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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 313 of 2023
and
CMP No.9334 of 2023

1. Narasimmappa
2. Maramma

..Appellants/Defendants

Vs

1. Egalerappa
2. Krishnappa
3. Gangamma

..Respondent/Plaintiffs

Prayer:The Second Appeal filed under Section 100 of the Civil Procedure Code, 1908 to set aside the Judgment and Decree in A.S.No.37 of 2021 dated 14-10-2022 on the file of the Additional District Judge, Hosur in reversing the well-reasoned Judgement and Decree in O.S.No.17 of 2018 dated 26-11-2019 on the file of the Principal Subordinate Judge, Hosur.

For Appellant(s): Ms.T.N.Sona
For Respondent(s): Mr.S.Eshwar

JUDGMENT

This second appeal has been filed to set aside the Judgment and Decree in A.S.No.37 of 2021 dated 14.10.2022 on the file of the Additional District Judge, Hosur in reversing the Judgment and Decree in O.S.No.17 of 2018 dated 26.11.2019 on the file of the Principal Subordinate Judge, Hosur.



2. The unsuccessful defendants are the appellants. The respondents/plaintiffs filed a suit for partition claiming 13/20th share in the suit property. The suit was dismissed by the trial Court. On appeal filed by the respondents/plaintiffs, the first appellate Court reversed the findings of the trial court and granted preliminary decree for 3/8th share in favour of the respondents/plaintiffs. Aggrieved by the same, the defendants have come before this Court.

3. According to the respondents/plaintiffs, the suit property originally purchased by the G.B.Muniyappa vide Sale Deed dated 08.10.1930. He married one Desamma as his first wife. He had a son namely Onnukurukkiyappa and a daughter called Yellama. The said Yellama married one Gopalappa and they have a daughter called Cheneeramma. The said Cheneeramma married Onnukurukkiyappa. The defendants 1 and 2 were born to them. Therefore, the defendants 1 and 2 are grand children of Muniyappa through his first wife Desamma. It was also stated by the plaintiffs that after the death of Desamma, the said Muniyappa married Thimmakka as his 2nd wife. He had a daughter called Papamma through his 2nd wife Thimmakka. The plaintiffs are children of Papamma. According to plaintiffs, they are in possession and enjoyment of the suit property along with defendants as legal heirs of Muniyappa. Upto three years immediately preceding the presentation of the plaint, the defendants have been giving share in the profits from suit property and suddenly they stopped



payment of share in the profits. Hence, plaintiffs issued a Legal Notice on 16.08.2017, calling upon the defendants to agree for amicable partition of the suit property. The defendants issued a Reply Notice on 31.08.2017, denying the right of the plaintiffs to claim partition with false and frivolous allegation. In these circumstances, a suit was filed for partition.

4. The defendants filed a written statement and denied the allegations in the plaint that Muniyappa married Thimmakka as his 2nd wife. According to the defendants, the plaintiffs are totally strangers to the family of Muniyappa and they have no right to claim partition. The defendants also denied the allegation in the plaint that plaintiffs had joint possession of the suit property along with them. It was also stated by the defendants that their father Onnukurukkiyappa died in the year 1980 and after his death, their maternal grand father one Gopalappa had taken custody of the minor defendants and he acted as kartha of the property of minor defendants. It was also pleaded that defendants alone are the legal heirs of Muniyappa through her daughter Yellamma. The defendants also pleaded that Gopalappa executed a registered Will bequeathing the suit property to defendants. It was further stated that the revenue documents stand in the name of the defendants and their ancestors and hence sought for dismissal of the suit.



5. During trial, the 2nd plaintiff was examined as P.W.1. Three other persons were examined as P.W.2 to P.W.4. P.W.2 failed to appear for cross examination and therefore, his evidence has been eschewed. On behalf of the plaintiffs, four documents were marked as Ex.A1 to Ex.A4. On behalf of the defendants, no oral or documentary documents were let in.

6. The trial Court on appreciation of oral and documentary evidence, came to the conclusion that the plaintiffs failed to establish the alleged marriage between Muniyappa and Thimmakka and relationship with the family of Muniyappa and consequently, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.37 of 2021, on the file of the Additional District Judge, Hosur. The first appellate Court reversed the finding of the trial Court and held that the relationship between the plaintiffs and defendants shall be inferred. As a consequence, the first appellate Court granted preliminary decree for 3/8th share of the plaintiffs in the suit property. Aggrieved by the same, the defendants have come before this Court.

7. At the time of admission, this Court framed the following substantial questions of law by an order dated 25.04.2023:

“a) Whether the First Appellate Court was right in decreeing the suit in favour of the respondent, when they have miserably failed to establish their relationship to the said G.B.Muniyappa?

b) Whether the First Appellate Court was right in presuming the legality of the marriage between Late G.B.Muniyappa and Thikamma



merely on account of the fact that the appellant did not take the witness stand nor did they produce any documents as evidence in the trial Court?

c) Whether the First Appellate Court was right in miscasting the burden of proof on the appellant when it is the duty of the respondent to prove the legality of the alleged second marriage of Late G.B.Muniyappa. In the absence of which should not the suit entail in dismissal?"

8. Elaborating substantial questions of law framed at the time of admission, the learned Counsel for the appellants/plaintiffs would submit that the evidence of P.W.3 and P.W.4 are only hearsay and the same is not useful to establish the relationship of the plaintiffs with Muniyappa. The learned Counsel would further submit that in the absence of any acceptable evidence on record to establish the marriage between Thimmakka and Muniyappa and to establish the relationship of the plaintiffs with Muniyappa, the first appellate Court committed a serious error in holding that relationship with the defendants could be inferred due to non examination of the defendants.

9. The learned Counsel for the respondents/defendants would submit that the relationship between plaintiffs and defendants had been established by examining independent witnesses namely P.W.3 and P.W.4 and the defendants failed to enter box to lead any contra evidence. In such circumstances, the first appellate Court was justified in taking adverse inference against the defendants and decreeing the suit.



10. A perusal of the pleadings of the plaintiff would show that the Muniyappa died 30 years back and his first wife Desamma died 25 years ago. As per the pleadings, the first wife of Muniyappa namely Desamma died after the death of Muniyappa. However, in the very same paragraph, the plaintiffs have also claimed that after the death of first wife Desamma, Muniyappa married Thimmakka as his 2nd wife. Therefore, there is a serious contradiction in the pleadings of the plaintiffs with regard to the fact whether Muniyappa married Thimmakka after the death of Desamma or before her death.

11. The 2nd plaintiff was examined as P.W.1. In his evidence, he categorically admitted that Desamma died 30 years after the death of Muniyappa. Therefore, it is clear that Muniyappa's first wife Desamma survived him and lived even after his death. In such circumstances, the plea raised by the plaintiff that Muniyappa married Thimmakka after the death of Desamma is falsified by the admission of P.W.1. Though it was claimed by the plaintiffs that Pappamma was born to Muniyappa and Thimmakka, the plaintiffs have not produced any documentary evidence to substantiate the same. The plaintiffs filed only four documents namely, a registered Sale Deed executed in favour of Muniyappa, computerized Patta in the name of Gopalappa, Legal Notice and Reply Notice. When the very relationship of the plaintiffs with Muniyappa is seriously disputed, the plaintiffs could have produced certain documents to establish the fact that Thimmakka married Muniyappa or at least



she lived with Muniyappa and he got a daughter Pappamma. However, the defendants have not produced any single documentary evidence to establish the relationship between Muniyappa and Thimmakka. The other witness examined by plaintiffs as P.W.2 failed to appear for examination, therefore, his evidence was eschewed.

12. P.W.3 in his cross examination, clearly admitted that he had no idea about the averments found in his proof affidavit and he simply put his signature as he was directed to do so. He also deposed that Muniyappa had only one wife and his wife Desamma survived Muniyappa. After saying so, he also stated that he heard Muniyappa had another wife. However, in his cross examination, he had not mentioned that Muniyappa married Thimmakka. Though he mentioned in his proof affidavit that Thimmakka married Muniyappa, in his cross examination, he categorically admitted that he had no knowledge about the averment made in proof affidavit and he signed the proof affidavit only on the direction of somebody else. In such circumstances, the evidence of P.W.3 is not useful to support the case of the plaintiffs to prove the factum of marriage of Muniyappa with Thimmakka and also the relationship of the plaintiffs with the defendants.

13. P.W.4 is an independent witness examined on behalf of the plaintiff to prove the factum of marriage and the relationship. P.W.4 also categorically



admitted that Desamma lived nearly 24 years after the death of Muniyappa. He also deposed that he heard that after the death of Desamma, Muniyappa married Thimmakka. He also admitted that he has not seen Muniyappa and Thimmakka. He categorically admitted that he had no direct knowledge about the fact that Pappamma was born to Muniyappa and Thimmakka. He only heard about the said fact. The evidence of P.W.4 is also self-contradictory. In one place, he deposed that Muniyappa's first wife Desamma lived nearly 25 years after his death. However, in the next place, he says Muniyappa married Thimmakka after death of Desamma. Further his evidence about the factum of marriage between Muniyappa and Thimmakka and birth of Pappamma to Muniyappa through Thimmakka are all hearsay and the same is not useful.

14. Therefore, the evidence of P.W.1, P.W.3 and P.W.4 independent witnesses, examined by the plaintiffs are not at all useful to prove that the marriage of Thimmakka and Muniyappa and also the relationship of plaintiffs with the defendants. Only based on interested testimony of P.W.1, we cannot come to a conclusion that plaintiffs established the marriage. As pointed out earlier, even in the evidence of P.W.1, there are material contradiction with regard to the fact whether Desamma was alive when Muniyappa married Thimmakka. Therefore, oral evidences let in by the plaintiffs are not useful as they have not produced any documentary evidence to establish the relationship with the defendants. The first appellate Court observed that the defendants



failed to cross examine P.W.1 and P.W.4, with regard to the Panchayat in the village between the parties. Though, plaintiffs claimed that there was a Panchayat to partition the property between the plaintiffs and defendants, for the reason best known to the plaintiffs, they have not examined the Panchayatars who mediated between them. In the evidence of P.W.3 and P.W.4, there was reference about Panchayat. In fact, P.W.4 was also cross examined with regard to the Panchayat. In the absence of any evidence by the persons, who mediated, based on reference in the evidence of P.W.1 and P.W.4 with regard to Panchayat, we cannot come to a conclusion that the plaintiffs established the relationship with defendants and their right to claim partition. The first appellate Court held that the defendants failed to enter the box and, therefore, adverse inference shall be drawn against them. When plaintiffs failed to establish their case by leading any acceptable evidence, merely because defendants failed to enter the box, we cannot take any adverse inference against the defendants. Therefore, the said approach of the first appellate Court in taking adverse inference is not at all acceptable to this Court.

15. In view of the discussions made, all the substantial question of law framed at the time of admission, are answered in favour of appellants. Accordingly, the Second Appeal stands allowed by setting aside the judgment and decree made in A.S.No.37 of 2021 dated 14.10.2022, on the file of the Additional District Judge. Consequently, the judgment and decree passed by the



trial Court in O.S.No.17 of 2018 dated 26.11.2019, on the file of the Principal Subordinate Judge, Hosur stands restored. Connected miscellaneous petition is closed. No costs.

06-04-2026

Index: Yes
Speaking
Neutral Citation: Yes

VEDA

To

1. The Additional District Judge, Hosur.
2. The Principal Subordinate Judge, Hosur.



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S.SOUNTHAR, J.

VEDA

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