
(1978) 01 MAD CK 0033
In the Madras High Court
Case No : C.R.P. No. 1954/of 1975

Jayalakshmi Ammal

APPELLANT

Vs

Lakshmi Ammal

RESPONDENT

Date of Decision : 12-01-1978

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (1978) 01 MAD CK 0033

Hon'ble Judges : Suryamurthi, J

Bench : Single Bench

Advocate : B. Lakshminarayana, for the Appellant; R. Srinivasavaradachari, for the Respondent

Judgement

Suryamurthi, J.—This is a civil revision petition against the judgment of the learned District Judge, South Arcot at Cuddalore, setting aside the order of the learned Principal District Munsif, Cuddalore, directing the issue of a Succession Certificate. The disputes centre around a sum of Rs. 2900 which had accrued to the credit of Ramachandra Reddiar towards his provident fund. Ramachandra Reddiar was employed as a peon in the South Arcot Cooperative Central Bank, Cuddalore. The revision petitioner was married to him on 21st October 1959 and was living with him for a time. According to the respondent herein, she deserted him subsequently and married one Ramalinga Reddiar and is living with him since then as his wife. Ramachandra Reddiar had nominated the respondent, his sister, by his letter, dated 9th May 1971, and the nomination was accepted by the officials concerned, notwithstanding the fact that the revision petitioner had married him and could claim to be his wife. On the death of Ramachandra Reddiar, the revision petitioner applied under S. 372 of the Indian Succession Act for the issue of a succession certificate in her favour, empowering her to withdraw the provident fund amount standing to the credit of Ramachandra Reddiar, at the time of his death. This petition was resisted by the respondent, who is the sister of Ramachandra Reddiar, inter alia on the ground referred to above, viz., that the petitioner has married Ramalinga Reddiar after leaving

Ramachandra Reddiar is adulterous.

2. The learned District Munsif came to the conclusion that there was no sufficient evidence to prove that Ramalinga Reddiar had married Jayalakshmi Ammal. He also disbelieved the contention of the respondent that the revision petitioner has been living in adultery with Ramalinga Reddiar. These findings of fact by the learned District Munsif were dissented from by the learned District Judge, who found that there was sufficient evidence to show "that the petitioner was not living with her husband during his lifetime and that she has been living with one Ramalinga Reddiar." He relied on the evidence of R.W.1, R.W.3 and R.W.4 to come to this conclusion.

3. The late Ramachandra Reddiar had executed a settlement deed (Ex. B.9) d. 9th May 1971, in favour of his nephews Rajaram Reddiar and Oomai Ramachandra Reddi. In this document, the deceased Ramachandra Reddiar had stated that he had no wife at that time. This would show that whether or not the revision petitioner married Ramalinga Reddiar validly, Ramachandra Reddiar no longer treated her as his wife when Ex.B9 came into existence. The vaccination register to prove that a child by name Murugadoss was born to Jayalakshmi and Ramalinga Reddiar has also been filed. The oral evidence of R.W.5 coupled with the recitals in Ex. B9 would suffice to prove the case of the respondent that the revision petitioner has been living in adultery with one Ramalinga Reddiar. An entry in Ex. B-8, a ledger maintained in Sri Lakshminarasimhaswami Devasthanam, Tindivanam for the payment of a sum of Rs. 10 at the time of the marriage of Jayalakshmi with Ramalinga Reddiar as per the entry in Ex. B-7, the marriage register, further reinforces the case of the respondent. The learned counsel for the revision petitioner contends that during the lifetime of Ramachandra Reddiar, there could be no valid marriage between Ramalinga Reddiar and Jayalakshmi and that the marriage between them, even if true, is not valid. The question whether the marriage was valid or not does not arise for the purpose of deciding the dispute in this case. There is no doubt about the fact that Jayalakshmi, the revision petitioner, was living in adultery with Ramalinga Reddiar. The learned District Judge was, therefore, right in coming to the conclusion that the revision petitioner has been living in adultery with Ramalinga Reddiar. I am constrained to come to the conclusion that Ramachandra Reddiar chose to nominate his sister, the respondent herein, as the person entitled to receive the Provident fund after his lifetime, because of the adulterous conduct of the revision petitioner, whom he ceased to consider as his wife.

4. The learned counsel for the revision petitioner contends that by reason of Rule 2(1)(c)(i) of the General Provident Fund (Madras) Rules it is only the subscriber, who can prove that by reason of her adulterous conduct, his wife was not entitled to maintenance and should, therefore, be deemed to be no longer a member of the subscriber's family in matters to which the General Provident Fund Rules relates. R.2(1)(c)(i) of the said rules reads as follows--

"family" means...(i) in the case of a male subscribers the wife or wives and

children of the subscriber, and the widow or widows, and children of a deceased son of the subscriber. Provided that if a subscriber proves that his wife has been judicially separated from him or has ceased under the customary law of the community, to which she belongs to be entitled to maintenance, she shall henceforth be deemed to be no longer a member of the subscriber's family in matters to which these rules relate, unless the subscriber subsequently indicates by express notice in writing to the Accounts Officer that she shall continue to be so regarded.

Such proof by the husband as is required by the rule extracted above is required only at the time when the nomination is made by the subscriber, if the subscriber has a wife living at that time and he chooses to nominate a person other than the wife. The fact that the authority concerned, accepted the nomination is sufficient to justify an inference that the subscriber, viz., Ramachandra Reddiar, had duly and properly proved to the satisfaction of the officer concerned that his wife was no longer entitled to maintenance by reason of her desertion and adulterous conduct. If he had not proved that his wife had lost her right to maintenance by reason of such adulterous conduct, his nomination would not have been accepted. The mere fact that his nomination has been accepted is sufficient to entitle the respondent to receive the provident fund amount now.

5. By reason of Rule 30(i)(a) of the General Provident Fund (Madras) Rules

On the death of a subscriber before the amount standing to his credit has become payable, or where the amount has become payable before payment has been made--(i) when the subscriber leaves a family--(a) if a nomination made by the subscriber in accordance with the provisions of Rule 7 or of the corresponding rule heretofore in force in favour of a member or members of his family subsists, the amount standing to his credit in the fund or the part thereof to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination ;

Provided that the amount shall be payable only to a person who fulfils the character of a member of the family on the date of the death of the subscriber;

Rule 30(ii) of the said rules is to the effect--

When the subscriber leaves no family, if a nomination made by him in accordance with the provisions of Rule 7 or of the corresponding rule heretofore in force in favour of any person or persons subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates, shall become payable to his nominee or nominees, in the proportion specified in the nomination.

By reason of her adulterous conduct, the revision petitioner has ceased to be a member of the family of the subscriber (Ramachandra Reddiar), because she had ceased under the customary law of the community to which she belongs to be entitled to maintenance. Therefore, on the date of the nomination of the

respondent, Ramachandra Reddiar had no family. The nomination of the respondent would not have been accepted if Ramachandra Reddiar had not proved to the satisfaction of the authorities concerned that his wife had ceased under the customary law of the community to which she belongs to be entitled to maintenance by reason of her adulterous living with Ramalinga Reddiar.

6. The learned counsel for the revision petitioner contends that the respondent should prove that Ramachandra Reddiar had established during his lifetime to the satisfaction of the authority concerned that his wife, namely, the revision petitioner, had ceased to be a member of the family by reason of her adulterous conduct. The nomination was made in the year 1971. Ramachandra Reddiar is now dead. It would not be possible at this stage for the respondent to adduce evidence about what happened at the time when the nomination was made by Ramachandra Reddiar, nor is it necessary for her to do so, because official acts may be presumed to have been regularly performed. The question whether the wife by her adulterous conduct or for any other reason had lost her right to maintenance had to be considered only at the time of the nomination. This is evident from the fact that Rule 2(1)(c)(i) of the General Provident Fund (Madras) Rules says that it is the subscriber who has to prove this fact. In these circumstances, the respondent as the nominee is entitled to receive the provident fund amount. Therefore, the judgment of the learned District Judge is confirmed, and the civil revision petition is dismissed. There will be no order as to costs.