



S.A.No.108 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

SA.No.108 of 2017

A.Muthamil Arasan

.. Appellant

Vs.

1.Gomathi Bai

2.A.Sethrathinam

3.A.Rohini

4.A.Indira Gandhi

5.A.Kamala kannan

6.A.Vijeyalakshmi

.. Respondents

PRAYER: Second Appeal is filed under section 100 of Civil Procedure Code, to set aside the judgment and decree of the learned XVII Additional Judge, City Civil Court, Chennai dated 23.08.2016 in A.S.No.260 of 2015 confirming the judgment and decree of the learned IV Assistant Judge, City Civil Court, Chennai in O.S.No.1791 of 2013 dated 09.07.2015.



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For Appellant : Mr.S.R.Rajagopal
Senior Counsel
assisted by
Ms.Divyadarshini for
M/s.Namasivayam

For Respondents : Mr.S.Parthasarathy
Senior Counsel
assisted by
Mr.M.Vinoth
Mr.V.Srikanth
M/s.Sam Jayaraj Houston

JUDGMENT

This present Second Appeal arises out of the judgment and decree of the Court of the learned XVII Additional Judge, City Civil Court, Chennai in A.S.No.260 of 2015, dated 23.08.2016 in confirming the judgment and decree of the Court of the learned IV Assistant Judge, City Civil Court, Chennai in O.S.No.1791 of 2013, dated 09.07.2015.

2. O.S.No.1791 of 2013 was presented by the appellant for the relief of declaration that he is the legally adopted son of late Sadhu Sethulakshmi @ Sethulakshmi and late Arumugam and sought for the



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consequential relief of injunction restraining the defendants and persons acting on behalf of the defendants from denying and contending or publishing or sending any communication or submitting any record as against the plaintiff's relationship as the son of the late Sadhu Sethulakshmi @ Sethulakshmi and late Arumugam. The plaintiff has arrayed the 2nd wife of Arumugam as the 1st defendant and the children born to Arumugam and the 1st defendant, as defendants 2 to 6.

3. It is the case of the plaintiff that he was born on 20.02.1968 to one Muniyandipillai and Sarada Bai. Sarada Bai is the younger sister of the aforesaid Sadhu Sethulakshmi @ Sethulakshmi. The 1st defendant/Gomathi Bai is her other sister. While the marriage with Sadhu Sethulakshmi @ Sethulakshmi was subsisting, Arumugam had married the 1st defendant/Gomathi Bai. The plaintiff averred that four months after his birth, he was given in adoption by his biological parents i.e., Muniyandipillai and Sarada Bai to Arumugam and Sadhu Sethulakshmi @ Sethulakshmi. The latter had brought up the plaintiff as their son



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giving him that status. They imparted education to him and he studied in the school that was run by the family.

4. According to him, the defendants were creating a situation to send out the plaintiff from the family under the guise of denying the relationship. Their idea is to take out the plaintiff from the administration of the school and consequently, they had written to public authorities to deny the plaintiff's claim to the family. It is pertinent to point out that in the plaint, the plaintiff had stated that Arumugam himself had filed a suit in O.S.No.2245 of 2006 on the file of the learned XIV Assistant Judge, City Civil Court at Madras challenging the settlement deed that had been executed by Sadhu Sethulakshmi @ Sethulakshmi in his favour.

5. He further pleaded that all of a sudden after the lapse of about 38 years, the defendants chose to deny his status as the son of Arumugam and Sadhu Sethulakshmi @ Sethulakshmi in order to deprive the relationship, privilege and his role in the family.



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6. The 1st defendant/Gomathi Bai entered appearance and had filed a detailed written statement. According to her, the adoption pleaded by the plaintiff is a false one. She said the plaintiff has come forward with the present suit only in order to grab the property of the defendants' family. She further pleaded that the husband of the 1st defendant being an educated member of the family was given due respect by all the members and his name was utilized in all family functions especially ear boring, name swearing, house warming, betrothal, marriage, etc.,.

7. Insofar as the prayer is concerned, her specific pleading was that there was no adoption and the plaintiff cannot claim the status of an adopted son. The 2nd defendant also filed a separate written statement which was adopted by defendants 4 to 6. Even in these written statements also, the adoption was denied.



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8. On the basis of these pleadings, the learned Judge framed the following issues :

- “1. Whether the plaintiff is entitled to declaration as prayed for ?
2. Whether the plaintiff is entitled to prohibitory relief as prayed for ?
3. Whether the suit is framed is with legal basis ?
4. To what other relief the plaintiff is entitled ? ”

9. On the side of the plaintiff, he was examined himself as P.W.1 and marked Ex.A1 to Ex.A22. On the side of the defendants, D.W.1 i.e., the 1st defendant/Gomathi Bai examined herself and marked Ex.B1 to Ex.B5. After a detailed discussion, the learned Trial Judge dismissed the suit on 09.07.2015. Aggrieved by the same, a regular appeal was preferred before the learned XVII Additional Judge, City Civil Court, Chennai in A.S.No.260 of 2015. The said 1st appeal was also dismissed. Against the concurrent findings, the present Second Appeal has been



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presented.

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10. On 09.02.2017, the Second Appeal was admitted on the following substantial questions of law :

1. Whether the status of a person adopted can be denied without considering the relevant documents and rejecting certain others received in evidence and without placing the burden on the party disputing the adoption to prove the negative ?
2. Whether the Courts below are right under law in dismissing the suit for want of further substantial evidence, having accepted the documents exhibited as conclusive proof of adoption and where no doubt about the genuineness of the same ?

11. Heard Mr.S.R.Rajagopal for Ms.Divyadarshini and Mr.S.Parthasarathy for Mr.M.Vinoth, Mr.V.Srikanth and M/s.Sam Jayaraj Houston for the respondents. I have gone through the records and



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carefully analysed the arguments of the learned counsel for both sides.

12. For the sake of convenience, the parties are addressed as per their rank in the suit.

13. Mr.S.R.Rajagopal would submit that the plaintiff was adopted four months after his birth and this had been admitted by the deceased Sadhu Sethulakshmi @ Sethulakshmi in Ex.B5. He would state that Arumugam started alienating the properties and therefore, on 23.02.2005, Sadhu Sethulakshmi @ Sethulakshmi executed a settlement deed in his favour. He would state that the issue of handing over and taking over of the child in adoption stands proved by virtue of the settlement deed.

14. He would invite the attention of this Court to the statement under Ex.B2 in O.S.No.2245 of 2006 i.e., the written statement filed by Sadhu Sethulakshmi @ Sethulakshmi in the suit that had been filed by Arumugam as against Sadhu Sethulakshmi @ Sethulakshmi and the



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present plaintiff, seeking for a declaration that the settlement deed executed by Sadhu Sethulakshmi @ Sethulakshmi in favour of the 2nd defendant is null and void. He would further point out that a legal heirship certificate had been issued in favour of the appellant and the defendants 2 to 5 as the children of Arumugam and this amounts to proof of adoption.

15. He would argue that under Section 7 of the Hindu Adoptions and Maintenance Act, 1956, no ceremony is required. He urges that Ex.A7, the Proforma that was maintained by the school which was run by the family as well as Ex.A22, the covering letter to the Provident Fund Commissioner written by Gomathi Bai/1st defendant are admissions to the fact that he was treated as the son of Arumugam.

16. On the basis of Ex.A1 to Ex.A22, he would argue that these are admitted facts and it need not be proved. He would urge that Ex.A22 is a public document and therefore, it is admissible under Section 74 of the



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Indian Evidence Act. He would submit that Ex.A17, the legal heir certificate deserves utmost respect and since it has been declared that he is the son of the Arumugam, the dismissal of the suit is bad.

17. Mr.S.Parthasarathy, whose argument was adopted by Mr.V.Srikanth, would submit that the suit is barred by time. He would invite my attention to the averments in the plaint, in particular, Paragraph No.4 to state that the cause of action for the suit had arisen seven years before the presentation of the plaint i.e., when the plaintiff was aged 38 years and the suit having been filed after seven years is barred by time as it is hit under Article 58 of the Limitation Act. His second submission is that, as early as in 2006, Arumugam had filed the suit denying the adoption and the present suit having been presented in the year 2013 is barred.

18. He would very strongly urge that, apart from the period of limitation, there is no proof of adoption. He would invite the attention of

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the Court to Ex.B3, the written statement filed by the present appellant in O.S.No.2245 of 2006, where, he had stated that he was adopted only in the year 1993 and not 4 months after his birth, as pleaded now.

19. On question by the Court as to what is the answer for Ex.A1 to Ex.A22, which points out the deceased Arumugam as the father of the appellant, the learned Senior Counsel and Mr.V.Srikanth would answer in unison that it was only foster care and does not lead to adoption.

20. The learned counsel would also point out from the averments in the Ex.B5 i.e., the settlement deed executed by Sadhu Sethulakshmi @ Sethulakshmi to state that nowhere she had stated that there had been adoption but had only stated that the appellant/plaintiff had been brought up in the care and custody of Arumugam and Sadhu Sethulakshmi @ Sethulakshmi. He would state that being the concurrent findings of fact this Court must not interfere in the Second Appeal and would pray for dismissal.



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21. I have perused the pleadings, evidences and the records and have gone through the authorities cited by Mr.S.R.Rajagopal and Mr.S.Parthasarathy.

22. The position of law prior to 21.12.1956 was based on the Pristine Hindu law. However, it has now become statutory in force. Chapter II of the Hindu Adoptions and Maintenance Act, in particular, Section 7 and Section 11 deal with the conditions for valid adoption. In order to prove the adoption and insofar as this case is concerned, there must be a positive proof as required under Section 11(vi) of the said Act. As per this Act, in case of every adoption the conditions that have to be complied with are set forth here under :

*“the child to be adopted must be **actually given and taken in adoption by the parents** or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.”*



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23. This shows that unless and until proof of actually giving and taking in adoption is given, the Court cannot conclude that there has been a case of adoption. High proof is demanded in case of adoption is because, in case if the Court comes to the conclusion that there is a valid adoption, it interferes with the natural line of succession in the family i.e., to say if I were to conclude that the plaintiff is the son of Arumugam apart from the admitted children namely, the defendants 2 to 6, the plaintiff would also be included as the legal heir in the family of Arumugam and Sadhu Sethulakshmi @ Sethulakshmi.

24. This brings me to the argument of Mr.S.R.Rajagopal that the authorities had given a certificate under Ex.A17 and this proves that he is the son of Arumugam. Ex.A17 is the legal heirship certificate issued by a Tahsildhar. A Tahsildhar is not competent to decide as to who is the legal heir and it is merely an administrative affair which had been evolved in the State of Tamil Nadu for the purpose of convenience. By the mere fact



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that the name of a person is found in the legal heirship certificate, a Court cannot come to a conclusion that he is the legal heir. This view is in line with the interpretation given by a Full Bench of this Court in ***P.Venkatachalam Vs. Tahsildar, Namakkal*** case reported in (2022) 4 CTC 1. The legal heirship certificate is no more than the certificate of relationship and is not given much weight in the civil proceedings. Further more in this case, the original application on the basis of which the certificate under Ex.A17 had been produced, had not been filed before the Court. It is not clear from the certificate whether it had been issued on the request made by the plaintiff or on the request that had been made by the defendants 2 to 6. Therefore, much weightage cannot be given to Ex.A17.

25. Insofar as the argument under Ex.B5 is concerned, Mr.S.R.Rajagopal would argue it reveals that Sadhu Sethulakshmi @ Sethulakshmi had accepted the plaintiff as her son taken in adoption. He would therefore argue that the very document is sufficient for the purpose



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of decreeing the suit. I have to add that, Ex.B5 is an undisputed document. It was filed by Gomathi Bai but the plaintiff had also got the benefit under the said document of nearly 5 ½ grounds in the city of Chennai in the suburbs of Vadapalani. Page 7 of the document would read as follows :

“என் மகன் A.முத்தமிழரசன் என் சுவீகாரப் பத்திரனாக பாத்யதை பெற்றவன். என் கணவர் ஆதியில் எனது இரண்டாவது தங்கையாகிய கோமதிபாய் என்பவரை என் விருப்பத்திற்கு மாறாக இரண்டாவது திருமணம் செய்தார். என் கணவர் ஆறுமுகத்திற்கும் என் தங்கை கோமதிபாயிக்கும் இரண்டு ஆண் மூன்று பெண் மகவுகள் பிறந்தன. அவர்கள் தான் இன்று என் சொத்துக்களை அனுபவிக்கிறார்கள். ஆனால் உரிமையுள்ள, எனக்காக என் உயிரைக்காப்பாற்ற வந்த நீ, சட்டப்பூர்வமாக சுவீகாரம் என்னால் செய்யப்படாததால் என் தங்கை கோமதிபாயினாலும் மற்றவர்களாலும் நீ ஒதுக்கப்பட்ட நிலையானது. ஆயினும் நீ என்னுடைய வளர்ப்பு குமாரரானபடியாலும்...”

26. Though the word “சுவீகாரம்” is used in the first line of Page No.8 of Ex.B5, the 8th line of the said document would show that Sadhu Sethulakshmi @ Sethulakshmi herself had stated that the plaintiff had not



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been taken in adoption as required by law. Therefore, Ex.B5 which was referred by Mr.S.R.Rajagopal, instead of going in favour of the plaintiff, would go against him.

27. The next argument of Mr.S.R.Rajagopal is that on the basis of the circumstantial evidence, this Court can come to a conclusion that giving and taking as required under Section 11(vi) does not require strict proof of evidence.

28. In this regard, he would draw my attention to two judgments of the Supreme Court in ***L.Debi Prasad (Dead) by L.RS. vs. Smt. Tribeni Devi and Others*** case reported in ***1970(1) SCC 677*** and other judgment in ***Nayansingh Gangaramsingh vs. Sumersingh Kewalsingh*** case reported in ***1951 SCC OnLine SC 65***. He would submit that the Supreme Court had taken a view that insofar as the ancient adoptions are concerned, positive proof cannot be produced, as those who would have been alive at the time of adoption, would not be available when the suit



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had been presented.

29. It is pertinent to point out that in this case, the specific pleading of the plaintiff is that the plaintiff was adopted as the son of Arumugam and Sadhu Sethulakshmi @ Sethulakshmi in the presence of several relatives following the traditional customs. Apart from that, it had been further pleaded his ear boring ceremony was conducted by Arumugam and Sadhu Sethulakshmi @ Sethulakshmi treating him as their own son. No doubt, it is true in case of adoptions which are lost in the mists of time, as in the case before the Supreme Court reported in **1970(1) SCC 677**, the Court cannot demand positive oral proof to prove the adoption. A careful perusal of the case before the Supreme Court shows that the plea of adoption was alleged to have been taken in the year 1892 and the suit came to be filed after several decades, sometime in the year 1934. By this time, the adopted father Gopal Das as well as his wife had passed away. On the contrary, in the case before us, Arumugam was alive in the year 2006 and he had filed a suit stating that the plaintiff was not his adopted son. Similarly, in the year 2005, Sadhu Sethulakshmi



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@ Sethulakshmi had executed Ex.B5 which we have seen above, had categorically stated that the plaintiff was not taken in adoption. Therefore, the denial of the status of the adopted son had taken place in the year 2005 itself.

30. Therefore, the plaintiff ought to have presented a suit immediately during the life time of Arumugam and Sadhu Sethulakshmi @ Sethulakshmi in order to claim his status. It is settled position of law that once the adoption is taken, the adopted parents while they can disinherit the adopted child, they cannot disown the child, as a child cannot be without the parents. That being the situation, the plaintiff waited till both Arumugam and Sadhu Sethulakshmi @ Sethulakshmi had passed away and only thereafter presented the plaint.

31. In an adoption, there are two sets of parents namely, biological parents and adoptive parents. There is no explanation from the plaintiff as to why he did not examine Sarada Bai. Even if I were to assume that



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the biological father Muniyandipillai was dead, the plaintiff should have atleast examined Sarada Bai, who is none other than the sister of Sadhu Sethulakshmi @ Sethulakshmi in order to prove that the biological parents had actually given their child, namely, the plaintiff in adoption and he was accepted by Arumugam and Sadhu Sethulakshmi @ Sethulakshmi. Even the reason for non-examination of Sarada Bai is not at all forthcoming. Even if none of the parents were available, the Plaintiff could have atleast examined the other close relatives who would have been present during such an important function as adoption. Unfortunately, none of such relatives had been examined.

32. I cannot rely upon the evidence of P.W.1 to come to a conclusion that there was giving and taking because, he would have been child of four months and the four months old child cannot plead about what took place in the year 1968. If P.W.1's evidence is discarded on the point of giving and taking, there is absolutely no other evidence for me to come to a conclusion that the requirements of Section 11(vi) had been



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complied with.

33. It is here that the judgment cited by Mr.S.Parthasarathy becomes important. Recently, the Supreme Court in ***M.Vanaja v. M.Sarla Devi(dead)*** case reported in **2020(5) SCC 307** had an occasion to deal with this issue. The relevant portions are Paragraph Nos.14 and 15, which are extracted here under :

“14. Section 7 provides that the male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. The consent of his wife has been made mandatory by the proviso to Section 7. Section 9 deals with persons who are capable of giving a child in adoption. The other conditions for a valid adoption are stipulated in Section 11 of the 1956 Act. One such condition is Section 11(vi) which is as under :

‘11. Other conditions for a valid adoption.- ...

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth (or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up) to the family of its adoption :

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human shall not be essential to the validity of an adoption.

15. A Plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the 1956 Act is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the 1956 Act are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption. The appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. That apart, the respondent who is the adoptive mother has categorically stated in her evidence that the appellant was never adopted though she was merely brought up by her and her husband. Even the grandmother of the appellant who appeared before the Court as PW 3 deposed that the appellant who lost her parents in her childhood was given to the respondent and her husband to be brought up. PW 3 also stated in her evidence that the appellant was not adopted by the respondent and her husband. Therefore, the appellant had failed to prove that she had been adopted by the respondent and her husband Narasimhulu Naidu.”

34. It is pertinent to point out in the very same judgment, the



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Supreme Court had distinguished the judgment that is relied upon by Mr.S.R.Rajagopal namely, **1970(1) SCC 677** holding that the said judgment had been delivered at a time when the Hindu Adoptions and Maintenance Act, 1956 had not come into force. It further declared as follows :

“16. The appellant relied upon a judgment of this Court in L.Debi Prasad v. Tribeni Devi [(1970) 1 SCC 677] to submit that abundant evidence submitted by her before the Court would point to the fact that she was brought up as the daughter of the respondent and her husband (late) Narasimhulu Naidu. Such evidence can be taken into account to draw inference that she was adopted by them. The facts in L.Debi Prasad v. Tribeni Devi [(1970) 1 SCC 677] are similar to those in the instant case. In that case, Shyam Behari Lal was adopted by Gopal Das in the year 1892 when he was an infant. Shyam Behari Lal was unable to establish the actual adoption but has produced considerable documentary evidence to show that he was treated as the son of Gopal Das for a quarter of century. This Court accepted the submission of Shyam Behari Lal and held that there was sufficient evidence on record to infer a valid adoption. Though the facts are similar, we are unable to apply the law laid down in L.Debi Prasad v. Tribeni Devi [(1970) 1 SCC 677] to the instant case. L.Debi Prasad v. Tribeni Devi [(1970) 1 SCC 677] case pertains to adoption that



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*took place in the year 1892 and we are concerned with an adoption that has taken place after the 1956 Act has come into force. Though the appellant has produced evidence to show that she was treated as a daughter by (Late) Narasimhulu Naidu and the defendant, she has not been able to establish her adoption. The mandate of the 1956 Act is that no adoption shall be valid unless it has been made in compliance with the conditions mentioned in Chapter I of the 1956 Act. The two essential conditions i.e. the consent of the wife and the actual ceremony of adoption have not been established. This Court by its judgment in *Ghisalal v. Dhapubai*, (2011) 2 SCC 298 held that the consent of the wife is mandatory for proving adoption.”*

35. This makes it clear that unless and until the proof of adoption is given in the terms of Section 11(vi), the Court cannot grant the declaration as sought for by the plaintiff. To complete the narration, the said judgment in ***M.Vanaja vs. Sarla Devi (Dead)*** case reported in **(2020) 5 SCC 307** has been reiterated in a recent judgment which was pronounced by the Supreme Court on 20.11.2023 in ***Moturu Nalini Kanth vs. Gainedi Kaliprasad (dead, through LRs.)*** case in Civil Appeal No.2435 of 2010 reported in ***Neutral Citation 2023 INSC 1004***.

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Therefore, I am not in a position to apply the principles of ancient adoption as developed by the Supreme Court in **1970(1) SCC 677** to the facts of the present case.

36. The argument that giving and taking can be through circumstantial manner could be accepted as held by the Supreme Court, in case, it is one of ancient adoption. In this case, from the written statement filed by the plaintiff himself under Ex.B3 would state that he was taken in adoption only in the year 1993. Therefore, the plaintiff himself was under a confusion as to when he was actually adopted whether it was 4 months after he was born or when he was 25 years old at Vadapalani Aandavar Temple.

37. The evidence for adoption must be strong and clear for the Court to come to a conclusion. That being absent in the present case and the evidence brought forth being shaky, I am not in a position to come to the rescue of the plaintiff.



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38. Insofar as the aspect on admission under Ex.A7 and Ex.A22 are concerned, I have to recall the settled position of law that admission must go the whole hog and must admit to the “fact in issue”. The “fact in issue” was that the issue of adoption between Arumugam and Sadhu Sethulakshmi @ Sethulakshmi or the plaintiff. Ex.A7 and Ex.A22 deal with the situation, where an application was filed for grant of Provident Fund by the plaintiff as the Head Master of the school that was run by the family. The 1st defendant/Gomathi Bai under Ex.B2 merely forwarded the application that had been made by the plaintiff. The person who should admit to the fact that the plaintiff is the adopted son are Arumugam and Sadhu Sethulakshmi @ Sethulakshmi. Gomathi Bai cannot admit to the said status on behalf of the aforesaid persons. The purpose of Ex.A22 was for, an application for advance of the Provident Fund in terms of the Employees Provident Fund scheme of 1952. The 1st defendant/Gomathi Bai had merely signed the document as the correspondent of the school



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and not in the capacity of representative of Arumugam or Sadhu Sethulakshmi @ Sethulakshmi. Therefore, Ex.A22 does not help the case of the plaintiff.

39. Insofar as Ex.A7 is concerned, this is a proforma of the record maintained by the school. It is on record that, Arumugam was a very wealthy person and he had been taking care of the interest of his relatives as well as that of his wife's relatives. While running the school, perhaps, Arumugam had tendered to give his name as a parent and this is what was set forth in the proforma. The proforma is a mere extract of the qualifications of the plaintiff but does not directly deal with the issue of adoption.

40. I am not willing to read Ex.A5 and Ex.A22 as documents of admission. An admission must be to a fact in issue and both Ex.A5 and Ex.A22 do not admit to the adoption and therefore, I reject the argument to that effect made by Mr.S.R.Rajagopal.



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41. In the light of the above discussion, this Second Appeal fails, the judgment and decree of the Court of the learned XVII Additional Judge, City Civil Court, Chennai in A.S.No.260 of 2015, dated 23.08.2016 in confirming the judgment and decree of the Court of the learned IV Assistant Judge, City Civil Court at Chennai in O.S.No.1791 of 2013, dated 09.07.2015 stands confirmed.

42. Accordingly, this Second Appeal stands dismissed. Costs through out.

06.02.2024

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

1.The XVII Additional Judge,
City Civil Court, Chennai

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2.The IV Assistant Judge,
City Civil Court, Chennai

V.LAKSHMINARAYANAN,J.

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