

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Miscellaneous Appeal No.519 of 2012
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JUDGMENT:

This Civil Miscellaneous Appeal by the unsuccessful respondents 2 to 4 under Section 384 of the Indian Succession Act, 1925 is directed against the orders dated 15.02.2012 of the learned District Judge, Chittoor passed in S.O.P.No.271 of 2005.

2. I have heard the submissions of the learned counsel for the appellants/respondents 2 to 4 and the learned counsel for the respondents 1 to 3/the petitioners. The 4th respondent herein is the 4th petitioner. The 5th respondent is impleaded being the legal representative of the deceased 1st respondent-D.B.Rajendran. I have perused the material record.

3. For convenience and clarity, the parties in this appeal shall hereinafter be referred to as 'the petitioners' and 'the respondents' as arrayed in the succession original petition before the Court below.

4. The facts leading to filing of the present appeal may be stated, in brief, as follows:

The petitioners had filed the Succession Original Petition under Section 372 of the Indian Succession Act against the respondents 1 to 4 for issuance of a succession certificate in respect of the petition schedule property, *inter alia* claiming that the 1st petitioner is the wife of the deceased D.V.Balaraju ('the deceased' for short) and the other petitioners are the children and the mother of the said deceased. Though the petition was filed by all the four petitioners, during the pendency of the petition, the 4th petitioner, who is the mother of the deceased Balaraju had died; and; a memo was filed to the effect that the petitioners 1 to 3, who are already on record, are her only legal heirs. It is apt to note that the petition is originally filed against the 1st respondent. But, the respondents 2 to 4 were added as per the orders dated

12.07.2006 in I.A.No.399 of 2005. The respondents 2 to 4 resisted the claim of the petitioners 1 to 3 *inter alia* claiming that the 2nd respondent is the wife of the deceased Balaraju @ D.V.Balarajan. After full-fledged trial, the learned District Judge had allowed the petition and granted a succession certificate in regard to the petition schedule items 1 and 2, i.e., death-cum-retirement benefits payable on the death of the deceased, thus entitling the 1st petitioner-D.Vasanth, the widow of the deceased, to receive the same. In the said orders, the learned District Judge had further directed that the succession certificate be engrossed on the requisite stamp papers subject to superior claims, if any, by way of a suit or other proceeding. Feeling aggrieved of the said orders, the respondents 2 to 4 had filed this appeal.

5. The learned counsel for the respondents 2 to 4 would contend as follows:

The Court below had grossly erred in allowing the petition of the petitioners and in directing issuance of a certificate in respect of the items 1 and 2 of the schedule properties in favour of the 1st petitioner. The trial Court did not properly appreciate the oral and documentary evidence. The deceased Balaraju @ D.V.Balarajan himself had admitted and gave an affidavit and other documents admitting that the 2nd respondent/1st appellant is his wife. Therefore, the observations of the Court below that even if the deceased had married the 2nd respondent during the life time of his first wife i.e., the 1st petitioner, the 2nd respondent will not get any status of wife are incorrect and unsustainable. The trial Court ought to have properly appreciated the documentary evidence and ought to have seen that exhibit B9 submitted by the deceased discloses that the 2nd respondent (B.Nirmala) is his wife, but her name was struck off and the name of the 1st petitioner (D.Vasanth) was incorporated. The said document would show that the marriage of the 1st petitioner (D.Vasanth) with the deceased, even if true, will not confer any rights on her because the marriage of the 2nd respondent (B.Nirmala) with the deceased was subsisting. The documents in exhibit 'B'

series substantiate sufficiently the defence of the respondents. But, the Court below has simply ignored the said evidence. Exhibit B9 is Form-2 prescribed under the Family Pension Scheme, 1971 and the contents of the scheme sufficiently establish that the name of the 2nd respondent (B.Nirmala) was recorded as the wife of the deceased and that later, her name was struck off and the name of the 1st petitioner (D.Vasantha) was added by showing her as the wife of the deceased by fraudulent and malicious methods. Exhibit B6, the agreement dated 01.06.1990 also discloses that the 2nd respondent (B.Nirmala) is the wife of the deceased and is the duly constituted nominee to receive the security deposit in the event of his death in harness. Therefore, the trial Court ought not to have given credence to any other document as exhibit B9 and B6 are superior documents. Several documents are filed to show the relationship between the respondents 2 to 4 on one hand and the deceased on the other. Therefore, the Court below ought to have held that the 2nd respondent (B.Nirmala) is the legally wedded wife of the deceased Balaraju and ought not to have granted a succession certificate to the petitioners 1 to 3. The trial Court had failed to take into consideration the settled propositions of law that admitted facts need not be proved. When the documents show the 2nd respondent (B.Nirmala) as the wife of the deceased, the trial Court instead of ordering issuance of succession certificate to the petitioners 1 to 3, ought to have directed the petitioners to approach a civil court for resolution of the disputes as the Court below only exercises limited jurisdiction in the instant proceedings under the Indian Succession Act. The trial Court ought to have seen that when the deceased himself affirmed that Nirmala is his wife, there is no need to give any particulars of marriage of Nirmala with him and the absence of pleading in that regard is not of any significance. The trial Court ought to have seen that exhibit A3-wedding card is a manipulated document. The trial Court erred in giving credence to exhibits A3 and A4 and other documents in 'A' series. The trial Court ought to have seen that the 1st petitioner had falsely stated that she is also being called as Nirmala without either any foundation in the pleading or sufficient proof in that regard. The trial Court ought to have seen that exhibits X1 to

X11 are manipulated subsequent to the desertion of the respondents 2 to 4 by the deceased. The trial Court ought to have seen that the marriage of the deceased with the 1st petitioner (D.Vasantha) even if true, is null and void for the reason that the marriage of the 2nd respondent-Nirmala with the deceased was admitted and necessary documents were furnished by the deceased during his life time to his employer. The trial Court ought not to have relied upon the Voters lists for upholding the plea of marriage of the 1st petitioner with the deceased.

6. On the other hand, the learned counsel for the petitioners 1 to 3 while supporting the impugned orders had submitted as follows:

The trial Court had correctly framed the point as to whether the petitioners 1 to 3 on one hand or the respondents 2 to 4 on the other are entitled for grant of succession certificate and had rightly appreciated the pleadings, the evidence and the legal principles applicable to the facts of the case and had rightly granted the succession certificate in regard to the items 1 and 2 of the petition schedule property to the 1st petitioner, who is the widow of the deceased. The said two items of the schedule are only death-cum-retirement benefits payable on the death of the deceased by his employer. The documents in exhibit 'B' series, as rightly held by the Court below have no probative value and are not worthy of any credit. Therefore, the trial Court had rightly discarded the evidence on the side of the respondents after giving valid reasons and had rightly given due weight to the evidence on the side of the petitioners and had passed a well reasoned and well considered order. Therefore, the said order does not call for any interference. In any view of the matter, the Court below had added a rider in the operative portion of the judgment that the certificate granted is subject to superior claim, if any, by way of suit or other proceeding. Therefore, the appeal is devoid of merit and is liable to be dismissed.

7. Now, the points for consideration are:-

- (i) **Whether the order of the Court below directing issuance of succession certificate in favour of the 1st**

petitioner in respect of items 1 and 2 of the petition schedule entitling her to receive the properties/amounts mentioned therein, i.e., death-cum-retirement benefits of the deceased D.V.Balaraju is unsustainable under facts and in law as urged by the appellants/respondents 2 to 4?

(ii) To what relief?

8. POINTS:

8.1 The facts leading to filing of the appeal and the contentions of both the sides are already stated supra, in detail. Before proceeding further, it is necessary to refer to the pleaded cases of the parties.

8.2 The case of the petitioners is this:

The marriage of the deceased with the 1st petitioner-D.Vasantha was performed on 12.11.1973. The petitioners 2 and 3 are the children of the 1st petitioner and the deceased. The 4th petitioner who is the mother of the deceased had died during the pendency of the proceedings leaving behind the petitioners 1 to 3 as her only legal heirs. The deceased D.V.Balaraju while working as a driver in APSRTC, Palamaner Depot had met with an accident on Chittoor-Palamaner road; and, while undergoing treatment in CMC Hospital, Vellore, he had succumbed to the injuries on 21.05.2004. He had died intestate. The deceased, while working as Driver, APSRTC of Palamner Depot, had nominated the 1st petitioner to receive the retirement benefits. In view of the said nomination and the relationship, except the 1st petitioner no other person is entitled to receive the petition schedule amounts. Hence, the petitioners are obliged to file the Original Petition for grant of Succession Certificate in favour of the 1st petitioner in respect of the petition schedule properties.

8.3 During the pendency of the original petition, the respondents 2 to 4 came on record *inter alia* claiming that they are entitled to receive the death-cum-retirement benefits of the deceased. The 2nd respondent had filed a

counter. The same was adopted by respondents 3 and 4 by means of a memo. The case of the respondents is this:

The 2nd respondent, who is the widow of the deceased, is the legally wedded wife of the deceased D.V.Balaraju @ D.V.Balarajan; and, they both were blessed with two children, the respondents 3 and 4. The voters identity card, the photographs and the registered gift settlement deed dated 01.09.1994 establish their said relationship with the deceased. The respondents 2, 3 and 4 are the only legal heirs and successors to succeed to the estate left behind by the deceased and none else.

8.4 Before the Court below, PWs 1 to 5 were examined and exhibits A1 to A30 were marked on the side of the petitioners. On the side of the respondents, RWs 1 to 5 were examined and exhibits B1 to B21 were marked. Exhibits X1 to X13 were also marked. On merits, the Court below had granted the succession certificate in favour of D.Vasantha, the 1st petitioner, the widow of the deceased in respect of the petition schedule item nos.1 and 2, i.e., death-cum-retirement benefits. Feeling aggrieved of the said orders, the respondents 2 to 4 had filed this appeal.

8.5 The proceeding for grant of a succession certificate, as rightly held by the trial Court is a summary proceeding and the decision made in the said proceeding is always subject to challenge in an appeal or in a separate comprehensive proceeding like a suit, which the law permits. Therefore, the finality attached to the succession certificate granted under the provisions of the Indian Succession Act is always subject to the rider that the finding recorded in the succession certificate proceedings does not operate as *res judicata* and that the succession certificate becomes final in the absence of the parties aggrieved not challenging the orders granting succession certificate either by filing an appeal as provided under law or by instituting a comprehensive civil proceeding, which the law permits.

8.6 The 1st petitioner as **PW1** had deposed in line with her pleaded case. She had exhibited exhibits A1 to A29, the details of which are as follows:

“Exhibit A1 is the original nomination form dated 01.07.1955 issued by APSRTC, Hyderabad, exhibit A2 is the Election Identity card dated 15.02.1999 of the deceased, exhibit A3 is the Wedding card of the 1st petitioner dated 12.11.1973, exhibit A4 is the CC of petition dated 13.09.2001 in OP No.24 of 2001 on the file of the Principal Junior Civil Judge’s Court, Chittoor, exhibit A5 is the attested copy voters list of Bangarupalem Mandal, exhibit A6 is the record sheet belonging to the deceased Balaraju issued by the school authority, dated 31.05.1962, exhibit A7 is the certificate dated 25.05.2003 issued by C.E.S., of India, exhibit A8 is the Nativity certificate dated 29.01.2004 issued by the Panchayat Secretary, Mogili Mittoor, exhibit A9 is the Transfer Certificate issued by the school authority dated 31.05.2004, exhibit A10 is the caste certificate issued by the M.R.O., Bangarupalem, exhibit A11 is the order copy dated 17.09.2004 in W.A.No.1430 of 2004 on the file of this Court, exhibit A12 is the wedding card dated 03.11.2003 of the marriage of the 2nd petitioner, exhibit A13 is the bunch of receipts (medical receipts) and membership statement issued by APSRTC (6 in number), exhibit A14 is the house tax receipt and demand notice dated 02.05.2002 issued by the Sarpanch of Mogili Mittoor, exhibit A15 is the cist receipts for agricultural lands, exhibit A16 is the telephone bills (two in number), exhibit A17 is the savings passbook issued by the Postal Department dated 10.10.2001, exhibit A18 is the receipt dated 03.08.2011 issued by election officer at the time of contesting the election, exhibit A19 is the receipts and demand notice and letter of LIC of India four in number, exhibit A20 is the pattadar passbook issued by MRO, exhibit A21 is the certificate dated 23.07.2004 issued by A.Madhava Reddy, A.P.Rural Development Academy, exhibit A 22 is the sale deed dated 31.12.2001, exhibit A23 is the driving licence dated 22.04.2004, exhibit A24 is the caste certificate dated 26.12.2006 of the 1st petitioner, exhibit A25 is the medical identity card issued by APSRTC in the name of the 1st petitioner, exhibit A26 is the ITI certificate dated 23.08.2001, exhibit A27 is the SSC certificate dated 24.06.1995, exhibit A28 is the attested copy of key Register of Mogili village F.P.Shop issued by Tahsildar, Bangarupalem, exhibit A29 is the attested

copy of Voters list for the year 1999 of Mogili Mittoor and exhibit A30 is the attested copy of voters list for the year 1999 of Mogili Mittoor.” She had further examined **PW2** one Venugopal Rao who was said to be a neighbour and a resident of a house neighboring to the house of the deceased in Mogili Mittoor village. She had testified about the marriage of the 1st petitioner with the deceased and their living together as man and wife. Exhibit A3 is the Wedding Card for the marriage of the 1st petitioner with the deceased. Exhibit A4 is the certified copy of the order petition in Election Petition in O.P. no. 24 of 2001 on the file of the Principal Senior Civil Judge, Chittoor filed by one Jayanthi against the 1st petitioner herein and others for recounting of votes and to declare the election of the 1st petitioner herein as Sarpanch of Mogili village during the elections held in the year 2001 as null and void and declare the said Jayanthi in the said OP as the successful candidate and for other reliefs. In this proceeding filed by a third party against the 1st petitioner herein, she was described as the wife of the deceased herein. Exhibits A29 and A30 are the copies of the relevant portions of Voters Lists of the year 1999 of constituency no.141 of Palamneru, wherein at entry no.460, the name of the 1st petitioner was shown as ‘D.Vasantha W/o Balaraju (deceased)’ and at entry no.461, the name of the 4th petitioner who is the mother of the deceased was shown. PW4 one P.Ramu is the Depot Manager of APSRTC, Palamner where the deceased had last worked. He had produced exhibits X1 to X11. Amongst the other documents produced by him, exhibit X4 is the notarized affidavit of the deceased given to his Department, wherein the deceased had affirmed that his wife’s name is D.Vasantha @ Nirmala and that in the official records, his wife’s name is D.Vasantha and his wife used to sign and write for all purposes as D.Vasantha and that at the time of filing of his nomination forms by mistake he mentioned the name of his wife as B.Nirmala and his wife is Smt. D.Vasantha for all purposes of official transactions. The above affidavit is dated 22.02.1994. As already noted, PW1 had also asserted in her evidence that she is also known as Nirmala.

According to the evidence of PW4, on the death of the deceased, the funeral expenses in a sum of Rs.2,000/- were also paid to the 2nd petitioner Hemagiri

as per their records. The said receipt for the said payment is exhibit X1. The nomination form submitted by the deceased to his Department nominating D.Vasantha (1st petitioner) is also produced by him. The attested nomination form is exhibit X2. Exhibit X3 is the attested nomination form by the deceased nominating D.Vasantha to receive the staff benefit thrift fund. Exhibit X5 is the attested copy of declaration of family members. In this document, there are some corrections as admitted by PW4. Exhibit X7 is the declaration form with the name of D.Vasantha. Exhibit X8 is the attested copy of declaration given in the year 1990. In fact, according to the evidence of PW4, on 23.02.1994, while the deceased was working at B.Kothakota, he had given a statement that his wife is being called as Nirmala and her name is Vasantha. The said statement of the deceased is exhibit X9. Exhibit X10 is the agreement given by the deceased to the Department at the time of joining the service. In this agreement of the year 1990, the name of the wife of the deceased is mentioned as B.Nirmala and her age was mentioned as 32 years. This evidence on record, *prima facie*, discharged the initial onus of proof which is upon the petitioners 1 to 3.

8.7 Dealing with the evidence on the side of the respondents, it may be noted that the 2nd respondent was examined as RW2. She had also examined the brother of the deceased by name Munirathnam as RW3. On her side, exhibits B1 to B21 were exhibited, the details of the same are as under: “Exhibit B1 is the photos three in number with negatives, exhibit B2 is the Voter Identity card of B.Nirmala, exhibit B3 is the registered gift settlement deed dated 01.09.1994 along with translation copy, exhibit B4 is the letter dated 30.01.2002 issued by Ward Member of a political party, exhibit B5 is the attested copy of Sterilization certificate dated 22.05.2008 issued by CMC Hospital, Vellore in the name of B.Nirmala, exhibit B6 is the attested copy of agreement of the deceased to APSRTC, exhibit B7 is the attested copy of nomination for A.P. Gratuity Rules of APSRTC, exhibit B8 is the attested copy of Guaranteed provident fund of the deceased, exhibit B9 is the attested copy of Form-2 family pension scheme 1971 of the deceased, exhibit B10 is the attested copy of Family members bus pass, exhibit B11 is the attested

copy of Family members for medical attendance of the deceased to APSRTC, dated 01.10.1993, exhibit B12 is the attested copy of nominee given by APSRTC dated 05.06.2008, exhibit B13 is the Death Certificate of Balaraju dated 26.08.2004, exhibit B14 is the attested copy of Birth certificate of 4th respondent dated 20.07.2004, exhibit B15 is the attested transfer certificate of 3rd respondent dated 16.11.2000, exhibit B16 is the CC of legal heir certificate in Tamil with translated copy, exhibit B17 is the original transfer certificate (marked subject to admissibility relevancy and proof), exhibit B18 the encumbrance certificate with translated copy, exhibit B19 is the Voters identity card of Payani (marked subject to admissibility relevancy and proof), exhibit B 20 is the Voters identity card of Nirmala (marked subject to admissibility, relevancy and proof), exhibit B 21 are the photos with negatives showing the deceased and RW2 and the daughter of her elder sister by name Maheswari.” The 2nd respondent did not either plead or state in her evidence the date, month and year of her marriage with the deceased. RW3 also did not speak about the said particulars in his evidence. RW3 admitted in his evidence that there was a civil dispute between him and the deceased in or about the year 1990 and since then, he is living elsewhere. RW4 who was said to be a person present at the time of the marriage of the 2nd respondent with the deceased is also an attester of exhibit B3 gift deed executed by the deceased in favour of the 4th respondent. In this gift deed, the name of the donor is mentioned as D.V.Balaji. The name of the father of the said donor is not mentioned. Therefore, there is no satisfactory material to hold that the executant of the said gift deed is the deceased. Exhibit X13 Voters list of 43-Assembly Constituency for the year 2011 is exhibited through RW5, an employee of the office of the Tahasildar, Vellore. This document being subsequent to this proceeding is of no probative value.

Exhibit B1 is a photograph with negative showing therein the deceased and the 2nd respondent. Exhibit B2 is the Voter Identity card of the 2nd respondent. In that card, her husband's name is shown as Paulraj. The contention of the learned counsel for the appellant/2nd respondent that in

Tamil Balraj will be called as Paulraj cannot be countenanced, as also rightly held by the Court below. Exhibit B4 is a letter issued by a Ward Member of a political party dated 30.01.2002 wherein the name of the husband of the 2nd respondent was shown as Paulraj. Exhibits B10 and B11 which are privileged bus passes also show the name of the 1st petitioner as the wife along with the name of the deceased, his mother and others. The petitioners specifically pleaded that the marriage of the 1st petitioner was performed with the deceased on 12.11.1973; and apart from examining PW2, the petitioners 1 to 3 had produced documentary evidence to show that the 1st petitioner and the deceased lived as man and wife and were recognized as such in the locality by the people of the locality concerned. Whereas, as already noted, the 2nd respondent did not plead the date, month and the year of her marriage. Therefore, on a harmonious consideration of the evidence on record, particularly the affidavit of the deceased which was given to his Department and also the documents on the side of the respondents which go against the contentions of the 2nd respondent in the light of the fact that some of such documents show the name of the husband of the 2nd respondent as Paulraj, this Court is inclined to hold that the onus which is shifted to the 2nd respondent is not discharged and that the entire evidence on record probalizes the case of the petitioners 1 to 3 on an application of the test of preponderance of probabilities. Having regard to the above reasons, this Court finds that the Court below is justified in passing the order which is assailed in this appeal and that the said order, therefore, does not call for any interference.

9. Before parting with the case, it is necessary to mention that the appellants, i.e., the respondents 2 to 4 in the OP had filed a petition under Order XLI Rule 27 of the Code to receive the documents viz., the marriage invitation in Tamil with translation and marriage Lagna Patrika with translation as additional evidence. The said application is also coming along with this appeal as the said application is required under law to be disposed of along with the appeal and not ahead of the appeal. In the affidavit of the

2nd respondent filed in support of the petition, while reiterating her defence in the OP, it is stated that the conclusion of the trial Court is wrong and that after the case was adjourned by this Court an enquiry was made by the counsel about the marriage particulars and that on that, a search and a further enquiry were made with the uncle of the 2nd respondent and that on that the aforementioned documents were traced in his house on 04.12.2014 and hence, the said documents which prove the marriage of the 2nd respondent with the deceased are filed into Court along with the petition and that the said documents could not be filed earlier as their existence had come to the knowledge of the respondents 2 to 4 only after the disposal of the case by the trial court and that the said documents were traced only on 04.12.2014 during the pendency of this appeal. The 2nd petitioner in the OP had filed a counter denying the allegations in the affidavit of the 2nd respondent. Thus, the petitioners 1 to 3 are resisting the application for receiving additional evidence. Both the learned counsel advanced arguments in line with the contentions in the respective pleadings in the affidavit and the counter affidavit. The 2nd respondent ought to have pleaded in her counter filed in the OP the date, month and year of her marriage considering the nature of the claim of the 1st petitioner and the nature of the proceeding which she is resisting. Even in her affidavit in chief, she did not plead about the date, the month and the year of marriage. She had admitted in her evidence that the 1st respondent in the OP is the son of the 1st petitioner through the deceased. As per the age mentioned in exhibit B2, which is the copy of Voters Identity card, the age of the 2nd respondent as on the date of her evidence in the year 2011 works out to 66 years. It was specifically suggested to her in her cross-examination that she is not the legal heir of the deceased. Therefore, she was required under law to produce necessary evidence to prove her marriage vis-à-vis her relationship with the deceased. Therefore, she was aware that she has to be diligent and produce necessary evidence in support of her contentions. Therefore, she ought to have made enquiries during the pendency of the proceedings before the trial Court about

the date, month and year of her marriage and ought to have produced any evidence in support of her defence even when the matter was pending before the trial Court. Therefore, the circumstances do not establish that the evidence now being sought to be produced could not be produced by her notwithstanding exercise of due diligence at the time when the order appealed against was passed. Hence this Court finds no merit in this application to receive additional evidence. The petition is accordingly dismissed.

10. In the result, the appeal is dismissed without costs confirming the order of the Court below.

Miscellaneous petitions, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

16th September 2015
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