SUPREME COURT OF INDIA

Challamma

Vs.

Tilaga

C.A.No.4961 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

31.07.2009

JUDGMENT

S.B. Sinha, J.

Leave granted.

1. K.T. Subramanya (the deceased) was employed with Karnataka Power Corporation (for short, KPC) at Linganamakki. He took four life insurance policies from Life Insurance Corporation of India being dated 13.1.1987, 16.2.1987, 31.3.1987, and 3.6.1988. Indisputably, therein he nominated Challamma, his mother as the beneficiary thereof. The first respondent is said to have entered into a wedlock with the deceased on 3.12.1984. Subramanya died on 22.9.1988.

2. Respondent Nos. 2 and 3 are said to be the sons of the deceased Subramanya and the first respondent herein. The respondents filed an application for grant of succession certificate in their favour in terms of Section 372 of the *Indian Succession Act, 1925* (for short, the Act) in the Court of Civil Judge, Sagar in respect of the scheduled debts. The said application was marked as P S.C. 3/89. Appellant admittedly being the mother of the deceased filed an application for being impleaded as a party therein, which was allowed. She objected to the grant of the said succession certificate contending that the deceased was not married at all. The core question in view of the aforementioned stand taken by the appellant in the said proceedings was as to whether the first respondent was married to the deceased or not.

3. A large number of witnesses being P.Ws. 1 to 5, namely, Tilaga, first respondent herein (P.W.1), Muniyamma, the mother of respondent no.1 (P.W.2), Puttappa, father of the respondent No.1 (P.W.3), Y.M. Bangera, Administrative Officer, L.I.C. of India, Sagar (P.W.4) and Subba Rao B.R., the Personnel Officer of the K.P.C. (P.W.5) were examined by the respondents in support of their contention that the first respondent was married to the deceased.. A large number of documents including photographs showing performance of marriage ceremony were also filed. Inter alia on a finding that the first respondent and the deceased having been residing in a quarter together for a period of 3 years, 9 months and 19

days and furthermore having arrived at a finding of fact that the society accepted them as husband and wife, the learned trial judge held that a presumption of valid marriage should be drawn and on the basis thereof the application for grant of succession certificate filed by the respondents herein was allowed.

4. Appellant, aggrieved by and dissatisfied with the said judgment and order of the learned Civil Judge, preferred an appeal thereagainst in the court of District Judge, Shimoga which was marked as Misc. Appeal No. 52 of 1995. The said appeal was eventually transferred to the Court of Additional District Judge. By reason of a judgment and order dated 1.3.2004, the learned First Appellate Court opined that the appellant was entitled to 1/4th share in the estate of the deceased while upholding the judgment and order of the learned trial judge that the marriage by and between the deceased and the first respondent was valid and the respondent Nos. 2 and 3 were their sons.

5. Still not satisfied, the appellant preferred Civil Revision Petition No. 1115 of 2004 before the High Court which by reason of the impugned judgment has been dismissed.

6. Mr. O.P. Chaturvedi, learned counsel appearing on behalf of the appellant would contend that the courts below committed a serious error in passing the impugned judgments insofar as they failed to take into consideration the evidences brought on record by the parties in their correct perspective. It was urged that keeping in view the provisions of the *Hindu Marriage Act, 1955*, it was obligatory on the part of the first respondent to establish that all the ingredients of a valid marriage were proved. In a case of this nature where the first respondent was a woman of easy virtue, it was urged, the presumption of a valid marriage ought not to have been drawn.

7. Mr. R.S. Hegde, learned counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

8. First respondent examined herself as P.W.1 before the learned trial judge. In her deposition she not only stated in great details the factum of her marriage which took place on 3.12.1984 at Dharmasthala but also produced a document styled as an `agreement of marriage' which was registered with the office of Sub-Registrar, Sagar on 13.12.1984. She furthermore produced various documents to show that the deceased had insured his life with the Life Insurance Corporation of India and also under group insurance while in service. Furthermore some documents were also brought on record to show that the deceased applied for allotment of a house as a married person. Appellant examined herself as D.W.1. An officer of the Life Insurance Corporation of India was also examined to prove the life insurance policies.

9. The question as to whether a valid marriage had taken place between the deceased Subramanya and the first respondent is essentially a question of fact. In arriving at a finding of fact indisputably the learned trial judge was not only entitled to analyze the evidences brought on record by the parties hereto so as to come to a conclusion as to whether all the ingredients of a valid marriage as contained in Section 5 of the Hindu Marriage Act, 1955

stand established or not; a presumption of a valid marriage having regard to the fact that they had been residing together for a long time and has been accepted in the society as husband and wife, could also be drawn.

> "It is true, as has been contended by Mr. Chaturvedi, that the appellant had brought on record certain documents to show that the deceased in the year 1986 while applying for his employment in Mysore Power Corporation showed his status as `single, but a specific finding of fact had been arrived at by the courts below that all the subsequent documents clearly showed that not only the deceased married the first respondent but also he sought for allotment of a quarter as a married person. It is of some significance to notice that one Subba Rao, a personnel officer of the KPC while examining himself as P.W.5 categorically stated that in terms of the rules for allotment of quarter by the company commonly known as `Township Committee Rules' quarters were allotted to married persons only and clubbed accommodation were provided to the bachelors."

10. It is beyond any cavil of doubt that in determining the question of valid marriage, the conduct of the deceased in a case of this nature would be of some relevance. If on the aforementioned premise, the learned trial judge has arrived at a finding that the deceased Subramanya had married the first respondent, no exception thereto can be taken. A long cohabitation and acceptance of the society of a man and woman as husband and wife goes a long way in establishing a valid marriage. In *Tulsa v. Durghatiya*[1], this court held: 11. At this juncture reference may be made to Section 114 of the *Evidence Act, 1872* (in short the Evidence Act). The provision refers to common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case.

12. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them i.e. Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy. Their Lordships of the Privy Council laid down the general proposition that: (AIR p. 187)

> "... where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage."

13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan Their Lordships of the Privy Council once again laid down that: (AIR p. 138) The law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years.

14. It was held that such a presumption could be drawn under Section 114 of the Evidence Act. It is also well settled that a presumption of a valid marriage although is a rebuttable one,

it is for the other party to establish the same. {See *Ranganath Parmeshwar Panditrao Modi v. Eknath Gajanan Kulkarni*[2], *and Sobha Hymavathi Devi v. Setti Gangadhara Swamy*[3] }.Such a presumption can be validly raised having regard to Section 50 of the Indian Evidence Act. [See Tulsa (supra)] A heavy burden, thus, lies on the person who seeks to prove that no marriage has taken place.

11. There is another aspect of the matter which cannot be lost sight of. Section 39 of the Insurance Act, 1938 enables the holder of a policy, while effecting the same, to nominate a person to whom the money secured by the policy shall be paid in the event of his death. The effect of such nomination was considered by this Court in *Vishin N. Khanchandani Anr. Vs. Vidya Lachmandas Khanchandani Anr.*[4] wherein the law has been laid down in the following terms:

> "....The nomination only indicated the hand which was authorised to receive the amount on the payment of which the insurer got a valid discharge of its liability under the policy. The policy-holder continued to have an interest in the policy during his lifetime and the nominee acquired no sort of interest in the policy during the lifetime of the policy-holder. On the death of the policy-holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. Section 39 did not operate as a third kind of succession which could be styled as a statutory testament. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heirs of the assured in accordance with the law of succession governing them.
>
> In *Smt. Sarbati Devi Anr. vs. Smt. Usha Devi*[5], this Court held:
>
> 4. At the outset it should be mentioned that except the decision of the Allahabad High Court in Kesari Devi v. Dharma Dev on which reliance was placed by the High Court in dismissing the appeal before it and the two decisions of the Delhi High Court in S. Fauza Singh v. Kuldip Sing and Uma Sehgal v. Dwarka Dass Sehgal in all other decisions cited before us the view taken is that the nominee under Section 39 of the Act is nothing more than an agent to receive the money due under a life insurance policy in the circumstances similar to those in the present case and that the money remains the property of the assured during his lifetime and on his death forms part of his estate subject to the law of succession applicable to him...."

12. In view of the fact that the appellant was one of the heirs and legal representatives of the deceased Subramanya, there cannot be any doubt whatsoever that she had been rightly held to be entitled to 1/4th share in the estate of the deceased Subramanya.

13. For the aforementioned reasons, the appeal is dismissed with costs. Counsel's fee assessed at Rs.5,000/-.

[1](2008) 4 SCC 520 [2](1996) 7 SCC 681 [3](2005) 2 SCC 244 [4](2000) 6 SCC 724 [5](1984) 1 SCC 424