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O.S.A. No.36 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.No.36 of 2024
and
C.M.P.No.4892 of 2024

1.B.Ponnuswamy

2.P.Lakshmi

... Appellants

Vs.

S.Saranya

... Respondent

Prayer: Original Side Appeal filed under Order 36 Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent, to allow the above OSA by dismissing the order passed in SOP.No.598 of 2019 dated 27.04.2023 and to issue Succession Certificate to the appellants alone.

For Appellants : Mr.R.Balasubramanian



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J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The challenge in this appeal is to the order of the learned Single Judge granting Succession Certificate in favour of the wife and the mother of deceased Ponnudurai.

2. The parents of the deceased had resisted the application of the wife for grant of Succession Certificate on the ground that there was no marriage as well as on the ground that the applicant had re-married, after the death of their son, in the year 2019.

3. The 1st respondent/ wife of the deceased Ponnudurai sought for issuance of Succession Certificate on the ground that she had married the deceased on 20.01.2016 at Siva Vishnu temple and the said marriage was registered under the Hindu Marriage Act on 10.03.2016.

4. The claim of the 1st respondent was resisted by the parents of the deceased Ponnudurai on two contentions. One was that there was no marriage and the other was that she had re-married.



5. As far as the factum of marriage on 20.01.2016 is concerned, the said marriage has been registered under the relevant Rules viz., Hindu Marriage Registration (Tamil Nadu) Rules, 1967. Once the registration is made, there is a presumption of marriage. Therefore, we are unable to fault the learned Single Judge for having rejected the contention regarding the absence of marriage.

6. On the question of re-marriage, the learned counsel would draw our attention to Section 2 of the Hindu Widows' Remarriage Act, 1856 to contend that upon re-marriage, the rights of a widow in her husband's property ceases. This contention evidently overlooks the fact that the said Act viz., Hindu Widows' Remarriage Act was repealed by the Hindu Widows' Remarriage (Repeal) Act 1983.

7. The learned counsel would also seek to rely upon the judgment of the Full Bench of this Court in ***Minor Ramaiya Konar alias Ramasami Konar by father and guardian Natesa konar and another Vs. Mottayya Mudaliar alias Manicka Mudaliar*** reported in **64 LW 776**, which is based



on the Hindu Women's Right to Property Act XVIII of 1937. The law particularly Hindu Law relating to inheritance by women had undergone very serious changes thereafter. The said decision also relates to the right of inheritance of an unchaste of Hindu widow. It is not the case of the appellants that the respondent is unchaste. Hence the said decision will not apply to the facts of this case.

8. We do not see any merit in this appeal. The appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
04.03.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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