counsel appearing for the first respondent/first defendant.

9. At the outset itself, I would like to highlight that the trial Court miserably failed to understand the real purport of the prayer of the petitioner/ plaintiff. Hence, it is just and necessary to extract hereunder the prayer of the petitioner/plaintiff in the said I.A.No.269 of 2004:

> "For the reasons stated in the accompanying affidavit it is prayed that the Hon'ble Court may be pleased to recognise Thiru M.Bernad, S/o.Michel as Power of Attorney Agent of the petitioner/plaintiff and permit him to conduct the case on behalf of the plaintiff and thus render justice".

10. A mere perusal of the prayer of the petitioner/plaintiff before the trial Court would amply make the point clear that he never prayed for any permission for his power agent to depose before the Court or he never expected that the Court should treat the evidence, which would be given by the power agent as the evidence of the plaintiff himself. As such in this view of the matter, the petitioner's stand is different from the one contemplated in the decision of the Hon'ble Apex Court reported in A.I.R.2005-SC-439. No party could carve out an exception to the application of Indian Evidence Act. Further if any fact is within the exclusive knowledge of the plaintiff it goes without saying that only he could depose relating to such facts and in the absence of deposing, if the Court finds that it would be fatal to the case of such party then the matter would be entirely different and there cannot be any direction or order by any Court to the effect that whatever the power agent would depose on behalf of the plaintiff should be taken for gospel truth.

11. As such with this observation, I am of the considered opinion that the order of the trial Court should be set aside and that the petitioner should be permitted to represented by his power agent and conduct the case on behalf of him.

12. With the above observations, the Civil Revision Petition is allowed and the fair and decreetal order dated 12.08.2005 passed in I.A.No.269 of 2004 in O.S.No.1603 of 1998 on the file of the learned III Additional District Munsif, Trichy is set aside and I.A.No.269 of 2004 in O.S.No.1603 of 1998 on the file of the learned III Additional District Munsif, Trichy shall stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

VCJ/VCS

2008-4-L.W. 390

IN THE HIGH COURT OF JUDICATURE AT MADRAS

25.07.2008 / A.S.No.386 of 1994

G.Rajasuria, J.

Parvathi .. *Appellant*

Vs.

1. K.Sivalingam
2. Mariyayee .. *Respondents*

Appeal filed as against the judgment and decree dated 24.01.1994 passed by the learned Principal Subordinate Judge, Salem in O.S.No.667 of 1985.

***Hindu Marriage Act** (1955), Section 16, **Madras Hindu (Bigamy Prevention and Divorce) Act** (1949), Section 4, **Evidence Act,** Sections 76,77, 78, 79 — **Held:** Suit for partition — Birth certificate issued by statutory authority, presumption of, admissibility.*

Para 11

When a marriage is claimed to have taken place several decades ago, precisely evidence cannot be expected to be adduced — Courts can from the available evidence relating to long cohabitation could arrive at the conclusion that there was marriage between the couple concerned — In this case the statutory authority under the Births and Deaths Act issued the birth certificate in proper format from the register maintained statutorily by the authority and in such a case, it is admissible — Long cohabitation between a male and a female, the marriage between them could be presumed and even for the purpose of attracting Section 16 of the Hindu Marriage Act, the same could be relied on.

The deceased Kandasamy Naicker and the deceased first defendant gave birth to a female child by name Parvathi, the second defendant. The same Kandasamy Naicker gave birth to the plaintiff through his second wife, viz., Kuzhandai Ammal. The deceased third defendant was the one other wife of Kandasamy Naicker. The immovable property described in the Schedule of the plaint belonged to the deceased Kandasamy Naicker, who died intestate during the year 1977. Consequently, the plaintiff and the defendants became the legal heirs and inherited his properties. The plaintiff and the second defendant were entitled to one third share each and the remaining one third was the share of the first and third defendants, viz., the widows of deceased Kandasamy Naicker. During the pendency of the Suit, the defendants 1 and 3 died and consequently, the shares of the plaintiff and the first defendant got enlarged as half share in favour of each of them. As such, with the aforesaid prayer, the plaintiff seeks partition. Para 3

The trial Court decreed the suit for partition. Being aggrieved by and dissatisfied with the judgment and decree of the trial Court, the second defendant filed this appeal. Paras 5,6

The learned counsel for the appellant/second defendant would argue that absolutely there is no iota or modicum of evidence to prove that there was any marriage between the deceased Kandasamy Naicker and Kuzhandai Ammal and that there is no proof that the plaintiff happened to be the son of Kandasamy Naicker. Para 7

Ex.A8 is the Birth Certificate of the plaintiff, which would evidence that he was born on 09.05.1934 as the son of Kandasamy Naicker and Kuzhandai Ammal. No doubt, in Ex.A8, there is no specification of the name of the plaintiff, as it is obvious and axiomatic that in Tamil Nadu, as per Rules, at the time of registration itself there is no necessity for the declarant to furnish the name of the child and subsequently, the name could be incorporated. But in this case, no such steps were taken to incorporate the name of the plaintiff. Para 8

In this case the statutory authority under the Births and Deaths Act issued the birth certificate in proper format from the register maintained statutorily by the authority and in such a case, it is admissible. Para 11

Accordingly if viewed, it is clear that Ex.A8 is a genuine document which clearly demonstrates that the plaintiff was born to Kandasamy Naicker and Kuzhandai Ammal. Para 13

Then the core question arises as to whether Kuzhandai Ammal could be held to be the legitimate wife of Kandasamy Naicker and that too, when admittedly Pappathiammal was the first wife of Kandasamy Naicker. Para 14

Section 3 of the said Act would unambiguously show that the said Act applies to Hindus domiciled in the then State of Madras. Para 16

It is therefore crystal clear that anterior to the enactment of the year 1949, in the then State of Madras, for Hindus monogamy was not the Rule. Further, it is evident that Kandasamy Naicker and Kuzhandai Ammal lived as husband and wife even anterior to 1934, the year in which the plaintiff was born to them. As such the fact that Kuzhandai Ammal happened to be the second wife of Kandasamy Naicker, cannot be held to be illegal and that too in the wake of Ex.A8, which would establish that Kandasamy Naicker and Kuzhandai Ammal lived

as husband and wife and gave birth to the plaintiff. Para 17

When a marriage claimed to have taken place several decades ago, precisely evidence cannot be expected to be adduced and in such a case, the Courts can from the available evidence relating to long cohabitation could arrive at the conclusion that there was marriage between the couple concerned. Here, Ex.A8 coupled with the deposition of P.W.2 would clearly exemplify that the plaintiff was born while Kandasamy Naicker and Kuzhandai Ammal were living as husband and wife and in such a case, the contention of the appellant/second defendant cannot be upheld. Para 19

As such, a perusal of the aforesaid decisions would clearly indicate that from long cohabitation between a male and a female, the marriage between them could be presumed and even for the purpose of attracting Section 16 of the Hindu Marriage Act, the same could be relied on. Para 21

Here, my discussion would indicate that there was legitimate marriage between Kandasamy Naicker and Kuzhandai Ammal. Even for argument sake it is taken that there was no legitimate marriage between them, yet, as per the aforesaid decisions cited supra, it is clear that he could be treated as the illegitimate son of Kandasamy Naicker within the meaning of Section 16 of the Hindu Marriage Act and he can claim share in the suit properties, as admittedly, the suit properties happened to be the self acquired properties of Kandasamy Naicker. Para 22

In view of the discussion supra, I could see no infirmity in the judgment and decree of the trial Court, accordingly, the same is confirmed and the appeal is dismissed. Para 26

1975(2) SCC 564 (*Lala Satyanarain Prasad v. Gadadhar Ram*); and

2001 (3) CTC 513 (*Kanagavalli v. Saroja*);

— Referred to.

Appeal dismissed.

For Appellant : Mrs.Pushpa Sathyanarayanan

For respondents : No appearance

ORDER

This appeal is focussed as against the judgment and decree dated 24.01.1994 passed by the learned Principal Subordinate Judge, Salem in O.S.No.667 of 1985, which was filed by the plaintiff as against the defendants seeking partition. For convenience sake, the parties are referred to here under according to their litigative status before the trial Court.

2. The unsuccessful second defendant filed this appeal.

3. An epitome of the case of the plaintiff as stood exposited from the amended plaint could be portrayed thus:

The deceased Kandasamy Naicker and the deceased first defendant gave birth to a female child by name Parvathi, the second defendant. The same Kandasamy Naicker gave birth to the plaintiff through his second wife, viz., Kuzhandai Ammal. The deceased third defendant was the one other wife of Kandasamy Naicker. The immovable property described in the Schedule of the plaint belonged to the deceased Kandasamy Naicker, who died intestate during the year 1977. Consequently, the plaintiff and the defendants became the legal heirs and inherited his properties. The plaintiff and the second defendant were entitled to one third share each and the remaining one third was the share of the first and third defendants, viz., the widows of deceased Kandasamy Naicker. During the pendency of the Suit, the defendants 1 and 3 died and consequently, the shares of the plaintiff and the first defendant got enlarged as half share in favour of each of them. As such, with the aforesaid prayer, the plaintiff seeks partition.

4. Controverting and gainsaying the allegations/averments in the plaint, the second defendant filed the written statement, the warp and woof of it would run thus:

The plaintiff is not the son of the deceased Kandasamy Naicker and there was no legal marriage between the first defendant and the deceased Kuzhandai Ammal. The first defendant was the only wife of Kandasamy Naicker and the second defendant was born to them, who happened to be their legitimate daughter entitled to entire suit property . Accordingly, she prayed for the dismissal of the suit.

5. The trial Court framed the relevant issues. During trial, on the side of the plaintiff P.Ws.1 to 5 were examined and Exs.A1 to Ex.A18 were marked. On the side of the respondents D.Ws.1 to 4 were examined and Exs.B1 to Ex.B81 were marked. Ultimately, the trial Court decreed the suit for partition.

6. Being aggrieved by and dissatisfied with the judgment and decree of the trial Court, the second defendant filed this appeal on various grounds, the gist and kernel of them would run thus:

The judgment and decree of the trial Court is against law, weight of evidence and all probabilities of the case; the trial Court failed to hold that no legitimate marriage between Kandasamy Naicker and Kuzhandai Ammal was proved and that the plaintiff could not be the legal heir of the deceased Kandasamy Naicker; the deposition of P.W.2 ought not to have been believed by the trial Court; the trial Court ought to have held that the suit for partition was a misconceived one; the trial Court ought to have given due weightage to Exs.B7 to B62 as the plaintiff did not controvert those documents; Ex.A5 is a fabricated document and Exs.A8 and A12 emerged during the pendency of the Suit and all these facts were not considered by the trial Court properly; Ex.A9 - the Will was proved to be a false document in one other Suit viz., O.S.No.563 of 1991 filed by the same plaintiff and in such a case, the trial Court should have dismissed the suit for partition. Accordingly, the appellant/second defendant prayed for setting aside the judgment and decree of the trial Court and for dismissing the original suit.

7. The points for consideration are as to:-

(a) Whether there had been any legal marriage between Kandasamy Naicker and Kuzhandai Ammal and whether the plaintiff is one of the legal heirs of the deceased Kandasamy Naicker?

(b) Whether there is any infirmity in the judgment and decree of the trial Court '

POINT NO.1:

The learned counsel for the appellant/second defendant would argue that absolutely there is no iota or modicum of evidence to prove that there was any marriage between the deceased Kandasamy Naicker and Kuzhandai Ammal and that there is no proof that the plaintiff happened to be the son of Kandasamy Naicker. It is therefore just and necessary to analyse the evidence available on record.

8. Ex.A8 is the Birth Certificate of the plaintiff, which would evidence that he was born on 09.05.1934 as the son of Kandasamy Naicker and Kuzhandai Ammal. No doubt, in Ex.A8, there is no specification of the name of the plaintiff, as it is obvious and axiomatic that in Tamil Nadu, as per Rules, at the time of registration itself there is no necessity for the declarant to furnish the name of the child and subsequently, the name could be incorporated. But in this case, no such steps were taken to incorporate the name of the plaintiff. However, here the circumstances would unambiguously exemplify that the plaintiff as on the date of filing of the suit was 55 years, so to say, during the year 1985 the year in which the Suit was filed, he was aged 55 years and in such a case, his year of Birth should be during 1930's. Here, Ex.A8 would demonstrate that

his Date of Birth was 09.05.1934, not even a suggestion during cross examination of P.W.1 was put that Ex.A8 is a concocted document. In such a case, Ex.A8 being the certified copy issued by the competent authority, its genuineness could be presumed.

9. The learned counsel for the appellant, citing the decision of the Hon'ble Apex Court reported in 1975(2) SCC 564 (*Lala Satyanarain Prasad v. Gadadhar Ram*) would advance her argument to the effect that a mere production of certificate would not amount to proving the Certificate.

10. A bare perusal of it would highlight and spotlight the fact that the facts involved in the case decided by the Hon'ble Apex Court were entirely different. There, the challenge was to the very document and its genuineness. In fact, a sale deed was under challenge on the ground that during the minority of the person concerned, the sale emerged not for the minor's benefit and in support of the same, a document was sought to be marked, which was looked askance at by the Hon'ble Apex Court for want of proof. But here, to the risk of repetition, without being tautologous, I would highlight that absolutely there is no suggestion put to D.W.1 to the effect that Ex.A8 is an unreliable piece of document, so as to enable the plaintiff to summon the necessary original records and prove its genuineness. In the absence of such challenge, as per Indian Evidence Act marking of such copies issued by the public authorities could be taken as evidence.

11. In the cited decision of the Hon'ble Apex Court, a birth certificate issued by the competent authority was not produced, but only a certificate issued by the school authority from the entries found in the school register and in that context, the Hon'ble Apex Court expected further proof. But, in this case the statutory authority under the Births and Deaths Act issued the birth certificate in proper format from the register maintained statutorily by the authority and in such a case, it is admissible.

12. Sections 76, 77 and 79 of the Indian Evidence Act are reproduced hereunder for ready reference.

> "76. Certified copies of public documents:- Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written, at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.
>
> 77. Proof of documents by production of certified copies :- Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.
>
> 79. Presumption as to genuineness of certified copies:- The Court shall presume [to be genuine] every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the State of Jammu and Kashmir] who is duly authorised thereto by the Central Government]:
>
> Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.
>
> The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper."

As such, those provisions speak by themselves that Ex.A8 could be relied on as a piece of evidence.

13. In fact, the cross examination was on the line as though the father's name referred to in Ex.A8 is not that of the deceased Kandasamy Naicker, the father of the second defendant. It is common knowledge that at times, people would be very meticulous in furnishing their caste suffix and at times, they may be so. Simply because in Ex.A8, in the parents name column, the name Kandasamy Naicker alone is mentioned without caste suffix, it need not be looked askance at. There is one other fact which should be taken note of. Here, in the 7th column relating to the names of father and mother, the names of Kandasamy Gounder and Kuzhandai Ammal are found and it would be a far fetched thinking that there might have been one other set of couple with the name Kandasamy Naicker and Kuzhandai Ammal. The preponderance of probabilities would govern the adjudication in civil cases. Accordingly if viewed, it is clear that Ex.A8 is a genuine document which clearly demonstrates that the plaintiff was born to Kandasamy Naicker and Kuzhandai Ammal.

14. Then the core question arises as to whether Kuzhandai Ammal could be held to be the legitimate wife of Kandasamy Naicker and that too, when admittedly Pappathiammal was the first wife of Kandasamy Naicker. At this juncture, I would like to trace the history of the Hindu Law relating to marriage.

15. The Hindu Marriage Act, 1955 preaches monogamy. Even earlier to it, The Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 under Section 4 mandates thus:

"Bigamy to be void and punishable"

16. Section 3 of the said Act would unambiguously show that the said Act applies to Hindus domiciled in the then State of Madras. Here, the parties belong to the then State of Madras. The preamble of the Act is extracted here under for ready reference:

> "An Act to prohibit bigamous marriage among, and to provide for a right of divorce for, Hindus in the State of Madras.
>
> Whereas it is expedient to prohibit bigamous marriages, among, and to provide for a right of divorce on certain grounds for Hindus domiciled in the State of Madras: ....."

17. It is therefore crystal clear that anterior to the said enactment of the year 1949, in the then State of Madras, for Hindus monogamy was not the Rule. Further, it is evident that Kandasamy Naicker and Kuzhandai Ammal lived as husband and wife even anterior to 1934, the year in which the plaintiff was born to them. As such the fact that Kuzhandai Ammal happened to be the second wife of Kandasamy Naicker, cannot be held to be illegal and that too in the wake of Ex.A8, which would establish that Kandasamy Naicker and Kuzhandai Ammal lived as husband and wife and gave birth to the plaintiff.

18. Impugning and refuting the evidence of P.W.2, the learned counsel for the appellant/second defendant would develop her argument to the effect that from the deposition of P.W.2 no head or tail could be made out of it. No doubt, P.W.2 an octogenarian aged 86 could not recollect precisely the year in which Kandasamy Naicker and Kuzhandai Ammal got married. However, he is a person who had no axe to grind in the matter and no ill- will, spite, malice have been attributed against him during cross examination. During chief examination, P.W.2 clearly stated that he witnessed the said marriage between Kandasamy Naicker and Kuzhandai Ammal which took place at Kamalavaram and he saw Kandasamy Naicker tying Thali around the neck of Kuzhandai Ammal. Hence, I am of the con-

sidered opinion that the evidence of P.W.2 cannot be discarded.

19. The learned counsel for the appellant/second defendant would argue that it is not the plea of the plaintiff that the marriage between Kandasamy Naicker and Kuzhandai Ammal should be presumed due to their long cohabitation. I cannot countenance such an argument and uphold it as correct for the reason that the case laws which emerged on the subject is on the line that when a marriage claimed to have taken place several decades ago, precisely evidence cannot be expected to be adduced and in such a case, the Courts can from the available evidence relating to long cohabitation could arrive at the conclusion that there was marriage between the couple concerned. Here, Ex.A8 coupled with the deposition of P.W.2 would clearly exemplify that the plaintiff was born while Kandasamy Naicker and Kuzhandai Ammal were living as husband and wife and in such a case, the contention of the appellant/second defendant cannot be upheld.

20. At this juncture, my mind is redolent with the following decision:

2001 (3) CTC 513 (*Kanagavalli v. Saroja*). An excerpt from it would run thus:

> "7. Section 16 of the Hindu Marriage Act clearly lays down that notwithstanding that a marriage is null and void under Section 11 and where a decree of nullity has been granted in respect of a voidable marriage, children who are born, who would otherwise have been legitimate children. What follows therefrom is that such children will be entitled to inherit their father's property. In the decision reported in *S.P.S.Balasubramanyam v. Suruttayan*, AIR 1992 SC 756 the Supreme Court held that the circumstances of evidence in that case did not destroy the presumption that the parties therein lived as man and wife under the same roof. In this case also, there is undeniable evidence that Natarajan and the first appellant had lived as man and wife under the same roof. Therefore, the children born to them are not illegitimate and the provisions of Section 16 of the Hindu Marriage Act will be applicable to them.
>
> 8. In *Rameshwari Devi v. State Of Bihar & Others*, 2002 (2) S.C.C.431 the Supreme Court held that in the circumstances, the Cohabitation for a long time between the deceased employee and the 2nd spouse gave rise to presumption of wedlock and therefore, the minor children of second marriage were entitled to family pension, but not to second widow. In that case also, both the wives were living. The first wife had one child and the second wife had three children as in the instant case. The Supreme Court held that the children of the second wife were entitled to be deemed legitimate as per Section 16 of the Act. This is also applicable to this case."

21. As such, a perusal of the aforesaid decisions would clearly indicate that from long cohabitation between a male and a female, the marriage between them could be presumed and even for the purpose of attracting Section 16 of the Hindu Marriage Act, the same could be relied on.

22. Here, my discussion would indicate that there was legitimate marriage between Kandasamy Naicker and Kuzhandai Ammal. Even for argument sake it is taken that there was no legitimate marriage between them, yet, as per the aforesaid decisions cited supra, it is clear that he could be treated as the illegitimate son of Kandasamy Naicker within the meaning of Section 16 of the Hindu Marriage Act and he can claim share in the suit properties, as admittedly, the suit properties happened to be the self acquired properties of Kandasamy Naicker.

23. The learned counsel for the appellant would contend that in the one other suit O.S.No.563 of 1991 filed by him, his contention that Kandasamy Naicker executed the Will in his favour relating to one other prop-

erty was negatived and that it shows the plaintiff's intention to grab the suit property herein.

24. In my considered opinion, simply because in the previous connected suit he lost his case both in the trial Court and in the appellate Court, there is no presumption that his contention here also should be presumed to be false.

25 . The maxim Falsus in uno, falsus in Omnibus (False in one thing, false in every thing), is not a maxim to be effected while analysing cases in Indian settings. Hence, in the result, point No.1 is answered as against the appellant.

POINT NO.2:

26. In view of the discussion supra, I could see no infirmity in the judgment and decree of the trial Court, accordingly, the same is confirmed and the appeal is dismissed. No costs.

VCJ/VCS

2008-4-L.W. 397

IN THE HIGH COURT OF JUDICATURE AT MADRAS

9.9.2008/C.M.A.NPD. No.115 of 2003

S. Palanivelu, J.

Union of India, Owning Southern Railway, rep. by General Manager .. Appellant

..vs..

P. Gowri & 4 others ... Respondents

Appeal against the judgment dated 4.7.2002 in O.A. No.2001/0062 on the file of the Railway Claims Tribunal, Chennai Bench, Chennai.

***Railways Act** (1984), Sections 123(c)(2), 124-A/'untoward incident' — **Held:** while the train was reaching the platform No.2 of the station, the deceased suddenly slipped and fell down and got into the wheels there was an accidental fall and the perusal of the evidence also shows that there was no negligence on his part — If the case could be brought within the purview of Section 124-A of the Act, there is no need to see whether the injured or deceased was at fault — Order passed by the Railway Claims Tribunal does not suffer from any factual or legal infirmity, so as to invite interference from this Court — Railway Claims Tribunal, Chennai Beach has decided that it is an accidental fall as described in statute which should be termed as 'untoward incident' and awarded compensation to the respondents — Appellants is liable to pay compensation satutorily under Section 124-A of the Act.*

U.O.I. v. P.V. Kumar (2008) 4 MLJ 323 (SC));

T.V. Kunjali v. Union Of India (2007-3-L.W.345 = A.I.R. 2007 Madras 285); and

K. Vidya Kumari v. Union Of India, South Central Railway (2004 ACJ 1420);

— Referred to.

CMA dismissed.

For Appellant : Mr. M. Vellaisamy

For Respondents : Mr. T. Raja Mohan

JUDGMENT

This appeal is filed against the judgment dated 4.7.2002 in O.A. No.2001/0062 on the file of the Railway Claims Tribunal, Chennai Bench, Chennai.

2. The short facts necessary for the disposal of the appeal are as follows:-