

Sarangapani and Others Vs. Varadhan and Others

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Court : Chennai

Decided On : Oct-28-1994

Reported in : AIR1995Mad188

Judge : Abdul Hadi and ;Sampath Kumaran, JJ.

Acts : [Evidence Act, 1872](#) - Sections 112 and 114

Appeal No. : Appeal Suit No. 80 of 1984

Appellant : Sarangapani and Others

Respondent : Varadhan and Others

Advocate for Def. : Mr. K. Sampath, Senior Counsel

Advocate for Pet/Ap. : Mr. S.V. Jayaraman, Adv.

Judgement :

ORDER

Abdul Hadi, J.

1. In the light of the arguments advanced, the short question mainly involved in this First Appeal by defendants 1 to 9, against the preliminary decree for partition of 4/14th share of the 'plaintiffs/respondents 1 to 4 herein, granted in O.S. No. 26 of 1982 on the file of the Sub-Court, Villupuram, is Whether one Kiliyam-bal ammal

alias Kamalammal, who died in 1972, was the wife of Venugopal Pillai, who died in 1979 and whether the said respondents 1 to 4 herein are the legitimate children of the said Venugopal Pillai and Kiliyambalammal. Admittedly the tenth defendant, who died pending suit was the wife of the said Venugopal Pillai and the appellants are the children of the said Venugopal Pillai through her. The trial Court, accepting the plea of the plaintiffs and negating the plea of the defendants 1 to 10 granted the preliminary decree prayed for in respect of suit 'A' schedule properties (lands and houses), items 1 to 3 of suit 'E' schedule properties (out-standings) and item 8 of 'C' schedule (Utensils) on the footing that the said Kiliyambalammal was one of the wives of Venugopal Pillai and the plaintiffs were their children. After analysing the entire evidence, the Court below came to the abovesaid conclusion, pursuant to S. 114 of the Evidence Act, since it found that Venugopal Pillai and Kiliyambalammal were living together for a long time as husband and wife.

2. In view of the abovesaid short question involved, there may not be any necessity for setting out the allegations in the plaint and the written statement separately. No doubt, there was also one other question in the suit as to whether the suit properties were separate properties of Venugopal Pillai as pleaded by the plaintiffs or the joint family properties of Venugopal Pillai's family as pleaded by the defendants. The Court below held that the properties were separate properties of Venugopal Pillai. Though, the learned counsel for the appellant initially sought to make some faint arguments to contend that the properties were joint family properties, but finally he did not press the said argument any further. So, in this appeal we proceed as if the suit properties were only self-acquired properties. There is also no scope for holding otherwise. There is also no scope for the other faint argument made by the learned counsel for the appellant that if the suit properties are joint family properties, the suit is barred by limitation. This question also will not arise because, as already mentioned, the properties are taken only as self-acquired properties. Defendants 11 and 12 are only lessees-of some of the properties and they are respondents 6 and 7 herein.

3. Now, while there is no plea regarding the date of the abovesaid marriage between Venugopal Pillai and Kiliyambalammal, the trial Court came to the abovesaid conclusion that Venugopal Pillai and Kiliyambalammal were, for a long

time, living together as husband and wife, relying inter alia on the following documents:

(i) Ex. A-1 dt. 30-3-1972 the funeral ceremony invitation card relating to Kiliyambal ammal, issued by Venugopal Pillai, describing Kiliyambal ammal as his wife.

(ii) Ex. A-2 dt. 11-6-1965 - Marriage Invitation Card in relation to the marriage of plaintiffs 1 and 2, issued by Venugopa! Pillai, describing plaintiffs 1 and 2 as his sons.

(iii) Ex. A-3 dt. 26-8-1964 - Invitation Card, relating to the fourth plaintiff, issued by Venugopal Pillai, describing the fourth plaintiff as his daughter.

(iv) Exs. A-4, A-5 and A-6 - Birth extracts of third plaintiff, first plaintiff and fourth plaintiff, showing the birth of the third plaintiff on 12-3-1934, of first plaintiff on 14-10-1940 and of fourth plaintiff on 4-6-1942 respectively. In these birth extracts Venugopal Pillai is described as the father of the respective children.

(v) Exs. A-7 and A-8 the Voters' list showing Venugopal Pillai, Kiliyambal ammal and the plaintiffs as voters living in the family house (Hem 7 of 1 Schedule).

(vi) Exs. A-14 to A-18 are the Tax Receipts in respect of the abovesaid house standing in the name of the first plaintiff. Prior to the period for which Exs. A-14 to A-18 were . given, the house tax receipts were in the name of Venugopal Pillai in respect of the same house and those receipts are Exhibits A-22 and A-23.

(vii) Ex. A-24 dt. 22-8-1938 Original Sale deed of 1938 in favour of Venugopal Pillai. This was produced by the plaintiffs showing that it was in their custody.

4. The trial Court, in the light of Exs. A-14 to A-18 and other features in the case also held that the plea of the defendants 1 to 10 that the plaintiffs were only tenants of the abovesaid family house cannot be true. It also dealt with Exs. B-1, B-2 and B-4, documents filed by the defendants. Ex. B-1 is the Lawyer Notice dt. 10-3-1963 issued .by Kiliyambal" Ammal against Venugopal Pillai claiming that she and her children are entitled to a share in Venugopal Pillai's properties as his wife and children and that they must also be maintained by him. Ex. B-2 dt. 25-9-1963

is the reply given through a Lawyer by Venugopal Pillai. There, he repudiates Kiliyam-bal's claim that she was his wife and the plaintiffs were his children through her. He also says in the said reply that Kiliyambal Ammal was married to a person in Virinji-pakkam and the allegation that she and himself were living as husband and wife was a lie and that she and her children were living in her parent's house. Since Dealing with Ex. B-2 the trial Court observes that in the light of the other evidence in the case, Ex. B-2 would not advance the case of the defendants, particularly, when the defendants have not sought to let in any evidence regarding the allegations in Ex. B-2 that Kiliyambal Ammal was already married to another person at Virinji-pakkam. Then coming to Ex. B-4, it is a Release Deed dt. 11-12-1968 executed by Venugopal Pillai and Defendants 1 to .9 in favour of Venugopal Pillai's brother Aru-rnugham Pillai, whose son gave evidence as P. W. 2 in this case supporting the case of the plaintiffs. The release was in respect of an admittedly joint family property, which is not the subject matter of the present suit. In this regard the argument of the defendants was that if really the 1st and 2nd plaintiffs (son) were also of the coparceners same joint family members they also would have figured as releasors in Ex. B-4, and the fact that they were not parties to Ex. B-4 shows that they were not the legitimate children of Venugopal Pillai. Here again, the trial Court held that simply because of the abovesaid fact it cannot be said that Kiliyambal was not the wife of Venugopal Pillai and the plaintiffs were not legitimate children' of Venugopal Pillai through her, particularly, in the light of other evidence in the case,

5. Now, I shall 'consider the submissions of the learned counsel for Appellants, oneafter another in relation to the above referred two documents: The documents on which he very much be relied on are Exs. B-4 and B-2. With reference to Ex. B-4, his main submission is that the releasee Arumugham Pillai therein is not, a stranger to the family, but Venugopal Pillai's own brother and he would have taken care to include in Ex. B-4 plaintiffs 1 and 2 (sons of Kiliyambal Amrnal) if really they were legitimate sons of Venugopal Pillai born through Kiliyambal Ammal. According to him, the fact that those sons were not so included shows that they were not legitimate sons of Venugopal Pillai. Though this argument appears to have some force, we are in the light of other numerous documentary evidences in the case, we are unable to tilt the case in favour of the defendants solely on Ex. B-

4. Then coming to Ex. P-2, the reply sent by Venugopal Pillai to Kiliyambal Ammal, we are unable to give any credence to what is stated in Ex. B-2 by Venugopal Pillai, through his counsel. Despite the various other documentary evidence, particularly like Ex. A-4, Ex. A-5 and Ex. A-6 wherein Venugopal Pillai and Kiliyambal have been described as the father and mother respectively of the third plaintiff, first plaintiff and fourth plaintiff respectively. It must also be noted that the dates of birth in these cases are 12-3-1934, 14-10-1940 and 4-6-1942 respectively. These dates are long before the date of Ex. B-2 viz. 25-9-1963. In such a situation Venugopal Pillai had gone to the extent of giving instructions to his counsel to say in Ex. B-2 as follows:

(Vernacular mailer omitted)

So, we are unable to give any credence to what is stated in Ex. B-2. Further even though in Ex. B-2 it is stated that Kiliyambal Ammal was given in marriage at Virinjipakkam earlier, there is absolutely no proof in the present case regarding the same. So, Venugopal Pillai's allegation found in Ex. B-2 cannot be given any credence. Further, the subsequent conduct of Venugopal Pillai after Ex. B-2, as borne out by Exs. A-1 to A-3 and other documents show, that despite Ex. B-2, Venugopal Pillai and Kiliyambal Ammal were living together as husband and wife even subsequently.

6. No doubt, regarding Ex. A-3 Marriage Invitation Card, learned counsel for appellants points out that it cannot be said that the marriage invitation was issued by the above-said Venugopal Pillai, since in the said printed marriage invitation in print 'V. Venu Mudahar' alone is mentioned and that has been corrected as 'K. Venu Pillai'. But on this ground, it cannot be said that the said marriage invitation is not genuine or it does not relate to the abovesaid Venugopal Pillai. We have only to concur with the view of the Court below that the said marriage invitations cannot be taken as a document created for the purpose of this case. If really, the plaintiffs wanted to so create a document, they would have taken care to see that there was no such correction in the document. That apart, the marriage invitation which relates to the fourth plaintiff Visalatchi was issued actually by the bridegroom's brother N. Kothandapani Mudaliar and the abovesaid Venugopal Pillai's name has

been mentioned as (Vernacular matter omitted). In the above circumstances, some mistake might have crept in in the printing and might have subsequently corrected, as stated above. Further in the other marriage invitation Ex. A-2, there is no such correction and the abovesaid Venugopal Pillai has been correctly described as (Vernacular matter omitted). Further regarding Ex. A-1 also there is no serious specific attack. In Ex. A-1, Venugopal Pillai has described Kiliyambal Ammal as his wife. In the said Ex. A-1, his full name K. Venugopal Pillai is also clearly mentioned. As already noted Ex. A-1 relates to the funeral ceremony of Kiliyambal Ammal. Here it must also be noted that P.W. 1, the first plaintiff has also deposed in chief examination thus:

(Vernacular maner omitted).

On this also there is no cross-examination. No doubt, with reference to A-1 to A-3, learned counsel for the Appellants also contended that they were not filed along with the plaint, but only later, though P.W. 1 deposed that at the time when the suit was filed, they were available in the house. But this argument cannot be given much weight. It is not absolutely necessary that all the documents relied on must be filed along with the plaint itself. Further, when the documents and oral evidence clearly show that the plaintiffs were living in the family house of Venugopal Pillai, namely item 7 of 'A' schedule and with reference to the said property even the tax receipts Exs. A-14 to A-18 stood in the name of the first plaintiff and Ex. A-22 and Ex. A-24 which are the property tax demand notices show that for an earlier period for the very same house the property tax assessment was in the name of Venugopal Pillai:

7. No doubt, learned counsel for the appellant also argued that no other independent elderly witness has been examined. But in the light of the abovesaid several documents filed on behalf of the plaintiffs the non-examination of any other independent elderly witness will not tilt the case in favour of the defendants. Further even PW 2, the son of the brother of Venugopal Pillai has supported the case of the plaintiffs.

8. Further as pointed out by the learned counsel for the respondents we also find that P.W. 1 has also deposed thus:

(Vernacular matter omitted).

(The said house is the above referred to family house described as item 7 of the 'A' schedule).

(Vernacular matter omitted).

Taking all these factors into account and in view of what is contained in S. 114 of the Evidence Act, we see no reason to interfere with the findings of the Court below. Further, 1989 (2) LW 197, Mohan v. Santha Bai, relied on by learned counsel of appellant turned on different facts and has no application to the present facts. In Mohan v. Santha Bai Ammal, 1989 (2) LW 197 there was a specific plea that the alleged marriage took place on a particular day and evidence was also sought to be let in to that effect. But the Court held that the said plea had not been proved. In such circumstances, the Court held as follows:

'In those circumstances, the presumption of marriage arising out of long cohabitation as husband and wife does not arise in this case.'

As already seen, the facts are different in the, present case.

8A. Dealing with the abovesaid presumption under S. 114 of the Evidence Act, it is also significant to note the following observation of a Division Bench of this Court in Rajagopal Pillai v. Pakkiam Ammal, 1968 2 Mad LJ 411:

'The marriage state being the chief foundation on which the superstructure of society rests, presumption of the marriage arising from cohabitation of spouses is a very strong presumption. Where a man and a woman had lived together as man and wife, the law will presume, until the contrary is proved, that they were living together by virtue of a legal marriage and not in concubinage. The presumption of law is the strongest of legal presumptions and is not lightly to be repelled by a mere balance of probabilities and the evidence repelling that presumption must be strong, distinct and satisfactory. Every in-tendment is made in favour of a marriage *de facto* and the more distant, the date of the marriage, the more readily is the presumption drawn, based upon cohabitation and repute. The presumption still exists, even when there is no positive evidence of any marriage having taken

place.'

Thus, the abovesaid Ex. B-4 also by itself, cannot be held to rebut the abovesaid presumption. The decision of S.P.S. Balasubra-manyam v. Suruttayan, : AIR 1992 SC756 also supports the case of the respondents in this regard. Further in Smt. Vanajakshamma v. P. Gopala Krishna, also, it was held that the abovesaid presumption was not affected by mere total denial of cohabitation by the husband. So, in the present case, even the abovesaid Ex. B-2 will not help the case of the appellants.

9. Accordingly the appeal is dismissed. In the circumstances of the case no order as to costs.

10. Appeal dismissed.

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