



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.437 OF 2001

1.Subban

2.Muniandi :Appellants/Appellants/Plaintiffs

.vs.

1.Nallamuthu Ambalam(died)

2.Rengarajan

3.Murugesan

4.Backiyam

5.Chinnaiah

6.Chinnaponnu

7.Parvathi

8.Ayinan(died)

9.Natchayee

10.Pushpavalli

11.Selvaraj :Respondents/Respondents/Defendants

(Appellants and Respondents 2 to 4 are recorded as LRs of the deceased R1 and respondents 6 to 11 are brought on record as LRS of the deceased R1 as per order of this Court made in C.M.P(MD)Nos.3567 and 3568 of 2017 in S.A(MD)No.437 of 2001, dated 22.03.2022)



PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.82 of 1999, dated 10.10.2000, on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Pudukkottai, confirming the judgment and decree made in O.S.No.153 of 1993, dated 21.07.1998, on the file of the Sub-Judge, Pudukkottai.

For Appellants	:Ms.Parkavi for Mr.N.C.Ashok Kumar
For Respondents 2,3 and 5	:Ms.R.Jegatheeswari for Mr.K.Marimuthu
For Respondents 9 to 11	:Mr.G.Thandayuthapani

JUDGMENT

The plaintiffs in the suit are the appellants. The suit is for partition and the same was dismissed by the trial Court. Aggrieved by the same, the plaintiffs have filed an appeal in A.S.No.82 of 1999 and the findings of the trial Court was confirmed by the first appellate Court. Aggrieved by the findings of the first appellate Court, the plaintiffs have filed the present Second appeal before this Court.

2. According to the appellants, the suit properties are ancestral properties of the first respondent-Nallamuthu Ambalam. It was claimed by the appellants that they are the sons of the first



respondent through his first wife namely, Periyammal. The other respondents are the children of the first respondent through his second wife, namely, Kannammal. On these pleadings, the appellants claim 1/5th share in the suit property and laid a suit for partition.

3.The respondents have filed a written statement denying the legal status of the appellants as his son and that of their mother Periyammal as the legally wedded wife of the first respondent. It was the case of the respondents that the mother of the appellants namely, Periyammal was given in marriage to one Azhagan of Manamettupatti and the appellants are the sons of the said Azhagan. It was further averred that after the death of the said Azhagan, on account of the close relationship namely, sister of the first respondent's wife Kannammal, Periyammal was allowed to live along with the family of the first respondent. It was also claimed that the first respondent also helped Periyammal to maintain her children on humanitarian considerations. Therefore, the respondents have prayed for dismissal of the suit.

4.The Trial Court, on appreciation of evidence, came to the conclusion that the appellants had failed to prove that their mother Periyammal was the legally wedded wife of the first respondent



and the appellants were the sons of the first respondent and consequently, dismissed the suit. The trial Court also non-suited the appellants on the technical ground that the suit was bad for non-joinder of necessary parties namely, daughters of Kannammal. Aggrieved by the said findings, the appellants preferred an appeal in A.S.No.82 of 1999, on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Pudukkottai. The first appellate Court also, on independent appreciation of oral and documentary evidence available on record, confirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the appellants are before this Court with the present Second Appeal.

5.The learned counsel for the appellants vehemently contended that the appellants produced the Voter's List to prove that Periyammal and the appellants lived along with the first respondent's family. The learned counsel further contended that the appellants have examined the President of the Village Panchayat namely, D.W.2 to prove the marriage of Periyamal along with the first respondent. The learned counsel also relied on the judgment of the Honourable Apex Court in the case of ***Kattukandi Edathil Krishnan and another .vs. Kattukandi Edathil Valsan and others*** reported in ***2022(4) CTC 149***, for the proposition that if a



man and woman live together for long years as husband and wife, it would raise a presumption in favour of a legally wedded wife.

6.Per contra, the learned counsel for the respondents submitted that the first respondent himself had appeared before the trial Court and denied the alleged marriage between himself and Periyammal. The learned counsel further submitted that the evidence of independent witnesses namely, D.W.2 and D.W.3 support the case of the respondents that Periyammal is not the legally wedded wife of the first respondent. It is the submission of the learned counsel that both the Courts below, on appreciation of entire oral and documentary evidence available on record, had given a factual finding that the factum of marriage between periyammal and the first respondent was not at all proved and the said factual finding does not call for any interference from this Court.

7.Heard the arguments advanced by the learned counsel for the appellants as well as the learned counsel for the respondents.

8.It is not in dispute that the first respondent herein had married one Kannammal and the other respondents are the children of the first respondent born through the said Kannammal.



The appellants herein claim that they are the sons of the first respondent through his first wife namely, Periyammal. Therefore, it is incumbent on the part of the appellants to prove not only the factum of marriage of Periyammal with the first respondent, but they should also prove that the marriage of Periyammal had taken place prior to the marriage of Kannammal with the first respondent. In the case on hand, in order to prove the marriage of Periyammal with the first respondent, there is no direct evidence available on record. The appellants have only produced the Voter's List Ex.A3 and Ex.A11 to prove that the appellants and their mother Periyammal lived along with the family of the first respondent. Further, the appellants have relied on the evidence of the Panchayat President, who was examined as P.W.2 to prove the factum of the alleged marriage. The mother of the appellants was examined as P.W.3 and she deposed that she got married to the first respondent and the case of the respondents that she got married to one Azhagan was not proved. However, a close scrutiny of P.W.3 evidence would make it clear that though she had admitted that as per the custom and usage prevailing in the family, the marriage would be solemnized only after printing of invitation, but in her case, no such invitation was printed. She also admitted that at the time of marriage, the essential feature of the Hindu Marriage namely, Sapthabathi was not followed. Therefore, the evidence of



P.W.3, namely, the mother of the appellants is not sufficient to prove the factum of valid marriage between herself and the first respondent. The learned counsel for the appellants relying on the judgment of the Honourable Apex Court in ***K.E.Krishnan's case*** as cited supra, submitted that long cohabitation gives rise to a legal presumption that the marriage had taken place legally. However, the respondents submitted that Periyammal was only the sister of the first respondent's wife Kannammal and after the death of the husband of Periyammal, she was allowed to live along with the family of the first respondent, for some time, on humanitarian grounds. The said fact was spoken to by the witnesses examined by the respondents on their behalf namely, D.W.2 and D.W.3.

9.The Courts below, on a perusal of the oral evidence let in by both the parties, came to the conclusion that the factum of marriage was not at all proved.This Court finds no perversity on the said finding of the Courts below, when there is no misreading of evidence available on record, on this aspect. In such circumstances, this Court finds no perversity in the above said findings of the Courts below to exercise the jurisdiction under Section 100 of Civil Procedure Code. Apart from that, the judgment relied on by the learned counsel for the appellants would not help the appellants in any way. Even assuming that the long



cohabitation between Periyammal and the first respondent has been proved by the appellants, the long cohabitation would only give rise to a presumption of marriage between Periyammal and the first respondent. As far as this case is concerned, in view of the admitted fact that Kannammal is the legally wedded wife of the first respondent, unless the appellants are able to establish that the marriage of periyammal with the first respondent had taken place prior to his marriage with Kannammal, the appellants cannot claim themselves as the legitimate children of the first respondent and claim share in the ancestral properties of the first respondent. Therefore, looking at any angle, findings of the Courts below that the appellants failed to make out a case for partition is correct and hence, the Second Appeal is devoid of merits.

10.In fine, the Second Appeal stands dismissed, confirming the judgments and decrees of the Courts below. Considering the relationship between the parties, there will be no order as to costs.

06.02.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No



vsn

To

- 1.The Principal District Judge,
Pudukkottai.
- 2.The District Munsif,
Sivakasi..
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.437 OF 2001

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