

HON'BLE SMT JUSTICE ANIS

SECOND APPEAL No.209 OF 2003

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 03.12.2002, passed in A.S.No.16 of 1999, by the Senior Civil Judge, Siricilla, whereby and whereunder the learned Senior Civil Judge has allowed the appeal setting aside the judgment and decree dated 15.12.1995, passed in O.S.No.1337 of 1992, by the Junior Civil Judge, Siricilla.

The appellant herein is the plaintiff and respondent herein is the defendant in O.S.No.1337 of 1992. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The brief averments of the case are that the plaintiff has filed the suit for declaration that she is the only legally wedded wife of late Chandanam Shankaraiah, that she alone is entitled for his pension and other emoluments payable by the Government, and that the defendant is not at all his wife. According to the plaintiff, the marriage between herself and late Chandanam Shankaraiah was solemnized as per Hindu law rights and customs prevalent in their Viswabrahmin community on 30.03.1967 in her parental house at Kodimial village. Their marriage was consummated and out of the wedlock, two daughters and a son were born to them. The plaintiff and Chandanam Shankaraiah lived as wife and

husband till the death of Shankaraiah on 10.09.1989. Late Chandanam Shankaraiah worked as Government teacher and he took voluntary retirement due to ill health. The defendant is the legally wedded wife of Vemulawada Chandraiah of Kazipur village and their marriage was solemnized as per Hindu law and custom prevalent in their Viswabrahmin community and her husband is alive and the defendant deserted her husband and developed illicit intimacy with late Chandanam Shankaraiah about 15 years back and she became his keep. The defendant is not at all the wife of late Chandanam Shankaraiah. After the death of Shankaraiah, the plaintiff being his widow applied for pension and other emoluments payable to Shankaraiah. But, as the defendant also claims herself to be the widow of Shankaraiah and she also applied for pension, the Mandal Revenue Officer gave a memo on 12.07.1991 to the plaintiff directing her to obtain a decree from the competent Court to the effect that she is the widow of late Chandanam Shankaraiah and entitled to receive pension by way of succession. The defendant was also given a similar memo on 05.10.1989. Further, the plaintiff's son Madhusudhan applied for a job in the office of Zilla Praja Parishad, Karimnagar and he was also directed to produce the legal heir certificate. Hence, the plaintiff filed the present suit.

The defendant filed her written statement and contented that her surname is not Thammanapalli but Chandanam and

her husband is late Chandanam Shankaraiah and she is his legally wedded wife. Defendant disputed that plaintiff is the wife of late Chandanam Shankaraiah and begot three children through him. According to the defendant, her husband Shankaraiah worked as Government teacher and retired himself voluntarily due to ill-health and died on 10.09.1989 and she denied that she is the legally wedded wife of Vemulawada Chandraiah of Kazipur village. She also denied that she deserted him and developed illicit intimacy with late Chandanam Shankaraiah and became his keep. According to the defendant, she is the legally wedded wife of late Chandanam Shankaraiah. The marriage between them was solemnized as per Hindu law and caste customs and the marriage was consummated and she lived with him as wife till his death and she does not have any issues during her marital life with Shankaraiah. The defendant alleged that the plaintiff has got illegal contacts with Shankaraiah and she got documentary evidence to prove that Shankaraiah nominated her in the service register for receiving the pension and other death benefits and the name of the plaintiff was not at all shown as wife of Shankaraiah in any of the Government record. Even the plaintiff has not challenged the service book entries after the death of Shankaraiah. So, the plaintiff is estopped from challenging the same now. The plaintiff filed a false suit to receive the retirement benefits of late Chandanam Shankaraiah and to seek employment to his son. The Mandal

Revenue Officer, Vemulawada issued a certificate to the effect that defendant alone is the wife of Shankaraiah and she alone performed the last rites of Shankaraiah. The suit filed by the plaintiff is not maintainable and thus, the defendant prayed the Court to dismiss the suit.

Basing on the above pleadings, the trial Court framed four issues. To substantiate the plaintiff's claim, PWs.1 to 3 were examined and Exs.A1 & A2 were got marked. On behalf of the defendant, DWs.1 to 3 were examined and Exs.B1 to B13 were got marked. Exs.C1 to C6 were marked by the Court.

The trial Court after considering the oral and documentary evidence decreed the suit filed by the plaintiff declaring that the plaintiff is the legally wedded wife of late Chandanam Shankaraiah, that defendant is not his wife, and that plaintiff is entitled to receive the pension and other amounts payable to him. Aggrieved by the judgment of the trial Court, the defendant filed an appeal in A.S.No.16 of 1999 on the file of the Senior Civil Judge, Siricilla. On 03.12.2002, the first appellate Court allowed the appeal setting aside the judgment of the trial Court in O.S.No.1337 of 1992 and held that the appellant/defendant is the legally wedded wife of late Chandanam Shankaraiah and she alone is entitled to all the pension benefits and other emoluments of late Chandanam Shankaraiah.

Aggrieved by the reversal judgment of the first appellate Court in A.S.No.16 of 1999, the plaintiff preferred the second Appeal on the following substantial questions of law.

1. Whether the first appellate Court was justified in rejecting the most cogent evidence being Ex.A2 'Lagna Patrika' dated 30.03.1967 amply proved by PW.1 and PW.2 which clearly proved impending marriage between appellant herein and late Ch. Shankaraiah?
2. Whether the first appellate Court erred in not considering the fact of existence of three children whose school records and factum of birth through late Shankaraiah are clear proof in evidence in the trial Court?
3. Whether the first appellate Court wrongly came to the conclusion that the 'Lagna Patrika' should be attested by the bride and bride groom which is totally against the Hindu Customs and Marriage?
4. Whether the first appellate Court erred in wrongly interpreting the Section 214 of Indian Succession Act whether the requirement of succession certificate is necessary while the suit O.S.No.1337 of 1992 is itself for the relief of declaration as required under law?
5. Whether the first appellate Court grossly erred in placing undue reliance on Exs.B1 to B16 which are merely which do not confer any legal character to the respondent herein?

The learned counsel for the appellant/plaintiff argued that the first appellate Court failed to consider Ex.A2 Lagna Patrika, which clearly proved that the marriage of the plaintiff was solemnized with late Chandanam Shankaraiah on 30.03.1967, and erroneously held that the Lagna Patrika

Ex.A2 should be attested by the bride and bridegroom which is totally against the Hindu rights and customs of marriage. It is also argued that the first appellate Court erred in interpreting Section 214 of the Indian Succession Act and grossly erred in placing undue reliance on Exs.B1 to 13 filed by the defendant, which do not confer any legal character to the defendant. The first appellate Court also did not appreciate the fact that the deceased Shankaraiah had two daughters and one son and their birth certificates and school records clearly shows that Chandanam Shankaraiah was their father and defendant had no issues at all. To prove his case, the learned counsel relied on the case laws reported in (1) **Chandrakant Tukaram Nikam and others v. municipal Corporation of Ahmedabad and another¹**, wherein it is held at para 4 as follows:

“4. One of the leading authorities on the point is the case of Dhulabhai and Ors. v. The State of Madhya Pradesh and Another, [1968] 3 SCR 662. A Constitution Bench of this Court after examining the diverse views expressed in several earlier decisions came to hold that an exclusion of jurisdiction of Civil Court is not readily to be inferred unless the statute gives a finality to the orders of the special Tribunals and the Tribunals would be entitled to confer adequate remedy what the Civil Courts would normally do in a suit and only in such circumstance the Civil Courts' jurisdiction can be inferred to be excluded, but the Court hasten to add that even in such cases also the Civil Courts' jurisdiction cannot be said to be excluded, if it is alleged that the provisions of particular Act had not been complied with or that the statutory Tribunal have not acted in conformity with the fundamental principles of judicial procedure.”

¹ AIR 2002 SC 997

(2) **Government of Andhra Pradesh v. Institution of the Hon'ble Lokayukta and Upa-Lokayukta, Hyderabad and another**², wherein it is held at para 7 as follows:

"7. The ouster jurisdiction is very clear and, therefore, the Lokayukta inherently lacks jurisdiction and the Administrative Tribunals Act, 1985 is a latter one. Obviously, apart from going by the language of the section applying the test of interpretation of statute, any provision of Section 28 of the Administrative Tribunals Act, 1985 overrides the former statute. Therefore, any order or action taken by the 1st respondent- Lokayukta is a nullity and the same is hereby set aside. It would be open for the unofficial respondent to approach the appropriate Tribunal, if so advised, in accordance with law."

(3) **M. Sudhakar Rao v. Director of School Educaiton, A.P., Hyderabad and others**³, wherein it is held at para 5 as follows:

"5. A serious doubt arises as to the maintainability of the O.A. filed by the petitioner. O.A. can be filed only in relation to any dispute pertaining to service matter. The subject matter before the 3rd respondent was purely a question of correction of date of birth. This is not a matter concerning the service of the petitioner. As a matter of fact, the representation is said to have been made, much before the petitioner joined the service and steps were taken on that representation, though belatedly. It is only when the date of birth in the S.S.C. certificate is corrected and the same is not taken into account by the appointing authority, that an occasion would have arisen for the petitioner to approach the Tribunal. Therefore, the very invocation of the jurisdiction of the Tribunal becomes a bit untenable."

and finally prayed the Court to allow the Second Appeal by setting aside the judgment and decree passed in A.S.No.16 of 1999 dated 03.12.2002 on the file of the Senior Civil Judge, Siricilla.

On the other hand, the learned counsel for the respondent/defendant argued that defendant is the wife of late Chandanam Shankaraiah and plaintiff is not the wife of

² 2014 (2) ALD 190 (DB)

³ 2014 (1) ALD 335 (DB)

late Chandanam Shankaraiah and her marriage with late Chandanam Shankaraiah was performed as per Hindu rights and customs and till the death of Shankaraiah she lived with him and the service record of late Chandanam Shankaraiah also clearly shows that the defendant is his wife. Therefore, the first appellate Court rightly allowed the appeal and set aside the judgment of the trial Court in O.S.No.1337 of 1992 and rightly held that the respondent/defendant is alone entitled to receive the death benefits of late Chandanam Shankaraiah as his legally wedded wife and the appellant has not made out any case to set aside the judgment of the first appellate Court. Thus, relied upon the case laws reported in (1) ***M. Samadhanam v. Divisional Railway Manager (P)/ S.C. Office of the Divisional Railway Manager, Personal Branch, Secunderabad and another***⁴, wherein it is held as follows:

“In view of the Division Bench judgment of this Court in N. Rajamma v. Union of India's case, W.P.No.2622 of 2008, dated 05.03.2008 APHC, the 1st respondent is justified in refusing the request of the petitioner to consider her claim for compassionate appointment. However, a fact remains that the petitioner is the nominee of the deceased, in which case, there cannot be any impediment for the 1st respondent to disburse the amounts due under P.F., GIS and DCRG benefits to the petitioner. With regard to the compassionate appointment, the 2nd respondent being the first wife of the deceased can make an application seeking compassionate appointment.”

(2) ***K. Srinivasu v. A.P.Co-operative Bank Ltd., Hyderabad***⁵, wherein it is held at para 6 as follows:

⁴ 2009 (3) ALD 565

⁵ 2006 (1) ALD 382

“6. It is for the respondent bank to take a decision whether to act on the legal heir Certificate issued by the Mandal Revenue officer, Saroornagar, or to insist upon production of a Succession Certificate or to take any another form of security from the petitioner for releasing the amounts covered by the fixed deposits of his parents in his favour, but this Court cannot interfere with the discretion exercised by the respondent, for its own safety. As rightly contended by the learned Counsel for the respondent since the petitioner did not produce any document to show that respondent insisted on his production of a Succession Certificate, petitioner is at liberty to make an application to the respondent for payment of the amount covered under the fixed deposit made by his parents to him basing on the Legal Heir Certificate issued by the Mandal Revenue Officer, Saroornagar. The respondent can consider that application of the petitioner and communicate its decision to the petitioner, but no relief can be granted by this Court to the petitioner on this petition.”

(3) **D. Leelavathi @ Lavanya and others v. Director of Mines and Geology, Hyderabad and others⁶**, wherein it is held at para 14 as follows:

“13. This Court in G.Vijaya Bhaskar and Others Vs. Mandal Revenue Officer, Manopad Mandal, Mahaboobnagar District, Unreported decision dt. 01.02.2001 in W.P. No.7430 of 2000, held that the issue relating to legal heirs of deceased persons has to be decided by the competent court of civil jurisdiction and it is open to the parties to pursue the remedies available in law and it is not open to Mandal Revenue Officer/Tahsildar to issue certificates about family members. In view of the decision in G.Vijaya Bhaskar’s case (supra), it has to be held that certificates dt.25.4.2002 and 29.5.2002 issued by 4th respondent are without jurisdiction and are therefore null and void. Therefore the consequent orders dt. 17.7.2002 and 20.11.2003 of 2nd respondent recognizing 1st petitioner and Thirupallamma as successor lessees of D.Siva Sankar Reddy and D.China Subba Reddy basing on the said family member certificates issued by 4th respondent are also not legal and valid as no independent enquiry was done by 2nd respondent before granting them.”

and prayed the Court to dismiss the second appeal.

P O I N T: A perusal of the pleadings and evidence on record shows that the plaintiff is claiming that she is the legally wedded wife of late Chandanam Shankaraiah, married under Hindu rights and customs prevalent in their Viswabrahmin Community and her marriage was taken place

⁶ 2013 (5) ALD 658

on 30.03.1967 and out of their wedlock, two daughters by name Padma and Uma Devi and a son by name Chandanam Madhusudhan were born. Whereas, the defendant deserted her first husband during the subsistence of her marriage and developed illegal intimacy with late Chandanam Shankaraiah and became his keep.

It is the case of the defendant that she is the legally wedded wife of late Chandanam Shankaraiah and the plaintiff has illicit contacts with said Shankaraiah. Thus, it is evident on record that plaintiff and defendant are claiming to be the legally wedded wives of late Chandanam Shankaraiah. Both the parties let the oral evidence in proof of their respective pleas taken regarding the marriage with late Chandanam Shankaraiah. It is also evident from record that plaintiff and defendant admittedly lived with late Chandanam Shankaraiah either as a wife or mistress. The dispute arose six years after the death of late Chandanam Shankaraiah when both plaintiff and defendant laid claims for the pensionary benefits and also employment. It is also born out from the record that plaintiff and defendant both approached the authorities for grant of pension and when plaintiff approached, they issued a memo to get the declaration from the Court as to who is entitled to the pensionary benefits being legal heir of late Chandanam Shankaraiah. It is an admitted fact that late Chandanam Shankaraiah worked as a teacher and died six years before filing of the suit. Before his

death, he suffered illness and he took voluntary retirement from service on 18.09.1987 on the ground of serious illness.

To support the plaintiff's evidence, plaintiff got examined two witnesses as PWs.2 and 3. PW.2 is none other than the elder brother of late Chandanam Shankaraiah. PW.3 is the person who attended the marriage of late Chandanam Shankaraiah with plaintiff. The evidence of both the witnesses are corroborating with the evidence of PW.1 regarding the marriage of the plaintiff with late Chandanam Shankaraiah. On behalf of the defendant, DW.2 was examined. She is none other than the sister's husband of late Chandanam Shankaraiah. The defendant also got examined another witness as DW.3. The trial Court after considering the evidence, disbelieved the evidence of the witnesses of defendant on the ground that they do not know who performed the marriage of the defendant with late Chandanam Shankaraiah and who performed Kanyadanam. Whereas, plaintiff filed the Lagna patrika and defendant not filed any scrap of paper. The trial Court believed the evidence of PWs.1 to 3 coupled with documentary evidence and held that plaintiff proved that she is the wife of late Chandanam Shankaraiah.

The first appellate Court basing on the documentary evidence i.e., service record of late Chandanam Shankaraiah and entries in it held that defendant is the wife of late

Chandanam Shankaraiah. A perusal of the first appellate Court findings shows that the Court has not discussed elaborately the evidence produced by both sides and by seeing the documentary evidence held that defendant is the wife of late Chandanam Shankaraiah. The first appellate Court relied upon Exs.B1 to B16 documents and some of them are dated just before the death of Shankaraiah. They are prescriptions of doctors of late Chandanam Shankaraiah. The trial Court after considering the evidence elaborately held that the defendant, though a married woman, developed illegal intimacy with late Chandanam Shankaraiah and Shankaraiah being under her control, got her name entered into his service record. The first appellate Court also held that Ex.A2-Lagna patrika does not contain signatures of the concerned parties and is not signed by them and also not attested by any of the witnesses. This finding of the first appellate Court is erroneous because Lagna patrika does not contain the signatures of bride and bridegroom. It will only contain who are the bride and bridegroom. Likewise, the first appellate Court also held that plaintiff should have been obtained succession certificate under Section 214 of the Indian Succession Act. This finding of the first appellate Court is also erroneous because both plaintiff and defendant are claiming to be the wives of late Chandanam Shankaraiah. Therefore, the Mandal Revenue officer concerned issued a memo to the plaintiff to get a declaration from the Court as to

who is entitled to the pensionary benefits being legal heir of late Chandanam Shankaraiah. The defendant is relying on the evidence of DW.2 who corroborates the evidence of the defendant. He is the husband of the defendant's elder sister and in the cross-examination he is not in a position to say who performed Kanyadanam at the time of marriage of defendant with late Chandanam Shankaraiah. The defendant also does not know the date of marriage with late Chandanam Shankaraiah.

The trial Court also discussed another circumstance coming in support of the plea of the plaintiff that she is the legally wedded wife of late Chandanam Shankaraiah and they had three children out of the wedlock. Defendant in the written statement admitted that she had no issues during her marital life with late Chandanam Shankaraiah. The trial Court got summoned the service register of Shankaraiah and perused the same. As per the service record, on 10.10.1980 Shankaraiah underwent family planning operation and was granted two incentive increments with effect from 11.12.1980 and the said entry was made by the Principal, Government Junior College, Vemulawada in the service register at page No.21. Therefore, the contention of the defendant that late Chandanam Shankaraiah had no issues through her may be correct, but the fact that he got three issues through the plaintiff can be accepted. Further, the Government servant who had no issues through wife will not be granted family

planning incentives. Exs.C1 to C6 further clarifies this issue, wherein the hall ticket of Chandanam Madhusudhan for S.S.C examination shows that he is the son of late Chandanam Shankaraiah. Therefore, after discussing the oral and documentary evidence on record the trial Court rightly held that plaintiff is the wife of late Chandanam Shankaraiah and begot three children through him.

The ***M. Samadhanam's case*** (fourth cited supra), relied upon by the learned counsel for respondent has no bearing to the facts of the present case as there was a compromise petition filed before the Lok Adalath and award has been passed and in pursuance of the terms of the compromise, respondent No.2 is to receive the pension, death benefits including arrears of pension to be equally shared by both. In the present case, plaintiff and defendant are claiming to be the wives of late Chandanam Shankaraiah, and further the authorities directed the plaintiff to get a declaration from the Court that she is the legally wedded wife of late Chandanam Shankaraiah.

The other judgment relied upon by the learned counsel for respondent is ***K. Srinivasu's case*** (fifth cited supra). In the said case, the Andhra Pradesh Cooperative Bank Limited insisted on production of succession certificate for realizing the amount covered by the fixed deposits made by the parents in the bank. The above case law also has no application to

the present facts of the case because in the present case, there is no debt or any amount lying with any bank or any statutory authority since there is a dispute to claim the pensionary benefits and employment basing on the question who is the legally wedded wife of late Chandanam Shankaraiah, the authorities directed the plaintiff to get declaration from the Court.

The learned counsel also relied upon ***D. Leelavathi's case*** (sixth cited supra). But, the said case pertains with respect to the powers of the District Collector to cancel the family member certificate issued by the Tahsildar. In the said case, the Court held that the Collector has no jurisdiction to pass such orders. The facts and circumstances of the present case are quite different with the above case. Further, no ratio was laid to apply to the facts of the present case. Therefore, the said case law is also not applicable to the present facts of the case.

Therefore, in view of the above discussion, the findings of the trial Court are cogent and as per the evidence on record. The appeal filed by the appellant herein is to be allowed setting aside the judgment dated 03.12.2002 passed in A.S.No.16 of 1999 by the Senior Civil Judge, Siricilla and confirming the judgment dated 15.12.1995 passed in O.S.No.1337 of 1992 by the Junior Civil Judge, Siricilla.

Accordingly, the second appeal is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

Date: 17.09.2016
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ANIS, J

