

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 428 of 2012

1.S.Veerasley Chettiar (died)

2.S.Vasanth (deceased)

3.S.Veeradasan

4.S.Veeracholan

5.S.Singaravelan

6.S.Venketaraman

7.Vasuki

8.Kannaki @ Viji

(Appellants 7 & 8 brought on record

as LRs of deceased 2nd appellant

vide court order dated:9.07.12

made in MP.3/12 in AS.428/12)

... Appellants/ Respondents 3 to 6

-Vs-

1.Union of India

Rep. By Secretary to Government (Revenue)
Government of Puducherry.

2.The Deputy Collector (Revenue) -cum-

Land Acquisition Officer,
Karaikal.

... Respondents 1 & 2/ Petitioners

3.Rani @ Poruselvay

4. Vennila

5. Chandra

6. Jawahar

सत्यमेव जयते

WEB COPY

... Respondents 3 to 6/ Respondents 7 to 10

Prayer: Appeal filed under Section 54 of the Land Acquisition Act, 1894 against the order dated 16.11.2011 passed in L.A.O.P.No.6 of 2007 on the file of the District Judge at Karaikal and set aside the same in so far as to the extent of the order granting 4/6th shares that is Rs.30,78,766/0 out of the compensation amount of Rs.46,18,164/- to the respondents 3 to 6

and direct the payment of the said compensation amount of Rs.30,78,766/- to the appellants together with accrued interest.

For Appellants : Mr.R.Natarajan

For respondents 1 & 2 : Mr.A.Gandhiraj,
Govt. Pleader (Pondy)

For respondents : Mr.K.V.Babu
No. 3 to 6

JUDGMENT
(Delivered by M.M.Sundresh, J.)

This appeal is preferred by the appellants aggrieved over the award passed by the Reference Court under Section 30 of the Land Acquisition Act, 1894 resolving the dispute with respect to apportionment of the compensation awarded.

2. The appellants are the legal heirs of the deceased Veerasamy Chettiar, born through his first wife. The contesting respondents raised objection before the Additional District Court, Puducherry on the premise that they are the legal heirs of the deceased through the second wife. The Reference Court answered in favour of the contesting respondents and hence the present appeal.

3. Before the trial Court, the third appellant herein examined himself as RW1. RW2 to RW5 have been examined on behalf of the respondents therein. In total, about 47 documents have been marked by the parties, while Ex.X1 has been marked through RW5. Before us, a petition has been filed in M.P.No.2 of 2012 seeking to invoke Order 41 Rule 27 of Code of Civil Procedure to mark the document evidencing the factum of the marriage between the mother of the contesting respondents and one Sinnandi.

4. The Reference Court came to the conclusion on the premise that the documents produced coupled with the evidence would clearly show the presumption of marriage through long cohabitation and, therefore, the contesting respondents are entitled to the relief. Incidentally, documents have been marked under Exs. R15 to R18 corresponding to Exs.R40 to R44, with specific reference to Exs.R18 and R44, which are stated to have been signed by the deceased Veerasamy Chettiar himself acknowledging the factum that the respondents were born from the wedlock between himself and the deceased Andjalatchi @ Paramathal @Sivapakiam. Challenging the same, the present appeal is before us.

5. Learned counsel appearing for the appellants would contend that here is the case where both the deceased Veerasamy Chettiar and his so-called second wife were married earlier. She was living with somebody else in the year 1970 after the death of her first husband. Such a statement has been made by RW3 himself, who has been called upon to depose on behalf of the contesting respondents. Ex.R37 cannot be taken into consideration having been obtained by force. The decree obtained by the appellants would be binding. Section 16 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') cannot be pressed into service, as there is no marriage at all and, therefore, the same would not come within the rigor of Sections 11 and 12 of the Act, as the case may be.

6. Learned counsel for the appellants submitted that Section 112 of the Indian Evidence Act cannot be pressed into service as it presupposes the marriage which can only be a valid one. In such view of the matter, Section 16 of the Act will not be made available to the respondents. The trial Court has misdirected itself by placing reliance upon the judgment which is not applicable to the facts of the case. Presumption can only be drawn subject to the rigor available under the Act. In such view of the matter, the order of the Reference Court would require interference. To buttress his submission, learned counsel relied on the following decisions (i) K.Munuswami Gounder and another v. M.Govindaraju and others reported in 1995-1-L.W.487; (ii) V.D.Grahalakshmi v. T.Prashanth reported in 2012 (2) CTC 833; (iii) Surjit Kaur v. Garja Singh and others reported in AIR 1994 SC 135; and (iv) Y.P.Sudhanva Reddy and others v. Chairman and Managing director, Karnataka Milk Federation and others reported in (2018) 6 SCC 574.

7. Learned counsel for the contesting respondents would submit that the trial Court has considered Exs.R15 to R18 corresponding to Exs.R40 to R44. As two of these documents were signed and acknowledged by the deceased Veersamy Chettiar himself, the Reference Court rightly took them into consideration while coming to the conclusion that marriage has been proved and so also the status of the respondents being the children born from the said relationship. The judgment and decree rendered by the Civil Court in favour of the appellants cannot be binding on the contesting respondents, inasmuch as they are not parties to the said proceedings. Ex.R27 also would clearly show the factum of the marriage and the status of the contesting respondents. The evidence of RW3 will have to be seen as a whole and particularly in the light of the documents marked. As the Reference Court came to the conclusion by a proper analysis of facts and law, no interference is required.

8. At least, the basic facts are not in dispute. The first fact is that the property under execution, belonging to the deceased Veerasamy Chettiar, is a self-acquired property. Secondly, the mother of the contesting respondents was living with Veerasamy Chettiar even according to the appellants. With these basic facts, let us analyze the case on hand.

9. Section 5 of the Act speaks about the conditions which are required for a valid marriage. Sections 11 and 12 of the Act deal with void and voidable marriages. Under Section 11 of the Act, when a man and wife marry each other, notwithstanding the fact that he/she or both of them were married earlier, the same would be termed as void marriage. When we speak about a void marriage it gives the status of a nullity. Such a nullity would start from the date on which the marriage was conducted. Therefore, there is a marked difference between the marriage which is void and voidable. However, when we come to Section 16, a child born from such a void or voidable marriage are given the same status. The object and rationale behind Section 16 is to give an element of respectability to the child born from such a relationship. After all, the aforesaid Section has got a laudable object behind. Inasmuch as the same has been introduced by way of social reform, such a relationship shall not affect a child who has got nothing to do with the conduct of the father or mother, as the case may be.

10. A marriage can be void or voidable, but the status of father and mother can never change. That is the import of Section 16 of the Act. Resultantly, this provision also gives social status and rights to the child born from such a relationship. Therefore, such a welfare legislation will have to give benefit to the child born even before or after the commencement of the Marriage Laws (Amendment) Act, 1976. In such view of the matter, the word 'marriage' is to be given a wider import. As we discussed earlier, the legislation is to give a benefit to the child born from such a relationship. In the case on hand, the documents produced by the contesting respondents, especially Exs.R15 to R18, would clearly show that the deceased Veerasamy Chettiar has himself acknowledged the parentage of the children, which in turn would amount to acknowledgment of the relationship between him and the deceased second wife. That itself would be sufficient enough to bring the case of the respondents within the rigor of Section 16 of the Act. Hence, the contentions raised by the learned counsel by placing reliance on Sections 5, 11 and 12 of the Act, in our considered view, cannot be countenanced. A technical interpretation given would have the effect of defeating the laudable object under Section 16 of the Act.

11. The judgments relied on by the learned counsel appearing for the appellants, in our considered view, have got no application as it has to be seen in its own context.

12. Ex.R27 is a decision arrived at by the Panchayat. We may hold that the said document may not have a binding effect. However, the said document is not disputed, even though it is the plea by the appellants that it has been obtained by force and coercion. Even if the said document is accepted, the appellants in all fairness ought to have impleaded as contesting respondents in the suit filed seeking to declare the status as the legal heirs of the deceased Veerasamy Chettiar. After all, the objection comes from the contesting respondents. In fact, that is the cause of action for filing the said suit. Thus, we are of the view that the judgment and decree rendered therein in the absence of the contesting respondents before us would not be binding on the contesting respondents and the Reference Court.

13. Coming to the additional documents sought to be marked, we are inclined to allow the petition filed being M.P.No.2 of 2012. This, we do so for the reason that allowing of this petition will not have any bearing on the conclusion which we arrived at. Since we are holding that the marriage is void marriage and it will take away the right of the contesting respondents seeking benefit under Section 16 of the Act, the petition filed stands allowed accordingly.

14. Much reliance has been made on the evidence of RW3. The evidence of RW3 will have to be read as a whole. Inasmuch as the documents marked by the contesting respondents with respect to the birth certificates coupled with the acknowledgment of the deceased Veerasamy Chettiar himself with respect to the parentage is not disputed, the small discrepancies in the evidence of RW3 will not take away the right of the interest accrued under Section 16 of the Act. The Reference Court, in our considered view, has rightly taken all the relevant materials and came to the correct conclusion. Thus, we are not inclined to allow the appeal.

In view of the above, the appeal stands dismissed. No costs. Consequently, M.P.No.1 of 2012 is closed and M.P.No.2 of 2012 is allowed.

ssm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

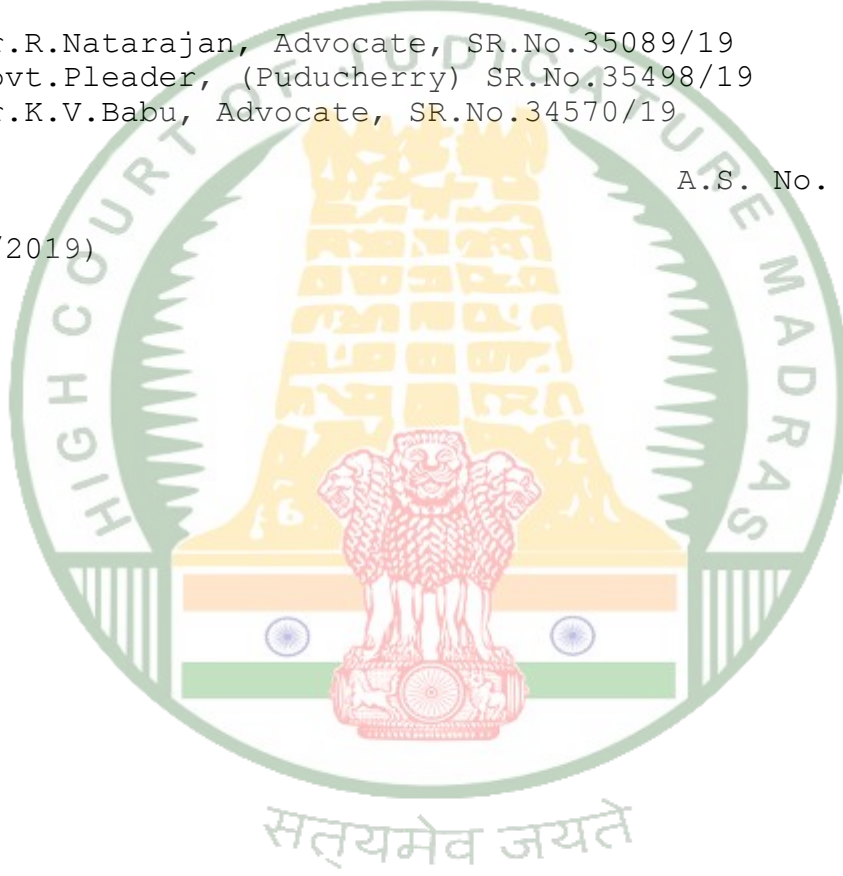
To

1. The Secretary to Government (Revenue),
Government of Puducherry.
2. The Deputy Collector (Revenue) -cum-
Land Acquisition Officer,
Karaikal.
3. The District Judge,
Karaikal

+2cc to Mr.R.Natarajan, Advocate, SR.No.35089/19
+1cc to Govt.Pleader, (Puducherry) SR.No.35498/19
+1cc to Mr.K.V.Babu, Advocate, SR.No.34570/19

A.S. No. 428 of 2012

Kak (12/07/2019)



WEB COPY