

A.S.(MD).No.35 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.09.2025

PRONOUNCED ON : 26.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD).No.35 of 2019

N.Harikrishnan

....Appellant/Plaintiff

Vs

1.Parameshwari

2.Karunakaran

....Respondents/Defendants

Prayer: The First Appeal filed under Section 96 of C.P.C, to allow the appeal by setting aside the judgment and decree made in O.S.No.06 of 2014 dated 08.11.2018 on the file of the Family Court, Dindigul.

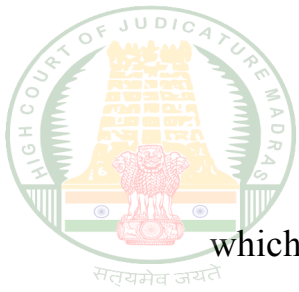
For Appellant : Mr..M.Thirunavukkarasu

For Respondents : Mr.S.Anand Chandrasekar
For M/s.Sarvabhauman Associates

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The plaintiff in O.S.No.6 of 2014 on the file of the Family Court, Dindigul has filed the present appeal challenging the dismissal of his suit



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which was filed for a declaration that the first defendant is not his legally wedded wife and the second defendant is not his legitimate son. The plaintiff had further prayed that the defendants should not make any claim as if they are the wife and son of the plaintiff.

(A).Summary of the plaint is as follows:

2.The plaintiff had married one Nagavalli and he is blessed with three sons namely Sethupathi, Boopathi and Pasupathi. There is no marriage between the plaintiff and the first defendant and they have never lived together as husband and wife. There is no connection between the plaintiff and the first defendant.

3.The first defendant and her mother made a request to the plaintiff to marry the first defendant. However, the plaintiff has not agreed for the same. Therefore, the first defendant for herself and for her son (born without marriage) claimed maintenance under Section 125 of Cr.P.C. In such circumstances, the status of the plaintiff has become doubtful and there is a possibility of wrong perception being created as against him. Hence, the present suit.

(B).Summary of the written statement is as follows:

4.The marriage between the plaintiff and the first defendant was conducted as per Hindu Customs in Pillaiyar Temple. Thereafter, the plaintiff and the first defendant lived together as husband and wife and through the



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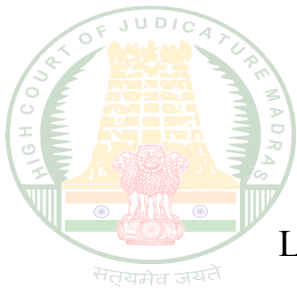
said wedlock, the second defendant was born. Thereafter, the plaintiff harassed the first defendant demanding dowry. Hence, a criminal case was lodged as against the plaintiff and he was convicted confirming that the first defendant is the wife of the plaintiff.

5.The defendant had also filed MC.No.19 of 1994 before the Judicial Magistrate No.III, Dindigul seeking maintenance and the same was allowed and confirmed in appeal. Pursuant to this order, the first defendant and her minor son are receiving maintenance from the plaintiff. Only to evade the payment of maintenance, the present suit has been filed. Since the marital status of the first defendant had already been declared in the previous proceedings, the present suit is barred by principle of *res judicata*.

6.The plaintiff had examined himself as PW1 and his relative was examined as PW2. On the side of the plaintiff, Exs.A1 to A5 were marked. The first defendant has examined herself as DW1 and a villager has been examined as DW2. On the side of the defendants, Exs.B1 to B13 were marked.

(C).The trial Court had rendered the following findings:-

7.(a)The cause of action for filing the suit arose when the first defendant had filed MC.No.18 of 1994. However, the present suit has been filed after a period of three years i.e on 15.03.2007 and hence, the present suit is barred under Article 58 of the



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Limitation Act.

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b)During cross examination, PW1 has admitted that the second defendant is his son.

c)The plaintiff has not proved his marriage with Nagavalli. The plaintiff has not mentioned the date of marriage or the year of marriage with Nagavalli.

d)The plaintiff has not proved that Sethupathi, Boopathi and Pasupathi are his sons and they are born to him through Nagavalli.

e)The plaintiff having claimed declaratory relief, the entire burden is upon him to prove his marriage with Nagavalli. However, he has failed to discharge the burden.

f)The issue relating to marital status between the plaintiff and the first defendant have not been decided in the previous proceedings and hence, the present suit is not barred under Section 11 of C.P.C.

8.Having aggrieved over the judgment and decree of the trial Court, the present appeal has been preferred under Section 96 of C.P.C by the plaintiff.

(D).Submissions of the counsels appearing on either side:

9.According to the learned counsel for the appellant, the trial Court has not considered the fact that there is no evidence whatsoever from the side of



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the first defendant that she had ever lived with the plaintiff as husband and wife. On the other hand, the plaintiff by examining himself and PW2 had established the fact that the plaintiff had married the said Nagavalli and not the first defendant.

10.The learned counsel for the appellant had further contended that PW2 who is an independent witness has categorically deposed that there was no marriage between the plaintiff and the first defendant. The learned counsel had further submitted that the first defendant had lodged a private complaint before the Judicial Magistrate No.III, Dindigul in C.C.No.97 of 2008 to punish the plaintiff under Sections 494, 120(b) and 108 I.P.C. However, the said complaint was dismissed for default in the year 2008. Therefore, the period of limitation should be calculated from the said date and hence, the suit is not barred by limitation.

11.The learned counsel appearing for the appellant had further submitted that the first defendant, though claims that she is married to the plaintiff, has not mentioned the date and year of her alleged marriage. In fact, there is no marriage at all between the plaintiff and the first defendant. He had further submitted that during cross examination, the defendant has admitted that she is not aware whether the plaintiff is living with Nagavalli as wife or not.



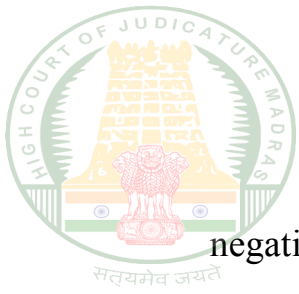
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12.The learned counsel for the appellant has further submitted that the Family Court has not properly appreciated the fact that the second defendant was not born through the plaintiff. In fact, in the birth register, the name of the second defendant is mentioned as illegitimate. Therefore, it is clear that the second defendant is not the son of the plaintiff. The trial Court has erroneously dismissed the suit. Hence, he prayed for allowing the appeal.

13.Per contra, the learned counsel appearing for the respondents submitted that the plaintiff during his cross examination has categorically admitted that the second defendant is his son born through the first defendant. The second defendant had filed O.S.No.58 of 1998 claiming partition as against the plaintiff, his mother and minor sons Sethupathi and Boopathi who were born through Nagavalli. The said suit was decreed and a final decree was passed in I.A.No.247 of 2002 on 18.04.2012.

14.The learned counsel for the respondents had further submitted that in order to evade the execution of the final decree in the partition suit, the plaintiff had set up his mother to file O.S.No.334 of 2005 claiming declaratory relief for the properties and the same was not successful. The learned counsel had further submitted that the first defendant has produced the Family Card, Election Identity Card and Aadhar Card to establish that she is married to the plaintiff and the second defendant is the son of the plaintiff. Only considering the said facts, the trial Court has dismissed the suit seeking



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negative declaration. Hence, he prayed for confirming the judgment and decree of the trial Court.

15.We have considered the submissions made on either side and perused the material records.

(E).Analysis:

16.The plaintiff has filed the present suit seeking a negative declaration that the first defendant is not her legally wedded wife and the second defendant is not his legitimate son.

17.A careful perusal of the prayer in the plaint reveals that the plaintiff has not sought for a declaration that the first defendant is not his wife, but his only claim is that the first defendant is not his legally wedded wife. The prayer relating to the second defendant is also to the effect that he is not his legitimate son. When the prayer is couched in such a manner, the entire burden is upon the plaintiff to establish that the Nagavalli is his legally wedded wife and Sethupathi, Boopathi and Pasupathi are his legitimate sons.

18.The plaintiff has not chosen to examine Sri.Nagavalli or any one of his three sons. He has also not produced any document to show that Nagavalli is his legally wedded wife or the said Sethupathi, Boopathi and Pasupathi are his legitimate sons. All documents filed on the side of the plaintiff relate to the legal proceedings initiated by the first defendant as against the plaintiff.



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PW2 who is a villager, during his cross examination, though he disputes the marriage of the plaintiff with the first defendant, has admitted that the second defendant is the son of the plaintiff through the first defendant. He had further admitted that he is not aware of the date of marriage of the plaintiff with Nagavalli and the name of the sons that were born to the plaintiff through the said Nagavalli. Therefore, the evidence of PW2 is not of any help to the plaintiff.

19.Ex.B2 is the final decree passed in a partition suit in I.A.No.247 of 2002 in O.S.No.58 of 1998 in favour of the second defendant. The plaintiff is the first defendant in the said suit. Though the final decree has been passed as early as on 18.04.2012, the plaintiff has not chosen to challenge either the preliminary decree or the final decree wherein a share has been allotted to the second defendant on the ground that he is the son of the plaintiff through the first defendant.

20.The defendants have produced Ex.B7, (Family Card) which reveals that the plaintiff and the both the defendants are residing under the same roof. Ex.B8 is the Election Identity Card of the first defendant and Ex.B10 is the Election Identity Card of the second defendant. Both these documents reveal the name of the plaintiff as husband of the first defendant and father of the second defendant. Ex.B9 is the Aadhar Card of the first defendant which discloses that the plaintiff is the husband of the first defendant. When the



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defendants have taken effort to prove their matrimonial status and legitimacy of the son by filing these documents, the plaintiff has not filed a single document to establish his alleged marriage with Nagavalli. Therefore, the trial Court has rightly arrived at a finding that the plaintiff has miserably failed to establish his marriage with Nagavalli.

21.The first defendant has initiated proceedings under Section 125 of Cr.P.C in M.C.No.18 of 1994 before Judicial Magistrate No.III, Dindigul. The said petition was allowed on 10.10.1996 directing the plaintiff to pay maintenance to the defendants. Therefore, it is clear that the defendants have started making a claim with regard to the marital status and legitimacy as against the plaintiff even in the year 1994. However, the present suit seeking negative declaration has been filed only on 15.03.2007.

22.As per Article 58 of the Limitation Act, a suit to obtain any declaration has to be filed within a period of three years when right to sue first accrues. In the present case, the right to seek a negative declaration accrued in the year 1994 and the present suit has been filed only in the year 2007. Hence, the trial Court has rightly arrived at a finding that the suit is barred by limitation.



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23. When the plaintiff has prayed for a declaratory decree, the entire burden is upon him to establish the fact that he is legally wedded to one Nagavalli and the first defendant is not his legally wedded wife and the second defendant is not his legitimate son.

(F).Conclusion:

24. As discussed supra, the plaintiff has miserably failed to prove the same. The trial Court has rightly dismissed the suit. Having re-appreciated the oral and documentary evidence, we do not find any reason to interfere in the judgment and decree of the trial Court. The First Appeal stands dismissed confirming the judgment and decree of the trial Court. No costs.

(C.V.K.J.,)

(R.V.J.,)

26.09.2025.

Index : Yes/No
Internet : Yes/No
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- To
- 1.The Judge
Family Court
Dindigul.
 - 2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

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Pre-delivery Judgment made in
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