

SMT JUSTICE T. RAJANI

MACMA.No.981 of 2006

JUDGMENT:

This appeal is preferred by the appellant – insurance company, who is the second respondent before the Court below, assailing the judgment of the IV Additional District Judge, Kurnool in MVOP.No.247 of 2004, on the grounds that the Court below found that respondent No.1 is not the legal heir of the deceased, who is a beggar, but having found so, instead of dismissing the OP, it directed the claimant to produce succession certificate from the competent Court, which is an error and hence, the judgment of the Court below needs to be set aside.

2. Heard counsel for the appellant. None appeared for the respondents.

3. The only point that was urged by the counsel for the appellant is that the Court below having observed that the claimant is not the legal heir of the deceased, awarded compensation with a condition that compensation shall be released in his favour, if he produces succession certificate before the Court.

4. The case of the claimant was that he is the legal heir of the deceased Nagamma, being her adopted son. In order to prove the said contention, he examined P.Ws.2 to 4, in addition to himself testifying about the said fact as P.W.1. The evidence of four witnesses become highly unreliable from the facts stated in their chief examination itself. As P.W.1, the claimant states that there is no

adoption deed evidencing his adoption by the deceased Nagamma. According to him, the husband of Nagamma is one Ankanna, who pre-deceased Nagamma and Nagamma did not have any issues through him. There was no relationship between him and Nagamma, except by way of adoption. No ceremonies that were required for adoption were performed at the time of adoption. Nagamma died while residing in the house bearing No.41-473-148. In the criminal case, he stated before the Police that Nagamma was a spinster and that he does not know the native place of Nagamma. It was suggested to him that the deceased was a beggar and that he filed this claim, taking advantage of the death of Nagamma. He further stated that Nagamma, being an orphan, stayed in that house even prior to his birth and he was brought up by Nagamma since his birth. According to him, he was working as auto driver.

P.W.2 is a witness, who claimed that Nagamma resided in her house even prior to her birth and that Nagamma and her mother are sisters. She further stated that Nagamma died unmarried. She categorically stated that she was not adopted by Nagamma but her name was shown as daughter of Nagamma, in Ex.A5. According to her, Nagamma used to pay money for staying in her house. It was suggested that Nagamma did not adopt P.W.1 and that she was deposing falsely to help P.W.1. In the chief examination, she stated that the claimant alone is the legal heir of Nagamma, though her name was shown in Ex.A5 as family member.

P.W.3 is a witness, who resides adjacent to the house of P.W.1 and she is no other than the mother-in-law of P.W.1.

Her evidence is that she saw Nagamma in her house since childhood. Nagamma used to work as maid servant. She does not know whether Nagamma is married or not and whether her husband is alive or not. So also her native place and her father's name. She could not say whether P.W.1 was related to Nagamma prior to adoption and she was not present when P.W.1 was adopted by Nagamma. According to her, Nagamma used to give Rs.1,000/- to the family of P.W.1 as she was residing in his house. In the chief examination, she states that Nagamma used to work as maid servant and also used to receive small contributions from the Saibaba devotees, to an extent of Rs.1,000/-, through which the family of the claimant was surviving at the time of his marriage. At present, the claimant is working as auto driver i.e. after the death of Nagamma.

P.W.4 is examined to speak about the avocation of Nagamma. According to P.W.4, the deceased Nagamma worked in his house for 4 to 5 years before her death. According to his evidence, the claimant also used to come to his house to take his mother, while she worked in their house.

5. Several inconsistencies surface from the above evidence, throwing any amount of doubt on the credibility of the whole case and the entire evidence. In the legal heir certificate, the names of P.Ws.1 and 2 are shown, as the legal heirs of Nagamma, whereas P.W.2 is not the daughter of Nagamma and she does not claim to be a legal heir of Nagamma. According to P.W.3, Nagamma used to reside in the house of P.W.1 and she used to pay Rs.1,000/- per month to the family of P.W.1. That part of her evidence would suggest that P.W.1 was not the

adopted son of Nagamma and that Nagamma used to pay Rs.1,000/- in consideration of her stay with P.W.1. If P.W.1 is her adopted son, there is no necessity for her to pay any amount in consideration of her stay with him. The evidence of P.W.3 that P.W.1 started working as auto driver only after the death of Nagamma, is not comprehensible. As to why the claimant, who is able bodied, did not take up any avocation till after the death of Nagamma and as to why he had to depend on Nagamma, who was aged 70 years, is not explained. P.W.3's evidence that the claimant started working as driver after the death of Nagamma shows that he is able bodied and knows driving. Hence, that part of the evidence of P.W.3 seems to be with an intention of projecting PW1 as a dependant of Nagamma.

6. As against the evidence of P.W.3, P.W.2 states that Nagamma resided in her house and used to pay money for staying in her house. There is also discrepancy and inconsistency with regard to the marital status of Nagamma. While P.W.2 states that Nagamma died unmarried, P.W.1 states that the name of the husband of Nagamma is Ankanna, but he admits that before the police he stated that Nagamma was a spinster and that he does not know the native place of Nagamma. The evidence of P.W.4 may not be totally false, as Nagamma might have worked as maid servant in his house. But none of the witnesses seem to be competent to speak about the adoption of P.W.1 by Nagamma. The above inconsistencies would only suggest that the claimant took advantage of the death of Nagamma in a road accident and filed this claim.

7. The counsel for the appellant contend that according to Section 166 of the Motor Vehicles Act, a claim petition should be filed only by the legal heir and hence, it is the duty of the Court to decide whether the claimants are legal heirs or not and the approach of the Court below in directing the claimant to file succession certificate in order to receive compensation is far from legality.

8. The aforesaid contention carries some weight. The evidence adduced and the documents filed by the claimant would show that there was an effort to prove that the claimant was the legal heir of the deceased. The Court below gave a finding in that regard, by stating that the claimant is not the adopted son of the deceased. In the light of that finding, the Court below ought to have dismissed the OP, instead of directing the claimant to produce the succession certificate. Hence, in view of the above discussion, the judgment of the Court below cannot be sustained and the same is set aside and the claim petition is dismissed.

The civil miscellaneous appeal is allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

November 14, 2017
DSK

T. RAJANI, J