



C.R.P.(PD)No.1952 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.1952 of 2024
and C.M.P.No.10298 of 2024

B.Revathy

.. Petitioner

Vs

1. Hariraj

2. The Tahsildar,
Coimbatore North Taluk,
Coimbatore-641 018.

3. The District Collector,
Collectorate, Coimbatore-641 018.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.691 of 2023 on the file of the learned Principal District Munsif at Coimbatore.

For Petitioner : Mr.V.Raghupathy
for Mr.Suresh V. Souli



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For R1 : Mr.S.Lakshmanasamy

For RR2 & 3 : Mr.N.Muthuvel, Government Advocate

ORDER

This civil revision petition challenges the very presentation of the suit in O.S.No.691 of 2023 on the file of the learned Principal District Munsif at Coimbatore.

2. The case of the plaintiff Mr.Hariraj is that he was adopted by one Mr.Boopathy on 11.02.1998. As Boopathy passed away on 26.02.2013, he claimed that he has succeeded to the estate of Boopathy by virtue of an adoption deed. The siblings of the deceased Boopathy had presented a suit in O.S.No.2639 of 2013 seeking for a declaration that they are the legal heirs of the deceased Boopathy. On that basis, they had proceeded to divide the properties among themselves.

3. The plaintiff claimed by virtue of the Hindu Succession Act, he is a Class-I heir and therefore, the decree in O.S.No.2639 of 2013 is null and void. Hence, he presented O.S.No.691 of 2023 to cancel the decree in O.S.No.2639 of 2013 dated 02.04.2014. The 1st defendant in the suit namely, Mrs.B.Revathy was the 5th plaintiff in O.S.No.2639 of 2013.



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Therefore, she was impleaded as a party to the suit and the present suit came to be filed.

4. Feeling aggrieved by the presentation of the plaint, Mrs.B.Revathy is on revision before me.

5. I heard Mr.V.Raghupathy for Mr.Suresh V.Souli and Mr.S.Lakshmanasamy for the 1st respondent and Mr.N.Muthuvel for respondents 2 & 3.

6. Being a revision challenging the plaint, I cannot go into the question of the defence that is raised by the 1st respondent/plaintiff. I have to confine myself to the averments made in the plaint and the plaint documents and find out if the suit is an abuse of process of law or whether it is barred by any provision of law.

7. The undisputed facts are, one Subbaraju married Adhilakshmi and begot five sons and four daughters. For the sake of easy understanding, the genealogy chart as given in the plaint is extracted hereunder:

Genealogical Tree
Subbaraju (died on 05.10.1956)



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Adhilakshmi (wife died on 07.03.1971)

Venkatapathy (Died) Thirumalpathy (Died) Boopathy (Died) Raghupathy (Died) Dhanalakshmi (Died) Janakiammal (Died) Jampakalakshmi (Died) Rajamani (Died) Revathy 1st defendant

Adopted Father

Chandra Devi
(W/o. Boopathy)

Died on : 27.08.1999

Plaintiff's Adopted Mother

8. There is no dispute that the third son Boopathy, who was a lawyer practising in Coimbatore, married one Chandradevi. The said Chandradevi pre-deceased Boopathy. She passed away on 27.08.1999. Unfortunately, from the wedlock between Boopathy and Chandradevi, there were no issues. As pointed out above, Boopathy passed away on 26.02.2013. Since there were no Class-I heirs, his siblings namely, Venkatapathy, Thirumalpathy, S.Raghupathy, Rajamani and B.Revathy falling under Category-II of Class-(II) filed a suit for declaration that they are the legal heirs of late Boopathy. They impleaded the District Collector, Coimbatore and Tahsildar, Coimbatore North Taluk as parties and presented the plaint. On service of summons, the Court went into the relationship and declared that the siblings of Boopathy are the legal heirs of the deceased person and granted a decree on 02.04.2014.

9. This decree was put into challenge in O.S.No.352 of 2015 by



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one Mohankumaran. In the said suit, the present plaintiff Mr.Hariraj was impleaded as the 8th defendant. The suit came to be dismissed as withdrawn on 07.02.2017. The 8th defendant, who was served with the summons, did not enter appearance in the said suit. Thereafter, he seems to have waited for six more years to present the present suit seeking for cancellation of the decree in O.S.No.2639 of 2013.

10. Mr.V.Raghupathy argues that the foundation of the case of the plaintiff is that Boopathy and Chandradevi had adopted the plaintiff on 11.02.1998. He points out that, on the date of the alleged adoption, the plaintiff was aged about 46 years. He draws my attention to the adoption deed that had been filed as plaint document No.1.

11. A perusal of the said document, which is enclosed at page no.36 of the typed set of papers, shows that the plea of Mr.V.Raghupathy is correct. It reads that Hariraj was aged about 46 years and on 11.02.1998, the deceased Boopathy and Chandradevi are said to have adopted the said Hariraj from that day onwards. Hence, he pleads that the suit is an abuse of process of law, as it is contrary to the Hindu Adoptions and Maintenance Act, 1956.



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12. Per contra, Mr.S.Lakshmanasamy urges that the civil revision petition is not maintainable as the civil revision petitioner/1st defendant has already filed her written statement. He further pleads that the very decree in O.S.No.2639 of 2013 is an act of collusion between the District Collector, The Tahsildar and the present civil revision petitioner and therefore, no weight should be placed on the said decree. He pleads that apart from the adoptive parents, genitive parents and the adopted son himself, no one else has a right or locus to question the validity of an adoption. For the said proposition, he relies upon the following judgments

(i) ***Sri. Kadappa Satyappa Terani v. Sri Siddappa Khandappa Terani and others in R.S.A.No.1483 of 2005 (PAR)*** and;

(ii) ***Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust v. The Tahsildar and another, W.A.No.2625 of 2022, dated 23.01.2023.***

and pleads that the civil revision petitioner has no locus to present the present revision.

13. I have carefully considered the submissions of either side. I have gone through the entire records.



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14. I have to refer to Section 10 of the Hindu Adoptions and Maintenance Act, 1956. This is because, there is no dispute that the parties are Hindus and they belong to Patturoja community. Under Section 10 of the said Act, it lays down certain conditions as to who can be given in adoption. Under Section 10(iii) and 10(iv), a person, who is already married, cannot be given in adoption. In addition, if a person has exceeded the age of 15, he or she cannot be given up for adoption. The exception to this rule is that, there should be a specific plea raised by the party claiming adoption that there exists a custom or usage applicable to the parties, under which, even if a person is married or above the age of 15, he or she can be given for adoption.

15. Unfortunately, for Mr.S.Lakshmanasamy, there is no plea by the plaintiff that there exists a custom in Patturoja community for giving a person, who is already married or above the age of 15 to be given, for adoption. If there is no such plea, then Section 10(iii) & 10(iv) of the said Act would operate.

16. There is no dispute that the 1st respondent/plaintiff was already married on the date of adoption. Further, it is not in dispute that on the



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date of the alleged adoption, he was aged about 46 years. Therefore, the plea that the plaintiff, is the adopted son of Boopathy, is directly hit by the aforesaid sections of the Hindu Adoptions and Maintenance Act, 1956. Consequently, there is no cause of action for the plaintiff to seek for a declaration that he is the legally adopted son of the deceased Boopathy.

17. During the course of narration of the facts, I have pointed out that, Boopathy was an Advocate and also an advisor to several corporates situated in Coimbatore. Therefore, to plead, a lawyer was not aware of Section 10 of the Hindu Adoptions and Maintenance Act, 1956 is a story, which is too much for me to swallow.

18. Facing this difficulty, Mr.S.Lakshmanasamy attacked the very maintainability of this revision. According to him, only 1st respondent's parents, Boopathy or Chandradevi or the plaintiff himself could have challenged the adoption.

19. Before I turn to the authorities, I should point out that the cause of action for the suit is the death of Boopathy. Boopathy died on



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26.02.2013 and his wife Chandradevi died on 27.08.1999. The plaintiff's mother Jambakalakshmi died on 11.03.2002 and the father of the 1st respondent had predeceased her. Therefore, none of the parties were alive, when Boopathy passed away on 26.02.2013. To claim that the deceased persons ought to have filed the suit is a demand which is impossible. Dead persons do not present suits.

20. It is here I have to refer to the Hindu Succession Act, 1956. Under Section 8 of the Hindu Succession Act, if a person dies intestate, as to who can succeed the estate is specified under the Schedule to the Act. A Class-I heir excludes the Class-II heir and in the absence of a Class-I heir, I have to turn to Class-II of the said Schedule. Under Class-II, there are IX categories of persons, who are entitled to succeed to the estate. If a person is found in a category above the category to which the plaintiff or any other person falls under, then the former will exclude the later. This too is clear from the casual reading of Section 8.

21. The plaintiffs in O.S.No.2639 of 2013 are the siblings of Boopathy. Therefore, they fall under Class-II Category-II of the Hindu



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Succession Act. The 1st respondent/plaintiff being a sister's son falls under Class-II Category-IV(II). Therefore, the siblings of the deceased Boopathy naturally exclude the plaintiff from succeeding to the estate. This is the reason why, the plaintiff had projected an adoption deed to claim he is a Class-I heir. As pointed out above, the adoption deed fall foul of Section 10 of the Hindu Adoptions and Maintenance Act, 1956. Consequently, even on the very plea of the plaintiff, the sole surviving sibling of the deceased Boopathy namely, the civil revision petitioner excludes the plaintiff from succeeding to the estate of the deceased Boopathy.

22. Mr.S.Lakshmanasamy urges that there was a collusion between the Tahsildar and the District Collector in O.S.No.2639 of 2013. He states that the Tahsildhar, who was the 2nd defendant in that suit had given him the legal heirship certificate and therefore, he ought to have got the suit in O.S.No.2639 of 2013 to be dismissed and since that was not done, it is an act of collusion between the defendants in the aforesaid suit.

23. As Mr.S.Lakshmanasamy had pleaded collusion, I went through the plaint all over again. This is because, under Order VI Rule 4



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of the C.P.C., where a party pleads about vitiating circumstances, then it is his/her duty to plead, as to how & when the Tahsildar had colluded with the 1st defendant and permitted the Court to pass a decree in O.S.No.2639 of 2013. Both Mr.S.Lakshmanasamy and I are not in a position to find out any plea of collusion. Therefore, this plea is one raised in desperation and not one based on the records.

24. Turning now to the judgments referred to by Mr.S.Lakshmanasamy to defeat the revision, I first refer to ***Veerabhadrayya R.Hiremath v. Irayya A.F.Basayya Hiremath, 2006 (3) AIR KAR R 252***. In that case, a suit had been presented in the year 1992 challenging an adoption that had been made in the year 1961. The plaintiff in that case had conceded to the adoption deed. He pleaded that it was created in the year 1961 by playing fraud and undue influence on the adopted father and therefore, he is entitled to a decree in that suit. The learned Judge, considering the plea of the plaintiff, had come to a conclusion that, if a fraud had been played on the adoptive father, he himself could have filed a suit for cancellation of the adoption. While coming to this conclusion, he had stated that “in the normal circumstances, adoption can be challenged either by the natural parents,



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adoptive parents or by the child who has been given in adoption.” This shows that the learned Judge had not laid down a law that in all circumstances, it is only these three categories who can file the suit. In addition, the learned Single Judge had pointed out that the plaintiff in that case was a stranger to the family.

25. The same position prevails in *Kadappa's* case too. The learned Judge came to a conclusion that the adoption had taken place in 1947. That being a case before the promulgation of the Hindu Adoptions and Maintenance Act, 1956, the question of applying the said Act to the facts of that case does not arise. It is not in dispute in the facts of this case, the alleged adoption had taken place in the year 1998, which is obviously after the promulgation of the Hindu Adoptions and Maintenance Act, 1956. Hence, these judgments are inapplicable to the facts of the present case.

26. Finally, turning to the judgment in *Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust's case*, I have to point out that the learned Judges had adopted the judgment of the authorities cited above and came to a conclusion that as the person who challenges the adoption



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was a Trust represented by a Trustee, who was a part of the adoption ceremony and also cognizant of the age of the adopted son and the branch to which he belonged to at the time of adoption, cannot claim ignorance of the said fact. It was also pointed out that the Trust is a stranger to the family of the 2nd respondent therein. In addition, there is no dispute that the 2nd respondent in that case belonged to Nattukottai Chettiar community as is clear from paragraph no.2 of the said judgment. It is settled law that amongst Nattukottai Chettiar's community, there is a custom of adopting a person above the age of 15 and also, when he or she is already married.

27. In the discussions pointed out above, I have held that there is no plea by the plaintiff/1st respondent that such a custom exists in Patturoja community. Custom must be specifically pleaded and proved and if it is not so pleaded, it cannot be presumed by the Court.

28. Further, as the suit has come to be presented six years after the plaintiff had been put on knowledge of the decree in O.S.No.2639 of 2013 dated 02.04.2014, it is barred by virtue of Article 58 & 59 of the Limitation Act. Under Article 58 & 59 of the Limitation Act, a suit has



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to be presented to set aside a document within three years from the date of knowledge of the decree. The plaintiff being a party to the suit in O.S.No.352 of 2015 did not file a suit till 08.08.2023. Therefore, *ex facie* it is barred by limitation.

29. Mr.S.Lakshmanasamy would plead that the Tahsildar had given a legal heirship certificate to the 1st respondent and therefore, the suit in O.S.No.2639 of 2013, in any event, is not maintainable.

30. It has been held by a Full Bench of this Court in ***P.Venkatachalam v. Tahsildar, Namakkal, (2022) 4 CTC 1***, that a Tahsildar cannot declare the status of parties or their legal relationship with the deceased person. At best, a certificate issued by a Tahsildar is only a relationship certificate and that such a certificate does not bind a Civil Court. There are enough and more Government orders passed by the State of Tamil Nadu stating that a Tahsildar cannot give a legal heirship certificate in case of adoption or in case of Class-II legal heirs.

31. That being the position of law, the certificate obtained by the 1st respondent/plaintiff from the Tahsildar does not improve his case at all.



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In case the status of parties are in dispute, under Section 34 of the Specific Relief Act, it is the duty of the party, whose status has been so denied, to approach the Civil Court for a declaration of the said status. Since the plaintiffs in O.S.No.2639 of 2013 were Class-II heirs, they had rightly approached a Civil Court and obtained a decree. I should remind myself that it is not in dispute that the plaintiffs in O.S.No.2639 of 2013 are the siblings of the deceased Boopathy and hence, Class-II heirs.

32. This is a case which attracts more than one of the categories pointed out by the Hon'ble Mr. Justice Subramani in ***Ranipet Municipality v. M.Shamsheerkhan, 1998 (1) CTC 66***. Being an abuse of process of Court, this Court has the jurisdiction under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure to nip such suits in the bud.

33. Further, as pointed out by my brother Justice Mr.D.Bharatha Chakravarthy in ***N.Periyasamy v. Mohamed Bilaldeen and others, C.R.P.(MD)No.671 of 2022, dated 23.08.2024***, pushing the parties to a trial in cases, where the suit itself is an abuse of process would amount to



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harassment of the parties. Prior to reaching to the conclusion, my brother Justice Mr.D.Bharatha Chakravarthy had analysed several judgments of the Supreme Court and this Court on the scope, power and content of Article 227 of the Constitution of India.

34. In addition, on the face of the record, it is clear that the document, on the basis of which the plaintiff has filed the suit, is a fabricated document. The alleged adoption deed runs to two pages, which is said to have been attested by a notary public. A notary public attests a document certifying that the document was executed in his presence. A perusal of page no.1 of the document shows that the notary public had affixed his signature and seal as if the document has been signed. However, none of the parties to the document have affixed their signatures in the said page. This itself shows that the document does not deserve to be given the respect of having been signed by the notary public. Mr.S.Lakshmanasamy states that the notary public is no more. Hence, I am not giving any further directions in this regard.

35. In the light of the above discussions, I am of the clear view that the suit is an abuse of process of law and is absolutely bereft of any cause



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of action to retain the suit on the file of the Court amounts to give a premium for a dishonest litigant. The civil revision petition stands allowed. O.S.No.691 of 2023 on the file of the learned Principal District Munsif at Coimbatore is struck off from the file of the Court. There will be a cost of Rs.50,000/- (Rupees Fifty thousand only) imposed on the 1st respondent/plaintiff. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN,J.

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To

1. The Principal District Munsif at Coimbatore.

2. The Tahsildar,
Coimbatore North Taluk,
Coimbatore-641 018.

3. The District Collector,
Collectorate, Coimbatore-641 018.

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