



C.M.A.(MD) No.1125 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1125 of 2018

and

C.M.P.(MD)Nos.11440 to 11442 of 2018

Rahila Banu

... Appellant

Vs.

1.A.Kathija Banu,
2.Superintendent of Police,
Virudhungagar.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 384 of Succession Act No.39 of 1925 against the fair and decreetal order dated 24.04.2017 passed in S.O.P.No.2 of 2010 on the file of the I Additional District Judge, Madurai.

For Appellant

: Mr.M.R.Murugesan
Babu.Rajendran

For Respondents

for R1

: Mr.S.Pakalavan

for R2

: Mr.M.Muthumanikkam
Government Advocate



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J U D G M E N T

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The instant appeal has been filed challenging the order passed in the petition filed under Section 372 of the Indian Succession Act by the appellant.

2. The appeal arises under the following circumstances:

a. The appellant, claiming to be the wife of one Abdul Latif, filed a petition to issue Succession Certificate to her for obtaining a sum of Rs.11,50,000/- being the terminal benefits and other benefits of the deceased.

b. The first respondent objected to the petition by filing a counter and stating that the appellant got separated from the deceased; that the deceased divorced the appellant as per the Muslim Personal Law; and that thereafter, she had married the deceased and hence, the appellant was not entitled to a Succession Certificate.

c. The appellant examined herself as P.W.1 and marked Exs.P1 to P11. The first respondent filed proof affidavit and marked Exs.R1 to R11. However, she had not subjected herself to cross-examination.



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3. The Trial Court, after considering the evidence on record, held that the appellant was the legally wedded wife of the deceased and that there is an evidence to show that the first respondent was also the legally wedded wife of the deceased, it held that the appellant and the first respondent each were entitled to 50% of the terminal benefits of the deceased.

4. The learned counsel for the appellant submitted that having held that the appellant is legally wedded wife since the first respondent had not established her marriage, the Trial Court ought not to have directed that both the appellant and the first respondent are each entitled to 50% of the terminal benefits of the deceased.

5. The learned counsel for the first respondent, per contra, submitted that the first respondent had filed the document, namely, the Talak notice dated 11.01.1990, the copy of the insurance policy in the name of the deceased and in the name of the first respondent, wherein the relationship between the deceased and the first respondent is revealed and therefore, the Trial Court was right in holding that both the appellant and the first respondent are entitled to 50% each of the terminal benefits of the



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deceased.

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6. The only point for consideration in the instant appeal is '*Whether the Court below was right in holding that the appellant and the first respondent are each entitled to 50% of the terminal benefits of the deceased?*'

7. Though R.W.1 had filed a proof affidavit and marked Exs.R1 to R11, she had not subjected herself to cross-examination. In the absence of the same, the proof affidavit of the first respondent would have no value. In fact, the Trial Court treated the first respondent *ex parte*. On the contrary, the appellant had established that she was the legally wedded wife of the deceased and that she had earlier sought for maintenance from the deceased and there was no divorce between the appellant and the deceased. Hence, the Trial Court rightly held that the appellant was the legally wedded wife of the deceased. However, finding of the Trial Court that there is *prima facie* evidence to show that the first respondent was also the wife of the deceased is contrary to the evidence on record. The Trial Court had come to the conclusion on the basis of the documents filed along with proof affidavit of the first respondent, which would not have



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any evidentiary value, since the first respondent had not subjected herself to cross-examination. Any conclusion based on those inadmissible materials cannot be sustained. Therefore, this Court is of the view that the appellant, had established that she was legally wedded wife of the deceased and the first respondent had not established her claim. Thus, the appellant would be entitled to the terminal benefits of the deceased and hence, entitled to the Succession Certificate as prayed for.

8. In the result, this Civil Miscellaneous Appeal is allowed. The order dated 24.04.2017 in S.O.P.No.2 of 2010 by the learned I Additional District Judge, Madurai is set aside and the appellant would be entitled to Succession Certificate as prayed for in S.O.P.No.2 of 2010. No costs. Consequently, connected miscellaneous petitions are closed.

03.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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To:
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1. The I Additional District Judge, Madurai
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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