IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE BHAVANI SUBBAROYAN

C.M.S.A.No.23 of 2013

Ellammal ...Appellant/petitioner

Vs.

Maragadam ...Respondent/Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 11.12.2012 made in C.M.A.No.06 of 2012 on the file of the Principal District Judge, Krishnagiri, in confirming the Judgment and decree dated 06.12.2010 made in S.O.P.No.1 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.T.Dhanya Kumar

J U D G M E N T

The appeal has been filed by one Ellammal wife of Chinnasamy Goundar against the Judgment and decree dated 11.12.2012 made in C.M.A.No.06 of 2012 on the file of the Principal District Judge, Krishnagiri, in confirming the Judgment and decree dated 06.12.2010 made in S.O.P.No.1 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri.

2.The substantial questions of law that arise for consideration in the Civil Miscellaneous Second Appeal are as follows:

> "a) Whether the section 383 of the Hindu Succession Act 1925 is a bar for granting benefits to the respondent who is ceased to be a legal representative of Late Asokan under whom the benefit is claimed?
>
> b) Whether the judgment of the Lower appellate Court is right without complying the mandatory provision under order 41 Rule 26 of CPC?
>
> c) Whether the Lower appellate Court right in rendering the judgment without considering and rendering a finding regarding the documents marked as additional evidence?"

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3.The appellant herein is the mother of one (late) Asokan. The appellant is the only surviving legal heir of (late) Asokan who is the son of the appellant herein. The respondent herein, the wife of the said deceased Asokan, has filed S.O.P.No.1 of 2006 making the appellant herein as a respondent. The said Asokan died on 26.10.2003, while he was working in GREF Centre C/O 56 APO. Since, the husband died, Maragatham, the wife/respondent herein, being the first heir to the deceased Asokan, was entitled to the Postal Life Insurance Policy which was matured in Policy No.APS-267547-M and since, the Original Policy bond was not traceable, the Department official asked her to produce Succession Certificate from the Civil Court to receive the said policy amount. Hence, she filed S.O.P.No.1 of 2006 and the same was contested by the mother in law/appellant herein saying that the respondent herein is not the wife of the deceased Asokan and the appellant herein said that Asokan was unmarried and the legal heir certificate filed before the Court was fraudulent and bogus one and even if it has been issued by the Tahsildar, which would be obtained by misrepresentation, fraud and other illegal means and since, there was no enquiry conducted either by the Tahsildar or the other officials, if any legal heir certificate has been issued, she will take necessary steps, to cancel the legal heirship certificate issued by the Tahsildar and sought for dismissal of the said petition, since there was no material evidence produced to prove the marriage which has taken place between the said respondent herein and the deceased Asokan.

4.In the said S.O.P.No.1 of 2006, the lower Court, dated 10.01.2008 has passed an order, that on perusal of the case records and as per the evidence of PW1 the Court was satisfied that there is no dispute that the petitioner received pension and there is no dispute that the Postal Insurance Policy was taken by the deceased Asokan and PW1 has no objection to give the half share to the appellant herein and therefore, both the appellant and the respondent are entitled a half share as prayed for.

5.In the meanwhile, mother of the deceased Asokan filed S.O.P.No.1 of 2009 before the Principal Subordinate Judge, Krishnagiri under Section 372 of Indian Succession Act for issuing succession certificate as the appellant herein is the only legal heir of her deceased son Asokan. The appellant herein has submitted that the respondent married another person and hence, she cannot be treated as legal heir of Asokan. The said wife of the deceased Asokan has filed a counter stating that since the appellant herein did not co-operate with her, she herself filed a succession certificate and half share was given to the appellant herein and therefore, the petition was liable to be dismissed as not maintainable.

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6.On going through the records, it was found that as far as the maintenance of the petition in S.O.P.No.1 of 2009, the lower Court has pointed out that the appellant herein submitted that after the death of Asokan, the alleged wife Maragadam married one Thambidurai and hence she ceases to be the wife of the deceased Asokan and she cannot be a legal heir of her son Asokan. It is also pointed out by the lower Court that the wife submitted Ex-B1 is the extract of suit register, wherein it is found that the succession certificate was issued and it was declared that the mother/appellant herein is entitled to receive half share of the amount. Based on the above submissions and also on perusal of the records, the lower Court has come to the conclusion that since, there was no appeal filed by the mother/appellant herein of the deceased to negative the said order and no appeal or revision has been preferred by the respondent herein against the said order passed, the said order become final and hence the said petition filed by the mother/appellant herein cannot be entertained and the same was dismissed with cost. Against the said order of the Court passed in S.O.P.No.1 of 2009, an appeal has been filed before the Principal District Court, Krishnagiri in C.M.A.No.6 of 2010 and the same was dismissed on 11.12.2012. Against which the appellant herein has filed this civil miscellaneous second appeal.

7.The learned counsel for the appellant/mother has submitted that in earlier S.O.P.No.1 of 2006, both parties were fighting for the money which was available in the Postal Life Insurance and since there was a mutual agreement between the parties, there was an order on 10.01.2008 passed by the Subordinate Judge, Krishnagiri, that the amount should be shared equally between the parties. But at the time of disposal of the said S.O.P.No.1 of 2006, the respondent herein was living as a widow and thereby she was entitled to the benefits of her husband. But subsequently, she got married to one Thambi Durai and she has lost the legal heirship of the deceased Asokan and ceased to be the wife of the said person. This aspect was not considered by the lower Court. But the lower Court, in view of the order passed in S.O.P.No.1 of 2006, rejected S.O.P.No.1 of 2009. When there is subsequent development taken place in the life of the respondent herein, she cannot be treated as the wife of Asokan and she cannot be inherited to the estates of the deceased Asokan, for which the succession certificate was granted. Since, now the respondent herein cannot be treated as legal heir of the deceased Asokan, the earlier order has become invalid automatically.

8.The learned counsel for the appellant has further submitted that since Section 383 of the Indian Succession Act, 1925, which clearly discloses the reasons for invalidity of the

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earlier certificate granted by the Court of Law, also covers the present case and an order of succession has to be granted by the lower Court in favour of the appellant herein, when the said appellant herein is the only legal heir of the said deceased Asokan. Hence there is no legal embargo in granting the succession certificate afresh in favour of the appellant herein.

9.The learned counsel for the appellant has also produced the receipt issued by Arulmighu Venkataramana Swamy Koil, Kannampalli dated 08.04.2009 that the respondent herein was married to one Thambi Durai in the said temple, which has not been looked into by the lower Court.

10.Heard, the learned counsel for the petitioner and the learned counsel for the respondent and perused the available materials on records.

11.It could be seen from the records that the said Asokan died on 26.10.2003 and only for getting the amount from the Postal Life Insurance Policy, the parties have filed succession petition. Accordingly the amount of Rs.1,60,000/- was ordered to be divided equally. There was no appeal filed and later on, the said widow has married to one Thambi Durai, which is also not denied by the respondent in her counter.

12.Section 383 of the Indian Succession Act, 1925, reads as follows:

> "Revocation of certificate - A certificate granted under this part may be revoked for any of the following causes, namely:-
>
> a) that the proceedings to obtain the certificate were defective in substance.
>
> b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
>
> c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
>
> d) that the certificate has become useless and inoperative through circumstances;
>
> e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked."

13.On perusal of records, it could be seen that on 10.01.2008 the order was passed by the lower Court in S.O.P.No.1

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of 2006. Thereafter, the respondent herein was married to one Thambi Durai on 08.04.2009. Under such circumstances the succession certificate has become useless and inoperative. In the Hindu Succession Act, 1956, under Section 24 it is stated as follows:

> "Certain widows remarrying may not inherit as widows. Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried".

14.Hence, the respondent herein has ceased to be the wife of the deceased and she cannot be a legal heir to the deceased husband. The lower Courts have not considered the subsequent developments, whether the widow has remarried and once she she has remarried, she is not the part of the deceased husband's family. Accordingly she cannot succeed to the estate of the deceased husband. Therefore, the respondent herein has to be deleted/omitted from the legal heir of the said deceased and the only surviving legal heir is Ellamal, the mother of the deceased Asokan. The appellant can approach the Revenue authorities to delete the name of the wife/respondent herein and the Revenue authorities are directed to delete the respondent herein from the list of legal heir of the deceased Asokan and issue legal heir certificate in the name of mother/Ellammal, the only surviving legal heir of the deceased Asokan.

14.Accordingly, this civil miscellaneous second appeal is allowed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

1.The Principal District Judge, Krishnagiri.

2.The Principal Subordinate Judge, Krishnagiri.

+1cc to Mr.T.DHANYA KUMAR , S.R.No.76296/19

C.M.S.A.No.23 of 2013

NRJK(CO)

TSG(28/05/2019)

GMY (25/07/2019)

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