

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Second Appeal No.595 of 2018

1.Rajamani,
W/o.Duraiswamy.
2.D.Dhanbal.
3.P.Kalamani.
4.D.Indhirani.
5.S.Renuka.

... Appellants

-vs-

G.Jothi (Died)
1.G.Swaminathan.
2.G.Varadaraj.
3.G.Babu @ Baluswamy.
4.G.Indhirani.
5.Santhamani,
S/o.Late G.Jyothi.

... Respondents

Prayer:-

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree made in A.S.No.25 of 2017 on the file of the I Additional District Judge, Erode dated 06.04.2018, confirming the judgment and decree made in O.S.No.34 of 2012, dated 02.12.2016, on the file of Subordinate Judge, Sathyamangalam and allow the above second appeal.

For Appellants : Mr.Thameem Mohideen

For Respondents : No Appearance

JUDGMENT

Heard Mr.Thameem Mohideen, learned counsel for the appellants.

2.This appeal has been filed by the plaintiffs challenging the judgment and decree passed in A.S.No.25 of 2017 on the file of the I Additional District Court, Erode dated 06.04.2018, confirming the judgment and decree of the trial Court in

O.S.No.34 of 2012, dated 02.12.2016, on the file of the Subordinate Judge, Sathyamangalam.

3.The above appeal has been filed raising the following substantial questions of law:-

"(i) Without framing any issue, are the Courts below right in dismissing the suit with regard to the identity of the adoptive parents of their father, Duraisamy, when the written statement does not aver any dispute?

(ii) Are the Courts below right in dismissing the suit without the 1st Defendant not subjecting himself for the trial to disprove the claim of the plaintiffs and to prove his claim of his adoption?

(iii) Are the Courts below right in dismissing the suit despite holding that Exhibits 2 to 5 reveals that the father of the plaintiffs is the adopted son of Velusamy Naicker?

(iv) Are the Courts below right in dismissing the suit without the defendant pleaded any doubt and when the same was affirmed in the cross examination?"

4.The appellants are the plaintiffs and they filed the suit for division of the suit properties into three equal shares by metes and bounds and allot one such share to the plaintiffs and order separate possession of the shares allotted to the plaintiffs in the suit properties and grant a permanent injunction against the defendants 2 to 6 from alienating or encumbering the suit properties.

5.The case of the appellants/plaintiffs is that their father, Duraisamy was the adopted son of Ammani Ammal @ Guruvammal, who was married to one Velusamy Naicker @ Velappa Naicker.

6.The plaintiffs would state that Velusamy Naicker @ Velappa Naicker died in the year 1973, Ammani Ammal @ Guruvammal died in the year 1999 and Duraisamy, their father died in the year 2002.

7.According to the plaintiffs, Ammayee Ammal married one Maunasamy and she died issueless in the year 2006 and her husband Maunasamy predeceased his wife. Therefore, the

plaintiffs would state that her common 1/3rd share devolved upon her only brother Gopalsamy. Hence, the said Gopalsamy is entitled to a common 2/3rd share in the suit property. The said Gopalsamy died on 21.07.2011 leaving behind his four sons and one daughter, who are the defendants. After the death of the father of the defendants, his common 2/3 share devolved upon the defendants. With these facts, the plaintiffs approached the Court.

8.The defendants filed a written statement totally denying the allegations made by the plaintiffs. They stated that the claim of the plaintiffs is ill will and made only with an intention of grabbing the suit property, as if Duraisamy was the adopted son of Ammani Ammal @ Guruvammal.

9.It is the case of the defendants that the 1st defendant G.Jothi @ Jothiprakash is the only adopted son and the 1st defendant is none other than the nephew of Ammani Ammal @ Guruvammal i.e., son of her own brother Gopalsamy and Ranganayagi, and since the brother of Ammani Ammal had many children, it was Ammani Ammal, who was keen to adopt the first son of Gopalsamy and Ranganayagi and it was rightly accepted by her husband Velusamy Naicker. The defendants also stated as to how the case of the plaintiffs is absolutely without any basis. Additional written statement was also filed. Parties went for trial and before the Trial Court, on the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3, and on the side of the defendants, two witnesses were examined as D.W.1 and D.W.2. On the side of the plaintiffs, 37 documents were marked as Exs.A1 to A37 and on the side of the defendants 39 documents were marked as Exs.B1 to B39.

10.The Trial Court framed the following issues for consideration:-

(i) Whether the deceased Duraisamy is the adopted son of Ammani Ammal @ Guruvammal as contended by the plaintiffs?

(ii) Whether the plaintiffs are entitled for the relief of partition as claimed by them?

(iii) Whether the plaintiffs are in the possession of suit property? and

(iv) Whether the Court fee paid was correct and proper?

11.After considering the oral and documentary evidence, the Trial Court dismissed the suit. The plaintiffs preferred appeal before the lower appellate Court. The lower appellate Court re-appreciated the evidence on record and found that the suit filed

by the plaintiffs is only speculative. Evidence was thoroughly re-appreciated and the lower appellate Court has recorded a finding that the plaintiffs miserably failed to prove that Duraisamy was the adopted son of Ammani Ammal @ Guruvammal and Velusamy Naicker @ Velappa Naicker.

12.Thus, in the absence of adequate proof to show that Duraisamy is the adopted son, the lower appellate Court confirmed the finding of the trial Court. Further, the lower appellate Court re-appreciated the fact of Exs.A1 to A37, which were marked on the side of the plaintiffs. From the Exhibits A1 to A37, which have been marked, I find that six of them are postal acknowledgement cards and two are legal notices. After considering the effect of those documents, the lower appellate court concurred the finding of the trial Court that none of the exhibits produced by the plaintiffs prove the factum of adoption. Further, as rightly held by the lower appellate Court, the onus is on the plaintiffs to prove that their father was the adopted son of the adoptive parents and the burden is heavy on the plaintiffs which they failed to discharge. Hence, no grounds have been made out to interfere with the judgment and decree of the lower appellate Court.

13.Accordingly, the appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr
To

- 1.The I Additional District Judge, Erode.
- 2.The Subordinate Judge, Sathyamangalam.

Copy To

The Section Officer,
VR Section, High Court, Madras-104. (2 Copies)

+1cc to Mr.Thameem Mohideen, Advocate, S.R.No.71876

S.A.No.595 of 2018

SSV(Co)

CS/28/11/2018