

Kamala Vs. Sarojini

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Court : Chennai

Decided On : Mar-15-2013

Judge : R.Karuppiah

Appellant : Kamala

Respondent : Sarojini

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

15. 03/2013 CORAM THE HON'BLE MR.JUSTICE R.KARUPPIAH A.3733 of 2012
KAMALA VS. SAROJINI FOR PETITIONER : SRIRAAJ FOR RESPONDENT :
V.BHIMAN ORDER A.Nos.3733, 3734 and 3735 of 2012 and A.No.4113 of 2011
In TOS No.40 of 2001 R.KARUPPIAH,J.

A.No.4113 of 2011 is filed by applicant/ plaintiff to implead her son and daughter as Legal Heir of the deceased Kamala in which it is stated that applicant/ plaintiff's husband Subramanian married defendant, namely, Kamala in the year 1956. As they have no issues and he married the applicant/ plaintiff as second wife and respondents namely, Rajavelu and Sasirekha were born to them. Further it is averred that during his lifetime Subramanian executed a Will dated 26.04.1999, in favour of son, namely, Rajavelu in respect of the suit property. After death of Subramanian, Appellant/ plaintiff filed O.P.No.906 of 1999 for probate the Will impleaded her son and daughter as R1 and R2 and also Kamala as R3. Since Kamala filed caveat and raised objections, it was converted as T.O.S.No.40 of

2001. The said Kamala died on 02.05.2009 leaving no issues. In the absence of the said Kamala, and parents of Kamala had predeceased her, only the legal heirs are husband's children as per Section 15(2)(b) of the Hindu Succession Act, 1956. Hence, filed this application. 2. During pendency of the above said application, the applications (i.e.) (i) A.No.3733 of 2012 is filed to condone the delay of 814 days in filing the application to set aside the order of abatement; (ii) A.No.3734 of 2012 is filed to set aside the order of abatement due to the death of the sole defendant (deceased); (iii) A.No.3735 of 2012 is filed to bring on record the appellant herein as 2nd defendant and the legal representatives of the deceased Defendant in T.O.S.No.40 of 2001 by one S.Saraswathi who is sister of deceased defendant Kamala.

3. In the affidavit filed in support of these applications filed by the applicant in A.Nos.3733 to 3735 of 2012, it is stated that the respondent/ plaintiff had filed O.P.906 of 1999 seeking the relief to probate a Will and late Kamala, the applicant's sister had contested the said petition and hence, the OP was numbered as T.O.S.No.40 of 2001. During the pendency of the above said proceedings, Kamala who is the defendant in the above said suit passed away on 02.05.2009 and therefore, as a legal representative of the late Kamala, it is necessitating the application to implead as defendant in the suit as a sister of the deceased. 4. It is further stated in the affidavit that the above said property was purchased by the father of the applicant and the deceased Kamala, namely, Velayutham Pillai out of his own funds in the name of the brother-in-law of the applicant namely Subramanian with the bonafide intention that he would take utmost care of the applicant's sister Kamala. It is also stated in the affidavit that the Testator late Subramanian had illicit relationship with the plaintiff and through her, he had two children namely, Rajavelu and Sasirekha. The applicant denied the above said Will and stated that the respondent/ plaintiff has to prove the genuineness of the alleged Will executed by the Testator. Further the above Will alleged to have executed by Subramanian is attained by under coercion and undue influence. It is also averred in the affidavit that the applicant's daughter also spent more than Rs.5,00,000/- for Kamala's treatment. The applicant is entitled to inherit assets of her sister as a legal heir and hence, the applicant has to be implead as the legal heir of late Kamala in the said suit since if the alleged Will

held as invalid, as per Section 15 of the Hindu Succession Act, applicant is legal heir to the estate of Late Kamala. The applicant was bonafide belief that the respondent/ plaintiff would take steps to implead the applicant as legal representative but no steps were taken. But plaintiff had sought to falsely implead her son and daughter as legal representatives. Therefore these applications filed to condone the delay of 814 days in filing the application to set aside the order of abatement; to set aside the order of abatement due to the death of the sole defendant (deceased) and to bring on record the applicant herein as 2nd defendant as the legal representatives of the deceased Defendant in T.O.S.No.40 of 2001. 5.The respondent/ plaintiff has filed counter in which it is stated that the sister of the deceased cannot be held as a legal heir or legal representative of the deceased person. As per Section 15(2)(b) of the Hindu succession Act, any property inherited by a female Hindu from her husband shall devolve in the absence of any son and daughter of the deceased not upon the other heirs referred to in sub-section (1) of Section 15 of the Hindu succession Act but upon the heirs of the husband. The applicant who is sister of the deceased not a legal heir and hence, the application is not maintainable. Further it is filed to protract the proceedings. Further the application is filed after long delay and the delay not explained properly. Therefore, prayed for the dismissal of the applications. 6.The learned counsel for the respondent/ plaintiff would submit that the plaintiff, namely, Sarojini is the second wife of late Subramaniam and they had two children namely, Rajavelu and Sasirekha and therefore, after the death of the sole defendant, namely, Kamala, the applicant namely, the sister of the late Kamala cannot be a legal representative as per Section 15 of the Hindu succession Act and therefore, she is not entitled to file these applications and further contended that no sufficient reason was given for the delay in filing these applications. 7.The learned counsel for the applicant/ proposed 2nd defendant submitted that the alleged second marriage between the late Subramaniam and the respondent is not true. In the above circumstances, the applicant as a sister of the deceased is entitled to contest the above said alleged Will executed by the deceased Subramaniam. To that effect he had relied on two decisions of the Hon'ble Supreme Court. (i)Reported in MANU/SC/8047/2008 (G.Gopal Vs. C.Baskar and others), wherein, in paragraph no.4 it is stated as follows: "4..... That being the position, we

must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator." (ii) Reported in MANU/SC/0160/2010 (Shri Jagjit Singh and others versus Mrs. Pamela Manmohan Singh), wherein, in paragraph no.12 it is stated as follows: "12..... It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator." 8. In the instant case, it is not disputed that the applicant is the sister of the deceased Kamala. But the factum of the legal marriage between the deceased Subramaniam and the plaintiff namely, Sarojini is not admitted. It has to be decided only in the main suit. In the above circumstances, this Court is of the view that as per the settled principles laid down by the Hon'ble Supreme Court that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator, the applicant is entitled to file the application to implead herself as one of the defendant in the above said proceedings. 9. With regard to the delay is concerned, it is contended on the side of the applicant that the applicant was under bonafide belief that the plaintiff would take appropriate steps to implead the applicant as legal representative. But the plaintiff has not taken any steps to implead her, on the contrary, the plaintiff has falsely impleaded her son and daughter as legal representative and therefore, there is delay in filing the legal heir application. In the above circumstances, the applicant has prayed to condone the delay of 814 days in filing the application to set aside the order of abatement made in TOS No.40 of 2001; to set aside the order of abatement due to the death of the sole defendant (deceased) made in TOS No.40 of 2001 and restore the same on file and to bring on record the petitioner herein as 2nd defendant and the legal representatives of the deceased Defendant in T.O.S.No.40 of 2001. 10. Considering the above said reasons stated in the affidavit and also so as to give an opportunity to the applicant to prove her case and also in the interest of justice, this Court is of view that all the three applications, namely, A.Nos.3733, 3734 and 3735 of 2012 are to be allowed. 11. Further, if the applicant in the above said three applications does not prove her case in the main suit and the plaintiff proves her case by adducing

sufficient oral and documentary evidence, then the son and daughter of the plaintiff are also necessary party in the suit. 12.In the above said circumstances, this Court is of the view that the application A.No.4113/2011 is also to be allowed. Therefore, all the four applications are to be allowed. This Court in this stage cannot decided who are the legal heirs, who are entitled to the suit properties and all the other facts and the above said facts are to be decided only in the main suit after adducing both side evidence. On the above said conditions, all the applications are allowed. 13.The plaintiff is directed to take necessary steps to implead all the parties in the main suit within a period of two weeks. 15.03.2013 pri R.KARUPPIAH, J.

pri A.Nos.3733, 3734 and 3735 of 2012 and A.No.4113 of 2011 In TOS No.40 o

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