



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**S.A.(MD)No.916 of 2010**

Malarvizhi,  
Pharmacist,  
Railway Hospital Ponmalai,  
Ponmalai,  
Trichy - 4.

... Appellant / 1<sup>st</sup> Respondent /  
Plaintiff

Vs.

1. Chief Vigilance Officer,  
Vigilance Office,  
Southern Railway,  
Chennai -1.

2. Senior Medical Officer (C.M.S.),  
Railway Hospital,  
Ponmalai, Trichy - 4.

3. General Manager,  
Southern Railway Head Quarters,  
Chennai

... Respondents 1 to 3 / Appellants /  
Defendants 8 to 10

4. Tahsildar,  
Tiruchirappalli.

5. Head Master,  
St. Joseph Higher Secondary School,  
Ponmalaipatti, Trichy.

6. The Secretary,  
Board of Secondary Education,  
College Road, Chennai.

7. The Secretary,  
Board of Higher Secondary Education,  
College Road,  
Chennai.

8. The Dean,  
Thanjavur Medical College,  
Thanjavur.

9. The Director of Medical Education,  
Board of Pharmacy, Chennai - 5.



10. The Registrar,  
Tamil Nadu Pharmacy Council,  
Chennai - 6.

... Respondents / Respondents /  
Defendants 1 to 7

**Prayer:** Second appeal filed under Section 100 of C.P.C., against the reversing Judgment and Decree in A.S. No.28 of 2008 on the file of the learned II Additional Subordinate Judge, Thiruchirappalli, dated 17.02.2010, against the Judgment and Decree in O.S.No.897 of 2003 on the file of the Principal District Munsif, Thiruchirappalli, dated 15.04.2004.

For Appellant : Mr.V.Chandrasekar  
For R-1 to R-3 : Mr.S.Manohar,  
Standing Counsel for  
Southern Railway.  
For R-4,  
R-6 to R-10 : Mr.N.Muthu Vijayan,  
Special Government Pleader.  
For R-5 : No appearance.  
\* \* \*

### **J U D G M E N T**

The plaintiff in O.S.No.897 of 2003 on the file of the Principal District Munsif, Thiruchirappalli, is the appellant in this second appeal.

2. The plaintiff filed the said suit seeking the relief of declaration that she is the adopted daughter of one P.Rajasekaran and that the adoption deed executed by the biological mother of the plaintiff is valid and legally enforceable and that the plaintiff belongs to Hindu Pallan community. The plaintiff also sought mandatory injunction for restraining her employer from taking any disciplinary action against her. The plaintiff also wanted the name of her biological father to be deleted from the relevant records. The plaintiff 's employer was Southern Railway. They filed written statement controverting the plaint averments. The employer was shown as impleaded defendants 8 to 10. After the written statement was filed, they were exonerated and deleted from the array of parties. The jurisdictional Tahsildar, educational authorities and the institutions in which the plaintiff studied were shown as defendants 1 to 7. Defendants 1 to 7 were remained ex-parte. The trial Court by a cryptic judgment, decreed the suit on 15.04.2004. The trial Court had granted all the reliefs sought for by the plaintiff. Even though the employer was given up, injunction order was passed against them also. Aggrieved by the same, the Southern Railway filed C.R.P.No.1143 of 2005 before the High Court. The said C.R.P. was dismissed as withdrawn on 17.01.2006 with liberty to file an appeal. Availing the same, the employer filed A.S.No.28 of 2008 before the



II Additional Sub Court, Thiruchirappalli. By the impugned judgment and decree dated 17.02.2010, the decision of the trial Court was set aside and the appeal was allowed and the suit came to be dismissed. Challenging the same, this second appeal came to be filed.

3. Heard the learned counsel appearing for the appellant and the learned Standing counsel appearing for the Southern Railway and the learned Special Government Pleader appearing for the Government.

4. I can only express my shock that the suit filed by the plaintiff came to be even numbered in the first instance. One of the main prayers in the suit was that the plaintiff must be declared as belonging to Hindu Pallan community. I wanted to know if the biological parents belong to any scheduled caste. It is fairly stated that they belong to Sozhiya Vellalar community and it is only Thiru.P.Rajasekaran who is claimed to be the adoptive father belonged to Hindu Pallan community. As rightly pointed out by the learned counsel appearing for the Southern Railways, such prayer runs counter to the law laid down by the Hon'ble Supreme Court in **Kumari Madhuri Patil V. Additional Commissioner ( (1994) 6 SCC 241 )**.

5. Secondly, in respect of any service matter of a railway employee, it is only the Central Administrative Tribunal that can have jurisdiction. The jurisdiction of the civil Court to entertain the service matters of the Government employees was expressly taken away by the Administrative Tribunals Act 1985. Therefore, the suit could not have been taken on file. The judgment of the trial Court is as follows:-

" Since the defendants have not appeared, they have been set ex-parte. P.W.1 was examined and Ex.A.1 to Ex.A.10 were marked. The claim has been proved. The suit is decreed as prayed for with cost. "

This cannot be called as a judgment at all. Even though the employer has been specifically given up, the decree contains injunction restraining the employer from taking any disciplinary action against the plaintiff.

6. The learned counsel appearing for the appellant realising that he is on a vulnerable ground chose to make a faint submission that he would confine his relief to seeking the relief of declaring the plaintiff as the adopted daughter of Thiru.P.Rajasekar. But to obtain such a relief, the plaintiff must prove all the ingredients of valid adoption.

7. The plaintiff is a woman. The parties are Hindus. Therefore, the requirements set out in Hindu Adoptions and Maintenance Act, 1956 will have to be fulfilled. There must be giving and taking of the child. In this case, the deed of adoption is also not



registered. Except the plaintiff Malarvizhi, no one else has been examined as witness. If proper witnesses had been examined, then this Court can consider granting the relief of declaration. Malarvizhi was said to have been 4 ½ years old, when she was given in adoption. Therefore, her testimony does not inspire my confidence. Looked at from any angle, the judgment and decree passed by the first Appellate Court do not call for any interference.

**8.** This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

1. The II Additional Subordinate Judge,  
Thiruchirappalli.
2. The Principal District Munsif,  
Thiruchirappalli.

**COPY TO:-**

The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.S.MANO HAR, Advocate ( SR-11066[F] dated 10/03/2022 )

+1 CC to M/s.SPL GP ( SR-11173[F] dated 10/03/2022 )

**S.A.(MD)No.916 of 2010**

**09.03.2022**

MA (CO)

GC(13.04.2022) 4P 7C