
(2003) 03 MAD CK 0150
In the Madras High Court
Case No : A.S. No. 1275 of 1988

Velammal alias Subbulakshmi

APPELLANT

Vs

Achayya Naicker

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2003) 2 CTC 561

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : D. Srinivasaraghavan, for V. Ramajagadeesan and Rathina Ashokan, for the Appellant; R. Krishnan, for A. Sivaji, for the Respondent

Final Decision : Dismissed

Judgement

P. Thangavel, J.—This Appeal has been filed by the defendant as appellant against the judgment and decree dated 12.9.1988 and made in O.S.No.131 of 1985 on the file of the learned Subordinate Judge, Srivilliputhur.

2. The case of the plaintiff, who is the respondent herein, is as follows:- Late Smt.Nachiarammal is the sister of the plaintiff, Achaya Naicker, who is the brother of A.Krishnasamy Naicker. The defendant Velammal alias Subbulakshmi is the daughter of the above said Krishnasamy Naicker. Nachiarammal was married to Subba Naicker as his second wife and they have no issue. The suit properties are given to Nachiarammal by her husband Subba Naicker under a settlement deed dated 8.4.1967 and Nachiarammal was in possession and enjoyment of the suit properties. The father of the defendant, with a view to grab the properties of Nachiarammal, obtained a registered adoption deed dated 3.9.1980 as if the defendant was adopted from Nachiarammal, under coercion from the above said Nachiarammal. The defendant was more than 18 years of age at the time of execution of the adoption deed dated 3.9.1980 and she was living with her father, who arranged for the marriage of the defendant. The defendant was not attending to the needs of Nachiarammal. The deed of

adoption dated 3.9.1980 is not valid in law. The said Nachiarammal, in fact, had cancelled the above said adoption deed by means of another registered document dated 9.8.1985. The said adoption deed executed in favour of the defendant will not confer any right in the suit properties to the defendant.

3. The plaintiff was attending to the needs of Nachiarammal as a brother. Out of love and affection, Nachiarammal executed a registered Will dated 9.8.1985 bequeathing the suit properties in favour of the plaintiff. The Will has to come into force after the life time of Nachiarammal, who died on 22.8.1985. The plaintiff performed all obsequies ceremonies. The plaintiff alone is entitled to the suit properties. The defendant is denying the right and title of the plaintiff to the suit properties. It is under the said circumstances, the plaintiff has come forward with the suit for declaration and for permanent injunction or in the alternative for recovery of possession.

4. The appellant as defendant resisted the case of the plaintiff/respondent on the following grounds:- Nachiyarammal was the owner of the suit properties and the suit properties are situate in Thombakulam Kilur village. The plaintiff was working and residing in Kalingappatti village in Sankarankovil Taluk. The plaintiff was not attending to the needs of Nachiarammal. Nor Nachiarammal was having any love and affection towards the plaintiff, her brother. The defendant was helping Nachiarammal from her childhood and due to love and affection, Nachiarammal adopted the defendant by means of a registered adoption deed dated 3.9.1980 and gave the suit properties under the said adoption deed to the defendant. The adoption deed was not obtained by the father of the defendant, with a view to grab the suit properties of Nachiarammal. The adoption deed is valid and the defendant did not admit the cancellation of the registered adoption deed of the said Nachiarammal on 9.8.1985. Nachiarammal had also no right to cancel the adoption deed under law. The plaintiff and the relatives of the wife of the plaintiff took Nachiarammal in a taxi to give native treatment for jaundice on 8.8.1985 and two days later Nachiarammal was brought back. There was no love and affection towards the plaintiff for Nachiarammal and therefore, the alleged execution of Will by Nachiarammal in favour of the plaintiff is not true. The obsequies ceremonies were not done by the plaintiff. The defendant alone is in possession and enjoyment of the suit properties. It is only to grab the properties enjoyed by the defendant, the plaintiff has come forward with the suit. Therefore, the defendant has sought for dismissal of the suit.

5. After considering the submission made on both sides and in the light of the material evidence available on record, the trial Court has come to a conclusion that the plaintiff is entitled to the reliefs of declaration and for recovery of possession of the suit properties. Aggrieved at the judgment and decree dated 12.9.1988 and made in O.S.No.131 of 1985 on the file of the learned Subordinate Judge, Srivilliputhur, the defendant as appellant has come forward with this appeal.

6. The points for determination are:-

(1) Whether the cancellation of the registered adoption deed dated 3.9.1980 by Nachiarammal by means of registered cancellation deed dated 9.8.1985 is valid and binding on the defendant?

(2) Whether the registered Will dated 9.8.1985 executed by Nachiarammal in favour of the plaintiff is true, valid and binding on the defendant?

(3) To what relief?

7. Point No.1:- The respondent, who is the plaintiff before the trial Court, was examined as P.W.1, apart from examining P.W.4 Tmt. Umamaheswari and two other witnesses as P.Ws.2 and 3. The appellant, who is the defendant before the trial Court, was examined as D.W.1 apart from examining two other witnesses as D.Ws.2 and 3 before the trial Court. The fact remains that Nachiarammal was married to Subba Naicker as his second wife and they have no issue out of the wedlock. A perusal of Ex.A-5 dated 8.4.1967, registered settlement deed executed by Subba Naicker in favour of Nachiarammal would disclose that the properties described therein, viz., the suit properties, were settled in favour of Nachiarammal by her husband Subba Naicker and she was put in possession of the said properties. There is also no dispute between both parties that Nachiarammal was the absolute owner of the suit properties and she was in possession and enjoyment of the said properties. The fact also remains that the respondent and A.Krishnasamy Naicker are brothers and Nachiarammal is the sister of the above said brothers. The appellant is none other than the daughter of the above said A.Krishnasamy Naicker.

8. The evidence of D.W.3 Subbaiah Naiker, scribe of the registered adoption deed Ex.A-1 dated 3.9.1980 would disclose that the above said registered adoption deed was executed by Nachiarammal in favour of the appellant. The evidence of D.W.3 would not help to establish that the said document was not obtained under coercion by the father of the appellant as it is a matter between Nachiarammal on one hand and the father of the appellant on the other hand.

9. A perusal of Section 15 of the Hindu Adoptions and Maintenance Act, 1956 (herein after referred to as "the Act") would disclose that no adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth. Therefore, if a deed of adoption is a valid one, the question of cancellation of such valid deed of adoption will not arise. It has to be seen whether the deed of adoption Ex.A-1 dated 3.9.1980 is a valid document and if so, whether Ex.A-1 can be cancelled by Nachiarammal by means of a registered deed of cancellation of adoption as seen in Ex.A-3 dated 9.8.1985.

10. A perusal of Section 10 of the Act would disclose that no person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely,-

(i) he or she is Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

It is the specific case of the respondent that the age of the appellant was about 18 years at the time of execution of the registered adoption deed, Ex.A-1 dated 3.9.1980 and therefore, it is not valid in law and that therefore, the said document can be cancelled as seen in Ex.A-3 dated 9.8.1985 by Nachiarammal. P.W.4 Umamaheswari, who is the Headmistress of Bharathi Elementary School, had given evidence with regard to the age of the appellant. The evidence of P.W.4 would disclose that she knows the appellant and the appellant was admitted as a student in Bharathi Elementary School and she was admitted by the Headmistress, who was working in that school and that her date of birth was registered as 31.10.1962 in Serial No.26 of Admission Register Ex.A-11. Ex.A-11 is the register maintained in the school in day-to-day administration with regard to admission. The details to make entry in Ex.A-11 with regard to the date of birth of the appellant should have been given by her parents and the date of birth was entered as 31.10.1962 in the year 1971. There is no need to suspect the genuineness of the entry made with regard to the date of birth of the appellant as 31.10.1962 in Ex.A-11 and also to discard the evidence of P.W.4 who has deposed based on record. Therefore, the evidence of P.W.4 and Ex.A-11 would disclose that the date of birth of the appellant was 31.10.1962. If the above said fact is taken into consideration, it is clear that on the date of execution and registration of the adoption deed Ex.A-1 dated 3.9.1980, the age of the appellant was 17 years 10 months and 2 days. Since the age of the appellant was more than 15 years on the date of adoption or registration of the deed of adoption, it can be cancelled, in view of Section 10 of the Act referred to above.

11. The learned counsel appearing for the appellant contends that a male or female can be adopted, even after completion of 15 years, if the custom and usage permits for such adoption. Of course, if the custom and usage permits adoption after completion of 15 years, an adoption can be made after completion of 15 years. It has to be seen whether the custom or usage permits adoption after completion of 15 years. In support of the case of the appellant, D.W.2 Paulchamy Naicker was examined. According to him, the custom in the community of Kammavar Naicker to which the appellant, respondent and D.W.2 belong, permits adoption of a male or female children after completion of 15 years. It is also in his evidence that he has adopted one Mariappan in April, 1978 and deed of adoption was written and registered in connection with such adoption in the year 1981. Ex.X-1 is the certified copy of adoption deed. A perusal of Ex.X-1 would disclose that one Mariappan, who is none other than the

son of the sister of Paulchamy Naicker, was adopted by performing religious ceremonies on 20.4.1972 and a deed of adoption was registered on 12.6.1981. The age or the date of birth of the said Mariappan was not specifically mentioned in Ex.X-1. Therefore, the age of the said Mariappan at the time of adoption cannot be determined by relying on the above said document. No other document evidencing the date of birth of the said Mariappan has also been produced before the Court by D.W.2. No reason was also assigned as to why the said deed of adoption was registered on 12.6.1981, even though the alleged adoption was said to have taken place on 20.4.1972. It is admitted by D.W.2 in cross-examination that Mariappan, who was allegedly adopted by D.W.2, had studied S.S.L.C. three years after the registration of Ex.X-1. If that fact is also taken into consideration, it is clear that the age of the said Mariappan should be less than 15 years at the time of alleged adoption. That apart, even after the alleged adoption, the name of the father of Mariappan was given as Gurusamy Naicker, who is the natural father of Mariappan. That would disclose that the said Mariappan continued to be the son of the natural father, even after the alleged adoption and not as adopted son of D.W.2. It is evident from the evidence of D.W.2 that Mariappan had applied for job in Alangulam Cement Factory for the purpose of which lands of D.W.2 were acquired. It is also evident that D.W.2 is a bachelor and he has no heir. It is evident from the above said circumstances that to get a job in Alangulam Cement Factory, the deed of adoption should have been created by D.W.2 and not for real adoption. Therefore, the evidence of D.W.2 and Ex.X-1 will not help the appellant to establish that there was a custom of adopting male or female children after completion of 15 years.

12. D.W.2 had also produced Ex.X-2, certified copy of adoption deed dated 22.12.1982 in connection with adoption of Subburaj to one Seenai Naicker. A perusal of Ex.X-2 would not also disclose the age or date of birth of the said Subburaj at the time of adoption or at the time of registration of the document Ex.X-2. Even though D.W.2 has stated that the age of Subburaj was about 25 years at the time of adoption, he would admit that he does not know the date of birth of Subburaj. If that be so, the evidence given by D.W.2 with regard to the age of the said Subburaj cannot be accepted. It is also evident that the above said Subburaj has also applied for job in Alangulam Cement Factory as adopted son of Seenai Naicker, whose lands were acquired for the said cement factory. It is evident from the material evidence given by D.W.2 that the said deed should also come into existence only with a view to obtain job in Alangulam Cement Factory, which would give job to those whose lands were acquired for the above said factory. Therefore, the above said document Ex.X-2 or the evidence of D.W.2 in connection with the above said adoption will not also advance the case of the appellant in any respect.

13. There is absolutely no acceptable evidence on the side of the appellant to establish that there was a custom or usage in Kammavar Naicker Community to adopt male or female children after completion of 15 years. If the said circumstances are taken into consideration, the adoption of the appellant at the

age of 18 years by means of Ex.A-1 dated 3.9.1980 cannot be held to be a valid document as per law and therefore, the cancellation of the above said document by Nachiarammal under Ex.A-3 dated 9.8.1985, registered deed of cancellation of adoption deed has to be held as valid document. Therefore, this Court holds the Point No.1 against the appellant.

14. Point No.2:- The evidence of P.W.1 Achayya Naicker would disclose that he, who is the brother of Nachiarammal, is attending to the needs of Nachiarammal and that therefore, the said Nachiarammal had executed a registered Will Ex.A-2 dated 9.8.1985 bequeathing her properties described in the plaint schedule to him. According to P.W.1, Ex.A-2 is a true and valid document executed by Nachiarammal in sound disposing state of mind in the presence of attesting witnesses as required under law. Of course, the said fact was disputed by the appellant. A perusal of Ex.A-2 would disclose that P.W.2 Durairaj is not only an attesting witness, but also an identifying witness to Ex.A-2, while P.W.3 Ilayaperumal is the attesting witness of Ex.A-2. A perusal of Ex.A-5 registered settlement deed dated 8.4.1967 executed by Subba Naicker in favour of Nachiarammal would also reveal that P.W.2 Durairaj was an identifying witness to the above said document. The above said facts would disclose that P.W.2 is a person closely associated with the family of Subba Naicker and his wife Nachiarammal. The evidence of P.W.2 would disclose that he knows Nachiarammal, respondent and the father of the appellant. The evidence of P.W.2 would disclose that the registered Will Ex.A-2 was executed by Nachiarammal on her own accord by affixing her thumb impression in Ex.A-2 in his presence and in the presence of other attesting witness P.W.3 Ilayaperumal. It is also his evidence that he and Ilayaperumal had signed the above said Will Ex.A-2 in the presence of Nachiarammal. He has also stated that the deed of cancellation of adoption Ex.A-3 was written and registered on the same day and he has attested the above said document also as seen from the evidence of P.W.2. He has also stated that Nachiarammal was in sound disposing state of mind at the time of execution of Exs.A-2 and A-3 and she was not threatened or coerced to execute the above said documents as alleged by the appellant. The evidence of P.W.2 is corroborated by the evidence of P.W.3 Ilayaperumal in connection with the execution of Exs.A-2 and A-3, attesting the said documents in the presence of Nachiarammal, who affixed her thumb impression and about the sound disposing state of mind of Nachiarammal at the time of execution of Exs.A-2 and A-3 and registering the above said documents. D.W.1 would admit during cross-examination that Nachiarammal was in sound disposing state of mind for one week after execution of the deed of cancellation of adoption Ex.A-3 dated 9.8.1985. It is relevant to point out that the Will Ex.A-2 was also executed and registered on 9.8.1985 by Nachiarammal along with Ex.A-3. The above said admission would disclose that Nachiarammal should have been in sound disposing state of mind at the time of execution of the registered Will Ex.A-2 dated 9.8.1985. In the light of the above said admission, the evidence given by P.Ws.2 and 3 with regard to the sound disposing state of mind of Nachiarammal

at the time of execution of the Will Ex.A-2 dated 9.8.1985 has to be accepted, apart from the other evidence regarding execution of the Will. If the evidence of P.Ws.2 and 3 are taken into consideration in the light of the Exs.A-2 and A-3, it is clear that the said Nachiarammal had not only cancelled the deed of adoption Ex.A-1 dated 3.9.1980 by means of another registered document Ex.A-3 dated 9.8.1985, but also executed the registered Will Ex.A-2 dated 9.8.1985 bequeathing the suit properties in favour of the respondent voluntarily in sound disposing state of mind.

15. In view of the material evidence referred to above, the decision reported in Pt.Parshotam Ram - vs. - L.Kesho Das & another A.I.R.(32) 1945 Lah 3 and relied on by the learned counsel appearing for the appellant will not advance the case of the appellant in any respect.

16. It is evident that the said Nachiarammal died on 22.8.1985 as seen in Ex.A-4. Therefore, the Will Ex.A-2 has come into force on the death of the said Nachiarammal. In view of coming into force of the registered Will Ex.A-2, the respondent has become the owner of the properties described in the plaint and therefore, the appellant has no right to dispute the title of the respondent to the suit properties. Since the appellant is disputing the right and title of the respondent to the suit properties, he is entitled to the relief of declaration as prayed for by him. The appellant herself admits that she is in possession of the suit properties. Therefore, the delivery of possession by the appellant to the respondent as ordered by the trial Court has to be sustained. The Point No.2 is answered accordingly against the appellant.

17. Point No.3:- The respondent as plaintiff is entitled to the reliefs of declaration and possession as prayed for in this suit. The appeal stands dismissed. Taking into consideration of the relationship between both parties, and circumstances of the case, both parties are directed to bear their own costs. Delivery of the suit properties, if not delivered already, by two months.