

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2020

Date of Verdict : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1249 of 2005
& C.M.P.No.17070 of 2005

Pappathiyammal
W/o. Govindasamy

...Appellant/Plaintiff

Vs.

1. Jothi

2. The Block Development Officer (Regular)
Panchayath Union, Alangayam,
Vellore District.

3. The Division Development Officer,
Tirupattur,
Vellore District.

4. The Thasildhar,
Taluk Office,
Vaniyambadi.

5. The State of Tamil Nadu
Rep. by The District Collector,
Vellore District,
Vellore.

...Respondents/ Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.04.2004 made in A.S.No.22 of 2003 on the file of the Subordinate Court, Tirupattur, confirming the judgment and decree dated 20.01.2003 made in O.S.No.1448 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Vaniyambadi.

For Appellant : Mr.V.Jeevagiridharan

For Respondents

R1 : Note ready in notice

For R2 to R5 : Mr.S.Jaganathan
Government Advcoate (CS)

JUDGMENT

This second appeal is directed as against the judgment and decree dated 30.04.2004 made in A.S.No.22 of 2003 on the file of the Subordinate Court, Tirupattur, confirming the judgment and decree dated 20.01.2003 made in O.S.No.1448 of 1995 on the file of the District Munsif -cum-Judicial Magistrate Court, Vaniyambadi.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration declaring that the plaintiff is the legal heir of the deceased Ponnusamy. One Ponnusamy was working in Alangayam Panchayath Union and while he was in service, died on 08.06.1989. The plaintiff is his own sister. The said Ponnusamy did not marry anybody and his parents and another brother were already died. Except the plaintiff, no other legal heir for her deceased brother Ponnusamy. While he was residing at Alangayam, he used to visit the first defendant's house. The first defendant also unmarried. Utilizing the situation, the first defendant extracted all the income from the said Ponnusamy for her family expenses. Thereafter, the said Ponnusamy fell ill and died on 08.06.1989. The plaintiff had done all his last rites of her brother.

3.2. Further the first defendant belonged to some other community and she did not get marry. She was also working in the Thirupattur Co-operative Registrar office. The first defendant amended the service register of the said Ponnusamy and after his death, the first defendant applied legal heir certificate before the Thasildhar, Vaniyambadi, by stating that she was adopted daughter of the said Ponnusamy and obtained legal heir certificate. Thereafter, she sent representation to the authority concern to receive terminal benefits of the said Ponnusamy from the defendants 2 & 3. Hence the suit for declaration declaring that the plaintiff is the legal heir of the deceased Ponnusamy.

4. Resisting the same, the first defendant filed written statement stating that all the avernments made in the plaint is false and frivolous. The deceased Ponnusamy was living with the first defendant. In fact, 35 years before, he adopted the first defendant as his daughter. While he fell in ill, the first defendant only had taken care of him and admitted in so many hospitals and treated him. Unfortunately, the treatment failed and he died. In fact, the first defendant had done all his last rites and customs. Initially, the said Ponnusamy entered his mother name as his nominee and after the death of his mother, the first defendant's name had been entered as his nominee in the service register and PF register. After his death, the first defendant and also the plaintiff applied for legal heir certificate. The Thasildhar, Vaniyambadi, conducted detailed enquiry and issued legal heir

certificate in favour of the first defendant. The first defendant also received a sum of Rs.1,000/- to meet out the expenditure at the time of performing the last rites of the deceased Ponnusamy. Now only to extract money from the first defendant, the present suit has been filed and prayed for dismissal of the suit.

5. The second defendant also filed separate written statement stating that one Ponnusamy was working as Peon at Alangayam Panchayat Union and he died on 08.06.1989, while he was in service. After his death, according to the service register, as a nominee, the first defendant received a sum of Rs.1,000/- for the funeral expenses of the deceased Ponnusamy. He nominated the first defendant to receive all his death benefits in the service register. The said Ponnusamy categorically mentioned that the first defendant is his adopted daughter in the service register. Based on the service register, the Thasildhar, Vaniyambadi, also issued legal heir certificate to the first defendant as she is the adopted daughter of the deceased Ponnusamy. They are also ready and willing to give gratuity, provident fund and other benefits due to the deceased Ponnusamy to the persons whom this Court directs as legal heir.

6. On the side of the plaintiff, he examined P.W.1 to P.W.3 and were marked Ex.A.1 to Ex.A.3. On the side of the defendants, they examined D.W.1 to D.W.4 and were marked Ex.B.1 to Ex.B.9. On perusal of the material produced on record and on considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No. 22 of 2003 and the same was also dismissed by the first appellate Court by confirming the judgment and decreed passed by the trial Court. Aggrieved by the same, the plaintiff preferred this present second appeal.

7. At the time of admission of this second appeal on 08.12.2005, the following substantial questions of law were formulated for consideration:-

"1. Whether the adoption is valid under the Provisions of the Hindu Adoptions and Maintenance Act, 1956?

2. Whether the adoption is valid under Section 11(iii) of the Hindu Adoptions & Maintenance Act, 1956, when the age difference between the 1st defendant and her adopted father is less than 21 years?

3. Whether the adoption of the 1st defendant is valid under Section 9(2) of the Hindu Adoptions & Maintenance Act, 1956, when the consent of her mother to give adopting was not proved?

4. Whether the 1st defendant nomination by Late Ponnusamy in the Service record is tenable in view of Rule 45 of the Tamil Nadu Pension Rules, 1978?"

8. The learned counsel appearing for the plaintiff/appellant submitted that the first defendant is a foster daughter of the said Ponnusamy and he never adopted the first defendant as his daughter. The first defendant did not produce any document to show that the deceased Ponnusamy adopted her as his daughter. Whereas the plaintiff is own sister of the deceased Ponnusamy and admittedly except the plaintiff no one is alive to claim as legal heir of the deceased Ponnusamy. Further the plaintiff is also a widow and she is the only legal heir alive to the deceased Ponnusamy. Under Section 17 of the Hindu Adoption and Maintenance Act, the foster daughter is not a legal heir. Further under Section 45 Sub Section 5 of the Tamil Nadu Pension Rule, 1978, categorically defined who are eligible to be declared as nominee, in which no where mentioned about the foster daughter. Therefore, the first defendant is not at all the legal heir of the deceased Ponnusamy and she is not entitled for any terminal benefits of the deceased Ponnusamy and prayed for decreed the suit.

9. Heard Mr.V.Jeevagiridharan, learned counsel appearing for the appellant/plaintiff and Mr.S.Jaganathan, learned Government Advocate appearing for the respondents 2 to 5/defendants 2 to 5.

10. Admittedly, the plaintiff is the sister of the deceased Ponnusamy. While he was in service as Peon in Alangayam Panchayath Union, he died on 08.06.1989. Even according to the plaintiff, he stayed at Alangayam and he used to visit the first defendant's house. The plaintiff marked the voters list and the death certificate of the deceased Ponnusamy as Ex.A.1 to Ex.A.3. Except the same, no other document was marked to declare her as legal heir of the deceased Ponnusamy. Admittedly, the deceased Ponnusamy and the first defendant belonged to different community. The plaintiff examined her daughter as P.W.2 and she deposed that the plaintiff had taken care of the deceased Ponnusamy, while he was under treatment. She only had done the last rites of the deceased Ponnusamy and except the plaintiff, no one is there to claim as legal heir of the deceased Ponnusamy. Even then, the plaintiff failed to produce any document to prove her contention that the plaintiff had taken care of the deceased Ponnusamy, while he was bed-ridden.

11. Whereas, the first defendant deposed that the said Ponnusamy is her adopted father. While he was alive, the first defendant's name was entered as nominee in the service register and other documents. He categorically nominated the first defendant as his adopted daughter. The deceased

Ponnusamy only maintained her and taken care of her studies and other maintenances. Before his death, he was fell in ill for the past three years and he had been taken treatment. All along, the first defendant had taken care of him. Unfortunately, he died and the funeral expenses was received by her from the department. All the medical expenditure born out by the first respondent and to prove the same, she marked Ex.D.1 to Ex.D.7, the medical bills incurred by her for the treatment of the deceased Ponnusamy.

12. After his death, the first defendant applied for legal heir certificate, before the Tashildhar, Vaniyambadi. In fact, the plaintiff also applied for legal heir certificate and after conducting due enquiry by the Tashildhar, Vaniyambadi, the legal heir certificate was issued in favour of the first defendant that she is the only legal heir of the deceased Ponnusamy. The legal heir certificate was marked as Ex.B.8. Considering the above documents both the Courts below concluded that the first defendant is the only legal heir of the deceased Ponnusamy.

13. In the present second appeal, while arguments, the learned counsel appearing for the plaintiff took a specific plea that the first defendant is only a foster daughter and hence she cannot claim any terminal benefits of the said Ponnusamy as adopted daughter under Section 45 Sub Section 5 of the Tamil Nadu Pension Rule, 1978. But the plaintiff never pleaded about the first defendant's dis-entitlement as nominee, since she is not an adopted daughter of the deceased Ponnusamy and she is only a foster daughter. Therefore, it cannot be considered now, that too without any plea.

14. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below, as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the first defendant and as against the plaintiff.

15. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

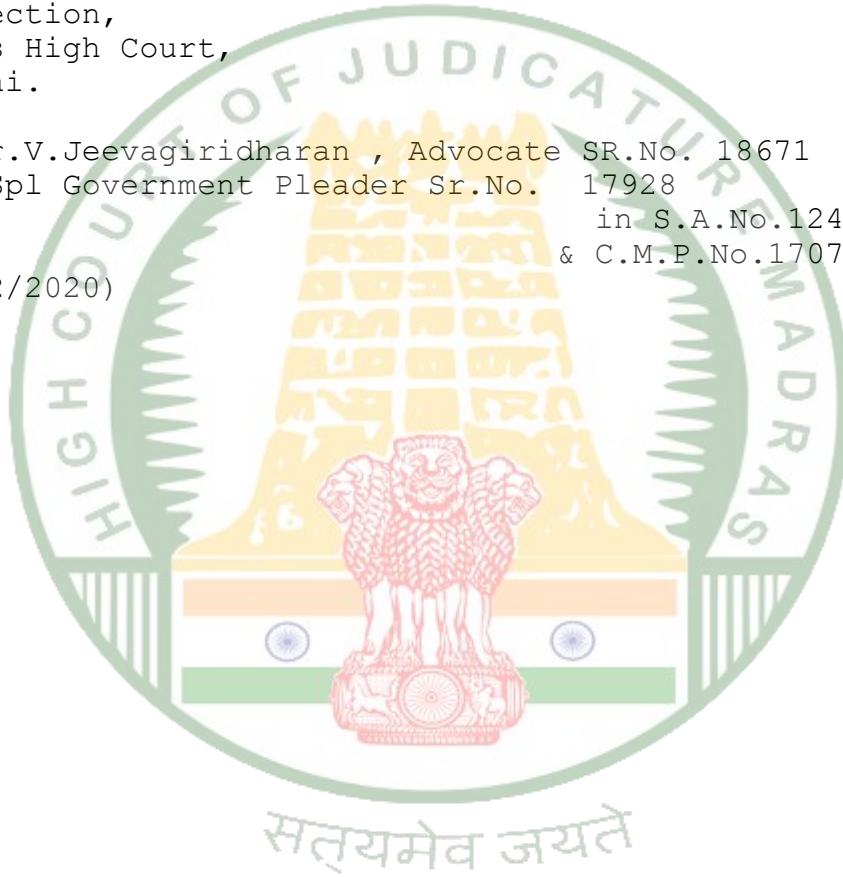
1. The Subordinate Judge,
Tirupattur.
2. The District Munsif
-cum-Judicial Magistrate,
Vaniyambadi.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.V.Jeevagiridharan , Advocate SR.No. 18671

+1 cc to Spl Government Pleader Sr.No. 17928

in S.A.No.1249 of 2005
& C.M.P.No.17070 of 2005

A.SK(03/12/2020)



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