

Konsam Rajen Singh Vs Konsam Ningol Meitram Ongbi Mema

Court: Manipur High Court

Date of Decision: May 2, 2019

Acts Referred: Specific Relief Act, 1963 â€” Section 34
Family Courts Act, 1984 â€” Section 7, 7(1)

Hon'ble Judges: Ramalingam Sudhakar, CJ; M.V. Muralidaran, J

Bench: Division Bench

Advocate: M. Ibotombi Sharma, A. Mohendro, Ayam Romesh

Final Decision: Dismissed

Judgement

M.V. Muralidaran, J

1. The present appeal has been filed by the appellant against the decree and judgment dated 05.10.2016 passed in Mat (Dec) Suit No.16 of 2014 on

the file of the Family Court, Bishnupur, wherein and whereby, the suit filed by the appellant for declaration has been dismissed.

2. Brief facts are as follows:

2.1. The appellant is the son of one Konsam Member @ Membhor Singh who died while in service as Jeep driver in the office of the Electrical and

Mechanical Division, Irrigation and Flood Control Department, Government of Manipur on 08.02.2014. The wife of Konsam Member @ Membhor

Singh predeceased. All the religious ceremonies relating to the death of Konsam Member @ Membhor Singh and his wife were performed by the

appellant being their only son.

2.2. After the death of Konsam Member @ Membhor Singh, on 29.03.2014, the appellant submitted an application to the Chief Engineer, Irrigation

and Floor Department for disbursement of retirement benefits. The first respondent had also filed an application before the same authority claiming

herself to be the sole daughter of late Konsam Member @ Membhor Singh. According to the appellant, the first respondent was fostered by his late

father at his home, as she came with her mother viz., Maimu Devi and his father agreed to foster on the request of first respondent's mother.

2.3. Though the appellant made clarification with regard to his application before the second respondent, the second respondent directed the appellant

to submit the name of nominees supported by a genuine order from the Court having jurisdiction. Hence, the appellant has filed the instant suit under

Section 34 of the Specific Relief Act for declaration to declare that he is the natural son of late Konsam Member @ Membhor Singh.

3. Resisting the suit, the first respondent filed written statement stating that she is the only child and natural daughter of late Konsam Member @

Membhor Singh and late Konsam (O) Maimu Devi. It is stated that the appellant is the son of late Ibopishak Singh, who is the elder brother of late

Konsam Member @ Membhor Singh. According to the first respondent, Konsam (O) Chaobi Devi was divorced due to not having Issues, however,

she got monthly maintenance during her life time from late Konsam Member @ Membhor Singh. Later on, late Konsam Member @ Membhor Singh

married Maimu Devi and the first respondent was born to them. The religious ceremonies of late Konsam Member @ Membhor Singh was performed

by the first respondent in the capacity as daughter. According to the first respondent, the appellant is not entitled to monetary benefits of late Konsam

Member @ Membhor Singh, as he is the son of late Ibopishak Singh and Konsam (O) Khomdonbi Devi and, therefore, prayed for dismissal of the

suit.

4. Based on the pleadings, the trial Court framed the following Issues:

(1) Whether the plaintiff is the only son of Konsam Member @ Membhor Singh or not? Or Whether the plaintiff is the son of Konsam Ibopishak

Singh, the elder brother of Konsam Member @ Membhor Singh or not?

(2) Whether the defendant No.1 is the real daughter or fostered daughter of Konsam Member @ Membhor Singh?

(3) Is there cause of action of the suit?

(4) Is the plaintiff entitled to the reliefs claimed?

5. Before the trial Court, the appellant examined himself as P.W.1 and Tvl. Laishram Biramani Singh, Pukhrambam Naba Singh, Konsam Tarpon

Singh were examined as P.Ws.2 to 4 and marked Exs.A1 to A7. The first respondent examined herself as D.W.1 and Tvl. Pukhrambam (N)

Khwaitrakpam (O) Mema Devi, Konsam Ramnagar Meitei, Salam (O) Ibemhal Devi were examined as D.Ws.2 to 4 and Exs.D1 to D9 were marked.

The First respondent also marked Exs.X1 and X2.

6. Upon consideration of the oral and documentary evidence, the trial Court dismissed the suit. Aggrieved by the same, the appellant has preferred the

present appeal.

7. The First and foremost contention of the learned counsel for the appellant is that the Family Court has no jurisdiction to entertain and/or decide the

issue :involved in the suit regarding declaration as to the legitimacy and the Family Court can only decide the declaration in respect of matrimonial

relationship.

8. The learned counsel next submitted that the trial Court has given its findings without consideration of the admissible documents exhibited by the

appellant which would clearly show that the appellant is the son of late Konsam Member @ Membhor Singh and that the trial Court considered the

xerox copy of the electoral roll of the first respondent, which was not exhibited, as marked document. He would submit that electoral roll always

speaks itself about the chronological descendents of the clan of a family, but the name of the first respondent was never found in the chronological

table of Konsam Clan at any point of time. The learned counsel argued that in Ex.A3 electoral roll, the name of the appellant appears as the son of

late Konsam Member @ Membhor Singh, but the name of the first respondent is no where found in Ex.A3. If really the first respondent was born

from the wedlock of late Konsam Member @ Membhor Singh and late Maimu Devi, then the name of the first respondent might have found place in

the Clan of the electoral roll.

9. The learned counsel further submitted that the second marriage during the subsistence of the first marriage is void marriage and children born

through such void marriage are illegitimate. He would contend that mere living together as husband and wife without undergoing formalities provided

under Section 7 will not confer the status of husband and wife.

10. The learned counsel then submitted that the trial Court failed to appreciate the evidence of appellant's side witnesses and the documents. In fact,

the evidence adduced by the appellant corroborate the plaint averments and the said evidence was never rebutted by the first respondent, rather the

first respondent suggested the appellant as adopted son of late Konsam Member @ Membhor Singh as he has no male issue. According to the learned

counsel, the finding on the interested witnesses against the appellant is not on proper appreciation of evidence and is not sustainable in law.

11. Per contra, reiterating the findings of the trial Court, the learned counsel for the contesting first respondent submitted that the appellant has failed

to prove that he is the son of late Konsam Member @ Membhor Singh. He would submit that it is settled that the appellant being the plaintiff has to

prove his case and cannot succeed on the weakness of the first respondent's case. The learned counsel further submitted that the trial Court upon

consideration of the oral and documentary evidence adduced by the parties, rightly dismissed the suit, warranting no interference.

12. We have considered the submissions made by the learned counsel appearing on either side and also perused the impugned judgment and the

materials available on record.

13. Insofar as the argument of the learned counsel for the _ appellant regarding jurisdiction of the Family Court in entertaining the suit for declaration

as to the legitimacy is concerned, for the First time, the learned counsel has raised such a ground. In fact, there is not a whisper about the said plea in

the Memorandum of Appeal.

14. With a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected

therewith by providing for establishment of Family Courts, the Parliament enacted the Family Courts Act, 1984. The Act, inter alia, is intended to

exclusively provide jurisdiction to the Family Courts for matters relating to matrimonial relief, including nullity of marriage, judicial separation, divorce,

restitution of conjugal rights, or declaration as to the validity of a marriage or as to the matrimonial status of any person, the property of the spouses or

of either of them, declaration as to the legitimacy of any person, guardianship of a person or the custody of any minor, maintenance, including

proceedings under Chapter IX of the Code of Criminal Procedure.

15. Before adverting to the real controversy, it is apt to extract Section 7 of the Act, which reads thus:

“7. Jurisdiction:- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force in

respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil

court for the area to which the jurisdiction of the Family Court extends.

Explanation:- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case

may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of

the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

16. Section 7(1) of the Act read with the Explanations there under, has set out that where a Family Court is established, it is that Court which shall

have and exercise all the jurisdiction in relation to a suit or proceeding between the parties to a marriage for a decree of nullity of marriage or

restitution of conjugal rights or judicial separation, and dissolution of marriage. Therefore, a suit or proceeding between the parties to a marriage alone

is dealt with under clause (a). In clause (b) the nature of claim set out relates to a suit or proceeding for a declaration as to the validity of marriage or

as to the matrimonial status of any person. It is again important to notice the crucial expressions mentioned therein, namely, validity of marriage or as

to the matrimonial status of any person. Therefore, if the subject matter is to be covered by clause (b), then the suit or a proceeding must be one,

which is brought out by either of the parties to a marriage. When we examine clause (c), it was set out very clearly therein that a suit or proceeding

between the parties to a marriage with respect to the property of the parties or of either of them. Clause (c) does not offer any difficulty, in as much

as it is made explicitly clear that the suit or proceeding should be brought out by the parties to a marriage with respect to the properties of either of

them. When we look at clause (d), it is once again clear that a suit or proceeding for an order or injunction in circumstances arising out of a marital

relationship is covered by its sweep. Therefore, for a subject matter to fall under the sweep of clause (d) the parties to a suit or proceeding must

necessarily have a marital relationship. The most crucial clause, for our inquiry is clause (e), which sets out that a suit or proceeding for a declaration

as to the legitimacy of any person. This clause obviously deals with a third party to a matrimonial relationship and that third party should be obviously

the offspring of persons having a matrimonial relationship. In spite of the obvious, if a person is desirous of securing a declaration of one's legitimacy

(his or her), then he can seek a declaration of his legitimacy.

17. In other words, Section 7 of the Family Courts Act, 1984 deals with the question of jurisdiction of the Family Courts. According to the provisions

of this Section, a Family Court shall have and can exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under

any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation to the said Section. Clause (e) to

Explanation pertains to a suit or proceeding for a declaration as to the legitimacy of any person.

18. In a catena of decisions, the Hon'ble Supreme Court as well as various High Courts considered the scope of jurisdiction of the Family Court,

with particular reference to clause (e) of the Explanation and it has been held that under Section 7(1) of the Family Courts Act read with clause (e) of

the Explanation, a suit or proceeding for declaration as to the legitimacy of a person is within the jurisdiction of the Family Court.

19. The Hon'ble Supreme Court in the case of Renubala Moharana Vs. Mina Mohanty reported in 2004 (4) SCC 215 : 2004 AIR (SC) 3500

observed as follows :-

"5. After trial, the Family Court, by its judgment dated 2-5-2000 dismissed the petition on the ground that the petition itself was not maintainable in

the light of Section 7 of the Family Courts Act. As regards the prayer for guardianship, the learned Judge observed that Respondent 1 being the

natural mother against whom there was no adverse allegation, there was no need to appoint any other person as guardian. On appeal to the High

Court, the Division Bench of the High Court agreed with the conclusion of the Family Court that the first relief sought for by the appellants cannot be

granted by the Family Court for the reason that declaration as to the legitimacy of any person without any claim of marital relationship is not directly

entertainable by the Family Court. In view of the admitted fact that Samuel Maharana and Respondent 1 were not married, the child allegedly born

through Samuel Maharana can never be a legitimate child. However, the High Court reversed the order of the Family Court insofar as the petition

related to the custody of the minor. The High Court held that the prayer for guardianship and custody is entertainable by the Family Court under

Explanation (g) to Section 7(1) of the Act. While directing the Family Court to consider the prayer for guardianship and/or custody of the minor, the

High Court, having noted the fact that the evidence adduced on behalf of the parties was not discussed and considered, also observed that

"in order to determine the question of guardianship or custody of the minor, if it becomes collaterally necessary to consider the question of status of

the minor or the parties to the proceedings, the Family Court may be required to consider the same and give its finding".

In effect, the High Court held that while deciding the petition for guardianship/custody, the question of status or inter se relationship of the parties can

be incidentally considered by the Family Court.

6. The view taken by the High Court as regards the first prayer has been assailed before us. Under Section 7(1) read with clause (e) of the

Explanation, a suit or proceeding for a declaration "as to the legitimacy of any person" is within the jurisdiction of the Family Court. According to

the appellants, the child was born on account of extramarital relationship of Respondent 1 with their son, the late Samuel Maharana. Accepting the

case of the appellants, the child cannot obviously be treated as a legitimate child of Samuel and Mina Mohanty (R-1). The question of status of the

child in relation to the parties to the petition can be incidentally gone into by the Family Court if necessary while deciding the guardianship petition.

That liberty has been granted to the Family Court. However, as rightly held by the Family Court and the High Court, the declaratory relief as regards

the illegitimacy of the child cannot be granted. In effect, that is what the appellants want under prayer (a). "The

20. In another case, the Madras High Court in the case of S. Krishnamurthy Vs. Poubalane & Ors. held in C.R.P. (PD) No. 1477 of 2012 and M.P.

No. 1 of 2012 dated 06.03.2013 has assailed as follows :-

"7. The Family Courts Act, 1984 (66 of 1984) was enacted to provide for the establishment of Family Courts with a view to promote

conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. Section 7 of the

Family Courts Act deals with jurisdiction and as per Section 7 (1), explanation (e), in a suit or proceeding for declaration as to the legitimacy of any

person will come under the jurisdiction of the Family Court. "The

Similarly, in a suit or proceeding for a declaration as to the legitimacy of any person or a suit or proceeding for maintenance or a suit or proceeding in

relation to the guardianship of the person or the custody of, or access to, any minor, the Family Court will have exclusive jurisdiction. "The

21. The Hon'ble Supreme Court in the case of K.A. Abdul Jaleel Vs. T.A. Shahida reported in 2003 4 SCC 166 observed as follows :-

"10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure

speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. From a perusal of the Statement of objects

and reasons, it appears that the said Act, inter alia, seeks to exclusively provide within the jurisdiction of the Family Courts matters relating to the

property of the spouses or either of them. Section 7 of the Act provides for the jurisdiction of the Family Court in respect of suits and proceedings as

referred to in the Explanation appended thereto. Explanation (c) appended to Section 7 refers to a suit or proceeding between the parties to a marriage

with respect to the property of the parties or of either of them. "The

22. It is settled that the question of status of child in relation to the parties to the proceedings can be incidentally gone into by the Family Court, if

necessary, while deciding the guardianship. Further, in a particular case if question pertaining to status of a child in relation to the parties to the petition

pending before the Family Court is involved, the said question can be gone into by the Family Court under clause (e) of the Explanation to Section 7(1)

of the Act.

23. It is to be held that the legitimacy or otherwise of a child born to the parties in a proceedings before the Family Court can be gone into by the

Family Court and for the said purpose, the Family Court has jurisdiction.

24. The argument of the learned counsel for the Appellant that the Family Court has no jurisdiction to entertain the instant suit is concerned, the same

has to be rejected on the following grounds:

1. The appellant himself is the plaintiff.

2. Once the appellant as plaintiff himself filed the suit, he has no right to raise the plea that the Family Court has no jurisdiction to entertain the instant

suit.

3. No ground with regard to jurisdiction of Family Court was raised in the Grounds of Appeal.

4. As per Explanation (e) to Section 7(1) of the Family Courts Act, the Family Court has jurisdiction to entertain the suit or proceedings for declaration

as to the legitimacy of any person.

25. In view of the foregoing discussions, we are of the considered view that the argument of the learned counsel for the appellant that the Family

Court has no jurisdiction to entertain the suit in the nature of the instant case cannot be countenanced. Thus, it is held that as per Explanation (e) to

Section 7(1) of the Family Courts Act, the Family Court has got jurisdiction to entertain the suit or proceedings for declaration as to the legitimacy of

any person.

26. Now let us consider merits of the appeal.

27. Upon consideration of the rival submissions and the impugned judgment, the point that boils down for consideration is whether the trial

Court/Family Court was right in dismissing the suit filed by the appellant?

28. According to the appellant, he is the son of late Konsam Member @ Membhor Singh and in the capacity of son, he had performed last rites of his

deceased father and mother. In his evidence, the appellant (P.W.1) deposed that he is the son of late Konsam Member @ Membhor Singh, who died

on 08.2.2014 while in Government service. The appellant examined P.Ws.2 to 4 to show that he is the sole son of late Konsam Member @ Membhor

Singh. According to the appellant, the first respondent was fostered by his father and, therefore, she is not the daughter of late Konsam Member @

Membhor Singh.

29. In his evidence, P.W.2 stated that the first respondent was fostered at the age of 17/18 years by the father of the appellant. However, in his cross-

examination, P.W.2 stated that it is true that late Chaobi Devi, the first wife of late Konsam Member @ Membhor Singh died issueless and late

Konsam Member @ Membhor Singh married Konsam (O) Maimu Devi after the death of his first wife. Similarly, in his cross-examination, P.W.3

stated that it is true that Konsam Mema Devi is the daughter of late Konsam Maimu Devi.

30. At this juncture, it would be pertinent to extract the relevant portion of the cross-examination of P.W.1, who has clearly deposed as under:

“It is true that wife of Membor Singh, namely, Choabi was divorced during the life time of the said K. Membor Singh.

It is true that during the life time of K.Membor Singh, he married with one Konsam Maimu Devi after the divorce of Konsam Choabi Devi.

However, P.W.1 denied that Choabi Devi was issueless. On the other hand, D.W.3, who is the elder member of the family, aged about 82 years at

the time of recording evidence, deposed that “Konsam Member Singh @ Membor was married to one Choabi Devi but being issueless Choabi

Devi was divorced by Konsam Member Singh @ Membor and later Konsam Member Singh @ Membor married to one K. (O) Maimu Devi, out of

their wedlock, the first respondent namely Konsam Mema Devi was born. D.W.3 also deposed regarding solemnisation of marriage between late

Konsam Member Singh @ Membor and Maimu Devi as per their customs and rites.

31. To prove the case of the appellant, he had filed Ex.A1 Residential Certificate dated 24.2.2014 issued by the Sub Deputy Collector, Nambol. Ex.A2

is the Horoscope of the appellant. Ex.A3 is the electoral roll. Ex.A4 is the letter addressed by the Executive Engineer, Electrical and Mechanical

Division, Manipur to the appellant. Ex.A5 is the another letter. Ex.A6 is the death certificate of late Konsam Member @ Membhor Singh and Ex.A7

is the death certificate of Konsam (O) Choabl Leima.

32. On the other hand, the case of the first respondent is that she is the daughter of late Konsam Member @ Membhor Singh and late Konsam (O)

Maimu Devi. It is also the case of the first respondent that the appellant is the son of late Ibopishak Singh, who is the elder brother of late Konsam

Member @ Membhor Singh.

33. In her evidence, the first respondent (D.W.1) categorically stated that the appellant is the cousin, who is the sixth child of late Konsam Ibopishak

Singh and Konsam (O) Khomdonbi Devi. Late Konsam Ibopishak Singh is the elder brother of her father late Konsam Member @ Membhor Singh

and she married to Meitram Ratankumar Singh of Khabi Mamang Leikai, Imphal West on 19.04.1996. In her evidence, she clearly stated that she is

the only child of late Konsam Member @ Membhor Singh.

34. In their evidence, D.Ws.2 to 4 also categorically stated that the first respondent is the only natural daughter of late Konsam Member @ Membhor

Singh and Smt. Konsam (O) Maimu Devi. D.W.3, who is the elder brother of late Konsam Member @ Membhor Singh, deposed that the first

respondent is the only daughter of late Konsam Member @ Membhor Singh and the appellant is the son of late Konsam Ibopishak Singh and Konsam

Khomdonbi Devi. To disprove the evidence of D.W.1 and D.W.3, the appellant has not produced any materials.

35. In order to prove her case, the first respondent marked Exs.D1 to D9. Ex.D1 is the Provisional Certificate of HSLC Examination issued in favour

of the first respondent. Ex.D2 is the marriage invitation card of the first respondent with M.Ratankumar. Ex.D3 is the voter identity card of the first

respondent. Ex.D4 is the Horoscope of the first respondent. Ex.D5 is the daughter-ship certificate issued by the Chairman, Nambol Municipality

Council in favour of the first respondent. Ex.D6 is the unemployment certificate issued in the name of the first respondent. Ex.D7 is the reading

certificate issued by the Headmaster of Nambol Liren High School. Ex.D8 is the marriage photograph and Ex.D9 is the marriage CD.

36. On a perusal of Exs.D1 to D4, it is seen that the first respondent is the daughter of late Konsam Member @ Membhor Singh and those documents

are supported and/or corroborated by the oral evidence of D.W.3, who is the only surviving elder member of the family at the relevant point of time.

In his proof affidavit by way of chief examination, D.W.3 stated as under:

“I am the elder brother of Late Konsam Member Singh @ Membhor @ Membhor and I know the Respondent No.1 as she is the lone natural

daughter of Late Konsam Member Singh @ Membhor @ Membhor and (Late) Smt. K. (O) Maimu Devi. And plaintiff is the son of Late Konsam

Ibopishak Singh and Konsam (O) Khomdonbi Devi. And it is also true that Late Konsam Ibopishak Singh is my elder brother.

“I am the elder brother of Late Konsam Member Singh @ Membhor @ Membhor and I know the Respondent No.1 as she is the lone natural

daughter of Late Konsam Member Singh @ Membhor @ Membhor and (Late) Smt. K. (O) Maimu Devi. And plaintiff is the son of Late Konsam

Ibopishak Singh and Konsam (O) Khomdonbi Devi. And it is also true that Late Konsam Ibopishak Singh is my elder brother.

“I am the elder brother of Late Konsam Member Singh @ Membhor @ Membhor and I know the Respondent No.1 as she is the lone natural daughter of Late Konsam Member Singh @ Membhor @ Membhor and (Late) Smt. K. (O) Maimu Devi. And plaintiff is the son of Late Konsam

and the last rites and ritual ceremony of Late Konsam Member Singh @ Membor was performed by Konsam Mema Devi as she being the only child

of Late Konsam Member @ Membhor Singh. ~~Àçâ,-â€~~

37. The evidence of D.W.3, who is the elder member of the family assumes much importance. To disbelieve the evidence of D.W.3, the appellant has

not produced any evidence. Therefore, as rightly held by the trial Court, there is no ground for disbelieving the evidence of D.W.3.

38. As stated supra, the appellant has produced Ex.A1-residential certificate dated 24.2.2014 issued by the Sub Deputy Collector, Nambol to show

that he is the son of late Konsam Member @ Membhor Singh. However, the appellant had failed to examine the issuing authority of Ex.A1 to prove

the same. Ex.A2 is the Horoscope of the appellant, in which the date of birth of the appellant is mentioned as 16.12.1968. But, in his cross-

examination, P.W.1 stated that his date of birth is 01.02.1969, which itself shows that there are contradictions in the evidence of P.W.1 and that he

had approached the Court with unclean hands. Further, the appellant had failed to prove his case that he is the son of late Konsam Member @

Membhor Singh.

39. In the present case, since the appellant filed the suit seeking declaration to declare him as the son of late Konsam Member @ Membhor Singh, the

burden heavily lies on him to prove the same. But, in the present case, the appellant has failed to do so and the evidence adduced by the appellant is

not enough to prove his claim. More over, the appellant cannot take advantage of the loopholes in the case of the first respondent. The trial Court held

that Exs.D1 to D4 and the evidence of D.W.3 would clearly establish that the first respondent is the daughter of late Konsam Member @ Membhor

Singh. Since the said finding of the trial Court is based on oral and documentary evidence and thorough analysis of facts and law, we affirm the said

finding.

40. Further, as rightly held by the trial Court, the theory of fostering of the first respondent by late Konsam Member @ Membhor Singh, as alleged by

the appellant, has not been proved by the appellant. Therefore, we are of the view that the trial Court was right in answering Issue No.2 against the

appellant.

41. There is no dispute that late Konsam Member @ Membhor Singh died on 08.2.2014 while in service as Jeep driver in the office of the Electrical

and Mechanical Division, Irrigation and Flood Control Department, Government of Manipur. There is also no dispute that the first wife of late Konsam

Member @ Membhor Singh viz., Konsam (O) Choabi Devi was divorced on the ground of having no issues, however, she was paid monthly

maintenance during life time by late Konsam Member @ Membhor Singh and Konsam (O) Chaobi Devi died on 17.12.1989. When the appellant has

not proved that he is the son of late Konsam Member @ Membhor Singh, as rightly held by the trial Court, there is no cause of action for filing the suit

by the appellant.

42. In view of the foregoing discussions, we are of the view that the trial Court, upon appreciating the oral and documentary evidence produced by

both sides, rightly dismissed the suit. No valid grounds have been made out to interfere with the well considered judgment of the trial Court. We also

find no infirmity and/or illegality in the judgment of the trial Court and thus, the appeal preferred by the appellant is liable to be dismissed. The point is

answered accordingly.

43. In the result, the appeal is dismissed. The judgment and decree dated 05.10.2016 passed in Mat. (Declaration) Suit No.16 of 2014 on the file of the

Family Court, Bishnupur, Manipur is confirmed. Considering the nature of suit and the relationship of parties, the parties are directed to bear their own

costs.