



A.No.2336 of 2022

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in
O.P.No.759 of 2016

SENTHILKUMAR RAMAMOORTHY, J.

By order dated 02.11.2018, O.P.No.759 of 2016 was allowed by issuing a succession certificate in respect of the debts described in the schedule to the petition. By this application, the respondent in the O.P. seeks to revoke the succession certificate. For the sake of convenience, the parties are referred to as per their status in O.P.No.759 of 2016.

2. The respondent states that she married the late Mr.T.Kathiresan on 30.05.2004. In support of this contention, the certificate of marriage issued on 31.05.2004 is relied upon. According to the respondent, the late T.Kathiresan suppressed his earlier marriage to the first respondent herein at the time of his marriage to the applicant. By relying upon the ration card and election ID, it is contended that the applicant was described in the said documents as the wife of the deceased.



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3. Learned counsel for the respondent also submits that the respondent resided with the deceased at the address shown in the cause title until his death. Thereafter, it is submitted that the applicant shifted to Kerala and was, therefore, unaware about the proceedings culminating in the grant of the succession certificate.

4. The next contention of learned counsel for the respondent is that the expression "wife" should be construed widely and not narrowly. In support of this contention, reliance was placed on the judgment of the Supreme Court in *Badshah v. Urmila Badshah Godse and another (Badshah)*, (2014) 1 SCC 188, particularly paragraph 11 thereof. Learned counsel also relies upon the judgment of this Court in *K.Rajeswari v. The Secretary to Government, Personnel and Administrative Reforms Department and others (Rajeswari)*, MANU/TN/1103/2011, to contend that bigamy is a punishable offence under service rules and that, therefore, no relief should be granted to the petitioners.



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5. In conclusion, learned counsel asserts that the petitioners suppressed material facts relating to proceedings for maintenance and criminal proceedings between the parties hereto. For all these reasons, it is stated that the succession certificate is liable to be revoked.

6. In response to these contentions, learned counsel for the petitioners submits that there is no defect in the proceedings culminating in the grant of succession certificate. Since the petitioners were aware that the first respondent's late husband was living with the applicant, she was joined as a respondent in the petition and the petition was proceeded with after serving notice on the respondent. Learned counsel contended that the applicant was aware of the marriage of the deceased to the first petitioner. Indeed, he submits that the applicant has referred to this fact in paragraph 6 of the rejoinder. Learned counsel further submits that upon grant of the succession certificate on 02.11.2018, the petitioners received the benefits in terms thereof. As such, it is submitted that no case is made out for interference at this juncture.



7. A succession certificate may be revoked for any of the reasons specified in Section 383 of the Indian Succession Act, 1925 (the Succession Act). Section 383 is set out below:

"383. Revocation of certificate. - A certificate granted under this Part may be revoked for any of the following causes, namely :-

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked."



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8. In *Joseph Easwaran Wapshare v. Shirley Katheleen Wheeler*,

WEB CO (2019) 5 SCC 58, the Supreme Court concluded that the grounds specified in Section 383 are exhaustive. Therefore, it should be examined whether a case to revoke the grant is made out on the grounds specified in Section 383 of the Succession Act.

9. In order to establish entitlement to relief in the O.P., the petitioners adduced evidence by examining the first petitioner as PW1. In the course of the examination in chief of PW 1, 10 documents were exhibited as Exs.P1-P10. The death certificate of the late T.Kathiresan was exhibited as Ex.P1. The legal heirship certificate dated 17.11.2015 indicating the names of the petitioners as the legal heirs was exhibited as Ex.P2. The marriage invitation card for the marriage ceremony on 15.12.1985 between the deceased and first petitioner is on record as Ex.P3. The family card for the period 1998-2003 was exhibited as Ex.P4 and reflects the name of the deceased as the head of the family and the petitioners as the members of the family. The Family Court order dated 16.05.2005 in M.C.No.528/2004 was exhibited as Ex.P6. By this order, the deceased was directed to pay monthly maintenance



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of Rs.10,000/- to the first petitioner. Exs.P7 and P8 are the representations made by the petitioners to the Regional Administrative Medical Officer (ESI). Paper publication was effected and exhibited as Ex.P10. On considering the above evidence, this Court arrived at the conclusion that the petitioners are the only legal heirs of the deceased and issued the succession certificate.

10. The main ground on which the grant is challenged is that the respondent married the late Mr.T.Kathiresan and lived with him until his death. In the petition, the petitioners stated that the first petitioner's husband deserted the petitioners and was living with the respondent. For such reason, the petitioners arrayed the respondent as a party to the O.P. As is evident from the discussion on the evidence adduced by the petitioners, the petitioners placed on record evidence that the first petitioner married the late Mr.Kathiresan on 15.12.1985, which is much prior to 30.05.2004, i.e. the date of the purported marriage between the respondent and Mr.Kathiresan. In order to establish the validity of the purported marriage on 30.05.2004, the respondent should have produced a



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decree of divorce by which the earlier marriage was dissolved. The respondent did not assert or provide evidence of the dissolution of the earlier marriage. Indeed, as contended by learned counsel for the petitioners, the respondent implicitly admitted that the deceased was married to the first petitioner in paragraph 6 of the rejoinder, which is set out below:

"I submit that I am being legally wedded wife of the deceased T.Kathiresan though I was duped by the deceased at the time of our marriage that he was single and unmarried. Throughout his whole life with me I carried out my duties as a dutiful wife to my husband by taking care of his health condition and assisted him while he was sick. I am also entitled to receive the benefits arising out death of my husband as I have nobody to take care of me throughout my life and struggling my life to meet both ends without him by economically and mentally."

11. Under the Hindu Succession Act, 1956 (the Hindu Succession Act) when a Hindu male dies intestate, succession is determined on the basis of Section 8 thereof read with the schedule thereto. As per the said



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provision, the following persons, if alive, would qualify as Class I legal heirs of the deceased Hindu male: his mother, wife and children. If the children pre-decease him, their children would qualify. Thus, unless the applicant establishes that she qualifies as the wife, she cannot contend that the grant was defective in substance. Being acutely conscious of this predicament, learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in **Badshah**. The said judgment dealt with the meaning of the expression "wife" in Section 125 of the Code of Criminal Procedure, 1973. In that context, the Supreme Court concluded that the expression should be construed widely so as to enable a person in a long term relationship with a man to receive maintenance. The interpretation placed on the expression "wife" in Section 125 of the Cr.P.C cannot be imported into and applied to Section 8 of the Hindu Succession Act. **Rajeswari** dealt with bigamy as misconduct under applicable service rules. Considering that the Government servant, Mr.Kathiresan, is dead, the principle laid down therein has no bearing on this case.



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12. The respondent contends that she currently resides at No.A8, Prince Village - 1, 4th Floor, No.405, Ellaiar Mudali Streer, Tondiarpet, Chennai 81. Therefore, it is stated that she did not receive notice at the address specified in the cause title of the O.P. Except for the Aadhaar card, which was issued subsequently, the other documents produced by the respondent specify the address shown in the cause title to the petition. In view thereof, the petitioners cannot be faulted for providing the address specified in the cause title. Although service was effected on the respondent by substituted service by paper publication, in the facts and circumstances set out above, the grant is not vitiated on that account.

13. On perusal of the petition, the evidence recorded previously and the documents placed on record by the respondent, it cannot be said that the petitioners obtained the certificate fraudulently by making false suggestions or suppressing material facts or by making untrue allegations on facts essential to the grant. It also cannot be concluded that the grant is defective in substance.



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14. Hence, the applicant has failed to establish any of the grounds for
revoking a grant under Section 383 of the Indian Succession Act. As a
result, the application is liable to be and is hereby dismissed.

19.01.2023

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