

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.10.2018

JUDGMENT PRONOUNCED ON : 02.11.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.381 of 2008

- 1.S.Ranjit Priya
- 2.S.Gnana Prasanna
- 3.Kavya

[3<sup>rd</sup> Appellant Declared as major and her Guardian & Next Friend, 1<sup>st</sup> Appellant Ranjit Priya, Discharged from the Guardianship vide order of Court dated 24.08.2018 made in CMP. No.14934 & 14935/2018 in SA No.381/2008]

.. Appellants /Plaintiffs 1 to 3

Vs.

- 1.Suseela
- 2.Ramesh Babu

.. Respondents 1 & 2/Defendants 2&3

- 3.S.Tamilarasi

4.Tamil Nadu Electricity Board,  
rep. by its Superintending Engineer,  
Tamil Nadu Electricity Board,  
Tatabad, Coimbatore.

.. Respondents 3&4/Defendants 1&4

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.02.2007 made in AS.No.159 of 2006 on the file of the II Additional Subordinate Judge's Court, Coimbatore, reversing the decree and judgment of the I Additional District Munsif's Court, Coimbatore, made in OS.No.762 of 2001 dated 24.06.2004.

For Appellants : Mr.C.R.Prasannan  
for M/s.A.Palaniappan

For Respondents : M/s.S.Kolandasamy and  
C.S.Saravanan for R1 & R2

## J U D G M E N T

1. The plaintiffs in OS.No.762 of 2001 are the appellants. The said suit was initiated seeking a declaration that the plaintiffs are the legal heirs of the deceased Sundararaju and for a consequential permanent injunction restraining the 4<sup>th</sup> defendant from disbursing the death and other benefits accrued to the Estate of Late Sundararaju to the defendants 2 and 3 or any other persons claiming under him.

2. According to the plaintiffs, they are the daughters of late Sundararaju and 1<sup>st</sup> defendant S.Tamilarasi. They were born on 29.06.1979, 09.07.1981 and 10.02.1989 respectively. They would further claim that the deceased Sundararaju and the 1<sup>st</sup> defendant got married on 26.06.1978 and they lived as husband and wife. They were treated as husband and wife by the whole world. The deceased Sundararaju had acknowledged the 1<sup>st</sup> defendant as his widow and the plaintiffs as his children.

3. It is the further contention of the plaintiffs that the said Sundararaju never disclosed any of his connection with the 2<sup>nd</sup> defendant who now claims to be his first wife and the 3<sup>rd</sup> defendant who claims to be son born to the said Sundararaju and the first wife. The plaintiffs would contend that they are legitimate daughters of the said Sundararaju even assuming the Court upholds the marriage between Sundararaju and the 2<sup>nd</sup> defendant in view of Section 16 of the Hindu Marriage Act. It is claimed that the said Sundararaju died on 27.08.1999. He had also nominated the 1<sup>st</sup> defendant and the plaintiffs as the beneficiaries entitled to receive his death benefits. Based on the above contentions the plaintiffs had filed the suit seeking the aforesaid reliefs.

4. The 1<sup>st</sup> defendant remained exparte and the defendants 2 and 3 resisted the suit contending that the suit itself is barred by res judicata, inasmuch as the defendants 2 and 3 have filed a suit in OS.No.34 of 2000 on the file of the District Munsif, Tiruppur against the 1<sup>st</sup> and 4<sup>th</sup> defendants seeking a declaration that they are the legal heirs of the deceased Sundararaju and the said suit has been decreed on 15.12.2000 in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. In view of the said decree, the plaintiffs cannot now seek to re-agitate the very same question once again.

5. It is also further contended by the defendants 2 and 3 that the deceased Sundararaju was a Christian by birth and he died as a Christian. According to the defendants 2 and 3, the said Sundararaju married the 2<sup>nd</sup> defendant at TELC Church at Tiruppur on 05.04.1973 and the 3<sup>rd</sup> defendant was born out of the wedlock on 04.09.1974. Contending that the defendants 2 and 3

are alone the legal heirs of the deceased Sundararaju and the plaintiffs are not the children of the deceased Sundararaju the defendants 2 and 3 sought for dismissal of the suit.

6. At trial, the 1<sup>st</sup> plaintiff was examined as PW1 and Exs.A1 to A10 were marked on the side of the plaintiffs. The 2<sup>nd</sup> defendant Suseela was examined as DW1 and one Nagendra Mohan employee of the Tamil Nadu Electricity Board was examined as DW2, Exs.B1 to B19 were marked. The trial Court framed relevant issues and found that the deceased Sundararaju had in fact married the 2<sup>nd</sup> defendant in the year 1973 at the TELC Church, Tiruppur.

7. The learned trial Judge also found that the 3<sup>rd</sup> defendant is the son of the deceased Sundararaju born out of lawful wedlock. The trial Court however concluded that the plaintiffs 1 to 3 are also the legal heirs of the deceased Sundararaju. The reason for such a conclusion is that the deceased Sundararaju had acknowledged the plaintiffs as his daughters. The learned trial Judge also took into account the fact that the deceased Sundararaju and the 2<sup>nd</sup> defendant had separated immediately after marriage and they did not reunite till his death.

8. On the above findings, the learned trial Judge concluded that the plaintiffs and the defendants 2 and 3 are the legal heirs of the deceased Sundararaju and his death benefits must be equally distributed amongst them. The trial Court also made a suggestion that one share can be given to the 1<sup>st</sup> defendant who is admittedly the second wife of Sundararaju. Aggrieved, the defendants 2 and 3 preferred an appeal.

9. The lower appellate Court on a re-appreciation of the evidence as well as the law relating to succession, concluded that the deceased Sundararaju was born as Christian and had married the 2<sup>nd</sup> defendant as per Christian customs in a Church, it also concluded that the deceased Sundararaju lived as Christian till his death based on specific admissions made by PW1 in her evidence. Therefore, the learned Appellate Judge found that the marriage between the 1<sup>st</sup> defendant and Sundararaju which is said to have taken place in the year 1978 cannot be held to be a valid marriage, inasmuch as it is claimed that it was performed following Hindu rituals and customs. The learned Appellate Judge also found that there is no provision akin to Section 16 either under the Indian Divorce Act or under the Indian Succession Act to enable the Court to treat illegitimate children also as legitimate children.

10. In the light of the aforesaid conclusions the learned Appellate Judge allowed the appeal reversing the judgment and decree of the trial Court and dismissed the suit holding that

the defendants 2 and 3 alone can be said to be the legal heirs of the deceased Sundararaju. Aggrieved, the plaintiffs are before this court by way of this Second Appeal.

11. At the time of admission of the Appeal, the following questions of law were framed:

1. Whether in law the lower appellate Court erred in holding that the marriage between the first respondent and the appellant's father Sundararajan had been proved based on Exhibits B.1 and B.2 which were not proved by examining the persons who issued these documents and the priest who was alleged to have conducted the marriage?
2. Whether in law the lower appellate Court had erred in overlooking that the first respondent who has not been heard for more than 7 years by any one including deceased Sundararajan was presumed to be dead leaving the marriage between the third respondent and deceased Sundararaju unquestioned?
3. Having held that the appellants who are illegitimate children entitled to equal shares in the benefits of the father, the lower appellate Court erred in reversing the decree of the trial Court?

12. Heard Mr.C.R.Prasannan, learned counsel appearing for the appellants and Mr.S.Kolandasamy, learned counsel appearing for the respondents.

13. Mr.C.R.Prasannan, learned counsel appearing for the appellants would submit that an additional question of law would arise in this case and the additional question of law suggested by him reads as follows:

Having rendered a finding that the plaintiffs are illegitimate children, whether in law, lower appellate Court erred in not extending the provisions of the Hindu Succession Act, 1956 to the plaintiffs who are Hindus?

14. The learned counsel would concede that question Nos.1 and 2 framed at the time of the admission are essentially questions of fact and the same need not be addressed in this appeal. The 3<sup>rd</sup> question of law framed at the time of the admission is re-framed as suggested by the learned counsel for the appellants. The learned counsel for the respondent was also put on notice of the re-framed question of law and he has also addressed arguments on the said question.

15. Mr.C.R.Prasannan, learned counsel appearing for the appellants would vehemently contend that the lower appellate Court erred in not applying the provisions of Section 16 of the Hindu Succession Act inasmuch as the plaintiffs are Hindus. He would also seek to rely upon the judgments of the Division Benches of the Kerala High Court in Jane Antony Vs. Siyath reported in (2008) 4 KLT 1002 and M.Vijayakumari and another Vs. K.Devabalan and others reported in AIR 2003 Ker 363. He would also invite my attention to the judgment of the Hon'ble Supreme Court in Vidhyadhari and others Vs. Sukhrana Bai and others reported in (2008) 2 SCC 238 and judgment of the learned Single Judge of this Court in Kanagavalli and 4 others Vs. Saroja and 3 others reported in 2001 (3) CTC 513, apart from relying upon the judgment of the Privy Council in Myna Boyee and others Vs. Ootaram, Myaram and Taukooram reported in 8 M.I.A. 400.

16. The sum and substance of the contentions of Mr.C.R.Prasannan is that even in the absence of a provision akin to Section 16 of the Hindu Marriage Act either in Indian Divorce Act or in the Indian Succession Act, the Court can extend the said provision and apply it to heirs of a Christian who are living as Hindus.

17. The Privy Council in Myna Boyee and others Vs. Ootaram, Myaram and Taukooram reported in 8 M.I.A. 400 was concerned with the status of a joint Hindu family constituted by illegitimate children of the Christian father and different Hindu mothers. The Privy Council concluded that a family constituted by such illegitimate children of Christian father through different mothers cannot be called an united Hindu family or a joint Hindu family in the ordinary sense in which the term is used in the Hindu law. The Privy Council observed as follows:-

"The parties could not by their agreement give new rights of succession to themselves or their heirs unknown to the law. The law of survivorship, which is the consequence of such a partnership amongst Hindus, would come in only on failure of the heirs."

18. After holding so, the Privy Council remitted the matter for a decision on a question framed by it with the consent of counsels for both sides. I do not find any law laid down by the Hon'ble Privy Council which at least recommends application of Hindu Law to the children of the Christian father. In fact the Hon'ble Privy Council has specifically spelt out that a partnership formed by sons of a Christian father through his

Hindu wives cannot be said to be a joint Hindu family as contemplated under Hindu Law.

19. The judgment in Kanagavalli and others Vs. Saroja and others reported in 2001 (3) CTC 513 relied upon by the learned counsel for the appellants dealt with the case of a Hindu father and his two Hindu wives. Therefore, the same falls within the scope of Section 16 of the Hindu Marriage Act and I do not think the decision in the said case on the interpretation of Section 16 of the Hindu Marriage Act could be of any use to decide the present dispute.

20. In Vidhyadhari and others Vs. Sukhrana Bai and others reported in (2008) 2 SCC 238, the Hon'ble Supreme Court was concerned with illegitimate children of a Hindu who were recognized as legitimate, in view of Section 16 of the Hindu Marriage Act. The Hon'ble Supreme Court did not go into the question as to whether children of the Christian born out of second marriage could be treated as legitimate children merely because they were living as Hindus. Hence, the said decision is also not useful in deciding the controversy.

21. Insofar as the decision of the Kerala High Court in M.Vijayakumari and another Vs. K.Devabalan and others reported in AIR 2003 Ker 363 is concerned, there, the question that arose is as to whether the children born to a Hindu husband and a Christian wife would be termed as Hindus or Christians. While considering the said question the Kerala High Court relied upon the following paragraph in N.R.Raghavachary's Hindu Law at Page 21 that reads as follows:-

"Illegitimacy is no bar to the applicability of the Hindu Law, but in that case either both the parents must be Hindu, or at least the mother must be a Hindu and the child brought up as a Hindu, though the father is a Christian. If the mother is a non-Hindu, for instance, a Christian, or a Mohammedan, Hindu Law has no application to the illegitimate child, the reason being that the religion of such children is to be fixed by the religion to which the mother belongs."

22. From the above passage it could be seen that the religion of the children born out of invalid marriage between a Christian and a Hindu would be that of the mother's religion and not the father's. Therefore, the children would be treated as Christians in the said case, since, on facts, it was a marriage between a Hindu man and a Christian woman. After having concluded thus, the Division Bench of the Kerala High Court

found that the children of Adichan Nadar born through his wife Mary Agastin should be treated only as Christians and not as a Hindus.

23. The case before us is not on the question as to whether the plaintiffs 1 to 3 are Hindus or Christians. What is to be decided in this appeal is as to whether the succession to the estate of the deceased Sundararaju who died as a Christian would be governed by Section 16 of the Hindu Marriage Act. Therefore the above decision of the Kerala High Court based on the paragraph from N.R.Raghavachary Hindu Law cannot be taken to be a deciding pronouncement on the law relating to succession.

24. Yet another Division Bench judgment of the Kerala High Court relied upon by Mr.C.R.Prasanan in Jane Antony Vs. Siyath reported in (2008) 4 KLT 1002. The Kerala High Court framed the following three issues:-

"(i) Whether the requirement of a central legislation recognizing the right of illegitimate children of all classes irrespective of their religion to inherit the property of their parents is the need of the hour?

(ii) Whether illegitimate children born to Christian father and mother are entitled to inherit the property of their father under the Indian Succession Act?

(iii) Whether children born to parents living as husband and wife during the subsistence of the father's first marriage are legitimate or illegitimate in the eye of law? "

25. The Division Bench after having considered the provisions of the Hindu Marriage Act, Indian Divorce Act as well as Indian Succession Act had made a suggestion to the Central Government to enact the legislation to confer right of succession of all illegitimate children irrespective of their religion in tune with Section 125 of the Code of Civil Procedure which is for all purposes of secular legislation.

26. After making such suggestion, the Division Bench had gone ahead allotting various shares in the compensation amount that was found payable for the death of one Antony who died in a motor accident on 03.05.1993. I am unable to see any reason for the said conclusion from the report of the said judgment. But, the fact remains that the Central Government had not chosen to act upon the recommendations made by the Division Bench of the Kerala High Court in the judgment cited supra.

27. I do not think that the said decision could be taken as a precedent to lay down the law, whereby, a illegitimate child of Christian could be treated as a legitimate child, in the absence of any specific statutory provision akin to Section 16 of the Hindu Marriage Act.

28. This Court had considered the validity of marriage between two Christians (Uncle and Niece) evidenced by a deed which recorded the fact that they have been living together and they will continue to live together as per Hindu Customs. This Court held that such a marriage or such a living together is unknown to Christian Law. After referring to the provisions of the Indian Christian Marriage Act, 1872 which deals with the essential conditions of a Christian Marriage, the learned Judge had concluded that the alleged marriage evidenced by a instrument which was produced as Ex.A10 in the said case cannot be construed as a valid marriage.

29. On such finding, the learned Judge concluded that there cannot be a valid marriage between two Christians performed outside the Christian Marriage Act. Upon such finding, the learned Judge held that the respondent cannot claim as a widow of Adichan Nadar. However, since she claimed as a sisters daughter of Adichan Nadar, this Court remitted the matter to the trial Court to consider the entitlement of the 1<sup>st</sup> respondent therein as heir under the Indian Succession Act.

30. From the above pronouncement, it is clear that unless there has been a valid marriage as per Christian Law, the children born out of a relationship between a man and woman of whom one of them happens to be a Christian cannot be considered to be legitimate children. If they are not legitimate children they will not be entitled to the estate of their father. Neither the Indian Divorce Act nor the Indian Succession Act recognized illegitimate children as legitimate children under any circumstances.

31. The next question that would arise is whether the plaintiffs being Hindus would be entitled to the benefits of Section 16 of the Hindu Marriage Act. The provisions of Hindu Marriage Act cannot in my considered opinion be used to validate a marriage or legitimise children of a Christian. Admittedly, even according to PW1, the deceased Sundararaju lived and died as a Christian. The marriage between him and the 2<sup>nd</sup> defendant is not denied. It is also not in dispute that the marriage between Sundararaju and the 2<sup>nd</sup> defendant preceded the marriage between the 1<sup>st</sup> defendant and Sundararaju. In the light of such an admitted factual position, it has to be concluded that the marriage between Sundararaju and 1<sup>st</sup> defendant is invalid and the children born out of the said marriage cannot be treated as

legitimate children, particularly in view of the fact that the deceased Sundararaju was a Christian. Applicability of Succession Laws would depend on the religion professed by the deceased and not the heirs.

32. Therefore, the question of law that is framed is answered against the appellant and in favour of the respondents. In view of the above said conclusion, the Second Appeal fails and it is dismissed. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The II Additional Subordinate Judge, Coimbatore.
2. The I Additional District Munsif, Coimbatore
3. The Section Officer, V.R. Section,  
High Court of Madras, Chennai 600 104.

+1 cc to M/s.C.r.Prasannan, Advocate Sr.No.76254

+2 cc to M/s.S.Kolandasamy, Advocate Sr.No.76326(23.01.2019)

Judgment in  
S.A.No.381 of 2008

SJ(CO)  
CSL/02.01.2019

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