



C.R.P.(NPD)(MD)No.298 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD)No.298 of 2020
and C.M.P.(MD)Nos.1740 & 1741 of 2020

1.Lalitha
2.Padmapriya
3.Jayasuriya

... Petitioners

Vs.

1.Mariyammal
2.Rani

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India, praying to set aside the judgement and decree in CMA No.26 of 2017, dated 09.10.2017 on the file of the Additional District Judge, FTC, Kumbakonam confirming the judgement and Decree in SOP.No.84 of 2013 dated 04.07.2017 on the file of the Learned Principal Subordinate Judge, Kumbakonam and allow this Civil Revision Petition.

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For Petitioners : Mr.H.Lakshmi Shankar

For Respondents : No Appearance

ORDER

The petitioners herein claiming to be the legal heirs of one deceased Radhakrishnan, ie., first petitioner being wife and petitioners 2 and 3 claiming to be the children filed S.O.P.N.84 of 2013 on the file of the Court of Principal Subordinate Judge, Kumbaknoam under Section 383 of the Indian Succession Act, 1925 against the respondents herein, who are the first wife and daughter of the deceased late Radhakrishnan, seeking to revoke the certificate of succession granted in S.O.P.No.57 of 2012 dated 28.06.2012.

2. The said S.O.P.No.57 of 2012 was filed by the respondent No.1 herein against respondent No.2 for grant of succession in respect of the terminal benefits of late Radhakrishnan. The said SOP was not contested by the respondent No.2 herein and accordingly, the same was ordered duly granting succession in favour of the respondents herein, declaring them as the persons



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entitled to equally for the terminal benefits of late Radhakrishnan. The first petitioner herein claiming to be the second wife and petitioners 2 and 3 claiming to be the daughters of late Radhakrishnan through second wife filed S.O.P.No.84 of 2013 under Section 383 of the Indian Succession Act, 1925 to revoke the succession certificate granted in favour of the respondents herein in S.O.P.No.57 of 2012.

3. This Court after having heard the counsel on either side on 13.02.2024 *prima facie* opined that in the facts and circumstances of the case, the issue is squarely covered by a recent decision of the Hon'ble Supreme Court in ***Revanasiddappa and another Vs. Mallikarjun and others*** reported in (2023) 10 SCC 1 and posted the matter for orders. On 19.02.2024, when the matter was listed for orders, there was no representation for the respondents. Hence, the matter was directed to be listed again on 20.02.2024.

4. Today when the matter is listed under the caption for orders also there is no representation for the respondents either in the pre-lunch session or in the



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post lunch session. In the circumstances, this Court is left with no other option, except to consider the matter on merits and pass appropriate orders.

5. As already noted above, the petitioner No.1 herein is claiming to be the second wife and petitioners 2 and 3 are claiming to be the children of late Radhakrishnan. Whereas admittedly, the respondent No.1 is the legally wedded wife and second respondent is the daughter of late Radhakrishnan. Though in the counter affidavit filed by the respondents in S.O.P.No.84 of 2013, the marriage of the first petitioner with the deceased late Radhakrishnan was disputed and several allegations were made against the first petitioner herein about her character, so also about the status of the petitioners 2 and 3 being the children of late Radhakrishnan was disputed, it is admitted in the counter that the names of the petitioners herein were entered in the service register of the deceased Radhakrishnan as nominees showing them as wife and children. From the tenor with which the counter affidavit was filed also goes to suggest that the petitioners 2 and 3 herein are the children of late Radhakrishnan. Further the birth certificates of petitioners 2 and 3 herein were also marked as Ex.B5 and



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Ex.B6, thereby proving their births to late Radhakrishnan and the first petitioner herein. Even during in the course of argument also on 13.02.2024, the learned counsel appearing for the respondents have not seriously disputed about the status of the petitioners 2 and 3 herein being the children of late Radhakrishnan.

6. Both the Court's below have failed to consider the evidence available on record but non-suited the petitioners only on the ground that they are not entitled to file the petition under Section 383 of the Indian Succession Act, 1925 unless and until they filed the suit for declaration to declare them as wife and children of late Radhakrishnan and get such declaration. But in the considered view of this Court it is not necessary for the petitioners to seek declaration of the status of wife and children independently as condition precedent but it is also competent for them to file an application under Section 383 of the Indian succession Act, 1925 seeking revocation of the certificate issued in favour of the respondents. The only requirement of Section 383 of the Indian Succession Act, 1925 is that they have to establish that they are the legal heirs of late Radhakrishnan. Whether the said requirement of establishing the factual aspects



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is by way of declaration or by seeking revocation of the succession certificate by filing a petition under Section 383 of the Indian Succession Act makes no difference. But both the Courts below have gravely erred in refusing to consider the matter on merits. Hence, both the orders are liable to be set aside.

7. As already noted above, there is no serious dispute about the petitioners 2 and 3 being the children of late Radhakrishnan. Sufficient materials are already placed on record and they are marked as documents. On the other hand as already noted above, there was tacit admission on the part of the respondents admitting about the status of the petitioners 2 and 3 as children of late Radhakrishnan. So far as the petitioner No.1 is concerned who is claiming to be the second wife of late Radhakrishnan, the so called marriage between the first petitioner and the late Radhakrishnan is admittedly took place during the subsistence of marriage of the first respondent herein with the late Radhakrishnan. Therefore, the said marriage cannot be recognised under the provision of Hindu Marriage Act, 1955. Such a marriage that took place during the life time of the spouse is liable to be declared as void. Therefore, the claim



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of the first petitioner herein as successor in interest or legal heir of late Radhakrishnan cannot be accepted. Then coming to the claim of petitioners 2 and 3 is concerned, though they are not children born out of a legal marriage but the rights of the petitioners 2 and 3 being the children born out of a void marriage is protected under Section 16 of Hindu Succession Act, 1956. The very same issue as to whether the children born out of a void marriage are entitled to claim succession in their father's property / estate or not has come up for consideration on a reference before a three Judges Bench of the Hon'ble Supreme Court. The Hon'ble Apex Court after having elaborately considered the same has been pleased to conclude that the children born out of void marriage are equally entitled to claim succession on par with the legitimate children of the deceased in terms of Section 16 of the Hindu Succession Act, 1956. The final conclusion drawn by the Hon'ble Apex Court are extracted herein for clarity:

“K.Conclusion

81. We now formulate our conclusions in the following terms:

81.1. In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or



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after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

81.2. In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

81.3. While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

81.4. While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation 'related by legitimate kinship' and cannot be regarded as an 'illegitimate child' for the purposes of the proviso;



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81.5. Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

81.6. Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by



WEB COPY *Mitakshara law has been made the norm;*

81.7. Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

81.8. While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that 'the coparcenary property shall be deemed to have been divided as if a partition had taken place'. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

81.9. For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place



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immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

81.10. The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.”

8. In the light of the settled legal position, the claim of the petitioners 2 and 3 herein cannot be denied. The respondent No.1 herein while filing S.O.P.No.57 of 2012 though fully aware of the existence of the petitioners herein failed to disclose the said fact and obtained the succession certificate along with the respondent No.2 behind their back. Section 383 of the Indian Succession Act, 1925 provides for filing a petition for revocation of the certificates granted under certain specified circumstances. Section 383 of the Indian Succession Act,



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1925, reads as under:

“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.”

9. The case of the petitioners herein would definitely fall under clause (b) of Section 383 of the Indian Succession Act, 1925. Therefore, the entitlement of petitioners herein to file a petition under Section 383 of the Indian Succession



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Act, 1925, cannot be questioned. In other words, the petitioners herein have rightly filed a petition under Section 383 of the India Succession Act, 1925, but both the courts below failed to appreciate the factual situation and legal position in proper perspective and rejected the claim of the petitioners.

10. In the light of the above, the orders passed in S.O.P.No.84 of 2023, dated 04.07.2017 as confirmed in C.M.A.No.26 of 2017, dated 09.10.2017 are set aside insofar as the petitioners 2 and 3 are concerned. Insofar as the petitioner No.1 is concerned, the said S.O.P.No.84 of 2023 shall stand dismissed. Accordingly, the certificate of succession granted in S.O.P.No.57 of 2012 dated 28.06.2012 by the Court of Principal Subordinate Judge, Kumbakonam is revoked.

11. Having revoked the certificate of succession granted in favour of the respondents herein, this Court is not inclined to leave the matter there especially taking into consideration the fact that the late Radhakrishna expired on 11.01.2009 and the terminal benefits payable to the legal heirs of the said



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Radhakrishnan are still kept on hold because of the litigation between the parties herein. In the light of the conclusion already arrived at by this Court as above, this Court is inclined to declare that the petitioners 2 and 3 and respondents 1 and 2 are the legal heirs of late Radhakrishnan and they are all entitled to draw the terminal benefits that are payable consequent upon the death of late Radhakrishnan equally. The parties are granted liberty to make appropriate claim before the employer for payment of terminal benefits in terms of this order.

12. With the above observations, this Civil Revision Petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.02.2024

Neutral Citation: Yes / No
Index : Yes / No
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To

- 1.The Additional District Judge,
FTC, Kumbakonam.
- 2.The Principal Subordinate Judge, Kumbakonam
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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