

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.04.2022

PRONOUNCED ON :06.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Appeal Suit No.525 of 2016

Dr.Nirmala ...Appellant/Plaintiff
Vrs.

1. Subash Sehgal ...Respondent/1st Defendant
2. A.Rajan ...Respondent/2nd Defendant

Prayer: Appeal Suit has been filed under Section 96 r/w. Order 41 & 41 A of the Civil Procedure Code, against the Judgment and Decree, dated 28.04.2016 passed by the learned I Additional District Judge, Coimbatore in O.S.No.64 of 2011.

For Appellants :Mrs.R.Maheswari

For Respondents:Mr.C.Munusamy

J U D G M E N T

The plaintiff in O.S.No.64 of 2011 on the file of the I Additional District Judge, Coimbatore has come forward with this Appeal suit as against the partial decree granted in her favour. In other words, she filed a suit for decree for declaration and permanent injunction. But the trial Court on appreciation of the entire evidence, has granted a decree to the effect that the plaintiff is entitled to half share in the suit property along with her sister Vimala and consequently, there will be permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff till the suit property is divided between the plaintiff and the first defendant by metes and bounds.

2. As per the plaint averments, the suit property belonged to one Sinnappa Pillai, grandfather of the plaintiff. During his life time, Sinnappa Pillai executed a Will dated 13.03.1974 registered as document No.18/1974 in favour of his wife Susaiammal. As per the Will, the testator has bequeathed the property in favour of his wife with condition that she shall enjoy the property till her life time and after her life time it will be bequeathed in favour of his unmarried daughter Josephine. The Will came into effect as Sinnappa Pillai died on

19.07.1978 and consequently his wife died on 17.04.1987. By virtue of the Will, Josephine was in possession and occupation of the suit property till her death on 11.02.2007.

3.It is asserted by the plaintiff that Josephine died as spinster and therefore on the death of Josephine, she and her sister Vimala had become the legal heirs of Josephine and are entitled to succeed the estate of Josephine. It is also claimed that the plaintiff and her sister Vimala have also succeeded their father's property by inheritance in Chennai as well as the suit property of their aunt, Josephine in Pollachi. Reference was also made to a suit in C.S.No.867 of 2007 filed by the plaintiff against her sister Vimala, in which, a compromise decree was passed on 21.11.2007. According to the plaintiff, she is peacefully living in the suit property and a portion of the suit property was rented out to a third party and she is collecting rents.

4.While so, the defendants have raised a plea that they are entitled to the suit property on the basis of a bogus marriage certificate evidencing marriage between the first defendant and late Josephine on 05.06.1978. According to the plaintiff, no such marriage had ever taken place between Josephine and the first defendant and the marriage certificate is a bogus one. Further, the first defendant also produced the legal heir certificate to show that he, as husband of late Josephine is the legal heir to succeed to the estate of her wife. As the defendants have made a cloud in the title of the suit property, the plaintiff has filed the present suit for declaration and consequential permanent injunction.

5.On notice, the second defendant, who is the Power Agent of the first defendant, has filed the written statement repudiating the plaintiff's averments. According to the second defendant, it is true that the suit property belonged to Sinnappa Pillai and he has also executed a Will in favour of Josephine. The Will was also acted upon and Josephine has become the absolute owner of the property. At the same time, the first defendant claimed that he married Josephine on 05.06.1978 and therefore the plea of the plaintiff that Josephine died as a spinster is false and incorrect. The second defendant also placed reliance on the marriage certificate in Document No.5/1978 issued by Our Lady of Saint Lourdes Church, Pollachi. Therefore, the first defendant claims that he is the legal heir of late Josephine as her husband and the plea of the plaintiff that Josephine died as spinster is false.

6.The second defendant in the written statement has also referred to the plaintiff in O.S.No.58 of 2006 filed against Josephine for partition. In the plaintiff, Josephine was described as "Smt.Josephine Sehgal, W/o. Mr. Subash Sehgal", the first defendant herein. Since the mother of the plaintiff by name

Regina died, the suit in O.S.No.58 of 2006 was not prosecuted and it was dismissed for default. Further reference was made to the suit in C.S.No.867 of 2007 filed before this Court by Vimala, the sister of the plaintiff herein. In the suit, the compromise decree was passed on 21.11.2007. In the suit, in paragraph No.7, it was stated that Josephine got married to the first defendant herein against the wishes of her parents and sisters on 05.06.1978. Therefore, it cannot be said that Josephine died as a spinster. It is further stated that Josephine was living with the first defendant and during the life time of Josephine, she permitted the plaintiff to run a clinic in a small portion under live and licence. As Josephine was sick and ill, it was the first defendant who was collecting rents and also paying property tax to the suit property. The cause of action for the suit is false. The suit has been improperly valued at Rs.21 lakhs, whereas the market value of the suit property is more than 1.5 crores. The plaintiff is not entitled to the relief as prayed for in the suit and therefore, the second defendant, on behalf of the first defendant, prayed for dismissal of the suit.

7.With the above averments, the parties went for trial. Based upon the above pleadings, the trial Court framed the following issues:

- i. Whether the plaintiff has title to the suit property?
- ii. Whether the 1st defendant is the husband of Josephine?
- iii. Whether the plaintiff is entitled for the relief of declaration and injunction?

8.During trial, the plaintiff examined herself as P.W.1 and the sister of the plaintiff viz., Vimala was examined as P.W.2 and Exs.A1 to A 52 were marked. On the side of the defendants, D.W.1 to D.W.6 were examined and Exs.B1 to B.29 were marked. Exs.X1 to X9 were also marked as Court documents.

9.Upon consideration of the oral and documentary evidence, the trial Court decreed the suit, declaring that the plaintiff is the absolute owner of half share in the suit schedule property along with her sister Vimala and granted permanent injunction in favour of the plaintiff and restrained the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff till the suit property is divided between the plaintiff and 1st defendant by metes and bounds.

10.As regards the issue No.2, the trial Court concluded that late Josephine was married to the first defendant and the plea of the plaintiff that Josephine died as a spinster is contrary to records. Therefore, the trial Court concluded that both the plaintiff and her sister Vimala on the one hand and the first

defendant on the other hand are entitled to half share in the suit property. Accordingly, the trial Court decreed the suit granting half share to the plaintiff along with her sister and another half share to the first defendant.

11.The learned counsel appearing for the plaintiff/appellant would contend that the marriage said to have been solemnised between the first defendant and late. Josephine is a sham and nominal marriage and it cannot be validated under law. The first defendant, by suppressing his earlier marriage with another woman, had contracted the marriage with the deceased Josephine with an intention to grab the suit property and other assets belonged to her. The intention of the first defendant in contracting the marriage with the deceased Josephine has not been taken note of by the trial court while partially decreeing the suit. The appellant/plaintiff and her sister are the lawful legal heirs to succeed to the entire estate of the deceased Josephine and the first defendant cannot be given any share in the suit property. In fact, the first defendant did not live with the deceased Josephine at all and even as admitted by him, he was out of the town and stationed at some other State. While so, it can be construed that the first defendant and the deceased Josephine did not live as husband and wife at any point of time. Further, the first defendant did not identify himself that he is the one who married the deceased Josephine and there is no proof forthcoming in this case. Therefore, the learned counsel for the appellant would contend that the deceased Josephine died as a spinster and the first defendant has not proved the so-called marriage in a manner known to law. While so, the trial court erred in partially decreeing the suit by accepting the theory of marriage with the deceased Josephine projected by the first defendant. In support of the above contentions, the learned counsel for the appellant relied on several decisions and contended that the Court below committed a grave error in decreeing the suit partially instead of decreeing it in toto. Some of the decisions relied on by the learned counsel for the appellant are as under:-

i) In the case of John and ors. Vrs. Badrul Hasan and ors. reported in 2010 SCC Online Chh 122

ii) in the case Advance Oleochem Pvt. Ltd., through its Director, Vrs. Manoj Agarwal and ors. reported in 2021 SCC Online Bom 4946

12.Per contra, the learned counsel appearing for the respondents/defendants would submit that the plaintiff could not prove the averments made in the plaint. According to him, the plaintiff made a fervent attempt to show that Josephine was not married. It has been disproved by the defendants by producing documents to show that the first defendant married late Josephine. The defendants also examined the Priest who had

performed the marriage. Even during the cross examination of the second defendant, power agent of first defendant, he has stated that his widow mother did not consent for his marriage with Josephine and inspite of such opposition, he married Josephine and lived along with her in Pollachi. It was the specific defence of the second defendant/power agent that the first defendant was an Engineer by profession and he has to travel all over the country at all times. Therefore, he used to visit Pollachi occasionally and lived with Josephine. It is also stated that there was no children born out of his wedlock with late Josephine. The trial Court considering the above testimony by D.W.1 as well as the deposition of Priest has come to the definite conclusion that the plaintiff has not proved that Josephine died as Spinster.

13.It is further stated that before obtaining legal heir certificate, the Tahsildar, Pollachi had examined the plaintiff as well as the defendants. In fact, the plaintiff herself has given an objection for issuing legal heir certificate to the first defendant herein on 12.04.2010. Along with the objections she has enclosed various documents before the Tahsildar, Pollachi Taluk. The Tahsildar by considering the statement of the plaintiff as well as the first defendant, refused to cancel the legal heir ship certificate dated 14.03.2007 issued in favour of the first defendant. Therefore it cannot be said that the plaintiff can assert title to the suit property in entirety. On the other hand, the plaintiff, as sister's daughter of late Josephine, is entitled to half share along with her sister Vimala. This was rightly appreciated by the trial Court and therefore the Judgment and decree passed by the trial Court cannot be said to be perverse and hence he prayed for dismissal of the appeal.

14.I have heard Mrs.R.Maheswari, learned counsel for the appellant and Mr.C.Munusamy, learned counsel appearing for the respondents.

15.The Points arise for consideration in this appeal are as follows:

- i.Whether the plaintiff has established that late Josephine died as spinster?
- ii.Whether the legal heir certificate issued by the Tahsildar, Pollachi will bind the plaintiff or not?
- Iii. Whether the trial Court is right in granting half share to the plaintiff and her sister Vimala in the suit filed by her for declaration and permanent injunction?

16.At the outset, it must be mentioned that the suit was filed by the plaintiff for a declaration and consequential permanent injunction. The suit was partially decreed granting

only half share in favour of the plaintiff and her sister and another half share in favour of the first defendant. Such a decree passed by the trial court has not been subjected to challenge by the first defendant and therefore, the decree passed by the trial Court has become final. This appeal is filed by the plaintiff assailing the partial relief granted in her favour.

17. Admittedly, the suit property belonged to Sinnappa Pillai who executed a Will dated 13.03.1974 by which he bequeathed the life estate to his wife Susaiammal and the remainder in favour of his second daughter Josephine. It is claimed that the first daughter of Sinnappa Pillai by name Regina was financially sound and therefore she was not allotted any share in the suit property by Sinnappa Pillai. It is further admitted that Sinnappa Pillai died on 19.07.1978 and his wife Susaiammal died on 17.04.1987. Therefore, the Will dated 13.03.1974 has come into force. As per the Will, it is stated that Josephine was in possession and occupation of the suit property. However, it is claimed by the plaintiff that Josephine died as a Spinster on 11.02.2007. Whether Josephine died as a spinster or married the second defendant is the core point arises for consideration in this appeal. In this context, the trial Court in paragraph Nos.4, 5 and 6, dealt with this aspect extensively and upon examination of the same, this Court proceeds to determine the core issue arises in this appeal.

18. It is the defence of the first defendant that he married Josephine on 05.06.1978 and their marriage has been registered vide document No.5/1978. The first defendant referred to the plaint in O.S.No.58 of 2006 filed by the plaintiff's mother in which Josephine was referred as "Smt. Josephine Sehgal W/o. Mr. Subash Sehgal", the first defendant herein. Similarly, the plaintiff's sister filed the suit in C.S.No.867 of 2007 before this Court in which paragraph no.7 of the plaint shows that late Josephine was referred to as a married woman who married the first defendant against the wishes of her parents and sisters in the Church on 05.06.1978.

19. The trial Court while dealing with the factum of marriage between the first defendant and late Josephine had stated that the plaintiff has approbated and reprobated as regards the factum of marriage of Josephine. In paragraph No.4, the trial Court has stated that originally the plaintiff has pleaded in the plaint that Josephine was never married. However, during trial, she has pleaded that the marriage between Josephine and the first defendant is void and it will not bind her. This admission of the plaintiff was pointed out by the trial Court to conclude that there was a marriage between Josephine and the first defendant. The trial Court also referred to Exs.B10 (Summons served on Josephine Sehgal in O.S.No.58 of 2006 - Original), B21 (Office copy of the complaint given by Josephine

- Original) and B23 (Office copy of the legal notice with postal receipt issued on behalf of Josephine). Further the trial Court referred to Ex.A39 produced by the plaintiff herein which is a Rental Agreement deed (Copy) and Ex.A40, another Rental Agreement Deed (Copy) wherein the marital status of Josephine was indicated as "wife of Mr.Subash Sehgal", the first defendant herein. Further, under Ex.B1, copy of the plaint in C.S.No.867 of 2007 the said Josephine was described as the wife of the first defendant herein. The trial Court also placed reliance on Exs.X1 to X4 to conclude that there was a marriage between the first defendant and the late Josephine. Further reliance was made to the deposition of DW1, Loordu Irudayaraj, who was the Priest attached to the Church and he has spoken about the factum of marriage between late Josephine and the first defendant. Therefore, this Court is of the view that the averment that Josephine died as spinster has not been proved by the plaintiff. Though the learned counsel for the appellant had putforth her effective and forceful arguments about the validity of the marriage between the deceased Josephine and the 1st defendant Subash Sehgal by pointing out the various frauds committed by the 1st defendant such as the suppression about his first marriage with one Devika and his two grown up children, about his date of birth in the marriage certificate and his contradictory evidence in the cross examination, the appellant/plaintiff, has not even whispered about the same in her plaint. The only contention of the appellant/plaintiff was that the said Josephine died as spinster and since the respondents/defendants have made a cloud in the title of the suit property, the appellant/plaintiff filed the suit for declaration and consequential permanent injunction.

20.First of all, it must be mentioned that the plea of the plaintiff in the plaint is that Josephine died as spinster. On notice, the first defendant, through his power agent second defendant, filed a written statement and contended that there was a marriage between Late. Josephine and the first defendant and the plea that Josephine died as spinster is false. The trial court appreciated this piece of plea raised by the plaintiff in the plaint extensively. However, even before this Court, the learned counsel for the appellant vehemently contended that the marriage between the first defendant and Late. Josephine is an invalid marriage. This argument of the counsel for the appellant cannot be countenanced. In this appeal, the issue arise for consideration is whether Late. Josephine died as spinster or not, as pleaded in the plaint. There was no occasion for the trial court to consider whether the marriage between the deceased Josephine and first defendant is a valid marriage or not. It is well settled that an argument raised by a counsel in a case without any pleading to that effect, need not be examined by the Court. Further, even after filing of the written

statement, the appellant has not taken any steps to amend the plaint with proper prayer. Hence, any amount of forceful arguments without pleadings will not be of any help to the case of the appellant to buttress her case. Therefore, the issue with respect to the factum of marriage between Josephine and the first defendant has to be answered against the plaintiff herein and in favour of the defendants.

21. On 21.12.2018, the Village Administrative Officer upon enquiry has submitted a report stating that the first defendant is the only surviving legal heir of late Josephine. In other words, it is stated that the first defendant being husband, is the Class I heir of late Josephine. Objecting to the legal heir certificate issued in favour of the first defendant, the plaintiff has given a letter dated 12.04.2010 to the Tahsildar, Pollachi. On the basis of the same, an enquiry was conducted and the statement of the plaintiff as well as the first defendant was recorded. The first defendant was also cross examined on various aspects, particularly, with reference to his marriage with late Josephine. In his cross examination, the first defendant has stated that he married Josephine as per the Christian rites and customs. However, the plaintiff in the plaint in paragraph No.12 has stated that the defendants obtained the legal heir certificate of late Josephine by fraud and misrepresentation and the documents, based on which the first defendant claims to be the husband of late Josephine, are bogus. Further in paragraph No.14 of the plaint, she has stated that the legal heir certificate given by Tahsildar is not an adjudication and it will not be binding in the Court of law as establishing the marital relationship. Further the plaintiff has also challenged the legal heir certificate issued to the first defendant by way of Writ Petition before this Court. However, the fact remains that the Tahsildar, Pollachi has conducted an enquiry in which the plaintiff has participated. After affording an opportunity to the plaintiff as well as the first defendant, the legal heir certificate was issued and therefore, it is for the plaintiff to assail the validity and/or correctness of such legal heir certificate issued to the first defendant in the manner known to law, if it is her case that the legal heir Certificate is bogus. Therefore, this Court answers the second question in this appeal also in favour of the defendants and against the plaintiff.

22. As regards the third question, the plaintiff has filed the suit only for declaration and consequential injunction. However after trial, the trial Court found that the plaintiff cannot have exclusive right to claim title and interest in the suit property. The trial Court concluded that the first defendant being the husband of late Josephine is also having right and share in the suit property. It is more so that the suit property is not the self acquired property of Josephine.

The suit property originally purchased by Sinnappa Pillai and by virtue of a Will, Josephine obtained the suit property in her favour. The plaintiff and her sister Vimala are the daughters of Regina, another daughter of late Sinnappa Pillai. During the life time of Josephine, she has not executed any document bequeathing the suit property in favour of any one either by way of Settlement Deed or by way of Will. Taking note of the above facts, even though the suit was filed for declaratory relief, the trial Court has moulded the relief sought for by the plaintiff and declared that the plaintiff and her sister Vimala are entitled for half share in the suit property and the first defendant being the husband of Josephine is entitled to half share in the suit property. Even though, it was not a suit filed for partition of the suit property, in order to render complete justice, it is well open to the trial Court to mould the relief prayed for in the suit and to pass appropriate decree in favour of the litigant. In such view of the matter, this Court is of the view that the trial Court is legally right in moulding the relief sought for by the plaintiff and granting a decree, allotting one half share in favour of the plaintiff and her sister and another half share in favour of the first defendant. Accordingly, this issue is also answered in favour of the defendants and against the plaintiff.

23. In the result, the Appeal fails and it is accordingly dismissed confirming the Judgment and Decree in O.S.No.64 of 2011 on the file of the learned I Additional District Judge, Coimbatore. No costs. It is needless to mention that the suit was filed in the year 2011 and a decade had gone-by. Therefore, if final decree application is filed by the plaintiff as per the decree and judgment dated 28.04.2016, the same shall be decided by the Court below and the entire proceedings shall be wrapped up within a period of one year from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vum

To:
The I Additional District Judge, Coimbatore.

+1cc to M/s.R.Maheswari, Advocate, S.R.No.32126

Appeal Suit No.525 of 2016

PMK(CO)
RGA(22/07/2022)