

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4052 of 2013

1. Suseela (died)
2. S.Mohan Kumar

... Petitioner/plaintiff

Vs.

1. Ranjithammal
2. Malliga
3. Murugesan (died)
4. Madhialagan
5. Prabakaran
6. Phoopalan
7. Suseela
8. Alex Pandian
9. Vanaja
10. Tamilselvi
11. Ranjithammal

... Respondents/defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the order dated 02.03.2012 made in I.A.No.22 of 2011 in O.S.No.164 of 2008 on the file of the learned Subordinate Judge, Thiruvallure and allow the above I.A.No.22 of 2011 in O.S.No.164 of 2008 on the file of the learned Subordinate Judge, Thiruvallur.

For Petitioner : M/s.V.Perumal

For RR1,2,4,6 & 8 to 10 : M/s.R.Selvakumar

For R3 : Died
For RR5,7 & 11 : No appearance

ORDER

This Civil Revision Petition has been filed as against the order dated 02.03.2012 made in I.A.No.22 of 2011 in O.S.No.164 of 2008, made by the learned Subordinate Judge, Thiruvallure, in dismissing the application filed by the revision petitioner, impleading the second plaintiff the adopted son of the first plaintiff, who died pending trial.

2. The suit in O.S.No.164 of 2008, was originally filed by the first plaintiff seeking declaration, as against the defendants. Pending trial, the first plaintiff died on 12.11.2010. It is the admitted the case of the parties that the first plaintiff had no issue. At this juncture, the revision petitioner claiming to be the adoption son filed an application to implead himself to continue the suit. The above application was resisted by the respondents on the ground that adoption is not valid and the petition is not valid and the petitioner cannot be brought on record as plaintiff before the trial Court. On the side of the plaintiff, he examined himself as P.W.1 and one Dharmalingam was examined as P.W.2 and exhibits Ex.P1 to Ex.P3 were marked. The trial Court however, dismissed the application on the ground that the adopted child should have an intention to live as the own child of his or her adoptive mother. However, the

adoption is not proved and non-suited the revision petitioner, as against which the present Civil Revision Petition has been filed.

3. Heard Mr.V.Perumal, the learned counsel appearing for the revision petitioner and Mr.R.Selva Kumar, learned counsel appearing for the respondents 1, 2, 4,6 & 8 to 10.

4. It is the contention of the learned counsel appearing for the revision petitioner, that the trial Court had in fact disputed the Adoption Deed and dismissed the application which is against law. The presumption applicable to the registered Adoption Deed and is not taken note of by the trial Court. In fact, the trial Court gone to the merits of the Adoption Deed and such approach of the trial Court is not based on proper procedure. Hence, submitted that the order of the trial Court requires interference.

5. Whereas the learned counsel appearing for the respondents submitted that the trial Court analysed the evidence recorded during the above application and come to the conclusion that adoption was not applicable. Hence, submitted that the order of the trial Court does not require any interference.

5. I have perused the entire order of the trial court.

6. Admittedly, it is not in dispute that the suit has been laid by the sole plaintiff for declaratory relief. She is died in the year 2010. Pending suit, the revision petitioner filed an application and has come on record as legal representatives on the basis of Ex.P1 Adoption Deed dated 28.12.1978 and he has also produced the Legal Heir Certificate issued by the Tahsildar Ex.P2 and Death Certificate of the adoptive father is Ex.P3 and also examined two witnesses on his side.

6. It is curious to note that it is an admitted fact, that the plaintiff died without having any issues. At that time for petitioner Mohan Kumar, filed an application to come as second plaintiff legal Representative as adoptive son. When such application was filed, the Court has to decide whether the party is Legal Representative or not. The enquiry at that stage will limited to find out whether the person is a Legal Representative of not. The Court cannot go beyond the scope of Order 22 Rule 5 C.P.C., whereas the court below had gone to the issue of validity of adoption. Whether the adoption is validly given or not is the matter of evidence. The validity of the adoption is not an issue in the application.

7. Admittedly, the registered Adoption Deed is filed and there is a statutory presumption available in such registered deed under Section 16 of the Hindu Adoptions and Maintenance Act 1956. Therefore, the Court cannot substitute its own findings so as to nullify adoption as long as the statutory presumption available to such document. Interlocutory application stage, the Court cannot come to the conclusion, that such adoption is not valid. Whether the presumption available to such registered document is rebutted or not is a matter of evidence. Therefore, as long as the legal presumption to the Registered Deed is very much available, the adopted son continues to be the Legal Representative.

8. Hence, I am of the view that the order of the trial Court requires interference. The trial Court substituted its own conclusions to nullify the valid registered document proof of the adoption and its validity is a matter of evidence during trial. Hence, the order of the trial Court dismissing the application is to be set aside and impleading petition filed in the suit is to be allowed.

9. With the above observations, this Civil Revision Petition is disposed of and the revision petitioner is directed to make necessary amendment and file an amended plaint copy. Thereafter, it is open to the

N.SATHISH KUMAR, J.

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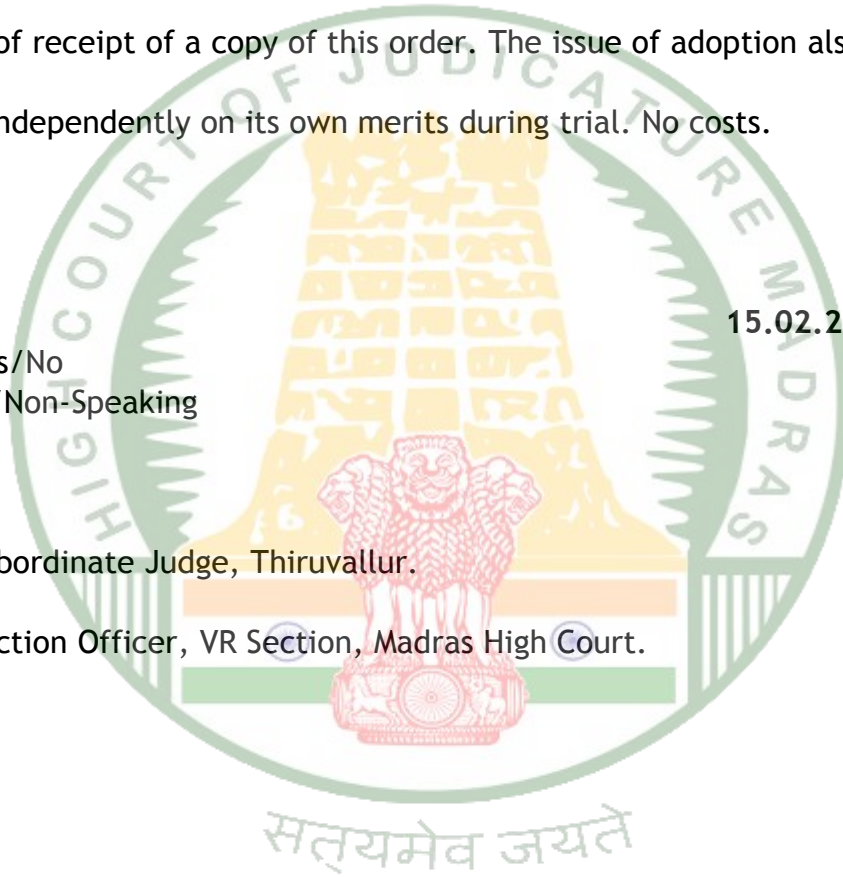
defendants to file an additional written statement if any, questioning the adoption and the trial Court shall dispose of the suit within six months from the date of receipt of a copy of this order. The issue of adoption also has to be decided independently on its own merits during trial. No costs.

15.02.2019

Index: Yes/No
Speaking/Non-Speaking
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To

1. The Subordinate Judge, Thiruvallur.
2. The Section Officer, VR Section, Madras High Court.



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