

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.328 of 2016

Gurusamy

..Appellant/Plaintiff

Versus

1.A.K.Raja

2.The State of Tamil Nadu,
Rep. by its District Collector,
Erode District,
Erode.

3.The Tahsildar,
Bhavani,
Erode District.

..Respondents/Defendants 3,1 & 2

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.08.2009 made in A.S.No.7 of 2008 on the file of Sub Court, Bhavani, Erode District reversal of the judgment and decree dated 29.11.2007 made in O.S.No.248 of 2006, on the file of Principal District Munsif Court, Bhavani, Erode District

For Appellant : Mr.N.Manokaran

For Respondents: Mr.P.Muth Kumarasamy for R1

Mrs.A.Madhumathi
Additional Governance Pleader (CS) for
R2 & R3

JUDGMENT

The appellant is the plaintiff in O.S.No.248 of 2006 and the suit was filed to declare him as the only legal-heir of the deceased Kaliyannan and for mandatory injunction, directing the defendants to issue legal-heir certificate in favour of the plaintiff.

2. According to the plaintiff, he is the only son of his parents Kaliannan and Parvathi. His father died on 11.10.1986 while his mother passed away in the year 1991. The first respondent herein, as third defendant in the suit resisted the claim, by contending that the plaintiff is not the legal-heir of the said Kaliannan and he died leaving behind his only son Krishnan and the third defendant is the son of said Krishnan.

3. On the basis of the above pleading, the trial Court framed necessary issues. The plaintiff examined himself as P.W.1 and examined one Sugadevan as P.W.2 and marked Ex.A1-letter issued by the Tahsildar, dated 10.12.2005 and the death certificate of the said Kaliannan as Ex.A2. On the side of the defendant, 5 witnesses were examined and Exs.B1 to B10 were marked.

4. The trial Court having come to the conclusion that the third defendant has not established his case, held that the plaintiff is the sole legal-heir of the said Kaliannan and Parvathi. The appellate Court, reversed the finding of the trial Court on the ground that no document was produced by the appellant / plaintiff to prove that he is the sole legal-heir of Kaliannan.

5. This appeal was admitted on the following substantial questions of law:-

"(i) Whether the First Appellate Court erred in law in dismissing the suit on the ground that the plaintiff has not marked ration card, voters list, etc., to prove his claim as the son of Kaliannan particularly when the suit itself was filed only to declare his status as the son of Kaliannan?

(ii) Having disbelieved the claim of the third defendant on the basis of the genealogy produced by him, whether the First Appellate Court is right in dismissing the suit filed by the plaintiff?"

6. Mr.N.Manoharan, learned counsel for the appellant would vehemently contend that the appellate Court ought not to have reversed the finding of the trial Court and non-suited the plaintiff on the ground that the plaintiff / appellant has not produced ration card, voters list etc., to prove his claim. It is also contended that the appellate Court has also disbelieved the genealogy produced by the first respondent / third defendant.

7. Per contra Mrs.A.Madhumathi, learned Additional Government Pleader (CS) appearing for the respondents 2 and 3

would submit that the plaintiff, who claims for a declaratory relief, failed to produce a piece of evidence to show that he is the only legal-heir of Kaliannan. It is further submitted that the first appellate Court, after considering the entire evidence, rightly allowed the appeal and the finding of the appellate Court need not be interfered with.

8. Mr.P.Muthu Kumarasamy, learned counsel for the first respondent made submissions in support of the finding of the appellate Court.

9. Heard the rival submissions and perused the materials available on record.

10. In the case on hand, a perusal of the records would reveal that the plaintiff except examining P.W.2, has not produced any documents to establish that he is the legal-heir of the said Kaliannan. On the date of suit, the plaintiff was aged about 55 years, if the plaintiff is a legal-heir, as claimed by him, he should have produced relevant materials to prove his case. It is settled law that the plaintiff, who comes to the Court has to prove his case and he is not entitled to take advantage of some loopholes in the case of the defendants.

11. In my view, the first appellate Court, has rightly disbelieved the case of the plaintiff and dismissed the appeal. Hence, I find no illegality or irregularity in the judgment of the first appellate Court. In such view of the matter, the questions of law are answered against the appellant and the Second Appeal is dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s
To

1. The Subordinate Judge
Bhavani,
2. The Principal District Munsif
Bhavani.

+1 CC to Mr.N.Manoharan, Advocate sr 103786
+1 CC to Additional Govt. Pleader(CS) sr 103508.

S.A.No.328 of 2016

NRJK (CO)
SP (31/08/2020)