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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.837 of 2012
and MP No.1 of 2012

1. Govindammal
2. Sarasu ..Appellants/Appellants/Defendants 1 and 2

Vs.

1. Santhi ..^{1st} defendant/1st Defendant/Plaintiff

2. Chinnappan (Died)

(R2 Died. Appellants 1 and 2 are
recorded as legal heirs of the deceased
R2 vide order of Court dated 01.08.2017
made in SA No.837 of 2012 as per memo
dated 14.06.2017 in USR No.5176 of 2017
(SBJ)

....Respondents

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 28.02.2012 made in A.S.No.114 of 2011 on the file of the Court of the Principal District Judge, Namakkal, confirming the judgment and decree dated 04.09.2010 made in O.S.No.346 of 2008 on the file of the Court of the Subordinate Judge, Rasipuram.

For Appellants :Mr.T.Dhanasekaran

For Respondents :M/s.P.Rathinavel for
R1

JUDGMENT

The 1st and 2nd defendants are the appellants in this second appeal.



2. The 1st respondent / plaintiff filed a suit seeking for the relief of partition and for allotment of 1/4th share in the suit property.

3. The case of the plaintiff is that she is the daughter of one Subramani, who is the brother of the 1st and 2nd defendants and the son of the 3rd defendant. According to the plaintiff, the properties originally belonged to one Pappammal, who is the mother of defendants 1 and 2 and wife of the 3rd defendant. It is further stated that the father of the plaintiff namely Subramani died 18 years before the suit was filed and after his death, the grand mother was taken care by the mother of the plaintiff. The said pappammal died three years prior to the institution of the suit.

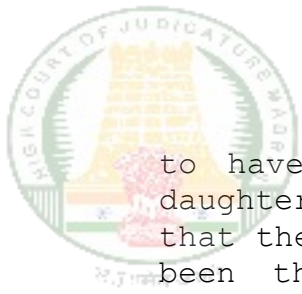
4. The further case of the plaintiff is that the above said Pappammal purchased the A Schedule property through a registered Sale Deed dated 05.12.2006 and it is the self acquired property of Pappammal. Insofar as the B Schedule property is concerned, the same was also purchased by Pappammal through a registered Sale deed dated 05.02.1986. Insofar as the 2nd sale is concerned, it was jointly purchased by Pappammal and one balu. The said balu executed a Will dated 19.07.1999 in favour of Pappammal with regard to his share in the B Schedule property. The said balu died on 15.08.1999. Thereby, Pappammal became the absolute owner of the B Schedule property also.

5. It is stated that the above said Pappammal died in testate on 21.08.2008 and hence, the plaintiff is claiming for 1/4th share in both the A and B Schedule properties.

6. The main defence that was taken by the defendants was that the plaintiff was not the daughter of the above said Subramani. Hence, according to the defendants, the plaintiff even without establishing the relationship is not entitled for any share in the suit properties.

7. Both the Courts below considered the facts and circumstances of the case and appreciated the oral and documentary evidence and found that the plaintiff is the daughter of Subramani and that she is entitled for 1/4th share in the suit properties. Aggrieved by the same, the defendants 1 and 2 have filed this second appeal.

8. The learned counsel for the Appellant submitted that the defendants have specifically denied the fact that the plaintiff was born to Subramani and hence, the plaintiff ought



to have sought for a declaration to declare that she is the daughter of late Subramani. The learned counsel further submitted that the plaintiff did not even examine her mother who could have been the best person to speak about the relationship with Subramani. Therefore, it was submitted that the best evidence that was not let-in by the plaintiff must lead to an adverse inference against the plaintiff. The learned counsel further submitted that both the Courts below merely relied upon Ex.A5, which is the school leaving certificate and came to a conclusion that the plaintiff is the daughter of Subramani. The learned counsel therefore submitted that the findings of both the Courts below warrants the interference of this Court.

9. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the findings of both the Courts below.

10. The specific case of the plaintiff is that Subramani got married to one Vellaiammal and the plaintiff was born out of the said wedlock. Since the defendants took a very specific stand that the plaintiff was not born to Subramani, the Lower Appellate Court specifically framed a point for determination in this regard. The Lower Appellate Court thereafter appreciated the evidence and the findings rendered by the Trial Court and found that DW1 even in her evidence had admitted that both Subramani and Vellaiammal got married and they lived together for three years. The specific case of the plaintiff is that she was born to them. Considering the fact that both of them were living as husband and wife for a period of three years and the fact that Ex.A5, which is the School Leaving Certificate showed the name of the father in the said record, the Courts below came to a conclusion that Subramani is infact the father of the plaintiff.

11. In the considered view of this Court, Section 112 of the Indian Evidence Act, will govern the facts of the present case. For proper appreciation, Section 112 of the Evidence Act is extracted hereunder :-

112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to



the marriage had no access to each other at any time when he could have been begotten.

12. It is clear from the above provision that any person who is born during the continuance of a valid marriage between a man and a woman, there is a legal presumption that the child born to them is their legitimate child. In other words, the said provision provides for a conclusive proof when the child is born out of a wedlock, unless it is proved that the man and woman had no access to each other at any time when the child could have been begotten. Legitimacy of a child is presumed to be a conclusive proof.

13. It is for the above reason, the Courts below had put the burden on the defendants to establish that the plaintiff was not born to Subramani. The reason is that the marriage between Subramani and Vellaiammal is accepted and it also accepted that they lived together for three years and the claim of the plaintiff is that she was born to them. Therefore, there is a presumption under Section 112 of the Act that the plaintiff is legally the daughter of said Subramaniam and Vellaiammal. Under the said provision, the Court has no discretion or option to even look for any proof like that is available in cases where the provision gives the discretion to the Court by using the term "may presume" or "shall presume". The definition of "conclusive proof" under Section 4 of the Act, Specifically provides that where one fact is declared by the Act to be conclusive proof of another, the Court on proof of that one fact, shall regard the other as proved and the Court shall not allow evidence to be given for the purpose of disproving it.

14. In the present case, the marriage between Subramani and Vellaiammal and they living together for a period of three years has been admitted by DW1. Once that fact is proved, the birth of the plaintiff for the said Subramani and Vellaiammal is a conclusive proof and it is deemed to have been proved. Even the defendant could not have been allowed to adduce evidence to disprove it except for the limited scope that is available under Section 112 of the Act. That limited scope is that the defendants must prove that there was no access between Subramani and Vellaiammal. That has not been done by the defendants in the present case.

15. In view of the above findings, this Court does not find any ground to interfere with the findings of both the Courts below. No substantial question of law is involved in the present Second Appeal.



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16. In the result, Second Appeal is dismissed. Considering the facts and circumstances of this case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Subordinate Judge, Rasipuram

2.The Principal District Judge, Namakkal.

Copy To:-

The Section Officer

VR Section, High Court

Madras.

+1cc to Mr.T.Dhanasekaran, Advocate SR.No.11112

+1cc to Mr.P.Rathanavel, Advocate SR.No.10702

SA.No.837 of 2012

NK(CO)

CB(15/03/2022)