

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

A.S.No.54 of 2013

and

M.P.No.1 of 2013

Baskaran

.. Appellant/Defendant

Versus

1.Mathialagan

2.Raji

3.Murali

4.Jayasimman

.. Respondents/Plaintiff and Defendant 2 to 4

First Appeal filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.17 of 2010 dated 13.12.2011 on the file of the District Court, Nagapattinam.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.Srinath Sridevan for R1
R2 & R4 - Not ready
R3 - Exparte

JUDGMENT

This appeal is directed against the judgment and decree passed in O.S.No.17 of 2010 by the District Judge, Nagapattinam.

2. The appellant herein is the first defendant. The suit in O.S.No.17 of 2010 was filed by the first respondent seeking preliminary decree for partition of his 1/5th share in the suit properties.

3. The plaintiff and the defendants are brothers. According to the plaintiff, the first item of the suit property was allotted to his father one Kaliya Perumal vide partition deed dated 27.10.1947 and the second item was purchased by his mother. The father and mother of the plaintiff died intestate on 25.01.2008 and 31.10.2008, respectively. Hence, he is entitled for 1/5th share in the suit properties. The plaintiff demanded partition through a legal notice dated 11.03.2010. Since there was no response, the suit was filed.

4. In the written statement filed by the first defendant, it is contended that the plaintiff was given in adoption to one Kalamurthy, when he was five years old. Therefore, he is not entitled for any share in the suit

properties. It is also stated that the plaintiff is not in joint possession and enjoyment of the properties.

5. On the basis of the above pleadings, the Trial Court framed the following issues :

- (1) Whether the plaintiff is entitled for partition as prayed for ?
- (2) Whether the plaintiff was not given adoption to one Kaliyamurthy ?
- (3) Whether the plaintiff has no right to claim partition ?
- (4) To what relief ?

6. On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A.11 were marked. On the side of the defendants, D.Ws.1 to 3 were examined and Ex.B1 was marked and two other documents were marked as Exs.X1 and X2. After considering the evidence adduced by the parties, the Trial Court passed a preliminary decree, allotting 1/5th share to the plaintiff. Aggrieved over the same, the first defendant has come up with the present appeal.

7. Mr. S. Sounthar, learned counsel for the appellant would urge that the Trial Court decreed the suit without appreciating the pleadings of adoption raised by the appellant. It is the submission of the learned counsel for the appellant, to prove the adoption of the plaintiff to one Kaliyamurthy, D.Ws.1 to 3 gave cogent evidence and the documentary evidence produced by the appellant were also not properly appreciated by the Trial Court.

8. Per contra, Mr. Srinath Sridevan, learned counsel for the 1st respondent submitted that there is no proper pleadings and evidence to prove the alleged adoption. By placing reliance upon the decision of the Hon'ble Apex Court in the case of M. Vanaja Vs. M. Sarla Devi (2020 SCC Online SC 311), it is contended by the learned counsel that unless the conditions enumerated in Sections 7 and 11 of the Hindu Adoptions and Maintenance Act, 1956 are proved, it is not a valid adoption and the Trial Court rightly rejected the case of the appellant and granted a preliminary decree in favour of the plaintiff and hence no interference is required.

9. The following points arise for determination in the First Appeal:

1. Whether the defendants have proved the adoption of the plaintiff to Kalia Murthy ?
2. Whether the plaintiff has entitled for partition as prayed for ?
3. To what other reliefs ?

10. In the instant case, all the issues are taken up together for consideration. The suit was filed for partition claiming 1/5th share in the suit properties. It is not in dispute that the plaintiff and the defendants are brothers and their parents died intestate in the year 2008. It is also not

in dispute that the suit schedule first item was allotted to their father in the family partition vide partition deed dated 27.10.1947 and the second item of the property was purchased by their mother.

11. In order to prove the case of the plaintiff, partition deed dated 27.10.1947 and sale deed dated 24.02.1986 were marked as Ex.A1 and A8, respectively. It is the specific case of the plaintiff that both his parents died intestate and he is entitled for 1/5th share in the suit properties. The suit was resisted by the defendants on the sole ground that the plaintiff was given adoption to one Kalia Murthy and hence, no share can be allotted to him.

12. On perusal of the written statement, it is seen that there is no pleading with regard to the date of adoption and the ceremonies performed to prove the alleged adoption. Ex.B1 marriage invitations was relied on to show that D.W.3 is the adopted mother of the plaintiff. D.W.3 in her evidence has not given any details of the adoption of the plaintiff and in fact, she had denied such adoption as pleaded by the defendants. Ex.X1 and X2 transfer certificates of the plaintiffs, show that the plaintiff has studied in different villages.

13. The Hon'ble Apex Court in the decision referred supra has observed that two conditions as mentioned in Sections 7 and 11 of the Hindu Adoptions and Maintenance Act, 1956 are imperative to prove valid adoption. The relevant paragraphs would run thus :-

"11. Section 7 provides that the male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. The consent of his wife has been made mandatory by the proviso to Section 7. Section 9 deals with persons who are capable of giving a child in adoption. The other conditions for a valid adoption are stipulated in Section 11 of the Act of 1956. One such condition is 11 (6) which is as under :-

" 11. Other conditions for a valid adoption.

xx

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of his birth (or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up) to the family of its

adoption :

Provided that the performance of data homam shall not be essential to the validity of adoption"

12. A plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the Act of 1956 is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the Act of 1956 are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption. The Appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. That apart, the Respondent who is the adoptive mother has categorically stated in her evidence that the Appellant was never adopted though she was merely brought up by her and her husband. Even the grandmother of the Appellant who appeared before the Court as PW-3 deposed that the Appellant who lost her parents in her childhood was given to the Respondent and her husband to be brought up. PW 3 also stated in her evidence that the Appellant was not adopted by the Respondent and her husband. Therefore, the Appellant had failed to prove that she has been adopted by the Respondent and her husband Narasimhulu Naidu."

14. It is evident from the records that there is no proper pleading and the evidence let in to prove the case of the defendants. In my considered view, the decision of the Supreme Court cited by the respondent would squarely apply to the case on hand. The Trial Court on proper appreciation of evidence came to the conclusion that the defendants have not proved the adoption pleaded by them and the plaintiff is entitled for 1/5th share in the suit properties. The issues are answered accordingly.

15. In such view of the matter, the appeal is dismissed as devoid of merits. No costs. Consequently connected, miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

To

1.The District Judge,
Nagapattinam.

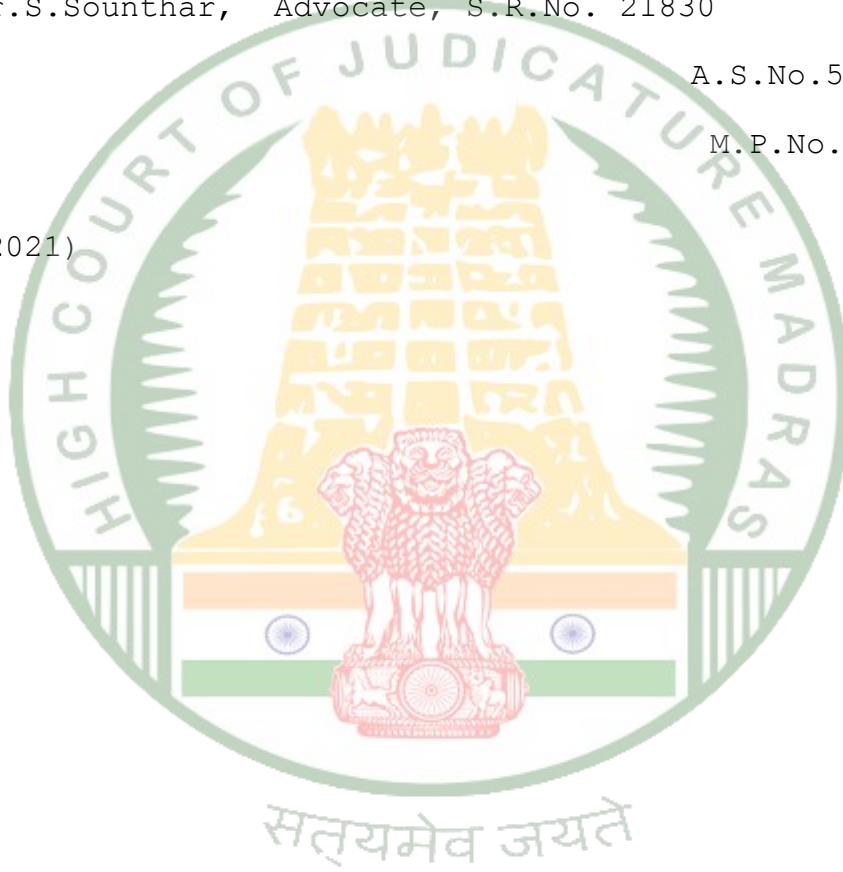
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The Section Officer,
V.R.Section,
High Court, Madras

+1cc to Mr.S.Sounthar, Advocate, S.R.No. 21830

A.S.No.54 of 2013
and
M.P.No.1 of 2013

BS (CO)
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