



S.A.No.975 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.975 of 2004

Velayudham

... Appellant

Vs

1.Meenatchi
2.Somasundaram
3.Subbiah @ Thannermalaiyan
4.Muthathal (Died)
5.Valliappan (Died)
6.Sigappi
7.Devi
8.Rajathi
9.Kulandai Gounder

... Respondents

(Memo dated 13.04.2024 presented before the Court on 15.04.2024 is recorded to the effect that respondents 4 and 5 died and respondent 6 to 8 who are already on record, are recorded as LR's of the deceased R4, vide Court order dated 15.04.2024)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 26.12.2002 passed in A.S.No.44 of 2001 on the file of learned Subordinate Judge, Pudukkottai, confirming the judgment and decree dated 29.03.2001 made in O.S.No.111 of 1996 on the file of District Munsif cum Judicial Magistrate, Thirumayam.

For Appellant

: Mr.R.Thiagarajan

For Respondents

: Mr.G.Sridharan for R7 & R8
R1 to R3, R6 & R9 dispensed with



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R4 & R5 died

JUDGMENT

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The plaintiff in the suit is the appellant. Suit is for partition. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

2. According to the plaintiff, his father Muthadaikkappa Chettiyar married one Sigappi and a son was born through her viz., Ramanathan. Thereafter, he married plaintiff's mother Renganayaki as second wife. The plaintiff and defendants 1 to 3 are children of Muthadaikkappa Chettiyar through Renganayaki. The said Muthadaikkappa Chettiyar died in the year 1950 leaving behind his wife Renganayaki and five children viz., plaintiff, defendants 1 to 3 and Ramanathan, a son born through the first wife. The above said Ramanathan married one Valliammal and she died in the year 1963. Later he married 4th defendant and through her defendants 5 to 8 were born. Ramanathan died in the year 1988. the plaintiff claimed that the first item of the suit property was ancestral property and the life interest of Renganayaki viz., 1/5th share enlarged into absolute estate by passing of the Hindu Succession Act, 1956 and hence, the plaintiff claimed 4/15th share in the suit



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property. It was asserted by the plaintiff that after the death of Ramanathan, he enjoyed the property along with other defendants. The 4th defendant started to act against the interest of the plaintiff and his brothers. Therefore, a demand for partition was made and the same was evaded by the 4th defendant. In these circumstances, the plaintiff issued a lawyer notice on 09.05.1991 seeking partition of the suit property. The contesting defendants replied with false allegations and hence, the plaintiff was constrained to file a suit for partition seeking 4/15th share.

3. The defendants 1 to 3 remained *ex parte*. 4th defendant filed a written statement and the same was adopted by the defendants 5 to 8. The contesting defendants denying the claim of the plaintiff that Renganayaki married to Muthadaikkappa Chettiyar. They also denied the status of the plaintiff and defendants 1 to 3 as the children of Muthadaikkappa Chettiyar. It was claimed by the defendants that Ramanathan was the only son of Muthadaikkappa Chettiyar and the plaintiff had no right to maintain the suit for partition. It was further claimed by the defendants that after the death of Muthadaikkappa Chettiyar, 4th defendant's husband Ramanathan enjoyed the property exclusively and after his death, the same had been in possession and



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enjoyment of the defendants 4 to 8. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and 20 documents were marked on his side as Ex.A1 to Ex.A20. On behalf of the defendants, 4th defendant was examined as D.W.1 and yet another witness was examined as D.W.2. On behalf of the defendants, 57 documents were marked as Ex.B1 to Ex.B57. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove the marriage of Renganayaki with Muthadaikkappa Chettiyar and also their status as children of Muthadaikkappa Chettiyar and consequently, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.44 of 2001 on the file of Subordinate Judge, Pudukkottai. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiff has come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following



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substantial questions of law by an order dated 26.04.2004:

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“1. Is the learned Subordinate Judge correct in holding that the plaintiff and defendants 1 to 3 are not entitled to partition in the separate properties of their father without advertng to Section 16(3) of Hindu Marriage Act?

2. Is the learned Subordinate Judge correct in not drawing the presumption of marriage under Section 114 of Evidence Act when the plaintiff has proved the marriage and there is no rebutal of the same?”

7. The learned counsel for the appellant vehemently contended that the plaintiff filed various documents in support of his claim that Renganayaki married Muthadaikkappa Chettiyar and the plaintiff and the defendants 1 to 3 are the children born to him. The learned counsel specifically has drawn the attention of this Court to the vaccination certificates marked as Ex.A2 and Ex.A5 and the marriage invitations of the third defendant and the plaintiff marked as Ex.A8 and Ex.A9 in support of his contention that the marital status of Renganayaki and paternity of plaintiff had been proved. The learned counsel further submitted that D.W.1 was not competent to speak about the marriage that had taken place between the Renganayaki and Muthadaikkappa Chettiyar in the year 1926. It was also submitted by the learned counsel that the



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plaintiff by producing various documents proved that Muthadaikkappa Chettiyar and Renganayaki lived as husband and wife and the presumption raised by the evidence was not at all rebutted by the evidence of D.W.1.

8. The learned counsel appearing for the respondents by taking this Court to the findings of the trial Court submitted that the marriage between Renganayaki and Muthadaikkappa Chettiyar was not at all proved and the plaintiff miserably failed to establish the same by examining any independent witnesses. When absolutely there is no evidence available on record to prove the marriage of Renganayaki with Muthadaikkappa Chettiyar, the plaintiff and the defendants 1 to 3 are not entitled to claim right under Section 16(3) of the Hindu Marriage Act, 1955.

9. It is the case of the plaintiff that Muthadaikkappa Chettiyar married Renganayaki in Malaysia and the plaintiff was born to Muthadaikkappa Chettiyar through his second wife Renganayaki. In support of his contention, the plaintiff was examined as P.W.1. The plaintiff has not examined any other independent witnesses to prove the



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factum of marriage. The learned counsel for the appellant submitted that since the marriage between Muthadaikkappa Chettiyar and Renganayaki had taken place in the year 1926, the appellant is not in a position to lead any documentary evidence in support of the factum of marriage. The plaintiff in order to create presumption of marriage, could have examined neighbours or other independent witnesses to prove that Muthadaikkappa Chettiyar and Renganayaki had lived as husband and wife for long time. But except interest testimony of plaintiff, there is no evidence available on record to speak about the factum of marriage. Therefore, both the Courts below came to the conclusion that the factum of marriage between Muthadaikkappa Chettiyar and Renganayaki was not at all proved by the plaintiff. The vaccination certificates relied on by the plaintiff viz., Ex.A2 and Ex.A5 are not useful to prove that the plaintiff was born to Muthadaikkappa Chettiyar as the name of the plaintiff was not mentioned in those documents. In Ex.A11, birth certificate of the plaintiff also, the name of the child is not mentioned and the same is useful only to prove that a male child was born to Muthadaikkappa Chettiyar on 10.10.1944 and the same was not useful to prove that the plaintiff was born to Muthadaikkappa Chettiyar.

10. Much reliance was made by the learned counsel for the



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appellant on Ex.A8 and Ex.A9 in support of his contention. Ex.A8 is the marriage invitation of the third defendant printed in the name of Ramanathan Chettiyar and Ex.A9 is the marriage invitation of the plaintiff printed in the name of Ramanathan Chettiyar. In Ex.A8 and Ex.A9, the name of Renganayaki is not at all mentioned. Therefore, EX.A8 and Ex.A9 cannot be taken as an evidence to prove the marital relationship between Muthadaikkappa Chettiyar and Renganayaki. Even as per the admitted case of the appellant/plaintiff, Muthadaikkappa Chettiyar died in the year 1950. Therefore, unless the factum of marriage between Muthadaikkappa Chettiyar and Renganayaki is proved, any son born to Renganayaki cannot claim share in the properties of Muthadaikkappa Chettiyar under Section 16 (3) of the Hindu Marriage Act, 1955. In this regard, the Courts below relied on the judgment of this Court in ***Singaram @ Velayudha Udayar and two others Vs. Subramaniam and three others*** reported in ***1999 (III) CTC 136***. While considering the rights of the illegitimate children born under void marriage or voidable marriage, this Court observed as follows:

“22. In the case on hand there is absolutely no evidence to establish the question of marriage between Nainamalai and the fourth defendant. More so, both the courts below have concurrently, on a question of fact, held that there was no marriage at all in any form between the said Nainamalai and



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the fourth defendant. When there is no marriage, the fourth defendant can be only a concubine of the said Nainamalai. Section 16 of the said Act do not deal with the rights of the children through the concubinage.”

11. Therefore, Section 16 of the Hindu Marriage Act, 1955 only deals with rights of the children born out of void or voidable marriage and the same is not dealing with the rights of the children through concubinage. Therefore, the above mentioned decision is squarely applicable to the facts of the present case. In the case on hand, as mentioned earlier, there is no evidence available on record to prove the factum of marriage between Renganayaki and Muthadaikkappa Chettiyar. When the factum of marriage is not proved, the sons allegedly born to Muthadaikkappa Chettiyar through Renganayaki are not entitled to claim any right in the ancestral property of Muthadaikkappa Chettiyar that too under old Hindu law prior to coming into force of the Hindu Marriage Act, 1955. In such circumstances, the questions of law framed at the time of admission are answered against the appellant and in favour of the respondents. Therefore, the second appeal stands dismissed. There shall be no order as to costs.

22.07.2024

NCC : Yes / No



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: Yes / No

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S.SOUNTHAR, J.

vsm

To

- 1.The Subordinate Judge, Pudukkottai.
- 2.The District Munsif cum Judicial Magistrate, Thirumayam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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