
(2009) 09 MAD CK 0270
In the Madras High Court
Case No : O.P. No's. 193 and 892 of 2005

Mrs. Yamuna Dhevi

APPELLANT

Vs

Mrs. D. Nalini
Mrs. D. Nalini Vs Mrs. Yamuna Dhevi and
Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Hindu Succession Act, 1956 — Section 13B, 13B(2), 14, 14(1), 24
Insurance Act, 1938 — Section 39

Citation : (2010) 5 LW 295

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G.K. Sekar, in O.P. No. 193/2005 and S. Subramanian, in O.P. No. 892/2005, for the Appellant; M.S. Subramanian in O.P. No. 193/2005 and G.K. Sekar, for R1 and R2 and G. Gunasekaran, ACGSC for R5 in O.P. No. 892/2005, for the Respondent

Judgement

K. Chandru, J.—O.P. 193 of 2005 was filed by the petitioner, who was the mother of the deceased L.R.Paranthaman for the grant of Succession Certificate in her name alone in respect of the Employees Provident Fund and LIC amount. In that OP, the respondent is the wife of the deceased. She had filed O.P. No. 892 of 2005, is seeking for the grant of Succession Certificate in respect of her half share alone due to the death benefits, fixed deposits and savings deposits, EPF and LIC. In that OP, she had made the mother and father of the deceased L.R.Paranthaman as well as Mylapore Hindu Permanent Fund Ltd., Life Insurance Corporation of India and Regional Provident Fund Commissioner, Chennai as party respondents.

2. In view of the interconnectivity between the two Original Petitions, they were tried together and common evidence was let in.

3. On behalf of Yamuna Dhevi,(mother of late L.R. Paranthaman), she examined herself as P.W.1. Rajabather (father of late L.R. Paranthaman) was examined as

P.W.2. On behalf of the wife of the deceased, D. Nalini was examined as R.W.1 and documents were marked through them.

4. The claim of the petitioner in O.P. No. 193 of 2005 was that she and her husband Rajabather alone were the legal heirs of the deceased L.R.Paranthaman and the respondent Nalini, who was the wife of L.R.Paranthaman was not entitled to succeed to the estate of the deceased. According to her, Paranthaman and Nalini got married on 19.02.1999. Thereafter, the respondent left Paranthaman on 12.12.1999 and started residing with her mother. She also filed a criminal complaint on 22.12.1999 alleging that she was forced to pay Rs. 30,000/- out of which Rs. 7,000/- was paid in cash and for the remaining amounts she had given her own jewels.

5. A petition for divorce by mutual consent was filed by the wife Nalini in O.P. No. 2104 of 1999 for declaring her marriage with Paranthaman as nullity. While O.P. No. 2104 of 1999 was pending, the said Paranthaman died on 11.03.2002. After the death of the Paranthaman, the respondent Nalini again got married to one Ravishankar on 10.11.2002.

6. It was submitted that by virtue of her remarriage, she had lost the right to claim any amount as the heir of late Paranthaman and therefore, the Succession certificate should be given solely in her name.

7. The case of the respondent Nalini was that the marriage between her and L.R.Paranthaman was an arranged marriage. It was done without disclosing the fact that the late Paranthaman was suffering from Epilepsy. Before the marriage dowry demands were also made. All her jewelleries were pledged with the Mylapore Hindu Permanent Fund Ltd. It was alleged that the petitioner was put to ill-treatment and harassment. She filed O.P. No. 2104 of 1999 before the Family Court for declaring the marriage as null and void. While the petitioner was living with her parents, the late Paranthaman continued to live with his parents (i.e. petitioner in O.P. No. 193/2005). He died on 11.03.200. The OP filed by Nalini was dismissed as infructuous.

8. The petitioner sent a letter to the Mylapore Hindu Permanent Fund Ltd., intimating the death of the Paranthaman and claiming their dues as legal heirs. A counsel's notice was also issued and it was filed before this Court. She had filed the present OP (O.P. No. 892/05) for the similar relief excepting that she had claimed only 50% of the share of the estate of late Paranthaman.

9. Though the mother of late L.R.Paranthaman alleged that she suspected the hand of the respondent Nalini, who must have murdered her son, but no proof was forthcoming with reference to that allegation. Perhaps the said defence was taken to avail the benefit u/s 25 of the Hindu Succession Act by disentiing her from claiming any share in the property.

10. The short question that arises for consideration is whether the wife Nalini can be excluded by any provision of law from succeeding to the estate of her first

husband late Paranthaman.

11. In support of the contentions raised by the mother, the following decisions were relied upon:

i) Koochu Aiyar alias Venkatasubbaier v. Vengu Ammal (1926) 1 MLJ 432

ii) P. Meenambal Vs. R. Rajeswari and Others,

iii) Vidyadhari and Others Vs. Sukhrana Bai and Others,

12. The first decision Koochu Aiyar alias Venkatasubbaier v. Vengu Ammal relied upon by the petitioner was for the purpose of showing that if the debtor has paid the debts before the grant of a Succession Certificate to the person really entitled to the debt, it affords a complete defence to the suit by the Certificate-holder.

13. The second decision P. Meenambal v. R. Rajeswari and Ors. is for the purpose of showing that if a prima facie case is shown, a succession certificate can be given to that person who can collect the asset. Such a certificate is only for the purpose of collection and while issuing the certificate title is not decided. The title to the amount, whether the petitioner is the absolute owner or someone has a better claim over the amount are all to be decided in a properly instituted suit and the finding rendered during the course of certificate proceedings will not bar a properly laid suit.

14. The third decision relied upon by the petitioner/mother is Vidhyadhari and Ors. v. Sukhrana Bai and Ors. In that case, u/s 372 of the Succession Act, a legally wedded wife is not automatically entitled to get a Succession Certificate to the exclusion of second de facto wife and her children, especially when the deceased had made nomination in favour of second wife to receive the benefits of his employment. Though the de facto second wife herself may not be a legally wedded wife, her children were considered as legitimate for the purpose of getting a share in their father's employment dues. It is not clear as to how this decision will have any relevance to the case of the petitioners.

15. In the third judgment cited supra in paragraph No. 14, it was observed as follows:

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyakumari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security

in the trial court to the satisfaction of the trial court.

(Emphasis added)

16. In the present case, there is no claim of nomination by the deceased in favour of his mother except that they have already received a sum of Rs. 2,97,151.71 from the Mylapore Hindu Permanent Fund Ltd., being death benefits, fixed deposit, recurring deposit and savings deposit as per Ex.P5. In the letter itself, it was stated that Rs. 1,60,331.11 was paid to the mother being the death benefits and Rs. 4,988/- being the Fixed Deposit amount and the balance amount of Rs. 1,31,832/- has been transferred from Fixed Deposit, recurring deposit and savings deposit in the name of Rajabather, the father-in-law. Only remaining sum of Rs. 62,000/- payable on account of Life Insurance Corporation of India and Rs. 40,052/- being the Employees Provident Fund alone are available. Therefore, while deciding the rights of parties, this Court can declare the share available to the wife also. To that extent, the judgment will have bearing on the present case.

17. Per contra, the learned Counsel for the respondent in O.P. No. 193 of 2005 contended that so long as the wife after the death of her husband has become a widow and there is nothing else to show that she had married, the subsequent marriage will not disentitle her from claiming amount due payable after the death of her husband. By no stretch of imagination, she can be non-suited from claiming any such amount.

18. He relied upon the decision in Mst. Bhuri Bai Vs. Mst. Champi Bai and Another, . Reliance was placed upon the following passage found in paragraph 17, which is as follows:

17. In this view, I am supported by the provisions embodied in Section 24 of the Act. This section lays down that "any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married". To constitute a disqualification for succession according to this provision remarriage must have taken place before the opening of the succession and this section does not provide for the divesting of the estate vested in the widow on her remarriage subsequent to the date the succession opens. When the widows specified in Section 24 do not forfeit the property vested in them on remarriage, it will be hardly proper to hold that the widow of intestate himself should forfeit the property on remarriage even after she has become absolute owner. It is true that Section 24 of the Act does not include the widow of the intestate but the omission appears to be due to the fact that it is not possible to conceive of a person leaving a widow who had remarried. I am clear that while the principle embodied in Section 24 of the Act points out towards the non-applicability of Section 2 of the Act of 1856 to a widow succeeding or acquiring absolute estate under the Act, the omission of the intestate's widow in Section

24 cannot lend support to a contrary view.

19. Mr. M.S. Subramanian, learned Counsel for the respondent further placed reliance upon a Division Bench of this Court in Chinnappavu Naidu Vs. Meenakshi Ammal and Another, and placed reliance upon paragraph 2 of the judgment, which is as follows:

2. Section 2 of the Hindu Widows' Re-marriage Act, 1856, provided that a Hindu widow on remarriage shall forfeit her right to the property which she had inherited from her husband. Now, does this provision affect the first plaintiff? Learned Counsel for the appellant contends that Section 2 of the Hindu Widows' Re-marriage Act has not been expressly repealed by the Hindu Succession Act and that Section 24 itself shows that the legislature was conscious that in case of re-marriage by a widow she should not be able to succeed to her husband. In view of this it is said that the forfeiture provided by Section 2 of the Hindu Widows' Re-marriage Act still obtains and it would deprive the first plaintiff of her right to still hold the property of her husband. Though the point is not free from doubt, a combined reading of Sections 4(1)(b) 14, 27 and 28 leaves us with the impression that the provisions of the Hindu Succession Act have overriding effect and Section 14(1) which is absolute and unrestricted in its terms and sweep, enables the first plaintiff to hold the property as absolute owner thereof. The test for the application of Section 14(1) is whether, on the date of the commencement of the Hindu Succession Act, 1956, a Hindu female was in possession of any property as a limited owner. If she was, the limited estate would be converted into full ownership. There is nothing in Section 14(1) or any other section to qualify the absolute ownership or to forfeit her full ownership on her re-marriage. It is true the Legislature was certainly conscious of the disqualification based on re-marriage. Section 24 will incapacitate a widow on her re-marriage from succeeding to the property of her husband. But nowhere has it been stated in the Act that once she has succeeded, her subsequent marriage will forfeit her right to hold the property. On the other hand, Clause (b) of Section 4(1) makes it clear that "any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act." Section 2 of the Hindu Widows' Remarriage Act, 1856, is to our mind, definitely in conflict with Section 14(1) which says that, if the widow was possessed of a limited estate at the commencement of the Act, it would be converted into a full ownership in her. The intention of the Hindu Succession Act, whether it is deliberate or not, appears to be as its provisions stand, that a subsequent remarriage will not work forfeiture. That is also consistent with authority. Ramaiya Konar alias Ramaswami Konar, by father and guardian Natesa Konar and Another Vs. Mottayya Mudaliar alias Manicka Mudaliar, held that subsequent unchastity will not make a widow forfeit the property which she has succeeded to her husband on his death. The view we have taken is also supported by a judgment of a single Judge of the Rajasthan High Court in Mst. Bhuri Bai Vs. Mst. Champi Bai and Another, . We are, therefore, of the view that the courts below came to the correct conclusion

on this aspect of the matter.

20. The learned Counsel placed reliance upon the judgment of the Kerala High Court in *Abdul Karim and Another Vs. Raheesa Ansari*, , for contending that the legal heirs of a deceased, even if they are nominees under insurance policy are entitled to get succession certificate in respect of the insurance amount, as such amount belonged to the estate of the deceased which vested in the heirs in terms of Section 39 of the Insurance Act.

21. The learned Counsel further place reliance upon a judgment in *Thankam Vs. Rajan*, , for contending that since the decree of divorce was not obtained and the petition for divorce was dismissed. The wife as a widow entitled to succeed to the estate. He place reliance upon paragraph 5 of the judgment, which is as follows:

5. ...The wife is a class I heir under the Hindu Succession Act. So when a deceased male member dies and the wife survives him, she is class I heir. Learned Counsel for the respondent submitted that in view of the fact that the petition for divorce was submitted before the death of Rajendra Prasad, she should be deemed to have been divorced and that the plaintiff was not the wife at the time of the death of Rajendra Prasad. This argument cannot be accepted. The wife continues to be the wife till the marital life is broken by a decree under the proceedings of the Hindu Marriage Act. Any transaction or any document showing a divorce cannot be accepted in the eye of law, unless a decree is granted under the Hindu Marriage Act (here the parties are Hindus). Even if the husband and wife executed a document stating that their marital tie is broken, that will not be a valid document in the eye of law to show that the parties have dissolved the marriage. Divorce has to be obtained in accordance with the procedure under the Hindu Marriage Act. Section 13B of the Act gives opportunities to both husband and wife to get a divorce by joint petition. Further, u/s 13B(2) of the Act, divorce can be granted only with effect from the date of decree. In this case, no decree for divorce was granted by the Court. Hence, the plaintiff continued to be the wife of deceased Rajendra Prasad in spite of the steps taken for divorce.

22. The counsel also relied upon the judgment of the Supreme Court in *Cherotte Sugathan (Died through LR"s) and Others Vs. Cherotte Bharathi and Others*, . It was held that the Hindu Succession Act, 1956 by introducing Section 4 to have overriding effect brought about a sea change in Shastric Hindu Law. Hindu widows were brought on equal footing in the matter of inheritance and succession. Therefore, it was held in paragraph 17, which is as follows:

17. Yet again this Court in *Velamuri Venkata Sivaprasad v. Kothuri Venkateswarlu* held: (SCC P. 165, para 52)

52. Incidentally, Section 24 of the Succession Act of 1956 placed certain restrictions on certain specified widows in the event of there being a remarriage; while it is true that the section speaks of a predeceased son or son of a predeceased son but this in our view is a reflection of the Shastric Law on to the

statute. The Act of 1956 in terms of Section 8 permits the widow of a Hindu male to inherit simultaneously with the son, daughter and other heirs specified in Class I of the Schedule. As a matter of fact she takes her share absolutely and not the widow's estate only in terms of Section 14. Remarriage of a widow stands legalised by reason of the incorporation of the Act of 1956 but on her remarriage she forfeits the right to obtain any benefit from out of her deceased husband's estate and Section 2 of the Act of 1856 as noticed above is very specific that the estate in that event would pass on to the next heir of her deceased husband as if she were dead. Incidentally, the Act of 1856 does not stand abrogated or repealed by the Succession Act of 1956 and it is only by Act 24 of 1983 that the Act stands repealed. As such the Act of 1856 had its fullest application in the contextual facts in 1956 when Section 14(1) of the Hindu Succession Act was relied upon by Defendant 1.

23. The learned Counsel lastly placed reliance upon a decision in Harabati and Others Vs. Jasodhara Debi and Others, and placed reliance upon the following passage found in paragraph 13, which is as follows:

13. On my above finding that absolute ownership in the suit properties vested in Jasodhara for all intents and purposes as per Section 14(1) of the Act. She cannot lose her said right merely on her remarriage with some other person. So long a widow had only a limited life interest in her husband's properties, her said right ceased and determined on her remarriage under the provisions of Section 2 of the Hindu Widows' Remarriage Act (Act 15 of 1856). But in view of the provisions of Section 31 of the Hindu Succession Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of that Act ceased to have any effect in respect of any matter for which provision is made in this Act, and other laws in force immediately before the commencement of the said Act ceased to apply to Hindus in so far as the same were inconsistent with any of the provisions contained in that Act. The provisions of Section 2 of the Act 15 of 1856 (supra) being inconsistent with the provisions of Section 14 of the Hindu Succession Act, the former and/or any other such provision in any other law ceased to apply to the Hindus and the same stand repealed to the extent of repugnancy. Accordingly, Jasodhara, who has acquired absolute ownership over the suit properties u/s 14(1) of the Act, cannot be divested of her said right in the suit properties even on her remarriage with any other person. My above view is supported by the decision reported in ILR 1965 Cut 398 (supra)

24. Therefore, in the light of the above, he submitted that since attempt were made to disqualify her on the ground that she had filed a divorce application and subsequently she got remarried after the death of Paranthaman and that the Succession Certificate cannot be decide title of parties cannot stand in the way of this Court ordering her petition.

25. If it is once held that the respondent is the wife of the late Paranthaman and her subsequent remarriage will not disqualify her from succeeding to the estate

of her late husband, then she is entitled to succeed to half the share of the deceased Paranthaman. It is not necessary to drive parties to some other forum because the necessary parties are before this Court in both the Original Petitions. As held by the Supreme Court in Vidyadhari and Others Vs. Sukhrana Bai and Others, , this Court can itself declare the rights of the parties with the proportionate share to each of them so as to succeed to the estate of Late Paranthaman.

26. Accordingly, Mrs. J. Yamunadevi, petitioner in O.P. No. 193/2005 (mother of late Paranthaman) and Mrs. Nalini, petitioner in O.P. No. 892 of 2005 (wife of Paranthaman) are each entitled to succeed to half share in respect of the dues payable to late Paranthaman. Let a Succession Certificate be issued on the above terms.

27. Both Original Petitions are ordered accordingly. No costs.