



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD) .No.746 of 2016

and

C.M.P. (MD) No.11870 of 2016

WEB COPY

S.Karuppaiah

..Appellant/Appellant/Plaintiff

Vs.

Alagammai (died)

1.Muthaiah @ Mani

2.Valliammai @ Santhanavalli

3.Thendral @ Ulagammai

4.Minor Ulagamayee @ Subalatha

Minor represented by her mother

and next friend 2nd respondent

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

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree dated 31.08.2016 in A.S.No.7 of 2015 on the file of the Principal District Judge, Pudukkottai, confirming the decree and judgment dated 27.08.2015 in O.S.No.61 of 2010 on the file of Subordinate Judge, Pudukkottai.

For Appellant	: Mrs.N.Krishnaveni senior counsel for Mr.P.Thiagarajan
For R1	: Mr.K.Baalasundharam
For R2 to R4	: Mr.N.Balakrishnan

JUDGMENT

The plaintiff in O.S.No.61 of 2010, who failed before the Courts below in her attempt to obtain a declaration that the first defendant is not the legally wedded second wife, the second defendant and his deceased brother, Ulagappan, are not the legitimate sons of their father Subbaiah and a declaration that she is the absolute owner of the 4th Item of suit property, has come up with this appeal.

2.The case of the plaintiff is that the suit property originally belonged to the joint family consisting of the plaintiff, his heirs and his father Subbaiah. The said Subbaiah had married the mother of the plaintiff, Lakshmi and through her, the plaintiff and one Meenal, were born. The said Meenal predeceased Subbaiah without any issue.

3.It is averred in the plaint that the said Subbaiah had a illegitimate relationship with the first defendant in the present suit and through such acquaintance, the second defendant, namely, Muthaiah @ Mani and one Ulagappan were born. The said Ulagappan died leaving behind the defendants 3 to 5. Claiming that the first defendant, Alagammai was never married to Subbaiah and it was only a



illegitimate relationship, the plaintiff would seek declaratory reliefs as stated above.

4.It is also averred in the plaint that the plaintiff filed a suit in O.S.No.223 of 1989 seeking partition and separate possession of half share in the suit properties, which were described as A, B, C, D and E schedules. In the said suit, both the second defendant herein and Ulagappan were made parties apart from Subbaiah.

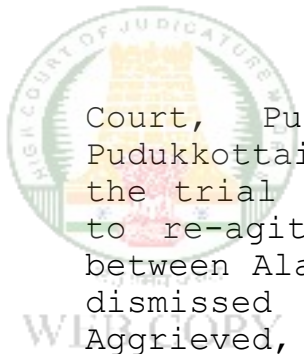
5.Subbiah resisted the said suit contending that only the suit A and B schedule properties were the ancestral properties and the suit C, D and E schedule properties were purchased by him out of his employment and therefore, the plaintiff cannot claim a share in the said properties.

6.According to the plaintiff, though no issues were framed regarding the marriage between Alagammai and Subbaiah, the Courts below while deciding entitlement of the plaintiff to partition, went into the question and held that there was a valid second marriage between Alagammai and Subbaiah and as such the defendants 2 and 3 in the said suit are the legitimate children of Subbaiah. On the said finding, the trial Court granted a decree declaring the plaintiffs 1/4th share in the suit A, B and C schedule properties. The said suit was dismissed in respect of D and E schedule properties. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.63 of 1992 on the file of this Court. The said appeal came to be dismissed on 28.04.2006.

7.This Court during the course of its judgment has recorded specific finding that there was a valid marriage between Subbaiah and Alagammai. There was no further challenge to the said judgment of this Court made in A.S.No.63 of 1992. After the disposal of the said appeal, the plaintiff has now come up with the present suit seeking declaration that the first defendant is not legally wedded wife of the second defendant and the predecessor in interest of defendants 3 to 5 are not the legitimate children of Subbaiah.

8.The present suit was resisted by the defendants contending that in the earlier proceedings, the marriage between Subbaiah and Alagammai has been held to be valid. Therefore, the plaintiff cannot seek to reopen the said issue and claim that Alagammai was not the legally wedded wife of Subbaiah and that the second defendant and the predecessor in interest of defendants 3 to 5 are not the legitimate children of Subbaiah.

9.The trial Court on a consideration of the evidence on record concluded that the finding relating to the marriage between Alagammai and Subbaiah in O.S.No.223 of 1989 would definitely operate as resjudicata in the present suit. On the said finding, the suit was dismissed. Aggrieved, the plaintiff preferred an appeal in A.S.No.7 of 2015 on the file of the Principal District



Court, Pudukkottai. The learned Principal District Judge, Pudukkottai, who heard the appeal, concurred with the findings of the trial Court and concluded that the plaintiff cannot be allowed to re-agitate the issue regarding the validity of the marriage between Alagammai and Subbaiah. Consequently, the appeal itself was dismissed confirming the judgment and decree of the trial Court. Aggrieved, the plaintiff has come up with this appeal.

10. Heard Mrs.N.Krishnaveni, learned senior counsel appearing for Mr.P.Thiagarajan, learned counsel for the appellant.

11. Mrs.N.Krishnaveni, learned senior counsel would vehemently contend that the validity of the marriage between Subbaiah and Alagammai was not tested in the backdrop of Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 in the earlier proceedings. She would further contend that there is no finding regarding the actual date of marriage and both the Courts below in the earlier proceedings have come to the conclusion that the marriage that taken place prior to 1955 could not be termed as invalid marriage. According to her, the fact that the date of marriage was not established, would render the findings in O.S.No.223 of 1989 and the appeal therefrom in A.S.No.63 of 1992 subject to challenge. Therefore, according to her, the above findings cannot operate as resjudicata.

12. Notice of motion was ordered by this Court on 09.12.2016 and upon notice, Mr.K.Balasundaram has entered appearance for the first respondent and Mr.N.Balakrishnan, has entered appearance for the respondents 2 to 5.

13. I have considered the rival submissions of learned counsel for the parties.

14. The only question that arises is as to whether the Courts below were right in concluding that the finding in O.S.No.223 of 1989 and the appeal therefrom in A.S.No.63 of 1992 would operate as resjudicata so as to prevent the plaintiff from re-agitating the question of validity of the marriage between Subbaiah and Alagammai in the present proceedings.

15. The judgment of the trial Court in O.S.No.223 of 1989 has been marked as Ex.A1 and the judgment of this Court has been marked as Ex.B1.

16. On a perusal of those judgments would go to show that the validity of the marriage between Subbaiah and Alagammai was put in issue, since the plaintiff had specifically pleaded that there was no marriage between Subbaiah and Alagammai and as such, the first defendant in the suit namely, Muthaiah @ Mani and the deceased Ulagappan are not legitimate children and therefore, she is entitled to the suit property.



17.This claim was resisted by Subbaiah contending that he had married Alagammai in 1947 with the consent of his first wife, namely, Lakshmi and therefore, the son born to Alagammai are also coparceners along with him and as such the plaintiff is entitled only to 1/4th share and not 1/2 share claimed by her in the ancestral properties. This plea of Subbaiah was accepted by the trial Court in O.S.No.223 of 1989. Merely because, the date of the marriage was not specifically proved the same cannot be presumed to be would not be hit by the provisions of Madras Hindu (Bigamy Prevention and Divorce) Act, 1949. It cannot be stated that the findings regarding the validity of the marriage would loose significance or stand effaced. In fact both the Courts in the earlier round of litigation had accepted the case set up by Subbaiah that he had married Alagammai in the year 1947 with the consent of his first wife, Lakshmi.

18.Mrs.N.Krishnaveni, the learned senior counsel appearing for the appellant would contend that the finding is based on no evidence. I don't think it is open to the plaintiff, who had obtained a decree for partition of 1/4th share on the finding that both Muthaiah @ Mani and Ulagappan are also coparceners along with the plaintiff and Subbaiah, cannot now seek to reagitate the same and contend that there was no valid marriage between Subbaiah and Alagammai. The finding regarding the marriage between Subbaiah and Alagammai and the status of Muthaiah @ Mani and Ulagappan would definitely operate as resjudicata in the present proceedings, wherein, the plaintiff seeks a declaratory relief regarding their status. I am therefore unable to countenance the submission of the learned senior counsel appearing for the appellant to the effect that since the validity of the marriage was not tested in the backdrop in the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949, the finding would not operate as resjudicata in the present suit. Both the Courts below have analyzed the evidence in proper perspective and have come to the conclusion that the present claim is barred by resjudicata. I don't find any question of law much less a substantial question of law enabling me to entertain this second appeal.

19.This Second Appeal is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



To

1.The Principal District Judge,
Pudukkottai.

2.The Subordinate Judge,
Pudukkottai.

+1 CC to M/s.M/S.K.BAALASUNDHARAM, Advocate (SR-105204[F]

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-105281[F]

+1 CC to M/s.N.BALAJRISHNAN, Advocate (SR-105259[F]

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