

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.198 of 2014

1.Amsavalli

2.Minor P.Sakthivel

(Rep. by mother and next friend

Meenakshi @ Alagu Meenakshi)

... Appellants / Plaintiffs

Vs.

1.Palanisamy

2.P.Kumaravelu

... Respondents / Defendants

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C. against the judgment and decree dated 12.03.2014, passed by the Additional District Judge (PCR), Tiruchirappalli, in O.S.No.44 of 2013.

For Appellants : Mr.T.Vadivelan

For Respondents : Mr.S.Sankar for R1 & R2

JUDGMENT

Aggrieved over the dismissal of the suit filed for partition, the present appeal came to be filed.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

The first defendant has married one Chinnammal and Alagu Meenakshi on the same day on 24.06.1982. The plaintiffs are children born through the Alagu Meenakshi. The second defendant born through the said Chinnammal. All of them are residing under one roof. The suit 'A' and 'B' schedule properties are ancestral properties of the plaintiffs and defendants. 'C' schedule property has been purchased through the income from the A and B schedule properties. Therefore, all the properties are ancestral properties. The first plaintiff has got married on 12.09.2010. For that marriage, the first defendant has spent meagre expenses and the major expenses was met out by her maternal uncle. Thereafter, the plaintiffs demanded a partition and the 1st defendant has evaded the same. The plaintiffs each are entitled to 1/4th share in the suit schedule property and the

defendant also each entitled to 1/4th share in the suit property. The plaintiffs demanded partition and issued a legal notice dated 11.02.2013 and the same has been replied by the defendants on 22.02.2013 with false allegations. Hence, the suit.

4. The first defendant has filed a written statement denying the marriage with one Alagu Meenakshi on 24.06.1982. It is the contention of the first defendant that he married one Chinnammal and through her, second defendant was born. It is the further contention of the first defendant that the alleged marriage invitation is created for the purpose of case. According to him, second defendant is the only son and 'C' schedule properties were purchased by Chinnammal in the name of the first defendant. It is his further contention that Alagu Meenakshi is the sister's daughter of the first defendant. Therefore, during the marriage of the first plaintiff, out of sympathy and also on compulsion from the brothers of the Alagu Meenakshi, the first defendant borrowed loan from the various persons and spent for the marriage of the first plaintiff, which is necessitated to sell some of the properties to one Selvaraj of Pudukkottai. The first defendant executed a settlement deed, settled the property in favour of the second defendant on 08.03.2013. Hence, prayed for dismissal of the suit.

5. The second defendant has also filed a written statement denying the alleged marriage and stated that the plaintiffs never resided with the defendant's family under one roof at any point of time. It is further stated that 'C' schedule properties were purchased by his mother, out of her savings in the name of her husband viz., first defendant. The first defendant executed a settlement deed in his favour in respect of the suit property. In respect of his shares, the second defendant is also coparcener and he is entitled to half share in the property and the remaining half share was settled in his favour. According to him, Ex.A2 to A5 were created only for the purpose of the case.

6. The trial Court based on the above pleadings framed the following issues:

“1. Whether the plaintiffs are entitled for partition and separate possession as prayed for?

2. Whether the plaintiffs are legitimate children born to the 1st defendant?

3. Whether the 'C' schedule property is self acquired property of Chinnammal?

4. Whether the plaintiffs are entitled for the accounts as prayed for?

5. Whether the suit is bad for non joinder of necessary parties?

6. Whether the Court fee paid is incorrect?”

7. On the side of the plaintiffs, one witness was examined as P.W.1 and eight documents were marked as Ex.A1 to Ex.A8. On the side of the defendants, no oral and documentary evidence was adduced.

8. The trial Court after appreciating the oral and documentary evidence has held that there was a marriage between the plaintiffs' mother and first defendant. However, dismissed the suit on the ground that plaintiffs cannot be coparceners since the marriage was not valid as per Hindu Marriage Act. Challenging the same, the present appeal came to be filed.

9. The main contention of the learned counsel appearing for the plaintiffs/appellants before this Court is that Ex.A2 to Ex.A5 clearly show that the marriage took place between the plaintiffs' mother and the first defendant. The trial Court has clearly considered the same and held that there was a marriage between the plaintiff's mother and the first defendant on the same day. The finding of the trial Court is not challenged by the respondents / defendants by way of cross appeal. The suit has been dismissed only on the ground that the plaintiffs are not entitled to partition, since the marriage between the plaintiffs' mother and the first

defendant was void. The trial Court, in fact, has not framed any specific issue with regard to the character of the suit property. Besides the trial Court, without considering the fact that the plaintiff's mother is a legally wedded wife, erred in holding that the marriage of the plaintiffs' mother with the first defendant was void. Ex.A2 has not been considered properly by the trial Court. Hence, it is the contention of the learned counsel appearing for the plaintiffs / appellants that the suit ought to have been decreed for partition.

10. The learned counsel appearing for the defendants / respondents would submit that the trial Court has erred in holding that there was a marriage between the first defendant and plaintiffs' mother on the same day i.e., on 24.06.1982, without any evidence. Ex.A2 to A5 are created documents. Despite the objection was made as to its admissibility in evidence, the trial Court has not gone into that objection. Even while marking those documents, objection has been raised, whereas the trial Court without recording the objection has marked the documents. However, during the disposal of the main suit, no discussion was made with regard to the validity of the documents. According to them, though separate cross appeal has been filed challenging the finding of the trial Court in accepting the documents and holding that there was a marriage, they are entitled to challenge the

findings of the trial Court that there was a marriage and they can very well object the finding of the trial Court during submission.

11. Further, it is the submission of the learned counsel appearing for the defendants / respondents that there was no evidence whatsoever available on record to show that the marriage as alleged in the plaint was established. The so called mother of the plaintiffs was not come into the witness box. Ex.A2 is only a printing card which has been created and Ex.A4 is only a xerox copy of the family card and there was no explanation whatsoever for not filing the original. No evidence whatsoever available on record to show that the relationship between the first defendant and the plaintiffs. Hence, the trial Court on mere assumption held that there was a marriage between the parties, however, the same is void. Hence, it is the contention of the learned counsel appearing for the defendants / respondents that in the absence of any evidence to prove the marriage, the finding of the trial Court holding that there was a marriage is liable to be set aside and the suit has to be dismissed in its entirety.

12. In the light of the above submissions, now the points arise for consideration in this appeal are as follows:

1. Whether the plaintiffs have discharged their burden to establish the marriage between the plaintiff's mother and first defendant?

2. Ex.A2 to Ex.A5 are valid and proved in the manner known to law?

3. Whether the plaintiffs are entitled to any share in the suit property?

13. It is the case of the plaintiffs that the first defendant has married the plaintiffs' mother viz., Alagu Meenakshi and one Chinnammal on the same day i.e., on 24.06.1982. To prove the so called marriage, Ex.A2- Invitation card has been filed. That apart, Ex.A4-xerox copy of the Family card has been filed to show that all of them are residing in the same roof. It is relevant to note that the plaintiffs' mother Alagu Meenakshi has not been examined for the reason best known to the plaintiffs to prove the so called marriage. The defendants have taken a stand that there was no marriage at all and Ex.A2 to A5 were created at the instance of one of the uncles of the plaintiffs. When Ex.A2 is only an Invitation card and its authentication itself has been denied, the plaintiffs ought to have proved the same by other witnesses.

14. It is the main contention of the plaintiffs that there was a marriage on the same day and the first defendant has married two brides. It is for the plaintiffs to establish the same. None of the relatives, said to have performed the marriage or who have present at the relevant point of time, were examined. The best person, to speak about the marriage, is mother of the plaintiffs, however, she has not been examined and no explanation whatsoever forthcoming. Therefore, merely on the basis of the Invitation card-Ex.A2, the Court cannot presume the marriage and the marriage cannot be held to be proved. Since the marriage is an institution and it decides the status of the parties, the marriage has to be proved in a cogent evidence. Whereas, the trial Court has simply relied Ex.A2-Invitation card and Ex.A4-Xerox copy of the Family card, has come to the conclusion that there was a marriage performed between the first defendant and the plaintiffs' mother and one Chinnammal.

15. It is relevant to note that according to the plaintiffs, the marriage was performed in the year 1982. Marrying two brides by a Male Hindu is totally prohibited under law. Such view of the matter, the printing invitation and make it public is also highly improbable. Therefore, in the absence of any other evidence to show that the marriage was performed with the plaintiffs' mother, first

defendant and Chinnammal on the same day, merely on the basis of Ex.A2-Invitation card, it is very difficult to come to the conclusion that there was a valid marriage between the parties.

16. It is relevant to note that at the time of filing of the suit i.e., in the year 2013, the first plaintiff was aged about 24 years and therefore, she should have been born only in the year 1989. Similarly, second plaintiff was aged about 14 years while filing the suit and therefore, he should have been born only in the year 1999. Plaintiffs could have very well produced any birth records to show that the first defendant was all along their father and no other documents from the public records have been filed. There was no reason as to why, the birth certificate of the plaintiffs and other documents, like school certificates have been produced before the Court to show that they were born out of the relationship or in marriage between the first defendant and their mother. In the absence of any other concrete reliable evidence to establish the marriage, it is highly difficult for this Court to accept the version of the plaintiffs that there was a marriage, in which the first defendant married two bride on the same marriage.

17. The trial Court has given undue importance to Ex.A4- Xerox copy of the Family card. It is relevant to note that those documents have been objected to be marked. The trial Court, having admitted the document, subject to objection, not even decided the admissibility, while discussing about the documents in the judgment. Ex.A4 is an ordinary xerox copy of the so called Family card and there was no explanation forthcoming from the plaintiffs as to why they could not produce the original Family card. Even assuming that the original Ration card was in the possession of the first defendant, nothing prevented the plaintiffs for establishing the said Family card, by summoning the concerned officials from the Civil Supplies and Consumer Protection Department. It is not done in this case. Therefore, without producing the original, the xerox copy cannot be admitted in evidence. The plaintiffs ought to have at least given a notice to the first defendant to produce the original, which has not been done so. Therefore, without complying the conditions provided under Section 65 of the Indian Evidence Act to file a secondary evidence, Ex.A4- xerox copy of the Family card cannot be admitted in evidence.

18. Therefore, the trial Court relying upon the those documents holding that there was a marriage, is without any basis. In fact, the trial Court has not

appreciated the evidence properly. The trial Court, having accepted the documents subject to objection, proof and relevancy, ought to have gone into the validity of these documents legally, which has not been done. Be that as it may. No evidence from the public records such as school records, birth register and other documents have been filed by the plaintiffs to show that in fact, their father was the first defendant. Therefore, in the absence of any other evidence, merely on the basis of the documents viz., Ex.A2 to Ex.A5, a marriage cannot be proved. It is also relevant to note that P.W.1, first plaintiff in her cross examination has categorically admitted that her mother was not married the first defendant. The trial Court has, in fact, placed the burden on the defendants to produce the contrary evidence to disprove the contention of the plaintiffs. The question of shifting the onus will arise only when the plaintiffs have proved the particular fact. The very document relied upon by the plaintiffs is not established as per law to prove the factum of marriage. Therefore, the trial Court shifting the burden on the defendants to produce the contrary evidence is contrary to the well settled position of law. The trial Court has also relied upon Ex.A5, the marriage invitation of the first plaintiff.

19. It is relevant to note that possibility of printing the invitation by anyone cannot be ruled out. Therefore, merely because on the basis of some names found

as father of the first plaintiff, it cannot be said that only the first defendant was the father of the plaintiffs. The trial Court, in fact, considering the age of the plaintiffs and second defendant, has presumed that marriage of the plaintiffs' mother performed secondly. Therefore it is void. The above said conclusion is also based on its own presumption and without any evidence. Be that as it may. When the marriage itself has not been established, the question of claiming the share by the plaintiffs does not arise at all. Though the findings recorded as against the defendants have not been challenged by way of cross appeal, as per Order 41 Rule 22 of C.P.C., the defendants / respondents very well object the findings recorded against them. Therefore, this Court is of the view that the contention of the defendants / respondents that the documents have not been proved in any manner under law has to be accepted. It is also to be noted that the plaintiffs failed to prove the factum of marriage of their mother. The mother has not been examined and there was no reason as to why she was not been examined. That apart, no relatives were examined.

20. In view of the above reasons, this Court holds that the very marriage of the plaintiffs' mother with the first defendant has not been established. Therefore, claiming share in the property, allotted to the first defendant in a partition deed

i.e., schedule 'A' and 'B' and also 'C' schedule properties, which was purchased by them, does not arise at all. The plaintiffs have not established their case to claim partition in the suit property.

21. Accordingly, this Appeal Suit is dismissed and the judgment and decree passed by the learned Additional District Judge (PCR), Tiruchirappalli, in O.S.No. 44 of 2013, dated 12.03.2014 dismissing the suit for partition, is confirmed. However, the finding that there was a marriage between the parties is set aside. No costs.

21.03.2023

NCC : Yes

Index : Yes/No

Internet : Yes

vsm

To

- 1.The Additional District Judge (PCR),
Tiruchirappalli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

A.S.(MD)No.198 of 2014

N.SATHISH KUMAR, J.

vsm

A.S.(MD)No.198 of 2014

21.03.2023