

(2012) 04 MAD CK 0145
In the Madras High Court
Case No : Criminal O.P. No. 8055 of 2012

Rangasamy

APPELLANT

Vs

Executive Officer, Kolappalur Panchayat Board

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Evidence Act, 1872 — Section 107

Registration of Births and Deaths Act, 1969 — Section 13(1)(3), 13(1)(4), 13(3), 2, 2(1)(b)

Citation : (2012) MLJ(Cri) 767

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R.T. Doraisamy, for the Appellant; M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The petitioner's father was one Mr. Padaikalam Ramasamy @ Ramaboyan. During the year 2009, Mr. Padaikalam Ramasamy was aged 90 years. According to the petitioner, on 8.1.2009 Mr. Padaikalam Ramasamy left his house for the hospital. He did not return thereafter. Subsequent enquiries of the petitioner and his family members revealed that Mr. Padaikalam Ramasamy would have fallen accidentally into a river on the same day. In this regard, a complaint was prepared to the Inspector of Police, Gopichettipalayam Police Station, on the same day, upon which, a case was registered in Crime No. 161 of 2009 for man missing. The said case is under investigation. During investigation, the whereabouts of Mr. Padaikalam Ramasamy could not be ascertained and his fate is not known. According to the petitioner, believing that Mr. Padaikalam Ramasamy died on 8.1.2009, he conducted last rites for him as per the local custom. Mr. Padaikalam Ramasamy had allegedly executed a Will on 30.1.2003. After disappearance of Mr. Padaikalam Ramasamy there arose dispute between the legal heirs of Mr. Padaikalam Ramasamy in sharing the properties left behind by him. Treating Mr. Padaikalam Ramasamy to have died and relying on the

alleged Will dated 30.1.2003, a suit was filed before the competent civil Court and the same is pending. While so, the petitioner approached the Commissioner, District Municipality, Gopichettipalayam to register the death of Mr. Padaikalam Ramasamy in the death registrar as per the provisions of The Registration of Births and Deaths Act, 1969 (for short "the Act"). In that petition, the petitioner had claimed that Mr. Padaikalam Ramasamy died on 8.1.2009. The Commissioner District Municipality declined to register the same. Thereafter, the petitioner filed a petition before the learned Judicial Magistrate No. 1, Gopichettipalayam u/s 13(3) of the Act, seeking a declaration that Mr. Padaikalam Ramasamy died on 8.1.2009 and for a direction to the respondent herein to register the death of Mr. Padaikalam Ramasamy. The learned Magistrate returned the said petition, since there were no documents produced to prima facie to show the death of Mr. Padaikalam Ramasamy. Aggrieved over the same, the petitioner has come up with this original petition seeking a direction to the learned Magistrate to entertain the said petition and dispose of the same in accordance with law.

2. I have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

3. The object of The Registration of Births and Deaths Act, 1969 is to provide for the regulation of the registration of births and deaths and for matters connected therewith. As per Section 8 of the Act, the registering authority is duty bound to register the births and deaths in the prescribed register. If the registration in respect of any birth or death has not been made within one year of its occurrence as per Section 13(1)(3) of the Act, the same shall be registered only on an order made by a Magistrate of the First Class or Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

4. The term "death" has been defined in sub-section (1)(b) of Section 2 of the Act as follows:

death" means the permanent disappearance of all evidence of life at any time after live-birth has taken place;

5. The above provision would clearly go to define that if there is permanent disappearance of all evidence of life of an individual after live birth has taken place and if there is no dispute regarding the date of death, the same shall be registered by the registering authority within the time prescribed in the Act and if the death is sought to be registered beyond the prescribed date, the same shall be registered only on the orders of the Magistrate as enshrined in Section 13(1)(4) of the Act.

6. Section 13(1)(3) of the Act empowers the Magistrate to issue an order for registering birth or death, which reads as follows:

Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first

class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

7. As per the above provision, before ordering the registration of the birth or death, the Magistrate is statutorily duty bound to verify the correctness of the birth or death. Such verification can be had from the materials placed before him, including oral evidence. But, when the very death of a person is either in dispute or doubt, then, it shall not be competent for the Magistrate to issue a direction for registration of death. In such event, the litigating party has to approach only the civil Court for getting necessary declaration regarding the date of death. As we have already seen, as defined u/s 2(1)(b) of the Act to declare a man dead, it should be proved that there has been permanent disappearance of all evidence of life. Here, the expression "of all evidence", needs to be emphasised. To put it otherwise, the expression "death" means cessation of life from the body leaving only the mortal remains. Therefore, whether a person is dead or alive, is to be proved by means of all evidence of life. The Magistrate, who verifies the alleged death of an individual cannot go into the said disputed question of fact inasmuch as the question whether a person is alive or dead is a civil dispute and the same is to be adjudicated upon only by the civil Court. The Magistrate has got only a limited role to play. It is too well settled that even if registration of date of birth or death is made in the register on the orders of the Magistrate, the same is not conclusive. The disputing party will be at liberty to question the correctness of the same in a competent civil Court (vide *K. Muthulakshmi v. K. Lakshmiammal*, LNIND 2011 MAD 3058 : (2011) 8 MLJ 893). Therefore, in the case on hand, the learned Magistrate has exercised his judicial function properly by returning the petition for want of materials to prima facie show that Mr. Padaikalam Ramasamy died on 8.1.2009.

8. In this regard, I may also refer to Section 107 of the Evidence Act which reads thus:

707. Burden of proving death of person known to have been alive within thirty years.- When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

9. As per the said provision, the burden is heavily upon the person, who affirms that a person is dead, to prove the same, if it is shown that the said person was found alive within thirty years. In the instant case, admittedly, Mr. Padaikalam Ramasamy was alive in the year 2009. Since the petitioner wants to affirm that Mr. Padaikalam Ramasamy died on 8.1.2009, the burden is heavily upon the petitioner to prove the same. As I have already concluded above, such proof can be made only before the competent civil Court. But, in the instant case, curiously, the petitioner, in the petition filed before the learned Magistrate has prayed for a declaration by the learned Magistrate that Mr. Padaikalam Ramasamy died on 8.1.2009. In my firm view, the learned Magistrate lacks jurisdiction to declare the death of any individual under the Act inasmuch as such

jurisdiction is vested only in the civil Court.

10. It is true, that a complaint was preferred by the petitioner to the police on 8.1.2009 in respect of the disappearance of Mr. Padaikalam Ramasamy. But, the result of the investigation is not known. The petitioner has not produced any document to show the outcome of the investigation. This is yet another reason, as to why, the petition was returned by the learned Magistrate. Apart from that, based on the alleged Will executed by Mr. Padaikalam Ramasamy, the parties are now litigating before the civil Court in respect of the properties belonging to Mr. Padaikalam Ramasamy. Surely, the question of death of the alleged Mr. Padaikalam Ramasamy on 8.1.2009 shall be in issue before the civil Court. Therefore, it is for the petitioner to prove the same in discharge of his burden as per Section 107 of the Indian Evidence Act before the civil Court. The learned Magistrate cannot go into such question at all.

11. In view of the foregoing discussions, I hold that the learned Magistrate was right in returning the petition and the said order does not require any interference at the hands of this Court. In the result, the criminal original petition is dismissed.