



S.A.(MD).No.286 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.286 of 2020

and

C.M.P.(MD).No.3454 of 2020

Nachimuthu

... Appellant/Appellant/5th Defendant

Vs.

1.V.Kannammal

2.V.Jeyakumar

3.Latha

4.Vishalakshi

5.Nirmala

6.The Executive Officer,
Punjai Pugalur Panchayat,
Velayuthampalayam,
Now Manmangalam Taluk,
Karur District.

7.The Tahsildar,
Karur Taluk,
Karur.

8.The State of Tamil Nadu,
Represented by its District Collector,
Karur.

...Respondents/Respondents/Plaintiffs &
Defendants 2 to 4



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Prayer: Second Appeal is filed under Section 100 of CPC to set aside the decree and judgement dated 06.12.2019 passed in A.S.No.22 of 2015 on the file of Additional Subordinate Judge, Karur by confirming the decree and judgement dated 28.08.2015 passed in O.S.No.189 of 2009 by the Principal District Munsif, Karur and allow the Second Appeal.

For Appellant : Mr.K.Suresh
For R-1 to R-5 : Mr.M.Jothi Basu
For R-6 : No appearance
For R-7 and R-8 : Mrs.S.Jeyapriya,
Government Advocate.

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree passed by the Courts below. The fifth defendant in the suit in O.S.No.189 of 2009 on the file of the Principal District Munsif Court, Karur is the appellant herein. The respondents 1 to 5 are the plaintiffs in the suit. The respondents 6 to 8 are the defendants 2 to 4 in the suit and are formal parties.

2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit. The plaintiffs filed a suit for declaration in O.S.No.189 of 2009 on the file of the Principal District Munsif Court, Karur seeking for a declaration that they are the only legal heirs of the deceased



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Veeran. Since they had a difficulty in obtaining the legal heirship certificate for the deceased Veeran on account of the objections raised by the first defendant (Karuppayee), who also claims to be the wife of late Veeran, the plaintiffs were constrained to file a suit seeking for the declaratory relief. During the pendency of the suit, the first defendant Karuppayee died and the plaintiffs filed an interlocutory application to bring on record her son, namely, the fifth defendant as her legal representative. The fifth defendant was disclosed as son of Chinnu and not Veeran in the application filed to bring on record the legal representative of the deceased first defendant Karuppayee. Since the notice remained unserved in the said interlocutory application despite attempts being made, the Trial Court had permitted substituted service through paper publication for serving the notice on the fifth defendant. Accordingly, paper publication was effected and despite the same, since the fifth defendant did not enter appearance, he was set ex parte by the Trial Court. Before the Trial Court, neither Karuppayee while she was alive nor the fifth defendant filed their respective written statements.

3. Before the Trial Court, the plaintiffs filed five documents, which were marked as exhibits A1 to A5. The exhibits marked on the side of the plaintiffs are as follows:



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Exhibit No.	Nature of document
A1	Family card of the deceased Veeran
A2	Identity card issued by the second defendant Panchayat
A3	Judgment dated 29.03.2000 passed by the Additional District and Sessions Court, Karur in Crl.R.C.No.1 of 1999
A4	Will dated 30.06.1997 executed by the deceased Veeran
A5	Death certificate of Veeran

Two witnesses were also examined on the side of the plaintiffs, namely, the first plaintiff Kannammal as P.W.1 and A.Shanmugam as P.W.2, who claims to be the attesor of the Will dated 30.06.1997 allegedly executed by the deceased Veeran. On the side of the defendants, no documents were filed and no witness was examined. The defendants 2 to 4 are only formal parties and in their written statement, they have agreed to abide by any directions given by the Trial Court.

4. It is to be noted that the first defendant Karuppayee died during the pendency of the suit and the fifth defendant, who is her son, has been brought on record as her legal representative. It is also to be noted that the fifth defendant has also been set ex parte by the Trial Court based on the substituted



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service effected through paper publication on him. The Trial Court passed an ex parte decree in favour of the plaintiffs by its judgment and decree dated 28.08.2015 in O.S.No.189 of 2009 and granted the relief of declaration as prayed for by the plaintiffs in the suit by declaring them as the only legal heirs of the deceased Veeran. Aggrieved by the same, the fifth defendant, who is the son of the deceased first defendant and who claims that he is also the son of the deceased Veeran, filed a first appeal before the Additional Sub Court, Karur in A.S.No.22 of 2015.

5. Along with the first appeal, the fifth defendant has also filed I.A.No.791 of 2016 under Order 41 Rule 27 CPC seeking for reception of additional documents as additional evidence. The additional documents which were sought to be received by the Lower Appellate Court are as follows:

- a) Record sheet
- b) Community certificate dated 17.04.2009
- c) Death certificate of Karuppayee dated 16.12.2009
- d) FIR dated 26.11.2009 registered by the Velayuthampalayam Police Station in Crime No.661 of 2009
- e) Family card for the year 2005-2009
- f) Nativity certificate of Nachimuthu



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The aforementioned documents were sought to be received as additional evidence to prove the case of the fifth defendant that he is also one of the sons of late Veeran. This Court has also perused and examined the documents filed by the fifth defendant in support of his application under Order 41 Rule 27 CPC. The said documents disclose that the fifth defendant's father's name is Veeran. However, the Lower Appellate Court, namely, the Additional Sub Court, Karur in its judgment and decree dated 06.12.2019 confirmed the findings of the Trial Court by dismissing the first appeal and has also dismissed I.A.No.791 of 2016 filed by the fifth defendant under Order 41 Rule 27 CPC seeking for reception of the enclosed documents as additional evidence on the ground that since the fifth defendant has not filed the same before the Trial Court, he cannot seek to file the same in the Lower Appellate Court by filing an application under Order 41 Rule 27 CPC. According to the Lower Appellate Court, no sufficient reasons have been given by the fifth defendant for not filing the documents before the Trial Court.

6. While confirming the judgment and decree of the Trial Court, the Lower Appellate Court has relied upon the judgment of the Additional Sessions Court, Karur in CrI.R.C.No.1 of 1999 dated 29.03.2000 for coming to the conclusion that the plaintiffs are the only legal heirs of the deceased Veeran. CrI.R.C.No.1 of 1999 dated 29.03.2000 was filed by late Veeran aggrieved by



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the awarding of maintenance to Karuppayee, who claimed to be his wife, by the order of the Judicial Magistrate Court No.III, Karur in M.C.No.8 of 1997.

Based on the findings rendered in a maintenance case involving Karuppayee as a claimant and Veeran as the respondent, the Lower Appellate Court has erroneously come to the conclusion that the fifth defendant is not the son of late Veeran. When the fifth defendant has produced documents in support of his contention that he is also the son of late Veeran, which have been referred to supra, this Court is of the considered view that the Lower Appellate Court ought to have allowed the application filed by the fifth defendant under Order 41 Rule 27 CPC and should have received the documents filed along with the same and remanded the matter back to the Trial Court for fresh consideration on merits and in accordance with law after hearing both the parties to the dispute.

7. Admittedly, the documents produced by the fifth defendant along with his application under Order 41 Rule 27 CPC before the Lower Appellate Court disclose that his father was late Veeran. The Lower Appellate Court ought not to have relied on the judgment rendered by the Additional Sessions Court, Karur in Crl.R.C.No.1 of 1999 setting aside the judgment in M.C.No.8 of 1997 for the purpose of deciding the contention raised by the fifth defendant in the first appeal that being a son, he is also entitled to be declared as the legal heir of the deceased Veeran along with the plaintiffs. The paternity issue of the fifth



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defendant was never the subject matter of consideration in the maintenance case filed by the deceased Karuppayee, who was originally the first defendant in the suit. However, erroneously by total non-application of mind, the Lower Appellate Court has relied upon the maintenance case judgment rendered in M.C.No.8 of 1997 for the purpose of denying the fifth defendant's claim and has erroneously confirmed the ex parte judgment and decree rendered by the Trial Court in O.S.No.189 of 2009 by dismissing the first appeal.

8. This Court is admitting this Second Appeal on the following substantial questions of law:

a) Whether the findings of the Criminal Court in a maintenance case will bind the Civil Court while deciding the paternity of a person?

b) Whether a summon with wrong particulars can be treated as a valid summon, especially when the defect has been shown by the party concerned?

c) Whether the non-consideration of the additional evidence by the Lower Appellate Court would substantially affect the right of the parties?

d) Whether the Court below is bound to consider the evidentiary value of the additional evidence produced, which is capable to alter the very basis of the contentions raised in the suit touching the relevant issue in the suit?

e) Whether the rejection of additional evidence by the Lower



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Appellate Court is essentially an erroneous approach to the relevant facts in issue and if so justifiable?

f) Whether the Court below is bound to declare the rights of the parties in case the additional documents will substantially affect the rights of the parties in order to render justice?

9. The aforementioned substantial questions of law have to be answered in favour of the fifth defendant in the suit, the appellant herein, for the following reasons:

a) The maintenance case is a dispute between Karuppayee and Veeran. The paternity issue of the fifth defendant was not the subject matter of consideration in the maintenance case. Therefore, the Lower Appellate Court ought not to have relied upon the judgment rendered in the maintenance case for the purpose of deciding the paternity issue of the fifth defendant in the suit. Therefore, the first substantial question of law is answered in favour of the fifth defendant by holding that the finding of the Criminal Court in a maintenance case will not bind the Civil Court, that too, when the paternity issue with regard to the fifth defendant's paternity was not the subject matter of consideration in the maintenance case.

b) Admittedly, the suit summon in O.S.No.189 of 2009 on the file of the Principal District Munsif Court, Karur was sent to the fifth defendant disclosing



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his father's name as Chinnu, whereas, the fifth defendant claims that his father's name is Veeran. Admittedly, the summons were returned unserved and only through substituted service, the summons were declared to be served and the fifth defendant was set ex parte. Therefore, unless and until, the paternity of the fifth defendant is determined through proper oral and documentary evidence, the fifth defendant's claim that the suit summons has given wrong particulars with regard to his father's name has to be believed and therefore, the Trial Court ought not to have accepted the particulars furnished by the plaintiffs with regard to the fifth defendant in the suit summons and ought not to have set the fifth defendant ex parte in the suit based on the wrong particulars furnished by the plaintiffs in the suit summons. Therefore, the second substantial question of law referred to supra is also answered in favour of the fifth defendant.

c) Admittedly, along with the application filed under Order 41 Rule 27 CPC, the fifth defendant has enclosed documents, which disclosed his father's name as Veeran. However, by total non-application of mind, the Lower Appellate Court has erroneously rejected the said application on the ground that the said documents ought to have been filed by the fifth defendant before the Trial Court. When the fifth defendant categorically contends that Veeran is his father and not Chinnu and admittedly when the name of the fifth defendant was



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mentioned as S/o.Chinnu in the suit summons, the additional evidence produced by the fifth defendant before the Lower Appellate Court in his application filed under Order 41 Rule 27 CPC ought to have been accepted and the matter ought to have been remanded back to the Trial Court for fresh consideration after setting aside the ex parte decree passed by the Trial Court. Therefore, the third substantial question of law is also answered in favour of the fifth defendant by holding that the non-consideration of the additional evidence by the Lower Appellate Court has substantially affected the right of the parties and this being the case, the Lower Appellate Court ought to have remanded the matter back to the Trial Court for fresh consideration on merits and in accordance with law after giving due consideration to the additional evidence produced by the fifth defendant before the Lower Appellate Court along with his application filed under Order 41 Rule 27 CPC.

d) The fourth substantial question of law formulated supra is also answered in favour of the fifth defendant by holding that the evidentiary value of the additional evidence produced by the fifth defendant in his application filed under Order 41 Rule 27 CPC is capable of altering the very basis of the contentions raised in the suit and it touches upon the relevant issues in the suit and therefore, the Lower Appellate Court ought to have remanded the matter for fresh consideration by the Trial Court based on the additional evidence



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produced by the fifth defendant in his application filed under Order 41 Rule 27 CPC.

e) The fifth substantial question of law referred to supra is also answered in favour of the fifth defendant as the rejection of the additional evidence produced by the fifth defendant in his application filed under Order 41 Rule 27 CPC is an erroneous approach and the Lower Appellate Court ought to have allowed the application filed by the fifth defendant under Order 41 Rule 27 CPC.

f) The sixth substantial question of law formulated supra is also answered in favour of the fifth defendant by declaring that the rights of the parties may substantially be affected if the additional documents produced by the fifth defendant along with his application filed under Order 41 Rule 27 CPC is not allowed as the said documents disclose Veeran as the father of the fifth defendant. Therefore, the Lower Appellate Court ought to have allowed the application filed by the fifth defendant under Order 41 Rule 27 CPC.

10. For the foregoing reasons, in order to unearth the truth with regard to the paternity of the appellant/fifth defendant as to whether he is a son of late Veeran, necessarily the matter has to be remanded back to the Trial Court for



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fresh consideration on merits and in accordance with law after giving due consideration to the additional evidence filed by the appellant before the Lower Appellate Court in his application in I.A.No.791 of 2016 in A.S.No.22 of 2015 on the file of the Additional Sub Court, Karur, which have been extracted supra and after permitting the appellant/fifth defendant to file his written statement and after the Trial Court frames its issues based on the pleadings of the respective parties and after permitting all the parties to let in oral and documentary evidence. This Court is also of the considered view that erroneously the fifth defendant has been set ex parte by the Trial Court despite the fact that the fifth defendant categorically contends that he is the son of late Veeran and not Chinnu as disclosed in the suit summons issued to the fifth defendant before the Trial Court.

11. In the result, the impugned judgments and decrees of the Courts below are hereby set aside and this Second Appeal is allowed by remanding the matter back to the Trial Court, namely, the Principal District Munsif Court, Karur in O.S.No.189 of 2009 for fresh consideration on merits and in accordance with law. The appellant/fifth defendant as well as the respondents 1 to 5 are directed to appear before the Trial Court either by themselves or through their counsel on 05.06.2023. Within thirty (30) days from the date of their appearance, the fifth defendant is directed to file his written statement.



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The plaintiff is also permitted to file a reply statement to the same within a period of two (2) weeks thereafter. The Trial Court is directed to frame the issues within a period of four (4) weeks from the date of completion of pleadings. The Trial Court is also directed to dispose of the suit, after allowing the documents filed by the appellant/fifth defendant, which are enclosed along with his application in I.A.No.791 of 2016 in A.S.No.22 of 2015 on the file of the Additional Sub Court, Karur, as exhibits marked on the side of the appellant/fifth defendant through his witness, within a period of three (3) months from the date of framing of the issues. The respective parties shall co-operate for the disposal of the suit within a period of three (3) months as directed supra. The Trial Court shall dispose of the suit uninfluenced by any of the observations made by this Court in this judgment. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

03.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm



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To

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- 1.The Additional Sub Court,
Karur.
- 2.The Principal District Munsif Court,
Karur.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.
- 4.The Tahsildar,
Karur Taluk,
Karur.
- 5.The District Collector,
The State of Tamil Nadu, Karur.



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ABDUL QUDDHOSE, J.

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