

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

A.S. No.78 of 2017
and
C.M.P.No.21599 of 2017

S.Arumugam ... Appellant/Plaintiff

-vs-

C.Ramamirtham (Deceased)

1.C.Ugiprabhu

2.G.Rekha

3.S.Vimaladevi

4.District Collector,
Having Office at Central Co operative Bank Campus,
Salem - 636 001.

5.Revenue Divisional Officer,
Having Office at Central Co operative Bank Campus,
Salem - 636 001.

6.Tahsildar,
Having Office at Central Co operative Bank Campus,
Salem - 636 001. .. Respondents

PRAYER: Appeal Suit filed under Order 41 r/w Section 96 of Civil Procedure Code against the Judgment and decree dated 26.10.2016 made in O.S.No.230 of 2013 by the learned III Additional District Judge, Salem.

For Appellant : Mr.K.M.Subramaniam

For Respondents: Mr.S.V.Jayaraman, Senior Counsel
for Mr.T.Dhanasekaran for R2.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appeal suit has been filed against the decree and Judgment passed by the trial Court dismissing the suit filed by the appellant for the relief of declaration, declaring that the appellant is the legally wedded husband of deceased Vijayalakshmi and has become her sole legal heir entitled to the assets belonging to her and declare that the sale deed stands in the name of 4th defendant allegedly executed by the 1st defendant under document No.3255/2008 is null and void and for other reliefs.

2.The case of the appellant is that he got married to one Vijayalakshmi who was the widow of one Elangovan. The appellant developed a relationship with the said Vijayalakshmi and got married to her on 16.06.2002 at Meenakshmi Amman Temple, Madurai. Through the first marriage, the said Vijayalakshmi has got a son called Mohana Krishnan. The first defendant, C.Ramamirtham is the mother of Vijayalakshmi and the 2nd defendant is the brother of Vijayalakshmi.

3.The case of the appellant is that after marriage, he lived in a house at No.36-A, Ramanathapuram, Salem-636008 along with the said Vijayalakshmi, as husband and wife till her death on 17.06.2006. Her son Mohana Krishnan committed suicide on the very same day on 17.06.2006 due to the dispute between him and his wife. At the time of death, the appellant was away in Hosur and the death of the said Vijayalakshmi was not informed to the appellant. Thereafter, he filed a police complaint in this regard. However, no action was taken.

4.The police informed that they had handed over the properties to defendants 5 and 6. After enquiry, the Official defendants handed over the properties of the deceased to the first defendant who was the mother of the said Vijayalakshmi. Subsequently, the 1st and 2nd defendants therein, sold the properties to 3rd and 4th defendants. Therefore, the suit was filed by the plaintiff/appellant.

5.The 1st and 2nd defendants in the suit remained exparte. The subsequent purchasers, namely, the 3rd and 4th defendants alone contested the suit by filing written statement. They contended that the property was purchased by the said Vijayalakshmi, who is the daughter of the 1st defendant and sister of the 2nd defendant therein. Since Vijayalakshmi's first husband had already died and her son Mohana Krishnan also committed suicide, there were no legal heirs except the 1st and 2nd defendants who had voluntarily sold the property to the 3rd

and 4th defendants after ascertaining all the facts and verifying the documents. The legal heir certificate given in favour of the 1st and 2nd defendants would show that they alone are the legal heirs and the appellant/plaintiff does not have connection either with Vijayalakshmi or with the property. The Trial Court framed the following issues for consideration:

"1)Whether the plaintiff is entitled to the relief of declaration, declaring that he is the legally wedded husband of the deceased vijayalakshmi?

2)Whether the plaintiff is entitled to the relief of declaration with regard to item 'A' of the suit property?

3)Whether the plaintiff is entitled to the relief of declaration with regard to item 'B' of the suit property?

4)Whether the plaintiff is entitled to the relief of declaration with regard to title to item 'C' of suit property?

5)Whether the plaintiff is entitled to receive the items 'A' and 'B' from D3, D4?

6)Whether the plaintiff is entitled to receive the item 'C' from D1 and D2?

7)Whether the plaintiff is entitled to the relief of permanent injunction?

8)To what other relief?"

On appreciation of oral and documentary evidence, the trial Court dismissed the suit against which only the appeal suit has been filed.

6.Heard Mr.Mr.K.M.Subramaniam, learned Counsel for the appellant and Mr.S.V.Jayaraman, Senior Counsel for Mr.T.Dhanasekaran for R2.

7. Though the plaintiff/appellant claimed that he got married to deceased Vijayalakshmi on 16.06.2002 in Meenakshmi Amman Temple at Madurai, he failed to produce any certificate issued by the temple authorities viz., HR & CE or failed to examine any witness who attended the marriage except producing a photograph (Ex.A.25) in which the appellant and the said Vijayalakshmi were figuring. No other proof had been produced to show that there was a marriage between the appellant and the said Vijayalakshmi either by adducing evidence or by producing documentary evidence except the evidence of P.W.1, the appellant/plaintiff himself.

8.Neither the death of Vijayalakshmi nor that of her son not known to the appellant. Though he had stated that he was out of station and the said fact was suppressed from him, only after an enquiry, the police and the revenue officials had handed over the possession of the property to the mother and brother of the said Vijayalakshmi. The documents exhibited by the appellant are only the notices and the petitions sent by the plaintiff to the defendants and the acknowledgements received in this regard.

Ex.A.18 is the obituary column published in 'Dhinamalar'. Ex.A.21 to Ex.A.24 are property tax receipts in respect of the property owned by the said Vijayalakshmi. In the absence of any proof regarding the marriage and even in the absence of any documentary evidence and oral evidence, the trial Court rightly decided issue No.1 against the appellant.

9.The property covered under Ex.B.1 was purchased on 10.02.2000, on which date, the appellant was not married to the said Vijayalakshmi. If really, the appellant had married the said Vijayalakshmi on 16.06.2002, that fact would have been reflected in Ex.A.20, sale deed dated 06.10.2005 by which the 'B' schedule property was purchased by the deceased Vijayalakshmi. A perusal of the said document would reveal that Vijayalakshmi was described only as wife of Elangovan, who is her first husband. If the appellant had really married Vijayalakshmi on 16.06.2002, definitely, in the subsequent sale deed dated 06.10.2005, his name would have been shown as husband of Vijayalakshmi. These are facts which persuaded the trial Court to hold issue No.1 against the appellant and therefore, it does not call for any interference.

10.As far as issue Nos.2 and 3, namely, the relief of declaration with regard to 'A' and 'B' schedule properties are concerned, as already found, the appellant failed to prove that he is the legally wedded husband of Vijayalakshmi and therefore, he cannot be declared as the legal heir of Vijayalakshmi. When he is not the husband or legal heir of deceased Vijayalakshmi, he is not entitled to any declaration in respect of 'A' and 'B' schedule properties. Though it is contended by the appellant that the 'B' schedule property was purchased from the income of the appellant, as contended by the appellant, he did not produce any income tax returns regarding his income at the time of purchasing the property under Ex.A.20. If 'B' schedule property had been purchased using the income of the appellant, definitely, his name would have figured as husband of Vijayalakshmi but, in Ex-A20, Vijayalakshmi had been described only as wife of late Elangovan. Even for possessing and enjoying the properties, no document, in the name of the appellant had been produced and therefore, the Trial Court rightly held issue Nos.2 and 3 against the appellant.

11.It is proved by respondents 3 and 4 that Vijayalakshmi's legal heirs were only 1st and 2nd respondents/defendants viz., mother and brother of Vijayalakshmi by producing Ex.B.5 legal heirship certificate of Vijayalakshmi in which the mother and the brother viz., 1st and 2nd defendants alone were shown as legal heirs. The Village Administrative Officer also certified through Ex.B.6 that the 1st defendant alone is the owner of the property. The Salem Corporation also issued notice only to the 1st defendant, Ramamirtham through Ex.B.7. The sale deed and the

property tax receipts all stand in the name of Ramamirtham, the 1st defendant.

12. That apart, all the certificates of Vijayalakshmi have been exhibited through Ex.B.10 to Ex.B.15 and one among them is Ex.B.15, the family card of Vijayalakshmi. If really, the appellant had married Vijayalakshmi in 2002, the family card, which had been issued in 2004, the appellant's name would have been included whereas, it is not so. Therefore, the legal heirs, as proved by Ex.B5, are only the mother of Vijayalakshmi viz., Ramamirtham and her brother C.Ugiprabhu and they are entitled to sell the property to 3rd and 4th defendants through Ex.B.9 sale deed dated 22.08.2008. Therefore, the declaration sought by the appellant was rightly denied and issue Nos.4 and 5 were rightly held against the appellant. Similarly, regarding issue No.6, the trial Court, based on Ex.B.15, family card found that Vijayalakshmi's legal heirs are only defendants 1 and 2 and therefore, the card standing in the name of Vijayalakshmi was rightly transferred in the name of the 1st defendant and therefore, the right to receive item 'C' was rightly denied by the trial Court.

13. Regarding issue No.7 i.e., the relief of permanent injunction, the trial Court having held against the appellant in the other issues, regarding declaration that he is the husband of late Vijayalakshmi, has rightly denied the relief of permanent injunction as he is a third party.

14. For the reasons stated above, there is no illegality or lacuna in the decree and Judgment passed by the trial Court. Without even an iota of evidence, the appellant seems to have tried his luck to grab the properties of a lady without any proof, especially, when Vijayalakshmi's mother and brother were alive at that point of time. The trial Court rightly dismissed the suit and there is no occasion for this Court to interfere with the same. Though the appeal has to be dismissed with costs, taking into consideration, that the appeal has been filed as in forma pauperis, this Court is dismissing the appeal without any costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ay/nv

To

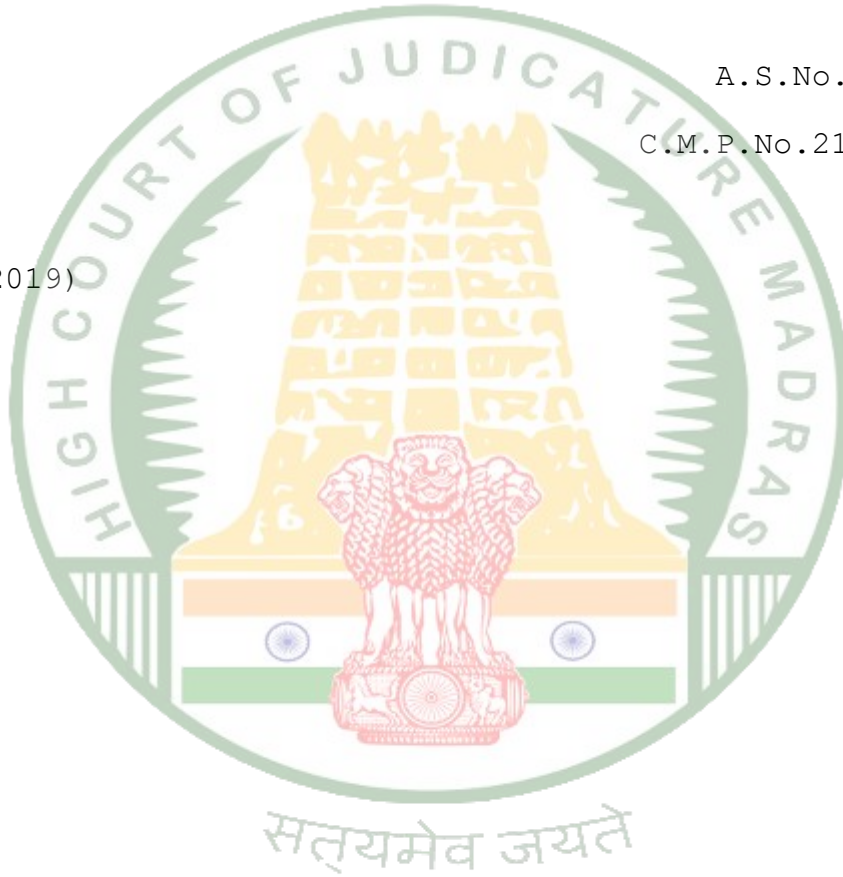
1. The III Additional District Judge
Salem.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.T.Dhanasekaran, Advocate sr 79452.

A.S.No.78 of 2017
and
C.M.P.No.21599 of 2017

KK(CO)
SP(16/05/2019)



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