



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)Nos.716 & 717 of 2008

&

MP(MD)Nos.1 & 1 of 2008, MP(MD)No.1 & 2 of 2013 &
MP(MD)No.3 of 2013

in SA(MD)No.716 of 2008 :

1.Rakkappan (died) ... Appellant/Appellant/Defendant

2.Karuppiah S/o.Rama Narayanan

(2nd Appellant brought on record as the
LR of the deceased sole appellant
vide order dated 11.07.2013 in M.P(MD).2/2012 ... Appellant

Vs.

1.Devi

2.Lakshmi

3.Chidambaram

4.Thirumeni

... Respondents/Plaintiff/
Defendants 2 to 4

5.Mechi Ammal

6.Mallika

...Respondents / Respondents
Defendants 5 & 6

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.11.2007 and made in A.S No.2 of 2007 on the file of the District Judge, Sivagangai confirming the judgment and decree dated 14.06.2006 made in O.S No.134 of 2002 on the file of the Subordinate Court, Devakottai.

in SA(MD)No.717 of 2008 :

1.P.R.Rakkappan (died) ... Appellant/Appellant/Plaintiff

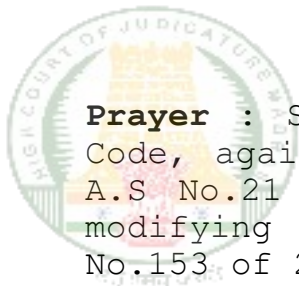
2.Karuppiah S/o.Rama Narayanan

(2nd Appellant brought on record as the
LR of the deceased sole appellant
vide order dated 11.07.2013 made in
M.P. (MD) No.2/2012) ... Appellant

Vs.

N.Lakshmi

...Respondent/ Respondent/Defendant



Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.11.2007 and made in A.S No.21 of 2007 on the file of the District Judge, Sivagangai modifying the judgment and decree dated 14.06.2006 made in O.S No.153 of 2002 on the file of the Subordinate Court, Devakottai.

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For Appellants : Mr.T.R.Ramanujam,
Senior Counsel for
Mr.V.R.Shanmuganathan
in SA(MD)Nos.716 & 717 of 2008
in both cases
For Respondents : Mr.S.Madhavan for R1 & R2 in SA(MD) .
No.716/2008
Mr.R.Vijayakumar for R3 to R6
in SA(MD)No.716 of 2008
Mr.S.Madhavan in SA(MD)No.717 of 2008

JUDGEMENT

SA(MD)No.717 of 2008 arises out of O.S No.153 of 2002 on the file of the Sub Court, Devakottai. SA(MD)No.716 of 2008 arises out of O.S No.134 of 2002 on the file of the Sub Court, Devakottai. O.S No.134 of 2002 was filed by the respondent herein, namely, N.Devi. The case of the plaintiff in O.S No.134 of 2002 is that she was the biological daughter of Rama.Narayanan and Lakshmi. She was born in the year 1980. According to her, she was given in adoption to the original appellant Rakkappan and his wife Paripooranam. Paripooranam is none other than the older sister of N.Lakshmi, the biological mother of N.Devi. According to the plaintiff, it was Rakkappan and Paripooranam who brought up Devi. Paripooranam passed away on 12.03.1993. She died intestate. According to the plaintiff, she was enjoying the suit properties along with her adoptive father Rakkappan. The suit properties are comprised in two schedules. "A" schedule comprises the properties belonging to Lakshmi and Paripooranam. "B" Schedule properties are the ancestral properties of Rakkappan. Since the adoptive father attempted to create encumbrances on the undivided properties in which Devi also had right and interest, she was constrained to issue legal notice on 24.06.2002 calling upon the adoptive father not to do so. She also gave paper publication on 20.06.2002. Controverting the stand taken by Devi, Rakkappan gave reply notice on 19.07.2002. Since the dispute could not be amicably resolved, Devi filed O.S No.134 of 2002 on the file of the Sub Court, Devakottai, seeking partition in respect of 1/4th share in "A" Schedule and ½ share in the "B" Schedule properties. The suit claim was resisted by Rakkappan who was shown as the first defendant in the suit. Rakkappan filed his written statement denying that the plaintiff Devi was ever given in adoption to him and his wife Paripooranam. The case of the plaintiff was denied in toto by Rakkappan. Rakkappan also independently filed O.S No.153 of 2002 seeking ½ share in what was shown as "A" Schedule in O.S No.134 of 2002. Both the suits were

<https://hdservices.courts.gov.in/hdservices/> Devi examined herself as PW.1. Three other



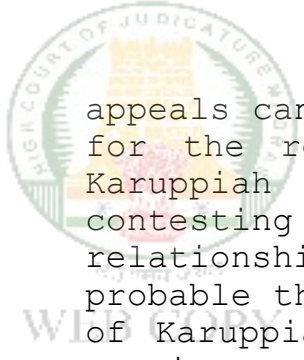
witnesses were also examined on her behalf. Exs.A1 to A18 were marked. Rakkappan examined himself as DW.1 and five other witnesses on his side. Exs.B1 to B7 were marked. An Advocate Commissioner was also appointed and he submitted his report and plan. They were also marked. After consideration of the evidence on record, the learned Trial Judge by judgment and decree dated 14.06.2006 decreed O.S No.134 of 2002 and dismissed O.S No.153 of 2002.

2. Aggrieved by the same, Rakkappan filed A.S Nos.2 of 2007 and 21 of 2007 before the District Judge, Devakottai. By judgment and decree dated 05.11.2007, the first appellate court while dismissing A.S No.2 of 2007 filed against the judgment and decree made in O.S No.134 of 2002, partly allowed A.S No.21 of 2007 filed against the judgment and decree made in O.S No.153 of 2002. The first appellate court came to the conclusion that the subject matter of O.S No.153 of 2002 were the undivided properties belonging to Lakshmi and Paripooranam. Paripooranam was the wife of Rakkappan. Even if adoption is accepted, still, $\frac{1}{2}$ share of Paripooranam's estate will devolve on Rakkappan. Therefore, Rakkappan was held to be entitled to $\frac{1}{4}$ th share. Therefore, the judgment and decree passed by the Trial Court in O.S No.153 of 2002 was accordingly modified and Rakkappan was allotted $\frac{1}{4}$ th share in the suit property. Questioning the same, these two second appeals were filed.

3. Heard the learned Senior Counsel appearing for the appellant and the learned counsel for the first respondent and the other learned counsel.

4. The learned Senior Counsel appearing for the appellant took me through the grounds set out in the memorandum of appeals and submitted that since the finding of the courts below are perverse, the appeals may be formally admitted after framing the necessary substantial questions of law arising for consideration and thereafter disposed of.

5. The appeals were filed by Rakkappan. Rakkappan had passed away in the year 2012. One Karuppaiah who is none other than the nephew of Rakkappan and the biological brother of Devi filed MP(MD) Nos.2 & 2 of 2012 in these Second Appeals for prosecuting the second appeals. Karuppaiah claimed that Rakkappan had executed a Will dated 02.08.2012 in his favour and that therefore, he is entitled to step into his shoes and prosecute the second appeals. The said MPs were strongly contested by Devi. However, by a common order dated 11.07.2013, the petitions were allowed and Karuppaiah was allowed to come on record as the legal representative of Rakkappan on the strength of the Will dated 02.08.2012. It was however made clear that the order allowing MPs was only for the purpose of permitting Karuppaiah to prosecute the second appeals. Karuppaiah had to establish his right independently. I therefore sustain the contention of the learned Senior Counsel for the appellant that the

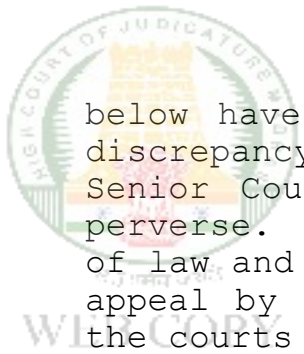


appeals cannot be dismissed as abated. The learned counsel appearing for the respondent challenge the very genuineness of the Will. Karuppiah is none other than the biological brother of the contesting respondent. He is the nephew of Rakkappan. Since the relationship between Rakkappan and Devi had broken down, it is quite probable that Rakappan had chosen to bequeath the property in favour of Karuppiah / present appellant herein. The Will appears to be genuine and true. However, in view of the order passed in the above miscellaneous petition, it is for the appellant to establish the same in the manner known to law and work out his rights.

6.The learned Senior counsel for the appellant took me through the evidence adduced by the parties. He pointed out that even according to the plaintiff, she was hardly two years old when she was allegedly given in adoption. Therefore, Devi was obviously incompetent to speak about the adoption ; the deposition of the other three witnesses are equally unhelpful to advance the theory of adoption ; the testimonies of the remaining witnesses are also mutually contradictory and bristle with discrepancies. While one witness would claim that the adoption took place in the Tamil Year of Thunmathi, the case of Devi was that the adoption took place in 1982. The biological mother of Devi would claim that the adoption took place in the year 1988. The witnesses are unable to give any definite particulars regarding the factum of adoption.

7.The learned Senior Counsel drew my attention to the recent decision of the Hon'ble Supreme Court reported in **(2020) 5 SCC 307 (M.Vanaja vs. M.Sarla Devi)** wherein it has been held that the mandate of Hindu Adoptions And Maintenance Act, 1956 is that no adoption shall be valid unless the adoption is made in compliance with the other conditions mentioned in the Act. As per Section 11 of the Hindu Adoptions and Maintenance Act, the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned. Therefore, the precise particulars must be placed before the Court to show that the child was actually given in adoption and then taken in adoption. In this case, the parties are not quite clear as to when the adoption really took place. Conflicting dates have been given. Therefore, the very claim of adoption is totally vague.

8.The learned Senior counsel drew my attention to the decision of the Hon'ble Division Bench reported in **1998 (3) LW. 822 (V.Ravichandran vs. R.Ramesh Jayaram and ors)**. The Hon'ble Division Bench following the Apex Court decision had held that the oral evidence of the witnesses deposing about the ceremony of adoption shall be trustworthy and there should be details of the events in ceremony ending with the usual feast following it. The Division Bench has stressed the importance of conducting ceremony. In the case on hand, oral evidence of the witnesses as regards the giving of adoption is wholly untrustworthy. He submitted that the courts



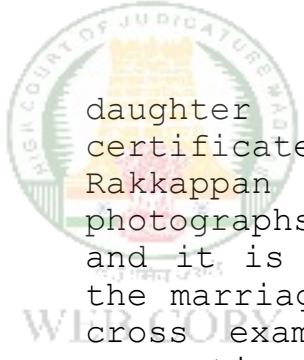
below have not at all taken note of the mutual contradiction and discrepancy between the testimonies of these witnesses. The learned Senior Counsel characterized the approach of the courts below as perverse. He called upon this Court to frame substantial questions of law and answer the same in favour of the appellant and allow this appeal by setting aside the impugned judgment and decree passed by the courts below.

9.Per contra, the learned counsel appearing for the contesting respondent/Devi submitted that the impugned judgment and decree passed by the courts below are well founded and that they do not call for any interference.

10.The learned counsel appearing for the respondents 4 to 6 in SA(MD)No.716 of 2008 submitted that they are bonafide purchasers for value. The learned counsel adopted the contentions advanced by the learned Senior Counsel appearing for the appellant.

11.I carefully considered the rival contentions and went through the evidence on record. It is true that the oral evidence adduced in support of the claim of adoption is not quite clear as regards the date or month or year in which it was performed. The evidence of PW.2 to PW.4 is not clear or and in accord with the version projected by the plaintiff in O.S No.132 of 2002. However, all the three witnesses would firmly state that Devi was given in adoption by her biological parents, namely, Narayanan and Lakshmi to Rakkappan and his wife Paripooranam. The discrepancy is only regarding the date, month and year. The question is whether on this ground, the plea of adoption put forth by Devi is to be negatived. The learned Senior Counsel appearing for the appellant would state that Devi was actually born to Narayanan and Lakshmi and if really she was given in adoption to Rakkappan and Paripooranam, then, her initial would not be N.Devi but R.Devi. Even the suit was filed by Devi with her initial as "N".

12.The question is whether the finding of the courts below in upholding the claim of adoption is to be accepted or reversed. Devi in support of her claim of adoption had marked as many as 18 documents. Exs.A1 to A4 are not quite relevant, because, they surfaced after the dispute cropped up between Devi and Rakkappan. Ex.A5 is the Transfer Certificate issued in the name of Devi. In Ex.A5, interestingly, Devi's initial has been mentioned as R.Devi. In the father's column, the name of P.R.Rakkappan is mentioned. It is seen therefrom that Devi was admitted in Shri Venkatesa Matriculation School, West Anna Nagar, Madras and that she left the school on 13.04.1995 and the Transfer Certificate was issued on 31.01.1996. Ex.A7, dated 30.11.1997 is the order passed by Tahsildar, Karaikudi whereby the house site patta was assigned in favour of Devi. The said order reads that Devi is the daughter of Rakkappan. Devi got married on 10.04.2000. Ex.A6 is the marriage invitation card. In the said Invitation Card, Devi is described as the



daughter of P.R.Rakkappan Ambalam. Ex.A15 is the community certificate of Devi and it describes her as the daughter of Rakkappan and her initial is mentioned as R.Devi. The marriage photographs and video cassette have been marked as Ex.A16 and A17 and it is seen therefrom that it was Rakkappan who had solemnized the marriage of Devi in the capacity of father. Even though in the cross examination, Rakkappan had denied almost each and every suggestion put to him and the trial court had given a categorical finding that Rakkappan had played the role of a father in the said marriage function of Devi. Since Devi's husband's name is also Narayanan, her initial became "N".

13.The conduct of the parties is highly relevant. It is true that the definite date on which Devi was given in adoption is not clear.However, the documentary evidence produced by Devi overwhelmingly establishes that Devi is the adoptive daughter of Rakkappan. The courts below have concurrently found that the plea of adoption put forth by Devi had been established. Exercising jurisdiction under Section 100 of CPC, I do not find any ground to interfere. No substantial question of law arises for consideration. The second appeals are dismissed. No costs.

Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)

skm

Note : Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The District Judge, Sivagangai.
- 2.The Subordinate Judge, Devekottai.

Copy to :

The Record Keeper, (2C)
V.R. Section, Madurai Bench of Madras High Court,
Madurai.

(As directed to return the original will be the appellant counsel)

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.H.ARUMUGAM, Advocate (SR-21685[F] dated 08/07/2021)

+2 CC to M/s.V.R.SHANMUGANATHAN, Advocate (SR-21684[F],21683dated
08/07/2021)

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