



S.A.No.846 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2024

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Second Appeal No.846 of 2012
and
Miscellaneous Petition No.1 of 2012

1. Subbammal
2. Palanisamy
3. Velusamy

... Appellants

-Vs-

1. Chinammal
2. Chinnaraj
3. Thasildhar,
O/o Thasildhar
Mysore Trunk Road,
Sathyamangalam.
4. District Collector
Erode District,
Sampath Nagar,
Erode.

... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 22.12.2011 in A.S.No.28 of 2011 on the file of the Subordinate Judge, Sathiyamangalam confirming the



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Judgment and Decree dated 19.04.2011 in O.S.No.151 of 2010 on the file of the learned District Munsif Judge, Sathiyamangalam.

For Appellants : Mr. N. Ishtiaq Ahmed
For R1 & R2 : Mr. S. Parthasarathy
For R3 & R4 : Mr. T. Arunkumar,
Additional Government Pleader

JUDGMENT

This Second Appeal has been filed by the Defendants No.1 to 3 challenging the concurrent findings of the Lower Courts wherein, declaration of the second plaintiff status as the son of the deceased Thottanna Gouder has been declared.

2. For the sake of convenience, the parties are referred as per their ranking before the Trial Court.

3. The plaintiffs claim that due to the wedlock between the first plaintiff and the deceased Thottanna Gouder, the second plaintiff was born. During the lifetime of Thottanna Gouder, he was living with the plaintiffs and died on 26.07.2009. After the death of Thottanna Gouder, plaintiffs



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have approached third respondent for obtaining the Legal Heirship Certificate, for which, an objection was raised by the contesting private defendants stating that the first plaintiff is not the wife of Thottanna Gouder and the second plaintiff is not the son and in separate proceedings, the Tahsildar has also directed them to approach the Civil Court to avail appropriate remedy.

4. Aggrieved over the same, the plaintiffs filed the suit for declaration of their status.

5. The first defendant filed a written statement adopted by the second and third defendants. According to them, the plaintiffs were not having any relationship with Thottanna Gouder. The first defendant is the wife of Thottanna Gouder, and they were living with the other defendants. In the year 1996, sisters of Thottanna Gouder filed a partition suit against their family members and in which, Thottanna Gouder has not made any declaration that the plaintiffs are his legal heirs. Particularly, he has not stated anything about the second plaintiff as his son and plaintiffs were also not impleaded themselves as one of the shareholders in the partition suit.



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The defendants 1 to 5, have also filed separate suit in O.S.No.90 of 2010 for partition against Thottanna Gouder, claiming 4/6 shares in the joint family properties. The defendants also came to know that the Thottanna Gouder has executed an agreement to sell the properties, which were allotted to him, in favour of the second plaintiff. They also stated that the first defendant is the first wife, and the others are his sons, they are the legal heirs of Thottanna Gouder and prayed for rejecting relief of declaration as made by the plaintiffs.

6. The Trial Court after considering the evidences placed on record, by relying mainly on the execution of Ex.A7, which is the Settlement Deed by Thottanna Gouder in favour of the second plaintiff, decreed the same in favour of the second plaintiff alone and declared that the first plaintiff is the second wife, is not entitled to claim status as the first wife. Similarly, the Appellate Court in the appeal, filed by the defendants also confirmed the Judgment and Decree of the Trial Court.

7. Aggrieved over the concurrent findings, the present appeal has been filed by the contesting private defendants i.e., defendants No.1 to 3.



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Before admission, notice was issued to the parties to hear them for admission of this Second Appeal.

8. The learned counsel appearing for the appellants submitted that the second plaintiff, in his evidence, admitted that the plaintiffs have not been impleaded as party in the suit relating to the family partition suit filed in O.S.No.116 of 1996 on the file of the Principal subordinate Court, Gopichettipalayam and Thottanna Gouder has also not whispered any relationship with the plaintiffs herein. This was not appreciated by the both Courts and without any evidence, both Courts have accepted the relationship of plaintiff's with Thottanna Gouder and same is perverse or based on no evidence.

9. The learned counsel appeared on behalf of plaintiffs submitted that, already defendants No.1 to 3 accepted that the plaintiff No.1 is second wife of Thottanna Gouder. It is the admitted case of the plaintiffs that the first plaintiff is the second wife. In Ex.A7-Settlement Deed, where Thottanna Gouder himself has made a declaration that the first plaintiff is his wife and the second plaintiff is his son and thereby, he has come forward to give his property allotted to him in the partition suit, prays to dismiss the appeal.



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10. I have considered the rival submissions made on both sides and also perused the records available.

11. Both Courts have considered the validity of Ex.A7-Settlement deed. This document was proved by examining P.W.3 attesor of the same. This declaration is clinchingly proves that Thottanna Gouder himself has declared the relationship with the plaintiffs. The plaintiffs have also marked various other documents as Ex.A3 to Ex.A6 such as Family Card, Voter Identity Card also taken into account by both Courts. Since both Courts have rendered their finding based on evidence, more particularly, Ex.A7 this Court is not inclined to once again re-appreciate the evidence and same is not permissible, while exercising power under Section 100 of Code of Civil Procedure. Accordingly, this Court finds no infirmity and finds no substantial question of law arises in this appeal merits in the Appeal and the same is liable to be dismissed.

12. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 22.12.2011 in A.S.No.28 of 2011 on the file of the



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Subordinate Judge, Sathiyamangalam confirming the Judgment and Decree dated 19.04.2011 in O.S.No.151 of 2010 on the file of the learned District Munsif Judge, Sathiyamangalam is hereby confirmed. No order as to costs.

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Index : Yes/No

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

To:

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2. The District Munsif, Sathiyamangalam.
3. Thasildhar,
O/o Thasildhar
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Sathiyamangalam.
4. District Collector, Erode District,
Sampath Nagar, Erode.
5. The Section Officer,
VR Section,
High Court of Madras.



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