

PETITIONER:

S. AJARMA BI & S. HAJARAM BIHI AND ANOTHER

Vs.

RESPONDENT:

S.KHURSHID BEGUM & OTHERS

DATE OF JUDGMENT: 13/02/1996

BENCH:

HANSARIA B.L. (J)

BENCH:

HANSARIA B.L. (J)

RAY, G.N. (J)

CITATION:

1996 AIR 1663 JT 1996 (6) 155

1996 SCALE (2)205

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARAI, J.

Leave granted.

2. The dispute at hand relates to property bearing door Nos.297 to 306 which once belonged to one M.Abdul Sattar and his vounder brother M.Sattar. Respondent Nos.1 and 2 herein are the daughters of M.Sattar through his first wife, the third respondent. The two appellants claimed themselves to be the offspring of M.Sattar through his second wife. They challenged a deed of settlement by the aforesaid Sattars relating to the property in favour of respondent Nos.1 and 2 on the ground that the same had been obtained by misrepresentation, fraud and coercion. After the death of both the Sattars, the appellants filed a suit in the file of Court of Subordinate Judge, Coimbatore, claiming that they were entitled to 53 and 1/2 out of 72 shares and mesne profits. Respondents' case was that the appellants are illegitimate children of M.Sattar, and so, not entitled to any share; and the settlement deed was valid. The trial court decreed the suit, but on appeal the High Court dismissed the same holding that the appellants were not legitimate children of M.Sattar and the settlement deed was valid.

3. Shri Mohan, learned counsel for the appellants, has strenuously urged that the finding of the High Court relating to legitimacy is untenable inasmuch as the Court gave undue importance to Exhibit A.9, which is a copy of marriage register containing recital of marriage of M.Sattar and his second wife stating "I affirm that this date I have married".(Emphasis supplied). Shri Mohan contends that apart from this exhibit, which is dated 26.8.1967, there are many documents to show that M.Sattar had acknowledged paternity prior to that date. It is submitted that these acknowledgements were not viewed in proper perspective by the High Court.

4. We have felt inclined to accept the aforesaid submission of Shri Mohan keeping in view the principle underlying section 112 of the Evidence Act and what has been stated in section 114. These two sections give rise to presumption against concubinage and permit raising of presumption of legitimacy of the children born during the period of continuous cohabitation. Shri Nariman, appearing for the respondents, has no objection to our holding that the appellants are legitimate offspring of M.Sattar, provided interest of his clients is adequately protected qua other properties of the two Sattars. We, therefore, state that the appellants would be accepted, taken and treated as legitimate children of M.Sattar.

5. On the question relating to validity or otherwise of the settlement deed, we find no reason to disagree with the High Court, as, whether the deed was obtained by misrepresentation, fraud and coercion is a question of fact which has been thoroughly gone into by the High Court with reference to the materials on record. We, therefore, uphold the finding of the High Court qua the validity of the settlement deed.

6. It appears to us that to do complete justice between the parties it would be apposite to state that as we have decided the question of legitimacy on the basis of presumption, it should be made clear that the appellants would not lay any claim in respect of any property left by M.Sattar and/or Abdul Sattar on the basis of what has been held by us relating to the legitimacy of the two appellants; and we say so.

7. The appeal is allowed accordingly with no order as to costs.