

(2010) 11 MAD CK 0065

In the Madras High Court

Case No : C.R.P. (PD) No. 3290 of 2010 and M.P. No. 1 of 2010

S.K. Jeyarhaaj

APPELLANT

Vs

Baby @ Rohini, S.K. Ravikumar, S.K. Shobana and
Senthilkumar

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Hindu Marriage Act, 1955 — Section 16

Citation : (2011) 1 CTC 92

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M.S. Krishnan and for Sarvabhauman Associates, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Second Defendant in O.S. No. 269 of 2004 on the file of Fast Track Court I, Coimbatore is the revision Petitioner.

2. The revision Petitioner filed I.A. No. 323 of 2010 under Order VII Rule 11 of the CPC to reject the plaint in O.S. No. 269 of 2004 and that

application was dismissed and hence, the revision is filed.

3. It is submitted by the learned Senior Counsel Mr. M.S. Krishnan that Respondents 1 to 4 herein filed the above suit for partition and separate

possession of the suit properties and the Plaintiffs, have no cause of action to file the suit and they have no right over the suit properties and

therefore, the plaint is liable to be rejected. According to the learned Senior Counsel, the suit was filed by the Respondents for partition as if they

are entitled to a share in the suit properties by virtue of the status viz., the children of the deceased Kumaresan through his second wife Chandra.

Even according to the plaint, the mother of the Plaintiffs was the second wife and the properties were the ancestral properties in the hands of late

Veeraboyan, who had three sons by name S.V. Subramaniam, S.V. Kumaresan and S.V. Viswanathan. The said Veeraboyan had executed a

settlement deed on 21.5.1950 settling A schedule property to his first son S.V. Subramaniam, B Schedule property to his second son S.V.

Kumaresan, C schedule property to his third son S.V. Viswanathan and the D schedule property to his two wives and the daughter Valliammal

born through his first wife. As per the settlement, his sons and their wives are entitled to enjoy the properties allotted to them only during their

lifetime and then the property will go to the male descendants after their life time. It is further stated in the plaint that the father of the Plaintiffs viz.,

S.V. Kumaresan was the only surviving son of Veeraboyan and he alone was entitled to the suit properties and as per the settlement deed, the

male santhathis are entitled to enjoy the suit properties and as the mother of the Plaintiffs was not legally married to the said S.V. Kumaresan, the

Plaintiffs will not come within the category of class I heirs to succeed to the estate of Veeraboyan as the property was ancestral in the hands of

Veeraboyan. Therefore, the Plaintiffs cannot succeed to the suit properties and hence, they are not entitled to partition and therefore, the suit is

liable to be struck off. In support of his contention, the learned Senior Counsel relied upon the following judgments:

1 Jinia Keotin and Ors. v. Kumar Sitaram Manjhi and Ors. 2003(1) CTC 250

2 Saleem Bhai and Others Vs. State of Maharashtra and Others,

3 T. Arivandandam Vs. T.V. Satyapal and Another,

4 Subba Reddiar v. Vasantha Ammal and Anr. 2001 L.W.472

4. It is contended by Mr. M.S. Krishnan, learned Senior Counsel for the Petitioner that u/s 16 of the Hindu Marriages Act, only in respect of the

self-acquired property left by a deceased, the children born through a second wife, who was married to the deceased, are entitled to any share and

in respect of an ancestral property, the children born through a second wife are not entitled to succeed and admittedly, the mother of the Plaintiffs

was the second wife and even according to the Plaintiffs, the marriage was contracted during the life time of the first wife and therefore, the

Plaintiffs cannot claim any right in the ancestral property and they cannot claim

to be class I heirs to succeed to the estate of Veeraboyan. The learned Senior Counsel relied on the decision in *Jinia Keotin and Ors. v. Kumar Sitaram Manjhi and Ors.* (cited supra) in support of his contention.

5. No doubt, in the above judgment, the Honourable Supreme Court has made it clear that as per Section 16 of the Hindu Marriages Act, the children born through bigamous marriage are to be treated as legitimate children so far as the succession or inheritance of such children to the properties of the father is concerned, notwithstanding that the marriage was void or voidable. He, therefore, submitted that the Plaintiffs can claim succession only to the separate property of the father and in this case, the property is the ancestral property in the hands of Veeraboyan and therefore, the Plaintiffs, being the children born through the second wife, are not entitled to claim any right over the suit properties and therefore, the suit filed by them has to be struck off.

6. I am not able to accept the contention of the learned Senior Counsel. It is the settled law that for striking down a plaint, we will have to go by the averments made in the plaint and the documents filed in support of the plaint. In this case, as stated supra, the case of the Plaintiffs is that Veeraboyan settled the properties giving vested remainder to the male grandchildren and the Plaintiffs, being the grandchildren of Veeraboyan, are entitled to a share alongwith the second Defendant, who is the son of late S.V. Kumaresan through his first wife Kamalam Kumaresan, the first Defendant in the suit. It is further stated in the plaint in para 4 that the suit properties were the self-acquired properties of late Veeraboyan. Therefore, as per the averments made in the plaint, the properties are the self-acquired properties of Veeraboyan and the question whether the properties are ancestral properties in the hands of Veeraboyan or not can be decided by the court below during trial and that cannot be presumed at this stage. Further, the Plaintiffs claim to be the children of S.V. Kumaresan through his second wife and they are also claiming right over the suit properties on the basis of the settlement deed executed by Veeraboyan. In the settlement deed, it has been stated that the sons shall enjoy the properties without any power of alienation and thereafter their male santhathis shall enjoy the properties absolutely.

7. According to me, the intention of the settlor viz., Veeraboyan was to give absolute right to his grandsons. Admittedly, the Plaintiffs are the

children born to S.V. Kumaresan through his second wife. Nevertheless, Respondents 2 and 4 satisfy the description of male santhathis of

late Veeraboyan through his son and hence, prima facie, I am of the opinion that they are also entitled to claim their share in the suit properties.

Whether the mother of the Plaintiffs was the legally wedded wife of late S.V. Kumaresan or she was a concubine, as now contended by the

revision Petitioner, can be decided only during trial and as per the averments made in the plaint, the Plaintiffs are the children born to S.V.

Kumaresan through his second wife.

8. Further, the applicability of Section 16 of the Hindu Marriages Act cannot be invoked in this case as it is the contention of the Plaintiffs that the

properties are the self-acquired properties of Veeraboyan and even assuming that the properties are the ancestral properties in the hands of

Veeraboyan as contended by the revision Petitioners, as the Plaintiffs are the grandsons of Veeraboyan, they are entitled to claim their share in the

suit property under the settlement deed. Hence, I am not able to accept the contention of the learned Senior Counsel that the Plaintiffs have no

cause of action. According to me, necessary allegations are made in the plaint to sustain the suit and it is for the court below to decide whether the

Plaintiffs are entitled to the relief as prayed for and hence, I do not find any merit in the contention of the learned Senior Counsel for the Petitioner.

9. In the result, the revision petition is dismissed. The connected miscellaneous petition is also dismissed.

10. It is made clear that the observation made in this order is only for the purpose of giving a prima facie finding that the suit is maintainable and the

court below, while disposing of the suit, is directed to proceed on merits and in accordance with law without being influenced by the observation

made in this revision petition.