



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	29.09.2021
DELIVERED ON	29.10.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No. 527 of 2020

and

C.M.P. (MD)No. 5527 of 2020

WEB COPY

1.R.Muniyandi
2.M.Abisheha Praisy ... Appellants/Respondent Nos.8 & 9
[Minor represented through her next friend 1st Appellant]

Vs.

1.S.Gnanaraj (died)
2.G.Niruba Blesse ... Respondents 1 & 2/Petitioners 1 & 2

3.The Manager,
LIC of India, (Branch Code 748),
Madurai City Branch,
Office No.1, Post Box-26,
Bharath Building, H-3,
West Marret Street, Madurai - 652 001.

4.The Manager,
LIC of India, (Branch Code - 74J)
Sivagangai Branch Office,
23/5 Majeeth Road, Sivagangai - 623 560.

5.The Assistant General Manager,
State Bank of India,
RASMECCC, Madhura Complex,
No.2, Ambedkar Road,
Madurai - 625 002.

6.The Assistant Elementary Educational Officer,
Madurai West, Anaiyur,
Madurai - 625 002.

7.The Manager,
SBI Life Insurance,
No.215, Theni Main Road,
PP Chavadi, Madurai - 625 016.

8.The Commissioner,
Madurai Corporation,
Anna Maligai, Madurai.



9.The Thasildar,
Madurai North,
Madurai District.

... R-3 to 9/R-1 to R-7

PRAYER: Civil Miscellaneous Appeal filed under Section 384 of Indian Succession Act read with order 43 Rule 1 of Civil Procedure Code, to set aside the Judgment and decree passed in S.O.P.No.8 of 2017 on the file of the I Additional District Court, Madurai, dated 09.09.2020 and allow the Civil Miscellaneous Appeal.

For Appellants	: Mr.C.Vakeeswaran
For R-2	: Mr.P.Athimoola Pandian, for Mr.G.Ethirajulu
For R-3 & R-4	: Mr.G.Prabhu Rajadurai
For R-7	: Mr.P.Arun Jayatram
For R-8	: Mr.P.Prabhu Ramachandran
For R-6 & R-9	: Mr.A.Baskaran, Government Advocate
For R-5	: No Appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the order and decree, dated 09.09.2020 in S.O.P.No.8 of 2017 passed by the learned I Additional District Judge, Madurai.

2. Heard on either side. Perused the material documents available on record.

3. The learned counsel appearing for the Appellants submitted that the Court below not to have allowed the Succession Original Petition in favour of the respondents 1 and 2 alone, without considering that the divorce application filed by the deceased as against the 1st respondent herein and the subsequent marriage was solemnized between the deceased and the 1st appellant on 07.07.2006 and thereby the 2nd appellant was born. He further submitted that the Court below has failed to appreciate legal preposition under Section 21 of Indian Divorce Act, 1869 which clearly envisages that even the illegitimate children shall be entitled to succeed in the same manner as the legitimate children, to the estate of the parents.

4.The respondents 1 & 2/petitioners have filed a petition in S.O.P.No.8 of 2017 on the file of the I Additional District Court, Madurai, to issue succession certificate on the ground that the 1st petitioner is husband of deceased ArulHelena and the 2nd petitioner is daughter of the deceased ArulHelena.

5.The appellants/respondents 8 & 9 in S.O.P.No.8 of 2017 contented that the ArulHelena filed a petition in I.D.O.P.No.9 of

<https://hcservices.ecourts.gov.in/hcservices/>



2004 against the 1st petitioner and they lived separately. Then ArulHelena married the 1st petitioner/8th defendant on 07.07.2006 and together the 2nd petitioner/9th defendant.

6.ArulHelena died on 27.08.2017 due to illness leaving Bank account and LIC policies as her assets.

7. The point for consideration is that,

1.Whether the order passed by the learned I Additional District Judge, Madurai, in S.O.P.No.8 of 2017 is liable to be set aside?

2.Whether the appellants are the LR's of ArulHelena?

8.The Marriage between the 1st respondent and ArulHelena is admitted by the appellants. The marriage is in existence. ArulHelena has filed a divorce petition in I.D.O.P.No.9 of 2004 and the same was dismissed for default and there is no further proceedings in that matter.

9.Since the first marriage is alive, second marriage with the first appellant is not valid. Therefore, the first appellant cannot get the status of legal heir for Arulhelena.

10.Regarding the second appellant, when marriage with first appellant is invalid, the birth of the second appellant is also not a legal one. As per Indian Succession Act, only lineal descendants get the status of legal heirs.

11.The ingredients of **Section 25 of Indian Succession Act**, is extracted hereunder:

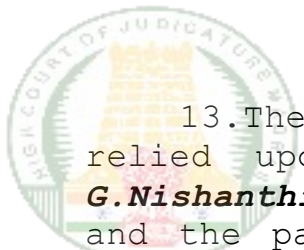
"25.Lineal Consanguinity :

(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."

12.The second appellant is only a illegitimate child.



13.The learned counsel appearing for the respondents 1 & 2 relied upon the Judgment reported in **S.A.No.718 of 2019** in **G.Nishanthi & another one Vs. Deborah (deceased) and 2 others** and the paragraph Nos.10 & 11 are extracted hereunder:

WEB COPY

....
"10.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 judgment 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 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. "

14.He also relied upon the Judgment reported in **A.S.No.23 of 2020, S.Kamalam and seven others Vs. Selvaraja and 2 others** and the paragraph Nos.21 & 22 are extracted hereunder:

.....
"21.In Wharton's Law Lexicon, "Lineal Consanguinity" is defined as that relationship which subsists between persons descendent in a right line, as grandfather, father, son, grandson "Lineal Descent" is defined as the descent of an estate from ancestor to heir in a right line. Reading these two together, "lineal descendant"



WEB COPY

means descendant in the right line as from father to son etc, without any deviation. In the Oxford English Dictionary, Vol.III, a "descendant" is defined as one who "descends" or is descended from an ancestor; issue, offspring (in any decree near or remote).

22. 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 of 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".

15.From the above Judgments, it is clarified that only legitimate child can get status of legal heirs under Indian Succession Act. When Indian Succession Act, clearly uphold the right of legitimate child, Indian Divorce Act, Section 21 cannot interfere with the Succession Act.

16.Finally, this Civil Miscellaneous Appeal is dismissed by confirming the order and decree, dated 09.09.2020 in S.O.P.No.8 of 2017 passed by the learned I Additional District Judge, Madurai. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

The I Additional District Judge,
Madurai.

Copy to

WEB COPY

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.PRABU RAMACHANDRAN, Advocate (SR-33549[F] dated 02/11/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-33587[F] dated 02/11/2021)

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-33331[F] dated 01/11/2021)

+1 CC to M/s.SPL.GP (SR-33395[F] dated 01/11/2021)

Order made in
C.M.A. (MD) .No.527 of 2020
29.10.2021

SR(CO)

RS/SKN (22.11.2021) 6P 8C