

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 21ST DAY OF FEBRUARY 2018

THE HON'BLE JUSTICE R.SUBRAMANIAN

A.No.1440 of 2018
in
C.S.No.121 of 2011

C.S.No.121 of 2011

1.L.Suresh,
S/o.M.Logaiah,
New No.4/58, Raju Naicken Street,
Old Door No.19,
West Mambalam,
Chennai-600 033.

.. Plaintiffs

-Vs-

1.S.Bhanumathi
W/o.Late.Mr.K.Sarboji
No.4/58, Raju Naicken Street,
Rear Portion, West Mambalam,
Chennai -600 033.

2.Selvi S.Kamalajothi,
D/o.Late.Mr.K.Sarboji
No.4/58, Raju Naicken Street,
Rear Portion, West Mambalam,
chennai -600 033.

3.Mrs.B.Karthikajothi
W/o.D.Babu,
No.1/8, Thilak Street,
T.NAgar,
Chennai -600 017.

...Defendants

A.No.1440 of 2018

1.S.Bhanumathi
W/o.Late.Mr.K.Sarboji
No.4/58, Raju Naicken Street,
Rear Portion, West Mambalam,
Chennai -600 033.

2.Selvi S.Kamalajothi,
D/o.Late.Mr.K.Sarboji
No.4/58, Raju Naicken Street,
Rear Portion, West Mambalam,
Chennai -600 033.

3.Mrs.B.Karthikajothi,
W/o.D.Babu,
No.1/8, Thilak Street,
T.Nagar,
Chennai -600 033.

... Applicants/Defendants

.Vs.

L.Suresh,
No.4/58, Raju Naicken Street,
Front portion, west Mambalam,
Chennai -600 033.

...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to why an advocate commissioner should not be appointed for taking the plaintiff and his alleged father, Mr.Logiah before the MEDICAL BOARD for MEDICAL EXAMINATION and for conducting DNA TEST on them by way of scientific investigation.

This Application coming on this day before this court for hearing the court made the following order:

This application has been filed seeking appointment of Commissioner to take the plaintiff and his alleged father Mr.Logaiah before the Medical Board for Medical Examination and for conducting DNA Test on them by way of scientific investigation.

2. This application was served on the respondent's counsel on 23.10.2017, no counter has been filed till date. Since the learned counsel for the respondent was absent when the matter was listed yesterday (20.02.2018), it was directed to be posted today for orders. Even today, there is no representation for the learned counsel for the respondent.

3. The suit in C.S.No.121 of 2011 has been filed by the plaintiff/ respondent herein seeking a declaration of his title to the property, a declaration that the settlement

deed dated 11.09.2009 executed by the 1st defendant in favour of the 3rd defendant is null and void and for permanent injunction restraining the defendants from alienating and encumbering the suit property. The plaintiff has also sought for recovery of possession of the suit property from the defendants.

4. The claim of the plaintiff is that the suit property originally belonged to one Munusamy, who died leaving behind his wife Nancharammal and one son Logaiah. On the death of Nancharammal, her share in the property also devolved upon Logaiah and thus Logaiah became the absolute owner of the property.

5. According to the plaintiff, Logaiah by a settlement deed dated 15.07.2002 registered as Doc.No.2594 of 2002 settled the property on his only son viz., the plaintiff. The plaintiff would however contend that the 1st defendant in C.S.No.121 of 2011 had lost her parents and therefore, she was brought up by Logaiah and Logaiah got her married to one K.Saraboji. It is claimed that the said Saraboji died leaving behind the 1st defendant and three daughters. Taking pity of her plight, the said Logaiah had permitted her to reside in a portion of the suit property.

6. Taking advantage of the same, the 1st defendant had executed a settlement deed on 11.09.2009 claiming that she being adopted daughter of Logaiah she is entitled to 1/3rd share in the suit property. This had led to Police

complaints and counter complaints amongst the parties. The plaintiff has thus come forward with the present suit.

7. The 1st defendant filed the written statement claiming that both the plaintiff as well as the 1st defendant are adopted children of Logaiah and the settlement deed dated 15.07.2002 has been extracted from Logaiah under threat and coercion. The 1st defendant would deny the claim of the plaintiff that he is natural son of Logaiah.

8. On the above pleadings, this Court has framed the following issues for determination:

- 1. Whether the Settlement Deed dated 11.09.2009 is null and void not binding on the plaintiff?*
- 2. Whether the plaintiff is the actual owner of the suit property?*
- 3. Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 4. Whether the defendant is entitled for 1/3rd share in the suit property?*
- 5. To what other relief?*

9. It is in this backdrop the present application has been filed by the 1st defendant seeking DNA Test. From the facts narrated above I do not see any reason for allowing this application. The issues to be decided in this suit do not relate to the paternity of the parties. While the plaintiff claims that he is natural son of Logaiah, the defendant would claim that the plaintiff is adopted son of Logaiah and she would also claim that she is the adopted daughter of Logaiah.

10. The question that is to be decided in the suit is the validity of settlement deed executed by Logaiah on 15.07.2002. It does not matter as to whether the plaintiff is adopted or natural son. If the settlement deed is proved to be valid then the plaintiff takes the property himself, otherwise the defendant, if she establishes that she is the adopted daughter of Logaiah, she would also take share in the property.

11. Therefore, I do not see any necessity for referring the plaintiff and his father for DNA Test to prove the paternity. Even a settlement deed executed in favour of a stranger is valid if it is proved in accordance with law. Hence, this application is dismissed as unnecessary.

12. The Registry is directed to list the matter before the learned Additional Master - III for continuation of evidence on 27.02.2018.

Sd/.R.S.M.J

21.02.2018

//Certified to be a true copy//

Dated this the 21st day of February 2018.

TE/08/03/2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.