

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Sixteenth day of December Two Thousand Nineteen

PRESENT

THE HON`BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMP No.19797 of 2019

in CMSA.No.13 of 2019

SAROJA [PETITIONER]

Vs

1 NAGARAJAN [RESPONDENTS]
(DECEASED)

2 K.CHINNAMMAL

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to bring on record the 2nd Respondent/proposed 2nd Respondent as the Legal Heir of the deceased 1st Respondent as the 2nd Respondent in the above CMSA.(in CMP.No.19797/2019)

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.T.S.BASKARAN, Advocate for the petitioner and of M/S.ROHIT KRISHNA, Advocate on behalf of the 1st respondent the court made the following order:-

The present Civil Miscellaneous Petition has been filed by the petitioner / appellant to bring on record the proposed respondent, viz., K.Chinnammal, as 2nd respondent, in the aforesaid C.M.S.A.No.13 of 2005.

2. The case of the petitioner is that she has filed a petition in H.M.O.P.No.47 of 1997 before the Sub Court, Kallakurichi stating that one K.Nagarajan, who is the 1st respondent is her husband and she was seeking for restitution of conjugal rights against him. The petitioner submitted that she got married to the respondent / husband on 30.03.1996 at Thavadi Amman Koil, Kachirapalayam and they were living together for some time and thereafter, the respondent refused to have conjugal relationship with her, hence the petitioner was constrained to file the said H.M.O.P. No. 47 of 1997. Since both the courts had negatived her claim, the petitioner herein has come forward with the C.M.S.A. Moreover, pending C.M.S.A, the respondent died and hence she has filed the present petition to bring on record the proposed respondent, viz., mother-in-law as 2nd respondent.

3. Earlier, the respondent had denied all the said alleged statement made by the petitioner and he filed a counter in the said H.M.O.P. After hearing the allegations and counter allegations on either side and after perusing the oral and documentary evidence on both the sides, the Sub Judge, Kallakurichi had dismissed the petitioner's application for restitution of conjugal rights. Hence, the petitioner herein filed a CMA No.19 of 2004 before the Additional District Court, Kallakurichi. The said court also had dismissed her claim and she preferred the appeal against the said order by filing the present C.M.S.A.No.13 of 2005 before this Court.

4. The learned counsel for the petitioner would submit that pending the present C.M.S.A., the respondent, viz., A.K.Nagarajan, died on 14.06.2019. Now, the petitioner claims that she is one of the legal heir along with the mother of the said deceased husband, namely, K.Chinnamal. Further, the petitioner wanted to prove to the community that she is the legally wedded wife of the deceased respondent, Nagarajan. As the court below had held that she has not proved the factum of marriage solemnized, she wanted to have the status of the wife of the deceased Nagarajan. Hence the petitioner filed a petition seeking for restitution of Conjugal rights. Even after the death of the said person, she can proceed with the said CMSA to come to an augmented conclusion about her status as wife of the deceased respondent, only if the appeal is heard and disposed of on merits.

5. The learned counsel for the petitioner contends that the petitioner claims her share, as wife, in the properties of the deceased Nagarajan. Hence, she filed the present petition to bring the mother of the deceased proposed respondent, viz., mother-in-law, as 2nd respondent on record and continue the proceedings in the present C.M.S.A.

6. The learned counsel for the petitioner has relied on the Judgment of this Court reported in **1999 (1) CTC 645 in C.R.P.Nos.325 to 3277 of 1998 [Vasantha Ammal and Others V. Narasimha Naidu]**, wherein this Court has held that 'application to bring legal representative of plaintiff on record; the wife of the plaintiff filed an application to be brought on record on death of husband wherein the trial court dismissed the application holding that essential ceremonies required for valid marriage were not proved to prove the status of wife. On revision, the High Court has set aside the order of the trial court holding that the trial court has exceeded its jurisdiction in deciding such question relating to essential ceremonies of valid marriage in an application filed by the wife to bring her on record. Such questions are to be adjudicated solely at the time of adjudication of main suit. On facts found that there was prima facie evidence available to hold that the applicant was wife of deceased / plaintiff so as to allow her application to bring on record the as legal representative of her husband'.

7. Notice was served on the proposed 2nd respondent and the said proposed respondent, viz., Chinnammal, has filed a counter stating that the appeal is unsustainable by impleading her as party respondent to a proceedings pending, which is a personal issue between the petitioner and the deceased- respondent. The cause of action for the said proceedings concludes once the respondent/husband dies and cause of action does not survive any more. There cannot be a fresh and resubmission of cause of action in the guise of claiming status, as wife, by the petitioner.

8. The counter of the said Chinnammal, proceeds to state that a man, after the death, can no more be divorced or secure a decree for restitution of conjugal rights. In this case, the specific prayer of the petitioner is only for restitution of conjugal rights and no other prayer other than this. The court below has rightly evaluated the evidence on record and has come to a conclusion that the alleged marriage between the petitioner and the deceased 1st respondent has not been proved. Hence only to get a share from the estate of the deceased person, the petition has been filed by the said petitioner, which is a motivated one intended to deprive the legitimate claim of pecuniary benefits of the deceased- respondent, who was working as a steno typist in the Department of Prosecution, Salem and who died, while he was in service. The said petitioner has also objected for issuing legal heirship certificate by the revenue authorities and due to which, the mother of the deceased was not able to get legal heirship certificate also. Till date, the mother of the deceased is not able to obtain any pensionary benefits which has to be paid by the Government authorities. In the absence of the legal heirship certificate, the mother of the deceased is not able to pursue the matter further. As the mother of the deceased was solely dependent on the son for her livelihood, she is facing a severe hardship inspite of the irreparable loss due to the death of her son.

9. The counter would also proceeds to state that the petitioner, who is working as Assistant in District Legal Aid Authority, Cuddalore has filed the petition only to harass the proposed 2nd respondent and to cause dishonour to the departed soul of her son. As the petitioner failed to prove that the alleged marriage was consummated or completed, the courts below has rightly rejected the same and this Court also has to reject the said application and thereby sought to dismiss the petition.

10. The counsel for the respondent submitted that this Court in **1989 1 L.W. in C.R.P.Nos.2556 and 2557 of 1986 [Saraswathi Ammal V. Lakshmi]** has held that the 'death of husband after passing exparte order was in his favour, the petition to set aside the exparte order impleading the husband's mother as his legal representative. The trial court held that it is not maintainable. The Court has held that cause of action did not survive to any one else, as it dies with him and there cannot be

a flesh and blood resurrection of a dead cause of action under the guise of the status of the respondent'. The learned counsel for the respondent also relied on the **Judgement of this Court in (2019) 8 Supreme Court Cases 308 [Ravinder Kaur V. Manjeet Singh (Dead)]** through Legal representatives.

11. Heard the learned counsel on either side and perused the documents placed on record.

12. It is pertinent to note that in the aforesaid decision relied on by the learned counsel for the respondent, the Court has observed that the decision relied on by the said counsel therein in **Thulasiammal V. Gowriammal [1964-I-M.L.J 228]** and **Poonuthayee Ammal and Kamakshi Ammal [1978 - I- M.L.J.448]** had no application whatsoever in the case on hand therein and decided that the court below has erred in by permitting the respondent therein to bring the petitioner therein on record as legal representative of her deceased husband. As pointed out earlier, the cause of action of the suit arose by the deceased Ramanathan in O.P.No.30 of 1983, Sub Court, Kumbakonam against the respondent therein was purely personal to him and cause of action did not survive to any one else, as it dies with him, and there cannot be flesh and blood resurrection of a dead cause of action under the status of the respondent and had set aside the order passed and stated that 'after the death of the husband nothing survives'.

13. Admittedly, the decision relied on by the learned counsel for the respondent **1989 1 L.W. in C.R.P.Nos.2556 and 2557 of 1986 [Saraswathi Ammal V. Lakshmi]** is squarely applicable to the case on hand. When the husband dies, everything dies and after the death of the husband nothing survives. The petitioner's plea to bring on record the 2nd respondent/proposed respondent as legal heir of the deceased-respondent, cannot be accepted because her husband, viz, 1st respondent is no more to accept her as wife and to give her conjugal rights.

In view of the above stated reasons, the present petition seeking to implead the proposed respondent, viz., mother-in-law of the petitioner, as 2nd respondent is dismissed.

-sd/-

16/12/2019

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1. THE SUBORDINATE JUDGE,
KALLAKURICHI

2. THE ADDITIONAL DISTRICT AND AND SESSIONS JUDGE,
[FAST TRACK COURT NO.III]
KALLAKURICHI

3. THE SECTION OFFICER,
VR SECTION, MADRAS HIGH COURT,
CHENNAI

C.C. to M/S.T.S.BASKARAN Advocate Sr.No.14837

C.C. to M/S.ROHIT KRISHNA, Advocate on payment of necessary
charges

Order

in

CMP.19797/2019

in CMSA.No.13 of 2019

Date :16/12/2019

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
KP(03/01/2020)

सत्यमेव जयते

WEB COPY