
(2014) 04 MAD CK 0080

In the Madras High Court

Case No : S.A. No. 1101 of 2009, M.P. No. 1 of 2009 and M.P. No. 1 of 2012

C.M.T. Govindarajan (Deceased) and Others

APPELLANT

Vs

S. Padmavathi and Others

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Hindu Adoptions and Maintenance Act, 1956 — Section 11, 16

Citation : (2014) 7 MLJ 27

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Duraiswamy, J.—The above appeal arises against the judgment and decree passed in A.S. No. 21 of 2007 on the file of the Subordinate Court, Kanchipuram, reversing the judgment and decree passed in O.S. No. 814 of 1998 on the file of the District Munsif Court, Kanchipuram. The appellants are the legal representatives of the deceased first plaintiff. The respondents 1 to 9 were the defendants in the suit, respondents 10 to 13 were brought on record as the legal representatives of the deceased seventh respondent.

2. The plaintiffs filed the suit in O.S. No. 814 of 1998 to declare that they are the absolute owners of the suit property and for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property; to declare the Document No. 1573/98 as illegal, invalid and not binding upon them and for permanent injunction restraining the defendants from enforcing the same; to declare the Document No. 1610/98 as illegal, invalid and not binding upon the plaintiffs and for permanent injunction restraining the defendants from enforcing the same and for other reliefs.

3. The brief case of the plaintiffs are as follows:

(i) According to the plaintiffs, the suit property originally belonged to Ramasamy

Mudaliar, who died intestate, leaving behind two sons viz., Nagularaja Mudaliar and Thiruvengadasamy Mudaliar. The said Nagularaja Mudaliar died intestate, leaving behind two sons viz., Beemaraya Mudaliar and Kannappa Mudaliar. Ramasamy Mudaliar was enjoying "B" Block lands in Karaipettai Village and on his death, his sons became entitled to half share each. The first plaintiff is the adopted son of Thiruvengadasamy Mudaliar and on the death of Thiruvengadasamy Mudaliar, the first plaintiff succeeded to his half share. Nagularaja Mudaliar's half share devolved upon his two sons viz., Beemaraya Mudaliar and Kannappa Mudaliar and each of them was entitled to one-fourth share. As per the Will dated 29.05.1970, executed by Kannappa Mudaliar, his one-fourth share was bequeathed in favour of C.M.K. Soundararajan. On the death of C.M.K. Soundararajan, his share devolved upon the defendants 1 to 4.

(ii) The plaintiffs were the Pattadars in respect of Survey No. 364/2. As per the registered Partition Deed dated 12.11.1930 between Beemaraya Mudaliar and Kannappa Mudaliar, an extent of 2.05 = acres was allotted to Kannappa Mudaliar. C.M.K. Soundararajan claimed patta before the Settlement Officer pursuant to the Partition Deed dated 12.11.1930 for an extent of 2.05 = acres. The Settlement Officer assigned new Survey No. 365/1 and granted patta in his favour. By mistake, C.M.K. Soundararajan's name was also included in Survey No. 364/2, which was corresponding to Paimash Nos. 35/B(P) and 36/B(P). The settlement proceedings was not conducted properly. In spite of the wrong order, during the life time of Soundararajan, he never claimed any right, title or interest or possession in Survey No. 364/2. He claimed patta only for Survey No. 35/B(P) measuring an extent of 2.05 = acres. In O.S. No. 39 of 1970 on the file of the Sub Court, Chengalpattu, Thiruvengadasamy Mudaliar got 105.40 acres.

(iii) As per the Adoption Deed No. 53/1944, the first plaintiff was taken in adoption by Thiruvengadasamy Mudaliar's wife Jagannathammal. Hence, the first plaintiff got 5.98 = acres in Survey No. 36/B under "C" Schedule of the Koorchit dated 15.02.1966. The second plaintiff became entitled to 2.05 = acres in Survey No. 35/B, New No. 364/2, therefore, the plaintiffs are the absolute owners of the suit property. The sub division as Survey Nos. 364/2A and 364/2B were effected as early as in the year 1975. The plaintiffs were granted patta in these two sub divided Survey Numbers. However, the defendants 1 to 4, without any manner of right, title, interest or possession, in collusion with the sixth defendant created a Mortgage Deed dated 21.08.1998 alleging that they are entitled to half share and another Mortgage Deed dated 28.08.1998 in favour of the seventh defendant through the fifth defendant, their Power Agent. The alleged Mortgage Deeds are sham and nominal and as such illegal. There was no exchange of notices between the parties. After the filing of the suit, the defendants 1 to 7 again created another document dated 15.10.1998 in favour of the seventh defendant. The Mortgage Deed had created a shadow over the title of the plaintiffs in respect of the suit property. The plaintiffs sent notice to the defendants 1 to 4 calling upon them to cancel the Mortgage Deeds. In these circumstances, the plaintiffs filed the suit.

4. The brief case of the defendants are as follows:

(i) According to the defendants, the defendants 1 to 4 got half share in the suit property and they are the co-sharers, since the property was not divided by metes and bounds. They have created two Mortgage Deeds in favour of the defendants 6 & 7 on 21.08.1998 and 28.08.1998. The defendants 1 to 4 also executed a joint Power of Attorney in favour of the fifth defendant on 21.01.1995. Another Power of Attorney was executed by them in favour of the sixth defendant on 21.08.1998. Pursuant to which, the sixth defendant took possession of the property. The defendants 1 to 4 entered into a Sale Agreement in favour of the sixth defendant on 31.01.1995. In pursuance to the same, possession of the property was handed over to him. Similarly, on 21.01.1995, the defendants 1 to 4 entered into a Sale Agreement with the fifth defendant and possession was handed over to him in respect of undivided half share in Survey No. 364/2.

(ii) The suit property originally belonged to Ramasamy Mudaliar and his sons Thiruvengadasamy Mudaliar and Nagularaja Mudaliar were enjoying half share, each, in "B" Block lands. C.M.K. Soundararajan died intestate, leaving behind the defendants 1 to 4 as his legal heirs. Patta was granted jointly in the name of the plaintiffs and the said Soundararajan, after the enquiry conducted by the Settlement Tahsildar. The plaintiffs 1 & 2 are entitled to half share. Similarly, Soundararajan was entitled to half share as per the order of the Settlement Tahsildar dated 15.02.1972. After the death of Soundararajan, the plaintiffs joined together and sub divided the property as Survey Nos. 364/2A and 364/2B and even thereafter, joint patta was granted in favour of Soundararajan in respect of the Survey No. 364/2A.

(iii) By misrepresentation, the plaintiffs got independent patta in their name in respect of the Survey No. 364/2B. Even though sub division had taken place, there was no real partition by metes and bounds. Taking advantage of the patta obtained in favour of the plaintiffs, they tried to alienate the property to third parties. The defendants 1 to 4 came to know about the sub division and they gave objection to the District Collector against granting patta in favour of the plaintiffs. As Power Agent, the fifth defendant sold a portion of the property in Survey No. 364/2B in favour of the seventh defendant and in pursuance of the Sale Deed, possession was also handed over to him. The order of the Settlement Officer has become final. If the plaintiffs are aggrieved over the same, they should have filed an appeal and they cannot question the same in the Civil Court, that too, after a lapse of 26 years. Since the plaintiffs are not in possession of the property, they have no right to file a suit for injunction. In these circumstances, the defendants prayed for dismissal of the suit.

5. The brief case of the defendants 8 & 9 are as follows:

According to the defendants, patta in respect of Survey No. 364/2B measuring 1.84.5 Hectares stands in the name of plaintiffs and Soundararajan. Survey No.

364/2B measuring an extent of 1.12.5 Hectares of wet land in the same Village stands in the name of the first plaintiff. Further, the defendants have stated that they will abide by the order of the Court. In these circumstances, the defendants prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiffs, the first plaintiff was examined as P.W. 1 and 24 documents, Exs. A1 to A24 were marked and on the side of the defendants, sixth defendant was examined as D.W. 1 and 6 documents, Exs. B1 to B6 were marked.

7. The trial Court, after taking into consideration the oral and documentary evidences of both sides, decreed the suit. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal in A.S. No. 21 of 2007 and the lower Appellate Court reversed the judgment and decree of the trial Court and allowed the appeal. Aggrieved over the judgment and decree of the lower Appellate Court, the plaintiffs have filed the above Second Appeal. Since the first plaintiff had died during the pendency of the Second Appeal, his legal representatives were brought on record as appellants 2 to 5.

8. Heard Mr. V. Raghupathi, learned counsel appearing for the appellants, Mr. V.R. Karthikeyan, learned counsel appearing for the respondents 1 to 6 & 10 to 13 and Mrs. Saraswathi Sivaraman Iyer, learned Government Advocate (CS) appearing for the respondents 8 & 9.

9. At the time of admission of the Second Appeal, the following substantial questions of law arose for consideration:

(i) Whether the grant of patta by Settlement Officer under Inams Estate (abolition and conversion into Ryotwari) Act 1963 can supersede the title ascertained by the Civil Court earlier?

(ii) Whether the Appellate Court is empowered to entertain a fresh defense not found in the pleadings and unfound in the written statement?

10. Mr. V. Raghupathi, the learned counsel appearing on behalf of the appellants submitted that when it was not disputed by the defendants that the first plaintiff viz., C.M.T. Govindarajan is the adopted son of Jagannathammal, widow of late Thiruvengadasamy Mudaliar, the lower Appellate Court should not have gone into the question of adoption as per Document No. 53/1944. Further, the learned counsel submitted that the fact of adoption was admitted by D.W. 1 in the written statement and also in his oral evidence, in such a case, the lower Appellate Court ought not to have gone into that issue and held against the plaintiffs.

11. The third appellant filed an application in M.P. No. 1 of 2012 under Order 41 Rule 27 seeking to receive (i) Power Deed for Adoption dated 19.03.1916, (ii) Registered Adoption Deed dated 03.12.1944 and (iii) Registered Sale Deed dated 22.03.1989. In the affidavit filed in support of the petition, the petitioner has stated that inspite of due diligence by his father and himself for tracing the said

documents, they could not be traced, hence, they were not produced before the Courts below. Further, he had stated that he got the certified copies of those documents and seeking to produce the said documents as additional documents. Further, the petitioner has stated that no oral evidence is required to prove the fact of adoption, since the said documents are certified copies of the relevant documents, which are secondary evidence.

12. The respondents/defendants filed their counter disputing the averment stated in the affidavit filed in support of the petition. Further, they have stated that additional evidence should not be permitted at the appellate stage in order to enable, one of the parties to fill up the lacunae in its case at the appellate stage. The respondents have also stated that as per the provisions of Order 41 Rule 27, the general principle is that the Appellate Court should not travel outside the record of the lower Appellate Court and cannot take any evidence in appeal.

13. In support of his contentions, the learned counsel for the appellants relied upon the following judgments:

(i) (1906) ILR 28 377 (P.C.) (Privy Council) wherein the Privy Council held that all the Schools of Hindu Law recognise the right of the widow to adopt a son to her husband with his assent, which may be given either orally or in writing, when given must be strictly pursued. Further, the widow cannot be compelled to act upon such authority, unless and until she chooses to do so and in the absence of express direction to the contrary, there is no limit to the time within which she may exercise the power conferred upon her.

(ii) Sawan Ram and Others Vs. Kala Wanti and Others, wherein the Supreme Court held that in a case of adoption by a widow, adoption will be not only to herself, but also to her husband and the adopted son is to be deemed to be a member of the family of the deceased husband of the widow and the adopted son will loose all his rights in the family of his birth.

(iii) Union of India (UOI) Vs. Ibrahim Uddin and Another, . In this judgment, the Apex Court held that true test for allowing an application filed under Order 41 Rule 27 is whether the Appellate Court is able to pronounce the judgment on the materials before it, without taking into consideration the additional evidence sought to be adduced.

(iv) Goswami Shree Vallabhalalji Vs. Goswami Shree Mahalaxmi Bahuji Maharaj, wherein the Apex Court held that the consent of the husband's sapindas is necessary for adoption by the widow only where there was no authority from the husband. When the husband had authorised his wife to make an adoption after his death, though at the same time indicating his preference for one particular boy, consent of the husband's sapindas does not arise.

14. Countering the submissions made by the learned counsel for the appellants, Mr. V.R. Karthikeyan, the learned counsel appearing on behalf of the respondents

1 to 6 & 10 to 13 submitted that the lower Appellate Court has rightly reversed the judgment and decree of the trial Court and dismissed the suit for the reason that the plaintiffs failed to establish the alleged adoption of the first plaintiff viz., C.M.T. Govindarajan in the year 1944. The learned counsel further submitted that the petitioner/appellant failed to give any acceptable reason for not producing the documents before the Courts below, which are sought to be produced as additional documents in M.P. No. 1 of 2012 in the above Second Appeal, therefore, the learned counsel sought for dismissal of the said application.

15. In support of his contentions, the learned counsel for the respondents relied upon the following judgments:

(i) Jai Singh Vs. Shakuntala, wherein the Apex Court held that the presumption u/s 16 of the Hindu Adoptions and Maintenance Act is rebuttable and the use of words unless and until it is disproved makes the definite mandate indicated by use of word shall flexible.

(ii) Nilima Mukherjee Vs. Kanta Bhusan Ghosh, wherein the Hon'ble Supreme Court held that in the absence of sufficient proof of adoption and in the absence of any evidence to show that any ceremony of adoption being performed, the adoption cannot be believed.

(iii) A.C. Narayanan Vs. State of Maharashtra and Another, wherein the Supreme Court, in a criminal case filed under Negotiable Instruments Act, held that a Power of Attorney holder having no knowledge of transaction cannot be examined as witness in the case.

(iv) Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, . In this judgment, the Apex Court held that a Power of Attorney holder, if rendered some acts in pursuance of Power of Attorney, he may depose for the principal in respect of such acts but he cannot depose for the principal for the acts done by the principal and not by him.

(v) Chairman, Bihar Rajya Vidyut Board Vs. Chhathu Ram and Others, . In this judgment, the Supreme Court held that the presumption u/s 16 of the Hindu Adoptions and Maintenance Act, shall not arise where the Adoption Deed was not signed by the person giving in adoption and the person taking the child in adoption and there was no indication of registration thereof. Taking note of the same, the Apex Court held that the management could not be faulted for denying compassionate appointment for the adopted son on the basis of such Adoption Deed.

(vi) V. Ravichandran Vs. R. Ramesh Jayaram and others wherein a Division Bench of this Court held that proviso to Section 11 of the Hindu Adoptions and Maintenance Act prescribes that even the performance of the Human is not necessary, but the giving and taking of the child in adoption is essential. The object of the corporeal giving and taking in adoption is to secure due publicity. To achieve this, it is essential to have a formal ceremony. For a valid adoption, the

physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions, whatever the caste. The evidence to prove the ceremony of giving and taking should be such that it is free from all suspicions of fraud and so consistent and probable as to give no occasion for doubting its truth.

(vii) *N. Jayavel Vs. M. Nallammal*, wherein this Court held that with regard to the adoption, giving and taking of the child is mandatory and the factum of adoption has to be pleaded and proved.

(viii) *Prataprai N. Kothari Vs. John Braganza*, wherein the Apex Court held that in the absence of any plea, no evidence is admissible. When there was no plea or issue on the question of title, no evidence whatever was admissible regarding the same. Therefore, the parties cannot be permitted to adduce additional evidence at the appellate stage.

(ix) *Union of India and Another Vs. Major K.K. Taneja*, wherein a Division Bench of Delhi High Court held that when the appellant was aware of the material document and if the same was not produced before the Court below and he was negligent in filing the document in the lower Appellate Court, in such a case, he cannot be permitted to file the document by way of additional evidence.

16. On a careful consideration of the materials available on record and the submissions made by the learned counsels on either side and also taking into consideration the judgments relied upon by the learned counsels on either side, it could be seen that the plaintiffs have filed the suit for declaration to declare that they are the absolute owners of the suit property, to declare the Document Nos. 1573/98 and 1610/98 as invalid, illegal and not binding upon them and for consequential permanent injunction. According to the plaintiffs, the suit property originally belonged to one Ramasamy Mudaliar. The said Ramasamy Mudaliar died intestate, leaving behind his two sons viz., Nagularaja Mudaliar and Thiruvengadasamy Mudaliar. The said Nagularaja Mudaliar and Thiruvengadasamy Mudaliar were entitled to half share each in the property owned by Ramasamy Mudaliar. According to the plaintiffs, the first plaintiff, C.M.T. Govindarajan is the adopted son of Thiruvengadasamy Mudaliar and that after the death of Thiruvengadasamy Mudaliar, he succeeded to the half share.

17. Further according to the plaintiffs, Nagularaja Mudaliar's half share devolved upon his two sons viz., Beemaraya Mudaliar and Kannappa Mudaliar, each, entitled to one-fourth share. The said Kannappa Mudaliar's one-fourth share devolved upon C.M.K. Soundararajan as per Will dated 29.05.1970. On the death of C.M.K. Soundararajan, his share alone had devolved upon the defendants 1 to 4. The plaintiffs contended that for the suit Survey No. 364/2, the original Paimash Numbers were 36/B (P) and 35/B(P). As per Ex. A3, Partition Deed dated 12.11.1930, Beemaraya Mudaliar and Kannappa Mudaliar divided the said property and an extent of 2.05 = acres was allotted to Kannappa Mudaliar. C.M.K. Soundararajan claimed patta before the Settlement Officer pursuant to Ex. A3 Partition Deed and the Settlement Officer assigned a new Survey No.

365/1 and granted patta in respect of an extent of 2.08 acres in favour of C.M.K. Soundararajan. According to the plaintiffs, by mistake, C.M.K. Soundararajan's name was also included in Survey No. 364/2. However, according to the plaintiffs, the said C.M.K. Soundararajan did not claim any right in respect of Survey No. 364/2. In the plaint, the plaintiffs have stated that the first plaintiff is the adopted son of Thiruvengadasamy Mudaliar and he was taken in adoption as per Document No. 53/1944 by Thiruvengadasamy Mudaliar's wife Jagannathammal. Therefore, according to the plaintiffs, the first plaintiff is entitled to the property which belonged to Thiruvengadasamy Mudaliar as his legal heir. Ex. A13 is the Mortgage Deed dated 28.08.1998 executed by the first defendant Padmavathy and others in favour of the seventh defendant. Ex. A14 is the Mortgage Deed dated 21.08.1998 executed by the first defendant and three others in favour of the sixth defendant. The plaintiffs sought to declare these Mortgage Deeds as illegal, invalid and not binding upon them. The defendants contended that they have got half share in the suit property and the absolute owners of the said half share have created mortgage in their favour. In paragraph no. 5 of the written statement, the defendants have stated as follows:

Thiruvengadasamy had no male issues. He had two daughters and they have also died without heirs. Later Thiruvengadasamy adopted son by name Govindaraj, 1st plaintiff and he succeeded half share in "B" Block lands as per the settlement proceedings. Similarly, Nagularaja Mudaliar enjoyed half share in "B" Block lands.

The defendants also admitted the execution of Exs. A13 and A14 Mortgage Deeds and also stated that after due enquiry, the Settlement Officer granted patta jointly in the name of the plaintiffs and in favour of C.M.K. Soundararajan. Further, the defendants have stated that the first plaintiff, C.M.T. Govindarajan and the second plaintiff, Kalaivani are entitled to half share and C.M.K. Soundararajan is entitled to the remaining half share in the suit property. The first plaintiff, C.M.T. Govindarajan died during the pendency of the Second Appeal and his legal representatives were brought on record as appellants 2 to 5. The second plaintiff is the daughter of the first plaintiff. The first defendant is the mother of the defendants 2 to 4. By Ex. A2 certified copy of the final decree passed in O.S. No. 39 of 1917 on the file of the Sub Court, Chengalpattu dated 24.01.1919, the family properties of Ramasamy Mudaliar were partitioned in the final decree proceedings and an extent of 2.05 = acres in Paimash No. 35 and 5.98 = acres in Paimash No. 36 were allotted to Thiruvengadasamy Mudaliar. Nagularaja Mudaliar is the brother of Thiruvengadasamy Mudaliar. The properties allotted to Nagularaja Mudaliar in O.S. No. 39 of 1917 were divided between his sons under Ex. A3 Partition Deed dated 12.11.1930. In the said partition, 2.05 = acres in Paimash No. 35 was allotted to Kannappa Mudaliar and 5.98 = acres in Paimash No. 36 was allotted to Beemaraya Mudaliar.

18. As already stated in the written statement, the defendants have admitted that the first plaintiff, C.M.T. Govindarajan, is the adopted son of

Thiruvengadasamy Mudaliar. In the chief examination of P.W. 1, he has stated that Thiruvengadasamy Mudaliar adopted the first plaintiff as his son. For this specific statement made by P.W. 1, the defendants did not put any specific question or suggestion denying the said statement. That apart, in the evidence of D.W. 1, he had admitted that the plaintiffs 1 & 2 are the legal heirs of Thiruvengadasamy Mudaliar. Therefore, the defendants did not dispute that the first plaintiff is the adopted son of Thiruvengadasamy Mudaliar and in fact specifically admitted that he is the legal heir of Thiruvengadasamy Mudaliar, both in the written statement as well as in his evidence. In these circumstances, there was no necessity for the trial Court to go into the admitted fact with regard to the adoption made by Thiruvengadasamy Mudaliar. Therefore, the issue with regard to the adoption made by Thiruvengadasamy Mudaliar was not raised as an issue before the trial Court. However, the lower Appellate Court, even in the absence of any pleading disputing the adoption and without taking into consideration the admission made by the defendants, both in the written statement as well as in the evidence of D.W. 1, erroneously raised this as a point for consideration and decided the same against the plaintiffs holding that the plaintiffs failed to prove the factum of adoption. It is settled position that an admitted fact need not be proved. When there was no dispute with regard to the adoption made by Jagannathammal, widow of Thiruvengadasamy Mudaliar, the lower Appellate Court ought not to have taken the said issue and decided the same against the plaintiffs. That apart, the defendants have not raised the issue with regard to adoption as a ground in the First Appeal filed by them before the lower Appellate Court. In spite of all these things, the lower Appellate Court, for the reasons best known to it, erroneously raised the said point for consideration and reversed the judgment and decree of the trial Court.

19. Though a joint patta was issued in favour of the husband of the first defendant along with the plaintiffs, he cannot claim title over the property in view of the final decree passed in O.S. No. 39 of 1917. Therefore, without title, the defendants 1 to 4 cannot claim that they have been in possession and enjoyment of the suit property, especially when the plaintiffs have got title under Ex. A2. In the "A" Register marked as Ex. B1 in respect of Survey No. 364/2, the same stands in the name of the plaintiffs and the husband of the first defendant. Merely because a patta was issued in favour of the husband of the first defendant, it cannot be said, by settled position of law, that he is the owner of the property by virtue of the patta. When a Competent Court had passed a decree in O.S. No. 39 of 1917, the same is binding on the parties than the patta issued by the authorities. Further, the order passed by the Settlement Officer, at no point of time, can supersede the decree of the Civil Court. Though the defendants have produced Ex. B6 patta in respect of Survey No. 364/2A, apart from the said document, the defendants were not in a position to prove their possession by any other oral and documentary evidence. The decree passed in O.S. No. 39 of 1917 is binding on the parties and in view of the final decree passed in the said suit, the patta issued in favour of the first defendant's

husband is liable to be rejected.

20. Under Ex. A14 Mortgage Deed dated 21.08.1998, the defendants 1 to 4 mortgaged half share of the property in Survey No. 364/2B measuring an extent of 1.38 = acres to the sixth defendant and through their Power of Attorney viz., the fifth defendant, they mortgaged an extent of 4.55 acres in Survey No. 364/2A on 28.08.1998 under Ex. A13 Mortgage Deed to the seventh defendant. When the defendants have no title over the suit property in view of the decree passed in O.S. No. 39 of 1917, they have no right to encumber the suit property.

21. The defendants 1 to 4 contended that through their Power of Attorney viz., the fifth defendant, they sold the property measuring an extent of 4.55 acres in Survey No. 364/2A under Ex. A15 Sale Deed dated 15.10.1998 to the seventh defendant. It is pertinent to note that the alienation made by the defendants 1 to 4 was during the pendency of an order of interim injunction granted by the trial Court on 16.09.1998 in I.A. No. 1485 of 1998 in O.S. No. 814 of 1998. Taking into account all these aspects, the trial Court has rightly decreed the suit. The lower Appellate Court, as already stated, on a flimsy ground, held that the plaintiffs failed to establish the adoption pleaded by them and reversed the judgment and decree of the trial Court.

22. There is no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsels on either side. However, the judgments relied upon by the learned counsel for the respondents are not applicable to the facts and circumstances of the present case. Applying the ratios laid down in the judgments relied upon by the learned counsel for the appellants, I am of the view that the judgment and decree of the lower Appellate Court are liable to be set aside.

23. With regard to the additional documents sought to be marked by the appellant, the first document is the certified copy of the Power Deed for Adoption dated 19.03.1916, the second document is the certified copy of the registered Adoption Deed dated 03.12.1944 and the third document is the certified copy of the registered Will dated 22.03.1989. So far as the first two documents are concerned, the parties had mentioned about those documents in the pleading. With regard to the third document (i.e.) the certified copy of the registered Will dated 22.03.1989, there was no pleading made in the plaint by the plaintiffs. Though the plaintiffs have mentioned about the Power Deed for adoption dated 19.03.1916 and about the Adoption Deed dated 03.12.1944 in the plaint, the said averment was not disputed or denied by the defendants in their written statement. In fact, as already stated, the defendants admitted the adoption made by Jagannathammal, wife of Thiruvengadasamy Mudaliar, in the written statement as well as in the oral evidence of D.W. 1. When the defendants admitted the adoption made by Jagannathammal on 03.12.1944, I am of the view that the first two documents can be marked as additional documents. That apart, the appellants/plaintiffs, in their affidavit filed in support of the petition in M.P. No. 1 of 2012, have stated that no oral evidence is required to prove the

fact of adoption, in the interest of justice, the same can be marked as additional documents. By marking these documents, no prejudice would be caused to the respondents/defendants, for the reason that they themselves admitted the factum of adoption, both in their written statement as well as in their oral evidence.

24. The learned counsel for the appellants also submitted that the third document viz., the certified copy of the registered Will dated 22.03.1989 need not be marked as an additional document.

25. In these circumstances, the certified copy of the Power Deed for adoption dated 19.03.1916 (D. No. 36/1916 registered in the office of the Sub Registrar, Kanchipuram) is marked as Ex. A25. The certified copy of the registered Adoption Deed dated 03.12.1944 (D. No. 53/1944 registered in the office of Sub Registrar, Kanchipuram) is marked as Ex. A26 and the certified copy of the Will dated 22.03.1989 is rejected.

26. In these circumstances, the substantial questions of law are decided in favour of the appellants. The judgment and decree of the lower Appellate Court are set aside. The judgment and decree of the trial Court are restored. The Second Appeal is allowed. No costs. M.P. No. 1 of 2012 is ordered as stated above. Consequently, M.P. No. 1 of 2009 is closed.