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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1503 of 2007

Viruthambal

...Appellant/1st Defendant

Vs.

1. Parimelazagan ... 1st Respondent/Plaintiff
2. Director of Administration
Neyveli Lignite Corporation,
Head Office, Neyveli- 2.
3. Finance Controller,
Accounts Section
Central Workshop Service Unit,
First Mines, Neyveli Lignite Corporation
Neyveli - 2.
4. General Manager,
Central Workshop Service Unit,
First Mines, Neyveli Lignite Corporation,
Neyveli - 2.
5. Special Officer,
Neyveli Employees Corporative Thirft
and Credit Society Limited,
Circle - 12, Neyveli - 2.

... Respondents 2 to 5/
Defendants 2 to 5

Prayer :-

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 27.03.2007 passed in A.S.No.83 of 2005 on the file of the II Additional Subordinate Judge, Villupuram, confirming the judgement and decree dated 19.04.2005 passed in O.S.No.252 of 2002 on the file of the Principal District Munsif Court, Ulunturpet.



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For Appellant : Mr.A.S.Narasimhan

For Respondent : Ms.V.Srimathi
No.1

For Respondent : Mr.N.Nithyanandam
Nos. 2 to 5

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 27.03.2007 passed in A.S.No.83 of 2005 on the file of the II Additional Subordinate Court, Villupuram, confirming the judgement and decree dated 19.04.2005 passed in O.S.No.252 of 2002 on the file of the Principal District Munsif Court, Ulunturpet.

2.The second appeal has been admitted on the following substantial question of law:

“Whether the determination of the Courts below that the plaintiff is the adopted son of the deceased Narayanasamy is based upon the proper appreciation of the materials placed on record and the principles of law governing the adoption.”

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the suit has been laid by the plaintiff to declare him as the legal heir of the deceased Narayanasamy and for the consequential permanent injunction.

6.The plaintiff claims himself to be the adopted son of the deceased Narayanasamy. It is found that Narayanasamy employed in Neyvei Lignite Corporation had married one Kasiammal. No issue was born to them. It is further seen that Narayanasamy had started living with the first defendant, after the demise of his wife Kasiammal and through the first defendant also, Narayanasamy had no issue. Now, according to the plaintiff, he had been taken in adoption by Narayanasamy, when he was three years old and in recognition of the abovesaid adoption, both the deceased Narayanasamy and the first defendant had also executed an adoption deed on 12.09.1997 and accordingly, the



plaintiff had been treated as the adopted son of Narayanasamy and it is only Narayanasamy and the first defendant, who had performed the marriage of the plaintiff and the plaintiff is also one of his legal heirs and also so recorded in the government records and on the other hand, inasmuch as the first defendant is attempting to obtain the benefits from the Neyveli Lignite Corporation pertaining to Narayanasamy on her own, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

7.The first defendant, in particular, disputed the claim of the plaintiff that he had been taken in adoption by Narayanasamy and according to the first defendant, she alone is the legal heir of the deceased Narayanasamy and entitled to obtain the benefits from the Neyveli Lignite Corporation in entirety and disputed the claim of the plaintiff that Narayanasamy and the first defendant had recorded the factum of adoption by way of a deed dated 12.09.1997 and further, the first defendant would also plead that out of abundant caution, she had cancelled the abovesaid deed of adoption dated 11.09.1997 by a cancellation deed dated 26.08.2002 and therefore, put forth that the plaintiff is not entitled to obtain the reliefs prayed for.

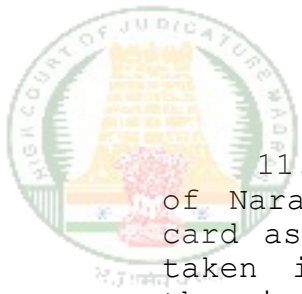
8.The second defendant put forth the case that inasmuch as the first defendant has been shown as the nominee in the records maintained by them qua the deceased Narayanasamy, it is stated that the first defendant is entitled to receive the benefits pertaining to Narayanasamy and also contended that they had paid one payment of provident fund and gratuity to the first defendant and the other payments are kept pending in view of the present lis and accordingly, prayed for the dismissal of the plaintiff's suit.

9.Based on the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case. Impugning the same, the first defendant has preferred the present second appeal.

10.According to the plaintiff, he had been taken in adoption by the deceased Narayanasamy, when he was three years old and in recognition of the said adoption, both Narayanasamy and the first defendant had executed the document of adoption on 12.09.1997 marked as Ex.A1. According to the first defendant, though such a document had been executed, it is her case that the same had been cancelled by her by a deed of cancellation dated 26.08.2002, which document has come to be marked as Ex.B3. In this connection, the plaintiff has examined himself as PW1 and tendered evidence that he had been taken in adoption by the deceased Narayanasamy from his natural parents, when he was three years old. PW2 Ponnambalam and PW3 parvathi examined on



behalf of the plaintiff had also tendered evidence about the adoption of the plaintiff by Narayanasamy. It is found that Narayanasamy had taken the plaintiff in adoption, when his first wife Kasiammal was alive and at that point of time, the plaintiff was aged about three years and the plaintiff's natural parents had given the plaintiff in adoption to Narayanasamy and accepting the same, Narayanasamy had taken the plaintiff in adoption and the adoption had taken place in the temple and the abovesaid facts had been clearly spelt out by PW2 Ponnambalam and PW3 Parvathi. Furthermore, as rightly determined by the Courts below, PW2 & PW3 are found to be related to Narayanasamy as well as the first defendant and accordingly, they are competent to depose about the factum of the adoption of the plaintiff by the deceased Narayanasamy and as abovenoted, for sustaining the factum of adoption, the plaintiff has produced the deed of adoption, which had been executed by Narayanasamy and the first defendant dated 12.09.1997 marked as Ex.A1. Though it has been put forth that the plaintiff's parents had not signed in Ex.A1 deed, however, as rightly found by the Courts below, considering the fact that Ex.A1 deed had come to be executed, after the demise of the plaintiff's natural parents, it is found that there had been no opportunity of the plaintiff's parents putting their signatures in the abovesaid document. The abovesaid document had come to be executed, after the demise of the plaintiff's natural parents as could be seen from the recitals contained therein. Therefore, merely because, the plaintiff's parents had not signed in Ex.A1, on that ground, the abovesaid document cannot be held to be an invalid document. In fact, the attessor to the abovesaid document Parvathi examined as PW3 has clearly spoken about the attestation of her husband and others in Ex.A1 and also deposed about the signing of the said document by Narayanasamy as well as the first defendant. Furthermore, the scribe of Ex.A1 viz., Ramachandran has been examined as PW4 and he has clearly spoken about the execution of the abovesaid document by Narayanasamy and the first defendant in the presence of the witnesses and the attestation of the same by the witnesses and the scribing of the said document on his part and furthermore, the first defendant, during the course of her evidence also, having admitted that her husband and she and the witnesses had signed in the document Ex.A1 and when the presence of PW3 has also been admitted by the first defendant, it is found that inasmuch as the plaintiff had been taken in adoption by Narayanasamy, when he was three years old and subsequently, in recognition of the same, Narayanasamy and the first defendant had chosen to execute the document Ex.A1 pertaining to the same and therefore, in the light of the evidence adduced by PWs 1 to 4 and DW1 also, the Courts below are justified in accepting the plea of the plaintiff that he had been taken in adoption by the deceased Narayanasamy.



11.To establish that he had been treated as the adopted son of Narayanasamy, the plaintiff had also marked his engagement card as Ex.A7, wherein, the factum that the plaintiff had been taken in adoption by Narayanasamy has been clearly set out therein. Therefore, Ex.A7 also buttresses the case of the plaintiff that he has been taken in adoption by the deceased Narayanasamy. The witness Pondurangan DW2 examined on behalf of the first defendant is also a signatory to Ex.A7. DW2 has admitted that he has also attended the engagement function of the plaintiff and the engagement card had been written and though at the first instance, he would deny his signature found in the engagement card, later he had also accepted signing in the same. Therefore, considering the evidence of DW2 as well as the engagement card marked as Ex.A7, in toto, it is found that the factum of adoption of the plaintiff by Narayanasamy is a true one. Furthermore, the first defendant has also admitted that the plaintiff's wife is Dhatchayini and also admitted that her husband Narayanasamy and DW2 Pondurangan had signed in the engagement card and therefore, when the first defendant herself has admitted the execution of Ex.A7 and considering the evidence of DW2, when he has also admitted the execution of Ex.A7 and when in Ex.A7, the plaintiff has been described as the adopted son of Narayanasamy and acknowledged by Narayanasamy himself by signing the said document, in addition to Ex.A1, it is found that Ex.A7 also buttresses the plaintiff's case as determined by the Courts below.

12.The marriage invitation card of the plaintiff has been marked as Ex.A2 and in Ex.A2 also, the plaintiff has been described as the adopted son of Narayanasamy. Furthermore, the photo marked as Ex.A6 shows the presence of the first defendant in the said photo and inasmuch as the plaintiff is the adopted son of Narayanasamy and the first defendant, it is found that the first defendant had also participated in the marriage function of the plaintiff and the abovesaid document also, as determined by the Courts below, supports the plaintiff's case.

13.The legal heir certificate marked as Ex.A4 also described the plaintiff as one of the legal heirs of the deceased Narayanasamy as his adopted son and therefore, the factum of the adoption of the plaintiff by Narayanasamy could also be gathered from the legal heir certificate marked as Ex.A4. The Voters list marked as Ex.A5 also go to establish that Narayanasamy, the first defendant and the plaintiff had been residing together and the Courts below are justified in placing reliance upon the voters list for accepting the plaintiff case. In addition to that, when it is found that during the vigilance enquiry, Narayanasamy himself had admitted that he had taken the plaintiff in adoption and the same could be gathered from the evidence of PW5 as well as the letter written by Narayanasamy



marked as Ex.X1 and when in the said letter, Narayanasamy had averred that the plaintiff had been residing along with him as the adopted son, in all, as contended by the plaintiff from the abovesaid documents, in toto, it could be seen that the plaintiff had been residing with Narayanasamy as his adopted son and accordingly, all along the plaintiff had been recognised by Narayanasamy as well as the first defendant as the adopted son and necessary recitals pointing to the same are recorded in the abovesaid documents. Therefore, it is evident that the plaintiff has placed acceptable proof to sustain his claim of adoption by Narayanasamy.

14.The only document relied upon by the first defendant is the cancellation deed marked as Ex.B7. Even in Ex.B7, the factum of adoption of the plaintiff by Narayanasamy has not been denied. Ex.B7 recites, as if inasmuch as the plaintiff had not endeavoured to come and stay with the family, the deed of cancellation has been effected by the first defendant. Therefore, as determined by the Courts below, when the first defendant herself has admitted the factum of adoption of the plaintiff by Narayanasamy and would only contend that she had been necessitated to cancel the adoption on the footing that the plaintiff had not proceeded to stay with the family of his adoptive father and on the other hand, when the documents projected by the plaintiff as above discussed go to point out that the plaintiff had been residing with the adoptive father and recognised as the adopted son by the adoptive father, in such view of the matter, the claim of the first defendant that she had cancelled the adoption of the plaintiff by way of Ex.B7 deed, as such, cannot be accepted. When the plaintiff is found to have been taken in adoption validly by the deceased Narayanasamy and recognising the same, the deed of adoption had also been executed by Narayanasamy as well as the first defendant marked as Ex.A1 and when furthermore, the plaintiff is found to be treated and recognised as the adopted son thereafter, the first defendant would not be competent to cancel the factum of adoption i.e. the adoption made by Narayanasamy as per law and therefore, as determined by the Courts below, the deed of cancellation marked as Ex.B7 would not have any valid force and on that basis, the first defendant would not be entitled to challenge the entitlement of the plaintiff to be also the legal heir of Narayanasamy.

15.In the light of the abovesaid factors, the plaintiff is also found to be one of the legal heirs of Narayanasamy as determined by the Courts below and the plaintiff is also found entitled to receive the benefits from the Neyveli Lignite Corporation pertaining to Narayanasamy as determined by the Courts below and in such view of the matter, I do not find any valid reason to interfere with the abovesaid reasonings and



conclusions of the Courts below for upholding the plaintiff's case.

16. In the light of the abovesaid discussions, it is found that the determination of the Courts below that the plaintiff is the adopted son of the deceased Narayanasamy is based on the proper appreciation of the materials placed on record and the principles of law governing the adoption and the substantial question of law formulated in the second appeal, is, accordingly answered in favour of the plaintiff and against the the first defendant.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms

To

1. The II Additional Subordinate Court, Villupuram.
2. The Principal District Munsif Court, Ulunturpet.

Copy To
The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.44577
+1cc to Mr.N.Nithyanandam, Advocate, S.R.No.44871

S.A.No.1503 of 2007

NRJK(CO)
CS/17/10/2019