



A.S.No.916 of 1991

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 20.03.2023

PRONOUNCED ON : 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.916 of 1991

M.Palpandi

...Defendant /Appellant

Vs.

1.Pooranammal (died)

2.Jeyamani (died)

... Plaintiffs/Respondents 1 & 2

3.Selvam

...3rd Respondent/3rd Respondent

[cause title was amended vide Court order dated 20.03.2023]

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the decree and judgment made in O.S.No.553 of 1989 dated 29.08.1991 on the file of the Principal Subordinate Court, Madurai.

For Appellant : Mr. D.P.Sundararaj

For Respondents : Mr.G.S.Asok Adhithya



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JUDGMENT

Aggrieved over the grant of preliminary decree in favour of the plaintiffs in respect of 2/3 share in the suit property, the present Appeal Suit is filed by the defendant/appellant herein.

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:-

(i) in the plaint it has been stated that the marriage between the first plaintiff and one Muthu Ambalam was solemnized in the year 1946 at Sathampatti Village, Natham Taluk according to the Hindu customs in the house of Muthu Ambalam. The second plaintiff was born to the first plaintiff and Muthu Ambalam in the year 1948. The first wife of Muthu Ambalam namely, Amirtham died. The first plaintiff is the sister of the first wife of Muthu Ambalam, viz., Amirtham. The defendant is the son born to Muthu Ambalam and his first wife, Amirtham. The mother of the defendant died 43 years back. The defendant left the house of



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his father and got married in the year 1963 and now he is living separately with his wife and children

(ii)The suit properties were the absolute properties of Muthu Ambalam. The defendant was born through the first wife of Muthu Ambalam. The suit properties were looked after by the plaintiffs and Muthu Ambalam. The said Muthu Ambalam died on 17.07.1988. After the death of Muthu Ambalam, dispute arose between the defendant and the first plaintiff. The first plaintiff was forcibly sent out from her husband's house in the year 1989, now she is staying with her daughter, second plaintiff at Pudukkottai. The plaintiffs being the legal heirs of Muthu Ambalam have filed a suit claiming 2/3 share in the property.

(iii)Denying the case of the plaintiffs, it is the case of the defendant that the first plaintiff never married Muthu Ambalam. In fact, she has married one Alagar, son of Karuppiah at Sanarpatti Village and she lived with him for several years. Through the said wedlock, the second plaintiff was born. According to the defendant, the first plaintiff is not a legally wedded wife of late Muthu Ambalam and the second plaintiff is not the daughter of the late Muthu Ambalam. The defendant's father married Amirtham alone and he never married second wife



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during his lifetime. The first plaintiff was the sister of the first wife of Muthu Ambalam. Due to some family dispute with Alagar, without any divorce she came to her sister's house as a guest. The mother of the defendant gave shelter to the first plaintiff, since she was pregnant at that time.

(iv)The defendant had never left his father at any point of time. He lived with his father as Hindu joint family. The properties are joint family properties. The allegation that the plaintiffs had looked after the properties is also denied. It is the contention of the defendant that the second plaintiff had executed a release deed on 28.02.1969 relinquishing her right in favour of Muthu Ambalam. The suit itself was filed at the instigation of the son-in-law of the first plaintiff, who is claiming a share in the joint family properties of late Muthu Ambalam. The allegation of the plaintiffs that there was a partition in the year 1969 is also denied as false. It is further contended that the properties are joint family properties of late Muthu Ambalam and the plaintiffs are not entitled to any share.

(v)In the additional written statement, the defendant contended that in the first item of suit property the father of the defendant was in possession of 2 acres and 50 cents and the remaining extent of 2 acres and 22 1/2 cents was in



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possession of Alagappan Ambalam the elder brother of late Muthu Ambalam. As far as the second item of suit property is concerned, late Muthu Ambalam was in possession of 60 cents and the remaining extent was in possession of Alagappan Ambalam. Though the sale deed stood in the name of Muthu Ambalam, in fact Muthu Ambalam and his brother Alagappan Ambalam were lived as joint family and purchased the properties in the name of Muthu Ambalam and they have divided these two items of property into equal half share, by which the father of the defendant, Muthu Ambalam was allotted eastern side and Alagappan Ambalam was allotted western side of the property.

4. Before the trial Court, on the side of the plaintiffs, the plaintiffs examined themselves as examined as P.W.1 and P.W.2 and Exs.A1 to A13 were marked. On the side of the defendant, the defendant was examined himself as R.W.1 and R.W.2 to R.W.4 were also examined and Ex.B1 to Ex.B6 were marked.

5. Based on the above pleadings, the trial Court had framed the issues:

1) Whether the plaintiffs are entitled to the preliminary decree for 2/3 share in the suit properties?

2) Whether the plaintiffs are entitled to damages?



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3) *Whether the plaintiffs are not the legal heirs of Muthu Ambalam?*

4) *Whether the defendant alone is the legal heir of Muthu Ambalam?*

5) *To what other reliefs?*

6. The trial Court after analyzing the entire evidence on record, granted preliminary decree for 2/3 share in the suit properties in favour of the plaintiffs. Challenging the same, the present appeal came to be filed.

7. During the pendency of the appeal, an application has been filed for reception of additional evidence namely release deed dated 28.02.1969 executed by the second plaintiff in favour of Muthu Ambalam. That said application was allowed on 20.03.2023, since both the parties have admitted that no oral evidence is required with regard to the above documents.

8. The learned counsel for the appellant would mainly contend that the first plaintiff was not a legally wedded wife of Muthu Ambalam. The marriage between the first wife and Muthu Ambalam has not been established. Therefore, the plaintiffs are not entitled to any right in the suit properties. Ex.B7, filed in the appeal stage itself shows that the second plaintiff had already relinquished her



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share in favour of Muthu Ambalam. Therefore, it is the contention of the appellant that when the marriage itself has not been established, the decree and judgment granted by the trial Court granting 2/3 share in the suit properties in favour of the plaintiffs is not in accordance with law. Further, the first plaintiff is none other than the sister of the first wife of Muthu Ambalam. She was already married to one Alagar. In a matrimonial dispute between herself and the said Alagar, the first plaintiff left the matrimonial home and came to her sister's house. Therefore, it cannot be stated that she married Muthu Ambalam. Hence, it is the contention that the trial Court without appreciating the evidence properly had granted the preliminary decree.

9.The learned counsel for the respondents would submit that P.W.1 and P.W.2 have clearly spoken about the marriage between the first plaintiff and Muthu Ambalam. That apart, the documents filed on the side of the plaintiffs clearly establish the marriage between the first plaintiff and Muthu Ambalam, who is the father of the defendant. It is the contention of the learned counsel for the respondents that the marriage had been performed only after the death of the first wife to look after the minor child, first defendant. That apart, Ex.B7 filed on the side of the appellant clearly proves the relationship between the parties. The trial



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Court has analyzed the evidence carefully and granted the decree and the same does not warrant any interference.

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

1. Whether the first plaintiff has proved the marriage with Muthu Ambalam?

2. Whether the second plaintiff is the daughter of Muthu Ambalam and the first plaintiff?

3. Whether the plaintiffs are entitled to 2/3 share in the properties?

4. Whether the properties are ancestral properties or self acquired properties of Muthu Ambalam?

11. Heard the learned counsel appearing on either side and perused the materials available on record.



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12.It is the case of the first plaintiff that she married one Muthu Ambalam in the year 1946 after the death of his first wife, viz., Amirtham. Through the wedlock the second plaintiff was born in the year 1948. It is the specific contention of the defendant that the first plaintiff never married Muthu Ambalam. The first plaintiff is none other than the sister of one Amirtham, who was the first wife of Muthu Ambalam. It is the specific contention that the mother of the defendant died after 7 years of his birth.

13.On the perusal of the pleadings and the evidence, it is clear that the relationship between the parties is not in dispute. The first plaintiff is none other than the sister of Amirtham, who was the first wife of Muthu Ambalam, father of the defendant. It is the case of the defendant that the first plaintiff married one Alagar and due the matrimonial dispute, she left the matrimonial home and came to her sister's house, where she was given shelter. After the death of the defendant's mother, the first plaintiff lived with his father. However, the marriage is totally denied. Whereas it is specific version of the first plaintiff that she married Muthu Ambalam in the year 1946 after the death of Amirtham, sister of the first plaintiff and first wife of Muthu Ambalam. In the light of the assertion



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made by the parties, now it has to be seen whether the first plaintiff had discharged the initial burden of establishing the alleged marriage between her and Muthu Ambalam, father of the defendant.

14.It is relevant to note that the trial Court has mainly relied upon Ex.A2, patta obtained in the year 1986 and Ex.A5, voters list of 1978, wherein the first plaintiff was shown as wife of Muthu Ambalam to come to the conclusion that there was a valid marriage between the first plaintiff and Muthu Ambalam. It is relevant to note that the specific assertion of the first plaintiff was that she married in the year 1946, when her sister Amirtham, first wife of Muthu Ambalam died, only to take care of the defendant, who was aged about 7 years at the relevant point of time. The marriage was performed in the house of Muthu Ambalam.

15.The plaintiffs had relied upon Ex.A1, death certificate of Muthu Ambalam to show that he died on 17.07.1988. Ex.A1, when carefully seen along with Ex.A9, Registered mortgage deed, dated 25.07.1988, clearly indicates that Ex.A1 cannot be true at all. Ex.A9, mortgage deed, was executed by Muthu Ambalam, the defendant and the second plaintiff on 25.07.1988. Therefore, the death certificate relied upon by the plaintiffs under Ex.A1 runs contrary to the



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registered document under Ex.A9, mortgage deed. Therefore, the death certificate Ex.A1 is not established regarding the date of death of Muthu Ambalam.

16.Be that as it may, it is the specific contention of the first plaintiff that she married Muthu Ambalam in the year 1946, when the defendant was minor. It is relevant to note that D.W.1 in his evidence has clearly stated that his mother died when he was 7 years old. D.W.2, brother of Muthu Ambalam in his evidence also clearly stated that defendant's mother died, when the defendant was aged about 10 years. D.W.3 and D.W.4 in their evidence asserted that there was no marriage between the first plaintiff and the defendant's father Muthu Ambalam. P.W.1 in her evidence also admitted that normally in their community the marriage will be performed only in the bride's house, whereas she has stated that the marriage was performed only in Muthu Ambalam's house and no other witness was examined to show that there was any marriage contracted between the first plaintiff and the defendant's father Muthu Ambalam in the year 1946. Now in the light of the above evidence, the burden is on the plaintiffs to show that the marriage of the first plaintiff was solemnized in the year 1946 with Muthu Ambalam after the death of the first wife of Muthu Ambalam.



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17.Ex.A10, is the Register of the year 1951 maintained under the Birth and Deaths Registration Act, 1951. In the said document, it is recorded that a male child was born to Muthu Ambalam on 05.11.1951 and the same has been registered on 09.11.1951. The above register clearly shows that a male child was born to Muthu Ambalam only in the year 1951. It is relevant to note that this document has been brought on record to disprove Ex.B3, extract of Register maintained to record the births. The same clearly shows that the defendant was born on 05.11.1951 to Muthu Ambalam and Amirtham. The said entries also made in Ex.A10, Register of births.

19.The extract given under Section 17 of the Registration of Births and Deaths Act, 1969 shall be admissible in evidence for the purpose of proving the birth or death to which entries relates. The entries in Ex.A10 clearly indicate that a male child was born to Muthu Ambalam and the extract issued by the authorities under Ex.B3 clearly proves the date of birth of the defendant as 05.11.1951. Therefore, this Court is of the view that the official records properly maintained under the Registration of Birth and Deaths Act, certainly relevant under Section 35 of the Indian Evidence Act to prove the date of birth of the defendant. These entries clearly show that in the year 1951, while the defendant was born, his



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mother was very much alive. Therefore, the contention of the first plaintiff that Amirtham died prior to 1946 and hence, she she married Muthu Ambalam is highly improbable and cannot be countenanced.

20.It is further to be noted that the first plaintiff was examined as P.W.1. She was not in a position even to say when her sister died and she feigned ignorance even to the date of her alleged marriage with Muthu Ambalam. Therefore, when the official entries made in the official records particularly, register of births clearly shows that in the year 1951, Amirtham was alive, the contention of the plaintiff that she married Muthuambalam after the death of Amirtham in the year 1946 is highly improbable. The evidence of D.W.1 an D.W. 2 clearly shows that Amirtham died 7 years after the birth of the defendant. Such being the position, Amirtham would have been alive till 1956 or 1957. Therefore, the alleged death of Amirtham in the year 1946 is unbelievable.

21.Even relying other documents particularly Ex.A2, patta of the year 1988, Ex.A3, patta of the year 1986, wherein the first plaintiff was referred as wife of Muthu Ambalam, the possibility of the first plaintiff having lived with the deceased Muthu Ambalam after the death his first wife cannot be ruled out.



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Therefore, mere reference of the first plaintiff as wife in the revenue records at the most will be helpful to prove the long cohabitation and the same will not prove the marriage as claimed by the first plaintiff.

22.Ex.A5, voters list of the year 1978 wherein the first plaintiff was shown as wife of Muthu Ambalam. It is relevant to note that if really the first plaintiff married the defendant's father in the year 1946, there was no reason as to why no other documents have been filed by the plaintiffs such as ration card and other voters list prior to 1978. Though the defendant stated that the first plaintiff was married to one Alagar and there was some matrimonial disputes and therefore, she left the matrimonial home and came to her sister's house, where she was sheltered, the above aspect has not been established by any evidence.

23.Further, the contention of the first plaintiff that the second plaintiff was born in the year 1948 is also highly improbable and cannot be countenanced. The second plaintiff was examined as P.W.2 in her evidence, she has stated that at the time of giving evidence i.e., in the year 1991, she was aged about 45 years. If her evidence is taken into consideration, she would have born to her mother only in the year 1946 -1947, when the first wife of Muthu Ambalam was very much



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alive. Therefore, these facts clearly probablise the defence theory that the first plaintiff had the relationship with Muthu Ambalam, after she came to his house, which led to long cohabitation and birth of second plaintiff.

24.Though other documents particularly Ex.A9, indicates that the second plaintiff was also joined in executing the mortgage deed along with her father, Muthu Ambalam and the said Muthu Ambalam also treated the second plaintiff as his daughter. Ex.A7 clearly shows that all along the first plaintiff was also treated as wife of Muthu Ambalam after the death of Amirtham, first wife. Now a crucial question arises that whether the second plaintiff was born during the subsistence of the first marriage?. Admittedly, as per Ex.B3 and Ex.A10, first wife of Muthu Ambalam, viz., Amirtham was very much alive in the year 1951 and the evidence of D.W1 and D.W.2 also clearly indicates that Amirtham died only after 1956. In the present case, even assuming that the second plaintiff was born in 1946 and there was a valid marriage, such marriage during the life of the first wife is only void.

25.Though Ex.A5 and Ex.B7 indicate that the first plaintiff was all along treated as wife of Muthu Ambalam, that will not validate the marriage between the



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first plaintiff and Muthu Ambalam since the wife was very much alive. From the other evidence, this Court can very well presume that there was a long cohabitation between the first plaintiff and Muthu Ambalam. However, in the absence of valid marriage, the first plaintiff cannot be claimed as a legally wedded wife. She is not even in a position to say that when the marriage was conducted.

26.In the chief examination, P.W.1, when she was examined on 06.04.1991, had asserted that she married 50 years back. Particularly her case was that she married only after the death of her sister. But, the fact remains that Amirtham, first wife of Muthu Ambalam was very much alive even in the year 1951 and that is established through the evidence of D.W.1 and D.W.2 that she died only after 1956.

27.She does not even remember the month of the marriage. It is a normal conduct of a human, particularly women folk to remember atleast the month, when the marriage had taken place. She has totally feigned ignorance about the same. The very allegation of valid marriage has not been established. Even assuming that the marriage could be presumed due to the long cohabitation, at the most she would have married only during the lifetime of the first wife. It is



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substantially not valid in the eye of law. From the above discussion, this Court holds that the valid marriage between the first plaintiff and Muthu Ambalam has not been established.

28.In her evidence, she also admitted that only her husband had arranged the marriage of the defendant. This fact also clearly falsifies the stand taken by the first plaintiff in the pleading that the defendant had left the house and leading a wayward life.

29.As discussed above, Muthu Ambalam and the first plaintiff were living as husband and wife, after the death of the first wife of Muthu Ambalam and there was a cohabitation between them. The second plaintiff was also born even prior of 1950. Her evidence clearly indicates that she is younger to the defendant. Such being the position, she would have been born only after the birth of the defendant during the existence of first marriage.

30.Be that as it may, now for the question with regard to the character of the property, it is the stand of the defendant that the properties are ancestral properties. Absolutely, there is no evidence adduced or placed before the Court to



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show that the ancestors of Muthu Ambalam had sufficient nucleus to purchase the property. On the other hand Ex.A7, sale deed in respect of a house site, clearly shows that Muthu Ambalam had purchased the property himself. Under Ex.A8 also, Muthu Ambalam had purchased an extent of 6 acres 7 ½ cents on 23.01.1974. Under Ex.A12 also he had purchased another one acre and 32 cents on 24.01.1963. Thereafter, under Ex.A13 he had sold the property along with his minor son, defendant herein. Similarly under Section Ex.B4, he had dealt with the property along with his minor son. All the properties were purchased individually by Muthu Ambalam. Merely the minor son was shown as eo nomine party while selling some portion of the property, it cannot be stated that the entire property is ancestral property. Making minors as a party to the document executed by a male is a normal practice.

31. Such view of the matter, mere showing the defendant as minor in some of the sale deeds by his father while selling the property, the same will not elevate the suit properties to the status of ancestral properties. Even the recital in the documents with regard to the suit properties clearly shows that the properties are self acquired properties of Muthu Ambalam. Such view of the matter, in the absence of any evidence to show that the properties have been purchased out of



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the joint family nucleus, the contention of the defendant has to be rejected.

Though D.W.2, brother of Muthu Ambalam was examined to show that the suit properties were purchased by himself and his brother and then the same was partitioned among themselves, the said fact has not been established. None of the revenue records stand in the name of D.W.2. All the revenue records stand in the name of Muthu Ambalam, father of the defendant. Such view of the matter, this Court holds that the suit properties are only self acquired properties of Muthu Ambalam.

32.It is also established that the second plaintiff was all along treated as daughter of Muthu Ambalam. Ex.A9, mortgage deed, in which she was shown as daughter of Muthu Ambalam. Besides, under Ex.B7, marked in the appeal stage, she has relinquished her rights in favour of her father. When Muthu Ambalam had treated the second plaintiff as daughter, this Court is of the view that even there was a marriage between the first plaintiff and Muthu Ambalam, the same is void. Since the birth of the second plaintiff is not disputed due to such relationship, the second plaintiff is certainly entitled to claim a share from her father's property as per Section 16 of the Hindu Marriage Act. Such view of the matter, this Court is of the view that as the properties were held to be individual properties of Muthu



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Ambalam, the second plaintiff and the defendant are equally entitled to half share each in the suit properties. Since the valid marriage has not been established by the first plaintiff, she is not entitled to get any share in the property.

33.In view of the above discussions, this Appeal Suit is partly allowed and the judgment of the trial Court is modified and preliminary decree is passed granting half share each to the second plaintiff and the defendant equally in the suit properties. No costs.

03.04.2023

NCC : Yes/NO
Index : Yes/No
Internet : Yes/No
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To

1.The Principal Subordinate Court,
Madurai.

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

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N.SATHISH KUMAR, J.

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Judgment made in
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