

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.723 of 2008
and M.P.No.1 of 2008

Shanthi .. Appellant

versus

1. Bibi

2. The Superintending Engineer
Distribution,
Madras Electricity System North
Tamil Nadu Electricity Board,
781, Anna Salai,
Chennai - 600 002.

.. Respondents

Prayer:-

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 06.02.2007 made in A.S.No.8 of 2004 on the file of the learned Subordinate Judge, Tiruvallur, against the Judgment and Decree dated 22.12.2003 made in OS.No.521 of 1995 on the file of the District Munsif, Thiruvallur.

For Appellant : Mr.V.Chandrakanthan

For Respondent No.1 : No Appearance

For Respondent No.2 : Mr.V.Viswanathan

JUDGMENT

Aggrieved over the concurrent findings of the Courts below, declaring the first respondent, who is the wife of late Govindaraj and also permanent injunction restraining them to receive any death benefits, the trial Court as well as the first Appellate Court decreed the suit, as against which, the present Second Appeal is filed.

2. The Substantial Questions of Law raised in this Second Appeal, which are as follows:

"1. Whether the widow Muslim women can marry a Hindu without conversion to Hinduism at Amman Koil Hindu Temple and such a marriage is valid in law ?

2. Whether the failure to produce the document to prove that the first respondent / plaintiff converted to Hinduism is not sufficient to hold she is not the legal wedded wife of Late Govindaraj ?

3. Whether the first respondent / plaintiff herein can claim status of legal wedded wife even she lives with late Govindaraj for 20 years continuously ?"

3. For the sake of convenience, the parties are to be referred to in their original rank in the suit.

4. The case of the plaintiff is that Govindaraj was employed in Tamil Nadu Electricity Board, the first defendant is the daughter of the said Govindaraj through his first wife Saroja. After the death of Saroja, the plaintiff married the said Govindaraj. After she converted into Hinduism, the first husband also died. The marriage was solemnized in Bangalore and she was residing with the said Govindaraj. In the Government Hospital, the body of Govindaraj was handed over to the plaintiff and she also obtained legal heirship certificate and hence, filed a suit to declare that there is a legal heir of Govindaraj.

5. It is the case of the first defendant that after the death of her father, she gave application to get back the death benefits at the time only she came to know that the plaintiff has also filed an application and obtained certificate. Further, it is the contention that the legal heirship certificate and other things had been fabricated and prayed for dismissal.

6. It is the case of the second defendant, since the plaintiff has also filed application for disbursement of the death benefits, as there was a rival claim, they could not disburse the amount.

7. Before the trial Court, on the side of the plaintiff, she was examined as P.W.1 and P.W.2 to P.W.5 were examined and 5 exhibits were marked as Ex.A.1 to Ex.A-5 and on

the side of the defendants, first defendant was examined as D.W.1 and 4 exhibits were marked as Ex.B.1 to Ex.B.4.

8. After analysing the evidence, the trial Court allowed the suit. Aggrieved over the same, the first respondent has preferred an Appeal in A.S.No.8 of 2004 on the file of the learned Subordinate Judge, Tiruvallur.

9. The First Appellate Court, reappraised the entire evidence and came to the conclusion that the appellant as well as the first respondent are the legal heirs of the deceased Govindaraj as daughter and wife and both of them are legally entitled of their half share of the deceased Govindaraj's death cum terminal benefits and partly allowed the appeal, modifying the judgment of the trial Court. Being aggrieved over the same, the first respondent has preferred this Second Appeal.

10. I have heard Mr.V.Chandrakanthan, learned counsel appearing for the appellant as well as Mr.V.Viswanathan, learned counsel appearing for the second respondent. There is no representation on behalf of the first respondent.

11. The learned counsel appearing for the appellant vehemently contended that the alleged marriage of the first respondent with the deceased Govindaraj has not been established in according to law and there is no evidence available on record to show that she has converted into Hinduism and the evidence does not show that she has married. Merely at earlier instances, she has manoeuvred to get the document to show that she is the legal heir that itself cannot be a ground that she is legally wedded wife. In fact, the trial Court has found that the certificates from Tahsildar are obtained by fabrication, by the Revenue Officers. However, the trial Court and the First Appellate Court had not given much importance and hence, submitted that the first respondent is a Muslim. Therefore, she has no claim as the legal heir of the deceased unless she married the deceased legally as per Section 5 of the Hindu Marriage Act or under the Special Marriage Act. Hence, submitted that the Courts below committed an error in decreeing the suit, declaring the legal heirship in favour of the first respondent. Further, according to him, the trial Court has wrongly rejected the claim of the appellant and hence, pleaded for allowing this Second Appeal.

12. I have perused the entire materials available on record. The suit itself laid by the plaintiff to declare that she is the legal heir of the deceased Govindaraj. According to her, she married the Govindaraj at Bangalore after conversion into Hinduism. The entire plaint pleadings also clearly indicate that she married the said Govindaraj during subsistence of her

earlier marriage with former husband Amir John. It is to be noted that the claim legally wedded wife as per Hindu Marriage Act, one has to establish that the marriage is valid and duly performed as per Section 5 of the Hindu Marriage Act. Though it is contended by the plaintiff that she has converted into Hinduism and married the Govindaraj, absolutely, there is no evidence whatsoever available on record to establish the factum of conversion of the plaintiff from Muslim to Hinduism.

13. Further even her evidence, I could not able to see when she has been entered into wedlock with the said Govindaraj and simply states that after the marriage, they lived in Bangalore and many other places. Therefore, in the voters list also, her name finds place. In the absence of any evidence available on record to show that she is legally converted as Hindu and the marriage was performed as per the Hindu Marriage Act, she cannot claim as legally wedded wife. Further, without establishing the conversion, the legality of the marriage in Hindu law itself is a question to consider whether the marriage is valid under Hindu law. For valid Hindu marriage, both spouses to be Hindu on the date of such marriage whereas, the plaintiff has not established that she has converted legally into Hinduism.

14. It is further to be noted that the first husband was alive at the relevant point of time. Even during the evidence she categorically admitted that she is still as a Muslim therefore the very validity of the marriage so called alleged marriage itself is a issue to be decided first. As long as the marriage as per Hindu law has not been established, one cannot claim as a legally wedded wife, particularly the plaintiff is from different religion. Therefore, without establishing the conversion, the plaintiff cannot simply rely upon some of the entries made in the voters list and other documents to claim that she is the legally wedded wife may be those entries may show that the plaintiff and the deceased Govindaraj were lived together for some time. Mere living together for some period, the status of the wife cannot be acquired unless the valid marriage has been established.

15. The fact remains that the Revenue Department has conducted a thorough enquiry and come to the conclusion that only the appellant is a class-I legal heir and held that the certificate issued by them at the earlier point of time is not valid. When the Revenue Department has conducted enquiry as to the legal heirship and issued a certificate, the Courts below rejecting such evidence on the ground that such enquiry has been conducted belatedly and therefore, such evidence is not relied upon have no basis.

16. In fact, the Tahsildar has given a report and held that earlier legal heirship certificate obtained by the plaintiff is not correct and only the first defendant/appellant herein is the legal heir. Therefore, this Court is of the view that since the very fact of marriage under the Hindu Law has not been established, the conversion has also not been established, the marriage was allegedly said to have been taken place during the life time of the husband of the first respondent, the contention of the plaintiff that there is a valid marriage cannot be countenanced.

17. The Honourable Apex Court in a similar case in GULLIPILLI SOWRIA RAJ vs. BANDARU PAVANI @ GULLIPILI PAVANI reported in 2008 CJ(SC) 596 where one of the parties is Christian said to have performed the marriage under the Hindu Law and registered under Section 8 of the Hindu Marriage Act has held that unless the marriage is valid and set out under Section 5 of the Act, such marriage is not a valid marriage under law and thereby, dismissed the appeal.

18. For the aforesaid reasons, the substantial questions of law are answered in favour of the appellant and against the respondents. The Second Appeal is therefore allowed, by setting aside the judgment and decree of the Courts below. Consequently, the connected Miscellaneous Petition is closed. No costs.

sri

18.02.2019

This Second Appeal has been posted on 19.06.2019 under the caption "for being mentioned" in pursuance to the order of this court dated 18.02.2019 and made in the presence of the aforesaid Advocate, the Court made the following order:-

This Second Appeal has been listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2. The contention of the learned counsel for the petitioner is that the Second Appeal No.723 of 2008 has been allowed and the judgment and the decree of the Courts below are set aside. Whereas the decree drafted indicate as if the Second Appeal has been dismissed.

3. In view of the above, the registry is directed to draft the decree as per the judgment in Second Appeal No.723 of 2008 indicating that the Second Appeal is allowed and the judgments of the Courts below are set aside and the suit is dismissed and issue fresh Judgment copy.

s/d-
Assistant Registrar(CS-IV)

/True Copy/

Sub-Assistant Registrar

vrc

To

1. The Subordinate Judge,
Tiruvallur.
2. The District Munsif Court,
Tiruvallur.

To be Substituted to the
Judgment already despatched
on 18.06.2019

+1cc to Mr.V.Chandrakanthan, Advocate,
vide S.R.No.14432.

+1cc to Mr.V.Chandrakanthan, Advocate,
vide S.R.No.49800

+1cc to Mr.V.Viswanathan, Advocate,
vide S.R.No.14865

S.A.No.723 of 2008
and M.P.No.1 of 2008

KAN(CO)
CS/14/06/2019
MR(CO)
SSM(24/06/2019).