

(2012) 02 MAD CK 0333

In the Madras High Court

Case No : A.S. No. 1030 of 2004 and C.M.P. No. 16842 of 2004

Mangaiarkarasi

APPELLANT

Vs

K.P. Latha and Shanthi Maran

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0333

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Udayakumar, for the Appellant; K. Kalyanasundaram for R1 and Mr. P.P. Rajendran for R2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G. Rajasuria

1. This appeal is focussed by the first defendant as against the judgment and decree dated 09.12.2003 made in O.S. No. 206 of 2003, which was one for partition, on the file of the Additional District Judge (Fast Track Court No. I) Coimbatore. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. The epitome and the long and short of the relevant facts absolutely necessary and germane for the disposal of this appeal would run thus:

The plaintiff filed the suit as against the two defendants for partition with the following relief:

(a) For partition and division of the suit properties mentioned hereunder in the schedule into 3 equal share with reference to good and bad soil and allot one such share to the plaintiff and put the plaintiff in possession of the same;

(b) To direct the first defendant to render true and proper account regarding the other movables left by late Parameswaran; and

(c) For costs.

(extracted as such)

3. The second defendant resisted the suit by filing the written statement; whereupon issues were framed.

4. During trial, the plaintiff-P.Latha examined herself as P.W.1 along with P.W.2-Subramania Iyer and P.W.3-K.Natarajan and Exs.A1 to A7 were marked. The first defendant-Mangaiarkarasi examined herself as D.W.1 along with D.W.2-Sivashankaran and Ex.B1 was marked.

5. Ultimately the trial Court passed the judgment as well as preliminary decree allotting one-third share in favour of the plaintiff in the immovable property described in the schedule of the plaint. Being aggrieved by and dissatisfied with the judgment and preliminary decree of the trial Court, the appellant/first defendant preferred this appeal on various grounds.

6. A thumb nail sketch of the germane facts necessary for the disposal of this appeal would run thus:

The plaintiff approached the Court with the plea that she got married the deceased Parameswaran, when he was 67 years" old. The couple lived together happily for some time and thereafter, he died leaving behind the plaintiff and his two daughters, the defendants herein, who were born through his first wife. The precise contention of the plaintiff is that the marriage between herself and the deceased Parameswaran took place on 22.01.1999 at Krishna Koil, Oppanakkara Street, Coimbatore and the said fact was got incorporated in a joint affidavit filed by both of them and attested by a notary, namely Natarajan. The defendants were not agreeable for amicable partition and therefore, the plaintiff was constrained to file the suit.

7. The first defendant would contend that the plaintiff is an utter stranger to the deceased Parameswaran, and purely for the purpose of grabbing a share in his property, she has chosen to dish out the plea as found set out in her false plaint. It is also the contention of D1, that the deceased Parameswaran executed Ex.B1-the registered Will dated 27.10.2001, which was registered on 13.11.2001, bequeathing his entire properties in favour of the first respondent for life and absolute estate in favour of her son, who is not in the party array.

8. The second defendant would contend that the plaintiff was not legally married to Parameswaran; she cannot be given the status of the wife of Parameswaran; purely for the purpose of making the false claim in the suit, she has projected herself as the wife of Parameswaran. It is also her contention that the Will dated 27.10.2001 registered on 13.11.2001 is not a genuine Will, but the earlier Will dated 19.04.1999 registered on 20.04.1999 is the genuine Will, whereby R1 and R2 were bequeathed with the properties of Parameswaran.

Both the defendants, precisely prayed for the dismissal of the suit.

9. The gist and kernel of the arguments of the learned counsel for the appellant/D1 would run thus:

(a) The trial Court without any solid evidence, merely on conjectures and surmises held as though a valid marriage took place between the plaintiff and the deceased Parameswaran.

(b) The witness (P.W.2), Subramania Iyer did not speak anything about the rituals conducted by him at the time of the alleged marriage solemnised by him, between the plaintiff and the deceased Parameswaran.

(c) Even though the said Krishna temple happened to be the one at that time itself under the control of an Executive Officer (HR & CE), the Officer was not examined and the relevant records also were not summoned to prove the alleged said marriage. If at all any such marriage had taken place, certainly there must have been records in that temple maintained by the Executive Officer. As such, in the absence of such records, the trial Court should not have held that there emerged a valid marriage between the plaintiff and the deceased Parameswaran. The trial Court also erroneously held as though the said Will dated 27.10.2001 was not proved, even though it happened to be a genuine Will.

Accordingly, the learned counsel for the appellant/D1, would pray for setting aside the judgment and decree of the trial court and for dismissing the original suit.

10. The learned counsel for the first respondent/plaintiff would support the judgment of the trial Court by contending that placing reliance on the deposition of P.W.2-the Prohit, who solemnised the said marriage, the Court rendered its verdict. Over and above that, the Notary public -Natarajan (P.W.3) was also examined, who spoke about the factum of he having attested the joint affidavit presented before him, by the plaintiff and the deceased Parameswaran.

Accordingly, the learned counsel for the first respondent/plaintiff would pray for the dismissal of the appeal.

11. The learned counsel for R2 would put forth and set forth his arguments to the effect that the plaintiff did not produce any clinching evidence in support of her plea of marriage. Had really such a marriage taken place, certainly, there must have been temple records and in the absence of best evidence having been produced, the trial Court was not justified in decreeing the suit in favour of the plaintiff. There is also one other Will dated 19.04.1999, registered on 20.04.1999, executed by Parameswaran and that Will alone would govern the property rights of D1 and D2, and the plaintiff is having nothing to do with the suit property.

Accordingly, he would pray for the dismissal of the appeal.

12. The points for consideration are as to:

(1) Whether the trial Court gave its finding upholding the marriage between the

plaintiff and the deceased Parameswaran based on inadmissible and insufficient and patchy evidence, warranting interference in the appeal?

(2) Whether the finding of the trial Court in other issues are fraught with perversity and illegality?

13. Both the points are taken together for discussion as they are inter-linked and inter-woven, with each other.

14. Indubitably and indisputably, unassailably and unarguably, as on 22.01.1999, the deceased Parameswaran was aged 67 years old, being a retired English Professor who had two married daughters living separately from him. According to the plaintiff, she on seeing an advertisement for marriage in Hindu Newspaper approached him for marrying him and they both got married as per Hindu rites and customs at Krishna Koil. Oppannakara Street, Coimbatore, as solemnised by P.W.2-Subramania Iyer. The publication in the Hindu newspaper was not produced by the plaintiff. The said Subramania Iyer in his chief examination, would depose that at the request of one Vijay Kumar, he solemnised the said marriage, but the said Vijay Kumar was not examined as a witness in Court. In Ex.A1-the notary attested affidavit, one Vijay Kumar appears to have signed along with one other witness.

15. The learned counsel for the appellant/D1 would vehemently contend that the same Subramania Iyer during cross examination would depose that none of the relatives were present at the time of the marriage. According to appellant's counsel, there is total incoherence in the evidence of P.W.2. None of the witnesses to that affidavit was examined before the Court. The learned counsel for the first respondent/plaintiff would contend that the evidence of the notary public and the said Prohit would be more than sufficient to prove the said marriage. I am at a loss to understand as to why, even according to him, the best evidence was not produced. If at all any marriage had taken place in the said temple which was under the control of the Executive Officer functioning under the Hindu Religious and Charitable Endowments Act, certainly there must be records maintained in the temple office. No such authority can claim that without records or making any entry in the register concerned, they are allowing marriages to be solemnised in such temples. As such, the best evidence was not produced, admittedly by the plaintiffs. Even though according to the plaintiff she and the deceased Parameswaran did choose to appear before the notary and get their joint affidavit attested, yet there is no iota or molecular extent of evidence to establish and demonstrate as to what prevented them from getting their marriage registered under the Hindu Marriage Act. The trial Court seems to have ushered in certain principles based on culture, which are not germane for deciding the contentious issues in this case. There should be clinching evidence to establish the marriage.

16. The learned counsel for the appellant/D1 would convincingly and legally submit that P.W.2-the Prohit did not even choose to narrate as to whether "Thali"

was tied by Parameswaran around the neck of the plaintiff at the time of the alleged marriage and he did not also speak about the "Saptapadi" even though "Saptapadi" is not an essential ritual in all Hindu marriages.

17. On the perusal of the deposition of P.W.2, what I could observe is that his deposition is bereft and niggard of details creating suspicion in the mind of the Court and that too, in the absence of production of clinching evidence, even though, according to the plaintiff, was available with the temple authorities concerned. Trite is the proposition of law that witnesses might lie, but the circumstances will not do so. Here suspicious circumstances are that the alleged marriage according to the plaintiff took place on 22.01.1999 when Parameswaran was 67 years old and that he died on 27.11.2001 itself. However, the plaintiff in her deposition would claim as though they lead sexual life during that short span of time, but because of the interference of the relatives of Parameswaran, they could not continue it etc. At times truth might be stranger than fiction, but there should be objectivity in deciding the case and on conjectures and surmises a lis cannot be decided, as it has been done by the trial Court. Each trial is a voyage in quest of truth.

18. I am of the considered view that necessarily the matter has to be remitted back to the trial Court, so as to enable both sides to adduce best evidence available relating to the factum of the marriage.

19. Simply because the plaintiff referred to the second Will Ex.B1 dated 27.10.2001 and not to the first Will, referred to supra, the defendants were not justified in not placing the whole facts before the Court. No doubt, the trial Court held the second Will as the one not proved, in which case the first Will would come to life if at all the first Will is proved. But no evidence has been adduced and there are also no pleadings to that effect. As such, this is a case which could be cited as a good example for both sides not keeping in mind the salient provisions of law and participating in the trial. A fortiori the judgment and decree of the trial Court should necessarily be set aside and the matter has to be remitted back to the trial Court with the following direction:

The parties are at liberty to adduce additional evidence before the trial Court, which also shall issue summons to necessary witnesses for appearance as well as for producing the relevant records. After giving due opportunity of being heard, the matter shall be disposed of within a period of three months preferably.

20. The parties shall appear before the trial Court on 16.03.2012.

21. On hearing the judgment, the learned counsel for R2 would make an extempore submission to the effect that before the trial Court, R2 and D2 remained exparte and liberty might be given to R2 to file necessary application to get opportunity to participate in the proceedings. It is open for him to do so as per law. Accordingly, this appeal is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.