
(1988) 08 MAD CK 0005
In the Madras High Court
Case No : S.A. No. 392 of 1981

Adhilakshmiammal and another	Vs	APPELLANT
Jayalakshmiammal and 3 others		RESPONDENT

Date of Decision : 04-08-1988

Acts Referred:

Citation : (1988) 08 MAD CK 0005

Hon'ble Judges : Bellie, J

Bench : Single Bench

Advocate : Bhavanikumar, R. Muthukumaraswamy and V. Ramajagadeesan, for the Appellant; K. Sampath, C. Hari Krishnan and S. Subbulakshmi, for the Respondent

Judgement

Bellie, J.—The defendants are the appellants. First defendant is the wife and second defendant is her husband. The first plaintiff

Santhanayaki Ammal (since deceased) and Dhanapathi Ammal were sisters of one Raja Balasubramania Mudaliar. Second and third plaintiffs are

the daughters of the said Dhanapathiammal. Fourth plaintiff is the daughter and fifth plaintiff is the son of the deceased first plaintiff who have been

impleaded as the Legal Representatives of the deceased first plaintiff. The suit property belonged to the said Raja Balasubramania Mudaliar. He

married Neelambal in 1918. They had no issues. The plaintiffs' case is, even during the life-time of Neelambal, Raja Balasubramania Mudaliar

developed illicit intimacy with one Lokanayaki, widow of Masilamani Mudaliar who was the paternal uncle's son of Raja Balasubramania

Mudaliar. As a result of this illicit intimacy first defendant was born in 1944. One year after the birth of the first defendant Adhilakshmiammal the

relationship of Raja Balasubramaniam and Lokanayaki became estranged and

Lokanayaki left Madras and went to Irunpuliur near. Thambaram, but the child was with Raja Balasubramaniam. He and his wife Neelambal brought up the child. Neelambal died on 16-3-1959. In 1961 Raja Balasubramaniam gave his daughter first defendant in marriage to the second defendant. For a year or so the two defendants were living in the second defendant's house, but thereafter they began to live with Raja Balasubramaniam. Since the defendants did not take care of Raja Balasubramaniam during his last days he came and lived with the second plaintiff. He died on 18-8-1969. Some time after, the first defendant issued a notice to the second plaintiff claiming herself to be the heir of Raja Balasubramaniam and demanding to deliver to her the cash balance of Raja Balasubramaniam. A reply was sent by refuting the claim. The plaintiffs are the heirs of Raja Balasubramaniam who died intestate and without any legal issue. The first plaintiff is entitled to half share and the plaintiffs 2 and 3 to the other half. The first defendant has no right in the property left by Raja Balasubramaniam since she is only an illegitimate child. Since the first defendant claims right in the property and as she is in possession of the suit house of Raja Balasubramaniam a suit had to be filed. (Here it may be mentioned that it is rather strange that the plaintiffs without a prayer for possession of the house from the defendants have prayed for only declaration of their title and partition of the properties among them).

2. In the written statement the defendants deny that the first defendant was an illegitimate child of Raja Balasubramaniam and they claim that she was born out of the wedlock of Raja Balasubramaniam and Lokanayaki and therefore she is a legitimate child and she is the heir of Raja Balasubramaniam. It is further submitted that the plaintiffs who are the remote heirs of Raja Balasubramaniam have no right in the property. It is further claimed that Raja Balasubramaniam had executed a will in favour of the first defendant with respect to the suit property.

3. The trial Court viz., the Fifth Assistant Judge, City Civil Court, Madras, held that the first defendant is the legitimate daughter of Raja Balasubramaniam. However, he did not accept the first defendant's case that Raja Balasubramaniam executed a will in her favour. In conclusion, rather strangely, he held that the plaintiffs 1 to 3 are each entitled to 1/4 share and the first defendant to the remaining 1/4 share and he also held

that the plaintiffs would be entitled to mesne profits.

4. As against this Judgment the defendants filed an appeal and the plaintiffs also filed cross objections. In the appeal the defendants did not canvass

their plea of execution of the will by Raja Balasubramaniam. The appellate Court dismissed the appeal and allowed the cross objection and held

that the plaintiffs 4 and 5 who are the heirs of the deceased first plaintiff would be entitled to the suit properties and for possession of the same

from the defendants. As regards the plaintiffs 2 and 3 he dismissed the suit. He further ordered mesne profits to the plaintiffs 4 and 5 from the date

of suit till the date of delivery of possession and he ordered enquiry as regards the quantum of mesne profits under O. 20, R.12, C.P.C. As against

this Judgment the defendants have come up with this Second Appeal.

5. The principal point involved in this case is whether the first defendant Adhilakshmi was the illegitimate child of Raja Balasubramaniam. If the first

defendant was born out of the wedlock between Raja Balasubramaniam and Lokanayaki, then she being a Class I heir of Raja Balasubramaniam

will be solely entitled to the suit property and the plaintiffs cannot make any claim. After filing the written statement, the defendants have filed an

additional written statement and according to the learned first appellate Court, therein the defendants have stated that the first defendant was born

to Neelambal (not to Lokanayaki) and thus the first defendant has made a complete change of her case. On going through the additional written

statement I find that it is not clearly stated herein that the first defendant was born to Neelambal but however in paragraphs 4 and 7, she appears to

have stated that the plaint allegation that Raja Balasubramaniam and Neelambal had no issues is not correct and that she is the lawful issue. In

paragraph 7 she seems to put the plaintiffs to proof that she was born to Raja Balasubramaniam and Lokanayaki. From this it would appear that

she has stated she was born to Balasubramaniam and Neelamabal. But even if she has stated so that will not affect her case much. What she seems

to emphasise throughout the long additional written statement is that she is the only daughter of Raja Balasubramaniam and therefore she is the sole

heir.

6. Even according to the plaintiffs she is the daughter of Raja Balasubramaniam, but the dispute is while according to the plaintiffs she was the

illegitimate child born through Lokanayaki whom Raja Balasubramaniam did not marry but had illicit intimacy with, according to the first defendant

she is the lawful daughter of Raja Balasubramaniam. If, as stated by her in the original written statement she was born to Raja Balasubramaniam

and Lokanayaki out of wedlock between them, then she is a legitimate daughter. If she was, as she seems to state in her additional written

statement, born to Neelambal, then undoubtedly she will be a legitimate daughter. No doubt in the written statement and the additional written

statement there would appear to be inconsistent stands taken by the first defendant. But even on the basis of the plaintiff's case that she was born

to Lokanayaki only, as she also would state in her original written statement, we have to see whether she was born to Lokanayaki out of

concubinage and not wedlock.

7. Admittedly there was no issue to Neelambal. Lokanayaki was the widow of Raja Balasubramaniam's uncle's son Masilamani. There is no

evidence to show that there was any prohibition in law or otherwise of marriage between Balasubramaniam and Lokanayaki. There is of course no

direct evidence as to the factum of marriage. But whether there was marriage or not can be gathered from the surrounding circumstances in the

case. In this connection on the plaintiff's side the husband of the second plaintiff and the fifth plaintiff were examined as P.Ws. 1 and 2 respectively.

They have of course stated that Raja Balasubramaniam had illegal intimacy with Lokanayaki and there was no marriage between them. There is no

gainsaying that the evidence of these people is interested. Therefore unless there is strong corroboration to these people's evidences much

credence cannot be given to it. On the defendants' side only the first defendant herself has been examined. She has denied that there was illegal

intimacy between her father Raja Balasubramaniam and Lokanayaki. Her evidence also is no doubt interested. But when certain circumstances in

the case are considered, it appears to me they are clearly indicative of a marriage. It is the evidence of P.W 1 that Masilamani, the husband of

Lokanayaki, died in 1929 and after that Raja Balasubramaniam developed illicit intimacy with her. His further evidence is that to them a male child

was born in 1937 but it died immediately. This would indicate that they were close and they had cohabitation for a long time and even had a child

which of course died to the knowledge of all the relatives. Then the P.W.1 would say that even thereafter Balasubramaniam and Lokanayaki were

living together at Madras where Balasubramaniam was transferred (as Inspector of Police) and it was then the first defendant was born to them.

His further evidence is that after that there was estrangement between Raja Balasubramaniam and Lokanayaki and she left the house and thereafter

the child (first defendant) was with Raja Balasubramaniam and Neelambal and they brought it up. This would show that there was no secrecy

about the relationship between Raja Balasubramaniam and Lokanayaki and they were living together freely and openly to the knowledge of all the

relatives including Neelambal. From these it would appear highly improbable that they were not married. The evidence of P.W.1 further shows that

he and other members of the family were all kind to the first defendant. Here it is relevant to note the decision in Rajagopal Pillai and others v.

Pakkiam Ammal and another 1968-2-M.L.J. 411= 81 L.W. 200 wherein a Division Bench of this court has laid down that:

The marriage state being the chief foundation on which the superstructure of society rests, presumption of the marriage arising from cohabitation of

spouses is a very strong presumption. Where a man and a woman had lived together as man and wife, the law will presume, until the contrary is

proved, that they were living together by virtue of a legal marriage and not in concubinage.

The presumption of law is the strongest of legal presumptions and is not lightly to be repelled by a mere balance of probabilities and the evidence

repelling that presumption must be strong, distinct and satisfactory. Every intendment is made in favour of a marriage de facto and the more distant,

the date of the marriage, the more readily is the presumption drawn, based upon cohabitation and repute.

8. P.W.1 has also stated that he took very active part in the marriage of the first defendant with the second defendant in 1961. Ex.B1 is the

S.S.L.C. Book of the first defendant wherein the first defendant is stated to be the daughter of Raja Balasubramaniam. Ex.B2 attached to Ex.B1 is

a declaration given by Raja Balasubramaniam stating that the first defendant is his daughter. Ex.B8 is a photograph wherein Neelambal is holding

the first defendant when she was a child of 5 or 6 years old. The happy expression on the face of Neelambal looking at the child shows how much

she liked the child, and this would also to some extent atleast show that there should have been a marriage between Raja Balasubramaniam and

Lokanayaki and Neelambal consented to it. Ex.B9 is another photograph showing Raja Balasubramaniam and the first defendant with some

foreign friends and this serves as an indication that Raja Balasubramaniam brought up the first defendant in a sophisticated manner. In fact there is

evidence that the first defendant was educated in a convent school. These are compatible with the state of first defendant being the legitimate child

and not illegitimate child. Ex.B3 is the marriage invitation of the first defendant wherein Raja Balasubramaniam has been stated as her father, and

P.W.1 has stated in his evidence that he (Raja Balasubramaniam) gave her in marriage to the second defendant. Ex.B18 is a notice issued by the

Special Deputy Collector, Land Acquisition in which under the column "owners" the names of Raja Balasubramaniam and the first defendant have

been given and the first defendant has been stated to be the minor daughter of Raja Balasubramaniam. Ex.B19 is a statement given by Raja

Balasubramaniam before the Land Acquisition Officer wherein he has stated that his family consisted of himself, his wife Neelambal and his minor

daughter Adhilakshmi (first defendant). These documents go to show the intention of Raja Balasubramaniam that his daughter Adhilakshmi is the

only heir to his property. If really the first defendant was an illegitimate child, it is very unlikely that this intention of Raja Balasubramaniam would be

there. Hence this is a strong circumstance of there having been a marriage between Raja Balasubramaniam and Lokanayaki. Ex.B23 shows that

Raja Balasubramaniam has written a letter from Singapore to his wife Neelambal enquiring about her health and also the health of the first

defendant. Ex.B24 is a letter received by Raja Balasubramaniam from one B.A. Forsyth from Birmingham, England, expressing his happiness over

the news that Raja Balasubramaniam's daughter (first defendant) has given birth to a son. Raja Balasubramaniam has sent a reply Ex.B26 wherein

he has referred to the efforts he took to bring about the marriage of his daughter. Ex.B27 is a copy of the letter dated 1-7-1960 written by Raja

Balasubramaniam to one Mr. S.A. Turner wherein he has referred to his daughter passing S.S.L.C. examination.

9. Ex.B13 dated 27-1-1969 is a letter written by the first plaintiff to the defendants wherein she has referred to the first defendant as the daughter

of Raja Balasubramaniam and she has requested therein the first defendant to use her influence on her father Raja Balasubramaniam to send some

money to her. Exs.B14 to B17 are also letters from the first plaintiff to the defendants wherein also she has referred to Raja Balasubramaniam.

What is more, admittedly, when Raja Balasubramaniam died the first defendant did the obsequies and her husband only made arrangements for

taking the body to the cremation ground and no relation of Raja Balasubramaniam did raise any objection. Further it was the first defendant who

sent invitation for the 16th day death ceremony. These are certainly compatible with the first defendant being the legitimate child of Raja

Balasubramaniam. Will not all these prima facie show that the first defendant was the legitimate daughter of Raja Balasubramaniam?

10. The lower appellate Court seems to think that all these circumstances would go to show that Raja Balasubramaniam and Neelambal brought

up the first defendant, but nevertheless it does not go against the plaintiff's case that Lokanayaki was only in illicit intimacy with Raja

Balasubramaniam. But I have drawn the legitimate inference from the circumstances. The said circumstances are compatible with the first defendant

being only a legitimate child and not an illegitimate child. They further show that she was not born out of illicit intimacy but out of wedlock between

Raja Balasubramaniam and Lokanayaki. The said circumstances very clearly show that a presumption is almost irresistible that there should have

been marriage between Raja Balasubramaniam and Lokanayaki and the first defendant was born out of such a relationship. Excepting P.Ws.1 and

2 saying that Lokanayaki was in illicit intimacy with Raja Balasubramaniam they have not let in any other evidence, oral or documentary, in proof of

such illicit intimacy relationship. It is pointed out that in her evidence the first defendant as D.W.1 has stated that Neelambal was her mother. But I

do not think that this would in any way affect the defendant's case. It is common case that Neelambal in fact brought up the first defendant from

her childhood. May be this is the reason she has referred to Neelambal as her mother. Even otherwise, as stated above, even granting she was

born to Lokanayaki what is to be seen is whether Lokanayaki was not married to Raja Balasubramaniam. As aforesaid, the circumstances

discussed above, all would show that there is possibility of there having been a marriage between Lokanayaki and Raja Balasubramaniam.

11. It must be remembered that Raja Balasubramaniam and Lokanayaki were but relations. Lokanayaki was the widow of Raja

Balasubramaniam's paternal uncle's son. It must also be remembered that Raja Balasubramaniam and Neelambal had no issues. In these

circumstances it is quite possible that with a view to have a child, may be he wanted to marry Lokanayaki. And if the relations had come to know

any illegal relationship between Raja Balasubramaniam and Lokanayaki, they would have well advised Raja Balasubramaniam to marry her.

Possibly this had happened and that is why there is not an iota of evidence to show that any of the relations had raised his little finger against the

alleged illegal intimacy any time before the suit. It is not in dispute that the first defendant has sent a notice to P.W.1 asking for repayment of an

amount of Rs. 760 received by him from her father Raja Balasubramaniam and only after this the suit has been filed. It appears if there was no such

notice by the first defendant no suit would have been filed.

12. Considering all these facts and circumstances of the case it can be safely presumed that Raja Balasubramaniam and Lokanayaki were married

and therefore the first defendant as Class I heir of Raja Balasubramaniam would be entitled to the property to the exclusion of any other relation.

Then as stated above, though the recitals in the plaint appear to show that the suit is for recovery of possession, in fact no prayer to that effect has

been made. For this no explanation is offered. P.W.1 in fact admits that no such relief has been prayed for. This may give rise to an inference,

though weak that it may be that the plaintiffs considering the true relationship of the first defendant with Raja Balasubramaniam as legitimate

daughter of his, and because the relations also had been kind to her, they had no real intention of throwing her out of the suit house where she was

born and brought up, and only just to give a threat to her so that she may not give any more trouble to them they filed the suit just for having a

declaration that the suit property belongs to them and for a decree of mesne profits. Considering the entire circumstances of the case it would

appear quite unjust to hold that the first defendant was born out of concubinage and not out of wedlock. In the result, therefore the appeal is

allowed and the suit is dismissed in toto. There will be no order as to costs.