

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2580 of 2018 and
CMP No.15521 of 2018

V.Durairaj

... Petitioner

Vs

1. Malathi Rani
2. R.Elangovan

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal order dated 16.08.2017 in SOP No.71 of 2004 passed by the II Additional Subordinate Judge, Villupuram.

For Petitioner : Mr.R.Akilesh

For Respondents : Mr.D.Lakshmipathy (for R1)
No appearance (for R2)

ORDER

This revision is at the instance of the petitioner in S.O.P. No.71 of 2004 on the file of the Sub Court, Villupuram.

2. The petitioner sought for Succession Certificate in respect of

certain assest namely the compensation amount awarded to one Vasudevan who, according to the petitioner died unmarried on 04.08.2003. The petitioner being the brother of Late.Vasudevan being a Class II heir is entitled to succeed to the estate of Late.Vasudevan.

3. This application was resisted by the respondents contending that the 1st respondent married to the petitioner and a son by name Thiruvenkadam was born out of the said marriage. Therefore, as Class I heirs, they are entitled to the amount awarded as compensation in LAOP No.24 of 2001. It is also claimed that the 1st respondent had filed an application in I.A No.81 of 2003 seeking to implead herself and the said Thiruvenkadam as the legal heirs of Vasudevan and the said application has also been ordered.

4. At trial, the petitioner was examined as PW1 and Exs.A1 to A10 were marked. On the side of the respondents, the 1st respondent examined herself as RW1 and examined three other persons as RW2 to RW4. Exs.R1 to R28 were filed.

5. The learned trial Judge upon consideration of the evidence on record concluded that the marriage between the deceased Vasudevan and the 1st respondent Malathi Rani has been conclusively proved and Thiruvengadam is the son of the said Vasudevan. On the said findings, the learned trial Judge dismissed the original petition for grant of Succession Certificate. Aggrieved, the petitioner has come up with this Civil Revision petition. I have heard Mr.Akilesh, learned counsel appearing for the petitioner.

6. The learned counsel for the petitioner would vehemently contend that the trial Court erred in concluding that the marriage has been proved. According to him, in the absence of direct evidence for proof of marriage, the trial Court should have concluded that the marriage has not been proved. He would also draw my attention to the Judgment of the Division Bench of this Court in *Mohan & another Vs Santha Bai Ammal & others*, in support of his submission that there should be direct evidence with respect to the proof of marriage. The learned counsel would further

contend that he was not given an opportunity to place the best evidence before court as his application for sending some documents for expert opinion was dismissed by the trial court. The learned counsel would also draw my attention to the evidence on record and pointed out certain discrepancies in evidence regarding the factum of marriage.

7. I have considered the submissions of the learned counsel for the petitioner.

8. The claim of the petitioner is that Vasudevan died as a Bachelor. This is resisted by the 1st respondent contending that she was married to Vasudenvan on 22.08.1985 at Virudhagiriswarar Temple, Viruddhachalam and out of the said marriage, a son was born to them by name Thiruvenkatam on 29.07.1986. The birth Certificate of Thiruvenkatam has been produced as Ex.R3. Apart from the above other documents namely the original record of the engagement and original marriage invitation have been produced as Ex.R1 as Ex.R2, certain letters said to have been written by Vasudevan's father and mother have also been

produced. No doubt, the learned counsel for the petitioner would vehemently dispute the genuineness and the authenticity of the said letters. No doubt, the Principle of law is that the factum of marriage should be proved. In the case on hand, the marriage is sought to be challenged nearly after 30 years. Therefore, one cannot expect direct evidence of marriage. A Civil Court can base its decision on preponderance of probabilities.

9. A perusal of Exs.R1 and R2, would show that there was an engagement as well as invitation for the marriage. Apart from all that, Ex.R3 is the birth certificate of Thiruvankadam describing him as son of Vasudevan. It was issued as early as on 29.07.1986. As rightly pointed out by the trial Court that one cannot presume that the 1st respondent had created a record even in the year 1986, expecting land acquisition proceedings in the year 2003, grant of compensation and the claim by the brother that her husband died as Bachelor. Yet another document is Ex.R4 which is a registered instrument of mortgage, dated 13.03.1995, wherein Vasudevan and the 1st respondent had executed a mortgage deed in favour of a third party and in the said document, the 1st respondent has been described

as the wife of Vasudevan. It is also not in dispute that Vasudevan and the 1st respondent were living apart for sometime and during that period Vasudevan have sent money orders to the 1st respondent and the son Thiruvengkadam. Those documents have been marked as Exs.B16 to B23. The Ration Card, Voter Identity Card and Transfer Certificate have also been produced. In all these documents, the 1st respondent is described as the wife of Vasudevan. Apart from all these evidence, the petitioner himself has not positively denied the marriage.

10. The learned trial Judge had pointed out that the petitioner himself in cross examination, has not specifically denied the fact that Vasudevan had married the 1st respondent at Virudhachalam and had begotten a son through her. He has given a very evasive answer that he does not know. This evidence had led the Court to believe that there was a marriage between Vasudevan and the 1st respondent. I find that the trial Court has drawn an inference based on preponderance of Probabilities, concluded that the marriage between Vasudevan and the 1st respondent has been proved and out the said marriage he has begotten a child namely

Thiruvenkadam. Though the learned counsel would vehemently contend that the trial Court was wrong he is unable to substantiate his contention since the conclusions of the trial Court are based on valid evidence. Even excluding the other evidence, Ex.R4 which is a registered instrument alone would be sufficient to hold that the marriage is proved.

12. In the light of the unimpeachable evidence, I do not find any illegality or irregularity in the order of the trial court dismissing the application. The Civil Revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

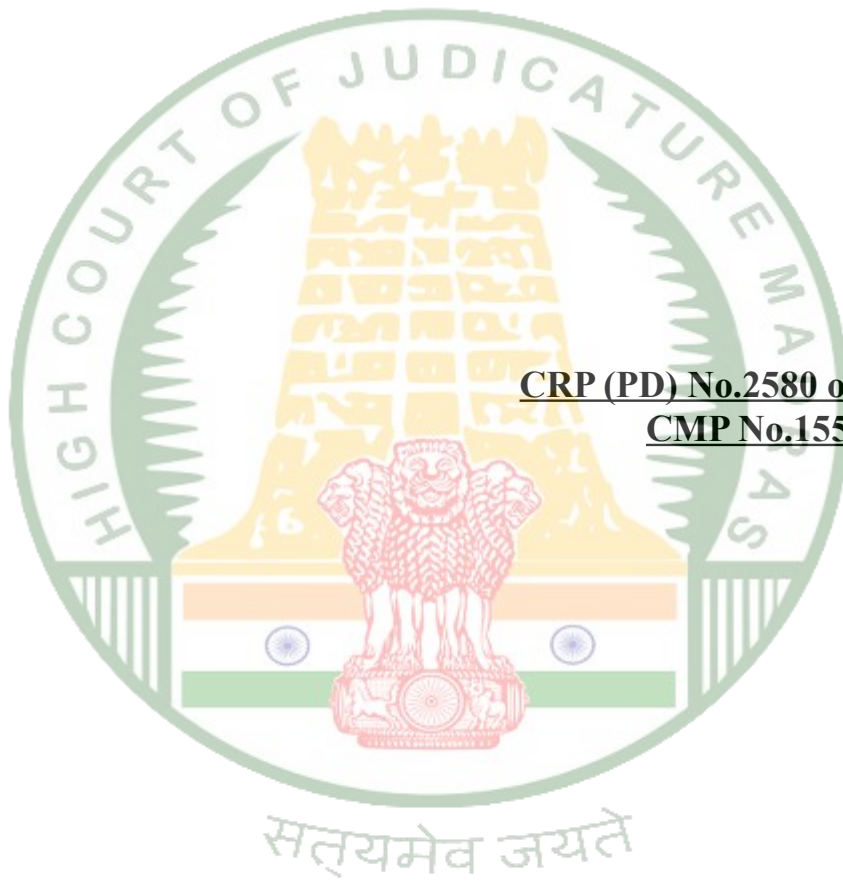
Speaking order / Non speaking order

To

The II Additional Subordinate Judge, Villupuram.

R.SUBRAMANIAN, J.

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