



A.S(MD)No.65 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

A.S(MD)No.65 of 2014

and

M.P(MD)No.1 of 2014

1.C.Gurusami

2.G.Sreenivasan

3.G.Shanthi

4.S.Saroja

... Defendants 7 to 10/Appellants

Vs.

1.Nagajothi

... Plaintiff / 1st respondent

2.Ragunathan

3.Saraswathy

4.Shanmugam

5.Ganesan

6.Vasanthakumari(Exonerated)

7.Veeraiah(Died)

8.M.Selvakumar

9.T.S.Saravanan

10.M.Pasumpon

11.N.Mathivathani

12.N.Meena Preethy

13.N.Kaviya Sangamithra

... Defendants 2 to 6 and 11 to 17/
Respondents 2 to 13

14.V.Kalavathi

15.V.Senthil Kumar

16.V.Prem Kumar

17.V.Ranjith Kumar

18.Rekha

... Respondents 14 to 18



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(RR14 to 18 are brought on record as LR's of the deceased R7 vide Court order dated 15.03.2021 made in C.M.P(MD)No.7477 of 2020 in A.S(MD)No.65 of 2014 by PSNJ and SKJ)

PRAYER: Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 04.02.2014 passed in O.S.No.551 of 2004 on the file of the Additional District Court No.6, Madurai.

For Appellants : Mr.M.Vallinayagam,
Senior Counsel for
Mr.D.Nallathambi

For Respondents : No Appearance
for RR-1 to 3, 10 to 12 and
14 to 18

Mr.D.Saravanan
for RR-4 & 5

Mr.G.Prabhu Rajadurai
for R-6

Mrs.N.Krishnaveni,
Learned Senior Counsel for
Mr.V.Balaji
For RR8 & 9

Mr.V.Kishore Kumar
for R-13



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JUDGMENT

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(Judgment of the Court was delivered by **M.S.RAMESH, J**)

The present appeal is directed against the judgment and decree of the trial Court, dated 04.02.2014 in O.S.No.551 of 2004 on the file of the VI Additional District Court, Madurai, whereby a preliminary decree of partition of 1/6th share in the suit property was decreed in favour of the plaintiff and 1/6th share each in favour of the defendants 2 to 5 and 15 to 17.

2. For the sake of convenience, the parties to the appeal are addressed according to their status in the original suit.

3.1. The case of the plaintiff is that the suit property originally belonged to one Thiru.late.N.Kannayiram Pillai, who had purchased the same through a registered sale deed dated 15.07.1981. The wife of Thiru.late.Kannayiram Pillai, had predeceased her husband. Thiru.late.Kannayiram Pillai, subsequently expired, without any issues.

3.2. During his lifetime, Thiru.late.Kannayirampillai had adopted



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the first defendant herein on 01.01.1983, who is Thiru.late.Kannayiram

Pillai wife's brother's son. Apart from the first defendant,

Thiru.late.Kannayiram Pillai had also adopted the plaintiff as their

daughter in the year 1959, as per Hindu Rites and Customs. The

plaintiff's marriage was conducted by Thiru.late.Kannayirampillai by

referring to her as his "Abimaana Puthalvi" in the marriage invitation.

The plaintiff continued to live in the suit property during the pendency of

the suit. While the defendants 2, 4 and 5 are the blood brothers of the

plaintiff, the third defendant is her blood sister. By way of a family

arrangement, the plaintiff and the defendants 1 to 5 and a predeceased

brother of the plaintiff, had entered into a family arrangement on

09.05.1996, whereby they had agreed that the plaintiff and the first

defendant would be entitled to equal share, which they are willing to

forego in favour of the other defendants and that the suit property would

be sold in open auction and the sale proceeds shall be divided equally

among the plaintiff and the defendants 1 to 5, as well as her predeceased

brother. In view of the death of the plaintiff's brother, the plaintiff and

the defendants 1 to 5 are entitled to 1/6th share each in the suit property.

3.3 The first defendant in his additional written statement, has

denied the adoption of the plaintiff. He further reiterated the statement in

the plaint that the first defendant was adopted by Thiru.late.Kannayiram



Pillai and had brought him up as his own son and strongly denied the plaintiff's adoption. Thiru.late.Kannayiram Pillai had also executed a Will, dated 11.12.1988, bequeathing the suit property in favour of the first defendant. The defendants 7 to 10 had purchased the suit property from the first defendant through a registered sale deed for a valid sale consideration and hence, they are the real owners of the suit property. The claim of the plaintiff that the suit property was sold to the defendants 11 to 13 by a Power Agent of the plaintiff and the defendants 2, 4 and 5, is sham and nominal one and hence, it is not binding upon the first defendant. The alleged deed of Power of Attorney was not acted upon and had not come into operation at all and hence is a fraudulent document.

3.4. The defendants 2 and 4 in their written statement have denied the adoption of the plaintiff, as well as the first defendant, by Thiru.late.Kannayiram Pillai and claimed that the first defendant had no legal right to alienate the suit property in favour of the defendants 7 to 10. These defendants claim 1/6th share each in the suit property in view of a family arrangement between the plaintiff and the defendants 1 to 5.



3.5. The third defendant in her written statement claimed that the plaintiff and the defendants 1 to 5 were all adopted by late.Kannayiram Pillai and therefore, they are also entitled for 1/6th share.

3.6. The fifth defendant in his written statement claimed 1/6th share in her favour, in lieu of the family arrangement arrived at between the plaintiff and the defendants 1 to 5.

3.7. The written statement filed by the seventh defendant was adopted by defendants 8 to 10, wherein it is stated that the first defendant is the only adopted son of late.Thiru.Kannayiram Pillai and therefore, he is the absolute owner of the suit property. Even otherwise, the suit property was bequeathed to the first defendant by Thiru.late.Kannayiram Pillai through a Will, dated 11.12.1988. It is further stated that after conducting due diligence on the title of the first defendant over the suit property and after effecting a publication in the newspapers about the proposal to purchase the same, the sale deed was executed in their favour and hence they are the absolute owners of the suit property.

3.8. The defendants 7 to 10 had stoutly denied the plaintiff's claim of being the adopted daughter of late.Kannayiram Pillai and her right over the suit property.



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3.9. The written statement filed by the 12th defendant was adopted by defendants 11 and 13, wherein the 12th defendant claims to have purchased an extent of 3000 sq. ft. in the suit property along with defendants 11 and 13 through an acceptance deed, dated 02.10.2006 confirming the sale deed, dated 27.06.2006, in their favour.

3.10. The 14th defendant in his written statement states that based on the registered deed of Power of Attorney, dated 05.05.2000, he sold an extent of 3000 sq. ft. of the suit property in favour of the defendants 11 to 13.

3.11. The defendants 15 to 17, support the case of the defendants 11 to 13.

4. The trial Court on the strength of the pleadings, had framed the following issues:

(i) Whether the plaintiff and the first defendant are the adopted daughter and son of Thiru.late.Kannayiram Pillai?



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(ii) Whether the family arrangement, dated 09.05.1996 between the plaintiff and the defendants 2 to 5 is true?

(iii) Whether the family arrangement was acted upon?

(iv) Whether the photocopy of the family arrangement can be accepted as a document?

(v) Whether the claim of the defendants 7 to 10 that the family arrangement should be registered, is correct?

(vi) Whether the claim of the defendants 7 to 10, the family arrangement, dated 01.10.1997 was revoked, is correct?

(vii) Whether the claim of the defendants 7 to 10 that a Will was executed by Thiru.late.Kannayiram Pillai in favour of the first defendant is correct?

(viii) Whether the defendants 7 to 10 had purchased the suit property pending suit?

(ix) Whether the sale deed in favour of the defendants 7 to 10, would bind the plaintiff?

(x) Whether the sale of 3000 sq. ft. in the suit property to the defendants 11 to 13, would bind the



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plaintiff and the defendants 1 to 5?

(xi) Whether the plaintiff is entitled for relief of partition?

(xii) Whether the plaintiff is entitled for relief of permanent injunction?

5. While the plaintiff examined herself as P.W.1., her husband's brother's mother-in-law was examined as P.W.2 and Exs.A1 to A32 were marked. On the side of the defendants, the fifteenth defendant was examined as D.W.1, the second defendant as D.W.2., the third defendant as D.W.3. The seventh defendant as D.W.5 and 12th defendant as D.W.6 and an independent witness, who had signed as a witness in the Will executed by Thiru.late.Kannayiram Pillai in favour of the first defendant, was examined as D.W.7. Exs.D1 to D146 were marked on the side of the defendants.

6. The trial Court on the strength of the oral and documentary evidences let in on either side while answering the first issue framed by it, had held that neither the plaintiff nor the first defendant were the adopted daughter or son of Thiru.late.Kannayiram Pillai. However, the suit came to be decreed as prayed for and through the preliminary decree,



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the trial Court had held that the plaintiff and the defendant 2 to 5 and 15 to 17, were entitled to 1/6th share each in the suit property.

7. Heard the learned counsels appearing on either side and perused the materials available on record.

8. Two flagrant legal flaws are noticed in the procedure adopted by the trial Court while the suit was decreed. Firstly, the plaintiff had categorically admitted in the plaint that the first defendant was adopted by Thiru.late.Kannayiram Pillai and had reiterated such statement in her oral evidence. The first defendant had also taken similar plea in his written statement, as well as through the oral evidence of D.W.1/15th defendant, who is the wife of the first defendant. However, the trial Court ventured to frame an issue on this admitted fact of adoption of the first defendant by Thiru.late.Kannayiram Pillai.

9. Order 14 Rule 1 of Code of Civil Procedure, provides for framing of issues when a material proposition of fact or law is affirmed by one party and denied by the other.

10. Section 58 of the Indian Evidence Act, 1872, postulates that



admitted facts need not be proved.

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11. In the backdrop of these provisions, it is needless to emphasis that admission of a party in the proceedings, either in the pleading or oral, is the best evidence and the same does not need any further corroboration, as held in the case of *Ahmedsaheb (Dead) by Lrs. And Others vs. Sayed Ismail* reported in (2012) 8 SCC 516.

12. Similar view has also been taken in the case of *Jagdish Prasad Patel (Dead) Through Legal Representatives and Another vs. Shivnath and Others* reported in (2019) 6 SCC 82, as well as in a catena of other decisions.

13. While the law does not mandate proof of admitted facts, the trial Court had ventured to frame an issue with regard to the validity of the adoption of the first defendant by Thiru.Late.Kannayiram Pillai and had ultimately placed reliance on the evidences before it and held that such an adoption, though admitted by the plaintiff in her pleading, as well as oral evidence, is invalid. Such an exercise is not only unwarranted, but also against the provisions of law, as well as the various



dictums of the Hon'ble Supreme Court referred above.

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14. The second legal flaw committed by the trial Court is that while framing the issues, it had gone into the validity of the plaintiff's claim to be the adopted daughter of Thiru.late.Kannayiram Pillai. While doing so, the trial Court had placed reliance on the documents produced by the plaintiff in particular Ex.A4, which is the marriage invitation of the plaintiff. Ex.A5, which is the advertisement of her marriage in a Tamil daily newspaper, Exs.A7 to A9 which are the photographs of her marriage. Exs.A10 and 11 which are the school testimonials and held that none of these documents produced by the plaintiff, establish that she was the adopted daughter. The trial Court further held that in the absence of any written document and any grand adoption ceremony by Thiru.late.Kannayiram Pillai, who was a very prominent personality in Madurai Locality, it had declared that the plaintiff was not the adopted daughter. However, and very curiously, the trial Court proceeded to adjudicate the suit for the relief of partition claimed by the plaintiff.

15. We are unable to comprehend as to how the trial Court would be justified in considering a prayer seeking for partition by the plaintiff, who is not among the Class-I heir or Class-II heir or Agnates or



Cognates.

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16. It is not in dispute that Thiru.late.Kannayiram Pillai, did not have any male or female blood relations alive at the time of his death. It is also not in dispute that the plaintiff, being the daughter of Thiru.late.Kannayiram Pillai's wife's brother, will not fall neither under Class-I or Class-II heirs nor under Agnates or Cognates.

17. If that be so, when the trial Court was very much aware of this fact, it ought not to have ordered for partition, after having clearly held that the plaintiff was not the adopted daughter of Thiru.late.Kannayiram Pillai.

18. Thus, all the findings in connection with the framed issue in this regard, are illegal and not binding on the aggrieved defendants.

19. The defendants 7 to 10/the appellants herein are the purchasers of the suit property from the first defendant, for a valid sale consideration. In view of the aforesaid findings rendered by us in the preceding portion of this judgment, the exercise of declaring that the first defendant was not the adopted son of Thiru.late.Kannayiram Pillai, is illegal. The first defendant also claims title over the suit property



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through a Will. In view of the admission made by the plaintiff herself that the first defendant is the adopted son of Thiru.late.Kannayiram Pillai, the title derived by the defendants 7 to 10 herein from the first defendant through a registered sale deed, is legally valid, since the suit property shall devolve on the first defendant through a testamentary succession under the Hindu Succession Act, 1956. It is needless to point out that Section 30 of the Hindu Succession Act, 1956, clearly laid down that any Hindu may dispose of by Will or other testamentary disposition any property, which is capable of being so disposed of by him.

20. The defendants 11 to 13 claim title over 3000 sq. ft., in the suit property by placing reliance on an acceptance deed, dated 02.10.2006 wherein they claim that there was a sale deed executed on 27.06.2006 between them and the plaintiff herein. Now that we have held that the plaintiff is not the adopted daughter of Thiru.late.Kannayiram Pillai and that, she has no legal right or title over the suit property and further that the first defendant herein is admittedly the adopted son of Thiru.late.Kannayiram Pillai, who had sold the property to defendants 7 to 10, the claim of title by these defendants through an acceptance deed allegedly executed by the plaintiff, is sham and nominal and has no legal binding.



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21. For all the foregoing reasons, this appeal is allowed and the judgment and decree of the trial Court, dated 04.02.2014 passed in O.S.No.551 of 2004 on the file of the VI Additional District Judge, Madurai, is set aside. Consequently, the suit in O.S.No.551 of 2004, stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed.

[M.S.R.,J.] & [N.A.V.,J.]

10.11.2022

Index : Yes/No

Internet : Yes/No

pm

To

1.The Judge,
Additional District Court No.6,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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