



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2026

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CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.725 of 2005

1.M.Kasthuri

2.G.Ramesh

3.Philomina (Died)

... Appellants

[A3 died, A1 & A2 already on record are

LR's of the deceased A3 vide Court

Order dated 24.04.2023 made in

C.M.P.No.9521 of 2023 in

S.A.No.725 of 2005(RHJ)]

Vs.

1.R.Kasthuri

2.G.Rajkumar

3.G.Tamilselvan

4.G.Jhansi, Minor

... Respondents

[R4 declared as Major and

R1 discharged from the guardianship of R4

vide Court Order dated 24.04.2023

made in C.M.P.Nos.9517 & 9476 of 2023

in S.A.No.725 of 2005 (RHJ)]

5.Tamil Nadu Civil Supplies Corporation,

Rep.by its Manager,

Chennai Division,

having Office at

No.7, Conronsmith Road,

Chennai-600 086.

Prayer: This Second Appeal is filed under Section 100 of CPC against the

Judgment and Decree dated 31.01.2005 passed in A.S.No.164 of 2004 on the

file of the learned Additional District & Sessions Judge, Fast Track Court IV,



Chennai confirming the Judgment and Decree dated 07.01.2004 passed in O.S.No.222 of 1998 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.J.R.K.Bhavanantham
For Respondents: No Appearance

JUDGMENT

This Second Appeal is before this Court on account of the Order of Remand passed by the Supreme Court in Civil Appeal No.432 of 2018 dated 16.01.2018.

2. I heard Mr.J.R.K.Bhavanantham for the appellants. Despite a couple of opportunities granted, there has been no representation for the respondents.

3. For the sake of convenience, the parties are referred to as per their ranks before the trial Court.

4. The case of the plaintiffs is as follows:-

The 1st plaintiff, R.Kasthuri claims to be the wife of one Gunaseelan, S/o.V.M.Aalai. She pleaded that, Gunaseelan passed away on 13.09.1996. From the wedlock between the 1st plaintiff and Gunaseelan, the plaintiffs 2 to 4 were born. She impleaded the defendants, who, according to her were unlawfully claiming to be the legal heirs of the very same Gunaseelan. She



also impleaded her mother-in-law (mother of Gunaseelan), as the 3rd defendant.

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5. The plaintiffs had secured a legal heirship Certificate from the Tahsildar on 11.10.1996. Similarly, the defendants 1 and 2 had also secured a legal heirship certificate stating that they are the legal heirs of Gunaseelan. As there were two conflicting legal heirship certificates, the plaintiffs approached the District Collector, Chennai District, for rectification of the records and to set aside the Certificate obtained by the defendants 1 and 2.

6. The District Collector, vide order dated 28.06.1997, cancelled both the certificates i.e., certificates issued to the plaintiffs, as well as, that issued to the defendants, and directed the parties to approach the jurisdictional Civil Court and get a declaration as to who the legal heirs of the deceased Gunaseelan are. Hence, the plaintiffs presented the suit seeking a declaration that the 1st plaintiff is the legally wedded wife of Gunaseelan and plaintiffs 2 to 4 are the legal heirs of the said Gunaseelan. Since there was a dispute, they impleaded the defendants 1 and 2, who claimed to be the legal heirs of the deceased Gunaseelan, and the mother of Gunaseelan as the 3rd defendant. This suit was numbered as O.S.No.222 of 1998.

7. Summons were served on the defendants.



8. The stand of the defendants is that the 1st defendant is the legally wedded wife of Gunaseelan. She claimed that she married Gunaseelan two years prior to the alleged marriage between the 1st plaintiff and Gunaseelan. She stated her marriage was solemnised on 30.04.1979. The defendants further pleaded that, from the wedlock between Gunaseelan and the 1st plaintiff (R.Kasthuri), two children were born; one Ramesh, who is the 2nd defendant, and another daughter by name Gunasundari. They claimed that there was no dispute on the date of death of Gunaseelan. They stated that Gunaseelan was residing with the defendants. Soon after his death, they claimed that the plaintiffs, along with certain unlawful elements, entered the property of the defendants and claimed the body of Gunaseelan. However, they denied the averments made by the plaintiffs that the last rites were performed by them. On the contrary, they contended that the last rites were performed only by the 2nd defendant, Ramesh. Apart from pleading that the 1st defendant had married Gunaseelan earlier than the 1st plaintiff, the defendants also projected that the 1st plaintiff had married one Munusamy. Munusamy, it was claimed, was an employee of Corporation of Chennai. They further pleaded that Munusamy passed away on 13.08.1992 and that the children, namely, plaintiffs 2 to 4, were the children born to Munusamy and M.Kasthuri, rather than to the deceased Gunaseelan.



9. Since Kasthuri was already married to Munusamy, the defendants contended that the plaintiffs' case as if the 1st plaintiff is the wife of the deceased Gunaseelan, is absolutely without any basis. They also projected that on the death of Munusamy, one of the sons of Munusamy, namely, one Sivarajan, had secured employment on compassionate grounds with the Corporation of Chennai.

10. On the basis of these pleadings, the trial Court framed the following issues:-

“1. வாதிக்கள் கோரியுள்ளவாறு விளம்புகை பரிகாரம் பெற உரியவர்களா ?

2. வேறு என்ன பரிகாரம் ?

11. On the side of the plaintiffs, they have examined PW1 to PW3. The 1st plaintiff, R.Kasthuri, entered into witness box as PW1. One Sivaraj was examined as PW2, while one Vijayakumar was examined as PW3. The plaintiffs marked Exs.A1 to A19. On the side of the defendants, the 1st defendant examined herself as DW1 and the father of Gunaseelan, one Aalai, was examined as DW2, and one Ranganathan was examined as DW3. On the side of the defendants, they marked Exs.B1 to B9.



12. After considering the oral and documentary evidence, the learned trial Judge decreed the suit as prayed for. Aggrieved by the same, the defendants 1 to 3 preferred A.S.No.164 of 2004 to the file of learned Principal Judge, City Civil Court, Chennai. The matter was made over to the IV Additional Fast Track Court, Chennai. The learned Judge took up the appeal for hearing on 31.01.2005 and dismissed the same. Before him, the defendants urged that a suit for declaration before a Civil Court is not maintainable and that, even if it were maintainable, the grant of decree by the learned trial Judge is erroneous and contrary to the evidence on record.

13. The learned District Judge held that a Civil Court has jurisdiction to grant the declaration as claimed. However, he did not discuss the merits of the case at all. Holding the decree and reasoning of the trial Court is correct, dismissed the regular appeal. Aggrieved by the same, the defendants preferred the present Second Appeal.

14. This Second Appeal was admitted on the following Substantial Questions of Law:-

(i) Whether Civil Court has jurisdiction to try a suit for declaration as to the validity of a marriage or as to the marital status of any person under Sec.7(1) explanation?

(ii) Whether the finding of the Trial Court is perverse



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since no oral and documentary evidence adduced on either side was considered and finding given in respect of all the issues framed by the Trial Court?

(iii) Whether the first appellate Court, being the last Court of facts, failed to advert its mind into the facts of the case, both oral and documentary evidence?

(iv) Whether the Appellate Court was right by not probing into the correctness of the finding arrived at by the Trial Court, while exercising the power under Or.41 r/w. Sec.96 of CPC?

(v) Whether mere declaratory suit is maintainable under Sec.34 of the Specific Relief Act?

15. The Second Appeal was originally taken up for hearing before this Court on 08.06.2015. A learned Single Judge held that the finding of the First Appellate Court, regarding the Civil Court having jurisdiction, is erroneous. She further held that it is only the Family Court, which has the jurisdiction to decide whether the plaintiffs are the legal heirs of Gunaseelan or not. Consequently, the Second Appeal was allowed. The judgments and decrees of the Court below were set aside and the case was directed to be forwarded to the Principal Family Court at Chennai for disposal. Aggrieved by the same, the plaintiffs had preferred a Special Leave Petition to the Supreme Court in



S.L.P.(Civil) No.12985 of 2016.

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16. The Supreme Court granted leave and allowed the Civil Appeal. It held that Civil Courts have jurisdiction to grant declaratory decrees, as sought in the present suit. It remitted the matter back to this Court, as stated supra. The Supreme Court held that when the issue is whether the plaintiffs or the defendants are the legal heirs of Gunaseelan, can be gone into only by the Civil Court and not by the Family Court. As this Court has not gone into the merits of the case, the matter was remitted for fresh disposal.

17. After a perusal of the records, I am of the view that questions of law, (i) & (v) having been settled by the Supreme Court in this very case, do not arise for consideration. Hence, I am taking up questions of law (iii) & (iv) together.

18. The relevant paragraph of the lower Appellate Court is extracted hereunder to show how the First Appellate Court has given a short shrift to the entire appellate proceedings. It reads:-

“The Apex Court has clearly held that legitimacy of any person and claim of marital relationship are not directly entertainable by family Courts. Therefore, the Jurisdiction issue also would not help the appellants. Hence the appellants have no case and the lower Court’s judgment was based on



clinching oral and documentary evidence. The legal position is also against the appellants. Hence this Court find nothing to interfere with the lower Court Judgment and accordingly decide the appeal.”

19. The reason for dismissal of the appeal on merits, as seen above, is that the First Appellate Court held that the appellants have no case and that the trial Court’s judgment is based on “*clinching oral and documentary evidence*”. Consequently, the legal position is against the appellants. The learned First Appellate Judge has not considered either the evidence let in by the plaintiffs or the evidence adduced by the defendants before coming to a conclusion that the evidence are clinching.

20. First appeal is a very valuable right. The First Appellate Court is a last Court of facts. It is the duty of the First Appellate Court to consider the pleadings, the evidence, and the arguments of both sides, weigh them and finally come to a conclusion as to whether the plaintiffs have proved their case or whether the defendants have a better case than that of the plaintiffs. Such an exercise is necessary because the test required to be applied by the First Appellate Court in civil proceedings is on the basis of preponderance of probabilities.



21. This assumes greater significance in this case, on account of the involvement of serious repercussions relating to the legitimacy of the plaintiffs 2 to 4 and the 2nd defendant. If the manner of disposal of the First Appellate Court were to be acceded to, then, the parties would be seriously prejudiced, even without an analysis as to how the Court came to the said conclusion.

22. The position of law on how the First Appellate Court should deal with an appeal is settled by the Supreme Court in ***Santhosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs., (2001) 3 SCC 179***. The relevant portion of the judgment is extracted hereunder:-

*“15. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124*). We would, however, like to sound a note of caution. Expression of general*



agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it....”

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23. If the test laid down by the Supreme Court is applied to the present judgment under appeal, then, certainly the First Appellate Court's judgment cannot pass legal muster. It does not reflect any application of mind or consideration of oral and documentary evidence let in before the trial Court. Though Mr.J.R.K.Bhavanantham has filed the evidence and would invite this Court to look into the same, I am not inclined to do so on account of the fact that the cryptic judgment of the lower Appellate Court does not give any indication to me as to how the evidence were analysed. In fact, owing to the judgment being laconic, the Second Appeal was admitted only on the basis of question of law Nos.3 & 4.

24. It is represented by Mr.J.R.K.Bhavanantham that the 1st respondent / R.Kasthuri is no more. This Court has already recorded that the legal heirs of R.Kasthuri, namely, plaintiffs 2 to 4 are already on record. Hence, plaintiffs 2 to 4 are recognised as the legal representatives of the deceased 1st respondent. As such, recognition has taken place, suffice for the appellants to file a memo before the First Appellate Court to the effect that the legal heirs of the deceased 1st Respondent / R.Kasthuri are already on record. On filing of such Memo, the First Appellate Court shall order the

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same and carry out the necessary corrections in the cause title.

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25. In the light of this discussion, this Second Appeal is allowed. The judgment and decree of the First Appellate Court in A.S.No.164 of 2004 dated 31.01.2005 is set aside. The matter is remitted back to the file of the First Appellate Court. The First Appellate Court shall issue notice to the appellants, as well as the respondents, and thereafter, take up the matter for disposal. At the time of disposal, the learned First Appellate Judge will keep in mind the principles laid down by the Supreme Court referred to above.

26. The parties are directed to appear before the First Appellate Court on **23.03.2026**. In the event of the respondents not appearing, the First Appellate Court shall direct the appellants to take notice on the plaintiffs, and once service is complete, take up the appeal for disposal.

26.02.2026

Index : Yes/No
Internet : Yes
NCC : Yes / No
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S.A.No.725 of 201



To

1. The Additional District & Sessions Judge,
Fast Track Court IV,
Chennai.
2. XV Assistant Judge,
City Civil Court, Chennai.



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S.A.No.725 of 2005



V.LAKSHMINARAYANAN, J.,

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