

Chowdegowda Alias Dorji [Dead] by Lrs. and Others

Vs

C. Nagaraju and Others

Civil Appeal No. 10696 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

05.08.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. Since this is a long-drawn litigation for over 37 years we think it appropriate to give quick end to the litigation instead of remanding the matter to the High Court for further remanding it to the appellate court. It is not in dispute that Machine Chowdegowda, the father of the appellant had three brothers. The suit came to be filed for partition of 10 acres of wet land, 5.30 acres of dry land, 30 gunthas of house site into four equal parts and 1/8th share towards the appellant-plaintiff. At three stages, the suit came to be dismissed and ultimately in the Second Appeal No. 204 of 1994, by judgment and decree dated 17-3-1995 the High Court of Karnataka confirmed the dismissal of the suit. Thus this appeal by special leave.
4. There is evidence in this case Exs. P-1, P-4 and P-36 which would indicate that Machine Chowdegowda had described the appellant to be the son born to his first wife, Siddamma. It is seen that there is a controversy as regards the factum of the customary marriage by name Kuduvali marriage which seems to have taken place in early 1920. Under those circumstances, at the distance of 40 years it would be difficult to prove with certainty of evidence of the factum of the marriage etc. But the meat of the fact is that Siddamma and Machine Chowdegowda lived together as wife and husband and the appellant came to be born from the wedlock. Under those circumstances, the presumption of valid marriage and as to the appellant having been born legitimately out of that marriage through Machine Chowdegowda could be drawn. This is the legal position settled by this Court in *Badri Prasad v. Dy. Director of Consolidation* [(1978) 3 SCC 527]; *Sumitra Devi v. Bhikan Choudhary* [(1985) 1 SCC 637 : 1985 SCC (Cri) 145] and *S. P. S. Balasubramanyam v. Suruttayan* [(1994) 1 SCC 460]. The appellant must, therefore, be presumed to be a legitimate son of Machine Chowdegowda. Accordingly, the appellant is granted one acre of the wet land and the rest of the land will be given to the respondents according to the respective shares. A preliminary decree be drawn and an application to pass final decree be made and dealt with by the trial court.
5. The appeal is accordingly allowed. No costs.