

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

A.S.No. 329 of 2017

1.P.Kanthasamy Gounder
2.Saraswathi Appellants/ Defendants

Vs.

1.Asha
2.Minor Kasthuri
rep. by mother and guardian R1 Respondents/Plaintiff

PRAYER : Appeal filed under Section 96 of Civil Procedure Code r/w Section 19 of Family Court Act, 1984 against the judgment and decree dated 23.09.2016 passed in O.S.No.22 of 2011 on the file of Principal Family Court, Coimbatore.

For Appellants : Mr.R.Kannan

For Respondents : Mr.V.Sivakumar

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

The appellants, who suffered decree for maintenance along with charge, seeks to set aside the same through this appeal.

2. The respondents filed the suit for maintenance along with charge against the appellants on the premise that the first respondent is the legally wedded wife of one Sivakumar @ Kumar, who is incidentally the son of the appellants, since deceased. According to the respondents, out of the wedlock, the second respondent was born.

3. The first respondent examined herself as P.W.1 and marked Exs.A1 to A15. Ex.A1 is the photocopy of the marriage between the first respondent and Sivakumar @ Kumar. Ex.A2 is the photocopy of the birth certificate of the second respondent dated 20.09.2000. Ex.A6 is the copy of the petition received by the All Women Police Station, Coimbatore dated 08.12.2006. Ex.A7 is the another copy of the petition received by the said police station dated 14.08.2007. Ex.A8 is the photocopy of the savings account in the name of the first respondent. This account was opened and money was deposited by the first appellant. Ex.A11 is the photocopy of the petition filed by the first respondent in H.M.O.P.No.717/2008 against the deceased husband. Exs.A12 and A13 are the Aadhar Cards standing in the name of first and second plaintiffs, which indicate the name of the respondent as that of the son of the appellants. Ex.A15 is the photocopy of the death certificate of the deceased husband of the first respondent, who is the son of the appellants.

4. On behalf of the appellants, sale deed, partition deed, discharge summary of the first plaintiff and copy of the birth certificate of the second plaintiff have been marked.

5. The trial Court, framed the following issues:-

- "1.Whether the 1st plaintiff is wife of deceased Sivakumar?
- 2.Whether the 2nd plaintiff is daughter of deceased Sivakumar born to 1st plaintiff?
- 3.Whether the suit property was purchased in the names of the defendants out of ancestral nucleus?
- 4.Whether the suit property is self acquired property of defendants?
- 5.Whether the plaintiffs are entitled for maintenance?
- 6.Whether the suit property is liable to create charge?
- 7.For what relief the plaintiffs are entitled?"

6. The trial Court, was pleased to hold that Exs.A1 and A2 would clearly show the factum of marriage and evidence of the second respondent born out of the said wedlock. The authentication of Ex.A15 which is the death certificate of the deceased Sivakumar @ Kumar was also taken note of. The Trial Court, further took into consideration Exs.A6 and A7 which are the complaints given by the first respondent/first plaintiff against the deceased husband. These two documents have not been seriously questioned by the appellants as recorded by the trial Court.

7. The trial Court after taking note of the aforesaid documents, including the petition filed for restitution of conjugal rights has further held that the properties are joint family properties augmenting income. The evidence adduced on behalf of the appellants with respect to Exs.B3 and B4 was not accepted by holding that the statement of D.W.2 and D.W.3 are not trustworthy. In fact, D.W.2 has stated that she did not know much about Ex.B3. D.W.3 has also admitted that the birth of the child at Government Hospital will have to come under old Ward No.51. Furthermore, D.W.2 was not clear as to whether Ex.B3 was issued by R.K.Bai Hospital. Thus, the trial Court accepted Ex.A2 which says that the second plaintiff was born at the Government Hospital. Accordingly, the suit has been decreed.

8. The learned counsel appearing for the appellants would submit that the factum of marriage has not been proved. The first respondent was married to some other third party. Even otherwise, there was no legal obligation on the part of the appellants to pay the maintenance, the properties are self-acquired properties of the appellants. The trial Court has not considered these aspects in the right perspective and, therefore, the appeal will have to be allowed.

9. The learned counsel appearing for the respondents would submit that the trial Court considered the entire materials available on record. The trial Court, declined to accept the evidence of the appellants along with the documents produced particularly, the evidence of D.W.2 and D.W.3 have not been accepted to prove the factum of Ex.B3 and Ex.B4. Thus, the appeal will have to be dismissed.

10. The first respondent belongs to the Scheduled Caste community. According to her, she married the deceased - Sivakumar @ Kumar, who was incidentally the sons of the appellants. Admittedly, the first respondent is an illiterate lady. However, to substantiate her case, she has produced numerous documents. As stated, these documents would clearly show the factum of marriage, birth of the second respondent and the dispute arose between herself and the deceased - Sivakumar @ Kumar. This could be seen from the complaint given by her to the police station. She has also filed a petition for restitution of conjugal rights. The Aadhar cards have also been marked. Therefore, there are voluminous particulars available to substantiate the factum of marriage and the birth of the second respondent born out of the said relationship. Though the appellants have contended that the first respondent was married to somebody, the evidence shown was not satisfactory, as rightly pointed out by the trial Court. The evidence of D.Ws 3 and 4 eschewed Exs.B3 and B4 as against Exs.A1 to A15. A specific

finding has been given by the trial Court on Ex.A8 that the bank account was opened in the name of the first respondent/first plaintiff by way of compromise pursuant to the complaint given by her. Thus, it cannot be accepted as submitted by the learned counsel appearing for the appellants.

11. The contention regarding the liability and the nature of the property also cannot be countenanced. Admittedly, the first appellant is the father of the deceased - Sivakumar @ Kumar. Therefore, it is for him to substantiate that the properties are self acquired. He has not discharged the onus. There is specific averment that the properties are self-acquired properties and the income being augmented from them. The trial Court, has rightly considered this aspect. Thus, we are inclined to reiterate that the issues have been rightly answered by the trial Court.

12. In such view of the matter, the appeal stands dismissed. No costs. Consequently, connected C.M.P.No.12538 of 2017 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssm
To

The Principal Judge,
Family Court,
Coimbatore.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.V.Sivakumar , Advocate SR.No. 105142

+1cc to Mr.V.R.Kannan , Advocate SR.No. 105539

A.S.No. 329 of 2017

Pvs

A.SK(22/09/2020)

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