

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.146 of 2018
and
C.M.P.No.8424 of 2018

J.Mala ... Appellant/4th Respondent

Vs

1.S.Ananthi ...1st Respondent/Petitioner
2.Lalitha
3.S.Pratap
4.S.Rajkumar ...2 to 4 Respondents/Respondents 1 to 3

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules against the order and decree dated 22.03.2018 made in O.P.No.427 of 2013.

Prayer in O.P.No.427 of 2003

Original Petition praying that this Hon'ble Court may be pleased to grant a succession certificate to the petitioner with a power.

1)to collect the debts and to receive interest specified in the Schedule here Under and

2)to claim and get the family Pension from the department and

3)to apply and get compassionate employment of the 3rd respondent from the department.

For Appellant .. Mr.V.Meenakshi Sundaram

For Respondents.. Mr.S.Stalin Muthu for R1/Caveator

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant, who is the sister of the deceased Suresh Bhagavan has come forward to challenge the order of the learned single Judge, who, by a detailed order, allowed the Original Petition filed for grant of succession certificate in favour of the first respondent/petitioner.

2.Learned counsel appearing for the appellant would submit that there was an earlier original petition filed and succession certificate was granted in favour of the mother of the deceased, to the knowledge of the first respondent. The order passed in the aforesaid original petition in favour of the deceased mother has become final. There is no material to hold that the first respondent/petitioner was the legally wedded wife of the deceased died as bachelor. There is no dispute on the inter se relation between the appellant and the deceased. There are discrepancies as could be seen in Ex.P3 - information obtained under the Right To Information Act. Thus this appeal will have to be allowed.

3.Learned counsel appearing for the first respondent/petitioner would submit that the earlier original petition filed and allowed in favour of the mother of the deceased will not stand as a bar since the first respondent/petitioner has not been arrayed as a party. Mere knowledge even assuming it to be so, cannot be a ground to take away the right vested in her. The learned single Judge took into consideration Exs.P1 to P10. It is important to note that even the employer of the deceased himself filed a written statement in the suit filed by a third party clearly stating that the first respondent herein is the legally wedded wife. This document has also been marked as Ex.P17. Under Ex.R4, which has been marked by the appellant, it has been clearly stated that the deceased was married. Therefore, this belies the specific case of the appellant that the deceased died as a bachelor. Inasmuch as the learned single Judge took into consideration the relevant materials, no interference is required.

4.A perusal of the order passed by the learned single Judge, Ex.P1 which is the proceedings of the Dean, Government Hospital, Chennai coupled with other exhibits clearly show the factum of the relationship between the deceased being the husband and the first respondent herein as the wife. The nomination made by the deceased declaring the first respondent/petitioner as wife and respondents 3 and 4 as the children would clinch the issue. Therefore, Exs.P3 and P4 which have been taken into

consideration by the learned single Judge rightly would stand against the appellant. Further more, Ex.P7 in clear terms reiterates the aforesaid factum of nomination made by the deceased nominating the first respondent/petitioner as the legally wedded wife. These factors have been duly taken into consideration by the learned single Judge. As rightly submitted by the learned counsel for the contesting respondent, Ex.R4 also says that the deceased was married. Therefore, the very basis of the case of the appellant falls to the ground. Thus, we do not find any merit in this appeal. Accordingly, the Original Side Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+2cc to Mr.S.Stalin Muthu, Advocate Sr.34713

O.S.A.No.146 of 2018

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