

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.4141 of 2015
and M.P.No.1 of 2015

1.Y.Naganandini
2.Satheesh Kumar
Rep by his Power Agent
Y.Naganandini

... Petitioners

Vs.

1.T.N.Pushpalatha
2.T.N.Devanathan
3.T.N.Sridharan
4.T.N.Padmaja Devi
5.T.N.Sriram
6.T.N.Srinivasan
7.G.Vijayalakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment dated 31.07.2015 in O.S.No.9562 of 2010 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.B.Ravi

For 5th respondent : Mr.M.Purushothaman

For 7th respondent : Mr.A.Arulmozhi

ORDER

This Civil Revision Petition has been filed against the finding of the trial Judge, namely, the 7th Additional Judge, City Civil Court, Chennai in O.S.No.9562 of 2010 regarding the preliminary issue, "whether the 7th defendant is the legally wedded wife of deceased Govindan". The said finding was rendered by order dated 31.07.2015. The plaintiffs in the above said suit are the petitioners in the revision petition.

2. The learned trial Judge held the 7th defendant be the legally wedded wife of deceased Govindan, based on the presumption contemplated under Section 114 of the Indian Evidence Act, 1872. Though the plaintiffs who are the revision petitioners contended before the Court below that the 7th defendant was only a servant maid, based on certain documentary evidence, namely, the family card containing the name of the 7th defendant as a member of the family of deceased Govindan, the Birth Certificate of the deceased daughter of the 7th defendant showing Govindan to be her father and complaint lodged by Govindan regarding the mysterious death of the daughter of the 7th defendant describing her to be his daughter, the Court below held that the same would be enough to show that the deceased Govindan and the 7th defendant lived under the same roof as husband and wife, as a result of which, a daughter was born and that the same would give rise to a presumption that the 7th defendant is the legally wedded wife of Govindan, even though there was no direct proof of marriage between them.

3. The learned trial Judge also held, that the plea projected by the plaintiffs that one Danalakshmi was the wife of Govindan and she died on 15.06.1990 does not stand substantiated by the production of the Death Certificate, which was obtained after the filing of the suit. It was also pointed out that the certificate would show that the registration itself was obtained after the filing of the suit and that same was not enough to arrive at a conclusion that the said Danalakshmi was alive, when the 7th defendant joined Govindan as his wife and started living under the same roof as husband and wife. The defendants 1, 2 and 6 supported the case of the plaintiff whereas, the defendants 3 and 5 supported the case of the 7th defendant and the 4th defendant remained *ex parte*.

4. Now, the petitioners/plaintiffs and the 7th respondent/7th defendant have entered into a settlement, as a result of which, a Memorandum of Compromise dated 26.04.2016 signed by the 1st plaintiff on her behalf and also on behalf of the 2nd plaintiff as his Power Agent and also by the 7th defendant Vijayalakshmi has been produced today. The 1st petitioner who is also representing the 2nd petitioner and the 7th respondent are personally present along with their respective counsel, submit they confirm having entered into the compromise voluntarily and pray for recording of the same and passing a decree in terms of the said Memorandum of Compromise. Besides recognising the status of 7th defendant as legally wedded wife of Govindan, her right to the 1st item of the suit properties, which admittedly belonged to Govindan, to the exclusion of others is also recognised and acknowledged by the plaintiffs.

However, the dispute regarding the 2nd item of the suit properties remains unsettled. Hence, the plaintiffs and the 7th defendant have chosen to enter into the compromise only in respect of the 1st item of the suit properties.

5. In addition, the 7th defendant also wants to give up her claim, if any, in respect of the 2nd item of the suit properties and leave the suit regarding the 2nd item to be fought between the plaintiffs and the remaining defendants. Since the other defendants had not challenged the order of the trial Court incorporating the finding regarding the preliminary issue, this Court has to take it that they have accepted the finding of the trial court. In view of the same, the rival claimants in this Civil Revision Petition are only the revision petitioners and the 7th respondent/7th defendant. They have entered into a compromise. There cannot be any impediment for recording the compromise and disposing of the Civil Revision Petition. The recording of the Compromise Memo shall have the effect of confirming the finding of the trial Court regarding the preliminary issue, upholding the status of 7th respondent/7th defendant as the legally wedded wife of deceased Govindan.

6. In view of the recognition of the legal status of the 7th respondent/7th defendant, none of the defendants and the plaintiffs can stake any claim in respect of the 1st item of the suit properties, which the revision petitioners/plaintiffs have confirmed and reiterated by entering into a compromise. Accordingly, the Civil Revision Petition is disposed of recording the Memo of Compromise dated 26.04.2016 evidencing the settlement, in respect of the 1st item of the suit properties alone. The

undertaking given by the 7th respondent/7th defendant not to stake a claim in respect of the 2nd item of the suit properties is also recorded. The plaintiffs and defendants 1 to 6 shall workout their remedies in respect of the 2nd item of the suit properties in the suit. The suit in respect of 1st item of the suit properties shall stand dismissed without cost. The compromise memo shall be annexed to this order and it shall form part of the same. Consequently, connected miscellaneous petition is closed.

26.04.2016
[1/2]

Index : Yes/No
Internet : Yes/No

gya

Note : Issue order copy on 03.05.2016

To
The VII Assistant Judge,
City Civil Court, Chennai.

P.R.SHIVAKUMAR, J.

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