

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2017

PRONOUNCED ON:08.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1038 of 2011
and
M.P.Nos.1 & 2 of 2011

1.J.Mohan
2.Kamala
3.Jothi
4.Kannan
5.Nirmala
6.Jayavelu

... Appellants/Respoondents/
Defendants

Vs.

1.Rukkumaniammal
2.Vembuli Ammal
3.Lakshmi Ammal

... Respondents/Appellants/
Plaintiffs

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.02.2011 made in A.S.No.107 of 2008 on the file of the Additional District Judge/Fast Track Court No.1, Chengalpattu, reversing the judgment and decree dated 19.02.2008 made in O.S.No.95 of 2003 on the file of the Principal Subordinate Court, Chengalpet.

सत्यमेव जयते

For Appellants : Mr.T.P.Sekar

For Respondents : Mr.C.T.Mohan

J U D G M E N T

Challenge in this second appeal is made by the defendants against the judgment and decree dated 21.02.2011 made in A.S.No.107 of 2008 on the file of the Additional District Judge/Fast Track Court No.1, Chengalpattu, reversing the judgment and decree dated 19.02.2008 made in O.S.No.95 of 2003 on the file of the Principal Subordinate Court, Chengalpet.

2.The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal:

(i)Whether the first appellate court is correct in reversing the well considered decree and judgment of the trial court when the plaintiff failed to prove that the first plaintiff is legally wedded wife of Govindarajan and the second and third plaintiffs are the legitimate children of said Govindarajan?

(ii)Is not the first appellate court wrong in decreeing the suit when the plaintiffs are not proved their inheritance, not proved that they are the legal heirs of the deceased Govindarajan?

(iii)Whether the first appellate court is correct in decreeing the suit on the ground that the appellants/defendants failed to rebut presumption by producing evidence to prove that the first plaintiff is concubine of Govindarajan?

(iv)Whether the first appellate court is correct in decreeing the suit only on the basis of Ex.A1, Marriage Agreement between Govindarajan and first plaintiff, which does not recited about the solemnization of marriage between the plaintiff and Govindarajan?

3.The suit has been laid by the plaintiffs for partition.

4.It is not in dispute that the suit property belonged to Devaki Ammal and this could be seen from the sale Deed dated 22.05.1956, marked as Ex.A3. The first defendant and the deceased Govindarajan are the sons of Devaki Ammal. Devaki Ammal had died on 16.05.2001. It is therefore seen that the first defendant and the deceased Govindarajan are her legal heirs. Now, according to the plaintiffs, the first plaintiff is the legally wedded wife of the deceased Govindarajan and the plaintiffs 2 and 3 are the daughters of the first plaintiff born through the deceased Govindarajan and that Govindarajan had died on 07.08.1987 and it is further stated that the marriage between the first plaintiff and the deceased Govindarajan took place on 04.09.1964 as per the Memorandum of Agreement registered and since then they had been living as husband and wife without any break, they have exchanged garlands and the marriage had been consummated and inasmuch as the deceased Govindarajan is entitled to obtain half share in the suit

property and after his death, as the legal heirs of the deceased Govindarajan, the plaintiffs are entitled to get the said half share and inasmuch as the first defendant had repudiated the claim of the plaintiffs seeking partition, the case has been instituted.

5. According to the first defendant, the first plaintiff is not the legally wedded wife of the deceased Govindarajan and that the plaintiffs 2 and 3 are not born through Govindarajan and the first plaintiff, they never lived as husband and wife and hence according to the first defendant, the plaintiffs are not entitled to seek and obtain half share in the suit property as the legal heirs of the deceased Govindarajan. Further, according to the first defendant, the first plaintiff is the wife of one Govindaraman Chettiar and the first plaintiff came to the suit property as a tenant with her daughters born through Govindaraman Chettiar and therefore, the plaintiffs case should not be accepted. Further, it is stated that the deceased Govindarajan died as a bachelor and after his death, it is only the first defendant, being the sole heir of the deceased Devaki Ammal, who has the absolute right in the suit property and hence the suit laid by the plaintiffs seeking partition of the suit property is liable to be rejected.

6. In the light of the above defence set out by the first defendant, it could be seen that the plaintiffs have to establish at the foremost that they are the legal representatives of the deceased Govindarajan. As adverted to earlier, according to the plaintiffs, the first plaintiff is the legally wedded wife of the deceased Govindarajan. With reference to the above claim of the plaintiffs, it is found that the plaintiffs have filed the agreement entered into between Govindarajan and the first plaintiff dated 04.09.1964, which had been registered and marked as Ex.A1. However, to establish the same, the first plaintiff has not entered into the witness box. Only the second plaintiff had presented herself for cross examination to sustain the plaintiffs case. It could therefore be seen as also seen by the Courts below, the second plaintiff as such would not be competent to speak about Ex.A1. The reason given by the plaintiffs for not examining the first plaintiff is that she is an aged lady about 75 years old and she is also short of hearing and therefore they are unable to examine her in support of their case. However, according to the plaintiffs counsel, inasmuch as the document marked as Ex.A1 is more than 30 years old as adumbrated under Section 90 of the Indian Evidence Act, the court should take the presumption of the genuineness of the said document and in this connection, strong reliance is placed upon the decision reported in (2009) 3 SCC 687 (Bharpur Singh and Others Vs. Shamsher Singh). As per the

above said decision, it could be seen that the presumption could be raised as regards the documents 30 years old excepting the Will.

7.A perusal of Ex.A1 would go to show that there is no specific recital in the same that the first plaintiff and the deceased Govindarajan had contracted the marriage prior to the said document. Ex.A1 recites that since Govindarajan and the first plaintiff had been in close intimacy for the past 9 months, they had agreed to live as husband and wife. Further, it also recites that the first plaintiff would be legally entitled to all the rights under the Women Property Act and that the children born to them would be the legitimate children. It could therefore be seen that even prior to Ex.A1, the first plaintiff and the deceased Govindarajan had been living together and accordingly had chosen to enter into a Memorandum of Agreement marked as Ex.A1 and under the same they had also reiterated their relationship as husband and wife and further stressed that the first plaintiff would be entitled to seek all the rights as the legally wedded wife and that the children born to them should be considered only as the legitimate children. The document marked as Ex.A1 being a 30 year old document, the presumption could be raised in favour of the same and it could therefore be seen that the plaintiffs have established that the deceased Govindarajan and the first plaintiff had been living together as husband and wife even prior to Ex.A1.

8.It is the case of the plaintiffs that the first plaintiff and the deceased Govindarajan had been living as husband and wife for several years and that the society had recognised them as husband and wife. Various documents had been placed by the plaintiffs in support of the same. It is found that the deceased Govindarajan had worked at Hindustan Teleprinters Ltd., Chennai and no issue is raised with reference to the same. Under Ex.A2, E.S.I Corporation Identity Card issued to Govindarajan, it is found that the first plaintiff has been mentioned as his wife and the plaintiffs 2 and 3 had been mentioned as their daughters. It was issued on 07.08.1986. The Death Certificate of Govindarajan dated 25.08.1987 marked as Ex.A5, described the first plaintiff as his wife. Ex.A6 is the School Transfer Certificate of the second plaintiff, wherein, the deceased Govindarajan had been shown as the father of the second plaintiff. The same had been issued in the year 1982. In Ex.A7, the Birth Extract of the third plaintiff, Govindarajan has been mentioned as her father. In the School Transfer certificate of the third plaintiff marked as Ex.A8, Govindarajan has been mentioned as her father. Ex.A9 is the Marriage Invitation Card of the second plaintiff. That apart, the plaintiffs have also marked the marriage photographs as

Exs.A14 and A15, which would also go in support of their claim. That apart, during the course of the first appeal, the plaintiff have also marked Ex.A16, which is the communication sent by the Hindustan Teleprinters Ltd to the plaintiffs, to receive the death-cum-gratuity of the deceased Govindarajan, wherein, the first plaintiff has been described as his wife. That it is only the plaintiffs who had received the above said benefits has not been controverted by the first defendant. It could therefore be seen that voluminous documents had been produced by the plaintiffs commencing from 1964 onwards to establish that the first plaintiff and the deceased Govindarajan had been living as husband and wife. No doubt as regards the ceremony of the marriage between the first plaintiff and the deceased Govindarajan, adequate material is not forthcoming. In this situation it has to be seen whether on the basis of the long cohabitation between the first plaintiff and the deceased Govindarajan, whether the presumption of marriage could be inferred.

9.The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years. Further, it is also found that where a man and a woman are proved to have live 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. In this connection, as regards the above proposition of law, the plaintiffs counsel relied upon the decisions reported in 2010 2 CTC 622(Kuppan Vs. Muniammal and another), 2005 2 SCC 244(Sobha Hymavathi Devi Vs. Setti Gangadhar Swamy and Others), 2008(1) CTC 773(Tulsa & Others Vs. Durghatiya & Others). It could therefore be seen that when it is shown and established that a man and a woman have been living together for a long time as man and wife, the law will presume that they were living together only in consequence of a valid marriage and in such a situation the presumption should be drawn under Section 114 of the Indian Evidence Act in favour of them living together as husband and wife in consequence of a valid marriage and even though the said presumption is a rebuttable one, its burden is heavily upon the person to discharge the said presumption, who seeks to deprive the relationship of man and wife. As seen above when acceptable and reliable documents have been placed by the plaintiffs which would go to show that the first plaintiff and the deceased Govindarajan had been living as husband and wife for a considerable period of time and when Govindarajan himself had under Ex.A1 asserted that the first plaintiff is his wife entitled to receive all the benefits as such and that the children born to them are his legitimate children and following the same, the Society had also looked upon them as husband and

wife which had been buttressed by the various documents produced on the side of the plaintiffs. In the light of the above said authorities, it could be seen that the only inevitable conclusion that could be raised is that the deceased Govindarajan and the first plaintiff had been living together as husband and wife only in consequence of a valid marriage.

10. Now it has to be seen whether the first defendant had rebutted the above said presumption that had been raised in favour of the plaintiffs. As regards the defence set out by the defendants, no material is forthcoming. Only two witnesses have been examined as DW1 and DW2. It is mainly contended that inasmuch as on the death of the deceased Govindarajan, he was garlanded with 'Erukampoo Malai' and as per the custom prevailing of the parties, the court should presume that he had died only as a bachelor. However, on that sole ground, we cannot safely conclude that Govindarajan had died as a bachelor or that the plaintiffs are not the legal representatives of the deceased Govindarajan. The above fact does not, in my considered opinion, discharge the presumption that had been raised in favour of the plaintiffs. No scrap of paper has been produced by the first defendant to show that after the death of the deceased Govindarajan, he had been recognised as his sole heir. It could therefore be seen that no material worthwhile has been placed by the defendants to rebut the presumption that had been raised in favour of the plaintiffs.

11. It is contended by the defendants that the first plaintiff is the wife of Govindaraman Chettiar. Now doubt, the same had also been admitted by PW1. However, according to PW1, Govindaraman Chettiar had died. With reference to the same, no document is forthcoming. However, when it is found that right from Ex.A1 onwards, it is only the first plaintiff and the deceased Govindarajan had been living together as husband and wife and only through that cohabitation, the plaintiffs 2 and 3 had been born, it could be seen as per the decision above mentioned reported in 2005 2 SCC 244 (Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others), even assuming that there was an earlier marriage between the first plaintiff and Govindaraman Chettiar inasmuch as the first plaintiff and the deceased Govindarajan had been living as husband and wife right from 1964 onwards, it could be safely presumed that the marriage between the first plaintiff and Govindaraman Chettiar had terminated prior to the same, particularly, when there is no material forthcoming on the part of the defendants to establish that subsequent to Ex.A1, the first plaintiff and Govindaraman Chettiar had been living together as husband and wife. It is

also found that no material is placed to hold that the plaintiffs 2 and 3 had been born to the first plaintiff through Govindaraman Chettiar. On the other hand, the documents produced on the side of the plaintiffs would only go to establish that they had been born to the first plaintiff only through the deceased Govindarajan. It could therefore be seen that the defendants have miserably failed to place any acceptable and reliable material to discharge the presumption that could be raised in favour of the plaintiffs that they are the legal heirs of the deceased Govindarajan in consequence of a valid marriage between the first plaintiff and the deceased Govindarajan.

12. Even the trial court has also accepted the case of the plaintiffs to the extent that the deceased Govindarajan and the first plaintiff had been living as husband and wife for a long period of time. However, the trial court had negated the plaintiffs case merely on the footing that the plaintiffs have not established the factum of marriage between the deceased Govindarajan and the first plaintiff. However, when the factum of marriage could be raised or presumed in favour of the plaintiffs, on account of long cohabitation as husband and wife between the deceased Govindarajan and the first plaintiff, it is found that the trial court has erred in rejecting the plaintiffs case without proper appreciation of the issues involved in the matter.

13. The plaintiffs have established without any doubt that they are the legal heirs of the deceased Govindarajan. As rightly pointed out by the plaintiffs counsel inasmuch as on account of the long cohabitation, the presumption of a valid marriage could be inferred, the plaintiffs 2 and 3, as such, would also be entitled to claim the share in the suit property as the legal heirs of the deceased Govindarajan under Section 16 of the Hindu Marriage Act 1955.

14. In the light of the above discussions, no infirmity is ascribed or found with reference to the findings and conclusions of the first appellate court in upholding the plaintiffs case and rejecting the defence version.

15. Accordingly, the substantial questions of law formulated in this second appeal are answered against the defendants and in favour of the plaintiffs.

16.In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge/
Fast Track Court No.1,
Chengalpattu.
2. The Principal Subordinate Court,
Chengalpet.

+1cc to Mr.Sekar, Advocate, S.R.No.8038
+1cc to Mr.Mohan, Advocate, S.R.No.7844

GJ(CO)
RS(24/02/2017)

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and
M.P.Nos.1 & 2 of 2011

सत्यमेव जयते

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