

Chamundamma and Others Vs. Lakshmi and Others

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Court : Karnataka

Decided On : Dec-03-2014

Judge : N.K. Patil & the Honourable Mrs. Justice Rathnakala

Appeal No. : Misc. First Appeal No. 3104 of 2011 (FC)

Appellant : Chamundamma and Others

Respondent : Lakshmi and Others

Judgement :

(Prayer: This Misc. First Appeal Is Filed Under Section 19(1) of the Family Courts Act, against the Judgment and Decree Dated:23.02.2011 Passed In O.S.No.39/2008 on the File of the Family Court, Mysore, Dismissing the Suit Filed for Declaration and Direction for Settlement of Death Benefits.)

1. This appeal is by the aggrieved plaintiffs of O.S.No.39/2008 against the judgment and decree dated 23.2.2011 on the file of the Judge, Family Court at Mysore.
2. For the sake of convenience, the parties will be referred to as per their original status before the trial court.
3. Briefly stated the facts are, the plaintiffs filed a suit for declaration that, first plaintiff is the legally wedded wife and plaintiff Nos.2 and 3 are the children of deceased Javara Naika and sought for a direction against defendant Nos.4 and 5

to settle the death benefits arising on the death of Javara Naika, who was a Police Constable working in K.S.R.P., DAR, Mysore. Their case was, they are the legally wedded wife and children of Javara Naika, who died on 7.9.2008 while working as a Police Constable, token No.P.C.139 of District Armed Reserve, Jyothinagar, Mysore. The third plaintiff is entitled for an appointment on compassionate ground; that the first defendant claiming to be the wife of Javara Naika and defendant Nos.2 and 3 claiming to be her children born from the wedlock between first defendant and the deceased, are trying to get all benefits and get appointment on compassionate ground. After the death of her husband, she approached the defendants-4 and 5/Department to get death benefits and family pension payable to her on the death of her husband. But the defendant Nos.4 and 5 are considering the application in favour of defendant Nos.1 to 3.

Defendant Nos.1 to 3 contested the suit. Their case was, first defendant is the legally wedded wife of the deceased Javara Naika having married on 17.6.1988 at Shanidevara Temple, H.D.Kote, as per customs and she has given birth to defendant Nos.2 and 3. Plaintiffs have come up with a false suit. Her husband has nominated her in his insurance policy and she received the maturity value of the policy. He executed a Registered Will on 12.8.2008, bequeathing all his properties to her and also her children. In the Will itself he has notified that the second defendant is entitled to get the appointment on compassionate ground in the event of his death. After his death, she performed the last rituals on getting financial help from the Department. Deceased never resided with the plaintiffs at any point of time and first plaintiff is not his wife.

Fifth defendant/Superintendent of Police, Mysore District, in his written statement brought on record that deceased has not declared the first plaintiff as his legally wedded wife and plaintiff Nos.2 and 3 as his children in his Service Records. He has shown Smt.Lakshamma as his wife in the Service Records and nominated her to receive the family pension after his death. He has nominated her for DCRG, Group Insurance and declared the defendant Nos.1 to 3 as is legally wedded wife and children.

4. On the above pleadings, the trial court framed the issues and after recording the evidence and giving audience to both the parties answered the issues against the plaintiffs and in favour of defendant Nos.1 to 3, as below:

1. Whether the plaintiffs prove that, the first plaintiff is the legally wedded wife and second and third plaintiffs are the children of Late Javara Naika? ...Negative

2. Whether the plaintiffs further prove that, they are entitled for the death benefits of Late Javara Naika as they are legal heirs?

...Negative

3. Whether the first defendant proves that, she is the legally wedded wife of Late Javara Naika and second and third defendants are born from their wedlock?

...Affirmative

4. To what Order or relief the parties are entitled to?

During trial, first plaintiff got herself examined as PW-1, her brothers-in-law as PW-2 and PW-3. She had produced her marriage invitation card/Ex.P1; two photos with the deceased Exs.P2 and 3; mark cards of her son and Transfer Certificate of her daughter Exs.P4, P5 and P8 respectively and caste and income certificate, Green ration card and voter ID card Exs.P7, P9 and P10. Rebuttal evidence was adduced by first defendant as DW-1 and documents marked as Exs.D1 to D16 were produced.

5. What weighed the judgment of the Trial Judge to non-suit the plaintiffs was, that there was contradiction in the evidence of PWs. The first plaintiff had not produced any documentary proof about her stay with the deceased Javara Naika in his house at Jayapura Village. She never claimed that she ever lived with the deceased at Jyothinagar Police Quarters. On the other hand, defence was built up to the effect that defendant Nos.1 to 3 were staying with the deceased at Police Quarters at Jyothinagar. The documents produced by the defendants vis- -vis the documents produced by the plaintiffs were, Lagna Kundali pertaining to the marriage of first defendant and the deceased on 17.6.1988, ration card showing

the photograph of the deceased as the head of the family with the first defendant as his wife, the photographs of the family members with the deceased. The declaration made by the deceased under Arogya Bhagya Yojana Ex.D5 declaring the first defendant as his wife, the LIC policies, LIC premium paid receipts, which nominated the first defendant as his wife, the record of enumeration with the names of the deceased and the first defendant - Ex.D9. By taking note of the fact that the plaintiff had not pleaded about the date of marriage, as against which the defendants at the stage of filing written statement itself had contended that the marriage of the deceased and the first defendant was performed on 17.6.1988, the finding tilted in favour of the defendants. A registered Will Ex.D10 said to have been executed by the deceased one month prior to his death bequeathing all his service benefits in favour of defendant No.1 and proposing appointment on compassionate ground to second defendant among other things influenced the Trial Judge.

6. Learned Counsel appearing for the appellants/plaintiffs submits that, the marriage of the first plaintiff and the deceased had taken place in the year 1983 much earlier to the alleged marriage of the deceased with the first defendant. In the Green ration card/Ex.P9 and the Voter ID card/Ex.P10, the name of the deceased is shown as the husband of the first plaintiff. The marks cards of the third plaintiff Exs.P4 and P5 bear the name of the deceased as his father. In the Transfer Certificate pertaining to the second plaintiff also, the father's name is shown as Javara Naika. The trial court noticed discrepancy about the age of the second plaintiff, but that is of no relevance to the matter in dispute between the parties. Without appreciating the evidence in its proper perspective, the trial court dismissed the suit in limine, which has resulted in miscarriage of justice to the plaintiffs. The intervention of this Court is required to grant relief as prayed for by declaring the first plaintiff as the legally wedded wife of the deceased.

7. In reply, learned Counsel for the respondents/defendants submits that, the plaintiffs did not mention the date on which the arranged marriage between the first plaintiff and the deceased was performed, but sought for declaration that the first plaintiff is the legally wedded wife of the deceased and the plaintiffs-2 and 3 are the children of deceased Javara Naika and also for the direction to the

Government to settle the death benefits in favour of the first plaintiff. The merit of the case entirely rests on sole factor i.e., the marital status of the first plaintiff with the deceased. In all his official records, the deceased had declared the first defendant as his legally wedded wife. On the other hand, the documents produced by the plaintiffs, more particularly Ex.P1, the wedding card are suspicious and concocted for the purpose of the case. PWs-2 and 3, the brothers of the deceased are inimical to the defendants and cannot be relied for whatever purpose. The court below on a proper appreciation of the evidence has found that, the marriage of the deceased with the first defendant is valid and legal and rightly decreed the suit and interference by this court is not called for, in the circumstances of the case.

8. On hearing both learned Counsel and on careful consideration of the case records, following point arises for our consideration:

"Whether the first plaintiff is the legally wedded wife of the deceased Javara Naika and whether plaintiffs-2 and 3 are the children from their wedlock?"

9. Initially, the plaintiffs did not plead in the plaint, the date on which marriage of the first plaintiff and the deceased was performed. It is only after the defendants filed their written statement, claiming first defendant is the legally wedded wife of the deceased having married him on 17.6.1988 as per customs prevailing in the community, the plaintiff for the first time at the stage of her evidence produced her marriage invitation card Ex.P1, according to which, marriage was scheduled to 29.5.1983. For a while, we are not resting ourselves on this document as the foolproof of the marriage of the first plaintiff with the deceased. Then there are photos Exs.P4, P5 and P11 taken in an undisputed point of time. Two photos are that of the first plaintiff and the deceased and the other one said to have been taken during the engagement ceremony of the second plaintiff. On a keen observation of these photos would disclose that Ex.P11 is the magnified copy of Ex.P2 and both photos are taken on the same day in a Studio. These photos probalilise the family relationship of plaintiff with the deceased. The marks cards pertaining to the third plaintiff Exs.P4 and P5 reflect that, Javara Naika J., is his father. The Transfer Certificate Ex.P8 pertaining to second defendant also shows

that Javara Naika is her father. The voter ID card Ex.P10 issued on 12.9.1995, the green card Ex.P9 bear the name of Javara Naika as the husband of the first plaintiff, though in the green card, the photo of the son-in-law is shown as the male member of the family. All these documents coupled with the supporting evidence of PWs-2 and 3 in corroboration to the sworn testimony of PW-1 would lead towards one and only conclusion that the deceased is none other than the husband of the first plaintiff. At the same time, the defendants have successfully demonstrated that, first defendant was married to the deceased on 17.6.1988 and begot two issues from the said wedlock.

10. Now to address the legality or otherwise of the marriages in question, Section 5 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') enumerates the conditions for a Hindu marriage. Among others, the first condition relevant for us is:

"5. Conditions for a Hindu marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii)

(iii)

(iv)

(v)"

11. In the backdrop of the above position of law, the pivotal question before the court is, whose marriage was earlier in point of time. If it is shown that the marriage between the first plaintiff and the deceased was earlier to that of first defendant and the deceased, then the suit shall succeed.

12. The age factor of the plaintiffs-2 and 3 was the disturbing factor for the learned Trial Judge to reach his conclusion; the learned Trial Judge during the course of his discussion observes that:

". . . . If the first plaintiff has really married Javara Naika in the year 1983 itself, she would have got children soon after her marriage and the age of his two children (plaintiffs-2 and 3) is not tallying with the alleged date of her marriage with Javara Naika. and the evidence available on record discloses that, she must have come in contact with him subsequent to he marrying the first defendant, the relationship even if any existed between the first plaintiff and deceased Javara Naika, considered to be not a valid marital relationship and the first plaintiff cannot get the legal status as legally wedded wife. . ."

13. It is unfortunate that the learned Trial Judge seems to be under misconception that a wife conceives immediately after the marriage. The age of the second plaintiff is described as 22 years in the cause title as on the date of filing of the suit before the trial court on 12.9.2008. If that is so, her date of birth dates back to September 1986. In the Transfer Certificate, the column for the date of birth is blank. However, from this document only, it is noticed that the candidate lastly attended 7th standard on 10.8.1999. If it is assumed that she was 13 years by the time she reached 7th standard, she is born in 1986 and there is not much to comment on the date of birth of the third plaintiff, which is shown as 8.5.1991 as per the SSLC and 7th standard marks cards. Then it percolates to the point that second plaintiff was born prior to the marriage of the deceased with the first defendant, which is of 1988. It was not the defence that, the first plaintiff is married to some other person. The tone of cross-examination was to the limited extent that the marriage of the deceased and the first plaintiff was not prior to the marriage of the deceased with the first defendant.

14. The defence have a sharp tool in their hand i.e., Registered Will said to have been executed by Javara Naika on 12.8.2008 i.e., one month prior to his death on 7.9.2008. The averments in this document is to the effect that the executant, who was sick and was expecting death, declares that he married the first defendant on 16.6.1988 as per customs and has two issues from the said marriage and said wife and children have been taking care of him and they are dependent on him. He bequeaths all his properties and service benefits in favour of the said wife and children and expresses that, after his death, the appointment on compassionate ground may be given by the Government to his son/second defendant.

15. Assuming for a while that this is the true Will and testament of the deceased husband, we have reasons to doubt the fairness of the intention in executing such a Will. If defendants-1 to 3 were his one and only wife and children, what was the necessity for the testator to describe the date and place of his marriage and bequeath his service benefits and compassionate appointment in their favour? Basically, the genuineness of this Will was not at issue between the parties. The Will since not admitted, it was to be proved as per the requirement of Section 68 of the Evidence Act, but that is not done and no witness is examined. Further, the declaration made by the deceased in the official records and nominating the first defendant to the insurance policy, etc., are all on the basis of his own self-serving statement. One cannot defeat a widow's right of maintenance out of her deceased husband's estate and deprive the children from inheriting the ancestral property of the family, by way of testamentary disposition. There is enough of evidence demonstrating that first defendant married the deceased, begot defendant Nos.2 and 3 out of the said wedlock and stayed with him till his last breath. But these factors do not legalize her marital relationship with the deceased since it surfaces from the evidence that by 1986 itself, 2nd plaintiff was born out of the wedlock between the first plaintiff and the deceased. Dehors minor deficiencies and discrepancies in the evidence of the brothers of the deceased, it is made out on preponderance of probabilities that the first plaintiff and the deceased were married as per customs prevailing in their community in the year 1983, prior to the marriage of deceased and first defendant in 1988 and gave birth to her first child/2nd plaintiff in the year 1986.

16. Now coming back to the marriage invitation card/Ex.P1, the learned Trial Judge suspects the genuineness of this document since the time of muhurtham is not mentioned. We are not able to subscribe to this view also. If really the plaintiffs had fabricated the invitation card, nothing prevented them to fabricate a well defined marriage invitation card. We have to understand the human conduct in its natural course in the backdrop of their social, cultural and economic background. By contrasting the evidence placed on record by each of the parties, plaintiffs' evidence outweighs and drives us to conclude that, first plaintiff is the legally married wife of deceased Javara Naika and plaintiffs-2 and 3 are the children born out of the said wedlock. That leads to the eventuality, the marriage of the first

defendant with deceased Javara Naika is not valid in view of Section 5(i) of the Act.

17. Now coming to the question as to what relief the plaintiffs are entitled for, it is the submission at the Bar that all the death benefits is already disbursed by the Department in favour of defendant Nos.1 to 3 since the deceased had declared the first defendant as his legally wedded wife and defendant Nos.2 and 3 as his children in his service records and the first defendant since was nominated by the deceased in his insurance policy, she has received the insurance amount also.

18. In view of the above discussion, we are reaching the stage of moulding proper and justifiable relief having regard to the ground reality of life and the mandates of law. The marriage of the first defendant being later to that of the first plaintiff is in violation of Section 5(i) of the Act and is a void marriage under Section 11 of the Act. The defendants-2 and 3 though born out of the void marriage, by virtue of Section 16 of the Act are conferred with legitimate status and under sub-section (3) of Section 16, they are entitled to inherit the estate of their deceased father along with plaintiffs. But, what about the fate of the wife entangled with the marital tie, which is in violation of Section 5(i) of the Act. None of the personal laws nor the benefit of maintenance available under Section 125 of Cr.P.C., go to rescue the widow of an invalid marriage to keep her body and soul together. Despite such discouragement by the statutes, here and there, we are coming across spouses in our society living in marital relationship, though not valid in the eye of law, still recognized by the society as husband and wife.

19. If such relationship is disrupted for whatever reason, many a times, it is the woman partner, whose life is doomed and she will have no way to sustain herself. The judgment reported in (2005) 2 SCC page 33 (Rameshchandra Daga -vs- Rameshwari Daga), is of some relevance here though facts, circumstances and question of law were on different count, while clarifying position of law regarding Section 25 of the Hindu Marriage Act, the Apex Court confirmed the order of grant of maintenance to a second wife passed at the time of Decree under Section 11 of the Hindu Marriage Act. In the midst of the discussion, it was observed thus:

". Keeping into consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependant. It is with the purpose of not rendering a financially dependant spouse destitute that Section 25 enables the court to award maintenance at the time of passing any type of decree resulting in breach in a marriage relationship.. . . ."

The Parliament in its highest wisdom to provide the rights guaranteed under the Constitution of India to the victims of domestic violence has enforced the statute "The Protection of Women from Domestic Violence Act, 2005". The scheme of the Act is for remedying the victims of violence of all kinds occurring within the family and in respect of matters connected therewith and incidental thereto.

20. Section 2(f) of the Protection of Women from Domestic Violence Act, defines "domestic relationship"- among other things, the relationship between two persons, who live or have, at any point of time, lived together in a relationship in the nature of marriage is a domestic relationship. The victims of domestic violence are entitled for protection orders, residence orders and monetary reliefs from the erring partner. The term "domestic violence" is defined under Section 3 of the said Act. Accordingly, depriving a woman of economic and financial resource, falls under the category of the domestic violence. Extending the concept of the Domestic Violence Act to the case on hand, we hold that the first defendant herein is one such victim, who has rendered helpless in half way of her life. She had lived with Javara Naika as his wife till his last breath, took care of him in his distress, borne children for him and she was recognized as his wife by the society. In that view of the matter, she shall not become a destitute in view of the deprivation of legitimate status of a wife by the statute. That prompts us to hold that the death benefits already disbursed by the defendants-4 and 5 in favour of the defendant No.1 shall be availed by her towards her future maintenance; neither the plaintiffs nor defendants-2 and 3 shall have any claim over that amount.

21. We are further of the opinion that the family pension shall go to the first plaintiff since she alone is the legally wedded wife of deceased Javara Naika and the

appointment on compassionate ground shall be given to third plaintiff, that would sub-serve the ends of justice and would bring quietus between two families without driving them to further litigate regarding the amounts disbursed by the Department in favour of defendants-1 to 3. As regards the other immovable properties left behind by late Javara Naika, the Succession Law read with Section 16 of the Act shall follow.

Accordingly, the appeal is allowed.

The judgment and decree passed in O.S.No.39/2008 dated 23.2.2011 on the file of the Judge, Family Court at Mysore, is hereby set aside.

The first appellant/first plaintiff is declared as the legally wedded wife of the deceased Javara Naika and the appellant Nos.2 and 3/plaintiff Nos.2 and 3 are the children of first appellant and the deceased Javara Naika.

The appellants and respondents-2 and 3/defendants-2 and 3 are all entitled to inherit the estate of deceased Javara Naika as his Class-I legal heirs and also to any monetary relief still available at the hands of respondents-4 and 5.

The first appellant is entitled for family pension and the third appellant is entitled for appointment on compassionate ground.

There is no further order in respect of the monetary benefits disbursed by the Department in respect of respondents-1 to 3 and the first respondent is entitled to utilize the said amount towards her future maintenance.

The respondents-4 and 5 are directed to settle the death benefits still undisturbed, if any, in favour of appellants-1 to 3 and respondents-2 and 3.

Parties to bear their own costs.

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