



S.A.No.831 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.831 of 2013

and

M.P.No.1 of 2013

Rajendran

.. Appellant

Vs.

Jeyamani

.. Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the learned Principal District Judge, Perambalur in A.S.No.11 of 2010, dated 08.08.2012 confirming the judgment and decree of the learned Subordinate Judge, Perambalur in O.S.No.115 of 2008, dated 05.03.2010.

For Appellant : Mr.Ruban Chakaravarthy

For Respondent : Mr.T.Deeraj



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JUDGMENT

The present Second Appeal arises out of the judgment and decree of the learned Principal District Judge at Perambalur in A.S.No.11 of 2010, dated 08.08.2012 in confirming the judgment and decree of the Court of the learned Subordinate Judge at Perambalur in O.S.No.115 of 2008, dated 05.03.2010.

2. O.S.No.115 of 2008 is a suit for partition and for separate possession of 1/4 th share in 'A' Schedule properties and half a share in 'B' Schedule properties. 'A' Schedule properties are the ancestral properties of one Krishnasamy Reddiar. The plaintiff is the wife of Krishnasamy Reddiar. Krishnasamy Reddiar and the plaintiff took the defendant Rajendran in adoption by way of a registered document, dated 07.11.2001. Krishnasamy Reddiar died on 18.12.2004. Since disputes arose between the plaintiff and the defendant, she presented this suit for partition.

3. The defendant entered appearance and filed a detailed written statement. The relationship between the parties was admitted. The defendant



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pleaded that he went to Malaysia and earned income and from and out of the said income, the house property, in which Krishnasamy Reddiar was residing, was purchased. On the basis of these pleadings, the parties went to trial.

4. During the course of trial, an application was filed under Order VIII Rule 9 of the Code of Civil Procedure for the purpose of receiving an additional statement. In the additional statement, the defendant pleaded that as the plaintiff had admitted in her cross examination that she married Krishnasamy Reddiar during the lifetime of one Renganayagi/1st wife, she is not entitled to any share. Taking note of this new stand that was taken by the defendant, a reply statement was filed by the plaintiff stating that she married Krishnasamy Reddiar only after the death of Renganayagi and that too, when she was a child of 16 years old.

5. On the basis of these pleadings, the Trial Court framed the following issue :

“ 1. Whether the plaintiff is entitled for preliminary decree for 1/2 share in the suit property as prayed for ? ”



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6. During the course of examination, the Trial Court re-cast the following issues :

“ 1. Whether the plaintiff is entitled for 1/4 share in 'A' schedule property and whether the plaintiff is entitled for 1/2 share in 'B' schedule property ?

2. Whether the plaintiff is entitled for mesne profits ?

3. What other relief available to the plaintiff ? ”

7. The learned Trial Judge came to a conclusion that the plaintiff has proved that she is the wife of Krishnasamy Reddiar and held that the sentence in the cross examination, on which the defendant relied upon to say that the plaintiff had married the said Krishnasamy Reddiar during the lifetime of 1st wife/Renganayagi is a stray sentence and cannot be treated as an admission. Therefore, decreed the suit as prayed for.

8. Against the said decree, an appeal in A.S.No.11 of 2010 was preferred, which ended in dismissal. Against the concurrent finding, the present Second Appeal has come before this Court.



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WEB COPY 9. On 27.08.2013, the Second Appeal was admitted on the following substantial questions of law :

“Whether the Courts below are right in holding that the plaintiff/respondent is entitled to a share in the suit property, as claimed by her, when admittedly, she got married to her husband as second wife, when the first wife was alive ?”

10. Heard Mr.Ruban Chakaravarthy, learned counsel appearing for the appellant and Mr.T.Deeraj appearing for the respondent.

11. Mr.Ruban Chakaravarthy drew my attention to the statement made by P.W.1 in the witness box and stated that, as she had admitted that Renganayagi had died one month after her marriage, it shows that the plaintiff is the 2nd wife of Krishnasamy Reddiar and therefore, she is not entitled to any share in the property. Therefore, he would plead that since she is the 2nd wife, she is not entitled to inherit any properties.



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12. Mr.T.Deeraj would contend that this admission is a stray sentence

and he would point out that this stand of the illegitimacy of the second marriage was not taken in the reply notice or in the original written statement but was taken for the first time during the course of trial and that too, after the cross examination of P.W.1. He would also point out that P.W.1 had clearly stated to a specific question that had been put by the defendant as follows :

“ எனது கணவர் முதல் மனைவி உயிரோடு
இருக்கும்போது இரண்டாவது என்னை திருமணம்
செய்துகொண்டதால் கணவர் சொத்தில் எனக்கு எந்த
பாத்யம் இல்லை என்றால் சரியல்ல. ”

13. He would state that the previous statement that had been made by the plaintiff cannot be treated as an admission and it is only a stray sentence during the course of a lengthy cross examination.

14. I have carefully considered the arguments on either side.



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15. The relationship between the parties is not in dispute.

Krishnasamy Reddiar is the husband of the Jeyamani/plaintiff. Krishnasamy Reddiar and Jeyamani took in adoption, the defendant/Rajendran, who is none else than the step brother of the plaintiff. I am not going into the validity of adoption or otherwise, though I have my own doubts on it. At the time of adoption, the defendant was aged about 25 years and such an adoption would be contrary to Section 11 of the Hindu Adoption and Maintenance Act, 1956. However, since an issue has not been framed to that effect, I am not rendering a finding on the same.

16. It is settled position of law that no amount of evidence can be looked into, unless or until, it is supported by a specific plea. In this particular case, as rightly pointed out by Mr.T.Deeraj, the question of the marriage between Krishnasamy Reddiar and the plaintiff was not raised in the reply notice or in the original written statement. It was on the basis of those pleadings that the parties went to trial.

17. During the course of cross examination, some forensic wisdom seems to have caused the defendant to pose a question, questioning the very



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legitimacy of the marriage between Krishnasamy Reddiar and Jeyamani. I would hold that such a question and cross examination ought not have been permitted because that was not a matter in issue. As already pointed out the Court should have been conscious, not to let the parties cross examine as if in a cinematic trial and ask questions and try to take the plaintiff by surprise. On account of the fact that such questions were permitted and it has given raise to the present Second Appeal.

18. The original stand of the defendant/appellant was that the plaintiff is his adoptive mother. Curiously enough, during the trial, having obtained the stray sentence in the cross examination has emboldened him to file an additional statement, questioning the very marriage between Krishnasamy Reddiar and Jeyamani. Such a question cuts the very branch on which the defendant was sitting upon. If Jeyamani's marriage with Krishnasamy Reddiar is questionable, all the more, the adoption of the defendant by Jeyamani and Krishnasamy Reddiar becomes equally questionable.

19. However, as pointed out by me supra, I am not inclined to go into that issue because it was neither argued nor pleaded by the respective



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parties. Suffice it to say, for a statement to plea an admission, it must go the whole hog.

20. In this particular case, Jeyamani should have specifically admitted that she is not the legitimate wife of the Krishnasamy Reddiar and if such an admission had been made, the question of going to that issue would arise. Since Jeyamani had subsequently denied the specific question posed by the defendant on the legitimacy of her marriage, I cannot treat the previous sentence as an admission. It is only a stray sentence which has been extracted during the course of a lengthy cross examination.

21. Therefore, I conclude that from the evidence on record, Krishnasamy Reddiar had married Jeyamani after the death of his 1st wife/Renganayagi and therefore, the marriage between Krishnasamy Reddiar and Jeyamani is valid. No other questions of law having been addressed before me, I have to answer the question of law against the appellant.



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22. Therefore, I confirm the judgment and decree of the Court of the learned Principal District Judge at Perambalur in A.S.No.11 of 2010, dated 08.08.2012 in confirming the judgment and decree of the Court of the learned Subordinate Judge at Perambalur in O.S.No.115 of 2008, dated 05.03.2010. The decree for partition stands confirmed. The plaintiff will be entitled to 1/4th share in 'A' schedule properties and half share in 'B' schedule properties.

23. As the parties have been litigating for more than 16 years and the plaintiff being a senior citizen aged about 70 years old, the learned Trial Judge is requested to not to wait for the parties to file an application for final decree. He is directed to follow the verdict of the Supreme Court in ***Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna and Others*** case reported in ***(2009) 9 SCC 689*** and start the final decree proceedings immediately on a receipt of a copy of this order or on production of either a certified copy or web copy thereof by either parties and appoint an Advocate Commissioner and proceed with the final decree proceedings and conclude the same on or before 31.10.2024.



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WEB COPY 24. With the above directions, the Second Appeal is dismissed. The connected Miscellaneous Petition is closed. Costs through out.

28.02.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

- 1.The learned Principal District Judge,
Perambalur
- 2.The learned Subordinate Judge,
Perambalur



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V. LAKSHMINARAYANAN, J.

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