

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.686 of 2009

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the first respondent against the order dated 24.04.2007 passed in SAOP No.6 of 2001 by the Principal District Judge, Ongole.

For the sake of convenience, the parties are referred to as petitioners and respondents as arrayed in the lower Court.

The application in the lower Court was filed by Perli Sulochana and her two children against Golla Rajeswari and the Senior Superintendant of Post Offices, Prakasam District at Ongole claiming that the petitioners are the legal representatives of Perli Vijaya Vardhana Raju. They claim that they are entitled to receive death-cum-retirement benefits and family pension payable by the second respondent. As the first respondent set up the original claim claiming to be the wife, the application is filed for issuance of a succession certificate in favour of the petitioners.

The case of the petitioners in the lower Court is that the first petitioner (PW.1) is the wife of late Perli Vijaya Vardhana Raju and their marriage was solemnized on 15.05.1996 at Kothapatnam according to Christian rites and customs. Soonafter their marriage, the first petitioner joined her husband to lead marital life and out of their conjugal life, they begot children i.e., petitioners 2 & 3. The husband of the first petitioner, late Perli Vijaya Vardhana Raju worked as a Postal Assistant in Kanigiri Head Post Office. He suddenly fell sick

and while undergoing treatment at Governemnt General Hospital, Guntur, he died on 06.12.2000. Consequent upon the death of late Perli Vijaya Vardhana Raju, the petitioners having become entitled to his death-cum-retirement benefits including the family pension. They approached the second respondent for payment of the death benefits and family pension as per rules submitting the death certificate etc. However, they received a letter dated 27.04.2001 from the second respondent stating that the first respondent has also preferred a claim for the above amounts claiming herself as wife of late Vijaya Vardhana Raju and directing them to submit succession certificate. Hence, the petition.

The second respondent, the Senior Superintendent of Post Offices, Ongole remained *ex parte*. The first respondent as contesting party and as 'wife' of the deceased-Vijaya Vardhana Raj filed her counter denying all allegations made by the petitioners in their petition and further alleged that:

a) The first respondent after the death of late Vijaya Vardhana Raju issued a legal notice to the Department concerned as she could know that some one is trying to receive the death benefits of late Vijaya Vardhana Raju by making false representations. She alleges that the petitioners got filed the petition with false allegations by creating forged documents for grant of succession certificate.

b) The first respondent contended that she married late Vijaya Vardhana Raju in the year 1984 as per her caste customs and rites at Bapatla and during their wedlock, they

begot two daughters viz., Prathiba and Divya. The first respondent has proper and legal proof to prove that she is the legally wedded wife of late Vijaya Vardhana Raju and that she is alone entitled to receive the death benefits from the second respondent. Hence, she prayed for dismissal of the petition.

To prove her case, the first petitioner herself was examined as PW.1 and on her behalf, PWs.2 to 4 were examined. Exs.A.1 to A.9 were marked. Exs.X.1, Ex.X.2 and X.2 (A) were also marked. On behalf of the first respondent, she was examined as RW.1 and another witness was also examined as RW.2 and Exs.B.1 to B.15 were marked.

Before the lower Court, the points that arose for consideration are:

- i) Whether the petitioners are wife and children of late Vijaya Vardhana Raj?
- ii) Whether the first respondent is also wife of late Vijaya Vardhana Raj and she is also along with the three children (not parties) also legal heirs of late Vijaya Vardhana Raj?
- iii) Whether the petitioners are entitled to Succession Certificate, if so, for what extent in the estate & death-cum-retirement benefits and family pension consequent to the death of late Vijaya Vardhana Raj while in service under R-2?
- iv) With what result?

After hearing the oral and documentary evidence, the lower Court came to the conclusion that the petitioners are entitled to the reliefs as prayed for and accordingly issued succession certificate. It is this judgment that is now assailed in the present appeal.

This Court heard Nimmagadda Revathi, learned counsel for the appellant/first respondent and Sri Kurra Srinivasulu, learned counsel for the respondents/petitioners.

As the first petitioner and the first respondent both claim to be the legally wedded wives of the deceased Vijaya Vardhana Raj, the learned counsel for both parties sought to bring out the essential factors relating to the marriages of their clients to the deceased. The first respondent argued that she married the deceased in the year 1984 at Bapatla and that she begot two daughters from the marriage. The contention of the petitioner on the other hand that she was married on 15.05.1996 at Kothapatnam to Vijay Vardhan Raju and that out of the marriage, two children-petitioners 2 & 3 were born. Therefore, this Court will have to see whether which of the two marriages was correct. If the marriage of 1984 between first respondent and the deceased is held to be true and correct, the first petitioner's marriage will have to be declared to be unlawful and not valid. Since the appellant/first respondent argued first, the issue of her marriage in 1984 is examined first.

On behalf of the respondents, two witnesses were examined as RWs.1 & 2 and Exs.B.1 to B.15 were marked. Out of these, Exs.B.9 to B.15 are the lawyer notice and postal receipts. Therefore, they are not relevant to decide the question of prior marriage. Even the pleading of the first respondent is also not very clear in the counter filed in the lower Court. She does not even mention the date of her

marriage clearly and in para-5, she merely states that she married Vijaya Vardhana Raju in the year 1984 at Bapatla as per caste and customs under the supervision of paster Samuel. She further states that she has ample proof with witnesses to prove her marriage with Vijaya Vardhana Raju.

However, on a perusal of the documents filed, it is clear that Ex.B.1 is a certificate dated 16.03.1984 showing a marriage has been solemnized between Rajeswari and Vijaya Vardhana Raju @ Golla Raj Vadhana Rao. Ex.B.2 is a birth report showing that a child is born on 22.06.1995 and the father's name is clearly mentioned as Perli Raja Vardhana Rao. Ex.B.3 is a birth certificate with the same details. Ex.B.4 is a certificate issued on a letter-pad by Bharathi Nursing Home stating that Perli Rajeswari, w/o. Raja Vardhana Rao delivered a female child on 21.07.1997. Ex.B.6 is a marriage dissolution document signed by Perli Raja Vardhana Rao on 18.12.1989 supposedly dissolving a prior marriage. Ex.B.7 is a family member card showing the details of three children of the first respondent and the name of the husband as Vijaya Vardhana Raju. Ex.B.8 is a record sheet/a certificate dated 14.06.1999 showing that P. Divya is the daughter of Perli Vijaya Vardhana Rao. Thus, the documents filed by the first respondent show that the name of her husband both as Raja Vardhana Rao and Vijaya Vardhana Rao. There is no explanation forthcoming for the discrepancies in the name of her husband. She examined herself as a witness and also examined RW.2 to prove her

marriage. In her cross-examination, RW.1 admitted that her marriage took place in her house and that the Paster Samuel officiated at the time of the marriage. She named three people who attended the marriage on her behalf and also three people on behalf of her husband. She states that photos of marriage were taken and that a marriage card was there to prove their wedding. However, the second witness states that at the time of marriage at Bapatla around 500 members attended for both sides, meals were arranged for all 500 members and the marriage was solemnized in the house of paster and marriage tent was also there and 150 people gave the gifts. It is, however, clear that neither the photos nor the marriage card nor any of these people who supposedly attended marriage were examined to prove that a marriage took place in 1984 as claimed by the first respondent.

In contradistinction to this, PW.1 filled a marriage invitation card printed by her parents-Ex.A.1. Colour photos of the marriage, which are marked together as Ex.A.2. The marriage certificate of PW.1 is marked as Ex.A.3. The death certificate of the deceased Perli Vijaya Vardhana Raju is marked as Ex.A.4. A family member certificate was marked as Ex.A.5 showing the name of 'P. Vijaya Vardhana Raju'. Ex.A.6 ration card is showing the first petitioner as the wife of P. Vijaya Vardhanaa Raju. Even Ex.A.9 birth certificate shows the birth of a child on 11.09.1999 to the petitioner and P. Vijaya Vardhana Raju.

The lower Court in the opinion of this Court conducted a detailed analysis of the documentary evidence filed and rightly noticed that in the cross-examination of PW.1, suggestions were put to the witness as follows:

“it is not true to suggest that my marriage was solemnized with my husband in Gundamala Church with a view to conceal the same to be known by others.”

Therefore, by putting such a suggestion, it is admitted that the marriage has taken place as pleaded by the petitioner. Similarly, with regard to the photos marked as Ex.X.2, the witness in the cross-examination identified her father, her husband, herself and another person. Suggestions were put with regard to the people in the photograph (Ex.A.2). A question was put about the marriage being performed and of the presence of the persons in the photos. This again shows that there is no serious dispute about the wedding performed in May 1996 between the petitioner and the deceased Vijaya Vardhana Raju.

The lower Court rightly noticed that the second witness (PW.2) examined for the petitioner was the Pastor, who conducted the wedding of the petitioner and Vijaya Vardhana Rao. He produced the original register book of marriages along with xerox copy of the same. The same is marked as Ex.X.1 and the original was returned.

Therefore, after a reading of the entire evidence together with wedding card, photographs, marriage register and other

documents showing the name of the deceased husband as Vijaya Vardhana Raju, the lower Court came to the conclusion tht the marriage of the petitioner with Vijaya Vardhana Raju is correct.

In addition, the lower Court also noticed an important point that PW.4 was the post-master of Ongole, who was summoned to bring the service register of Vijaya Vardhana Raju. He brought the same and it was marked as Ex.X.2. Ex.X.2 (A) is a relevant entry in which Vijaya Vardhana Raju nominated his brother, Satyanand as nominee of death-cum-retirement benefits. This nomination was made on 25.11.1992. Therefore, as noticed by the lower Court in the normal course of human affairs if the wedding of the first respondent with Vijaya Vardhana Raju was performed in 1984 and they had already a child by them, Vijaya Vardhana Rao should have been nominated his wife and daughter to receive the death-cum-retirement benefits in 1992. Even otherwise, this Court notices that there is no cross-examination of the witness from the respondent's side. This witness could have been confronted at least on the fact that Vijaya Vardhana Raju was also known as Raj Vardhana Rao or that he had alias in his name. There was no cross-examination on the contents of two documents also.

Therefore, on an examination of the facts narrated by both parties, this Court is of the opinion that the lower Court did not commit any error in passing the impugned judgment. This Court also considers that the totality of evidence

introduced by the first petitioner is more consistent with her case and in fact she has proved her case. The first respondent on the other hand could not categorically prove her case or the prior marriage. Neither the details of the marriage are clearly pleaded nor is there clear evidence to show the performance of the wedding. Discrepancies in number of people also cast a shadow of doubt on the so-called marriage of 1984. The failure to file the photographs wedding card etc., also lead to a doubt. In addition, the first respondent could not and did not give any explanation as to why the name 'Raja Vardhana Rao' is in her record, when the name of the deceased was Vijaya Vardhana Raju even as per his official record.

For all the above reasons, this Court concurs with the finding of the lower Court. There are no valid grounds made out in the appeal.. The appeal is accordingly dismissed. The order dated 24.04.2007 passed in SAOP No.6 of 2001 by the Principal District Judge, Ongole is confirmed in all respects. However, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 13.04.2018
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