



S.A.No.907 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.907 of 2013

and

M.P.No.1 of 2013

1. Alphonse (died)
2. S.Rajendran (died)
3. R.Raj Kumar
4. R.Pradeep Kumar ... Appellants
[Appellants 3 and 4 brought on record as LR's of the deceased
Appellants 1 & 2 vide order of Court dated 01.04.2016
made in CMP No.4340/2016 in S.A.No.907/2013]

Versus

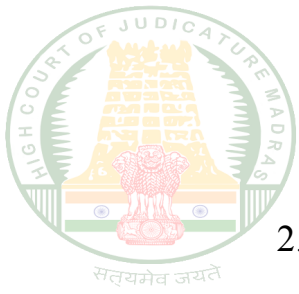
Karolinamary @ S.A.Santhimary ... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the learned I Additional District Judge, Salem, dated 26.03.2013 in A.S.No.44 of 2010 reversing the Judgment and Decree of the Subordinate Judge, Mettur, dated 01.04.2010 in O.S.No.12 of 2008.

For Appellants : Mr. Babu Rangasamy
For Respondent : Mr. M. Devaraj

J U D G M E N T

This Second Appeal had been filed against the judgment and decree dated 26.03.2013 passed in A.S.No.44 of 2010 by the learned I Additional District Judge, Salem, reversing the Judgment and Decree dated 01.04.2010 made in O.S.No.12 of 2008 by the learned Subordinate Judge, Mettur.



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2. The plaint averments in brief are as follows:

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2.1. The Plaintiff is the adopted daughter of the 1st Defendant and her late husband S.Anthonisamy. The 2nd Defendant is the son born between the 1st Defendant and Anthonisamy. The Plaintiff is born to the one Chinnappan and one Mathalaimary and they are having three daughters. The said Chinnappan is the brother of the adoptive father of the Plaintiff namely S.Anthonisamy. Anthonisamy was not having girl child and hence, he has adopted the Plaintiff as his adopted child. The said Anthonisamy was employed as Village Karnam of Arachalur Village situated at Erode District and he put up his residence at Vellingiriputhur Arachalur. Thereafter, the said Anthonisamy admitted the Plaintiff at the Government Higher Secondary School, Arachalur and she was educated therein. She has completed Higher Secondary School in the academic year 1978-79 at Government Higher Secondary School, Arachalur and in the Secondary School Leave Certificate, the said Anthonisamy given a declaration stating that the Plaintiff is the daughter of Anthonisamy. Further, the Plaintiff's father Anthonisamy and the 1st Defendant had given the Plaintiff in marriage with one Mariaprakasam and the same was conducted at the Prayer Hall, Nirmala Higher Secondary School, Kolathur in the presence of Rev.Brother Krachentius, Rev.Brother Arokkiasamy, Rev.Brother Saverimuthu and Rev.Brother Iruthayam and reception was held at Ramayammal Thirumanamandapam, Kolathur. During the service, the Plaintiff's father



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employed at following Villages namely Chennimalai, Uthukuzhi, Vijayamangalam, Perundurai, Sennipalli and Pasuvapatty. Further, the

Plaintiff's father purchased the suit properties by his earned money till his death, he was in possession and enjoyment of the suit property. He died on 10.10.1994 at R.C.Chettipatty leaving behind Plaintiff and the Defendants as his legal heirs and his successors. After the death of the father of the Plaintiff, the Plaintiff and the Defendants are in joint possession and enjoyment of the suit properties. The 2nd item of the suit properties was also built jointly by the Plaintiff and the Defendants. In such circumstances, the Plaintiff requested the Defendants to divide the suit properties into three equal shares and to allot one such share to the Plaintiff taking into consideration the value of the suit properties. But the Defendants refused to partition the suit property. Finally, on 05.01.2008, the Plaintiff came over to Erode along with some other persons and requested the Defendants to divide the suit properties and allot one such share to the Plaintiff. But on that day also, the Defendants did not give proper reply. Hence, she had issued notice through her Counsel asking the Defendants to partition. The Defendants have sent reply notice denying the adoption of the Plaintiff. Further, the Defendants alleged that the properties were purchased in the name of the Plaintiff's father Anthonisamy, by himself and his brother with the income and savings made by himself and his own brother with common fund. All the averments made by the Defendants in their reply notice are false.



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Hence, the suit for partition and for separate possession.

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3. The contents of the written statement filed by the Defendants briefly are as follows:

3.1. The plaint averments are all false. The said S.Anthonisamy was employed as Village Karnam of Arachalur village in Erode District and shifted to several places in different revenue blocks and served at different destinations and actually find no time even to look after his only son the 2nd Defendant in those days and hence he had no idea, animus and thought of having a female child to be adopted in 1964 and no iota of truth comes when the Plaintiff was 4 months old. The brother of Anthonisamy alone has taken all affairs of both families and in the course of family burden experienced by said Chinnappan, whose second daughter, the Plaintiff, is always shown some more love and affection as like other two daughters, the own sisters of Plaintiff and her father equally treated all the three daughters without prejudice to their likes and dislikes and the Plaintiff's father Chinnappan never opted for any adoption to his brother Anthonisamy except to give more care, freedom and liberty in bringing up of a child in 1964 which cannot be wrongly equated with adoption etc., In order to give Plaintiff a good education, she was educated, studied and completed her Secondary School in the Academic year 1978-79. At the time of admission of her Government High School, Arachalur and signed a declaration



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in S.S.L.C. Book stating that he also treated her equally as her father

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Chinnappan whose education rank and status prevented him to sign on the roll of her real daughter Plaintiff. Because of mere signing School records, the performance of marriage conducted by Rev.Father Pushpanathan and in the presence of all other dignitaries like Rev.Brother four in numbers and also the marriage reception given at Ramayammal Thirumana Mandapam at Kolathur etc., does not mean that the Plaintiff's father was only Mr.Anthonisamy but for reasons best known to one and all in the family of both Chinnappan and late Anthonisamy, who purchased the 1st item of suit properties and all other properties since 1963 in almost joint purchase except one or two properties purchased in the name of S.Anthonisamy but both brothers always treated as entire properties as common joint properties and not discriminated or showed any difference in the matter of purchase, money invested by them as one and the same alike as they were and only 1976 i.e., on 25.12.1976 the two brothers have legally, actually and originally partitioned their properties as per registered partition deed dated 25.12.1976 actually registered on 27.12.1976. Therefore, it is very significant, pertinent and categorically to establish that after 27.12.1976 the said Anthonisamy's separate, exclusive and independent allotted 'A' schedule properties given has been come into force and acted upon in so far as his 'family member are concerned and so the Plaintiff has nothing to make a demand or claim over 'A' schedule properties of late S.Anthonisamy.



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All the documents produced by the Plaintiff in the suit from 23.8.1978, 23.8.1982, 23.8.1992 are only after 27.12.1976 partition deed of Plaintiff's father one Chinnappan @ Andappan and late S.Anthonisamy does not bear any useful testimony in favour of Plaintiff in the matter of her plea of adoption and other allegations of her joint possession and enjoyment along with late.S.Anthonisamy or his only legal heirs the Defendants 1 and 2. Except Defendants 1 and 2 the sole legal heirs to succeed the estate of late Anthonisamy in all aspects, no other persons are entitled to make any claim for partition and separate possession in items 1 and 2 which absolutely belongs to Defendants 1 and 2 only. Above all, the theory of mere adoption of female child in the year 1964 does not and cannot confer any legal right, title and in the name of Plaintiff, solely on the ground of nonrecognition of adoption especially in Christian Law of Adoption and more over without any valid proof, evidence and chain of events of adoption ceremony since 1964 should be proved strictly beyond any reasonable doubt in cases of adoption even in custom, tradition and other forms prevailing in that locality society and caste. The Defendants 1 and 2 are mother and son and only legal heirs of late S.Anthonisamy who died on 10.10.1994 surviving only two members in his family. Plaintiff cannot take law into her hands so as to wrongly construe the real meaning of 'adoption' especially prohibited, not recognized in Christian community which confers any status as adopted daughter in favour of Plaintiff.



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Really, if Anthonisamy had taken the child in adoption in 1964, certainly he would have celebrated the ceremony of female adoption even in 1964 and afterwards in all other family matters, he would have at least orally declared the Plaintiff as his own daughter to make others to know at large in recognition of Plaintiff's real affection, affinity and regards on him. So in the absence of all legal formalities, the Plaintiff's case falls on the ground without any cause of action Under Order 2, Rule 2 CPC. The suit properties in item 1 originally partitioned and actually falls into the share of Plaintiff's father Chinnappan and item 2 purchased in the name of S.Anthoniosamy as vacant site and gradually built up with monies invested by Defendants 1 and 2 only. Plaintiff has no manner of any right in the separate property of Defendants 1 and 2 after the death of Anthonisamy on 10.10.1994. During the lifetime of late S.Anthonisamy, the entire properties have been looked after by the Plaintiff's father only and later in 1976, the family partition of almost all are duly partitioned and hence, nothing remains to make any demand on Plaintiff as a matter of right anything if any conferred on her. The Defendants 1 and 2 prays for total dismissal of suit of Plaintiff on merits.

4. The contents of the additional written statement filed by the Defendants in brief are as follows:

4.1. The father of Plaintiff one Chinnappan is a necessary and proper



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party to the suit for adjudication and without impleading him, the suit is liable to be dismissed *in limini* on merits. The description of properties contains different survey numbers that originally belongs to late Anthonisamy as per registered partition deed dated 25.12.1976 and the Plaintiff cannot seek for any partition because of 25.12.1976 deed of partition that has been acted upon, come into force and devolves specific shares fall into the share of each brother even in 1976. The Plaintiff has no case, scope and *locus standi* without first prove her adoption which is unknown to Christian law for ever. The reliefs and prayer of Plaintiff are not at all available to her because of Plaintiff's dual role of both adopted daughter and original daughter in this alleged suit for partition and separate possession originally sought against late Anthonisamy. The plea of adoption is not at all legally recognized in pure Christian law and in the absence of any proof, custom and usage in any locality, the Plaintiff's suit should be thrown out at the first instance. After fully cross examined the Plaintiff's case has already lacks all *bona fide* on her part. The 1st Defendant is now aged about 75, a senior citizen, whose day today affairs are totally affected, paralyzed and prejudiced because of vexatious claim in the suit against Defendants 1 and 2. There is no real cause of action to the Plaintiff to prosecute the suit originally filed in 2008 and only to get unjust claim, enrichment and some money the Plaintiff has created, invented and filed this vexatious suit without any base, foundation and legal reason to believe in all



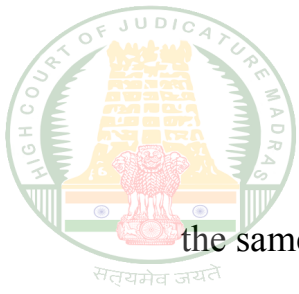
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four corners in law. There is no joint family nucleus in the case of Plaintiff after 25.12.1976 partition deed and Plaintiff cannot take plea of ignorance about this partition since she has been fully aware of all facts since her childhood. Hence, prays for dismissal of the suit.

5. Based on the above pleadings, the trial Court had framed the following issues:

- 1) Whether the Plaintiff is the adopted daughter of the 1st Defendant and late Anthonisamy?
- 2) Whether the Plaintiff is entitled for a share in the suit property?
- 3) Whether the Plaintiff is entitled to the relief of permanent injunction?
- 4) To what relief?

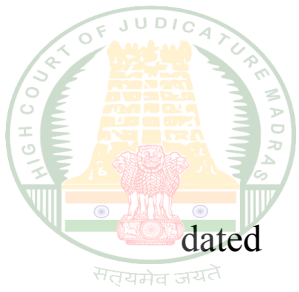
6. During trial, the Plaintiff examined herself as P.W-1 and marked documents as Ex.A-1 to Ex.A-12. Ex.A-1 is the S.S.L.C. Book of the Plaintiff in which the name of the father is given as Anthonisamy (adoptive father). Ex.A-2 is the marriage invitation of the Plaintiff dated 23.08.1982 in which the names of the parents are mentioned as Anthonisamy and the first Defendant in the suit, Alphonse. Ex.A-3 is the invitation for the house warming ceremony dated 23.08.1992 in which the names of the parents of the Plaintiff are given as Anthonisamy and the first Defendant, Alphonse. Ex.A-4 is the copy of Advocate notice dated 08.01.2008 issued on behalf of the Plaintiff to the Defendants. Ex.A-5 and Ex.A-6 are the acknowledgment card for receipt of



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the same by the Defendants 1 and 2. Ex.A-7 is the reply notice on behalf of the Defendants to the Plaintiff dated 17.01.2008. Ex.A-8 is the photo with negative. Ex.A-9 is the registration copy of the sale deed dated 19.05.2008. Ex.A-10 is the marriage invitation of John Peter and Lilly dated 01.06.1984. Ex.A-11 is the marriage invitation dated 10.06.1988 of Lawrence and Santhamary. Ex.A-12 is the marriage invitation of S.C.Kennedy Paulraj and Josephine Anitha.

7. The Plaintiff's evidence was closed with the Plaintiff. No other witness were examined. The first Defendant Alphonse examined herself as D.W-1. The biological father of the Plaintiff Thiru. Chinnappan @ Arulappan was examined as D.W-2. One Chandra Babu was examined as D.W-3. On the side of the Defendants 10 documents were marked as Ex.B-1 to Ex.B-10. Ex.B-1 is the legal heir certificate issued by the Tahsildar, Omalur dated 28.05.1995 regarding the legal heirs of the deceased Anthonisamy. Ex.B-2 is the Death Certificate of Anthonisamy. Ex.B-3 is the registration copy of the sale dated dated 02.12.1968. Ex.B-4 is the partition deed dated 25.12.1976. Ex.B-5 is the registration copy of the sale deed dated 31.01.1963. Ex.B-6 is the registration copy of the sale deed dated 22.10.1974. Ex.B-7 is the registration copy of the release deed executed by Anthoniyammal in favour of Jayamary dated 04.12.1984. Ex.B-8 is the registration copy of the sale deed



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dated 22.08.1979. Ex.B-9 is the registration copy of sale deed dated 25.03.1974. Ex.B-10 is the extract from the register of Baptism.

8. On appreciation of evidence, the learned Sub Judge, Mettur, by judgment dated 01.04.2010 dismissed the suit of the Plaintiff.

9. Aggrieved, the Plaintiff as Appellant filed A.S.No.44 of 2010 before the District Court, Salem. The Appeal was heard by the learned I Additional District Judge, Salem.

10. The learned Sub Judge, Mettur, had dismissed the suit of the Plaintiff based on the Baptism Certificate under Ex.B-10 wherein the names of the adoptive parents were not found. The names of the biological parents – D.W-2 and his wife were only found. Therefore, the learned Sub Judge, Mettur, had dismissed the suit stating that there is discrepancy. Also, he had observed that no elderly person who had witnessed to the adoption was examined. In the appeal, the learned I Additional District Judge, Salem, had raised the following points for determination:

- 1) Whether the Plaintiff is the adopted daughter of the Anthonisamy?
- 2) Whether the adoption of the child is allowed in Christianity?



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- 3) Whether the Plaintiff is having 1/3rd share in the suit mentioned property?
- 4) Whether the Defendants are entitled for suit property as per the principles of adverse possession?
- 5) Whether the Plaintiff is entitled for preliminary decree for partition and separate possession?
- 6) Whether the Plaintiff is entitled for permanent injunction?
- 7) Whether the judgment and decree passed by the lower Court is liable to be set aside?
- 8) To what other relief the plaintiff is entitled?

11. After hearing both parties, by judgment dated 26.03.2013, the learned I Additional District Judge, Salem, had allowed the Appeal of the Plaintiff and thereby set side the judgment of dismissal passed by the learned Sub Judge, Mettur. The learned I Additional District Judge had decreed the suit of the Plaintiff.

12. Aggrieved, the Defendants 1 and 2 in O.S.No.12 of 2008 before the learned Sub Judge, Mettur and the Respondents in A.S.No.44 of 2010 before the learned I Additional District Judge, Salem, had preferred this Second Appeal raising the following substantial questions of law:

- (a) Whether the lower Appellate Court was right in holding that the Plaintiff is entitled for partition when she has failed to prove adoption with substantial evidence?
- (b) Whether the lower Appellate Court was right in



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decreeing the suit on the ground of plea of adverse possession when the same is not pleaded by the Defendants?

(c) Whether the lower Appellate Court was right in decreeing the suit when the Plaintiff has miserably failed to prove the mode and manner of adoption by examining any independent witnesses?

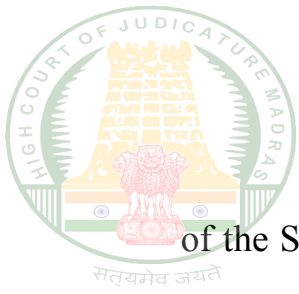
(d) Whether the lower Appellate Court was right in reversing the judgment and decree without setting out its reasons for being unable to agree with the reasonings and conclusions of the trial Court?

13. While admitting this Second Appeal, on 11.09.2013, this Court had framed the following Substantial Question of Law:

“Whether the lower Appellate Court was right in holding that the Plaintiff is entitled for partition when she has failed to prove adoption with substantial evidence?”

14. The first Defendant/first Appellant herein is the wife of Anthonisamy. The second Defendant/second Appellant herein is the son of the first Defendant and Late Anthonisamy. During the pendency of this Second Appeal, Defendants 1 and 2 in O.S.No.12 of 2008 on the file of the learned Sub Judge, Mettur, the Appellants in this Second Appeal died. Therefore, the legal heirs of the Defendants 1 and 2 were impleaded as Appellants.

15. The learned Counsel for the Appellants submitted that the Appellants-1 and 2 are the Defendants-1 and 2 in O.S.No.12 of 2008 on the file



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of the Subordinate Judge, Mettur. The suit in O.S.No.12 of 2008 was filed by the Plaintiff claiming partition in the property of Anthonisamy since she is the adopted daughter of the Defendant-1 and Anthonisamy. The Defendant-2 in the suit is the brother of the Plaintiff. The Plaintiff is the daughter of Chinnappan and his wife Mathalaimary. The husband of the Defendant-1 S.Anthonysamy is the brother of Chinnappan. The Plaintiff claims that she was adopted by the S.Anthonysamy, when the Plaintiff was four months old. The Plaintiff stated that she was adopted when she was 1½ years old. It is her case that in the School records, the name of Anthonysamy was recorded as father of the Plaintiff. Her marriage was also performed by Anthonysamy. The suit has been filed by the Plaintiff seeking relief of partition of her 1/3 share in the suit property.

16. The learned Counsel for the Appellants submitted that during the pendency of the Second Appeal both the Appellants died. Their legal heirs had been impleaded as Appellants. The learned Counsel for the Appellants invited the attention of this Court to the averments made in O.S.No.12 of 2008 on the file of the Subordinate Judge, Mettur and the written statement as well as the additional written statement filed by the Defendants. The learned Subordinate Judge, Mettur framed issues based on the pleadings and on assessment of evidence, dismissed the suit. The learned Counsel for the



Appellants invited the attention of this Court to the discussion of evidence adduced before the Subordinate Judge, Mettur in O.S.No.12 of 2008, particularly in Paragraphs 14 to 19 which are extracted as under:

“14. The next important point to be decided is Whether the Plaintiff is adopted daughter of late Anthonisamy and 1st Defendant under Canon Law. As per Canon 110 of the Canon Law, the child who was adopted in accordance with the norms of Civil Law is considered as a child adopted under Canon Law. So the Plaintiff who is claiming adoption under Canon Law is bound to prove her adoption as per customs and rights prevailed then. The case of the Plaintiff is that she was 4 months old baby when she was adopted by the late Anthonisamy and the 1st Defendant. P.W-1 in her proof affidavit has stated that the 1st Defendant and Anthonisamy have no female child and she would further contend that the 2nd Defendant is her brother. P.W-1 during her cross-examination has stated as follows:

“நான் 4 மாத குழந்தையாக இருக்கும்போது என் தகப்பனாரின் அண்ணனான அந்தோணிசாமி என்னை சுவீகாரம் எடுத்துக்கொண்டார். எனக்கு 1 1/2 வயதாக இருக்கும்போது நான் சுவீகாரம் கொடுக்கப்பட்டதை பற்றி தெரிந்து கொண்டேன். என்னை வளர்த்த பெற்றோர்கள் அதன் விபரத்தை சொன்னார்கள். என்னை பெற்ற தாய் தந்தையர் சுவீகாரம் பற்றி என்னிடம் எதுவும் சொல்லவில்லை.”

The evidence of P.W-1 that she came to know about the adoption while she was 1-1/2 years old is highly unbelievable. Now the age of the Plaintiff is 46 years old. The evidence of P.W-1 that her biological parents have informed the adoption while she was 1-1/2 years old is not at all acceptable one. No child at the age of 1-1/2 years old could remember the occurrence at the tender age. There is no doubt that the Plaintiff is not a competent person to speak about the adoption alleged to have been taken place while she was 4 months old.

15. The Plaintiff who is bound to prove the adoption of the plaintiff has not examined any elderly persons in support of the adoption of the Plaintiff alleged to have been taken place while the Plaintiff was 4 months old. The Plaintiff has not given any explanation for not examining any elderly persons to prove the adoption of the Plaintiff.

16. Moreover, there is no piece of evidence to substantiate the adoption of the Plaintiff by Anthonisamy and the 1st Defendant. The



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Plaintiff neither pleaded nor gave evidence with regard to the mode of adoption, manner of adoption, place of adoption alleged to have been taken place while she was 4 months old. The learned Counsel for the Plaintiff has argued that the Plaintiff was 4 months old and she could not speak about the mode of adoption, manner of adoption and other factors relating to the adoption. It is true that the Plaintiff is not a competent person to speak about the adoption. But in those circumstances, the Plaintiff ought to have examined the persons who had direct knowledge about the alleged adoption of the Plaintiff while she was 4 months old. Absolutely, the Plaintiff has not given any explanation for nor examining any elderly persons who had direct knowledge about the adoption of the Plaintiff. So the argument of the learned Counsel for the Plaintiff is not acceptable one.

17. As per the case of the Plaintiff, the adoption is only oral. When the Plaintiff is not producing any documentary evidence to substantiate the adoption it is the bounden duty of the Plaintiff to prove the adoption by sufficient oral evidence. But the Plaintiff has miserably failed to lead any oral evidence of prove the case of adoption while she was 4 months old.

18) The learned Counsel for the Plaintiff has argued that the late Anthonisamy and the 1st Defendant have brought up the Plaintiff and adopted her and relied upon Ex.A-1 to Ex.A-3. Ex.A-1, S.S.L.C. Book of the Plaintiff. Ex.A-2 is the marriage invitation of the Plaintiff in which the 1st Defendant and Anthonisamy were shown as the parents of the Plaintiff. The learned Counsel for the Plaintiff has argued Ex.A-1 and Ex.A-2 clearly prove that the Plaintiff is the adopted daughter of the late Anthonisamy and the 1st Defendant. It is true that in Ex.A-1 the father's name of the Plaintiff is mentioned as S.Anthonisamy and S.Anthonisamy has signed in Ex.A-1. It is also true that in Ex.A-2 the 1st Defendant and Anthonisamy were described as the parents of the Plaintiff Karolinemary. These documents and evidence of P.W-1 establish that the Plaintiff was brought up and educated by Anthonisamy and 1st Defendant. But when the Plaintiff has miserably failed to prove the alleged adoption while she was 4 months old baby by any evidence, Ex.A-1 and Ex.A-2 are not at all sufficient to hold the adoption of the Plaintiff by the late Anthonisamy and the 1st Defendant. At this juncture, the evidence of D.W-2 is relevant for consideration. D.W-2 in his proof affidavit has stated that the Plaintiff was suffered with Whooping cough at her tender age. The D.W-2 has specifically stated that the Plaintiff was not adopted by the brother Anthonisamy and 1st Defendant. There is no reason to disbelieve the testimony of D.W-2 who is the father of the Plaintiff. Moreover, the P.W-1 during his cross-examination has stated as follows:



“அரச்சலுரில் தான் அந்தோணிசாமியும் முதலாம் பிரதிவாதியும் என்னை சவீகாரம் எடுத்துக் கொண்டதாக சொன்னார்கள். சவீகாரம் எடுக்கப்பட்டதற்கு விழா எதுவும் நடத்தவில்லை. சவீகாரம் எடுத்தபோது சேலத்தில் உள்ள தாய் தந்தையர் அரச்சலுருக்கு வரவில்லை. என்னை சவீகாரம் எடுத்ததற்கு எழுத்துமூலமான ஆதாரம் எதுவும் இல்லை. வாய்மொழியாக தான் சவீகாரம் கொடுத்தார்கள்.”

P.W-1 has specifically admitted that her biological parent were not present at the time of the alleged adoption at Arachalur. So when the biological parents of the Plaintiff were absent during the alleged adoption when the Plaintiff was 4 months old baby, the theory of adoption of the Plaintiff by the Anthonisamy and 1st Defendant at Arachalur is not at all acceptable one.

19. Mere signing in Ex.A-1 as a parent of the Plaintiff is not sufficient to hold that the Plaintiff is the adopted daughter of the Anthonisamy and 1st Defendant. In the same way, Ex.A-2 is not at all sufficient to hold that the Plaintiff is the adopted daughter of late Anthonisamy and 1st Defendant. Ex.A-1 and Ex.A-2 established that the Plaintiff was brought up and educated by late Anthonisamy and 1st Defendant till the marriage of the Plaintiff. In the absence of any evidence or documents to establish the alleged adoption of the Plaintiff, Ex.A-1 and Ex.A-2 are not sufficient to hold that the Plaintiff is the adopted daughter of late Anthonisamy and the 1st Defendant.”

17. The learned Subordinate Judge dismissed the suit for partition preferred by the Plaintiff. Aggrieved by the same, the Plaintiff had preferred First Appeal before the learned I Additional District Judge, Salem in A.S.No.44 of 2010. The learned I Additional District Judge, after hearing both the parties, passed judgment and decree dated 26.03.2013 and granted preliminary decree for partition to the Plaintiff. Aggrieved by the same, the Defendants in Suit and the Respondents in Appeal Suit had preferred this Second Appeal.



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WEB COPY18. The learned Counsel for the Appellants invited the attention of this Court to the discussion of evidence by the learned I Additional District Judge, Salem. It is the contention of the learned Counsel for the Appellants that the natural Guardian/father of the Plaintiff himself had adduced evidence as D.W-2 before the Trial Court wherein he had clearly stated that the Plaintiff was not given any adoption to Anthonisamy, the brother of D.W-2. Further, the learned Counsel for the Appellants submitted that the School certificate cannot be admitted unless it is proved by examining the Headmaster or any School authorities. It is the further contention of the learned Counsel for the Appellants that there was partition of the properties in the family between the biological father of the Plaintiff and husband of the Defendant-1 Anthonisamy. Merely based on the fact that the biological father of the Plaintiff had not signed the declaration form in the School, since Anthonisamy is the elder paternal uncle of the Plaintiff had signed, she cannot be considered as adopted child of Anthonisamy and she failed to prove the claim of her contention before the trial Court. Further, she had failed to prove the Baptism, whereby her parent name will be found in the Baptism Certificate, no other documents were marked. Therefore, the reversal of the judgment and decree passed by the learned I Additional District Judge, Salem, granting preliminary decree of partition is perverse and it has to be set aside.

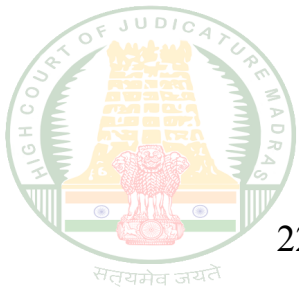


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WEB COPY19. The learned Counsel for the Respondent submitted that when the Plaintiff was four months old, she was physically weak and she was deserted by the biological parents. Therefore, the adoptive parents taken care of her and admitted in School and her marriage was also performed by Anthonisamy and 1st Defendant. Therefore, there is sufficient evidence before the Trial Court which the learned trial Judge failed to consider the Invitation Card for the marriage and the School Certificates. Those documents are sufficient to prove that the Plaintiff was adopted by Anthonisamy. Therefore, the grant of preliminary decree by the I Additional District Judge, Salem, is well reasoned and well considered judgment and decree which does not warrant any interference by this Court.

20. Heard the learned Counsel for the Appellants Mr.Babu Rangasamy and the learned Counsel for the Respondent Mr.M.Devaraj.

21. Perused the documents under Ex.A-1 to Ex.A-12 and Ex.B-1 to Ex.B-10. Perused the judgment of the learned Sub Judge, Mettur in O.S.No.12 of 2008, dated 01.04.2010 and the judgment of the learned I Additional District Judge, Salem in A.S.No.44 of 2010, dated 26.03.2013.



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22. On perusal of the documents and the judgment of the trial Court and the first Appellate Court, the contention by the Defendants in the written statement was that Anthonisamy being educated and employed as Village Karnam had given declaration in the S.S.L.C. Book of the Plaintiff. But that does not mean that Anthonisamy adopted her. Since the Plaintiff was weak as a child, she was brought up by Anthonisamy, who is none other than the elder brother of the Plaintiff's biological father. Just because Anthonisamy's name was entered in the S.S.L.C. Book, it does not mean that Anthonisamy adopted the Plaintiff.

23. The learned Sub Judge, Mettur, on assessment of evidence, based on discrepancies between date of birth of the Plaintiff and the Baptism Certificate under Ex.B-10, had rejected the evidence of the Plaintiff regarding adoption based on Canon Law. In Ex.A-1 S.S.L.C. Book, the date of birth is given as 25.05.1964 whereas the Baptism Certificate under Ex.B-10 it is given as 23.07.1964. It is the observation of the learned Sub Judge, Mettur that the Plaintiff had not given any explanation with regard to the discrepancies of her date of birth. The learned Sub Judge, Mettur, relied on Canon 877 (3) of Canon Law which reads as under:

“If it concerns an adopted child, the names of those adopting are to be inscribed and, at least if it is done in the civil



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records of the region, also the names of the natural parents according to the norm of 1 and 2, with due regard for the prescripts of the conference of bishops.”

24. The Canon 877 (3) is relating to the Baptism of the Christians. As per Canon 877(3) the name of the adopting parents should be incorporated in the Baptism register. Ex.B-10 is the extract of the Register of Baptism of the Plaintiff Karolinemary. But in Ex.B-10 the name of the alleged adoptive parents Anthonisamy and the first Defendant were not incorporated. On the other hand, the names of the biological parents i.e., Chinnappan and Mathalaimary were mentioned as parents of the Plaintiff Karolinemary. There is no reason to discard Ex.B-10. Ex.B-10 coupled with evidence of D.W-2 father of the Plaintiff destroys the case of the Plaintiff. Therefore, the learned Sub Judge, Mettur, had dismissed the suit of the Plaintiff.

25. In the Appeal, the learned I Additional District Judge, Salem, on consideration of the rival submissions of both the Appellant/Plaintiff and the Respondents/Defendant and on re-appreciation of evidence, had considered the evidence of the cross-examination of D.W-1 to D.W-3 wherein the conduct of the parties treating the Plaintiff as daughter of Anthonisamy. Based on which, the S.S.L.C. Book came into existence under Ex.A-1 wherein the father of the Plaintiff is given as Anthonisamy and the mother of the Plaintiff is given as



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Alphonse. Also, in the marriage invitation and the invitation for the house warming ceremony of the Plaintiff, the names of Anthonisamy and Alphonse were mentioned as parents of the Plaintiff. It is true that the legal heirship certificate of Anthonisamy did not contain the name of the Plaintiff. The Legal Heirship Certificate issued by the Revenue Officials. It does not consider the adopted child. That need not be given weightage by a Civil Court. The trial is held only regarding the claim made by the Plaintiff that she is the adopted daughter of Anthonisamy. She admits that her biological father is D.W-2 and when she was 1½ years old, she was given in adoption. The plaint pleadings and the evidence by the Plaintiff mentions that she came to know that she was given in adoption only from her adoptive parents. When she claimed partition, the Defendants 1 and 2, the wife and son of late Anthonisamy denied adoption of the Plaintiff. Whereas the documentary proof is in favour of the Plaintiff viz., S.S.L.C. Book, invitation card regarding marriage and housewarming ceremony.

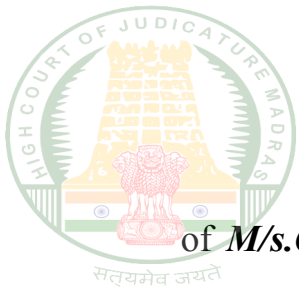
26. It is true that the Baptism Certificate under Ex.B-10 contains the name of the biological father of the Plaintiff. The biological father of the Plaintiff was examined as D.W-2 by the Defendants 1 and 2. He had supported the claim of the Defendants. In his cross-examination, he admitted that the Plaintiff was weak as a child of tender age. Therefore, to take care of her, the



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WEB COPY elder brother of the Plaintiff's biological father took her with him, took care of her and gave her education. He was better educated and informed worldly-wise than the Plaintiff's biological father and he had provided her education. The learned I Additional District Judge had considered those aspects and arrived at a conclusion by answering the points for determination in favour of the Appellant/Plaintiff. The points for determination 1 and 2 pertains to adoption of Plaintiff by Anthonisamy and whether such adoption is allowed in Christianity.

27. The learned Judge had discussed the evidence, in the declaration form in the S.S.L.C. Book of the Plaintiff, Anthonisamy subscribed his signature as father of the Plaintiff. Ex.A-2 is the marriage invitation of the Plaintiff wherein the names of the parents were mentioned as Anthonisamy and the first Defendant Alphonse. The biological father of the Plaintiff as D.W-2 had deposed before the trial Court that the Plaintiff was suffering from ill-health from her early childhood. Hence, in order to give her good medical treatment and give her education, his brother Anthonisamy had given foster care to the Plaintiff and he had denied that the biological father had given his daughter in adoption. The contention of the Defendants 1 and 2 in the written statement that the Christianity does not recognise adoption, for which the learned Counsel appearing for the Plaintiff as Appellant relied on the decision



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of *M/s.Oriental Insurance Company Ltd., vs. Minor Jayapriya represented by next friend/guardian Maruthambal* reported in *2010 (3) CTC 819* and

Kanthammal vs. Bysani Sriramulu Chetti and another reported in *1987 1 MLJ 300* that the declaration given by Anthonisamy that he is the father of the Plaintiff which is sufficient to prove that it is binding on the persons claiming through adopter. The claim made by the Plaintiff that when she was too young as a child aged 1½ years she was given in adoption to her elder paternal uncle Anthonisamy who brought her up as his own daughter. There is evidence before the trial Court regarding such claim through the cross-examination the biological father as D.W-2 and the adoptive mother as D.W-1 first Defendant. Therefore, the learned I Additional District Judge, Salem, had on independent assessment of the evidence before the learned Sub Judge, Mettur, in O.S.No.12 of 2008 had arrived at a conclusion that the claim made by the Plaintiff is true. There are materials available in the cross examination of the biological father D.W-2 which made the learned I Additional District Judge to arrive at a conclusion that the claim of the Plaintiff had been proved by the cross-examination of the biological father. The materials available before the trial Court through the cross-examination of the biological father as D.W-2. The Defendants had denied the claim of the Plaintiff for partition in the property left intestate by Anthonisamy on the ground that the Plaintiff is not the adopted daughter.



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WEB COPY 28. It is the contention of the Defendants that Anthonismy died on 10.10.1994 and the Plaintiff had filed the suit after 15 years. Therefore, by the time lapse, the Defendants had claimed adverse possession adverse to the interest of the Plaintiff which was rejected by the learned I Additional District Judge on the ground that a partition can be filed at any time, there is no limitation. Also the Defendants had not pleaded adverse possession in the written statement. Only in their evidence, they claim adverse possession adverse to the interest of the Plaintiff. Therefore, the claim of the Defendants was rejected by the learned I Additional District Judge, Salem.

29. The issue pertains to partition only. The claim of the Plaintiff as adopted daughter was denied only on that ground whereas the certificate and evidence in cross examination proves the claim of the Plaintiff which was lost sight by the learned Sub Judge, Mettur, rejecting the claim of the Plaintiff. The rulings sighted in support of the claim of the Respondent in the Appeal, the Defendants before the trial Court regarding adoption are all related to Hindu adoption and the procedure for adoption. Whereas the learned Judge had relied on provisions of Juvenile Justice Act regarding adoption irrespective of religion. It is for the individuals who had adopted the child to follow the statute. The learned I Additional District Judge, Salem, had rejected the



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WEB COPY rulings cited on behalf of the Respondents in the appeal regarding mode of adoption.

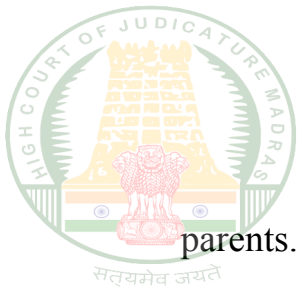
30. The learned I Additional District Judge, Salem, had during the discussion of evidence stated that the Headmaster of the School where the Plaintiff studied was not examined to mark the S.S.L.C. Book regarding the declaration given by Anthonisamy. At the same time, the learned I Additional District Judge had observed in his judgment that the Defendants had not disputed the signature of Anthonisamy, the adoptive father of the Plaintiff who had given declaration in the S.S.L.C. Book by declaring the Plaintiff as his daughter. The signature was also not disputed. Therefore, the learned I Additional District Judge had rejected the claim of the Respondents in the Appeal, the Defendants before the trial Court that S.S.L.C. Book cannot be marked without examining the Headmaster of the School where the Plaintiff studied. The learned I Additional District Judge had relied on the evidence in cross-examination of D.W-1 and D.W-2 regarding the conduct of the parties regarding the claim of the Plaintiff. The biological father had admitted that the Plaintiff was given in custody of his elder brother Anthonisamy for better medical care and better education and till her marriage, she was in custody of Anthonisamy and the first Defendant. That is sufficient to prove the claim of the Plaintiff and the averments in the plaint that she was given in adoption by



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her biological parents, when she was a child of 1½ years and she was brought up by Anthonisamy as his own daughter. The learned I Additional District Judge had clearly stated in the judgment that the learned Sub Judge, Mettur, failed to appreciate those materials which are available in support of the claim of the Plaintiff available in the cross-examination of D.W-1, the adaptive mother, the first Defendant and D.W-2 the biological father of the Plaintiff and based on that alone, he had decreed the suit in favour of the Plaintiff. The dispute by the Defendants 1 and 2, the wife and son of Anthonisamy regarding claim of adoption by the Plaintiff is only to avoid partition. Therefore, after the trial proceeded, they had made a claim that they perfected title to the property against the interest of the Plaintiff by adverse possession which was refused by the learned I Additional District Judge on the ground that the suit for partition can be filed at any time. It is an acceptable principle that suit for partition is not subject to limitation. The learned I Additional District Judge, had relied on the provisions of the Indian Succession Act regarding intestate succession and had relied on the earliest ruling regarding adoption among Christians in *AIR 2001 Allahabad 109 [Ajit Datt vs. Ethel Walters]*. Based on the earliest ruling of the Allahabad High Court reported in *AIR 2001 Allahabad 109 [Ajit Datt vs. Ethel Walters]* the Karnataka High Court reported in *2007 (5) Karnataka Law Journal 194 [Vasanthi vs. Sharoz John Abraham]* regarding adopted son or daughter placing claim over the properties of the adoptive



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parents. Also the learned I Additional District Judge, Salem had relied on the reported rulings of the Keral High Court reported in **1999 (1) KLT 643 [Philips Alfred Malvin vs. Y.J.Gonsalvis and others]** wherein it was held that the Christian couple can adopt and adopted child gets all rights of a naturally born child and entitled to inherit the assets of the adoptive parents.

31. The learned I Additional District Judge, Salem, had also relied on the rulings cited by the learned Counsel for the Plaintiff as Appellant in **M/s.Oriental Insurance Company Ltd., vs. Minor Jayapriya represented by next friend/guardian Maruthambal** reported in **2010 (3) CTC 819** wherein it is observed as follows:

“27. The contention that the adoption has not been recognised in India among Christians does not merit acceptance. In (2009) 8 MLJ 309 (R.R.GEORGE CHRISTOPHER), referring to Sections 40 and 41 of Juvenile Justice (Care and Protection of Children) Act, 2000, Justice K.Chandru has held that the said Act itself was enacted with a view to fulfil the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Aspiring parents who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisions of the said Act. The learned single Judge has further held that Sections 40 and 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 are not restricted to persons belonging to particular religion alone and upheld the plea of adoption by the applicants therein, who are Christians and held as under:

".... 13. The JJ Act for the first time provides 'adoption' as a means to rehabilitate and socially reintegrate a child. It had empowered the 'State Government' and the JJ Board to give a child for adoption. This is the first secular law in India providing for adoption. The provision in Sections 40 and 41 are not restricted to persons belonging to particular religion alone..."

28. In our considered view, the stand taken by the learned Counsel for 6th Respondent that there cannot be valid adoption among the Christians is not in consonance with the Constitution and the various judicial pronouncements. As pointed out by the learned single Judge, the Canon Law, which is applicable to Jagadambal and 6th Respondent

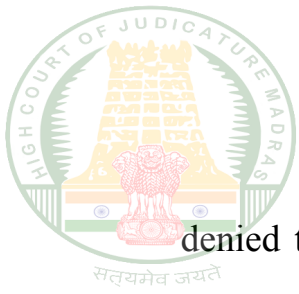


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provides for adoption if the Civil Law of the Country permit the same. In the light of Sections 40 and 41 of Juvenile Justice Act, we do not find any embargo for adoption. In any event, the proceeding, being summary in nature, the validity or otherwise of the adoption needs no further elaboration.”

32. In the light of those materials, on proper appreciation of evidence, the admission made in cross-examination by the biological father of the Plaintiff as D.W-2 and the adoptive mother, the first Defendant as D.W-1 the conduct of the parties is sufficient to arrive at a conclusion that the claim of the Plaintiff had been proved. The elders in the family themselves denied adoption whereas when they were confronted with facts as stated by the Plaintiff in the cross-examination, they had admitted that from the tender age of 1½ years till she was married off, everything was taken care of by Anthonisamy and the first Defendant Alphonse. Therefore, there is clear proof that the Plaintiff was the adopted daughter of Anthonisamy.

33. The learned I Additional District Judge, Salem, refused to give weightage to Ex.B-10 the extract regarding Baptism Certificate as the persons who are in custody of the register had not been examined regarding the same and therefore, it need not be given much weightage. The conduct of the close relatives, the person who brought her up, the person who was her biological father in the admission in cross-examination is sufficient proof that the Plaintiff was brought up from her tender age till her marriage by none other than Anthonisamy and the first Defendant Alphonse. The Defendants 1 and 2



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denied the claim of the Plaintiff as adopted daughter only to avoid partition.

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Therefore, the learned I Additional District Judge, Salem, had on proper appreciation of evidence, considered the claim of the Plaintiff and granted the decree for partition based on the settled principles of law laid down in the decisions reported in (i) *1999 (1) KLT 643 [Philips Alfred Malvin vs. Y.J.Gonsalvis and others]*; (ii) *AIR 2001 Allahabad 109 [Ajit Datt vs. Ethel Walters]*; (iii) *2007 (5) Karnataka Law Journal 194 [Vasanthi vs. Sharoz John Abraham]*; (iv) *2009 8 MLJ 309 [R.R. George Christopher]* and (v) *2010 (3) CTC 819 [M/s.Oriental Insurance Company Ltd., vs. Minor Jayapriya represented by next friend/guardian Maruthambal]*.

34. In the light of the above discussion from paragraphs 21 to 33, **the Substantial Question of Law framed by this Court is answered in favour of the Plaintiff and against the Defendants.** The learned I Additional District Judge was right in holding that the Plaintiff is entitled to partition and the Plaintiff had proved adoption with substantial evidence through cross-examination of first Defendant adoptive mother as D.W-1 and biological father of Plaintiff as D.W-2 in his cross-examination. The elders in the family are the competent persons to speak about the adoption. Even though they disputed adoption, they had in their cross-examination admitted that the Plaintiff was in the custody of late Anthonisamy and the first Defendant, Alphonse from her



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tender age of 1½ years till she was married off. That admission is the best evidence. Hence, the finding of the learned first Appellate Judge/learned I Additional District Judge, Salem, does not warrant any interference by this Court.

In the result, **this Second Appeal is dismissed.** The judgment and decree dated 26.03.2013 passed in A.S.No.44 of 2010 by the learned I Additional District Judge, Salem, is confirmed and the judgment and decree dated 01.04.2010 passed in O.S.No.12 of 2008 by the learned Sub Judge, Mettur is set aside. The suit in O.S.No.12 of 2008 is decreed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2024

gvn/srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The Sub Court,
Mettur.
2. The I Additional District Court,
Salem.
3. The Section Officer,



V.R. Section,
High Court Madras.

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SATHI KUMAR SUKUMARA KURUP, J.,

gvn/srm

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24.06.2024