



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 08.09.2017
Delivered on: 09.10.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Appeal Suit (MD) Nos.167 of 2013 and 53 of 2014
and
M.P.(MD)Nos.1 & 2 of 2013 and 1, 2 & 3 of 2014

A.S.(MD)No.167 of 2013

1.G.Seeni
2.G.Venkatajalapathi : Appellants / Defendants 4 & 5

-Vs-

1.Avudaiammal : 1st Respondent / Plaintiff
2.Subbiah Pillai
3.Sankaran
4.Palani : Respondents 2 to 4/Defendants 1 to 3

Prayer: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree passed in O.S.No.140 of 2010, dated 20.11.2013 on the file of the Third Additional District and Sessions Court, Tirunelveli.

For Appellants : Mr.H.Arumugam
For Respondent 1 : Mr.F.X.Eugene
For Respondents 2-4 : Mr.J.Bharathan

A.S.(MD)No.53 of 2014

1.Subbiah Pillai
2.Sankaran
3.Palani : Appellants / Defendants 1 to 3

-Vs-.

1.Avudaiammal : 1st Respondent / Plaintiff
2.G.Seeni
3.G.Venkatajalapathi : Respondents 2 & 3/Defendants 4&5

Prayer: Appeal Suit filed under Section 96 of the Civil Procedure Code against the judgment and decree passed in O.S.No.140 of 2010, dated 20.11.2013 on the file of Third Additional District and Sessions Court, Tirunelveli.



For Appellants : Mr.J.Bharathan
For Respondent 1 : Mr.F.X.Eugene
For Respondents 2&3 : Mr.H.Arumugam

COMMON JUDGMENT

WEB COPY

These two appeals have been preferred as against the judgment and decree, dated 20.11.2013 in O.S.No.140 of 2010 on the file of the III Additional District Judge, Tirunelveli.

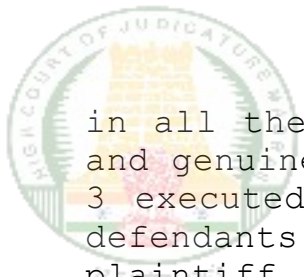
2.The defendants 4 and 5 in the suit in O.S.No.140 of 2010 have preferred A.S.(MD)No.167 of 2013. Whereas the defendants 1 to 3 have filed the first appeal in A.S.(MD)No.53 of 2014.

3.The first respondent in both the appeals is the plaintiff in the suit and the suit is for declaration of title in respect of plaint schedule items 1 to 4 and for consequential permanent injunction restraining the defendants 1 to 5 in the suit from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiff. Alternatively, the plaintiff / first respondent also prayed for partition of $\frac{1}{2}$ share in all the suit properties, in case, the Will relied upon by the defendants 1 to 3 is proved.

4.The case of the plaintiff / first respondent as per the plaint are as follows:

4.1.The suit properties item 1 to 4 belong to the plaintiff's father one Periyasamy Pillai. Since Periyasamy Pillai and his wife one Maragathammal had no children, they adopted the plaintiff, as the plaintiff who is none else than the daughter of Maragathammal's sister. The plaint schedule properties items 1 to 3 are house properties and the fourth item is a nanja land. Periyasamy Pillai died on 18.05.1982. After the demise of Periyasamy Pillai, the properties were inherited by Maragathammal and the plaintiff. Maragathammal also died on 10.10.2017. After the death of Maragathammal, the plaintiff became the sole legal heir and inherited the entire suit properties. The plaintiff has been in enjoyment of the suit properties and that she is residing in plaint third item.

4.2.The plaintiff's title and enjoyment as the sole legal heir of Periyasamy Pillai and Maragathammal was also declared by the Civil Court by the judgment and decree in A.S.No.85 of 2008 on the file of the Sub Court, Sankarankovil. The defendants 1 to 3 who are only the brothers of Maragathammal, are falsely claiming that Maragathammal had executed a Will in respect of the suit properties and that they are the owners as per the Will. Since the defendants are causing disturbance to the plaintiff's peaceful possession and enjoyment over the suit properties raising a false claim under the alleged Will, the plaintiff is entitled to $\frac{1}{2}$ share

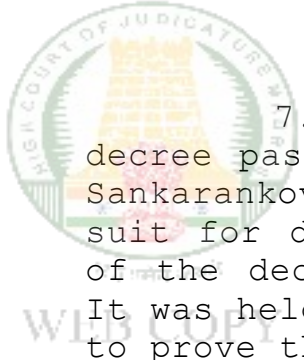


in all the suit properties even if the Will is proved to be true and genuine. During the pendency of the suit, the defendants 1 to 3 executed a sale deed in respect of items 1 to 3 in favour of defendants 4 and 5. The said Will is not binding on the plaintiff. Hence, the suit.

WEB COPY

5.The suit was contested by defendants 1 to 3 namely the appellants in A.S.(MD)No.53 of 2014 by filing a detailed written statement. The written statement filed by the defendants 1 to 3 is also adopted by the defendants 4 and 5 in the suit who are the appellants in A.S.(MD)No.167 of 2013. The adoption pleaded by the plaintiff / first respondent was specifically denied. It is further contended by the defendants 1 to 3 that the judgment and decree in A.S.No.85 of 2008 on the file of the Sub Court, Sankarankovil is nothing but collusive and that the said judgment is not binding on the defendants. The defendants also admitted that the suit properties are owned by Periyasamy Pillai and his wife Maragathammal and that they were in joint enjoyment of the same. It is stated by the defendants that after the death of Periyasamy Pillai on 18.05.1982, his wife Maragathammal became the sole legal heir and that during the life time of Maragathammal, she executed a Will dated 19.12.2001 in favour of her brothers namely defendants 1 to 3. It is further stated that after the death of Maragathammal on 10.10.2007, the defendants 1 to 3 are in possession and enjoyment of the same. It is also stated that the plaintiff filed a collusive suit against one Vijaya Lakshmi who is none else than her brother's wife and tried to get an ex parte decree. Though the suit was dismissed, the same was taken on appeal by the plaintiff and the appeal was allowed on the basis of the pleadings and documents which were not controverted by the defendant in the said suit. The defendants 1 to 3 stated that they have executed a sale deed in favour of the defendants 4 and 5 on 19.11.2010 for valuable consideration and that the said sale deed was prior to the filing of suit. As stated earlier, the defendants 4 and 5 are only purchasers of suit properties items 1 to 3 from defendants 1 to 3 and they have adopted the same stand taken by defendants 1 to 3. The trial Court framed necessary issues.

6.One of the issues is whether the plaintiff has proved that she is the adopted child of the deceased Maragathammal and her husband Periyasamy Pillai. The other issue is regarding the proof of Will dated 19.12.2001 relied upon by the defendants 1 to 3 as one executed by Maragathammal. Before the trial Court, the plaintiff examined herself as P.W.1. The plaintiff's mother was examined as P.W.2. Two other witnesses viz., P.W.3 and P.W.4 were also examined. The plaintiff filed Ex.A1 to Ex.A17. The third defendant examined himself as D.W.1. The fourth defendant was examined as D.W.2. The attesor of the Will was examined as D.W.3. On the defendants' side Ex.B1 to B6 were filed.



7. The trial Court relied upon Ex.A1-the judgment and decree passed in A.S.No.85 of 2008 on the file of the Sub Court, Sankarankovil. As per the judgment in the appeal, the plaintiff's suit for declaration that the plaintiff is the adoptive daughter of the deceased Periyasamy Pillai and Maragathammal was decreed. It was held by the trial Court that the evidentiary value of Ex.A1 to prove the factum of adoption as pleaded by the plaintiff in the suit cannot be overlooked. The trial Court accepted the evidence of P.W.2-the mother of plaintiff to prove the case of adoption. Relying upon Ex.A17, the Ration Card and evidence of P.W.4, the trial Court found, that the plaintiff was living with her family along with Maragathammal. On the appreciation of evidence, the trial Court recorded a finding that the plaintiff has proved that she is the adopted daughter of Periyasamy Pillai and Maragathammal. Regarding the genuineness of the Will, the trial Court pointed out certain discrepancies in the evidence of D.W.1 and D.W.2 and held that their evidence cannot be accepted to prove the due execution and genuineness of the Will which was marked as Ex.B5. Since the Will under Ex.B5 is held to be not proved, the trial Court granted decree in favour of the plaintiff as prayed for. The trial Court held that the defendants 4 and 5 are not bona fide purchasers for value, as they have purchased the suit properties after the documents Ex.A11 and A12 whereby the suit properties were mortgaged by the plaintiff, even before the sale in favour of the defendants 4 and 5. Aggrieved by the judgment and decree of the trial Court, as stated earlier, the brothers of Maragathammal namely the defendants 1 to 3 filed A.S.(MD)No.53 of 2013 and the purchasers of item 1 to 3 from the defendants 1 to 3 have filed A.S.(MD)No.167 of 2014.

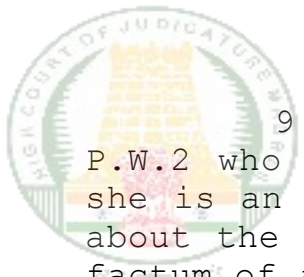
8. It is not in dispute that the plaintiff is not the heir of Maragathammal, being the daughter of Maragathammal's sister. Hence, the plaintiff can succeed in the suit only if she proves that she is the adopted daughter of Periyasamy Pillai and Maragathammal. In those circumstances, the main argument advanced by the learned counsel appearing for the appellants in both the appeals is regarding the proof and validity of the adoption pleaded by the plaintiff / first respondent.

9. Sum and substance, the argument on the side of appellants in both the appeals can be summarised as follows:

9(a). There is no specific pleading about the place, time and manner in which the adoption took place.

9(b). The judgment and decree in A.S.No.85 of 2008 on the file of the Sub Court, Sankarankovil, is neither valid nor binding on the appellants and therefore, the judgment of the trial Court relying upon the said judgment is not sustainable.

9(c). The findings of the trial Court as regards the validity of adoption is perverse inasmuch as the documents were misconstrued ignoring their contents and evidentiary value.



9(d).The trial Court has relied upon the evidence of P.W.2 who is only the mother of plaintiff ignoring the fact that she is an interested witness and that she has not stated anything about the date, time and the ceremony and other details about the factum of adoption.

WEB COPY

9(e).All other documents produced by the plaintiff were created only for the purpose of the suit so as to claim title over the suit properties and the trial Court have not considered the genuineness of the documents despite the fact that the plaintiff has not given any explanation for the unnatural features and attending circumstances while considering the evidence.

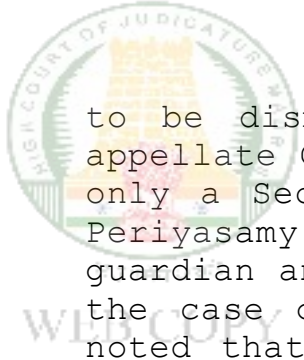
10.As against the findings of the trial Court, as regards the genuineness of the Will, the learned counsels appearing for the appellants submitted that the judgment is on the basis of some portion of evidence ignoring several facts and circumstances and material documents produced by the defendants. It is stated by the learned counsel for the appellant that the Will is proved as required in law and that there is no suspicious circumstances. The Will being natural, the trial Court ought to have accepted the case of the defendants. Having regard to the lengthy arguments submitted by the learned counsels for the appellants as well as the respondents in this case on the main issues, this Court framed the following points for determination:

(a)Whether the factum of adoption and the validity of adoption is proved by the plaintiff to claim exclusive right over the properties of Maragathammal as the sole legal heir by virtue of being the adopted daughter of Maragathammal?

(b)Whether the Will under Ex.B5 dated 19.12.2001 is proved in accordance with law?

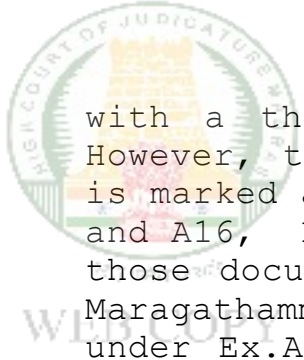
11.On the first issue, it is to be noted that the plaintiff has not even pleaded the date, time and the manner in which the adoption pleaded by her took place. Even there is no pleading that the plaintiff's natural parents have given her in adoption. The plaintiff states that Periyasamy Pillai and Maragathammal adopted her as their child when she was two or three years old. The legal position is well settled that the case of adoption cannot be accepted unless the propounder of adoption plead and prove the factum of adoption.

12.The learned counsel appearing for the appellants referred to almost all the documents filed by the plaintiff to prove her case of adoption. Ex.A1 is the judgment in A.S.No.85 of 2008 on the file of the Sub Court, Sankarankovil. It is to be noted that the suit itself was not contested by the defendant in the suit who is none else than the plaintiff's brothers wife. Even though the defendant did not contest the suit, the suit came



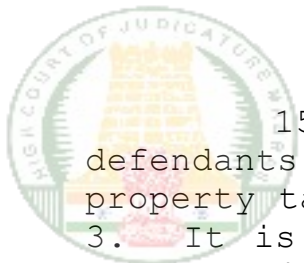
to be dismissed by the trial Court. However, on appeal, the appellate Court relying upon the document marked as Ex.A9 which is only a Secondary School Leaving Certificate, and where the said Periyasamy Pillai had signed in the declaration column only as guardian and not as the adoptive father of the plaintiff, accepted the case of adoption in favour of the plaintiff. It is to be noted that yet another document which was marked in the earlier suit Ex.A1, is the marriage invitation of the plaintiff. The learned counsel appearing for the respondent himself produced the said marriage invitation which was one of the documents relied upon by the learned Sub Judge, Sankarankovil in the judgment in A.S.No.85 of 2008. In the marriage invitation, the first respondent was shown as the daughter of her natural father Thiru.A.Ramaiah Pillai and அழகாம்புத்திரி of Thiru.Periyasamy Pillai. It is to be seen that in the same invitation, the first respondent's husband was described as the adopted son of Late Thiru.Ganapathiya Pillai. This document is in fact gives an indication that the plaintiff was never recognised as the adopted daughter of Periyasamy Pillai even during his life time. The school certificate also refers to the fact that she is the daughter of Thiru.A.Ramaiah Pillai, the plaintiff's natural father. In such circumstances, the findings of the learned Subordinate Judge, Sankarankovil, in A.S.No.85 of 2008 is contrary to records and it cannot be relied upon by the first respondent as a valid document declaring her right as the adopted daughter of Periyasamy Pillai. Except some revenue documents, no other document is produced by the plaintiff to show that the plaintiff was either the adopted daughter of Periyasamy Pillai or that she was treated as the adopted daughter of Periyasamy Pillai at any point of time. The plaintiff relied upon a document which was marked as Ex.A6 in the previous proceeding namely the xerox copy of Family Ration Card. This document would clearly show that Maragathammal referred to therein is not the Maragathammal under whom the plaintiff claims title. The Maragathammal referred to in the document is a female who is 16 years younger than Avudaiammal, the plaintiff. The trial Court relied upon Ex.A17, the details of family card marked in the present proceeding. In this document Avudaiammal is shown as the mother of Maragathammal. Age of Avudaiammal is also shown as 68, 18 years older than Maragathammal. This document is therefore cannot be accepted to show that plaintiff was residing with Maragathammal. The family card which was produced would also show that there are other members of the family who are not accounted for.

13.The plaintiff also produced the certified copy of mortgage deed executed by Avudaiammal in favour of one Arumugam. It is to be noted that the said mortgage deed under Ex.A11 was registered on 24.02.2010 for a sum of Rs.10,000/- and that the same was discharged under Ex.A12 within 22 days. Similarly, the sale agreement dated 30.08.2010 under Ex.A15 was filed to show that the first respondent entered into an agreement on 30.08.2010



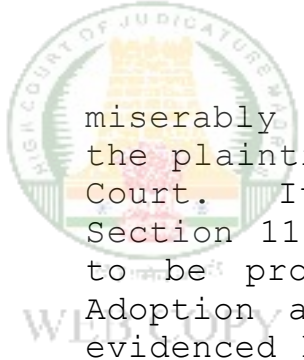
with a third party in respect of one of the suit properties. However, the said sale agreement was cancelled and the same also is marked as Ex.A16, dated 05.10.2010. From the reading of Ex.A15 and A16, Ex.A11 and 12 it can be seen that the plaintiff executed those documents as the adopted daughter of Periyasamy Pillai and Maragathammal. However, the execution of mortgage and discharge under Ex.A11 and A12 and the sale agreement and its cancellation under Ex.A15 and A16 would only show that the plaintiff has made an attempt to establish her right as the adopted daughter of Periyasamy Pillai and Maragathammal by these documents. However, no attempt was made by the first respondent to prove the genuineness of the transactions under these four documents. Having regard to several other documents and evidence in this case, which will be discussed later, this Court is of the firm view that no credence can be given to the documents Ex.A11 and A12, A15 and A16 to prove the factum of adoption or the validity of the adoption or even the contention of the plaintiff that she was living with Maragathammal as the adopted daughter of Maragathammal.

14.The learned counsels appearing for the appellants relied upon Ex.B3 and B4. Ex.B3 is a registered sale deed executed by the said Maragathammal in favour of one Andi Chettiar. Ex.B4 is a certified copy of another registered sale deed executed by Maragathammal in favour of one Arumugam Chettiar. Ex.A3 is dated 20.01.2003 and Ex.A4 is dated 05.11.2004. In these two documents, Maragathammal has conveyed certain properties inherited by her from her husband. In these documents, Maragathammal had described herself as the exclusive owner of the properties of Periyasamy Pillai after his death not only as his wife but also as his sole legal heir succeeding to the properties of Periyasamy Pillai. The documents would clearly show that Maragathammal, the wife of Periyasamy Pillai, never recognised the plaintiff as her adopted daughter by treating her as one of the legal heirs of Periyasamy Pillai. The appellants relied upon the evidence of P.W.1 admitting that the revenue department issued legal heir certificate mentioning Maragathammal as the sole legal heir and that the plaintiff did not challenge the same. The plaintiff also had admitted in her evidence that her name is mentioned in the Secondary School Leaving Certificate as R.Avudaiyammal, daughter of A.Ramaiah Pillai and that Periyasamy Pillai had signed only as a guardian. It is to be noted that the ration card particulars of Maragathammal produced under Ex.A17 also suggest that the case of the plaintiff / first respondent cannot be accepted. It is pointed out that the age of Avudaiammal is referred to as 68. It is to be noted that the plaintiff is aged 45 when she filed the suit in the year 2010. Further, Avudaiammal is also shown as the mother of Maragathammal. It was therefore suggested by the learned counsels for the appellants that the name Avudaiammal is not referable to the plaintiff, cannot be ignored.



15.As against some documents filed by the plaintiff, the defendants have also filed documents Ex.B1 to show that the property tax assessment was changed in the name of defendants 1 to 3. It is also pointed out that the property tax receipts under Ex.B2 series would show that the defendants 1 to 3 have paid house tax for the suit properties. One another circumstances to disprove the plaintiff's claim of adoption is that the fact that the plaintiff has not challenged the alienations by Maragathammal herself. Even the Will under Ex.B5 contains several properties. It is to be noted that the plaintiff does not dispute the properties referred to in these documents as one belonged to either Periyasamy Pillai or Maragathammal. The properties which were sold to third parties is not the subject matter of the suit and the plaintiff has challenged only the alienation which were made by the defendants 1 to 3 in favour of the defendants 4 and 5. If the plaintiff is really the adopted daughter of Maragathammal, she could have certainly included all those properties alienated by Maragathammal and sought for partition of her half share in all the properties which were sold out by Maragathammal. As against the material documents which are against the plaintiff's case of adoption, the plaintiff has no other documents to prove the factum of adoption or the validity of adoption except the evidence of P.W.2 - the mother of plaintiff who is an interested witness. Even the evidence of P.W.2 does not disclose the date, time and the manner in which the adoption was performed. The evidence of P.W.3 and P.W.4 also are not helpful to establish the factum of adoption. The trial Court has accepted the evidence of P.W.2 only on the ground that the defendants 1 to 3 have not cross-examined P.W.2 regarding the factum of adoption. This observation of the trial Court is erroneous having regard to the fact that specific suggestions were put to the witness about the falsehood in the evidence of P.W.2 regarding adoption. In the circumstances and the material evidence in this case, this Court find that the judgment of trial Court is perverse and has no hesitation to hold that the plaintiff has neither pleaded nor proved the factum or validity of adoption in the manner known to law. It is also to be noted that the material documents would clearly indicate that the plaintiff was never given the status of adopted daughter either by Periyasamy Pillai or by Maragathammal.

16.The learned counsels appearing for the appellants relied upon a judgment of the learned Single Judge of this Court in the case of Brahadambal Agency v. S.Ramasamy Chettiar (Died) reported in 2016 (2) CTC 739. The learned Single Judge of this Court after referring to several judgments of the Hon'ble Supreme Court and this Court, discussed several issues about the requirement of proper pleading and proof regarding adoption. The said judgment can be applied to the factual position in this case where the factum of adoption has not been proved in the manner required in law. To prove valid adoption, there must be specific plea of actual giving and taking. The plaintiff in this case



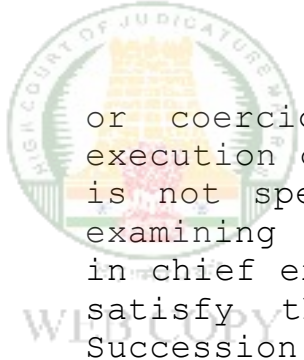
miserably failed to prove the physical act of giving and taking the plaintiff in adoption as reiterated in several rulings of this Court. It is to be noted that the ingredients required under Section 11(vi) of Hindu Adoption and Maintenance Act, (1956) have to be proved satisfactorily. Under Section 16 of the Hindu Adoption and Maintenance Act, (1956) only when the adoption is evidenced by a registered document such adoption can be presumed. In no other case, the factum of adoption can be presumed. Since adoption displaces the natural succession of property, it has been repeatedly pointed out that the adoption should be proved as a matter of fact. In this case, the plaintiff, leaving alone the factum of adoption, could have proved through documents or evidence as to how she was never considered as daughter of her natural parents and how she was treated by her natural parents after the adoption. The legal implications of a valid adoption is clearly stated under Section 12 of Hindu Adoptions and Maintenance Act, (1956). The plaintiff had ample opportunity to prove the factum of adoption by producing independent evidence about the nature of relationship she had with her natural parents. The material documents produced before this Court, however, prove her case to be false.

17.The learned counsel for appellants further relied upon another judgment of the Hon'ble Supreme Court in the case of Nilima Mukherjee v. Kanta Bhusan Ghosh reported in 2002-1-L.W. 71 wherein it has been held that the burden of proof of factum of adoption and its validity is heavily upon the person who set up adoption and that lack of evidence to prove the ceremony of adoption or the manner in which the adopted child was actually handed over for adoption by her parents would go against the factum of adoption. The Hon'ble Supreme Court in the case of S.T.Krishnappa v. Shivakumar and others reported 2007 (5) CTC 294, after referring to some of the earlier judgments of the Hon'ble Supreme Court has observed in a case where there was no evidence of any ceremony or form of adoption vouching the giving of child by the natural parents, the adoption cannot be taken as valid.

18.The next issue is about the proof of Will under Ex.B5, dated 19.12.2001. The defendants 1 to 3 have produced the original registered Will alleged to have been executed by Maragathammal. The fact that the Will is a registered one is not in dispute. Though the registration of Will does not dispense with the proof of due execution of the Will, the registration of Will is certainly a strong circumstance in favour of the propounder of the Will to prove the due execution of the Will as any other registered document.

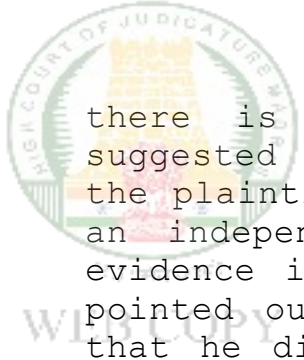
19.The registration of the document will at least enable the Court to draw the presumption under Section 114 of Indian Evidence Act. In this case, the plaintiff has not challenged the Will on the ground of fraud, misrepresentation or undue influence

<https://hcservices.ecourts.gov.in/hcservices/>



or coercion. The plaintiff does not specifically deny the execution of the Will. However, even if the execution of the Will is not specifically denied, it requires to be proved in law by examining at least one attesting witness. The evidence of D.W.2 in chief examination would clearly show that the evidence of D.W.2 satisfy the requirements of Section 63 (c) of the Indian Succession Act. D.W.2 in his evidence has not only spoken about the attestation by himself but also due attestation by another person by name Pitchaiya Pillai. The defendants 1 to 3 namely the legattees under the Will are none else than the brothers of Maragathammal. It is quite natural for the testator Maragathammal to execute the Will in favour of her brothers in the absence of any other lineal descendants.

20. It is to be noted that after the life time of Maragathammal, the properties would go to the family of her husband in the absence of any Will. Hence, this Court is also of the view that the execution of the Will by Maragathammal in favour of the defendants 1 to 3 is quite natural. The trial Court observed that there are discrepancies in the evidence of D.W.1 and D.W.2 about the execution of the Will. D.W.1 is not a person who was present at the time of execution of the Will. His evidence is only about the enjoyment of the properties after the Will came into force. As a matter of fact, D.W.1 saw the Will only after the life time of Maragathammal. However, his evidence is to the effect that his brother informed him about the fact that the testator had informed his brother that she had executed the Will in favour of defendants in respect of her properties inherited from her husband. The trial Court has observed that the evidence of D.W.1 about the execution of the Will is hearsay and that therefore, his evidence cannot be believed. The reasoning of the trial Judge is perverse inasmuch as the purpose of examining D.W.1 is not regarding the proof of the Will but with regard to certain other circumstances and documents, to prove the enjoyment of the properties by the defendants after the death of Maragathammal in the year 2007. The trial Court disbelieved the evidence of D.W.2 only on the ground that his statement that he was helping the testator's husband Periyasamy Pillai for 30 years by taking into account the age of D.W.2 at the time of giving evidence. The trial Court found that the evidence of D.W.2 about his service for 30 years was not credible. However, from that portion of the evidence, the entire evidence regarding the attestation of the Will cannot be doubted. The trial Court on the admission of D.W.2 has observed that the evidence of D.W.2 is not reliable. This Court considered the entire evidence of D.W.2. Absolutely, there is nothing to indicate that the evidence of D.W.2 regarding attestation, signing a document as an attestor is shady or interested to doubt the credibility of the witness. The Will was executed in the year 2001. The witness was examined in 2013 nearly after a period of 12 years. Small discrepancies which are not material cannot affect the credibility of the witness unless



there is any other strong circumstance. There is nothing suggested as against the witness to give false evidence against the plaintiff. As a matter of fact, it can be seen that D.W.2 is an independent witness who has no personal interest to give evidence in favour of the defendants. One of the circumstances pointed out by the trial Court is about the statement of D.W.2 that he did not remember whether the Will was written in a Ten rupees stamp paper or twenty rupees stamp paper. Pointing out that the Will was not written in any stamped paper, the trial Court raised a serious doubt about the veracity of the witness. It is to be noted that the fact that the signature found in Ex.B5 is the signature of D.W.2 is not in dispute. When D.W.2 has attested the Will and the fact that he did not remember whether it was written in a stamped paper or not is not material. At best, it can be inferred that the witness does not remember everything at the time when he attested the document. His evidence as an attesting witness cannot be ignored as no suggestion was put to him so as to come to the conclusion that D.W.2 has not spoken about the attestation in the manner required in law. In the case of Gopalan Nambiar v. Balakrishnan Nambiar reported in AIR 1995 SC 1852, the Hon'ble Supreme Court has observed that mere discrepancy in the evidence of the attester in case of registered Will would not vitiate its validity.

21. For all the above reasons, this Court is unable to subscribe to the findings of the trial Court on the question regarding proof of Will. From the available evidence, this Court conclude that the Will under Ex.B5 has been proved in the manner known to law and that no suspicious circumstance has been brought forth to suspect the genuineness of the Will. The suit is filed by the first respondent for declaration of her title. As pointed out earlier, the plaintiff can succeed only if she is able to prove the factum of adoption. Having regard to the specific finding of this Court that the plaintiff has miserably failed to prove that she is the adopted daughter of Periyasamy Pillai and Maragathammal, this Court has no other option but to set aside the judgment and decree of the trial Court in O.S.No.140 of 2010 on the file of the Additional District Judge No.III, Tirunelveli. As a result, both the appeals are allowed and the judgment and decree of the trial Court in O.S.No.140 of 2010, dated 20.11.2013 rendered by the III Additional District Judge, Tirunelveli is set aside. Having regard to the circumstance of the case, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)



To

1. The III Additional District Judge,
Tirunelveli

WEB COPY

COPY TO:

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.H.Arumugam, Advocate SR.No. 81966
+1cc to M/S.T.R.Jeyapalam, Advocate SR.No. 82233
+2cc to M/S.F.X.Eugene, Advocate SR.No. 82032 & 82033

Judgment made in
Appeal Suit Nos.167 of 2013 and 53 of 2014
09.10.2017

SRM

JM/SKN RSK/SAR 1/02.11.2017/12P/7C