



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.1044 of 2015
and MP No.1 of 2015

1. Kanniyammal
2. Krishnaveni
3. SenthilAppellants/Appellants/Plaintiffs
Vs.

1. L.Amaravathi Ammal
2. L.Venkatesan
3. S.Kavitha
4. P.Banumathi
5. T.Kalaivani
6. S.Saravanan ... Respondents/Respondents/ Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the decree and judgment dated 24.03.2015 in A.S.No.40 of 2015 on the file of sub-court at Arni confirming the judgement and decree dated 13.12.2013 in O.S.No.477 of 2006 on the file of District Munsif Court, Arni.

For Appellant : Mr.P.Rajavelu

For Respondents: Mr.B.Jawahar for R1 and R2
No Appearance for R4 & R5
R3 and R6 - Notice returned
not ready

JUDGMENT

The plaintiffs are the appellants in this second appeal.



2. The case of the plaintiffs is that the 1st plaintiff is the wife of Late Sekar and the Plaintiffs 2 and 3 are the daughter and son of Late Sekar. The 6th defendant is also yet another son of Late Sekar. The further case of the plaintiffs is that the 1st defendant is the wife of one Logu Mudaliar and the said Sekar was born to them. Apart from Sekar, there were four more children who are defendants 2 to 5.

3. It is stated that Logu Mudaliar died on 02.08.2006 and Sekar predeceased him. According to the plaintiffs, they and the defendants constitute a Hindu Joint family and the suit properties are in the nature of joint family properties.

4. The grievance of the plaintiffs is that the said Logu Mudaliar had executed a sham and nominal sale deed in favour of the 2nd defendant and the 6th defendant and the same is not binding on the plaintiffs. According to the plaintiffs, they are entitled for a share in the suit property. Hence, the suit was filed for partition and for allotment of the respective shares to each plaintiffs.

5. The defendants took a stand to the effect that the said Sekar was born to the 1st defendant and one Rajagopal and that he was not born to the above said Logu Mudaliar. According to the defendants, the 1st defendant was living with Logu Mudaliar and four children were born for them and they are defendants 2 to 5. In view of the same, the defendants contented that the above said Sekar does not have any right over the property of Logu Mudaliar and consequently, the plaintiffs are also not entitled for any share in the suit properties. Thus, the defendants sought for the dismissal of the suit.

6. Both the Courts below after considering the facts and circumstances of the case and on considering the oral and documentary evidence, came to a categoric conclusion that the deceased Sekar was not born to the 1st defendant and Logu Mudaliar and accordingly, both the Courts held against the plaintiffs and dismissed the suit. Aggrieved by the same, the present second appeal has been filed before this Court.

7. The learned counsel for the Appellant submitted that both the Courts below failed to consider Exhibit A2, A7 and the deposition of DW1 in the cross examination. The learned counsel submitted that both the Courts below went wrong in relying upon the legal heir ship certificate that was marked as Ex.B1 while determining the relationship between the parties. It was further submitted that the 1st defendant was only a concubine to the said Logu Mudaliar and hence, defendants 2 to 5 who are illegitimate children cannot get any share in the joint family properties. The learned counsel submitted that the findings of both the Courts below requires the interference of this Court.



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

9. In the present case, the evidence of DW1 carries a lot of significance. The 1st defendant (DW1) admittedly was living with Logu Mudaliar. She states in her evidence that she was originally the wife of Rajagopal and Sekar was born out of the said wedlock. She further states that after the demise of Rajagopal, she started living with Logu Mudaliar and defendants 2 to 5 were born to them. Even during cross examination, she perfectly maintains that stand and the evidence of DW1 was not discredited during cross examination.

10. The evidence of DW1 is the best evidence that is available in the present case pertaining to the relationship between Sekar and Logu Mudhaliar. As against this evidence, an attempt was made to bring in Ex.A2 and A7, which according to the plaintiffs establishes that Sekar was infact the son of Logu Mudaliar. Ex.A2 is the death certificate of Sekar and it is stated in the certificate that his father's name is Logu Mudaliar. Ex.A7 is a sale deed which was executed by the 1st defendant in favour of the 6th defendant. In this sale deed, the father of the 6th defendant is shown as L.Sekar. Therefore, according to the learned counsel for the Appellant, it denotes Logu Mudaliar to be the father of the plaintiff.

11. In the considered view of this Court, Ex.A2 and A7 does not in any way take away the credibility of the evidence of DW1. These documents pitted against the evidence of DW1, pales into insignificance. The plaintiffs were not able to come with any sterling document pertaining to Sekar which would establish that he was the son of Logu Mudhaliar.

12. Both the Courts below concurrently held that Sekar was not born to Logu Mudaliar and the 1st defendant and consequently, the plaintiffs are not entitled for any share in the suit properties. This Court does not find any perversity in the findings of both the Courts below. In any case, this Court cannot undertake the exercise of re-appreciation of evidence in a second appeal. No substantial questions of law are involved in the Second Appeal. Consequently, the Second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar



rka

To

1.The Sub Court, Arni

2.The District Munsif Court, Arni.

Copy To:-

The Section Officer
VR Section,
High Court Madras.

+1cc to Mr.B.Jawahar, Advocate, S.R.No.14107

SA.No.1044 of 2015

JPL(CO)
SB(06/04/2022)