



S.A.(MD)No.912 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.12.2022

Pronounced on: 16.12.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.912 of 2007

Selvi

... Appellant/Respondent/Plaintiff

Vs

Arumugagani

..Respondent/Appellant/Defendant

2.Samudhrapandi (Died)

..2nd Respondent

3.S.Palkani

4.S.Kathirvel

5.S.Muthuselvi

6.S.Jhansi

7.S.Devi

8.S.Ganesh

.. Respondents 3 to 8/Lrs of R2

(R2 is impleaded Vide Court order dated 21.09.2022 made in C.M.P(MD)Nos. 12077 of 2016, 5975 and 5976 of 2018 in SA(MD)No.912 of 2007 by NSSJ)

(R3 to R8 are brought on record as lrs of the deceased second respondent Vide Court order dated 21.09.2022 made in C.M.P(MD)Nos.12077 of 2016, 5975 and 5976 of 2018 in SA(MD)No.912 of 2007 by NSSJ)

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.168 of 2006 dated 31.10.2006 on the



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file of the Additional Subordinate Judge, Tirunelveli, reversing the judgment and decree dated 04.04.2005 passed in O.S.No.121 of 2000 on the file of the Additional District Munsif, Nanguneri.

For Appellant : Ms.J.Aanandhavalli

For R3 to R8 : No Representation

JUDGMENT

The plaintiff in O.S.No.121 of 2000 is the appellant herein. The suit is laid by her principally for a declaration that she is an adopted daughter of one Lakshmana Nadar. For narrative convenience, the parties would be referred to by their rank before the trial court.

2. The case of the plaintiff is as below:

- The plaintiff was born to one Duraipandi Nadar and Anthony Ammal. They were living in Mumbai. Other than the plaintiff, her parents had 3 other children, of whom the plaintiff is the eldest. When the plaintiff was 4 years old, her biological mother passed away.
- Duraipandi Nadar had a brother named Lakshmana Nadar. He was working in the Railways, and he was also a resident of Mumbai. Lakshmana Nadar



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was married to Arumugagani, the defendant herein. Both Duraipandi Nadar and Lakshmana Nadar had their other siblings. One of their sister was married to P.W.4, Thomas Nadar, who has a role to play, to be disclosed later in the judgment.

- Both Lakshmana Nadar and the defendant did not have any issues to themselves. Within about few days of the demise of the biological mother of the plaintiff, both Lakshmana Nadar and the defendant decided to take the plaintiff in adoption, and accordingly she was given in adoption by the plaintiff's biological father Duraipandi Nadar.
- Ever since the plaintiff came under the care of her adopted parents. She is since married, and is living with her husband. In the meantime, Lakshmana Nadar passed away on 07.07.1999. Arumugagani, the defendant was living in her native village in Tirunelveli District.
- The plaint discloses 8 items of properties of which items 1 and 6 are the self acquisition of Lakshmana Nadar, and the rest of the properties are the ancestral properties in the hands of her biological father, adoptive father and their siblings. While so, the plaintiff during her visit to the native sometime prior to the institution of suit, came to know that Arumugagani,



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her adoptive mother, was afoot to deal with the properties unilaterally, and hence she laid the suit for declaration of her status as the adopted child of Lakshmana Nadar, and also for injunction that the defendant be prohibited from alienating the properties.

3. The suit was contested by the defendant. She would principally contend that Duraipandi Nadar had four children through his first wife Anthony Ammal, and shortly after the demise of Anthony Ammal, he married his sister-in-law and had another 4 children through her. Duraipandi Nadar did not have adequate income to support his large family. Since the defendant and her husband did not have an issue, they merely offered to support Duraipandi Nadar and brought the plaintiff to their house for foster care. In other words, the defendant contends that the plaintiff is not their adopted child, but only their foster child. She however, admits that items 2 to 5 are the ancestral properties, item No.1 is an exclusive property of Lakshmana Nadar and item No.6 was purchased with the joint contribution of Lakshmana Nadar.

4.1 The dispute went to trial and before the trial court, the plaintiff examined



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herself as P.W.1. She examined another 6 witnesses as P.W.2 to P.W.7, besides examining her biological father, Duraipandi Nadar as P.W.8. She produced Exts.A.1 and A.2, of which Ext.A.1 is her marriage certificate. Of the six independent witnesses she examined, P.W.2 and P.W.3 are the attestors to Ext.A.1 marriage certificate. P.W.4, Thomas Nadar, is the brother-in-law of both Duraipandi Nadar and Lakshmana Nadar, he having married their sister. P.W.5 is the Nurse, who cared Lakshmana Nadar when he was sick. P.W.6 is the Bank Manager and through him Exts.X1 to X.3 came to be marked. P.W.7 is the Tahsildar through him Ext.X4 ration card was marked. For the defendant, she examined herself as D.W.1 and she had also examined her nephew (sister's son) as D.W.2. She has not produced any documentary evidence.

4.2 On appreciating the evidence before it, the trial court decreed the suit. It relied on Ext.A.1, marriage certificate of the plaintiff which shows Lakshmana Nadar as her father. This fact has been spoken to by P.W.2 and P.W.3, who are the attestors to the document. P.W.4, Thomas Nadar, speaks to the arrangement of marriage for the plaintiff as the daughter of Lakshmana Nadar. This was followed by Exts.X.1 to X.3 all of which show that Lakshmana Nadar had notified the



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plaintiff as his nominee to receive the amounts in his bank-accounts. The third aspect that weighed with the trial court was that in Ext. X.4 ration cardm the plaintiff was shown as the daughter of Lakshmana Nadar and Arumugagani. And finally, Armugagani in her cross-examination had conceded that she had not given any instruction to file the written statement and that it was prepared only at the instance of her nephew D.W.2.

5. Aggrieved by the decree, an appeal came to be preferred in A.S.No.168 of 2005 by the defendant. On appreciating the same evidence, the First Appellate Court has come to a different conclusion and reversed the decree. Its reasons are:

- the plaintiff has not proved the factum of adoption by proving the due ritual of adoption;
- and that she has also not provided the date of adoption etc.

Hence, this Second Appeal is filed at the instance of the plaintiff.

6. This Second Appeal is admitted for considering the following substantial questions of law:

(i) Whether the judgment and decree of the lower appellate court is



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sustainable in law ignoring Exts.X.1 to X.4?

(ii) Is not the lower appellate court committed an error in dismissing the suit relying on one portion of the oral evidence and eschewing the other portion regarding the taken over of the plaintiff in adoption which is contrary to the documentary evidence let in by the appellant?

7. The learned counsel for the appellant has made the following submissions:

- At the relevant time when the plaintiff was given in adoption by the plaintiff's biological father to his brother Lakshmana Nadar and the defendant. P.W.4, who is the brother-in-law of both Duraipandi Nadar and Lakshmana Nadar, speaks to this fact. Indeed, according to P.W.8, the biological father of the plaintiff, one Thiraviya Nadar was also present at the time of the adoption, but, the first appellate Court has taken exception to the fact that Thiraviya Nadar was not examined. What it has overlooked is that P.W.8 has deposed that Thiraviya Nadar has died by then.
- That the plaintiff was treated as an adopted daughter was adequately established by Ext.A1 read along side the testimonies of P.W.2 and P.W.3 and Exts.X.1 to X4. And the testimonies of P.W.8 and P.W.4 also were not impeached for their credibility. These evidence tilt the probability of the



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plaintiff's case, and to rebut the same, the defendant has not produced any documentary evidence.

- Turning to want of pleading of the ritual regarding adoption, the defendant has not pleaded the nature of ritual which the parties have to undergo for a valid adoption, nor was that aspect pointedly cross-examined. Only when the existence and prevalence of a particular ceremony or ritual for adoption is established, it could be possible for the court to draw an inference whether the adoption pleaded by the plaintiff is acceptable or not.

Summing up her argument, the learned counsel submitted that the civil case has to be decided by preponderance of probability, and if this rule of the thumb is applied, then, the probability tilts more in favour of the plaintiff especially when the defendant herself concedes as D.W.1 that she was merely a puppet in the hands of her nephew, D.W.2.

8. There is lot of force in the submissions of the counsel for the plaintiff/appellant. The issue involved in this litigation is whether the plaintiff is the adopted daughter of Lakshmana Nadar and the defendant, or is she their foster child. And, as in any civil litigation, this has to be resolved by the



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preponderance of evidentiary probability. The first appellate Court has taken a view that the plaintiff has not proved the custom involved but as was correctly argued by the learned counsel, nowhere did the defendant plead the nature of custom or rites or rituals which the community to which the parties herein belong, should follow for a valid adoption. Nor was there a pointed cross-examination as to the nature of the rituals to be followed for a valid adoption. The defendant had her opportunity to plead and prove it, but did not. As rightly found by the trial Court there are overwhelming documentary evidence that preponderates the probability of plaintiff's assertion that she is the adopted child of Lakshmana Nadar and the defendant. To make the matter worse, the defendant had testified but she has not even instructed her counsel for preparing the written statement which implies the brain behind the written statement ought to be DW2. Hence, this Court does not consider that the first appellate Court has re-appreciated the evidence correctly .

9. In fine, this Court find every reason to interfere with the judgement and the decree of the first appellate Court in A.S.No.168 of 2006 dated 31.10.2006 on the file of the Additional Subordinate Judge, Tirunelveli, and allows this appeal, set



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aside the same and restore the judgment of the trial Court in O.S.No.121 of 2000 on the file of the Additional District Munsif, Nanguneri. No costs.

16.12.2022

To,

1. The Additional Subordinate Judge, Tirunelveli
2. The District Munsif, Nanguneri.
3. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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N.SESHASAYEE, J.

Cm

Pre-delivery Judgment in
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