

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Revision No.844 of 2011
and
M.P.No.1 of 2011

K.M.Palanisamy (Deceased)

1.Saraswathy

2.Chandrakala

3.Karthick

(Petitioners 1 to 3 are impleaded
as per the order of this Court
dated 25.01.2017 in CrI.MP.
No.1144 of 2017.)
Petitioners

Vs

1.P.Rameswari @ Ramathal 1st Respondent/Petitioner

2.The Executive Officer,
Kodumudi Town Panchayat,
Kodumudi. 2nd
Respondent/Respondent

Prayer:-

This Criminal revision is filed under Section 397 & 401
of Cr.P.C., to call for the records of the District Munsif cum
Judicial Magistrate at Kodumudi in C.M.P.No.950 2009 and set
aside the order dated 21.04.2009 and allow the criminal revision.

For petitioners : Mr.K.Venkatasubbam and
for M/s.Saravabhauman Associates

For 1st
Respondent : Mr.C.Ramkumar

For 2nd
Respondent

: No Appearance

O R D E R

Challenging the order dated 21.04.2009 passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in C.M.P.No.950 2009, the brother of the first respondent herein, filed the present criminal revision.

2. The case of the prosecution in brief is as follows:-

The first respondent herein is the sister of the revision petitioner. They are the son and daughter of one Muthusamy Gounder, the said Muthusamy Gounder is the son of one Rayappa Gounder. The Said Muthusamy Gounder died on 15.06.1958. Subsequently, the first respondent, daughter of Muthusamy Gounder filed a suit in O.S.No.79 of 2007 claiming partition on the file of the learned District Munsif, Tiruppur, claiming that the properties mentioned in the suit are the self acquired properties of the deceased Muthusamy Gounder. The first respondent also filed another suit in O.S.No.275 of 2010, against the revision petitioner and others for declaration to declare that the first respondent and the revision petitioner herein are the legal heirs of the deceased Muthusamy Gounder. The above suit was contested by the revision petitioner herein stating that the father Muthusamy Gounder died in the year 1950, and after his death, the revision petitioner alone is enjoying the property. Since the father died in the year 1950, the first respondent is not entitled to get any benefit under the Hindu Succession Act, now both the suits are pending. Subsequently, in the year 2009, the first respondent filed a C.M.P.No.950 of 2009, under Section 13(3) of the Registration of Birth and Death Act 1969 on the file of the learned Judicial Magistrate, Kodumudi to register the death of her father Muthusamy Gounder as 15.06.1958. The above petition has been filed without impleading the revision petitioner and the other legal heirs. The Court below allowed the said petition without hearing the other legal heirs. Hence, challenging the above order dated 21.04.2009, the present Criminal Revision has been filed.

3. I have heard Ms. P.T.Asha, learned counsel appearing for the petitioner and Mr.C.Ramkumar, learned counsel appearing for the first respondent and perused the materials available on record.

4. The learned counsel appearing for the petitioner submitted that both the suits are pending between the parties and the date of death of the father is being disputed in the suits. Now, the first respondent, without disclosing all the above facts and without impleading other legal heirs filed the petition, as if she requires the same for transferring the electricity service connection and she also obtained an order

in order to get a favourable decree in the civil suit filed by her.

5. The learned counsel for the revision petitioner further submitted that when the petition is filed under Section 13(3) of the Registration of Birth and Death Act 1969, the first respondent should necessarily state the reason for not filing the petition in time and the purpose for which, the petition has been filed without including the legal heirs of the deceased. Apart from that, the person, who will be affected by making entry in the birth and death registers should also be impleaded. The first respondent without disclosing all the above facts, filed a petition and obtained the order. Hence, the petitioner has come forward with the present Criminal Revision.

6. In support of his submissions, the learned counsel for the petitioner relied on the decisions in Smt.Muniyamma Vs. Deve Gowda (2014 (1) KAR L.J. 714), S.K.Rahimuddin Vs. Ojifa Bibi and Others (AIR 1989 ORI 566) and Karimabibi W/o.Gulam Mohammed Mustufa Karodiawad and others Vs. Ankleshwar.

7. Per contra, the learned counsel for the first respondent submitted that the first respondent has filed a petition only to register the date of death of her father and she also stated the reason for not filing the petition in time. Since the petitioner is being a legal heir of the deceased Muthusamy Gounder, there is no necessity to implead the other legal heirs as party. The Court below after considering the facts and circumstances of the case allowed the petition in proper and perspective manner. Hence, there is no reason to interfere with the order passed by this Court below.

8. I have considered the rival submissions made by the learned counsel on either side.

9. Admittedly, both the revision petitioner and the first respondent are the legal heirs of the deceased Muthusamy Gounder and Civil suits are pending between the parties wherein the date of death of the above said Muthusamy Gounder is disputed. Written statement has been filed in both the suits stating that Muthusamy Gounder died in the year 1950 and the first respondent being the daughter, she is not entitled to get any relief under the Hindu Succession Act 1956 which came into force after the death of Muthusamy Gounder. Since the death of Muthusamy Gounder is disputed in the Civil Suits, the first respondent herein simply filed a petition as if she wants the death certificate for the purpose for transferring the electricity service connection and the same was allowed.

10. Even though no procedure is prescribed under

Section 13(3) of the Registration of Birth and Death Act 1969, and no procedure is also laid down by any rules framed under the Act, for filling such application, it would be incumbent on the applicant to state the reasons/ground in the application and to issue notice to all the persons, who are likely to be affected by the order and the learned Magistrate mechanically accepted the petition and passed the order in total non application of mind.

11. In such circumstances, it is useful to refer to the decision relied on by the learned counsel for the petitioner in Smt. Muniyamma Vs. Deve Gowda (2014 (1) KAR L.J. 714), wherein it has been held thus:

17. "Therefore, the applicant has to state atleast the following particulars in the application filed under Section 13(3) of the Act for entering the date of death:

(i) The reasons/grounds as to why entry in the death register could not be made earlier and why he could not give information regarding the same to the competent authority.

(ii) The purpose for which he wants entry in the death register.

(iii) Wife and children of the deceased have to be made parties in the application as also the Jurisdictional Registrar of Births and Deaths.

(iv) The particulars of the person/persons, who are likely to be affected by the entry in the death register.

(v) The Magistrate can also direct the applicant to furnish such other particulars as he may deem fit and proper in the circumstances of the case.

18. If the application contains the above particulars, the Magistrate should not only issue notice to the respondents but also to those persons who are likely to be affected by the order. He should also direct the issue of notice in two local daily newspapers, one of them should be in vernacular language, having wide circulation. The Magistrate may also issue such other directions as he may deem fit and proper depending upon the facts of the case. He should hold an enquiry and pass appropriate orders thereon in accordance with law. If there

is a serious dispute with regard to the date of death, the Magistrate has to dismiss the petition with liberty to the parties to approach the Civil Court for appropriate reliefs."

12. The learned counsel for the petitioner also relied on yet another decision rendered in similar circumstances in S.K.Rahimuddin Vs. Ojifa Bibi and Others (AIR 1989 ORI 566), wherein the relevant portion reads as follows:

That apart, subsection (3) of Section 13 casts an onerous duty on the Magistrate to verify the correctness of the birth or death and thereafter pass an order. There cannot be any manner of doubt that an entry with regard to the date of birth of a person confers a valuable right and when such an entry was not contemporaneously made for some reason or the other and can be made only after a Magistrate passes an order after verifying the correctness of the same, the Magistrate must make an inquiry in that respect. Without any inquiry worth the name, and passing an order mechanically on the basis of affidavit filed, would tantamount to passing an order on total non-application of mind and in the eye of law, it would not be a verification as contemplated under Sub-section (3) of Section 13 of the Act. In this view of the matter, in the facts and circumstances of the present case, the conclusion is inescapable that the Magistrate passed the order which has been annexed as Annexure 1 to the writ petition in O.J.C. No. 2495 of 1987 without making any verification and on total non-application of mind, mechanically in a routine manner and such an order cannot be sustained in law.

13. The learned counsel for the petitioner, also relied on the decision in Karimabibi W/o.Gulam Mohammed Mustufa Karodiawad and others Vs. Ankleshwar (AIR 1998 GUJ 42) wherein it is held thus:

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part in register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action.

Admittedly the application filed by the respondents Nos. 2 and 3 was under sub-section

(3) of Section 13 of the said Act. If the above provision of sub-section (3) of Section 13 are considered, then it would be quite clear that it is the duty of the learned Judicial Magistrate to verify the correctness of the date of birth before allowing the application filed before him. When the law expects that he has to verify correctness of the birth, it is expected from him that he must hear the persons who would be interested in disputing or supporting the said application. No doubt the said Act of 1969 does not lay down any procedure as to how and in what manner the application is to be presented by the petitioner to the learned Judicial Magistrate. Not only that, the said Act of 1969 is not making any provision for the proceeding for filing such an application, but no procedure is also laid down by any rules framed under the said Act or by any other specific provisions of any Act. Therefore, in these circumstances, when any application is presented under Section 13 of the said Act after a period of 1 year from the date of birth or date of death, it would be incumbent on the applicant to state the reasons/grounds in his application as to why the earlier entry in the death or birth register could not be made and why he could not give the information regarding the same to the competent authority. He must justify his late action in filing such an application by making necessary averments in his petition. It is also further necessary for him to state the purpose of which he wants the entry in the birth register or the death register. He must also state in the said application as who are likely to be affected by the said entry in the birth register or death register. For example, if suppose the applicant is a person employed and he wants the entry in the birth register to correct his service record, then he must state in his application that purpose for which he has filed the application. He must give address of his employer where he is working because the order as regards his birth date will be affecting his employer and therefore, his employer will be interested in disputing the said claim by showing certain material before him which might have been produced by the applicant himself. Similarly the applicant must also state the name of both the parents of the

person whose birth date is to be entered in the Birth Register. If the said person has got brothers and sisters (even step brothers and step sisters), then their names, their address in his application must be given because they will be also interested in disputing or supporting his claim and therefore, they must have an opportunity to meet the claim of the applicant. In case of entry in birth register as regards the birth date, it is also necessary for the applicant to state the place where the birth of the person took place. The applicant must also give the name of the hospital or the maternity home or place where the birth of that person had actually taken place. He must also state the name of the person who had performed the delivery. In case, if the delivery was performed by any doctor or any nurse or Aaya, then he must also produce the evidence of the said person, if the said person is alive to support his claim. But merely on saying that he was born on such date without giving above indicated details, the application filed under Sub-section (3) of Section 13 of the said Act could not be entertained by the Magistrate. But in case of an orphan child (deserted child) the names of father and mother need not be disclosed or stated. Similarly it is not necessary to state whether the child has got brothers or sister. Because as the child is an Orphan/deserted, the information in these respects could not be available. Similarly in case of an orphan/deserted child the information regarding the place of birth, who performed the delivery and where the delivery took place could not be available. Therefore, such informations need not be given in case of an application filed to record the birth date of an orphan/deserted child.

14. In the instant case, the learned Judge without issuing any notice to the other legal heirs and without giving opportunity to other side, mechanically passed the order by allowing the application by issuing a direction to the Registrar to register the date of death of Muthusamy Gounder as 15.06.1958. Hence, the impugned order is liable to be set aside.

15. When the date of death of the said Muthusamy Gounder is disputed in the civil suits pending between the parties, it is always open to the parties to approach the civil court and get appropriate relief.

16. In the result, the Criminal Revision is allowed. The order passed in C.M.P.No.950 2009, dated 21.04.2009 is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registra

cla

To

1.The District Munsif-cum-Judicial Magistrate,
Kodumudi.

Copy to:

The Record Keeper,
Criminal Records,
High Court,
Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate in sr.no.8715

Cr1.R.C.No.844 of 2011

SJ(CO)
NR 28/11/2017



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