

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1220 of 2010

1.Subramani

2.Muchaliammal Appellants/Respondents/Defendants

versus

1. B.Nagarajan (Deceased)

2. Kamala @ Kamalammal

3. Dr.Saravanan

4. N.Vijaya

(R2 to R4 brought on record as
legal representatives of the
deceased sole respondent vide
order of Court dated 07.01.2019
in C.M.P.No.14424 of 2016
in S.A.No.1220 of 2010 (NSSJ))

... Respondents/ Appellants/Plaintiffs

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the Judgment and Decree dated 20.07.2007 made in A.S.No.2 of 2005 on the file of the Principal Subordinate Judge, Krishnagiri reversing the Judgment and Decree dated 25.11.2004 made in O.S.No.50 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai.

For Appellants : Mr.Mukunth

For Respondents: Mr.D.Shivakumaran [R2 to R4]

JUDGMENT

The suit is laid in this case to injunct the defendants that the latter shall not call the former as father nor use his status as such.

2. The facts are narrated in detail by ordering C.M.P.No.14424 of 2016 and to avoid duplication to convert this Court verbatim reproduce the same factually narrates:

- The plaintiff when he was about 16 years, stated to have been forced into a marriage with the second defendant on 04.06.1961. As he was only 16 years at that relevant time and was not prepared for the marriage, he broke away from the matrimony on the very date of marriage and never joined the second defendant. The case of the plaintiff is that in the meantime, the second defendant developed some intimacy with some other person/persons, through which she has been given birth to the first defendant/first appellant herein.
- While so, the plaintiff has filed a petition in O.P.No.410 of 1964 before the Sub Court, Salem, for dissolution of his marriage with the second defendant, but that came to be dismissed for default. Thereafter, the plaintiff laid another petition in O.P.No.7/1969 for dissolution of marriage against the second defendant. After trial, the trial Court dismissed the petition. Challenging the same, the plaintiff has laid an appeal in AAO.No.93 of 1971 before this Court. During the pendency of this appeal, the second defendant is alleged to have conceived the first defendant and consequently, this Appellate Court Vide its judgment dated 15.02.1973, had remanded the matter back to the trial Court to ascertain the paternity of the first defendant and also for amending the pleadings suitably.
- On remand, the pleadings were suitably amended by the plaintiff, accusing the second defendant of leading an adulterous life, whereupon the trial Court entered a finding Vide its judgment dated 27.09.1974, that the plaintiff was not responsible for second defendant's conception and accordingly allowed the petition in O.P.No.7/69 filed by the plaintiff, and dissolved the marriage of the plaintiff with the second defendant, on the ground of latter's adultery.
- The second defendant would then took this matter in an appeal in AAO.No.659/74 before this Court and this Court Vide its judgment dated 12.08.1975, allowed this appeal.
- Challenging the same, the plaintiff preferred

LPA.No.101/75 and Vide its judgment 27.02.1979, this Court has concurred with the findings of the trial Court and allowed this appeal filed by the plaintiff.

- However, sometime in 1997, the first defendant began to claim paternity to the plaintiff, and started printing his marriage invitation cards, citing plaintiff as his father.

Hence, the plaintiff has laid the present suit in O.S.No.50/1997 for bare injunction that the first defendant shall not call him as his son.

3. The trial Court dismissed the suit on 25.11.2004, on the ground that the suit is barred by limitation, whereas the first Appellate Court in A.S.No.2 of 2005, has decreed the suit on the basis of the judgment in LPA.No.101/75, referred to above.

4. Challenging the same, the first defendant and his mother, the second defendant have come forward with this appeal.

5. At the time of admission, the following substantial questions of law were framed:

'a) Whether a suit for bare injunction without the relief of declaration is maintainable?

b) Whether the lower appellate court is correct in law in relying on the obiter passed in an earlier proceedings in which the 1st appellant is not a party and in which the 1st appellant was not called upon to prove his paternity?

c) Is not the suit in so far as the first portion of the relief barred by limitation?'

6. The moot point addressed by the rival counsel is whether the judgment of this Court dated 27.02.1979 in L.P.A.No.101 of 1975, a copy of which is available on record as Ext.A4, declares the status of the 2nd defendant and his relationship to the plaintiff. This Court went through the entire judgment in Ext.A4 and is satisfied that the Court has stated the 1st defendant was not born to the plaintiff through 2nd defendant. In fact, the earlier matrimonial litigation itself is rooted where the very birth of the 1st defendant was a testimony of 2nd defendant's adulterous life. This having been concluded, there cannot be an independent finding on the same.

7. In conclusion, this Court does not find any relevant substantial questions of law and therefore, this Second Appeal is dismissed and the Judgment and Decree dated 20.07.2007 made

in A.S.No.2 of 2005 on the file of the Principal Subordinate Judge, Krishnagiri reversing the Judgment and Decree dated 25.11.2004 made in O.S.No.50 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai are confirmed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Principal Subordinate Judge,
Krishnagiri.
2. The District Munsif cum Judicial Magistrate Court,
Uthangarai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Sarvabhauman Associates, Advocate SR.No.7071

+1cc to Mr.D.Shivakumaran, Advocate SR.No.6911

S.A.No.1220 of 2010

SSV(CO)
GMY(13/09/2019)

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