

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.796 of 2018
and
C.M.P.No.22302 of 2018

Mudiarasi

... Appellant/Plaintiff

Vs.

1.R.Murugan
2.Kanaga

... Respondents/Defendants

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 09.04.2018 in A.S.No.82 of 2017 on the file of the learned Principal District Judge, Krishnagiri, confirming the Judgment and Decree dated 06.09.2016 in O.S.No.166 of 2012 on the file of the learned Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.R.Agilesh

JUDGMENT

The plaintiff is the appellant before this Court. The Second Appeal arises from a suit filed by the plaintiff, who is the daughter of the 1st defendant and the niece of the 2nd defendant, for Partition to declare the Partition Deed dated 09.07.2012 as null and void.

2.The basis on which the above suit had been filed are as follows:

The plaintiff would contend that she is the daughter of the 1st defendant and was born to the 1st defendant and his wife Indrani. It is her case that the marriage between the 1st defendant and her mother Indrani has been solemnized 22 years ago and out of wedlock, she was born on 10.06.1993. She would further contend that the 1st defendant wanted her to marry his friend, who was a totally stranger to the plaintiff and her relatives and that the plaintiff, her mother and their relatives objected the same and thereafter, solemnized her marriage to

Kumar, who is the close relative, on 31.08.2011. This led to misunderstanding between the plaintiff and the 1st defendant and the plaintiff did not get any share of her properties. Her father, the 1st defendant herein has entered into a Partition Deed with his sister, the 2nd defendant herein. This partition is not binding on the plaintiff as the suit property are the ancestral property in which the 2nd defendant, who had married long prior to Hindu Succession Act, Amendment Act, 1/90, was entitled to $\frac{1}{4}$ share and the plaintiff along with the 1st defendant was entitled to $\frac{3}{4}$ share. Since the defendant did not come forward to partition the property, the plaintiff had filed the suit O.S.No.166 of 2012 for the relief as mentioned supra.

3.The defence to this suit was that the plaintiff was not the daughter of the 1st defendant. The 1st defendant would contend that though he had married the plaintiff's mother Indrani, within a week of her marriage, she had eloped with a person whom she was in love prior to their marriage. It was the specific case of the defendant that Indrani was not interested to live with the 1st defendant and therefore, there was no cohabitation between them. In the year 1990, there was a panchayat in which the plaintiff's mother declared that she did not want to live with the 1st defendant. The 1st defendant in his Written Statement had categorically stated that he is ready and willing to undergo for a DNA Test. Hence, he sought for dismissal of the suit.

4.The learned Principal Subordinate Judge, Krishnagiri, by her Judgment and Decree dated 06.09.2016 was pleased to dismiss the suit. Challenging the said Judgment and Decree, the plaintiff filed A.S.No.82 of 2017 on the file of the learned Principal District Judge, Krishnagiri. The learned Principal District Judge, Krishnagiri, by her Judgment dated 09.04.2018 confirmed the Judgment and Decree of the trial Court. Challenging the said concurrent Judgments and Decrees, the appellant is before this Court.

5.Mr.R.Agilesh, learned counsel for the appellant would contend that the defendant has not denied that the appellant's mother was his wife and that the marriage has not been dissolved in the manner known to law. He would draw the attention of this Court to the evidence of one Chinnaraj, who was examined as P.W.2 that the defendant used to visit the house of the plaintiff and that the plaintiff is the daughter of the 1st defendant. He would therefore contend that the Courts below were wrong in holding that the plaintiff is not the daughter of the 1st defendant.

6.Heard the learned counsel for the appellant and perused the material available on record.

7.There is no explanation forthcoming from the plaintiff as to why she was not willing to undergo DNA Test, when the 1st respondent was ready to undergo, even as per the Written Statement, more particularly, when the 1st defendant had denied the paternity. The fact that the plaintiff has not undertaken these factors, leads this Court to draw adverse inference against the plaintiff. The plaintiff has not been able to establish the factum of paternity. She had also admitted that her mother had left the 1st defendant only a week of the marriage. In these circumstances, coupled with her reluctance to undergo the paternity test, this Court is inclined to agree with the concurrent findings of the Courts below. Accordingly, this Court finds no question of law much less a Substantial Question of Law for admitting the above Second Appeal.

This Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Principal District Judge,
Krishnagiri.

2.The Principal Subordinate Judge,
Krishnagiri.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.86774

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VBA (CO)
CS/07/05/2019