

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD).Nos.2645 & 1804 of 2014

and

M.P.No.1 of 2014

C.R.P(NPD).No.1804 of 2014

1.Rameena
2.Minor.Thanuja
3.Minor.Dinesh
4.Minor.Abitha
(cause title accepted vide order
dtd 14.07.2014 made in M.P.No.2 of 2014
in CRPSR No.52720 of 2014)

... Petitioners

Vs

1.Santhiyammal @ Shanthi
2.Muralikrishnan
3.Vimala
4.The Chief Medical Officer,
Government Hospital,
Thiruppathur, Vellore District.
5.The District Collector,
Vellore District,
Collectorate Building,
Vellore, Vellore District.
6.The Dean,
The Government Hospital, Adukkamparai,
Vellore, Vellore District.
7.The Tahsildar,
Vellore Fort,
Vellore District.

... Respondents

Prayer: Civil Revision is filed under Article 227 of Civil Procedure Code, to set aside the order passed in I.A.No.510 of 2013 in O.S.No.376 of 2012 dated 04.11.2013 on the file of the learned Additional District Munsif, Vellore, Vellore District.

C.R.P(NPD).No.2645 of 2014 and M.P.No.1 of 2014

1.Rameena
2.Minor.Thanuja
3.Minor.Dinesh
4.Minor.Abitha
(Minor 2 to 4 are represened mother and their natural guardian viz., 1st petitioner Rameena)
(cause title accepted vide order dtd 14.07.2014 made in M.P.No.2 of 2014 in CRPSR No.52720 of 2014.)

... Petitioners

Vs

1.Santhiyammal @ Shanthi
2.Muralikrishnan
3.Vimala
4.Kumudhavalli @ Deivanai
5.The District Collector,
Vellore District,
Collectorate Building,
Vellore, Vellore District.
6.The Dean,
The Government Hospital, Adukkamparai,
Vellore, Vellore District.
7.The Tahsildar,
Vellore Fort,
Vellore District.

... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of Constitution of India, to quash the Ex-parte decree and judgement passed in O.S.No.70 of

2011 dated 09.12.2012 by the learned Additional District Munsif, Vellore, Vellore District.

For Petitioners : Mr.V.Lakshminarayanan
for Mr.R.Vasudevan in both CRPs
For Respondents : Ms.R.T.Sundari in both CRPs

COMMON ORDER

By this common order, both the Civil Revision Petitions are being disposed. C.R.P.No.1804 of 2014 has been filed against order dated 04.11.2013 passed by the Additional District Munsif Court in I.A 510 of 2013 O.S.No.376 of 2012.

2. C.R.P.No.2645 of 2014 has been filed by way of an abundant caution to declare the judgment and decree dated 09.01.2012 in O.S.No.70 of 2011 obtained by the first three respondent's herein before the same court as null and void.

3.The petitioners No 1 to 3 are the plaintiffs in O.S.No.376 of 2012. Though, the name of the first respondent in the suit has been given as Tmt.Shanthi, in the application for rejection of the plaint and in the written statement, the name of the first respondent has been given as

Tmt.Shanthiyammal. In these circumstances, an order came to be passed by this Court on 14.07.2014 to accept the cause title with the name of the 1st respondent as Tmt.Shanthiyammal as mentioned above.

4. I.A.No.510 of 2013 in O.S.No.376 of 2012 was filed by the respondents/defendant Nos.1 to 3 herein in the above suit under Order 7 Rule 11 of CPC. The said IA was allowed by the said court vide the impugned order dated 04.11.2013 and the plaint filed by the Petitioners herein in O.S.No.376 of 2012 was rejected.

5. The said suit was filed for a declaration that the petitioners were the legal heirs of the deceased K.G.Velu who was working under the 4th respondent. The Chief Medical Officer, Gen Hospital Thirupatur. In the said suit the petitioner has also prayed that the judgment and decree dated 09.01.2012 in O.S.No.70 of 2011 obtained by the first three respondent's herein before the same court as null and void. Therefore, as mentioned above the second C.R.P.(NPD)No.2645 of 2014 has been filed by way of abundant caution. The said judgment was pursuant to setting exparte the defendant therein.

6. While allowing I.A.No.510 of 2013, the Court has concluded that O.S.No.376 of 2012 was vexatious inasmuch as order in H.M.O.P.No.13 of 2013

to dissolve the marriage between the 1st respondent and K.G.Velu was passed only on 25.01.2005 and that the first respondent was admittedly the legally wife of the deceased on the alleged date of marriage between the 1st petitioner and the deceased K.G.Velu on 19.02.2003.

7. According to the lower Court, the suit was barred under law in view of the fact that at the time of the alleged marriage between the first petitioner and the said K.G.Velu on 18.02.2003, the marriage solemnised between the said K.G.Velu and the first respondent/defendant on 04.12.1983 was valid on subsisting and that the alleged marriage is said to have taken place between the said K.G.Velu and the first petitioner was not a valid marriage in the eye of law as the order dissolving the marriage though by an exparte order came to be passed subsequent only on a later date on 25.01.2005.

8. The deceased K.G.Velu is said to have sired the second, third and the fourth petitioners through his union with the first petitioner after the said K.G.Velu and the first respondent estranged.

9. The age of the petitioner in O.S.No.376 of 2012 has given as 27 years. The suit is of the year 2012 and in the above C.R.P.(NPD)No.1804 of 2014 and

the age of the petitioner has been given as 36 years. These glaring contradictions which remain unexplained.

10. The respondent Nos.1 to 3 in the written statement before the Court and in the application filed in support of the above application to reject the plaint have stated that the petitioner named Tmt.Rameena is the same person as the first defendant namely Mrs.Kumudhavalli @ Deivanai in O.S.No.70 of 2011. Therefore, the second suit in O.S.No.376 of 2012 before the Additional District Munsif Court, Vellore District was not maintainable.

11. The fact when the petitioners or the respondents 1 to 3 are entitled to succeed to the estate of the deceased K.G.Velu is something which can be decided after a trial. Further, whether the first defendant namely Mrs.Kumudhavalli @ Deivanai in O.S.No.70 of 2011 is the same person as T.Rameena in O.S.No.376 of 2012 also has to be decided only after proper enquiry. Further whether the second, third and fourth respondents were born as out of the union between them first petitioner and the deceased K.G.Velu has to be decided only after a full-fledged trial. Even if the union between these two people did not result in a valid marriage, the rights of the petitioners 2 to 4 as illegitimate children of the deceased K.G.Velu has to be

determined. This can only be done only after issues framed and after a trial full fledged is conducted.

12. Therefore, I am of the view that there is no harm in allowing CRP.(NpD) No.1804 of 2014 and CRP (NPD) No.2645 of 2014.

13. Accordingly, these civil revision petitions are allowed and the case is remitted back to the trial Court viz., Additional District Munsif Court, Vellore District. The learned Additional District Munsif, Vellore District is directed to conduct a joint trial in both the suits viz., O.S.Nos.70 of 2011 and O.S.No.376 of 2012 and passed final judgment and decree inferable within a period of six months from the date of receipt of this order. In any case, not later than six months.

14. The civil revision petitions are allowed with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

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08.04.2019

Index: Yes/ No
Internet : Yes/No
arb/kkd

C.SARAVANAN.,J.

Arb/kkd

To

- 1.The Additional District Munsif Court,
Vellore, Vellore District.
- 2.The Chief Medical Officer,
Government Hospital,
Thiruppathur, Vellore District.
- 3.The District Collector,
Vellore District,
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