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S.A.No. 1222 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1222 of 2012

1. K.R.Kalyani
2. Ezhilarasi
3. Minor. Cherelathan
Represented by mother K.R.Kalyani ... Appellants / Plaintiffs

Vs.

1. Krishnaveni
2. Cholarajan
3. Rajathi ... Respondents / Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree in A.S.No.14 of 2011 dated 25.08.2012 on the file of Sub-Court, Tirupattur, Vellore District reversing the judgment and decree in O.S.No.267 of 2005 dated 20.10.2010 on the file of District Munsif Court, Tirupattur, Vellore District.

For Appellant : Mr.PA.Sudesh Kumar

For Respondent : Mr.M.Guruprasad



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JUDGMENT

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Heard Mr.PA.Sudesh Kumar, the learned counsel for the appellant and Mr.M.Guruprasad, the learned counsel for the respondent.

2. The appellants are the plaintiffs who have filed the suit for the relief of declaration that the plaintiffs and the defendants are the legal heirs of the deceased K.C.Radhakrishnan and they are entitled to the death benefits of Mr.K.C.Radhakrishnan from the Government. The suit was decreed in part by the trial Court by holding that the plaintiffs 2 and 3 and defendants 1 to 3 are the legal heirs of K.C.Radhakrishnan and they are entitled to the death benefits of K.C.Radhakrishnan. Aggrieved by the same, the defendants challenged the judgment of the trial Court and the appeal has been allowed by setting aside the judgment and decree of the trial Court by holding that the appellant /defendants and the plaintiffs are also not entitled to the death benefits of K.C.Radhakrishnan. Though the defendant did not prefer to challenge the judgment and decree of the first appellate Court, the plaintiffs has filed this second appeal challenging the same.



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3. The short facts pleaded in the plaint filed by the plaintiff are as

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One K.C.Radhakrishnan, son of Chinna Gounder was working as an Organizer in the Noon Meal Scheme in the Panchayat Union Elementary School, Kudiyanakuppam. K.C.Radhakrishnan had married the first defendant as per the Hindu Law and out of the said wedlock the defendants 2 and 3 were born to them. The first defendant fall ill and she was not able to do any domestic work and with her consent K.C.Radhakrishnan married the first plaintiff as his second wife and the plaintiffs 2 and 3 are born. K.C.Radhakrishnan died on 10.01.2005 while he was in service leaving behind the plaintiffs and the defendants as his legal heirs. The first plaintiff claimed the death benefits of K.C.Radhakrishnan as she was advised to get the succession certificate from the Court. But however, the plaintiffs have filed a suit to declare the status of the plaintiffs and the defendants as the legal heirs of the deceased K.C.Radhakrishnan.

4. The short averments pleaded in the written statement filed by the first defendant and adopted by the second and third defendants are as follows:



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It is false to state that with the consent of the first defendant, the deceased K.C.Radhakrishnan had married the first plaintiff as his second wife and that the plaintiffs 2 and 3 born to them. The deceased K.C.Radhakrishnan had recognized the first defendant as his legally wedded wife and hence the defendants alone are the legal heirs of the deceased K.C.Radhakrishnan.

5. On the basis of the above pleadings, the trial Court has framed the following issues:

- “1. 1ம் பிரதிவாதி ராதாகிருஷ்ணனின் சட்டபடியான மனைவியா ?
2. வாதிகள் தான் இறந்த ராதாகிருஷ்ணனின் சட்டபடியாக வாரிசுகள் என்பது சரியா ?
3. வழக்குக்கு வழக்குமூலம் இல்லையா ?
4. வாதிக்கு அவர் கோரும் பரிகாரம் கிடைக்கத் தக்கதா ?
5. எப்பரிகாரத்துக்கு ?

Additional issues raised by the trial Court are as follows:

1. பிரதிவாதிகள் கூறியவாறு இறந்துபோன கே.சி.ராதாகிருஷ்ணனுக்கு பிரதிவாதிகள் மட்டுமே வாரிசுதாரர்களா ?
2. பிரதிவாதிகள் கோரும் பரிகாரம் கிடைக்கத்தக்கதா?
3. பிரதிவாதிகளுக்கு கிடைக்கக்கூடிய பரிகாரம் யாது?”



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6. During the course of trial, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A5 have marked. On the side of the defendants two witnesses were examined as D.W.1 and D.W. 2 and Exs.B1 to B7 were marked.

7. At the conclusion of the trial, the trial Court partly decreed the suit by holding that the plaintiffs 2 and 3 and the defendants are the legal heirs of the deceased K.C.Radhakrishnan. On the first appeal preferred by the defendants, the first appellate Court has disposed the appeal by setting aside the judgment and the decree of the trial Court by observing that the defendants did not make any counter-claim and hence, no relief can be granted to the defendant. Now the plaintiffs have preferred this Second Appeal.

8. On hearing the arguments of both side counsel, I feel it is appropriate that the following Substantial Questions of Law are allowed to be raised in the second appeal:

“ 1. Whether the first appellate Court is right in holding that suit for declaration without any consequential injunction shall fail to succeed on such framing of the suit itself ?



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2. Whether the first appellate Court is right in denying the relief to both the rival parties by allowing the appeal on some incongruous reasons, which cannot be countenanced in the court of law ?”

9. Before proceeding to deal with the merits of the judgment of the first appellate Court in setting aside the decree of the trial Court certain unshakable facts have to be admitted. The suit has been filed by the appellants / plaintiffs for seeking the relief of declaration as to the status that they are the legal heirs of the deceased K.C.Radhakrishnan along with the defendants 1, 2 and 3. When the suit has been decreed as prayed by including the plaintiffs 2 and 3 and the defendants 1 to 3 as legal heirs of the deceased K.C.Radhakrishnan, the first plaintiff did not chose to prefer any appeal. The defendants alone have preferred the appeal. It appears that the first appellate Court has approached the status of the plaintiffs 2 and 3 more specifically the paternity of the deceased K.C.Radhakrishnan for the plaintiffs 2 and 3, only on the presumption that there should be a valid marriage between the deceased K.C.Radhakrishnan and the first plaintiff and the first plaintiff ought to have been proved the same in order to accept the plaintiffs 2 and 3 as the children of the deceased K.C.Radhakrishnan.



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10. Even according to the first plaintiff her alleged marriage was during the subsistence of the first defendant's marriage with the deceased K.C.Radhakrishnan. Even if the first plaintiff happened to prove before the Court that there was solemnization of marriage, that can be of no consequence because no validity can be attached to the said marriage as it would be an illegal marriage in view of the first marriage of the K.C.Radhakrishnan with the first defendant was subsisting. The first appellate Court ought to have scrutinized the reasoning and the legality of the findings of the trial Court with regard to the acceptance of the plaintiffs 2 and 3 as the children born to late K.C.Radhakrishnan through the first plaintiff. Though the legal heirship certificate alone cannot conclude the heirship of a person to the deceased, that can be a corroborative evidence as to the relationship between the persons mentioned therein.

11. The first plaintiff has examined herself and also one more local witness by name Krishnamoorthy (P.W.2) in order to prove the fact that there was a marriage between herself and the deceased K.C.Radhakrishnan and the plaintiffs 2 and 3 were born to them. The first appellate Court did not record any finding to disbelieve the evidence of P.W.1 and P.W.2 except by stating that the first plaintiff has not given the date of her marriage during



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the cross-examination. In fact in the community certificate and the income certificate produced as Exs.A3 to A5, it is seen that the deceased K.C.Radhakrishnan has been shown as father of plaintiffs 2 and 3. The consolidated evidence of the first plaintiff and P.W.2 along with the other documentary evidence would *prima facie* prove that the plaintiffs 2 and 3 are related to the deceased K.C.Radhakrishnan as children born to him. Even the defendants have not tried to disprove the paternity of the plaintiffs 2 and 3 except by stating that the alleged marriage between the deceased K.C.Radhakrishnan and the first plaintiff was not true and valid. Even in the absence of any marriage, the Courts are bound to look into the materials to find out whether the deceased K.C.Radhakrishnan had fathered the plaintiffs 2 and 3.

12. When the suit has been filed after the demise of K.C.Radhakrishnan, especially when his terminal benefits were claimed, the best evidence the plaintiffs could produce will be some public documents where they have been referred as children of K.C.Radhakrishnan. The respondents / defendants did not take up the plea that those public documents Exs.A1, B4 and B5 are concocted documents. To consider all those documents as basis for declaring the legal heirship of a person is



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different from presuming the relationship between the individuals listed therein. Had the trial Court bluntly relied only Ex.A1- Legal heirship certificate, it would have been possible to arrive at a conclusion that with that alone the plaintiffs' status could not be believed. Those documents have to be read along with the oral evidence of plaintiff side witnesses P.W.1 and P.W.2. In fact the trial Court has made a distinction as to the entitlement of legal heirship of the first plaintiff even though her name is also found in the Ex.A1 Legal heirship certificate issued by the Tahsildar by applying the principles of law.

13. As the first plaintiff cannot be the legally wedded wife of deceased K.C.Radhakrishnan, the trial court has accepted the plaintiffs 2 and 3 alone as the legal heirs of K.C.Radhakrishnan. So it is wrong on the part of the first appellate Court to presume that the trial Court has granted the relief only on the basis of Ex.A1 (legal heirship certificate).

14. Even in the grounds of appeal filed before the first appellate Court, the defendants have taken the argument that in the absence of legally acceptable marriage between the deceased K.C.Radhakrishnan and the first plaintiff it is wrong to say that the plaintiffs 2 and 3 were born to the



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deceased. Even if the marriage is not valid by mere cohabitation of the deceased K.C.Radhakrishnan with the first plaintiff, it would be possible to give birth to the plaintiffs 2 and 3 by the first plaintiff through K.C.Radhakrishnan. The defendants all along were only objecting the marriage between the first plaintiff and the deceased K.C.Radhakrishnan and they did not disprove or raise any contention as to the paternity of the plaintiffs 2 and 3. Even when the first plaintiff herself did not challenge the findings of the trial Court as to her invalid marriage and her ineligibility to the legal heir of the deceased K.C.Radhakrishnan, it is unnecessary for the first appellate Court to appreciate the factum of marriage or the validity of the marriage between the deceased K.C.Radhakrishnan and the first plaintiff.

15. It was not the defense of the respondents / defendants that the deceased K.C.Radhakrishnan did not have any access to the first plaintiff to give birth to the plaintiffs 2 and 3 by cohabiting with her. Only if the first plaintiff was serious in her claim of legal heirship with the deceased K.C.Radhakrishnan, the proof of her marriage with K.C.Radhakrishnan or its validity would arise. The first appellate Court has confused two different essential facts and had done an unnecessary roving exercise. In fact, the first appellate Court has observed at some point of its judgment that the



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defendants have chosen to pay the court fee for the counter claim that they are the only legal heirs of deceased Radha Krishnan. Though the trial Court might have erred in not framing any specific issue as to whether the defendants alone are the legal heirs of the Radha Krishnan, the whole of appreciation of evidence made by the trial Court would only show that the trial Court has done an exhaustive exercise to find out whether the plaintiffs and the defendants are the legal heirs of the deceased K.C.Radhakrishnan or whether the plaintiffs alone are the legal heirs of the deceased Radha Krishnan. Only in view of such an exhaustive exercise, the trial Court has come to a conclusion that both the plaintiffs 2 and 3 and the defendants 1 to 3 are the legal heirs of deceased K.C.Radhakrishnan. Hence, the judgment of the first appellate Court in denying the relief to both the parties despite admitting that at least the defendants alone are the legal heirs of deceased K.C.Radhakrishnan, is absurd.

16. So far as the nature of relief sought by the appellants along with the first plaintiff is concerned, it is the relief of mere declaration. On some wrong premise the first appellate Court had chosen to render a finding that the suit for mere declaration is not maintainable in the absence of any consequential relief as to the injunction.



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17. On perusal of the plaint it is seen that the plaintiffs have paid the court fee under Section 25(d) of Tamil Nadu Court Fee and Suit Valuation Act, 1955 (hereinafter referred to as “the Act”). For the sake of clarity, Section 25(d) of the Act is extracted hereunder:

“ 25. In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26 --

...

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand] [Substituted for the words 'rupees four hundred' by the Tamil Nadu Court-fees and Suits Valuation (Amendment) Act, 2003 (Tamil Nadu Act 17 of 2003) With effect from 15th June 2003.], whichever is higher.”

18. The plaintiffs have valued their suit under Section 25(d) of the Act and paid the court fee and there is no quarrel on that. As the suits contemplated under Section 25 of the Act is inclusive of suits for declaration with or without consequential relief, it is fundamentally wrong on the part of the first appellate Court to conclude that the suit filed for mere declaration without the consequential relief is barred. It appears from the judgment of the first appellate Court that the Section 42 of the old Specific Relief Act (corresponding to Section 34 of the new Specific Relief Act) has been



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referred in order to arrive at a conclusion that the plaintiffs ought to have a sought a consequential relief and they omitted to do so and hence they are not entitled to the relief of declaration. For the sake of convenient understanding, Section 34 of the Specific Relief Act is extracted hereunder:

“ 34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

19. The above provision does not *per se* bar the suit for mere declaration. The above provision would only say that if the plaintiffs are able to seek further relief than mere declaration of title, the Court shall not grant the relief of declaration. However, it is at the discretion of the plaintiffs to chose their prayer. When the first plaintiff had approached the authorities for claiming the death benefits of deceased K.C.Radhakrishnan, she was asked to get a certificate from the Court showing the legal heirship. Had it been the



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direction of the authorities that unless the first plaintiff gets a mandatory injunction for directing them to disburse the terminal benefits, it would have occurred for the plaintiffs to add any consequential relief along with the relief of declaration. In the background in which the plaintiffs were compelled to file a suit would show that they were right in believing and pursuing a mere decree for declaration of their status and hence Section 34 of the Specific Relief Act, cannot be misread against the plaintiffs.

20. Since the lower appellate Court had misdirected itself while applying the provisions applicable to the case of the plaintiffs and had rendered the judgment which is no way helpful for both the parties, I feel the judgment and decree of the first appellate Court calls for interference for the purpose of setting it aside.

21. Even though the first plaintiff has been a party to the Second Appeal proceedings, it is made clear that the first plaintiff is not the legal heir of the deceased K.C.Radhakrishnan as she had very much accepted the judgment of the trial Court in this regard and had not chosen to challenge the same by preferring the Second Appeal.



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WEB COPY 22. In view of the above stated reasons, the Second Appeal is allowed and the judgment and decree dated 25.08.2012 made in A.S.No.14 of 2011 on the file of Sub-Court, Tirupattur, Vellore District, is hereby set aside and the judgment and decree dated 20.10.2010 made in O.S.No.267 of 2005 on the file of District Munsif Court, Tirupattur, Vellore District, is restored. No costs. Connected miscellaneous petition.

05.11.2024

Index:Yes
Speaking Order
Neutral Citation Case : Yes
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To:

1. The Sub Judge, Tirupattur, Vellore District.
2. The District Munsif, Tirupattur, Vellore District



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R.N.MANJULA, J.

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