

Gnanamma and ors. Vs. Devaki and ors.

Gnanamma and ors. Vs. Devaki and ors.

SooperKanoon Citation : sooperkanoon.com/370299

Court : Karnataka

Decided On : Jan-04-2006

Reported in : AIR2006Kant147; ILR2006KAR789; 2006(2)KarLJ475

Judge : Anand Byrareddy, J.

Acts : [Indian Succession Act, 1925](#) - Sections 372

Appeal No. : Miscellaneous First Appal No. 3413 of 2004

Appellant : Gnanamma and ors.

Respondent : Devaki and ors.

Advocate for Def. : Shriyuths V.F. Kumbar, ;R.P. Hosamani and ;Ramachandra, Adv. for Respondent Nos. 1 to 3

Advocate for Pet/Ap. : S. Shaker Shetty, Adv.

Disposition : Appeal allowed

Judgement :

Anand Byrareddy, J.

1. The appellants, who were the petitioners before the Trial Court, had sought for Succession Certificate in respect of monies due to the estate of deceased M. Sundaram.

2. The Appellants had claimed as the widow and children of the deceased. The respondent also claimed as the widow of the deceased and contested the petition of the appellants. The Trial Court has allowed the petition in favour of appellants 2 to 4 and the respondent by directing that the Succession Certificate be issued in favour of all the said parties. The Trial Court has found that the First Appellant was not the legally wedded wife of the deceased-as she had admitted that she was a Christian prior to her marriage and as there was no material to show that she had converted to Hinduism-she could not be held to be the legally wedded wife of the deceased.

3. The Counsel for the appellant Shri Shaker Shetty would submit that the finding of the Trial Court on the validity or otherwise of the marriage of the First Appellant with the deceased was without jurisdiction in a summary proceeding under Section 372 of the [Indian Succession Act, 1925](#) (hereinafter referred to as 'the Act' for brevity).

4. It is contended that the Trial Court was not justified in denying the Succession Certificate at the instance or the claim of the respondent. The First Appellant was never entitled to an exclusive claim over the monies as a nominee and the First Appellant having been named as the nominee of the deceased, the certificate could have been safely issued in her favour. Any persons, including the respondents are not precluded from laying claim to the same in appropriate proceedings.

5. The Counsel also contends that the Trial Court has erred even on the finding as to the religion of the First Appellant. The counsel points out that a woman takes the religion of her Hindu husband by marriage-no document of conversion is contemplated.

6. Further, the Trial Court has palpably erred in granting a certificate in favour of respondent No. 1 and respondents 2 and 3, the latter who were not even parties before the Trial Court, and the former who was not even an applicant. Such a grant was wholly without jurisdiction.

7. Per contra, the counsel for the respondent seeks to support the impugned order.

8. On these rival contentions, I have no hesitation in holding that the finding of the Trial Court on the validity of the marriage of appellant No. 1 with the deceased was without jurisdiction and proceeded on an incorrect application of the law.

9. Secondly, the grant of Succession Certificate in favour of the respondents, who were not applicants before it, is wholly irregular and not permissible in law.

10. Hence, on these two short grounds, the order of the Trial Court warrants interference. The appeal is allowed. The order of the Trial Court in so far as it directs grant of a Succession Certificate in favour of the respondents is set aside, so also the findings as to the invalidity of the marriage of the First Appellant. Succession Certificate shall be issued in favour of the appellants alone. The respondents are at liberty to set up any claim in respect of the monies and benefits, in respect of which the certificate is issued, in appropriate proceedings.