

(2013) 07 AP CK 0063

Andhra Pradesh High Court

Case No: Appeal Suit No. 1639 of 2001

J. Sukanya

APPELLANT

Vs

Mrs. J.P. Nirmala, J. Ganesh
Chandra and Deputy
Commissioner of Excise,
Hyderabad Division

RESPONDENT

Date of Decision: July 31, 2013

Citation: (2013) 6 ALD 405 : (2013) 6 ALT 245

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: K. Mohan, for the Appellant; K.R. Sasidharan Nair, Advocate for the Respondent
Nos. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

The 1st defendant in O.S. No. 84 of 1999 on the file of the Court of the Judge, Family Court at Secunderabad filed this appeal feeling aggrieved by the decree, dated 08-03-2001, passed therein. For the sake of convenience, the parties herein are referred to as arrayed in the suit. Plaintiffs 1 and 2 filed the suit for declaration to the effect that they are the only legal heirs and successors of late J.P. Girish Chandra and that they are entitled to receive the service benefits from the 2nd defendant. The appellant was shown as the 1st defendant.

2. It was pleaded that the 1st plaintiff was residing in her sister's house at Adaiah Nagar, Secunderabad, from 1973 onwards, and when she was attending a Type-writing institute in the near by locality, she got acquaintance with J.P. Girishchandra. Both of them are said to have married on 31-05-1975 at Sri Venkateshwara Temple, Chikkadapally. It was further pleaded that Girishchandra executed an agreement on 31-05-1975 stating that he did not marry any other woman and that he would look after her well. The 2nd plaintiff is said to have born

out of their wedlock.

3. It was stated in the plaint that when they were residing at Adaiah Nagar, Ghasmandi, Secunderabad, Girishchandra developed intimacy with the 1st defendant, who was residing in the opposite house. It was also stated that when Girishchandra brought the 1st defendant to their house and she started living there, the plaintiffs left that house and started living at another place. Girishchandra is said to have died in the year 1998 and alleging that their claim for extension of death-cum-retirement benefits was opposed, they filed the suit.

4. The 1st defendant filed written statement denying the contents of the plaint. She stated that her marriage with Girishchandra was performed in the year 1977 at Yadagirigutta and that the plaintiffs are strangers to their family. She pleaded that according to the information gathered by her, the 1st plaintiff is a Christian and it was not even pleaded that she got converted to Hinduism. Various events that have been taken place in the life of Girishchandra and the manner in which he met with death, are furnished in detail. She prayed for dismissal of the suit.

5. The 2nd defendant filed written statement stating that they would abide by any adjudication made by the Court.

6. The Trial Court decreed the suit through its judgment, dated 08-03-2001.

7. Sri K. Mohan, learned counsel for the appellant, submits that even if, one goes by the contents of the plaint, the case presented by the plaintiffs is totally fictitious and the suit was filed only to knock away death-cum-retirement benefits of Girishchandra. He contends that 1st plaintiff did not dispute that she was practicing Christianity in the year 1975 and the question of marriage between her and a person professing Hindu taking place in a temple, does not arise. He further submits that the plaintiffs have pleaded that the 1st defendant was brought to their house and it was she, who left the place on protest. According to the learned counsel, if this was true, any person in the place of the 1st plaintiff would have submitted a complaint alleging bigamy and the very fact that no steps were taken and that she is said to have left the house, would clearly demonstrate the shallowness of the claim of the plaintiffs.

8. Sri K.R. Sashidharan Nair, learned counsel for the plaintiffs, on the other hand, submits that his client has placed cogent oral and documentary evidence before the trial Court and the findings were recorded with proper reasoning. He contends that the marriage between the 1st plaintiff and Girishchandra is proved through oral evidence of Pws. 1 to 3 and other documentary evidence. Learned counsel further submits that P.W. 2 who is none other than the wife of paternal aunt of Girishchandra has stated that she has witnessed the marriage between the 1st plaintiff and Girishchandra and the decree passed by the trial Court does not warrant interference.

9. In a way, the plaintiffs admitted that the 1st defendant was also living with late Girishchandra. However, they wanted declaration to the effect that they alone are the legal heirs of late Girishchandra. No prayer was made to declare that there existed a marriage between the 1st plaintiff and Girishchandra or that such a marriage is valid in law.

10. The trial Court framed the following issues for consideration:--

1. Whether the 1st plaintiff was the legally wedded wife and the 2nd plaintiff was the legitimate son of late J.P. Girishchandra?

2. Whether the plaintiffs are entitled for declaration as prayed for in the suit?

3. Whether the 1st defendant was the legally wedded wife of late J.P. Girishchandra?

4. Among the plaintiffs and the 1st defendant who is entitled to receive the service benefits of late J.P. Girishchandra?

5. To what relief?

11. On behalf of the plaintiffs, Pws. 1 to 3 were examined and Exs. A-1 to A-13 were filed. On behalf of defendants, Dws. 1 and 2 were examined and Exs. B.1 to 10 were filed. The suit was decreed.

12. The points that arise for consideration are as follows:--

a) Whether the plaintiffs could have sought for declaration as they did, without a prayer to declare that the 1st plaintiff is the legally wedded wife of Late Girishchandra?

b) Whether the 1st plaintiff proved her marriage with the late Girishchandra?

c) Whether the judgment rendered by the trial Court suffers from any infirmity?

13. The nature of the relief claimed in the suit has already been mentioned in the preceding paragraphs. Straightaway declaration is sought to the effect that the plaintiffs are the only legal heirs of late Girishchandra. It is only when relationship between the deceased person and those who are claiming the relief is not disputed, such relief can be claimed. When there is serious contest as to the relationship between the 1st plaintiff and the deceased, the relief claimed in the suit becomes untenable. The plaintiffs cannot take the fundamental facts, such as the marriage between the 1st plaintiff and Girishchandra, as having been proved. Though, the trial Court did not frame any issue on this aspect, being a pure question of law, it can be considered at this stage also. We find that the frame of suit filed by the plaintiffs suffers from serious infirmity in this behalf. The point is answered, accordingly.

14. Assuming that there is no infirmity in the frame of the suit, it has to be seen as to whether the 1st plaintiff/P.W. 1 proved her marriage with Girishchandra. Her

contention was that she was living in the house of her sister from 1973 at Adaiah Nagar, Secunderabad and she got acquainted with Girishchandra. It was also stated that their marriage was performed in Sri Venkateshwara Swamy Temple, Chikkadapally, Hyderabad. In the cross-examination of P.W. 1, it was suggested to her that she was professing Christianity in the year 1975 and her sister and brother-in-law were Christians and that they were attending Churches and no satisfactory answer to contradict this was coming from the witness.

15. In para 4 of the plaint, it was stated that Girishchandra brought the 1st defendant to his house at Secunderabad. Timing thereof is not mentioned. If, infact, P.W. 1 was legally wedded wife of Girishchandra, and later on brought any other woman to their house, any sensible woman would have protested and submitted a complaint to the police as well as to the department in which he was employed. No such steps have taken place. On the other hand, it was mentioned that she left the house in protest. It was not even mentioned as to when she left the house and how long she stayed outside.

16. P.W. 2 is the wife of paternal uncle of Girishchandra. In the chief examination itself, she stated that Girishchandra married 1st defendant in the year 1977. However, according to her, it was second marriage. Though, she stated that Girishchandra married the 1st plaintiff in the year 1975, her evidence in this behalf was shaky it is important to note that in the cross-examination, she admitted that she attended the marriage of Girishchandra with 1st defendant at Yadagirigutta, whereas, she was not a witness to the alleged marriage of Girishchandra with P.W. 1. Suggestions were given to the effect that there are property disputes between their family and family of Girishchandra. She pleaded ignorance, when it was suggested to her that P.W. 1 is a Christian.

17. 1st defendant as D.W. 1 has virtually reiterated the contents of her written statement. Nothing contradictory was elicited from her. That, however, does not take her case further. D.W. 2 is the maternal uncle of Girishchandra. He recollected various important aspects of the life of his nephew till Girishchandra had his last breath. He categorically stated that except D.W. 1, there is no other wife to Girishchandra and that he has not seen the plaintiffs at any point of time with his nephew. There is nothing on record to suspect or disbelieve the evidence of P.W. 2.

18. When the 1st plaintiff did not dispute that she was professing Christianity by 1975, she could not have contacted marriage with Girishchandra, except after conversion by either of the spouses. She admitted that there was no conversion. The evidence of D.W. 1 is not at all trustworthy. We hold that P.W. 1 failed to prove her marriage with Girishchandra.

19. The trial Court has committed several errors in appreciating the evidence on record. It ought to have suspected the veracity of the version of P.W. 1, once she stated that Girishchandra gave an affidavit three days after the marriage to the

effect that he would look after well and that he did not marry any other woman. That itself is sufficient to demonstrate that so-called marriage between them is a fictitious one. Added to that, when Girishchandra was alive, P.W. 1 did not protest as to his living with D.W. 1. We are not at all convinced with the findings of the trial Court.

20. The appeal is, accordingly, allowed and the decree passed by the trial Court is set aside. However, we do not disturb the finding in relation to the 2nd plaintiff, in as much as an illegitimate child is also entitled to be treated as legal heir of his father. The 1st defendant shall be entitled to receive death-cum-retirement benefits of late Girishchandra and shall be entitled to inherit the estate of the deceased. There shall be no order as to costs. The miscellaneous petitions filed in this Appeal shall also stand disposed of.