

(1992) 04 MAD CK 0060

In the Madras High Court

Case No : Criminal R.C. No"s. 510 and 512 of 1986, Criminal R.P. No"s. 582 and 584 of 1986

Pavathal

APPELLANT

Vs

Periasamy Gounder

RESPONDENT

Date of Decision : 09-04-1992

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 13(3)

Citation : (1992) 04 MAD CK 0060

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : C.S. Dhanasekaran, for the Appellant; G. Munirathinam, for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—Both these revisions arise over the some dispute between the same parties involving a common question of law and are therefore, disposed off together by a common order.

2. These revisions challenge two different orders by the Sessions Judge, Erode allowing two different revisions at the instance of the respondent herein, and setting aside the order of the learned Magistrate directing under Sec.13(3) of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as the Act) registration of the birth of a male child to the petitioner and the respondent herein on 20.10.1957 and the death of that child on 22.10.1957.

3. It is the common case that the petitioner and the respondent were married in 1956. After living together for some-time, they got separated due to misunderstandings and the petitioner filed O.S.421/70 in the Court of the Subordinate Judge, Erode against the respondent seeking maintenance. She also filed O.S.64/85 in the same Court for partition of her share of the family properties. According to the petitioner, a male child was born to them on

20.10.1957 that child lived for 2 days and died on 22.10.1957. As class I heir of her dead son she was entitled to his share. The respondent denied the birth of any male child and also its death. Since, neither the birth nor the death of the Child was registered with the authorities under Sec.13(1) of the Act, the petitioner filed CrI.M.P.14/85 for an order of the learned Magistrate for registering the birth of the male child as born on 20.10.1957 and she filed CrI.M.P.No.15/85 in the same court for an order of the learned Magistrate for registering the death of the above child as died on 22.10.1957. The Learned Magistrate caused publication of the two petitions to be made and after verifying the correctness of the birth and death and examining the petitioner, ordered both the petitioners, and directed necessary entries to be made in the register of births and deaths. The respondent who later on came to know about the two orders, filed Criminal Revision Case No.5/86 challenging the order for registration of the birth and Criminal Revision Case No.6/86 challenging the order for registration of the death of the child. The learned Sessions Judge, after hearing both parties and for the reasons mentioned in his order, allowed both the revisions, cancelling the order of the learned Magistrate for registering the birth as well as the death of the child. Aggrieved with the orders in CrI.R.C.5/86 the petitioner has filed CrI.R.C.510/ 86 and aggrieved with the order in CrI.R.C.6/86 the petitioner has filed CrI.R.C.No.512/86.

4. The learned counsel for the petitioner urged two contentions in support of her prayer. The first contention was that the order passed by the learned Magistrate acting u/s 13 Sub-section (3) of the Act, could not be revised u/s 397, Cr.P.C. either by the High Court or by the Sessions Court, since the learned Magistrate was not performing any judicial functions but was merely passing an administrative order. The second contention of the learned Counsel was that even if a revision would lie, still it was beyond powers of the court of revision to reassess the evidence, appreciate it and reverse findings of fact rendered by the learned Magistrate on this ground also, the order of the learned counsel in support of the first proposition relied upon the decisions Raja Y.S.A. Prasad v. Kolli Ramaswamy and others 1948 Madras Weekly Notes CrI. 11 Kowdanda Mariyana & others v. Satta Venkata Rao and others 1959 (CrI.) M.L.J. 271 Tiguti Venkatapadiraaju and another v. Walireddi Appanna and others 1966 (CrI.1) M.L.J.62 , Mithon and another v. Municipal Board of Oral and State of U.P. AIR 1957 All. 351.

5. Thiru Munirathinam, the learned counsel for the respondent did not canvass the correctness or otherwise of the legal contention that the order of the learned Magistrate was not subject to the revisional jurisdiction u/s 397 Cr.P.C. and instead, sought to support the order of the learned Sessions Judge on the ground that the reasons given by the learned Sessions Judge, for reversing the factual findings of the learned Magistrate, were correct. The learned counsel submitted that the respondent would work out his remedies in a civil forum by a separate suit and this court could make certain observations in respect of the delay in resorting to remedies in the civil forum.

6. The question that arises for consideration is whether there is any illegality, perversity or error in the orders of the Sessions Court so as to call for interference by this Court under its revisional jurisdiction.

7. Since the first contention of the learned Counsel for the petitioner regarding the maintainability of the revisions before the learned Sessions Judge has not been canvassed in full by the respective counsel and since I am accepting the second contention of the learned counsel for the petitioner and allowing these revisions, the question as to whether the order passed by the Magistrate u/s 13 sub-section (3) of the Act, would fall within the revisional jurisdiction in Section 397, Cr.P.C. is left open.

8. The second contention of the learned counsel for the petitioner regarding the powers of the court of revision has to be accepted. The Supreme Court in *Pathumma and Another Vs. Muhammad*, has made it clear, that a court of revision, should not re-appreciate the evidence relating to questions of fact and substitute its own view to the View of the Magistrate, who alone could render findings of the fact. The scope of the revision therefore, is merely to find out whether the order of the subordinate Court suffers from any illegality or impropriety, which the court of revision could set aside. Findings of fact based on an analysis of the evidence recorded ought not to be disbursed by the court of revision. In the instant case, all the learned Magistrate was required to do under S. 13(3) of the Act, was merely to verify the correctness of the birth or death and order registration. This contingency would arise when the registration is sought to be made, one year after the birth or death as the case might be. Registration before that period would be done by the Registrar concerned. The Act does not prescribe any procedure that the learned Magistrate has to follow for verifying the correctness of the birth or death. He is not conducting any trial or even holding an enquiry. The applicant who seeks registration, is not required to prove the fact of the birth or death, as a fact is required to be proved either in a civil court or in a criminal court. The manner by which the learned Magistrate has to verify the correctness of the birth or death is left to his absolute discretion. The Evidence Act would not apply to the proceedings.

9. In the instant case, the learned Magistrate had chosen to examine the petitioner and to call for a report from the Village Administrative Officer. The materials so gathered had enabled him to verify the correctness of the birth and the death and on being satisfied about the correctness he had ordered registration. The learned Sessions Judge had reversed these findings on fact stating that the Village Administrative Officer who issued the certificate had not been examined by the learned Magistrate in court, that the Village Administrative Officer who was in that village in 1957 had not been examined, that a mere report had been acted upon and so on. In short, he has applied the Evidence Act to the verification proceedings of the learned Magistrate. This is not warranted under law. The learned Sessions Judge had re-assessed the evidence reappreciated it, tested it in the light of broad probabilities and rules of evidence

and has reversed the findings of fact. This was beyond the scope of a revision under S. 397, Cr.P.C. The orders of the learned Sessions Judge therefore cannot be legally upheld.

10. In the result, the orders of the learned Sessions Judge are set aside and both the revisions are allowed.