

Veerumandi Vs. Mayee and ors.

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Court : Chennai

Decided On : Dec-17-2007

Reported in : (2008)3MLJ614

Judge : P.R. Shivakumar, J.

Acts : Hindu Succession Act, 1856 - Sections 15, 15(1), 15(2) and 16; Limitation Act - Sections 5

Appeal No. : S.A. No. of 1775 of 1990

Appellant : Veerumandi

Respondent : Mayee and ors.

Advocate for Def. : G. Sridharan, Adv. for Respondent No. 1 and; P. Santhosh Kumar, Adv. for Respondent No. 4

Advocate for Pet/Ap. : M.V. Krishnan, Adv.

Disposition : Appeal dismissed

Judgement :

P.R. Shivakumar, J.

1. This Second Appeal has been preferred against the Judgment and decree of the Third Additional District Judge, Madurai, dated 9.10.1995 made in A.S. No.

181/1987 confirming the Judgment and decree of the trial court namely, the court of District Munsif, Thirumangalam, dated 18.8.1987 in O.S. No. 601 of 1984, on the file of the said court. The first defendant in the original suit is the appellant in the Second Appeal.

2. One Duraisamy who is the sole plaintiff had filed the original suit on the file of the District Munsif, Thirumangalam for the relief of declaration of his title in respect of the suit properties, for recovery of possession and for recovery of mesne profits in respect of the suit properties. According to the plaint averments, the suit properties were purchased by late. Andi Thevar with the help of his own funds in the name of his wife Vanappetchi. The said Andi Thevar predeceased is wife Vanappetchi and on the death of Venappetchi 2 years prior to the filing of the suit, the said plaintiff as the sole legal heir of Vanappetchi became entitled to the suit properties. The further contention of the plaintiff was that the appellant herein/first defendant in the original suit who is the brother of the deceased Vanappetchi took away certain title deeds and trespassed into the suit properties in the first week of January 1984 and occupied the same.

3. The suit was resisted by the appellant/first defendant contending that Vanappetchi was given in marriage to Andi Thevar at his age of 60 against her will; that after she gave birth to a female child on 17.4.1951, Vanappetchi refused to cohabit with her husband Andi Thevar and hence according to the customary practice that was prevailing in the community to which both of them belonged the marriage was dissolved by customary divorce granted by the panchayatdars and that in or about 1952 or 1953 when Andi Thevar died there was no relationship between himself and Vanappetchi as husband and wife. It was the further contention of the appellant/first defendant that the suit properties were purchased in the name of Vanappetchi for her benefit with the help of the money provided by the appellant/first defendant and his father that due to the said reason and due to the fact that the relationship of husband and wife between Andi Thevar and Vanapetchi had come to an end even before the death of Andi Thevar, the appellant/first defenant alone was the legal heir of the deceased Vanapetchi.

4. The learned District Munsif, Thirumangalam framed necessary issues and conducted trial in which four witnesses were examined and 6 documents were marked on the side of the plaintiff, whereas three witnesses were examined and 23 documents were marked on the side of the contesting defendant, the appellant/first defendant. At the conclusion of trial, after going through the evidence in the light of the arguments advanced on either side, the learned District Munsif, Thirumangalam came to the conclusion that the contention of the first defendant that there was a customary divorce by which the relationship of husband and wife between Andi Thevar and Vanappetchi had been brought to an end was not substantiated by appellant/first defendant and that as per Section 15 of the Hindu Succession Act, the plaintiff/Duraisamy Thevar was the sole legal heir of Vanappetchi entitled to succeed to the suit properties namely the properties of Vanappetchi. Accordingly the learned District Munsif, Thirumangalam allowed the suit and granted a decree for the reliefs of declaration, possession and mesne profits.

5. The said Judgment and the decree of the trial court was confirmed on appeal by the learned Third Additional District Judge, Madurai, by Judgment dated 9.10.1990 made in A.S. No. 181/1987. In all respects the Judgment and decree of the trial court were confirmed by the lower appellate court. As against the said Judgment and decree of the lower appellate court, the present Second Appeal has been brought forth by the appellant/first defendant.

6. During the pendency of the appeal before the lower appellate court, the Plaintiff Duraisamy Thevar who had been arrayed as first respondent in the Second Appeal, passed away and his legal representatives were impleaded as representatives 3 to 8 in A.S. No. 181/1987 before the lower appellate court. The legal representatives impleaded in the first appeal before the lower appellate court are the respondents 2 to 7 in the Second Appeal. The second defendant in the original suit is the first respondent in the Second Appeal. During the pendency of the Second Appeal, respondents 2, 3, 5, 6 and 7 died on 10.11.1997, 22.5.2000, 27.11.1995, 14.10.2000 and 16.12.1995 respectively. The appellant herein failed to take steps to bring the legal representatives of R2, R6 and R7 on record. On the other hand, on 13.12.2003, the learned Counsel for the appellant made an

endorsement to the effect that the respondents 2, 6 and 7 were given up. By the time the said endorsement was made, the appeal as against the said respondents had abated because steps for impleading the legal representatives were not taken within the time allowed by the statute. So far as the respondents 3 and 5 are concerned, as no steps were taken within the period allowed by the statute, the appeal against them stood abated. However, the appellant had filed a petition under Section 5 of the Limitation Act to condone the delay in filing the petition to set aside the abatement, a petition to set aside abatement and another petition to implead the legal representatives of the deceased respondents 3 and 5. The said petitions were taken on file as C.M.P. Nos. 3472 to 3452 of 2007 and by an order dated 5.4.2006 those petitions were dismissed. As such the second Appeal, as against the respondents 2, 3 and 5 to 7 stands abated. Respondents 1 and 4 alone are the respondents who are alive and against whom the Second Appeal shall be deemed to be pending. Both of them are represented by a counsel.

7. This Court heard the submissions made by Mr. M.V. Krishnan, the learned Counsel for the appellant, Mr. G. Sridharan, the learned Counsel for the first respondent and Mr. P. Santosh Kumar, the learned Counsel for the fourth respondent.

8. The following substantial questions of law have been framed At the time of admission of the Second Appeal, for determination in the Second Appeal:

- 1) Whether a divorce can be inferred by styling a female as daughter of her father rather than describing her as the wife of a living husband?
- 2) In case, divorce is proved whether the first defendant would exclude the plaintiff, who has put forth the case of a heir to a female dying intestate, as the son of the first wife?

9. The facts are as follows:

The deceased plaintiff Duraisamy Thevar was the son of Andi Thevar through his first wife. After the death of his first wife, Andi Thevar married one Muthuppetchi as his second wife. She also died issueless. After the death of the second wife

Muthuppetchi, Andithevar married Vanappetchi. Through Vanappetchi, Andi Thevar had got a daughter by name Kaluvayee @ Thavamani. Within two and a half years after Thavamani was born, Andi Thevar died on 30.9.1953 as evidenced by Ex.B8-Death Certificate. The suit properties were purchased in the name of Vanappetchi by two registered sale deed dated 8.6.1953 and 4.6.1965. The first sale deed dated 4.6.1965 has been marked as Ex.B9, whereas the certified copy of the sale deed dated 8.6.1953 is produced and marked as Ex.B6. Kaluvayee @ Thavamani died predeceased Vanappetchi and she had no issues.

ii) Subsequent to the death of Kaluvayee @ Thavamani, Vanappetchi died two years prior to the filing of the suit. The deceased plaintiff Duraisamy Thevar claimed title to the suit properties on the following two grounds. (1) the properties were purchased by Andi Thevar with his own money benami in the name of his wife Vanapetchi; and (2) he as a sole legal heir of Vanappetchi was entitled to succeed to the properties of Vanappetchi as per the Hindu Succession Act,1956.

iii) Per contra, the appellant/first defendant contended that the properties were purchased by the appellant/first defendant and his father with their money in the name of Vanappetchi for her benefit; that since the properties were purchased with the help of the funds provided by them to Vanappetchi, under Section 15(2)(a) of the Hindu Succession Act, the appellant/first defendant alone would be entitle to succeed to the suit properties as the heir of the father of Vanappetchi; that even assuming the appellant/first defendant would not be entitled to suceed to the properties of Vanappetchi under Section 15(2)(a) he alone would be the sole legal heir of Vanappetchi under Section 15(1) of Hindu Succession Act, 1956 as there was a valid divorce dissolving the marriage between Andi Thevar and Vanappetchi. The said contention of the appellant/first defendant that there was a valid customary divorce dissolving the marriage between Andi Thevar and Vanappetchi was stoutly deined by the deceased plaintiff.

10. In the background of the above said rival contentions, the parties went on with the trial and the courts below have negatived the contention of the appellant/first defendant that there was a valid customary divorce dissolving the marriage between Andi Thevar and Vanappetchi.

11. The learned Counsel for the appellant argued that the courts below committed an error in rejecting the case of the appellant/first defendant that there was a valid customary divorce dissolving the marriage between Andi Thevar and Vanappetchi. Of course, in order to prove the above said contention of the appellant/first defendant that there was a valid divorce, the first defendant, besides examining himself as D.W.1, has chosen to examine two more witnesses as D.W.2 and 3. Though the original plaintiff Duraisamy, while deposing as P.w.1, would admit that there was a practice prevailing in their community to dissolve the marriage by the verdict of the Panchayatdars, he has denied the plaintiff allegation that the marriage was dissolved by a customary divorce. In support of the said evidence of P.W.1 three more witnesses were examined as P.W.2 to 4. Among three witnesses P.W.3 is the son in law of Vanappetchi. Apart from the oral evidence adduced on the side of the plaintiff through P.W.1 to 4, the plaintiff had also produced Ex.A5- Voters list in which Vanappetchi's name is mentioned as Petchiammal and Ex.A4- Encumbrance Clearance Receipt executed by Vanappetchi in favour of Plaintiff Duraisamy Thevar on 10.3.1974.

12. Relying on the recitals found in the sale deeds wherein Vanappetchi was described to be the daughter of Kalyuva Thevar and not as the wife of Andi Thevar. The learned Counsel for the appellant would contend that she was described so only because there was disruption of matrimonial relationship by the customary divorce pleaded by the appellant/first defendant. According to the submissions made by the learned Counsel for the appellant, the single fact that Vanappetchi was described as daughter of Kalyva Thevar was enough to support his contention that Vanappetchi was no longer the wife of Andi Thevar. On the other hand, the learned Counsel for the fourth respondent relying on Ex.A4 dated 10.3.1974 would contend that if at all there was a customary divorce as pleaded by the appellant/first defendant, Vanappetchi would not have described herself as wife of Late. Andi Thevar in the said document and that the mere fact that Vanappetchi had been described as the daughter of Kaluva Thevar in Ex.A5, 6 and 9 will not be enough to come to the conclusion that she was no longer the wife of Andi Thevar.

13. There is substance in the contention of the learned Counsel for the contesting fourth respondent that Ex.A4 will give an inference that the matrimonial relationship between Andi Thevar and vanappetchi continued till the death of Andi Thevar and that is the reason why she chose to described herself as the wife of Andi Thevar in Ex.A4. Apart from the fact that the documents relied on by the appellants/first defendant (Ex.B5,6 and 9) do not point out the fact unambiguously that there was a divorce between Andi Thevar and Vanappetchi, the evidence of D.W.1 to D.W.3, in this regard, also seem to be unreliable. It is evident from Ex.B4-Birth certificate that Kalyvayee @ Thavamani was born on 17.4.1951. According to the evidence of the defendant's side witness, Panchayat for awarding the divorce decree was conducted within three months after Kaluvayee @Thavamani was born. D.W.2 would say that within three months after the said Panchayat, Andi Thevar died. D.W.1 would say that the Panchayat was held in the year 1952 which goes contra to the evidence of D.W.2. The other witness P.W.2 does not say anything about the time gap between the Panchayat and the death of Andi Thevar. He could not state even the month and the year in which the Panchayat was held. A combined reading of the evidence of D.W.1 and D.W.2 would suggest that Andi Thevar died within six months after Kaluvayee @ Thavamani was born. It is obvious from Ex.B4-Birth Certificate that Kaluvayee @ Thavamani was born on 17.04.1951. If the evidence of D.W.1. and D.W.2 that panchayat held when Kalyvayee was three months old and Andi Thevar died within three months thereafter are to be true, then Andi Thevar should have died in the month of October 1951 itself. But Ex.B8-Death Certificate proves that Andi Thevar died on 30.09.1953. Therefore the evidence of defendants' side witnesses that the panchayat was held when Kaluvayee @ Thavamani was just three months old could not be true. All these aspects would go to show that the finding recorded by the courts below regarding the plea of the appellant/first defendant that there was a valid divorce dissolving the marriage between Andi Thevar and Vanappetchi cannot be infirm or defective much less perverse. The concurrent findings of the courts below on a question of fact cannot be reopened in the Second Appeal unless such finding happens to be a perverse finding in which case the same will acquire the character of a substantial question of law. To say a finding is perverse, such finding should be either not based on any legal evidence or no reasonable

man could have arrived at such a conclusion in the light of the evidence available. The same is not the position in the case on hand. Therefore this Court is of the considered opinion that the abovesaid finding of fact recorded by the courts below has got to be confirmed and no interference can be made in this Second Appeal.

14. So far as the question of succession to the properties of Vanappetchi is concerned, it is immaterial who provided her with the financial assistance to purchase the properties in question. Section 15(2) of the Hindu Succession Act is attracted to cases wherein the disputed properties happen to be the properties inherited by the deceased female person. In case those properties are not the properties inherited by her, either from her parents or from the husband/father-in-law and in case the properties are herself and they are their self acquisitions, there is no question of application of Section 15(2) of the Hindu Succession Act. In such cases, Section 15(1) of the Hindu Succession Act alone will be attracted. For the sake of convenience, Section 15 of the Hindu Succession Act is reproduced herein:

15. General rules of succession in the case of female Hindus: (1) The property of a female Hindu dying intestate shall devolve according to the fules set out in Section 16,-

(a) firstly, upon the sons and daughters(including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother

(2) Notwithstanding anything contained in Sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to

in Sub-section (1) in the other specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband.

15. It is the case of none of the parties that any one of the suit properties was inherited by Vanappetchi either from the husband side or from the father side. Therefore there cannot be any second opinion that Section 15(1) of the Hindu Succession Act alone is attracted in the case on hand. The learned Counsel for the appellant made a faint attempt to contend that in the absence of natural son or daughter, the step-son will not be a legal heir to the deceased female member and hence the plaintiff Duraisamy Thevar (since deceased) would not be entitled to succeed to the properties of Vanappetchi under Section 15(1) also. Here again the learned Counsel relies on the contention of the appellant/first defendant that he was not entitled to succeed to the properties of Vanappetchi even as the legal heir of her husband as the relationship of husband and wife between Andi Thevar and Vanapetchi did not last till the death of Andi Thevar. In tune with the above said finding that the plea of customary divorce could not be believed, the above said contention of the learned Counsel for the appellant also deserves to be rejected as untenable.

16. Sons, daughters (including the children of any pre-deceased son or daughter) and the husband are in Clause A as legal heirs under Section 15(1) of the Hindu Succession Act. Legal heirs of the husband who come under Category 'b' of legal heirs under Section 15(1) will exclude the parents and legal heirs of the parents who come under subsequent categories. Of course it is true that step-son is not entitled to claim share in the property of the female dying intestate as the word 'sons' in Clause (a) of Section 15(1) of the Hindu Succession Act does not include 'step-sons'. Reference could be made to the judgment of the Supreme Court in *Lackman Singh v. Kirpa Singh and Ors.* reported in : [1987]2SCR933 in support of

the above said preposition. However in the very same judgment the Honourable Supreme Court has clearly held that 'step-sons' fall in the category of the heirs of the husband referred to in Clause (b) of Section 15(1). The relevant passage in the judgment of the Supreme Court reads as follows:

We are concerned in this case with the rules of succession to the property of a female Hindu dying intestate. Sections 15 and 16 of the Act are material for our purpose. Ordinarily laws of succession to property follow the natural inclinations of men and women. The list of heirs in Section 15(1) of the Act is enumerated having regard to the current notions about propinquity or nearness of relationship. The words 'son' and 'step-son' are not defined in the Act. According to Collins English Dictionary a 'son' means a male offspring and 'step-son' means a son of one's husband or wife by a former union. Under the Act a son of a female by her first marriage will not succeed to the estate of her 'second husband' on his dying intestate. In the case of a woman it is natural that a step-son, that is, the son of her husband by his another wife is a step away from the son who has come out of her own womb. But under the Act a step-son of a female dying intestate is an heir and that is so because the family headed by a male is considered as a social unit. If a step-son does not fall within the scope of the expression 'sons' in Clause (a) of Section 15(1) of the Act, he is sure to fall under Clause (b) thereof being an heir of the husband.

17. In this case, though the plaintiff Duraisamy Thevar could not be taken as a direct legal heir of Vanappetchi under Category 'a' since step-son would not be a son for the purpose of succession, nevertheless he would fall under the category 'b' as a legal heir of the husband of Vanappetchi. Therefore the courts below have rightly held that the deceased plaintiff was the only legal heir of Vanappetchi entitled to succeed to the above said properties, namely the suit properties. There is no scope, whatsoever, to interfere with the same and the said finding of the courts below has got to be confirmed.

18. In view of the reasons stated supra, both questions of law framed have to be answered against the appellant/first defendant and in favour of the contesting respondents. There is no merit in the Second Appeal and the same deserves to be

dismissed.

19. In the result, Second Appeal is dismissed. No costs. So far as the first respondent is concerned, his counsel is entitled to receive the remuneration from the Legal Services Authority attached to this Bench as per the schedule of fees applicable to legal aid matters.

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