

**(1988) 07 MAD CK 0035**  
**In the Madras High Court**  
**Case No : Second Appeal No. 591 of 1988**

Sivalingam

APPELLANT

Vs

Sakthivel and Another

RESPONDENT

**Date of Decision :** 22-07-1988

**Acts Referred:**

Evidence Act, 1872 — Section 19

**Citation :** AIR 1989 Mad 252 : (1988) 2 MLJ 167

**Hon'ble Judges :** Srinivasan, J

**Bench :** Single Bench

**Advocate :** P. Rajagopal, for the Appellant; K. Venkatasubramaniam, for the Respondent

**Final Decision :** Dismissed

## Judgement

Srinivasan, J.—This second appeal is against the judgment and decree of the District Judge, East Tanjore at Nagapattinam made in A.S. 123 of 1987, reversing that of the District Munsif of Nagapattinam, in O.S. 262 of 1982, At the time of admission of the second j appeal, the following substantial question of law was framed :--

"Whether a valid marriage can be inferred from a mere recital of relationship in a document, in the absence of any proof of the | form and ceremonies of marriage ?"

The learned Judge, who admitted the appeal directed the appeal to be posted on 20-6-1988 , for final disposal. Consequently when the application for stay came up before me, directed counsel on both sides to argue the appeal, arid after some adjournments, the appeal was argued today.

2. The plaintiffs prayed for declaration of title to the suit property and for recovery of possession on the ground that they are the children of Thambithurai, who was the owner of the suit property. According to the plaintiffs, the suit property was leased to the defendant by Thambithurai. Thambithurai died in

1979 and the plaintiffs' mother Anjammal died in 1981. The plaintiffs claimed that after the death of Anjammal, they were the exclusive owners of the property and as the defendant is not acknowledging their title and is refusing to pay the rent in spite of demands, they had terminated the tenancy and sought for declaration of title and recovery of possession.

3. The defences raised by the defendant are that there was no relationship of landlord and tenant between Thambithurai and the defendant, that the plaintiffs were not the legal heirs of Thambithurai, that the superstructure belongs to the defendant, the land had been taken on lease from a temple benami for the benefit of the defendant in the name of Thambithurai, who was the maternal uncle of the defendant and that the defendant had prescribed title to the suit property by adverse possession.

4. The trial Court framed eight issues, covering the entire pleadings on both sides and gave the following findings :

1. The plaintiffs are not the legal heirs of Thambithurai.

2. There was no relationship of landlord and tenant between Thambithurai and the defendant

3. The defendant had not perfected title to the suit property by adverse possession.

4. The superstructure belonged to Thambithurai and he was the lessee of the land and not to the defendant.

In view of the finding that the plaintiffs are not the legal heirs of Thambithurai, the suit was dismissed.

5. On appeal, the learned District Judge framed two points for consideration--(i) Whether the plaintiffs are entitled to the suit property as legal heirs of deceased Thambithurai ? (ii) Whether the defendant's claim to the suit property, either as a person who has put up the building or as a person, who has prescribed title by adverse possession is true ?

On the second point, the learned District Judge found that the decision of the trial Court holding against the defendant was correct, and on the evidence, he could not differ from the findings given by the trial Court. On the first point, the learned District Judge differed from the finding of the trial Court and held that the plaintiffs are the legal heirs of Thambithurai as they had proved to the satisfaction of the Court that their mother Anjammal was the legally wedded wife of Thambithurai. Consequently, the learned District Judge granted a decree to the plaintiffs as prayed for by them.

6. In this second appeal, learned counsel for the appellant vehemently contends that the learned District Judge was wrong in granting a decree in favour of the plaintiffs, even assuming that they were the owners of the property, as they had failed to prove the landlord and tenant relationship between them and the

defendant. According to learned counsel, once the plaintiffs come to Court with a definite case of tenancy, they have to fail if they do not establish that case. Reliance is placed by learned counsel on the decision of the Supreme Court in *Bhagwati Prasad Vs. Shri Chandramaul*, . My attention has been drawn to the following passage in the judgment of the Supreme Court found in para 14 at page 739--

"In support of its conclusion that in a case like the present a decree for ejectment can be passed in favour of the plaintiff, though the specific case of tenancy set up by him is not proved, the High Court has relied upon two of its earlier Full Bench decisions. In *Abdul Ghani v. Mt. Babni* (1903) ILR 25 All 256 (FB) the Allahabad High Court took the view that in a case where the plaintiff asks for ejectment of the defendant on the ground that the defendant is a tenant of the premises, a decree for ejectment can be passed even though tenancy is not proved, provided it is established that the possession of the defendant is that of a licensee. It is true that in that case, before giving effect to the finding that the defendant was a licensee, the High Court remanded the case, because it appeared to the High Court that that part of the case had not been clearly decided. But once the finding was returned that the defendant was " in possession as a licensee, the High Court did not feel any difficulty in confirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. To the same effect is the decision of the Allahabad High Court in the case of *Balmakund v. Dalu* (1903) ILR 25 All 498 (FB)."

It is argued by the learned counsel for the appellant that once the case of tenancy was found against, it was not open to the Court to grant a decree in favour of the plaintiffs on some other footing. I do not agree with learned, counsel for the appellant that the decision of the Supreme Court lays down such a proposition. In fact, in the very next paragraph, the Supreme Court has observed thus (at p. 739)--

"It is hardly necessary to emphasise that in a matter of this kind, it is undesirable and inexpedient to lay down any general rule. The importance of the pleadings cannot, of course, be ignored, because it is the pleadings that lead to the framing of issues and a trial in every civil case has inevitably to be confined to the issues framed in the suit. The whole object of framing the issues would be defeated if parties are allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues. But cases may arise in which though a particular plea is not specifically included in the issues, parties might know that in substance the said plea is being tried and might lead evidence about it. It is only in such a case where the Court is satisfied that the ground on which reliance is placed, by one or the other of the parties, was in substance at issue between them and that both of them had opportunity to lead evidence about it at the trial that the formal requirement of pleadings can be relaxed."

7. The present case falls squarely within the observations of the Supreme Court extracted above. As pointed out already the trial Court had framed eight issues. Issues Nos. 1 and 3 related to the ownership of the superstructure. Issue No. 3 also related to the tenancy put forward by the plaintiffs. Issue No. 4 related to the heirship of the plaintiffs to Thambithurai. Issue No. 5 related to the claim of adverse possession put forward, by the defendant. Issue No. 6 was whether the plaintiffs are entitled to get the declaration prayed for by them.

8. The pleadings as well as the issues framed in the case show that the defendant was not taken by surprise with regard to the claim of title. The defendant was fully aware that the plaintiffs were resting their case on their title to the suit property. In fact, the suit is valued u/s 25(a) of the Court-fees Act and court-fees have been paid on that basis. It cannot be contended that the suit rested only on the claim of tenancy put forward by the plaintiffs. In those circumstances, the Court was free to grant a decree in favour of the plaintiffs on the basis of the title found in favour of the plaintiffs. In this case, the plaintiffs' title having been upheld by the District Judge and the case of adverse possession put forward by the defendant having been negated, the only course open to the Court was to grant a decree in favour of the plaintiffs for declaration of title and delivery of possession. Hence, the contention urged by learned counsel on this aspect of the matter is rejected.

9. Learned counsel contended that the finding of the learned District Judge on the question of relationship of the plaintiffs to Thambithurai is vitiated by his failure to consider the relevant evidence on record. According to him, D.W. 2 has given categorical evidence that she was the married wife of Thambithurai and that the plaintiffs' mother was not married to him. D. W. 2 has not given the date of her marriage. It is not necessary to consider in the present case, whether D.W. 2 Amma-kannu is the legally wedded wife of Thambithurai or not. Even assuming for argument sake that D.W. 2 is the legally wedded wife of Thambithurai, that will not in any way disprove the case of the plaintiffs that their mother Anjammal " was the legally wedded wife of Thambithurai. As early as in 1949 Thambithurai had executed a sale deed under Ex. A4 dated 29-4-1949 in favour of Anjammal, the mother of the plaintiffs, describing her as his wife. At that time, there was no motive whatsoever for Thambithurai to include a false description in the sale deed. In Ex. A.9, which is the S.S.L.C. book of the first plaintiff, he has been described as the son of Thambithurai. At the time when the first plaintiff was admitted in the school or when he passed the S.S.L.C. examination, there was absolutely no dispute so as to cause suspicion on the genuineness of the contents of Ex. A.9. Ex. A.10 is a Will executed by Anjammal on 21-6-1977. Even at that time there was no motive for Anjammal to make a false recital that she was the wife of Thambithurai. Taking into account these documents along with the evidence of the plaintiffs, the learned District Judge has come to the conclusion that the plaintiffs have proved their relationship with Thambithurai. The learned Judge rejected the evidence of D.W. 2. I do not find any error in the discussion or appreciation of the evidence by the

learned District Judge. The finding given by the learned District Judge is not liable to be interfered with u/s 100, C.P. Code.

10. Learned counsel for the appellants contends that the recital in Ex. A.4 would not prove the marriage between Thambithurai and Anjammal. He relies upon the decision of a Division Bench of Andhra Pradesh High Court in *Mutyala v. Subbalakshmi*. AIR 1962 Andh Pra 311 in support of his contention. In that case, it has been observed by the Division Bench as follows (at p. 320)-

"A marriage cannot be proved merely by statements which relate to the existence of any relationship or by the opinion of any person given out or even expressed by conduct as to the existence of such relationship of any person although that person has special means of knowledge on the subject; or (2) by the admissions made by the parties (o the marriage who may at times be actuated by ulterior motives; but if, in addition thereto, or independently, any evidence of the parents of the parties regarding celebration or solemnisation of a marriage is available, it would go a long way in establishing the factum of marriage."

11. Even the passage extracted above administers a caution that the admission made by a party to the marriage might be, actuated by ulterior motive, and, therefore, that could not be used as evidence by itself. Therefore, the question will be in each case to consider on the facts of the case whether the admission by the concerned party was actuated by ulterior motive or not. If there was no occasion for such an admission being vitiated by any ulterior motive, then the admission is conclusive as against that party, unless it is explained by the party himself. In the present case, about 33 years prior to the dispute Thambithurai had admitted in a solemnly registered document that Anjammal, the mother of the plaintiffs, was his wife. There was absolutely no motive for him to make a false statement in the sale deed at that time. Hence, that admission made in the sale deed, Ex. A,4 proves, in my opinion, conclusively that Anjammal was the wife of Thambithurai. In my view, no further evidence is required to prove that Anjammal was the legally wedded wife of Thambithurai in the circumstances of the case. Hence, the findings given by the learned District Judge are unassailable. No other point was argued before me. There is no merit whatsoever in the second appeal. The second appeal therefore fails and the same is dismissed with costs. Learned counsel for the appellants prays for time to vacate the premises. Learned counsel for the respondents agrees for grant of one month. The appellant is granted time till 31-8-1988, to vacate the suit property and hand over possession to the respondent.