him.

9. Now, according to the first defendant, Unnamalai Ammal adopted him on 02.09.1954. Therefore, it could be seen that even before the Hindu Adoptions and Maintenance Act, 1956 came into force, according to the case of the first defendant, he had been taken in adoption by Unnamalai Ammal on 02.09.1954. From the evidence adduced by the parties, it could be seen that Unnamalai Ammal's husband viz., Vadamalai Chettiar died on 12.02.1911, long back to the alleged adoption. Therefore, it could be seen that on the date of the alleged adoption, Unnamalai Ammal was only a widow.

10. The plaintiff and other contesting defendants are resisting the case of adoption projected by the first defendant on two grounds viz., the first defendant has failed to establish the factum of adoption and even assuming for the sake of arguments that the adoption is true, it is not a legal transaction and therefore, on that ground also,

the first defendant's case should not be accepted.

11. As regards the factum of adoption is concerned, to prove the same, only two documents are pressed into service by the first defendant. One is the invitation of adoption ceremony marked as Ex.B1 and the other is the death ceremony invitation of Unnamalai Ammal marked as Ex.B4. As rightly argued by the plaintiff's counsel, merely on the basis of Ex.B1, this court cannot infer, Unnamalai Ammal had taken the first defendant in adoption.

12. As seen from the evidence of the first defendant examined as DW1, he claims to be of two years old and that, he was not aware of the factum of adoption and that, he came to know about the adoption only through his grandmother and father. Therefore, it could be seen that DW1 was not aware of the factum of adoption and ceremonies conducted pertaining to the same. In such circumstances, when none has been examined on the side of the first defendant to establish the factum of adoption, as such, merely on the basis of Ex.A1, the invitation card, this Court cannot hold that Unnamalai Ammal had taken the first defendant in adoption as projected by him. As rightly found by the Courts below, when none has been examined to sustain the case of the adoption projected by the first defendant and when the same has been seriously controverted by the plaintiff

and other contesting parties, it could be seen that merely on the basis of the Ex.B1 and the evidence, DW1, the plea of adoption cannot be sustained.

13. Similarly, on the basis of the death ceremony invitation marked as Ex.B4 also, this Court cannot hold that Unnamalai Ammal had taken the first defendant in adoption. As per the admission of DW1, he is not having personal knowledge as to who had performed funeral ceremony of the deceased Unnamalai Ammal. Ex.B1 and B4 are challenged as fabricated documents created for the purpose of the case. Therefore, it could be seen that the courts below have correctly held that the first defendant has miserably failed to establish the factum of adoption pleaded by him.

14. Further, according to the counsel appearing for the plaintiff, Unnamalai ammal, was a widow, at the time of the alleged adoption. As per the law, then existing, sans the authority of her husband, a widow cannot adopt and therefore, it is argued that even assuming for the sake of the case, the first defendant's plea of adoption is held to be proved, it is not legally sustainable. In this connection, reliance is placed upon the decision reported in **AIR 1965 PATNA 160 (Vol.52,C.41) (Nathuni Prasad Singh and another Vs. Mst.Kachnar Kuer and other)**. This decision was placed before the

Courts below and as per the above said decision, it could be seen that inasmuch as prior to the advent of the Hindu Adoptions and Maintenance Act 1956, a Hindu widow would not be entitled to take in adoption without the consent or authority of her husband and the adoption performed before 21.12.1956 by a Hindu widow cannot be made valid under the Hindu Adoptions and Maintenance Act, 1956 as the said Act would not operate retrospectively. Based upon the above said decision, it has to be held that the adoption pleaded by the first defendant also cannot be legally sustained.

15. Further, on an analysis of the evidence of DW1, it is highly doubtful whether he would have been alive on the date of the alleged adoption. Though the adoption said to have taken place on 02.09.1954, no material is placed to hold as to when actually the first defendant was born. According to the first defendant, he was aged 21 years at the time of his marriage and that, his marriage took place on 09.09.1977. He was examined on 09.11.2006. Therefore, a suggestion was put to him that he would be aged 49 years at the time of his deposition, but that was denied by the first defendant. He has also admitted that he had not produced his school leaving certificate to establish his date of birth and as he did not mark the same, a suggestion was also put that he was not born during 1954. Considering the above facts calculating the age of the first defendant

vis-a-vis his age at the time of his marriage, as admitted by him, it could be seen that he would have not been born on 02.09.1954. Therefore, it could be seen that the plea of the first defendant that he was aged about 2 years at the time of alleged adoption would not be a true case. The proof of adoption being squarely on the shoulders of the first defendant, when nothing is forthcoming to sustain his case on that aspect, it has to be held that the first defendant has miserably failed to establish the plea of adoption projected by him. However, it has to be held that even for the sake of arguments, if the said adoption is accepted to be true, it cannot be legally sustainable for the reasons afore stated.

16. As rightly argued by the plaintiff's counsel, the decisions relied on by the first defendant's counsel reported in **AIR 1966 Bom 174, (1965) 67 BOMLR 864 (Ankush Narayan Shingate Vs. Janabai Kom Rama Sawat and Ors), AIR 1969 Mad 72 (Arumugha Udayar and ors Vs. Valliammal and ors) and 1967 AIR 1761, 1967 SCR (3) 687 (Sawan Ram & Others Vs. Kala Wanti and others)** are not applicable to the facts and circumstances of this case as those decisions pertain to the cases of adoption after the advent of Hindu Adoptions and Maintenance Act, 1956. The counsel for the plaintiff also, in support of his case relied upon the following decisions reported in **2005 (5) CTC 1 (T.N. Anantha**

Balaraje Urs Vs. Smt.Gunamba Nanjaraje Urs), and (2003) 8 Supreme Court Cases 740 (Kashi Nath (Dead) through Lrs Vs. Jaganath). The principles of law adumbrated in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the present case.

The upshot of the above discussion would only go to disclose that there is no substantial question of law involved in this second appeal. Hence, the second appeal is devoid of merits and the same is dismissed. No costs.

.11.2016

Index : Yes/No
Internet: Yes/No
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To

1. The VII Additional City Civil Court,
Chennai.
2. The VIII Assistant City Civil Court,
Chennai.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No. 139 of 2011

.11.2016

Pre -delivery judgment
in S. A.No. 139 of 2011

To

The Ho n'ble Mr.Justice T.Ravindran

Respectfully submitted
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(P.A.to the Hon'ble Judges)