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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Received on : 19.12.2023

Pronounced on : 11.01.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.549 of 2007

1.Puttamma
2.Mallamma
3.Prakasam(Died)
4.Ramachandran
5.Rathinamma(Minor)
Natural Guardian
1st appellant

...Plaintiffs/Respondents/Appellants

Vs.

1.Mallappa
2.Sarojamma
3.Rupa
4.Manojkumar(Minor)
5.Yakshith(Minor)
(R3 to R5 are brought on record
as Lrs of the deceased third appellant
vide Court order dated 29.11.2019.)

...Defendants/Appellants/Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 16.12.2006 made in A.S.No.23 of 2003 on the file of the Subordinate Court, Hosur, reversing the judgment and decree dated 31.07.2003 in O.S.No.682 of 1993 on the file of the District Munsif-cum-Judicial Magistrate, Denkanikottai.

For Appellants : M/s.R.S.Akila
for M/s.V.M.Venkatraman
For Respondents : M/s.R.Abirami
for M/s.V.Srimathi



JUDGMENT

The present second appeal has been filed at the instance of the plaintiffs. The respondents are the defendants before the trial Court.

2. The parties will be referred to according to their litigative status before the trial Court.

The brief facts which give rise to the instant second appeal are that:

3. The suit property was originally belonged to one Muni Mallappa, who has got four children. After the demise of the said Muni Mallappa, the suit property devolves upon Nadukkal Mallappa, who is one among the four son of Muni Mallappa. The said Nadukkal Mallappa has two wives viz., Lingamma and the first plaintiff Puttamma. The senior wife of Nadukkal Mallappa viz, Lingamma died without any issues. Whereas, the first plaintiff has got four children out of the wedlock with Nadukkal Mallappa and they are arrayed as the plaintiffs 2 to 5. The plaintiffs submit that the first defendant is the son of one Lingappa, and the second defendant is the wife of the first defendant. Both the defendants 1 and 2 are purely strangers to the suit property and they have got no right over the same. However, recently the first defendant claiming share in the suit property attempted to trespass into the suit property. Hence, the plaintiffs have come forward with the prayer for declaration to declare that the suit property belongs to the plaintiffs and for permanent injunction.



4. The said suit was resisted by the first defendant by contending that he is also one of the legal heirs of Nadukkal Mallappa. According to the first defendant, Nadukkal Mallappa has got three wives viz., Lingamma, Chickkamma and Puttamma (first plaintiff). The first defendant admits that the suit property was originally belonged to Muni Mallappa and thereafter, by virtue of oral partition, it devolved upon Nadukkal Mallappa. The first defendant also admits that the first plaintiff is the wife of Nadukkal Mallappa and the plaintiffs 2 to 5 are their children. However, it is his contention that prior to the marriage of the first plaintiff Puttama, his father Nadukkal Mallappa married his mother Chickkamma. After the birth of the first defendant, within three months his mother Chickkamma died and he was brought up by the senior wife of Nadukkal Mallappa qua Lingamma, and the first plaintiff. Therefore, the first defendant submits that he is also the legal heir of Nadukkal Mallappa. Hence, he prays to dismiss the suit.

Evidence and Documents:

5. Before the trial Court, on the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and ten documents were marked as Ex.A1 to Ex.A10. On the side of the defendants, four witnesses were examined as D.W.1 to D.W.4 and nine documents were marked as Ex.D1 to Ex.D.9. As a third party documents, three documents were marked as X.1 to X.3.



Findings of both the Court below:

6. The trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that the first defendant has not established that he is also a son of Nadukkal Mallappa and that since the first defendant himself admits the plaintiffs are the legal heirs of the Nadukkal Mallappa, decreed the suit as prayed for. Aggrieved with the same, the defendants preferred an appeal before the first appellate Court and the first appellate Court, based up on the re-appreciation of the evidence, has found that through the birth certificate of the first defendant and through the other documents, the paternity of the first defendant established and that Mr.Nadukkal Mallappa, is the father of the first defendant. The first appellate Court also gave credential to the above findings from the fact that the said Nadukkal Mallappa's first wife Lingamma has handed over her settlement deed(Ex.B2) executed by the Nadkkaal Mallappa, to the first defendant. Therefore, the contention put forth by the first defendant that he is also the legal heir of Nadukkal Mallappa cannot be brush aside and ultimately, allowed the appeal by dismissing the suit. Aggrieved over the same, the plaintiffs are before this Court by way of this second appeal.

Substantial questions of law:

7. At the time of admission, this Court has formulated the following substantial questions of law on 08.06.2007:

“(1)Whether the lower Appellate Court is right in holding

that the first defendant is the son of Nadukula Mallappa through



his second wife Chikkama in the absence of any proof?

(2) Whether the lower Appellate Court is right in disregarding Ex.A.9 and A.10, when the recitals in Ex.A.9 and Ex.A.10 clearly shows that the first defendant's mother Singamma and his father Lingappa were brought up by one Mariyasiddaiya and Chennamma.

(3) Whether in view of the Discrepancy in the date of Birth of D.W.1 under Ex.B.1 and Ex.X.1, the paternity of D.W.1 can be proved under Section 35 of the Evidence Act?

(4) Whether the findings of the lower appellate Court is vitiated by error of law on misreading of evidence?"

Submissions on either side:

8. The learned counsel appearing for the appellants/plaintiffs would submit that when the defendant himself admits the plaintiffs' right over the suit property, since because there is a reference of name Nadukkal Mallappa in Ex.B.1 birth certificate of the first defendant, it cannot be construed that he also be the son of the first plaintiff's husband Nadukkal Mallappa. It was also further contended by the learned counsel for the plaintiffs that the name of Nadukkal Mallappa is very common in the village and even according to the evidence of P.W.3-Annaiyappa, there were 20 persons with the name of Nadukkal Mallappa. Therefore, contented that the mere reference of Nadukkal Mallappa in the birth certificate will not enure any benefit to the defendants so as to proclaim that he is also the son of the first plaintiff's husband. By referring to Ex.A.9 and Ex.A10, the learned counsel for the plaintiffs would further contend that the first defendant's father's name was only



Lingappa. Hence, she vociferously submitted that the finding rendered by the first appellate Court is error on facts and law and on misreading of evidence. Hence, he prayed to interfere with the order of the lower appellate Court by allowing the second appeal.

9. Per contra, the learned counsel for the defendants/respondents would contend that, the second defendant is also the son of Nadukkal Mallappa through his second wife Chikkamma. The learned counsel would contend that the factum of his birth and his father's name has been proved by filing Ex.B.1-Birth Certificate, and that the evidence of P.W.1 and P.W.2 as to the presence of the first defendant along with them in their residence, has not been denied. Therefore, the Birth Certificate of the first defendant would emphatically prove that he is also the son of Nadukkal Mallappa and such factum can be vindicated through the evidence of P.W.1 and P.W.2. Hence, the learned counsel for the defendants contended that by proper re-appreciation of evidence, the first appellate Court has correctly arrived at a conclusion which do not require any interference. Hence, he prays to dismiss the appeal.

Analysis of the submission:

10. In order to decide the substantial question of law, what is essential is whether the first defendant is the son of one Nadukkal Mallappa, who is the husband of the first plaintiff. According to the first defendant, he categorically admits that the plaintiffs are the legal heirs of one Nadukkal Mallappa. He has also



further admitted that the suit property were absolutely belonged to the said Nadukkal Mallappa. However, he contended that he is also the legal heir of the said Nadukkal Mallappa.

11. In this regard, he is very much relying upon the Birth Certificate Ex.B.1. On perusal of Ex.B.1-Birth Certificate, the father's name is shown as Nadukkal Mallappa. However, the trial Court misdirected by comparing Ex.B.1 with the Transfer Certificate of the first defendant Ex.X.3 and disbelieved the case of the defendants. According to the finding of the trial Court in Ex.B1-Birth Certificate, the date of birth is shown as 09.05.1968. Whereas in the transfer certificate, the date of birth of the first defendant is shown as 10.03.1968. Therefore, both Ex.B3 and Ex.X.3 could not be believed. No doubt, there is variation in the date of birth between Ex.B1 and Ex.X.3. This Court cannot be oblivious to the happening in the Society. The variation of date of birth from the Birth Certificate and Transfer Certificate are common. That is why the Government employees have been given window to correct the date of birth within the stipulated time as per the respective rule, if there is variation. Therefore, here what is essential to see is whether the father name is differed between Ex.B.1 and Ex.X.3 is material factor.

12. On perusal of Ex.B1 and Ex.X.3, the father's name is shown as Nadukkal Mallappa. As rightly contended by the learned counsel for the defendants that when the plaintiffs dispute that the first defendant's paternity with the specific stand that his father's name is Lingappa, and not the legal heir of Nadukkal



Mallapa who is the husband of the first plaintiff and the father of the plaintiffs 2 to 5, it becomes the duty of the first defendant to establish that he is the son of Nadukkal Mallappa. Now, through Ex.B.1 and Ex.X.1 to Ex.X.3, the first defendant has established that he is the son of one Nadukkal Mallappa. Now that the burden shifts upon the plaintiffs to establish that the said Nadukkal Mallappa referred to Ex.B.1, Ex.X.1 to Ex.X.3 is not the said Nadukkal Mallappa, who is the first defendant's husband. In this regard, the trial Court has found through the evidence of P.W.3-Annaiyappa that the name of Nadukkal Mallappa is very common in the said village. It may be true, but the burden is upon the plaintiff to establish that Nadukkal Mallappa referred to in Ex.B.1 and Ex.X.1 to Ex.X.3, is not a person who is the husband of the first plaintiff.

13.However, the trial Court by referring Ex.A.9 and Ex.A10 deeds, which were executed by one Marichitthaiah of Osatti Village, which have recitals that he is settling some of the properties in favour of one Lingappan and Chikkamma wherein he recited about his wish about the marriage between Chikkamma and one Lingappan. Based on this recital, the trial Court found that the said Lingappan is the husband of Chikkamma and proceeded with the presumptive approach. But admittedly there are no materials to show that the said Lingappan was the husband of Chikkamma. Per contra, the first defendant has established that he is the son of Nadukkal Mallappa through Ex.B1. At this juncture, this Court would like to refer to the curious submission made by P.W.1-first plaintiff during his cross-



examination. According to the plaint averments, the first defendant is a stranger to their family. However, while she was questioned about the presence of the first defendant till his marriage with the first plaintiff's family, he pleaded ignorance and he also pleaded ignorance about the steps taken by his husband Nadukkal Mallappa to enroll the first defendant in the school. In this regard, it is relevant to extract the answers given by P.W.1 during cross-examination:

“.....நடுகொல் மல்லப்பாதான் 1ஆம் பிரதிவாதியை பள்ளியில் சேர்த்தார் என்ற விவரம் எனக்குத் தெரியாது,,,,,,,,, 1ஆம் பிரதிவாதி திருமணம் ஆகும்வரை எங்களுடன்தான் கூடவாழ்ந்து வந்தார் என்றால் எனக்குத் தெரியாது.”

If really the first defendant was a stranger to the plaintiff, and no way connected to the plaintiffs' family, her answer should be a in emphatic negative, whereas he pleaded ignorance, which is nothing but admission in respect of his relationship between the first defendant and the plaintiff's husband Nadukkal Mallappa. Therefore, the above answer assumes much significance in the background of Ex.B1, X.1 to X.3.

14.In similar line, though P.W.2 Sathasivaiah, who is also relative to the plaintiffs, he refuted various suggestions made by the defendants, but he also pleaded ignorance about the attempt made by Nadukkal Mallappa to enroll the first defendant in the school. The relevant reply is follows:

“.....நடுகல் மல்லப்பா தான் 1ஆம் பிரதிவாதியை பள்ளியில் சேர்த்தார் என்றால் எனக்குத் தெரியாது....”



first wife Lingamma has handed over her original settlement deed executed by Nadukkal Mallappa to the first defendant. The said document has been marked as Ex.B.2 through first defendant. Therefore, in the background of the existence of Ex.B.1-Birth Certificate and the possession of Ex.B.2-settlement deed of late Lingamma, the first appellate Court on correct re-appreciation of evidence, reversed the finding of the trial Court.

16.From the submission of either side, still there may be a possibility for different view while analyzing the evidence adduced by either side. But under Section 100 C.P.C., this Court should only find, whether the findings recorded by the first appellate Court is without any evidence or contrary to law or perverse. On a harmonious analysis of the reasoning given by the first appellate Court, in the background of the evidence adduced before the trial Court, this Court could not find any perversity in the findings recorded by the first appellate Court.

17.It is pertinent to mention here that when the first defendant has established that he is the son on Nadukkal Mallappa, the burden shifts upon the plaintiffs to show that the said Nadukkal Mallappa referred to in the birth certificate is not as that of the first plaintiff's husband. Whereas, there are no evidence submitted by the plaintiffs to discharge their burden and they have satisfied their discharge of burden by simply referring that there are many persons



in the name of Nadukkal Mallappa. But this Court could not accept such stand as discharge of burden of the plaintiffs.

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18.Hence, this Court is of the view that the first defendant has established that he is the son of Nadukkal Mallappa and not Lingappa. Therefore, the contention put forth by the first defendant is probable one. In the background of Ex.B.1, X.1 to X.3, the recitals in Ex.A.9 and Ex.A10 deed, which are of the year 1939 and 1943 pales in to insignificance.

19.Therefore, this Court is of the firm view that the findings recorded by the first appellate Court is based on proper re-appreciation of evidence, and this Court could not find any material to deviate from the said findings. In view of the above discussions, the substantial questions of law are answered in favour of the respondents.

20.In the result, this Second Appeal stands dismissed, confirming the decree and judgment of the lower appellate Court. No costs.

11.01.2024

NCC:Yes
Index:Yes
Internet:Yes



C.KUMARAPPAN.,J
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To

- 1.The Subordinate Court,
Hosur.
- 2.The District Munsif-cum-
Judicial Magistrate,
Denkanikottai.
- 3.The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

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