



A.S.No.570 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.03.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.570 of 2024 and
C.M.P.No.17578 of 2024

T.B.Bharath

... Plaintiff/Appellant

-vs-

1. Vanitha
2. Gowrajammal
3. M.Harinar
4. M.Pradeepan

5. The Tahsildar,
Taluk Office,
Bargur,
Krishnagiri District.

6. The District Collector,
Krishnagiri.

7. The Sub Registrar,
Krishnagiri.

... Respondents/Respondents

Prayer: Appeal Suit is filed under Section 96 of the CPC to allow this appeal to allow this appellant to raise additional grounds at the time of arguments, set aside the judgment and decree dated 05.02.2024 in O.S.No.144 of 2018 passed by the Trial Court, The Additional District Court, Krishnagiri with costs.



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A.S.No.570 of 2024

For Appellant : Mr.Adaikala Arockiaraj
For Mrs.T.Dharani
For R1 : Mr.C.Umashankar
For R3 & R4 : Mr.M.Selvam
For R2,R5,R6&R7: Set Exparte in the Trial Court

J U D G M E N T

A challenge has been made to the decree and judgment of the Trial Court, dismissing the suit filed for declaration and partition.

2. The case of the plaintiff/appellant is that he was adopted by the 1st defendant and her husband when he was 45 days old and adoption was done as per the customs and Hindu rites. The 1st defendant educated him in A.E.S.Matric Higher Secondary School upto 8th standard and at that time, his adoptive father died on 25.11.2012. Thereafter, the plaintiff was admitted in Swathi Matric Higher Secondary School at Hosur and was studying 9th standard in the school. As the school fee has not been paid by the 1st defendant, the plaintiff was not permitted to pursue education and he went to his parents house.



A.S.No.570 of 2024

3. According to the plaintiff, thereafter, he was in the custody

of one Rojali's at Kannandahalli and the 1st defendant failed to get back her adoptive son back to her house. Subsequently, the plaintiff came to know that his father Balu @ Balachandran executed a registered Will on 13.12.2009 in respect of 'A' Schedule property and based on the Will, the plaintiff approached the 1st defendant to deliver the Will property and at that time, he came to know that the 1st defendant had obtained a decree in O.S.No.192 of 2013, stating that the property belonged to her. The suit was proceeded as against the minor and represented by one Gowrajammal and therefore, the said decree and judgment is not binding on the plaintiff. Hence, the plaintiff seeks declaration of 'A' Schedule property on the basis of the Will and insofar as 'B' Schedule property is concerned, he seeks partition in respect of half share.

4. It is the contention of the 1st defendant in the written statement that the property originally belonged to one Nagappa Chetty as per the partition deed of the year 1965 and after his demise, his son T.A.Balu @ Balachandran (in short 'Balu') inherited the property and



A.S.No.570 of 2024

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therefore, the property is not a self acquired property of Balu. The adoption of the plaintiff is denied by the 1st defendant. Similarly, the allegation that 1st defendant and her husband educated the plaintiff is also denied. It is further contended that Rojali with whom the Plaintiff was in the custody had already filed a suit in O.S.No.167 of 2013 on the file of District Munsif, Krishnagiri for a relief of declaration on the basis of the Will said to have been executed by Balu on 10.12.2010. The said suit was dismissed on 24.02.2015 and the appeal was also dismissed on 30.11.2017. The 1st defendant denied the execution of registered Will by her husband and according to her, she is the sole legal heir of her husband and disputed the claim of the plaintiff.

5. The Trial Court, on the basis of the aforesaid pleadings, framed the following issues:

1) Whether the plaintiff is the legal heir of the deceased Balu @ Balanchandran as adopted son or whether the 1st defendant alone is the legal heir of the deceased Balu @ Balachandran?

2) Whether the suit schedule properties is the ancestral property?



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A.S.No.570 of 2024

3) Whether the registered Will dated 31.12.2009 executed in favour of the plaintiff is valid?

4) Whether the plaintiff was in the possession of the suit schedule property?

5) Whether the plaintiff is entitled to the relief of declaration to the suit schedule property?

6) Whether the plaintiff is entitled to the relief of $\frac{1}{2}$ share in the suit 'B' schedule properties?

7) Whether the plaintiff is entitled to the relief of declaration of sale deed in Doc.No.240/2018 dated 22.01.2018 as null and void?

8) Whether the plaintiff is entitled the decree of cancel the decree of the suit in O.S.No.192/2013 dated 15.03.2017 as null and void?

9) Whether the plaintiff is entitled to the relief of permanent injunction?

10) To what other relief of the plaintiff is entitled?

6. On the side of the plaintiff, the plaintiff was examined as P.W.1 and P.W.2 to P.W.5 were also examined and Ex.A1 to Ex.A16 were marked. On the side of the defendants, 1st defendant was examined as D.W.1 and D.W.2 to D.W.4 were also examined and Ex.B1 to Ex.B4 were marked. Ex.X1 to Ex.X11 as also Ex.C1 to Ex.C3 documents were marked.



A.S.No.570 of 2024

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7. The Trial Court, after considering the entire material documents and evidence dismissed the suit. Challenging the judgment of dismissal, the instant appeal has been filed.

8. Learned counsel for the appellant would mainly submit that Ex.A4 is the registered Will and one of the attesting witnesses, namely, P.W.3 has spoken about the execution of the Will. That apart, the 1st defendant admitted in her cross examination that there was adoption and therefore, the Trial Court's judgment is without proper appreciation of evidence. He would further submit that the decree in O.S.No.167 of 2013 on the file of District Munsif, Krishnagiri, which is marked as Ex.A5 was obtained by the 1st defendant fraudulently and therefore, the same is not binding on the minor. The Trial Court ought to have relied upon the Will to grant the relief and hence, prayed for allowing the instant appeal.

9. Per contra, learned counsel for the 1st respondent would



A.S.No.570 of 2024

contend that the adoption has not been established as per law and merely because in the school certificate, Balu is shown as father, the adoption cannot be presumed automatically in the absence of any proof in respect of adoption in the manner known to law. That apart, the Will relied upon by the plaintiff has not been proved as per law and therefore, the same cannot be admitted in the eye of law.

10. In the light of the above, the points for consideration in this appeal are as follows:

- i) Whether the plaintiff is the adopted son of the 1st defendant and her husband?
- ii) Whether the Will dated 13.12.2009 is true and valid and proved in the manner known to law?

POINTS:

11. It is the main case of the plaintiff that he was given in adoption, when he was 45 days old and he was given education by Balu, husband of the 1st defendant. His adoptive father died, while he was studying 8th standard and thereafter, the 1st defendant did not support the



A.S.No.570 of 2024

plaintiff and the plaintiff was under the care and custody of one Rojali.

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Once a person takes the plea of adoption, the same has to be established with some evidence. The plaintiff is not in a position to say as to who is his natural / biological parents, who has given him adoption and the place of adoption. Absolutely, there is no evidence. It is relevant to point out that as per Hindu Adoption and Maintenance Act, 1956, no person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption. When the plaintiff is not in a position to establish the names of his parents or guardian, the contention that he was adopted by the husband of the 1st defendant cannot be countenanced.

12. In terms of Section 11 of the Act, 1956, 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. In this case, the plaintiff has not established whether he was given adoption by the parents or any guardian



A.S.No.570 of 2024

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and under whose custody he was. Merely on the basis of some school certificate marked as Ex.A10, wherein his father's name is mentioned as Balu, it cannot be said that adoption is validly proved. At the most, the document relied upon by the plaintiff will give an inference about fostering the child and not beyond that. Fostering a child is different from adoption.

13. When a person proved adoption, the adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. Therefore, when a child is transferred from the custody of natural parents to the adoptive parents, he elevates his position as the son of the adoptive parents, where he can also claim right in the adoptive parents' property also. In such view of the matter, as the adoption has not been established, merely on the basis of some school records, which indicates the name of Balu as father, adoption cannot be presumed. ***Thus, the Point No.1 is answered accordingly.***



A.S.No.570 of 2024

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14. Insofar as the 2nd point in respect of Ex.A4 / Will said to have been executed by Balu, is concerned, it is relevant to note that when a person relies upon a Will, the same has to be proved in the manner known to law. At least one of the attesting witnesses to the Will ought to have spoken about the execution and attestation of the Will as per law. It is to be noted that the original Will has not been placed on record. There is no foundation made for production of secondary evidence. Unless the foundation is made for loss of original or for non production of original, as a matter of right, the secondary evidence is not permissible. Such course has not been followed while producing the certified copy. Therefore, at the first instance, the certified copy cannot be relied upon.

15. Be that as it may, in respect of proof of the Will, the plaintiff has examined P.W.3 and P.W.4. Though P.W.3 is stated to be one of the attesting witnesses, he has not spoken about the execution of the Will as mandated in law. In the entire evidence of P.W.3, he has not spoken anything about the signing of the Will by the attester in his presence and



A.S.No.570 of 2024

also in the presence of other attesting witnesses. According to him, he has signed the document executed by Balu and he does not know as to the nature of the document he signed. The entire evidence of P.W.3 does not qualify the test to prove the execution and attestation. Execution in the sense, the attesor should have signed the document after understanding its contents and the attestation means that the attesor signing the document ought to have been witnessed by both witnesses. Similarly, the attesor should have seen both witnesses signing in his presence. These aspects have not been spoken by P.W.3.

16. It is relevant to note that P.W.3 has not been treated as hostile and no cross examination has been done. P.W.4, the other witness in any event does not support the case of the plaintiff, as he never spoke about the execution and attestation. P.W.2 / Sub-Registrar was examined, who has just produced some records from the Sub-Registrar's Office and his evidence does not show that the Will was executed in his presence and registered in his presence and therefore, his evidence does not satisfy to prove the execution of Will. The plaintiff has not made any attempt to prove



A.S.No.570 of 2024

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the Will by any other evidence, particularly when the attesting witnesses denied the execution of the Will. When both the attesting witnesses did not support the case of the plaintiff, the Will ought to have been proved by any other evidence as adumbrated under Section 71 of The Indian Evidence Act, 1872. No attempt whatsoever was made and therefore, in the absence of any evidence for the proof of Will, the relief of declaration cannot be granted in favour of the plaintiff. No attempt was made by the plaintiff to prove the Will in the manner known to law. ***The 2nd point is answered accordingly.***

17. For the foregoing reasons, this Court is of the view that the instant appeal fails and is liable to be dismissed. Accordingly, the Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.03.2025

Index: Yes / No
Internet: Yes / No
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A.S.No.570 of 2024

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To:

1. The Additional District Judge,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court,
Madras.



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A.S.No.570 of 2024

N.SATHISH KUMAR,J.,
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A.S.No.570 of 2024