

S.P.S. Balasubramanyam

Vs

Suruttayan alias Andali Padayachi and others

Civil Appeal No.1188 of 1982

(K. Jagannatha Shetty, R.M. Sahai JJ)

29.11.1991

JUDGMENT

1. This appeal is against the judgment of the Madras High Court dated 20 February, 1981 made in Second Appeal No. 2015 of 1977 arising out of suit for declaration of title and injunction in respect of property measuring 3.06 acres.

2. The appellant instituted the suit for declaration of title after purchasing the property from Ramaswamy under the sale deed Ex. A-1 dated 29 November, 1971. It is necessary to trace how Ramaswamy got the suit property. One Manthi alias Thambiran Padayachi had three sons one of whom was called Chinnathambi. The admitted wife of Chinnathambi was called Pavayee, who is referred hereafter as Pavayee No.1 Chinnathambi was living with another woman having the same name who is hereinafter referred to as Pavayee No. 2. Two sons and one daughter were born to Chinnathambi with Pavayee No.2. Ramaswamy is one of the sons. Manthi executed a will Ex. B-1 dated 17 March, 1930 bequeathing his properties to his children and grandchildren. Chinnathambi filed a suit against his brothers claiming a share in the properties bequeathed under the will and also in respect of other family properties. The suit was terminated by a compromise Ex.B-32 dated March 18, 1952. Chinnathambi was given a share in the suit property. In respect of that share of property, he executed a settlement deed A-16 dated 4 April 1968 by which he gave the property to wife and his children. Under Ex. A-16, Ramaswamy got 1/3rd of the property including the property sold to the plaintiff.

3. The defendants resisted the suit out of which the present appeal arises, inter alia, contending that Ramaswamy was not the legitimate son of Chinnathambi and in any event Chinnathambi could not get absolute right in respect of his share of property given to him under Ex. B-32. The trial Court accepting the case of the defendants dismissed the suit. It was held that there was no evidence about the marriage of Chinnathambi with Pavayee No.2. The appellate Court however, held to the contrary. It held that since Chinnathambi and Pavayee No.2 continuously lived under the same roof and cohabited for a number of years the law would raise presumption that they lived as husband and wife. There was no other evidence to destroy that presumption. So stating the plaintiff's suit was decreed. In the second appeal the High Court took a different view. It was held that presumption available in favour of Pavayee No. 2 by her continuous living with Chinnathambi has been destroyed by other circumstances in the case. The High Court relied upon three circumstances to rebut the presumption (i) Non-mentioning the name of Pavayee No.2 in the will Ex.B-1; (ii) Not referring the names of Pavayee No.2 and her children by Chinnathambi in the compromise Ex. B-32; and (iii) The evidence of P. W. 6 and D.W. 4. We do not think that the circumstances relied upon by the High Court are not relevant to destroy the presumption which is otherwise available to recognise Pavayee No.2 as the wife of Chinnathambi. The first two circumstances relied upon by

the High Court are indeed neutral. The absence of any reference to Pavayee No.2 in Ex. B-1 or in B-32 cannot be held against the legitimacy of the children of Pavayee No.2 born to Chinnathambi. Equally, we do not find anything from the evidence of P. W. 6 or D.W. 4. Both these witnesses did not deny that Chinnathambi and Pavayee No. 2 were living together. It is not in dispute that children including Ramaswami were born to Chinnathambi. In our opinion, the circumstances and the evidence relied upon by the High Court are not relevant to destroy the presumption that Chinnathambi and Pavayee No.2 lived together as husband and wife.

4. In the result the appeal is allowed, the judgment and decree of the High Court are set aside and that of the first Appellate Court are restored. In the circumstances of the case, we make no order as to costs. Appeal allowed.

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