

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS SECOND APPEAL No.16 of 2022

JUDGMENT:

1. The present second appeal is arising out of judgment and decree dated 24.03.2022 in C.M.A.No.66 of 2016 on the file of IV Additional District and Sessions Judge, Rangareddy District at L.B.Nagar, wherein and whereby, order dated 17.12.2014 in O.P.No.6 of 2014 on the file of Principal Senior Civil Judge, Rangareddy District at L.B.Nagar, whereunder succession granted in favour of the appellants herein, in respect of death benefits of E. Raju, who was working as Safai Karmachari in National Police Academy, Hyderabad, was set aside and appeal was allowed. Aggrieved by the same, the present second appeal is filed.

2. It is the case of the appellants that appellant No.1 is legally wedded wife of E. Raju (hereinafter referred to as 'deceased'), who was working as Safai Karmachari in National Police Academy, Hyderabad. Their marriage took place on 25.01.2009 and out of the said wedlock appellant No.2 was born on 15.01.2009. On 24.03.2012, said E. Raju died due to cardio respiratory arrest, while undergoing treatment in Care Hospital, Hyderabad. During his life time, the deceased

made entries into his service register showing appellants herein and his mother as his family members. The said entries reflect that appellant Nos.1 and 2 are wife and son of the deceased. After the death of deceased, the appellants obtained legal heir certificate dated 26.07.2012 from Mandal Revenue Officer, Rajendranagar Mandal, Rangareddy District. Meanwhile, the mother of the deceased also expired on 29.10.2013. Therefore, the appellants herein filed succession O.P.No.6 of 2014 claiming service benefits of the deceased. The trial Court after appreciating the evidence on record allowed the claim of the appellants and granted succession certificate dated 17.12.2014 in favour of appellants.

3. It is the case of respondent Nos.1 to 4 herein that respondent No.1 is legally wedded wife of the deceased and appellant No.1 is not legally wedded wife. Out of the marriage between deceased and respondent No.1, respondent Nos. 2 to 4 were born. They also claimed that they filed O.P.No.2 of 2014 on the file of Munsif Court, Attingal, Kerala and obtained succession certificate dated 24.03.2015, as legal heirs of deceased. Respondent No.1 herein also filed O.P.No.380 of 2013 on the file of Family Court, Attingal,

Kerala and obtained declaration that she is legally wedded wife of the deceased. Appellant No.1 herein was party to both the said cases, but she did not contest the proceedings. Ultimately, the Courts in Kerala declared that respondent Nos.1 to 4 are legal heirs of the deceased, and respondent No.1 was declared as legally wedded wife of the deceased. According to them, suppressing the said facts O.P.No.6 of 2014 was filed by the appellants and succession certificate was obtained illegally without making them party to the suit. Hence, they filed the first appeal.

4. In view of the above facts and in the light of the findings rendered by the Courts in Kerala in O.P.Nos.380 of 2013 and 280 of 2014, the first appellate Court allowed the appeal. Consequently, the succession certificate granted in the favour of the appellants herein was cancelled. Aggrieved by the same, the present second appeal is filed at the instance of the appellants.

5. Heard both sides.

6. In the light of above submissions, the points emerging for consideration in this second appeal are as follows:

- “1. Whether the appellants are entitled to claim as legal heirs to the estate of the deceased?
2. Whether the respondent Nos.1 to 4 are alone entitled to be declared as legal heirs of the deceased?
3. To what relief ?”

Point Nos.1 and 2:

7. Learned counsel for the appellants contended that the entries in service register of the deceased show that the appellants along with mother of the deceased were only his family members and there are no entries of names respondent Nos.1 to 4. Therefore, according to him, the first appellate Court ought not to have set aside the succession granted in favour of the appellants.

8. On the contrary, learned counsel for respondent Nos. 1 to 4 contended that there is a judgment and decree from competent Court that the respondent No.1 is legally wedded wife of the deceased and appellant No.1 was made party to such proceedings. Similarly, the Munsif Court, Attingal, Kerala has granted succession certificate in favour of respondent Nos.1 to 4 and appellant No.1 was also made as party to such proceedings. Therefore, according to him, the first appellate Court considered all the material placed on

record and has rightly set aside the succession certificate obtained by the appellants. Such order requires no interference by this Court.

9. It is not seriously in dispute that names of appellants are entered in the service register of deceased, as wife and son. The judgment and decree obtained by respondent Nos.1 to 4 from Family Court, Attingal, Kerala shows that respondent No.1 is legally wedded wife of deceased and appellant No.1 was made party to such proceedings. When such a declaration of legal status is on record, without assailing such order, appellant No.1 cannot say that she is legally wedded wife of the deceased.

10. It is also not seriously in dispute that appellant No.2 is son of deceased and born out of invalid marriage of deceased and appellant No.1. Appellant No.2 is also legal heir of the deceased and he is entitled to claim right in the estate of his deceased father. The first appellate Court has not considered this aspect that appellant No.2 is one of the legal heirs of deceased. To that effect, findings of the first appellate Court requires interference.

Point No.3:

11. In the result, the second appeal is partly allowed and preliminarily decreed as follows:

- a. The judgment and decree dated 24.03.2022 in C.M.A.No.66 of 2016 on the file of IV Additional District and Sessions Judge, Rangareddy District at L.B.Nagar, is set aside to the extent of issue of succession certificate to appellant No.2, to the extent of 1/5th share in the estate of deceased.
- b. Appellant No.2 is entitled to succession certificate to the extent of 1/5th share of amounts lying to the credit of deceased estate.
- c. Respondent Nos. 1 to 4 are entitled to 1/5th share each in the estate along with appellant No.2.
- d. There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 25.11.2022
GVR