
(1988) 07 MAD CK 0020
In the Madras High Court

Sivalingam

APPELLANT

Vs

Sakthivel, rep. by his power of Attorney agent
Kunjithapatham Pillai and Another

RESPONDENT

Date of Decision : 22-07-1988

Acts Referred:

Citation : (1988) 2 LW 348 : (1988) 2 MLJ 167

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This second appeal is against the judgment and decree of the District Judge of East Thanjavur at Nagapattinam made in

A.S.No. 124 of 1987, reversing that of the District Munsif, Nagapattinam, in O.S.No. 262 of 1982. At the time of admission of the second

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, I directed counsel on both sides to argue the appeal, and 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 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.

1. Whether the plaintiffs are entitled to the suit property as legal heirs of deceased Thambithurai?
2. Whether the defendant's alleged claim to the suit property, either 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 finding 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 paragraph 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 ILR

(1903) All. 256, the Allahabad High Court took the view that in a case where the plaintiff asks for the 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 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 ILR (1903) All. 498.

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:

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 occur 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 have 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. Issue number 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 by 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 Ammakannu is the legally wedded wife of Thambithurai or not. Even assuming for

arguments 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.A.4, 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 a 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.2.1 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 of the Code of Civil

Procedure.

10. Learned Counsel for the appellant contends that the recital in ExA.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. Subbulakshmi (1962)1 A.W.R. 91 : (1962) M.L.J.

(Cri.) 91 : AIR 1962 A.P. 311 in support of his contention. In that case, it has been observed by the Division Bench as follows:

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 admission made by the parties to the marriage who may at times be actuated by ulterior motives; but if, in addition thereto or independently, and evidence of the patents of the parties regarding celebration or solemnization 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 appellant 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.