
(1998) 01 KAR CK 0049

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 125 of 1997

Smt. Jayalakshmi and Others

APPELLANT

Vs

Smt. Gayathri and Another

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 12, 16, 5

Citation : AIR 1998 Kar 169 : (1998) 2 CivCC 524 : (1998) 1 DMC 681

Hon'ble Judges : B.K. Sangalad, J

Bench : Single Bench

Advocate : Sri S.B. Mukkannappa, for the Appellant; Sri S.P. Goutham, for the Respondent

Judgement

1. This appeal is directed against the order dated 23-11-1996 rejecting the prayer of the appellants for the grant of succession certificate on account of the death of Ramesh.

2. The first appellant is the wife of late Ramesh and the II and III appellants are the children of first appellant and late Ramesh out of their wedlock.

3. The first appellant's marriage took place with late Ramesh on 29-6-1980. Ramesh died on 8-1-1994. He was working as Artisan in K.S.R.T.C. He met with an accident on 7-1-1994 as he was hit by BTS bus bearing No. MEF 097 when he was crossing the road. He sustained severe injuries and died on 8-1-1994 at Nimhans Bangalore. Since the dependants were entitled to the benefits which were described in the schedule of the petition, the appellants being the L.Rs of the deceased applied for the grant of succession certificate. This application was numbered in P and SC. No. 50 of 1994. This application was contested by respondent 1 who also claims to be the wife of late Ramesh. Respondent 2 is the mother of the deceased.

4. For the appellants, the first appellant is examined and Exs. P-I to P-13 are marked. For the respondents both R.Ws. 1 and 2 are examined and Exs. R-I to

R-12 have been marked. After the closure of the evidence, the learned Judge has held that it is only respondent 2 who is entitled for the succession certificate. He has denied the succession certificate to the appellants on the ground that the first appellant had to obtain the declaration that she is the legally wedded wife of the deceased Ramesh.

5. Mr. Mukkannappa, learned Counsel for the appellant submitted that the marriage of the appellant took place on 29-6-1980 and out of this wedlock, the appellants 2 and 3 were born. Respondent 1 was not at all the legally wedded wife; she had got married with one Mr. Srinivasamurthy who maintained divorce petition in M.C. No. 159 of 1978 as such even though it is held that respondent 1 was residing with the deceased Ramesh, she was not legally wedded wife as the marriage itself was void in view of Section 11 of the Hindu Marriage Act (hereinafter shall be referred to as the "Act") He also relied upon a decision in the case of Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another, , wherein it is stated as follows:

"Clause (i) of Section 5 lays down for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. The plea that the marriage should not be treated as void because such a marriage was earlier recognised in law and custom cannot be accepted. By reason of the overriding effect of the Act as mentioned in Section 4, no aid can be taken of the earlier Hindu Law or any custom or usage as a part of that Law inconsistent with any provision of the Act. Such a marriage cannot be also said to be voidable by reference to Section 12. So far as Section 12 is concerned, it is confined to other categories of marriages and is not applicable to one solemnised in violation of Section 5, clause (i). Sub-section (2) of Section 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a Court in a proceeding specifically commenced for the purpose. The provisions of Section 16 also throw light on this aspect. Section 16(3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Sections 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child".

In view of this decision now it is to be seen whether the marriage of respondent 1 with late Ramesh was void ab initio. In other words, when the marriage u/s 11 of the Hindu Marriage Act, 1955 is void in view of Section 5 of the Act, it is not

necessary to drive the parties to the Civil Court to obtain the declaration regarding the nullity or otherwise of the marriage. In the instant case, such occasion arises.

6. It is very clear from Ex. P-13 that P.S. Srinivasamurthy, the alleged husband of respondent 1 had maintained M.C. No. 159 of 1978. This petition was filed u/s 13(1)(b) of the Hindu Marriage Act for decree of divorce. It is stated in Para 2 as follows:

"The petitioner and the respondent were married about 8 years back in Bangalore. They had one male and two female children. From about last three years the petitioner and respondent are not living cordially. Respondent left the house of the petitioner about two and half years back and deserted the petitioner.....".

According to the averments made in this M.C. case the marriage must have taken place somewhere in the year 1970 or so. If this is believed then the marriage of the respondent 1 with the petitioner Srinivasamurthy was subsisting till the divorce petition was decreed in the year 1980. According to respondent 1 she claims to have married late Ramesh on 13-4-1977. The facts eloquently speak that during this period her marriage with Srinivasamurthy was subsisting. Hence she could not have married late Ramesh legally.

7. Section 11 speaks that any marriage solemnised after the commencement of the Act shall be null and void. The conditions enumerated in Section 5 is that a marriage may be solemnised between any two Hindus if the following conditions are fulfilled:

"neither party has a spouse living at the time of the marriage".

This condition is clearly violated. At the time of the marriage of respondent 1 with Ramesh, she already had a husband. Hence she could not have legally married. The conditions enumerated in Section 5 read with Section 11 clearly enunciate that the so called alleged marriage of respondent 1 with late Ramesh is definitely null and void. In *Yamunabai's* case, *supra*, the Supreme Court has highlighted the importance of Sections 11 and 15. It is also observed as follows:

"The marriage covered by Section 11 are void ipso jure that is void from the very inception, and have to be ignored as not existing in law at all if and when such question arises".

Applying this precisely to the case on hand, in view of the fact that the M.C. petition was pending between respondent 1 and one Srinivasamurthy, the alleged marriage with respondent 1 with late Ramesh is ipso jure void. When such inference can be drawn, I think in the interest of justice it is not necessary to make the parties move from one forum to another forum to obtain succession certificate to receive the benefits arising out of the death of the earning member of the family.

8. Mr. Mukkannappa submits that he has no grievance as far as respondent 2 in the list of successors. In the light of this observation, the following order is passed.

In the result, the impugned order is set aside as far as appellants are concerned. The lower Court is directed to issue succession certificate in favour of the appellants along with respondent 2.