



S.A.No.1024 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1024 of 2022
and C.M.P.No.21952 of 2022

1. Valliammal
2. Madheswaran @ Theerthagiri
3. Palaniyammal

... Appellants

Vs.

- K.A.Sankaran (Deceased)
1. Satheeshkumar
 2. Kasthuri Sankaran
 3. Shanthi
 4. Latha Sekar
 5. The Tahsildar,
Thasildar office,
Krishnagiri District.

... Respondents

Prayer :- Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 09.12.2021 passed in A.S.No.6 of 2019 on the file of the Principal Subordinate Court, Krishnagiri, reversing the judgment and decree dated 29.07.2019 passed in O.S.No.124 of 2016 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mrs.Chitra Sampath,



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Senior Counsel
For Mr.R.Bharathkumar

For Respondents

For R3 : Mr.A.E.Ravichandran

For R5 : Mr.M.R.Gokulkrishnan

Additional Government Pleader

JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 09.12.2021, passed by the learned Principal Subordinate Judge, Krishnagiri, in A.S.No.6 of 2019, reversing the judgment and decree dated 29.07.2019, passed by the learned District Munsif, Krishnagiri, in O.S.No.124 of 2016, thereby decreed the suit filed by the respondents herein for declaration.

2. The deceased respondent filed suit in O.S.No.124 of 2016 as against the appellants herein for declaration declaring that the legal heir certificate issued by the fifth respondent herein in favour of the appellants is null and void and for injunction in respect of the suit property. The case of the respondent is that one Savithiriammal, W/o. Venkataraya Maniagar, died without issue on 26.12.1966. After her death, her husband married the first



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appellant herein as his second wife and gave birth to the second and third appellants herein. The said Venkataraya Maniagar died on 13.09.1977 and the property belongs to the said Savithiriammal was settled by her in favour of one Nagaraja Maniagar. In respect of other properties and in various previous suits, it has been decided that the said Nagaraja Maniagar is the legal heir of the deceased Savithiriammal. Therefore, the legal heir certificate obtained by the appellants herein is to be declared as null and void.

3. The appellants filed written statement and raised several objections. The deceased respondent has no locus standi to file the suit. The appellants obtained legal heir certificate as per Section 15(1)(b) of the Hindu Succession Act and there is no illegality in the grant of legal heir certificate in their favour. The deceased respondent is nowhere connected either with the said Nagaraja Maniagar nor to the said Savithiriammal. Therefore, he has no authority to question the legal heir certificate obtained by the appellants from the revenue authority.

4. On the side of the deceased respondent, he had examined



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P.W.1 & P.W.2 and marked document in Ex.A.1 to Ex.A.8. On the side of the appellants, they were examined D.W.1 & D.W.2 and also marked documents in Ex.B.1 to Ex.B.9. Through Court witnesses, Ex.X.1 to Ex.X.3 were marked. On a perusal of oral and documentary evidences, the trial Court dismissed the suit. Aggrieved by the same, the deceased respondent preferred an appeal suit and the appellate Court reversed the findings of the trial Court and allowed the suit. Aggrieved by the same, the present Second Appeal.

5. In the present Second Appeal, the appellants raised the following substantially question of law:-

(i) Whether the First Appellate Court is correct and justified in declaring that the legal heirship certificate issued by the fourth defendant in favour of the defendants 1-3 as null and void in the absence of a specific challenge to an award dated 12.03.2016 passed by the Lok Adalat in O.S.No.53 of 2016?

(ii) Whether the first appellate Court is justified in nullifying the award passed by the Lok Adalath in view of the specific bar under Section 21 of Legal Services Authorities



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Act, 1987 and the law laid down in State of Punjab Vs. Jablur Singh reported in 2008(2) SCC 660?

(iii) Whether the First Appellate Court is correct in nullifying the legal heirship certificate – Ex.A.5 which was issued as per Section 15(1)(b) of Hindu Succession Act, at the instance of a stranger to the family?

(iv) Whether the First Appellate Court is correct in reversing the well considered judgement and decree of the Trial Court without assigning any independent reasons for not accepting the findings of the Trial Court, which is a sine qua non for coming to a different conclusion?

(v) Whether the First Appellate Court is justified in dealing with the issues other than those framed by trial Court and deciding the same in favour of the plaintiff depriving defendants 1-3, valuable opportunity to counter to the plaintiff case?

(vi) Is the First Appellate Court erred in decreeing the suit by ignoring the transfer of possession in present and holding that the defendants 1-3 have failed to prove Ex.B.5 by examining the attestors, more particularly in the absence of any specific challenge disputing Ex.B.5?

(vii) Whether the First Appellate Court has rendered a finding in favour of plaintiff in the absence of pleadings and



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evidences adduced by the parties?

(viii) When the First Appellate Court is bound to render judgment in accordance with Section 96 read with Order 41 Rule 31 of C.P.C., when the impugned judgment of the First Appellate Court rendered in violation of the said provision, is sustainable in law?

(ix) Whether the judgment and decree of the First Appellate Court is perverse?"

6. The learned Senior Counsel appearing for the appellants submitted that the said Nagaraja Maniagar being the close relative of the deceased Savithiriammal was allowed to continue the suit in O.S.No.9810 of 1967 as her legal representative, since she has no legal heirs. Though the first appellate Court appreciated the difference between the legal representative and legal heir, reversed the findings of the trial Court. The deceased respondent has no locus to seek relief of declaration, since he is neither the legal heir of the said Savithiriammal nor to the Nagaraja Maniagar. Though the deceased respondent was claimed to be the grandson of the said Nagaraja Maniagar, he failed to implead the other legal heirs and as such the suit is hit by non-joinder of the necessary party.



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6.1. She further submitted that the legal heir certificate was issued by the fifth respondent herein, in pursuant to the award dated 12.03.2016 passed in O.S.No.53 of 2016 by the Lokadalath. The deceased first respondent cannot challenge the legal heir certificate alone without challenging the award passed by the lokadalath. However, the deceased first respondent filed the present suit for declaration to declare that the legal heir certificate issued in favour of the appellants is null and avoid. Hence, she prayed to allow the present Second Appeal.

7. Heard Mrs.Chitra Sampath, learned Senior Counsel appearing for the appellants, Mr.A.E.Ravichandran, learned counsel appearing for the third respondent and Mr.M.R.Gokulkrishnan, learned Additional Government Pleader appearing for the fifth respondent.

8. Admittedly, the first appellant is the second wife of one Venkataraya Maniagar. One Savithiriammal was the first wife of the said



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VENKATARAYA MANIAGAR and she died issueless on 26.12.1966. After her demise, the said Venkataraya Maniagar married the first appellant as his second wife and due to their wedlock, they gave birth to the second and third appellants herein. Thereafter, they filed suit in O.S.No.53 of 2016 as against the revenue officials viz., the Tashildar and the District Collector, Krishnagiri, and suit was referred before the Lokadalath. The Lokadalath passed award dated 12.03.2016, thereby directed the revenue officials to issue legal heir certificate as if they are the legal heirs of the deceased Savithiriammal. Accordingly, the revenue official issued legal heir certificate.

9. On a perusal of legal heir certificate, it was issued only based on the Lokadalath award passed on 12.03.2016. The trial Court misconstrued the relief sought for in the suit that the deceased first respondent and others are the legal heirs of the deceased Savithiriammal. However, they never claimed that they are legal heirs of the said Savithiriammal before the Courts below. Admittedly, the deceased respondent never claimed any legal heir certificate in the present suit. Therefore, the suit does not require any other legal heir to be added as party



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in the suit. Hence, the suit is not bad for non-joinder of necessary party.

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10. With regard to locus standi of the deceased respondent concerned, he is one of the parties in O.S.No.261 of 1977 on the file of the District Munsif Court, Krishnagiri, and in the said suit, he was declared as legal heir of the said Savithiriammal. Whereas, the appellants herein claimed to be legal heirs of the deceased Savithiriammal through the award passed in the Lokadalath. In fact, the deceased respondent was the party in the suit in O.S.No.261 of 1977 and in the said suit, the appellants herein filed application in I.A.No.487 of 1996 to implead them as defendants in that suit. The said application was dismissed and concluded that the said Venkataraya Maniagar after demise of her first wife Savithiriammal got married the first appellant and gave birth to the second and third appellants. When the said Venkataraya Maniagar itself is not the legal heir of Savithiriammal, since he has no right over the property belonged to the said Savithiriammal, his second wife and the children born through the second wife are also not the legal heir of the said Savithiriammal. They are the legal heir of Venkataraya Maniagar and the said order was marked as Ex.A.8.



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11. That apart, the said Savithiriammal inherited the property as a heir of her mother. Therefore, her husband viz., Venkataraya Maniagar, who had no issue, cannot claim any title over the property, which was inherited by his deceased first wife viz., Savithiriammal. Further as per Section 15(2)(a) of the Hindu Succession Act, any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, including the children of any pre-deceased son or daughter, no upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father.

12. Therefore, the property inherited by the deceased Savithiriammal shall go to her mother or father's legal heirs. Hence her property will devolve upon her father viz., Theerthangiri and his sons Nagaraja Maniagar and Veerana Maniagar. Therefore, the appellants are not the legal heirs of the said Savithiriammal and they are colluded with the revenue official and obtained legal heir certificate on the basis of the order passed in O.S.No.53 of 2016. Hence, the first appellate Court rightly



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decreed the suit filed by the deceased respondent herein.

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13. Hence, this Court finds no substantial question of law involved in the present appeal and this Second Appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

20.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Principal Subordinate Judge,
Krishnagiri.
2. The District Munsif,
Krishnagiri.



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