

S.P.S. Balasubramanyam vs Suruttayan on 13 October, 1993

Equivalent citations: 1994 AIR 133, 1994 SCC (1) 460

Author: R.M. Sahai

Bench: R.M. Sahai, S.R. Pandian

PETITIONER:

S.P.S. BALASUBRAMANYAM

Vs.

RESPONDENT:

SURUTTAYAN

DATE OF JUDGMENT 13/10/1993

BENCH:

SAHAI, R.M. (J)

BENCH:

SAHAI, R.M. (J)

PANDIAN, S.R. (J)

CITATION:

1994 AIR 133

1994 SCC (1) 460

JT 1993 (6) 495

1993 SCALE (4) 192

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by R.M. SAHAI, J.- The short question that arises for consideration in this plaintiff's appeal directed against the judgment and order of the Madras High Court allowing the appeal, setting aside the judgment and decree of the First Appellate Court restoring that of the trial court and dismissing the suit of the appellant for declaration and possession over the land in dispute, is if the High Court was justified in interfering with the presumption drawn by the Appellate Court of valid marriage arising out of prolonged living together of a man and woman as husband and wife.

2. Manthi, admittedly, had three sons one of them being Chinathambi. His legally wedded wife was one Pavayee. He also lived with another woman. whose name, too, was Pavayee. From the second Pavayee he had issues one of them being Ramaswamy. He sold his one-third share, which he received from his father, in 1971 to the appellant. This was resisted by descendants of other two branches. The appellant therefore filed suit for declaration and recovery of possession. Two main questions arose first if Ramaswamy was legitimate child of Chinathambi, second the property being ancestral and coparcenary property bequeathed by Manthi in favour of his sons and grandsons but excluding Ramaswamy, could any valid title vest in him under deed of settlement executed by his father in 1968.

3. The trial court accepted the claim of defendants that Ramaswamy was an illegitimate child of Chinathambi as second Pavayee was only a concubine and not a legally wedded wife of Chinathambi. It was also found that the deed of settlement made by Chinathambi could not convey any right, title or interest in favour of Ramaswamy or his mother as it was in respect of coparcenary property or joint family property and, therefore, the deed of settlement was invalid. In appeal both the findings were set aside. The Appellate Court found that Chinathambi and Pavayee No. 2 having lived together as husband and wife since 1920 a presumption arose in law that they were husband and wife. The Appellate Court further found that in the compromise entered between the three sons of Manthi in the suit filed by Chinathambi there was a partition and the parties agreed that the compromise arrived at by them may be given effect to without effecting any partition by metes and bounds as they were in possession of their separate share. It was, therefore, held that Chinathambi got exclusive right over his share under the compromise and he was entitled to execute the deed of settlement in 1968. In second appeal the presumption drawn by the Appellate Court was found to have been rebutted as if Pavayee No. 2 would have been the legally married wife of Chinathambi, her name or the name of her sons would have found mention in the will executed by Manthi, the father of Chinathambi. It was also found that when compromise was arrived between the members of the family on a suit filed by Chinathambi no reference was made either to Pavayee or to her offspring, namely, Ramaswamy. Reliance was also placed on the depositions of PW 6 and DW 4 in support of the conclusion that no legal marriage had come into being between Chinathambi and Pavayee No. 2.

4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see *Gokal Chand v. Parvin Kumari*¹). It has been found by all the courts including the High Court that Chinathambi and Pavayee No. 2 lived together since long. But the High Court held that the presumption stood rebutted for reasons stated earlier. The question is if any of the circumstances taken individually or together were sufficient to warrant the finding that the presumption stood rebutted. Taking each one of them it may be stated that the omission to mention the name of a woman who was living as a concubine and her offspring in the will executed by the father-in-law could not destroy the presumption which otherwise arose in law. In the Hindu society no father would, normally, tolerate behaviour of his son of having a concubine, therefore, the mere fact that Manthi while executing the will did not mention the name of Pavayee No. 2 or her offspring was of no consequence. Similarly the absence of any reference to Pavayee and her children in the compromise entered into between Chinathambi and his brothers was totally irrelevant circumstance. The suit was filed for partition by one of the members of joint Hindu family for his

share on strength of will executed by his father. Since his children were not given any share by his father they could not have been party either in the suit or in the compromise decree. The absence of their name therefore could not be taken adversely for destroying the presumption. As regards evidence of PW 6 or DW 4 their depositions are on record. It does not indicate that they stated that Chinathambi and Pavayee did not live together. Since it was not disputed that Ramaswamy was born of Chinathambi and Pavayee who lived together as husband and wife since 1920 each of these circumstances was irrelevant and could not have resulted in rebutting the presumption. In our opinion the High Court was not justified in interfering with the findings of fact recorded by the First Appellate Court arrived at after appreciating the evidence on record.

5. In order to overcome the difficulty it was vehemently argued by the learned counsel for respondent that even if it is assumed that Pavayee was living with Chinathambi since 1920 there being evidence on record to establish that her husband was alive when she came to live with Chinathambi, she was leading an adulterous life and no law recognizes such relationship as valid, consequently the presumption, if any, in favour of a legal marriage stood rebutted. Reliance has been placed on observations made in the judgments at various places and even the statement of Pavayee herself that she had left her husband and had come to live with Chinathambi. It appears unnecessary to express any opinion as to whether the relationship between Chinathambi and Pavayee was adulterous and if it was sufficient to 1 AIR 1952 SC 231: 1952 SCR 825 destroy the presumption in law as this plea does not appear to have been raised in the written statement nor any issue was framed on it nor any of the courts have recorded any finding on it.

6. As regards the deed of settlement executed by Chinathambi it having been found that Chinathambi got his share by way of partition decree, the ancestral or coparcenary nature of property came to an end and Chinathambi became its exclusive owner. Consequently he could execute a deed of settlement in favour of his wife and children. Since Ramaswamy derived his title from the settlement deed it was valid and he could convey his interest in favour of the appellant.

7. In the result this appeal succeeds and is allowed. The judgment and decree of the High Court is set aside and that of the First Appellate Court is restored. The parties shall however bear their own costs.