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S.A.No.563 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 10 / 2024

JUDGMENT PRONOUNCED ON : 22 / 01 / 2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.563 OF 2018

AND

CMP NO.16900 OF 2018

1.C.Subramanian

2.S.Meenachi

... Appellants / Appellants /
Plaintiffs

Vs.

1.V.Shanmugam

2.Kanimozhi

... Respondents / Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 8, 2017 passed in A.S.No.42 of 2016 on the file of the II Additional Subordinate Judge, Villupuram, confirming the Judgment and Decree dated February 3, 2016 made in O.S.No.152 of 2013 on the file of the Principal District Munsif, Thirukoilur.

For Appellants : Mr.S.Mukunth
Senior Counsel
for Mr.K.Sathish Kumar
For Respondents : Mr.E.K.Kumaresan



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JUDGMENT

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This Second Appeal is preferred by the unsuccessful plaintiffs in the Original Suit, assailing the Judgment and Decree dated December 8, 2017 passed in A.S.No.42 of 2016 by the 'II Additional Subordinate Court, Villupuram' ['First Appellate Court' for brevity], wherein and whereby the Judgment and Decree dated February 3, 2016 passed in O.S.No.152 of 2013 by the 'Principal District Munsif Court, Thirukoilur' [henceforth 'Trial Court'] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. The plaintiffs are a married couple with three children, the youngest of whom is Rajasekar. The defendants are also a married couple, with the 1st defendant being the maternal uncle of 2nd plaintiff. Although the defendants were married in 1993, they were issueless. Hence, out of kindness, the plaintiffs allowed the defendants to take care of their 3rd child – Rajasekar by leaving him under the defendants custody. The plaintiffs never gave him in adoption to the defendants. However, the



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defendants took advantage of the custody, and obtained a Deed from the plaintiffs through false representation. The plaintiffs became aware of this

Deed as an Adoption Deed only on June 11, 2012, when they demanded return of the child. Plaintiffs claim that no adoption ceremonies were performed and they never consented to the alleged adoption. Currently, the defendants' marital relationship has deteriorated. The 1st defendant developed a relationship outside of marriage with one A***** [name masked for the sake of privacy] and have a female child through her. After the birth of this female child, the 1st defendant failed to maintain Rajasekar. Consequently, the plaintiffs demanded return of his custody. In response, the 1st defendant claimed that the child was adopted by him through an Adoption Deed dated April 20, 2005, which was actually obtained falsely. Further, the 1st defendant deserted his wife / 2nd defendant. Currently, child - Rajasekar is in the custody of the 2nd defendant, who is now living without sufficient income in a penurious condition unable to maintain the child. Despite this, the 2nd defendant refused to return the child to the plaintiffs. Therefore, the plaintiffs have filed the Suit praying to declare the Adoption Deed as null and void, and for mandatory injunction directing the defendants to hand over custody of



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the child to the plaintiffs.

WEB CO **DEFENDANTS' CASE**

4. The defendants filed written statement denying the plaintiff averments, except the relationship between the parties and that their marriage took place in 1993 and that they were not blessed with a child. According to the defendants, since they were issueless, they adopted the child - Rajasekar from the plaintiffs with their consent. The adoption ceremony was conducted on August 30, 2004 at Padaleeswarar Temple, Cuddalore, in accordance with Hindu customs. From that day onwards, the child has been under their custody as their son. The defendants maintained the child with love and affection. To evidence the adoption, the defendants executed an Adoption Deed on April 20, 2005 with plaintiffs' due consent. They enrolled the child at Mahabharathi International School, Kallakurichi. On July 4, 2005, the 1st defendant settled a property in favour of the minor child - Rajasekar. The plaintiffs have filed the Suit with a *mala fide* intention to usurp the said property. The Suit is not maintainable as it is barred by limitation. Accordingly, they sought for dismissal of the Suit with costs.



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5. At trial, the plaintiffs were examined as P.W.1 and P.W.2, four other witnesses were examined as P.W.3 to P.W.6, and Ex-A.1 to Ex-A.4 were marked on the side of the plaintiffs. On the side of the defendants, the 1st defendant was examined as D.W.1, three other witnesses were examined as D.W.2 to D.W.4, and Ex-B.1 to Ex-B.12 were marked.

6. Upon hearing both sides and perusing the evidence available on record, the Trial Court mainly relied on the oral evidence of D.W.1 to D.W.3 coupled with the evidence of P.W.1 to P.W.6 to conclude that the factum of adoption has been proved and that Ex-A.1 – Adoption Deed is a valid one. Accordingly, the Trial Court dismissed the Suit.

FIRST APPELLATE COURT

7. Feeling aggrieved, the plaintiffs preferred an appeal in A.S.No.42 of 2016 before the First Appellate Court, which after hearing both sides and perusing the documents available on record, confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal.



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8. Feeling aggrieved by the same, the plaintiffs have preferred this Second Appeal. Considering the nature of the Second Appeal, this Court vide its Order dated October 1, 2024, directed the Registry to call for records from the Trial Court as well as the First Appellate Court. Accordingly, records were received from both the Courts.

ARGUMENTS

9. Mr.S.Mukunth, learned Senior Counsel appearing for the appellants / plaintiffs would submit that the Trial Court as well as the First Appellate Court failed to consider the evidence in proper perspective. Actual / physical giving and taking of the child is *sine quo non* of a valid adoption. In this case, as the defendants were issueless, the child was given to them for the purpose upbringing only, out of kindness and out of respect for the elders' words. In Ex-A.1 – Adoption Deed, there is no such recital that the minor child was actually given to the defendants by the plaintiffs under adoption. The admissions made by the first plaintiff / P.W.1 is not a clear admission but a honest statement. It has to be seen as a whole through the lens of the facts and circumstances of this case. Further he would argue that the first defendant is in a relationship outside of



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marriage with one A***** and through her, two children were born.

Hence, the alleged adoption is barred under Section 7 of the Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956). The Trial Court as well as the First Appellate Court dismissed the Suit only on the ground that the plaintiffs and other witnesses admitted their signatures in Ex-A.1 – Adoption Deed. Both the Courts did not consider the fact that only on compulsion by elders, the plaintiffs were forced to sign Ex-A.1 - Adoption Deed. The defendants failed to prove that on August 30, 2004, adoption ceremony took place as per Hindu Rites and Customs. The plaintiffs acquired knowledge about Ex-A.1 – Adoption Deed only on June 11, 2012 and the Suit has been filed within three years therefrom. Hence, the Suit is well within time. Both the Courts concluded that the Suit is barred by limitation, which is erroneous. Further, D.W.1 / first defendant, in view of his subsequent conduct, has no locus to give evidence on behalf of his wife / second defendant. Accordingly, the learned Senior Counsel would pray to allow the Second Appeal and set aside the Judgment and Decree passed by Trial Court as well as First Appellate Court.



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10. In response to the above arguments, Mr.E.K.Kumaresan, learned Counsel appearing for the respondents / defendants would argue that the factum of adoption has been proved by examining D.W.3, who is none other than the maternal uncle of the second plaintiff. Further, adoption took place on August 30, 2004 at Cuddalore Padaleeswarar Temple in a proper adoption ceremony. On April 20, 2005, Ex-A.1 – Adoption Deed was executed confirming the adoption that took place on August 30, 2004. Further, P.W.3, who is none other than the father of the second plaintiff and P.W.4, who is the paternal uncle of the second plaintiff were examined on the side of the plaintiffs and their evidence corroborates the factum of adoption and execution of Ex-A.1 – Adoption Deed. Pursuant to the execution of Ex-A.1 – Adoption Deed, the defendants executed a Gift Settlement Deed as well in favour of their adoptive son vide Ex-B.2 – Gift Settlement Deed dated July 4, 2005. Further, P.W.1 is ‘Bachelor of Engineering’ dropout and P.W.2 has completed ‘Bachelor of Commerce’; both are well educated persons. Further, as per Section 120 of Indian Evidence Act, 1872, spouse is a competent witness to depose on behalf of the other. Further he would submit that there is no pleadings as regards under Order VI Rule 4 of the



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Code of Civil Procedure, 1908. In the absence of such particulars, plea of *non-est factum* is not sustainable. The Trial Court as well as the First Appellate Court after considering the evidence and materials, recorded a factual finding that the adoption was proved. Further, the act of giving and taking of a child in adoption is a question of fact and not a question of law. There is no question of law much less any Substantial Question of Law involved in this Second Appeal. Accordingly, he would pray to dismiss the Second Appeal.

10.1. In support of his submissions, learned Counsel for the respondents / defendants relied on the following judgments:

(i) Judgment of the Hon'ble Supreme Court in Chandrabhan Vs. Saraswati and Others, reported in 2022 SCC OnLine SC 1273;

(ii) Judgment of the Hon'ble Supreme Court in Ramathal and Others Vs. K.Rajamani, reported in 2023 SCC OnLine SC 1022;

(iii) Judgment of the Hon'ble Supreme Court in Placido Francisco Pinto and Another Vs. Jose Francisco Pinto and Another, reported in 2021 SCC OnLine SC 842 ; and



(iv) Judgment of the High Court of Andhra Pradesh at Hyderabad in Idam Swarajya Laxmi and Others Vs. Idam Vani and Others, reported in 2004 SCC OnLine AP 263

DISCUSSION

11. This Court has considered the submissions made on either side and perused the evidence available on record.

12. Admittedly, the plaintiffs and the defendants are close relatives. In fact, the first defendant is none other than the maternal uncle (தாய் மாமா) of the second plaintiff. Minor Rajasekar was born to the plaintiffs as their third child on April 20, 2004. The defendants were married in the year 1993 and were issueless. There is no dispute with regard to the above facts.

13. According to the plaintiffs, the child was merely given to the defendants for upbringing, out of kindness, considering the fact that they were issueless. According to the defendants, on August 30, 2004 when the minor child Rajasekar was four months old, the plaintiffs voluntarily gave him for adoption to the defendants. In cases of adoption, initial burden of proof is upon the adoptive parents (defendants) to prove



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the factum of adoption and execution of adoption deed. In order to prove the adoption, the defendants examined D.W.3, who is a close relative to both parties. D.W.3 has clearly deposed about the adoption of Rajasekar that took place on August 30, 2004 at Cuddalore Padaleeswarar Temple. He has further deposed that pursuant to the adoption, Ex-A.1 – Adoption Deed was executed on April 20, 2005. Further, after adoption, the defendants executed Gift Settlement Deed in favour of their adoptive son under Ex-B.2, which also supports the factum of adoption and execution of Ex-A.1 – Adoption Deed.

14. The plaintiffs, who are educated persons, clearly admitted the execution of Ex-A.1 – Adoption Deed. They did not deny the execution of the adoption deed. On the other hand, the plaintiffs stated that only at the compulsion of the elders, the plaintiffs signed in Ex-A.1. If it is so, the *onus* is upon the plaintiffs to prove the alleged coercion or compulsion. On the side of the plaintiffs, six witnesses were examined as P.W.1 to P.W.6. However, the evidence of P.W.1 to P.W.6 do not favour the plaintiffs' case. The evidence of P.W.1 to P.W.6 coupled with the evidence of D.W.3 – Ramasamy clinchingly prove the execution of Ex-A.1 – Adoption Deed. It is apposite to note here that 1st plaintiff's father



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K.Chockalingam appeared before the Court on August 17, 2015 and filed

his chief affidavit as D.W.4. To be noted, his chief affidavit was recorded under oath in open Court. Unfortunately, he passed away before the date, when the case was posted for cross examination. It is settled law that his evidence is admissible, can be considered, appreciated along with other evidence available on record. His chief affidavit fully supports the case of the defendants. As stated *supra*, in this case, not only the parties to the Suit, except D.W.2 Document Writer, other witnesses are also close relatives of both the plaintiffs and defendants.

15. Admittedly, the adoptive son is under the care and custody of the second defendant. Cumulative reading of the evidence coupled with the facts and circumstances of the case would show that the child is nurtured in a proper environment with good education. Till 2012, there was no dispute between the plaintiffs and the defendants with regard to custody of the child. It is alleged by the plaintiffs that in the year 2012, the first defendant got into a relationship outside of marriage with one A*****, through whom two children were born. The said fact was not denied by first defendant and now there is no serious dispute with the same. However, there is no evidence available on record to show that on



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the date of adoption and execution of Ex-A.1 – Adoption Deed, the first defendant was in a relationship outside of marriage. The subsequent conduct of the adoptive father cannot invalidate a valid adoption. Moreover, Ex-A.1 - Adoption Deed is a registered one. Hence, Ex-A.1 attracts the presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956. Of course, the presumption is a rebuttable one. In view of presumption, the *onus* shifts onto the plaintiffs to rebut the presumption stated under Section 16 of the said Act. But the evidence adduced on the side of plaintiffs are not sufficient to rebut the same. In fact, the plaintiffs' evidence strengthens the case of the defendants. Perusal of the plaintiffs' side oral evidence *viz.*, P.W.1 to P.W.6, would clearly show that valid adoption took place on August 30, 2004 at Padaleeswarar Temple, Cuddalore, pursuant to which, Ex-A.1 – Adoption Deed was executed on April 20, 2005. The Suit has been filed eight years after the adoption and execution of Ex-A.1 – Adoption Deed. The Trial Court and the First Appellate Court concluded that the relief sought for in the plaint is barred under Article 57 of the Limitation Act, 1963. This Court finds no reason to interfere in it.



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16. Both, the Trial Court as well as the First Appellate Court, after considering the materials and evidence available on record, arrived at a factual finding that the factum of adoption and execution of Ex-A.1 – Adoption Deed were proved. This Court is not inclined to interfere with same in view of the overwhelming evidence available on record which are all in favour of the defendants. There is no quarrel with the case laws relied on by the defendants' side. There is no question of law much less substantial question of law involved in the Second Appeal. The Second Appeal deserves to be dismissed.

CONCLUSION

17. In fine, the Second Appeal is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

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- 1.The II Additional Subordinate Judge
Villupuram.
- 2.The Principal District Munsif
Thirukoilur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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