

(2010) 07 MAD CK 0191

Madras High Court

Case No: O.P. No. 375 of 2003 and A. No. 1700 of 2010

B. Purushothaman Naidu

APPELLANT

Vs

B. Kaliaperumal Naidu and
Others

RESPONDENT

Date of Decision: July 29, 2010

Acts Referred:

- Hindu Succession Act, 1956 - Section 15(1), 15(2), 18

Citation: (2010) 6 CTC 60 : (2011) 1 MLJ 1132 : (2011) 2 RCR(Civil) 489 : (2011) 2 RCR(Civil) 489

Hon'ble Judges: V. Periya Karuppiyah, J

Bench: Single Bench

Advocate: J. Balagopal, for the Appellant; J. Balagopal, for the Respondent

Judgement

V. Periya Karuppiyah, J.

This Application has been filed by the Respondents 1 to 4 in the main Original Petitioner reject the main Original

Petition as it is not sustainable in law.

2. The briefcase of the applicants/Respondents 1 to 4 would be thus:

(a) The Respondent has filed Original Petition for grant of Letters of Administration of the estate of the applicants' aunt, the deceased K.

Sugantha. On receipt, of service of notice, the applicants have filed a caveat and also an Affidavit of objection. However, the O.P. has not been

converted as a Suit. The applicants have filed a detailed Counter in the Application filed by the Respondent in Application No. 619 of 2003. The

Respondent, after obtaining permission from this Court started to administer the estate of the deceased by letting out the premises on rent,

appointing third parties as power agent, etc. The applicants herein have, filed Application No. 1580 of 2004 to direct deposit of the amounts collected by him through the estate of the deceased in Court deposit and the said Application is pending. The main O.P. is not maintainable in law, and the same is liable to be dismissed in limini.

(b) The Respondent is not the legal heir as defined under the Hindu Succession Act. The Respondent is not the brother-in-law of the deceased as

mentioned in the petition. The Husband of the deceased is only the step brother of the Respondent and the Respondent is not an heir falling under

any class or category enumerated under Hindu Succession Act. The Respondent is not entitled to the estate of the deceased K. Sugantha in view

of the legal bar u/s 15(1) and Section 15(2)(b) of the Hindu Succession Act. The Respondent with an ulterior motive has impleaded the 6th and

7th Respondents in the O.P. knowing fully well that they are not the legal heirs of the deceased. The Respondent has not disclosed particulars of

the estate of the deceased in the petition and he has deliberately undervalued the assets of the deceased. This Court may not have territorial,

jurisdiction to entertain the O.P. and the Respondent does not satisfy the mandatory requirement of Section 270 of the Act. The deceased had the

fixed place of abode at Kolattur which is outside the jurisdiction of this Court. The Applicants alone are the legal heirs of the deceased K.

Sugantha and they alone are entitled for the properties mentioned in the schedule there under and the applicants herein have made a registered

family partition among themselves and had shared the properties mentioned in the schedule to the Petition and the Respondent is not entitled to any

share in the said property. In spite of the direction of this Court, the Respondent has not deposited the rent/deposit received by him from the

property of the deceased. Hence, the applicants have filed this Application to reject the Original Petition filed by the Respondent.

3. No counter has been filed by the Respondent/Petitioner.

4. Heard, learned Counsel for the applicants/Respondents 1 to 4. There is no appearance for the Respondent/Petitioner since his counsel had

reported no instructions from the Respondent. No representation for the Respondent, despite his name is printed in the Cause List.

5. Learned Counsel for the applicants/Respondents 1 to 4 would submit in his argument that the Respondent has filed the main Original Petition for the grant of Letters of Administration for the estate of the deceased Sugantha who is the Wife of one Krishna Ramanujam, the deceased brother of applicants/Respondents 1 to 4, without, disclosing the fact that the Petitioner was the step brother of the deceased Krishna Ramanujam or the step brother-in-law of the deceased Sugantha in the Original Petition but he has simply mentioned that he is the brother-in-law of the deceased Sugantha. He would also submit in his arguments that the said Sugantha was the Wife of Krishna Ramanujam and the said Krishna Ramanujam had four brothers namely applicants/Respondents 1 to 4 through Alamelu, second Wife of Bakthavatchalam Naidu. However, the Respondent/Petitioner was born through the first Wife of Bakthavatchalam and he was the step brother of the applicants/Respondents 1 to 4 and the deceased Krishna Ramanujam. He would also submit that the said fact has not been disclosed in the main O.P. in order to make the Court believe that he is the blood brother of Krishna Ramanujam, to maintain the main Original Petition.

6. He would also submit that according to the existing law of devolution under the Hindu Succession Act, the Respondent/Petitioner cannot be defined as one of the heirs of either Krishna Ramanujam or the deceased Sugantha, since the said Sugantha died intestate, the estate belonging to Sugantha was divided among the Respondents 1 to 4 as their mother Alamelu died already. Learned Counsel would also submit that similarly, the inclusion of the Respondents 5 and 6, the mother and brother of the deceased Sugantha cannot be also sustained since they would not come under the definition of the legal heirs of a deceased female Hindu dying intestate as per provisions of Section 15 of the Act. He would once again submit in his argument that the provisions of Section 15(1) of the Hindu Succession Act would be attracted on the death of Sugantha which happened on 10.4.2003 and on such devolution, the applicants/Respondents 1 to 4 who are the Class II heirs of the deceased brother Krishna Ramanujam, the Husband of the deceased Sugantha, became entitled to the estate of Sugantha. Even though the Respondent/Petitioner is one of the sons of father

Bakthavatchalam, was born through the first Wife and he would be a half blood brother of the applicants/Respondents 1 to 4 and Krishna

Ramanujam and as per Section 18 of the Hindu Succession Act, the Respondent/Petitioner being the half blooded brother is excluded from

inheriting the property of the deceased Sugantha as the heir of the deceased brother Krishna Ramanujam. Therefore, learned Counsel for the

applicants would submit that the Petition filed by the Respondent/Petitioner in O.P. No. 375 of 2003 is not at all sustainable and the Respondent is

not legally entitled to succeed to the estate of the deceased Sugantha and he had suppressed the material fact that he was the step brother-in-law

of the deceased Sugantha. Learned Counsel for the applicants, therefore, requested the Court, to dismiss the main O.P. and to allow the present

Application.

7. I have perused the records and anxiously considered the arguments advanced by the learned Counsel for the applicants.

8. The fact that the applicants/Respondents 1 to 4 and the Respondent/Petitioner were brothers and their father was one Bakthavatchalam Naidu is

not at all disputed. It has been put forth by the applicants that the Respondent/Petitioner was born to the first Wife of Bakthavatchalam Naidu and

the applicants/Respondents 1 to 4 were born to second Wife of Bakthavatchalam Naidu namely Alamelu. The said fact has not been disclosed by

the Respondent in the main O.P. while he had sought for issuance of Letters of Administration of the estate of the deceased Sugantha in his favour.

There is no dispute that the said Sugantha died on 10.4.2003 and her Husband Krishna Ramanujam pre-deceased her on 21.3.1993 and the said

couple had no issues. Therefore, the property which was admittedly belonged to Sugantha, on her death, would devolve up on the heirs by

intestate succession. For finding out the heirs of Sugantha, the provisions of Section 15 has to be resorted to.

9. In Section 15(1) of the Act, We could see the list of legal heirs who are entitled to inherit the property of Hindu female who died intestate. As

per the provision of Section 15(1) of the Hindu Succession Act, as far as the estate of Sugantha is concerned, the category of relatives specified in

Sub-Section 15(1)(b) as the heirs of Husband could be considered as the legal heirs of the deceased Sugantha.

10. Admittedly, the Husband of Sugantha pre-deceased her and the heirs of her Husband Krishna Ramanujam could be ascertained through the

provisions of Section of Hindu Succession Act. Firstly, it would devolve upon Class-I heir. Class-I heirs refers to the father and he is also not alive.

Class-I heir of Krishna Ramanujam are not available since he had no issues and it would devolve upon Class II heirs. Class-II heirs refer to son's

daughter's son, son's daughter's daughter including brother and sister. As far as Krishna Ramanujam is concerned, he had no issues and there is

no possibility of his property devolving on his son's daughter son, son's daughter's daughter. There is no sister for Krishna Ramajunam.

Therefore, the brothers of Krishna Ramanujam will be the heirs of Krishna Ramanujam. The Respondent/Petitioner is also a brother of the

deceased Krishna Ramanujam, but he is only a step brother. The Respondent/Petitioner was born to the father of Krishna Ramanujam,

Bakthavatchalam but through his first Wife. Therefore, he is only half blooded brother of Krishna Ramanujam. However, the

applicants/Respondents 1 to 4 were born to father Bakthavatchalam Naidu and the mother Ms. Alamelu, of Krishna Ramanujam and they alone

would certainly come under the definition of brothers by full blood of Krishna Ramanujam.

11. Now, the main point to be decided is whether the Respondent/Petitioner is eligible to maintain the O.P. and whether he has to be considered in

terms of provisions to Section 18 of the Hindu Succession Act. It would be apt and appropriate to extract Section 18 of the Hindu Succession Act

which runs as follows.

18 Full blood preferred to half blood.-- Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of

the relationship is the same in every other respect.

According to the said Section, the full blood heirs shall be preferred to the heirs by half blood.

12. Therefore, even though the applicants/Respondents 1 to 4 and the Respondent/Petitioner are brothers of Krishna Ramanujam, the applicants

herein are brothers by full blood of Krishna Ramanujam whereas the Respondent/Petitioner is the brother by half blood of Krishna Ramanujam.

Therefore, the Applicants herein shall be preferred to the brother by half blood, the Respondent/Petitioner in respect of inheritance of Sugantha, on

her death. Hence, the Respondent/Petitioner has no locus standi to apply for Letters of Administration for the estate of the deceased Sugantha.

13. Apart from that, the Petitioner has not disclosed the correct fact that he was born to Bakthavatchalam through the first Wife and he was the

step brother-in-law of Sugantha in his Petition, which would certainly amount to suppression of fact which has misled the Court to have the Petition

admitted on file and to order issue of notice to the Respondents. Therefore, the filing of O.P. by the Respondent/Petitioner itself is not sustainable

and hence, it has to be rejected as prayed for by the applicants.

14. For the foregoing reasons, the main Original Petition filed by the Respondent/Petitioner in O.P. No. 375 of 2003 is liable to be rejected and

accordingly, rejected and the application is ordered with costs.