



S.A.No.854 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.854 of 2003

Shanthi

...Appellant

vs.

1.Kavitha

2.Minor Jayashankar

3.Minor Anitha

4.Krishnamurthy

5.G.N.Mahendrarvarman

6.Panneerselvam

... Respondents

(4th respondent is the guardian of the respondents 2 and 3)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 10.12.2002 in A.S.No. 64 of 2002 on the file of the Principal District Court, Pudukkottai confirming the Judgment and Decree dated 15.02.2002 in O.S.No.184 of 1998 on the file of the Additional District Munsif Court, Pudukkottai.



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For Appellant : Mr.R.Murali
for M/s.Sarvabhauman Associates

For Respondents : Mr.S.Manohar for R1 to R4

No appearance for R5 and R6

ORDER

The appellant is the fourth defendant in the suit in O.S.No.184 of 1998 on the file of the Additional District Munsif Court, Pudukkottai.

2. One Rajathi @ Palaniammal (deceased) and the respondents 1 to 4 herein filed the above suit against the appellant and the respondents 5 and 6 herein and one Packiriammal (deceased) for declaration that the plaintiffs alone hold successful right over the suit properties and for consequential relief of permanent injunction. After the completion of pleadings and trial, the Trial Court decreed the suit on 15.02.2002 in favour of the plaintiffs. Challenging the said Judgment and Decree, the fourth defendant in the suit had filed an appeal before the Principal District Court, Pudukottai in A.S.No.64 of 2002. The learned Principal District Judge, Pudukottai after hearing the arguments, considering the



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Memorandum of grounds of appeal and re-appreciating the oral and documentary evidence, had dismissed the Appeal. Challenging the said dismissal, the fourth defendant in the suit, who is the appellant in the appeal suit has filed the present Second Appeal before this Court, raising the following substantial questions of law.

"1. Whether the Courts below are correct in law in accepting the customary divorce without proper pleading and strict proof?

2. When there is no direct evidence to prove customary divorce whether the Courts below are correct in law in holding that the first defendant was a divorcee and therefore she has no right in the suit properties?"

3. On 03.02.2004, this Court admitted the Second Appeal on the above substantial questions of law raised by the appellant / fourth defendant.



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4. The case of the plaintiffs in the suit is that the father of the deceased first plaintiff, namely, Ramasamy Velar (deceased) married the deceased first defendant, namely, Packiriammal in the year 1951. On the date of marriage, the deceased Ramasamy Velar was aged 45 years and the deceased Packiriammal was aged 18 - 19 years. The deceased Packiriammal is none other than the daughter of the younger sister of the deceased Ramasamy Velar. Due to wedlock, they were blessed with the deceased first plaintiff Rajathi @ Palaniammal on 15.06.1953. After giving birth to the deceased Rajathi @ Palaniammal, the deceased Packiriammal had illegal intimacy with one Ragavan and even when her husband was alive, she eloped with the said Ragavan to Thanjavur in the year 1955. She also left her daughter, the deceased Rajathi @ Palaniammal, who was aged only 2 years with her husband. Since she refused to live with her husband and there was no chance of reunion, customary divorce was granted to them in the Panchayat held in the native of the deceased Ramasamy Velar in the year 1955. Subsequently, the deceased Packiriammal married the said Ragavan when her husband



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Ramasamy Velar was very well alive. Through the said Ragavan, she gave birth to the defendants 3 and 4, namely, Panneerselvam and Shanthi and one another child, namely, Muthumani. The deceased Packiriammal along with Ragavan and their children resided in Thanjavur separately. The deceased Ramasamy Velar died on 08.10.1961 leaving behind the deceased first plaintiff Rajathi @ Palaniammal as his only legal heir. The deceased Rajathi @ Palaniammal got married and gave birth to the plaintiffs 2 to 4. The fifth plaintiff is the second husband of the deceased Rajathi @ Palaniammal. As the only legal heir of the deceased Ramasamy Velar, the deceased first plaintiff Rajathi @ Palaniammal was in possession and enjoyment of the suit properties along with her family members, ie., the plaintiffs 2 to 5. While so, the defendants tried to interfere with their peaceful possession and enjoyment of the suit properties. The deceased Packiriammal had gone to the extent of suppressing the fact that the deceased Rajathi @ Palaniammal was her daughter through deceased Ramasamy Velar and obtained patta as if she is the wife and only legal heir of the deceased Ramasamy Velar. The said patta was cancelled in the subsequent proceedings. During the pendency



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of the suit, Rajathi @ Palaniammal and Packiriammal died. The deceased Rajathi @ Palaniammal was the only legal heir of the deceased Ramasamy Velar. Therefore, as the legal heirs of the deceased Rajathi @ Palaniammal, the plaintiffs 2 to 5 alone are entitled to the suit properties.

5. The case of the defendants in the suit is that the deceased first defendant Packiriammal married her maternal uncle deceased Ramasamy Velar. During the life time of the deceased Ramasamy Velar, she lived with him. After the demise of Ramasamy Velar on 08.10.1961, she lived with one Ragavan in a thatched roof house and gave birth to the defendants 3 and 4. Therefore, she is entitled to the suit properties as a legal heir of the deceased Ramasamy Velar along with her daughter deceased Rajathi @ Palaniammal. The deceased Packiriammal had obtained joint patta for the suit properties along with the deceased Rajathi @ Palaniammal. The said order was also confirmed by the District Revenue Officer on 20.06.1990 and the properties of the deceased Ramasamy Velar were allotted to the deceased Rajathi @ Palaniammal and the deceased Packiriammal as per the family



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arrangement and both of them had enjoyed the suit properties separately.

The deceased Packiriyammal was alone entitled to the A schedule property, since it is her self acquired property. She sold the A schedule property to the second defendant through a registered sale deed with the knowledge of the deceased Rajathi @ Palaniammal. Therefore, the second defendant is impleaded as a party to the proceedings. The further case of the defendants is that there was no customary divorce between the deceased Ramasamy Velar and the deceased Packiriyammal during their life time. Customary divorce is not permitted in their community and the same was not proved in the manner known to law. Unfortunately, the Trial Court and the Appellate Court had erroneously held that there was customary divorce in their community and through customary divorce, the deceased Ramasamy Velar and the deceased Packiriammal have dissolved their marriage. Only after the demise of Ramasamy Velar, the deceased Packiriammal married one Ragavan. Therefore, till the life time of the deceased Ramasamy Velar, the deceased Packiriammal lived as his wife. Both the Courts below have failed to appreciate the same and dismissed the Suit and the Appeal.



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6. The learned counsel appearing for the appellant / fourth defendant would submit that admittedly the deceased Packiriammal, who is the mother of the appellant / fourth defendant married her maternal uncle deceased Ramasamy Velar and gave birth to the deceased Rajathi @ Palaniammal in the year 1953. Ramasamy Velar died in the year 1961. Till such time, the deceased Packiriammal was living with the deceased Ramasamy Velar. Only subsequent to the death of Ramasamy Velar, she lived with Ragavan and gave birth to three children. There was no customary divorce prevailing in their community as claimed by the plaintiffs and there is no material evidence to prove that there was customary divorce prevailing in their community and as per the customs, their marriage was dissolved. No documentary evidence is produced by way of an Agreement, Muchalika or Minutes in the Panchayat Note Book. In order to prove the customary divorce, the plaintiffs have examined PW1 to PW3. PW1 is the second husband of the deceased Rajathi @ Palaniammal and he is not directly acquainted with the alleged customary divorce granted in the Panchayat. Evidence of PW2 and PW3



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are alone not sufficient to prove that the deceased Packiriammal and the deceased Ramasamy Velar dissolved their marriage through the customary divorce. It is the duty of the plaintiffs to plead and prove their case on customary divorce in strict sense. The plaintiffs have not even stated the specific place and date of the alleged customary divorce. It is well settled proposition of law that the plaintiffs have to prove their case on their own legs and they cannot take advantage of the loopholes left by the defendants. The plaintiffs have failed to prove that there was customary divorce prevailing in their community and that during the life time of the deceased Ramasamy Velar, customary divorce was granted and the deceased Packiriammal married Ragavan and therefore, the deceased Packiriammal had lost her right as a legal heir. Since the customary divorce was not proved in the manner known law, both the deceased Packiriammal and the deceased Rajathi @ Palaniammal are entitled to get half shares each in the suit properties. He would further submit that, even presuming that the customary divorce had taken place, it is to be noted that after the enactment of the Hindu Marriage Act, 1955, the marriage cannot be dissolved against law and divorce has to be



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granted only in accordance with law. He placed reliance on the Judgment of the Hon'ble Supreme Court of India in the case of *Subramani and Ors. vs. M.Chandralekha* reported in 2005 0 AIR(SC) 485 and submitted that the prevalence and customary divorce in the community to which parties belong, contrary to general law of divorce must be specifically pleaded and established by the person propounding such custom. He would therefore submit that both the Courts below failed to appreciate the above facts and prayed for allowing this appeal.

7. The learned counsel appearing for the respondents 1 to 4 / plaintiffs 2 to 5 would submit that the appellant herein was not examined as a witness in the suit. She had not even chosen to file the written statement in the suit. The third defendant who filed the written statement in the suit did not challenge the Judgment and Decree passed by the Trial Court and the First Appellate Court. He would submit that the deceased Packiriammal married her maternal uncle deceased Ramasamy Velar, who was then aged about 45 years and gave birth to the deceased Rajathi @ Palaniammal through the deceased Ramasamy Velar. During their



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lawful wedlock, the deceased Packiriammal was aged about 18 - 19 years. Since she did not like to live with her husband, she had illegal intimacy with one Ragavan and eloped with him to Thanjavur, leaving behind her child, who was then aged about two years. Thereafter, in the Village Panchayat the deceased Ramasamy Velar and the deceased Packiriammal were separated by way of customary divorce in the year 1955. The deceased Packiriammal, thereafter, married the said Ragavan and gave birth to the defendants 3 and 4 and one Muthumani. Subsequently, Ramasamy Velar died in the year 1961, leaving behind the deceased Rajathi @ Palaniammal as his only legal heir. Till the death of Ragavan, the deceased Packiriammal and her children lived separately along with Ragavan in Thanjavur and after the demise of Ragavan, they returned to the native place without shelter. Therefore, the deceased Rajathi @ Palaniammal allowed the deceased Packiriammal and her children to stay in the adjacent house. Taking advantage of the same, the deceased Packiriammal obtained a joint patta, in respect of the suit properties in a fraudulent manner. Neither the deceased Packiriammal nor the defendants 3 and 4 are the legal heirs of the deceased Ramasamy



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Velar and they are not entitled to any right or share over the suit properties. The customary divorce was proved by the respondents 1 to 4 / plaintiffs 2 to 5 by examining PW1 to PW3. They have clearly deposed about the customs prevailing in their community. Even the deceased Rajathi @ Palaniammal divorced her first husband and married the fifth plaintiff. He was examined as PW1. He has clearly deposed about the customary divorce prevailing in their community. Therefore, the deceased Rajathi @ Palaniammal pleaded the customary divorce and proved the same in the manner known to law by examining the witnesses. The defendants did not adduce any contra evidence and they have not even examined any independent witness to show that there was no customary divorce prevailing in their community. Therefore, both the Courts below rightly appreciated the facts and held that the deceased Rajathi @ Palaniammal is alone the legal heir of the deceased Ramasamy Velar. The other defendants who have filed written statement and examined themselves as witnesses have not challenged the decision of both the Courts below. The fourth defendant who had not even filed the written statement and had not examined herself as a witness, has



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challenged the decision of the Trial Court and the Appellate Court. There is no merits in the Second Appeal and it is liable to be dismissed.

8. Heard the learned counsel appearing for the appellant / fourth defendant and the learned counsel appearing for the respondents 1 to 4 / plaintiffs 2 to 5. Perused the materials available on record.

9. It is not in dispute that the deceased Ramasamy Velar married the deceased Packiriammal and she gave birth to the deceased Rajathi @ Palaniammal on 15.06.1953. The dispute is that, according to the deceased Rajathi @ Palaniammal, after her birth, the deceased Packiriammal had illegal intimacy with one Ragavan and eloped with him. Since the deceased Packiriammal refused to live with the deceased Ramasamy Velar, customary divorce was granted to them, according to the customs prevailing in their community. Subsequent to the customary divorce, even during the life time of the deceased Ramasamy Velar, the deceased Packiriammal married the said Ragavan in the year 1955 and gave birth to three children through Ragavan. Ramasamy Velar died on



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08.10.1961. On that date of death of Ramasamy Velar, the deceased Rajathi @ Palaniammal alone was his legal heir and therefore, she is entitled to all the properties of the deceased Ramasamy Velar, since he died intestate.

10. On the other hand, according to the appellant / fourth defendant there was no customary divorce and the deceased Packiriammal lived with one Ragavan only after the death of the deceased Ramasamy Velar. Therefore, the deceased Packiriammal is also one of the legal heirs of the deceased Ramasamy Velar along with the deceased Rajathi @ Palaniammal.

11. In the instant case, the third defendant who is the son of the deceased Packiriammal through Ragavan, contested the suit by filing written statement. However, he has not filed appeal against the Judgment and Decree passed in the Suit or Appeal Suit. However, the fourth defendant who did not even chose to file written statement or to enter the witness box has preferred the Appeal Suit and the Second Appeal.



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12. A perusal of the records shows that three witness were examined on the side of the plaintiffs ie., PW1 to PW3. The second husband of the deceased Rajathi @ Palaniammal, namely, Krishnamoorthy, was examined as PW1 who has deposed about the practice of customary divorce prevailing in their community. He had also deposed that the deceased Rajathi @ Palaniammal had earlier married another person and got divorce according to the customs prevailing in their community and thereafter, married him. Veeramuthu Konar, aged about 90 years on the date of examination, who is said to have been participated in the Panchayat was examined as PW2 and he had categorically deposed about the divorce granted in the Panchayat to the deceased Ramasamy Velar and the deceased Packiriammal as per the customs prevailing in their community. One Periyya, aged about 70 years on the date of examination, who is alleged to be a watcher of the Panchayat was examined as PW3 and he has deposed about the customary divorce granted to the deceased Ramasamy Velar and the deceased Packiriammal and about the fact that even during the life time of the deceased Ramasamy Velar, the deceased Packiriammal married



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Ragavan. Through the evidence of PW1 to PW3, the respondents 1 to 4 / plaintiffs 2 to 5 were able to establish that customary divorce was granted to the deceased Ramasamy Velar and the deceased Packiriammal and the deceased Rajathi @ Palaniammal was alone the legal heir of the deceased Ramasamy Velar on the date of his demise. A reading of their evidence would also show that even prior to the customary divorce, the deceased Packiriammal had illegal relationship with Ragavan and lived with him and after the customary divorce, she married Ragavan and gave birth to the defendants 3 and 4 and one Muthumani and resided in Thanjavur. Since there are no documentary evidence to prove the customary divorce, the respondents 1 to 4 / plaintiffs have proved the same clearly through oral evidence. Therefore, the contention of the learned counsel appearing for the appellant / fourth defendant that the deceased Rajathi @ Palaniammal did not plead and prove the customary divorce is not acceptable. The deceased Rajathi @ Palaniammal had specifically pleaded about the customary divorce and proved the same. No witness was examined on the side of the defendants to disprove the evidence of PW1 to PW3. In the absence of any contra evidence on the side of the



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defendants, it is to be concluded that customary divorce was granted to the deceased Ramasamy Velar and the deceased Packiriammal in the year 1955. Therefore, both the Courts rightly appreciated the facts and rightly held that customary divorce was granted and that the deceased Rajathi @ Palaniammal was the only legal heir to the deceased Ramasamy Velar on the date of his demise.

13. Though it is stated by the defendants that the exact date and place of the customary divorce is not known, this Court is of the opinion that it is not necessary to go into the above aspect since PW1 to PW3 have clearly deposed that there is a practice of customary divorce prevailing in their community. The date and place of customary divorce do not give any significance since after the appreciation of the evidence, it is concluded by both the Courts below and this Court that customary divorce was granted to the deceased Ramasamy Velar and the deceased Packiriammal.



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14. As far as the contention of the learned counsel appearing for the appellant / fourth defendant that after the enactment of the Hindu Marriage Act, 1955, marriage cannot be dissolved against law and divorce has to be granted in accordance with law, is concerned, the Hindu Marriage Act was enacted on 18.05.1955 and admittedly, the deceased Rajathi @ Palaniammal / first plaintiff was born on 15.06.1953, which is evident from the Certificate issued by Panchayat Union Middle School, Kantharvakkottai marked as Ex.A1 and according to the evidence of PW1 to PW3, subsequent to the birth of the deceased Rajathi @ Palaniammal, the deceased Packiriammal had illegal intimacy with one Ragavan and eloped with him. Customary divorce was granted to the deceased Ramasamy Velar and the deceased Packiriammal when the child was about 2 years old. Even though it is approximately stated that the child was aged about two years when customary divorce was granted, the exact age of the child and the date of the customary divorce is unknown. Under such circumstances, it cannot be stated that the customary divorce was granted after the enactment of the Hindu Marriage Act, 1955.



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15. In view of the above discussions, this Court finds no merits in the Appeal. The Second Appeal is liable to be dismissed. The Substantial questions of law framed by this Court are answered in favour of the respondents 1 to 4 / plaintiffs 2 to 5 and against the appellant / fourth defendant.

16. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 10.12.2002 in A.S.No.64 of 2002 on the file of the Principal District Court, Pudukkottai confirming the Judgment and Decree dated 15.02.2002 in O.S.No.184 of 1998 on the file of the Additional District Munsif Court, Pudukkottai is hereby upheld. No costs.

18.04.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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P.VELMURUGAN, J.

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To

- 1.The Principal District Court,
Pudukkottai
- 2.The Additional District Munsif Court,
Pudukkottai.

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