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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. No.71 of 2017

and

C.M.P. No.1205 & 1206 of 2017

- 1.Rathinambal
- 2.Lakshmynarayanan
- 3.Krishnamoorthy
- 4.Muthuraman
- 5.Sivanesan
- 6.Thulasi
- 7.Santhi
- 8.Vijaya
- 9.Thamizhselvi

..Appellants/Appellants

Vs

- 1.Abaranjitham @ Pappathiammal
- 2.Indirani
- 3.Sulochana

..Respondents/Respondents

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 06.09.2016 made in A.S. No.28 of 2015 on the file of Principal District Court, Puducherry, confirming the judgment and decree in O.S. No.499 of 1983 dated 12.09.2015 on the file of the Additional Sub Court, Puducherry.

For Appellants : Mr. K.S.Karthik Raja

For Respondents : Mr. T.P.Manoharan
for Mr. T.M.Naveen

JUDGMENT

This second appeal is filed to set aside the judgment and decree dated 06.09.2016 made in A.S. No.28 of 2015 on the file of Principal District Court, Pondicherry, confirming the judgment and decree in O.S. No.499 of 1983 dated 12.09.2015 on the file of Additional Sub-Court, Pondicherry.

2. The defendants in the suit in O.S.No.499 of 1983, on the file of the Second Additional Sub Court, Puducherry, are the



appellants in this second appeal. The respondents are the plaintiffs who filed the Suit in O.S. No.499 of 1983 for recovery of possession of properties mentioned in A Schedule of the plaint and to declare the donation deed dated 30.07.1998 as null and void and consequently to allot one half share in the B schedule properties. The case of the plaintiff is that all the properties originally belonged to one Nasia Counder. It is further stated in the plaint that the said Nasia Counder executed a partition dated 25.02.1964, allotting the properties described in A Schedule in the plaint to one of his sons by name Ramalinga Counder. In the same document, the properties described as B Schedule in the plaint were allotted to Nasia Counder. It is stated that in the said document the properties which were allotted to Nasia Counder shall be equally shared by his two sons after his lifetime if the properties are available.

3. It is the case of plaintiffs that the first plaintiff was married to Ramalinga Counder and that plaintiffs 2 and 3 are the daughters of Ramalinga Counder. It is stated by the plaintiffs that Nasia Counder executed a donation deed in favour of the first defendant in the suit, namely the brother of Ramalinga Counder after the death of Ramalinga Counder in the year 1965. Therefore, the plaintiffs questioned the said donation deed dated 30.07.1968 stated to have been executed by Nasia Counder on the ground that Nasia Counder had no right to deal with the properties allotted to Ramalinga Counder by an earlier partition by document dated 25.02.1964. Since the properties which are described in B Schedule are also available after the lifetime of Nasia Counder, the plaintiffs have filed a suit for recovery of possession in respect of the properties allotted or given to Ramalinga Counder in the document dated 25.02.1964. The plaintiffs also claim half share in the B Schedule properties as they are entitle to get equal share as the legal heirs of Ramalinga Counder. Stating that the donation deed dated 30.07.1968 executed by Nasia Counder in favour of Arjuna Counder in respect of properties allotted to Ramalinga Counder is invalid, the plaintiffs also prayed for a declaration that the donation deed is null and void.

4. The appellants filed a written statement disputing the marriage between the first plaintiff and Ramalinga Counder. The status of plaintiffs as legally wedded wife and children of Ramalinga Counder is specifically denied. Though the allotment of properties as per the document dated 25.02.1964 was admitted, it is the case of the appellants that there was no conveyance under this document. It is also contended that after the death of Ramalinga Counder the properties allotted to late Ramalinga Counder had reverted back to the father Nasia Counder and that therefore, the donation deed executed by Nasia Counder on 30.07.1968 in favour of Arjuna Counder, the first defendant in



the suit, is perfectly valid. In the course of trial it is admitted that the plaintiffs have filed a suit in O.S. No.899 of 2012 to declare the status of first plaintiff as the wife of late Ramalinga Counder and plaintiffs 2 and 3 as daughters of late Ramalinga Counder. Stating that the defendants are not parties to the suit in O.S. No.899 of 2012, the defendants contended that the judgment will have no legal consequences.

5. The trial court, after framing necessary issues, found that the first plaintiff is the wife of deceased Ramalinga Counder and the other plaintiffs are born to the first plaintiff and her husband Ramalinga Counder. The trial Court also found that the partition deed dated 25.02.1964 is a valid document of conveyance. Since the status of plaintiffs as lawful legal heirs of Ramalinga Counder is accepted by the trial Court, the trial Court also found that the donation deed dated 24.07.1968 executed by Nasia Counder is not valid. On the basis of the findings with regard to the status of the plaintiffs and the nature of documents under Ex. A1 dated 30.07.1968 and Ex. A2 dated 25.02.1964, the trial Court granted a decree for recovery of possession in respect of suit A schedule and partition of one half share in suit B schedule properties. The trial Court also declared the donation deed dated 24.07.1968, as void. As against the judgment and decree of the trial Court granting relief to the plaintiff as prayed for, the defendants filed an appeal in A.S. No.28 of 2015 on the file of Principle District Court, Puducherry. The lower Appellate Court after considering the issues independently confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the above second appeal is preferred by the defendants.

6. The appellants are the wife and children of Arjuna Counder, the defendants in the suit, who is none other than the brother of Ramalinga Counder. The claim of the plaintiffs rests on their status as wife and children of late Ramalinga Counder. As against the concurrent findings of facts accepting the case of the plaintiffs regarding the status and the validity of the documents Ex.A1 and A2, the legal heirs of defendants have raised a few questions of law in this Second Appeal. At the time of admitting the second appeal, this Court framed the following substantial questions of law:

"1. Are the Courts below right in holding Ex.C1 as the document evidencing dissolution of marriage between the first plaintiff and her husband, Munusamy, when Ex.C1 is a mere deed of relinquishment of right over the property without containing any specific recitals to the effect that the marriage between the first plaintiff and her husband Munusamy was ever dissolved?

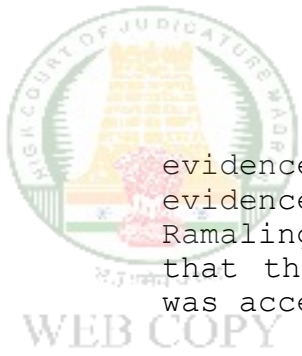


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2. Are not the Courts below erroneous in holding that Ex.A3 is a document 30 years old and therefore, it automatically raises a presumption under Section 90 of the Indian Evidence Act, without considering the qualifications and requirement enshrined under Section 90?

3. Are the Courts below right in taking into consideration Exs.A8 and A9, the certified copies of the judgment and decree in O.S. No.899 of 2012 containing a declaration that the plaintiffs in the present suit are the legal heirs of late Ramalinga Counder, when admittedly the said documents have come into existence after the suit i.e. post litum morteme and hence inadmissible?"

7. The trial Court as well the Appellate Court relied upon several documents apart from the statement of witnesses as borne out from the records. The admission of defendants themselves was relied upon by Courts below. One of the crucial documents relied upon by the trial Court is the marriage invitation which is marked as Ex.A3. This document dated 11.10.1959 is the marriage invitation printed by Nasia Counder and the father of the first plaintiff jointly in the year 1959, inviting the relatives to the marriage between Ramalinga Counder and first plaintiff. Since the original document was produced from the custody of the plaintiffs and the document is more than 30 years old, presumption under Section 90 of Indian Evidence Act was also drawn by the trial Court. The marriage invitation under Ex.A7 shows that the third plaintiff is shown as the daughter of Ramalinga Gouner. The defendants have not filed any document or piece of evidence to suggest that the status of the first plaintiff is different from what she alleged before the Courts below. In response to a notice issued to the defendants they themselves sent a reply describing the first plaintiff as the wife of Ramalinga Counder. Though it is contended that the first plaintiff was earlier married to one Munusamy, and that the said marriage was not dissolved, the trial Court, considered the document Ex.C1 namely the release deed dated 19.05.1959 executed by the first plaintiff in favour of one Munusamy. As per the document dated 19.05.1959, the trial Court found that the first plaintiff had accepted the earlier marriage with one Munusamy and that the said marriage had come to an end before the marriage of the first plaintiff with Ramalinga Counder. Since there is nothing to indicate that the marriage between the first plaintiff and her first husband was subsisting at the time when the first plaintiff married Ramalinga Counder, the trial Court rightly held that the marriage between the first plaintiff and Ramalinga Counder is valid as it was proved by many documents and corroborated by statements of witnesses. The plaintiffs examined P.W.2 to prove the marriage. Apart from direct



evidence, the plaintiffs have also produced oral and documentary evidence to show that the first plaintiff was living with Ramalinga Counder as husband and wife along with children and that the marriage between first plaintiff and Ramalinga Counder was accepted by everyone in the family.

8. The trial Court and the Appellate Court relied upon Ex.A8 and A9 which would show that the status of plaintiffs was declared. Voter list and other document produced by plaintiffs have been carefully considered. Even in the reply notice dated 05.07.1980 sent by Nasia Counder and first defendant, the first plaintiff was referred to as the wife of Ramalinga Counder. Since the status of plaintiff has been accepted by the Courts below on the basis of several documents and there is no contra evidence to discredit the conclusions arrived at by the Court below with regard to the status of first plaintiff as wife of Ramalinga Counder and plaintiff 2 and 3 as the daughters of Ramalinga Counder, this Court has no reason to interfere with the findings of the Courts below. Based on the findings on the status of plaintiffs, the conclusion reached by the lower Courts regarding the validity of Ex.A2 dated 25.02.1964 and the invalidity of Ex.A1 dated 30.07.1968 cannot be faulted. Once the properties described in A Schedule are allotted to the share of Ramalinga Counder, by the father himself, the plaintiffs are entitled to claim full ownership over the suit A Schedule properties. Therefore the Courts below are right in granting a decree for recovery of possession in respect of plaint A schedule properties. Similarly the document Ex.A1 was executed by Nasia Counder bequeathing A Schedule property in favour of first defendant namely Arjuna Counder, the brother of Ramalinga Counder. After execution of Ex.A2, Nasia Counder has no right to deal with the property that was already given to Ramalinga Counder. Therefore, the Courts below are also right in declaring the invalidity of the document Ex.A1.

9. Having regard to the specific findings recorded by the Courts below, this Court is unable to find any merits in any of the Substantial Questions of Law. The document Ex.C1 would clearly suggest that the document was executed by the first plaintiff at the time after she was relieved from the first marriage. The document does not indicate the subsistence of any marriage bond between first plaintiff and Munusamy and therefore, the findings of the Courts below on the document Ex.C1 cannot be assailed. The second question of law has no merits as the Courts below have accepted Ex.A3 as a genuine document as it was produced from the lawful custody of the first plaintiff. Since the document is 30 years old at the time when it was marked before the lower Court, the presumption has been rightly drawn and there is no irregularity committed by the Courts below for relying upon Section 90 of Indian Evidence Act.



The third question of law also may not have much relevance for the simple reason that the findings of the Courts below regarding status of plaintiffs are proved and established by other evidence. This Court is also convinced that the plaintiffs are the legal heirs of deceased Ramalinga Counder even if Exs.A8 and A9 are ignored. Though the judgment and decree in O.S. No.899 of 2012 and Ex. A8 and A9 are after suit, the fact that the said judgment is not assailed by the defendants by filing an appeal is also a circumstance indicating that the defendants have no grievance about the declaration that the plaintiffs in the present suit are also the legal heirs of the late Ramalinga Counder. Even if they are not the parties, it is open to them to challenge the judgment and decree of O.S. No.899 of 2012 in the manner known to law. In Pondicherry it is in practice to file a suit instead of getting a certificate of legal heirship. However, the question of law is framed suggesting that the judgment and decree in O.S. No.899 of 2012 is not valid as it was obtained after the present suit. The present suit was filed in the year 1983 and it was disposed of by judgment and decree dated 12.09.2015. The other suit in O.S. 899 of 2012 though filed later, does not render the judgment and decree invalid on any legal grounds. Further, the finding in the present suit as to the status of plaintiffs is relevant and is sufficient and this Court need not grant decree in favour of the plaintiffs based on the declaration in the other suit.

10. The fact that the suit in O.S. No.899 of 2012, declaring the status of plaintiffs may still be a valid piece of evidence even though it will not operate as res judicata. When it is admitted that the defendants in the present suit are not parties, certainly the said judgment is not binding on them. However, it will be a valid piece of evidence to prove the status of plaintiffs even in the present suit.

11. This Court finds no merits in the Second Appeal and none of the Substantial Questions of Law can be answered in favour of the appellants. As a result, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To

1. The Principal District Judge,
Puducherry,

2. The Additional Subordinate Judge,
Puducherry.

Copy To

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

+1cc to Mr.K.P.Jothesswaran, Advocate, S.R.No.23897

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.23720

S.A. No.71 of 2017

PP(CO)
RGA(08/10/2021)