



S.A.No.1136 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1136 of 2010

and

M.P.No.1 of 2010

1.Anbazzhagan

2.Sampoornam

... Appellants

vs.

1.Senthamil Selvi

2.Minor.Nithya

Represented by next friend and mother

Senthamil selvi

... Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 27.10.2009 in A.S.No.201 of 2008 passed by the Principal District Judge, Perambalur, confirming the judgment and decree dated 27.11.2007 in O.S.No.212 of 2001 passed by the Sub Judge, Ariyalur, Perambalur.

For appellants : Mr.R.Thiagarajan

For respondents : Mr.P.Valliappan, Senior Counsel
for Mr.G.RM.Palaniappan



S.A.No.1136 of 2010

J U D G M E N T

WEB COPY The defendants are the appellants before this Court. The respondents herein are the plaintiffs.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which gave rise to the instant Second Appeal, are as follows:

3. The suit property was an ancestral property of one Maruthamuthu Mooppanar. The first defendant is the son of late Maruthamuthu Mooppanar, and the second defendant is the second wife of late Maruthamuthu Mooppanar. The plaintiffs 1 and 2 are the wife and the daughter, respectively, of the first defendant.

4. According to the plaint, since the first defendant caused cruelty, the first plaintiff was not in a position to live along with him. Hence, the plaintiffs were forced to live in the first plaintiff's paternal home. It has also been pleaded by the plaintiffs that the defendants



S.A.No.1136 of 2010

obtained certain documents from the first plaintiff and that the first plaintiff, without knowing the same and under undue influence, have signed those documents. Therefore, according to plaintiff those documents will not bind upon the plaintiffs. Hence, the plaintiffs have come forward with the suit for maintenance, seeking partition in respect of the suit properties and claiming 3/8 share in favour of the second defendant.

5. The said suit was resisted by the defendants contending that the first plaintiff has executed a deed of divorce and also relinquishment deed by relinquishing her maintenance right from the first defendant.

6. Before the Trial Court, on behalf of the plaintiffs, the first plaintiff was examined as P.W.1 and two documents were marked as Exs.A1 and A2. On behalf of the defendants, the first defendant was examined as D.W.1 and one more witness viz., Palanisamy was examined as D.W2 and two documents were marked as Exs.B1 and B2.

7. The Trial Court, after having considered the oral and



S.A.No.1136 of 2010

documentary evidence, has arrived at a conclusion that the customary divorce is not binding upon the plaintiffs and ultimately, found that the first plaintiff is the legally wedded wife of the first defendant. Apart from that, the Trial Court has also disbelieved the relinquishment deed, which was allegedly executed by the first plaintiff to relinquish her maintenance right and ultimately, decreed the suit as prayed for.

8. Aggrieved by the same, when the defendants approached the First Appellate Court, the First Appellate Court has also concurred with the finding of the Trial Court and dismissed the appeal.

9. Not satisfied with the judgment of the First Appellate Court, the defendants are before this Court by way of this Second Appeal.

10. The learned counsel for the appellants/defendants would vehemently submit that the Trial Court as well as the First Appellate Court though believed the due execution of Ex.B1/relinquishment deed relinquishing the maintenance right, and the order of granting maintenance is contrary to law. It is also contended by the learned



S.A.No.1136 of 2010

WEB COPY

counsel for the appellants that, when the first plaintiff was all along living in her paternal home, she has no right to seek partition as well as maintenance from the first defendant. Hence, they prayed to interfere with the judgment of the Courts below and also prayed to dismiss the suit.

11. Per contra, the learned Senior Counsel for the respondents/plaintiffs would submit that the alleged deed of divorce is unknown to the Hindu Marriage Act, 1955. According to Section 13 of the Hindu Marriage Act, 1955, such alleged customary divorce has no sanctity in the eye of law. It is also contended by the learned Senior Counsel that the share claimed in the plaint are granted by Court is not in accordance with the correct calculation. Hence, contended that at the Second Appeal stage, even without prayer for correct share, the same can be granted. Therefore, it is the submission of the learned Senior Counsel while dismissing this appeal, the share of the second plaintiff is to be increased by modifying the decree of the Trial Court.

12. I have given my anxious consideration to the submissions



S.A.No.1136 of 2010

made by both sides.

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13. It is the contention of the learned Senior Counsel for the respondents/plaintiffs that the share of the second plaintiff has to be enhanced. Here, such argument cannot be entertained without having any factual foundation. In addition to the above aspect such finding was not challenged by way of filing any cross objection.

14. It is submitted by the learned counsel for the appellants/defendants that the first plaintiff had executed a deed of divorce and also relinquished her right to seek maintenance. It is a settled principle of law that the customary divorce cannot be accepted, unless such customs is proved that it was in existence for a long time. Apart from that, after the advent of the Hindu Marriage Act, 1955, any divorce in contravention to Section 13 of Hindu Marriage Act is not valid and binding. Therefore, the finding recorded by both the Courts below that the deed of divorce is not binding upon the first plaintiff is a well-merited finding and therefore, this court is not inclined to interfere with the same.



S.A.No.1136 of 2010

WEB COPY

15. In respect of maintenance, it is the submission of the learned counsel for the appellants/defendants that the first defendant has already paid a sum of Rs.13,000/- to the first plaintiff and on receipt of the entire amount, the plaintiff relinquished her right of maintenance. Both the Courts below have found that the first plaintiff is the legally wedded wife of the first defendant and that she can't relinquish the right of minor second plaintiff. In view of the same, both the Courts below found that though Ex.B1 was executed, the same will not bind upon the plaintiffs. In my opinion, such findings are well-merited and based upon the evidence and this Court could not find any perversity in such findings. Therefore, this Court is of the firm view that there is no ground to interfere with the well-merited concurrent finding of both the Courts below, and also this Court could not find any substantial question of law in this matter.

16. In the result, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



S.A.No.1136 of 2010

12.04.2024

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Principal District Judge, Perambalur.
2. The Sub Judge, Ariyalur, Perambalur.
3. The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.

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S.A.No.1136 of 2010

S.A.No.1136 of 2010

12.04.2024