



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A.(MD)No.300 of 2015

Esakkiammal @ Yasotha : Appellant/Respondent/Plaintiff

Vs.

Parvathiammal : Respondent/ Appellant/Defendant

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the decree and judgment, dated 28.11.2014 rendered in A.S.No.28 of 2014 on the file of the Principal District Court, Tirunelveli, reversing the decree and judgment, dated 25.02.2014 rendered in O.S.No.74 of 2010 on the file of the Subordinate Court, Ambasamudram.

For Appellant :Mrs.J.Jessy Jeeva Priya
for Mr.G.Aravinthan

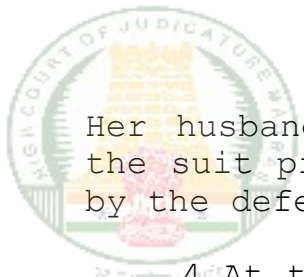
For Respondent :Mr.M.P.Senthil

JUDGMENT

The plaintiff in O.S.No.74 of 2010 is the appellant. The challenge is to the judgment and decree of the learned Principal District Judge, Tirunelveli, made in A.S.No.28 of 2014 reversing the judgment and decree of the trial Court granting the relief of declaration of title and recovery of possession.

2.The plaintiff sued for the aforesaid relief contending that the suit property belonged to one Karuppasamy Asari and Muthulakshmi, adoptive parents of the plaintiff. The said Karuppasamy Asari died on 29.07.1989 and Muthulakshmi also died in 2010. On the death of Muthulakshmi, the defendant, who is the brother's wife of Karuppasamy Asari and was permitted to occupy the suit property, had claimed independent title and disputed the status of the plaintiff, as adopted daughter of Karuppasamy Asari and Muthulakshmi. Hence, the plaintiff had come up with the above suit.

3.The suit was resisted by the defendant contending that the suit property was not the exclusive property of Karuppasamy Asari.



Her husband, Mani Asari, also contributed towards the purchase of the suit property. The adoption set up by the plaintiff was denied by the defendant.

4. At trial, the plaintiff examined herself as PW-1 and examined one independent witness as PW-2. Ex-A1 to Ex-A11 were marked. The defendant examined herself as DW-1. Ex-B1 to Ex-B8 were marked.

5. The learned trial Judge, upon a consideration of the evidence on record, accepted the evidence of PW-2, which was supported by the documentary evidence in the form of Ex-A7 and Ex-A9. The trial Court also found that the plaintiff has proved adoption. The claim of the defendant that the suit property was purchased in the name of Karuppasamy Asari with the aid of the contribution from Mani Asari was rejected. Upon the above findings, the trial Court decreed the suit as prayed for. Aggrieved, the defendant preferred an appeal in A.S.No.28 of 2014.

6. The learned appellate Judge, on a re-consideration of the evidence on record, concluded that the evidence of PW-2 cannot be accepted, as PW-2 was only 28 years old at the time of adoption and could not have developed a friendship with Karuppasamy Asari, who was 44 years old. The fact that the PW-2 was resident of Virudhunagar was also taken as a ground to disbelieve the evidence of PW-2. The learned Appellate Judge also rejected the documentary evidence in the form of Ex-A7, the marriage invitation and Ex-A9, the school record sheet. The learned appellate Judge referred to certain judgments of the Honourable Supreme Court, which deal with the nature of proof required for adoption and held that since adoption displaces the natural line of succession, very strong proof is required to uphold adoption. On the said findings, the learned appellate Judge allowed the appeal and dismissed the suit. Hence, the second appeal.

7. The following substantial questions of law were framed by this Court at the time admission:

"(a) Whether the Lower Appellate Court has failed to accord proper weightage to the Record Sheet produced as Ex-A9 and committed an error in law in holding to be not a public document?

(b) Whether Lower Appellate Court committed an error in law in holding that Ex-A9 is not reliable as it does not contain the signature of the person claimed to be the adoptive father of the plaintiff?

(c) Whether the Lower Appellate Court has rendered a perverse finding regarding the person who performed the marriage by preferring Ex-B4 and Ex-A7?"



8.I have heard Mrs.S.Jessi Jeeva Priya, learned Counsel appearing for the appellant and Mr.M.P.Senthil, learned Counsel appearing for the respondent.

9.Mrs.S.Jessi Jeeva Priya, learned Counsel appearing for the appellant, elaborating on the questions of law, would vehemently contend that the learned appellate Judge was not right in rejecting Ex-A9, which is an official document issued by the School authority, more so, when the first defendant, as DW-1, has admitted the fact that the plaintiff studied in the school, which had issued Ex-A9. The learned Counsel would also submit that the reasons assigned by the learned appellate Judge for disbelieving Ex-A7, the marriage invitation, as well as the evidence of PW-2, are unnatural and as such the judgment of the lower appellate Court has to be interfered with.

10.Contending per contra, Mr.M.P.Senthil, learned Counsel for the respondent would submit that the standard of proof required for adoption is very high, since the adoption seeks to displace normal course of succession. He would point out that the evidence of PW-2 is quite unnatural and PW-2, who was only 28 years old at the time when the adoption is said to have taken place, could not have developed a friendship with the 44 years old man, namely, Karuppasamy Asari. The learned Counsel would also point out that the evidence offered by Ex-A7 is weak, since the defendant has produced Ex-B4, which describe the plaintiff as daughter of her natural father, Palani Asari.

11.I have considered the rival contentions.

12.The lower appellate Court has overlooked an important admission in the pleadings as well as evidence of DW-1. DW-1 has, in the pleadings and in the evidence, admitted that the plaintiff was brought up Karuppasamy Asari and Muthulakshmi. This vital fact, which is admitted, would help a long way in assessing the other evidence available in the case on hand. Unfortunately, the learned appellate Judge did not take into account the specific admission made by DW-1. It is also seen that DW-1 has admitted that the plaintiff was the student of St.Xavier's Middle School, at Irudhayakulam.

13.Ex-A9 is the record sheet issued by the school, in which the father's name of plaintiff has been shown as Karuppasamy. No doubt, the learned appellate Judge has given certain reasons for rejecting Ex-A9, namely, while describing Karuppasamy both the terms, namely, the father and guardian, are stated therein, one of them should have been scored off and the same has not been done. The signature of the father is not borne out in the record. Ex-A9 has been issued by the Headmistress of St.Xavier Middle School. It is not denied that it relates to the plaintiff. It is admitted that the plaintiff



studied in the said school. Therefore, the non-scoring out of either the father or guardian in the record sheet and the absence of signature in the record sheet cannot be a ground to totally discard an official document maintained by the School in the course of its usual activities.

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14.As regards, Ex-A7 and Ex-B4, the learned appellate Judge has rejected Ex-A7 on the ground that it contains the name of the deceased adoptive father of the plaintiff. A reading of Ex-A7 would show that it is prepared by the bridegroom's side and the plaintiff is described as the daughter of Karuppsamy and Muthulakshmi. The fact that Karuppsamy Asari's name is shown as one of the inviters cannot be a ground to outright reject the Ex-A7. The defendant has produced Ex-B4, the marriage invitation, in which the plaintiff is described as the daughter of natural father, Palani Asari. It is not known as to how the defendant secured the invitation of a marriage, which took place in the year 1990 and produced it in Court in the year 2013. The custody of the marriage invitation of the plaintiff with the plaintiff can be explained, but, the custody of the marriage invitation of the plaintiff in the hands of the defendant, that too after 23 years of marriage, creates a doubt in the mind of the Court as to the genuineness of Ex-B4. The appellate Court, in my considered opinion, erred in discarding Ex-A7 and Ex-A9, which are very vital documents. The reasons assigned by the appellate Court for disbelieving or discarding the evidence of PW-2 are also unsound.

15.In view of the above, all the three substantial questions of law are answered in favour of the appellant and the appeal is, therefore, allowed and the judgment and decree of the lower appellate Court is set aside and that of the trial Court is restored. The suit is stand decreed as prayed for. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

To

- 1.The Principal District Judge, Tirunelveli.
- 2.The Subordinate Judge, Ambasamudram.



3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-7708[F] dated 01/03/2021)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-8186[F] dated
02/03/2021)

Judgment made in
S.A.(MD)No.300 of 2015
26.02.2021

VB (07.04.2021) 5P 7C