

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.10.2018**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

C.M.A.No.877 of 2010

R.Balavenkatraman .. Appellant

vs.

T.L.Natarajan .. Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 384 of the Indian Succession Act, 1925 against the fair and decretal order of the Principal District Court at Coimbatore, dated 08.12.2009 in S.O.P.No.60 of 2006.

For Appellant : Mr.P.Valliappan

For Respondent : Mr.M.N.Balakrishnan

JUDGMENT

The Appellant has filed this Civil Miscellaneous Appeal against the fair and decretal order of the Principal District Court at Coimbatore, dated 08.12.2009 in S.O.P.No.60 of 2006 by raising various grounds.

2. The learned counsel appearing for the appellant would submit that the learned District Judge has rejected the above said S.O.P on erroneous ground that the appellant has not made his

stepbrothers and stepsisters as parties which is patently erroneous, manifestly unjust and liable to be reversed. He would also contend that as per Section 15(d) of the Hindu Succession Act, 1956 the property of a family Hindu Law dying intestate shall devolve in the absence of sons, daughters, husband, mother and father, upon the heirs of her father and as per Section 18 of Hindu Succession Act, 1956 heirs related to intestate by full blood shall be preferred as related by half blood, if the nature of the relationship is the same in every respect. Hence, he would submit that on death of his sister who was unmarried and issueless, the appellant becomes only the legal heir and his stepbrothers and stepsisters are not entitled to succeed the same.

3. The learned Judge, ought not have rejected the said petition seeking Succession Certificate on the ground of non-joinder of necessary parties (i.e.) step-brothers and step-sisters. The so-called brothers and sisters are stepbrothers and stepsisters born through the appellant's father's second wife. He would also further contend that the paternal uncle of the appellant who is the respondent herein has no legal right over the property in question and his contentions are vexatious and frivolous.

4. Even from the counter of the respondent, it is clear that, the appellant, the deceased Gourammal and the deceased brother Ayyasamy are born through the first wife as such appellant has not suppressed any fact before the Court. The wrong conclusion of the learned Judge regarding the admission of the appellant that he has stepbrothers and stepsisters and since he has not made them as parties, the said petition is not maintainable has to be set aside.

5. The succession certificate only indicates who can receive the amount and it is not an adjudication on the entitlement of the parties to the estate. Hence, the learned Judge ought to have allowed the petition, but instead, rejected the same.

6. The case of the appellant is as follows. A petition was filed under Section 370 (Part X) of the Indian Succession Act of 1925 before the District and Sessions Judge, Coimbatore in S.O.P.No.60 of 2006. The appellant herein and one Gourammal and one R.Ayyasamy are the children of one P.L.Ranganathan. The appellant's mother died long ago and father also followed his mother. His sister namely Gourammal was working as an Adviser at Chinmaya Vidyalaya Matriculation Higher Secondary School at Palayankottai and retired

from service and died on 29.09.2005 at Kavundampalayam village, Coimbatore. The appellant's younger brother R.Ayyasamy also died on 15.09.2005. Both brother and sister of the appellant were not married and they have no issues. Such that, the appellant herein is the only surviving legal heir of said R.Ayyasamy and Gourammal as per Indian Succession Act. The appellant produced death certificate of the deceased brother and sister and contended that the persons who have died have earned some money and invested them in several securities and the details were also shown with, only the appellant has right to get the same as legal heir and as such the appellant has succeeded all the assets of the deceased brother and sister. In order to realise the assets and other securities he has to submit a succession certificate before the authorities. Hence, he has file S.O.P.No.60 of 2006 in order to declare him as a person successor to the said deceased persons and to collect the money of other securities available. The appellant has also paid fees prescribed and has also listed out what are all the loans pending before various Banks, Corporation, Housing Society, Post Office.

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7. The said respondent was impleaded to the petition as per orders in I.A.No.2805 of 2007 dated 13.03.2008. The respondent

was paternal uncle of the appellant herein. The said respondent has submitted that the appellant herein is not the only legal heir but one T.L.Radhakrishnan, T.L.Gopalakrishnan and T.L.Chakkubai are all legal heirs of Gourammal. Hence, the above said persons are also entitled to succeed to the said estate of said Gourammal.

8. The learned counsel for the respondent would submit that the respondent is the one who had taken care of all the persons and educated the said deceased Gourammal and got her employment and when she was not well, he has taken care of her. The appellant did not take care of his own sister when she was suffering and as such he would submit that the respondent herein has all the papers concerning the deceased in his custody, all the certificates, shares and stocks and fixed deposits have been managed by the respondent for the deceased and also with his own funds.

9. The appellant has gathered all the details from the respondent herein and filed the petition. When the respondent approached him to get the originals from him, the appellant has shown his succession certificate hence the respondent refused to part with the originals and the petitioner threatened to file 'police

complaint' against the respondent herein. The respondent has also stated that he was also a legal heir to the deceased Gourammal hence this petition needs an dismissal order.

10. The respondent has also stated that he has invested his own money in the name of Ayyasamy and Gourammal which was denied by the appellant herein. T.L.Radhakrishnan, T.L.Gopalakrishnan and T.L.Chakkubai were brothers and sister of appellant's father. The appellant had second wife through whom one Lakshmi Narayanan, Krishna Chetty, Subramaniam, Padmavathy, Sundari, Chithra, Srinivasan, who predeceased and hence, his wife Varalakshmi and daughter Sai Lakshmi were also legal heirs. The respondent has submitted that the appellant only is not the legal heir of the deceased Gourammal but the respondent and his brothers and sisters and also other stepbrothers and stepsisters are becoming the legal heir to the said Gourammal and hence suppressing those facts, the appellant has filed this petition. Hence, the respondent pleaded for dismissal of the same.

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11. In the lower Court, while conducting the enquiry, the appellant has submitted that his brother and sister died issueless and

they were not married and at that time he was the only legal heir but in his cross-examination has submitted that Lakshmi Narayanan, Krishna Chetty, Subramaniam, Padmavathy, Sundari, Chithra, Srinivasan are stepbrothers and stepsisters who were all born to his father's second wife and other persons namely T.L.Radhakrishnan, T.L.Gopalakrishnan and T.L.Chakkubai were his uncles and aunt.

12. Hence, the lower Court has come to the conclusion since for the deceased Gourammal and Ayyasamy other than the appellant there are someother heirs namely Lakshmi Narayanan, Krishna Chetty, Subramaniam, Padmavathy, Sundari, Chithra, Srinivasan, T.L.Radhakrishnan, T.L.Gopalakrishnan and T.L.Chakkubai and one Srinivasan predeceased and hence, his wife one Varalakshmi and Sai lakshmi as legal heirs, without making them as parties, the appellant alone has claimed succession certificate and even other than that they are also entitled for the share in the properties as such the deceased person did not have any Class one legal heirs to succeed and second class legal heirs are alone available and when the appellant himself has admitted that there are someother sisters and brothers are there, the petitioner has not made them as parties and he has also suppressed the above said facts and he has stated that he alone is the

legal heir. Hence, based on the facts of the case, the lower Court has come to the conclusion that the appellant is not entitled for getting a succession certificate.

13. Aggrieved by the said order of the learned Principal District Judge, Coimbatore, the appellant has preferred this Appeal in C.M.A.No.877 of 2010 before this Court. This Court has to decide whether the appellant is entitled for the prayer as prayed for.

14. Class one legal heirs as per Hindu Laws: The Hindu Succession Act 1956 is extracted hereunder:

"3. Definitions and interpretations.-----

(e) "full blood", "half blood" and "uterine blood"-

(i)two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(ii)two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husband."

15. So, from the above it is clear that a person to be

known as full blood have to be born through a father and a mother having full blood, half blood by the father being common, and mothers are different persons. Accordingly, when this Court had gone through the pleadings it has been found that the deceased Gourammal's full blood brother is the appellant herein. He has got stepbrothers and stepsisters through the second wife of his father and they are all half blooded persons.

16. He would further contend that as per Section 15 states as follows:

"15. General rules of succession in the case of female Hindus.-(1) *The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,-*

(a) *firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*

(b) *secondly, upon the heirs of the husband;*

(c) *thirdly, upon the mother and father;*

(d) *fourthly, upon the heirs of the father;*
and

(e) *lastly, upon the heirs of the mother."*

17. So, from the above it is clear that in the absence of

father, mother, sons, daughters the properties devolve on the heirs of her father and as per Section 18 of Hindu Succession Act which states as hereunder:

"18.Full blood preferred to half blood.-Heirs related to an intestate by full blood shall be preferred to heirs related by half blood; if the nature of the relationship is the same in every other respect."

18. As per the said Sections, the order of succession on heirs referred above distribution of intestate properties to those heirs shall take place. According to the said rules that only when there is no sons, daughters and husband then it goes to the heirs of the husband if those people are not available then it devolves upon father and mother; when the father and mother also not available, it goes to the heirs of the father. Accordingly, the appellant becomes the heir of the father as he is being the brother of the deceased Gourammal. The other persons such as stepbrothers and stepsisters born through the second wife can be termed only as half blood brothers and sisters as per Section 18, full blood brother has to be preferred to the heirs related to the half blood. Accordingly, the appellant becomes the successor to the property of the deceased Gourammal since he is the

brother available by full blood.

19. As per above sections, the learned counsel appearing for the appellant would submit that the lower Court has come to the wrong conclusion and deciding the matter that when there are stepbrothers and stepsisters are available, the appellant ought to have made them as parties to the proceedings and on the ground of non-joinder of parties the claim has been rejected and prayed for setting aside the order.

20. It could be seen that when those persons are only stepbrothers and stepsisters, as per the above said Sections it clearly proves that full blood heirs are preferred than the half blood heirs. Accordingly, rightly the appellant has not made them as parties because they do not have any right to succeed to the said property of the deceased Gourammal (sister) born through the first wife. The children of the second wife are entitled as heirs of the father and not of the estate of the deceased half blooded sister. As such the reasons given by the lower Court is been held as mis-conceived and it has to be set asided.

21. The learned counsel for the appellant as produced various judgments and placed reliance on **AIR 1975 MADRAS 253(1), Yellaya Gounder and another Vs. Lakshmi and others**, wherein states as follows:

1.

"Hindu Succession Act (30 of 1956), Section 18- Succession to brother – Sister of deceased by full blood would exclude not only sister by half blood but also brother by half blood.

The Section uses the words 'if the nature of the relationship is the same in every other respect'. The nature of relationship of a sister and a brother (in respect of the deceased) is one and the same in every other respect (sex has no relevance) for there is no difference either in respect of ascent or descent or in any other way.

3.

Therefore, if the Section had simply stated that if the relationship is the same in every other respect, then sister by full blood can exclude only a sister by half blood, for the relationship of both to the deceased is the same, namely, sister"

22. For the same proposition he has also relied upon **AIR 2004 MADHYA PRADESH 52, Smt. Jhugli Tekam Vs. Assistant Commissioner and others**, wherein it states that a full sister of deceased alone is a legal of deceased and stepbrothers and sisters are not entitled to any property of deceased. And he also relied upon **AIR 1991 KERALA 10, Narayanan Vs. Pushparajini and others**. For the same proposition he has also relied upon another case **AIR 1984 BOMBAY 208 (1), Waman Govind Shindore and others Vs. Gopal Baburao Chakradeo and others** and also relied on **AIR 1971 PUNJAB AND HARYANA 323 (V.58 C 69)**. From all the above cases referred, it is clear that the relationship of full blood excludes half blood.

23. Accordingly, this Court decides this appeal in favour of the appellant herein that he alone is entitled to the estate of the deceased Gourammal. Regarding the claim raised by the respondent herein, the respondent being the paternal uncle of the appellant and the deceased; claiming that he has taken care of the children and hence, he and his brothers and brothers children are entitled for the share in the properties of the deceased Gourammal is without any valid, legally enforceable right and as well as there is no proof filed for the same. In the absence of any materials to show that he has also

invested some of the amounts in the name of deceased Gourammal and deceased Ayyasamy, the lower Court has rightly not considered his claim and rejected the same.

24. The Sections (*cited supra*) clearly states that only class one heirs (i.e.) the brothers/sisters by full blood are entitled to succeed the estate of the deceased persons. Accordingly, when the appellant being the brother by full blood, he alone is entitled for the said money and not the respondent herein. The respondent herein has tried but for undue enrichment he has filed this counter against the appellant herein without any valid materials. It is only he who has said that the appellant has stepbrothers and stepsisters available and they are also entitled for a share. When the Court has decided in favour of the appellant, half blood brothers and sisters ought to be excluded and only the full blood brother alone is preferred. The question of claiming that the first respondent and the others are paternally related to him and they are also entitled for the claim is rejected.

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25. Accordingly, this Civil Miscellaneous Appeal is allowed.

The order passed by the learned Principal District Judge, Coimbatore in S.O.P.No.60 of 2006, dated 08.12.2009, is set aside and the matter is

remitted back to the authority to grant the necessary succession certificate within the period six weeks from the date of receipt of the copy of this order. No costs.

05.10.2018

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Index:Yes/ No
Internet: Yes/No
speaking/non-speaking

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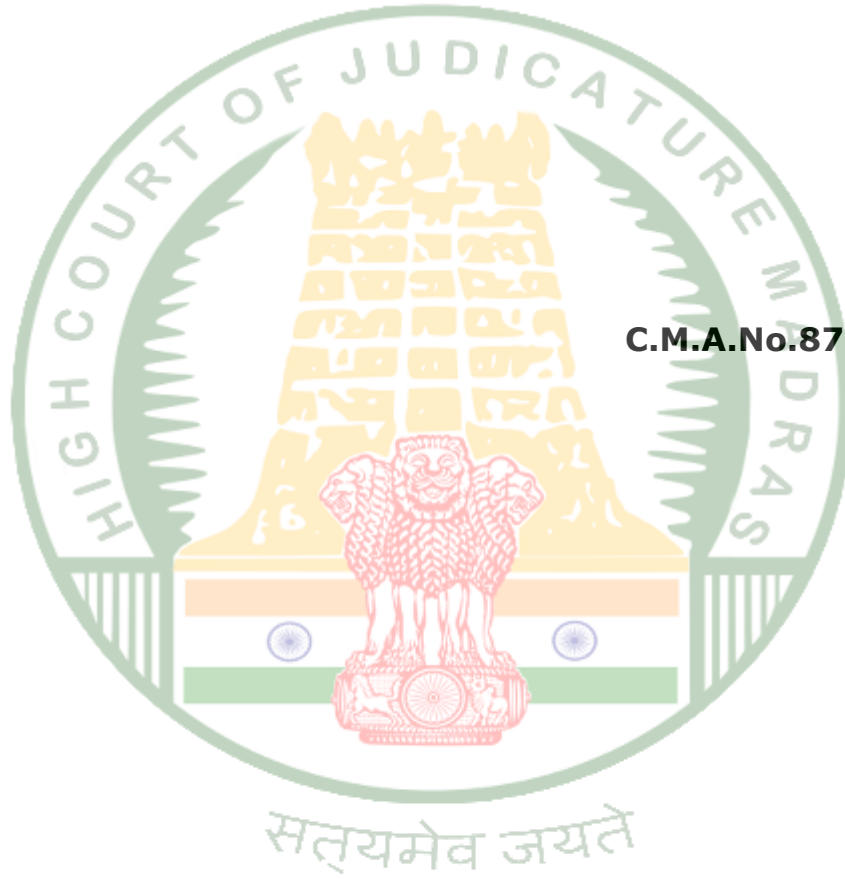
The Principal District Court,
Coimbatore.



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V.BHAVANI SUBBAROYAN, J.

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