



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.11.2021
CORAM:

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THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.984 of 2021
& C.M.P.No.18484 of 2021

1) Velmurugan
2) Selvakumar ...Plaintiffs/Appellants/Appellants

Vs.

Panchavarnam (since deceased)

1) Anjalai
2) Kasi
3) Ravichandran
4) Manikandan
5) Sukitha
6) Muthulakshmi ..Defendants/Respondents/Respondents

PRAYER: Second Appeal is filed against the judgment and decree dated 05.10.2020 made in A.S.No.86 of 2019 on the file of III Additional District and Sessions Court, Vridhachalam, Cuddalore District and to set aside the judgment and decree dated 21.02.2018 made in O.S.No.394 of 2008 on the file of I Additional District Munsif Virudhachalam, Cuddalore.

For Appellants:Mr.S.Murugan

J U D G M E N T

This Second Appeal is preferred challenging the Judgment and Decree of the learned III Additional District and Sessions Court, Vridhachalam, Cuddalore District in A.S.No.86 of 2019 dated 05.10.2020 confirming the judgment of the learned I Additional District Munsif Virudhachalam, Cuddalore in O.S.No.394 of 2008 dated 21.02.2018.

2. The Appellants are the Plaintiffs. The Appellants filed a suit for the relief of declaration of their title in the suit properties and for permanent injunction against the respondents, not to disturb their possession and enjoyment. It is seen from the plaint averments that the suit properties were purchased by one Rajambal through two sale deeds dated 19.03.1938 and 27.04.1939. The said Rajambal had a son named Masilamani. Two months subsequent to the marriage with



Panchavarnam, Masilamani died. Panchavarnam left her matrimonial home and started living with her brother Veeran. Rajambal adopted her sister's daughter Saradhambal in the presence of public in the village. Rajambal got her married to one Kaliaperumal. The plaintiffs are the sons of Saradhambal. Rajambal, Saradhambal and Kaliaperumal were living as joint family.

3. After the death of Rajambal, the suit properties vested on Saradhambal and she has been in possession and enjoyment of the suit properties. According to the learned counsel for the appellants, the first respondent has no right in the suit properties. However, the first respondent has filed a petition for cancelling the patta that stands in the name of the appellants and the respondents are trying to interfere with the possession and enjoyment of the suit properties. Therefore, the suit in O.S.No.394 of 2008 was filed by the appellants.

4. The first respondent filed a written statement denying the claim of the appellants. It has been stated that in the marriage with Masilamani, there was no child born to Panchavarnam. Therefore, Panchavarnam adopted her sister's daughter Anjalai. Anjalai married Balakrishnan. It is claimed that Rajambal's adoption of Saradhambal and treating Saradhambal as her daughter, is not true. There had never been an adoption taken place as claimed by the appellants. There was no ceremony performed as claimed in the plaint. The claim that Rajambal's properties were inherited by Saradhambal and then by the appellants is not correct. Rajambal was taken care of by Panchavarnam. The suit properties were vested on Panchavarnam. Patta had been granted in the name of Panchavarnam in Patta No.1602. Saradhambal was looking after the lands of Rajambal on the instructions of Rajambal. Except that, she had no connection in the property. Saradhambal, taking advantage of the illiteracy of Panchavarnam, had effected name change in the revenue records.

5. On coming to know about the name change, Panchavarnam gave a representation. On enquiry, patta was granted in the name of Panchavarnam. Thus, the appellants have no claim, title or possession in the suit properties. Panchavarnam also filed an additional written statement claiming that the fourth defendant is not the proper and necessary party to the suit and he is unnecessarily impleaded in the suit. Plaintiffs have also filed the reply statement denying the contentions made in the additional written statement and challenging the will said to have been executed by Panchavarnam in favour of the respondent



and also the sale executed by Panchavarnam in favour of Ravichandran on 24.06.2013.

6. On the basis of the above pleadings, the trial Court framed the following issues:

- (i) Whether the plaintiff has got valid title and lawful possession to the suit property?
 - (ii) Whether the Plaintiff is entitled to the relief of declaration and permanent injunction in the suit property?
 - (iii) Whether the defendant got title and in possession and enjoyment of the suit property?
 - (iv) Whether the defendant's averment that Saradhambal was not validly adopted by Rajambal is true or not?
 - (v) To what reliefs the plaintiffs is entitled to?
- Additional Issues:
- (i) Whether the suit is bad for misjoinder of parties?

7. During the trial, P.Ws.1 to 3 were examined and Exhibits Exs.A1 to A6 were marked on the side of the appellants and D.Ws.1 and 2 were examined and Exhibits Exs.B1 to B12 were marked on the side of the respondents.

8. On considering the oral and documentary evidence, the trial Judge has dismissed the suit primarily on the reason that the appellants have failed to plead and prove the adoption of Saradhambal by Rajambal and that the claim of possession is also not satisfactorily proved. Challenging the said judgment, the appellant preferred an appeal in A.S.No.86 of 2018. The learned Appellate Judge also on thoroughly going through the evidence and submissions found that there is no reason to differ from the findings rendered by the learned trial Judge and dismissed the Appeal. Against the said dismissal order, this Second Appeal has been filed.

9. Learned counsel for the appellants submitted that the adoption of Saradhambal by Rajambal as her daughter has taken place long back. Because there is no evidence and that there is no corroborative evidence in the form of documents, rejecting the case of the appellants without considering the oral evidences of P.W.2 and P.W.3, who had given evidence in support of the adoption, is nothing but non-appreciation of evidence in proper perspective. In this regard, he relied on the judgment of the Orissa High Court made in Gouranga Sahu and others vs. Bhaga Sahu and another reported in AIR 1976 Orissa 43 and the relevant portion is extracted hereunder:



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"....though the normal rule is that one who seeks to deflect the natural line of succession to property by alleging adoption must discharge that heavy burden, in cases of ancient adoption every allowance for the absence of evidence to prove such fact must be favourably entertained. Where there is a long lapse of years between the adoption and the time when it is being questioned and during that period of interregnum a variety of transactions of open life and conduct upon the footing that the adoption was valid act have taken place, the initial burden necessarily shifts to the person who challenged its validity".

10. Placing reliance on this judgment, the learned counsel for the appellants submitted that when the appellants were able to prove by examining P.Ws.2 and 3 in support of adoption, it is for the respondents to disprove that there was no adoption. However, the respondents have not taken any steps to prove that there was no adoption of Saradhambal by Rajambal. It is further submitted by the learned counsel for the appellants that the appellants are now in possession and enjoyment of the suit properties. Both the Courts have not taken into consideration the appellants' possession and enjoyment of the suit properties. Both the Courts have recorded a finding on the wrong appreciation of evidence and therefore, the judgments need to be interfered with.

11. Considered the submissions of the learned counsel for the appellants and perused the materials placed on record.

12. Admittedly, the appellants filed a suit for declaration of title and permanent injunction on the basis of title allegedly acquired through adoption of Saradhambal by Rajambal. There is no dispute with regard to the fact that the suit properties belong to Rajambal. It is also not in dispute that the first respondent is the daughter-in-law of Rajambal, i.e., Masilamani's wife. In the event of death of Rajambal, Rajambal's property would go to the first respondent Pancharvanam. Now, the natural line succession is sought to be upset, claiming adoption of Saradhambal by Rajambal. Therefore, it is primarily for the appellants to prove the adoption of Saradhambal by Rajambal.

13. The pleadings of the plaint shows that Rajambal took Saradhambal on adoption in the presence of villagers by performing Thathu homam without specifying the details, like the date and year of adoption, who gave the adoption, who are all



present at the time of adoption ...etc. P.W.2 and P.W.3 were examined in support of adoption have also not specified in their evidence as to the date of adoption. They have only stated that just after two days after the death of Masilamani, Rajambal took Saradhambal in adoption. It is claimed that Masilamani died on 28.07.1959. It is not known as to whether it is possible to indulge in adoption within two days from the date of death of Masilamani. When Masilamani died on 28.07.1959 and when it is claimed that two days after the death of Masilamani, Saradhambal was adopted by Rajambal, certainly it would have been possible that some entries would have been made in the connected registers, if really the adoption had taken place as claimed by the appellants. That is not available here.

14. Section 5 of the Hindu Adoptions and Maintenance Act, 1956 mandates that,

"5. Adoption to be regulated by this Chapter:

(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An Adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth."

15. Section 6 of the Hindu Adoptions and Maintenance Act, 1956 stipulates the following:

"6. Requisites of a valid adoption: - No Adoption shall be valid unless -

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter."

Unfortunately, there is no pleadings in the plaint, with regard to the conditions required for the adoption are satisfied and that the adoption was done as per the Hindu Adoptions and Maintenance Act, 1956.



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16. The learned trial Judge has referred to the judgment of the Hon'ble Supreme Court in *Rahasa Pandiani vs. Gokulandanda Panda* reported in AIR 1987 SC 962 wherein, the Hon'ble Supreme Court observed the following:

"In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature is there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a Will, there have been spurious claims about adoption having taken place. And the Court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such an adoption is beyond reproach."

17. In another judgment reported in 2005 (5) CTC 207 between *Pentakota Satyanarayanan Vs. Pentakota Seetharatnam*, the Hon'ble Supreme Court has held as follows:

"The onus is heavy on the person who set up a case of adoption to prove the factum of adoption and since the person seeks to exclude the natural line of succession of property by alleging adoption. Therefore, the duty of the Court while considering the question whether an adoption is genuine or not appears to be akin to that which is case upon a Court while dealing with Wills."

18. Reading of these judgments makes it clear that when the adoption is not supported by registered document or any other evidence of clinching nature, if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was such an adoption to avoid spurious claims of adoption. The onus is heavily on the person who set up a case of adoption to prove the factum of adoption.

19. As already stated, there is absolutely no pleadings with regard to the date of adoption and whether the condition requisite for the valid adoption was satisfied. Therefore, this Court finds that the finding of the Courts below that the



appellants have failed to plead and prove the valid adoption of Saradhambal by Rajambal is absolutely right in the facts and circumstances of the case and based on the evidence available. In the light of the aforesaid Supreme Court judgments, this Court finds that the judgment relied upon by the appellants in Gouranga Sahu's case (cited supra) has no relevance to this case.

20. Insofar as the claim of long possession claimed by the appellants, it is found that before the learned trial Judge, only three documents have been filed to prove their possession Ex.A.3 U.D.R.patta and Ex.A4 Chitta. It is observed that Ex.A4 which is computerised patta dated 13.08.2008 was issued prior to the filing of the suit. This patta was cancelled by Ex.B10. The appellants have not produced any documents to show the possession of suit properties by Saradhambal. Thus, the possession claimed by the appellants have also not been proved by satisfactory evidence and it is rightly recorded by the Courts below.

21. This Court concurs with the findings of the Court below that the appellants have not filed any evidence to prove the adoption of Saradhambal by Rajambal and they are not able to prove the claim of title and possession in respect of the suit property. Therefore, both the Courts have rightly dismissed the suit.

22. This Court is of the considered view that there is no substantial question of law involved in this case to entertain the Second Appeal. In this view of the matter, the judgment by the learned III Additional District and Sessions Judge, Vridhachalam, Cuddalore District in A.S.No.86 of 2019 dated 05.10.2020 confirming the judgment of the learned I Additional District Munsif Virudhachalam, Cuddalore in O.S.No.394 of 2008 dated 21.02.2018 is confirmed and therefore, the Second Appeal stands Dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



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To:

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1. The III Additional District and Sessions Court,
Vridhachalam,
Cuddalore District.
 2. The I Additional District Munsif,
Virudhachalam, Cuddalore.
 3. The Section Officer
V.R. Section,
High Court, Madras.
- +1 CC to Mr.S.Murugan, Advocate sr 60525.

S.A.No.984 of 2021

NRL(CO)
SP(20/12/2021)