



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.03.2017

PRONOUNCED ON: 07.04.2017

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CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

AS (MD) No.575 of 2011

MP (MD) No.1 of 2011

V.Ayisha Bivi

Appellant /10th Respondent/Claimant

Vs

1.The Special Tahsildar (LA), Karur-Dindigul Broad Gauge
Unit-11, Dindigul ..1st Respondent/Petitioner/Referring
Officer

2.Packir Mohammed

3.K.S.Abdul Khadar

4.Mohammed Rowther

5.Abdul Mudalip Rowther

6.Mohammed Ibrahim.

..Respondents 2 to 6/Respondents
1 to 5/Claimants

7.Muthiah Pillai

..Respondents 7 to 8/Respondents
7 to 8/Claimants

8.Maruthamuthu Pillai

9.Sarammal

..9th Respondent/Respondent
No.11/Claimant

Prayer:- This Appeal Suit is filed against the judgement and decree dated 10.03.2011 made in LAOP.No.7 of 1988, on the file of the Principal Sub Court cum Land Acquisition Tribunal, Dindigul.

For Appellant : Mr.V.Meenakshi Sundaram

For Respondents : Mr.A.R.Sethupathy-RR2 and 3

JUDGEMENT

This Appeal Suit had been filed by the 10th Respondent in LAOP. No.7 of 1988, on the file of the Principal Sub Court cum Land Acquisition Tribunal, Dindigul, challenging the award dated 10.3.2011, wherein the court below had held that the 2nd and 3rd Respondents in the appeal, namely, Packir Mohammed and K.S.Abdul Khader, are also entitled to three shares in the estate of late Sarammal Rowther and allotted one share to the Appellant herein.



2. In the impugned judgement, the court below had held that the Sheik Dawood Rowther was entitled to 1/5th share in the compensation payable by the Land Acquisition Officer and the said 1/5th share is to be divided into 4 shares and 3 shares is to be allotted to the 2nd and 3rd Respondents herein. Questioning the said allotment, this appeal had been filed.

3. The Appellant has not questioned the quantum of compensation granted by the court below, but she has only advanced contentions, regarding the division of the compensation allotted to the Sheik Dawood Rowther.

4. LAOP.No.7 of 1988 had been preferred by the Special Tahsildar (LA), Karur, Dindigul, Broad Gauge, Unit-11, Dindigul. For the work of conversion of the railway track into broad gauge line, 0.09 acres of land, namely, 3.68.5 hectares of land had been acquired on 8.4.1987 and as compensation, Rs.46,927.15 had been granted. Since there was a dispute among the legal heirs and the claimants, an application had been filed under Section 30. According to the Land Acquisition Officer, in the records available at Vedachandur Sub Registrar Office, in Document No.469, dated 8.6.1904, the lands were in the name of Khader Shah Rowther and thereafter, after his death, it devolved on his legal heirs, Sheik Dawood, Mohammed Rowther, Abdul Mudalip Rowther, Mohammed Ibrahim and Abdul Kasim. As between the said legal heirs and against Muthiah Pillai and Maruthamuthu Pillai, there was a suit pending in the Principal District Munsif Court at Dindigul in OS.No.1461 of 1985 and consequently, a reference under Section 30 had been preferred before the Principal Sub Judge (Land Acquisition Tribunal) Dindigul.

5. It has been the contention of the present Appellant, who was shown as the 10th Respondent in the said proceedings, that her father Sheik Dawood, had married Pathimuthu Bivi as his only wife and the 10th Respondent, who is the Appellant herein and the 11th Respondent therein alone are his legal heirs. It had been, therefore, stated that 1/5th share in the compensation allotted to Sheik Rowther has to be allotted in entirety to her and to the 11th Respondent. It had been stated that the 1st and 2nd Respondents, therein, namely, K.S.Packir Mohammed and K.S.Abdul Khader were not born to Sheik Dawood and they were not his legal heirs.

6. In this appeal, the main point to be decided is as to whether the allotment to the Respondents 2 and 3 herein/Respondents 1 and 2 in the land acquisition proceedings, has to be upheld or not.

7. Ex.P1 is the settlement deed dated 21.6.1972 and registered as Document No.966 of 1972. In the same, it had been stated as "நாகயாகோட்டையிலிருக்கும் K.ஜேகக்தாவூது ராவத்தர் வளர்ப்புத்திரனும் மேற்படியாரின் இஷ்டபாரியான் மௌலாஇஸ்லாம் பாப்பா என்ற பாததுமுத்து பீபியின் மகனுமான விவசாயம் K.S.பக்கீர் முகம்மதுக்கு ஷ"

8. The learned counsel for the Respondents had relied on the said document and had stated that Sheik Dawood Rowther had been described as the father of the Respondents 1 and 2. In

Ex.P3, which is the decree in OS.No.320 of 2006, again, it has been pointed out that the Respondents 1 and 2 have been shown as the sons of Sheik Dawood Rowther. It has been stated that the said judgement acts as a res-judicata to prevent any contrary finding being given by this court.

9. Ex.P4 is the copy of the school record sheet of K.S.Packir Mohammed, whose date of birth is given as 12.4.1948 and whose father's name is given as K.Sheik Dawood Rowther. It has also been signed by the Head Master of the School. It had been issued as a transfer certificate of the School. I hold that the said document is a conclusive proof, showing that K.Sheik Dawood Rowther is the father of K.S.Packir Mohammed. This is a document of the year 1959 and the truth and veracity of the same cannot be questioned.

10. The learned counsel for the Appellant had not been able to produce any contra evidence to negative the case of the Respondents 1 and 2. It is seen that Sheik Dawood Rowther had recognised the Respondents 1 and 2 as his own sons. As a matter of fact, evidence had been given by the 2nd Respondent in Ex.P3 on behalf of the present Appellant, wherein he had protected her interest as his sister. This has been pointed out by the learned counsel for the Respondents, stating that while the Respondents have protected the interest of the Appellant, in these proceedings, the Appellant is acting contrary to the interest of the Respondents. I hold that the use of the words "இடபாரியாள்" clearly shows that the mother of the Respondents 1 and 2 is the wife of Sheik Dawood Rowther.

11. The learned counsel for the Respondents also drew the attention of this court to the provisions of Mohammedan Law In Mulla Mohammedan Law, in respect of **"Paternity how established"**. It is stated in Mohammedan Law as follows:-

"4. Paternity, how established:- The paternity of a child can only be established by marriage between its parents. The marriage may be valid or irregular but it must not be void. It is shed in the husband of the mother of the child.

Paternity is established in the person said to be the father by proof or legal presumption that the child was begotten by him on a woman who was at the time of conception his lawful wife or was in good faith and reasonably believed by him to be such or whose marriage being merely irregular and to void ab initio has not at that time been terminated by actual separation.

Thus it is clear that for establishing the paternity of a child, direct proof of the marriage between the parents must be given. In the absence of direct proof, marriage may be presumed in certain circumstances, namely;

- i. from continued cohabitation or
- ii. from acknowledgement of the father.



When the paternity of the child is established, its legitimacy is also established. Parentage is established in Muslim Law in one of two ways and there is no third - (i) by birth during a regular (but not void) marriages, (or) (ii) by acknowledgement, in certain circumstances.

The only way to establish the paternity of a child is the evidence to establish the continuing marriage between child's parents. Such marriage may be valid or irregular but not void.

This rule is valid under all other systems also but what is special in Islamic Law is that the legitimacy of a child may be ascertained by acknowledgement by husband in certain circumstances. Therefore, the legitimacy of a child could be proved either, (i) by proving conception and the birth was the result of a valid or regular marriage and (ii) by acknowledgement of both the parents.

12. In Ex.P4, the initials are also given as K.S.Packir Mohammed, which indicates the name of the father as K.S.Sheik Dawood Rowther and the initial follows the name of the father. In fact, as held by the court below, there is no pleadings that the Respondents 1 and 2 had been born to somebody else. There is also no document to discredit the contents of Ex.P2 and Ex.P3. All these factors clearly show that the appeal is only an attempt to gain more than what had been allotted to the Appellant. The Appellant has not made out any prima facie case to interfere with the findings of the court below.

13. In the result, this appeal suit is dismissed. However, considering the relationship between the parties, there will be no order as to costs. Consequently, the connected MP is closed.

Sd/-

ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To:

The Principal Sub Court cum Land Acquisition Tribunal, Dindigul.

+1 CC TO MR.T.R.SUBRAMANIAN, ADVOCATE, SR NO.51031

+1 CC TO MR.D.NALLA THAMBI, ADVOCATE, SR NO.50751

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.50916

SRCM

MAS/JC/SAR4:12.05.2017:4P-5C

Pre-Delivery Judgement in
AS (MD) No.575 of 2011
07.04.2017