

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.2496 of 2012

D.Kannammal @ Muthammal

... Appellant

Versus

- 1.R.Velliyangiri
- 2.Sankaran
- 3.Saraswathi
- 4.Selvi.Santhamani
- 5.Mrs.Chandra
- 6.M/s.Bharat Petroleum Corporation Ltd.,
Installation (LPG)
Rep. by its Manager
Peelamedu, Coimbatore.
- 7.M/s.Bharat Petroleum Corporation Ltd.(South)
Rep. by its General Manager (HRS)
No.12, Ranganathan Gardens
Anna Nagar, Chennai-40.

... Respondents

Civil Miscellaneous Appeal is filed under Order 43 of C.P.C read with Section 372 of Indian Succession Act 1956 against the decree and judgement dated 12.12.2011 in SOP.No.383 of 2007 on the file of Principal District Judge, Coimbatore.

For Appellant

: Dr.R.Sampathkumar
for Mr.M.Muthukrishnan

For Respondents

: Mr.Saranraj for RR 1,3 & 5
Mr.Anand
for M/s.T.S.Gopalan & Co. for R7

JUDGMENT

The appeal has been preferred by a person claiming to be wife of one Dasarathan, who died on 14.3.2006, while working as Gas filler in LPG Plant Department, Bharat Petroleum Corporation, Coimbatore under the 6th respondent, against the dismissal of her petition filed under

Section 372 of Indian Succession Act 1956, rejecting her prayer to grant Succession Certificate in her favour to collect the death benefits of R.Dasarathan from Bharat Petroleum Corporation, Coimbatore.

2. Heard Dr.R.Sampathkumar representing Mr.M.Muthukrishnan, learned counsel appearing for the appellant, Mr.Saranraj, learned counsel appearing for the respondents 1,3 and 5 and Mr.Anand for M/s.T.S.Gopalan & Co, learned counsel appearing for the 7th respondent. 3. The case of the appellant is that she married one Dasarathan, who died, while he was working under the 6th respondent and therefore, she is entitled to the death benefits of Dasarathan available with the 6th respondent. However, the respondents, 1,3 and 5, who are second line legal heirs, namely, the brother and sisters of Dasarathan, contended that the appellant already married one Ramasamy and without dissolution of that marriage, she again got marriage with Dasarathan and therefore, the marriage of the appellant with Dasarathan is not valid in law. Accepting the said contention of the respondents 1,3 and 5, the Trial Court dismissed the S.O.P.No.383 of 2007 on 12.12.2011.

4. Though there was a marriage between the appellant and Ramasamy, the marriage which was performed at the age of 13 years was a child marriage and therefore, the said marriage is not valid in law. From the subsequent records, it is clear that the appellant was living with the deceased Dasarathan as husband and wife and a number of documents on record support the claim of the appellant.

5. In the Family Card issued between 1988 - 1992, the name of the appellant was shown as wife of Dasarathan. Ex.P1, Marriage Certificate dated 13.4.1989 would reveal that there was a marriage between the deceased Dasarathan and the appellant. All the documents namely, Ex.P1 to P36, undoubtedly prove that the appellant was living as wife with the deceased Dasarathan. As per Ex.P5, Muthammal and Kannammal are one and same person.

6. Though the learned counsel appearing for the respondents 1,3, and 5 would dispute the divorce document said to have been executed by Ramasamy and Kannammal @ Muthammal, the appellant herein, the party to the document, can only dispute the said document. Ramasamy did not object the said documents. However, this court is bound to look into the conduct of the parties and also the subsequent documents. Even if Ex.P13 divorce document is ignored, no other document was produced by the respondents 1,3 and 5 to show that the marriage between Ramasami and Kannammal @ Muthammal was existing.

7. Though the contention of the learned counsel appearing for the appellant that the marriage between Ramasamy and Kannammal @ Muthammal is not valid and the marriage between Dasarathan and the

appellant is as per law, there is no document to show that there was a valid marriage between Kannammal @ Muthammal and Ramasamy. In view of Ex.P1, Marriage Registration Certificate between Dasarathan and Muthammal, the said marriage was valid marriage.

8. More over, the respondents 1,3 and 5 has got no locus standi to question the marriage between Dasarathan and Kannammal @ Muthammal after the death of Dasarathan. It is only the right for Ramasamy, who can question the alleged second marriage of Kannammal @ Muthammal and it is not open to others. Ex.P3, Legal heir Certificate dated 10.6.2006 would show that the appellant is the legal heir of the deceased Dasarathan.

9. In this case, the most clinching document is the nomination made by the deceased Dasarathan to the Bharat Petroleum Corporation Limited, saying that the appellant is his wife. When the deceased himself had shown the appellant as his wife, there cannot be any dispute with regard to the relationship. The condolence message given by the Bharat Petroleum Corporation Limited, Ex.P28 dated 16.3.2003, regarding the death of Dasarathan was also addressed to the appellant. As per Ex.P29, the Life Insurance Corporation also paid the Policy money to the appellant by virtue of the letter dated 25.11.2006. Similarly, through Ex.P30 dated 17.3.2006, the 6th respondent Bharat Petroleum Corporation Limited paid Death Benevolent fund in respect of late Dasarathan to the tune of Rs.2,25,000/-. Ex.P-36, Will executed by none other than the deceased Dasarathan, would prove that he bequeathed his property in favour of the appellant as well as declared that all death benefits are to be paid by the Bharat Petroleum Corporation to the appellant only. The aforesaid document would undoubtedly prove the claim of the appellant. In the light of those documents, the claim of the respondents 1,3 and 5 cannot be sustained.

10. Therefore, the dismissal order of the Trial court is set aside and the appeal is allowed. Consequently the connected M.P.1 of 2012 and M.P.No.1 of 2015 are closed. No costs. Moreover, the succession certificate as prayed for by the appellant under Section 372 of Indian Succession Act 1956 is granted. The 6th respondent is directed to pay all other death benefits namely gratuity, provident fund and pension payable in respect of the deceased Dasarathan to the appellant within four weeks from the date of the receipt of a copy of the order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar.

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To

The Principal District Judge, Coimbatore.

2 cc to Mr.M.Muthukrishnan ,Advocate, SR.No.16583

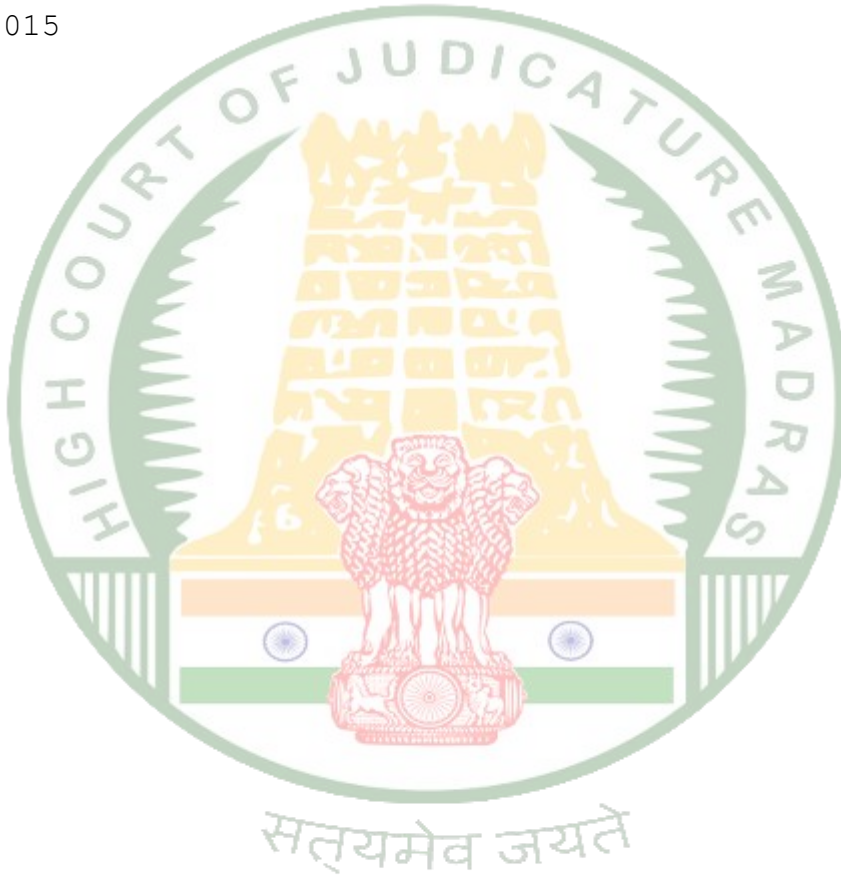
1 cc to M/s.T.S.Gopalan & Co. ,Advocate, SR.No.16576

1 cc to Mr.Saranraj ,Advocate, SR.No.17117

C.M.A.No.2496 of 2012

gj (co)

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