

Smt.A.Vijayalakshmi vs K.Vijayan on 14 February, 2025

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.117 of 2022

Smt.A.Vijayalakshmi
W/o.Anandan

.... Appella

Versus

1. K.Vijayan
S/o.Kannayira Konar

2. K.Ravichandran
S/o.Kannayira Konar

....Responde

First Appeal filed under Section 96 of Civil Procedure
against the judgment and decree dated 11.01.2022 made in O.S.No.12
2012 on the file of Additional District Court, Tiruvannamalai.

For Appellant ... Mr.J.Arun Prasad

For Respondents ... Mr.J.Ramakrishnan
for R1 and R2

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<https://www.mhc.tn.gov.in/judis>

ORDER

Aggrieved over the dismissal of the suit filed for declaration and consequential injunction, unsuccessful plaintiff has filed the present appeal.

2. The parties will be referred to as per their ranks before the trial Court.

3. The suit property is originally purchased by Panchalai Ammal in a Court auction sale in O.S.No.603 of 1935 in E.P.No.747 of 1936 on the file of District Munsif Court, Tiruvannamalai. It is the case of the plaintiff that one Ramasamy Konar had two sons, namely Kannayira Konar and Kanna Konar. The Defendants 1 and 2 are the sons of Kannayira Konar whereas the elder son of Ramasamy Konar, namely Kanna Konar married one Adhiyammal. From the said wedlock, Kanna Konar had one son by name Pandurangan and two daughters viz., Vijaya and Saroja. Pandurangan died issue less on 14.10.1999 and two daughters viz., Vijaya and Saroja also died issue less on 05.05.2012 and 21.12.1991 respectively. It is further stated <https://www.mhc.tn.gov.in/judis> that Kannayira Konar filed a suit in O.S.No.10 of 1958 for partition against his brother Kanna Konar including the suit property. However, the suit was dismissed in respect of the suit property as it was the separate property of Panchalai Ammal. The said suit reached finality in appeal in A.S.No.612 of 1959. After the death of Panchalai Ammal, her only daughter Adhiyammal was enjoying the property. She constructed two shops in front of the suit property and constructed a house on the backyard of the shops. The defendants have no connection with the suit property whereas Adhiyammal and her daughter borrowed several amounts from the plaintiff and her husband for their medical treatment. Therefore, a Exchange Deed dated 10.08.2009 was entered into between the parties. Since the property with higher value was given to the plaintiff and property with lesser value was exchanged to Adhiyammal, the differential amount was also paid separately and the same was acknowledged by Adhiyammal and Vijaya under the receipt dated 10.08.2009. After the execution of such exchange deed, at the request of Adhiyammal and her daughter Vijaya, the plaintiff permitted them to reside in a portion of the suit property till their demise. Adhiyammal died on 13.02.2011 and Vijaya died on 05.05.2012 and <https://www.mhc.tn.gov.in/judis> subsequent to the demise of Adhiyammal and Vijaya, the plaintiff is in possession of the suit property. The said Adhiyammal and Vijaya have also executed a registered Will dated 10.08.2009 in respect of the property exchanged in favour of adopted son, namely Vignesh. The mutation also taken place in favour of plaintiff, rents have also been paid to the plaintiff by the defendants but subsequent to the death of Vijaya, the defendants attempted to trespass into the suit property, hence the suit.

4. The first defendant filed a written statement denying the entire allegations in the plaint and the same was adopted by the second defendant. In the written statement, the first defendant has admitted the relationship of Kanna Konar and his children. The first defendant has stated that the legal heirs of Kanna Konar and Adhiyammal died intestate and therefore, the defendants being the Class II legal heirs of Kanna Konar together succeeded to the property on the demise of Vijaya on 05.05.2012. According to them, they are the absolute owner of the property. It is stated that said

Adhiyammal and Vijaya were sick and bed ridden for more than two years before their death and they were fostered by the defendants and the plaintiff <https://www.mhc.tn.gov.in/judis> being stranger to the family, taking advantage of the old age of Adhiyammal and the sickness of Adhiyammal and Vijaya fabricated the exchange deed dated 10.08.2009. According to the defendants, the value of the property which was given by Adhiyammal and Vijaya to the plaintiff is Rs.13,75,000/- whereas the property worth Rs.7,00,000/- alone is given to by the plaintiff to Adhiyammal. Further, the photographs of Adhiyammal and Vijaya were not affixed in the documents and according to them, registered exchange deed dated 10.08.2009 is fabricated. It is the further contention of defendants that the Will does not contain either the signatures or the thumb impression of said Adhiyammal and Vijaya. Hence, the Will brought out by the plaintiff is fabricated and therefore, plaintiff does not have any right over the property.

5. In the light of the above pleadings, following issues were framed:

- i) Whether the exchange deed dated 10.08.2009 between Adhiammal, Vijaya Ammal and the plaintiff A.Vijayalakshmi is true and valid one?
- ii) Whether the will dated 10.08.2009 said to have been executed by Adhi Ammal and Vijaya Ammal in favour of Minor Vignesh, by appointing Anandhan and Sekar as guardian, is true and valid?

<https://www.mhc.tn.gov.in/judis>

- iii) Whether the Receipt dated 10.08.2009 executed by Adhi Ammal and Vijaya in favour of the plaintiff is true and valid?
- iv) Whether the factum of adoption relied on by the plaintiff regarding Minor Vignesh is true?
- v) Whether the plaintiff is the absolute owner of the suit property on the basis of the Exchange deed dated 10.08.2009?
- vi) To what other reliefs parties entitled?

6. On the side of the plaintiff, two witnesses were examined as PWs 1 and 2 and Exs.A1 to A25 were marked and on the side of the defendants, one witness was examined as DW1, but no documents were marked.

7. The learned counsel appearing for the appellant/plaintiff mainly would contend that the trial Court has not properly appreciated the registered document and the learned trial Judge dismissed the suit merely on the ground that the value of the property exchanged between the parties is not the same and came to the conclusion that the exchange deed is not genuine. Learned counsel further submitted that the learned trial judge erred in coming to the conclusion that the plaintiff failed to prove the <https://www.mhc.tn.gov.in/judis> factum of adoption of Minor Vignesh and Will executed in his favour and hence, dismissed the suit in its entirety. The learned counsel for the appellant

submitted that the trial Court in fact has not considered the documents and the pleadings of the plaintiff which were not disputed by the defendants. Admittedly, there was no cordial relationship between the defendants and said Adhiyammal for a long time and father of the defendants filed a suit in the year 1958 itself including the suit property which was negated by the Court. Therefore, the defendants claiming right over the property does not arise and exchange deed has been clearly established in a manner known to law. The learned counsel submitted that the plaintiff is certainly entitled to declaration.

8. Per contra, the learned counsel appearing for the defendants submitted that exchange deed relied upon by the plaintiff has not been fully established. Further, so called adoption made by Adhiyammal and Vijaya has also not been proved and the Will said to have been executed on the same day also has not been established and all these facts were taken note of by the trial Court. Further, the main contention of the learned counsel for <https://www.mhc.tn.gov.in/judis> defendants is that the photograph of the parties were not affixed in the document which is mandatory as per Section 32 A of the Registration Act.

9. In the light of the above submissions, the following points arise for consideration in the present appeal:

- i) Whether the trial court is right in disbelieving the exchange deed merely on the submissions of the defendants without any foundational facts established invalidating registered documents?
- ii) Whether the exchange deed dated 10.08.2009 is not validly executed and vitiated by any other circumstances?

10. When the pleadings of the parties were perused, it is the specific case of the plaintiff that the property was purchased by one Panchalai Ammal in a Court auction and it is her self-acquired property. These aspects were not disputed by the defendants. The genealogy is relevant to understand the relationship between the defendants and one Adhiyammal and Vijaya. One Ramasamy Konar had two sons, namely Kannayira Konar <https://www.mhc.tn.gov.in/judis> and Kanna Konar. Defendants 1 and 2 are the sons of Kannayira Konar whereas Kanna Konar, who is said to be the younger son of Ramasamy Konar. married one Adhiyammal. From that marriage, he had one son viz., Pandurangan and two daughters viz., Vijaya and Saroja. Pandurangan died on 14.10.1999 without any issues. The other daughter Saroja also died on 21.12.1991 without any issues. Vijaya, one of the daughters of Kanna Konar died on 05.05.2012 without any issue whereas their mother Adhiyammal died on 13.02.2011. These facts are not disputed by the defendants. In fact, these facts were clearly spoken by PW1. After the death of Saroja and Pandurangan on 14.10.1999 and 21.12.1991, the subject property was in possession and enjoyment of Adhiyammal and her only surviving daughter Vijay at the relevant point of time. It is relevant to note that said Adhiyammal is a daughter of Panchali Ammal who purchased the property in a Court auction in O.S.No.603 of 1935 in E.P.No.747 of 1936. It is also to be noted that this property purchased by Panchali Ammal was also sought to be partitioned by Kannayira Konar, the father of the defendants in a suit filed by him in O.S.No.10 of 1958. However, as far as the suit property is concerned, suit has been dismissed.

This fact is also not <https://www.mhc.tn.gov.in/judis> disputed by the defendants.

11. The plaintiff was the neighbour of said Adhiyammal and Vijaya and as Adhiyammal and Vijaya were sick and required medical attention, they incurred various medical expenses and the plaintiff being a neighbour supported her. In this regard, the plaintiff has also maintained accounts. Therefore, said Adhiyammal and Vijaya decided to exchange their property and accordingly, a exchange deed was executed on 10.08.2009. This specific pleading of the plaintiff that Adhiyammal and her daughter Vijaya were assisted by the plaintiff and her husband for their medical treatment and Adhiyammal and her daughter Vijaya borrowed hand loan from the plaintiff several times and repaid the amount and also agreed to execute the exchange deed have not been denied by the defendants in the written statement. When the specific pleadings were not denied, such statements have to be taken as admission.

12. It is also relevant to note that nature of the treatment and amounts spent by the plaintiff have been clearly spoken by them. The defendants were totally cut off from the family. It is not their case that they were <https://www.mhc.tn.gov.in/judis> residing with Adhiyammal and Vijaya at the relevant point of time. Therefore, when a person is totally unconnected to the family and has no personal knowledge about the medical treatment and expenses, it cannot be said that they have knowledge about the affairs of such persons. The plaintiff has not only pleaded but also explained as to how the property worth Rs.7,00,000/- was exchanged for the property worth Rs.13,75,000/-. It is the specific case of the plaintiff that Adhiyammal and Vijaya was paid Rs.5,00,000/- on the date of exchange deed separately and the said document is also marked as Ex.A9. Therefore, when the circumstances pleaded in the plaint has not been denied in the written statement, now the defendants cannot dispute such document on technical grounds. It is further to be noted that exchange deed executed on 10.08.2009 (Ex.A8) shows that the document has been registered on the file of Sub-Registrar, Tiruvannamalai. From a careful perusal of Ex.A8, it could be seen that the document has been presented by the plaintiff, photograph is also affixed and signature and thumb impression of Adhiyammal and Vijaya have been affixed and the document has been registered. When the document has been properly executed as required under law, the contention of the defendants <https://www.mhc.tn.gov.in/judis> that the document is fabricated as signature and thumb impression of the executant is not that of the executant cannot be sustained and the burden lies on the defendants to establish the said fact. Having taken the plea in paragraph 7 of the written statement that Adhiyammal and Vijaya never signed and affixed their thumb impression before the Sub-Registrar and it is a forged document, the burden lies on the defendants to establish the said fact. No attempt whatsoever has been made by the defendants to establish the fact that the Ex.A8 is never executed by the parties. The only contention raised before this Court is that since the photographs of Adhiyammal and Vijaya are not found in the document, it has to be presumed that they never appeared before the Sub-Registrar. Such contention cannot hold water for the simple reason that what is required before the Registering Authority is affixture of passport-sized photograph of the party who is presenting the document and not every other person who is executing the document. Section 32A of the Registration Act, 1908 which is an amendment by way of Act 48 of 2001 with effect from 24.01.2001 makes it clear that every person presenting any document shall affix his/her passport-sized photograph and fingerprints to the document. Therefore, only the person <https://www.mhc.tn.gov.in/judis> who is presenting the document

requires to affix his/her passport-sized photograph. Therefore, presentation of the document is different from execution. A document can be presented by any one of the parties to the document and therefore, when the law requires affixture of passport-sized photograph of the party who is presenting the document, mere non-affixture of the photograph of others cannot make the very execution doubtful. When a person takes a plea that signature of the executant is not found in the document, the burden is on him/her to establish the same. They could have examined the registering authority to prove the same but no steps have been taken. Therefore, as the document has been properly executed, it has to be presumed that every official acts have been done properly. Even assuming that the value of the properties exchanged between the parties is different, that may not be a ground to invalidate the very exchange deed itself. The term “exchange” has been defined in Section 118 of Transfer of property Act, 1882 and the same reads as follows:

“118. “Exchange” defined.— When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an “exchange”.

<https://www.mhc.tn.gov.in/judis> A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale. “

13. Similarly, as per Section 54 of Transfer of Property Act, the “Sale” is transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Therefore, even if the entire consideration has not been paid, document cannot be said to be invalid. Therefore, it is the bargain of the parties to agree for such consideration. Therefore, merely because the value of one of the properties is lesser than the other property which is exchanged, it cannot be said that there was no exchange at all. Apart from Ex.A8, the plaintiff has also filed Ex.A9 executed between the parties on the same day wherein the parties have acknowledged receipt of Rs.5 lakhs. These facts also clearly establish the plaintiff's case. Therefore, as far as the title of the property is concerned, the plaintiff has clearly established her case by way of documents. Though the plaintiff has also pleaded so called Will in respect of alleged adoption by Adhiyammal and Vijaya, this Court is of the view that they are no way relevant to the present issue. Having pleaded the Will, the plaintiff has not proved the Will in a manner known to law whereas both sides travelled with regard to the so called Will. Once the Will has been established and proved in the manner <https://www.mhc.tn.gov.in/judis> known to law, it would have taken care of the proof of adoption as per sub-sections (4) and (5) of Section 32 of Evidence Act and sub-sections (e) and

(f) of Section 26 in Bharatiya Sakshya Adhiniyam, 2023

14. Therefore, the trial Court has dealt with the issues which is not germane for consideration merely based on the pleadings of the parties and evidence. The crux of the issue for a suit for declaration is with regard to the title of the property and as to whether the plaintiff has a valid title to claim such relief alone ought to have been seen by the trial Court. Therefore, the trial Court going beyond the scope of the suit in the considered opinion of this Court is not proper. The plaintiff has clearly established the exchange deed in the manner known to law but the defendants has not brought out any material to dislodge the document Ex.A8 and its execution. The plaintiff is certainly

entitled to declaration. Accordingly, both the points are answered in favour of the plaintiff.

In the result, this appeal is allowed and the judgment and decree of the Additional District Court, Tiruvannamalai dated 11.01.2022 in <https://www.mhc.tn.gov.in/judis> O.S.No.12 of 2012 is set aside and suit is decreed granting declaration and consequential injunction as prayed for in favour of the plaintiff in respect of the suit property. There shall be no order as to costs.

14.02.2025 gpa To The Additional District Court Tiruvannamalai <https://www.mhc.tn.gov.in/judis>
N. SATHISH KUMAR, J gpa 14.02.2025 <https://www.mhc.tn.gov.in/judis>