

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2018

PRONOUNCED ON : 16.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.1793 & 2101 of 2004

Jayalakshmi ... Appellant in S.A.No.1793 of 2004/  
Respondent in S.A.No. 2101 of 2004

Vs.

1. Tharabai  
2. Ravichandran ... Respondents in S.A.No.1793 of 2004/  
Appellants in S.A.No. 2101 of 2004

Common Prayer: Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.06.2004 passed in A.S.No. 87 of 2002 on the file of Additional District Court, FTC II, Cuddalore reversing the judgment and decree dated 27.08.99 passed in O.S. No.113 of 92 on the file of Subordinate Judge, Cuddalore.

For Appellant in S.A.No.1793/2004/  
Respondent in S.A.No.2101/2004 : Mr. R.Sunilkumar

For Respondents in S.A.No.1793/2004/  
Appellants in S.A.No.2101/2004 : Mr.Kingston Jerold

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COMMON JUDGMENT

Challenge in second appeal No.1793 of 2004 is made by the plaintiff against the judgment and decree dated 18.06.2004, passed in A.S.No. 87 of 2002, on the file of Additional District Judge, Fast Track Court II, Cuddalore, reversing the judgment and decree dated 27.08.99, passed in O.S. No.113 of 92, on the file of Subordinate Court, Cuddalore.

2. Challenge in second appeal No.2101 of 2004 is made by the defendants against the judgment and decree dated 18.06.2004, passed in A.S.No. 87 of 2002, on the file of Additional District Judge, Fast Track Court II, Cuddalore, reversing the judgment

and decree dated 27.08.99, passed in O.S. No.113 of 92, on the file of Subordinate Court, Cuddalore.

3. Second appeal No.1793 of 2004 has been admitted on the following substantial questions of law:

"1. Whether a mere registration of an adoption deed that adoption took place through the deed is sufficient proof for proof of the legal ingredients of giving and taking of adoption, as wrongly found by the lower appellate Court?

2. Whether the adoption of a grand child by the grand mother valid in Hindu Law?

3. Whether the lower appellate Court did not err in upholding the Wills propounded by the defendants, falling to note the suspicious circumstances including disinheritance of a daughter and the failure to even mention about the existence of the daughter, which clearly showed the unnatural disposition and vitiate the document of Will itself?

4. Second appeal No.2101 of 2004 has been admitted on the following substantial questions of law:

"1. Whether the judgment and decree of the lower appellate Court is vitiated by its failure to consider the pleadings of the parties and the evidence with regard to the truth and genuineness of Exhibit B-2 dated 23.12.1981?

2. Whether the respondent will be entitled to any share in item 3 of the suit property in view of the finding of the lower appellate Court that the second appellant is the adopted son of Ramachandra Naidu and that Ramachandra Naidu is entitled to only  $\frac{1}{2}$  share in item 3 of the suit property?

3. Whether the lower appellate Court is right in granting a decree for  $\frac{1}{3}$  share in item 3 of the suit property overlooking the provisions of Hindu Succession Act and Hindu Law?"

5. Parties are referred to as per their rankings in the trial Court.

6. Considering the scope of issues involved in the second appeals lying in a narrow compass, I deem it unnecessary to dwell into the facts of the case in detail.

7. Suffice to state that the suit has been laid by the plaintiff for partition.

8. The plaintiff and the first defendant are sisters. The second defendant is the son of the first defendant. DW10 Deenadhayalan is the husband of the first defendant and the father of the second defendant. Ramachandra Naidu and Padmavathy ammal are the parents of the plaintiff and the first defendant. Ramachandra Naidu died on 19.09.88 and Padmavathy ammal died on 17.03.90. Items 1 and 2 of the plaint schedule properties belonged to Padmavathy ammal. Item 3 of the plaint schedule properties belonged to Ramachandra Naidu. As regards the abovesaid facts, there is no dispute between the parties.

9. Accordingly, claiming that the plaint schedule properties belonged to their parents, namely, Ramachandra Naidu and Padmavathy ammal and seeking that she is entitled to half share in the plaint schedule properties, the plaintiff has come forward with the suit seeking half share in the plaint schedule properties. The suit laid by the plaintiff has been resisted by the defendants on three grounds. According to the defendants, the second defendant had been taken in adoption by Ramachandra Naidu and Padmavathy ammal on 27.02.78, on the ground that they had no male issue and accordingly, it is also contended on their behalf that to evidence the factum of adoption, an adoption deed has been executed on the same day marked as Ex.B1 and thus, it is contended by them that the second defendant is the adopted son of Ramachandra Naidu and Padmavathy ammal and further, it is also contended by the defendants that as regards the items 1 and 2 of the plaint schedule properties belonging to Padmavathy ammal, she had bequeathed the said properties in favour of the first defendant, by way of a registered Will dated 22.11.72, which document has come to be marked as Ex.B12 and therefore, it is contended that by virtue of the abovesaid Will, the plaintiff is not entitled to claim any share in the said items of the properties. Further, it is also pleaded by the defendants that Ramachandra Naidu had bequeathed the third item of the plaint schedule properties in favour of the adopted son, namely, the second defendant by way of a Will dated 23.12.81, which document has come to be marked as Ex.B2 and therefore, it is contended that by virtue of the same, the plaintiff is not entitled to claim any share in the third item of the plaint schedule properties. On the abovesaid three grounds, the defendants sought for the dismissal of the plaintiff's suit.

10. Admittedly, Ramachandra Naidu and Padmavathy ammal had

no male issues and as above noted, they had two daughters, namely, the plaintiff and the first defendant. It is thus found that accordingly, they had decided to take their grandson, namely, the second defendant as the adopted son and in this connection, it is found that the parties to the adoption, namely, the first defendant and her husband, DW10, Deenadhayalan and the adoptive parents, namely, Ramachandra Naidu and Padmavathy ammal had executed a deed of adoption marked as Ex.B1, a registered document and on a perusal of the recitals contained therein, it is found that the first defendant and her husband had given their son in adoption to Ramachandra Naidu and Padmavathy ammal and accordingly, the parties had entered their abovesaid determination into the document marked as Ex.B1 and the said document being a registered one and accordingly, it is found that in the light of the abovesaid adoption deed, the factum of adoption has been prima facie established by the defendants. That apart, to substantiate their case, the defendants have also examined one of the attestors to the adoption deed Ex.B1 as DW5. DW5, Natarajan, in his evidence has clearly deposed about the first defendant and her husband giving their son in adoption to Ramachandra Naidu and Padmavathy ammal and the factum of adoption being performed in due course and as per law and accordingly, it is found that the parties had recorded the same in a deed marked as Ex.B1 and the first appellate Court, on an analysis of the evidence of DW5 as well as the recitals contained in Ex.B1 plus the evidence of the first defendant and the second defendant as well as the evidence of DW10, Deenadhayalan, on a cumulative analysis of the same and as no material had been projected by the plaintiff to disbelieve the same and accordingly, upheld the plea of adoption projected by the defendants. I do not find any reasons to deviate from the abovesaid determination of the first appellate Court. Further, as rightly found by the first appellate Court, the adoption having been entered into a deed, a registered document and accordingly, the presumption under Section 16 of the Hindu Adoptions and Maintenance Act, 1956 would come into play and despite the same, the plaintiff having not placed any material to rebut the said presumption and accordingly, it is found that the first appellate Court, on the basis of the materials placed on record by the defendants as well as considering the principles of law outlined in the authorities cited before it, rightly held that the adoption of the second defendant by Ramachandra Naidu and Padmavathy ammal had been established by the defendants. The fact that the adoptive parents had taken the second defendant in adoption, when it is seen that the same had been done for performing their last rites and accordingly, when it is found that it is only the second defendant who had performed the last rites of their adoptive parents, despite the knowledge of the same, the plaintiff, during the course of her evidence, has feigned ignorance of the said facts and

accordingly, the first appellate Court has rightly held that the plaintiff, for the purpose of this case, has disputed the factum of the second defendant taken in adoption by Ramachandra Naidu and Padmavathy ammal. Further, as rightly determined by the first appellate Court, the plaintiff has not placed any custom prevailing in their community that the grandson could not be taken in adoption by the grandparents and further, the plaintiff has not placed any legal bar as to the taking in of the adoption of a grandson by the grandparents and resultantly, it is found that the first appellate Court has rightly upheld the plea of adoption projected by the defendants as abovestated by way of Ex.B1 deed plus the other materials placed on record and accordingly, it is seen that the plea of adoption projected by the defendants is true, valid and acceptable.

11. The defence has been taken by the defendants that Padmavathy ammal has bequeathed the properties belonging to her namely, items 1 and 2 of the plaint schedule properties in favour of the first defendant by way of a sale deed dated 22.11.72, marked as Ex.B12. It is found that admittedly, the items 1 and 2 of the plaint schedule properties belonged to Padmavathy ammal, so, it is seen that she is competent to bequeath the same to anyone she desires and inasmuch as Ex.B12 Will has been challenged by the plaintiff, the defendants being the propounder of the same, have to establish its authenticity with reference to proof of the Will marked as Ex.B12. On a perusal of the same, it is found that the same had been attested by Ramachandra Naidu and Murugesu pillai and it is found both had died and the witnesses who were present at the registration office are Seenivasan and Subramanian. Materials placed on record would go to show that of the abovesaid two attestors, the witness Subramanian had also died. Accordingly, it is found that the defendants has chosen to examine the son of one of the attestors, namely, Mohanasundaram as DW9 and accordingly DW9 has deposed about his father's signature in the Will marked as Ex.B12 and his evidence has been rightly accepted by the first appellate Court as the same is not shown to be suffering from any infirmity. Further, the defendants have also examined the identifying witness Seenivasan as DW6 who has also deposed about the execution of the Will by Padmavathy ammal and the presentation of the same by her before the registration office and the attestation made by him and the witness Subramanian in the registration office and other allied facts. Accordingly, it is found that the evidence of DW6 being natural and convincing and as nothing had been elicited by the plaintiff to discredit him, it is found that on the basis of DWs 9 and 6, the defendants have established the authenticity of Ex.B12 Will.

12. The only defence projected by the plaintiff with

reference to Ex.B12 Will is that she also being the daughter to Padmavathy ammal, there is no need to disinherit her by her mother and accordingly, the same is a suspicious circumstance surrounding the Will and on that footing, it is her contention that Ex.B12 Will should not be relied upon. It is the defence of the defendants that Padmavathy ammal had provided adequate money to the plaintiff in purchasing the house property by way of Ex.B20 document. It is found that the plaintiff in her plaint has admitted that the property purchased by her in Tukaram street was done out of her money as well as from the help offered by her mother. Though she would state during the course of evidence, the consideration for the said purchased flowed from her husband, however, as regards the said case of the plaintiff, there is no material forthcoming worth acceptance. On the other hand, as could be seen from the evidence of DW10 and from the documents marked as Exs.A23 to A37 marked in the first appellate Court, it is found that Padmavathy ammal had deposited the proceeds of the sale of her property at Villupuram in the bank and accordingly, withdrawn a substantial sum of money from the bank on 20.12.98 and accordingly, it is found that she had parted with the said sum to the plaintiff for the purpose of enabling the plaintiff to acquire the property under Ex.B20 document, which document has come to be executed on the next date i.e., 21.12.98. Accordingly, the first appellate Court has rightly assessed the materials in a conjoint manner and noting that Padmavathy ammal had given a lumpsum amount to the plaintiff for the acquisition of the property under Ex.B20 sale deed and when there is no material placed by the plaintiff to show that the property purchased under Ex.B20 had been acquired with the money given by her husband, as such, when it is seen that when the business indulged by her husband has been running into loss and he could not have offered money to the said purchase of the property under Ex.B20 sale deed, accordingly, it is noted that Padmavathy ammal rightly did not give any share in the items 1 and 2 of the properties to the plaintiff while bequeathing the same under Ex.B12 Will in favour of the first defendant and in such view of the matter, the abovesaid suspicious circumstance projected by the plaintiff for disbelieving the Will does not merit acceptance. Equally, it is found that at the time of execution of Ex.B12 Will, the parties were not at logger heads and only later the parties had developed misunderstanding and accordingly, when the materials projected as above discussed go to disclose that the plaintiff had already been given a lumpsum amount by Padmavathy ammal, merely because she had disinherited the plaintiff under Ex.B12, that cannot be projected as a suspicious factor for discountenancing the abovesaid Will. Further, it is also found that following the death of Padmavathy ammal, it is only the first defendant who had exercised ownership over the properties bequeathed to her as could be seen from the documents placed by

the defendants and as analysed by the first appellate Court.

13. In the light of the above discussions, I do not find any valid reasons to differ from the conclusion of the first appellate Court as regards the genuineness of Ex.B12 Will and accordingly, there is no reason to interfere with the abovesaid determination of the first appellate Court.

14. The last defence of the defendants, namely, the bequeathing of the third item of the plaint schedule properties by Ramachandra Naidu in favour of the second defendant by way of a Will dated 23.12.81 marked as Ex.B2, it is found that prior to the institution of the suit, there has been exchange of notices between the parties and there is no reference about the date of execution of Ex.B2 Will by the defendants in the reply notice marked as Ex.A2. If really the Will had been executed by Ramachandra Naidu in favour of the second defendant on 23.12.81, a reference about the same would have been mentioned in Ex.A2 reply notice by the defendants and accordingly, the abovesaid factor had been rightly taken into account by the first appellate Court for disbelieving the said Will. Further, it is also noted that the Ex.B2 Will is not a registered Will. No doubt, a Will need not be compulsorily registered. In addition to that, the first appellate Court has made a comparison of the signature of Ramachandra Naidu available in Ex.B2 Will and his signature available in the deed of adoption Ex.B1 and found material contradiction in the abovesaid signatures and also it is found that the signature of Ramachandra Naidu contained in Ex.B12 and B2 Will also not being similar and the abovesaid set of signatures being materially different even on the naked eye vision, accordingly and rightly, doubted the genuineness of Ex.B2 Will. Further, the appellate Court noting that the attestors of the abovesaid Will Ex.B2, though having been examined by the defendants as DWs 3 and 4, noting that they are also the employees of the bank where the first defendant's husband has been working and accordingly, finding their close rapport and acquaintance, accordingly, on an analysis of the evidence of DWs 3 and 4, finding that they had deposed about Ex.B2 Will only on account of their acquaintance with the first defendant's husband as his colleague in the bank and accordingly, in my considered opinion also, rightly did not take into account their evidence for upholding the genuineness of Ex.B2 Will. As rightly determined by the first appellate Court, when ample documents are available on record, particularly, contemporaneous signatures of Ramachandra Naidu being available to test the genuineness of the signatures of Ramachandra Naidu in Ex.B2 Will and despite the same, when a serious challenge has been put forth by the plaintiff with reference to Ex.B2 Will, the defendants having not endeavoured to test the truth of the signatures of Ramachandra Naidu

contained in Ex.B2 Will with the aid of an expert, accordingly and rightly came to the conclusion that Ex.B2 Will has not been established to be a document truly executed by Ramachandra Naidu and on that footing disbelieved the abovesaid case of the defendants. Considering the reasons offered by the first appellate Court for disbelieving the genuineness of Ex.B2 Will and when the attestors examined with reference to the same as DWs 3 and 4 did not inspire confidence, particularly, on account of their close acquaintance with the first defendant's husband and the factum of their evidence that the abovesaid will had come to be executed in the bank, which itself is found to be very artificial and on the basis of the signatures of Ramachandra Naidu contained in Ex.B2 Will appearing to be totally different from his signatures available in Ex.B1 deed of adoption and Ex.B12 Will, it is found that no interference is called for in the determination of the first appellate Court as regards the rejection of Ex.B2 Will.

15. Accordingly, it is found that the first appellate Court noting that the second defendant had been taken in adoption by Ramachandra Naidu and Padmavathy ammal and Ramachandra Naidu having died intestate and further noting that by virtue of the deed of adoption, the plaintiff, the first defendant and the second defendant being the legal heirs of Ramachandra Naidu and Padmavathy ammal, accordingly held that all the three are each entitled to 1/3 share in the third item of the plaint schedule properties and on that determination, held that the plaintiff is entitled to 1/3 share in the third item of the plaint schedule properties. In the light of the determination that the items 1 and 2 of the plaint schedule properties had been bequeathed in favour of the first defendant by Padmavathy ammal by virtue of Ex.B12 Will, the first appellate Court has determined that the plaintiff is not entitled to any share in the items 1 and 2 of the plaint schedule properties.

16. In the light of the above discussions, it is found that no interference is called for in the judgment and decree of the first appellate Court while disposing of the appeal preferred by the defendants challenging the judgment and decree of the trial Court and accordingly, the disposal of the first appeal by the first appellate Court as abovenoted being found to be based on the right appreciation of the materials placed on record in the correct perspective, both factually as well as legally and accordingly, no interference is called for with reference to the same. The substantial questions of law formulated in the second appeals are accordingly answered.

17. In conclusion, both the second appeals fail and are accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,  
Fast Track Court II,  
Cuddalore.
2. The Subordinate Court,  
Cuddalore.
3. The Section Officer,  
V.R.Section,  
High Court, Madras. (2 COPIES)

+2cc to Mr.R.SUNIL KUMAR, Advocate, S.R.No. 46653 & 46654  
+1cc to Mr.S.K.RAKHUNATHAN, Advocate, S.R.No. 46405

Pre-delivery Judgment in  
S. A.Nos.1793 & 2101 of 2004

SVI (CO)  
TR(06/08/2018)

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