

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.718 of 2019

1.G.Nishanthi

2.G.Jeevankumar

...Appellants/Appellants
Plaintiffs

Vs.

1.G.Deborah (Deceased)

2.G.Rajkumar

3.The Tahsildar,
Guindy, Saidapet,
Chennai - 600 015.

...Respondents/Respondents
Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 09.11.2018 passed in A.S.No.17 of 2018 on the file of the XVII Additional City Civil Court, Chennai, confirming the Judgment and Decree dated 05.10.2017 passed in O.S.No.1486 of 2015 on the file of the XVIII City Civil Court, Chennai.

For Appellants : Mr.V.L.Akshai Sajin Kumar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 09.11.2018 passed in A.S.No.17 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 05.10.2017 passed in O.S.No.1486 of 2015 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiffs/appellants had levied the suit against the defendants for seeking the relief of declaration that they and the defendants 1 & 2 are the legal heirs of the deceased Gunasingh, who died on 01.09.2014.

4. Briefly stated, according to the plaintiffs, they are the children of the deceased Gunasingh born through his second wife Sarojam and the first defendant is the first wife of the deceased Gunasingh and the second defendant is the son of the deceased Gunasingh born through the first defendant and according to the plaintiffs, the deceased Gunasingh married their mother in the year 1987 and since then, they had been living together as husband and wife and out of the said wedlock, the plaintiffs had been born and it is stated further by them that the first defendant had deserted the deceased Gunasingh and after separation, the deceased Gunasingh married the mother of the plaintiffs and hence, according to the plaintiffs, they are also the legal heirs of the deceased Gunasingh and when they had applied for the obtainment of the legal heirship certificate from the authorities concerned, the same had been objected to by the second defendant and hence, according to the plaintiffs, they had been necessitated to institute the suit for appropriate reliefs.

5. The second defendant contested the plaintiffs' suit contending that the first defendant is the wife of the deceased Gunasingh and they practice and profess Christianity religion and the first defendant married Gunasingh in accordance with the Christian Customs and is governed by the provisions of Indian Christian Marriage Act, 1872 and the marriage was solemnised on 02.02.1977 in the Seventh Day Adventist Church (SDA Church) in Pragasapuram, Tuticorin District. Out of their said wedlock, the second defendant was born. From the income derived from the business, the deceased Gunasingh purchased various properties and the second defendant also joined with his father in the business till his demise and the plaintiffs, with a view to usurp the business done by the deceased Gunasingh and the second defendant and the properties of Gunasingh with malafide intention, projected the case as if they are also the legal heirs of the deceased Gunasingh and according to the second defendant, the deceased Gunasingh did not marry the mother of the plaintiffs viz., Sarojam and the alleged marriage was held in the year 1977 between the deceased Gunasingh and Sarojam is invalid since the earlier marriage was in subsistence and the Indian Christian Marriage Act does not recognise the second marriage during the period when the first wife was alive and hence, the plaintiffs are not the legitimate children and therefore, the entire suit is barred by law and they are not entitled to seek the relief prayed for and further also put forth that the suit is bad for non joinder of necessary parties and hence, the suit laid by the plaintiffs is liable to be dismissed.

6. The third defendant also had put forth the case that the

plaintiffs' mother Sarojam had preferred the application for the issuance of the legal heirship certificate and the same was rejected by him and directed her to obtain the succession certificate from the appropriate Court of Law and further, according to the third defendant, the suit is bad in law for want of statutory and mandatory notice and the same is liable to be dismissed.

7. Based on the materials placed on record and the submissions made, the Courts below were pleased to dismiss the plaintiffs' suit and impugning the same, the present second appeal has been preferred.

8. From the materials placed on record and as determined by the Courts below, it is found that the first defendant is the wife of the deceased Gunasingh and the second defendant was born to the deceased Gunasingh and the first defendant and there is no issue with reference to the same. Even the plaintiffs have admitted that the first defendant is the wife of the deceased Gunasingh. Now, according to them, they are the children of Gunasingh through the second wife viz., Sarojam. Pending the suit, it is found that the first defendant had died leaving behind the second defendant as her legal heir. Considering the materials placed on record, it is found that the marriage between the deceased Gunasingh and the first defendant was subsisting till the demise of Gunasingh and therefore, as rightly found by the Courts below, the alleged marriage between Gunasingh and the plaintiffs' mother Sarojam cannot be legally sustained. No doubt, considering the materials projected by the plaintiffs, such as driving licence, SSLC book, family Card, Voters identity card, Transfer certificate, etc., no doubt, though it is found that Gunasingh name figures as the husband of Sarojam and the father of the plaintiffs, similar records have also been produced by the defendants in support of their defence version to show that it is only the first defendant, who is the legally wedded wife of the deceased Gunasingh and that the second defendant is the legitimate son of the deceased Gunasingh. In the light of the abovesaid position, as rightly found by the Courts below, as the marriage between the deceased Gunasingh and the first defendant was in force till the demise of the deceased Gunasingh, no legitimacy, as such, could be attached to the relationship of the deceased Gunasingh with the plaintiffs' mother Sarojam. The plaintiffs have not placed any materials to establish that the marriage had been indeed conducted between the deceased Gunasingh and their mother Sarojam. In the light of the abovesaid position, no legitimacy could be attached qua the relationship between the deceased Gunasingh and Sarojam. Even assuming for the sake of arguments that the deceased Gunasingh had spent the considerable length of his life time with the plaintiffs' mother and the plaintiffs as

projected by the plaintiffs, however the fact remains that considering the materials placed on record and as determined by the Courts below, though the plaintiffs are found to be born to the deceased Gunasingh through Sarojam, the plaintiffs, at the most, could only be treated as the illegitimate children of the deceased Gunasingh.

9. In the light of the abovesaid position, it is found that the plaintiffs had placed reliance upon the decision of the High Court of Kerala reported in 2008 (4) KLT 1002 (Jane Antony Vs. V.M.Siyath) and contended that as per the Indian Succession Act, the children contemplated under the abovesaid Act should be deemed to include even illegitimate children and accordingly, seem to have based their case only upon the abovesaid decision of the Kerala High Court. In the abovesaid decision, it is found that Kerala High Court has accepted that the illegitimate children are also entitled to a share in the compensation payable to the deceased employee, in the light of facts and circumstances of the said case. However, it is found that the second defendant's counsel had relied upon the decision rendered by this Court on 08.06.2010 in A.S.No.23 of 2000 (S.Kamalam and 7 others Vs. Selvaraj and 2 others) and this Court in the abovesaid decision, after considering the import Section 25 of the Indian Succession Act, and dwelling deep into the concept of lineal consanguinity, ultimately held that the word "son" in the abovesaid Act would be a lawful son (i.e. legitimate son) and it would not attract an illegitimate son and accordingly, rendered its decision in the following manner:

"Section 25 of Indian Succession Act

"Lineal Consanguinity:- (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.

(2). Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree,

and so on.

According to Section 25 lineal descendants would be the persons who are coming on the generation either ascending or descending. It has been explained in Schedule 1 of the Act that lineal descendants sons, grand sons and great grand sons of a father way. Whether the sons would include the legitimation also is the question to be answered.

20. According to the judgment cited by the learned counsel for the respondent in Indian Cases (1919) page 542 in between Sophia Blin Vs. Maria David it has been categorically mentioned as follows.

".. It is true that the Act itself makes no distinction between legitimate and illegitimate children except in Sections 7 and 8 which deal with domicile and Section 87 which deals with Wills: not is the meaning of the term wife defined. But the absence of any definition of the term 'wife' or of any distinction between legitimacy and illegitimacy is certainly not due to any intention to recognize the position or status of illegitimate children or to admit the claims of a wife who has not been legally married. It is due to an exactly opposite cause. Illegitimate children, that is to say, the offspring of a union which is not that of husband and wife in the sense in which the term is used in the Act are regarded as non-existent or the children of no one

When we carefully read the explanation given in the Law Lexicon and the explanation given under Schedule I of the Act regarding the lineal descendants the son referred to as lineal descendant should have been a legitimate son according to the precedents stated above. There is no inclusion of the illegitimate son to be considered as son defined in the said Act. It has been categorically explained in Hindu Marriage Act that the right of illegitimate sons would be

similar to that the legitimate sons but similar explanation has not been given in the Indian Succession Act. Therefore, the word son referred to in the Act would be a lawful son (i.e.) legitimate son. It would not attract an illegitimate son. Therefore, we could understand that the plaintiffs 2 to 8 and the 1st defendant who are admittedly the sons and daughters of the 1st plaintiff through the deceased Santhanam cannot be held as legitimate children nor would come under the definition of lineal descendants. Therefore, 1st defendant and plaintiffs 2 to 8 are not entitled to claim any right over the property of the deceased Santhanam, 2nd defendant is the widow and no other lineal descendant were present on the date of death of the deceased Santhanam. In the said circumstances, according to Sections 33 (a) and 33(c) of the Indian Succession Act, the widow, namely, the 2nd defendant alone is entitled to the entire property, left by deceased Santhanam."

10. Therefore, it is found that this Court had already interpreted the provisions of the Indian Succession Act as to the concept of lineal descendants and has held that the illegitimate children would not fall within the definition of lineal descendants and be entitled to succeed to the estate of Christian father dying intestate and accordingly, the Courts below, placing reliance upon the abovesaid decision of this Court, had refused to grant the relief of declaration sought for by the plaintiffs. In addition to that, the first appellate Court also, considering the abovesaid aspect of the matter in detail and also noting the import of Section 21 of the Indian Divorce Act as well as the other relevant provisions of Indian Succession Act and relying upon the decision of this Court as referred to supra, concurred with the judgement and decree of the trial Court and dismissed the first appeal preferred by the plaintiffs.

11. On a consideration of the decision of this Court referred to supra, inasmuch as this Court had held that the son contemplated under the Indian Succession Act would only denote the legitimate son and not attract an illegitimate son and the abovesaid decision had been rendered taking into consideration the legal aspects as well as the concept of legitimacy and illegitimacy as explained in the Hindu Marriage Act and found to

be acceptable, I am unable to take a different view from the abovesaid decision of this Court rendered in the first appeal abovestated and accordingly, it is found that the Courts below are justified in non-suiting the plaintiffs by holding that they are not entitled to seek the relief of declaration as prayed for.

For the reasons aforesaid, no substantial questions of law is found to be involved in this second appeal and accordingly, the second appeal fails and is, accordingly, dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

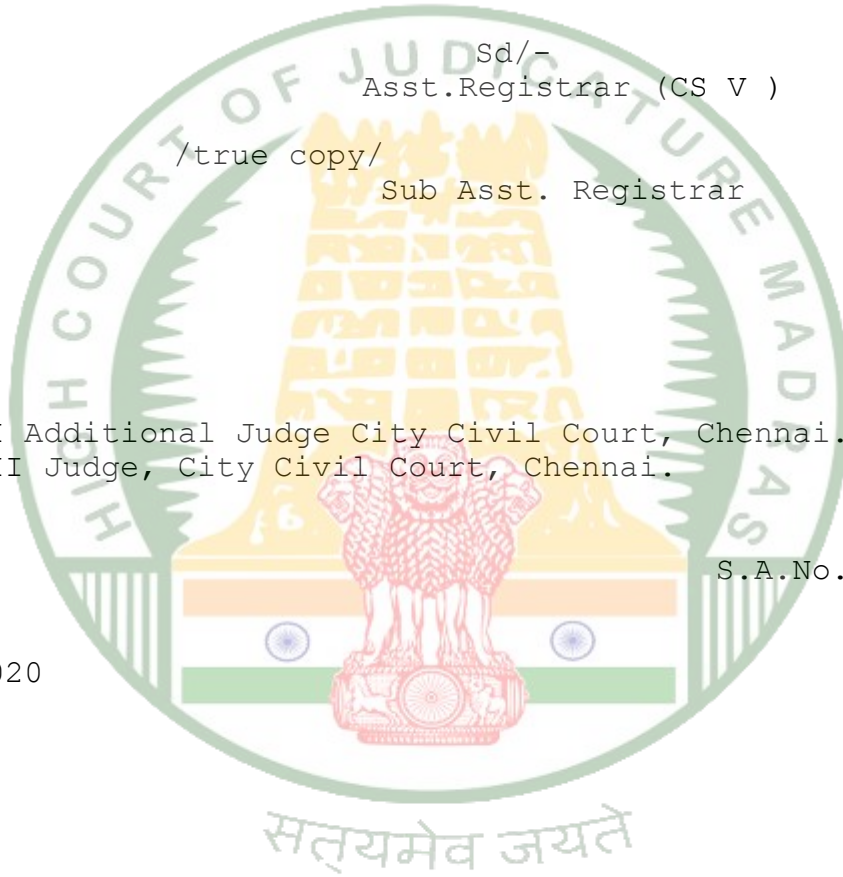
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To

- 1.The XVII Additional Judge City Civil Court, Chennai.
- 2.The XVIII Judge, City Civil Court, Chennai.

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