

(2010) 04 MAD CK 0052

In the Madras High Court

Case No : S.A. (MD) No. 1118 of 2009 and M.P. (MD) No. 1 of 2009

Irudhayaraj

APPELLANT

Vs

K. Indira @ Indira Gandhi and Others

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Evidence Act, 1872 — Section 32(3), 33

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 26

Citation : (2010) 04 MAD CK 0052

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : C. Dhanaseelan, for the Appellant; K. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. The unsuccessful first defendant in O.S. No. 342 of 2004, on the file of the Principal District Munsif Court, Tuticorin is the appellant herein.

3. The first respondent herein filed the above suit for declaration that she is the legal-heir of Kasi Nadar and Muthulakshmi Ammal and for

direction directing the first defendant viz., the appellant herein, to hand over all documents and title deeds in respect of the first schedule property

and to hand-over the fixed deposit receipts mentioned in the 2nd schedule property and for directing the defendants 2 to 10, who are tenants in the

property to pay the rent to the plaintiff. It is stated by the first respondent in the plaint that she was given in adoption to Kasi Nadar and

Muthulakshmi Ammal in the year 1963 by her natural parents Chelliah Nadar and Athilakshmi Ammal. The adoption ceremony was held at

Thandapathu in Ponvandu Ayyan Kovil according to religious practice when the

first respondent/plaintiff was one-and-half years and her natural parents gave her in adoption and Kasi Nadar and Muthulakshmi Ammal accepted the plaintiff by spraying Manchappal in the presence of the family members and since then, she was cared and nursed by Kasi Nadar and Muthulakshmi Ammal. The plaintiff's adoptive father Kasi Nadar worked in Madura Coats and she was educated by Kasi Nadar in Holy Cross Girls Higher Secondary School at Tuticorin and her marriage was celebrated by Kasi Nadar and she was treated as the adoptive daughter of Kasi Nadar by all the relations. Kasi Nadar died in the year 1986 intestate and Muthulakshmi Ammal, the adoptive mother of the plaintiff also died in the year 2000 and the first defendant viz., the appellant herein who was the brother of Muthulakshmi Ammal, after the death of Muthulakshmi Ammal, trespassed into the house where Muthulakshmi Ammal was residing and had taken all the original documents, fixed deposit receipts. Even during the life time of Muthulakshmi Ammal, the appellant assaulted her physically and a complaint was given by Muthulakshmi Ammal against the appellant. As she is entitled to succeed to the property and the first defendant has no right or title over the same, she filed a suit for declaration that she is the legal heir of Kasi Nadar and Muthulakshmi Ammal and for further direction.

4. The first defendant/appellant denied the factum of adoption as stated by the plaintiff/1st respondent and also denied the fact that the plaintiff was given in marriage by Kasi Nadar and Muthulakshmi Ammal and she is the legal heir of Kasi Nadar and Muthulakshmi Ammal. The appellant further stated that Muthulakshmi Ammal executed a Will, dated 28.11.2000 bequeathing the property to him and after her death, on 31.12.2000 the property devolved on her as per the Will and therefore, he is entitled to the property.

5. The learned District Munsif, on the basis of the pleadings framed the following two issues:

1. Whether the will Ex.B6 is valid?

2. Whether the plaintiff is entitled to the declaratory relief as prayed for?

6. The trial Court on the basis of the oral evidence of PW1 to 7 and Exs.A1 to A3, A23, 24, 25 to 27, held that the oral evidence and above

documents proved that the plaintiff is the adoptive daughter of Kasi Nadar and

Muthulakshmi Ammal and the appellant/first defendant failed to prove the execution of the Will and also held that the Will was not executed by Muthulakshmi Ammal and decreed the suit.

7. The appellant filed the appeal against the said judgment and decree passed in A.S. No. 48 of 2007, on the file of the Subordinate Judge,

Tuticorin and the learned Sub Judge also held that the Will was not proved by the appellant and the adoption was proved by the evidence of PW1

to 7 and documents the Exs.A1 to A3, A23, 25 to 27 and held that the plaintiff proved that she is the adoptive daughter of Kasi Nadar and

Muthulakshmi Ammal and dismissed the appeal. Aggrieved by the same, this second appeal is filed by the unsuccessful first defendant.

8. Though various substantial questions of law were raised by the appellant in the grounds of appeal, according to me, the following substantial

questions of law arise in the 2nd appeal:

1. Whether the Courts below are right in presuming the adoption on the basis of the Exs.A2 to A4,, 23, A25 to 27 in the absence of any proof for adoption?

2. Whether the suit for declaration that the plaintiff is the legal-heir is maintainable without a prayer for declaration that she the adoptive daughter of Kasi Nadar and Muthulakshmi Ammal, when the adoption is disputed?

9. Mr. C. Dhanaseelan, the learned Counsel appearing for the appellant submitted that no proof was adduced by the first respondent about the

factum of adoption and soon after the death of Kasi Nadar, Legal-heir Certificate was issued in favour of Muthulakshmi Ammal alone and in that

document, the first respondent was not mentioned as the adoptive daughter and the Legal-heir Certificate issued for the deceased Kasi Nadar was

marked as Ex.B4 and even after the death of Muthulakshmi Ammal, no attempt was made by the first respondent to obtain the Legal-heirs

certificate as if she is the adoptive daughter of Muthulakshmi Ammal and in the absence of Legal-heir certificate and in the absence of any proof for

adoption, the plaintiff viz., first respondent, cannot claim to be the adoptive daughter and hence, she cannot be declared as legal heir of Kasi Nadar

and Muthulakshmi Ammal.

10. He further submitted that the documents, which were relied upon by the Courts below for arriving at the conclusion that there was adoption,

will not prove the adoption as per the judgment of the Honourable Supreme Court and without proving the factum of adoption, the Court cannot

presume that there was adoption on the basis of the Exs.A2, A3, A23 to A27.

11. He further submitted that witnesses were examined on the side of the plaintiff from September 2004 to 09.02.2005 and at that time, the natural

mother of the first respondent was alive and she died on 27.02.2005 and no attempt was made to examine the natural mother, who was the

competent witness to speak about the adoption and none of the relatives were examined to prove the adoption and no proof was adduced that she

was accepted and recognised as adoptive daughter of Kasi Nadar and Muthulakshmi Ammal by the relatives and therefore, in the absence of any

proof of adoption, the Court cannot presume the adoption on the basis of the exhibits referred to above. He also relied upon the judgment

reported in Rahasa Pandiani (dead) by Lrs. and Others Vs. Gokulananda Panda and Others, . Lakshman Singh Kothari Vs. Smt. Rup Kanwar, .

12. The learned Counsel appearing for the appellant Mr. c.Dhanaseelan, further submitted that in Ex.A26 in the Record Sheet maintained for 1 to

7th standard, the father's name was left blank and only when the first respondent studied in 8th and 9th standard, the father's name was mentioned

as Kasi Nadar. Therefore, he submitted that in the absence of any proof of adoption, the plaintiff is not entitled to declaration that she is the legal-

heir of Kasi Nadar. He further submitted that u/s 26 of the Tamil Nadu Court Fees Act, when the suit is filed on the basis of adoption, the suit has

to be valued as per that section and in this case, the plaintiff relied upon the adoption and claimed the status of adoptive daughter of Kasi Nadar

and Muthulakshmi Ammal and when that is disputed, she ought to have prayed for declaration that she is the adoptive daughter of Kasi Nadar and

Muthulakshmi Ammal and without proving the same, she is not entitled to declaration that she is the legal heir of Kasi Nadar and Muthulakshmi

Ammal.

13. On the other hand, Mr. K.Srinivasan, the learned Counsel appearing for the respondents submitted that Ex.B4, the Legal-heir certificate given

to Muthulakshmi Ammal on the death of Kasi Nadar cannot be taken into consideration to hold that the first respondent is not the adoptive

daughter. The learned Counsel also relied upon the judgment of this Court

reported in 2010 (1) TLNJ 190 (Civil), in the case of Bhagawathy v.

Mahamayee and in 2002(2) CTC 228, in the case of N. Dhanalakshmi v. The District Revenue Officer, Salem and two others and submitted that

the revenue authorities have no power to issue such certificate and the Legal-heir certificate issued by the revenue officials will not in any way affect

the right accrued to persons under law and therefore, it is not open to the appellant to contend that as per Ex.B4, the plaintiff is not entitled to claim

any right.

14. He further submitted that the entries in the school records are having more authentic evidentiary value as held by the Honourable Supreme

Court in the judgment reported in 2007 (1) 660 in the case of Ananthi v. Ponnammal @ Vijayalakshmi and admittedly, in Exs.A3, 26 & 27 are

Records maintained by the school authorities wherein the father's name is mentioned as Kasi Nadar and therefore, those documents will prove that

she is the adopted daughter of the Kasi Nadar and Muthulakshmi Ammal. He further submitted that Ex.A2 is the Marriage Invitation and Ex.A25

is the nomination form filled up by Kasi Nadar, as per ESI Act wherein the first respondent herein was described as daughter of Kasi Nadar and

the first respondent was permitted to withdraw the fixed deposit amount as evident by Ex.A23 and these documents would corroborate the case

of the plaintiff/1st respondent that he is the adopted daughter of Muthulashkmi Ammal.

15. On the basis of the arguments advanced by both parties and on the basis of the evidence available on record, this Court has to see whether the

factum of adoption was proved by the 1st respondent/plaintiff and whether the concurrent finding of fact that the 1st respondent/plaintiff was the

adopted daughter of Kasi Nadar and Muthulakshmi Ammal is correct.

16. Before going into the question, the law on the issue of adoption has to be analysed. In the judgment reported in Thavamani Vs. The Special

Tahsildar (ADW) and Another, it has been held that in the case Kishori Lal Vs. Mst. Chaltibai, the Honourable Supreme Court observed:

An adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative

strangers or more remote relations it is necessary that evidence to support it should be such that it is free from all suspicions of fraud and so

consistent and probable as to leave no occasion for doubting its truth.

Direct evidence is not necessary. An adoption may be proved by probabilities, by conduct and admissions of the father and other relations, the

conduct and admissions of the persons whose adoption is in question and so on.

The fact that the adopted son offered pinda to the natural father but not to the adoptive father is a circumstance against the adoption. An ex-parte

statement made by a widow in mutation proceedings that she had authority from her husband to adopt is not admissible in evidence against the

reversioners in a subsequent suit challenging the adoption either u/s 32(3) or Section 33 of the Indian Evidence Act, 1872. A statement made by a

testator in his will to the effect that the legatee was the adopted son of the testator can be used as evidence by the legatee in a suit for a declaration

of adoption. A statement in the Panchayat report is admissible although the adoption itself was not the subject matter of the enquiry.

Lapse of time affects proof required; it may render little evidence sufficient; where long time has elapsed the burden may shift to the person

disputing, adoption especially where long recognition of adoption raises a presumption in favour of adoption. Absence of direct evidence may in

such cases be favourably considered.

Where there is evidence of gift and acceptance and of recognition for a number of years, formal proof of the performance of the ceremonies may

be dispensed with.

An assertion of her authority to adopt and her course of conduct which could only be described as equivocal are not sufficient to establish the

validity of an adoption made by widow.

A bare denial of adoption implied a denial only of the fact and not of the legality of adoption.

Once the facts are ascertained, a presumption arising from conduct cannot establish a right which the facts themselves disprove.

If the oral evidence shows that there was an adoption and there is nothing to show that valid adoption in accordance with law could not have taken

place, evidence of conduct which went to show that the adoption was recognised by the family of the adoptive father for a long time would lend

support to the inference that the adoption had in fact been made.

Therefore, as per the above judgment, to prove the adoption evidence must be free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth.

17. It has been further held in the same judgment that direct evidence is not necessary and adoption may be proved by probabilities, by conduct and admissions of the father and other relations. Further, where long time has elapsed, the burden may shift to the person disputing adoption especially where long recognition of adoption raises a presumption in favour of adoption. The same principal has been reiterated in the judgement reported Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, .

18. In the judgment reported in L. Debi Prasad (Dead) by Lrs. Vs. Tribeni Devi and Others, . it has held as follows: ""Under Hindu Law the giving and receiving of a body are absolutely necessary to the validity of an adoption; they are the operative part of the ceremony, being that part of it which transfers the boy from one family to another; but the Hindu law does not require that there shall be any particular form so far as giving and acceptance are concerned; for a valid adoption all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, and that the boy shall be handed over and taken for this purpose.

This burden of proving satisfactorily that he was given by his natural father and received by the adoptive father as his adoptive son is on the alleged adopted son. But although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period (nearly 54 years in this case) during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact is to be favourably entertained.

Where it is alleged that the boy was adopted on the day of his birth, the evidence of the by on the question of the ceremony of actual giving and taking is hearsay.

In the case of a Hindu, long recognition as an adopted son, raises a strong presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In the case of an ancient adoption evidence showing that the

boy was treated by relations, including the person who later on challenges the same, for a long time as the adopted son at the time when there was

no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming.

In the case of all ancient transactions, it is but natural that positive oral evidence will be lacking. In the case of an adoption said to have taken place

years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to

have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no

pre-determined way of proving any fact. If after taking an overall view of the evidence adduced in the case, the Court is satisfied that the adoption

pleaded is true, it must necessarily proceed on the basis, in the absence of any evidence to the contrary, that it is a valid adoption as well.

19. In *Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others*, the same principles have been reiterated.

20. In the judgment reported in 1997(II) CTC 571, in the case of *Thavamani v. The Special Tahsildar (ADW), Devakottai and Anr.* it has been

held that "a very heavy and serious onus rests on a person who seeks to displace the natural succession to property by the act of an adoption. In

such a case the proof of adoption as well as of the power to adopt of the adopter requires almost a strict and severe scrutiny.

21. Further in the judgment reported in *Rahasa Pandiani (dead) by Lrs. and Others Vs. Gokulananda Panda and Others*, it was held that when

the factum of adoption is in dispute, the absence of registered document to prove the adoption was a very important circumstance to disprove the

alleged adoption.

Therefore, from the above said judgment, the principles laid down by the Honourable Supreme Court, it is seen that the burden is heavily on the

person, who claims to be the adopted child to prove that she is the adoptive parents.

22. In this case, the first respondent/plaintiff examined herself as PW1 and examined another 6 persons to prove the adoption. Admittedly, except

PW6, all other witnesses were not present at the time of adoption. PW6 is the brother of Kasi Nadar and he has given evidence that the first

respondent/plaintiff was given adoption in the temple stated by plaintiff, by the natural parents of the plaintiff and that was received by Kasi Nadar

and Mathulakshmi Ammal and the adoption was conducted as per the family rites and customs. Unfortunately, he did not make himself available

for the cross examination and hence, his evidence cannot be taken into consideration for deciding the issue and his evidence is to be eschewed.

PW2 is the Bank official and he has given evidence that the fixed deposit amount deposited by Kasi Nadar was received by the first

respondent/plaintiff and through him Ex.A23 was marked. It is seen from the Ex.A23 that the first respondent's name was written after rounding of

the name of Kasi Nadar and Ex.A24 is the letter given by the first respondent/plaintiff to the Secretary of the Bank requesting the Bank to change

the deposit in her name and nominate her husband as her legal heir. It is seen from Ex.A23, the first respondent's name was mentioned as fixed

deposit holder and it was on the basis of Ex.A24, letter given by the first respondent. In Ex.A.24 also she has not stated that she is the adopted

daughter and she only stated that her father, Kasi Nadar died and therefore, the fixed deposit may be changed in her name. Further, Ex.A24 is the

self serving document given by the respondent.

23. Ex.A25 is the Family Declaration Form signed by the Kasi Nadar as per the provisions of ESI Act, wherein the first respondent was

mentioned as daughter. In Ex.A26, Kasi Nadar was mentioned as father, when the petitioner studied in 8th and 9th standard and in respect of

records sheet from 1st to 7th standard, the father's name was left blank. In Ex.A27, the first respondent father's name was mentioned as Kasi

Nadar. Ex.A3 is the Transfer Certificate wherein Kasi Nadar is described as father of the first respondent. Therefore, we will have to see whether

these documentary evidences are sufficient to prove the adoption of the first respondent/plaintiff in the absence of any proof of adoption that had

taken place in the year 1962.

24. As held by the Honourable Supreme Court in the judgment reported in Kishori Lal Vs. Mst. Chaltibai, and in L. Debi Prasad (Dead) by Lrs.

Vs. Tribeni Devi and Others, , in case of delay or lapse of 30 years or 40 years, direct evidence may not be available and the Court has to

proceed on the basis of the probabilities and circumstances. In this case also,

according to the first respondent, the adoption had taken place in the year 1962 and the dispute arose in the year 2002. Therefore, 40 years have lapsed and it may not be possible to have the direct evidence regarding the adoption. But in this case, the paternal uncle of the first respondent viz., the brother of Kasi Nadar was alive and he was examined as PW6 and he has also spoken about the adoption of the first respondent, but he was not available for cross examination and hence, his evidence was rightly eschewed by the trial Court.

25. Further, it is admitted that the natural mother of the first respondent died after the evidence of plaintiff was closed and no attempt was made by the first respondent/plaintiff to examine her to prove the adoption. Though, it was stated by the plaintiff in re-examination that she was bed-ridden for more than one year, no proof was filed to that effect. Therefore, though competent witnesses to speak about the factum of adoption namely PW6 and the natural mother of the first respondent/plaintiff were available, those persons were not examined to prove the adoption. Further, there is no evidence available that the plaintiff/first respondent was recognised and accepted as adoptive daughter of Kasi Nadar and Muthulakshmi Ammal and none of the other relations who were examined have given evidence about the subsequent treatment given to the plaintiff/first respondent, the adoptive daughter by the relatives of Kasi Nadar and Muthu Lakshmi Ammal. Hence, in the absence of any proof for valid adoption, when witnesses were available to prove the same, the question that loom large for consideration is whether the adoption can be presumed on the basis of the entries made in the school records and nomination form signed by the adoptive father without examining the proper persons.

26. In the judgment reported in *Rahasa Pandiani (dead) by Lrs. and Others Vs. Gokulananda Panda and Others*, , it was held that the absence of registered document was very important circumstances to disprove the alleged adoption.

27. In the judgment reported in 2001 (4) CTC 45, in the case of *Nilima Mukherjee v. Kanta Bhusan Ghosh*, it was held by the Honourable Supreme Court that in the absence of any document for adoption, except bank account standing in the joint name of late tenant and defendant

none having knowledge about the said adoption, the mere fact of having joint account would not prove adoption in absence of any other cogent evidence. Then we will have to see the entries made in the school records. Though it has been held in the judgment reported in 2006 (1) LW 198, in the case of State Bank of Punjab v. Mohinder Singh that the entries in the admission register of the school are having more probative and evidential value, in this case by the production of the school records wherein Kasi Nadar was described as father it cannot be contended that would prove the adoption, cannot be accepted. In the case of school records namely SSLC book and other records if the person who gave the information signed in that case, it can be taken that those records are relevant wherein the person has accepted the relationship. In this case, Kasi Nadar did not sign in the school certificate and no evidence was let in that the name of the father was filled up on the basis of the information given by Kasi Nadar. PW3, the School staff did not state that Kasi Nadar gave the information. Therefore, we are left with the ESI nomination form, Ex.A25 wherein Kasi Nadar has signed declaring the status of the first respondent/plaintiff is the daughter. According to me, in the absence of any evidence regarding the factum of adoption or the subsequent treatment or recognition given by the family, one cannot come to the conclusion about the status of the plaintiff on the basis of one statement given in the ESI nomination by the adoptive father. Admittedly, the plaintiff/first respondent was the sister's daughter of Kasi Nadar and PW7 has deposed that the plaintiff/first respondent was treated as foster daughter of Kasi Nadar and therefore, in order to confer certain benefits to her such as medical benefits, Kasi Nadar might have mentioned her as daughter. Further PW5 is the sister of plaintiff/1st respondent and even according to her own admission she was not the eye witness to adoption and when she was 13 years old she was informed by her father that the plaintiff/1st defendant was given in adoption and therefore, adoption was not also proved through her. PW7 has stated in his evidence that the plaintiff was taken as a foster daughter of Kasi Nadar and Muthulakshmi Ammal as they have no child. Therefore, oral evidence relied upon by the plaintiff did not prove adoption and in the absence of any oral proof and valid adoption, the Court cannot presume the valid adoption on the basis of the Exhibits referred to above.

28. The appellant relied upon the Ex.B4, the Legal heir certificate wherein the plaintiff was not described as legal-heir of the deceased Kasi Nadar.

No doubt, in the judgment reported in 2010(1)TNLJ 199 (Civil) and 2002(2) CTC 228 our Honourable High Court held that the revenue officers

have no legal authority to issue such certificate and the Court alone is the competent authority to issue such certificate, in my opinion, Ex.B4 can be

taken into consideration as one of the circumstances to disprove the adoption. The reason being that if really the plaintiff/first respondent had been

treated as the adoptive daughter of Kasi Nadar and Muthulakshmi Ammal for all these years viz., 35 years, the plaintiff would have been

mentioned as daughter of Kasi Nadar. Therefore, the fact that the plaintiff was not mentioned as the legal heir of Kasi Nadar in Ex.B4 would be a

circumstance for arriving at a conclusion that the adoption is not proved.

29. Nevertheless, the Lower Courts without appreciating the law laid down by the Honourable Supreme Court held that the non- examination of

the natural mother of the 1st respondent is not fatal to the case of the respondents. The Lower Appellate Court also without appreciating the

evidence of PW1 to 7 erred in holding that the evidence of PW1 to 7 proved the adoption. As stated supra, PW7 has given evidence that the 1st

respondent was treated as foster daughter and PW5, the sister of the 1st respondent has no personal knowledge and PW2 is a Bank official and

PW4 is an official from ESI Corporation and they have not stated anything about the adoption and therefore, no evidence was let in to prove the

adoption.

30. Further, the 1st respondent failed to examine any witness to prove that she has been recognised and treated as adoptive daughter of Kasi

Nadar and Muthulakshmi Ammal and in the absence of any evidence, adoption cannot be presumed by producing marriage invitation and

Nomination Form signed by the adoptive father or the entries in the School Records. Therefore, the Courts below erred in presuming that there

was valid adoption on the basis of Exs.A2,3,23,25 and 27 and therefore, substantial question of law No. 1 is answered in favour of the appellant

and it is held that the Lower Appellate Court erred in arriving at a conclusion that the 1st respondent is the adopted daughter of Kasi Nadar and

Muthulakshiammal..

31. Further when the status of the first respondent is disputed, she ought to have filed a suit for declaration that she is the adopted daughter and

without filing that, she has filed the suit for declaration that she is the legal-heir. As I have come to the conclusion that the first respondent has not

proved to be the adoptive daughter of Kasi Nadar and Muthulakshmi Ammal, she is not entitled to declaration, declaring herself as the legal heirs

of the Kasi Nadar. Hence, the 2nd substantial question of law is also answered against the first respondent.

32. In this case, both the Courts below have unnecessarily gone into the question of validity of the Will alleged to have been executed by

Muthulakshmi Ammal in favour of the appellant. In my opinion, the Courts below should not have gone into the question of validity of the Will as

the appellant has not prayed for declaration that he is the owner of the property under the Will and he did not file a counter-claim or instituted a

separate suit nor he paid any court fee.

33. In a suit for declaration by the plaintiff, the Court has to give finding that the plaintiff is entitled to declaration or not and in the absence of any

counter-claim made by the defendants on the basis of some documents by which he makes a rival claim, the Court should not have gone into the

question of rival claim. Therefore, in my opinion, the Courts below have unnecessarily discussed about the validity of the Will, which is not relevant

for deciding the case of the plaintiff.

34. In the result, this second appeal is allowed and the decree and judgment of the Courts below are set aside. Consequently, connected

Miscellaneous Petition is closed. No costs.