

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).2154/2007

(From the judgement and order dated 28/09/2006 in SA No. 1480/1994 & SA No. 1481/1994 of the H
IGH
COURT OF MADRAS)

GUNASEKARAN & ANR. Petitioner(s)
VERSUS

NARASINGAM Respondent(s)

(With prayer for interim relief and office report)

Date: 17/09/2007 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s) Mr. K. Subramaniam, Sr.Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. E.C. Agrawala, Adv.
Mr. Gaurav Goel, Adv.
Mr. Amit Sharma, Adv.
Ms. Neha Aggarwal, Adv.

For Respondent(s) Mr. G. Umapathy, Adv.
Mr. A. Leo G. Rozario, Adv.
Mr. Rakesh K. Sharma, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.
Heard the learned counsel for the parties.

The impugned judgment is set aside, the matter is remitted to the High
Court for consideration of the matter afresh and the appeal is disposed of in terms o
f
the signed order.

(A.S. BISHT)
COURT MASTER

(PUSHAP LATA BHARDWAJ)
COURT MASTER
[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4380 OF 2007
[Arising out of SLP(C) No. 2154/2007]

GUNASEKARAN AND ANR. ... APPELLANT(S)
:VERSUS:
NARASINGAM ... RESPONDENT(S)

ORDER

Leave granted.

This appeal arises out of a judgment and order dated 28.9.2006 passed by the learned Single Judge of the High Court of Judicature at Madras in Second Appeal Nos. 1480 & 1481 of 1994, whereby and whereunder the appeals preferred by the respondent herein from the judgments and decrees dated 30th August, 1994 in A.S. Nos.51 & 52 of 1992 passed by the Subordinate Judge, Villupuram, reversing the judgment and decree dated 30th April, 1992 passed by the District Munsif Court, Tirukkivilur in O.S. Nos. 667 & 668 of 1990, were allowed.

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Basic fact of the matter is not in dispute. Admittedly, one Kesava Pillai was the owner of the suit properties. He was married to one Thilagavathi. They had a daughter, namely, Jayalakshmi. Thilagavathi died in May 1974. Allegedly, Kesava Pillai thereafter married Gangammal. Whereas the appellants are the purchasers of the suit properties from the daughter of Kesava Pillai, namely, Jayalakshmi, the respondent herein purchased the suit property from Gangammal.

Two suits were filed by the appellants herein. The said suits were dismissed. However, the appeal filed thereagainst was allowed.

The principal question which arose for consideration in the said suits was as to whether Gangammal was the legally wedded wife of Kesava Pillai. In the second appeals preferred by the respondent herein, the purported substantial questions of law, which were raised, are:

"1. Whether the lower appellate Court has failed to take adverse inference in favour of the appellant under section 114 of the Evidence Act due to the non-examination of Jayalakshmi by the plaintiff to rebut the evidence of Gangammal (D.W.4) stating that she is the second wife of Kesava Pillai legally married to him after the death of his first wife Thilagavathy?

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2. Whether the lower appellate Court has erred in law by deciding the title in respect of suit properties when Gangammal and Jayalakshmi are not parties to the suit and that the lower Appellate Court should have impleaded them as parties in the interest of justice suo motu under O.1 R.10 C.P.C."
The High Court proceeded to consider the merit of the matter on the premise

that the substantial question of law which arose for consideration was as to whether Gangammal was the legally wedded wife of Kesava Pillai. We have noticed hereinbefore that the substantial question of law formulated by the High Court at the time of the said second appeals was not in relation to the validity, legality or otherwise of the marriage of Gangammal with Kesava Pillai. The High Court did not formulate the said question although there cannot be any doubt, whatsoever, that the same principally arose for its consideration. In the aforementioned premise, we are of the opinion that interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh for framing substantial questions of law which arose for consideration in the second appeal, keeping in view the finding of fact arrived at by the Courts below in their judgments and decrees. We direct accordingly.

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The High Court is requested to consider the desirability of disposing of the matter as expeditiously as possible.

The appeal is disposed of with the aforementioned observations and directions.

.....J
(S.B. SINHA)

.....J
(H.S. BEDI)

NEW DELHI,
SEPTEMBER 17, 2007.