

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2017
PRONOUNCED ON : 21.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1091 of 2002

Meenatchinathan

... Appellant

Vs.

1. The Chairman
NLC Ltd., Neyveli
by its Secretary.

2. Director,
Personnel,
NLC Ltd., Neyveli.

3. Director of School Education,
Madras.

4. Chief Educational Officer,
Cuddalore District,
Cuddalore.

... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 30.03.2001 made in A.S.No.21 of 2000 on the file of the Principal Subordinate Court, Cuddalore, confirming the judgment and decree dated 28.01.2000 made in O.S.No.62 of 1997 on the file of the Additional District Munsif, Cuddalore.

For Appellant : Mr.R.Gururaj

For Respondent : Mrs.N.Devi
Nos. 1 & 2 for M/s.N.Nithiyanandam

For Respondent : Mr.T.Jayaramaraj
Nos.3 & 4 Government Advocate (CS)

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 30.03.2001 made in A.S.No.21 of 2000 on the file of the Principal Subordinate Court, Cuddalore, confirming the judgment and decree dated 28.01.2000 made in O.S.No.62 of

1997 on the file of the Additional District Munsif, Cuddalore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and mandatory injunction.

4. The case of the plaintiff, in brief, is that the plaintiff's parents were married under a simple form of marriage in or about the middle of 1959 and the plaintiff is the eldest son born on 17.03.1961 and his birth was registered with Sub Registrar, Parangipettai and the plaintiff's parents had no other male issue either before or after the birth of the plaintiff and Devanathan was born on 24.09.1961, who is the son of the plaintiff's mother Kuttiammal's younger sister and her husband Samikannu. As the plaintiff's parents are illiterates, they had given the date of birth of the plaintiff as 15.07.1958 at the time of admission in the school and accordingly, the said date of birth has been entered in the SSLC certificate book. After completing his studies at ITI Cuddalore, the plaintiff joined in the employment of the defendants 1 & 2 on 17.12.1983 and accordingly, the date of birth entered in the SSLC Book had been incorporated in the service records. However, during 1992, the plaintiff came to know that he was born 6 months earlier to the birth of Devanathan and his date of birth entered into SSLC book is incorrect. Accordingly, on verification, the plaintiff applied for a copy of his birth certificate with the Sub Registrar, Parangipetti and obtaining a copy of the same on 06.05.1992 found that he was born on 17.03.1961 and not on 15.07.1958 and accordingly, presented a requisition to the defendants 1 & 2 to correct his date of birth in the service records, however, the same had been returned by them stating that for the correction of the date of birth, the plaintiff has to approach the education department only, accordingly the plaintiff presented an application to the third defendant along with necessary records and the third defendant sent a reply that the date of birth cannot be changed without assigning proper reasons and hence, the suit for appropriate reliefs.

5. The case of the defendants 1 & 2, in brief, is that the suit is not maintainable either in law or on facts. It is true that the plaintiff joined the service of the defendants 1 & 2 on 17.12.1983 and accordingly, as per the rules of the defendants 1 & 2, the plaintiff's date of birth was entered in the service records on 15.07.1958 after verification of SSLC Book and hence, his requisition for change of his date of birth in the service records did not find acceptance by the defendants 1 & 2 as the same cannot be entertained as per the rules of the defendants' corporation. The plaintiff was duly informed of the same and the case of the plaintiff that he was born only on 17.03.1961 and not on 15.07.1958 as per the birth extract obtained by him on

06.05.1992 is not accepted by the defendants and the plaintiff is put to strict proof of the same and the plaintiff, having acknowledged his date of birth as entered into the SSLC book, had signed in the service records and hence, the plaintiff is estopped from disputing the date of birth entered in the service records and the reliefs sought for by the plaintiff cannot be granted and the suit laid by the plaintiff, without any cause of action, is liable to be dismissed.

6. In support of the plaintiff's case , PWs1 to 3 were examined and Exs.A1 to 7 were marked. On the side of the defendants, no one has been examined and Exs.B1 has been marked. EXs.X1 & X2 have also been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to reject the plaintiff's case. Assailing the same, the present second appeal has been preferred by the plaintiff.

8. At time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the suit claim is barred by limitation?

(ii) Whether the Courts below erred in law and mis-directed themselves in non-suiting the plaintiff when the birth-extract Ex.A1 has been produced to prove the date of birth and overwhelming oral evidence has been let in?"

9. The plaintiff has laid the suit seeking for declaration that his date of birth is 17.03.1961 and not 15.07.1958 as entered in the SSLC book. It is found that the plaintiff's date of birth has been entered as 15.07.1958 in his SSLC book marked as Ex.A2. Now, according to the plaintiff, his parents' marriage was celebrated in or about the middle of 1959 and out of the said wedlock, he was born to them on 17.03.1961 and he came to understand that he was born six months prior to the birth of his aunt's son Devanathan, who was born on 24.09.1961 and accordingly, on verification, he had come to know that he was born only on 17.03.1961, on obtaining the copy of the birth extract from the Sub Registrar, Parangipettai on 06.05.1992 and hence, made request to the defendants to correct his date of birth. However, as his requests were not acceded to, according to him, he has been necessitated to lay the suit for appropriate reliefs.

10. The claim of the plaintiff that he was born on

17.03.1961 and not on 15.07.1958 as put forth by him is disputed by the defendants and not admitted and according to the defendants 1 & 2, the plaintiff's date of birth has been entered into service records only as per the SSLC book submitted by him at the time of joining the service and therefore, it cannot be changed as per the service rules. Though the defendants 3 & 4 did not contest the suit proceedings, in the second appeal, it is contended on their behalf that the plaintiff has not established his claim for changing his date of birth and hence, his request cannot be accepted.

11. The plaintiff's case proceeds on the footing that his parents got married in or about the middle of 1959. However, when the above said case of the plaintiff is not admitted as such, at the foremost, it is for the plaintiff to establish that his parents were married in or about the middle of 1959 as claimed by him. However, with reference to the same, no material, whatsoever, has been placed worth acceptance to hold that the plaintiff's parents got married in or about the middle of 1959 as stated in the plaint. In this connection, the plaintiff examined as PW1 has admitted during the course of cross examination that he does not know in which year his parents got married and does not know, whether there is any marriage invitation card to evidence the same and such being the position, it is found that there is no material to hold that his parents got married as put forth in the plaint. The plaintiff's father examined as PW2 also, during the course of chief examination, has not stated anything that he got married during the middle of 1959 and further also admitted during the course of cross examination that no marriage invitation card has been printed as his marriage was celebrated in a temple and such being the position, it is found that from the evidence of PW2 also, it cannot be held that the plaintiff's parents got married in or about the middle of 1959 and the evidence of PW3 does not refer to anything about when the marriage of the plaintiff's parents took place and therefore, his evidence would be of no use to sustain the above case of the plaintiff. It is thus seen that the plaintiff has miserably failed to establish that his parents got married in or about the middle of 1959.

12. According to the plaintiff, inasmuch as he was informed by his cousin Devanathan examined as PW3 and others that he was born six months prior to the birth of PW3, on verification, he has come to understand that his date of birth is 17.03.1961 and not 15.07.1958 as entered in the SSLC Book. In this connection, reliance is placed upon the birth extract marked as Ex.A1 by the plaintiff. A perusal of Ex.A1 would go to show that there is a reference in the said document that a male child was born to Mayavan/Kuttiammal on 17.03.1961. That apart, there is no indication contained therein that it refers only to the

plaintiff as such. When it is not established that the plaintiff's parents got married only during the middle of 1959 and when it is not established that the plaintiff is the eldest son born to them and when there is no reference contained in Ex.A1 that it pertains to the plaintiff, as such, on the basis of Ex.A1, it cannot be safely concluded that the date of birth mentioned in Ex.A1 is pointing only to the plaintiff and not others. Now, according to the plaintiff, his parents also gave birth to a daughter, who, according to the plaintiff, was four years younger to him. However, with reference to the above case of the plaintiff that had been disclosed during the course of evidence, that there is no material to hold as such that a daughter was born to them, who is four years younger to the plaintiff by placing acceptable materials. At least, if the birth extract of daughter born to his parents had been marked as rightly found by the Courts below, the same could have been made use of to analyse the case of the plaintiff in a proper perspective to some extent. However, even the said document had been suppressed by the plaintiff for the reason best known to him. In any event, when the plaintiff has not established that his parents got married only during the middle of 1959, merely on Ex.A1, it cannot be safely concluded that it only pertains to the plaintiff.

13. PW3 is the aunt's son of the plaintiff. According to him, his date of birth is 24.09.1961. The case of the plaintiff is that he was informed that he was born six months prior to the birth of PW3. It is the specific case of the plaintiff that his birth has been registered with the Sub Registrar, Parangipettai by his parents. If that be so, as rightly put forth, at the time of admission of the plaintiff in the school, his parents would have furnished the birth extract for entering the name of the plaintiff's date of birth in the school records as done in the case of PW3. However, according to the plaintiff, his parents being illiterates, they had not cared to place the birth extract at the time of admitting him in the school and had given his date of birth wrongly as 15.07.1958. However, when it is the specific case of the plaintiff that his parents had registered his date of birth, to say that his parents had failed to produce the birth extract at the time of admission of the plaintiff in the school as such cannot be readily accepted, when it is found that the date of birth as entered for PW3 has been correctly furnished in the school records. On the other hand, as rightly argued, inasmuch as Ex.A1 does not relate to the plaintiff, the same had not been pressed into service by his parents at the time of admitting his in the school. Hence, to say that the plaintiff's parents had not given the plaintiff's date of birth as recorded in the birth extract as such cannot be readily countenanced. Therefore, the very basis of the plaintiff's case that he born only on 17.03.1961 and not on 15.07.1958 mainly relying upon Ex.A1 as such cannot be accepted to grant the

reliefs claimed in the plaint.

14. It is found that according to the plaintiff, on obtaining the copy of the birth certificate dated 06.05.1992 marked as Ex.A1, he had come to know that he was born on 17.03.1961. If that be so, the plaintiff has obtained the cause of action for seeking the relief of declaration that his correct date of birth is only 17.03.1961 as per the copy of the birth certificate dated 06.05.1992. Therefore, when it is found that as per Article 58 of the Limitation Act, the time for commencement of the suit for declaration for the plaintiff having accrued on 06.05.1992 itself, it is found that the present suit laid by the plaintiff on 27.11.1996 is hit by the law of limitation.

15. However, it is contended by the plaintiff's counsel that inasmuch as the defendants have failed to correct the date of birth right from the representations made by the plaintiff in connection with the same and thereby, the injury caused to the plaintiff had continued thence from, it is the contention of the plaintiff's counsel that the cause of action for the plaintiff to change his date of birth is continuing and such being the position, according to him, the Courts below have erred in holding that the suit laid by the plaintiff is barred by limitation and in this connection, it is his argument that on account of the wrongful acts of the defendants, as the injury caused to the plaintiff is continuing, in such view of the matter, the plaintiff's suit is not barred by limitation. With reference to the above said contention and his other contentions reliance is placed upon by the plaintiff on the decisions reported in AIR 1933 Privy Council 193 (Hukum Chand and others Vs. Maharaj Bahadur Singh and others), 1986 TNLJ 236 (Bharathamatha Desiya Sangam, Madhavaram, by its Secretary M.Subramania Naicker and another Vs. Roja Sundaram and 2 others), AIR 1959 Supreme Court 798 (Balakrishna Savalram Pujari Waghmare and others Vs. Shree Dhyaneswar Maharaj Sansthan and others), AIR 1977 Supreme Court 1980 (R.S.Kallolimath Vs. The State of Mysore and another), AIR 1955 S.C.206 (Gurunath Vs. Kamalabai and others) and AIR 1991 Supreme Court 2234 (Byram Pestonji Gariwala Vs. Union Bank of India and others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16. At the foremost, the plaintiff has to establish that his correct date of birth is 17.03.1961 as claimed by him. However, when the plaintiff has failed to establish his case as projected in the plaint and when in the light of the above discussions, the plaintiff has failed to establish that Ex.A1 pertains to him and that, his parents got married in the middle of 1959, it is found that the defendants do not owe any duty to correct the

date of birth as claimed by the plaintiff without any basis. Such being the position, when the defendants have accordingly and rightly refused to accede to the request of the plaintiff to change his date of birth, that cannot be characterised as wrongful acts committed by the defendants and therefore, on that basis, it cannot be contended on behalf of the plaintiff that any injury had been caused to him and the same being continuous, his suit laid during 1996 is not barred by limitation. Such being the position, it is found that the contention of the plaintiff that the injury caused to the plaintiff, on account of the refusal of the defendants to change his date of birth, being a continuous injury on account of the wrongful acts committed by the defendants, his suit is not barred by limitation cannot be acceded to as the defendants have not wrongly refused to change his date of birth. On the other hand, it is found that the defendants have refused to change his date of birth as the plaintiff has failed to establish that his correct date of birth is 17.03.1961 as projected by him. In such view of the matter, it is found that the plaintiff cannot be allowed take shelter under the provisions of Section 22 & 23 of the Limitation Act for saving the suit from the point of limitation.

17. For the reasons afore stated, it is found that the Courts below have correctly held that the plaintiff has miserably failed to establish that his correct date of birth is 17.03.1961 and not 15.07.1958 as claimed by him and accordingly, refused to grant the reliefs as prayed for. The Courts below were also correct in holding that the suit laid by the plaintiff is barred by limitation. In the light of the above position, no perversity and infirmity is noted in the judgments and decrees of the Courts below for rejecting the plaintiff's case. The substantial questions of law formulated in this second appeal are, accordingly, answered against the plaintiff.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

sms

To

1.The Principal Subordinate Judge
Cuddalore.

2. The Additional District Munsif, Cuddalore.

Copy to

The Section officer
VR Section, High Court, Madras

+1 CC to Spl. Govt. Pleader(CS)

+1 CC to Mr.R. Gururaj, Advocate sr 91708.

+1 CC to Mr.N. Nithi Anandam, Advocate sr 91537.

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SVI (CO)
SP(05/02/2018)



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