
(2005) 04 AP CK 0083
In the Andhra Pradesh High Court
Case No : CMA No. 4838 of 2004

Mylarapu Mallamma

APPELLANT

Vs

Mylarapu Saroja and Others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Succession Act, 1925 — Section 383, 384

Citation : (2005) 4 ALD 24 : (2005) 4 ALT 6 : (2005) 2 APLJ 249 : (2005) 3 RCR(Civil) 350

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : K. Vasudeva Reddy, for the Appellant; Kowturu Vinay Kumar, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—When the vacate petition is taken up for hearing both the parties requested to dispose of the main appeal. At their request, CMA itself is taken up for hearing. Heard both sides.

2. The unsuccessful petitioner in the Court below preferred this CMA against the order and decree dated 6-10-2004 passed in OP No. 373 of 2001 by the I Additional District Judge, Karimnagar.

3. The relevant facts shorn of details for disposal of appeal lies in a narrow compass and briefly stated as under:

4. The petitioner is undisputedly first wife of the deceased Mylavardpu Rayamallu who was an employee of Singareni Collieries Company Limited, Godavarikhani till his death on 21-12-1997. He left behind the appellant/petitioner and his mother, who died on 8-7-2001. On the death of Rayamallu, appellant/petitioner approached the Controlling Authority under Payment of Gratuity Act for payment of gratuity amount in Claim Application No. 20/ 99 and the same was adjudicated in favour of the appellant/petitioner. Against which 1st respondent herein filed

appeal before the appellate authority. Pending the same 1st respondent also filed a suit - O.S. No. 73 of 1999 before the Junior Civil Judge, Peddapalli seeking a declaration that she is the legally wedded wife of the deceased Rayamallu, which was dismissed for non-deposit of process and no steps were taken for restoration. After adjudicating the claim of gratuity in favour of the appellant/petitioner, 1st respondent filed O.P.No. 559 of 2000 before the I Additional District Judge, Karimnagar for succession certificate under the Indian Succession Act without impleading the appellant/petitioner and mother of late Rayamallu and obtained succession in the said O.P. to receive the terminal benefits amounting to Rs. 3,09,371/-. On coming to know that the 1st respondent obtained succession certificate, appellant/petitioner filed O.P.No. 373 of 2001 before the I Additional District Judge, Karimnagar u/s 383(b)(c) of the Indian Succession Act for revoking the succession certificate granted in favour of the 1st respondent in O.P.No. 559 of 2000 dated 12-2-2001 stating that the 1st respondent has obtained the said succession certificate by misrepresenting the Court and without impleading the parties likely to be affected by granting the said certificate. The 1st respondent resisted the petition by filing a counter stating that she has not misrepresented the facts nor did play any fraud in obtaining the succession certificate. She got published the notification in the newspaper as directed by the Court and the appellant/petitioner did not come forward with any objection. In view of the same, the lower Court rightly granted succession certificate in her favour after satisfying with the documents furnished by her. It was further stated by her that the appellant/petitioner took customary divorce from the deceased on 16-1-1983 and later married Doddipalli Mallaiah and living with him and gave birth to children through the said Mallaiah. After obtaining such customary divorce deceased married the 1st respondent and living with her and her name was entered in the list of family members in the family medical attendance book, ration card issued by the Mandal Revenue Officer, Ramagundam and her name was nominated for all the terminal benefits. On the death of deceased, Singareni Collieries Company Limited paid a sum of Rs. 35,540/- by way of cheque to the 1st respondent and she vacated the quarter and handed over the same after the death of the deceased. Basing upon the above pleadings the learned District Judge framed the following points for trial.

1. Whether the petitioner is the divorced wife of the deceased Mylavarapu Rayamallu?
2. Whether the succession certificate granted in O.P. No. 559 of 2000 is liable to be revoked?
5. To prove the case of the parties, appellant/petitioner herself was examined as P.W.1 and got marked Exs.A1 to A7. For the respondents, 1st respondent was examined as R.W.1, co-employee of the deceased was examined as R.W.2 and attesor of Ex.B-1 - customary divorce deed was examined as R.W.3 apart from marking Exs.B1 to B14.

6. The lower Court after analyzing the oral and documentary evidence on Point No. 1 held that though the 1st respondent failed to prove customary divorce, the overwhelming evidence leans in favour of truth of Ex.B1. In view of the same, though the marriage between the 1st respondent and the deceased is not proved, it can be said that they lived as wife and husband under strong belief that the customary divorce deed - Ex.B1 has put an end to the relationship between the appellant/petitioner and the deceased. In view of preponderance of the probabilities the lower Court opined that the divorce set forth by the 1st respondent is true and also accepted that the appellant/petitioner is a divorced wife of the deceased Mylavarapu Rayamallu.

7. The said presumption drawn by the lower Court is not based on evidence. Such presumption can be drawn only to prove that the deceased and the 1st respondent lived as wife and husband, but no converse presumption can be drawn to prove that the deceased divorced the appellant/petitioner.

8. On Point No. 2 the learned Judge after extracting Section 383 of Indian Succession Act, which reads as under:

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 making 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.

concluded that the 1st respondent is under the bona fide belief that she is the legally wedded wife and she has been living as such since a long time. Hence, the necessity to mention the past history of the deceased might not have been felt by the 1st respondent. When the appellant/ petitioner claims to be the wife of the deceased and living with the deceased till the time of his death, she is expected to be aware of his death and to be alert enough to apply for the death benefits immediately after the death of the deceased. But she did not make any representation to the authorities or she did not file any petition seeking for succession certificate in her own favour. The appellant/petitioner filed the application on 19-3-1999 before the Controlling Authority under Payment of Gratuity Act and the Authority while passing the order under Ex.A4 did not cause

any enquiry with regard to alleged marriage and divorce. Therefore, the same cannot be taken as a proof to say that the 1st respondent is the wife of the deceased. The conduct of the appellant/petitioner in not seeking for a succession certificate has to be interpreted to say that she took advantage of her being nominated under the gratuity and she did not want to get any other benefits, which are not due to her. The very fact of 1st respondent filing application before the Assistant Commissioner of Labour shows that she is under the bona fide impression that she is the legally wedded wife of the deceased and filed the application. In such circumstances it cannot be said that the 1st respondent played any fraud on the Court by not stating about the first marriage of the deceased and there are no grounds to revoke the succession certificate granted in favour of the 1st respondent in O.P.No. 559 of 2000 and accordingly dismissed the O.P.

9. Learned Counsel for the appellant contended that when the appellant/petitioner approached the Controlling Authority under the Payment of Gratuity Act along with the 1st respondent for payment of gratuity which was adjudicated in favour of the appellant/petitioner under Ex.A4 and pending said adjudication the 1st respondent having filed O.S. No. 73 of 1999 seeking declaration that she is legally wedded wife of Rayamallu and filing of O.P. No. 559 of 2000 without impleading the appellant/ petitioner as party to the O.P. itself is sufficient to attract Section 383(b) and (c) of the Indian Succession Act to set aside the succession certificate. The lower Court having observed that the 1st respondent failed to prove customary divorce taken by late Rayamallu under Ex.B1 and also failed to prove that the custom, which existed in their caste allowed divorce as shown in Ex.B1, ought not to have accepted the divorce between the 1st respondent and deceased. Though the lower Court taken note of her submission in Paras 8 and 9 of its judgment that the 1st respondent failed to discharge the said burden, proceeded on the premise that they lived as wife and husband under strong belief that the customary divorce deed - Ex.B1 has put an end to the relationship between the appellant/petitioner and the deceased, and such contra presumption drawn by the lower Court suffers from conjectures and surmises.

10. Per contra, Mr. Kowturu Vinay Kumar, learned Counsel for the 1st respondent contends that R.W.2 who is co-employee of the deceased categorically stated that the 1st respondent is living with the deceased till his death and she has been paid a sum of Rs. 35,540/- and on the death of the deceased she has been asked to vacate the quarters and other documentary evidence, namely, Exs.B5, B7, B10 and B11 etc. prove that she is the wife of the deceased and in whose favour nomination was made by the deceased. By mere non-impleading the appellant/ petitioner (1st wife) under the bona fide belief that she has already divorced to late Rayamallu will not amount to concealing any fact and prayed for dismissal of the appeal.

11. It is not in dispute that u/s 381 of the Indian Succession Act a certificate

granted would be conclusive as against the persons owing debts or liable on such securities. But the grant of certificate can be revoked as provided u/s 383 on the grounds stated therein. u/s 384 of the said Act, a right of appeal is also provided. It follows, therefore, that the Act is a self-contained Act and makes ample provision for the aggrieved persons, who were either parties to it or were not parties. If they are parties to the succession proceedings, they can file appeal as contemplated u/s 384, but if they are not parties to such proceedings, the only remedy available to them is to move the Court, which granted succession, for revocation of certificate so granted u/s 383 on the grounds stated therein.

12. It is well settled that on issuance of succession certificate the Court does not become functus officio and still possess discretionary jurisdiction to revoke the certificate only on the grounds mentioned u/s 383.

13. In view of the same, once it is established that the appellant/petitioner is the legally wedded wife of the deceased and the 1st respondent failed to prove the valid marriage between herself and the deceased except living with the deceased as wife, necessarily she has to implead the petitioner/1st wife and the deceased's late mother, who are entitled to succeed the estate of the deceased subject to proof of divorce between the appellant and the deceased, in the proceedings initiated for succession. Any succession certificate obtained without impleading the legal heirs knowingly that both of them are made rival claims before the Controlling Authority under Payment of Gratuity Act will amount to obtaining the certificate fraudulently by concealment of some material facts.

14. In view of the same, the lower Court erred in dismissing the O.P. filed by the appellant/petitioner. Accordingly, the impugned order is set aside and O.P. is allowed and succession certificate granted in favour of the 1st respondent in O.P.No. 559 of 2000 is revoked. Parties are at liberty to move the lower Court to grant fresh certificate on application in supersession of earlier certificate issued in accordance with law.

15. Civil miscellaneous appeal is accordingly allowed. No costs.