

(2009) 09 MAD CK 0143
In the Madras High Court
Case No : O.P. No. 218 of 2005

S. Pappammal and M. Srinivasan

APPELLANT

Vs

Stella Manohari

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 2, 24, 8
Succession Act, 1925 — Section 370, 372

Citation : (2009) 09 MAD CK 0143

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Hemalatha, for the Appellant; Sugumar, for the Respondent

Judgement

K. Chandru, J.—This Original Petition is filed u/s 372 of the Indian Succession Act for the issuance of a Succession Certificate in the matter of debts of late Dr. S. Sekaran, who died interstate.

2. After due formalities, the first petitioner examined herself as P.W.1. She also examined her son-in-law one N. Dhanasekaran as P.W.2. The respondent examined herself as R.W.1.

3. The case of the petitioners was that their son Dr. S. Sekaran died at CMC Hospital, Vellore on 20.08.2003. He died interstate. The petitioners, being the parents are entitled to succeed to the estate. In terms of Section 370 of the Indian Succession Act, 1925, there is no impediment for them to succeed to his estate. The late Dr. S. Sekaran worked as a Medical Doctor under the control of the Director of Primary Health for over 25 years and was entitled to get his terminal benefits.

4. It was alleged that he did not marry during his life time and he died as a bachelor. It was brought to their knowledge that the respondent had also applied to get the terminal benefits payable on account of the death of Dr. Sekaran, by claiming to be his wife. The petitioners made a criminal complaint against the

respondent and a case is also pending against her. They also sent a representation dated 11.04.2004 to the government stating that they are the only legal heirs of the deceased. They were informed by the Department that in order to succeed to his benefits, they must produce a Succession Certificate and hence, the petition.

5. The respondent had filed a counter statement challenging the contentions raised by the petitioners. While late Dr. Sekaran and the respondent were students of Stanley Medical College, they fell in love with each other. The marriage between the late Dr. S. Sekaan and the respondent took place on 22.05.1980 at Mettur Dam in Pappammal Kalyana Mandapam in the presence of elders and relatives. After their marriage, the late Dr. Sekaran and the respondent lived as husband and wife till his last breath.

6. Since they did not have any issue out of the wedlock, they adopted a male child and named him as S. Jagadeesh. The said boy is now studying VIII standard in St. Joseph Matriculation School. The final rites of the late Dr. Sekaran was performed by the boy. There has all along been good relationship between the respondent and her in laws, who are the petitioners. The second petitioner was lodged in Mercy Home at Kilpauk. It was only at the instigation of P.W.2, (son-in-law of the petitioners), the entire case was set up. The petitioners are not entitled to get Succession Certificate exclusively in their favour in the presence of the respondent who is the wife of the deceased and her son.

7. A rejoinder to the counter statement was also filed by the petitioner dated Nil (July 2005). It was thereafter, evidence was let in and documents were marked.

8. It was seen from the records that the respondent had proved that she is the married wife of Dr. Sekaran. The evidence of P.W.1 is prevaricative. At one time, she says her son died as a bachelor. The second time she feigns ignorance about the marriage between her son and the respondent. The third time she said that she did not attend the marriage. Similarly, though she denied the marriage, the respondent was able to produce their marriage invitation card and various correspondence the second petitioner had with her. Infact, Dr. Sekaran in his service records had given the name of the respondent as his wife. Even in the charge memo issued to the respondent for her long absence, the department had described her as the wife of Dr. Sekaran. Her testimony could not be impeached in cross-examination. Exs.R9, R10 and R20 support the case of marital relationship between the deceased and the respondent. Likewise Exs.R22,R23 and R24 clearly support the stand of the respondent about her marital relationship with the deceased.

9. The second petitioner, who was kept in Mercy Home at Kilpauk had written a letter to the respondent which was marked as Ex.R10. In that letter he had described the respondent as his daughter-in-law and he was anxious to know about the health of their grand son Jegadish. Photographs filed as Exhibits also show the close relationship between the parties and that the respondent was not

a stranger to the petitioners. The evidence let in by the respondent both oral and documentary clearly proves that she was the legally wedded wife of late Dr. Sekaran. The circumstances under which the second petitioner was never examined and as to why he was kept in an old age home for a long number of years was also not explained. The correspondence between the respondent's counsel and the Mercy Home shows that for some unexplained reasons, the second petitioner was kept away from this Court. Therefore, this Court has not hesitation in rejecting the case put forth by the petitioners.

10. The learned Counsel for the respondent relied upon the following three judgments in support of his contentions:

i) Andrahennedige Dinohamy and Anr. v. Wijetunge Liyanapatabendige Balahamy and Ors. AIR 1927 PC 185

ii) Raghuvir Kumar and Another Vs. Shanmughavadivu and Others,

iii) Parameshwari Bai Vs. Muthojirao Scindia,

11. The petitioners were not able to dislodge the evidence produced by the respondent regarding the marital relationship between the respondent and the deceased Dr. Sekaran. Therefore, the respondent, being an automatic successor by herself, being the wife of the deceased and on behalf of the minor son Jegadish, the petitioners cannot get an exclusive Succession Certificate.

12. The Supreme Court vide its decision in Cherotte Sugathan (Died through LR's) and Others Vs. Cherotte Bharathi and Others, observed as follows:

15. In Kasturi Devi v. Dy Director of Consolidation this Court categorically held that a mother cannot be divested of her interest in the deceased son's property either on the ground of unchastity or remarriage.

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.

13. The Supreme Court vide its decision in Vidyadhari and Others Vs. Sukhrana Bai and Others, did not drive the parties to some other forum or proceedings in a clear case where rights of the parties are not in dispute. Hence, the passage found in Paragraph 14 may be usefully extracted below:

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 Vidhyadhari 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.

14. In the light of the above, this Original Petition is disposed of with a direction to grant Succession Certificate allocating 1/3rd share to the petitioners and 2/3rd share to the respondent and her minor son for all the dues payable to late Dr. Sekaran. Let a Succession Certificate be issued on the above terms.