

Velu Vs. Madathi

Velu Vs. Madathi

SooperKanoon Citation : sooperkanoon.com/777329

Court : Chennai

Decided On : Oct-04-1991

Reported in : AIR1992Mad224

Judge : Mrs. Padmini Jesudurai, J.

Acts : [Registration of Births and Deaths Act, 1969](#) - Sections 8 and 13(3);
[Constitution of India](#) - Article 226

Appeal No. : Criminal Revn. Case No. 87 of 1991 and Cri. Revn. Petn. No. 86 of 1991

Appellant : Velu

Respondent : Madathi

Advocate for Def. : Mrs. Vijayakumari Natarajan, Adv.

Advocate for Pet/Ap. : S. Udayakumar, Adv.

Judgement :

ORDER

1. This revision is filed against the order of the Additional Sessions Judge, Tirunelveli, reversing the order passed by the learned Magistrate under S. 13(3) of the [Registration of Births and Deaths Act, 1969](#) and directing registration of the death of M. Subramaniam in the Register of Births and Deaths.

2. The respondent is the daughter of the late M. Subramaniam and the petitioner is the son of Thoondil, the elder brother of M. Subramaniam. The death of Subramaniam had not been registered under the Registration of Births and Deaths Act 1969 (the Act, for short) and since an extract from the Register of Deaths maintained under the Act was necessary for the the respondent in the civil litigations between heir and the petitioner, she filed an application in CrI. M.P. 223087 under S. 13(3) of the Act in the Court of the Sub-Divisional Judicial Magistrate, Sengottai. According to the respondent the date of death of her father M. Subramaniam was 15-8-1957. The learned Magistrate caused publication to be made for objections and the petitioner, disputing the date of death entered appearance and contested the issue. According to the petitioner, the said M. Subrammaniam died in 1944. The learned Magistrate permitted both parties to adduce oral and documentary evidence. The respondent was examined as P. W. 1 and the then Tahsildar, Ambasamudhran, to whom the matter had been referred for verification and report, was examined as P. W. 2 and his report was marked as Ex. P3. The voters list for the year 1955 was marked as Ex. P.2 The petitioner examined himself as R.W. 1 and on his side, the certified copy of the judgment of the Subordinate Judge, Tenkasi in A.S. No. 49/ 84 dated 25-2-1987 was marked as Ex. R.1 and an account book maintained by the petitioner for the funeral expenses of his father Thoondil, was marked as Ex.R. 2. Though these were the only documents marked, reference is made to certain registration copies of documents executed by the parties. The learned Magistrate rejected Ex.P.2 on the ground that merely because the name of a person continues to be found in the voters list, the same would not be proof of the fact that the said person was alive. He rejected Ex.P.3 the report of P.W. 2 on the ground that it was not based on any thorough enquiry. He also rejected the evidence of the respondent. He however relied upon the registration copy of two documents, one executed by late Sankaran, the brother of the respondent herein on 10-1-1952 in favour of the petitioner and the petitioner's elder brother's son Chellappa and another document dated 10-5-1956 a mortgage deed executed by the said Sankaran to one Madan. In both the documents Sankaran had described the properties as belonging to him and being in his possession. The learned Magistrate reasoned that if Mr. Subramaniam would have joined his son in executing these documents and hence

M. Subramaniam should have died even before 1952. The learned Magistrate accordingly dismissed the application stating that the date of the death of M. Subramaniam as put forward by the respondent was incorrect.

3. Aggrieved with the order, the respondent filed Cr.R.R. 16/26 before the Sessions Judge, Tirunelveli and the learned Additional Sessions Judge who heard the revision, allowed it on the ground that Ex.P.2 voters list showed that in 1955 M. Subramaniam was alive and in the voters list for the year 1959 M. Subramaniam's name had been deleted and this was strong that Subramaniam should have died between 1952 and 1956. He also commented upon the varying stand of the petitioner regarding the year of death of Subramaniam. In the civil suit the petitioner had stated that Subramaniam had died in 1944, whereas a registered document dated 28-11-1944 executed by M. Subramaniam and his son Sankaran belied this version and finding that the petitioner had shifted his stand by stating that Subramaniam had died in 1943 itself. Mainly on these considerations, the learned Additional Sessions Judge held the date of death of M. Subramaniam to be 15-8-1957 and issued an order under S. 13(3) of the Act directing the registration of the death. Aggrieved with this order, the petitioner has filed the present revision.

4. Thiru S. Ddayakumar, learned counsel for the petitioner contended that since the learned Magistrate under S. 13(3) of the Act was exercising quasi judicial powers, criminal revision would not lie and that only a writ petition under Art. 226 of the [Constitution of India](#) would lie. The learned counsel also urged that it was for the respondent to prove her case regarding the exact date of death of her father and her evidence was far from satisfactory and had rightly been rejected by the learned Magistrate, who had considered the case in the proper perspective. The learned counsel, therefore, urged that the well considered order of the learned Magistrate should be restored.

5. Per contra Mrs. Vijayakumari Natarajan, learned counsel for the respondent would submit that the limited scope of the verification called for under S. 13(3) of the Act did not permit any further probe into the issue and the respondent being the daughter of M. Subramaniam, by producing Ex.P.2 the voters list and also the

report of P.W. 2 namely Ex. P.3, had satisfied the requirements of S. 13(3) of the Act and for the purpose of the Act, the above material was sufficient to order registration of the death of M. Subramaniam. According to the learned counsel, the learned Additional Sessions Judge had rightly given due importance to the entry in the voters list, made long prior to those proceedings and the reasoning of the learned Magistrate was based more on speculation, than on evidence.

6. The question that arises for consideration is whether the order of the learned Sessions Judge suffers from any illegality, impropriety or error so as to call for interference by this Court under its revisional jurisdiction.

7. This revision arises out of proceedings initiated under S. 13(3) of the Act. The object of the Act is to regulate the registration of births and deaths. The statement of objects and reasons for the Act has been given as follows:--

'The Central Government needs adequate and accurate country-wide registration data for purposes of national planning, organising public health and medical activities and developing planning programmes. Population is one of the most dynamic factors in the present economy of the country but it is here that information on trends furnished by the registration data is very defective and unreliable. The national interest requires in acceptable level of performance by the States and technical uniformity of the methods and standards used in the collection and compilation of data throughout the country. The Government, therefore, consider that in order to develop a sound and unified system of registration in the country, Central legislation is necessary on the subject'.

The Act is concerned only with the registration of births and deaths. A registration machinery, drawn from different departments, is made to look after the registration work in addition to their regular work.

7A. Under the Act, a duty is cast upon certain persons mentioned in S. 8, to give information to the authorities constituted under the Act, the various particulars required to be entered in the forms prescribed for the registration of births and deaths. The head of the household, the medical officer, in-charge of hospitals, the jailor in-charge of jail, the person in charge of a choultry-chatram, hostem,

dharmasala boarding-house, lodging house, tavern, arrack toddy shop and places of public resort, the headman of a village are required to give information. Failure to give information calls for penal action. S. 8(1) requires these persons to give information orally or in writing, according to the best of their knowledges and belief. The information so given is entered in the registers prescribed under the Act and extracts of the entries in Registers are given when required. If the information is not given within the period prescribed, the same could be given within 30 days of its occurrence on payment of a late fee. Any information given after 30 days but within one year of the occurrence, could be registered only with the written permission of the prescribed authority, on the production of an affidavit made before a notary public, and ., on payment of the prescribed fee. If, however, any birth or death had not been registered within one year of its occurrence, it could be registered only on an order made by Magistrate of the first class after verifying the correctness of the birth or death and on payment of the prescribed fee. The relevant sub-section is as follows:--

'13(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class, or presidency Magistrate after verifying the correctness of the birth and on payment of the prescribed fee'.

8. No particular procedure is prescribed either under the Act or the Rules, regarding the manner in which the Judicial Magistrate is to verify correctness of the birth or death. The very fact that no particular procedure is prescribed for the this verification would imply, that all that the Judicial Magistrate is concerned with under S. 13(3) of the Act is, verification of the correctness of the birth or death. Sub-sec. (3) as it stands, does not contemplate the learned Magistrate to verify the correctness of the date of birth or death or to hold an enquiry in the event of a dispute over the exact date of death or birth. The verification has to relate only to the correctness of the fact of birth or death. In other words, the learned Magistrate will have to be satisfied, that the birth or death had in fact taken place. Deciding the exact date of death or birth in the case of a dispute regarding the date, is beyond the scope of S. 13(3). As stated earlier, information which the persons mentioned in S. 8 are bound to give for registration of the birth or death, could be

based on their knowledge or even belief. If after verifying, the learned Magistrate is not satisfied that the birth or death had really taken place, he should refuse to issue an order to register. If, however, he is satisfied that the birth or death as the case might be, had occurred, he has to order registration. He is not concerned with the exact date of birth or death. He has to register as required by the applicant and leave the aggrieved parties, if any, to seek remedy in the civil forum or any other appropriate forum. The object of the Act is only to make available, population data for planning purposes. Indeed, if the registration is made contemporaneous to the birth or death, the evidentiary value of the date of birth or death, would be considerable and would even be conclusive. This however, is only a consequence that incidentally flows from the registration, the main object still being, registering the fact of birth or death.

9. In the instant case, the petitioner as well as the respondent agree that M. Subramaniam is dead and his name has not been registered anywhere under this Act. According to the respondent, the date of death was 15-8-1957. As the learned sessions Judge had pointed out Ex.P.2 voters list shows the name of M. Subramaniam as a voter, where as in the voters list of the year 1959, the name has been deleted. There is no presumption that the entries in the voters list are false until the contrary is proved. Preparation of the voters list is an official work, done in the discharge of public duties. The reasoning that if M. Subramaniam had been alive in 1952 and 1956, he would have joined his son Sankaran in the sale deed and the mortgage deed and none would have obtained deeds in their favour from the son alone when the father was alive, is purely speculative. The petitioner in the civil proceedings had given the year of the death of M. Subramaniam as 1943 and possibly because a registered mortgage deed dated 28-11-1944 executed by M. Subramaniam and his son Sankaran is now facing him, has shifted his stand to say that M. Subramaniam died in 1944. P.W. 2, the Tahsildar concerned has also made local enquiry through his subordinates and had submitted Ex. P.3 report. This would be the limited verification that the learned Magistrate under S. 13(3) is expected to make. The order of the learned Sessions Judge, therefore, not being based upon any error or illegality, or impropriety ought not to be disturbed by this Court under its revisional jurisdiction.

10. In the result, this revision is dismissed.

11. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com