

Armugam Vs. Shakuntla and Others

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Court : Karnataka

Decided On : Mar-25-2014

Judge : Huluvadi G. Ramesh

Appeal No. : Writ Petition No. 26645 of 2012 (GM-CPC)

Appellant : Armugam

Respondent : Shakuntla and Others

Judgement :

(Prayer: Writ Petition is filed under Art.226/227 of the Constitution praying to quash the order dated 9.7.2012 - annexure A on IA 9 in OS 48232/2007 by the Addl City Civil Judge, Bangalore, etc.)

Application was filed by the plaintiff before the trial court in IA 9 under O 14, R 5 r/w S. 151, CPC in a suit filed for declaration to declare him as the owner/successor of the suit property on the death of his sister in law Dhanbagyammal and also for recovery of possession. The matter was contested by the defendants. As it transpires, there is also a Will. It is also stated that defendants claim to be the adopted children of Dhanbagyammal and also there was a Will executed by Dhanbagyammal in favour of 1st defendant. However, denying the same, suit was filed for declaration. On the other hand, written statement was filed by the defendants contending that there was a valid adoption and also there is a Will executed in their favour as such, they sought dismissal of

the suit. The trial court framed five issues relating to declaration. However, plaintiff wanted to seek leave to raise the issue with regard to proof of adoption and also proof of Will. The contention of the respondents is, since it is pleaded in the plaint regarding denial of adoption and also the Will, burden is on the plaintiff and it is also not necessary specific issue is to be raised and seeking for a declaration covers everything. That is also the way in which the trial court disposed of the application filed stating that framing of separate issues by way of additional issues is not necessary. However, plaintiff aggrieved by the said order, is before this Court.

Heard the counsel representing the parties.

Counsel for the respondents to stand by his contention to defend the order passed by the trial court, relied upon the Supreme Court decision in the case of Anil Rishi Vs Gurbaksh Singh - (2006) 5 SCC 558 to contend that burden is on the plaintiff since he raised an issue of denying the adoption and the Will and accordingly submitted, the onus is on the plaintiff and more over, such an issue is not necessary as the plaintiff sought for a declaration and since he has pleaded everything, it covers the issue and no specific issue needs to be raised with regard to the adoption and the Will.

Counsel for the petitioner/plaintiff submitted that he only asserted the fact stating the factual position but ultimately burden is on the defendants as they are asserting rights by way of adoption and Will and they are strangers to the family whereas plaintiff is the brother in law of the deceased Dhanbagyammal and defendants are in no way concerned except claiming possession without there being proof of valid adoption and duly executed Will.

Regarding Ss.101, 102 and 106 of the Evidence Act, the Apex Court in the above cited case, while dealing with the reversal of burden of proof held that a distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. Question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later: (ii) to make that of establishing a

proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. Ultimately, referring to S.101 of the Evidence Act, it is held that burden of proving facts rests on the party who substantially asserts the affirmative of the issue and not on the party who denies it. The said rule may not be universal in its application and there may be exception there to. The suit will fail if both the parties do not adduce any evidence, in view of S. 102 of the Act. In terms of S.102, the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

Even the situation contemplates initial burden is on who ultimately asserts the right and substantially lies on the other party. In the case on hand, defendant rests on their right denying the case of the plaintiff based on the adoption deed and also the Will. Something is stated by the plaintiff as to the factual position by way of denying the right of the other party viz., defendant herein. Might be the initial burden is on the plaintiff but for all practical purposes, if the right is asserted by virtue of some deed or document for which the 1st defendant is a party and said to be beneficiary of such a transaction viz., adoption deed and Will which has taken place either genuinely or it is a created document, ultimately in respect of all the documents on which they rely upon, normally the burden of proof is on the defendant as they are asserting the right in respect of the property over which plaintiff claims his right by virtue of his natural succession.

In that view of the matter, the trial court needs to frame an issue with regard to the right of the defendant - whether the defendant prove that 1st defendant has been adopted and they have succeeded to the property by virtue of the Will executed in her favour. This issue be treated as one of the additional issues and initial burden of asserting and producing any additional evidence or any other evidence is on the plaintiff. Ultimately, to take advantage of the alleged adoption deed and Will, the burden is on the defendant. As stated in S.102 of the Evidence Act, initial onus is always on the plaintiff but if he discharges that onus and makes out a case, then onus is on the defendant to prove such circumstance if any, to disentitle the plaintiff to the same.

Petition is disposed of.

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