



CRP No. 2429 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.2429 of 2017
and
C.M.P.Nos.16968 of 2018 and 11434 of 2017

1. Yesodha
2. Krishnakumar

.. Petitioners

Versus

1. Subbulakshmi
2. M/s.Sri.Ramakrishna Mills Ltd., Coimbatore.
Ganapathy Post,
Coimbatore-641 006.
3.The Regional Provident Fund Commissioner,
Dr. Balasundaram Road,
Coimbatore-641 018.

.. Respondents

Civil Revision Petition filed Under Sub Clause 3 of Section 388 of the Indian Succession Act r/w Section 115 of the Code of Civil Procedure praying to set aside the judgment and Decree dated 24.02.2017 made in C.M.A. No. 35 of 2007 on the file of the III Additional District and Sessions Court, Coimbatore, confirming the fair and decreetal order dated 13.09.2005 passed in S.O.P.No.64 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioners : Mr. C.R. Prasanan

For Respondents : Mrs. R. Meenakshi



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ORDER

WEB COPY The petitioners have filed this Civil Revision Petition praying to set aside the judgment and Decree dated 24.02.2017, made in C.M.A. No. 35 of 2007 on the file of the III Additional District and Sessions Court, Coimbatore, confirming the fair and decreetal order dated 13.09.2005 made in S.O.P.No.64 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

2. Heard Mr. C.R. Prasanan, learned counsel for the petitioners and Mrs.R. Meenakshi, learned Counsel for the respondents and perused the materials available on record.

3. The petitioners herein are the first and fourth respondents in S.O.P. No. 64 of 1999 on the file of Principal Subordinate Court, Coimbatore. The said S.O.P. No. 64 of 1999 was filed by the first respondent in this revision petition praying to grant succession certificate, authorising her to realise the debts and securities mentioned in the Schedule of the Petition. According to the first respondent herein, she is the wife of Late. Sigamani, who was employed in Sri Ramakrishna Mills Limited. It is further stated by the first respondent herein that her husband Sigamani died intestate on 21.09.1998 at Coimbatore, where he was ordinarily residing until his death. It



is further stated by the first respondent herein that she is the legally wedded wife and except her, there is no other person left by her husband as legal heir.

It is further stated that the first revision petitioner herein is the concubine of her husband Sigamani and she cannot be construed as legal heir. However, the first revision petitioner alleged to have attempted to submit an application to the employer Mill where the deceased was employed as well as provident fund authorities claiming the benefits payable to the deceased. Therefore, the first respondent issued a notice dated 16.12.1998 to the employer of the deceased as well as the Provident fund authorities to disburse the death benefits to her, but the notice was not responded to. Therefore, the first respondent has filed SOP No. 64 of 1999.

4. On notice, the first revision petitioner filed a counter statement contending that the S.O.P.No.64 of 1999 is not maintainable. The first revision petitioner point out that the deceased Sigamani married her on 21.08.1987 at Vinayagar Temple, near Ranganathan Temple, Karamadai as per Hindu rites and customs and after their marriage, they lived together for about 7 years at Nesavalur Colony in a rented house. In the said wedlock the second revision petitioner was born on 03.07.1989. On 21.09.1998, the deceased Sigamani died due to cardiac arrest at his residence at Sivananda Colony, Coimbatore,



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leaving behind the revision petitioners as his legal heirs. It was also stated that the deceased Sigamani has executed an unregistered Will on 17/09/1998 bequeathing all his movable and immovable property to the first petitioner to be enjoyed until her life time and after her death the properties shall vest absolutely to his Son Krishnakumar/second petitioner herein. As the deceased died, the Will came into force. It is also stated that the first respondent is not the legally wedded wife of Sigamani, as claimed and she is not entitled to any of the benefits payable to the deceased. Accordingly, the revision petitioners prayed for dismissal of the SOP No. 64 of 1999.

5. Before the trial Court, both the parties adduced oral and documentary evidence and on consideration of the same, the learned trial Judge held that the first respondent herein is the legal wedded wife of deceased Sigamani. It was also held that the unregistered Will relied by the revision petitioners has not been proved in a manner known to law. However it was held that the second revision petitioner herein is the son born to the said Sigamani and the first revision petitioner. It was also held that the deceased Sigamani married the first revision petitioner during the subsistence of the marriage with the first respondent herein. So the second revision petitioner was declared as his illegitimate Son and he is entitled for half share in the estate



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of the deceased Sigamani along with the first respondent who is the legally wedded wife. Accordingly the Succession Original Petition was ordered and no relief was granted to the first revision petitioner herein.

6. By challenging the said findings, the petitioners herein have preferred an appeal in CMA. No. 35 of 2007 before the learned III Additional District and Sessions Judge, Coimbatore, stating that the learned trial Judge erroneously concluded that the Subbulakshmi/ first respondent herein is the legally wedded wife of the deceased Sigamani. While denying the status of legally wedded wife in favour of the first revision petitioner, the trial court has held that the second revision petitioner is the illegitimate son born to Sigamani through the first revision petitioner. Further, the Will dated 17.09.1998 relied by the revision petitioners was duly executed and attested by witnesses, but it was not properly considered by the trial court.

7. The Appellate Court, on consideration of the evidence made available, confirmed the order passed by the trial court and dismissed the appeal.



8. The learned counsel for the revision petitioners argue that the marriage with Sigamani and the first petitioner was proved in a manner known to law. However, the learned trial Judge as well as the Lower Appellate Judge failed to appreciate the said aspect and erroneously held that even if the marriage is proved, the first revision petitioner is not entitled to any share since the marriage with first respondent herein was subsisting at the time of their marriage. He further argues that the courts below erroneously held that the Will came to be executed in a suspicious circumstances without proper appreciation of the oral evidence of P.W.2, one of the attestors of the Will and as such they have complied with the requirements under Section 68 of Indian Evidence Act and therefore, the judgment of the courts below are liable to be set aside. Further he submitted that co-habitation between the first petitioner and her husband Sigamani for over a period of 7 years under one roof has been proved but the Courts below refused to accord the status of legally wedded wife to the first revision petitioner. Both the Courts below erroneously concluded that the first revision petitioner is not entitled to get any benefits from the death of the deceased Sigamani, while according the status of son in favour of the second revision petitioner. Therefore, the learned counsel for the revision petitioners prayed for allowing this Civil Revision Petition by setting aside the orders of the courts below.



9. The point to be decided in this Civil Revision Petition is

"whether, the revision petitioners are the legal heirs and entitled to succeed the estate of the deceased Sigamani".

10. The facts reveals that the first respondent herein/Subbulakshmi claims herself as legally wedded wife of the deceased Sigamani and filed above SOP No. 64 of 1999 praying to grant her succession certificate so as to receive the benefits of her husband deceased Sigamani.

11. The first revision petitioner opposed the Petition and denied the legal status of the said Subbulakshmi by contending that she married the deceased Sigamani on 21.08.1987 as per the Hindu rites and customs even though they belong to different caste. It is also stated that after marriage, they started living together at Nesavalur Street where the second revision petitioner born on 03.07.1989. It is also stated that subsequently, the first revision petitioner shifted their house to Sivananda Colony and till the death of Sigamani they lived together there. At the same time, it was stated by the first revision petitioner that she was not aware of the said marriage between Sigamani and Subbulakshmi/first respondent herein. She also denied that the first respondent is not the wife of deceased Sigamani. Further, she relied on



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the unregistered Will said to have been executed by the deceased, four days before his demise. Based on the Will, the revision petitioners claim that the first revision petitioner was given life estate and after her death, the properties covered in the Will shall devolve on the second revision petitioner.

12. Such defence taken by the revision petitioners clearly reveal that they have not accepted the legal status of Subbulakshmi/first respondent herein. But before the trial Court, first respondent herein established that she married the deceased Sigamani but due to misunderstanding they were separated and thereafter she filed a maintenance claim before the jurisdictional Court and also obtained order of maintenance and for arrears of maintenance also. In fact, the first respondent herein has filed an application to create a charge over the immovable property belongs to Sigamani/her husband in O.S. No.17 of 1995 and a copy of the complaint was also produced before this Court. Though the first revision petitioner herein denied the status of the first respondent as legally wedded wife, during the life time of the Sigamani, there was a matrimonial dispute between him and the first respondent herein and it was pending before the competent Court. Besides she also initiated maintenance proceedings and realized the maintenance amount. The petition filed by the first respondent to create a charge over the properties was allowed



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by the trial Court. Therefore, the documents produced as Ex.A2, A4 and A5 clearly shows that during the life time of Sigamani, the first respondent herein prosecuted him for claim of maintenance which itself proves that they lead a matrimonial life as husband and wife.

13. Even on a perusal of Ex.A3, Original Petition No. 28 of 1983 on the file of Subordinate Judge, Coimbatore filed by the deceased Sigamani against the first respondent/Subbulakshmi praying for a decree of divorce under Section 13 (1)(1b) of Hindu Marriage Act, it is clear that even in the year 1983 itself there was a dispute between Subbulakshmi and the deceased Sigamani. This clearly denotes that they got marriage and lived as husband and wife and due to matrimonial difference, the deceased filed a petition for divorce. Even assuming that the first revision petitioner married Sigamani her claim that the deceased married her in the year 1987 would clearly shows that as on the date of alleged marriage, the marriage of Sigamani with Subbulakshmi was subsisting. So the said Subbulakshmi is the legally wedded wife of the deceased Sigamani and the same was rightly concluded by the Courts below, which needs no interference by this Court.



14. It is also an admitted fact that the Petition for divorce was filed by the deceased, but it has not been prosecuted by him so it was dismissed for default, thereby during the life time of the deceased there was no decree of divorce granted between the parties. So, on the date of death of Sigamani the first respondent/Subbulakshmi was his legally wedded wife. As per Ex.B2-Birth certificate the second petitioner/Krishnakumar was born to the deceased and the first revision petitioner Yesodha and therefore, he was declared as the illegitimate son of the deceased and the first revision petitioner. It is an undisputed fact and there is no children between the deceased and the first respondent.

15. Now the point to be decided is, whether the Will relied by the first revision petitioner is proved beyond reasonable doubt. Before the trial Court one of the attestors was examined to prove the Will on the side of the revision petitioners. Admittedly, the said attesor is none other than the brother of the deceased and as per his evidence he saw his brother Sigamani unwell and unhealthy. He also stated that testator executed an unregistered Will in favour of the revision petitioners and signed it in his presence and he also saw the signature affixed by the said Sigamani and thereafter, he affixed his signature. But admittedly on perusal of the unregistered Will, as per the evidence of



PW.2 the said Will was preferred by one Sundarajan. But on the back side of the Will one Manokaran was said to be a person who prepared the Will.

Therefore, discrepancy has not been properly explained by the revision petitioners by adducing proper material evidence. Furthermore one of the witnesses is brother of the deceased and another one is the brother of the first revision petitioner. It is an admitted fact that already Sigamani filed a partition suit against P.W.2 so there is no cordial relationship between themselves, and there was reason to support the first revision petitioner. Thus the Court below rightly concluded that the Will has not been proved beyond reasonable doubt besides the other attester has not been examined.

16. But the learned counsel for the revision petitioners argued that under Section 68 of the Evidence Act examining one of the attesting witnesses is sufficient to prove the execution of the Will and the same was complied, so there is no necessity to examine the other attester. The said argument advanced by the counsel for the revision petitioners is acceptable one but, coming to the facts of the present case PW2 is the brother of the deceased and another attester is the brother of the first petitioner and there is no independent witness attested as witnesses. Further the execution of the Will has not been proved, for the reason that, there is a contradiction with regard to the preparation of the



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Will. Above all, the Will is an unregistered Will. Therefore, the Courts below rightly concluded that the Will has not been proved beyond reasonable doubt, which needs no interference by this Court.

17. So as discussed above the first respondent is the legally wedded wife of the deceased and the 2nd petitioner/Krishnakumar is the son of the deceased born through the first revision petitioner are legal heirs. Both are equally entitled to get 50% in the retirement benefits of the deceased Sigamani. Hence, the findings of the Courts below are confirmed and a direction is issued to issue Succession certificate in favour of the first respondent/Subbulakshmi and as well as the 2nd petitioner / Krishnakumar.

18. Accordingly, the present Civil Revision petition is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed.

No costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To
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1. The III Additional District and Sessions Court, Coimbatore.
2. The Principal Subordinate Court, Coimbatore.
3. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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