



S.A.No.291 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.291 of 2024

L.Dhanaseeli

... Appellant

Vs.

1.The District Collector,
Office of Chennai Collectorate,
No.62, Rajaji Salai, Fourth Floor,
Chennai – 600 001.

2.The Tahsildar,
Office of the Tahsildar,
Mylapore, Chennai – 600 004.

3.The Revenue Divisional Officer,
Chennai South Division,
Anna Salai, Guindy,
Chennai – 600 032.

4.R.Sensai Kanikkai Raj

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C, pleaded to allow the Second Appeal by setting aside the judgment and decree dated 27.09.2023 passed in AS.No.97 of 2023 on the file of the III Additional City Civil Judge in O.S.No.2837 of 2020 on the file of I Assistant, City Civil Judge, Chennai, judgment and decree dated 26.08.2022.



WEB COPY



S.A.No.291 of 2024

For Appellant : Mr.R.Arunkumar

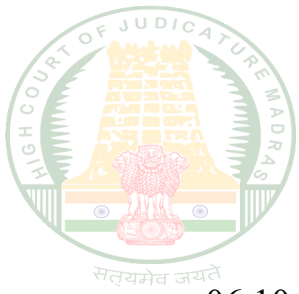
For Respondent : Mrs.B.Tamilnidhi, AGP
for R1 to R3

JUDGMENT

This Second Appeal is filed under Section 100 of The Code of Civil Procedure praying to set aside the Judgment and Decree dated 27.9.2023 made in A.S. No. 97 of 2023 on the file of the III Additional City Civil Judge, Chennai confirming the Judgment and Decree dated 26.08.2022 passed in O.S. No. 2837 of 2020 on the file of I Assistant City Civil Judge, Chennai.

2. The Plaintiff in O.S. No. 2837 of 2020 is the appellant in this Second Appeal. The fourth respondent in this appeal is her son. The Plaintiff-appellant has filed the suit praying to declare that she and her son/fourth defendant are the legal heirs of the deceased R. Rajasekar @ Jacob Rajasekar, who died on 29.10.2014.

3. As per the plaint averments, the marriage between the plaintiff and her husband Late. Rajasekar @ Jacob Rajasekar was solemnised on



S.A.No.291 of 2024

WEB COPY

06.10.1983 and it was registered at St. Teresa Church, Nungambakkam, Chennai. Out of such wedlock, on 02.02.1983, the fourth defendant in the suit was born. According to the plaintiff, the properties described in the plaint are located in Vadagampadi Madura, Kattu Thangal Village, Thirukazhukundram Taluk, Chengalpattu District. It was further stated that this property was purchased by the plaintiff from and out of her income and it is her self-acquired property. However, it was purchased in the name of her husband through a registered sale deed 10.03.1994 registered as document No. 407 of 1994 and her husband is only a name lender. The Plaintiff would further state that she was employed as a Teacher in Assumption School and was earning Rs.5,000/- per month. At that time, her husband was conducting Kung fu coaching Class and in order to expand his Kung fu teaching and academy, the suit property was purchased by the plaintiff from and out of her income, in the name of her husband.

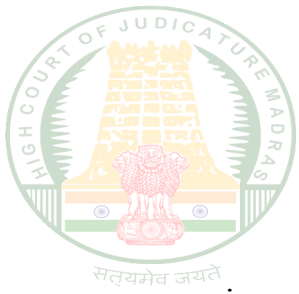
4. The Plaintiff further states that after purchase of the plaint described property, her husband shifted to the said property and continued to stay there without returning to live with the plaintiff. The plaintiff



S.A.No.291 of 2024

WEB COPY

therefore filed IDOP No. 3484 of 2013 before the Additional Family Court, Chennai and it was allowed on 03.04.2014. Notwithstanding the same, her husband did not come and live with her. While so, on 29.10.2014 the husband of the plaintiff died leaving behind the plaintiff and the fourth defendant as his legal heirs. After the death of her husband, the plaintiff submitted an application seeking to issue legal heir certificate on 27.07.2015. However, such certificate was not issued on the basis of frivolous and false reason that Mr. Rajasekar was already married to someone in the year 1974 and out of such wedlock, a female child by name S. Rekha was born. Even in the reply given to the application filed by the plaintiff, the name of first wife was not mentioned and it was simply stated that he had a first wife and daughter born to them before the marriage with the plaintiff. According to the plaintiff such a vague and bald reason assigned for rejecting the legal heir certificate are frivolous. Even after six years of the demise of Late. Rajasekar, the so-called second wife or the daughter born to them did not come forward to make any rival claim. Further, after the demise of her husband, the fourth defendant, who was residing with the plaintiff in the suit property, neglected the plaintiff and did not care for her. Therefore, the plaintiff had



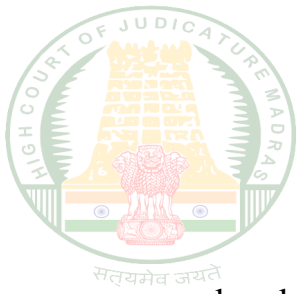
S.A.No.291 of 2024

WEB COPY

given a complaint before the Revenue Divisional Officer under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in which an order dated 27.02.2020 was passed directing the fourth defendant to pay her monthly maintenance. The Plaintiff is the legally wedded wife of Late. Rajasekar and therefore, the refusal on the part of the Tahsildar to issue legal heir certificate is unjust and arbitrary. Therefore, the suit was filed.

5. In spite of notice in the suit, the defendants in the suit did not appear and therefore, they were set exparte.

6. During trial, the plaintiff examined herself as PW1 and two other witnesses as PWs 2 to 3. Exs. A1 to A10 documents were marked on the side of the plaintiff. The trial court, on analysing the oral and documentary evidence concluded that even though it was contended by the plaintiff that she and the fourth defendant are the legal heirs to succeed the estate of her husband Rajasekar, the Tahsildar, clearly stated that the deceased Jacob Rajasekar was married in the year 1974 and his first wife died. Further, it was reported that out of such wedlock, a



S.A.No.291 of 2024

WEB COPY

daughter by name S. Rekha was born and presently she is residing in Villupuram. The said facts were also discussed in detail in Ex.A9, the order dated 11.07.2016 passed by the Tamil Nadu State Information Commission. Such an observation was made after conducting an oral enquiry from those living in and around the locality. Therefore, the trial court concluded that there is a cloud over the status of the plaintiff and defendant No.4 as legal heirs of late. Jacob Rajasekar. The suit is therefore bad for non-joinder of the first wife or the daughter born out of such wedlock. The trial court also observed that the present suit has been filed to indirectly get a declaration of title to the suit property in the guise of seeking for a declaration to declare the status of the plaintiff. Therefore, by the judgment dated 26.08.2022, the trial court dismissed the suit filed by the plaintiff.

7. The appeal filed by the plaintiff in A.S. No. 97 of 2023 was also dismissed by the learned III Additional City Civil Judge, Chennai on 27.09.2023.



WEB COPY

8. Challenging the concurrent findings of fact by the courts below, the plaintiff is before this Second Appeal under Section 100 of Code of Civil Procedure.

9. It is needless to state that though the defendants did not contest the suit, the plaintiff is bound to prove her averments made in the plaint, independently.

10. The learned counsel for the appellant submits that the following substantial questions of law arise for determination in this appeal and they are:-

- (i) Whether Rekha presumed to be the daughter of R.Rajasekar @ Jacob Rajasekar in the absence of substantial proof?
- (ii) Whether the question of examination Rekha as a witness in the absence of such person is fatal to the case?
- (iii) Whether the marriage certificate Ex.A1 is sufficient to prove the relationship between the appellant and the R.Rajasekar @ Jacob Rajasekar?



WEB COPY

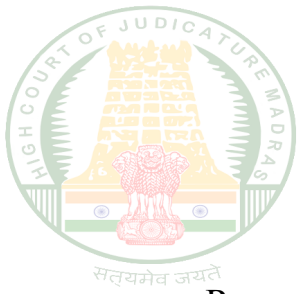


S.A.No.291 of 2024

(iv) Whether the Ex.A.3, Ex.A.4, Exx.A.5, Ex.A.6, Ex.A.7, Ex.A.8 are substantial proof to show the relationship between the appellant and the deceased R.Rajasekar @ Jacob Rajasekar and the 4th respondent?

(v) Whether the order dated 11.07.2016, Ex.A.9 is conclusive in the absence of examination of any witness or by documentary evidence?

11. According to the learned counsel for the plaintiff, the Plaintiff and the fourth defendant are the legal heirs to succeed the estate of late. Rajasekar @ Jacob Rajasekar. The marriage of the plaintiff with Jacob Rajasekar is substantiated by producing Ex.A1. The Plaintiff also proved that it is she, who has purchased the suit property in the name of her husband on 10.03.1984. Even assuming that the property has been purchased by her husband out of his own income, on his death, the plaintiff and the fourth defendant are automatically entitled to inherit the title to the property. The patta in respect of the property was not issued in her name and she had taken steps to assert over a right to issue patta in her name as could be evident from Ex.A10. The order passed by the



S.A.No.291 of 2024

WEB COPY

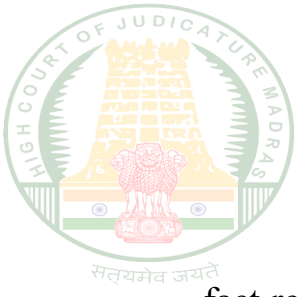
Revenue Divisional Officer reveals that during the enquiry it was disclosed that one Sekar has married the first wife in the year 1974 and not Jacob Rajasekar. The female child by name Rekha was born out of the wedlock between the so-called first wife and Sekar. Therefore, the reasons assigned for declining to issue the legal heir certificate is *per se* arbitrary, bald and without any valid reasons. The plaintiff cannot go in search of a person whose name and address are not disclosed. If really during the enquiry it was noticed that Jacob Rajasekar married a woman earlier, the details of the same have to be furnished without which it is not possible for the plaintiff to file the suit by impleading them. It is merely stated that the daughter born out of the first wedlock by name Rekha is residing in Villupuram and except the same, no other details are disclosed. While so, the non-impleading of the so called daughter born out of the first wedlock will not be a ground to reject the legal heir certificate. Even otherwise, the so-called first wife or the daughter Rekha have not come forward to make any claim against the estate of deceased Jacob Rajasekar. While so, the courts below erred in holding that the plaintiff is not the legally wedded wife of Jacob Rajasekar. Such a finding is without any basis and it calls for interference by this Honourable Court.



S.A.No.291 of 2024

WEB COPY

12. According to the plaintiff, she is the wife of late Rajasekar @ Jacob Rajasekar and both were got married in the Church in the year 1983 and the marriage was registered and to that effect she produced Ex.A1 certificate. It is stated that one male child was born to them in the year 1983, who is the fourth defendant herein. She claims that the suit property, as described in the suit schedule was purchased by her in the name of her husband on 10.03.1984 and sale deed was also produced. Thereafter, the plaintiff's husband died in the year 2014. On his claim, she is entitled to have the property an extent of 0.80 cents situated at No.158, Vadagampaadi Madura Kaatu Thangal Village, Thirukazhukundram Taluk, Chengalpattu in Survey No.167/8 as described in the suit schedule. Further, she would also contend that the Revenue Authority refused to transfer the patta in her name, for which she laid the documents in Ex.A.10. The order passed by the RDO reveals that during the enquiry, they found that one R.Sekar had married the first wife in the year 1974, out of the wedding, one female child S.Rekha was born to them. The said Rekha got married and settled and living happily. However, they refused to issue legal heir certificate to the plaintiff. The

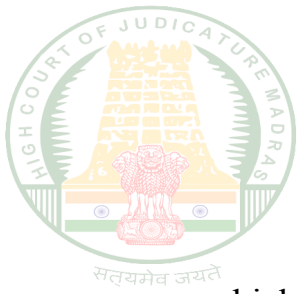


S.A.No.291 of 2024

WEB COPY

fact remains that the plaintiff has not taken any steps to implead the said Rekha as necessary party to the suit. More over in the entire pleadings, she indirectly claim right over the property as the legal heir of the deceased Rajasekar @ Jacob Rajasekar

13. As per the sale deed relied by the plaintiff, it stands in the name of R. Sekar, Son of Ramu. If she wants to get the absolute right over the property, she has to implead Rekha who is said to be the daughter born to the first wife. But in spite of the observation made by the Trial Judge, she has not taken any steps. Further, she relied on the Aadhar card, Voter card, Family card and in all documents, his husband name was mentioned as Rajasekar @ Jacob Rajasekar. But the plaintiff does not produce any document to show that R.Sekar as well as R.Rajasekar @ Jacob Rajasekar is one and the same person and therefore the trial Judge failed to accept the plaintiff's claim. As rightly observed by the Courts below, the plaintiff sought for the relief of declaration without any proof to show that she is the wife of late Rajasekar @ Jacob Rajasekar and to prove that one Sekar as well as Rajasekar @ Jacob Rajasekar are one and the same. In the absence of any proof, she want to declare her right over the property



S.A.No.291 of 2024

WEB COPY

which is not permissible. Therefore, the Courts below rightly refused the plaintiff's claim, which needs no interference. The substantial questions of law raised in main appeal are purely questions of fact based on which this second appeal cannot be filed. In the absence of any substantial questions of law no relief could be granted to the appellant in this appeal.

14. In the result, the Judgment and Decree dated 27.09.2023 made in A.S. No.97 of 2023 on the file of the III Additional City Civil Judge and confirming the decree and judgment in OS.No.2837 of 2020 dated 26.08.2022 on the file of I Assistant, City Civil Judge, Chennai is confirmed. The Second Appeal is dismissed. No costs.

12.06.2024

drl

Index : Yes / No

Neutral Citation : Yes / No

To

1.The III Additional City Civil Judge, Chennai.

2.The I Assistant City Civil Judge, Chennai.

12/13



WEB COPY



S.A.No.291 of 2024

T.V.THAMILSELVI.,J.

drl

S.A.No.291 of 2024

12.06.2024