

(2011) 02 KAR CK 0194
In the Karnataka High Court
Case No : C.R.P. No. 124 of 2010

Smt. Renukamma, W/o Alleged V.M Rangappa, Master R. Shiva Prasad and Master R. Gowtham APPELLANT

Vs

Smt. Radhamma, Kumari Manjula and Venkatachalapathy RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Succession Act, 1925 — Section 372

Citation : (2011) 3 KCCR 2366

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : Gowri Shankar, for T.J. Sulasa, for the Appellant; K. Subramanyam, for R1 to R3, for the Respondent

Judgement

Jawad Rahim, J.—This revision u/s 115, CPC is directed against the order in M.A. 17/08 dated 9.11.2009 on the file of Principal District Judge, Kolar, dismissing it and confirming the order passed by the trial court in P & SC.15/06 dated 29.3.2008 on the file of Civil Judge (Senior Divn.), Kolar.

2. Heard Sri Gowri Shankar, learned Counsel for the Petitioner.

3. Contextual facts which need reference are:

a) Respondent No. 1 herein along with two children filed a petition invoking Section 372 of the Indian Succession Act for grant of succession certificate to administer the estate of V.M. Rangappa who, she claimed, was her husband. The certificate sought was in respect of monetary benefits like terminal benefits upon his death, gratuity, Provident Fund, pension and insurance amount. In the petition, she brought into party array Renukamma (Petitioner herein) as 1st Respondent and executive officer of Taluk Panchayat, Srinivasapura, Kolar District, where Rangappa was working. She also brought in two others-R. Shivaprasad and R. Gowtham-children of Renukamma through her husband-V.M.

Rangappa. Her assertive contention was she is the legally wedded wife of Rangappa and through the nuptial knot with him, two children are born; Rangappa during his lifetime was employed in Government service and was entitled to service benefits. He died in harness and monetary benefits payable upon his death must reach her. When she applied to the 2nd Respondent-CEO where the deceased was working, she was directed to obtain succession certificate, but for which her claims were not accepted.

b) In response to notice, all the Respondents entered appearance, but the Petitioner herein (1st Respondent therein) filed detailed counter to the Petitioner denying the claim of Radhamma that she was the legally wedded wife of Rangappa and Kum. Manjula and Venkatachalapathy were children born to them. Describing them as strangers and not related to the deceased, she claimed to be the legally wedded wife and referred to two children born to her. In other words, 1st Respondent claimed to be the legally wedded wife of Rangappa, denying the Petitioner's claim.

c) In this fact situation, an enquiry was held during which the 1st Respondent herein-Radhamma examined herself as PW1 and one Jayaramappa (brother of the deceased) was examined as PW2. Reliance was placed on 5 documents while the Petitioner herein-Renukamma (1st Respondent before the trial court) tendered evidence as RW1 and relied on several documents. The learned trial judge noticed that Radhamma had satisfactorily proved there was marital relationship between her and Rangappa as wife and husband and that the children born to them are Manjula and Venkatachalapathy. As regards 1st Respondent, it opined that though there was material evidence to show she was the nominee for all the benefits of V.M. Rangappa and other two Respondents Petitioners 2 and 3 (Respondents 3 and 4 before the trial court) were shown to have been born through her, yet she will not be entitled to the benefit of succession certificate as she was the second wife and not the first wife. Being of that view, the petition was allowed in part. Succession certificate is issued in favour of Radhamma and her children as also against Petitioners 2 and 3 herein, viz., children born to 1st Petitioner-Renukamma, but denied the benefit of right to the 1st Respondent. Assailing it, she filed an appeal reiterating the same plea which did not appeal to the appellate court. The appellate court dismissed the appeal, confirming the order of the trial court.

4. Learned Counsel, Sri Gowri Shankar very rightly submits that the proceedings before the trial court were u/s 372 of the Succession Act for grant of succession certificate; in such proceedings, when a question arose about marital status of more than one woman, the circumstances in which the woman lived with the deceased during the period of time and her conduct are relevant factors, and if the rival claimant is the nominee, then she would enjoy a better position. In such circumstances, even if evidence shows that one of the women is the real wife and there is cloud on the claim of the other woman, she would still be entitled to the estate of the deceased as a nominee.

5. Learned Counsel gains support to his contention relying on the decision of the Apex Court in the case of Vidyadhari and Others Vs. Sukhrana Bai and Others, and another unreported decision in CrI.A.2028-2029/10 in the case of Velusamy v. D. Patchaiammal (accessed from the internet).

6. Learned Counsel for Respondents 1 to 3 is not present. Perused the records in supplementation to what is urged by the learned Counsel for the Petitioner.

7. The question for consideration is:

What is the right of the nominee even if she is a second wife?

8. From the evidence on record and as noticed by the trial court, Radhamma's evidence that she was the legally wedded wife of Rangappa stood the test of cross-examination and the trial court found no reason to disbelieve it. Accepting it as a clincher establishing her claim, the trial court holding her and Rangappa as wife and husband, granted succession certificate to her. But it is material to note there is sufficient evidence placed by the 1st Petitioner herein (1st Respondent before the trial court) also which substantiates all her contentions that she lived with Rangappa, cohabited with him in a proclaimed relationship of husband and wife. Two children are born out of such relationship and it was also documented in the school records. That apart, nomination made by Rangappa in her favour entitles her to receive all service benefits. Nomination done during the lifetime of Rangappa personally lends sufficient credence to such claim. That by itself would show that there was proximate and intimate relationship between Rangappa and the 1st Petitioner (1st Respondent before the trial court) which she claims to be marriage. Even if there be lack of material evidence sufficient enough, yet the four guidelines which the Apex Court framed in the case of VELUSWAMY (supra) answers the claim of the 1st Respondent. The test applied by the Apex Court is as follows:

i) The couple must hold themselves out to society as being akin to spouses;

ii) They must be of legal age to marry;

iii) They must be otherwise qualified to enter into a legal marriage, including being unmarried; and

iv) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

The evidence placed by the 1st Petitioner (1st Respondent before the trial court) answers the criteria laid down by the Supreme Court and there was no reason for the trial court to have negated her claim.

9. Be that as it may, if it is a second marriage, the question will be of preferential right of the Petitioner and her children. Normally, second marriage is not recognized and in such a situation, the first wife is granted the benefit of succession. But the decision in the case of VIDYADHARI (supra), the Apex Court has, in similar facts and circumstances, held thus:

10. However, unfortunately, the High Court stopped there only and did not consider the question as to whether in spite of this factual scenario Vidhyadhari could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this Succession Certificate was for the purposes of collecting the provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore, proved. Vidhyadhari had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed. This Court in a reported decision in Rameshwari Devi's case (supra) has held that even if a Government Servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for Succession Certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application u/s 372 of the Indian Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his life time. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. NO doubt that she herself has claimed to be legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the Succession Certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of Succession Certificate the Court has to use its discretion where the rival claims, as in this case, are made for the Succession Certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had born his four children and had claimed a Succession Certificate on behalf of children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana

Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

11. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would chose 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, chose 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.

10. Applying the ratio of the said decision, it has to be held a nominee has a right to obtain succession certificate. I am satisfied 1st Petitioner must succeed in her legal pursuit and the impugned order needs modification. While confirming the order of the trial court granting succession certificate in favour of Respondents 1, 2 and 3, it is further ordered Respondent No. 1 herein shall ensure the share of the 1st Petitioner-Renukamma to the extent of 1/5th in the estate of Rangappa to which she is entitled according to law, is granted and passes unto her. The petition is disposed of accordingly.