



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.03.2022

DELIVERED ON : 28.04.2022

CORAM

THE HONOURABLE MS. JUSTICE **R.N.MANJULA**

A.S(MD) .No.62 of 2019

and CROS.OBJ. (MD)No.3 of 2020

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In A.S. (MD)No.62 of 2019:

Seethalakshmi

... Appellant/1st Defendant

Vs.

1.Marudhupandi

... 1st Respondent/Plaintiff

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Board,
West Chithirai Street,
Madurai Town.

3. The Commissioner,
Hindu Religious and Charitable
Endowment Board,
Uthamar Gandhi Road,
Nungambakkam,
Chennai 600 034.

...Respondents 2 and 3/Defendants 2 and 3

Prayer :This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 15.03.2019 passed in O.S.No.92 of 2013 on the file of the I Additional District Judge, Madurai.

For Appellant : M/s. J.Anandhavalli

For R1 : Mr.V.MeenakshiSundaram

For Mr.D.Nallathambi

For R2 : Mr.C.Satheesh

Government Advocate

For R3 : Mr.P.Subbaraj

Special Government Pleader



In CROS.OBJ(MD)No.3 of 2020:

Marudhupandi

... Cross Appellant/1st Respondent

Vs.

1.Seethalakshmi

... 1st Respondent/Appellant

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Board,
West Chithirai Street,
Madurai Town.

3. The Commissioner,
Hindu Religious and Charitable
Endowment Board,
Uthamar Gandhi Road,
Nungambakkam,
Chennai 600 034.

...Respondents 2 and 3/Defendants 2 and 3

Prayer : This Cross Appeal is filed under Order 41 Rule 22 C.P.C to set aside the findings regarding the validity of Ex.A.11 and the validity of marriage of Aanandhavalli in the judgment and the decree passed in O.S.No.92 of 2013 dated 15/03/2019 on the file of the I Additional District Judge, Madurai.

For Cross Appellant : Mr.V.MeenakshiSundaram

For Mr.D.Nallathambi

For R1 : M/s. J.Anandhavalli

For R2 : Mr.C.Satheesh

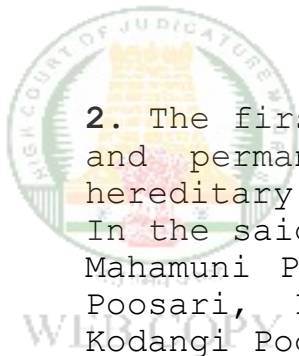
Government Advocate

For R3 : Mr.P.Subbaraj

Special Government Pleader

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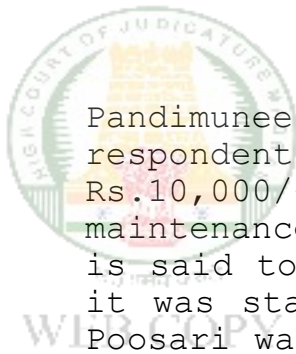
This Appeal Suit has been preferred challenging the judgment and decree passed by the learned I Additional District Judge, Madurai, dated 15.03.2019, in O.S.No.92 of 2013. The appellant is the first defendant in the suit.



2. The first respondent/plaintiff has filed the suit for declaration and permanent injunction in respect of the administration of hereditary trustees/poosaries of Arulmighu Pandimuneeshwarar Temple. In the said temple poojas were managed by Pothaipandiyan Poosari and Mahamuni Poosari. Pothaipandiyan had five sons namely, Veeramalai Poosari, Pandiyan Poosari, Sankan Poosari, Ponnai Poosari and Kodangi Poosari. Mahamuni Poosari had five wives, namely Ulagammal, Saroja, Aanandhavalli, Dhanam and Indra. In view of the dispute arose between the sons of Pothaipandiyan Poosari and Mahamuni Poosari in performing the poojas, a suit was filed in O.S.No.383 of 1973 before the District Munsif Court, Madurai; in the said suit, a compromise decree was passed; as per the compromise decree, it is agreed that the sons of Pothaipandiyan and the sons of Mahamuni Poosari would do poojas in rotation basis for every five weeks; Mahamuni Poosari married one Aanandhavalli and through her, he got one son and two daughters; later, he divorced her as per custom; subsequently, she was married by Pandiyan Poosari son of Pothaipandian; and they had no issues out of their marriage.

2.1. Pandiyan Poosari executed a power deed in favour of Aanandhavalli on 20.11.1985 by showing Aanandhavalli as his wife; since Pandiyan Poosari had no issues, he adopted a male child in order to do poojas at Pandimuneeshwarar temple on his behalf after his death; since only male heirs alone were holding the post of hereditary trustee and poosariship, Pandiyan Poosari and Aanandhavalli adopted the first respondent/plaintiff Maruthupandi as their adopted son through an adoption deed dated 30.08.1995; Aanandhavalli died on 19.05.1996; the legal heirship certificate given by Tahsildar would show that the plaintiff and Pandian Poosari alone were the legal heirs of Aanandhavalli; since Aanandhavalli had a son born through Mahamuni Poosari, in order to avoid the technical difficulties in connection with the validity of the adoption, another adoption deed was executed on 07.11.1996 by Pandiyan Poosari subsequent to the death of Aanandhavalli for adopting the plaintiff; the plaintiff was brought up by Pandiyan Poosari and his school record would show the same.

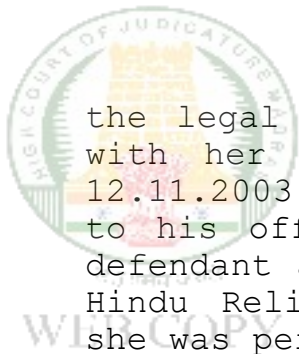
2.2. The first defendant namely, Seethalakshmi is the daughter of one Ramalingam Pillai and she had one sister by name Vijayalakshmi; they were residing at K.Pudur, Madurai; in the year 1985, Seethalakshmi married one Mohan and later, he lived with his sister Vijayalakshmi; on 12.08.1985, both Seethalakshmi and Vijayalakshmi were arrested in brothel case and later they acquitted on 26.12.1985; in the above case, Seethalakshmi's husband was shown as Mohan; even during the subsistence of marriage between Seethalakshmi and Mohan, Pandiyan Poosari lived with Seethalakshmi and called her as his second wife; in fact, Seethalakshmi was not the legally wedded wife of Pandiyan Poosari; on 07.12.1999, Pandiyan Poosari executed a Will by bequeathing the right of poosariship in Arulmighu



Pandimuneeshwarar temple in favour of the first respondent/plaintiff; in the said Will, it is mentioned that Rs.10,000/- (Rupees ten thousand only) should be given as maintenance to Seethalakshmi during the turn of pooja ; another Will is said to have been executed by Pandiyan Poosari; in the said Will it was stated that the marriage between Seethalakshmi and Pandiyan Poosari was held on 10.05.1985; in the said Will, it is also stated that Seethalakshmi would enjoy the rights of Pandiyan Poosari in the temple till her life time and thereafter, the plaintiff would inherit the said rights; since Seethalakshmi was arrested on 12.08.1985 in a brothel case, it was false to state that her marriage with Pandiyan Poosari was taken place on 10.05.1985.

2.3 The second Will executed by Pandiyan Poosari was cancelled subsequently; Pandiyan Poosari executed a settlement deed on 20.10.2003 and in the said settlement deed, he had given his hereditary trusteeship and poosariship in favour the plaintiff and cancelled his earlier Will dated 25.08.2003; Pandiyan Poosari died on 12.11.2003 leaving the plaintiff as his heir; on 25.11.2003, the first defendant gave a petition before the Tahsildar by stating that she alone was the legal heir of Pandiyan Poosari; the plaintiff's guardian Chellapandi had objected and claimed that the plaintiff alone is the legal heir; the Tahsildar made enquiries and passed orders on 19.12.2003 by stating that both Sethalakshmi and Maruthupandi are the legal heirs of Pandiyan Poosari; in an appeal preferred before the Revenue Divisional Officer, Madurai, an order was passed on 27.12.2004 by holding that the plaintiff alone is the legal heir; the first defendant challenged the same, by way of filing a Writ Petition before this Court in W.P(MD)No.154 of 2005; the said Writ Petition was disposed by directing the parties to seek remedy before the civil court; as against the order passed by the Government/defendants 2 and 3, another Writ Petition in W.P.No.14288 of 2004 was filed and it was allowed; the first defendant challenged the same by preferring an appeal in W.A.No.1590 of 2011 and in the said order passed in the said writ petition, the plaintiff was directed to establish his right before the competent civil court; hence, the plaintiff has filed the suit for declaration to declare him as the adopted son of the deceased Pandiyan Poosari and for other consequential reliefs.

3. The first defendant resisted the suit by stating that PandiyanPoosari married the first defendant on 10.05.1985 in Murugan temple at Madurai Rajaji Poonga according to Hindu rites and customs in the presence of the relatives and elders; the marriage was registered before the Marriage Registrar, Tallakulam Sub Registrar office registered on 12.05.1985 and serial number was given as 35/1985; P.M.Raja Poosari son of MahamuniPoosari born through his first wife Ulagammal and Sivaji Poosari son of Ponnann Poosari stood as witnesses and affixed their signatures; so the first defendant is

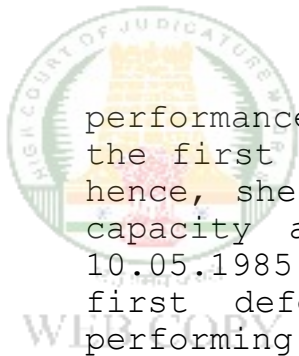


the legal wedded wife of Pandiyan Poosari; Pandiyan Poosari lived with her happily till his life time; Pandiyan Poosari died on 12.11.2003 and as his only legal heir the first defendant succeeded to his office of hereditary trusteeship in the temple; the first defendant also recorded her succession with the Joint Commissioner, Hindu Religious and Charitable Endowment Department; accordingly, she was permitted to perform pooja in the temple for a period of one week in a rotation basis.

3.1. Under such circumstances, the plaintiff has filed a petition under Section 54(1) the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959 by stating that he is an adopted son of Pandiyan Poosari; in the said petition an order was passed to seek relief before the civil court; the father of the plaintiff, namely, P.M.Chellapandi challenged the said order by way of preferring an appeal instead of revision; the appeal was disposed on 06.05.2004 by holding that the first defendant, being the wife of late Pandiyan Poosari, she is entitled to inherit his right to perform poojas and also to carry on the day to day affairs of the temple as one of the hereditary trustees; the said order was challenged by the plaintiff by way of filing a Writ Petition in W.P.No.14288 of 2004 and an order of stay was passed on 28.07.2011; the first defendant challenged the order by way of filing appeals in W.A.Nos.1590 of 2011 and 1995 of 2011; W.A.No. 1590 of 2011 was allowed and W.A. No.1995 of 2011 was dismissed on 30.11.2013; as against the said order, Special Leave Petitions in S.L.P.Nos.20572 and 20573 of 2013 were preferred before the Supreme Court of India and the same were dismissed.

3.2. The widow of a male Hindu is a class (i) legal heir under Hindu Succession Act; Aanandhavalli Ammal, who was the third wife of Mahamuni Poosari did not get divorce from her husband till her death. Mahamuni Poosari died in the year 1985 and she would come with the prohibitory relationship as against Pandiyan Poosari and hence it is false to state that Pandiyan Poosari married Aanandhavalli; hence, any documents alleged to have been executed by Aanandhavalli and Pandiyan Poosari are *void ab initio*; two adoption deeds mentioned by the plaintiff are not valid and on the dates of alleged adoption deeds, Pandian Poosari was not in sound disposing state of mind; the third relief sought in respect of Rs.10,000/- (Rupees ten thousand only) as maintenance on the strength of the settlement deed dated 20.10.2003 is misleading; the first defendant never claimed any maintenance on the strength of any settlement deed; she is acting as hereditary trustee in the place of her husband by getting emoluments; the reliefs sought by the plaintiff are not maintainable; hence, the suit has to be dismissed.

4. The Government/defendants 2 and 3 have admitted that the



performance of pooja is being done on rotation basis in the temple; the first defendant is the wife of the deceased Pandiyan Poosari and hence, she was performing pooja for a week out of ten weeks in her capacity as hereditary trustee; Pandian Poosari married her on 10.05.1985 and he expired on 12.09.2003 and hence as his wife the first defendant succeeded his office of trusteeship and was performing pooja on rotation basis; in the petition filed by the plaintiff under Section 54(1) of the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959, the plaintiff has stated that he is the son of Mahamuni Poosari through his third wife Aanandhavalli; an order has been passed to seek the relief before the civil court; the plaintiff's father filed an appeal before the Commissioner challenging the trusteeship and the appeal was disposed on 06.05.2004 by holding that the first defendant is the female heir and she being the wife of late Pandiyan Poosari, is entitled to perform poojas and carry out the day to day affairs of the temple; the father of the plaintiff challenged the same by way of filing W.P.No.14288 of 2014 and an order of stay was passed in the said Writ Petition on 28.07.2011; the first defendant was permitted to receive 50% of emoluments in turn; she challenged the said order by filing Writ Appeals in W.A.Nos. 1590 of 2011 and 1995 of 2011; W.A.No.1590 of 2011 was allowed and W.A.No.1995 of 2011 was dismissed on 30.11.2013; as against the said order, Special Leave Petitions in S.L.P.Nos.20572 and 20573 of 2013 were preferred before the Supreme Court of India and the same were dismissed; the plaintiff was in the habit of knocking the doors of several courts for some reason or other and this is an unending drama; hence, the suit should be dismissed.

5. On the above pleadings, the learned trial Judge has framed the following issues:

i) Whether the deceased Pandiyan Poosari adopted the Plaintiff as his adopted son?

ii) Whether the first defendant is the legally wedded wife of the said Pandiyan Poosari?

iii) Whether the Settlement Deed dated 20.10.2003 is true and valid and was acted upon?

iv) Whether plaintiff is entitled to the declarations he sought for?

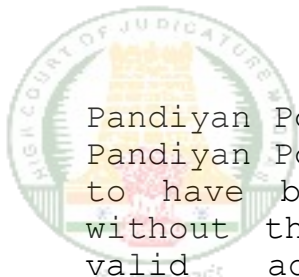
v) To what other relief the parties are entitled to?

6. During the course of trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and twenty eight documents were marked as Ex.A.1 to Ex.A.28. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and thirteen documents were marked as Ex.B.1 to Ex.B.13. Ex.X.1 was also marked.



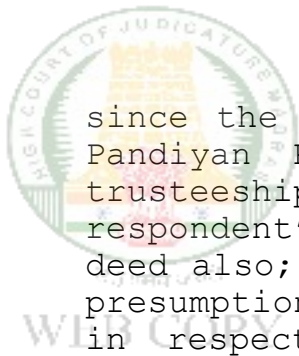
7. At the conclusion of the trial and on considering the materials available on record, the learned trial Judge decreed the suit by granting the major reliefs sought by the plaintiff. Aggrieved over that, the first defendant has preferred this Appeal Suit. The plaintiff has also filed Cross Objection with regard to the findings about the validity of Ex.A.11 and the marriage of Aanandhavalli with Pandiyan Poosari.

8. The learned counsel for the appellant/first defendant submitted that the learned trial Judge had ignored to appreciate the validity of the marriage certificate Ex.B.2, which would prove the marriage between Pandiyan Poosari and the appellant/first defendant; in order to grab the hereditary right that would vest on the appellant/first defendant, the plaintiff and his father Chellapandi had created false documents; he went to the extent of alleging that there was a marriage between the mother of Chellapandi and Pandiyan Poosari; the said Aanandhavalli is the grand-mother of the plaintiff Maruthupandi; the court has rightly held that the alleged marriage between Aanandhavalli and Pandiyan Poosari is not valid; even the respondent/plaintiff himself admitted that the adoption deed dated 30.08.1995 (Ex.A.2) is invalid; the respondent created another adoption deed dated 07.11.1996/Ex.A.5 and claimed that the plaintiff was adopted by Pandiyan Poosari and hence, the plaintiff is entitled to inherit the hereditary poosariship and all the rights of the deceased Pandiyan Poosari in respect of Arulmighu Pandimuneeshwarar Temple; the man behind the creation of documents and various litigations is Chellapandi, who is the father of the plaintiff; the appellant/first defendant being the clause (i) heir of a male Hindu is entitled to inherit all the rights of her husband Pandiyan Poosari; in W.P.No.14288 of 2004, this Court has held that the plaintiff is entitled to get the rights of Pandiyan Poosari; the appellant preferred an appeal in W.A(MD)No.1590 of 2011 and that was allowed; the Special Leave petition filed by the respondent/plaintiff challenging the above order was also dismissed; undue significance was given to Ex.A.9, in which excepting the entries in Ex.A.9, copy of the extracts of the case register maintained by the Thallakulam Police Station, no other document is produced to claim that the appellant is the wife of one Mohan; in the evidence of D.W.2, who is the sister of the appellant/first defendant she has stated that she is wife of Mohan; but the learned trial Judge had completely omitted to consider her evidence and proceeded to give too much weight for Ex.A.9; the benefit of presumption of marriage from the marriage certificate produced by the appellant was also not given; the marriage registration certificate, being a public document is a proof of marriage and hence presumption about the marriage under Section 114 (e) of the Indian Evidence Act can be made; that apart, a third party like the plaintiff has got no *locus standi* to question the marriage between



Pandiyan Poosari and the appellant; the appellant, being the wife of Pandiyan Poosari, ought to have participated in the adoption alleged to have been taken by Pandiyan Poosari on 07.11.1996 (Ex.A.5); without the participation of the appellant, there cannot be any valid adoption; the adoption claimed by the first respondent/plaintiff does not meet the requirements of Section 6 (4) r/w Proviso to Section 7 of the Hindu Adoption and Maintenance Act; the first respondent/plaintiff did not produce any document to show that he had been living with Pandiyan Poosari as his adopted son; no school records, marriage invitation, ration card or voters ID are produced to substantiate the claim of the first respondent/plaintiff; the registered adoption deed cannot presume the validity for an adoption unless the conditions for adoption as required under Sections 6 and 7 of the Hindu Adoption and Maintenance Act are complied; even in the documents produced by the first respondent/plaintiff, the appellant/first defendant is shown as the wife of Pandiyan Poosari; there is no time limit fixed for registering the marriage; hence, the delay in registration of marriage will not render the marriage registration invalid; the learned trial Judge has not appreciated the evidence in a proper perspective and decreed the suit on wrong presumptions and hence, it has to be set aside.

9. The learned counsel for the first respondents/plaintiff submitted that the appellant is not the legally wedded wife of late Pandiyan Poosari and the said fact was rightly appreciated by the learned trial Judge; the contents of Ex.A.9 was admitted by the appellant/first defendant herself in her evidence and Ex.A.9 would show that she was the wife of one Mohan; she has not produced any document to show that her marriage with Mohan was dissolved before her alleged marriage with Pandiyan Poosari; in Ex.A.20 sale deed dated 03.06.1991, though the appellant/first defendant was described as the wife of Pandiyan Poosari, in Ex.A.28 another sale deed would show that she was residing in Tahsildar Nagar; so, that would make it clear that the appellant never lived with Pandiyan Poosari, who was residing at Bharathipuram, Karuppayurani; after the death of Mahamuni Poosari, Aanandhavalli married Pandiyan Poosari and they were living as husband and wife for about 35 years; Ex.A.10 Will would also show the recitals to that effect; however the Will was cancelled due to settlement deed Ex.A.11; as per the said Will, Pandiyan Poosari had settled all his property rights and Poosari rights in respect of the temple in favour of the plaintiff namely, Maruthupandi by appointing his father Chellapandiyan as his guardian; the first respondent/plaintiff was adopted by Pandiyan Poosari and his wife Aanandhavalli by virtue of a registered adoption deed (Ex.A.2) dated 30.08.1995; since Aanandhavalli had a son living at that point of time, in order to avoid future technical difficulties that might arise after her death Pandiyan Poosari, he had executed another adoption deed dated 07.11.1996, by which the first respondent/plaintiff was lawfully adopted by Pandiyan Poosari;



since the first respondent is the only legal heir of the deceased Pandiyan Poosari, he alone is entitled to get the hereditary trusteeship and poosari rights of Pandiyan Poosari; the first respondent's right is further confirmed by virtue of the settlement deed also; the learned trial Judge has rightly pointed out that the presumption as to Ex.B.2 Marriage registration certificate was only in respect of registration, but, it cannot be the proof for marriage; it is observed that except Ex.B.2 marriage certificate, nothing was produced to show that the marriage between the first defendant and the deceased Pandiyan Poosari was solemnized legally as per Hindu rites and customs; Aanandhavalli was described as the wife of Pandiyan Poosari in various sale deeds like Ex.A.19, Ex.A.20 and Ex.A.21; the appellant never lived with Pandiyan Poosari and Pandiyan Poosari never married her; the appellant was the wife of one Mohan and she got a son by name Saravanan through him; hence, the learned trial Judge had granted the reliefs as prayed for and it does not require any interference.

10. Points for consideration in both the Appeal Suit and Cross Objection:

i) Whether the findings of the learned trial Judge that the appellant is not the legally wedded wife of Pandiyan Poosari is correct?

ii) Whether the findings of the learned trial Judge that the first respondent/plaintiff is the legally adopted son of the deceased Pandian Poosari is correct?

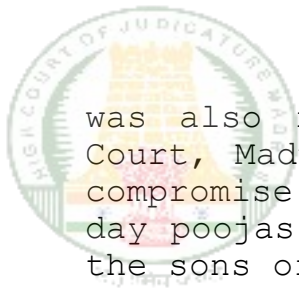
iii) Whether the finding of the learned trial Judge with regard to the validity of Ex.A.11 Will is correct?

iv) Whether the marriage of Aanandhavalli with Pandiyan Poosari is correct?

v) Whether the judgment and decree passed by the learned trial Judge is legally sustainable and whether the appeal should be allowed?

vi) Whether the Cross Objection should be allowed?

11. The whole dispute revolves around the hereditary trusteeship and pooja rights of Arulmighu Pandimuneeshwarar Temple in Meladi Village, Madurai North Taluk. Pandiyan Poosari was one among the five hereditary trustees of the said temple. The original founders of the temple Bothai Poosari and Mahamuni Poosari were managing the Arulmighu Pandimuneeshwarar Temple as its trustees and they were performing poojas. Bothaipandiyan Poosari had five sons namely, Veeramalai Poosari, Pandiyan Poosari, Sankan Poosari, Ponnai Poosari and Kodangi Poosari; Mahamuni Poosari had five wives namely, Ulagammal, Saroja, Aanandhavalli, Dhanam and Indra. After the death of Bothaipandiyan Poosari and Mahamuni Poosari, disputes arose between their sons with regard to the performance of pooja. A suit



was also filed in O.S.No.383 of 1973 before the District Munsif Court, Madurai Town and a compromise decree was passed. As per the compromise decree, it was agreed between the parties that the day to day poojas should be done on rotation basis for every five weeks by the sons of Bothaipandiyan Poosari and sons of Mahamuni Poosari.

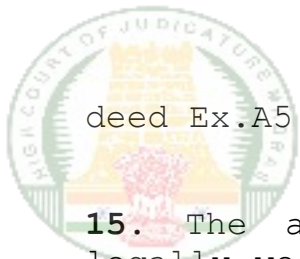
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12. Pandiyan Poosari, who is also one of the sons of Bothaipandiyan Poosari, did not have any issues. It is claimed by the first respondent/plaintiff that Pandiyan Poosari married Aanandhavalli.

The said Aanandhavalli is none other than the third wife of Mahamuni Poosari, to whom the plaintiff's father Chellapandian and two other daughters were born. It is stated by the first respondent/plaintiff that even during the life time of Mahamuni Poosari, Aanandhavalli divorced him and later married Pandiyan Poosari. Since the father of Pandiyan Poosari namely, Bothaipandiyan Poosari and the husband of Aanandhavalli namely Mahamuni Poosari are brothers, Aanandhavalli is the wife of the paternal uncle of Pandiyan Poosari. Marrying her is marrying a woman, who is equivalent to his mother. So, Aanandhavalli was standing in prohibitory degrees with PandiyanPoosari. But Aanandhavalli's own son Chellapandian is making a tall claim that his mother married Pandiyan Poosari. Though it is claimed that Aanandhavalli got divorced from Mahamuni Poosari, no evidence is produced to prove the same. The alleged marriage between Pandiyan Poosari and Aanandhavalli could not get any legal sanctity, even it happened to be true. At any stretch Aanandhavalli cannot be the legally wedded wife of Pandiyan Poosari. The trial Judge had dealt the above point in similar lines and rightly held that there is no valid marriage between Aanandhavalli and PandiyanPoosari.

13. Hence, all those documents in which Aanandhavalli appeared to have been described as Pandiyan Poosari's wife cannot be of any consequence and they can not confer the status of wife of Pandian Poosari on AanandhaValli. On the side of the plaintiff an adoption deed dated 30.08.1995 (Ex.A.2) is produced to show that Pandiyan Poosari and Aanandhavalli had adopted the plaintiff as their adopted son. It is to be noted that the plaintiff is the son of Chellapandiyan, who is a son born through Aanandhavalli through Mahamuni Poosari. Hence Ex.A.2 adoption deed would read that the grand-mother of the plaintiff had adopted him by marrying his paternal uncle. Another adoption deed dated 07.11.1996 (Ex.A5) is also produced. In which it is shown that Pandiyan Poosari alone had adopted the first respondent/ plaintiff as his adopted son.

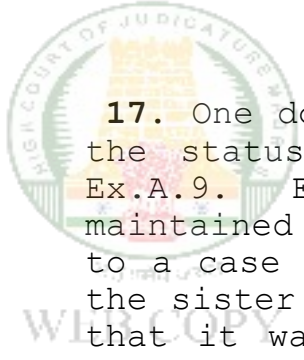
14. The recitals of Ex.A.5 adoption deed dated 17.11.1996 would say that the earlier adoption deed dated 19.05.1996 is invalid, since one of the adoptive parent namely Aanandhavalli had a living son by name Chellapandi at the time of adoption and so another adoption



deed Ex.A5 was made subsequent to the death of Aanandhavalli.

15. The appellant/first defendant would claim that she is the legally wedded wife of Pandiyan Poosari and hence the adoption deed cannot be given any legal validity without her permission and participation in the adoption. Pandiyan Poosari died on 25.11.2003. It is claimed by the first respondent/plaintiff himself that during the life time of Pandiyan Poosari, he executed a gift settlement deed on 20.10.2003. The said gift deed is marked as Ex.A.11. The recitals of Ex.A.11 gift settlement deed read that the appellant/first defendant is the wife of Pandiyan Poosari. By virtue of the settlement, the appellant/first defendant has to be given with Rs.10,000/- (Rupees ten thousand only) per week from the offerings given to the temple. But however, the pooja rights of Pandiyan Poosari should be enjoyed by the plaintiff in his capacity as the adopted son of Pandiyan Poosari.

16. It is claimed by the first respondent/ plaintiff that even before the adoption deed, a Will was executed by Pandiyan Poosari on 07.12.1999 (Ex.A.10). In the said Will, Aanandhavalli was described as the wife of Pandiyan Poosari and Seethalakshmi was described as a woman living with Pandiyan Poosari. In Ex.A.10, Seethalakshmi was given with the right to enjoy the full share of Pandiyan Poosari in the offerings till her life time. It is strange to note in Ex.A.10 Will that arrangements were made for the properties stood in the name of the appellant/first defendant as well, even without her being the testatrix of the Will. In the said Will it is stated that the properties stood in the name of the appellant/first defendant would be enjoyed by one Saravanan S/o Mohan. The above strange manner in which Ex.A.10 Will got executed would show that it is some one's hand work in the form of testamentary arrangement than the intention of the testator. By virtue of the subsequent settlement deed dated 20.10.2003 (Ex.A.11), the earlier Will is said to have got cancelled. It is alleged by the first defendant that Chella Pandian, who is the father of the plaintiff is the person behind the various litigations and he was instrumental in creating documents with an ulterior motive of creating heirship of the poojari rights of Pandian Poosari on his son. On this contention, the appellant/first defendant disputes the veracity of both Ex.A.10 and Ex.A.11. Even if it is presumed that Ex.A.10 and Ex.A.11 were the handworks of the plaintiff's biological father Chellapandiyan, the fact remains that in Ex.A.11, the appellant is described as the wife of late Pandiyan Poosari. Only in view to neutralize the above description, a prayer with regard of the status of the appellant has been sought; it is seen that the first respondent/plaintiff had claimed a relief of declaration that the appellant has got no right to get any maintenance as stated in Ex.A.11.

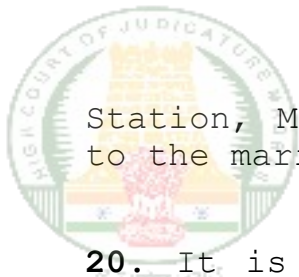


17. One document on the basis of which the first respondent denied the status of the appellant as the wife of Pandiyan Poosari is Ex.A.9. Ex.A.9 is the copy of the extract of a case entry maintained by Tallakulam Police Station. The above entries relate to a case filed against the appellant and her sister. When D.W.2, the sister of the appellant was confronted with Ex.A9, she admitted that it was a case registered under Immoral Traffic Act and from which the accused were acquitted. In the said entries, the name of the appellant and the name of D.W.2 are found. The appellant is shown as the wife of one Mohan and the entry was made on 12.08.1985.

D.W.2 claimed that the said Mohan was her husband and not the husband of the appellant. DW2 has further stated that she was married to him in the year 1975 itself and they have two sons by name Saravanan and Kumaran.

18. It is vehemently opposed by the learned counsel for the first respondent/plaintiff that just in order to conceal the truth that the appellant was the wife of Mohan, her sister/ D.W.2 has stated that her husband's name was Mohan. The death certificate of Mohan is produced as Ex.B.9 and his Legal Heir Certificate is produced as Ex.B.10. These certificates would show that Mohan died on 28.01.2006 and he had two legal heirs. Vijayalakshmi (D.W.2) was shown as the wife of Mohan and one Saravanan was shown as the son of Mohan. The father of Mohan was shown as Manickam. The legal heir certificate of Mohan cannot be disputed because even as per the case of the first respondent/ plaintiff, Kumaran was not the son of the appellant. Kumaran was 24 years in the year 2006. Hence the marriage between Mohan S/o Manickam and D.W.2 should have occurred any time before the year 1982. Ex.A.9 case was of the year 1985. In the said entry, the husband of Vijayalakshmi was not shown. Instead she is described as the daughter of one Ramalingam Pillai. However, the fact remains that Vijayalakshmi was married to Mohan even before 1982. While dealing with Ex.A.9, the learned trial Judge has observed that the appellant had contested the case relating to Ex.A9 as the wife of the deceased Mohan.

19. The appellant and her sister were slapped with the case registered under Prevention of Immoral Traffic Act. So the appellant and her sister /D.W.2 should have contested the case and got an order of acquittal. It was not a case to declare her status as the wife of Mohan. It is already observed that the husband's name of D.W.2 was not mentioned though she appeared to have got married before 1982, as per the age of her son Kumaran shown in Ex.B.10 legal heirship certificate dated 22.08.2006. D.W.2 had stated that she got married in the year 1975. D.W.2 mentioned her identity as the daughter of her father Ramalingam Pillai as well as the wife of her husband Mohan. Though the father's name is also mentioned, it cannot be taken that D.W.2 was not married as seen in Ex.A9 which is relevant to the date 12.08.1985 only. Hence, Ex.A9 - copy of the extract of the case register maintained by Tallakulam Police



Station, Madurai, would not serve as *prima facie* proof with regard to the marital status of DW2 or the appellant.

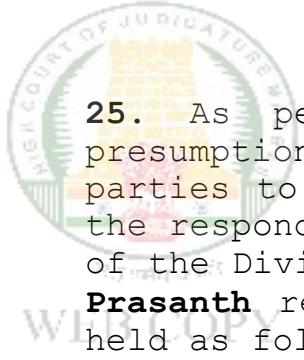
20. It is needless to state that those entries in Ex.A9 ought to have been made by Police. Neither the appellant nor her sister/DW2 had verified or attested the entries by accepting the correctness. Hence it can not be considered as a strong evidence in proof of the marital status of both the appellant and DW2. In view of the fact that those entries were made by third persons and about which the appellant did not have any control, the possibilities for errors in the same can not be dispensed.

21. So evidentiary value of Ex.A9 with regard to the marital status of the appellant cannot in any way be better or stronger than the marriage certificate-Ex.B2 produced by the appellant. It is needless to state that the marriage registration certificate is given in proof of marriage and it contains the signature of the couples. The registering authority certifies the particulars entered in the marriage register under the Hindu Marriage Registration Rule, 1967. Hence it is safer to give credence to the marriage certificate Ex.B.2 than Ex.A.9.

22. The delay in registering the marriage was also explained by the appellant. She has stated that despite she was married to Pandiyan Poosari on 10.05.1985, the necessity to register the marriage did not arise until a case, as seen in Ex.A.9 was filed against her. She has stated that that just in order to save her marriage from her adversaries, she had registered the marriage. The cumulative reading of Ex.A.9 and Ex.B.2 marriage certificate would show that her marriage with PandiyanPoosari was not accepted by her adversaries, who were instrumental in registering a case against her under the Prevention of Immoral Traffic Act. In order to give authentication of her marriage with PandiyanPoosari, the necessity to register her marriage seemed to have arisen.

23. It is relevant to mention that the adoption deeds Ex.A.2 and Ex.A.5, Will /Ex.A.10 and settlement deed /Ex.A.11 were all subsequent to 12.05.1986. So it appears that there are some calculative attempts made from time to time to deprive the appellant from enjoying her status, as the status of the wife of PandiyanPoosari. **Thus, point No.4 is answered.**

24. It is also relevant to note that PandiyanPoosari never made any objection about his marriage with the appellant, until he was alive. A personal status like marriage can be best spoken by a person, who is a party to marriage than a third person.



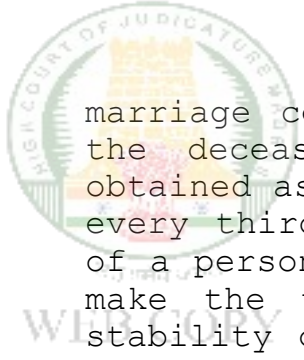
25. As per Section 114 (e) of the Indian Evidence Act the presumption of marriage can be drawn against every one except the parties to the marriage. In this context, the learned counsel for the respondent attracted the attention of this Court to the judgment of the Division Bench of this Court held in **V.D. Grahalakshmi vs. T. Prasanth** reported in **2012(2) CTC 833**. In the said judgment, it is held as follows:

40. The registration presupposes a valid marriage either under section 7 or 7A of the Act and performing the acts, more particularly, Saptapadi under Hindu rites and customs, is *sene qua non*. Therefore, the extract of Hindu Marriage register, which is the statements of particulars of a marriage, is not a substantial evidence to prove the marriage when one of the parties to the document repudiates the same. It may be a proof for all other purposes concerning the third parties to the marriage. We are conscious of a situation where a third party or a public authority hold that the certificate of marriage is not a substantial prove and call the party to prove the marriage. We wish emphasis that they can not. But once, one of the parties to the extract repudiates, then it is for the other party to prove the very fact of marriage either under sec.7 or 7-A of the Act. Merely because the marriage is registered or the particulars relating to the marriage is entered in a Hindu Marriage Register, will not go to show that a marriage was solemnized as per the conditions laid down in Sec.7 or 7(A) of the Act. Therefore, the registration of marriage is not a substantial proof of a Hindu marriage, if one party repudiates the same. The effect of production of a certificate is only to the extent that the parties have made such statements before a public authority.

26. It is to be noted that in the above case, the contesting parties were the parties to the marriage. Even in the said case, it is held that the registration of a marriage is a valid proof for all other purposes concerning third parties to the marriage, but not against the parties to the marriage and hence the registration cannot serve as a substantial proof of a Hindu marriage, if one of the parties to the marriage repudiates the same.

27. In the case in hand, Pandiyan Poosari while he was alive had not repudiated his marriage with the appellant. Neither he objected to Ex.B.2 marriage certificate. Had he opted not to accept the marriage as seen in Ex.B2, he would have filed a suit to declare the marriage as void, by invoking Sec. 12 (c) of the Hindu Marriage Act.

28. It may not be easier to produce any other legal and documentary proof against any third party, by a wife of a deceased than her

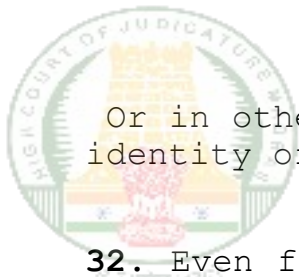


marriage certificate for the purpose of proving her marriage with the deceased. If the marriage registration certificate is not obtained as a valid proof of marriage as against a third party, then every third person would raise a litigation challenging the status of a person after her/his spouse died. Such kind of conflicts would make the very institution of marriage as meaningless. In fact stability of a relationship out of marriage is the foremost reason for the survival of a family system.

29. It is worthwhile to refer the judgement relied on by the learned counsel for the respondent held in **R.Anita Marginic Vs. R.Annadurai** reported in **1992 (2) MLJ page 11**. It relates to a case where the contesting parties are the parties to marriage. Yet another judgment relied on by the learned counsel for the respondent held in **Surjit Kaur v. Garja Singh and others** reported in **1994 AIR SC 135**, it is seen that the dispute with regard to recognition of a customary marriage. In the said case, the presumption of marriage is claimed on the basis of living together as husband and wife. But in the case in hand, the actual marriage itself is proved against a third party to marriage by producing the marriage certificate Ex.B.2.

30. It is submitted by the respondent that one Saravanan is shown as the son of Seethalakshmi in Ex.A.28 sale deed executed by the appellant in favour of Senathipathy S/o Ponnuchamy. It is further submitted that in Ex.A.26 voters list the name of the appellant (Seethalakshmi) is shown as wife of Mohan in serial No.370 and Mohan is shown as S/o Mariya Soosai in serial No.369 and the address is shown as K.Pudur, Ward 8. The learned trial Judge observed that the Mohan and Seethalakshmi shown in serial Nos. 369 and 370 should be the appellant and her husband. Since the father's name of Mohan was shown as Mariya Soosai and the father's name of husband of D.W.2 is Manickam, there could be two different persons born to two different fathers but given with the same name 'Mohan' and those two 'Mohans' could be the husbands of the appellant and her sister DW2. But such presumptions can not be made without getting clarification from the concerned or atleast by examining the authority who had caused the entries in the voter's list.

31. Apart from the persons who prepared the lists, the best person, to offer clarification about this can be the appellant or her sister D.W.2. The sister of the appellant, who was examined as D.W.2, has been telling consistently that the person called 'Mohan' is her husband and he is not the husband of the appellant. In proof thereof, she has produced the death certificate and the legal heir certificate of Mohan. Instead of presuming that both the sisters had got their husbands name as Mohan, there is a possibility for other presumption too. The father of Mohan could have got two names 'MariyaSoosai' and Manickam. So the trial court can not come to a conclusion on the basis of the records which serve only as lists.



Or in otherwords, they can not be taken as conclusive proof for the identity of persons.

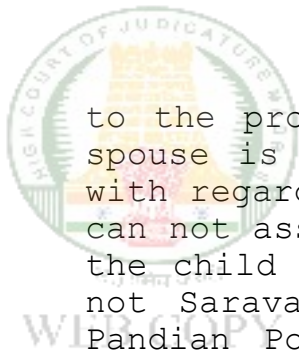
32. Even for the sake of argument it is accepted that another Mohan happened to be the husband of the appellant and they got a son by name Saravanan, the facts remain that Pandiyan Poosari married the appellant in the year 1985 and Mohan who was the husband of D.W.2 died in the year 2006. Under such circumstances it has to be proved that another Mohan, as husband of the appellant had ever existed and if so whether he continues to exist now or atleast till the time when Pandian Poosari married the appellant. Pandiyan Poosari never claimed to declare his marriage with the appellant as void by stating that the appellant had suppressed her earlier marriage if any, at the time of marrying him. No person called Mohan also challenged the marriage between the appellant and Pandian Poosari on the ground that his marriage with the appellant was subsisting, when she married Pandian Poosari.

33. Though D.W.2 claimed that she had two sons by name Kumaran and Saravanan, the legal heirship certificate of her husband Mohan would show the name of Kumaran alone. From that gap, if it is presumed that the maternity of Saravanan should be the appellant, then his paternity is a question. Supposing if his paternity also presumed to be Mohan, then again the question comes, whether it was the same Mohan who married DW2 or someone else who had the same name.

34. The challenge to the validity of the marriage between Pandiyan Poosari and the appellant never originated either from Pandian Poosari or from any one who had the name 'Mohan', until the life time of Pandiyan Poosari. Even the challenge from a third party like the plaintiff also did not surface until the life time of Pandian Poosari.

35. Under such circumstances, some one like the plaintiff can not challenge the marriage between the appellant and Pandian Poosari by claiming that the appellant is the wife of one Mohan or Pandian Poosari never married her or her marriage with Pandian Poosari had taken place when her marriage with someone else was subsisting and therefore it is invalid.

36. There are possibilities that a person can be a husband or wife of some one and still be a parent for a child born through some one else other than his or her spouse. The paternity or maternity of the child so born is the concern of the child or its parent and the claim for their status can be maintained only by the concerned not by any third party, unless the third parties' right to inheritance



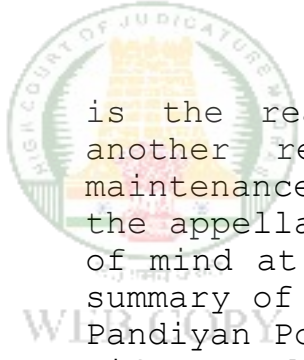
to the properties or any other inheritable status or right of the spouse is affected. In simpler terms unless there is any dispute with regard to the inheritance of any property rights, a third party can not assign any other paternity or maternity to a child than what the child knows or believes to be its parentage. Admittedly, it is not Saravanan who had laid any claim over the Poosari rights of Pandian Poosari by claiming that he is the son born to Pandian Poosari and the Appellant. So, even if the appellant happened to be the mother of the said Saravanan, that will not affect the marriage between the Appellant and Pandian Poosari.

37. When the personal relationship like marriage between two persons was not objected by either of them, their marriage need not be suspected by any third party with the sole object of depriving the spouse from inheriting the estate or any other inheritable rights of the other spouse. The learned trial Judge ought to have dealt the facts, circumstances and law regarding the marriage in a broader perspective, by giving due evidentiary value to Ex.B.2 marriage certificate, produced by the appellant.

38. The necessity is more when the learned trial Judge had disbelieved the factum of marriage between Aanandhavalli and Pandiyan Poosari or its validity. It is emphasized by the trial court that even if the marriage between Aanandhavalli and Pandiyan Poosari is accepted to be true, it cannot be a valid marriage because Aanandhavalli stood in prohibitory degrees and in fact she was the wife of the paternal uncle of Pandiyan Poosari. As against the plaintiff, Aanandhavalli was the mother of his father and hence his paternal grand-mother. All these facts and circumstances would only show that the father of the plaintiff, who was conducting several cases on behalf of the first respondent/plaintiff before several forums had acted with a sole motive of appropriating the hereditary poosariship rights of the deceased Pandian poosari and conferring it in favour of his own son, who is the plaintiff.

39. The manner in which Ex.A.10 Will was worded itself would show the influence of someone in making the recitals of the documents in such a way to exclude the appellant from becoming the legal heir of Pandiyan Poosari and claiming his hereditary rights of poosariship. At the risk of repetition, it is pointed out that in Ex.A.10 Will, there are recitals to the effect that the properties in the name of the appellant should be given to one Saravanan S/o Mohan, even when she was not the testatrix for Ex.A10.

40. In page No.5 of the gift settlement deed Ex.A.11, the appellant (Seethalakshmi) was described as the wife of Pandiyan Poosri. That

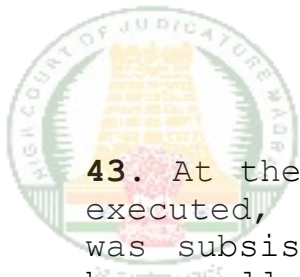


is the reason why the first respondent/plaintiff had sought another relief to declare that she is not entitled to any maintenance as per the recitals of Ex.A.11. However, it is claimed by the appellant that Pandiyan Poosari was not in sound disposing state of mind at the time when Ex.A.11 came into existence. The discharge summary of Pandiyan Poosari dated 08.11.2003 is produced as Ex.B.3. Pandiyan Poosari died one week thereafter on 15.11.2003. Ex.A.11 the gift settlement deed is dated 20.10.2003. On perusal of Ex.B.3 discharge summary, it is seen that Pandiyan Poosari was having severe health condition and he was admitted in Intensive Care Unit. Even a Psychiatrist opinion was also obtained to treat him. So his health condition was very bad and he was having Encephalopathy along with other severe health conditions. Encephalopathy is probably because of his chronic degenerative condition of brain. In such a state of health it is difficult to believe that Pandiyan Poosari had executed Ex.A.11 settlement deed in a good disposing state of mind. When Pandiyan Poosari was shown to be suffering from serious health conditions and he died shortly after Ex.A.11 and he was also admitted in the hospital for severe health condition shortly before his death, the burden would be upon the first respondent/plaintiff to prove that Ex.A.11 was executed by Pandiyan Poosari when he was in sound disposing state of mind.

41. Despite the learned trial Judge had perused the discharge summary and health condition of late Pandiyan Poosari, he proceeded to give a presumption in favour of the plaintiff. The discussion of the learned trial Judge on this aspect is seen to be self contradictory. Having accepted the fact the discharge summary of the deceased Pandiyan Poosari, which showed that he was hospitalized just 15 days before the date of execution, it is observed that no evidence was produced on the side of the appellant to show that Pandiyan Poosari was not in sound state of mind. It is also observed by the learned trial judge that there are prima facie proof available from the medical records that the deceased Pandiyan Poosari was suffering from Encephalopathy. Under said circumstances, the learned trial Judge ought to have fixed the burden on the side of the first respondent/plaintiff to prove that Pandiyan Poosari was in a fit state of mind to execute Ex.A.11, as claimed by him.

42. Admittedly, the appellant does not claim any right on the basis of Ex.A.11. It is observed by the learned trial Judge that the settlement deed was not acted upon even during the life time of the settlor and even after his death and hence that would not confer any right on either of the parties to the suit. Instead of rendering a primary finding on the basis of absence of proof as to the fit state of mind of the settlor, the learned trial judge has given a secondary finding that the settlement deed was not acted upon. **Thus,**

point No.3 is answered.



43. At the time when the second adoption deed dated 07.11.1996 was executed, the marriage between the appellant and Pandiyan Poosari was subsisting. Even though the adoption deeds are registered and hence all the formalities for the adoption can be presumed, that will not cure the legal incapacity of the adopting parent.

44. Section 7 of the Hindu Adoption and Maintenance Act, would prescribe the capacity of a male Hindu to take adoption as under:

7. Capacity of a male Hindu to take in adoption- Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation-If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

45. Section 6 Hindu Adoption and Maintenance Act would prescribe the requisite of the valid adoption as under:

Requisites of a valid adoption- No adoption shall be valid unless-

- the person adopting has the capacity, and also the right, to take in adoption;
- the person giving in adoption has the capacity to do so;
- the person adopted is capable of being taken in adoption; and
- the adoption is made in compliance with the other conditions mentioned in this Chapter.

46. But in the adoption deed Ex.A.5, the appellant who is the wife of Pandiyan Poosari is not a party. It is neither established that she had given her consent to take the first respondent/plaintiff as her adopted son. It is not the case of the first respondent/plaintiff also that the appellant had consented along with her husband Pandiyan Poosari to take him as their adopted son.

It was all along claimed by the first respondent/plaintiff that there was no legal marriage between PandiyanPoosari and Seethalakshmi. But the marriage between PandiyanPoosari and Seethalakshmi is proved. So, no legal sanctity can be given to Ex.A.5 adoption deed in which the appellant had not participated.

The first respondent cannot be accepted as the adopted son of late



Pandiyan Poosari.

47. Since the fundamental requirements for a male Hindu to take adoption are not proved to be present, it is unnecessary to deal with the other technical implications of a registered adoption deed. In view of the same, the citations relied on by both the counsels on the subject of implications of a registered adoption deed are not taken into consideration.

48. The cumulative effect of the oral and documentary evidence as discussed already would only prove that the appellant was the legally wedded wife of the deceased Pandiyan Poosari. Since there were no children born to the appellant and Pandian Poosari, the appellant alone is his legal heir. **Thus points 1 and 2 are answered in favour of the appellant.**

49. The consistent submission of the department respondents in all the proceedings filed under the provisions of Hindu Religious and Charitable Endowments Act and in the various Writ Petitions and Writ Appeals filed before the High Court is that the father of the first respondent/plaintiff namely Chellapandian is the creator of all troubles in connection with the rights of hereditary trusteeship of the deceased Pandian Poosari. Since the appellant is the sole legal heir of Pandian Poosari, she is entitled to inherit the Poosari rights of late. Pandian Poosari. .

50. The learned trial Judge has not appreciated the facts and evidence in a proper perspective and decreed the suit by granting the major reliefs to the plaintiff. Hence, the judgment and decree passed by the trial court requires interference. **Thus Point No.4 is answered.** In the result, this Appeal Suit is allowed and the judgment of the learned I Additional District Judge, Madurai, 15.03.2019 made in O.S.No.92 of 2013 is set aside and the Cross Objection is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-II)

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To

1.The Additional District Judge, Madurai.

2.The Section Office, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-21996[F] dated 28/04/2022)

+1 CC to M/s.SPL. GP (SR-23039[F] dated 29/04/2022)

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-23090[F] dated 02/05/2022)

A.S(MD) .No.62 of 2019

and CROS.OBJ(MD)No.3 of 2020

28.04.2022

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