

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.10.2018
DELIVERED ON: 30.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1366 of 2001

1. Saroja (died)
2. Manonmani
3. Mathivanan
4. Malliga

(As per the order made in memo dated 11.08.2018, Appellants 2 to 4 are recorded as legal heirs of the deceased first appellant in SA.1366/2001)

...Appellants/Defendants

Vs.

1. Krishnaveni
2. Kanthakumari
3. Neelavathy
4. R.Vijayan
5. Ranjitham
6. The Tahsildar,
Krishnagiri

... Respondents/Plaintiffs

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 12.04.2001 passed by the II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri in A.S.No.24 of 2000 upholding the decree and judgment dated 27.03.2000 passed by the District Munsif, Krishnagiri in O.S.No.189 of 1997.

For Appellants : Mrs.V.Srimathi

For Respondents 1 to 5 : Mr.V.Nicholas

For 6th Respondent : Mr.M.Venkadeshkumar
Gov. Advocate (Civil Side)

JUDGMENT

The appellants are the defendants in O.S.No.189 of 1997 on the file of the District Munsif, Krishnagiri, who are also appellants in A.S.No.24 of 2000 on the file of the II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri. The first appellant died during the pendency of

this second appeal and the appellants 2 to 4 are her legal heirs.

2. The respondents/plaintiffs filed the above suit in O.S.No.189 of 1997 before the District Munsif, Krishnagiri for a declaration that they are the only legal heirs of the deceased G.Ramasamy Naidu and for a permanent injunction restraining the first defendant from getting benefits from the government and also for a mandatory injunction directing the Tahsildar, Krishnagiri (5th defendant) to issue a legal heirship certificate for the plaintiffs alone.

3. For the sake of convenience, the parties are described as mentioned in the trial court.

4. The case of the respondents/plaintiffs in nutshell is as follows. The first plaintiff and one G.Ramasamy Naidu are husband and wife. The respondents/plaintiffs 2 to 5 are their children. G.Ramasamy Naidu was an ex-service man and also worked in Railways and as Village Munsif. During the year 1980, the post of Village Munsif was abolished by the Government and in that place, Village Administrative Officers were appointed. G.Ramasamy Naidu filed a writ petition against the decision taken by the Government, consequent upon which, certain allowances were given to all the Village Munsifs. When the plaintiffs applied for issuance of legal heirship certificate, the first defendant claiming that she is the second wife of G.Ramasamy Naidu and the defendants 2 to 4 are her children born to G.Ramasamy Naidu. The 5th defendant in his proceedings in Mu.Mu.No./4931/97 dated 02.05.1997, directed the respondents/plaintiffs to approach a civil court. According to the respondents/plaintiffs, the first appellant/first defendant (since deceased) was already married to one Lakshmana Gounder and left her family and was living with G.Ramasamy Naidu, as his concubine.

4. Both the courts below had concurrently held that the respondents/ plaintiffs alone are the legal heirs of late G.Ramasamy Naidu.

5. The trial court had mainly observed as follows.

The appellants/defendants did not prove that the first appellant/first defendant is the second wife of G.Ramasamy Naidu.

6. The first appellate court had observed that the presumption of marriage under Section 114 of the Indian Evidence Act cannot be drawn when the facts show that no marriage could have taken place between G.Ramasamy Naidu and the first appellant/first defendant.

7. Now the second appeal is filed by the appellants/defendants.

8. The suit was resisted by the respondents/defendants on the following grounds.

When the Tahsildar (5th defendant) has passed an order dated 02.05.1997 in Mu.Mu.No.4931/1997 stating that the appellants/defendants are also legal heirs of late G.Ramasamy Naidu, the respondents/plaintiffs have filed the suit without filing an appeal against the said order of the 5th defendant. It is their contention that G.Ramasamy Naidu married the first appellant/first defendant and the appellants 2 to 4/defendants 2 to 4 are their children.

9. The following substantial questions of law are raised in the second appeal.

1. When the deceased Ramaswamy had recognized the appellants 2 to 4 as his children, whether it is proper on the part of the courts below to arrive at a contrary conclusion?

2. Whether the courts below are right in illegitimising a relationship, when the law and justice favours in recognising the decent and honourable relationship?

3. Whether the courts below ought not to have applied the principles under Section 114 of the Evidence Act in view of the recognition accorded by the society to the first appellant as the wife of Ramasami Naidu?

4. Whether the order of the courts below are not against Ex.B3?

5. When the plaintiffs themselves have recognized the status of the appellants 2 to 4 and had sought for injunction as against the first defendant alone, whether the order of the courts below is right in its failure to recognize the rights of the appellants 2 to 4?

10. Mrs. Srimathi, learned counsel appearing for the appellants/ defendants contended that though the suit was filed by the respondents/ plaintiffs for a declaration that they are the only legal heirs of late G.Ramasamy Naidu, they have failed to establish their contention in this regard. She would further contend that even as per the averments in the plaint, the first defendant was a concubine of late G.Ramasamy Naidu and the appellants/defendants are also the legal heirs of late G.Ramasamy Naidu and the voters lists (Ex.B1 and Ex.B2) and the certified copy of the settlement deed Ex.B3 executed by G.Ramasamy Naidu mentioning the third defendant as his son would clearly show that both the courts below have committed a gross error in decreeing the suit filed by the respondents/plaintiffs by holding that the respondents/plaintiffs alone are the legal heirs of late G..Ramasamy Naidu.

11. Per contra, Mr.V.Nicholas, learned counsel appearing for the respondents 1 to 5 would contend that the appellants could not prove the marriage between the first defendant and late G.Ramasamy Naidu and therefore, the defendants cannot be legal heirs of late G.Ramasamy Naidu. However, to a question posed by the court as to whether the plaintiffs/ respondents 1 to 5 challenged the settlement deed, Mr.V.Nicholas, learned counsel for the respondents 1 to 5 admitted that the 3rd defendant is in possession of the property mentioned in the settlement deed and that the respondents/plaintiffs did not challenge the settlement deed.

12. It is trite law that the person, who comes to court seeking for a relief of declaration, injunction, must prove his case to the hilt. In the instant case, except denying the status of the defendants, no acceptable evidence is adduced on the side of the respondents/plaintiffs.

13. Section 16 of the Hindu Marriage Act brings about social reform on account of children who were born out of illegal intimacy between a male and a female and Section 16 (3) of the Hindu Marriage Act enables even the illegitimate children to acquire rights in the property of their father. It is also worthwhile to point out that as to how and when to take birth is not in the hands of a child.

13. Both the courts below have committed a gross error by holding that the appellants/defendants 2 to 4 are not the children of G.Ramasamy Naidu, especially when the case is filed by the respondents/plaintiffs seeking for a declaration that they are the only heirs of late G.Ramasamy Naidu. No acceptable evidence is adduced by the respondents/plaintiffs in this regard. Furthermore, the respondents/plaintiffs in their plaint have not stated that the appellants/defendants are totally strangers to their family. In fact, it is stated that their father G.Ramasamy Naidu had illicit intimacy with the first defendant/ first respondent. They have not also challenged the settlement deed Ex.A3 executed by their father in favour of the third defendant till date. Late G.Ramasamy Naidu settled one of his properties in favour of the third defendant/third appellant mentioning him as his son. In such circumstances, both the courts below have erred in illegitimising the relationship of the appellants/defendants 2 to 4 and their father. Ex.B3 has not also been considered in the proper perspective and merely because the original of Ex.B3 is not filed, the entire registered document cannot be thrown out. Both the courts below failed to consider that Ex.B3 is filed only to prove that the defendants 2 to 4 are born to late G.Ramasamy Naidu. All the observations of both the courts below are perverse and warrant interference by this court.

14. In the result,

(i) The second appeal is allowed. No costs.

(ii) The decree and judgment dated 12.04.2001 passed by the II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri in A.S.No.24 of 2000 and the decree and judgment dated 27.03.2000 passed by the District Munsif, Krishnagiri in O.S.No.189 of 1997 are set aside.

(iii) The suit in O.S.No.189 of 1997 on the file of the District Munsif, Krishnagiri is dismissed with costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. The II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri.

2. The District Munsif, Krishnagiri.

3. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr.V. Raghavachari, Advocate Sr.74676

+ 1 cc to MR. V. Nicholas, Advocate Sr.74702

S.A.No.1366 of 2001

EV(CO)
EU(06/12/2018)

WEB COPY