

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.11.2019

Pronounced On : 06.01.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.3869 of 2014

Thulasibai

.. Petitioner

Vs

1. Kanniammal
2. Venkidusamy

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the Fair and decreetal order dated 16.07.2013, made in CMA No.1 of 2011 on the file of the learned Subordinate Judge at Gobichettipalayam, reversing the fair and decreetal order dated 30.09.2010 made in S.C.O.P.No.1 of 2008 on the file of the learned District Munsif at Gobichettipalayam.

For Petitioner : Mr.N.Manokaran
for Mr.E.Ganesh

For Respondents : Mr.A.Thiyagarajan, Sr. Counsel
for Mr.M.Nandhakumar (for R1)

ORDER

The 2nd respondent in CMA No.1 of 2011 on the file of the learned Subordinate Judge, Gobichettipalayam, is the revision petitioner. Originally on 19.02.2008, one Kanniammal, 1st respondent herein, filed a petition in SCOP No.1 of 2008, on the file of District Munsif Court at

Gobichettipalayam, praying to grant a succession certificate in favour of her and the 2nd respondent, empowering them to receive the maturity amount on deposit, which was made by her husband Dr.C.S.Siva Krishnan. After elaborate enquiry, the learned District Munsif, Gobichettipalayam, by order dated 30.09.2010, dismissed the application filed by the 1st respondent herein.

2. Aggrieved over the same, 1st respondent herein filed the Civil Miscellaneous Petition, in CMA No.1 of 2011 on the file of learned Subordinate Judge, Gobichettipalayam and prayed to set aside the order passed in SCOP No.1 of 2008 dated 30.09.2010. By order dated 16.07.2013, the learned Subordinate Judge, Gobichettipalayam, allowed the appeal and set aside the dismissal order passed by the learned District Munsif, Gobichettipalayam.

3. For the sake of convenience hereinafter, the revision petitioner is called as 2nd respondent and the 1st respondent herein is called as petitioner.

4. The averments made in the application filed by the petitioner, in short, is as follows:

(i) The petitioner is the legally wedded wife of the deceased C.S.Siva

Krishnan. The marriage between the petitioner and C.S.Siva Krishnan was solemnised on 20.06.2004 in Appakudal Arassamarathaiyan Sri Vinayakar Temple at Appakudal, Bhavani Taluk, Erode District. The said marriage was celebrated in the presence of Mr.A.Pushpajothinathan, Vice President of Appakudal Town Panchayat. After marriage, the said C.S.Siva Krishnan and petitioner lived as husband and wife at B4, Kothandam Illam, Thiru.Vi.Ka.Street-III, Gobichettipalayam, till his death on 26.07.2004. The said C.S.Siva Krishnan died in a road accident leaving behind the petitioner and the 2nd respondent as his legal heirs. The deceased C.S.Siva Krishnan and petitioner had no issues after their marriage.

(ii) The 1st respondent is a financier. On 01.07.2004, the deceased C.S.Siva Krishnan deposited a sum of Rs.5,000/- with the 1st respondent. The maturity period of deposit has been fixed on 01.07.2005. After the death of C.S.Siva Krishnan, the petitioner approached the 1st respondent to repay the said amount, as she was badly in need of the money. The 1st respondent refused to repay the said amount as the 2nd respondent also made a claim for the same.

(iii) Hence, the petitioner has no other option except to file the present Succession Original Petition to get the above said amount deposited by C.S.Siva Krishnan with the 1st respondent. The 2nd respondent is the

mother of the deceased C.S.Siva Krishnan. The petitioner approached the Tahsildar, Gobichettipalayam for an heirship certificate for the deceased C.S.Siva Krishnan on 24.02.2005. But the Tahsildar, Gobichettipalayam issued a communication on 03.10.2005 that an heirship certificate has been issued by Tahsildhar, Aruppukottai for the deceased C.S.Siva Krishnan in favour of the 2nd respondent and her son and daughter viz. Mr.C.Balakrishnan and Ms.Kamalachi.

(iv) The said heirship certificate issued by the Tahsildhar, Aruppukottai, is against the law. Even if the deceased C.S.Siva Krishnan was a bachelor, the mother viz., the 2nd respondent alone can be the heir and his brother and sister are not heirs of the deceased C.S.Siva Krishnan. They suppressed the marriage of the deceased C.S.Siva Krishnan with the petitioner. That being so, the heirship certificate obtained by the 2nd respondent and her children is nothing but played fraud. Hence, the heirship certificate is a fraudulent one which has been obtained by influencing the revenue officials. The deceased has not left any Will. Since there was no rival claim or other near relatives, notice need not be served upon any other person except the 1st respondent who is holding the petition mentioned deposited amount and the 2nd respondent, who is also an heir of the deceased.

5. The averments contained in the counter affidavit filed by the 2nd respondent, in short, is as follows:

(i) The story put forth by the petitioner in respect to the alleged marriage are absolutely false. The petitioner was not at all the wife of the deceased C.S.Siva Krishnan at any point of time. The deceased is the son of the 2nd respondent. He was a bachelor and unmarried till his death in a road accident. The petitioner with an ulterior motive and malafide intention to get unlawful gain from the assets of the respondents apart from other legal proceedings in MCOP No.230 of 2005 and MCOP No.295 of 2004 on the file of the Fast Track Court, Gobichettipalayam, has filed the Succession Original Petition.

(ii) The allegation that the 1st respondent is a financier; that on 01.07.2004 deceased C.S.Siva Krishnan deposited a sum of Rs.5,000/- with the 1st respondent; that the original of the said receipt is produced therewith; that the maturity period of deposit has been fixed on 01.07.2005; that after the death of C.S.Siva Krishnan, the petitioner approached the 1st respondent to repay the said amount as she was badly in need of money; and that the first respondent refused to repay the said amount as the 2nd respondent also made a claim over the same, are all denied.

(iii) The legal heir certificate issued by the Tahsildar, Aruppukkottai, is a bonafide one. Settlement in the criminal proceedings by the police authority cannot be given evidentiary value. Neither this respondent nor her son and daughter admitted the marriage, at any point of time before the police authority in any criminal case. No police authority examined the 2nd respondent and her son or daughter at any point of time in the accident case of the deceased C.S.Siva Krishnan. The Court below has no jurisdiction to entertain the petition filed by the petitioner.

6. Averments contained in the counter statement of 1st respondent, in short, are as follows:

(i) It is true that the petitioner is the legally wedded wife of deceased C.S.Siva Krishnan. Marriage between the petitioner and C.S.Siva Krishnan was solemnized at Appakudal Arasamarathaiyan Sri Vinayakar Temple at Appakudal, Bhavani Taluk, Erode District. This respondent is not aware that the marriage was solemnized in the presence of Vice President, Appakudal Town Panchayat. It is true that the said C.S.Siva Krishnan and petitioner has lived as husband and wife at B4, Kothandam Illam, Thiru.Vi.Ka.Street-III, Gobichettipalayam till the death of C.S.Siva Krishnan on 26.07.2004. It is true that the said C.S.Siva Krishnan died in a road accident leaving behind the petitioner and his mother viz., the 2nd respondent as his legal heirs.

(ii) It is true that the deceased C.S.Siva Krishnan deposited a sum of Rs.5,000/- with the 1st respondent and the maturity period of deposit was fixed on 01.07.2005. It is true that after the death of C.S.Siva Krishnan approached the 1st respondent for repayment, as she was badly in need of money and he refused to repay the same as the 2nd respondent has also made a claim over it. The 1st respondent has contended that he is ready to pay the said amount to the petitioner and the 2nd respondent or otherwise to deposit the same into Court, as per the Court direction.

7. Before the trial Court, the petitioner, Kanniammal examined herself as PW1. Further on the side of the petitioner three more witnesses have been examined as PWs.2 to 4 and 24 documents were exhibited as Exs.P1 to P24. On the other hand, on the side of the respondents, the 2nd respondent Thulasibai, examined herself as RW1 and she has exhibited five documents as Exs.R1 to R5. Apart from those documents, three documents were exhibited as Ex.C1 to C3.

8. Having considered all the materials placed before him, the learned District Munsif, Gobichettipalayam, by order dated 30.09.2010, declined to allow the application filed by the petitioner and dismissed the application. Aggrieved over the same the petitioner viz., Kanniammal preferred an appeal before the learned Subordinate Judge, Gobichettipalayam, in CMA

No.1 of 2011. The learned Subordinate Judge, Gobichettipalayam, after elaborate enquiry came to the conclusion that the finding recorded by the learned District Munsif, Gobichettipalayam, is erroneous in law and ultimately, on 16.07.2013 allowed the application filed by the petitioner and directed to issue Succession Certificate in favour of the petitioner and the 2nd respondent empowering them to collect the amount deposited with the 1st respondent. Finally, aggrieved over the same, the 2nd respondent in the Succession Original Petition, is before this Court, with the present Civil Revision Petition.

9. The learned counsel appearing on behalf of the 2nd respondent/revision petitioner would contend that while at the time of disposing the Civil Miscellaneous Appeal, the learned Subordinate Judge, Gopichettipalayam, has held that the alleged marriage solemnized between Kanniammal and C.S.Siva Krishnan, was proved as Seerthirutha marriage and the same was legally permitted in Tamilnadu. Further, he has held the witnesses examined on the side of the petitioner will prove the factum of marriage and therefore, the petitioner is the legally wedded wife of the deceased Kanniammal and C.S.Siva Krishnan.

10. In this regard, the learned counsel for the revision petitioner/2nd respondent would further contend that since the petitioner and the

deceased C.S.Siva Krishnan are educated persons, if really the alleged marriage had taken place, definitely, it would have been registered before the competent authority. Marriage registration certificate is the only conclusive proof for proving the marriage. But the first appellate Court, without considering the said aspect, came to the conclusion that the evidence let in on the side of the petitioner is sufficient to hold that the alleged marriage solemnized between the petitioner and C.S.Siva Krishnan, is a true one. According to him the said finding, is bad in law.

11. Per contra, the learned counsel appearing for the 1st respondent/petitioner, would contend that the marriage now alleged by the petitioner is correctly proved through the evidences and the exhibits marked on the side of the petitioner and further, since the Seerthirutha marriage, is permitted one, it cannot be said that the alleged marriage solemnized between the petitioner and the C.S.Sivakrishnan, is void. In this regard, the findings arrived at by the first appellate Court is correct one and there is no need to interfere with the said findings.

12. Upon considering the arguments advanced by either side counsel, as per the evidence of 1st respondent/petitioner, her marriage was solemnized on 20.06.2004 in the Appakudal Arassamarathaiyan Sri Vinayagar Temple at Appakudal, Bhavani Taluk, Erode District, in the presence of the

Vice President of the Appakudal Town Panchayat, Mr.A.Pushpajothinathan. To substantiate the same, the said Mr.A.Pushpajothinathan was examined as PW2. He has also stated that on 20.06.2004, the marriage between the Kanniammal and C.S.Siva Krishnan was solemnized in the place stated by PW1. Further one Mr.Kothandam M.M, examined as PW3 has stated that the Kanniammal and the deceased C.S.Siva Krishnan were residing in his house as tenants for a monthly rent of Rs.1,200/-.

13. More than that, the priest of Arasamarathaiyan Sri Vinayagar Temple viz., Mr.Ramesh was examined as PW4 and he has also stated about the marriage of the petitioner Kanniammal with the deceased C.S.Siva Krishnan. It is true that all the oral evidence let in by the petitioner would categorically prove that on 20.06.2004, alleged marriage between the petitioner and the deceased C.S.Siva Krishnan, has happened in Arasamarathaiyan Sri Vinayagar Temple.

14. In this regard, the learned counsel appearing for the revision petitioner / 2nd respondent would contend that though the oral evidence let in by the petitioner is in the form of conformity of marriage, the other circumstances in and around the case of the petitioner would reveal the fact that the story put forth by the petitioner in respect to the marriage, is a false one.

15. In the said circumstances on going through the other circumstances found in the case, as per the evidence of the petitioner, the marriage was solemnized on 20.06.2004. Subsequently, within 36 days i.e. on 26.07.2004, the said C.S.Siva Krishnan died in a road accident. In the meantime, it is the case of the petitioner that on 01.07.2004, the deceased C.S.Siva Krishnan deposited a sum of Rs.5,000/- in the 1st respondent finance company. Though, it was stated by PW1 that in the deposit she was cited as a nominee, but the same was not written in the deposit receipt that the petitioner is a nominee. It is unbelievable that the deceased C.S.Siva Krishnan being a Doctor has deposited only Rs.5,000/- that too, in a private finance company, after 10 days from the date of marriage. If really he intended to deposit the said amount, definitely, he would have deposited in any one the bank. Secondly, both PW1 and PW2 have admitted in their cross examination that near Arasamarathaiyan Sri Vinayagar Temple there was a famous temple in the name of Mariamman and Banariamman temple, which was under the control of HR&CE Department.

16. Being an educated person, it is quite obvious that though the marriage celebrated between the petitioner viz., Kanniammal and the deceased C.S.Siva Krishnan, is against the wishes of their parents, it should have been registered in the Registrar's office.

17. More than that, the petitioner has approached this Court for a meagre amount of Rs.5,000/- after crossing the two Courts below, which creates a doubt whether the petitioner has approached the Court for bonafide reasons or not.

18. Further, in this case, as per the evidence given by the petitioner, though they intended to register their marriage, till the death of the C.S.Siva Krishnan, the marriage between the petitioner and C.S.Siva Krishnan was not registered. It also creates another doubt whether the story put forth by the petitioner is true or not.

19. It is not in dispute that the revision petitioner / 2nd respondent is the mother of the deceased C.S.Siva Krishnan. Being the mother, she is a Class-I heir of the said deceased C.S.Siva Krishnan. In this connection, the learned counsel appearing for the 1st respondent/petitioner would contend that during the time of the death of C.S.Siva Krishnan, the police registered a case and examined the 1st respondent Kanniyammal. Further, the police examined the relatives house of the deceased C.S.Siva Krishnan. In the statement recorded by the police officers under Section 161 Cr.P.C., the revision petitioner/2nd respondent had admitted the factum of marriage, which was confirmed by other relatives of the deceased. More than that, during the time of cross examination, the mother of the deceased has

admitted the marriage and therefore, it is unnecessary to find out whether the marriage is legally sustainable or not.

20. In this regard, the learned counsel appearing for the revision petitioner/2nd respondent would contend that picking isolated evidence for deciding the entire case is against the principles of law. It is necessary to go through the entire evidence recorded for deciding the issue. Accordingly, the admitted portion now indicated by the 1st respondent/petitioner alone cannot be taken into account that the marriage was proved. In this regard, he relied on the judgment of ***Kumarasamy Vs. Rajkumar and others*** reported in 2011 (11) CTCOL 648 (Mad), wherein it was held as follows:

27. The first appellate Court should not have of its own picked and chosen such a stray sentence and treated it as an admission. In this connection, I would like to refer to the decision in ***C.Koteswara Rao v. C.Subbarao*** reported in AIR 1971 SUPREME COURT 1542. An excerpt from it, is extracted hereunder for ready reference:

"5. We shall now proceed to consider the true effect of the statement made by the appellant. In his chief-examination, he specifically stated: "The lands purchased in my name under Exh.B-3 to seven are my own property. Since then I have been paying taxes on them under Exhs.B-59 and 60 receipt books. The

lease deeds for those lands are Exs.B-61 to 66 besides Exhs.B-14, 15, 17 to 20."

6. From this statement, it is clear that he had put forward a positive case that the lands in question are his separate properties. In the course of his cross-examination it was elicited from him:

"Under Ex.B-6 the consideration was paid by my father. I do not know how he got it."

7. This admission must be read along with the evidence given by him in his chief-examination. Soon after he made that statement, he also stated:

"From the time I took the sale deed Exh.B-6, I was paying taxes. I filed those tax receipts in a separate book for my personal properties. My father was paying taxes on family lands, separate from my lands."

8. If we read these statements along with his other evidence and in a harmonious manner, it is clear that what the appellant admitted was that the acquisition in question was made by his father on his behalf and the consideration for the same was paid by his father from out of the appellant's private funds that were in the hands of his father. Hence we are unable to agree with the High Court that the appellant had admitted that the properties covered by Ex.B-6 were the acquisitions of his father."

21. Applying the above said principles set out by this Court, in this case also in the chief examination and in 90% of the cross examination RW1/revision petitioner/2nd respondent has denied the factum of marriage.

Only at the end of the cross examination, when at the time of putting suggestion before her, she admitted the marriage. Therefore, the said admission alone could not be taken into account for deciding the issue involved in this case.

22. Therefore on culling out the entire circumstances, for deciding this Civil Revision Petition, basically, we have to find out whether the alleged marriage stated by PW1 is valid and in accordance with law or not. In this regard, it is necessary and useful to see the judgment of this Court in ***Mohan & Another Vs. Santha Bai Ammal and Others***, reported in **1989 (2) LW 197**, wherein a Hon'ble Division Bench of this Court has held as follows:

“11.....It is common knowledge that temples are maintaining such registers containing various particulars about the marriage and the parties to the marriage are required to sign in the register, in order to have an authenticated record of the said marriages. It is in evidence that the plaintiffs have applied for a copy of the said marriage register. But, however, no copy has been produced into Court so far. It is contended by the learned counsel for the appellants that in spite of the best efforts taken by the plaintiffs, they did not get a copy of the register. Such an explanation cannot be accepted in view of the fact that it was open to the plaintiffs to summon the register itself through

Court. This conduct of the plaintiffs shows that such a record of the marriage is not available. Therefore, in the absence of such an authenticated record, it is not possible to rely on Ex. A1 alone to come to a conclusion that the marriage had taken place on 13-7-1952 as alleged by the, Plaintiffs in this case.”

23. In respect to the statements given before the police officers, the said statements have been recorded by the investigation agency under Section 161 Cr.P.C. In fact the said statement has to be used only for the purpose of corroboration, at the time when the maker gives evidence before the Court of law. Therefore, that could not be taken into account for proving the marriage of the petitioner.

24. However, in respect to the factum of marriage, being a civil right, that has to be proved by way of filing a suit for declaration that the marriage solemnized between the 1st respondent/petitioner with C.S.Siva Krishanan is a valid one. Since, the 1st respondent/petitioner filed a S.C.O.P., before the learned District Munsif, Gobichettipalayam for a limited purpose i.e. to grant a succession certificate in favour of her and the 2nd respondent/revision petitioner, empowering them to receive the maturity amount on deposit, which was made by her husband Dr.C.S.Siva

Krishnan, it is not correct to decide in the said SCOP whether the marriage alleged to have been solemnized between the petitioner with the deceased C.S.Siva Krishnan, is valid or not.

25. Therefore, considering the facts and circumstances of the case, this Court is of the considered opinion that the petition filed by the 1st respondent/petitioner cannot be decided without proving the marriage before the competent forum. On that score, the order passed by the Court below, is not in accordance with law. Therefore, it is open to the 1st respondent/petitioner to file a suit, for the relief of declaration declaring that the marriage solemnized between Kanniammal and the deceased C.S.Siva Krishnan, on 20.06.2004, is valid in law. In otherwise, the S.C.O.P. filed by the 1st respondent / petitioner is liable for dismissal.

26. Accordingly, the Fair and decreetal order dated 16.07.2013, passed by the learned Subordinate Judge at Gobichettipalayam in CMA No.1 of 2011, is set aside and the order dated 30.09.2010, passed by the learned District Munsif at Gobichettipalayam in S.C.O.P.No.1 of 2008, is restored.

27. It is further observed that if a suit is filed the 1st respondent / petitioner, for the relief of declaration in respect to the marriage, the

Presiding Officer, who shall try the suit, has to decide the said issue without being influenced by the observations made in this order.

28. With the above observation and directions, the Civil Revision Petition is disposed of. No costs.

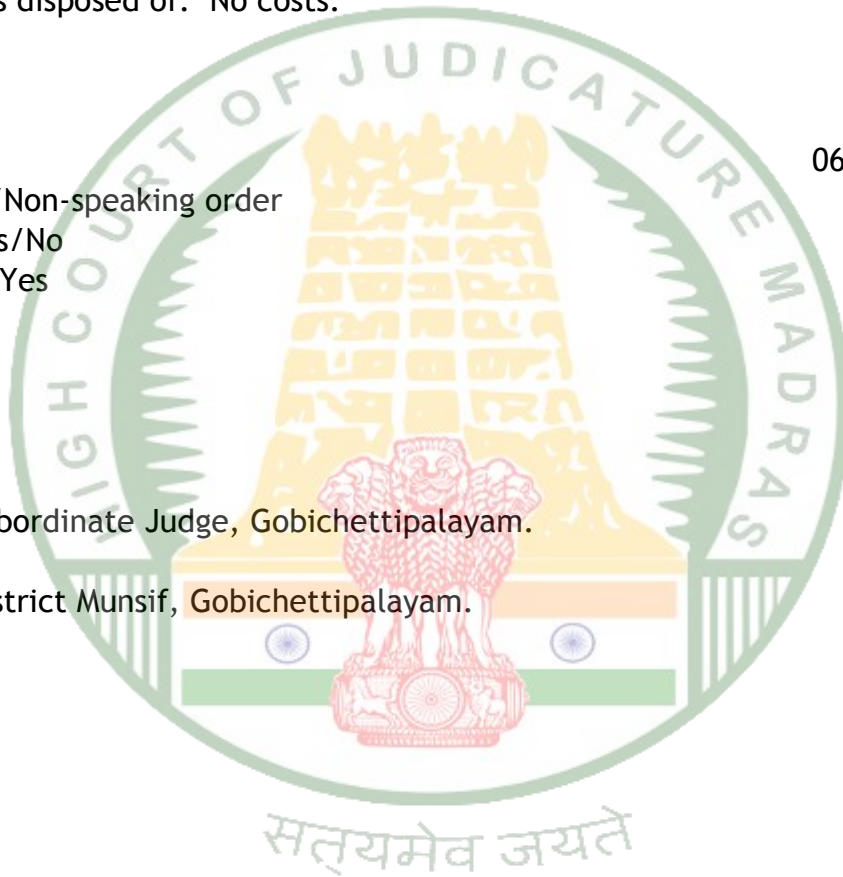
06.01.2020

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes

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To

1. The Subordinate Judge, Gobichettipalayam.
2. The District Munsif, Gobichettipalayam.



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R.PONGIAPPAN, J.,

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Pre-delivery order in
CRP (NPD) No.3869 of 2014

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