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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.243 OF 2017

S.Arumugam

...Appellant / 1st Defendant /
Plaintiff

Vs.

1.The District Collector,
Erode District.

2.The Tahsildar,
Erode Taluk,
Erode District.

...Respondents 1 & 2 / Defendants 2 & 3 /
Defendants 1 & 2

3.R.Krishnaveni

...3rd Respondent / Appellant / 3rd Defendant

PRAYER : The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.12.2016 made in A.S.No.75 of 2015 on the file of the Principal Sub Court, Erode against the judgment and decree dated 09.09.2015 in O.S.No.113 of 2014 passed by the Principal District Munsif at Erode.

For Appellant : Mr.Ashok Kumar
for M/s.G.Pavendhan

For Respondent
Nos.1 and 2 : Mr.P.Harish
Government Advocate

For Respondent No.3 : Mr.V.G.Suresh Kumar

J U D G M E N T

The unsuccessful plaintiff is the appellant before this Court.

2. According to the plaintiff, he got married to one Mahalakshmi on 21.01.1991. Since she was not able to beget a child, she arranged for second marriage to the plaintiff for the

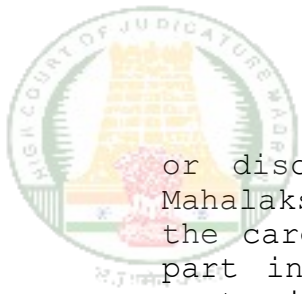


purpose of getting a child and to fulfill her wish to rear a child. The marital status between the plaintiff and the deceased Mahalakshmi continued till her death. The said Mahalakshmi died in a fire accident and an F.I.R. dated 18.08.2013 was registered and investigated. The plaintiff submitted an application to the second defendant, the Tahsildar, for issuance of legal heir certificate along with required documents. The certificate was unduly delayed and on enquiry, it was found that the third defendant created unnecessary obstacles. Thereafter, under the Right to Information Act, the plaintiff submitted a petition to which, the second defendant issued a letter dated 05.02.2014 that he could not issue a legal heir certificate as the said Mahalakshmi and the plaintiff were living separately and directed the plaintiff to approach the Competent Court to get relief. Hence, the suit was filed.

3. The defendants filed written statement denying the averments. Particularly, the third defendant, who is the sister of the deceased Mahalakshmi filed an independent written statement, wherein, it is stated that the marriage between her sister and the plaintiff lasted hardly for five months. The plaintiff physically tortured and caused cruelty to her sister demanding more dowry and jewels. During the month of June, 1991, her sister was beaten up severely and warned not to venture to come back unless she brought Rs.50,000/- as dowry. A criminal complaint was lodged with the Deputy Superintendent of Police, Erode, for dowry harassment, wherein, the plaintiff confessed to crime and agreed to take his wife back, but, he did not take her back till her death.

4. The plaintiff filed a petition for restitution of conjugal rights in H.M.O.P.No.6 of 1992 on the file of the Sub Court, Erode, and it was allowed, against which, Mahalakshmi preferred an appeal in C.M.A.No.31 of 1994 and the Appellate Court, by its order dated 11.03.1994, set aside the order passed in H.M.O.P.No.6 of 1992. During the subsistence of the first marriage, the plaintiff got married to another woman and got two children. Therefore, Mahalakshmi was not able to co-habit with the plaintiff till her death. In 1998, the plaintiff asked Mahalakshmi and her mother to deposit a huge amount in his name in order to take her back. The mother of Mahalakshmi deposited a sum of Rs.50,000/- jointly in the name of the plaintiff and Mahalakshmi, but, the plaintiff demanded entire deposit should be in his name only and it should not be in the joint account. Hence, Mahalakshmi lodged a complaint with "All Women Police Station" and got back the amount.

5. Thereafter, the plaintiff never attempted to take Mahalakshmi back as wife and never lived as husband and wife for more than 20 years and he never exhibited any love and affection

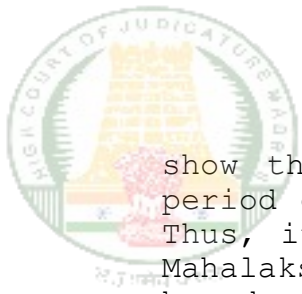


or discharged his duty as husband of deceased Mahalakshmi. Mahalakshmi was totally deserted. Till her death, she was under the care and custody of her mother. The plaintiff did not take part in any function of deceased Mahalakshmi and did not take part in her funeral ceremony. Mahalakshmi nominated her brother's son namely, Boopathy as her legal heir. After the death of Mahalakshmi, the plaintiff in order to grab the properties, is claiming for legal heir certificate. He is not entitled to relief sought for. As per law, Class - II legal heirs given in the genealogy are only entitled to legal heir certificate.

6. The trial Court framed appropriate issues and found that the plaintiff has failed to prove that he was living with Mahalakshmi and that he made an arrangement for cremation of wife as alleged by him. It was further found that the plaintiff was married to another woman and begotten two children through the second marriage during the subsistence of the first marriage. Ex.B1 to Ex.B9 prove that Mahalakshmi was living separately with her mother and shown as daughter of Ramakrishna and not as wife of Arumugam under separate address, but, the trial Court granted the relief on the ground that Mahalakshmi was not divorced through the Court of law and the marriage was not dissolved by the Court of law and therefore, the plaintiff shall be considered as her legal heir. Aggrieved over the same, the third defendant preferred an appeal. The Appellate Court after considering the materials on record, set aside the decree and judgment passed by the trial Court and dismissed the suit, against which, the plaintiff has preferred the present Second Appeal.

7. On notice, the third respondent appeared and argued the case before this Court. The sum and substance of the Second Appeal is that whether the appellant/plaintiff is a legal heir as per law. Both the counsel argued on this legal issue and by consent, the Second Appeal was heard.

8. The admitted fact remains that the plaintiff and the sister of the third respondent namely, Mahalakshmi got married on 21.01.1991. The finding of both the Courts below is that Ex.B1 to Ex.B9 categorically show that the said deceased Mahalakshmi was living separately for more than 20 years and that the appellant did not even attend funeral ceremony of Mahalakshmi. The first information was made by the third defendant and the said Mahalakshmi nominated her brother's son, Boopathy as her heir in the bank deposit. The written statement reveals that the money was deposited in the bank by the mother of Mahalakshmi. It is not the case of the plaintiff that he provided the money for being deposited in the name of Mahalakshmi. On the other hand, the entire narration goes to



show that Mahalakshmi went out of her marital home within a period of six months of marriage on account of demand of dowry. Thus, it is clear that the money was deposited by the mother of Mahalakshmi in the name of deceased and the deceased nominated her brother's son to receive the money. In other words, the property of the deceased flowed from her mother and not from her husband. The trial Court though had found that all the materials go to show that the plaintiff was not living with the deceased Mahalakshmi for more than 20 years, since the marriage was not dissolved in accordance with law, decreed that he is the legal heir and he is entitled to legal heir certificate. There is no contradictory evidence produced by the appellant to show that he was living with the deceased Mahalakshmi in the same room and that he was maintaining her as wife and he has not married anybody else. The very averment made in the plaint goes to show that the deceased Mahalakshmi wanted her husband to get a child to fulfill her wish to rear a child. Therefore, he consented for second marriage. This averment clearly shows that the plaintiff got married during the subsistence of the first marriage and begotten two children. The plaintiff has not proved by the evidence that the deceased Mahalakshmi had consented for second marriage and that she had taken care of children born through his second wife.

9. On the contrary, the Courts below have categorically discussed that the plaintiff has failed to explain as to why the deceased Mahalakshmi nominated her brother's son as her legal heir in spite of her consent for the second marriage and wish to rear a child for husband. Secondly, the appellant has failed to explain as to why the deceased first wife lived separately for 20 years. Therefore, the undisputable evidence goes to show that the marriage was irretrievably broken and the appellant and the deceased Mahalakshmi were not living together as husband and wife for more than two decades.

10. The learned counsel for the appellant would vehemently contend that a Division Bench in W.A.(MD) No.535 of 2019, by judgment dated 08.08.2019, has categorically laid down rationale that the husband could be the legal heir and he will prevail over the legal heirs mentioned in Section 8 of the Hindu Succession Act. Section 8 specifies the succession of male Hindu, which governs the property of the male Hindu dying intestate, whereas, in case of a female Hindu dying intestate, it shall be distributed as per the legal heir mentioned in Section 15 of the Hindu Succession Act. Accordingly, the husband is the only legal heir and therefore, the third defendant or anybody else cannot claim any right as a legal heir of the deceased Mahalakshmi as the marriage was in subsistence till her death and it was not dissolved in the manner known to law.



11. Be that as it may, insofar as devolution of property in respect of a female Hindu, Section 15 of the Hindu Succession Act, governs the same. As per sub-section 1 of Section 15, the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16. Firstly, it devolves on sons or daughters and her husband. According to the appellant, the husband is the legal heir and he will prevail over the other legal heirs namely, the father and the mother of the deceased. Admittedly, there are no issues to the deceased Mahalakshmi and therefore, he should be considered as only legal heir and the legal heir certificate should be issued.

12. A reading of sub-section 2 reveals that intention of the law makers is otherwise. Sub-section 2 reads as under:-

(2) Notwithstanding anything contained in sub-section (1), -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

13. The non abstante clause specified in sub-section 2 clearly shows that in spite of sub-section (1) which specifies the husband is the legal heir in respect of any property inherited by a female Hindu from her father or mother and it shall devolve, in the absence of any son or daughter of the deceased not upon the other heirs, but upon the heirs of the father. Not upon the other heirs means not upon the husband, who was mentioned as legal heir in clause (a) of sub-section (1) of Section 15.

14. In the instant case, admittedly, the money was deposited by the mother to Mahalakshmi's bank account and that she nominated her brother's son, Boopathy as nominee. In that event, sub-section (2) of Section 15 of Hindu Succession Act, governs the inheritance. As per above Section, the husband would stand eliminated for the property, which was inherited by a female Hindu from her father or mother. Therefore, the money deposited by the mother of the deceased Mahalakshmi in her favour will devolve upon her children. In the absence of the



children, it devolves upon the heirs of the father namely, the third defendant and others and not upon the husband, who is specifically eliminated by sub-section 2 (a) of Section 15 of Hindu Succession Act. Therefore, the Second Appeal preferred by the appellant does not merit consideration and does not deserve admission and accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Erode.

2.The Principal District Munsif,
Erode.

+1cc to Mr.G.Pavendhan, Advocate Sr.No.424

+1cc to Mr.V.G.Suresh Kumar, Advocate Sr.No.562

+1cc to the Special Government Pleader Sr.No.494

S.A.No.243 of 2017

NR (CO)
RVM(13/06/2022)