SUPREME COURT OF INDIA

Saroja

Vs.

Santhilkumar

C.A.No.529 of 2011

(Dr. Mukundakam Sharma and Anil R.Dave,JJ.,)

14.01.2011

JUDGMENT

Anil R.Dave,J.,

1. Leave granted.

2. Being aggrieved by the Judgment delivered in Appeal Suit No. 774 of 1989 dated 25th June, 2004, by the High Court of Madras, this appeal has been filed by Original Defendant No. 3 in the suit. The suit filed by present respondent nos. 1 and 2 had been dismissed and, therefore, the plaintiffs had filed the aforestated appeal, which has been allowed by the High Court and, therefore, original defendant no. 3 has filed the present appeal.

3. The facts giving rise to the present litigation in a nutshell are as under:

4.Original Suit No. 57 of 1985 was filed by present respondent nos. 1 and 2 for a declaration that the properties referred to in Schedule 'B' and 'C' attached to the plaint, belong to plaintiffs 1 and 2 respectively and, therefore, the other defendants, namely, the present appellant and other respondents be restrained from interfering with their peaceful possession and enjoyment of the said property.

5. It was a case of the plaintiffs that plaintiff no. 2 who was the daughter of late Arumugha Mudaliar and plaintiff no.1 was the son of plaintiff no. 2, i.e., grandson of late Arumugha Mudaliar. Arumugha Mudaliar had three children, namely, Mangalam, Saraswathi and Jayasubramanian. Jayasubramanian, the only son had expired in 1982 and he was survived by Saroja, his widow, the present appellant and defendant no. 3 in the suit.

6. As son of late Arumugha Mudaliar had expired, he had adopted Santhilkumar, his grand-son, the son of his daughter Saraswathi and plaintiff no. 1, by executing an adoption deed dated 18th August, 1984, after doing necessary rituals required to be performed under Hindu Law. Late Arumugha Mudaliar had thereafter executed a registered will on October 11, 1984, whereby the properties referred to hereinabove along with other properties had been

bequeathed and properties referred to in the schedule attached to the plaint had been disposed of in favour of his daughter Saraswathi and his grandson Santhilkumar i.e. the plaintiffs. Late Arumugha Mudaliar expired on 14th January, 1985.

7. As the defendants i.e. present appellant and respondent nos. 3 & 4 were interfering with or were likely to interfere with the possession of the properties referred to hereinabove, Original Suit No. 57 of 1985 was filed by Saraswathi and her son Santhilkumar, who was minor at the relevant time. The said suit was dismissed for the reason that the trial court did not believe that Santhilkumar was properly adopted by late Arumugha Mudaliar and the properties which had been bequeathed in the will were ancestral properties and, therefore, late Arumugha Mudaliar had no absolute right to dispose of the same.

8. Being aggrieved by the dismissal of the suit, Santhilkumar and Saraswathi filed Appeal Suit No. 774 of 1989 in the High Court of Madras which has been allowed and, therefore, the present appeal has been filed by Saroja, widow of the son of late Arumugha Mudaliar, and defendant no. 3.

9. Learned counsel appearing for the appellant mainly submitted that the properties which had been bequeathed in the will were not self-acquired properties of Arumugha Mudaliar and that other family members had also a right in the said properties, as the properties were joint family properties. He, therefore, submitted that late Arumugha Mudaliar had no right to execute the will and that the will, by virtue of which the property had been bequeathed, was not a valid will in the eye of law. Before the Trial Court it was urged that late Arumugha Mudaliar had also executed another will on 13th January, 1985, which was unregistered and that was a valid will as the said will, being executed latter in point of time, the will dated 11th October, 1984, stood automatically revoked.

10. On the other hand, the learned counsel appearing for the original-plaintiffs Santhilkumar and Saraswathi submitted that the High Court had rightly reappreciated the evidence and by reasoned judgment held that the properties in question were not joint family properties and late Arumugha Mudaliar had validly adopted his grandson-Santhilkumar and had executed will dated 11th October, 1984, which had been duly proved and, therefore, the appeal deserved to be dismissed.

11. We heard the learned counsel and have gone through both the judgments & the relevant record.

12. We do not accept the submission of the learned counsel appearing on behalf of the appellant that the properties which had been bequeathed by late Arumugha Mudaliar under his will dated 11th October, 1984 were joint family properties. The learned counsel submitted that the said properties belonged to late Shri Ratna Mudliar, father of late Arumugha Mudaliar. We do not accept the said contention for the reason that no documentary evidence of whatever type was adduced before the trial court to show that late Arumugha Mudaliar had inherited the properties referred to in the will dated 11th October, 1984 and that it originally belonged to late Shri Ratna Mudliar, father of late Arumugha

Mudaliar. No documentary evidence or revenue record showing ownership of late Shri Ratna Mudliar was produced before the trial court. In absence of such an evidence, in our opinion, the High Court rightly came to the conclusion that the properties which stood in the name of late Arumugha Mudaliar, belonged to him and no other family member had any right therein, as the said properties did not belong to the family. We, therefore, agree with the conclusion arrived at by the High Court that the properties in question were not joint family properties.

13. So far as adoption of Santhilkumar is concerned, in our opinion, the said adoption had been duly established before the trial court. Late Arumugha Mudaliar had followed the rituals required as per the provision of Hindu Law while adopting Santhilkumar as his son. There was sufficient evidence before the trial court to establish that Santhilkumar had been validly adopted by late Arumugha Mudaliar. Kandasamy(PW-2) had been examined in detail, who had placed on record photographs taken at the time of the ceremony. The said witness had given details about the rituals performed and the persons who were present at the time of the adoption ceremony and the deed of adoption had also been registered. The aforestated facts leave no doubt in our mind that the adoption was valid. Even photographs and negatives of the photographs which had been taken at the time of adoption are forming part of the record. In such a set of circumstances, we do not find any reason to disbelieve the adoption. We, therefore, agree with the conclusion arrived at by the High Court to the effect that the Santhilkumar was legally adopted son of late Arumugha Mudaliar.

14. So far as execution of will dated 11th October, 1984 is concerned, the said will had been duly registered.

15. For the purpose of proving the will, one of 1the attesting witnesses of the will, namely, Umar Datta (PW-4) had been examined. In his deposition, he had stated that he was present when the said will was being written by Kalyanasundaram (PW-5). The scribe of the will had also been examined. The High Court had appreciated the evidence and we have also gone through the relevant record which clearly reveals that execution of the will dated 11th October, 1984, was duly proved.

16. An effort was made on behalf of the present appellant to propound a will dated 13th January, 1985. The said unregistered will could not be proved and, therefore, in our opinion, the High Court was right when it came to the conclusion that will dated 13 th January, 1985, was not a valid will.

17. Looking to the findings arrived at by the High Court and upon going through the relevant record, we are in agreement with the conclusion arrived at by the High Court to the effect that the adoption of Santhilkumar was valid and will dated 11th October, 1984 executed by late Arumugha Mudaliar had been proved. In the circumstances, the High Court has rightly allowed the appeal by setting aside the judgment and decree of the trial court dated 15th February, 1989.

18. For the reasons stated hereinabove, we dismiss the appeal with no order as to costs.