

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 13.02.2017****PRONOUNCED ON : 15.02.2017****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.770 of 2011****and****M.P.No.1 of 2011**

Palani Ammal ... Appellant

Vs.

Dhanalakshmi ... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.08.2010 passed in A.S.No.40 of 2008 on the file of the Principal District Court, Cuddalore, confirming the judgment and decree dated 24.09.2008 passed in O.S.No.32 of 2004 on the file of the Sub Court, Panruti.

For Appellant : Mr.R.Gururaj

For Respondent : No representation

JUDGMENT

In this second appeal, the plaintiff has impugned the judgment and decree dated 30.08.2010 passed in A.S.No.40 of 2008 on the file of the Principal District Court, Cuddalore, confirming the judgment and decree dated 24.09.2008 passed in O.S.No.32 of 2004 on the file of the Sub Court, Panruti.

2. The suit has been laid by the plaintiff for partition.

3. The plaintiff, claiming herself to be the daughter of Mannangatti and the first defendant, Janaki, since deceased and also stating that the second defendant is her sister and also on the footing that the suit properties, though some had been purchased in the name of the first defendant and some had been acquired in the name of the second defendant, contending that the suit properties are the self acquired properties of Mannangatti, has laid the suit claiming half share.

4. The defendants have taken a specific stand that the plaintiff is not the daughter of the deceased Mannangatti and the first defendant. According to the defendants, the plaintiff is the daughter of the first defendant's sister viz. Pachaiammal @ Pottukannammal and one Mannangatti S/o Koliyanooran and thus, according to the defendants, the plaintiff is not entitled to lay any claim, whatsoever, in respect of the suit properties belonging to Mannangatti son of Kuppan, who is the husband of the first defendant and the father of the second defendant. According to the defendants, out of the wedlock between

the first defendant and Mannangatti son of Kuppan, they had be gotten only one daughter i.e. the second defendant. That apart, according to the defendants, the suit properties, standing in the name of the first defendant and the second defendant, had been acquired out of their own earnings and income and they do not belong to Mannangatti. It is further pleaded that even the items 5 & 6 of the suit properties, though they stand in the name of Mannangatti, had been acquired only by the first defendant in the name of Mannangatti. Further, it is also pleaded that the 8th item of the suit properties, does not belong to the family.

5. In the light of the above defence set out by the defendants, it could be seen that the onus is heavy upon the plaintiff to establish that her biological parents are Mannangatti, son of Kuppan and the first defendant. However, the plaintiff has miserably failed to establish that she was born to Mannangatti, son of Kuppan and the first defendant. As rightly found by the Courts below, no Indian mother would disown her daughter, particularly, the birth of her daughter. However, in so far of this case is concerned, the first defendant along with the second defendant, in the written statement filed by them, has categorically disowned the case of the plaintiff that she was born to Mannangatti,

son of Kuppan and the first defendant. It is the specific case of the defendants that the plaintiff is the daughter of the first defendant's sister i.e. Pachaiammal @ Pottukannammal and one Mannangatti, son of Koliyanooran . It is therefore obvious that the confusions had arisen inasmuch as the name of the plaintiff's father and the first defendant's husband, being similar.

6. The marriage invitation card of the plaintiff has been marked as Ex.B1. From the same, as rightly found by the Courts below, it could be seen that therein, the plaintiff is described as the daughter of Pachaiammal on the second page of the invitation. Therefore, it could be seen that even in the marriage invitation card of the plaintiff, she has not been shown as the daughter of Mannangatti, son of Kuppan and the first defendant. Inasmuch as the plaintiff's father had died prior to her marriage, it could be seen that the first defendant's husband Mannangatti, son of Kuppan being the eldest in the family and his wife viz., the first defendant also being the eldest in the family, as per the custom in vogue, they were the inviters to the marriage of the plaintiff and in such circumstances, no exception could be taken to the findings of the Courts below that the first defendant and her husband viz., Mannangatti son of Kuppan had invited one and all to the

marriage of the plaintiff. Therefore, the same cannot be taken advantage by the plaintiff to contend that she is born to Mannangatti, son of Kuppan and the first defendant. The plaintiff has not seriously disputed the genuineness of Ex.B1 other than vaguely contending that the same had been created for the purpose of this case. But, as rightly found by the Courts below, Ex.B1 strongly belies the case of the plaintiff as regards her case of the first defendant and Mannangatti, son of Kuppan, being her biological parent.

7. Similarly, it is found that the invitation card in respect of the ear boring ceremony of the plaintiff's children, being the eldest in the family, the names of Mannangatti son of Kuppan and the first defendant had invited one and all to the said function also. It is also found by the Courts below that the name of the plaintiff's brother one Subramani also finds a place in Ex.B2 and the same had not been controverted by the plaintiff. It is not the case of the plaintiff that Mannangatti, son of Kuppan and the first defendant had a son by name Subramani. Therefore, Ex.B2 also not only supports the defence version, also exposed the falsity of the plaintiff's case.

8. The plaintiff has produced certain photographs with negative marked as Ex.A4 & 5 and thereby, contended that in the same, the presence of the defendants are seen and from the said documents, the Court should infer the relationship between the plaintiff and the defendants. However, the fact that the plaintiff and the defendants are close relatives is not controverted. Accordingly, it could be seen that in the family functions, the presence of the defendants would be there and therefore, no exception could be taken to their presence at such functions and therefore, their presence cannot be taken advantage of the plaintiff to contend that they are her blood relations. Therefore, as rightly found by the Courts below, Exs.A4 & 5 do not in any manner advance the case of the plaintiff.

9. As rightly found by the first appellate court, if really, the plaintiff's biological parents are Mannangatti, son of Kuppan and the first defendant, nothing prevented the plaintiff from producing the ration card of Mannangatti, son of Kuppan to evidence that she is his daughter. The ration card has not been summoned from the concerned department. The plaintiff claims to have her birth certificate. If that had been produced, it would have disclosed her

parentage but strangely, the plaintiff has not produced her birth certificate, despite pleading that she is having the same. Therefore, no exception could be taken to the appellate court taking adverse inference against the plaintiff for not producing the birth certificate in her custody.

10. In the light of the above facts and when there is nothing on the side of the plaintiff to establish her case vis-a-vis Mannangatti and the first defendant being her biological parents as pleaded in the plaint, it could be seen that the Courts below have rightly held that the plaintiff has miserably failed to establish that she was born to Mannangatti, son of Kuppan and the first defendant.

11. As regards the character of the suit properties whether they belong to Mannangatti, son of Kuppan absolutely or belong to the first defendant or the second defendant, as regards the properties standing in their names, as no evidence is forthcoming from the both sides, it is found that the Courts below have accordingly held that the suit properties standing in the name of the first defendant and the second defendant belonged to them respectively and the suit properties standing in the name of Mannangatti, son of Kuppan belonged to him.

Nothing is projected, to warrant any interference, with reference to the same.

12. The last point that was urged by the counsel for the appellant is that in Ex.A7, a settlement deed, Mannangatti has described the plaintiff as his daughter and on the basis of that document alone, the plaintiff's case should have been accepted by the Courts below and thus, the plaintiff is entitled to seek partition of the suit properties. Ex.A7 pertains to the 6th item of the suit properties. No doubt, there is a reference in the document that Mannangatti has described the plaintiff as his daughter. However, as rightly found by the first appellate court, inasmuch as after the death of her father viz., Mannangatti son of Koliyanooran, the plaintiff and the defendants had been living together and accordingly, it has been held by the first appellate court that out of love and affection, Mannangatti would have settled the 6th item of the suit properties in her favour under Ex.A7 and accordingly, she being the daughter of his wife's sister described her as the daughter and accordingly, the first appellate court had held that on the basis of that document, *ipso facto*, we cannot hold that Mannangatti, son of Kuppan and the first defendant are the biological parents of the plaintiff. If that be so, the defendants would not have

disputed the parentage of the plaintiff, particularly, the first defendant who has been described as the plaintiff's mother, has tooth and nail controverted the above said claim of the plaintiff. In such view of the matter, it could be seen that no safe reliance could be placed on Ex.A7 alone and also, in the absence of any evidence as to how such a recital had been incorporated in Ex.A7 and when the same had not been established by the plaintiff by adducing acceptable evidence, it could be seen that the lower appellate court has rightly did not rely upon Ex.A7 to uphold the plaintiff's case. On the other hand, it is found that the lower appellate court as rightly held that inasmuch the 6th item of the suit properties being the property belonging to Mannangatti son of Kuppan, held that on the basis of Ex.A7, it is open to the plaintiff to work out her remedy as regards her right over the said item of the suit properties. Therefore, the findings of the first appellate court as regards Ex.A7 cannot be interfered in any manner and it is found to be correct. The evidence of PW2 does not in any manner support the plaintiff's case as he is unable to state anything about the parentage of the plaintiff and also admitted the same during the course of cross examination.

13. Other than Ex.A7, no other material is placed by the plaintiff to hold that Mannangatti, son of Kuppan and the first defendant are her biological parents. Therefore, the plaintiff having come forward with the suit claiming partition in the suit properties on that footing the courts below have rightly negated the relief sought for by the plaintiff and no interference is called for with reference to the same in the second appeal.

14. In support of the plaintiff's case, the plaintiff's counsel relied upon the decisions reported in **81 L.W. 200 (Rajagopal Pillai and others V.Pakkiam Ammal and another), 100 L.W.58 (Seerangammal (died) and others V. E.B.Venkatasubramanian & Ors), AIR 1978 Supreme Court 1557 (Badri Prasad V. Dy.Director of Consolidation and others) and AIR 1959 Supreme Court 31 (Moran Mar Basselios Catholicos, V. Thukalan Paulo Avira and others)**. Considering the fact and circumstances of the present case, it is found that the above said decisions are not applicable.

At the end, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
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15.02.2017

To

1. The Principal District Court, Cuddalore,
2. The Sub Court, Panruti.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
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